



GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADVISORY NEIGHBORHOOD COMMISSION 3D

PO Box 40846, Palisades Station

Washington, DC 20016

***PALISADES – KENT - SPRING VALLEY - WESLEY HEIGHTS - NEW MEXICO/CATHEDRAL –
THE AMERICAN UNIVERSITY - FOXHALL VILLAGE -BERKELEY***

June 27, 2016

Ms. Marnique Y. Heath, Chairperson
Board of Zoning Adjustment
441 4th Street NW
Room 200S
Washington, D.C. 20001

**RE: BZA Case No. 19274 – Appeal of Zoning Administrator Determination on
Parking Considerations with the Proposed Construction of a New Building at the
Spring Valley Shopping Center (Square 1500, Lots 1, 2, and 3)**

Dear Chairperson Heath:

In January 2015, Washington Real Estate Investment Trust (REIT) – formerly known as WRE and WRIT – proposed construction of a new infill building in the parking lot at the Spring Valley Shopping Center. The Shopping Center was designated as a Historic Landmark by the District government in 1989 and approved for listing on the National Register of Historic Places in 2003. After several hearings, the Historic Preservation Review Board (HPRB) approved a design concept for the new Washington REIT-proposed infill building on October 22, 2015. In its application filed with HPRB and in several public meetings before ANC 3D, Washington REIT indicated it would seek a variance from the Board of Zoning Adjustment (BZA) from zoning rules related to parking because of the loss and reduction of parking spaces that were the consequence of the new construction.

Zoning Administrator (ZA) Matthew LeGrant issued a determination letter on March 24, 2016 stating that a parking plan submitted for review by the Washington REIT in connection with construction of the new infill building at Square 1500 is “consistent with the Zoning Regulations.” The Washington REIT parking plan would significantly reduce the number of existing parking spaces at the Spring Valley Shopping Center. In effect, the ZA has unilaterally and arbitrarily granted relief from the parking rules outlined in the city’s zoning regulations that should apply in this case.

ANC 3D's appeal of this determination was filed with the BZA on April 5, 2016 and provides detailed analysis and documentation for this case. The purpose of this filing is to summarize ANC 3D's appeal and views on the major issues for the Board's consideration.

Why Is ANC 3D Challenging The ZA's Determination?

Since Washington REIT proposed a new unattached infill building in January 2015 at Square 1500, residents located immediately adjacent to the Shopping Center and throughout the surrounding neighborhood have expressed deep concerns about parking and traffic impacts in the neighborhood stemming from the loss of parking spaces at the site. Washington REIT has refused to discuss parking issues with residents or ANC 3D during the review of the proposal by the HPRB on the basis that parking issues were not germane to the purview of historic preservation; and, that these issues would be discussed later as part of a variance request to be filed with the BZA. Now, Washington REIT is seeking to avoid such discussions by circumventing review by the BZA contrary to DC Zoning Regulations. In fact, Washington REIT has indicated to ANC 3D and affected residents that it would not discuss parking and traffic issues until construction on the new infill building is completed.

The determination by the ZA in this case

- Undermines the authority of the BZA, which should have primary responsibility for determining whether the relaxation of parking requirements sought by Washington REIT meets the standards for a variance outlined in the Zoning Regulations;
- Deprives the public of an opportunity for meaningful input on a parking plan that is not consistent with the Zoning Regulations and could have a significant impact on their property values, the enjoyment of their property, and create new pedestrian and traffic safety issues in the adjacent residential neighborhood;
- End runs the zoning process at the expense of the public interest; and
- Has no basis in the existing Zoning Regulations.

It is for these reasons that ANC 3D challenges the ZA's determination.

The ZA's Determination Is Inconsistent With Existing Zoning Rules For Historic Landmarks; Section 2101 Rules Should Apply In This Case

Section 2120 (*Parking for Historic Buildings*) of the Zoning Regulations outlines the parking requirements for historic buildings and sets the conditions for exempting historic buildings from the general parking requirements outlined in Section 2101 (*Schedule of Requirements for Parking Spaces*). The language and intent of Section 2120.1 of the Zoning Regulations could not be clearer. Section 2120.1 states that the parking exemptions outlined in Section 2120 (including those cited by the ZA in his determination) "shall not apply to new unattached structures constructed on the same lot as a historic resource."

