



GREENSTEIN DELORME & LUCHS, P.C.

1620 L STREET, N.W., SUITE 900
WASHINGTON, D.C. 20036-5605
tel (202) 452-1400 fax (202) 452-1410

www.gdllaw.com

jpb@gdllaw.com
John Patrick Brown, Jr., Esq.

kmo@gdllaw.com
Kate M. Olson, Esq.

January 22, 2013

BY HAND DELIVERY

Lloyd Jordan, Esq.
Chairperson
Board of Zoning Adjustment
441 Fourth Street, NW
Suite 210
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2013 JAN 22 PM 2:27

Re: BZA Application of Mid Cities LLC, Case No. 18496
Rear of 4434 Connecticut Avenue, N.W.
Square 1971, Lots 831 and 832

Dear Mr. Jordan:

Enclosed please find the original and twenty (20) copies of the Prehearing Statement for BZA Case No. 18496.

Thank you for your assistance in this matter. If you have any questions, please have the Office of Zoning contact the undersigned.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: Kate M. Olson
Kate M. Olson

By: John Patrick Brown, Jr.
John Patrick Brown, Jr.

BOARD OF ZONING ADJUSTMENT
Enclosures District of Columbia
CASE NO. 18496
EXHIBIT NO. 20

Board of Zoning Adjustment
District of Columbia
CASE NO. 18496
EXHIBIT NO. 20



GREENSTEIN DELORME & LUCHS, P.C

**BZA Prehearing Statement
January 22, 2013**

CERTIFICATE OF SERVICE

I hereby certify that a copy of this BZA Application was sent on January 22, 2013 to the following:

ANC 3F
4401-A Connecticut Avenue, NW
Box 244
Washington, DC 20008-2322
(Electronically commissioners@anc3f.us and by mail)

Commissioner Adam Tope, SMD 3F01
(Electronically adam@adamtope.com)

Mr. Arthur Jackson
D.C. Office of Planning
1100 4th Street, SW
Suite E650
Washington, DC 20024
(Electronically arthur.jackson@dc.gov)

Mr. Lewis C. Booker
D.C. Department of Transportation
55 M Street, SE
5th Floor, Room 533
Washington, DC 20003
(Electronically lewis.booker@dc.gov)

Kate M. Olson, Esq.

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

Application of Mid Cities LLC
Square 1971, Lots 831 & 832

BZA Application No.: 18496
Hearing Date: February 5, 2013
ANC 3F

PREHEARING STATEMENT OF THE APPLICANT

This prehearing statement (“**Statement**”) is submitted on behalf of Mid Cities LLC (“**Applicant**”) by its attorneys, Greenstein DeLorme & Luchs, P.C. by John Patrick Brown Jr., Esquire and Kate M. Olson, Esquire, in support of an application for the special exception (“**Application**”) described below.

I. NATURE OF RELIEF SOUGHT

This is an application to renew a special exception under Section 214 of the Zoning Regulations for the continued use of the subject site for accessory parking in an R-1-B zone. The subject site is located in the R-1-B District at premises known as the rear of 4434 Connecticut Avenue, N.W. (Square 1971, Lots 831 and 832) (“**Accessory Parking Lot**” or “**Property**”). *See Exhibits A-C.* Section 214 of the Zoning Regulations allows the continued use of the subject site for accessory parking provided certain conditions are met. The site has been used for accessory parking for the one-story commercial building located at 4434 Connecticut Avenue, N.W. since the 1930’s when the building was occupied by the Thos. E. Clark Plumbing and Heating Company. Prior to 1958, BZA approval was not required. The first BZA approval for the accessory parking lot was granted in 1963. The most recent approval of this parking lot by the Board of Zoning Adjustment (“**BZA**” or “**Board**”) was in Order No. 16061 dated August 8, 1995. The Applicant requests permanent renewal of these accessory parking spaces.

II. JURISDICTION OF THE BOARD

This Board has jurisdiction to grant the requested special exception relief pursuant to Section 3104.1 and in accordance with Section 214 of the Zoning Regulations.

III. BACKGROUND AND PREVIOUS BZA APPROVALS

The Property is located in the Van Ness neighborhood. Similar rear parking lots are located immediately adjacent to the north and south of the subject site. The surrounding area includes several low scale retail establishments that front on Connecticut Avenue, including a car wash, a fast food establishment, and a dry cleaner. There is a seven-story apartment building known as “The Hastings” located at the corner of Connecticut Avenue and Albemarle Street.

The Applicant proposes the continuation of the existing surface parking lot to serve as accessory parking for Lots 831 and 832 in Square 1971. The Property consists of two alley lots containing approximately 5,178 square feet and 14 parking spaces. A 20 ft. wide public alley, accessible from Albermarle and Yuma Streets, provides access to the Accessory Parking Lot. The parking spaces are separated from the use it serves by this public alley. The commercial business at 4434 Connecticut Avenue which fronts Connecticut Avenue and is zoned C-3-A (“Commercial Property”). *See Exhibit D*, photos of the Property.

The Commercial Property is only 25 feet wide and approximately 140 feet long, with no space to provide parking. Both the Commercial Property, which houses a realtor’s office, and the rear Accessory Parking Lot have been owned by the Applicant since 1991 (21 years). Other than an existing enclosed garage that is used for storage, the Accessory Parking Lot is used exclusively for parking. The Property has operated as a parking lot since the 1930’s. The BZA

approval history for these two lots is as follows: Lot 832 has operated as a parking lot since 1991 (21 years)¹ and Lot 831 has operated as a parking lot since 1963 (49 years).²

IV. COMPLIANCE WITH BZA ORDER NO. 16061

The most recent approval of this Accessory Parking Lot by the Board was in Order No. 16061, dated August 8, 1995. The Board granted the approval subject to 11 conditions. *See Exhibit E.*

A. The Applicant is in compliance with all of the conditions established by the Board as set forth below, but inadvertently allowed the previous approval to expire:

1. Approval shall be for a period of seven years.

This condition is the subject of this Application. Order 16061 approved the accessory spaces for a period of seven (7) years, beginning in 1995 and expiring in 2002. The Applicant requests permanent renewal of the accessory spaces.

2. Fourteen parking spaces shall be provided on the site in accordance with revised plans marked as Exhibit No. 30A of the record.

Applicant is in compliance.

3. The hours of operation shall be from 8 a.m. to 9 p.m.

Applicant is in compliance.

4. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

Applicant is in compliance.

5. Bumper stops shall be maintained.

Applicant is in compliance.

6. All parts of the lot shall be kept free of refuse or debris and shall be paved and landscaped.

Applicant is in compliance.

¹ BZA Order pertaining to Lot 832: BZA Order 15401 (1991) and BZA Order 16061 (1995).

