Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

Atlanta
Boston
Bradenton
Chicago
Fort Lauderdale
Jacksonville
Lakeland
Los Angeles
Melbourne
Miami
New York
Northern Virginia
Orlando
Providence
St. Petersburg
San Antonio
San Francisco
Seattle
Tallahassee
Tampa
Washington, D.C.
West Palm Beach

International Offices:
Buenos Aires*
Mexico City
Rio de Janeiro
São Paulo
Tel Aviv*
Tokyo
*Representative Offices

June 12, 2001

MARY CAROLYN BROWN
202-862-5990

Internet Address:
mcbrown@hklaw.com

VIA HAND DELIVERY

Board of Zoning Adjustment for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20002

Re: BZA Application No. 16722
Parking Lot at 4817 U St., N.W. (Square 1389, Lot 816)

Dear Members of the Board:

Enclosed please find an original and ten copies of the Statement of the Applicant filed on behalf of F.S.K. Limited Partnership and CVS MacArthur Boulevard, Inc., in support of their application for a special exception to continue the parking lot use at 4817 U Street, N.W.

Thank you for your consideration of these materials.

Respectfully submitted,

Carolyn Brown

Carolyn Brown

Enclosures

cc: John Fondersmith, OP
ANC 3D
Palisades Citizens' Association

BZA
Case No. 16722
Exhibit No. 21

Board of Zoning Adjustment
District of Columbia
CASE NO.16722
EXHIBIT NO.21

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF
F.S.K. LIMITED PARTNERSHIP AND
CVS MACARTHUR BOULEVARD, INC.
FOR A SPECIAL EXCEPTION TO
CONTINUE USE OF THE PARKING LOT AT
4817 U STREET, N.W.

STATEMENT OF THE APPLICANT

BZA CASE NO. 16722

Submitted by:

HOLLAND & KNIGHT LLP
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006
Whayne S. Quin, Esq.
Mary Carolyn Brown, Esq.
Attorneys for the Applicant

June 12, 2001

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF
F.S.K. LIMITED PARTNERSHIP
4817 U Street, N.W.
(Square 1389, Lot 816)

BZA APPLICATION NO. 16722
HEARING DATE: JUNE 26, 2001
ANC 3D

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of F.S.K. Limited Partnership and its lessee, MacArthur Boulevard CVS, Inc. ("CVS"), in support of the application to the Board of Zoning Adjustment for a special exception to continue the use of the existing parking lot at 4817 U Street, N.W., (Square 1389, Lot 816) pursuant to 11 DCMR § 213. Advisory Neighborhood Commission 3D and the Palisades Citizens' Association have recommended approval of this application. The property is located in the R-1-B District.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment ("BZA" or "Board") has jurisdiction to grant the special exception relief requested pursuant to D.C. Code § 5-424 and section 3104.1 of the Zoning Regulations (11 DCMR).

III.
BACKGROUND

A. Description of the Subject Property

The Subject Property consists of Lot 816 in Square 1389, the city block bounded by MacArthur Boulevard, N.W., to the west, U Street to the south, 48th Place and V Street to the north, and 48th Street to the east. Fronting on U Street, the lot is rectangular in shape, measuring approximately 200 feet on U Street, with a depth of approximately 155 feet. The

parking lot is located approximately ninety feet to the north of the CVS Store across U Street. The closest street intersection at MacArthur Boulevard and U Street, N.W., is located approximately 124 feet from the entrance driveway. The entrance is not fenced off and there is no fee for parking on the lot.

The surface of the parking lot is paved with asphalt and comprises three-quarters of the site. The grade slopes gently upward to the east curb of the parking area, then rises significantly at the unimproved portion of the site. Consisting of natural vegetation and landscaping, this steep berm extends the full depth of the lot and comprises twenty-five percent of the site.

B. Description of Surrounding Area

The site is located in the R-1-B District, a residential district consisting of single family uses and certain other permitted uses. (11 DCMR § 201) To the east and north of the site are single family houses, which are screened from the parking lot by the thick vegetation and landscaping.

The parking lot is contiguous to the C-2-A District to the south and west located along MacArthur Boulevard. The C-2-A District is a community business area designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the city outside of the central core. Commercial uses along MacArthur Boulevard include Safeway Stores, Inc., an Exxon Service Station across MacArthur Boulevard, Mindy's Catering, and the CVS Store, as well as several other small commercial retail uses.

C. Description of Proposal

CVS is the lessee of the parking lot at 4817 U Street, N.W., and proposes to continue the parking lot use as previously approved. The lot, which contains 78 spaces, is not

required parking accessory to the CVS Store but is provided as a convenience to CVS patrons, neighborhood residents and other commercial uses in the neighborhood.

The subject property has been used as a parking lot since 1946 pursuant to a series of special exception approvals granted by the Board. (See BZA Order Nos. 1662, 2566, 3688, 5391, 14001, 15064 and 16311.) The most recent approval was granted under BZA Order No. 16311 in 1998 for a three-year period, which will expire on July 16, 2001. A copy of BZA Order No. 16311 is attached as Exhibit E.

IV.
THE APPLICANT MEETS THE TEST FOR SPECIAL EXCEPTION RELIEF TO CONTINUE THE EXISTING PARKING LOT USE CONSISTENT WITH 11 DCMR § 213.

A. Standard for Approving Special Exception Relief

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) *quoting Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

B. Standard of Review for Parking Lot Special Exceptions

Under section 213, the Board may grant special exception relief for a parking lot in a residential district provided the conditions of that section are met. As demonstrated below, and through exhibits, testimony and other information to be submitted into evidence before the Board, CVS meets all the standards of section 213. The requested relief can be granted

without materially impairing the intent and purpose of the Zoning Regulations, and the use will not tend to affect adversely the use of neighboring property.

1. Adjacency to an Existing Commercial District.

Section 213.2 of the regulations states that a "parking lot shall be located in its entirety within two hundred feet (200 ft.) of an existing Commercial or Industrial district." Section 213.3 further states that the "parking lot shall be contiguous to or separated only by an alley from a Commercial or Industrial district." Consistent with these requirements, the parking lot is located in its entirety within 200 feet of the C-2-A District. The commercial zone boundary line is contiguous with the western edge of the parking lot, as shown on the Zoning Map attached as Exhibit B. The lot then extends a total distance of 200 feet east from that boundary line, placing the entire lot within 200 feet of the C-2-A District.

2. Compliance with Chapter 23 of the Zoning Regulations.

Section 213.4 of the regulations requires the applicant to comply with all the provisions of Chapter 23 of the Zoning Regulations. Consistent with this requirement, the parking lot complies with the following applicable provisions of Chapter 23.

a. Impervious Paved Surface

Under section 2303.1(a), all areas devoted to driveways, access lanes, and parking areas must be paved and maintained with bituminous concrete or brick materials, or a equivalent materials, which form an all-weather impervious surface, and which is a minimum of four inches in thickness. Consistent with this provision, the subject parking lot is paved with impervious asphalt with a thickness of at least four inches. This surface was recently cleaned and repaired, and is in excellent condition.

b. Appropriate Layout

Section 2303.1(b) further requires that the lot must be designed so that no vehicle or any part of a vehicle projects over any lot line or building line. Consistent with this section, the southern edge of the parking lot is bordered with landscaping, which prevents vehicles from projecting over the lot line. To the north and west, a metal railing acts as a similar barrier to vehicles. Thus, the lot is in full compliance with this requirement.

c. Limitation of Uses on the Site

The provisions of section 2303.1(c) prohibit any other uses from being conducted on the site, and do not allow any structures except for an attendant booth or an otherwise permitted use or structure. No other uses or structures are located on the parking lot, and thus the applicant is in compliance with this requirement.

d. Limitation on Proximity to Intersection

Section 2303.1(d) also prohibits any vehicular entrance or exit to be located within forty feet of a street intersection, as measured from the intersection of the curb lines extended. Consistent with this provision, the parking lot entrance is approximately 124 feet away from the intersection of MacArthur Boulevard and U Street, N.W.

e. Confinement of Light Rays to the Site

In order to protect adjacent property from unnecessary light wash, section 2303.1(e) requires that any lighting must be arranged so that all direct rays are confined to the surface of the parking lot. The new lighting scheme recently implemented by CVS is consistent with this subsection. The light poles have been installed in the center area of the lot to ensure that light rays are directed downward and away from adjacent residential properties. Further, CVS has agreed to adjust the lighting intensity based on community input to ensure continuing compliance with this provision.

f. Maintenance and Landscaping of the Lot

Section 2303.1(f) sets forth several requirements regarding the appearance of the lot to maintain its compatibility with its residential surroundings. That section states that:

> The parking lot shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. Landscaping with trees and shrubs shall cover a minimum of five percent (5%) of the total area of the parking lot, or an area as determined by the Board of Zoning Adjustment for a parking lot otherwise requiring Board approval.

