Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

May 18, 2001

Sherri Pruitt
Secretary
BZA
441 4th Street NW
Washington DC 20001

RE: BZA # 16722 Parking Lot at 4817 U Street, NW

Dear Ms. Pruitt:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on May 2, 2001. Proper notice of this meeting was published in a local newspaper, notices were posted in all SMD's of this ANC, additionally, notification was given by e-mail and fax to interested parties. A quorum (4) was present at all times during the meeting.

One of the items on our agenda was BZA Application 16722. A request for " a special exception for continued use by CVS of a parking lot at 4817 U Street, NW, that currently is owned by First F.S.K., Limited Partnership."

The parking lot is located just off MacArthur Boulevard, NW., and is a former theater parking lot for the MacArthur Theater, which is now leased for retail use by CVS.

On March 4, 1998, the BZA issued a bench decision to Application No. 16311 granting a special exception for CVS to operate this parking lot for three years. Responding to community concerns, the BZA order included 13 conditions that included specifications for an all-weather surface, regular maintenance and lighting. (A copy of the 1998 BZA order is attached)

However, since this order was issued three years ago, CVS has ignored the BZA order and seriously neglected this parking lot, causing great concern to the community. To cite few examples:

1. at least five abandoned cars, some of left there from before CVS took over the parking lot in 1998, were left there until recently.

2. –the lot was never maintained and huge piles of trash accumulated regularly. Neighbors were forced to pay to clean up the trash.

3– no lighting was installed.

BZA
Case No. 16722
Exhibit No. 19

Board of Zoning Adjustment
District of Columbia
CASE NO.16722
EXHIBIT NO.19

4– no landscaping was done.

5–no resurfacing of the parking lot or striping was ever done.

6–unsightly conditions posed a threat to safety. A local teacher was held up in the lot.

In essence, CVS has ignored the BZA order and the conditions, which were included in the order for all three years that the BZA order has been in place. This spring, as the BZA order was about to expire–CVS made a sudden effort to clean up the lot and tow abandoned cars.

At the meeting of AN3D on May 2, 2001, CVS District Manager Steve Meyer and CVS attorney Carolyn Brown of Holland and Knight acknowledged that the company had neglected the parking lot and the conditions imposed by the BZA order. They said steps are being taken to remedy the situation. The 1998 BZA order also specified continued community use of this large parking lot, and CVS told the meeting of ANC3D that community use of the parking lot will continue.

CVS is coming now before the BZA again, this time to seek a special exception for continued use of the same parking lot for five years.

In light of CVS' disregard for the 1998 BZA order and its conditions, ANC3D urges the BZA not to grant a special exception for five years.

It is the recommendation of ANC3D that the BZA limit approval of the special exception to three years and that all of the conditions, which were specified in the initial 1998 BZA order, be included in any new order. (The Palisades Citizens Association and CVS are working on clarifying conditions 11 and 12 which seem somewhat in conflict.) This recommendation was approved by ANC3D at its regular monthly meeting at Sibley Memorial Hospital on May 2, 2001. The motion was seconded and approved by a 5-0-0 vote We ask that the Commission give our decision the "great weight" to which it is entitled under DC law. (Northwest Current article attached)

Sincerely yours,

Eleanor Roberts Lewis (bfm)
Chair, ANC3D



CVS promises to shape up on Palisades lot

Current Staff Report

The Palisades advisory neighborhood commission voted unanimously last week to recommend that the Board of Zoning Adjustment renew for three years the special exception that allows the CVS Pharmacy to continue using a parking lot located 90 feet north of the old MacArthur Theatre.

Carolyn Brown, the Holland & Knight attorney representing CVS, started her presentation with an admission that of the 12 conditions of the special exception, "very few ... have been kept" until recently.

Penny Pagano, president of the Palisades Citizens Association, said that the board's order "has been virtually ignored" since it was imposed three years ago.

"The lot has been in terrible shape, and the neighbors have had to pay to keep it clean," she said. She asked that the drug chain perform regular maintenance and clean the parking lot at least once a week.

Stephen Myers, the new CVS area manager, said that he took over the store on March 1 and that he "couldn't believe my eyes" when he first inspected the lot. There were several decrepit cars, he said, all of which he has had removed.

The lot's lighting, Myers added, is dysfunctional; a new system is being studied. "I pledge to you to keep it right," he told the commissioners.

Mayor gets earful on JPDS proposal

By ELIZABETH WIENER
Current Staff Writer

A group of high-level Jewish community leaders met with Mayor Anthony Williams last week to press the case for allowing the Jewish Primary Day School of the Nation's Capital to build on a controversial site on Gates Road in Forest Hills.

Williams, according to aides, expressed strong support for the school's return to Washington, but made no specific pledges on the site. The school purchased the so-called Owl's Nest estate earlier this year, but it faces opposition from many neighbors as well as a new landmark designation that could hamper

Discussion of the school's plight came at a regularly scheduled meeting April 30 with leaders of local Jewish organizations, such as the Jewish Community Council of Greater Washington and the local chapter of American Jewish Congress, according to mayoral aide Jim Wareck, his unofficial liaison with the Jewish community.