² BZA Orders pertaining to Lot 831: BZA Order 7256 (1963), BZA Order 9578 (1968), BZA Order 11366 (1973), BZA Order 12714 (1978), BZA Order 13861 (1983), BZA Order 15401 (1991) and BZA Order 16061 (1995). *See Exhibit E.*

7. **No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.**

Applicant is in compliance.

8. **Landscaping shall be provided in the three planters shown on the site plan. The landscaping shall consist of evergreens at least three feet in height and it shall be maintained in a healthy growing condition and in a neat and orderly appearance.**

Applicant is in compliance.

9. **No other use shall be conducted from or upon the premises. No structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.**

Applicant is in compliance.

10. **No vehicular entrances or exits shall be within 40 feet of a street intersection as measured from the intersection of the curb lines extended.**

Applicant is in compliance.

11. **Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.**

Applicant is in compliance.

V. THE APPLICANT IS ENTITLED TO SPECIAL EXCEPTION RELIEF UNDER THE ZONING REGULATIONS

As the Board is aware, uses that are allowed by special exception are deemed compatible with other uses permitted in the applicable zoning district provided certain requirements are met. In reviewing an application for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements set forth therein. If the prerequisites set out in particular regulations are satisfied, the Board must ordinarily grant the application. See e.g. Bakers Local Union. No. 118 v. D.C. Board of Zoning Adjustment, 437 A.2d 176, 178 (D.C. 1981).

As set forth below, approval of special exception relief in this case is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of nearby properties.

VI. THE APPLICANT MEETS THE SPECIAL EXCEPTION STANDARD FOR ACCESSORY PARKING SPACES

Section 214 of the Zoning Regulations allows accessory parking spaces to be located in the R-1 District subject to the following criteria:

A. Section 214.2: Accessory parking shall be in an open area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade.

The Accessory Parking Lot is located in an open area.

B. Section 214.3: Accessory parking spaces shall be located in their entirety within 200 feet of the area to which they are accessory.

The Accessory Parking Spaces on the Property are located to the rear of, and within 200 feet of, the Commercial Property located at 4434 Connecticut Avenue, N.W.

C. Section 214.4: Accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory.

The Accessory Parking Lot is located across a 20 ft. public alley from the Commercial Property at 4434 Connecticut Avenue, N.W.

D. Section 214.5: All provisions of chapter 23 of the Zoning Regulations regulating parking lots shall be complied with, except that the Board may in an appropriate case under Section 2303.3 modify or waive the conditions specified in Section 2303.2 where compliance would serve no useful purpose.

1. Section 2303.1 (a): All areas devoted to driveways, access lanes, and parking areas shall be surfaced and maintained with an all-weather surface. In addition to traditional impervious surfaces, allowable all weather surfaces include porous (or pervious) concrete, porous asphalt, and/or mechanically-reinforced grass, excluding grass or gravel.

The Accessory Parking Lot is appropriately paved.

2. Section 2303.1 (b): The parking lot will be designed so that no vehicle or any part thereof projects over any lot line, or building line.

The Accessory Parking Lot is designed and operated to meet this requirement.

3. Section 2303.1 (c): Parking, and any other use permitted on a parking lot in the district, will be the only uses conducted on the lot.

The Accessory Parking Lot meets this requirement.

4. Section 2303.1 (d): The vehicular entrance and exit will be more than 40 feet away from the nearest street intersection.

The Accessory Parking Lot meets this requirement.

5. Section 2303.1 (e): The lighting used to illuminate the parking lot will be arranged downward so that all direct rays will be confined to the surface of the parking lot.

The Accessory Parking Lot meets this requirement.

6. Section 2303.1 (f): The parking lot will be kept free of refuse and debris and the landscaping will be maintained. Landscaping will cover a minimum of five percent (5%) of the total area of the parking lot, or an area as determined by the Board.

The Accessory Parking Lot meets the Board's previous approval for landscaping in Case No. 16061.³

7. Section 2302.2-2302.4: The proposed parking lot will be appropriately screened from adjacent residential property.

The Accessory Parking Lot is adequately screened from the adjacent property. There is also extensive screening of the lot from the adjacent residential properties as a result of fences and accessory structures in the rear yards of the properties to the west and the fence and wall along the northerly boundary of the Property. Further, the landscaping on the subject site minimizes any impacts on neighboring properties. Accordingly, the Applicant seeks a continued waiver from the requirement for a 42 inch high wall along the western border of the site where it abuts residential properties. This waiver request was previously approved by the Board in BZA Order 15401 (1991).⁴ The existing structures and fencing in this area, as shown in the photos, provide ample screening.

E. Section 214.6: It shall be economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted.

The existing one-story commercial building occupies virtually the entire Commercial Property on which it is located. Therefore, it is impossible to locate accessory spaces on this lot.

³ Order 16061, Condition No. 8 required "Landscaping shall be provided in the three planters shown on the site plan. The landscaping shall consist of evergreens at least three feet in height and it shall be maintained in a healthy growing condition and in a neat and orderly appearance."

⁴ The previous owner of the Property was granted a special exception to establish the accessory parking lot and a waiver from having to provide a 42 inch wall to screen all contiguous residential lots for the Property by BZA Order 15401, dated January 15, 1991.

F. Section 214.7: The accessory parking spaces will not have an adverse impact on the neighborhood because of noise, traffic, or other objectionable conditions.

The Property has been used for accessory parking since the 1930's and with BZA approval beginning in 1963. This Accessory Parking Lot has operated, under the Applicant's ownership, since 1991 with no adverse impacts. There will be no adverse traffic impacts resulting from the continued location of accessory parking spaces on the subject site. The lot will be in operation from 8:00 a.m. and 9:00 p.m.

G. Section 214.8: Department of Transportation Review.

The application will be submitted to the D.C. Department of Transportation for review and report.

H. Section 3104.1: The relief sought is in harmony with the general purpose and intent of the regulations and will not tend to affect adversely the use of the neighboring property.

As is fully demonstrated above, this application meets the criteria set forth in Section 214, and therefore is in harmony with the general purpose and intent of the Zoning Regulations.

VII. COMMUNITY SUPPORT

The Applicant maintained contact with the Advisory Neighborhood Commission ("ANC") 3F since the submission of the Application in November and the ANC requests several things not included in the Application. These include: an order for a period of only five (5) years, a permanent bike rack, increased landscaping, replacement of the impervious surface with a pervious surface and two (2) car sharing spaces⁵.

The Application was presented to the full ANC 3F Commission at its duly noticed meeting on January 14, 2013. At this meeting, the Applicant responded to the ANC's requests and explained that a permanent renewal of these accessory parking spaces, versus an order for a term of years, is justified considering: the length of time these parking spaces have been in operation, the many orders issued by the BZA throughout the years, the fact that the owner has received no complaints about the parking, the cost of the requested additional landscaping and replacement of the surface to pervious surface (estimated to cost \$65,000 without engineering

⁵ Providing 2 out of 14 parking spaces for car sharing would equate to losing 15% of the parking.

fees). The ANC adopted a unanimous resolution, with conditions, in support of the Application for a five (5) year period.

