Peter C. Choharis
2771 Woodley Place, N.W.
Washington, D.C. 20008

January 13, 2003

Jerrily Kress
Director
Board of Zoning Adjustment
441 4th Street, NW
Suite 210 South
Washington, D.C. 20001

RE: No. 16875 – Application of All Souls Memorial Church

Filing of Enclosed Opponent's Response to Applicant's Supplemental Filing.

Dear Ms. Kress:

I am a party in the above-captioned case.

Please find enclosed an original and twenty copies of the Enclosed (1) Opponent's Response to Applicant's Supplemental Filing, (2) Declaration in Support, and (3) attached Exhibits in the above captioned case. In addition, please date-stamp a copy and return it to me via the messenger.

I mailed a copy of the enclosed materials via first-class U.S. Mail to Brigitte L. Adams, Counsel for the applicant All Soul's Church.

Thank you for your assistance.

Sincerely,

Peter C. Choharis

Peter C. Choharis

Enclosures

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BZA
Case No. 16875
Exhibit No. 53

Board of Zoning Adjustment
District of Columbia
CASE NO.16875
EXHIBIT NO.53A1

District of Columbia Board of Zoning Adjustment
Re: Application 16875
Applicant Memorial Episcopal Applicant Application for
Special Exception to Lease Commercially its Parking Lot

PARTY OPPONENT CHOHARIS'S RESPONSE TO APPLICANT'S SUPPLEMENTAL FILING IN SUPPORT OF BURDEN OF PROOF DATED DECEMBER 30, 2002

INTRODUCTION

On December 10, 2002, this Board of Zoning Authority ("BZA") re-opened the record in the above-captioned case, and requested Applicant All Souls Memorial Church ("Applicant") "to submit any additional information supporting the burden of proof required for the relief being sought" under Zoning Regulations §§ 3104.1 and 213 by December 30, 2002. Dec. 13, 2002 Letter from Jerrily Kress to Brigitte L. Adams, counsel for applicant ("BZA Letter"). Applicant filed its Supplemental Filing In Support of Burden of Proof ("Appl.-Supp"). The BZA Letter further provided Party Opponent Peter C. Choharis ("Opponent") an opportunity to respond by January 13, 2003. Opponent hereby files his response to the Appl.-Supp. with additional evidence and legal authority.

Applicant seeks both a "use variance" under 11 DCMR § 213 and a "special exception" under 11 DCMR § 3104. Appl.-Supp. 1. But Applicant's Supplemental Filing fails to introduce any additional evidence or even argumentation that would support either. Nor do any of Applicant's previous filings meet the necessary burden of proof for either a use variance or an exception.

Moreover, Applicant has withdrawn or discredited the very bases of its Application, rendering its Application wholly unsupported by any evidence or even

reason. In addition, Applicant's illegal prior leasing of its parking lot, and repeated failure to admit this illegal leasing even when directly asked during cross-examination, warrants denial of its application under D.C. Court of Appeals precedent. Other misrepresentations or omissions of material fact in Applicant's written filings and oral testimony further warrant denial of the Application. Finally, the overwhelming neighborhood opposition to the Application, compared to the lack of even a single statement of support from any neighbor, warrants denial of the application. Indeed, the neighborhood's unanimous opposition coupled with Applicant's failure to observe procedural integrity has prompted Ward One Councilmember Jim Graham to withdraw his support for the application.

BURDEN OF PROOF

1. Use Variance 11 DCMR § 213

"To support a variance it is fundamental that the difficulties or hardships be due to unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood." *Palmer v. BZA*, 287 A.2d 535, 540 (D.C. App. 1972). The burden is on the applicant to meet all three criteria of a use variance: (1) unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property; (2) undue hardship; and (3) no harm to the public or zone plan. *National Black Child Development Inst., Inc. v. BZA*, 483 A.2d 687 (D.C. App. 1984). "The burden of proof is greater for a use variance than for an area variance. . . . A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations." *Silverstone v. BZA*, 396 A.2d 992, 993 (D.C. App. 1979) (emphasis added). "In short, it must be shown that strict application of the

Zoning Regulations would preclude the use of the property for any purpose to which it may reasonably be adapted." *Id.*, quoting *Bernstein v. BZA*, 376 A.2d 816, 819 (D.C. App. 1977) (emphasis added).

2. Special Exception 11 DCMR § 3104.1

A special exception must be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. 11 DCMR § 3104.1 (emphasis added). Written in the negative, the "not tend to affect adversely" standard is quite high. It does not require that there be an adverse effect or even a likelihood of an adverse effect. Where there is record evidence that the special exception may "tend" to have an adverse effect on the neighboring property, the application must fail.

"The applicant has the burden of proving a need for the exception, that the safety and traffic requirements are met, and that there will not be an adverse effect upon the neighborhood." *First Baptist Church of Washington v. BZA*, 432 A.2d 695, 698 (D.C. App. 1981). "We have consistently held that the Board's determination must meet the three-pronged 'substantial evidence' test . . . : (1) there must be findings on 'each contested issue of fact,' (2) the decision must rationally follow from the facts, [and] (3) there must be sufficient evidence supporting each finding, i.e. more than a mere scintilla.'" *Id.* (citations omitted).

DISCUSSION

I. Applicant Fails to Present Any Evidence, Additional or Otherwise, To Support Either A Variance or Special Exception.

Applicant's Supplemental Filing does not contain any new evidence, let alone evidence that would support its "heavy burden" to sustain a use variance or to warrant a special exception. By contrast, Opponent's Declaration in Support of this Response, the attached exhibits thereto, Opponent's prior filed declarations and attached exhibits, all of which Opponent incorporates herein with this Response, are record evidence demonstrating that Applicant fails to meet the three criteria for a use variance and any of the applicable requirements of § 213 as well as the standards for a special exception.

A. Applicant Has Provided No Evidence That Strict Application Of The Zoning Regulations Will Preclude the Use Of The Parking Lot For Any Purpose.

As explained above, in order to obtain a use variance, the Applicant must show "that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may reasonably be adapted." *Silverstone,* 396 A.2d at 993 (emphasis added), quoting *Bernstein*, 376 A.2d at 819. Far from meeting this "heavy evidentiary burden," 376 A.2d at 819, Applicant has repeatedly admitted that it is currently using, and has used, its parking lot for "more than 70 years." Appl.-Supp. 3. Thus, the zoning regulations clearly do not "preclude the use of the property" as a parking lot for those involved in Church or Church-sponsored activities.

The Applicant never once claims, let alone provides any evidence whatsoever, that strict application of the zoning regulations requiring that commercial parking lots be entirely within 200 feet of a commercial or industrial district, § 213.2, or be

contiguous or separated only by an alley from such a district, § 213.3, would preclude the current use of the property.

Rather, Applicant claims that John Ward of the Office of Planning "observed the unique physical location of the Church's parking lot as support for the approval of a variance." Appl.-Supp. at 2. To the contrary, the Applicant's very own excerpt of the transcript, p. 70 attached as Ex. B to Appl.-Supp., establishes that Mr. Ward never so testified.[1]

But even if Mr. Ward had, the evidence belies the Applicant's assertion, for neither Ward nor Applicant [nor any other testimony] ever explains how or in what way the parking lot is unique or how the zoning regulations "would preclude the use of the property" when it is already being used frequently. Choharis Decl. Pars. 14-16; Ex. 2.

Applicant also utterly fails to meet the second criteria of undue hardship. *National Black Child Development Inst., Inc*, 483 A.2d 687. Applicant states that "There is currently no room for expansion in the area. All property between the Church and the neighboring commercial district is completely in use." Appl.-Supp. at 5. This argument makes not sense, since Applicant is not seeking to expand but rather to change the use of its parking lot to commercial leasing. Whether or not there is other land available for parking in a commercial district that the Applicant could purchase

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[1] Moreover, even if he had so testified, Mr. Ward's observations about the parking lot should be discounted as unreliable. Mr. Ward inaccurately testified that the Applicant's parking lot currently has "21 parking spaces . . . they're not new . . . They were out there all the time." Tr. 70. In fact, there are currently only 19 spaces; Applicant is surreptitiously trying to increase the number by more than 10 percent to 21 spaces. *Compare* Appl.-Supp. at 3 (parking lot is "fully constructed, blacktopped, consisting of 21 marked spaces) with Choharis Decl. Par. 14 (parking lot currently has 19 marked spaces).

and then lease commercially would have no bearing on whether the subject parking lot is eligible for a use variance. Moreover, the law is clear that, to "support a variance it is fundamental that the difficulties or hardship be due to unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood." *Palmer*, 287 A.2d at 539. See *Gilmartin v. BZA*, 579 A.2d 1164, 1168 (D.C. App. 1990) ("The critical point is that the extraordinary or exceptional condition must affect a single property.").

The Applicant's concluding argument makes even less sense: "Consequently, the Church is unable to relocate its parking lot closer or adjacent to a commercial district to meet the technical criteria of §§ 213.2 and 213.3. The undue hardship resulting from the Church's inability to relocate its parking lot supports the approval of a use variance in this instance." Appl.-Supp. at 5 (emphasis). By definition, no real property can be "relocate[d]." Under Applicant's theory, all property would be eligible for a use variance by virtue of its immobility, but that clearly is not the case. Moreover, the law clearly forbids a property's location as a ground for granting a use variance. *Palmer*, 287 A.2d at 539; *id.* at 540 (rejecting applicant's argument that "the location of the lot 'can supply the unique hardship required to support a variance'").

Finally, Applicant fails to meet the third criterion for a use variance: no harm to the public or zone plan. *National Black Child*, 483 A.2d 687. Applicant simply claims without any corroborating evidence that its Application will "promote[] the greater good of the community, reduce[] circling traffic on residential streets, advances the city's Comprehensive Plan, and does not affect the use of neighboring properties." Appl.-Supp. at 6.

As discussed in detail below in Part II.B., the northern block of Woodley Place on which the Applicant's parking lot is located has parking for only 42 cars on the west side of the street. See Choharis Decl. Pars. 17-21. Applicant's proposal to provide lease parking for 17 additional cars would increase the number of cars coming to this quiet, one-way street by more than 40 percent. Indeed, because Applicant is actually increasing the number of parking spaces to 21 spaces from the current 19 spaces, Applicant proposes to increase the number of cars traveling to and from its lot by as much as 50 percent. Choharis Decl. Par. 14. It defies logic to insist that such an increase would not increase traffic, noise, and pollution, as well as decrease safety and negatively affect the character of the neighborhood.

But just as importantly, Applicant utterly fails to present any evidence for its claims. Applicant presents no expert testimony, study, or even personal observation by a lay person to substantiate any of these claims. By failing to do so, Applicant utterly fails to meet its burden of proof.

Instead, the record evidence -- consisting of Opponent's personal observations; documentary evidence about the Church's parking lot use; and the neighbors' personal observations about traffic and safety issues -- demonstrates that Applicant's proposal will substantially "harm the public" and undermine the zoning plan. See Exs. 4 and 10 attached to Declaration (nearly 80 neighbors' petitions, e-mails, and letters opposing Application on account of detrimental effect on traffic, safety, pollution, noise, crime, and character of neighborhood); Declaration and attached exhibits in support of Opponent's Response to Applicant's Management Plan (crime statistics demonstrating average of one stolen or attempted theft of car per week in neighborhood).

In short, even with this additional opportunity to supplement the record, Applicant still fails to provide any evidence whatsoever that its application meets any of the three criteria necessary to gain a use variance.

B. Variance –The Undisputed Evidence Establishes That Applicant Has Failed To Meet the Statutory Requirements For a Variance Under § 213.