Jeffrey Colman, a parent and member of the school's board, said the 20 representatives from various Jewish organizations presented a united front in support of the school at that site. "We told Mayor Williams we would like to bring it back to the city and build it at that particular site," Colman said.

The mayor, said Wareck, [illegible] the school com-

was granted landmark status two weeks ago. School officials contend they were granted a preliminary raze permit before the Forest Hills Neighborhood Alliance filed an application to landmark the property, while neighbors argue the preliminary permit does not grant demolition rights.

Mayor Williams, according to Wareck, said he would not interfere in the legal dispute. He offered to help the school search for another site but suggested waiting to see how the Forest Hills controversy "plays out" first.

Colman said the school has also renewed its proposal for city-sponsored mediation between the school and Forest Hills residents.

Gary Stevens, president of the

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Application No. 16311 of First F.S.K. Limited Partnership, pursuant to 11 DCMR 3108.1 for a special exception under Section 213 to establish a parking lot in an R-1-B District at premises 4817 U Street, NW (Square 1389, Lot 816).

HEARING DATE: March 4, 1998
DECISION DATE: March 4, 1998 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

The subject site is known as 4817 U Street, NW, and is located in an R-1-B Zone.

The subject property is located on the north side of U Street, between MacArthur Boulevard and 48th Street, NW. The lot is located approximately 90 feet north of the old MacArthur Theatre which has been recently renovated and is now occupied by CVS/Pharmacy across U Street, N W. Access to the lot is from U Street.

The subject lot is rectangular in shape with a lot area of 31,000 square feet. The lot slopes slightly downward from south to north. There are no structures on the subject lot, which is paved with an all-weather impervious surface and is striped for parking.

Landscaping and a wooded area cover approximately 25% of the subject property, most of which is located on the eastern boundary of the property and in the rear of the site where the subject lot borders residential uses.

The parking lot is separated from abutting residential properties by a 2 foot 6 inch masonry wall, which is topped by a 42-inch stockade fence. There is also a wooded buffer area.

The subject property has been used as a parking lot since 1946, pursuant to a series of special exception approvals granted by the BZA. The most recent approval was granted in 1990 for a four-year period (BZA Application No. 15064).

Approval of the parking spaces on the subject lot is requested to serve the patrons of the new CVS Drugstore, which is located at 4859 Mac Arthur Boulevard. The CVS store provides no parking on site and no parking is required by virtue of the building's historic landmark designation. There is no fee for parking on the proposed lot.

The applicant proposes to continue to use the subject property as a service parking lot with the

same configuration of spaces as provided previously. The current lessee of the property, CVS, will operate the parking lot.

Issues and Arguments:

Section 213 – Parking
Section 213.1: Use as a parking lot shall be permitted in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section. These provisions are addressed below.

Section 213.2: A parking lot shall be located in its entirety within two hundred feet (200 ft.) of an existing Commercial or Industrial district.

The applicant testified that the subject parking lot is located in its entirety within 200 feet of an existing Commercial or Industrial zone.

Section 213.3: A parking shall be contiguous to or separated only by an alley from a Commercial or Industrial district.

The applicant testified that the C-2-A Zone district, which fronts on MacArthur Boulevard, is located approximately 90 feet away and is contiguous to the subject property.

Representatives of the Palisades Citizens Association and the ANC testified that the property does meet this criterion.

Section 213.4: All provisions of Chapter 23 of this title shall be complied with as indicated below.

The applicant testified that the proposed use satisfies the requirements of Section 2303.

Section 2303.1(a) All areas devoted to driveways, access lanes, and parking areas are paved and maintained with concrete materials, which form an all-weather impervious surface six inches in depth.

(b) The lot is designed that no vehicle or any part thereof projects over any lot line or building line.

(c) The lot will be used only for parking.

(d) No vehicular entrance or exit is within 40 feet of a street intersection.

(e) Lighting used to illuminate the parking lot is arranged so that all direct rays of such lighting are confined to the surface of the parking lot.

(f) The lot will be maintained by CVS and kept clean of refuse and debris. Green space and landscape areas consist of approximately 25 percent of the lot.

Section 2303.2 (a) The lot is screened from all contiguous residential property by a 2-foot, 6-inch high masonry wall, which is topped by a 42-inch high stockade fence.

(b) All parts of the lot not devoted to parking areas, driveways, access lanes, the attendant's shelter or the screening wall will be kept free of debris and are paved. The trees on the lot will be maintained in a neat and orderly appearance.

Section 213.5: No dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use, and the present character and future development of the neighborhood will not be affected adversely.

The applicant testified that: dangerous or otherwise objectionable traffic conditions will not result from the continued operation of the subject parking lot; access to the lot is well marked; and, the access driveway includes separate exit and entry lanes thereby minimizing the risk of traffic conflicts upon entering and exiting the lot.

