ANC 3F

3F01 - Phil Kogan
3F02 - Karen L. Perry
3F03 - Robert V. Maudlin
3F04 - David J. Bardin
3F05 - Doug Mitchell
3F06 - Cathy Wiss
3F07 - Lyn Oglesby, PhD

Advisory Neighborhood Commission 3F
NORTH CLEVELAND PARK / FOREST HILLS

August 29, 2001

BZA
Case No. 16611
Exhibit No. 236

SENT VIA FAX

Board of Zoning Adjustment
for the District of Columbia
441 4th Street NW, Suite 210-S
Washington, DC 20001

Re: Board of Zoning Adjustment Application No. 16611, Edmund Burke School

Dear Members of the Board:

ANC 3F has become aware, merely by chance, of a document submitted to the BZA in the referenced case by Shaw Pittman at 4:34 p.m. on August 27th. Commissioner Perry was at the BZA and observed delivery of this Shaw Pittman document, but it was not until yesterday at 3 p.m. that we learned this document would be sent to the Board. As of today, neither the ANC nor NULS has received a copy of the submission sent by first class mail. ANC 3F believes this document goes beyond rebuttal and contains new evidence not presented at the hearings. It also contains interpretations of events and unsubstantiated assertions. Due process requires that the parties must be provided an opportunity to respond. Shaw Pittman had seven days in which to review the NULS submissions and the ANC submissions before it filed its sur-rebuttal, pursuant to 11 DCMR Sections 3121.6 and 3121.7.

ANC 3F only became aware of these provisions on August 27th. ANC 3F and the opposing parties thought that once the record was closed, the submissions and the findings of fact filed, that was the end of the process until the Board rendered it verbal decision. ANC 3F was not made aware of these provisions by the Board or the BZA staff. We conducted our case based on the procedures Chairman Reid announced during the Applicant's special exception hearing.

Clearly, ANC 3F and the opposition parties do not have sufficient time to respond to the applicant's submission. Having to submit a response in less than 24 hours, whereas the applicant was provided the full seven day period for responding to the opposition parties, is unfair and is a violation of the basic requirements of due process. The applicant cites 11 DCMR 3121.6 as the basis for the "sur-rebuttal." This provision states that "The Board shall allow **all** (emphasis added) parties to a case an opportunity to file written responses to any exhibits, information or briefs submitted after the close of the hearing." Note that the rule is clear in that it applies to "all" parties, not only to the applicant.

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.236

e-mail: anc3f@juno.com
ANC 3F, P.O. Box 39290, Washington, DC 20016-9290
web site: www.DC.gov/maudlin
Phone: 202.362.6120 • Fax: 202.686.7237

Since the applicant's "sur-rebuttal" contains new evidence, ANC 3F believes it should not be allowed into the record at all. However, if it is to be given to the Board with other decision material,then ANC 3F and other parties must be provided seven days to respond to the "sur-rebuttal." Among other things, there is no evidence in the record dividing the buildings between a junior and senior high school. Burke seems to be saying that students in the Senior High School (the existing building) will not access the new library, the computer lab, and the theater in the proposed expansion. Burke has now introduced the number of students and teachers that will be in each building. The formula for calculating parking has changed from the requirements for a private school to that of a public junior high school and senior high school.

This situation stems from the fact that the BZA staff erroneously extended the due date for the Applicant's Findings of Fact, a matter addressed in ANC 3F's August 27th letter to the Board from Commissioners Kogan and Perry, without extending the decision date for the case, forcing the ANC and NULS into the untenable situation of an almost immediate response, less than 24 hours, in order to meet the Board's self-imposed decision date of September 4th . Neither the ANC nor NULS is represented by attorneys and the members of both groups hold full-time jobs. It is ironic that Shaw Pittman is given seven days to prepare a "sur-rebuttal" and community volunteers with full-time jobs, interested in their neighborhoods, have one day.

The only response ANC 3F can provide at the eleventh hour is one that is hastily assembled and, at the same time, request that the Board provide us more time to adequately respond. In some respects, the Applicant's sur-rebuttal bolsters the opposition position that this neighborhood, with its incomplete street grid, cannot handle the additional traffic generated by the Burke School daily activities, weekend, and evening activities. It also agrees with the opposition position and testimony that this site cannot handle the daily student activities and must rely on other institutions, the neighborhood, and the neighborhood streets to supplement its campus. And, it agrees that its parking garage spaces might not meet zoning requirements. This is not an attended garage. The applicant might be able to assign parking to its students, faculty and staff during the day based on the size of their vehicles. However, this garage is also intended to serve parents and visitors attending events in the auditorium and the theater in the proposed new building. If parents and visitors find the parking spaces small, if the aisles and driveways are difficult to negotiate, and if the spaces are not fully accessible at all times, then the garage will not be used and parents and visitors will once again use the residential streets.