Because the proposed new infill building is unattached, the current Zoning Regulations clearly require Washington REIT to comply with Section 2101 of the Zoning Regulations. The ZA also concluded in a separate January 15, 2015 determination letter that Square 1500 could be treated under Section 3202.3 of the Zoning Regulations as a single lot under the zoning regulations for purposes of constructing the new infill building.

Based on the square footage of 15,159 square feet referenced in the ZA's March 24, 2016 determination letter, Washington REIT would be required to increase its parking capacity from 72 spaces, as now exists, to 112 parking spaces to be "compliant," according to the schedule outlined in Section 2101.1.

Based on plans submitted by Washington REIT to HPRB and ANC 3D, the proposed building is clearly a separate, independent, unattached building. The building does not share a common wall; nor is there any connection with or passage between the new building and any other existing structure at the site. It is a free-standing building independent of any existing structure within Square 1500.

Even the ZA recognized the building as an independent structure in his January 2015 determination letter (**Exhibit 9**). The ZA's March 24, 2016 determination letter does not offer any rationale for rewriting the history of the site by assuming that the new structure is now an attachment or an addition to an existing structure. Instead, the ZA arbitrarily declares that the additional square footage is "attached" and refers to the new structure as an "addition" despite all the evidence to the contrary – even his own conclusion in the January 2015 determination letter.

Because the building is unattached, the parking rules for historic buildings outlined in Section 2120 do not apply, as stated clearly in Section 2120.1. Consequently, the argument by the ZA that the parking plan is a matter of right is fundamentally in error.

Instead, ANC 3D finds that Washington REIT must comply with the parking requirements outlined in Section 2101 and all other parking regulations as well, including Section 2115.1 which designates the size of parking spaces; Section 2115.3 which designates the size of compact car spaces; and Section 2115.4 which requires spaces for compact cars to be marked.

The requirement that compact spaces be designated as such is particularly significant in this case since Washington REIT has reduced nearly all the parking spaces (disability spaces appear to be the only exception) to match the size identified in the Zoning Regulations as compact car-sized spaces. Although this will maximize the number of spaces in the parking lot, it will also make parking inaccessible for many patrons who do not own compact cars, or those not wishing to have their cars damaged, and prompt them to find parking in the adjacent residential neighborhood. This will have a significant impact on homeowners immediately adjacent to the building site.

The ZA Miscalculates The Number Of Parking Spaces Required For Construction of a New Building at Square 1500 Even If Section 2120 Rules Apply.

ANC 3D believes the ZA erred by applying Section 2120 rules in this case. However, even if Section 2120 is thought to be applicable in this case, ANC 3D believes that the ZA does not have the authority to approve a reduction in parking spaces from 72 spaces to 64 spaces. The ZA can point to no zoning regulation that gives him the authority otherwise granted only to the BZA to provide parking relief in the form of a variance.

In his determination letter, the ZA acknowledged the views outlined by Washington REIT that 26 existing spaces in the parking lot are not compliant with current zoning regulations and, therefore, that Washington REIT should only be required to provide 46 spaces instead of 72 spaces as currently exist at the site. Washington REIT argues that 18 of these 26 spaces are not compliant because they cross separate lot lines thus failing to conform to Section 2116.1 of the Zoning Regulations. The ZA did not concur with Washington REIT's views on this and mentioned specifically that these spaces are still included as part of the proposed parking plan.

ANC 3D agrees with this determination by the ZA. If the zoning regulations consider these 18 parking spaces to be non-compliant because they cross existing lot lines at Square 1500, then the proposed building also would be non-compliant because the building, itself, crosses three lots. The ZA determined in January 2015 that Washington REIT could consolidate the lots consistent with Section 3202.3 of the Zoning Regulations (**Exhibit 9**). That same determination letter specified that "existing parking which may be displaced would need to be either replaced in kind or relief granted by a variance."