Maintenance and cleanliness of the lot has been a major concern for the community. Earlier this year, CVS renewed its efforts to address this issue. On March 1, 2001, the management of the CVS Store on MacArthur Boulevard was reassigned to Region 22. The new District Sales Manager for Region 22 inspected the site, saw that conditions were unsatisfactory and immediately hired a new maintenance contractor. The lot was cleaned of all refuse and debris, the surface was "power-washed," the spaces repainted, and the landscaping pruned and fertilized. In accordance with the maintenance contract, the lot will be cleaned every three days and landscaping and lawn mowing services performed every ten days. The store manager also inspects the site daily and requests supplemental cleaning service, as necessary.

CVS has established a dialog with the Palisades Citizens' Association ("PCA") and Advisory Neighborhood Commission ("ANC") 3D to ensure that all maintenance issues are properly addressed to the satisfaction of the community. Both organizations have expressed their appreciation for the renewed efforts of CVS to maintain the condition of the lot and are satisfied that this condition is being met.

With respect to the landscaping requirement, the natural vegetation and landscaping along the eastern edge of the site comprises approximately twenty-five percent of the property, well in excess of the five percent minimum standard. An evergreen screen has been planted along this portion of the site to buffer adjacent residential uses from the parking lot. A privet hedge also borders the southern property line on either side of the entrance to the lot.

g. Adequate Screening from Adjacent Residential Properties

Section 2303.2 further requires that a parking lot located in an R-1 District must be screened from all contiguous residential property by either a solid brick or stone wall at least one foot thick and 3.5 feet in height, or by evergreen hedges or trees, thickly planted and maintained, and at least 3.5 feet in height when planted. Consistent with these provisions, the parking lot is screened from the residential properties to the north by a masonry wall 2.5 feet in height, which is topped by a stockade fence 3.5 feet in height. A wooded area is also maintained in front of this fence. Along the eastern border of the property, evergreen trees at least 3.5 in height have been planted, which supplement the thickly growing natural vegetation on the unpaved portion of the site.

Section 2303.2 also reiterates the need for maintenance of the lot. As noted above, CVS has entered into a new service contract for cleaning and maintenance and has started a dialog with the community to ensure its concerns are fully addressed.

3. Prohibition Against Dangerous Traffic Conditions

In order to protect the character and future development of the neighborhood, section 213.5 states that no dangerous or otherwise objectionable traffic conditions shall result of the use of the parking lot. Since 1946, the parking lot has been operated in a safe and orderly manner without creating any dangerous or objectionable traffic conditions. Further, CVS has filed an application with the Department of Public Works to extend the

sidewalk along U Street to the entrance of the parking lot in order to enhance pedestrian safety in the neighborhood. The application review process is expected to be complete by the end of the summer and the sidewalk installed shortly thereafter.

4. Convenience to Other Neighborhood Uses

Finally, sections 213.6 and 213.7 require the parking lot to be reasonably necessary and convenient to other uses in the vicinity, so that the likely result will be a reduction in overspill parking on neighborhood streets. The majority of parking spaces shall serve residential uses or short-term parking needs of retail, service, and public facility uses in the vicinity.

Consistent with these sections, the parking lot provides a vital service to area retail and service uses. A nearby catering business is able to park its delivery vans at the lot, thereby preventing overspill parking on neighborhood streets and at the same time accommodating the needs of a local business. The automobile service station across MacArthur Boulevard is also able to use the lot to park vehicles that have been repaired on a short-term basis. Similarly, the lot provides supplemental space for weddings, funerals, or other special services at Our Lady of Victory Church located across U Street from the site. The lot also provides parking spaces for the school's teachers and visitors to nearby residences.

V.
COMMUNITY SUPPORT

During the past four months, CVS and its representatives have engaged in exhaustive discussions with ANC 3D, the Palisades Citizens' Association and members of the community to identify and address any concerns with the continued use of the parking lot. The major issue raised by the community related to maintenance of the lot. As discussed above, CVS acted immediately to redress the situation. CVS also reviewed the

conditions of the previous order and worked with the community to ensure compliance with all items. As a result of these efforts, on May 2, 2001, the ANC voted unanimously to support the parking lot renewal application with the same conditions imposed in the previous BZA order. However, because of the previous maintenance concerns, the ANC declined to endorse approval for a five-year period, as requested by CVS. Instead, the ANC recommended approval for a three-year period and CVS consented to this limitation. CVS also has the support of the Palisades Citizens' Association for a three-year renewal period.

VI.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A:	Portions of the Sanborn Atlas showing the subject property highlighted in yellow;
Exhibit B:	A portion of the Zoning Map showing the subject property highlighted in yellow;
Exhibit C:	Site Plan of Parking Lot;
Exhibit D:	Photographs of the Subject Property;
Exhibit E:	Previous BZA Orders Approving Parking Lot Use in Case Nos. 16311, 15064, and 14001;
Exhibit F:	Letter Recommending Approval from Advisory Neighborhood Commission 3D; and
Exhibit G:	Outlines of Witness Testimony.

VII.
WITNESSES

A. Representative of CVS

B. Representative of Owner, F.S.K. Limited Partnership

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for a special exception relief under the Zoning Regulations. The granting of the application will be in harmony with the general purpose and intent of the regulations and will not adversely affect the use of neighboring properties.

Accordingly, CVS respectfully requests the Board to grant the application and renew the parking lot use for a period of three years.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____
Whayne S. Quin, Esq.

By: _____
Mary Carolyn Brown, Esq.

