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May 14, 2002

Ms. Jerrily Kress
Mr. Paul Hart
Office of Zoning
Room 210 South
441 4th Street, NW
Washington, DC 2001

D.C. OFFICE OF ZONING
RECEIVED
2002 MAY 16 PM 5:02

Re: Application for Special Exemption and Variances
The Stuart Building, LLC
1750 N Street, NW
case no. 16827
Hearing Date January 29, 2002
Decision Date April 2, 2002

Dear Ms. Kress and Mr. Hart:

I have enclosed for filing the applicant's proposed findings of fact and conclusions of law and a draft order. I have made them available to Mary Nagelhout, Esq. in the Corporation Counsel's Office via email. Please let me know if you have any questions.

Sincerely,

Pamela B. Stuart

Pamela B. Stuart
managing member,
The Stuart Building, L.L.C.

BZA
Case No. 16827
Exhibit No. 47

Board of Zoning Adjustment
District of Columbia
CASE NO.16827
EXHIBIT NO.47

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

APPLICATION OF THE STUART BUILDING, L.L.C., a D.C. Limited Liability Corp.	)	BZA Application no. 16827 Decision date: April 2, 2002 ANC 2B

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to 11 DCMR 3121.2, the applicant proposes the following findings of fact and conclusions of law and respectfully submits a proposed order.

Application No. 16827 of The Stuart Building, L.L.C., pursuant to 11 DCMR § 3104.1 for a special exception under section 508, and pursuant to 11 DCMR § 3103.2 for a variance from the floor area ratio requirements under section 531, to allow additional office space in an existing office building which has a certificate of occupancy as a rooming house dated 1950 in a DC/SP-1 District, and for a variance pursuant to 11 DCMR § 3103.2 (or a parking space waiver under 11 DCMR § 2100.5) from the parking space requirements of 11 DCMR § 2101.1 applicable to premises 1750 N Street, N.W. (Square 159, Lot 70).

Procedural History

The zoning relief in this case was requested by the owner, the Stuart Building, L.L.C., represented by its managing member, Pamela B. Stuart who is a member of the District of Columbia Bar. The zoning relief in question was self-certified pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by

mail to Advisory Neighborhood Commission (ANC 2B), and to the owners of property within 200 feet of the site. The application was also referred to the Office of Planning for review and report.

The applicant posted the property for 11 days prior to the hearing and the Board directed the posting to remain on the building and to leave the record open for additional submissions and to waive the requirement that the building be posted 15 days before the hearing. The posting has remained on the property since that time.

The site of this application is located within the jurisdiction of ANC 2B. ANC 2B submitted a letter in support of the application. The Office of Planning submitted a report and two supplemental reports and ultimately recommended that the application be approved in its entirety.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for variances and a special exception pursuant to 11 DCMR § § 3103.2 and 3104.1. No person or entity sought party status in this case other than the applicant. A representative of a neighboring property owner, the Association for Microbiology, testified that the Association was "concerned" about the proposed addition and submitted a letter to that effect. Thus, no person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant the application would not be adverse to any party to this proceeding.

A hearing was held on January 29, 2002, at which time the

applicant presented the testimony of its managing member, Pamela Stuart, and the architect for the project, Jeffrey Stoiber, of Stoiber & Associates. Ms. Kim Shankle presented brief testimony on behalf of the Association for Microbiology. Mr. Arthur Jackson presented the report of the Office of Planning. The District Department of Public Works (DDOT) submitted a report the day before the hearing. At the hearing, the Board tasked the Office of Planning with clarifying the status of an alley located adjacent to the subject property with the Office of the Surveyor, with obtaining the views of the Fire Protection Division with respect to whether the building could comply with the fire code and whether the rear fire stairs was required, and with obtaining clarification of the views of the District's Department of Transportation. It afforded the applicant the opportunity to make additional evidentiary submissions including the views of the Historic Preservation Review Board concerning the status of the building as a "contributing structure" within the Dupont Circle Historic District, a trash plan, clarification of the existing and proposed floor area ratios, and a roof structure plan.