In order to preserve residential neighborhoods – especially ones such as Woodley Place which is a quiet, one-way street – the zoning regulations include a pair of requirements to ensure that commercial parking lots are located **very near** commercial districts.

213.2 Section 213.2 requires that a "parking lot shall be located in its entirety within two hundred (200 ft.) of an existing Commercial or Industrial district." (emphasis added). The All Souls parking lot fails to meet this requirement by more than a factor of at least four. See OP Memorandum (Case file No. 25 at p. 5) and perhaps as much as six or seven times. See Opponent's Preliminary Response to Management Plan, Ex. 2. In contrast to the All Souls parking lot, all four currently available commercial parking areas in Woodley Park easily satisfy this requirement. See Opponent's Preliminary Response to Management Plan, Exs. 1 & 2; Choharis Decl. Pars. 22-23.

213.3 Similarly, Section 213.3 requires that a "parking lot shall be contiguous to or separated only by an alley from a Commercial or Industrial district." (emphasis added). The All Souls parking lot is separated by many rowhouses and apartment buildings from the commercial district of Woodley Park. Once again, the parking lot does not meet this regulation, which is intended to protect and preserve neighborhoods.

Applicant tries to dismiss these and other requirements of § 213 as merely "technical." *E.g.*, Appl.-Supp. at 2, 6. But Applicant provides no legal authority for the

implication that the BZA can grant a use variance from both of these distance and adjacent requirements contained in zoning regulations. In fact, the D.C. Court of Appeals has expressly held to the contrary.

In *Palmer*, the applicant sought a use variance to operate its building as a public hall even though it could not satisfy the zoning requirements that it provide off-street parking within 800 feet of its building. 287 A.2d at 537-538. The BZA granted the variance because the "only factor preventing [Applicant] from obtaining the public hall certificate . . . is the requirement of . . . off-street parking within 800 feet . . . which cannot technically be met because of the condition of the property and the immediate area adjacent thereto . . . consequently, an 'extraordinary and exceptional situation or condition of a specific piece of property' exists." *Id.* at 538 (emphasis added). The D.C. Court of Appeals reversed the BZA's grant of the variance. The court held that the "only aspect about the location in question that is unique is [applicant's] desire to utilize it [as] a public hall. Such a consideration cannot support a variance." *Id.* at 540. Here, too, the only thing "aspect about the location" of Applicant's parking lot for purposes of a use variance application "that is unique" is the Applicant's "desire to utilize" the parking lot commercially, but such "a consideration cannot support a variance." *Id.*

Nor can Applicant defeat § 213.2's requirement that its entire lot must be within "200 feet" of an existing Commercial or Industrial District and § 213.3's requirements that its parking lot must be contiguous or only separated by an alley from such a district by implying that the lot is nonetheless close enough to such a district. First, the evidence is undisputed that the parking lot is between three and as much as six or seven times that distance. See Appl.-Supp. at 5 ("750 feet" from nearest commercial district); Exs.

Attached to Opponent's Response to Management Plan (six or seven times farther than 200 foot requirement and far from contiguous to commercial or industrial district). Second, the law is clear that "boundary lines must be drawn somewhere. Courts universally agree that, unless special factors exist, the mere nearness of adverse zoning does not warrant the granting of a variance." *Taylor v. BZA*, 308 A.2d 230, 235 (D.C. App. 1973).

Finally, Applicant's refrain that increasing the number of cars driving to and from Woodley place by 40 or even 50 percent each day on a quiet, one-way, residential street "promotes the greater good of the community, reduces circling traffic on residential streets, advances the city's Comprehensive Plan, and does not affect the use of neighboring properties" remains utterly unsupported by evidence. Appl.-Supp. at 6. Applicant has once again utterly failed to sustain its "heavy burden" for a use variance. Moreover, as explained below in the discussion of § 213.5, the record evidence rebuts Applicant's palpably implausible suppositions that all these benefits will fall upon the neighborhood without any negative impact from such a huge increase in traffic.

213.5 This section requires Applicant to provide evidence, not just unsubstantiated claims, to show two things. First, it requires that "[n]o dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use." Second, it requires Applicant to provide evidence demonstrating that "the present character and future development of the neighborhood will not be affected adversely."

1. Dangerous conditions. The Applicant asserts that "[t]here is no history of dangerous or otherwise objectionable traffic conditions involving the Parking Lot." Appl.-Supp. at 7. The issue is not history, but the future if the use variance is granted.

Furthermore, the issue is not "conditions involving the Parking Lot" *per* se, but rather dangerous or objectionable conditions that will result from commercial lease of the lot at all hours day and night.

But even limiting the issue as Applicant does, it is simply wrong with respect to the evidence regarding "dangerous or otherwise objectionable traffic conditions involving the Parking Lot." Appl.-Supp. at 7. The only record evidence on this subject demonstrates that there are already dangerous conditions associated with the lot. Opponent has personally witnessed, as has his neighbors Allison Tribble and Carl Spataro, many vehicles exiting the Applicant's parking lot and illegally turning left (north) on Woodley Place, which is a one-way street running southward. Choharis Decl. Par. 21, Ex. 10. Applicant provides no evidence to rebut Opponent's evidence. Moreover, there is uncontested evidence that vehicles frequently speed down Woodley Place. Choharis Decl. Par. 47 and Exs. 4, 8 and 10. Applicant is therefore flat wrong when it states that "[d]issenters raise no specific incidents or events, only general concerns based on speculation and not science." Appl.-Supp. at 7.

The evidence is also therefore clear that the Applicant currently cannot stop users of its lot during the day from making illegal and dangerous left turns up a one-way street on which cars speed down. Applicant provides no evidence, or even reason to hope, that it will stop 17 additional users of the lot from doing the same, especially in the evening and late at night when no one is working at the Church and cannot monitor the users of its parking lot.

2. Increased traffic. Moreover, it is Applicant that bears the "heavy burden" of proof, and it presents none. Instead, is simply asserts that "[a]pproval of this application

will reduce and not increase the amount of vehicular traffic on Woodley Place. By allowing residents and business people to use the Parking Lot during the week, the Church will effectively remove these vehicles from the street and the incessant need to circle the block in search of parking." Appl.-Supp. at 7. Again, there is not a single traffic study or other evidentiary basis to support these claims. Indeed, there is not even a single lay person's observation that cars do in fact circle the block looking for parking, when in fact the evidence is that this is not a problem. Choharis Decl. Par. 21. Again, the Applicant fails to meet its "heavy burden" of proof.

Moreover, Applicant's claims are based upon a number of false assumptions. First, Applicant's reduction of traffic claim inaccurately assumes that each of the 17 or 21 vehicles using the parking lot would otherwise "circle the block in search of parking," Appl.-Supp. at 7, rather than use one of the four currently available commercial lots offering more than 1,000 parking spaces – all of them closer to the business district. Choharis Decl. Pars. 22-26. Second, it assumes that these drivers would not park on another street or use the Metro. Third, it fails to take into account that the business employees to whom the Applicant anticipates leasing most of its spaces cannot currently park on the 2700 block of Woodley Place because they do not have Zone 3 parking stickers and thus could only park on the street for two hours on weekdays from 7:00 a.m. – 8:30 p.m. Choharis Decl. Pars. 17-20. Fourth, it fails to take into account that there are always spaces available during weekdays and residents can park on the street all day with Zone 3 stickers. Choharis Decl. Par. 20. It also fails to take into account that residents can lease spaces from other residents during evening hours. Ex. 10 (Letter from J. Waddell to Councilmember Graham.) Thus it is not true that "[b]y allowing residents

and business people to use the Parking Lot during the week, the Church will effectively remove these vehicles from the street," since these business people cannot park on the street now during the course of their business day, and residents have ample spaces available during the day and may lease parking spaces from other neighbors at night.

Thus, far from reducing traffic and the dangers posed by speeding and users of the lot traveling the wrong way up a one-way street, commercial lease of the lot would compound these dangers by drawing 17 additional vehicles of local business employees that would otherwise not park on Woodley Place. Applicant has presented no evidence that would support is claims or rebut Opponent's evidence.

3. Loss of available free parking spaces. And finally, Applicant ignores the fact that the neighborhood will actually suffer a loss of parking spaces if its proposal is adopted. Applicant currently hosts or conducts numerous, regular meetings throughout the week, including Alcoholics Anonymous, religious services, and in the past, the Woodley Park Community Association and other groups. Choharis Decl. Pars. 15 and 16, Ex. 2. Those attending these meetings currently park in Applicant's lot. But if Applicant leases 17 spaces, many of these people will seek parking in the neighborhood, thereby depriving residents of parking during the evening when residents are returning from work.

The Department of Transportation report cited by Applicant, Appl.-Supp. at 7, never consulted any of the neighbors about actual driving patterns on the street, amount of traffic, availability of parking spaces during weekdays, evenings, and weekends, or any other subject. Nor did it present any statistical or empirical evidence of any kind.

Rather, the report was conclusory and contained no evidence to supports its conclusions. It is therefore entitled to little weight.

Neighborhood character and future development

Second, Applicant must present evidence that "the present character and future development of the neighborhood will not be affected adversely." § 213.5 (emphasis added). Again, Applicant has presented no evidence that would show this and the record evidence rebuts Applicant's unsupported claims. The only statement that even vaguely addresses this issue is: "Both the ANC and the Woodley Park Community Association ("WPCA") have documented and filed their support for the Application." Appl.-Supp. at 7. But as discussed below in Part IV.B.2, neither Opponent nor any of the neighbors ever received notice to discuss their personal observations regarding traffic, speeding, pollution, and other safety and quality of life concerns before these organizations. See Ex. 4 (petition signed by 65 neighbors stating no notice of ANC or WPCA meetings); Ex. 9 (Councilmember Graham withdrawing support for application based in part on Applicant's, ANC's, and WPCA's failure to notify neighbors.). Moreover, the ANC's and WPCA's support were based on false representations by the Applicant regarding its intended use. Choharis Decl. Pars. 36-39; Part IV.B.1 below. Nor do two brief resolutions qualify as "evidence" that the "present character and future development of the neighborhood will not be affected adversely." Thus, they are entitled to no weight as evidence.

Moreover, the record evidence demonstrates that an additional 17, and possibly 19, vehicles on a quiet, one-way street parked in the middle of the night in a dimly lit, unmonitored parking lot will "adversely affect" the neighborhood.

4. Crime The addition of seventeen unattended cars at night (an increase of 40% from the 42 cars currently parked at night, Choharis Decl. at Par. 18) in a parking lot that currently has no cars parked at night will be a magnet for crime. Such crime may include not only car theft and breaking and entering, but muggings and worse. This is especially true where, as Applicant proposes, there will be no gate to control access and egress into the parking lot that is dimly lit.

Applicant tried to minimize this concern in its Management Plan by selectively presenting a tiny portion of the actual auto thefts and attempted thefts that plague the neighborhood. Management Plan at 12 (stating that in the last 3 ½ years, or since 1998, there have been six stolen cars or attempted thefts). A theft or attempted car theft once every six months on a street that only has 42 parking spaces is quite a lot. But in addition, this statistic could not be more misleading.

First, this number only applies to the 2700 block of Woodley Place and utterly ignores the fact that, according to the Metropolitan Police Department, there were 52 incidents of auto thefts or attempted thefts in the neighborhood ("Reporting Area 238") during the past year alone, June 13, 2001 to June 13, 2002. See Ex. A, attached to Opponent's Response to Management Plan.[2] This amounts to an average of one stolen car or attempted car theft per week in the neighborhood during the past year.