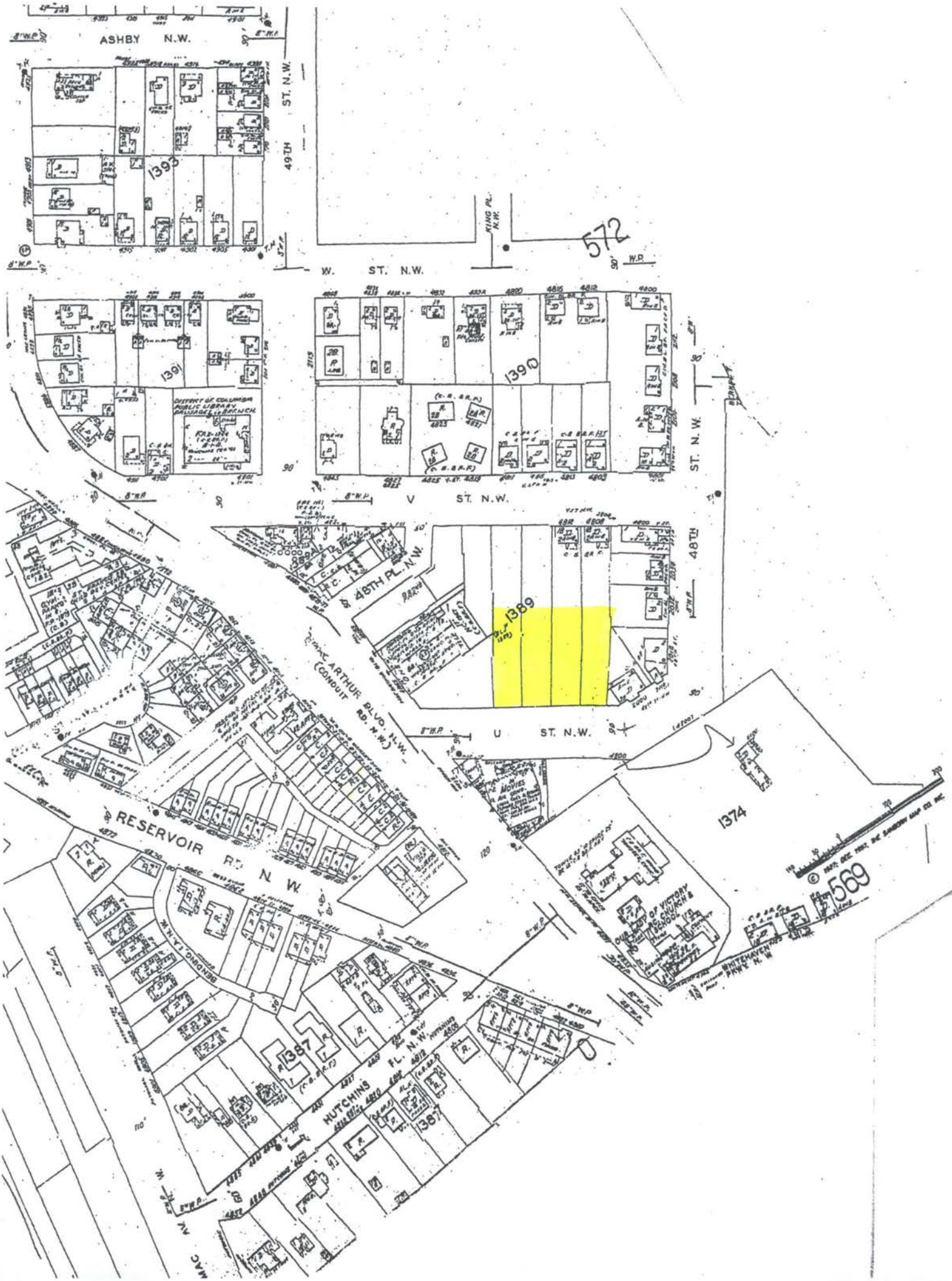
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

June 12, 2001

WAS1 #982427 v1

A


CONDUIT ROAD
W 49TH ST
V ST
49TH
W ST
V ST
1391
1390
1374
BLVD.
U ST
487TH
WHITEHAVEN PKWY
31,000sf
7,750sf
7,750sf
8,000sf
5000sf
3000sf
5,000sf


ASHBY N.W.
49TH ST. N.W.
1393
572
W. ST. N.W.
1391
1390
V ST. N.W.
48TH PL. N.W.
48TH ST. N.W.
1389
ARTHUR BLVD. (CONDUIT RD. N.W.)
U ST. N.W.
RESERVOIR RD. N.W.
1374
569
1387
HUTCHINS PL. N.W.
MAC AV. N.W.



DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., 02/28, 2001

Plat for Building Permit of SQR 1389 LOT 816

Scale: 1 inch = 30 feet Recorded in Book A&T Page 3361C

Receipt No: 2370

Furnished to: FREDA HOBAR

Surveyor, D.C.

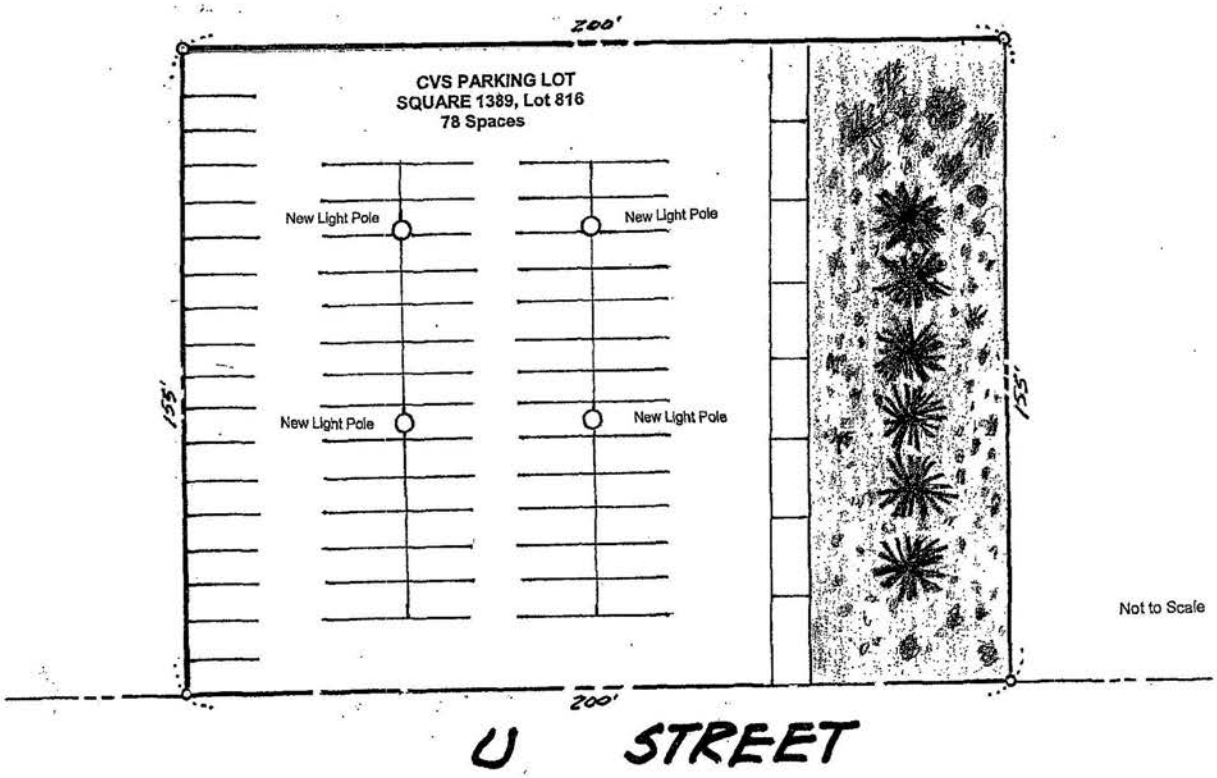
By: RFD JM4

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.)