MEDIATION:

- The opposition parties and Burke School's neighbors responded affirmatively to an offer in July by the school to meet, with or without a mediator, and suggested dates for a meeting.

- There was surprise among neighbors when the attached letter from Walter Aisles was received. The Burke School's response to this positive gesture by the parties was a set of conditions under which the school would meet — the offer was open only to the NULS organization and would meet only to mediate the conditions for a new building with a mediator present.

- The response from the school occurred at the same time neighbors were preparing their submissions and Findings and energies and efforts were directed toward this task.

- The neighbors felt all parties would be affected by the proposed expansion; that Burke did not want to really sit down and talk in good faith; and that the letter re-iterated the same divide and conquer philosophy the Burke School started more than a year ago of trying to strike a deal with one group and street at the expanse of another group and street.

- The parties spent less than two hours meeting with Mr. Julyan and were surprised to learn that the School was billed $3,000 for his services.

- Mr. Aisles' letter mis-states his conversation with Phil Kogan. The ANC does not have a pro-bono mediator available to them.

HOWARD LAW SCHOOL FIELDS:

- The applicant's interpretation of the Howard BZA order and its incorporation of the Howard campus plan is flawed.

- ANC 3F stands by the documentation submitted that shows Burke's use of the Howard Law School for athletic classes is a violation of Howard's campus plan and was a violation in 1983. The Board relied solely on Burke School testimony in an uncontested case in 1983. The current campus plans clearly states, "There is no athletic program requirement for the School of Law and no athletic activities take place on the West Campus." Further, Tab D of the complete 1997 Campus Plan contains over 70 pages and over 200 special events entitled "Special Reservations" for the West Campus. The Burke School is not listed.

- ANC 3F must rely on the contents of the Campus Plan and the letters from University Officials that assert that the site is for the exclusive use of the Howard School of Law and its students or it will never be able to support an institution moving into a residential area.

- It is Howard, not the Burke School, that must apply for a modification to Howard's approved campus plan. And, the BZA must notify the neighbors within 200 feet of the subject site of any proposed modifications. This applies to all the institutions in ANC 3F if a modification to a special exception or variance is requested.

- The residents that live directly across from the athletic field in the most restrictive R-1-A zone were not represented by NULS and were not parties to this case. They must be provided an opportunity to testify about noise or other objectionable conditions related to a modification of Howard's approved campus plan to allow the Burke School to use the fields for a multitude of athletic classes, baseball practice, etc..

- The entire city is an urban environment. Upton Street and Van Ness Street are classified as local, residential streets. Residents of Upton Street have as much a right to rely on their R-2 and R-1-A zoning as the residents of Spring Valley and the other residential communities in Washington. Along with that zoning is the inherent right to a residential quality of life.

- Not-with-standing the above, there is evidence in the case file and record to show that residents object to the use of the residential streets by the Burke School students and the Howard athletic fields.

- ANC 3F is submitting three maps showing the location of the athletic field. The athletic field is directly across from the R-1-A section of the neighborhood and about 800 feet from the school. With the exception of one block, most of the area is unpaved causing students to walk and run down Upton Street to access the area. The entrance to the campus that Mr. Feola asserts the students use is the steep Upton Street driveway to the campus. However, testimony shows that the students prefer the more direct route straight down Upton Street.

- Quoting from the testimony of one witness, Ms. Emma Jordan, a law professor at Georgetown and a graduate of the Howard Law School:

> "And the final point I want to make is this. One thing that we haven't said about traffic and special impacts of traffic in this area, there are no sidewalks at all on the north side of Upton Street going all the way from Linnean up to the Edmund Burke School. So there is a problem with conflict between pedestrian traffic and the traffic of autos. Finally, as to Edmund Burke specifically, they do not have an athletic field. The students run through the streets for a jogging track. So with this additional traffic from all the other five institutions and the fact that even with this expansion they do not have a field. They are running through the street with Hillwood auto traffic, Levine auto traffic, blind curves there and they don't have a permanent field. They're expanding without getting basic things that they need to operate an educational institution. It's a traffic hazard."