When the Board convened for a decision making meeting on March 5, 2002, neither the DDOT report or the Fire Protection Division report had been obtained by the Office of Planning. A letter from an attorney representing the Association for Microbiology was received into the record as well as a supplemental submission from the applicant. The Board determined that decision making would take place on April 2nd and invited the applicant to make further submissions addressing the letter from the Association for

Microbiology and the issues listed in the agenda for the March 5th hearing.

On the morning of April 2, 2002, the Office of Planning delivered its supplemental report dated April 5, 2002, recommending approval of (1) a special exception under 508 to allow principal office uses at 1750 N Street, N.W. (Square 159, Lot 70); (2) a variance to Section 531 to increase the allowable nonresidential FAR from 2.5 to 3.2 for office uses; and (3) a variance to Section 2100.10(a) to allow reduction of the existing on-site parking in the rear yard from three to two spaces. The Board held its decision-making hearing on April 2, 2002. No representative of the Planning Office was present at the Board's decision meeting to present the views of that Office.

Proposed Findings of Fact and Conclusions of Law

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

2. The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2B, and to the owners of property within 200 feet of the site. The applicant posted notice of the hearing for 11 days prior to the hearing and subsequent to the hearing left the notice in public view.

3. The application was referred to the Office of Planning for review and report.

4. The site of this application is located within the jurisdiction of ANC 2B. The applicant presented its proposal to ANC 2B at its meeting on January 16, 2002. ANC 2B submitted a

letter in support of the application that reported that all ANC Commissioners in attendance at the meeting had voted in favor of the application.

5. The Office of Planning (OP) submitted a final report recommending approval of the application for a Special Exception under Section 508 to allow principal office uses at 1750 N Street, NW, approval of a variance to Section 531 to increase the allowable nonresidential FAR from 2.5 to 3.2 for office uses; and approval of a variance to Section 2100.10(a) to allow reduction of the existing on-site parking in the rear yard from three to two spaces.

6. The applicant submitted roof structure plans showing lines of sight from the street to the proposed addition indicating that the proposed addition would not be visible from the street.

7. The applicant submitted a trash plan showing that the trash needs of the building could be satisfied by two supercans that would be accessed from the rear by a private trash company that serves the neighboring building.

8. The development application was formally submitted for review and approval through the Historic Preservation Office and the Office of Planning confirmed with the HPO that the subject property "contributes" to the Dupont Circle Historic District.

9. The record demonstrates that the proposal is consistent with the goals of the Dupont Circle Overlay District because the proposed office use and addition would have less impact on the neighborhood than if the building were entirely devoted to residential use and also because the useable floor area in the planned addition is less than the area in the existing building

that is not useable for offices. In addition, the record demonstrates that the building has been used for offices since at least 1974 even though it has had a certificate of occupancy as a rooming house since 1950.

10. The "unusable" floor area consists of a large open staircase between the 1st and 4th floors, a narrow first floor entry corridor with a low ceiling formerly believed to be a servants' entrance that is behind a fireplace, the front entrance lobby, and most of the 5th floor presently configured as an attic. The proposal's preserved, unavailable and non-expansion square footage (1,298 square feet) exceeds the proposed additional net increas in floor area proposed by the applicant (1,139 square feet).

11. The subject property's narrow (17'6" wide) and 103 ft. deep lot cannot be expanded because the 8-story American Society for Microbiology Building borders it on the west and south sides.

12. The irregular shape of Square 159 results in lots from west to east along N Street to become progressively shallower.

13. Project pro forma operating income and expenses demonstrate that the economics of the project require that the maximum floor area possible be allocated to rentable space.

14. The D.C. Fire Department Fire Protection Division confirmed that national and local fire codes require a rear stairway as a secondary means of ingress and egress, a sprinkler system, fire alarm and smoke detector system, and a smoke evacuation fan.