Date: _____

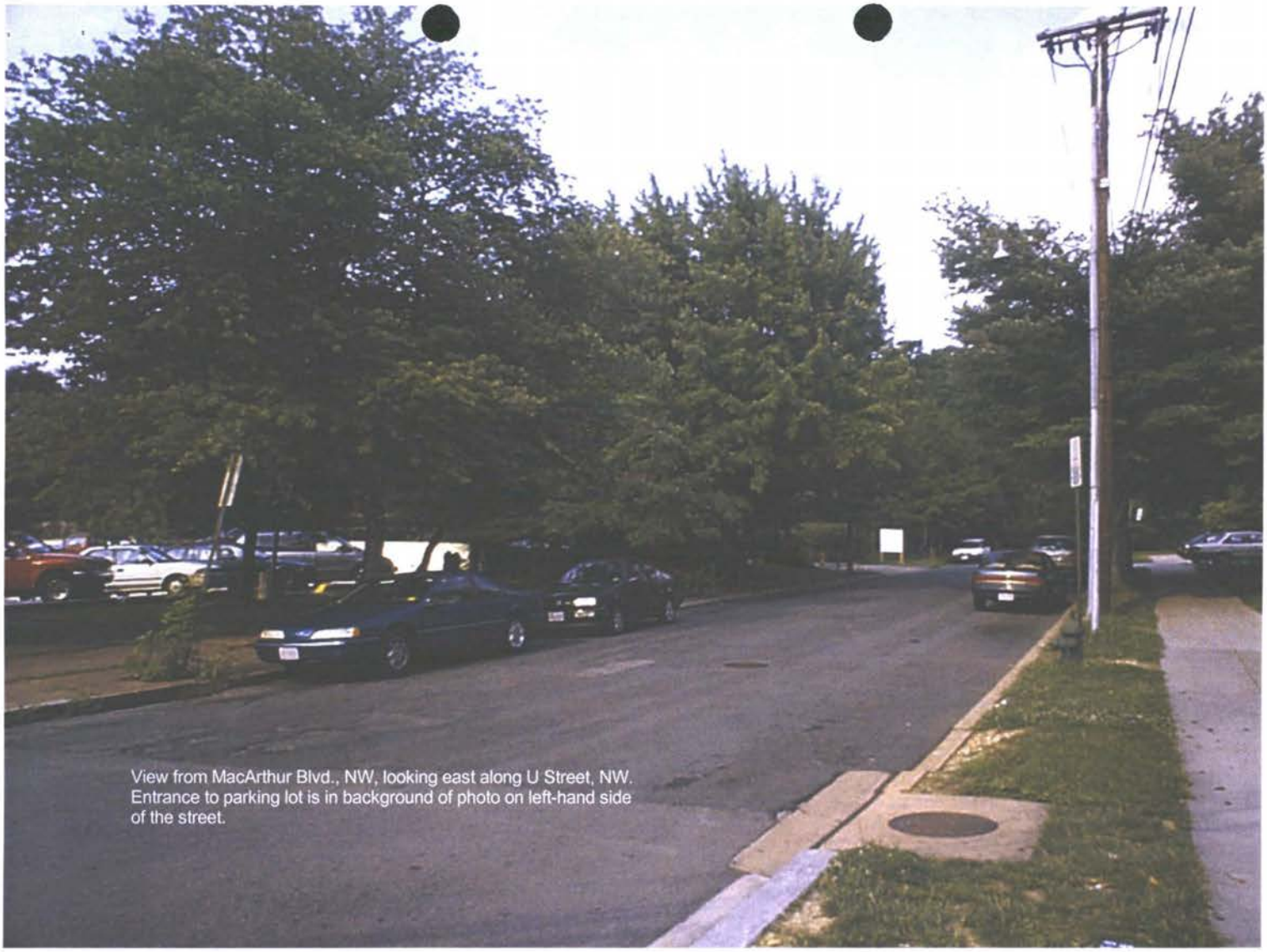
_____
(Signature of owner or his authorized agent)

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.