PARKING:

- NULS should be given sufficient time by the Board to prepare a response.

- The Burke School is trying to confuse the record by mixing private school parking standards and entering new evidence of the parking standards required for public junior high schools and senior high schools.

- The Burke School is entering new evidence on the number of junior and high school students the School expects to enroll, and the number of those students that can be expected to drive.

- The applicant states in its August 27 submission that, "as demonstrated by the plans in the record, the zoning confirmation letter by the District of Columbia's Zoning Administrator and the School's post-hearing filing dated August 20, 2001, the School's proposed parking plan including the size of the spaces meet all the requirements in the Zoning Regulations.

  ANC 3F has re-read the Zoning Administrator's letter and the evidence of record. The Zoning Administrator's letter does not show any evidence that he has reviewed the proposed underground parking garage or that he concurs that the spaces meet all the requirements in the Zoning Regulations.

- ANC 3F has spoken with NULS. NULS has not had any meetings or telephone conversations with the Zoning Administrator, either prior to or following our hearings. There was one e-mail from Milton Shinberg questioning the Zoning Administrator's decision and seeking clarification of that decision. ANC 3F does not consider "this "lobbying" the Zoning Administrator to convince him that his previous determination was wrong." Rather ANC 3F would question why the Zoning Administrator felt compelled to share this e-mail with the applicant, when the facts surrounding the private meeting with the Applicant was not shared with the ANC or the opposition.

- ANC 3F, based on our experience with DCRA, believes that if the Commission approves this project, the Zoning Administrator will not send the Applicant back to the Board for further zoning review for the underground garage, the loading dock, or the pedestrian bridge.

- The bus parking in the rear of the school takes away from the visitor parking spaces for evening activities and sporting events at the School. The Burke School testimony indicated that the proposed underground garage would only be used for students, faculty, staff, and parents.

- ANC 3F, NULS, and the other parties in opposition were not afforded an opportunity to cross-examine the Zoning Administrator.

- The applicant quotes from 11 DCMR, subsection 2100.6, which is subject to subsections 2100.7 through 2100.9. ANC 3F would quote from 2100.7, "Parking spaces shall not be required for the addition or additions unless the addition or additions increases the intensity of use of the building or structure by more than twenty five percent of the aggregate." The Burke School is adding students, teachers, and faculty beyond the 270 students and 35 faculty permitted in its current order. The Burke School is adding a 150 person theater for performances and increasing the number of school related activities.

- ANC 3F would also like to cite 2100.10, "In the case of a building or structure for which the Zoning Regulations now require more parking spaces than were required when the building or structure was built, the following shall be required: (a) If the existing number of parking spaces now provided is less than or equal to the minimum number of parking spaces now required by this chapter, the number of parking spaces cannot be reduced."

PROBLEMS WITH THE TRANSCRIPTS:

ANC 3F has identified problems in each of the Board's official transcripts of these proceedings, including, but not limited to, statements attributed to Mr. Gell, an attorney in the Phillip's case, and 4 pages of statements by Ms. Rustad Zignar. ANC 3F would like permission to write a letter at a later date in order to get the official transcript corrected.

ANC 3F submits that the Applicant has not met its burden of proof that this project will not be objectionable to the neighborhood because of noise, traffic, number of students, or other objectionable conditions. ANC 3F has felt like the burden of proof has been shifted to the ANC and the opposing parties. We feel we have met this burden. This site cannot contain the activities of the Burke School, without making the residential neighborhood an extension of the Burke School campus, and without severely impacting traffic flow in an already congested residential area that hosts many institutions. We also believe there are many outstanding issues, issues that require further public testimony, and further special exception and/or variance issues that should be noticed to the surrounding community.

ANC 3F would, respectfully submit, that this Application be denied without prejudice.