Moreover, Washington REIT sought and won approval in October 2015 from the HPRB to consolidate the lots.

For Washington REIT to now argue to the ZA that these 18 parking spaces are non-compliant with existing regulations because the lots are not consolidated is disingenuous and suggests an effort to manipulate the zoning and land use policies of the DC government to avoid a public hearing before the BZA.

However, in the March 2016 determination letter, the ZA concludes that eight of the 72 spaces are not compliant because they intrude slightly into public space and therefore do not need to be replaced. The decision of the ZA convolutes the intent and language of Section 2116.4 of the Zoning Regulations and ignores other key evidence in this case. The effect of this determination is to grant Washington REIT a variance from existing zoning regulations to allow for the reduction of parking spaces in the lot from the current capacity of 72 to 64.

The ZA argues that these spaces violate the "intent of Section 2116.4's bar on parking between street lot lines and the nearest building facades." However, if that determination is to apply to the site, this would mean that nearly all the spaces in the parking lot would not be compliant with zoning regulations because of the distance between the street lot lines and the nearest building façade in Square 1500. All parking at the site is located between the street lot

lines and the nearest building facades. The original parking lot was designed to place parking behind the buildings it was meant to serve.

The ZA also argues that these spaces are not compliant because they lack the requisite public space permit. There is nothing preventing Washington REIT from seeking a public space permit to use this space just as restaurants routinely seek a public space permit for outdoor dining. In fact, other establishments are required to obtain a public space permit – even after the fact – when they are using public space without the benefit of a permit or face losing the option of using the public space.

Failure to obtain a public space permit does not trigger a relaxation of zoning standards.

However, the parking area that now is determined to intrude into public space has been used for parking since at least 1957, according to aerial photographs (**Exhibit 10**) of the site. This pre-dates the Zoning Regulations and the public space rules. Not only were parking spaces configured at this location, this area now used for parking was designated as an entrance/exit for the parking lot dating back at least to 1949 (**Exhibit 10**). The curb cuts for the parking lot entrance/exit are still in place today.

To now argue that these parking spaces should not be considered “existing spaces” runs counter to the intent of the Zoning Regulations, particularly Section 2120. The fact that these spaces are deemed now to be non-compliant with current public space or zoning regulations does not absolve the applicant from meeting existing zoning regulations. It does not provide cause for relaxing the requirement for the number of parking spaces; instead, it requires the applicant to develop a parking plan which provides the required number of parking spaces in a way that complies with the regulations – which was triggered by the applicant’s decision to construct a new building at the site.

Instead, the ZA is using Washington REIT’s failure to comply with public space requirements to rationalize an exemption from compliance with the DC Zoning Regulations and justification for dismissing the requirement for a formal variance request and proceeding before the BZA.

The ZA also completely ignores historic maps provided by ANC 3D. These maps indicate that the configuration of parking spaces exceeded the current 72-space configuration when Square 1500 was designated a historic landmark in 1989. The number of parking spaces has been reduced gradually at Square 1500 after the site was designated a Historic Landmark to make way for additional landscaping and to increase the size of spaces to accommodate larger vehicles, such as SUVs. Washington REIT seeks to undo previous space considerations to provide more parking spaces despite the fact that the size of a majority of cars has not decreased – all for the objective of cramming the maximum number of spaces in a reduced parking lot footprint to avoid seeking a variance from the BZA.

An engineering plan prepared by the former owner of the site just before the site was designated a Historic Landmark – and provided to the ZA in advance of his determination – shows the parking lot had 77 parking spaces and that it was being expanded to 90 spaces.

(Exhibit 4) Moreover, this design of the parking lot, as it existed in 1987, shows that the parking lot had 77 spaces and that none of these spaces crossed the building restriction line into public space.

So, it was the property owner's choice – not by necessity – to locate parking spaces partially in public space in order to provide the 77 parking spaces. There is no basis to hold that the Zoning Regulations now exempt the property owner for choosing a parking lot configuration that failed to comply with the public space requirements.