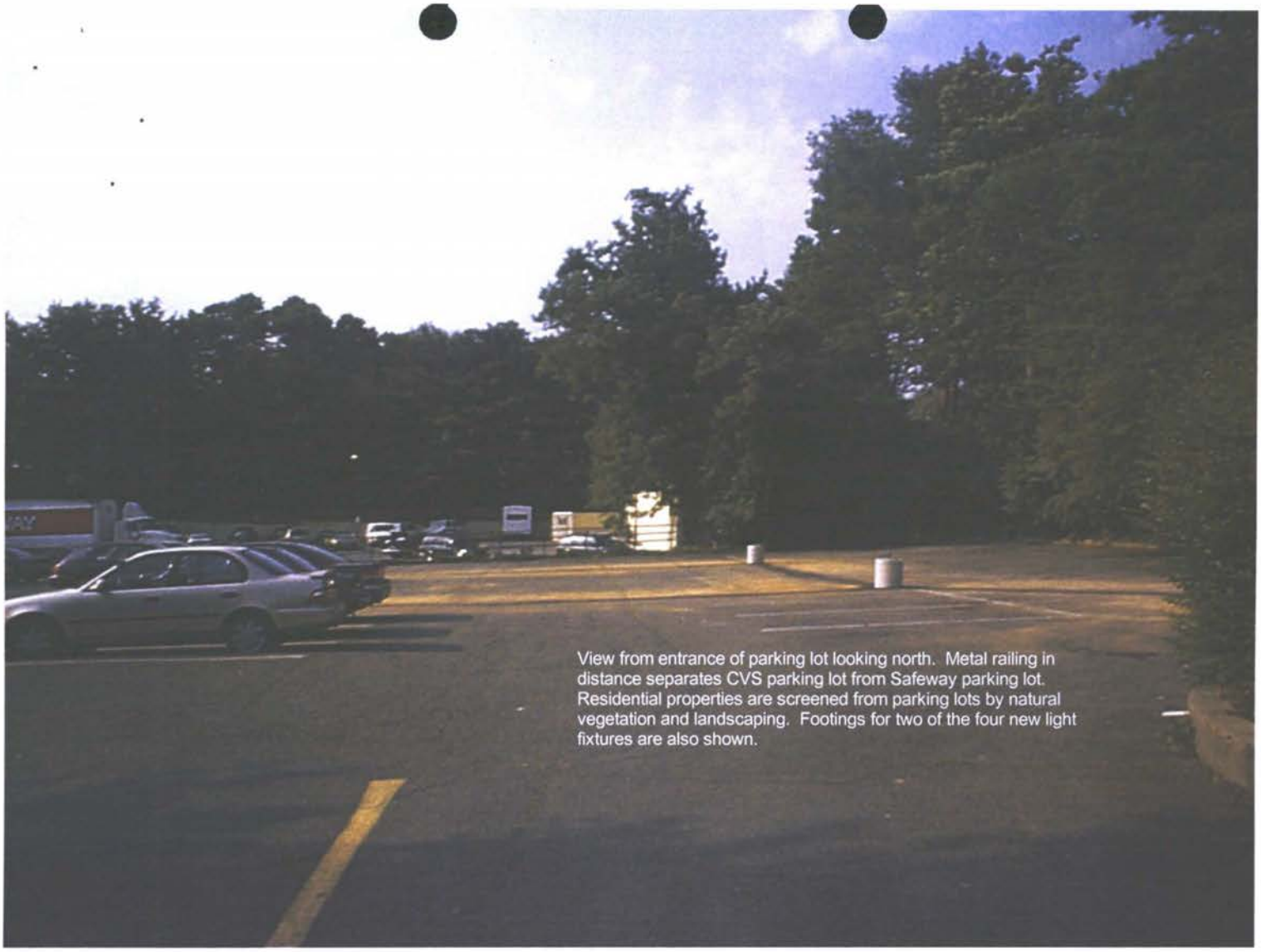


Not to Scale

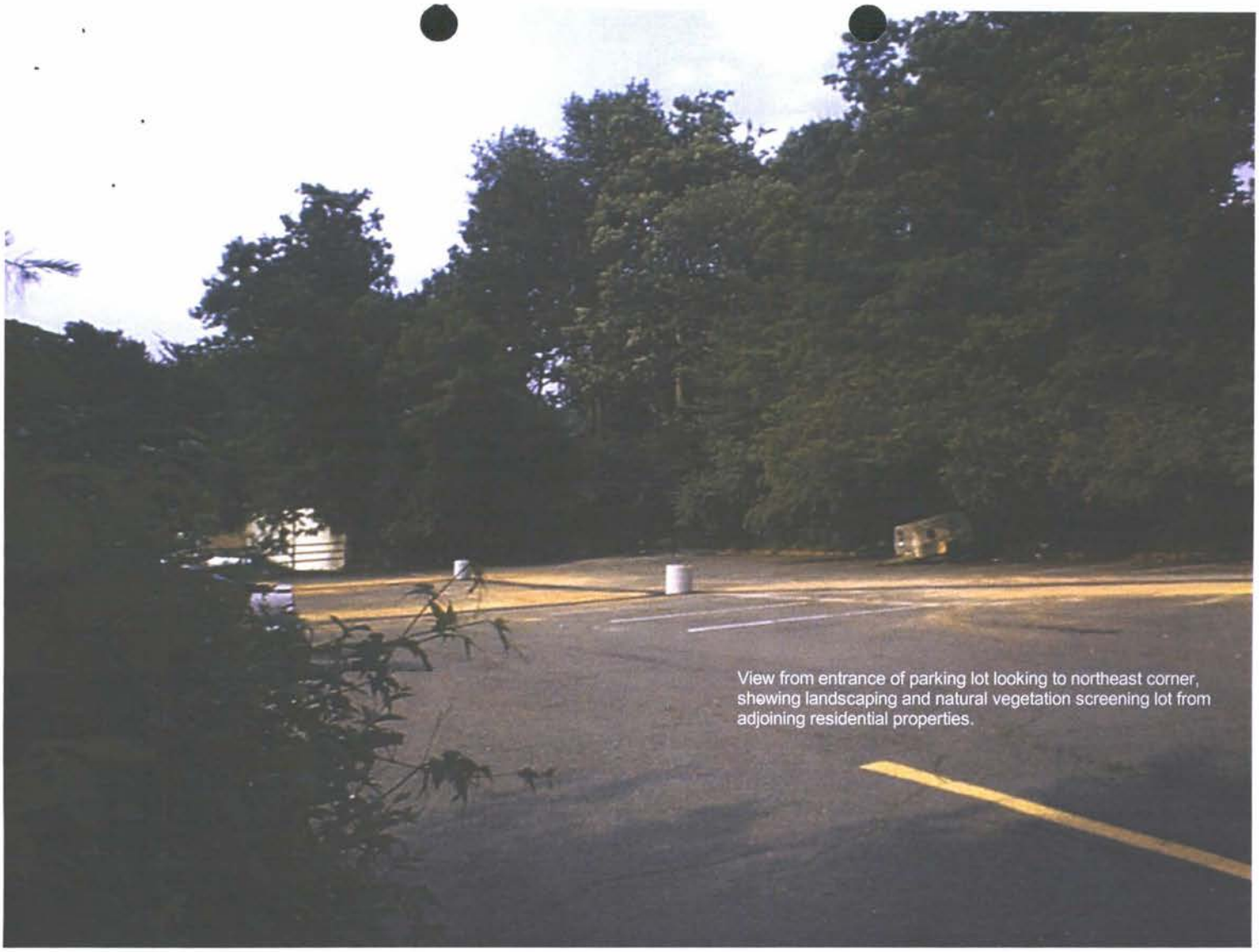




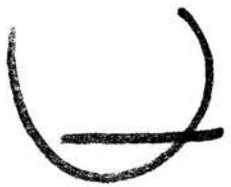
View from MacArthur Blvd., NW, looking east along U Street, NW. Entrance to parking lot is in background of photo on left-hand side of the street.



View from entrance of parking lot looking north. Metal railing in distance separates CVS parking lot from Safeway parking lot. Residential properties are screened from parking lots by natural vegetation and landscaping. Footings for two of the four new light fixtures are also shown.

