GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16722 of First F.S.K. Limited Partnership, pursuant to 11 DCMR § 3104.1 for a special exception under section 213 to continue the use of a parking lot in an R-1-B District at premises 4817 U Street, N.W. (Square 1389, Lot 816).

HEARING DATE: June 26, 2001
DECISION DATE: July 31, 2001

DECISION AND ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

FINDINGS OF FACT:

1. The subject site is known as 4817 U Street, N.W., and is located in an R-1-B District.

2. The subject lot is rectangular in shape with a lot area of 31,000 square feet. Seventy-five percent of the lot is paved with an all-weather impervious surface and is striped for parking. The paved area of the lot slopes slightly downward from south to north. The eastern portion of the site is steeply graded and consists of a wooded area and landscaping that buffers adjacent residential properties. The northeast corner of the lot is also separated from abutting residences by a masonry wall 2.5 feet in height and topped by a forty-two inch stockade fence.

3. The subject property has been used as a parking lot since 1946, pursuant to a series of special exception approvals granted by the Board of Zoning Adjustment (the "Board" or "BZA"). The most recent approval was granted in 1998 for a three-year period in BZA Application No. 16311.

4. The current lessee of the subject property, MacArthur Boulevard CVS, Inc. ("CVS"), proposes to continue the use of the site for parking for patrons of the CVS/Pharmacy Store at 4859 MacArthur Boulevard, N.W., which is located in the C-2-A District.

5. The parking lot contains 78 spaces. These spaces are not required as an accessory to the CVS store, but are provided as a convenience to CVS store patrons, area businesses and neighborhood residents who park there overnight. Entrance to the lot is not fenced off and there is no fee for parking on the lot.

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6. The applicant testified as to compliance with the requirements of section 213 of the Zoning Regulations.

7. The parking lot is contiguous to the C-2-A District, which is located to the south and west along MacArthur Boulevard.

8. All areas of the parking lot, including the aisles and driveways, are paved with an all-weather impervious surface at least four inches thick.

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

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

11. 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.

12. Illumination for the parking area is provided by four lights located in the center portion of the lot. All light rays are directed to the surface of the lot.

13. Landscaping and a wooded area cover approximately twenty-five percent of the property, the majority of which is located on the eastern boundary of the property. A hedge and bushes are also located at the southern boundary of the lot at U Street.

14. The applicant acknowledged that the parking lot had not been properly cleaned and maintained during the previous two and a half years. However, upon the store's reassignment to a different regional office in March, 2001, the new District Manager took action to rectify the unsatisfactory conditions. The lot was cleaned of all refuse and debris, the surface was "power-washed," the spaces repainted, the landscaping pruned and fertilized, new lighting installed, and a permit application filed with the Department of Public Works to complete the unfinished public sidewalk adjacent to the parking lot on U Street between the Safeway Store and the entrance to the lot.

15. The applicant submitted for the record the names and addresses of CVS personnel to be contacted in the event that refuse or debris accumulates on the lot. The applicant also submitted copies of the maintenance contract with McFall & Berry Landscape Management, Inc., outlining scheduled cleaning, landscaping services and towing services for the removal of abandoned cars on the lot. In accordance with the contract, the lot will be cleaned every three days and landscaping services performed every ten days. CVS will also install signs on the interior of the lot stating that CVS maintains the lot and providing the number to call if the lot needs servicing or abandoned vehicles or other property need to be removed. CVS also agreed

to submit monthly reports to the community on the maintenance of the lot and to address any other issues raised by the neighborhood.

16. The lot is separated from residential properties at the northeast corner of the lot by a 2.5 foot masonry wall, which is topped by a forty-two inch stockade fence. Residential properties to the east are separated from the parking lot by thick vegetation and evergreen trees.

17. The applicant indicated that no dangerous or otherwise objectionable conditions would 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. The applicant further indicated that it would complete, at its sole expense, the unfinished portion of public sidewalk adjacent to the parking lot on U Street between the Safeway store and the entrance to the parking lot, to further protect pedestrian safety.

18. The application also stated that the present character and future development of the neighborhood would 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 in the area.

19. The applicant indicated 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.

20. The Board finds further that there is no charge for the use of the parking spaces, which serve patrons of the CVS store and other neighborhood businesses, and local residents.

21. The Office of Planning ("OP"), by report dated July 18, 2001, and through testimony at the hearing, recommended that the application be approved with conditions. OP noted that, until recently, the applicant had not been meeting the conditions of the previous order to keep the lot clean of debris and refuse. OP stated that the applicant had corrected, or was continuing to correct, these problems and had pledged an improved maintenance program and communication with the community in the future. OP recommended that the application be approved with the following provisions:

(a) The special exception be approved for three years.

(b) The conditions adopted in the 1998 order be included in the new order, except that conditions 11 and 12 (dealing with screening) can be combined and reworded as being worked out by CVS and the community.