VIII. MEETING WITH THE OFFICE OF PLANNING AND DEPARTMENT OF TRANSPORTATION

The Applicant met the Office of Planning (“OP”) and Department of Transportation (“DDOT”) at the Property to review the requested permanent extension of the parking spaces. DDOT said that there were no reported run-off problems and vehicular circulation was not an issue. OP noted they were much more favorably disposed of not requiring a term limit to the order given the Applicant’s willingness to install green space/landscaping, in the form of planters, totaling 5% (240.9 square feet) of the surface parking area (*See Exhibit F, landscape plan*), a bike rack and the installation of a pervious surface (in stages as the pavement needs to be replaced).

IX. APPLICANT’S PROPOSED CONDITIONS

Based on feedback from the ANC, OP and DDOT, the Applicant reiterates its request for permanent approval of the accessory parking lots containing fourteen (14) parking spaces and proposes the BZA Order be subject to the following conditions (as noted below, some of these conditions are repeated from the 1995 BZA Order No. 16061):

1. **Landscaping, including the use of planter boxes shall be provided on site (totaling 5% of the surface parking area) per the plans marked as Exhibit _____. The landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.**
2. **The existing pervious surface shall be replaced, in stages, with pervious surface by 2020.**
3. **A permanent bicycle rack shall be installed.**

4. **The Applicant shall investigate the feasibility of using one (1) of the fourteen (14) parking spaces as a car sharing space, subject to approval of the tenant and a commercially reasonable agreement with a car sharing company.**
5. **The hours of operation shall be from 8am to 9pm. [Note: this condition was carried over from the 1995 BZA Order 16061]**
6. **Bumper stops shall be maintained. [Note: this condition was carried over from the 1995 BZA Order 16061]**
7. **All parts of the lot shall be kept free of refuse or debris and shall be paved and landscaped. [Note: this condition was carried over from the 1995 BZA Order 16061]**

X. WITNESS EXPECTED TO TESTIFY

Joseph Whelan, Mid Cities LLC

XI. EXHIBITS IN SUPPORT OF THE APPLICATION

Applicant offers the following exhibits in support of the requested relief:

- Exhibit A:** Copy of the Zoning Map showing the Accessory Parking Lot outlined in red.
- Exhibit B:** Portion of the Baist Atlas Map showing the Accessory Parking Lot outlined in red.
- Exhibit C:** Surveyor's Plat.
- Exhibit D:** Photographs of the Existing Commercial Property, Aerial View of the Area, Accessory Parking Lot, and the Three Planters.
- Exhibit E:** BZA Order 13861 (dated June 22, 1983), BZA Order 15401 (dated January 15, 1991) and BZA Order 16061(dated August 8, 1995).
- Exhibit F:** Landscape Plan.
- Exhibit G:** Certificates of Occupancy.
- Exhibit H:** Outline of Joseph Whelan's Testimony.

XII. CONCLUSION

For the reasons stated above, the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of neighboring property.

Respectfully Submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: Kate M. Olson
Kate M. Olson

By: John Patrick Brown, Jr.
John Patrick Brown, Jr.

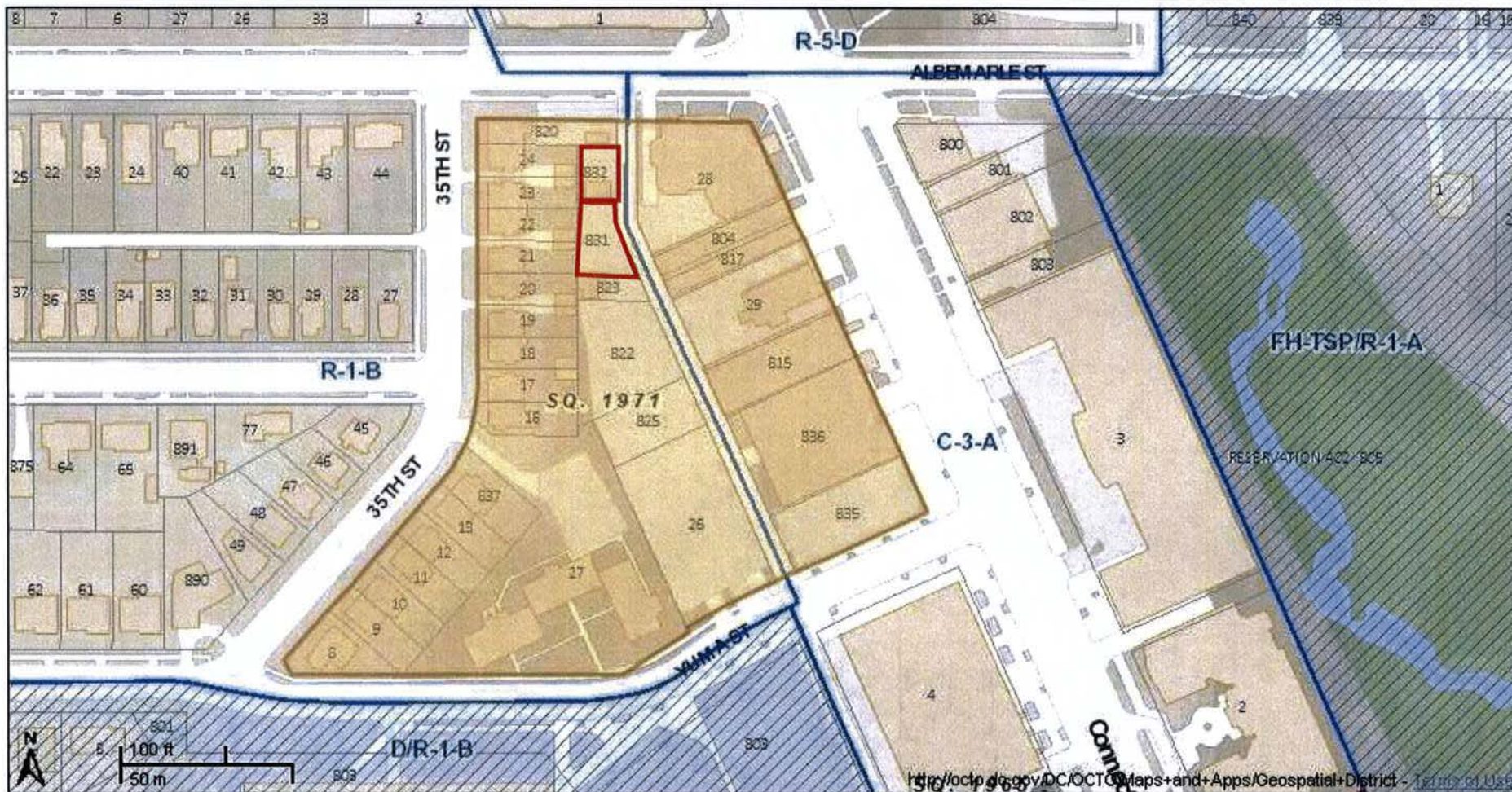
EXHIBIT A



District of Columbia Office of Zoning

EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP

October 3, 2012



Zoning Layers

Zone Districts	Overlays Districts	TDRs	Air Rights Zone
Pending Zones	CEA	Pending PUDs	Baist Index
Historic Districts	Campus Plans	Active PUDs	