Therefore, even if the ZA determination is deemed to be correct – that is, that the eight parking spaces intruding into public space are not compliant – Washington REIT would be required to have more than the 65 spaces provided in their parking plan.

Finally, in making his determination that Washington REIT's parking plan for 65 spaces is compliant with the Zoning Regulations, the ZA ignores the requirements of Section 2116.9 which requires that all parking spaces be functional and usable. At least five spaces in the proposed parking plan would not be usable. Some of these parking spaces are so close to the entrance and exit of the parking lot that it is not even possible to access them – or access them safely. Other spaces are located in an area designed to be used by trucks to access the new building for delivery purposes because the trucks will not be able to negotiate the narrow turns within the parking lot's travel lanes, according to Washington REIT.

A “Preferred Historic Preservation Outcome” Is Not A Zoning Standard

The ZA justifies his determination in part by saying the parking plan is the “preferred historic preservation outcome.” A “preferred historic preservation outcome” is not a zoning standard. It is not the role of the ZA to assess or determine compliance with Zoning Regulations on the basis of his view of what constitutes the “preferred historic preservation outcome.”

This conclusion further underscores the arbitrary and capricious nature of the ZA's determination in this case. Although ANC 3D and residents raised the issue of the parking lot throughout the HPRB review process, HPRB members consistently said that the zoning issues tied to the parking lot were not the subject of the HPRB hearings and fall within the domain of the BZA. The members of the HPRB stressed that their role was to review historic preservation and design issues associated with construction of the new building – not zoning issues.

In fact, testimony about issues tied to the parking lot by ANC 3D and other residents was cut short by HPRB Chair Gretchen Pfaehler, who said the following:

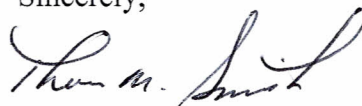
“Parking is important, but not in our purview. The number of parking spaces, the layout of parking spaces are all very important, but do not fall into our purview.”

Conclusion: Public Review By The BZA Is In The Public Interest

ANC 3D believes that Washington REIT is required to seek a parking variance from the BZA. Moreover, ANC 3D believes the ZA has exceeded his authority; and that the reasoning

offered by the ZA to determine that Washington REIT's proposed parking plan is in compliance with existing Zoning Regulations is fundamentally flawed, relies on an incomplete record of facts, and convolutes the intent of the Zoning Regulations to achieve the desired outcome that the parking plan is a matter of right.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Smith". The signature is fluid and cursive, with the first name "Thomas" and last name "Smith" clearly distinguishable.

Thomas M. Smith
Chair

Exhibits

- | | |
|-------------------|--|
| Exhibit 4 | ANC 3D Application Attachment C: Engineering Designs Of Parking Lot 1988-1989 |
| Exhibit 9 | ANC 3D Application Attachment H: January 15, 2015 Determination Letter Of Zoning Administrator |
| Exhibit 10 | ANC 3D Application Attachment I: Aerial Photographs |

Certificate Of Service

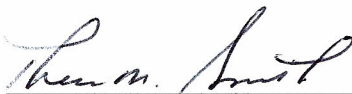
I hereby certify that on June 27, 2016, copies of the attached were delivered by e-mail to the following:

Mr. Edward Murn
Washington Real Estate Investment Trust
1175 Eye Street NW
Suite 1000
Washington, D.C. 20006
emurn@washreit.com

Mr. Matthew LeGrant
Zoning Administrator
DC Department of Consumer and Regulatory Affairs
1100 4th Street SW
Washington, D.C. 20024
Matthew.LeGrant@dc.gov

Ms. Melinda M. Bolling
Director
DC Department of Consumer and Regulatory Affairs
1100 4th Street SW
Washington, D.C. 20024
Melinda.Bolling@dc.gov

Jeffrey L. Kraskin, O.D.
President, Spring Valley-Wesley Heights Citizens Association
4600 Massachusetts Avenue NW
Washington, D.C. 20016
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Thomas M. Smith
Chair, ANC 3D