Sincerely,

Karen Lee Perry

Karen Perry
Advisory Neighborhood Commission 3F

Attachments

Certificate of Service

I hereby certify that on August 29, 2001, a copy of the foregoing Response to the Applicant's Filing was served via first-class mail to the following:

The Edmund Burke School
c/o Phil Feola, Shaw Pittman

Jennifer Steingasser
Office of Planning

Van Ness South Tenants Association
c/o Pat Brown, Greenstein, DeLorme & Luchs

Sirrus, LLC
c/of Cynthia Giordano, Arnold & Porter

Kenneth Laden
Department of Public Works

NULS
c/o Jodie Smolik

Linda Jay

Karen LeePerry



Walter Ailes <Walter_Ailes@eburke.org>
08/13/2001 04:50:28 PM

Record Type: Record

To: Donald R. Vereen/ONDCP/EOP@EOP

cc:

Subject: Fwd: Mediation

Dear Don,

When you and I spoke the other day, you mentioned that the school should have learned from the last effort to initiate mediation that the neighborhood needs to be part of the process of choosing a mediator. The school would very much like to work with a mediator to explore the possibility of reaching a set of mutually agreed upon terms that would have the NULS group and The School approaching the BZA with acceptable conditions to both parties as the school moves forward. We believe there are a number of areas to explore more fully: phased enrollment as a condition (340 students first phase, moving to 360 if we meet our standards), possible bridge between the two buildings to reduce pedestrian activity, and finally a mechanism that gives the neighborhood some sense of reliability that these impacts will be real and long lasting.

Twice we have put forth the concept of a mediator. The first time, this last spring, we hoped to work through an ANC sponsored mediator (who wanted to do this work pro bono) and Phil Kogan made it clear that he didn't feel this was an appropriate role for the ANC. The second time the Zoning administrator put forth a name with a strong recommendation that this individual did good work in another case, and the parties should explore this. The opposition group said that they wanted the school to pay for any pre-mediation expenses. $3,000's later we are told that the mediator was not a good fit. I have a list of five mediators that were put forth as possible mediators in the George Washington Univ. conflict with their neighbors. I will fax you that list this afternoon.

We don't believe there is much point in trying to bring together all of the opposition parties at this point in the process. This mediation process we are suggesting would only be with the NULS group.

Please let me know what the process could / should look like that brings all of us to the table untainted.

Respectfully,

Walter Ailes



Walter Ailes <Walter_Ailes@eburke.org>
08/14/2001 04:06:38 PM

Record Type: Record

To: Donald R. Vereen/ONDCP/EOP@EOP

cc:

Subject: Mediation information

Dear Don,

For the sake of full disclosure, I have found out today that our lawyer, Phil Feola, sits on the board of The Center for Dispute Resolution so Mr. Jerry Roscoe may be considered compromised. Secondly, Mr. Peter Maszack is a partner at Arnold and Porter which is the firm that is representing the Brown brothers and that carries with it a conflict of interest. This town is obviously too small.

I plan to call tomorrow to see how our possible timing could look. I think all of us are concerned that we will run out of time on this. If plan A is working with a mediator. Plan B may be that we share with each other our drafts of recommended conditions that must be submitted at the end of the month (27th?) and that if there are conditions that are mutually satisfactory to both NULS and the school they would carry more wait if both parties signed off on them. (just a thought)

Finally, I was slow to pick up yesterday the distinction that you may have been making about Linda Jay as a party and not a member of NULS. We would like to have Linda in the mix as we go into discussions, and I guess I have always considered her as a member of NULS.

best.....Walter

Government of the District of Columbia
BOARD OF ZONING ADJUSTMENT

★ ★ ★

[redacted]

August 9, 2001

Ms. Maureen Dwyer, Esq.
[redacted]
2300 N Street, NW
Washington, DC 20037-1122

Re: [redacted] – George Washington University Campus Plan – pretrial proceedings

Dear Ms. Dwyer, Esq.:

On August 2, 2001, the Board of Zoning Adjustment issued an order establishing a schedule for further proceedings with respect to the George Washington University Campus Plan. In that Order, the Board strongly encouraged the parties "to reach a settlement in agreement of the remaining areas of dispute with respect to the University Campus Plan in advance of the Board's forthcoming remand proceeding." The parties were directed to state by August 17, 2001 "a decision to pursue settlement, and were strongly encouraged "to use a neutral mediator to facilitate an agreement."

