THE PALISADES CITIZENS ASSOCIATION

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June 4, 2001

Sheila Cross Reid, Chair
Office of Zoning
441 Fourth Street, NW
Suite 210 South
Washington, D.C. 20001

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

Dear Ms. Reid,

The Palisades Citizens Association represents the Palisades neighborhood where this parking lot is located at 4817 U Street (Lot 816, Square 1389 – Zoned R-1-B).

Our community has serious reservations about the BZA granting a special exception to CVS *for five years* and would like to explain our concerns.

BACKGROUND:

In 1997, against considerable community opposition, CVS took over the former MacArthur Theatre, renovated the premises and opened a new retail store/pharmacy. The exterior of the building and the lobby were declared an historic landmark through community efforts.

In February, 1998, F.S.K Limited Partnerships applied to the BZA on behalf of CVS for a special exception (Application # 16311) to use the former theater parking lot for its business. This parking lot is across the street and up the hill on U Street from the CVS store.

The community and ANC3D opposed the application. The BZA granted the application 3-0 (Susan Morgan Hinton, Sheila Cross Reid, Betty King) in a bench decision on March 4, 1998. In response to community concerns, the BZA approved the special exception ONLY for three years, subject to 13 conditions.

This 1998 BZA order for three years has expired and CVS is returning to the BZA for another special exception, this time *for five years* instead of three years.

BZA
Case No. 16722
Exhibit No. 20

Board of Zoning Adjustment
District of Columbia
CASE NO.16722
EXHIBIT NO.20

WHAT HAS HAPPENED SINCE THE 1998 BZA ORDER WAS ISSUED:

The 1998 BZA order has been ignored by CVS.

At the 1998 hearings for a special exception, CVS representatives took great pains to stress the need to clean, repair, resurface and maintain this parking lot. It is an affront to our community –and to the BZA – to have people profess such plans at a public hearing, only to have them ignore what they said once the special exception has been granted.

As CVS and its current attorney admit, efforts to clean up and implement a regular maintenance plan were initiated recently ONLY when they realized that the 1998 BZA special exception for three years was about to expire and they needed to return to the BZA for another special exception.

Here are some examples of how CVS has ignored the 1998 BZA order:

– No maintenance program was ever implemented to keep the lot clean and safe.

– About a half dozen abandoned cars in various stages of deterioration have remained on the lot. Some of these cars have been there 5-6 years – even before CVS took over the parking lot in 1998. No effort was made by CVS to remove them until recently (Exhibit A).

– Condition 8 says *"the parking lot shall be kept free of refuse and debris."* In fact, huge piles of trash accumulated regularly and maintenance was essentially ignored. Neighbors who live adjacent the parking lot had to pay to clean up the trash which blew onto their property. (Exhibit B)

– No cleaning or striping of the lot occurred until recently when it was time for CVS to return to the BZA for another special exception and some efforts were undertaken. Condition 2 of the 1998 BZA order required that *"The applicant shall work with DPW to determine the feasibility of financing the appropriate striping and sidewalk repairs."* This apparently was never done.

– Condition 3 of the 1998 order says that "*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 (4 in.) in thickness.* No changes were ever made to the parking lot, and nothing was ever done to have the parking lot meet this condition.

– Condition 9 requires landscaping be done and that the parking lot "*shall be maintained in a healthy growing condition and in a neat and orderly appearance.*" No landscaping was done and no effort was made to maintain the existing landscaping or the property.

–Unsightly conditions posed a safety hazard to customers and others who used the parking lot. A local teacher was held up in the lot (Exhibit C–Police Report)

COMMUNITY RECOMMENDATIONS;

Because CVS has ignored the 1998 BZA order, we are left with several questions that we hope the BZA will address before issuing another order:

1. What can the BZA do to be sure that a new special exception and its conditions will be followed by CVS in the years to come? What happens if CVS ignores a new BZA order as it has done to the 1998 order for three years?

2. How can the community be assured that this parking lot will be maintained in a clean and safe manner as required by the BZA order?

We hope the BZA will consider these issues and incorporate its concerns in any new order for another special exception.