Second, while bad enough, an average of 1 attempted or actual car theft per week does not even include automobile break-ins – a number too large for the police to record.

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[2] Reporting Area 238 includes the other block of Woodley Place as well as the surrounding streets: parts of Cathedral Ave., Connecticut Ave., Woodley Rd., Calvert St., and 27th, 28th, and 29th streets – the area surrounding All Souls parking lot. See Ex. A. Reporting Areas are created by the Metropolitan Police to measure accurately the criminal activity facing particular communities.

Third, car-related crime is only a small portion of the crime affecting the neighborhood. An ungated, dimly-lit, unguarded parking lot will exacerbate other types of crime in the area, because if potential car thieves find nothing of value in cars, they will search the neighborhood for other targets. See Exs. 4, 10 (petition, letters, and e-mails from scores of neighbors explaining likelihood of additional crime).

Moreover, crime will likely increase because 17 (40% more) cars will be added to the neighborhood at night, these cars will be concentrated in a small area, there is poor lighting in the parking lot, and, because cars will be parked alongside of each other, car thieves will be able to work in the dark without observation from the street or surrounding homes. Muggings and other violent crimes are also more likely to take place in a parking lot between cars that will block the view of any passersby.

By contrast, pedestrian and automobile traffic as well as residents along Woodley Place can observe the cars parked along the street. Moreover, residents are much more likely to look out their windows and call the police when a car alarm goes off in front of their homes than when they hear one in a parking lot. As a result, it is much more difficult for car thieves and other criminals to hide from observation on the street than in a parking lot. The fact that the neighborhood already experiences nearly one stolen car or attempted auto-theft per week makes it imperative that that danger not be exacerbated by the addition of 17 more cars that will be far more difficult to observe and that will provide cover for criminal activity.

5. Noise and Safety.

The sound of car alarms, slamming car doors and trunks, the parking lot chain dropping, and loud voices will all be magnified by the tall apartment buildings behind the

parking lot that project noise toward the street. Applicant's Management Plan rejects posting a guard or hiring a security agency to patrol the lot; inaccurately claims that 17 additional cars "will not introduce any new sounds;" and calls upon "residents . . . to contact the police and report the nuisance or effect an arrest of the offending party" even in the middle of the night. (MP at 18).

The neighbors should not have to choose between ignoring loud noises from car alarms and parking tenants or racing to the parking lot in the middle of the night to confront or have arrested "unruly and disruptive" parking tenants. (MP at 18). Indeed, out of concern for personal safety, it is doubtful anyone would go to the parking lot to determine the identification of an "unruly" or "disruptive" parking tenant.

Finally, currently, most cars are already parked by 7:00 or 8:00 pm along the 2700 block of Woodley Place, thereby minimizing the noise from slamming doors, trunks, etc. Applicant's proposal to add 17 additional vehicles parked in the middle of the night (40% more vehicles) will introduce much noise into the neighborhood that does not currently exist.

6. Character of the neighborhood.

Woodley Place is a quiet, one-way street. That is one of the primary reasons that the neighbors choose to live there and, in most cases, purchased homes there. See Exs. 4 and 10 attached to Choharis Decl. (letters and e-mails opposing Application). Moreover, because of limited outdoor space, many residents enjoy their front porches for recreation. Indeed, easily half of the porches along the street have lawn furniture, barbeque grilles, and children's toys on their front porches. Seventeen additional cars going down this one-way street will result in additional traffic and accompanying pollution and noise and

will thus disturb the neighborhood's quiet character. Finally, the increased traffic will prevent the many children on the block from playing in front of their homes. Ex. 10 (Letter from J. Waddell to Councilmember Graham).

213.6 This section requires that 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 overspill parking on neighborhood streets." Again, Applicant cites absolutely no record evidence for its claim that "17 new spaces will be made available on residential streets, including Woodley Place, for short term parking. With greater turnover, these newly available on-street spaces will be able to accommodate the vehicles of more than 17 people, including residents, patrons, visitors and tourists." Appl.-Supp. at 7.

First, this claim directly contradicts Applicant's claim made two paragraphs earlier that "[a]pproval of this application will reduce and not increase the amount of vehicular traffic on Woodley Place." *Id.* at 7. For if "greater turnover" will result in "newly available on-street spaces [for] the vehicles of more than 17 people," *id.*, then the effect of the Application will be to increase traffic on Woodley Place by 17 vehicles or more. For under Applicant's theory, 17 long term parkers who used to park on the street will park in its lot, freeing up spaces "for short-term parking." Thus, not only will 17 vehicles park in the lot when they previously had not, but dozens of "short-term park[ers]" will take their place on the street. Under Applicant's theory, its Application will cause traffic to increase by dozens every day. Moreover, by definition, this will not "likely result [in] a reduction of overspill parking on neighborhood streets." § 213.7. To the contrary, since the previously occupied spaces on the street will be filled by "visitors and tourists" and others, there will be no relief from overspill parking, but rather an

increase in vehicles zooming in and out – just what a quiet, one-way street with children does not need. Exs. 4 and 10 (letters and e-mails attached to Choharis Decl.).

All of this, of course, is mere supposition. As with the rest of Applicant's claims, Applicant's Supplemental Filing fails to cite a single piece of evidence to support the claimed benefits of its Application. By contrast, the record evidence is clear that during the day, there are nearly always parking spaces available on Woodley Place during the day. Choharis Decl. Par. 20. Thus, permitting commercial parking of 17 vehicles in Applicant's parking lot will not likely reduce overspill parking since street parking will continue to be available, just as it has been. Moreover, the evidence undermines Applicant's claim that its Application will make available "17 new spaces," since employees of local businesses cannot park on area streets for more than two hours during business hours and thus do not do so. Choharis Decl. Par. 17-20. Rather than park on the street and have to move their cars every two hours while at work, it is far more likely that the business employees currently park in any of the 1,000 commercial parking spaces currently available in Woodley Park, all of which are closer to the business district. Choharis Decl. Pars. 22-23. Else, these employees likely take the Metro, since there is a stop in the heart of the business district.

In sum, Applicant has once again failed to meet its "heavy burden" by failing to present any evidence that would indicate that the Application meets § 213.6. Moreover, Applicant's theory undermines its (equally unsubstantiated) claim that its application would reduce traffic and therefore meet the standards of § 213.5. Thus, even on the level of supposition, Applicant's reasons for the Application are contradictory and fundamentally unsound.

213.7 Applicant fails to satisfy Section 213.7, which requires that "[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." See Tr. at 52. There is no prohibition in Applicant's proposed lease, Management Plan Ex. E, against parking tenants using the lot as a park-n-ride.

C. Special Exception –The Applicant Has Failed To Present Any Evidence That It Meets the Statutory Requirements For a Special Exception Under § 3104; Rather, All Record Evidence Is To The Contrary.

As set forth above, a special exception must be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. 11 DCMR § 3104.1 (emphasis added). Written in the negative, the "not tend to affect adversely" standard is quite high.

For the reasons stated in Part I.B above, the record evidence demonstrates that the Application will "tend," and indeed will likely, affect adversely the use of the neighboring property due to the increase in traffic, noise, and crime; the reduction in safety; the loss of neighborhood parking spaces during evening events sponsored by Applicant; and the damage to the character of the neighborhood. Applicant's unsubstantiated claims to the contrary do not meet its evidentiary burden under this section. Indeed, Applicant does not even try to meet this section's requirements in its Supplemental Filing, thereby conceding that it cannot do so.

II. Applicant's Prior Illegal Acts, And Failure To Admit Them Under Oath During The Hearing, Warrant Denial Of The Application

A. The D.C. Court of Appeals Overturns Board Grants of Special Exceptions That Ratify The Prior Illegal Acts Of An Applicant

As Opponent's Declaration (pars. 4-13) explains, Applicant had been renting its Parking Lot illegally – including, at one time, for valet parking – until a neighbor complained. Decl. par. 5, 10. Yet, not one of the Applicant's four witnesses divulged this information to the Board. Applicant's prior illegal leasing of the subject parking lot is not in dispute. Applicant's 2001 Annual Report, excerpted as Ex. 1, clearly identifies its former illegal practice. *See, e.g.*, p. 8 ("Our efforts to secure a zoning exception that will enable us once again to use our parking lot for commercial purposes is proceeding . . . "); pp. 14 and 16. Indeed, despite writing page 8 of the 2001 Annual Report, Applicant's witness and Senior Warden Michael McGee (Tr. 28) did not see fit to inform this Board that the Applicant had previously and illegally leased its parking lot during the Hearing.[3]

Furthermore, when during the Hearing Opponent asked Rev. John David van Dorn ("van Dorn") directly, "you haven't rented it [Applicant's parking lot] like this before, have you?," van Dorn answered, "We've had times in the past cars have – it's been full of people." Tr. 68. This answer was unresponsive, incomplete, and evasive. In short, it was untrue and intended to hide the Applicant's prior illegal leasing of its parking lot to deceive both Opponent and this Board about a material fact. Nor did any

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[3] Nor did any of the four witnesses mention the Applicant's prior leasing of the Parking Lot for valet parking and the neighbors' angry complaints about the dangers posed by it, Decl. par. 10, when Chairperson Griffis asked about Nema Shafik's letter asking that the Parking Lot not be used for valet parking. *See* Tr. 34.

of Applicant's other three witnesses correct the record. Rather, they sat silently permitting the false record to stand uncorrected.[4]

In *Dupont Circle Citizens Assoc. v. BZA*, 390 A.2d 1009, 1012 (D.C. App. 1978), the applicant's parking lots "were being used for parking, despite failure to procure a special exception." Nonetheless, the BZA granted the applicant a special exception. The D.C. Court of Appeals's condemnation was clear:

> We note with strong disapproval that the Board failed to respond to this apparent violation of the zoning regulations. Favorable disposition of this application thus ratified an illegal act. The citizens of the District of Columbia are not well served when the Board proceeds in this manner.

Id. at 1012 n.4. *See also Bernstein*, 376 A.2d at 819 n.11 ("A non-conforming use may not be established through an existing use of land which was commenced or maintained in violation of a zoning ordinance; any such use is not an existing lawful use within the meaning of an ordinance which protects existing lawful uses."), quoting *Besthoff v. [BZA]*, 34 A.2d 782, 783 (1970). If the Court of Appeals will not permit an applicant to obtain a special exception for a prior illegal use, then *a fortiori* the Board cannot grant a use variance to "ratif[y] an illegal act."

The Applicant's behavior in this case was far more culpable than that in *Dupont Circle.* For unlike in *Dupont Circle* where the applicant at least admitted its illegal leasing of its parking lot during its sworn testimony, the Applicant in this case failed to

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[4] Applicant again responded incompletely when answering Chairperson Griffis's question, "And then during the week, the Applicant doesn't have functions that would have need for [parking] spaces?" Tr. 51. Ms. Adams testified, "***No***, there is once a month a vestry meeting, but it's our expectation and also because based on the applicants that we're receiving for parking spaces, that those spaces would be available during the evening hours." (emphasis added). In fact, Applicant has numerous scheduled meetings, events, and services on weekdays and evenings, not just a vestry meeting once a month. *See* Decl. par. 15; Ex. 2.

disclose during the Hearing that it had illegally leased its parking lot. See Choharis Decl. Pars. 4–13. Even worse, when directly asked if it had previously leased its parking lot, van Dorn did not tell the truth. See Tr. 68. Nor did the other three witnesses correct the record, not even McGee who clearly new about the prior illegal leasing. Choharis Decl. Ex. 1.