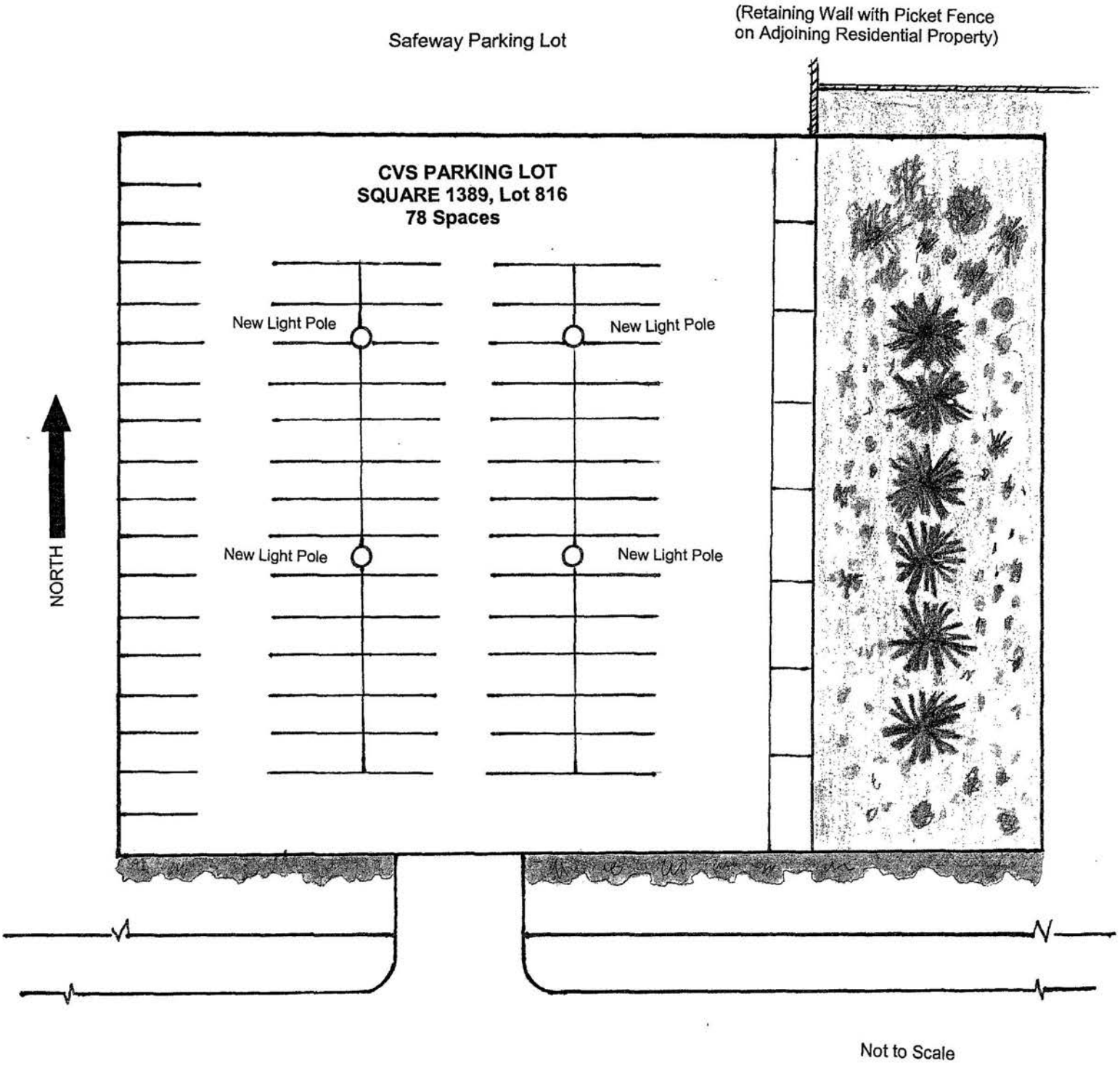


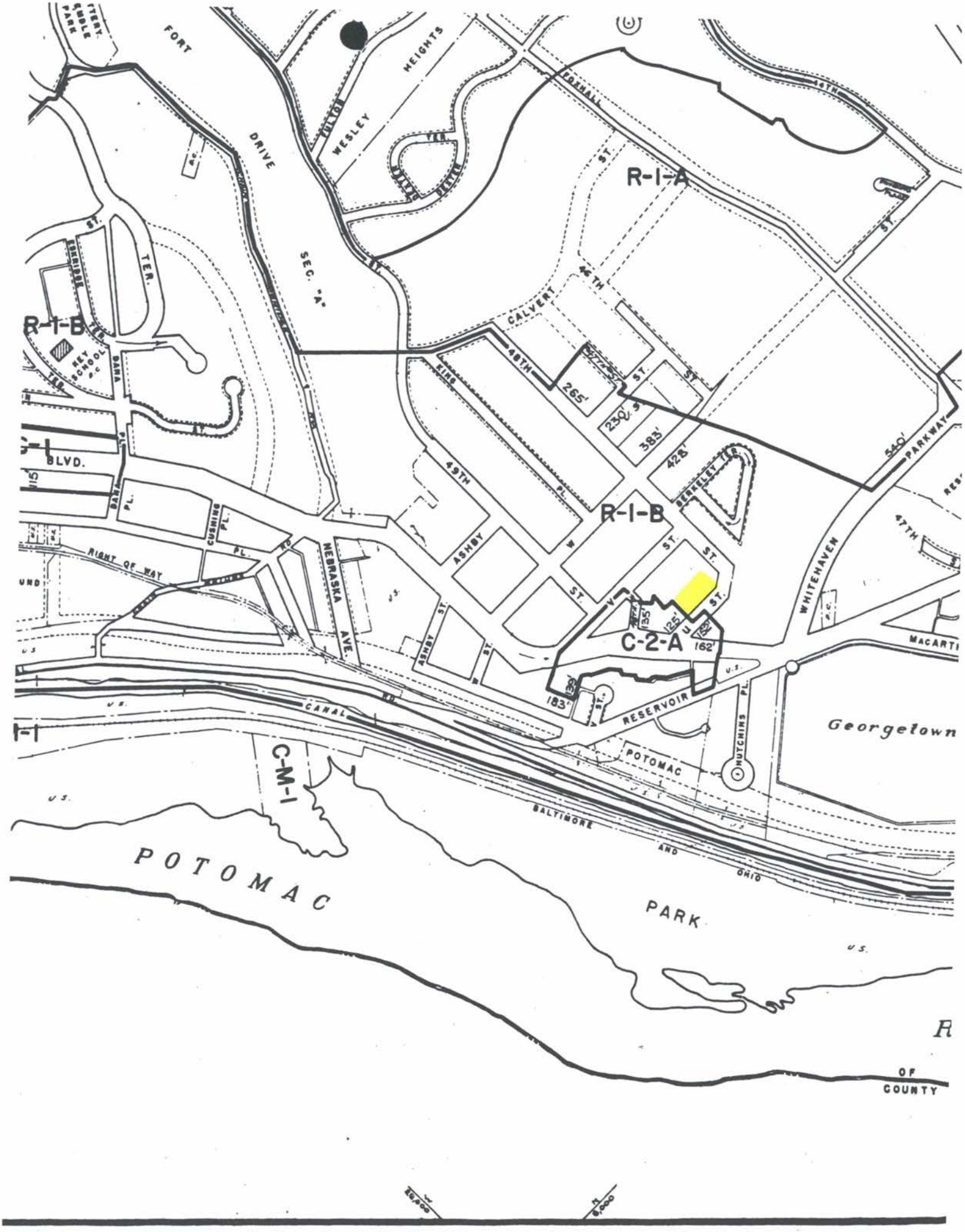
View from entrance of parking lot looking to northeast corner, showing landscaping and natural vegetation screening lot from adjoining residential properties.



SITE PLAN

(not to scale)




R-1-A
R-1-B
R-1-B
C-2-A
C-M-1
FORT DRIVE
SEC. "A"
WESLEY HEIGHTS
FOXHALL
CALVERT
48TH
49TH
47TH
46TH
265'
230'
383'
428'
540'
PARKWAY
BLVD.
TER.
PL.
ASHBY
CUSHING
NEBRASKA AVE.
WHITEHAVEN
RIGHT OF WAY
CANAL
RESERVOIR
POTOMAC
HUTCHINS PL.
Georgetown
BALTIMORE AND OHIO
POTOMAC PARK
OF COUNTY
DISTRICT OF COLUMBIA



GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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 (4) inches 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).

EXCEPTION PROCESS:

This order was issued as a proposed order pursuant to the provisions of D.C. Code Section 1-1509(d). The proposed order was sent to all parties on May 18, 1998. The filing deadline for exceptions and arguments was close of business (4:45 p.m.) on May 27, 1998. The deadline for responses was close of business (4:45 p.m.) on June 8, 1998. No party to this application filed exceptions or arguments relating to the proposed order, therefore, the Board of Zoning Adjustment adopts and issues this order as its final order in this case.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT---SHEILA CROSS REID, BETTY KING AND JERRILY R. KRESS.

ATTESTED BY: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

JUL 16 1998

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16311

As Interim Director of the Office of Zoning, I hereby certify and attest that on JUL 16 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Cynthia A. Giordano, Esquire
Linowes and Blocher
1150 17th Street, N.W.
Washington, D.C. 20036

Joseph D. Murphy
Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

Penny Pegano
4701 Berkeley Terrace, N.W.
Washington, D.C. 20007

Attested By: Sheri M Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: JUL 16 1998

Att./twr

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15064 of First F.S.K. Partnership, pursuant to 11 DCMR 3108.1, for a special exception under Section 213 to continue to operate a parking lot in an R-1-B District at premises 4817 U Street, N.W., (Square 1389, Lot 816).

HEARING DATE: July 21, 1989
DECISION DATE: July 28, 1989

FINDINGS OF FACT:

1. The application was amended to request a special exception to establish, rather than to continue, a parking lot since the most recent special exception expired on January 10, 1988, prior to the filing of this application.

2. The subject property is located on the north side of U Street, between MacArthur Boulevard and 48th Street. The site is known as 4817 U Street, N.W., located in an R-1-B Zone.

3. 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 lot which is striped for parking purposes.

4. The subject property has been used as a parking lot since 1946 pursuant to a series of special exception approvals granted by the Board. The most recent was granted in 1984 for a four-year period which expired January 10, 1988 (BZA Application No. 14001).

5. The current lessee of the subject property, Plitt Theatres, Inc., the U.S. subsidiary of Cineplex Odeon Corp., proposes to continue the use of the site for parking for patrons of the MacArthur Theater which is located in a C-2-A District at 4859 MacArthur Boulevard.

6. The parking lot which contains 79 spaces is not required parking accessory to the theatre but is provided as a convenience to theatre patrons and neighborhood residents who park there over night. Entrance to the lot is not fenced off and there is no fee for parking on the lot.

7. The applicant testified that all of the requirements of Section 212 of the Zoning Regulations have been met.

8. The parking lot is located approximately ninety feet to the north of the MacArthur Theatre across U Street, and is adjacent to a C-2-A District which fronts on MacArthur Boulevard.

9. All areas of the parking lot, including the aisles and driveways, are paved with an all-weather impervious surface at least 4 inches in depth.

10. The lot is designed so that no vehicle or any part thereof projects over any lot line or building line.

11. There are no structures on the subject lot and no other use is conducted from the subject premises.

12. Access to the subject lot is from U Street. The driveway is located approximately 124 feet from the closest street intersection at MacArthur Boulevard and U Street, N.W.

13. Lighting for the parking area is provided by four 500 watt mercury vapor lamps located at each corner of the lot. All rays of such lighting are directed to the surface of the parking lot.

14. The applicant indicated that the parking lot will be kept free of refuse and debris. The manager of the MacArthur Theatre will implement a new maintenance policy for the lot. Under this policy, the lot will be checked and cleaned of debris on a daily basis at 6:00 P.M. After the last show the manager will check the premises again and have any refuse and debris removed.

15. 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. A hedge and bushes are also located near the entrance of the site.

16. The applicant testified that Cineplex Odeon recently entered into a 2-year service agreement with Johnson's Landscaping Service to maintain the premises. A copy of that contract was submitted into the record. Services covered by this contract include weekly lawn mowing, fertilizing and pruning of all hedges and small trees. The agreement covers the on-site landscaping as well as the area in the front of the lot owned by the District of Columbia.

17. The lot is separated from residential properties by a 2.5 foot masonry wall which is topped by a forty-two inch stockade fence.

18. The applicant indicated that no dangerous or otherwise objectionable conditions will result from the continued operation of the subject parking lot. Access to the lot is well marked. The access driveway includes separate entry and exit lanes thereby minimizing the risk of traffic conflicts upon entering and exiting the lot.

19. The applicant indicated further 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, at least, 1946 and serves to alleviate parking congestion caused by the theatre use on neighborhood streets.

20. The applicant stated that the parking lot is located near a strip of commercial stores most of which do not provide off-street parking. The Board finds that the parking lot is reasonably necessary and convenient to other uses in the vicinity, and it is likely that continued use of the lot will result in a reduction in overspill parking on neighborhood streets.

21. The Board finds further that there is no charge for the use of the parking spaces which serve patrons of the MacArthur Theatre as well as residents who park there overnight.