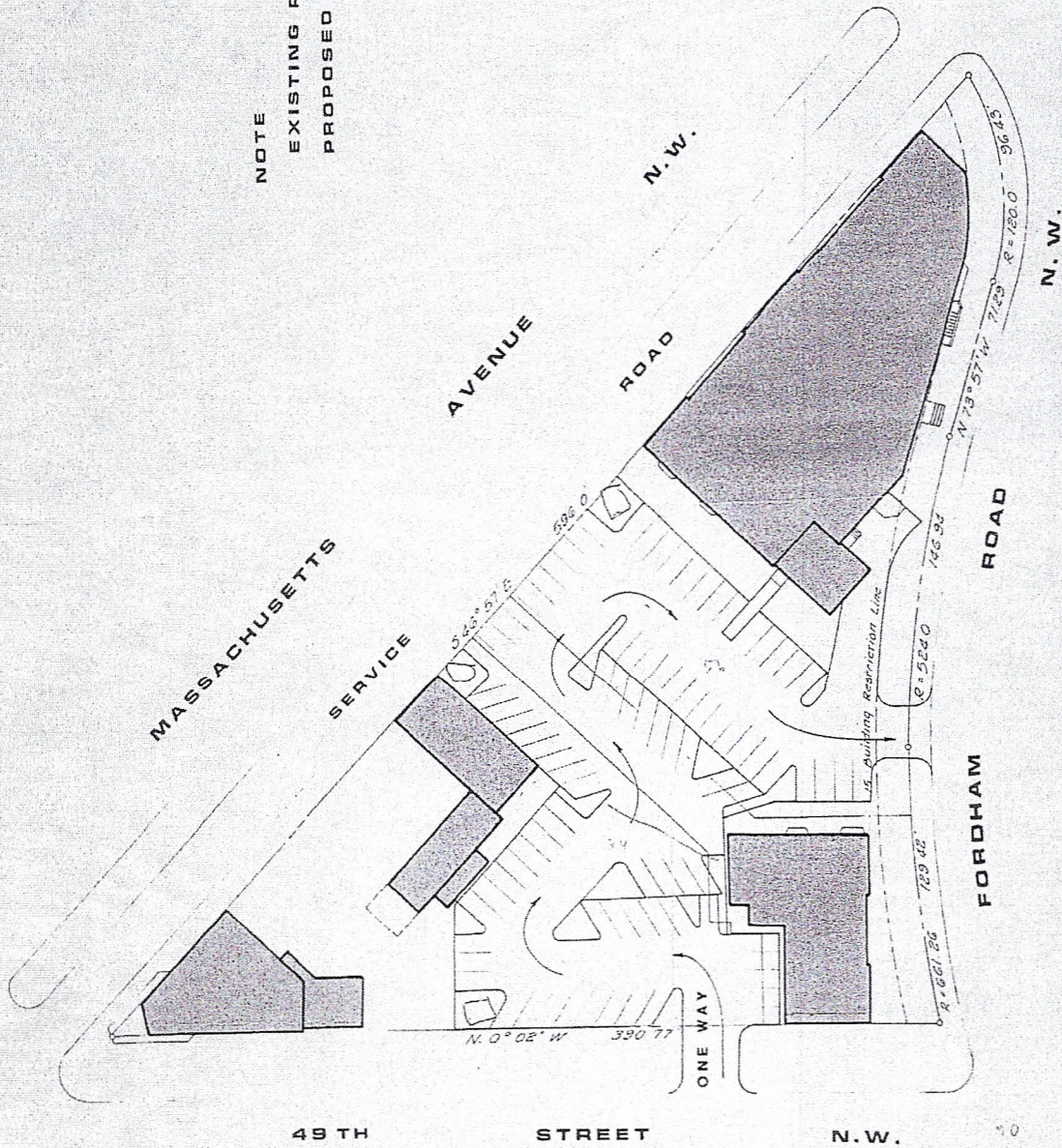
BZA CASE NO. 19274

Exhibit 4

**Engineering Designs Of Parking Lot 1988-1989
(ANC Application Attachment C)**

NOTE

EXISTING PARKING SPACES 76;
PROPOSED PARKING SPACES 90



SPRING VALLEY SHOPPING CENTER
WASHINGTON, D.C.