To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

EXHIBIT B

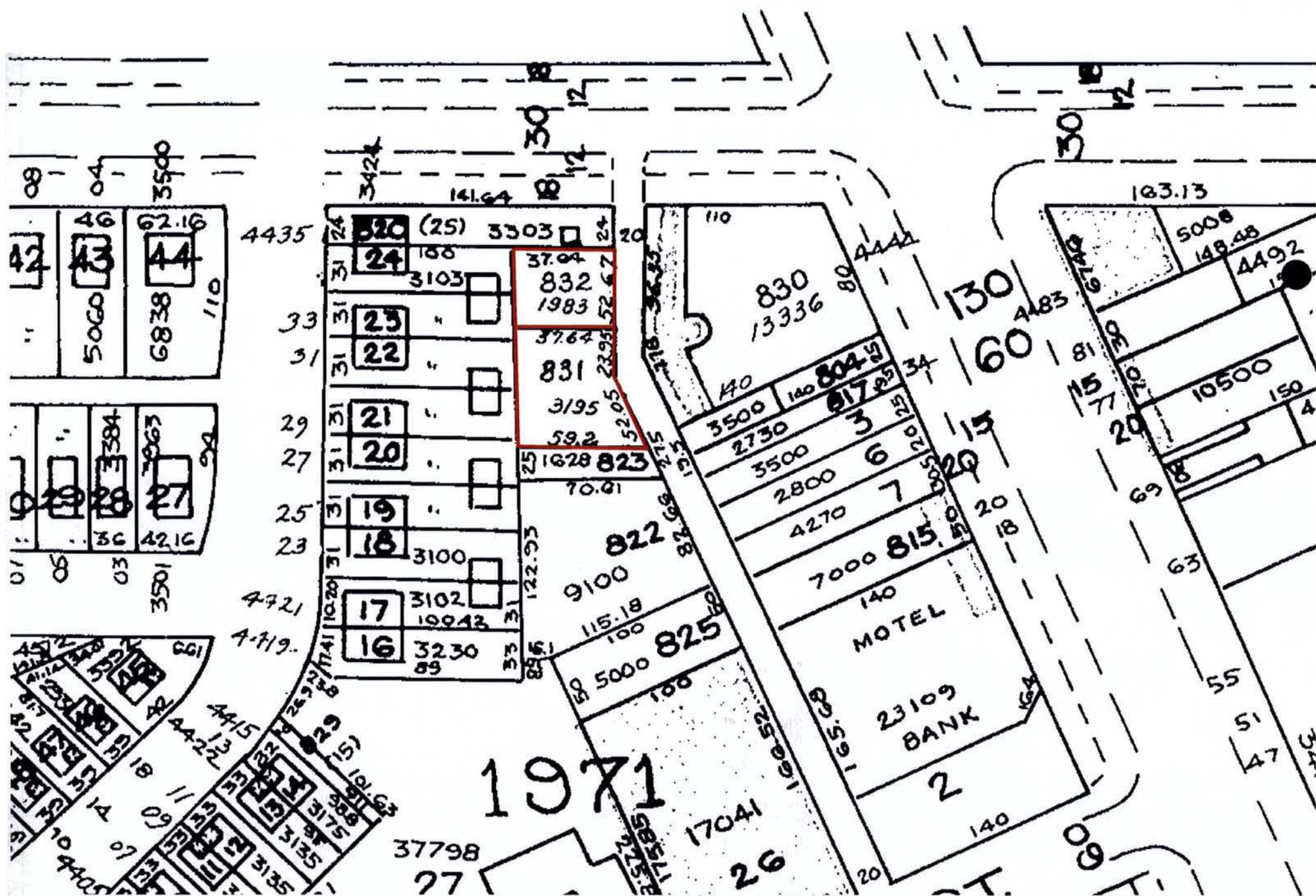


EXHIBIT C

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington D C September 27 2012

Plat for Building Permit of SQUARE 1971 LOTS 831 - 832

Scale 1 inch = 20 feet Recorded in Book A & T Page 3500 - N

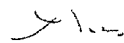
Receipt No 12-06523

Furnished to JULIEN H NAM

I hereby certify that all existing improvements shown hereon are completely dimensioned and are correctly platted that all proposed buildings or construction or parts thereof including covered porches are correctly dimensioned and platted and agree with plans accompanying the application that the foundation plans as shown hereon is drawn and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations and that this area has been correctly drawn and dimensioned hereon It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single family dwellings or flats or in excess of 12% at any point for other buildings (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property)


Surveyor, D C

Date _____

By A S 

(Signature of owner or his authorized agent)

NOTE. Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue Assessment Administration, and do not necessarily agree with deed description