Nor did Applicant cease its prior illegal leasing of the lot on its own. Rather, only when confronted by the threat of a sizeable, daily fine by the District government did Applicant finally stop its prior, illegal commercial leasing of its parking lot. See Choharis Decl. Pars. 4-13.

B. Applicant's Failure To Disclose Its Prior Illegal Leasing Of Its Parking Lot Denied Opponent A Fair Hearing.

Had Applicant revealed that it had previously illegally leased its parking lot at the Hearing, especially after being asked directly, Opponent and this Board could have (1) explored the Applicant's true motivation for seeking a special exception and (2) exposed the Applicant's trumped-up reasons for its Application, discussed below. Moreover, Opponent could have explored (3) who had leased parking spaces previously and illegally, (4) whether they were on the "list" of business owners who had expressed an interest in leasing parking spaces (Tr. at 51, 62), (5) whether these business owners were the ones who Applicant claimed on its Application Statement of Existing and Planned Use (Case file No. 3) had asked the Applicant to lease the Parking Lot, (6) whether those who had illegally leased spaces or their relatives or social acquaintances were members of the WPCA and ANC (in fact, Opponent learned that members of both organizations knew at least one illegal parking tenant and wanted to help him), and (7) whether those who had illegally leased spaces and/or were on the "list" for the parking spaces were the "residents in the neighborhood" that Applicant insisted supports its Application (Tr. 126).

Unable to develop the record on these issues and other critical issues, Opponent was deprived of his due process right to cross-examine meaningfully witnesses and to develop his case in opposition. Worse, this Board was deprived of the truth. The materiality of the Applicant's failure to tell the truth is a further basis for denying the application.

C. Applicant's Other Multiple Misstatements of Material Fact And Omissions of Fact Denied Opponent A Fair Hearing And Warrant Denial Of The Application.

Nor was Applicant's failure to present full and accurate testimony limited to its prior illegal acts. As discussed in this subsection, Applicant committed additional and repeated false testimony during the Hearing. Part III.A establishes that Applicant's written Application was also false in a material aspect and that this false statement caused the Office of Planning to approve the Application based upon false information.

Applicant repeatedly and falsely testified during the Hearing that the basis for its Application was WPCA's asking the Applicant to lease its Parking Lot and that the Applicant was applying for a special exception in order to respond to the community's request for more parking. For example, in response to Opponent's question, "Why is the application here?," meaning what is the basis for Applicant's Application, Ms. Adams answered: "The Applicant has been approached by the Woodley Park Community Association which adopted a resolution in April 2001 asking the Applicant to put to use its otherwise vacant parking lot during the week." Tr. 61.

In doing so, Ms Adams repeated the false testimony that she gave during her opening remarks to the Board: Tr. 32 (""the Woodley Park Community Association approached the Applicant and asked that it ease some of the parking congestion in the neighborhood by opening its lot to residents and to some of these business owners and business employees in the area during the week"); Tr. 33 ("So the proposal that the Applicant has made, on the recommendation of the Woodley Park Community Association, is for weekday parking in the lot on a contract basis . . . ."

But in fact, the WPCA did not ask the Applicant to lease its Parking Lot in order to relieve parking congestion. Rather, Applicant was the one who initiated contact with, and sought support from, the WPCA concerning Applicant's plan to lease commercially its parking lot. *See* Decl. Pars. 29-36.

Moreover, despite Ms. Adams testifying falsely three times about the reason and justification for the Application for special exception, none of Applicant's three other witnesses ever corrected the record – just as three other witnesses failed to correct van Dorn's testimony regarding prior leasing of the Parking Lot. *See* Tr. generally.

On June 19, 2002, Opponent called Ms. Adams and informed her that he believed Applicant's repeated testimony about the WPCA asking the Applicant to lease its Parking Lot was false and that Applicant's failure to reveal that it had previously leased the Parking Lot illegally was a material omission of fact. See Decl. Par. 34. Far from denying that its prior testimony was false three separate times, Applicant has beaten a hasty retreat. Nearly a month after the Hearing, and only after Opponent confronted Applicant's lawyer with the truth, Applicant contradicted its repeatedly false testimony when it admitted that "The Woodley Park Community Association ("WPCA") was informed" of the Application. Applicant's Statement of Facts and Conclusions of Law at 2.[5] Banished from this or any other subsequent filing by Applicant is any mention of

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[5] Applicant's Statement of Facts and Conclusions at 2 also claims that "hundreds of neighborhood residents eligible to vote on WPCA matters attended [and that] the WPCA unanimously adopted a Resolution endorsing the plans of the Applicant." The minutes of the WPCA meeting reveal, however, that it was an Executive Committee meeting. *See* Ex. 3 attached to Declaration. At a June 20, 2002 WPCA Executive Committee, President Ron David informed me and others that only Executive Committee members can vote at an Executive Committee Meeting. The WPCA website indicates that there are only a handful of officers of the WPCA. See Ex. 4.

Applicant's Application being in response to the WPCA's entreaties to lease the Parking Lot.

Nor has Applicant been forthcoming with this Board about the Applicant's plan to **increase the number of parking spaces from 19 to 21**. For example, in its Management Plan (at 2), Applicant incorrectly states that there are "21 parking spaces" currently. It repeats this in its Statement of Facts and Conclusions of Law at 6. At the Hearing, Applicant said fuzzily, "the parking lot is structurally complete. The striping is in a somewhat different configuration at the moment, but new striping is planned . . . ." Tr. 37. But in its Supplemental Filing at 7, Applicant repeats its false statement that its parking lot consists "of 21 marked parking spaces."

In fact, there are currently only 19 parking spaces in Applicant's Parking Lot. Choharis Decl. Par. 14. Applicant is trying to increase the number or spaces by more than 10 percent without informing this Board of the increase in traffic.

Applicant's failure to present an accurate record regarding its plan to increase the number of parking spaces also tainted the record with respect to the District of Columbia Office of Planning's ("OP") written Report and oral testimony. Perhaps again relying upon the Applicant's false representations, the Office of Planning Memorandum (Case file No. 25) at 4 erroneously states that the Applicant planned "to use up to 17 parking spaces on *a 21-space parking lot* . . . ." (emphasis added). Similarly, when testifying at the Hearing, John Ward of the Office of Planning explained the agency's support in part on his mistaken belief that "the 21 parking spaces that we had discussed in there currently and historically exist in the parking lot. I mean, they're not new." Tr. 81. As discussed below in III.A, the OP similarly relied upon Applicant's false statement in its Application

that area businesses asked Applicant to lease its parking lot. Because the OP relied upon two materially false statements by Applicant as the bases for its endorsement of the Application, the OP Report is unreliable and accorded no weight.

III. Applicant Has Failed To Provide Any Reason Or Basis For Its Application

A. During The Hearing, Applicant Admitted That The Written Basis For Its Application Was Untrue, Thereby Rendering The OP Report Baseless As Well.

Applicant's Application for Special Exception Statement of Existing and Intended Use (Case file No. 3) states: "The Applicant has been approached by a number of business owners and their employees who drive in from other neighborhoods to open its available parking spaces for weekday parking for non-Applicant purposes."

The District of Columbia OP relied upon this statement in the Application when the OP justified its support of the Application despite the Parking Lot's failure to meet the requirements of Zoning Regulation Sections 213.2 and 213.3:

> "Neither of the commercial districts is within 200 feet of the Applicant, nor is the parking lot separated from either of the commercial district [sic] only by an alley. However, it is the owners of some of the businesses in the two referenced commercial districts, and their employees, who are seeking to contract parking arrangements with the Applicant, because the Woodley Park neighborhood lacks sufficient parking to accommodate the demand for parking spaces."

Memorandum at 6 (Case file No. 25) *See also id.* at 4 ("Area business owners, on behalf of employees, have approached the Applicant about the possibility of using portions of the Applicant's parking lot for employee parking.")

This basis for the OP's Memorandum – the purported request by local businesses to lease Applicant's parking lot – was repeatedly disavowed by Applicant's witnesses during the Hearing. (In addition, as a matter of law, it is insufficient to warrant a use

variance or special exception from the strict application of the zoning regulations.) Applicant repeatedly testified that the WPCA approached the Applicant and asked it to lease parking spaces (Tr. 32, 33, 61). This testimony also directly contradicts Applicant's Application at 1, which states that "[t]he Applicant has been approached by a number of business owners and their employees . . . to open its available parking spaces for weekday parking." (Case file No. 3).

Indeed, Ms. Adams adamantly denied that the business community approached the Applicant and instead insisted that it was "the Woodley Park Community Association, and that is a body of neighbors, your neighbors" that did so. Tr. 61. When further pressed, Ms. Adams explained that her testimony that "[w]e've been approached by business owners and business employees from the commercial area down the street interested in renting or you know, parking in our lot during the week" was not meant to suggest that the business community was included in the Woodley Park Community Association's alleged overture to the Applicant asking it to rent spaces. Tr. 61. Ms. Adams said, "What I mean to say is that we've been approached by some business owners asking that they be able to use our lot . . . ." Tr. 62. To emphasize that business owners were not included when the WPCA allegedly asked the Applicant to lease parking spaces, Rev. van Dorn interjected, "I do know that the Woodley Park Community Association meets in the Church . . . . I know no businesses represented there." Tr. 62. Neither of Applicant's other two witnesses testified otherwise or corrected or modified

these statements in any way. Thus, Applicant expressly retracted the stated reason in its written Application for the basis of the Application.[6]

Leaving no doubt about Applicant's testimony that local residences, but not businesses, had asked to lease its parking lot, Chairperson Griffis asked Ward to clarify that the WPCA was a residential association, not a business group. See Tr. 71.

B. Applicant's Alternative Basis For Its Application –A Request From A Community Association – Was Similarly False.

After denying the factual predicate in its Application for a use variance and special exception that local businesses approached Applicant to lease its parking lot, Applicant during the Hearing three times offered sworn testimony that the actual basis for its Application was the Woodley Park Community Association's request that Applicant commercially lease its property. See Tr. 32 ("the Woodley Park Community Association approached the church and asked that it ease some of the parking congestion in the neighborhood by opening its lot to residents and to some of these business owners and business employees in the area during the week"); Tr. 33 ("So the proposal that the church has made, on the recommendation of the Woodley Park Community Association, is for weekday parking in the lot . . ."); Tr. 61 ("The church has been approached by the Woodley Park Community Association which adopted a resolution in April 2001 asking the church to put to use its otherwise vacant parking lot during the week.").

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[6] Furthermore, as noted above, Applicant denied both the Board and Opponent a full and fair opportunity to investigate what supposed business owners and employees had previously leased parking spaces. As a result, neither could investigate whether they were the same "business owners and their employees" who Applicant claimed in its Application Statement of Existing and Intended Use had asked the Applicant to lease parking spaces. Thus, Opponent was denied the opportunity to uncover whether Applicant was attempting to use those with whom it had conducted prior illegal business dealings to support its Application.

But as demonstrated above, these statements were patently false. See Choharis Decl. Pars. 29-36; Ex. 3. Thus, there is ***no record evidence*** supporting either of the purported bases for the Application.

IV. The Unrebutted Evidence Demonstrates Overwhelming Neighborhood Opposition To the Application.

A. The Community, Joined By Councilmember Graham, Unanimously Oppose the Church's Application.

Applicant falsely claims that the community supports its application. Appl.-Supp. at 8 ("The neighbors of the Church, as represented by the WPCA, largely support the Application, as does the local ANC, [and] Councilman Jim Graham.") But in fact, as the June 2002 petition, letters and e-mails; Ex. 4, the January 2003 e-mail/letters, Ex. 10; and Councilmember Jim Graham's Letter withdrawing support, Ex. 9; there is unanimous community opposition to the Application. See Choharis Decl. Par. 40-46. More than 70 people have registered their "vehement" opposition to the application. See Ex. 10 (Letter from J. Waddle to Councilmember Graham explaining fear for safety of her children).