22. The Office of Planning (OP), by report dated July 12, 1989 and through testimony at the hearing recommended that the application be approved with conditions. OP noted the location of the subject property and indicated that the predominant use in the area is residential, with the exception of the commercial uses on MacArthur Boulevard. OP notes further that the parking lot, which has been on the subject site for many years, meets the requirements of the Zoning Regulations. It is the opinion of OP that the lot is convenient and reasonably necessary to prevent objectionable traffic conditions in the area. OP therefore recommends that the subject application be approved with the same conditions that were contained in BZA Order No. 14001. These conditions are:

a. Approval shall be for a period of four years.

b. The layout of parking spaces on the lot shall be in accordance with the parking scheme marked as Exhibit No. 18A of the record in Case No. 14001.

c. The paved parking area and the surrounding buffer area shall be maintained free of refuse and debris at all times.

d. There shall be provided an evergreen privet hedge along U Street except along the sides of the driveway entrance. Such hedge shall be designed and allowed to grow to a height of at least five feet.

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

f. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

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

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

i. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

j. 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.

k. 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.

The Board is in accord with the opinion of the Office of Planning.

23. Advisory Neighborhood Commission (ANC) 3D by report dated July 14, 1989, recommended approval of the application with the following conditions:

a. The owner shall submit a satisfactory plan which includes adequate contractual arrangements with an outside landscape and maintenance organization to keep the area in compliance with the Board's Order;

b. Renewal of the special exception shall be required on a yearly basis; and

c. The applicant shall post a $5,000 performance bond running to the benefit of the interested parties to allow these parties to maintain the lot when the applicant fails to perform.

24. The Board finds that the theatre company has entered into a contract with a landscaping company to maintain the property in a neat and orderly manner.

25. Because it takes several months to process BZA cases, the Board finds that granting the special exception for only one year would not give the applicant enough time to demonstrate compliance with the Order before having to file again.

26. The Board finds that the contractual arrangements made with the landscaping company are sufficient to ensure that the property will be properly maintained and that a performance bond is therefore unnecessary.

27. By memorandum dated May 8, 1989, the Department of Public Works (DPW) indicated that it has no objection to continuing the use of the lot for parking. DPW noted that, from site inspection, the subject lot is in good condition, well landscaped and screened from all adjacent residential properties.

28. Two neighbors submitted letters and testified in opposition to the application. The neighbor residing at 2000 - 48th Street, N.W., immediately to the east of the subject parking lot, indicated to the Board that the property has not been maintained in a neat and orderly fashion. He testified that the owner of the theatre failed to mow the lawn on the lot and in the buffer zone and that the manager failed to have refuse removed from the parking lot. The neighbor also testified that old mattresses, and an abandoned car remained on the lot for a period of time despite complaints to the theatre chain's offices by another neighbor. It was suggested that the Board should grant the requested relief only with the conditions included in the ANC report.

29. A resident at 4800 U Street also testified in opposition to the application. His testimony was similar to that of the previous neighbor. He noted that an abandoned car and trailer had been left on the lot for approximately 18 months and that the grass and landscaping had not been properly maintained in the past.

30. The applicant testified that the abandoned car and trailer were left on the subject lot by the previous lessee.

He indicated that the District moved the abandoned vehicle in July 1988 after numerous requests to District officials. The applicant also indicated that the trailer had been holding seats for another theatre and was moved promptly after notice from the neighbor.

31. The Board finds that the contract submitted by the applicant with Johnson's Landscaping Service and the new clean-up policy adopted by the theatre adequately address the concerns regarding maintenance of the lot.

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 Maps and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of Section 212 regulating parking lots.

The Board concludes that the application meets the standards for granting the requested special exception. The physical layout of the parking lot remains unchanged since last approved by the Board. The lot is located within 200 feet of and is contiguous to a C-2-A Zone District. The provisions of Chapter 23 have been met. The Board concludes further that the parking lot does not create dangerous or otherwise objectionable traffic conditions nor does it have an adverse effect on the present character or future development of the neighborhood. Further, the Board concludes that the parking lot is reasonably necessary and convenient to other uses in the vicinity. The Board concludes that the parking spaces shall serve residential uses as well as the short term parking needs of a public facility use in the neighborhood. The Board concludes that the application has been referred to the Department of Public Works for review and report.

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 Maps. 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 Maps.

The Board has afforded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of TWO YEARS.

2. The layout of parking spaces shall be in accordance with the plat marked as Exhibit No. 25 of the record.

3. The paved parking area, the adjacent buffer area, and the public space along U Street shall be kept free of refuse and debris at all times and shall be maintained in accordance with the landscaping plan marked as Exhibit No. 27 of the record.

4. The evergreen privet hedge along U Street, except along the driveway, shall be allowed to grow to a height of at least five feet.

5. The parking lot shall comply with all the provisions of Section 2303 of the Zoning Regulations.

VOTE: 3-0 (William F. McIntosh and Carrie L. Thornhill to grant; John G. Parons to grant by proxy; Paula L. Jewell and Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 2 1990

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.

15064order/BHS15

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14001 of First F.S.K. Limited Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to establish a parking lot in an R-1-B District at premises 4817 U Street, N.W., (Square 1389, Lot, 816).

HEARING DATE: August 3, 1983
DECISION DATE: August 3, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the north side of U Street, between MacArthur Boulevard and 48th Street, and is known as premises 4817 U Street, N.W. It is zoned R-1-B.

2. 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 lot which is paved with an all-weather impervious surface and is striped for parking purposes.

3. The subject property was originally approved for use as a parking lot serving the MacArthur Theatre for a period of two years in BZA Order No. 1662 dated November 22, 1946. Approval was subject to the condition that the lot be graded and treated to prevent dust, that planting abutting the street be provided, and that the unfinished portion of the street be graded and surface with a hard top covering.

4. Continuation of the parking lot was approved in BZA Order No. 2566, dated May 19, 1950, for a period of one year, subject to the condition that the privet hedge on the eastern boundary of the lot be located at least five feet from the slope of the existing bank.

5. BZA Order No. 3688, dated November 18, 1953, approved the continuation of the parking lot for a period of five years subject to the condition that the hedge on the eastern boundary of the lot be thickened.

6. The most recent BZA approval of the subject parking facility is pursuant to BZA Order No. 5391 dated February 13, 1959, for a period of five years. No application for BZA approval or for a certificate of

occupancy for use of the subject parking lot have been filed since that order expired on February 13, 1964.

7. The current lessee of the subject property, the Washington Circle Theatre Corporation, hereinafter referred to as the applicant, proposes to continue the use of the site for parking for patrons of the MacArthur Theatre which is located in a C-2-A District at 4859 MacArthur Boulevard.

8. The applicant leased the MacArthur Theatre and the subject parking lot for a period of fifty-five years in approximately June of 1982. The applicant was unaware at that time that the subject lot had been operating without a valid certificate of occupancy since 1964. The purpose of the subject application is to obtain approval to continue the existing parking lot use.

9. The applicant, subsequent to leasing the subject property, resurfaced the lot, added lighting, and re-landscaped the perimeter of the lot.

10. All areas of the parking lot, including the aisles and drive ways, are paved with an all-weather impervious surface.

11. The applicant submitted two proposed parking layouts for the subject lot, marked as Exhibit Nos. 18A and 18B of the record. Exhibit No. 18A provides for seventy-nine parking space measuring nine by nineteen feet. Exhibit No. 18B provides for a total of eighty-three parking spaces. Fifty of those spaces measure nine by nineteen feet. The remaining thirty-three spaces measure eight by seventeen feet and are of sufficient size to accommodate compact cars.

12. The proposed parking is not required parking accessory to the theatre but is provided as a convenience to theatre patrons and neighborhood residents who park there overnight. There is no fee for parking on the subject lot.

13. The parking lot is located approximately ninety feet to the north of the MacArthur Theatre across U Street, and is adjacent to a C-2-A District which fronts on MacArthur Boulevard. In its prior orders on the subject lot, the Board found that the lot was reasonably necessary and convenient to the neighborhood. The Board finds that the character of the use and nature of surrounding vicinity has not changed and the lot continues to be "reasonably necessary and convenient" to the theater use.

