BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

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

BZA APPLICATION NO. 16912
HEARING DATE: SEPT. 17, 2002
ANC 3D

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

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

II.
JURISDICTION OF THE BOARD

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

III.
BACKGROUND

A. Description of the Subject Property

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

Board of Zoning Adjustment
District of Columbia
CASE NO.16912
EXHIBIT NO.26
#26

measuring approximately 200 feet on U Street, with a depth of approximately 155 feet. The parking lot is located approximately ninety feet to the north of the CVS Store across U Street. The closest street intersection at MacArthur Boulevard and U Street, N.W., is located approximately 124 feet from the entrance driveway. The entrance is not fenced off and there is no fee for parking on the lot.

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

B. Description of Surrounding Area

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

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

C. Description of Proposal

CVS is the lessee of the parking lot at 4817 U Street, N.W., and proposes to continue the parking lot use as previously approved for an additional three year period. CVS was

granted a one-year renewal last September under BZA Case No. 16722. The approval was limited to a one-year period in order to monitor CVS's compliance with its maintenance obligations ad other conditions of the Board's order. Because CVS has fulfilled all conditions of the order and has maintained the lot in good condition, it now seeks a three-year renewal of the parking lot use with the unanimous support of Advisory Neighborhood Commission ("ANC") 3D.

The lot, which contains 78 spaces, is not required parking accessory to the CVS Store but is provided as a convenience to CVS patrons, neighborhood residents and other commercial uses in the neighborhood. The subject property has been used as a parking lot since 1946 pursuant to a series of special exception approvals granted by the Board. (See BZA Order Nos. 1662, 2566, 3688, 5391, 14001, 15064, 16311, and 16722.) The most recent approval will expire on September 25, 2002. A copy of BZA Order No. 16722 is attached as Exhibit E.

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

A. Standard for Approving Special Exception Relief

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) *quoting Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

B. Standard of Review for Parking Lot Special Exceptions

Under section 213, the Board may grant special exception relief for a parking lot in a residential district provided the conditions of that section are met. As demonstrated below, and through exhibits, testimony and other information to be submitted into evidence before the Board, CVS meets all the standards of section 213. The requested relief can be granted without materially impairing the intent and purpose of the Zoning Regulations, and the use will not tend to affect adversely the use of neighboring property.

1. Adjacency to an Existing Commercial District.

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

2. Compliance with Chapter 23 of the Zoning Regulations.

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

a. Impervious Paved Surface

Under section 2303.1(a), all areas devoted to driveways, access lanes, and parking areas must be paved and maintained with bituminous concrete or brick materials, or a equivalent materials, which form an all-weather impervious surface, and which is a

minimum of four inches in thickness. Consistent with this provision, the subject parking lot is paved with impervious asphalt with a thickness of at least four inches. This surface was cleaned, repaired, and restriped last summer and is in excellent condition.

b. Appropriate Layout

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

c. Limitation of Uses on the Site

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

d. Limitation on Proximity to Intersection

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

e. Confinement of Light Rays to the Site

In order to protect adjacent property from unnecessary light wash, section 2303.1(e) requires that any lighting must be arranged so that all direct rays are confined to the surface of the parking lot. The new lighting scheme implemented last summer by CVS is consistent with this subsection. The light poles have been installed in the center area of

the lot to ensure that light rays are directed downward and away from adjacent residential properties. Further, CVS has agreed to adjust the lighting intensity based on community input to ensure continuing compliance with this provision.

f. Maintenance and Landscaping of the Lot

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

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

Maintenance and cleanliness of the lot was a major concern for the community and the Board during last year's approval process. As a result of discussions with the Palisades Citizens' Association ("PCA"), the ANC and through the BZA hearing process, CVS instituted several measures to ensure the cleanliness of the lot. A new maintenance contractor was hired and during the past year, the lot has been cleaned every three days and landscaping and lawn mowing services performed every ten days. The store manager also inspects the site daily and requests supplemental cleaning service, as necessary.

CVS established a dialog with the PCA and ANC to ensure that all maintenance issues are properly addressed to the satisfaction of the community. Both organizations have expressed their satisfaction with CVS's efforts and have acknowledged the dramatic improvement in the lot's appearance.

With respect to the landscaping requirement, the natural vegetation and landscaping along the eastern edge of the site comprises approximately twenty-five percent

of the property, well in excess of the five percent minimum standard. An evergreen screen has been planted along this portion of the site to buffer adjacent residential uses from the parking lot. A privet hedge also borders the southern property line on either side of the entrance to the lot.

g. Adequate Screening from Adjacent Residential Properties

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

Section 2303.2 also reiterates the need for maintenance of the lot. As noted above, CVS has been maintaining the lot in a clean and orderly fashion.