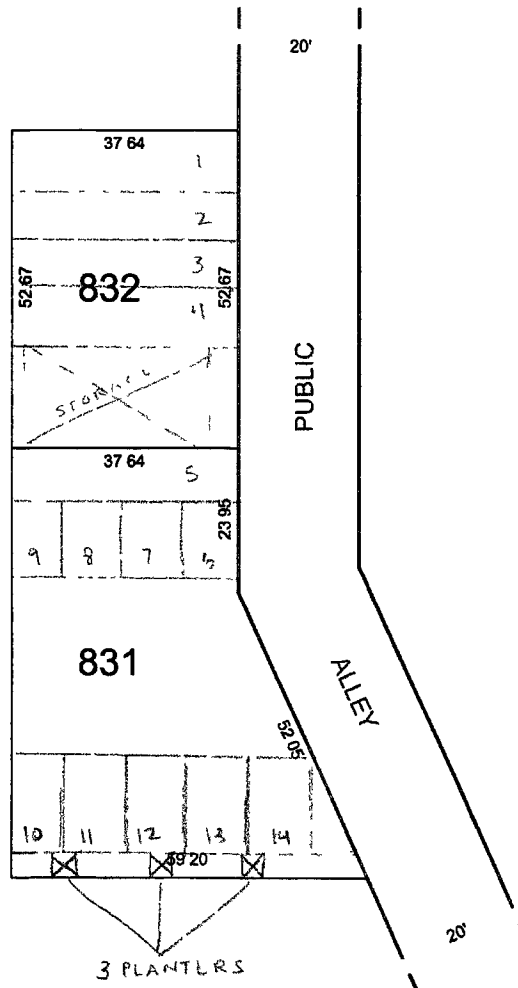
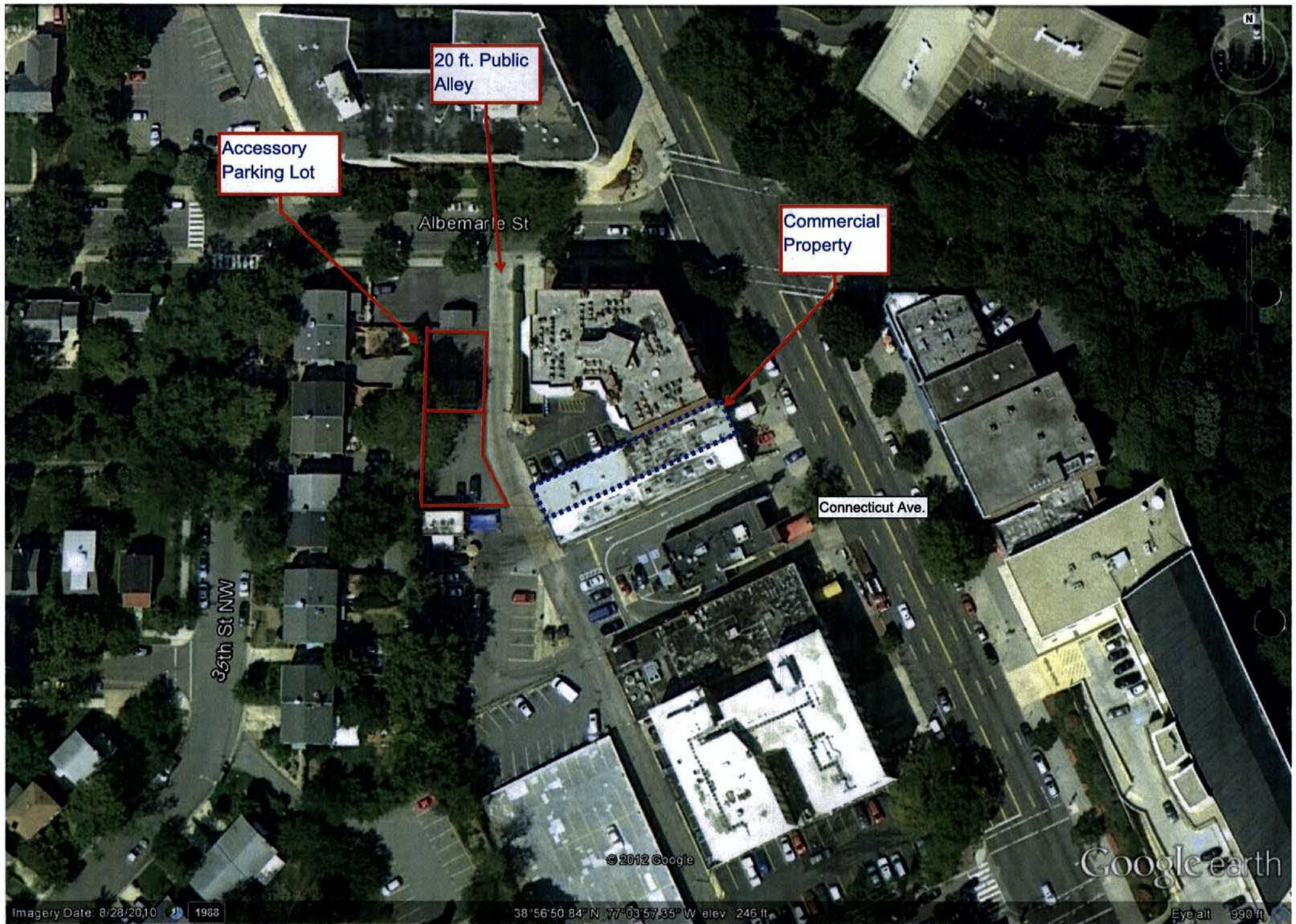


EXHIBIT D



20 ft. Public
Alley

Accessory
Parking Lot

Albemarle St

Commercial
Property

Connecticut Ave.