15. The construction of the rear fire stairway probably would

reduce the available space so that only two vehicles could park there (as opposed to the current three parking spaces).

16. The District Division of Transportation submitted a report dated March 26, 2002 indicating that the rear of the site abuts a 10 foot wide public alley located off St. Matthews Court. Even though access to the subject property's parking lot requires vehicles accessing the site to drive over a portion of the neighboring property owner's lot to the east of the site, sufficient public transportation and neighboring parking facilities on the same block exist to serve the parking demand adequately. DDOT had no objection to the proposal.

17. The District of Columbia Surveyor's Office and the DPW Public Space Division confirmed that the subject alley adjacent to the applicant's parking lot is still public.

18. The Fire and EMS Department indicated that it would approve the requested application if the applicant were willing to install a fire sprinkler system throughout the building. The applicant expressed an intent to install a sprinkler sytem throughout the building.

19. The existing building has a total floor area of 4,677 square feet (a floor area ratio of 2.57) which exceeds the permitted FAR for commercial use in this area which is 2.5.

20. The proposed expansion of the FAR would increase the total floor area by 1,139 square feet to 5,816 square feet or a 3.2 FAR.

21. With respect to the variance request to exceed the density limitation for nonresidential use in the Dupont Circle

Overlay District SP-1 Zone, the Board determined that the applicant had not met its burden of proof on this issue because:

(1) the hardship suffered by the applicant was self-created based upon the market-driven price paid to acquire the property which was supported by an appraisal excerpted in the record, and

(2) the applicant's desire to retain certain interior elements of the property such as the large, open staircase and the applicant's desire to install an elevator which are not required by historic preservation to be retained in their current inefficient and original condition.

In addition, the record did not demonstrate to the satisfaction of the Board that the property is not economically feasible in its existing configuration of five offices as opposed to the proposed ten offices because the project architect commented that "If we went in and gutted it I can assure you that we can create enough rentable, usable square footage in this building to make it economically viable" in the context of describing why that course of action would be undesirable because it would destroy the interior elements (stairway, high ceilings, fireplaces) that lend historic character to the building.

20. The adjacent building housing the Association for Microbiology has a glazed atrium. The record did not support the Association's claim that the use of the atrium would be detrimentally affected by the proposed addition to the subject property.

21. Because the subject property is a "contributing" building in a historic district and the rear firestairway is required, the applicant shall not be required to maintain parking space for more than two vehicles.

22. The applicant may use a FAR of 2.57 for office use which would exceed the limitation for nonresidential use in the SP-1 zone by 0.07. This 2.57 FAR is understood not to include the rear fire stairs required by the Fire Marshal. Should that rear fire stairway be required to be enclosed, it shall be in addition to the permitted 2.57 FAR.

Respectfully submitted,

Pamela B. Stuart

Pamela B. Stuart, as
managing member of the
Stuart Building, L.L.C.
1101 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036
202-835-2200
202-835-2202 (fax)

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

APPLICATION OF THE	)	BZA Application no. 16827
STUART BUILDING, L.L.C.,	)	Decision date: April 2, 2002
a D.C. Limited Liability Corp.	)	ANC 2B

Application No. 16827 of The Stuart Building, L.L.C., pursuant to 11 DCMR § 3104.1 for a special exception under section 508, and pursuant to 11 DCMR § 3103.2 for a variance from the floor area ratio requirements under section 531, to allow additional office space in an existing office building which has a certificate of occupancy as a rooming house dated 1950 in a DC/SP-1 District, and for a variance pursuant to 11 DCMR § 3103.2 (or a parking space waiver under 11 DCMR § 2100.5) from the parking space requirements of 11 DCMR § 2101.1 applicable to premises 1750 N Street, N.W. (Square 159, Lot 70).

HEARING DATE: January 29, 2002
DECISION DATE: April 2, 2002

ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC 2B), and to the owners of property within 200 feet of the site. The application was also referred to the Office of Planning for review and report.