These letters, e-mails, and petition signatures were obtained during very short periods of time. Choharis Decl. Pars. 44-45. Yet the opposition was overwhelming. Indeed, except for an elderly woman who did not speak English, every single one of the dozens of people contacted by Opponent oppose the application. Choharis Decl. Par. 46. By contrast, Applicant has not presented a single letter, e-mail, or other statement from a neighbor supporting the application. Instead, Applicant continues to rely upon discredited support from the ANC and WPCA. See Part IV.B below; Ex. 9 (Councilmember Graham withdrawing support for application in part on lack of notice to neighbors). Nor does the WPCA represent, or even purport to represent, the neighbors as

Applicant mistakenly asserts. And of course, Councilmember Graham no longer supports the Application. Ex. 9.

Thus, the evidence is unrebutted that there is no support in the neighborhood for the commercial leasing of Applicant's parking lot. Although an application for a use variance and special exception is not a popularity contest, the unanimous neighborhood opposition utterly undermines Applicant's unsubstantiated claim that the community needs commercial parking in Applicant's parking lot. If not a single neighbor has expressed such a need, the Applicant's unsupported claims cannot support either a use variance or special exception.

B. Applicant's Reliance On WPCA And ANC Support Is Misplaced Since Applicant Obtained Their Support On False Representations And Never Notified The Neighborhood That They Would Consider Its Application.

1. Applicant obtained support from the WPCA and ANC-3 based upon its inaccurate representation that it would lease its parking lot in the same manner as it had before it sought to lease the parking lot legally.

Because Applicant never revealed to the Board or Opponent that it had previously leased parking spaces, Opponent had no opportunity during the Hearing to develop the record about Applicant's prior, illegal "practice of renting out a limited number of parking spaces." Ex. 3, Minutes of WPCA Executive Committee meeting, April 19, 2001; Choharis Decl. Pars. 4-13. But as these Minutes reveal, the WPCA's resolution "was passed supporting the Applicant's efforts to obtain the necessary variance that would be *in line with its existing practice of renting out a limited number* of parking spaces . . . ." Ex. 3 at 2 (emphasis added). Similarly, the ANC Resolution 2002-009 (Case file Ex. No. 26) ("ANC Resolution") was based on Applicant's representations to the Commissioners that its proposed leasing of its parking lot would be conducted in the same manner as before. *See* Choharis Decl. pars. 37-39. Further undermining the ANC's support is the fact that the ANC Resolution expressly relied in part upon "the full support of the Woodley Park Community Association," (Case file No. 26), which was itself premised upon false representations.

The evidence shows that Applicant never rented 17 parking spaces between midnight, Sunday to midnight, Friday as it now proposes. *See* Decl. par. 13. Accordingly, the WPCA's and ANC's approval of Applicant's proposal to rent parking spaces was based upon representations by the Applicant that were false or inaccurate.

2. Applicant Obtained WPCA And ANC Support Without Providing Notice To The Neighborhood And The ANC Resolution Is Entitled To Know Weight.

As the June 2002 Petition, letters and e-mails establish, Ex. 4, and as Councilmember Graham noted in his letter withdrawing support for the Application, Ex. 9, **none of the neighbors** were informed by the Applicant or by the WPCA or ANC that the Applicant intended to seek the support of those organizations for its Application. Thus, none of the people who would be most immediately harmed by the Application were ever given the opportunity to present their views to these organizations. The Applicant does not dispute that neither it nor these organizations notified the neighbors. Nor does Applicant seek to explain why it failed to contact any of the neighbors about its Application or failed to notify them that it would seek the WPCA's and ANC's support. At any rate, Applicant's reliance on these organizations for evidence of community support is undermined by its own failure to notify the community of its designs.

Finally, The ANC Resolution (Case file Ex. No. 26) is not a "report" as set forth by Zoning Regulation 11-3115.1 and does not contain any information required by four of the nine subsections of 11-3115.1. Namely, it does not indicate "whether the proper notice of [the ANC meeting to consider the application] was given by the ANC." 11-3115.1(c). And as established above, Exs. 4 (petition) and 9 (Graham Letter), no notice was provided. Nor does the Resolution indicate the "number of the members of the ANC that constitute a quorum and the number of members present at the meeting." 11-3115.1(d). It does not set forth "the issues and concerns of the ANC about the . . . application as related to the standards of the Zoning Regulations and against which the . . . application must be judged." 11-3115.1(e). Finally, it does not "name the person who

is authorized by the ANC to present the report." 11-3115(h). The ANC-3 was specifically notified of the requirements of Section 11-3115.1. See Case file No. 17. Nonetheless, the ANC-3 declined to submit a "report" pursuant to 11-3115.1 and 11-3115.2. Thus, the ANC Resolution deserves no deference.

Conclusion

For all the foregoing reasons, Opponent respectfully requests that this Board reject Applicant's Application for a use variance and special exception.

January 13, 2003



Peter C. Choharis
2771 Woodley Place, N.W.
Washington, D.C. 20008
202-371-6078 (w)

Proof of Service

I, Peter C. Choharis, do hereby state that I caused to be sent via first class, postage pre-paid U.S. Mail the foregoing (1) Response to Applicant's December 2002 Supplemental Filing, (2) Declaration of Peter C. Choharis in Support of Response, and (3) accompanying Exhibits to:

Ms. Brigitte L. Adams
2800 Wisconsin Avenue, N.W., # 208
Washington, D.C. 20007

On this 13th day of January, 2003.



Peter C. Choharis

In Re: 16875
Application of All Souls Church for a Special Exception

Declaration of Party Opponent Peter C. Choharis
In Support of
Opponent's Response to Applicant's Supplemental Filing In Support of Burden of Proof

I, Peter C. Choharis, under penalty of perjury hereby declare as follows:

1. I am the owner of 2771 Woodley Place, N.W., Washington, D.C. which is my legal address.

2. I am currently an attorney at the Washington, D.C. office of Piper Rudnick LLP, located at 901 15th Street, N.W., Washington, D.C. 20005. I have previously practiced law at Mayer, Brown & Platt located at 1909 K Street, N.W., Washington, D.C. 20006 and O'Melveny & Myers, located at 555 13th Street, N.W., Washington, D.C. 20004. I have also been a Visiting Scholar at the George Washington School of Law, taught Remedies as an adjunct professor at the Washington College of Law at American University, and taught a seminar on international law at Yale University.

3. I have personal knowledge of the facts stated in this Declaration, and if called as a witness, I could and would testify as follows:

All Souls's Prior Illegal Leasing of Parking Lot

4. Debra Gross ("Gross") is my neighbor and resides at 2746 Woodley Place, N.W. Washington, D.C. During numerous conversations in person and via telephone, Gross informed me that she served for two years on the Woodley Park Community Association ("WPCA"). Unless otherwise noted, the facts in this subsection (Pars. 4-10, 13) are based upon my conversations with Gross.

5. In March, 2001, Gross parked her car in the All Souls Memorial Episcopal Church ("All Souls") Parking Lot ("Parking Lot"), because of work being done in the back of her house. When she tried to retrieve her car from the Parking Lot, an All Souls' officer, Barry Huber, told her that it had been towed. When Ms. Gross asked why other cars in the Parking Lot had not been towed, Huber informed her that they were renting spaces.

6. Not pleased with commercial parking being conducted in a residential neighborhood, Gross called the City to complain. She also asked that her identity not be disclosed. In April 2001, a woman named Yvette from the D.C. zoning office called Gross from the Parking Lot to inform her that she had given the Church two weeks to end its leasing operation; and, if it did not stop, it would face a substantial fine for each day it kept leasing spaces.

7. Despite Gross's request for confidentiality, her name was divulged. A neighbor who was a member of the Church, a gardener working at the Church, and others confronted her on the street and yelled at her for reporting the Church, one person even accusing her of being "an enemy of the Church."

8. Ms. Gross met with the Church Board (vestry) and the rector, Rev. John David van Dorn ("van Dorn") and told them that she opposed commercially parking on the street; but if they wanted to do it, they should at least put up a gate with a card key. Van Dorn and the Board refused to erect such a gate, and Gross replied that she opposed the lease of the Parking Lot.

9. Gross did not become more active opposing the commercial leasing of the Parking Lot, including writing this Board or appearing at this Board's May 29, 2002 Hearing ("Hearing") to oppose it, because of the abuse she had already suffered as a result of her reporting the Church. Nonetheless, van Dorn and the vestry were clear about her opposition.

10. Gross also learned that All Souls had previously allowed the Parking Lot to be used for valet parking. After neighbors complained about the danger posed by valet attendants racing down the alley behind their homes (the alley between Woodley Place and Connecticut) when these neighbors were trying to get out of their garages, walk their dogs, or walk with their children, the Church stopped valet parking.

11. The 2001 Annual Report, All Souls Memorial Church, May 19, 2002 confirms that All Souls had leased its Parking Lot. See Ex. 1, p. 8 ("Our efforts to secure a zoning exception that will enable us once again to use our parking lot for commercial purposes is proceeding . . . ."); *id.*, p. 14 ("As most parishioners know, rental of the parking lot was curtailed until a zoning variance is received from the city."); *id.*, p.6 (reporting actual revenue from parking lot of $5,185 versus budgeted amount of $14,000 as of December 31, 2001).

12. All Souls never revealed to the Board during the May 29, 2002 Hearing ("Hearing") that it had previously leased the Parking Lot– even when I directly asked the Rector of All Souls, Father John David van Dorn. Tr. 68. Nor did the other three witnesses reveal the fact that the Church had previously (and illegally) leased the Parking Lot.

13. From speaking with neighbors, my understanding is that during the time that the Church illegally leased the Parking Lot, it never leased seventeen (17) parking spaces. Nor did it lease 17 spaces at all times of the day and night from midnight, Sunday through midnight, Friday.

Current Weekday and Weeknight Use of Parking Lot

14. Upon personal observation, there are currently only 19 parking spaces in the Parking Lot. All Souls's Management Plan (at 2) incorrectly states that there are "21

parking spaces" currently. All Souls's Statement of Facts and Conclusions of Law at 6 repeats this. These statements are inaccurate. There are currently **only 19** parking spaces demarcated. There are only two parking spaces immediately to the right of the entrance to the Parking Lot. According to posted signs, they are reserved for the "Rector" and the "Parish Administrator." These two spaces run east-west parallel to the Parking Lot entrance. The Church proposes to replace these two spaces with four spaces running north-south, perpendicular to the entrance. *See* Case file No. 8, Proposed parking plan, spaces numbered 18-21. All Souls plans not only to expand the use of the lot by commercially leasing it from midnight Sunday through midnight Friday, but also to increase the number of parking spaces.

15. Every week during weekdays and evenings, All Souls uses the Parking Lot for Church meetings, meetings by such groups as Alcoholics Anonymous, services, and in the past by the Woodley Park Community Association and other groups. See Ex. 2. The Parking Lot is no way underutilized.

16. For example, I personally observed at 7:30 pm on June 25, 2002, 13 cars parked in the Parking Lot and a fourteenth vehicle, a van, parked illegally in front of the Parking Lot entrance. I was told by a woman in the parking lot that the "Church was having a meeting."

Current Neighborhood Parking

17. In order to park legally on Woodley Place or on Cathedral Avenue, automobiles must have a Zone 3 sticker. I see daily cars without the correct zone stickers with parking tickets.