33th St NW

© 2012 Google

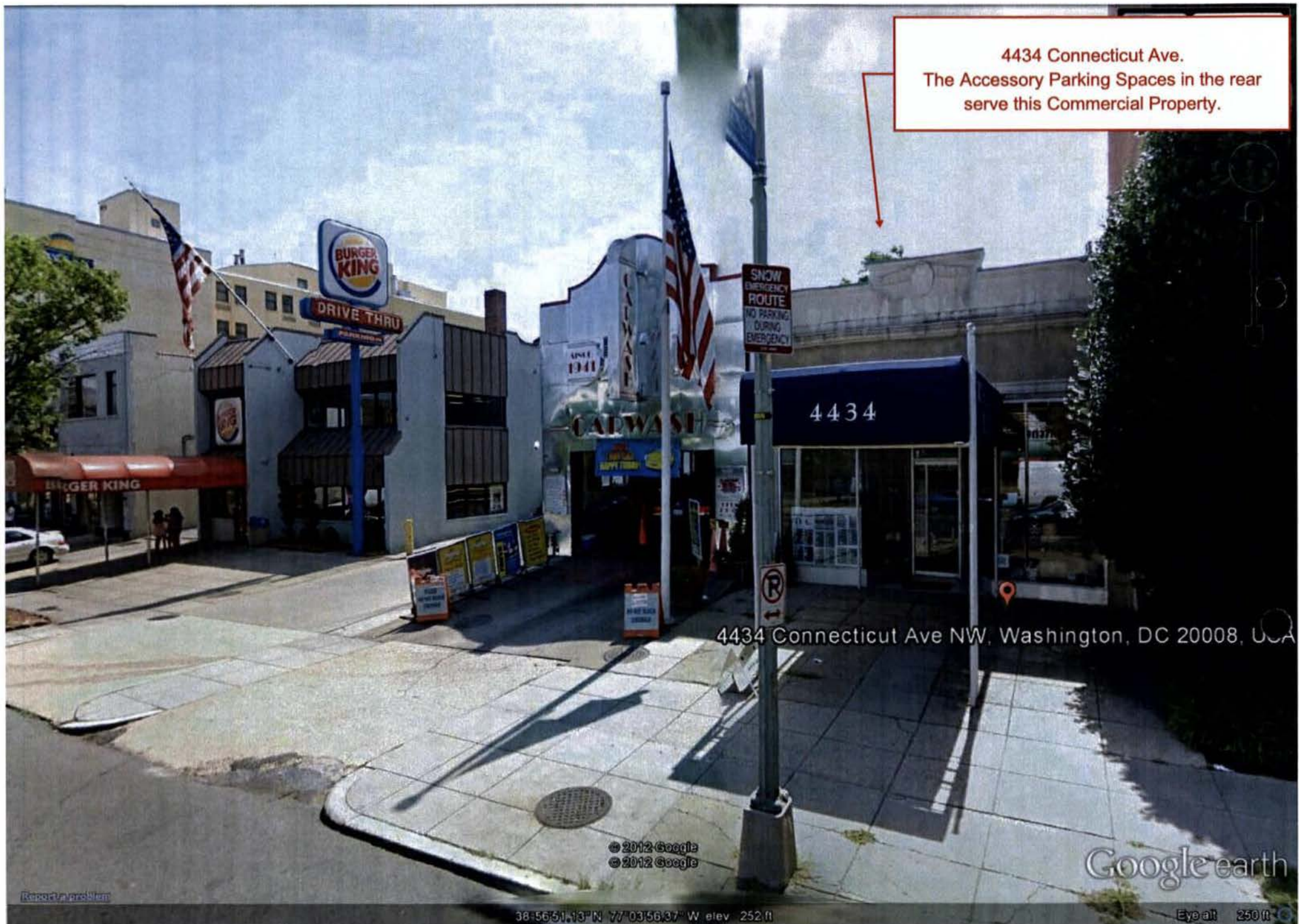
Google earth

Imagery Date: 8/28/2010 1983

38°56'50.84"N 77°03'57.35"W elev 246 ft

Eye alt 990 ft

4434 Connecticut Ave.
The Accessory Parking Spaces in the rear
serve this Commercial Property.



4434 Connecticut Ave NW, Washington, DC 20008, USA

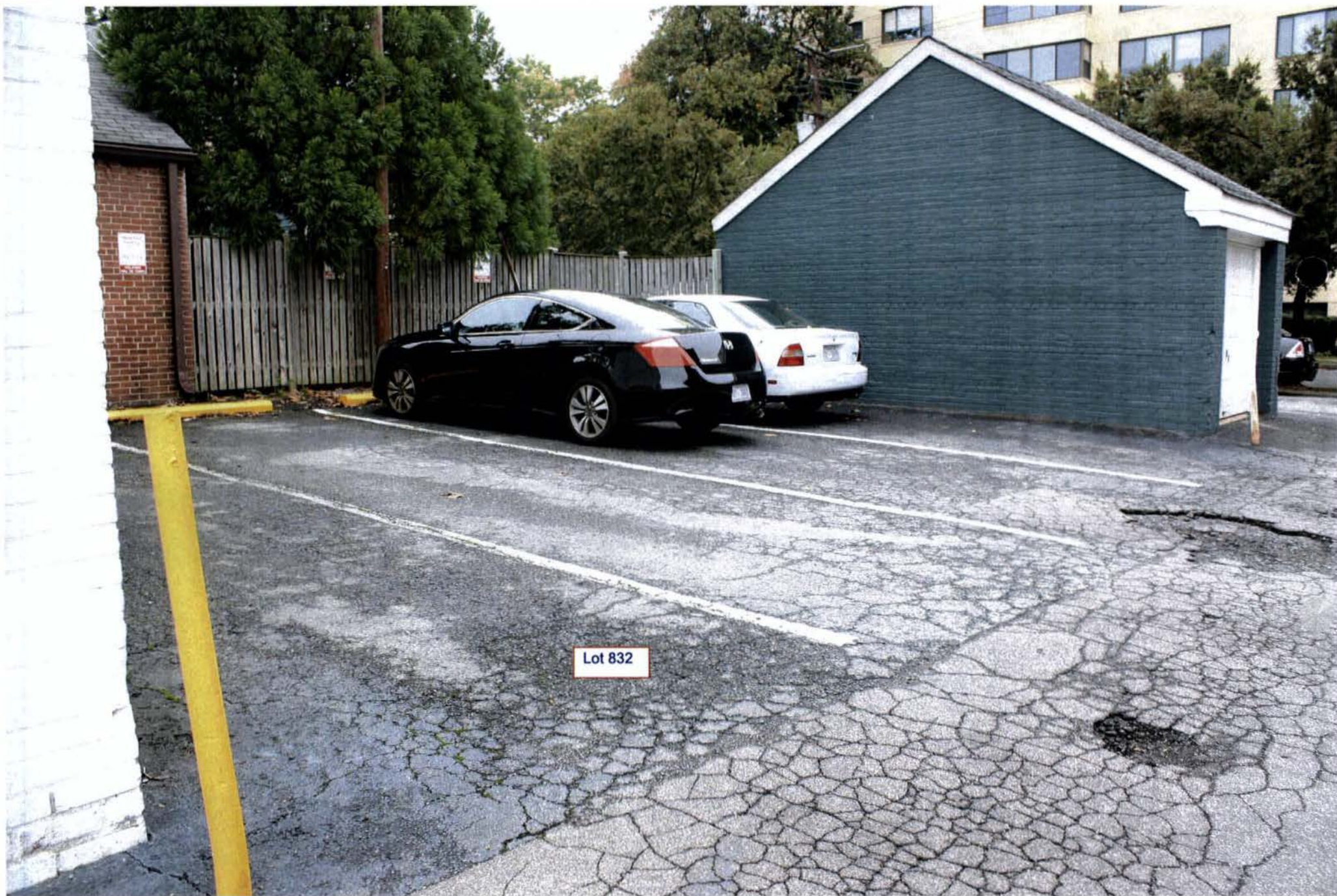
© 2012 Google
© 2012 Google

Google earth

[Report a problem](#)

38°55'51.13" N 77°03'56.37" W elev. 252 ft

Eye alt 250 ft



Lot 832



Lot 831



EXHIBIT E

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 13861, of Thomas E. Clark, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to continue the use of a parking lot in the R-1-B District at the rear of premises 4434 Connecticut Avenue, N.W., (Square 1971, Lot 831).

HEARING DATE: December 8, 1982

DECISION DATE: January 5, 1983

FINDINGS OF FACT:

1. The subject property is an alley lot in the square bounded by Connecticut Avenue, Albemarle, Yuma and 35th Streets, N.W. The lot is located at the rear of premises known as 4434 Connecticut Avenue, N.W. It is in an R-1-B District.

2. The subject site is irregularly shaped and has an all-weather impervious surface.

3. The subject property has been operated as a parking lot for approximately thirty years. The site is presently operating as a parking facility pursuant to this Board's previous Order No. 12714, dated September 22, 1978.

4. The lot abuts residential properties to the west but is screened from those properties by a six foot high brick wall and fence and an accessory building. Abutting the lot on the east is a twenty foot wide public alley which extends north and south into Albemarle and Yuma Streets. To the north and south, the other lots on the west side of the alley are used for accessory parking.

5. The lot accommodates approximately thirteen parking spaces and a trash dumpster.

6. The lot is separated from the use it serves by the above-noted alley.

7. The commercial property which the lot serves is only twenty-five feet wide and approximately 140 feet along with no space to provide parking.