The site of this application is located within the jurisdiction of ANC 2B. ANC 2B submitted a letter in support of the application. The Office of Planning submitted a report and two supplemental reports and ultimately recommended that the application be approved.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance and special exception pursuant to 11 DCMR § 3103.2 and 3104.1. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having considered the ANC and Office of Planning reports filed in this caseboth of

which recommended approval, the Board concludes that the applicant has not met the burden of proving under 11 DCMR § 3103.2 and 531 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, so that the requested relief (increase in the nonresidential FAR to 3.2) can be granted without substantial detriment to the public good and without substantially impairing the intent purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board reached this conclusion because, in its judgment, there was no evidence in the record that the property is not economically feasible in its existing configuration and because the hardship suffered by the applicant was self-created when the applicant paid market value to acquire the property which requires substantial and costly renovations to meet building code requirements. However, the Board does conclude that the applicant has met the burden of provind under 11 DCMR § 3103.2 and 531 that because the existing FAR of the building already exceeds the 2.5 FAR permitted for nonresidential uses in an SP-1 District in the Dupont Circle Overlay District, that the applicant shall be permitted to utilize an FAR of 2.57 for nonresidential (office) use and shall be permitted to construct a rear firestairway required by the fire marshal which, if it is required to be covered and becomes FAR, shall be in addition to the FAR of 2.57 permitted for nonresidential use. The Board further concludes that the applicant met the burden of proof under 11 DCMR §§ 3104.1 and 508, that the granting of the requested relief of changing its principal use to offices will be 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 Board further concludes that because the applicant is a contributing structure within the Dupont Circle Historic District that it is not required to have more than two parking spaces and that its parking needs will be adequately served by facilities available in the block. It is therefore **ORDERED** that this application be **GRANTED in part** and **DENIED in part.**

VOTE: **5-0** to approve the Special Exception

(Geoffrey H. Griffis, Carol Mitten, Anne M. Renshaw, Mr. Etherly, and David W. Levy to Approve)

0-5 to deny the proposed additional FAR of 3.2

(Geoffrey H. Griffis, Carol Mitten, Anne M. Renshaw, Mr. Etherly, and David W. Levy to Deny)

5-0 to approve the proposed nonresidential FAR of 2.57

(Geoffrey H. Griffis, Carol Mitten, Anne M. Renshaw, Mr. Etherly, and David W. Levy to Approve)

It was the sense of the Board that the status of the applicant as a contributing structure within an Historic District meant that additional parking or a reduction in existing parking spaces would not be required.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this Order.