3. Prohibition Against Dangerous Traffic Conditions

In order to protect the character and future development of the neighborhood, section 213.5 states that no dangerous or otherwise objectionable traffic conditions shall result of the use of the parking lot. Since 1946, the parking lot has been operated in a safe and orderly manner without creating any dangerous or objectionable traffic conditions. Further, in coordination with the Department of Public Works, CVS last year extended the public sidewalk along U Street to the entrance of the parking lot in order to enhance pedestrian safety in the neighborhood.

4. Convenience to Other Neighborhood Uses

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

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

V.
COMMUNITY SUPPORT

During the past year, CVS has been contacting the PCA and ANC at regular intervals to identify and address any concerns with the continued use of the parking lot. As a result of CVS's successful maintenance efforts, on July 17, 2002, the ANC voted unanimously to support the parking lot renewal application for a three-year period with the same conditions imposed in the previous BZA order.

VI.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A: Portions of the Sanborn Atlas showing the subject property highlighted in yellow;

Exhibit B: A portion of the Zoning Map showing the subject property highlighted in yellow;

Exhibit C: Site Plan of Parking Lot;

Exhibit D: Photographs of the Subject Property;

Exhibit E: Previous BZA Order Approving Parking Lot Use in Case No. 16722; and

Exhibit F: Outlines of Witness Testimony.

VII.
WITNESSES

A representative from CVS/Pharmacy will testify in support of the application at the September 17, 2002, hearing.

VIII.
CONCLUSION

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

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

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____

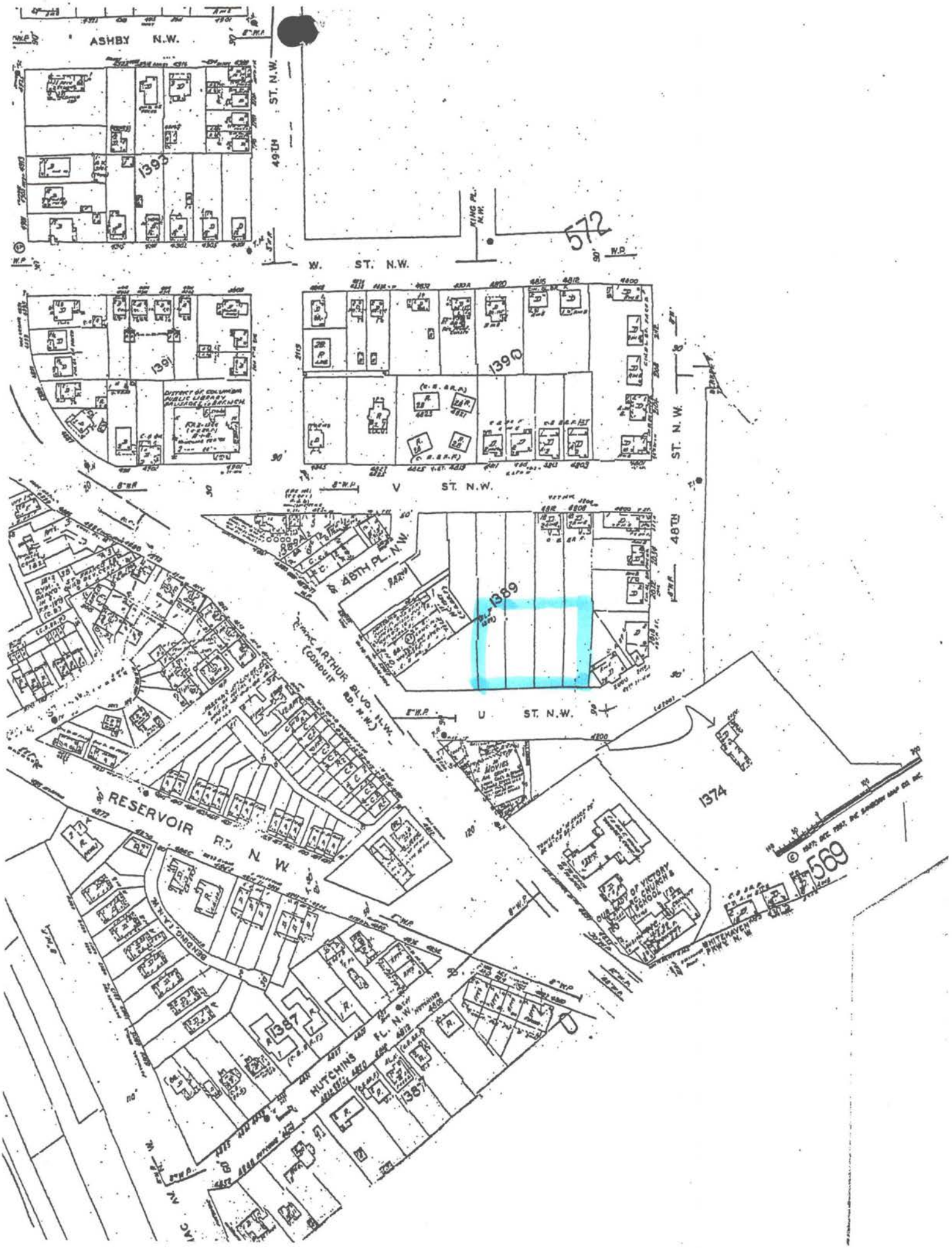
Mary Carolyn Brown, Esq.
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