The Palisades Citizens Association asks the BZA to approve a special exception ONLY FOR THREE YEARS, and to include in its order:

– ALL of the same provisions and conditions that were included in the 1998 order, including continued use of the parking lot by the community as specified in Section 213-Parking (213.7). (EXHIBIT D – 1998 BZA Order)

– a new condition that will provide the BZA, ANC3D and the Palisades community assurances that CVS will follow and implement conditions mandated by a new BZA order. This could be done by regular reports or some other process which the BZA prefers.

– that conditions 11 and 12 in the 1998 BZA order be combined as they appear to be redundant to both the community and to CVS..

ACTION BY ANC3D

ANC 3D, whose opinion is to be afforded great weight by the BZA, agrees with the Palisades community and voted its recommendations at its May 2, 2001 meeting. (Exhibit E–Northwest Current). The BZA has already received a letter from ANC3d Chair Eleanor Roberts Lewis to this effect.

As residents of this city, we respect the BZA and abide by its orders. We believe that applicants to the BZA who are granted approval for special exceptions have the same responsibility to be accountable.

Thank you for your consideration of our concerns.

Sincerely yours,

Penny Pagano

Penny Pagano, President
The Palisades Citizens Association

Exhibit A- Abandoned cars

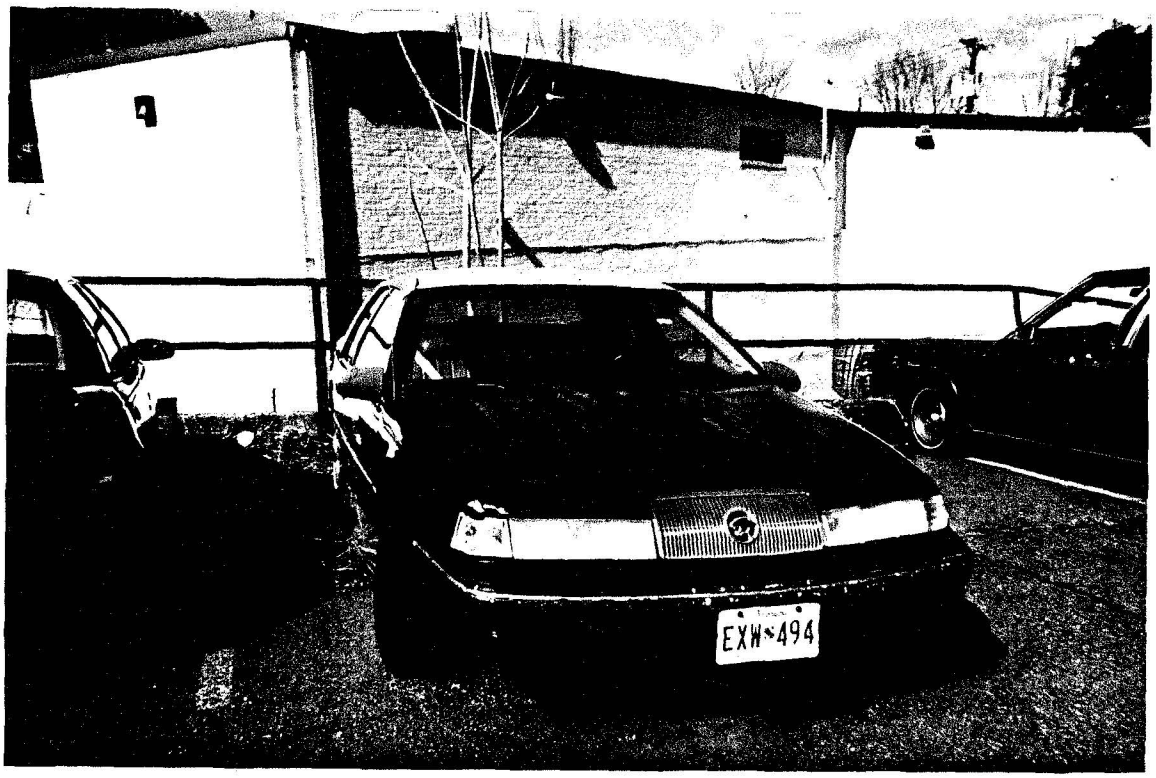




Exhibit A - Abandoned car (page 2)