8. The applicant proposes the continuation of the facility to serve as accessory parking to the Thomas E. Clark Plumbing and Heating Service, Inc., which is located

at 4434 Connecticut Avenue, N.W. The company's hours of operation are from 7:30 A.M. to 5:00 P.M.

9. The parking lot is used exclusively by the Thomas E. Clark, Inc. for parking of its twenty service vehicles and for customer parking. The parking is necessary for the operation of the business. Without the lot, trucks would be forced to park in the alley or on the streets.

10. Few service vehicles park on the lot during the day as they are out on service calls. Most service vehicles are in the possession of employees beyond 5:00 P.M. as the company provides a twenty-four hour service.

11. No bumper stops had been erected to protect adjacent buildings in accordance with the Board's previous Order No. 12714. The applicant assured the Board that it would bring the lot into compliance.

12. Photographs in the record evidence that a truck was parked on the lot with its front extending into the public alley. A representative of the applicant testified that that was an unusual situation, and that the company would take appropriate actions to see that such projection into the alley would not occur.

13. A representative of the applicant testified that the company has not received any complaints from any of its neighbors concerning the lot.

14. The lot is cleaned daily by a maintenance man.

15. The D.C. Department of Transportation, by memorandum dated August 27, 1982, had no objection to the continued use of the parking lot to serve the plumbing business.

16. No report was received from Advisory Neighborhood Commission 3F.

17. No one appeared in opposition to the application at the public hearing. There were no letters of record in opposition.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires compliance with Paragraph 3101.48 of the Zoning Regulations. The Board concludes that the applicant has met its burden of proof except for the placement of bumper stops, and the projection of parked vehicles into the alley.

The Board concludes that the lot is both convenient and necessary to the operation of the Thomas E. Clark, Plumbing and Heating Service, Inc. and the continuation of the lot will not be objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. The applicant is reminded to observe all of the conditions set forth in this order, particularly condition "c" regarding bumper stops and condition "d" concerning projection over the lot line.

The Board further concludes that the grant of this special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps. Accordingly, it is ORDERED that the application is hereby GRANTED SUBJECT to the following CONDITIONS:

- A. Approval shall be for a period of three years from the date of expiration of the previous order, namely from September 25, 1982.
- B. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- C. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- D. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
- E. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
- F. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
- G. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 5-0 (Lindsley Williams, Carrie L. Thornhill, William F. McIntosh and Charles R. Norris to GRANT; Douglas J. Patton to GRANT by PROXY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUN 22 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

13861order/PELZER

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15401, of Thomas E. Clark, Elizabeth J. Blake and Ellen C. Golibart, as amended, pursuant to 11 DCMR 3108.1, for special exceptions under Section 215 to establish an accessory parking lot and to waive under Sub-section 215.5 the requirement of Sub-section 2303.2(a) to provide a 42 inch high masonry wall for an accessory parking lot of fourteen spaces in an R-1-B District at the rear of 4434 Connecticut Avenue, N.W., (Square 1971, Lots 831 and 832).

HEARING DATE: December 12, 1990
DECISION DATE: December 12, 1990 (Bench Decision)

SUMMARY ORDER

At the public hearing, the applicant submitted revised plans reducing the number of parking spaces from fifteen to fourteen and requested that the application be amended to include an additional special exception under Sub-section 215.5 for a waiver of the requirements of Paragraph 2303.2(a) to provide a 42 inch high masonry wall.

The Board duly provided timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to ANC 3F and to owners of property within 200 feet of the site.

The site of the application is located in Advisory Neighborhood Commission (ANC) 3F. ANC 3F, which is automatically a party to the application, filed a written statement of issues and concerns in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 215 and 215.5. No person or entity appeared at the hearing or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, and that the requested relief can be granted without substantial detriment to the public good

and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and maps. It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FIVE YEARS.
2. The lot shall be developed in accordance with the revised plans marked as Exhibit No. 24 of the record.
3. The hours of operation shall not exceed from 8:00 A.M. to 9:00 P.M.
4. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
5. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
6. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
7. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
8. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
9. No vehicular entrances or exit shall be within forty feet (40') of a street intersection as measured from the intersection of the curb lines extended.
10. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.
11. The parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy and growing condition and in a neat and orderly appearance.

VOTE: 4-0 (Sheri M. Pruitt, Paula L. Jewell, Charles R. Norris and Carrie L. Thornhill to grant; Illovd D. Smith not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: JAN 15 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15401order/LJP68

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION/APPEAL No. 15401

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this case, dated JAN 15 1991 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Allison Prince, Esquire
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W., Ste. 1100
Wash, D.C. 20006

Joseph M. Whelan
6655 Mid-Cities Avenue
Beltsville, MD 20705-1415

Eben Fodor, Chairperson
Advisory Neighborhood Commission 3-F
4401 Connecticut Avenue, N.W., Suite 205
Washington, D. C. 20008

A handwritten signature in dark ink, appearing to read "ELC", written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: JAN 15 1991

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16061 of the Joseph M. Whelan Co., Inc., pursuant to 11 DCMR 3108.1, for a special exception under Section 214 to continue to operate an accessory parking lot under BZA Order No. 15401 in an R-1-B District at premises Rear 4434 Connecticut Avenue, N.W. (Square 1971, Lots 831 and 832).

HEARING DATE: July 19, 1995
DECISION DATE: July 19, 1995 (Bench Decision)

SUMMARY ORDER

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3F and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 3F. ANC 3F, which is automatically a party to the application, submitted a written statement indicating that it does not object to the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 214. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED. Subject to the following conditions:

1. Approval shall be for a period of seven years.
2. Fourteen parking spaces shall be provided on the site in accordance with revised plans marked as Exhibit No. 30A of the record.
3. The hours of operation shall be from 8 a.m. to 9 p.m.