(c) The use of the lot for community use be clarified in the order.

(d) CVS should provide the Board with a list of the corrective actions and improvements to the parking lot. OP noted that some of the steps already taken were outlined in the applicant's submission dated June 12, 2001, and most of the corrective actions would be completed by the June 26, 2001, BZA hearing. If not all were completed by the hearing date, the Board should ask the applicant to submit an updated list of improvements and ongoing actions when all improvements are completed, while recognizing that the approval of the special exception not be delayed.

(e) The Board should establish a procedure for this case only, for the term of the approved special exception, for CVS and the community to report to the Board on the ongoing management and maintenance of the lot. This might take the form of a written report to the Board every year (i.e., after one year, two years and at the time of the next application for a special exception to continue the parking lot). The community would retain the right to notify the Board any time during the next three years of any problems with the management and maintenance of the parking lot.

22. By report dated May 18, 2001, Advisory Neighborhood Commission ("ANC") 3D recommended approval of the application for a period of three years instead of five years, as requested by the applicant. The ANC noted that the applicant seriously neglected the parking lot, causing great concern to the community. The ANC recommended that all the conditions of the previous order be incorporated into any new order, with the apparent conflict between conditions 11 and 12 to be clarified.

23. The Palisades Citizens Association ("PCA"), by letter dated June 4, 2001, and through testimony at the hearing, also recommended that the Board limit approval of the special exception request for a period of three years only, with conditions. PCA noted that the applicant had failed to abide by the conditions of the previous order and requested that the Board institute measures to assure that the applicant adequately maintains the parking lot. PCA requested that the following conditions be included in any new approval order:

(a) All of the same provisions and conditions that there were included in the 1998 order, including continued use of the parking lot by the community as specified in 11 DCMR § 213.7.

(b) A new condition that will provide the Board, ANC 3D and PCA assurances that the applicant will follow and implement conditions mandated by a new BZA order, such as regular reports or some other process which the BZA prefers.

(c) That conditions 11 and 12 in the 1998 BZA order be combined to eliminate the apparent redundancy.

24. The Board finds that the applicant failed to maintain the lot in accordance with the conditions set forth in previous BZA Order No. 16311. The Board further finds, however, that the corrective measures instituted by the applicant since March 2001, the contractual arrangements made with the maintenance and landscaping service, and the applicant's offer to report monthly to the community, are sufficient to ensure that the property will be properly maintained. Nevertheless, the Board also finds that a shorter approval period of one year is necessary to ensure that any failure to maintain the lot does not go uncorrected for any extended length of time or otherwise impinge upon the appearance and safety of the neighborhood.

25. The Board finds that, in light of the thickly planted evergreen trees, shrubs and vegetation of at least forty-two inches in height adjacent to the residentially zoned property adjacent to the subject site, and the views of the community and OP on this matter, it is unnecessary to construct a solid masonry wall at least twelve inches thick and forty-two inches high to separate the eastern edge of the parking lot from the adjacent R-1 property as set forth in section 2303.2(a). The Board finds that the existing evergreens and thickly planted vegetation sufficiently buffer the abutting residential uses from the parking lot in compliance with section 2303.2.

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 continue a parking lot use 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 applicable requirements of section 213 regulating parking lots.

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

1. Approval shall be for **ONE YEAR** from the final date of this order.

2. 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 impervious surface, and which is a minimum of four inches in thickness.

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

4. 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.

5. No vehicular entrance or exit shall be within forty feet of a street intersection as measured from the intersection of the curb lines extended.

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

7. The parking lot shall be kept free of refuse and debris. The parking lot shall be cleaned every three days, and the landscaping maintained every ten days during the growing season, in accordance with the service contract.

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

9. 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 or landscaped.

10. The applicant shall pursue the issuance of a public space permit to complete construction of that portion of the public sidewalk adjacent to the parking lot on the north side of U Street between the Safeway parking lot and the entrance of the CVS parking lot.

11. The applicant shall install signage on the light posts on the interior of the lot stating that CVS is responsible for maintenance of the lot and providing a telephone number to call if the lot needs to be cleaned.

12. The applicant shall report to the ANC and PCA on a monthly basis, either by telephone or in writing, regarding the condition of the lot and to address any other concerns raised by the community. The applicant shall begin reporting to the ANC and PCA within one month after the effective date of this order.

VOTE: **4-0-1** (Sheila Cross Reid, Anne M. Renshaw, Geoffrey H. Griffis and John G. Parsons (by absentee vote); David W. Levy, not voting, not having heard the case.)

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: SEP 26 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICCATION NO. 16722

As Director of the Office of Zoning, I certify and attest that on SEP 26 2001, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Attested by: Jerrily R. Kress
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Director

Attest No. 16722/jkn