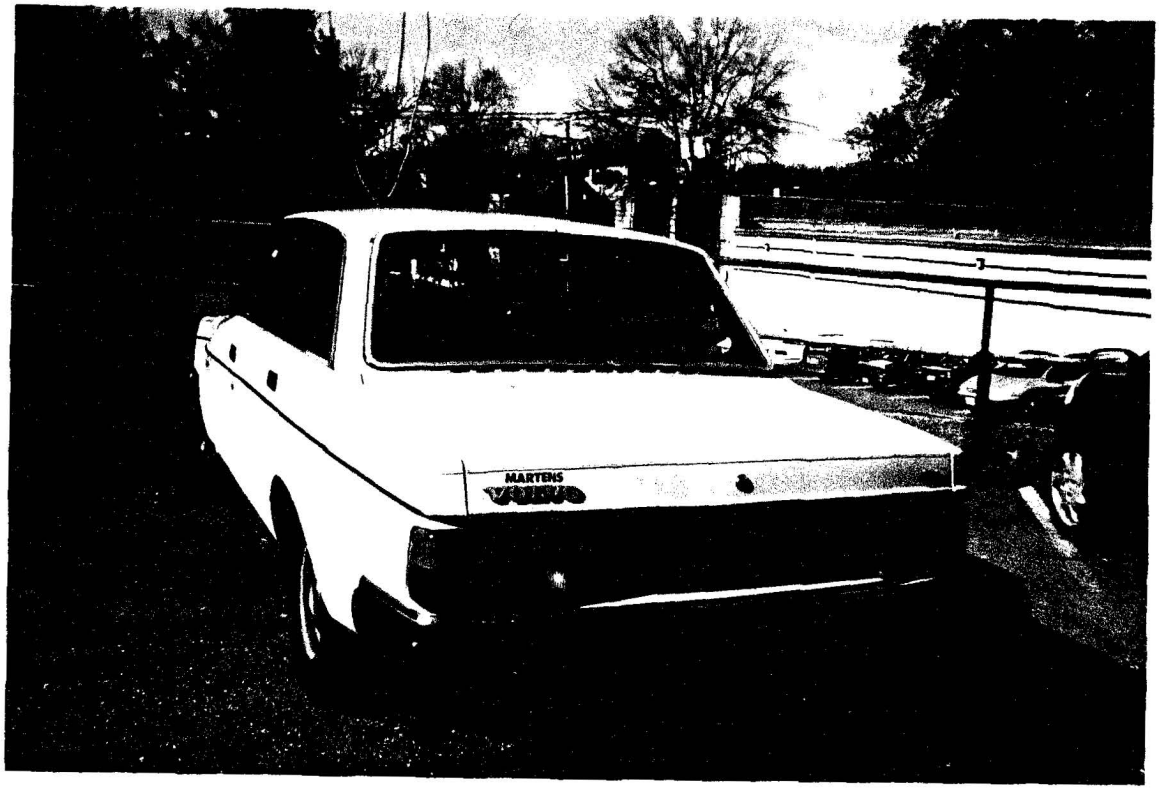


Exhibit B - Trash in parking lot





Exhibit B - Trash in Parking Lot (page 1)