18. Except for a few hours on Sundays during Church services, parking is only permitted on one side of Woodley Place, the west side. Excluding the space in front of the fire hydrant in the middle of the block, there is room for forty-two (42) vehicles on the north block of Woodley Place.

19. Residents with Zone 3 stickers can park on this block any time day or night. Vehicles without Zone 3 stickers are restricted to two hours during the hours of 7:00 a.m. – 8:30 p.m., Monday through Friday, but can park throughout the evening and night.

20. During weekdays, based upon daily personal observation over the course of months throughout the summer and early fall, there are nearly *always* parking spaces available on this block. The same is true on weekend days other than during Church services. Only at night does street parking on this block tend to be full. In addition, numerous neighbors have told me that they have spare parking spaces for lease, but that it is difficult to find lessors because there is not much demand. See, e.g., Ex. 10 (Letter from J. Waddell to Jim Graham) ("I have tried to rent out a spot behind my house and have never succeeded in doing so on more than a sporadic basis.")

21. I have personally witnessed numerous vehicles exiting the Church parking lot and illegally taking a left, the wrong way on a one-way street. My neighbors, Alison Tribble and Carl Spataro, have also told me that they frequently see cars exiting the Church parking lot and taking illegal left turns, thereby posing a danger of accidents. See Ex. 10 (Letter from A. Tribble and C. Spataro to Jim Graham). I have not, however, ever witnessed cars circling the block looking for parking since parking is available during week days and there are simply not many cars that travel down the 2700 block of Woodley Place most evenings. I base these observations having spent hundreds of hours during the day and evening in front of or along Woodley Place.[1]

Current Parking in Woodley Park Community

22. There are currently four other parking facilities in the Woodley Park area. This is undisputed. See Applicant's Management Plan at 15; Exs. 1 and 2. Specifically, the four parking facilities located near the Woodley Park business district are:

(i) Marriott-Wardman Hotel
2660 Woodley Road, N.W.
202-328-2976
capacity: 600+ parking spaces

(ii) Omni Shoreham Hotel
2500 Calvert Street, N.W.
202-234-0700 and 202-756-5098
capacity: 300+

(iii) Calvert Street Garage
2519 Connecticut Avenue
capacity: 75 spaces

(iv) Standard Parking
2639 Connecticut Avenue
483-0412
capacity: 52 spaces (daily parking)

23. Each of these four commercial parking facilities is closer to the business district than is the All Souls parking lot. See Ex. 2.

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[1] In my May 29, 2002 Response to Applicant's Management Plan, at p. 9 n.4, I indicated that I had not personally witnessed vehicles making illegal, left turns out of Applicant's parking lot. Since that time, I have spent many hours during the day and evenings on the 2700 block of Woodley Place, and have witnessed numerous vehicles exit the parking lot and turn north despite the fact that the 2700 block of Woodley Place is one-way going south.

24. There is no shortage of parking spaces available for lease on a monthly or daily basis in the Woodley Park area. The above four parking garages provide more than 1,000 spaces available on a daily basis and nearly 1,000 spaces available on a monthly basis.

25. All Souls proposal to offer 17 additional parking spaces for lease in the Woodley Park area will increase the available parking spaces for lease by less than 1.7 %.

26. The only parking shortage in Woodley Park is for free parking for more than two hours duration, *i.e.* for those vehicles without Zone 3 parking permits. See Par. 19. This two-hour limit is common in neighborhoods throughout the District and is not unique to Woodley Park.

27. All Souls does not propose to provide free parking. See Ex. E to Applicant's Management Plan. According to All Souls, the only difference between its parking lot and the four current commercial lots is that it will charge less money in exchange for greater inconvenience for the parking tenants. See Management Plan 15-16 (All Souls will charge a "discounted market rate" that reflects "the preemptive authority retained by the Church to temporarily suspend parking privileges, the restricted weekday use, and because the parking lot is outside.") All Souls has not disclosed what its "discounted market rate" will be. (See pp. 1, 5 of Ex. E attached to Management Plan). All Souls concedes that parking rates vary considerably among the four parking garages and that there is no "market rate." See Management Plan at 15 ("The monthly parking rate charged at each of the nearby hotels is $300, and at the two local private parking facilities is $145 and $150.").

28. The application therefore proposes to increase the number of parking spaces available for lease the Woodley Park area by less than 1.7 %. This proposed increase is not only negligible numerically, but it will have no impact when more than 1,000 spaces are already available for lease in the Woodley Park area.

Woodley Park Community Association and ANC-3 Purported Support

29. In a telephone conversation with Martin G. Murray ("Murray"), the President of the Woodley Park Community Association ("WPCA") in April, 2001, Murray told me that All Souls approached the WPCA and asked to make a presentation about leasing the Parking Lot. When I asked if WPCA approached All Souls and asked the Church to lease the Parking Lot, Murray said, "I **wouldn't** characterize it as us [WPCA] coming to them [All Souls]." (emphasis added). Murray elaborated that a woman from All Souls with a name that sounded like "Mother Hubbard" [Mother Hayden, the former assistant rector] presented reasons for why the Church wanted to rent its parking spaces.

30. The minutes of the WPCA Executive Committee Meeting of April 19, 2001 (Ex. 3) substantiate Murray's account that the WPCA did not approach All Souls and ask it to lease the Parking Lot, but that All Souls went to the WPCA seeking its support.

31. Ms. Adams testified repeatedly and inaccurately during the Board's May 29, 2002 hearing that the Woodley Park Community Association approached All Souls asking the Church to lease parking spaces. In answer to my question, "Why is the application here?," meaning what is the basis for All Souls's Application, Ms. Adams answered: "The church has been approached by the Woodley Park Community Association which adopted a resolution in April 2001 asking the church to put to use its otherwise vacant parking lot during the week." Tr. 61.

32. In doing so, Ms Adams repeated the false testimony that she gave during her opening remarks to the Board: Tr. 32 (""the Woodley Park Community Association approached the church and asked that it ease some of the parking congestion in the neighborhood by opening its lot to residents and to some of these business owners and business employees in the area during the week"); Tr. 33 ("So the proposal that the church has made, on the recommendation of the Woodley Park Community Association, is for weekday parking in the lot on a contract basis . . . ."

33. Despite Ms. Adams's falsely testifying three times about the reason and justification for All Souls's Application for special exception, none of All Souls's three other witnesses ever corrected the record -- just as three other witnesses failed to correct Reverend van Dorn's testimony regarding prior leasing of the Parking Lot. See Tr. generally.

34. On June 19, 2002, I called Ms. Adams and asked that I meet with her, Rev. van Dorn and other representatives of All Souls to discuss the fact that All Souls had never revealed that it had previously leased its Parking Lot – despite my direct question of Reverend van Dorn – and the repeated and false testimony that the reason for All Souls's Application was in response to the WPCA's request for the Church to lease its parking lot. Ms. Adams denied my request for a meeting.

35. All Souls in its Statement of Facts and Conclusions of Law at 2, which was signed by Ms. Adams, now merely claims that "The Woodley Park Community Association ("WPCA") was informed of the Church's Application."

36. All Souls's Statement of Facts and Conclusions at 2 also claims that "hundreds of neighborhood residents eligible to vote on WPCA matters attended [and that] the WPCA unanimously adopted a Resolution endorsing the plans of the Church." The minutes of the meeting reveal, however, that it was an Executive Committee meeting. See Ex. 3. At a June 20, 2002 WPCA Executive Committee, President Ron David informed me and others that only Executive Committee members can vote at an Executive Committee Meeting. The WPCA website indicates that there are only a handful of officers of the WPCA. See Ex. 4.

<u>All Souls's Failure to Reveal Plans to WPCA and ANC</u>

37. Former WPCA President Murray also said that All Souls did not indicate that it planned to lease 17 parking spaces from midnight, Sunday through midnight, Friday,

rather "[i]t was more like the status quo being returned rather than something different for the neighborhood." Again, the Executive Committee Minutes substantiate Murray's recollection: "A resolution was passed supporting the church's efforts to obtain the necessary variance that would be in ***line with its existing practice*** of renting out a ***limited number of parking spaces*** . . . ." Ex. 3 (emphasis added).

38. I have been told that All Souls similarly told the ANC that it would lease the parking lot in the same way that it had previously done. When I called the former ANC Commissioner, Cheryl Opacinch, who introduced the ANC Resolution supporting the Church's proposal, to complain that neither I nor any other of the other neighbors along Woodley Place were ever told that the ANC planned to consider the Church's proposal, Ms. Opacinch told me not to worry, that the Church had been leasing parking spaces for years, and that nobody ever objected. When I responded that All Souls now planned to rent 17 spaces from midnight Sunday through midnight Friday and that it had never done so before, she expressed disbelief and said she would call the Church's attorney, Ms. Adams.

39. In a June 25, 2002 telephone conversation, ANC Commissioner Kurt Vorndran told me that the expectation of the ANC was that All Souls would lease its Parking Lot in the same manner as in the past. Again, according to Gross, at no time did All Souls previously lease 17 out of 21 parking spaces, illegally or otherwise. (Par. 12) Indeed, the parking lot currently has 19 parking spaces, not 21. It will have to be repainted and reconfigured to accommodate 21 spaces. See Tr. 37 and All Souls' proposed parking plan.

Overwhelming Neighborhood Opposition to Parking Lot Proposal

40. After I received All Souls's Management Plan on Thursday, June 20, 2002, I prepared copies of a petition outlining five concerns of the neighborhood -- 1. Safety, 2. Noise, 3. Character of the Neighborhood, 4. Traffic, and 5. Loss of Neighborhood Parking Spaces. ("Petition") Ex. 5. The Petition also summarized the Management Plan's treatment of these concerns and explained why the Management Plan's response was either inadequate or lacking. The sixth reason listed for opposing the Application is the lack of notice by the WPCA, ANC, or the Church that the WPCA and ANC would consider the Church's proposals. I also appended the operative portions of the Management Plan, pages 7-19, behind the Petition so that neighbors could read for themselves the Church's Management Plan and judge its adequacy. In order to avoid needless copying, I have omitted pages 7-9 of the Management Plan from Ex. 5.

41. I made several copies of the Petition and gave them to two neighbors, Mary Conte, who also wrote a letter (Case File No. 23, attached at Ex. 7), and Timothy Budd. I also gave several copies to Karen Kirsch and her husband, Neal Kirsch, President of the Woodley Park Place Condominium Association, located at 2801 Connecticut Avenue. Neal Kirsch wrote an e-mail letter in opposition (attached at Ex. 6). Finally, I sent Neal Kirsch an e-mail attachment copy of the Petition without the Management Plan attached.

42. Due to time constraints, Conte, Budd and I were only able to spend a few hours during the course of two evenings circulating the Petition. Nonetheless, sixty-five people signed the Petition. In addition, all three of us believe more people would be willing to sign the Petition if we had more time to circulate it. I personally was thanked by dozens of neighbors for opposing the Church's proposal and for bringing this issue to their attention for the first time. Budd also told me that very few people had heard about the Church's plan prior to seeing the Petition.

43. Neal Kirsch also told me that he had never heard about the Church's plan, despite being the President of a Condo Association with 35 units, "20 of which directly face the church parking lot which is about 30 feet away across the alley." Kirsch e-mail/letter attached at Ex. 6. In addition to Kirsch and his wife's opposition, four other condo residents – including one who was traveling abroad -- sent e-mails asking to register their opposition.