14. Lighting for the parking area is provided by four 500 watt mercury vapor lamps located at each corner of the lot. All rays of such lighting are directed to the surface of the parking lot.

15. The manager of the theatre testified that the lot and adjacent areas to the curb are policed by theatre ushers between shows to remove any rubbish which may accumulate. The maintenance department is responsible for maintaining the landscaping. The manager testified further that he has had no complaints regarding the operation of the parking lot since he has been in charge.

16. The applicant re-landscaped the perimeter of the lot in late 1982. That landscaping included the resodding of the perimeter of the lot and the replacement of the existing privet hedge along U Street with dwarf Japaneses holly.

17. The lot is designed so that no vehicle or any part thereof projects over any lot line or building line. The lot is separated from residential properties by a 2.5 foot masonry wall which is topped by a forty-two inch stockade fence.

18. There are no structures on the subject lot and no other use is conducted from the subject premises.

19. Access to the subject lot is from U Street. The driveway is located in excess of twenty-five feet from any street intersection.

20. The owner of the residence located at 2000 48th Street, N.W., immediately to the east of the subject parking lot, appeared at the public hearing in opposition to the application. The witness testified that he would not oppose the continuation of the parking lot if approval of the application was contigent on the applicant:

A. Adopting a maintenance plan which would ensure continuing and regular maintenance of the parking lot, the grass area bordering U Street and the buffer area between the lot and his residence; and

B. Providing at least a five foot hedge to screen the lot from the nearby residential area.

The witness expressed concerns regarding the increase in the number of vehicles using the subject lot due to the conversion of the MacArthur Theatre from one movie theatre to three movie theaters in the same building and the present lack of policing in the buffer zone. The witness further testified that the prior approvals of the Board in 1946, 1950 and 1953 placed considerable emphasis on landscaping and required that the five foot hedge be maintained.

21. The applicant's architect testified that the replacement of the privet hedge with dwarf holly was for security reasons, in that the shorter hedge provided greater

visibility into the parking area for pedestrians and eliminated potential "ambush" areas.

22. The record contains a letter from Mr. Marshall Hornblower, a nearby resident, which letter expresses concern regarding the adequacy of the dwarf holly for screening purposes and for preventing parkers from short-cutting through it to reach the parking lot. Mr. Hornblower recommended the replacement of the dwarf holly with a privet hedge. The record contains two additional letters from area residents concurring with the concerns and recommendation expressed by Mr. Hornblower.

23. Advisory Neighborhood Commission 3D, by letter dated August 1, 1983, requested the Board to waive Section 108.1 of its Rules in order to accept the ANC report. The letter stated that the report was mailed in ample time to reach the Board seven days prior to the public hearing but was apparently delayed in the mail resulting in its being filed one day late. The Chairman ruled that the Rules be waived to accept the report.

24. Advisory Neighborhood Commission 3D recommended that the Board approve the subject application with the condition that a five foot privet hedge by provided on the U Street frontage. The rationale for the ANC's decision was that:

A. The property has been used for parking purposes for many years and its continued use is necessary to prevent theater patrons from using neighborhood streets for parking.

B. The applicant is working out an acceptable screening plan with the neighbors.

C. The neighborhood strongly supports continued operation of the theater as opposed to office or other C-2-A uses.

The Board concurs with the ANC recommendation.

25. The application was referred to the D.C. Department of Transportation for review and report on May 12, 1983. No report from the Department of Transportation was received.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate that it has substantially complied with the provisions of Paragraph

3101.48 and Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied.

The Board concludes that granting a new approval to this parking facility will not create dangerous or otherwise objectionable traffic conditions. The parking facility is located adjacent to a C-2-A District. The parking facility complies with the provisions of Article 74 of the Zoning Regulations. The parking lot is reasonably necessary and convenient to the neighborhood. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled and further, that the concerns of the opposition are addressed by the conditions hereinafter imposed.

The Board notes that the parking lot has been operated without proper approval since 1964. The Board advises the applicant not to let that situation occur again. The Board further notes that the screen hedge which surrounded the site was recently removed. Since the orders of the Board which required that screening are no longer in effect, the applicant may not have been required to keep the hedge. At the same time, it had no authority to operate the lot. The Board again admonishes the applicant to maintain the lot in accordance with the conditions of this Order, and not to let the approval granted herein expire before reapplying to the Board if the use is to continue.

The Board further concludes that, as hereinafter conditioned, the special exception can be granted as in harmony with the general purposed and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with said Zoning Regulations. It is therefore ORDERED that the application be GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FOUR YEARS. from the date of this order.

2. The layout of parking spaces on the lot shall be in accordance with the parking scheme marked as Exhibit No. 18A of the record.

3. The paved parking area and the surrounding buffer area shall be maintained free of refuse and debris at all times.

4. The existing dwarf Japanese holly along the U Street frontage shall be replaced with a privet hedge except along the sides of the driveway entrance. Such hedge shall be designed and allowed to grow to a height of at least five feet.

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

6. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

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

9. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

10. 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.

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

VOTE: 4-0 (Douglas J. Patton, Lindsley Williams, William F. McIntosh, and Charles R. Norris to grant; Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JAN 10 1984

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 CONSUMER AND REGULATORY AFFAIRS.

14001order/DON2

F

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

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.

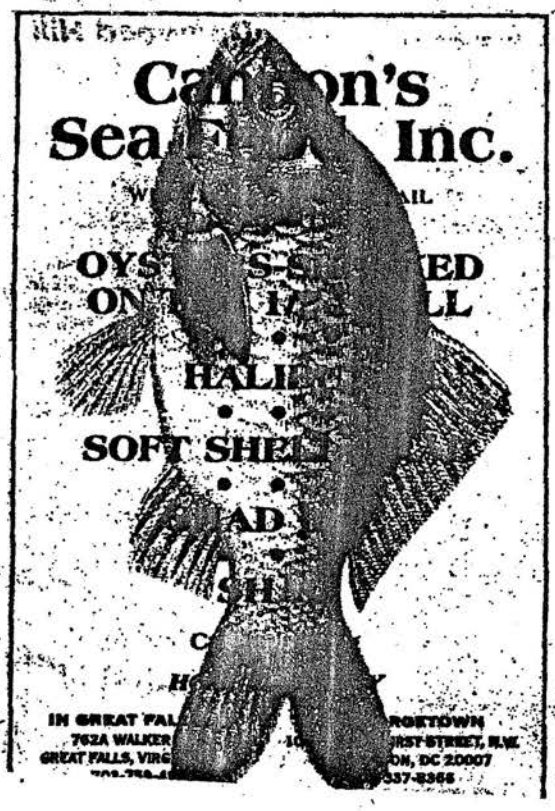
In light of CVS' disregard for the 1998 BZA order and its conditions, ANC3D urges the BZA not to grant a special exception for five years.

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

Eleanor Roberts Lewis
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, 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

MAY-21-2001 02:53 PM PENNY PAGANO 202 333 6422 P.01

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. already said

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



OUTLINE OF TESTIMONY
OF REPRESENTATIVE OF CVS

I. Introduction

   A. Position with CVS

   B. Scope of Responsibilities Related to MacArthur Blvd. Store

II. Need for Parking Lot

   A. CVS Patrons

   B. Neighborhood Businesses

   C. Overspill Parking from Residential Streets

III. Operations and Maintenance of Lot

   A. Maintenance Issues

   B. Service Contract with Debco

IV. Community Relations

   A. Advisory Neighborhood Commission

   B. Palisades Citizens' Association

V. Special Exception Standards for Renewal

   A. Review of Standards

   B. Three-Year versus Five-Year Renewal

VI. Conclusions

OUTLINE OF TESTIMONY
OF REPRESENTATIVE OF OWNER

I. Introduction

II. History of Parking Lot Use at Site

1. First BZA Approval in 1946

2. Associated with Former MacArthur Theater

3. Lease to CVS

III. Need for Parking Lot

IV. Conclusions

WAS1 #983736 v1