To assist in this process, the Office of Zoning has identified several professional mediators who may be willing to serve as facilitator in this matter. The Office has contacted the following mediators, some of whom were suggested by the Circuit Executive's office of the U.S. Courts:

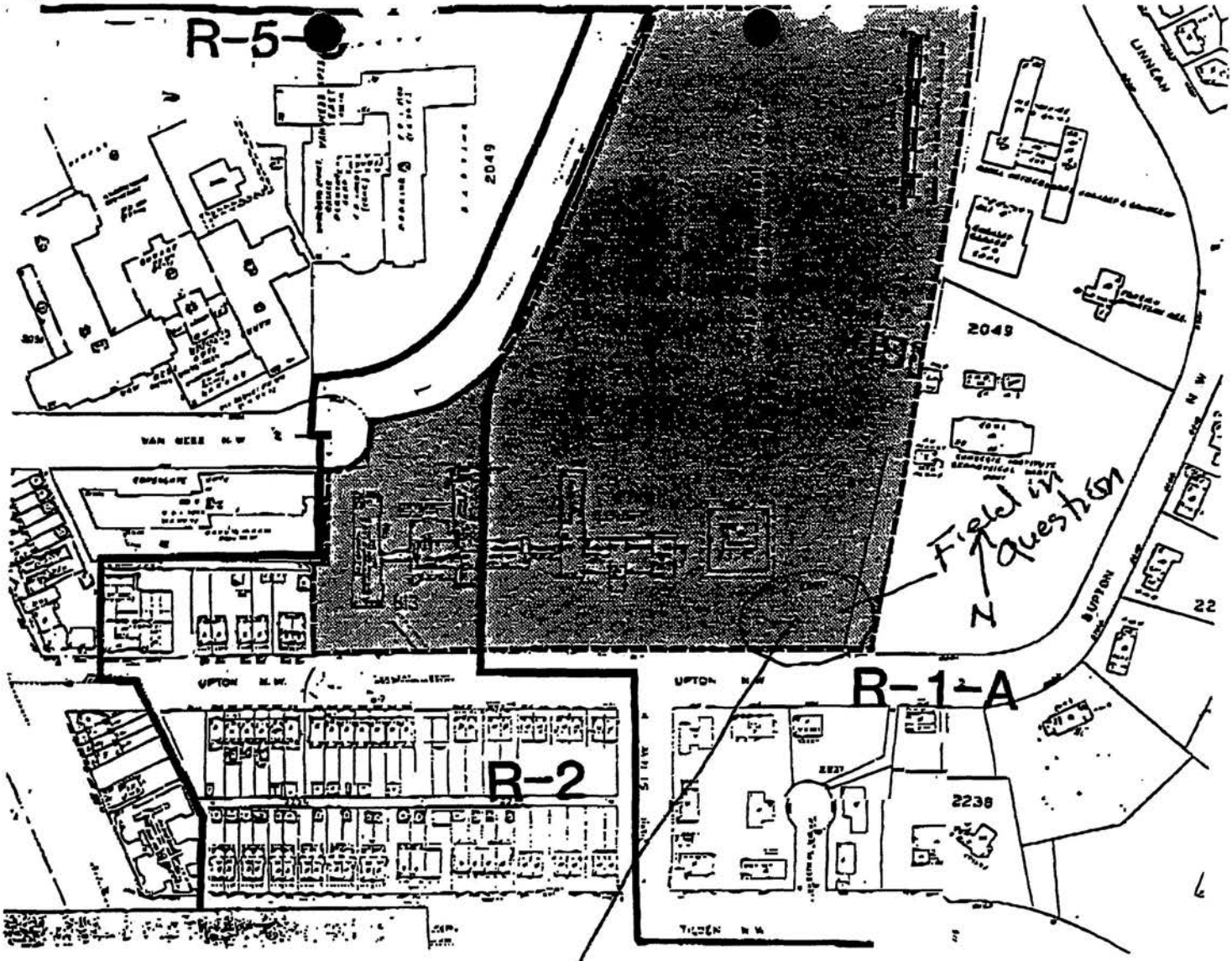
Mr. Dan Singer
1001 Pennsylvania Ave., NW, Ste 800
Washington, DC 20004-2505
(202) 639-7222
(fee to be negotiated)

Mr. Samuel Rodman
3339 Glen Hill Terrace
Falls Church, VA 22044
(202) 708-0614
(fee to be negotiated)

Mr. Peter Newmark
(202) 966-3045
(fee to be negotiated)

Ms. Jerry Rosen
Center for Dispute Resolution
1666 Connecticut Avenue, Ste. 500
Washington, DC 20009
(202) 332-0980
(fee to be negotiated; will consider pro bono)

Ms. David Jahren
Jahren & Jahren
730 15th Street, NW, Ste. 950
Washington, DC 20005
(202) 434-8934
(fee to be negotiated).