44. Thus, in less than a week, 71 people living around the All Souls Parking Lot have registered their opposition to the Church's Application to lease commercially its Parking Lot. Gregory J. DeNinno, who like me lives directly across the street from the Parking Lot, has written a letter explaining in greater detail his reasons for opposing the Application. See Ex. 7.

45. Moreover, after the Board re-opened the hearing, on January 5, 2003 I distributed a letter asking neighbors to e-mail Ward One Councilmember Jim Graham informing him of their opposition to the Application. I have no idea how many of my neighbors have access to e-mail, how many failed to .cc me on their e-mails, or how many called his office instead. But in less than a week, eight neighbors wrote Councilmember Graham often long, impassioned letters in opposition.

46. No neighbor ever expressed to me support for the Application. Not one.

Petition for Speed Bumps

47. In my testimony at the Hearing, in Choharis's Response to Management Plan at 8-9, and in Choharis's Proposed Findings of Fact and Conclusions of Law at Par. 21, p. 4, I referred to a petition being circulated in the neighborhood to install speed bumps on Woodley Place in response to the danger posed by speeding cars and by cars going up the one-way street in the wrong direction. Attached as Ex. 8 is a copy of that petition.

Executed on this 13th day of January, 2003



Peter C. Choharis

Index of Exhibits in Support of Choharis Declaration

Number	Exhibit Description
1	2001 Annual Report All Souls Memorial Church, May 19, 2002 – excerpts
2	All Souls Schedules of Weekly Events – two examples
3	Minutes of WPCA Executive Committee Meeting, April 19, 2001
4	WPCA Officers
5	June, 2002 Petition Opposing All Souls' Application
6	June, 2002 E-mails Opposing All Souls' Application
7	Letters Opposing All Souls' Application
8	Petition for Speed Bumps
9	Councilmember Graham Letter Withdrawing Support
10	January 2003 E-mail letters Opposing All Souls' Application

Exhibit 1

2001 Annual Report

All Souls Memorial Episcopal Church

May 19, 2002

The Senior Warden

"I NOTE THAT THE FINANCIAL HEALTH OF THE PARISH IS RECOVERING. YET, WE ARE NOT OUT OF THE WOODS. WE ARE STILL FACED WITH A SIGNIFICANT CONTRACTION. FOR EXAMPLE, OF OUR MUSIC PROGRAM. THE BUDGET FOR MAINTENANCE WON'T STAND MANY EMERGENCIES."

Since our last annual meeting, the world has changed. We have changed as a parish against a background of a nation and world more vulnerable and, paradoxically, more nurturing than it seemed in May, 2001.

In retrospect, our worsening financial situation last Spring and the administrative concerns over keeping the parish operating so the rector could enjoy a well-deserved sabbatical seem embarrassingly prosaic in light of the tragedy of September 11, the lost and shattered lives, the heroism and self-sacrifice of the rescuers and the continuing sacrifices of our military and their families. But, since this a report on the state of this parish, I confine my remarks to the more prosaic and immediate.

Having touched on the subject of finances, I note that the financial health of the parish is recovering. We are not yet out of the woods. We are still faced with a significant contraction, for example, of our music program. The budget for maintenance won't stand many emergencies. Fortunately, we have been able to correct the water damage in the Undercroft and spruce up the paint. The electrical work planned in earlier budget cycles was finally completed this year, removing a significant threat of fire caused by inadequate electrical service.

Our efforts to secure a zoning exception that will enable us once again to use our parking lot for commercial purposes is proceeding at the pace dictated by the District government. This effort, if successful, will restore a substantial income stream. We owe our appre-

The Treasurer

"IN SUM, ALL SOULS COMMITTED ITSELF TO A ROBUST PLEDGE CAMPAIGN AND BUDGET. THERE WERE SEVERAL UNEXPECTED CIRCUMSTANCES. BUT THROUGH PRUDENT STEWARDSHIP, THE CHURCH COMPLETED 2001 IN THE BLACK WITH A SLIGHT BALANCE . . . . THE PARISHIONERS AND THE VESTRY ARE TO BE COMMENDED FOR THE YEAR."

In retrospect, 2001* was an exceptional year for All Souls Memorial Church. The Vestry adopted the most aggressive budget ever ($500,100). Bolstered by a successful pledge campaign that realized 95 percent of its projected goal overall, total operating revenue contributions slightly exceeded budget.

Earned revenue, as compared to operating revenue, on the other hand, was 68 percent short of projections ($10,980 actual vs. $48,000 projected). This was due primarily to two factors: one outside the control of the Vestry and one Vestry-initiated. As most parishioners know, rental of the parking lot was curtailed until a zoning variance is received from the city. In addition, the Vestry elected not to withdraw $32,000 of endowment interest since cash reserves on hand were sufficient to cover all 2001 expenses. The Vestry opted to leave the routine annual transfer in the endowment until 2002 due to economic market conditions.

Combining income from the two major categories—operating revenue contributions and earned revenue—All Souls reached 94 percent of projected budget ($468,411 vs. $500,100). This percentage rate was acceptable to the Vestry since operating expenses were only 88 percent of budget ($426,211 actual vs. $483,345 budgeted).

* The first third of 2002 will be reported on during the annual meeting.

INCOME & EXPENSE—*December 31, 2001*

OPERATING REVENUE CONTRIBUTIONS:

	Budget	Actual	Over/(Short)	% of Budget Realized
Pledges	389,000	368,412	(20,588)	95%
Plate	40,000	50,113	10,113	125%
Memorials	-------	7,131	7,131	7131%
Bequests	15,000	22,585	7,585	51%
Flowers	2,600	5,036	2,436	194%
Music	2,000	1,337	(663)	67%
Fellowship	2,000	2,602	602	30%
Other	1,500	215	(1,285)	215%
Total Operating & Contributions	452,100	457,431	5,331	1.2%
EARNED REVENUE:				
Endownment Transfer	32,000	------	(32,000)	0%
Interest	1,000	1,570	570	57%
Parking Lot	14,000	5,185	(8,815)	37%
Church Use	1,000	1,510	510	51%
Bazaar	------	2,290	2,290	2290%
Other	------	425	425	425%
Total Earned Revenue	48,000	10,980	(37,020)	22%
TOTAL OPERATING REVENUES:	500,100	468,411	(31,689)	-6%

OPERATING EXPENSES:

	Budget	Actual	Over/(Under)	% of Budget Spent
Salaries & Benefits	260,552	247,497	(13,055)	95%
Professional Fees	19,500	18,672	(828)	96%
Outreach & Services	54,478	51,477	(3,001)	94%
Worship	18,675	18,453	(222)	99%
Fellowship	5,200	4,801	(399)	92%
Office Supplies/Services	33,275	28,671	(4,604)	86%
Facilities	91,665	56,646	(35,019)	62%
Total Operating Expenses	483,345	426,217	(57,128)	88%
EXCESS TOTAL OPERATING REVENUE OVER OPERATING EXPENSES	16,755	42,194	25,439	

	Budget	Actual	Over/(Under)
Restricted Revenue	20,000	31,972	11,972
Restricted Expenses	------	66,027	66,027
Restricted Revenue Total	------	(34,054)	------
TOTAL CASH RESERVE FOR 2001	------	8,140 [1]	------

1. Net carry forward to 2002.

Exhibit 2

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Weekly Events Sched

Today -- 5/26	*Pentecost 2--Second Sunday after Pe*
	Guest Celebrant: the Rev. Dr. F Carlyle Cato
	Holy Eucharist, 8:30 and 11:00
	Childcare, 10:00 a.m.
	Endowment Fund Board meeti a.m.
	No Choir until September
	No Adult Forum until Septemb
	No Sunday School until Septem
	AA Meeting, Conference room,
Monday	AA Meeting, conference room,
Tuesday	Staff meeting, 9:30 a.m.
Wednesday	Christ House Breakfast, 7:00 a.r
	Low Mass at noon
	Christ House dinner, 4:00 p.m.
	Centering Prayer, 6:45 p.m.
Thursday	Matins, 7:15 a.m.
	Low Mass, 7:30 a.m.
	St. Mary's Court, 7:00 p.m.
Friday	
Saturday	Farmer's Market, 9:00 a.m.-1:00
	Mariotti & Woodall Wedding, 2
Next Sunday -- 6/9	*Pentecost 3--Third Sunday after Pen.*
	Holy Eucharist, 8:30 a.m. & 11:
	Childcare, 10:00 a.m.
	No Choir until September
	No Adult Forum until Septemb
	No Sunday School until Septem
	Blackwelder Funeral, 2:00 p.m.
	AA Meeting, Conference room,

Liturgical ministers for June 2nd

Acoyltes:	8:30	Nancy Charlton, Kevin LeGra Minos, Nicolas Cueter, Gary C
	11:00	*CR1*–Joe Howell, *T1*–Travis R *T1*–Mat Moten, *T2*–Not Assig *T2*–Not Assigned, *Book*–Landi *CR2*–Mike McGee, *Thur*–Paul *BB*–Victoria Woodall
Lectors:	8:30	(OT) Kevin LeGrand, (NT) N:

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Weekly Events Schedule

Today -- 6/23	*Pentecost Fifth Sunday after Pentecost* Baptism of Emily Nicole Lopatki 11:00 Holy Eucharist, 8:30 and 11:00 a. Childcare, 10:00 a.m. No Choir until September No Adult Forum until Septembe No Sunday School until Septemb AA Meeting, Conference room, 2
Monday	AA Meeting, conference room, 8
Tuesday	Staff meeting, 9:30 a.m. Vestry meeting, conference room
Wednesday	Christ House Breakfast, 7:00 a.m. Low Mass at noon Centering Prayer, 6:45 p.m.
Thursday	Matins, 7:15 a.m. Low Mass, 7:30 a.m.
Friday	
Saturday	Farmer's Market, 9:00 a.m.-1:00 p
Next Sunday -- 6/30	*Pentecost 6--Sixth Sunday after Pente* Baptism of James Alexander Brac Sophie Grace Murdock at 11:00 Holy Eucharist, 8:30 a.m. & 11:0(Childcare, 10:00 a.m. No Choir until September No Adult Forum until Septembe No Sunday School until Septemb AA Meeting, Conference room, 2 Cole/Blair wedding, 3:30 p.m.

Liturgical ministers for June 23rd

Acoyltes:	8:30	Nancy Charlton, Kevin LeGra Minos, Nicolas Cueter, Gary C
	11:00	*CR1*--Bill Glew, *T1*--John Willi *T1*--Chuck Helman, *T2*--Not A *T2*--Not Assigned, *Book*--Gary *CR2*--Paul Carter, *Thur*--Heidi I
Lectors:	8:30	(OT) Cynthia Evans (NT) Alii Kinabrew, (PP) John Kinabrev
	11:00	(OT) Jennifer Johnston, (NT) Suggs, (PP) George Barnum

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Weekly Events Schedu

Today -- 12/29	*First Sunday after Christmas-Christm and Carols* Holy Eucharist, 8:30 and 11:00 a Childcare, 8:30 & 11:00 a.m. Choir rehearsal, 9:15-10:45 a.m. No Adult Forum Sunday school, 10:55 a.m. AA Meeting, Conference room,
Monday	Parish Office closed AA Meeting, conference room, 8
Tuesday	Parish Office closed
Wednesday	*New Year's Day* Christ House breakfast, 7:00 a.m Low Mass at noon No Centering Prayer
Thursday	Matins, 7:15 a.m. Low Mass, 7:30 a.m.
Friday	
Saturday	No Farmer's Market until Spring
Next Sunday -- 1/5	*Second Sunday after Christmas* Holy Eucharist, 8:30 a.m. & 11:0 Childcare, 8:30 & 11:00 a.m. Choir rehearsal, 9:15-10:45 a.m. 2:00 p.m. Adult Forum, 10:00 a.m. --What Makes a Saint? Sunday school, 10:55 a.m. AA Meeting, Conference room,

Liturgical ministers for December 29th

Acoyltes:	8:30	Nancy Charlton, Kevin LeGran O'Neill
	11:00	*CR1*--Nancy Charlton, *T1*--Fred *T1*--Denisse Prado, *T2*--Travis *T2*--Miguel Prado, *Book*--Joe Ho *CR2*--Heidi Rasciner, *Thur*--Gar Norcross, *BB*--Leanna Commin
Lectors:	8:30	(OT) Cynthia Evans, (NT) Joan (PP) David Tucker
	11:00	(OT) Susan Morrison, (NT) Jen Johnston, (PP) Beth Moten

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By METRO:

Take the RED line to the Woodley Park station. Wal Connecticut Avenue (up the hill) two blocks to Cathe Avenue. Turn right on Cathedral and the church is lo the right, on the corner of Woodley Place.