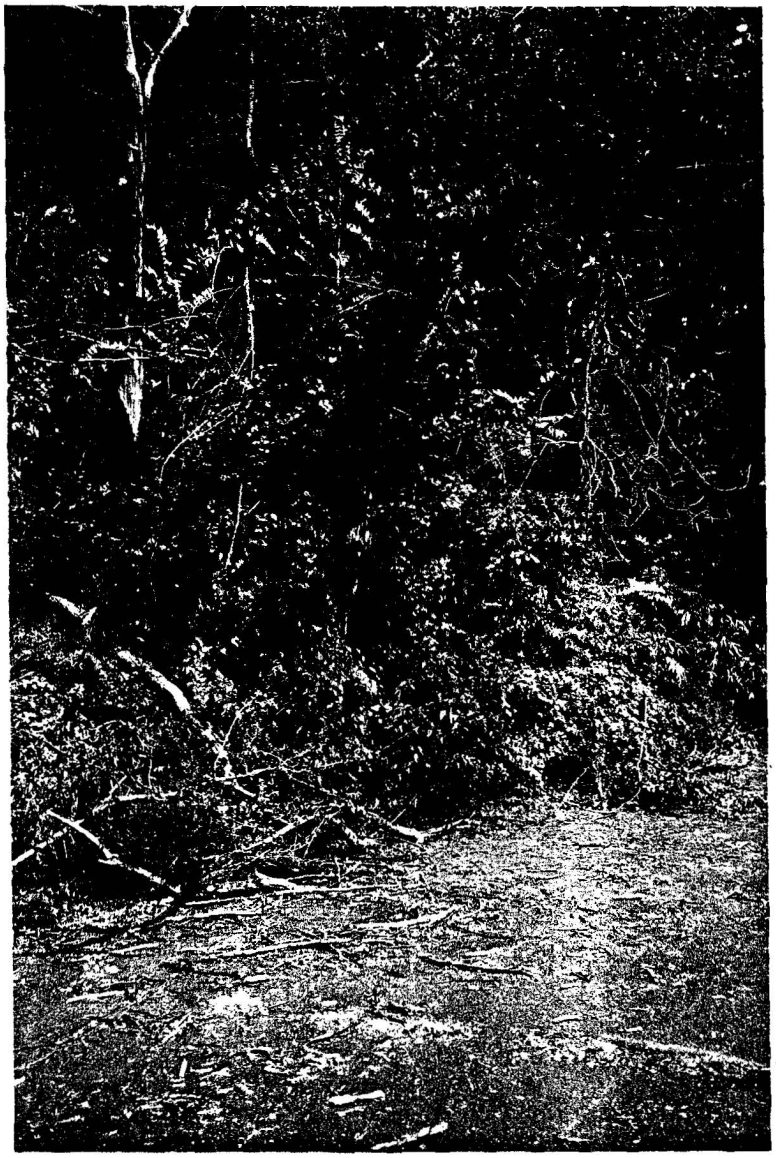


Exhibit C - Police Report

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.

P.D. 123 Rev. 1/74

REPORT OF INVESTIGATION

COMPLAINANT/ VICTIM	DATE OF OCCURRENCE	
Amie CARSON	2/24/99	
TYPE OF CASE	CCN	FILE NO.
Robbery Fear	102-579	

NARRATIVE: - GIVE A SYNOPSIS OF CASE INVESTIGATION SUBSEQUENT TO THE LAST REPORT, WITH PERSONS INTERVIEWED, NEW LEADS, AND OTHER INFORMATION ON CASE PROGRESS. P.S.A. 305

Complainant: CARSON, Amie W/F 5/30/74
HA: 3026 Wisc Ave NW #202
BA: 4759 Reservoir Rd NW
HP: 202-686-0851 BP: 202-965-6600

Location: 4800 Block of U St NW (Parking Lot)

Date/Time: 2/24/99 1600-1605 hours

Suspect: Hispanic Male, 35-45 years, 5'4"-5'5", 170-180 lbs, Medium Complexion, Black Hair, Unshaven, Square Face, wearing a Light Colored Jacket, Light Colored Pants, Dark Colored T-Shirt & possibly wearing a hat. Passenger in a Maroon or Rust Colored 1990's Honda, Described as Very Dirty & having Bumper Stickers, Bearing Tag Number 223-NJJ which is described as yellow with red or green lettering (possibly New Mexico).

Stolen: Ladies Black Leather Handbag containing a wallet, daily planner, $3.00 in US currency, and miscellaneous identification & credit cards.

Injuries: None

Lighting: Daylight

Synopsis: The Complainant reported that between 1600-1605 hours, 2/24/99 while walking to her vehicle which was parked in the parking lot located in the 4800 block of U Street NW behind the Safeway Store, she observed S-1 standing by her vehicle and the described vehicle was approximately 20' away. S-1 approached the Complainant with his hand underneath his jacket as if he had a weapon and ordered the Complainant to drop her handbag to the ground. The Complainant complied and S-1 retrieved the property at which time he ran to the passenger side of the described vehicle and the vehicle drove off. C-1 further reported that she thought that there was a second subject inside the described vehicle as the driver, but she never saw this suspect.

On Scene: Officer Kennedy
205 - Detective Sender

CASE STATUS: ☒ OPEN ☐ CLOSED ☐ OTHER (Explain) PAGE 1 OF 1 PAGES

INVESTIGATOR'S SIGNATURE	DATE
Detective Brian Sender	2/24/99
SUPERVISOR'S SIGNATURE	DATE
	3/24/99

This report is the property of the Metropolitan Police Department, Washington, D.C.
Neither it nor its contents may be disseminated to unauthorized personnel or agencies.

Exhibit D - BZA 1998 Order

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.

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.

ord16311/poh