DATE: December 16, 1992

SCALE: 1" : 120'

SOURCE: SANBORN-VOL. , PL.

LEGEND:

ZONE BOUNDARY

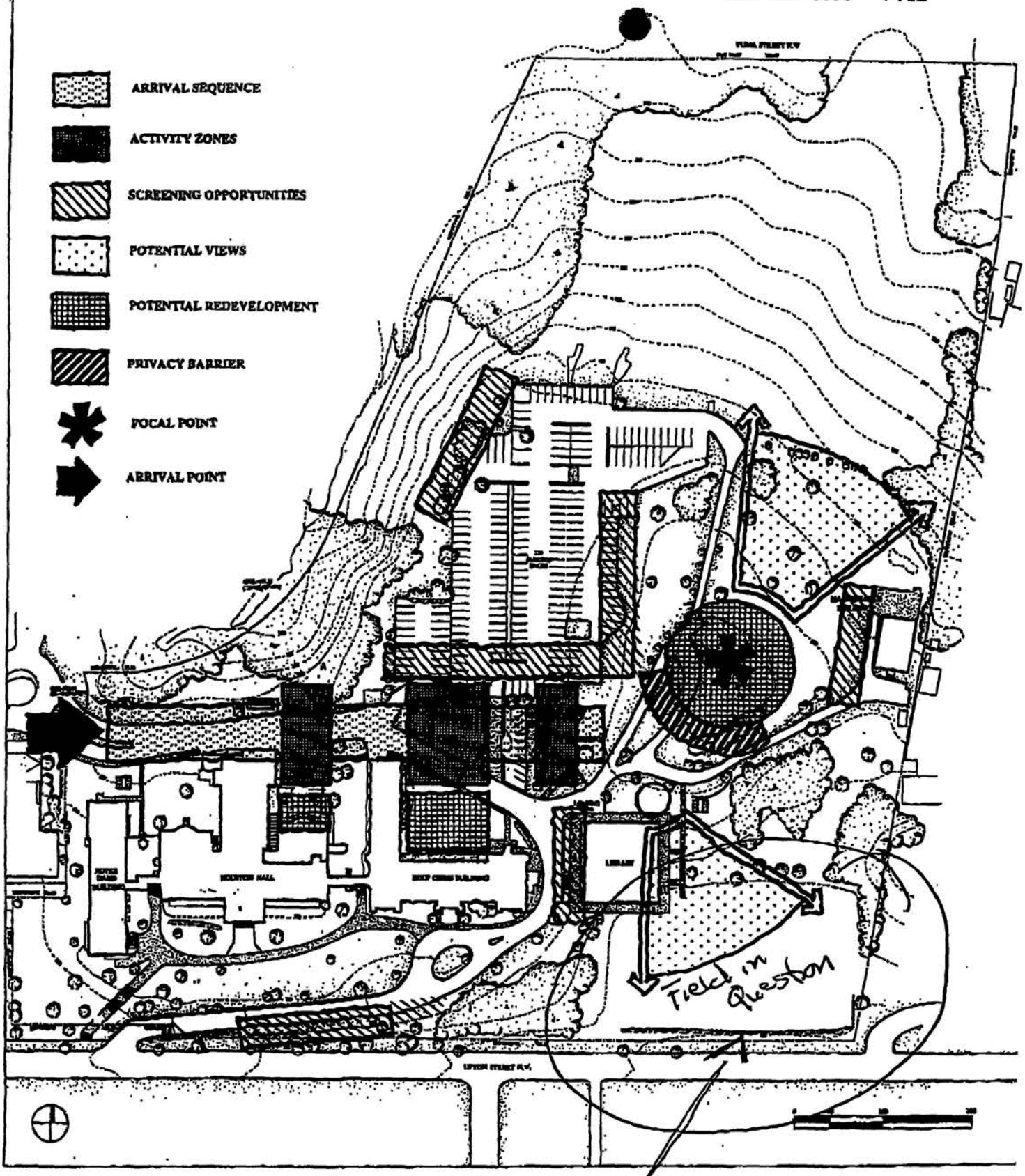
PROPERTY INVOLVED

15767
ANC-3F

Application of Howard University, as amended, pursuant to 11 DCMR 3108.1, for special exceptions under Section 210 for an amendment to an approved campus plan and further processing under the amended plan to allow an addition to an existing law school in an R-1-A/R-2 Districts at premises 2900 Van Ness Street, N.W. (Square 2049, Lot 810).