From Dupont Circle:

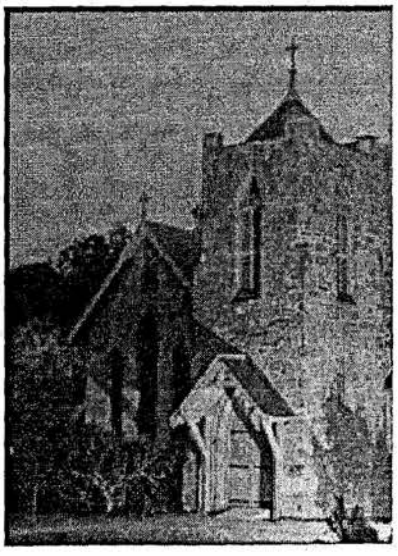
Proceed north on Connecticut Avenue, crossing the over Rock Creek, across Calvert Street into Woodley (Woodley Park METRO station is on the left.) the ne street is Woodley Road; the second cross street is Cat Avenue. TURN RIGHT onto Cathedral Avenue; the located on the right, on the corner of Woodley Place.

From Rock Creek Parkway (from the Mal

Take the LEFT LANE of the parkway ("CONNECT AVE and CATHEDRAL AVE NEXT LEFT) where DRIVE to MARYLAND splits off to the right. Take available right turn (CATHEDRAL AVENUE), und bridge. Proceed up the hill (please note the 25 mph s and at the end of the left curve, the church will be on on the corner of Woodley Place.

From Rock Creek Parkway/Beach Drive Maryland):

After the tunnel, there will be a stop sign; bear right. Immediately take the next available right turn (CATHEDRAL AVENUE), under the same bridge. Proceed up the hill (please note the 25 mph speed limit) and at the end of the left curve, the



church will be on the left, on the corner of Woodley

From Maryland/Connecticut Avenue:

Proceed south on Connecticut Avenue toward the N Zoo, whose entrance will be on the left at the top of next intersection will be Cathedral Avenue; TURN L church is located on the right, on the corner of Wood

Parking

There is a small parking lot at the rear of the church, be entered from Woodley Place by a driveway just be Sunday School Annex at the rear of the church. Park allowed on the right curb lane of Cathedral Avenue a curb lane of Woodley Place on Sundays from 8:30 am pm.

Exhibit 3

Minutes of WPCA Executive Committee Meeting
Thursday, April 19, 2001

Meeting Convened – Martin Murray, the president, opened the meeting at 7:05 pm at the Maret School. Approximately 50 persons attended. In addition to Murray, other executive committee members present were: Abby Martin (secretary), Armen Tashdinian (treasurer), Sally MacDonald (immediate past president); at-large members Jane Howard, Camille Kurtz, Tony Nuland, and Ronnie Rosenwasser; Barbara Ioanes (nominations committee chair), and Detective Nelson Morais (crime awareness).

Woodley Park Crime Discussion – Assistant US Attorney Rachel Carlson Leiber, who is assigned to the 2nd Police District, opened a discussion of area crime. Among other things, she said she hopes her office can operate as a clearinghouse on crime and urged residents to share information with her. During the give-and-take, detectives and police officers from the 2nd district also provided information. The discussion covered such areas as the substantial increase in robberies in the area, sentencing for armed robbery, the graffiti problem, and rotating of police officers every six months.

Committee Reports – Reports included the following:

Marilyn Mural: David White has talked with the building's owner and the artist who agreed to restore the mural. The restoration will cost approximately $5,000 to $6,000.

Oyster School: As a result of the new construction and landscaping plan, 21 new replacement trees will be planted, around the school and in the neighborhood.

Call Boxes: DPW will begin work on call boxes, including putting on primer, in June. All boxes in the WP area have been "adopted." The call box workshop had not yet been scheduled.

Treasurer's Report: The association's total balance (as of April 19) stood at $12,658.95. Tashdinian said the Shoreham West had contributed $500. Murray said he hopes to encourage contributions from other condo associations.

All Souls Church Parking Lot – The Reverend Andrea Hayden, assistant rector of All Souls, asked the WPCA for support for the variance the church intended to apply for related to use of the parking lot for non-church-related functions. A resolution was

*

passed supporting the church's efforts to obtain the necessary variance that would be in line with its existing practice of renting out a limited number of parking spaces to area residents and merchants and providing a site for a weekend farmer's market.

Redistricting – Councilmembers Jim Graham (Ward 1) and Phil Mendelson (at-large) led a discussion of redistricting in DC, which is constitutionally required following the 2000 census, and its potential impact on Woodley Park's two wards (1 and 3), both of which gained population during the 1990s. So that all 10 wards will have approximately the same population, Wards 1 and 3 will have to lose residents to other wards and boundaries will be redrawn. The entire redistricting process must be completed by July 1. Mendelson was to begin public hearings on redistricting April 23.

By-Laws and Minutes – A few additional changes were approved to the proposed by-laws which were to be presented to the membership for approval at the general meeting in May. The minutes for the March meeting were approved.

Meeting Adjourned – The meeting was adjourned at 9:45 pm.

Abby Martin, Secretary
June 16, 2001

Exhibit 4

Woodley Park
Community Association

PO BOX 4852 WASHINGTON, DC 20008

Home
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City Services
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SafetyBrochure

OFFICERS

President: Ron David wpcadc@hotmail.com

Vice President: Roy Woodall; Treasurer: Mary Beth Handsman; Secre
Abby Martin; *At-Large members*: Camille Kurtz, Kathleen McCarthy, I
Rosenwasser, Tony Nuland.

Past President: Martin Murray; **Crime Awareness:** Nelson Morais; **Bus Liaison:** Larry Aurbach; **Traffic Impact:** Jim Listorti; **Horticulture:** Valer Caracelli; **Historical Committee:** Judy Waxman; **Oyster School liaison:** Ioanes; **Acorn editor:** Guenter Riegler; **Community Group Liaison:** Sal MacDonald; **Webmaster:** David White Mrblanc@aol.com

To contact any of the officers of the WPCA, please use:
wpcadc@hotmail.com

Copyright: Woodley Park Community Association

Webmaster: David White

Updated: June 22, 2002

Exhibit 5

PETITION OPPOSING COMMERCIAL LEASE
OF ALL SOULS CHURCH PARKING LOT

After reviewing the attached, relevant portions of the Church's proposed Management Plan for the commercial lease of 17 out of 21 parking spaces from Sunday, midnight through Friday, midnight, we the undersigned neighbors oppose the Church's application for the following reasons:

Pages 7-19 of the Church's Management Plan were attached [redacted] and available for review by all the Signatories.

1. Safety. Unattended cars, especially without a gate to control access, are a magnet for crime – both car theft and breaking and entering into cars. The Church's Management Plan (pp. 11-12) ignores the fact that, according to the Metropolitan Police Department, there were 52 incidents of auto thefts and vandalism in the neighborhood ("Reporting Area 238") during the past year, June 13, 2001 to June 13, 2002. The Plan's reliance on the prospect of "potential loss of parking privileges [and] police patrols" will not protect the neighborhood from crime. (p. 16).

2. Noise. The sound of car alarms, slamming car doors and trunks, the parking lot chain dropping, and loud voices will all be magnified by the tall apartment buildings behind the parking lot that project noise toward the street. The Church's Management Plan rejects posting a 24-hour guard; inaccurately claims that 17 additional cars "will not introduce any new sounds;" and calls upon "residents . . . to contact the police and report the nuisance or effect an arrest of the offending party" even in the middle of the night. (p. 18). The neighbors should not have to choose between ignoring loud noises from car alarms and parking tenants or racing to the parking lot in the middle of the night to confront or have arrested "unruly and disruptive" parking tenants. (p. 18).

3. Character of the neighborhood. Because of limited outdoor space, many residents enjoy their front porches for recreation. Additional traffic, and accompanying pollution and noise, will disturb the neighborhood's quiet character. The Church's Management Plan does not adequately address this issue.

4. Traffic. Woodley Place is a one-way street that already suffers from considerable traffic. Some neighbors are circulating a petition for the city to install speed bumps to try to reduce the speeding that regularly occurs. Seventeen additional cars will add to this traffic. The Church's Management Plan inaccurately claims that 17 additional cars will reduce vehicular traffic because they "will go directly to the Parking Lot" rather than circling the street for parking. (p. 19). This falsely assumes that each of these drivers would otherwise "circle the block in search of parking" rather than use one of the four available commercial lots – all of them closer to the business district; park somewhere else; or use the Metro. (p. 19). It also ignores the fact that the neighborhood will actually suffer a loss of parking spaces if the Church's proposal is adopted.

5. Loss of Neighborhood Parking Spaces. The Church hosts or conducts numerous, regular meetings throughout the week, including AA, Woodley Park Community Association, and religious services. Those attending these meetings currently park in the Church lot. But if the Church leases 17 spaces, many of these people will seek parking in the neighborhood, thereby depriving residents of already scarce parking. The Church's Management Plan ignores this issue and utterly fails to mention these meetings and week-day services. Instead, the Plan focuses on special church events such as funerals and weddings, and dismisses these additional "Church events [as] infrequent and not anticipated to pose a substantial problem for the weekday [parking] tenants." (p. 15). The Church is silent on the problems posed for the neighbors.

6. Absence of notice. None of us received notice that the Church was seeking support of its proposal to lease commercially its parking lot from the Woodley Park Community Association or ANC-3. Nor did the Church ever seek our views on leasing the parking lot before approaching these organizations.

Pages 7-14 of the Church's Management Plan were attached and available to be reviewed by all the signatories – Peter C. Rhoades

	NAME	ADDRESS
1.	Peter C. Rhoades	2771 Woodley Place NW
2.	Jeremi W. Jamal	2276 Cathedral Ave
3	Suzanne May	2829 Connecticut Ave
4.	Kelli Sabbe	2769 Woodley Pl NW
5.	Carol Shanta	2769 Woodley Pl NW
6.	Bill Dell	2773 Woodley Place NW
7.	Meg G. Hart	2260 Cathedral Ave NW #B
8.	J. Miller	2767 Woodley Place NW

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10.	Jason Sfaelos	2747 Woodley Place, NW
11.	[illegible]	2741 WOODLEY PL, NW
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15.	[illegible]	2737 Woodley Pl. NW
16.	[illegible]	2729 Woodley Pl NW
17	[illegible]	2729 Woodley PL NW
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19.	[illegible]	2725 Woodley Place N.W.
20.	[illegible]	2723 Woodley Pl. NW
21.	[illegible]	2721 Woodley Pl NW
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