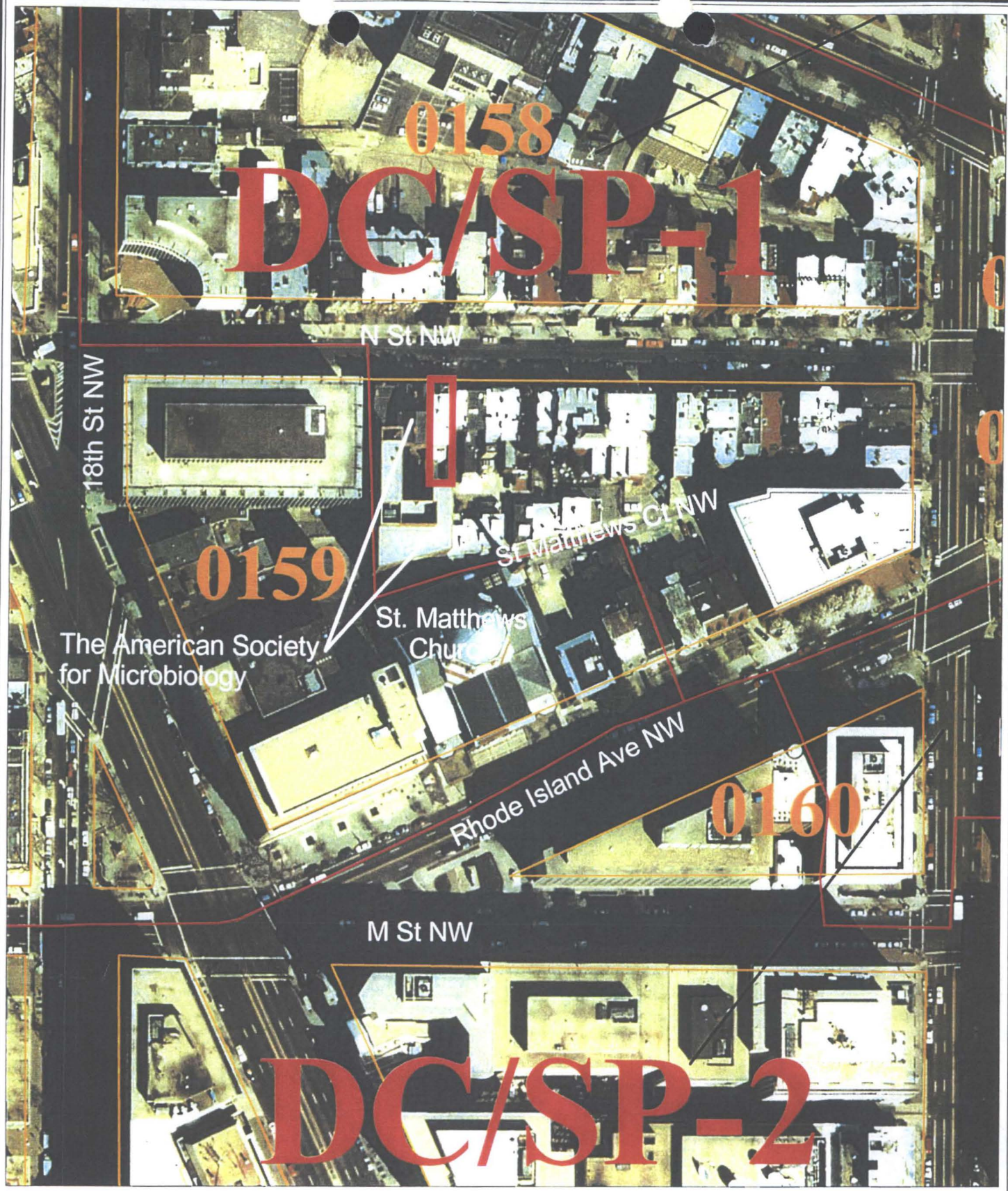
ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

Final Date of Order: _____

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.

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.