Benning & Associates, Inc.
Land Planning Consultants
8833 Shady Grove Court
Gaithersburg, Md. 20877
(301) 948-0240



date: MAR. 5, 1987
scale: 1" = 40'
north

BZA CASE NO. 19274

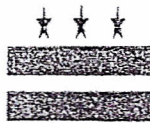
Exhibit 9

**January 15, 2015 Letter Of Determination
Issued By DC Zoning Administrator
(ANC Application Attachment H)**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

January 15, 2015

Christine Roddy, Director
Goulston & Storrs
1999 K Street, NW, 5th Floor
Washington, DC 20006-1020



RE: Consolidation of Lots and Development of Spring Valley Shopping Center
(Square 1500, Lots 1, 2, and 3 ("Property"))

Dear Ms. Roddy:

This memorializes our discussion at our meeting on May 8, 2014. It is my understanding that your client, Washington Real Estate Investment Trust ("WRIT"), has purchased the Property and plans to construct a modest addition to the shopping center along Massachusetts Avenue. The shopping center is comprised of three commercial structures located on three record lots. The buildings located on the Property are a designated historic landmark. WRIT would like to consolidate the three record lots into one record lot and to construct a fourth commercial building along Massachusetts Avenue. I am confirming that WRIT may rely on Section 3202.3 to subdivide the lots to create a single record lot and maintain four independent commercial buildings on the Property.

Section 3202.3 provides that "any combination of commercial occupancies separated in their entirety, erected or maintained in a single ownership shall be considered as one (1) structure". In sum, Section 3202.3 allows for multiple commercial buildings on a single record lot so long as the property is maintained in single ownership. This provision is typically used in the few locales in the District, such as this, that can be described as a strip shopping center.

The flexibility allowed pursuant to Section 3202.3 is contingent on compliance with the requirements of Section 2516; however, Section 2516 is not applicable in this instance since the Property is not located within 25 feet of a residential district. The Property is currently located in the C-2-A Zone District. Properties to the west are located in the R-4 Zone District and properties to the south are located in the R-1-B zone district, yet, the zone boundary line separating the Property from these properties runs down the centerline of the street. Each of the streets are at least 50 feet wide, meaning that the Property is not located within 25 feet of a residential zone. More specifically, Massachusetts Avenue is 160 feet wide, 49th Street is 90 feet wide and Fordham Road is 60 feet wide; thus, the Property is located at least 30 feet away from the closest residential district. Accordingly, the restrictions of Section 2516 are not triggered and the project can benefit from the flexibility afforded by Section 3202.3.

You have also asked me to confirm the implications of new construction on the single record lot with respect to parking requirements, green area ratio ("GAR") requirements and side yard requirements. As a historic landmark, no additional parking requirements are triggered if the addition is less than 50% of the total existing gross floor area. In calculating the existing GFA on the single record lot, calculate the combined density of the three existing buildings.

1100 4th Street, SW 3rd Floor Washington, D.C. 20024

Phone: (202) 442-4576 Fax: (202) 442-4871

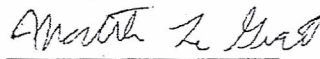
2120.3

Assuming the addition does not exceed the 50% threshold, it will not trigger a new parking requirement and only existing parking which may be displaced by the addition would need to be either replaced in kind or relief granted by a variance or other zoning process. Similarly, an addition will not trigger the GAR requirements so long as the new construction is less than 50% of the existing GFA of the three buildings combined.

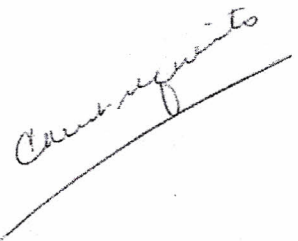
Finally, the proposed infill development will not create side yards but will create courts. A side yard is located between a building and a side property line. Because the yards will be located between two buildings and not between a building and a side property line, they are considered courts and not side yards. Accordingly those spaces must comply with the court requirements of the Zoning Regulations.