Mr. James Lowe, Jr. of 4615 Cathedral Avenue, NW, in a letter to the Board opposed the application and stated that it would be disruptive to a neighborhood that did not want the increased traffic that CVS would attract.

Section 213.6: The parking lot shall be reasonably necessary and convenient to other uses in the vicinity, so that the likely result will be a reduction in over spill parking on neighborhood streets.

The applicant testified that: the present character and future development of the neighborhood will not be adversely affected by continued use of the site as a parking lot; the lot has been a feature of the neighborhood since 1946; it serves to help alleviate parking congestion on neighborhood streets; the parking lot is reasonably necessary and convenient to other uses in the vicinity. The parking lot is located near a strip of commercial stores most of which do not provide off-street parking.

In a letter of opposition dated February 12, 1998, Advisory Neighborhood Commission (ANC) 3-D stated that the proposed use would adversely affect the neighborhood because children attending the two neighborhood churches and four schools within one block of the lot would need to cross an intersection (U Street at MacArthur Boulevard) through which the parking lot patrons would need to drive.

Section 213.7: A majority of the parking spaces shall serve residential uses or short-term parking needs of retail, service, and public facility uses in the vicinity.

The applicant testified that the parking spaces serve patrons of the CVS drugstore.

Section 213.8: Before taking final action on an application for use as a parking lot, the Board shall submit the application to the D.C. Department of Public Works (DPW) for review and report.

By memorandum dated February 24, 1997, the Department of Public Works (DPW) indicated

that it had no objection to continuing the use of the lot for parking. DPW noted that, from site inspection, the subject lot is in good condition, is well landscaped, and is screened from all adjacent residential property. DPW further testified that the lot serves the short-term parking needs of surrounding commercial users.

Section 3108 – Special Exceptions

The applicant testified that the application satisfies the general requirements of Section 3108. The applicant stated that the parking lot is well screened from nearby residential uses, and it should relieve parking congestion on nearby streets. The applicant maintains that the parking lot 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.

Ms. Penny Pagano, President of the Palisades Citizens Association, testified in opposition and stated that the proposed change from a theater to a retail use is a significant change. She further testified that, contrary to the applicant's testimony, there is a need for better screening and adequate fencing for adjacent neighbors.

FINDINGS OF FACT:

1. The parking lot is reasonably necessary and convenient to other uses in the vicinity.

2. The parking lot is located near a strip of commercial stores, most of which do not provide off-street parking.

3. The continuation of the subject parking lot for use by patrons of the new CVS drugstore will help to relieve traffic conditions on the neighboring streets.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception to establish a parking lot in an R-1-B District The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of Section 213 regulating parking lots.

The Board concludes that that the applicant meets the requirements of Section 213 regulating parking lots and the application meets the standards for granting the requested special exception.

The Board is of the opinion that granting the subject application is in harmony with the general purpose and intent of the Zoning Regulations and Map. Further, it is the view of the Board that to grant the application will not adversely affect the use of neighboring property in accordance with the Regulations and Map.

The Board has afforded the ANC the "great weight" to which it is entitled.

In the light of the foregoing, the Board **ORDERS** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of **THREE** years.

2. The applicant shall work with DPW to determine the feasibility of financing the appropriate striping and sidewalk repairs.

3. All areas devoted to driveways, access lanes, and parking areas shall be paved and maintained with bituminous concrete or brick materials, or a combination of these materials, which forms an all-weather surface, and which is a minimum of four inches (4in.) in thickness.

4. The parking lot shall be designed so that no vehicle or any part of a vehicle projects over any lot line or building line.

5. 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 the use or structure is otherwise permitted in the district in which the parking lot is located.

6. No vehicular entrance or exit shall be within forty feet (40 ft.) of a street intersection as measured from the intersection of the curb lines extended.

7. Any lighting used to illuminate the accessory parking spaces shall be arranged so that all direct rays are confined to the surface of the parking lot.

8. The parking lot shall be kept free of refuse and debris. Landscaping

9. The parking lot shall be landscaped with trees and shrubs covering a minimum of five percent (5%) of the total area of the parking lot. The landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

10. All parts of the lot not devoted to parking areas, driveways, access lanes, attendant's shelter, or required screening walls shall be kept free of refuse and debris and shall be paved and landscaped.

11. The lot shall be screened from all contiguous residential property located in an R-1, R-2, R-3, R-4 or R-5-A District by a solid brick or stone wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high or by evergreen hedges and /or evergreen growing trees which are thickly planted and maintained and are at least forty-two inches (42 in.) in height when planted.

12. The parking lot shall be screened from all contiguous residential property located in an R-1, R-2 or R-3 District by a solid masonry wall at least twelve inches thick and forty-two inches high.

13. The applicant shall meet with representatives of the Palisades Citizens Association and/or the ANC at the request of these organizations

VOTE: **3-0** (Susan Morgan Hinton, Sheila Cross Reid and Betty King to grant).

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

ATTESTED BY:_____
SHERI M. PRUITT-WILLIAMS
Interim Director

Final Date Of Order:_____

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 TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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