Feature Key

- Zoning Boundaries
- Zoning Leader Lines
- Street Centerlines

Board of Zoning Adjustment

Application No. #16827

DC Office of Planning

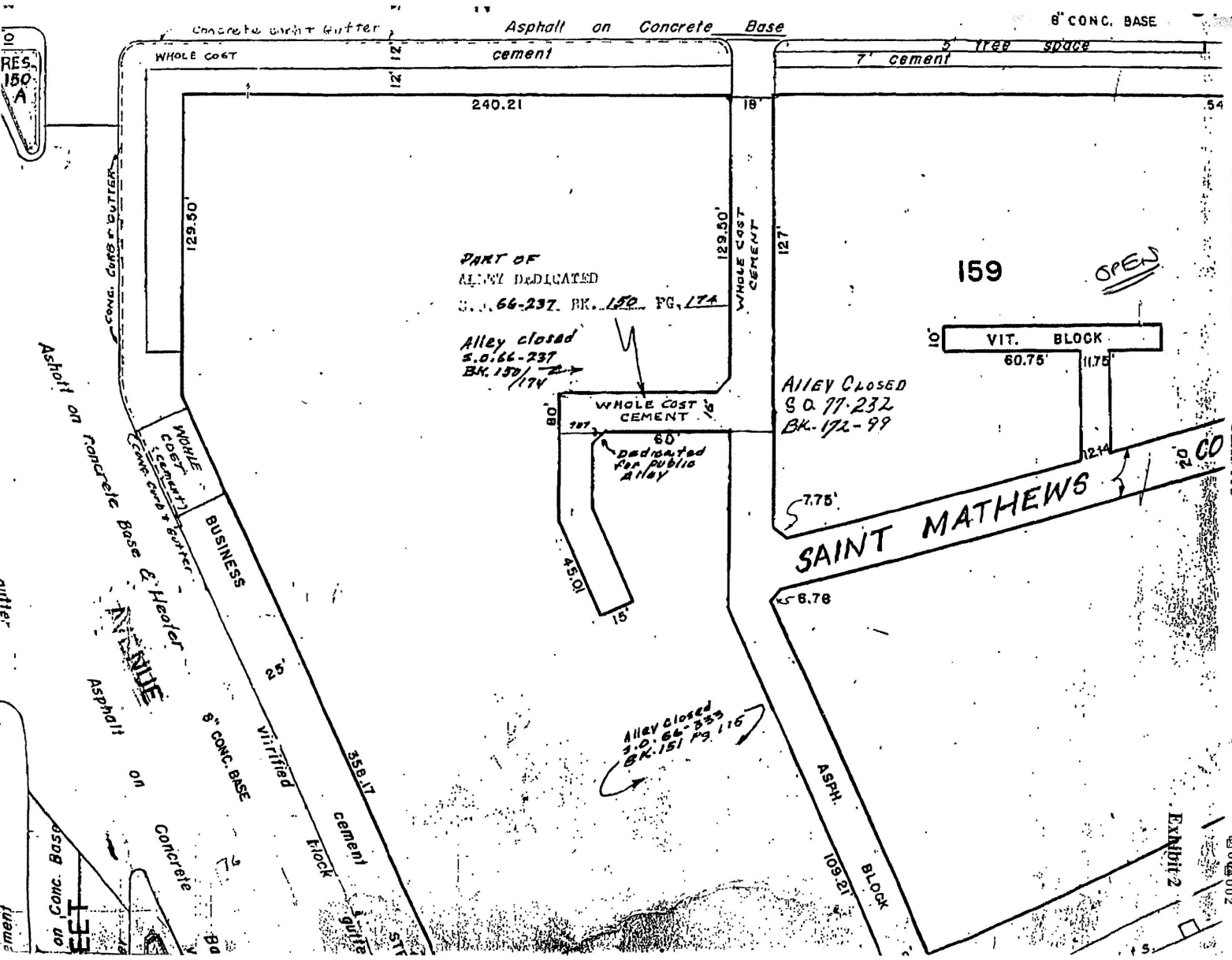
January 22, 2002

Scale 1:1600

25 0 25 50 75 100 125 Feet

N

Attachment # 1


Concrete Curb & Gutter
Asphalt on Concrete Base
8" CONC. BASE
WHOLE COST
cement
12'
5' tree space
7' cement
240.21
18'
54'
129.50'
PART OF
ALLEY DEDICATED
S.O. 66-237 BK. 150 PG. 174
WHOLE COST CEMENT
127'
159
OPEN
Alley closed
S.O. 66-237
BK. 150/174
VIT. BLOCK
60.75'
11.75'
ALLEY CLOSED
S.O. 77-232
BK. 172-99
WHOLE COST CEMENT
80'
60' dedicated for public Alley
12.14'
7.75'
SAINT MATHEWS
45.01'
15'
6.78'
Asphalt on Concrete Base & Heater
AVENUE
BUSINESS
2.5'
8" CONC. BASE
Vitrified
358.17'
cement
Block
gutter
Alley closed
S.O. 66-339
BK. 151 PG. 116
ASPH.
109.21'
BLOCK
Exhibit 2
02/07/02 15:23 FAX 2027277561
BLRA/PPD
002