Please let me know if you have any further questions.

Sincerely,



Matthew Le Grant
Zoning Administrator



BZA CASE NO. 19274

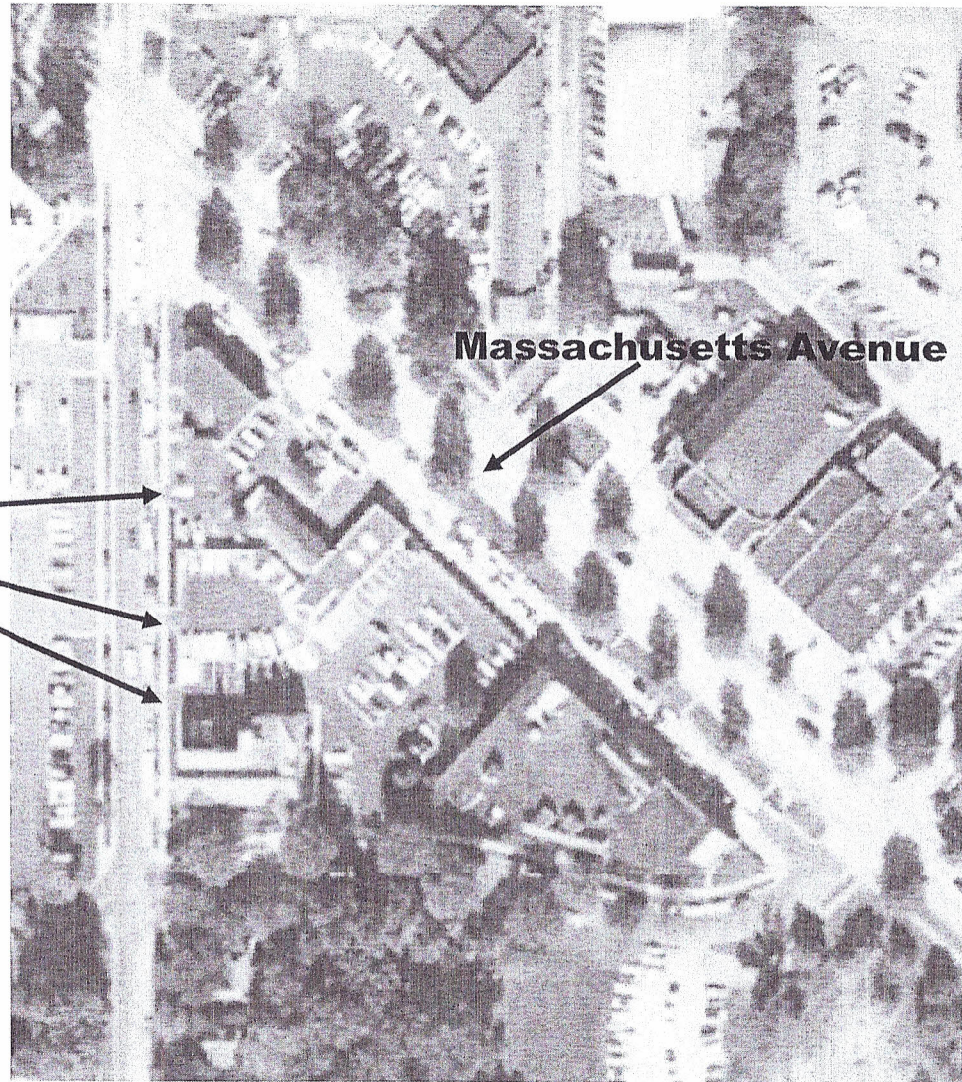
Exhibit 10

**Aerial Photographs
(ANC Application Attachment I)**

**Spring Valley Shopping Center
1963 Aerial Photo**

**49th Street
Curb Cuts for
Entrance/Exit**

Massachusetts Avenue NW



**Spring Valley Shopping Center
1957 Aerial Photo**

**49th Street
Curb Cuts for
Entrance/Exit**

Massachusetts Avenue NW