Field in Question

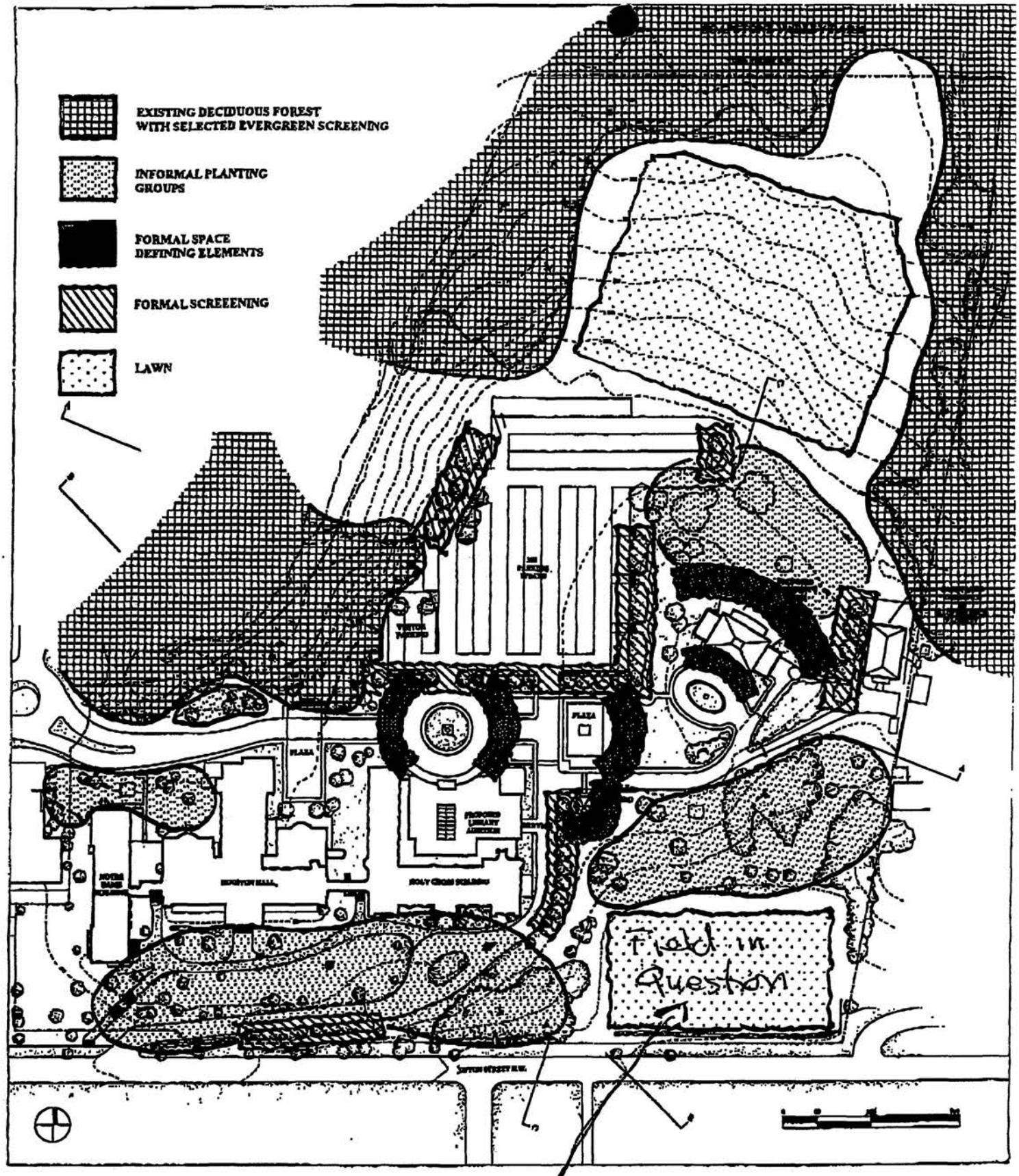
15767



Existing Site Plan - Site Analysis

Howard University
West Campus

KEYES CONDON FLORANCE ARCHITECTS
JANUARY 10, 1997



Landscape Concept

Howard University
West Campus

KEYES CONDON FLORANCE ARCHITECTS
JANUARY 16, 1997