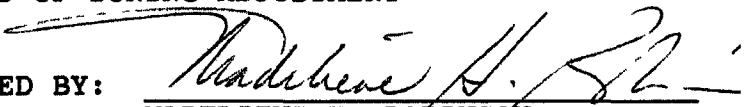
4. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
5. Bumper stops shall be maintained.
6. All parts of the lot shall be kept free of refuse or debris and shall be paved and landscaped.
7. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
8. Landscaping shall be provided in the three planters shown on the site plan. The landscaping shall consist of evergreens at least three feet in height and it shall be maintained in a healthy growing condition and in a neat and orderly appearance.
9. No other use shall be conducted from or upon the premises. No structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
10. No vehicular entrances or exits shall be within 40 feet of a street intersection as measured from the intersection of the curb lines extended.
11. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 5-0 (Laura M. Richards, Susan Morgan Hinton, Angel F. Clarens, John G. Parsons and Craig Ellis to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER:

AUG 8 1995

BZA APPLICATION NO. 16061
PAGE NO. 3

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ORD16061/TWR/CT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

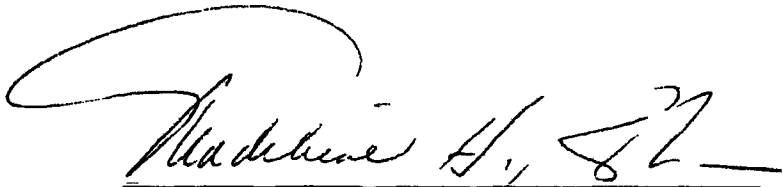


BZA APPLICATION NO. 16061

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 8 1995 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Allison C. Prince, Esquire
Wilkes, Artis, Hedrick and Lane
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006

Douglas Mitchell, Chairperson
Advisory Neighborhood Commission 3F
3400 International Drive, N.W., #2J21
Washington, D.C. 20008


MADELIENE H. ROBINSON
Director

DATE: AUG 8 1995

EXHIBIT F

Washington, D.C., September 27, 2012

Scale: 1 inch = 20 feet Recorded in Book A & T Page 3500 - N

Receipt No. 12-06523

Furnished to: JULIEN H. NAM

I hereby certify that existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

Surveyor, D.C.

By: A.S.

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

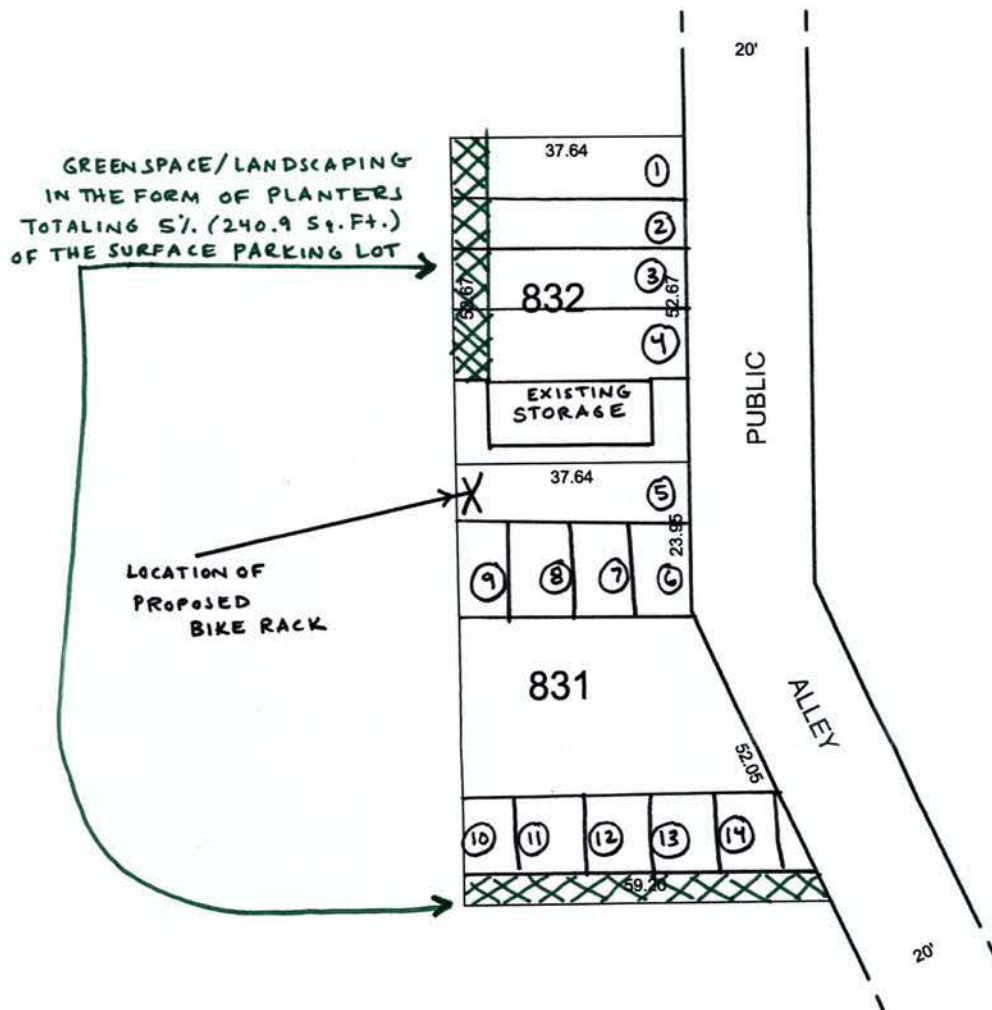


EXHIBIT G

★ ★ ★
BLPA-17
(Rev. 5/76)

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

F. 02
No. B 160908

CERTIFICATE OF OCCUPANCY

5/15/91
(date)

Permission is hereby granted to Joseph M. Whelan Co., Inc.
to use suite(s) _____ on the _____ lot _____ floor(s)
of the building located on lot(s) 831-832 square 1971
known as premises rear of 4434 Connecticut Ave. N.W. for the following
purpose(s) Accessory Parking Lot for rear of 4434 Conn. Ave. N.W.
(8:00 am- 9:00 pm) - 15 cars [w]

BZA # 15401 EXPIRATION DATE: 1/15/96

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY
for the premises, or part thereof, and for the purposes, indicated above, and IS NOT
TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE
in the type of business, ownership of business, or part of premises used therefor, will
render this Certificate VOID and a NEW Certificate must be obtained.

ZONE FEE \$ 27.00
Donald G. Murray, Director
By [Signature]
Designee

68-P-3601 w/112

No. B 160129

★ ★ ★
BLPA-17
(Rev. 5/76)

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

CERTIFICATE OF OCCUPANCY

041091
(date)

Permission is hereby granted to Joseph M. Whelan Co., Inc.
to use suite(s) _____ on the _____ First _____ floor(s)
of the building located on lot(s) 804 square 1971
known as premises 4434 Connecticut Ave. N.W. for the following
purpose(s) Retail Bath Products Showroom
Not Sexually Oriented [w]

BZA #: _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY
for the premises, or part thereof, and for the purposes, indicated above, and IS NOT
TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE
in the type of business, ownership of business, or part of premises used therefor, will
render this Certificate VOID and a NEW Certificate must be obtained.

ZONE FEE \$ 27.00
C-3-A
Donald G. Murray, Director
By [Signature]
Designee

68-P-3601 w/112

The Top certificate of occupancy (160908) is for the parking
lot. The bottom certificate of occupancy is for the store.

EXHIBIT H

**OUTLINE OF TESTIMONY OF JOSEPH WHELAN
APPLICANT - MID CITIES LLC**

- I. History and current use of the Property
- II. Need for and Benefit of Continued Use
- III. Need for and Benefit of Permanent Renewal of Order
- IV. Conclusion