September 3, 2002

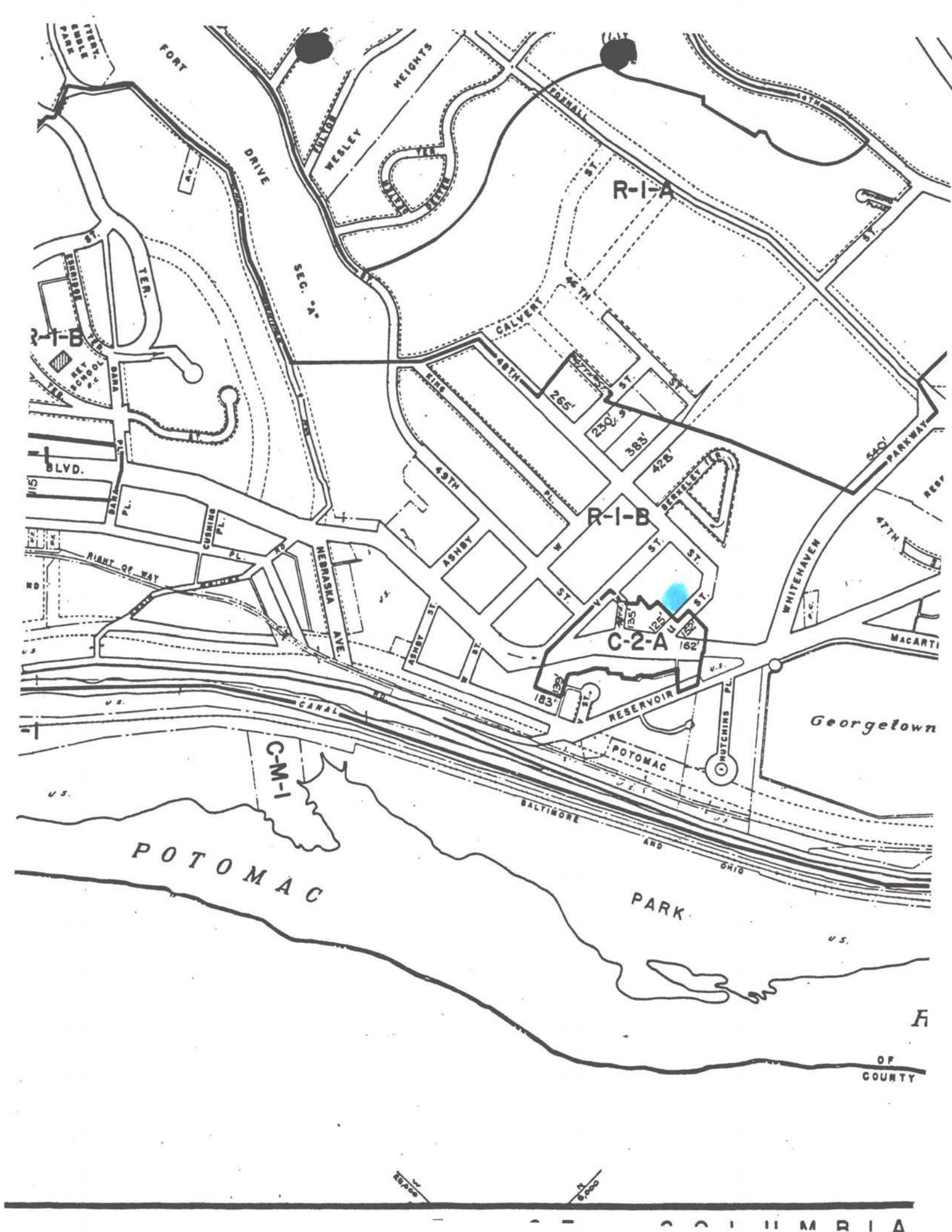
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48TH PL. N.W.
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ARTHUR BLVD. (CONDUIT RD. N.W.)
U ST. N.W.
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RESERVOIR RD N.W.
BEHIND I.A.N.W.
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WHITEHAVEN PKWY. N.W.




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SEC. "A"
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CALVERT
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428'
540'
PARKWAY
R-1-B
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ASHBY
NEBRASKA AVE.
WHITEHAVEN
47TH
C-2-A
135'
125'
162'
183'
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MACARTHUR
CANAL
POTOMAC
HUTCHINS PL.
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KEY SCHOOL
BLVD.
RIGHT OF WAY
COUNTY



DISTRICT OF COLUMBIA GO\ \NT
OFFICE OF THE SURVEYOR

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

Plat for Building Permit of SQR 1389 LOT 816

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

Receipt No: 2370

Furnished to: FREDA HOBAR

Surveyor, D.C.

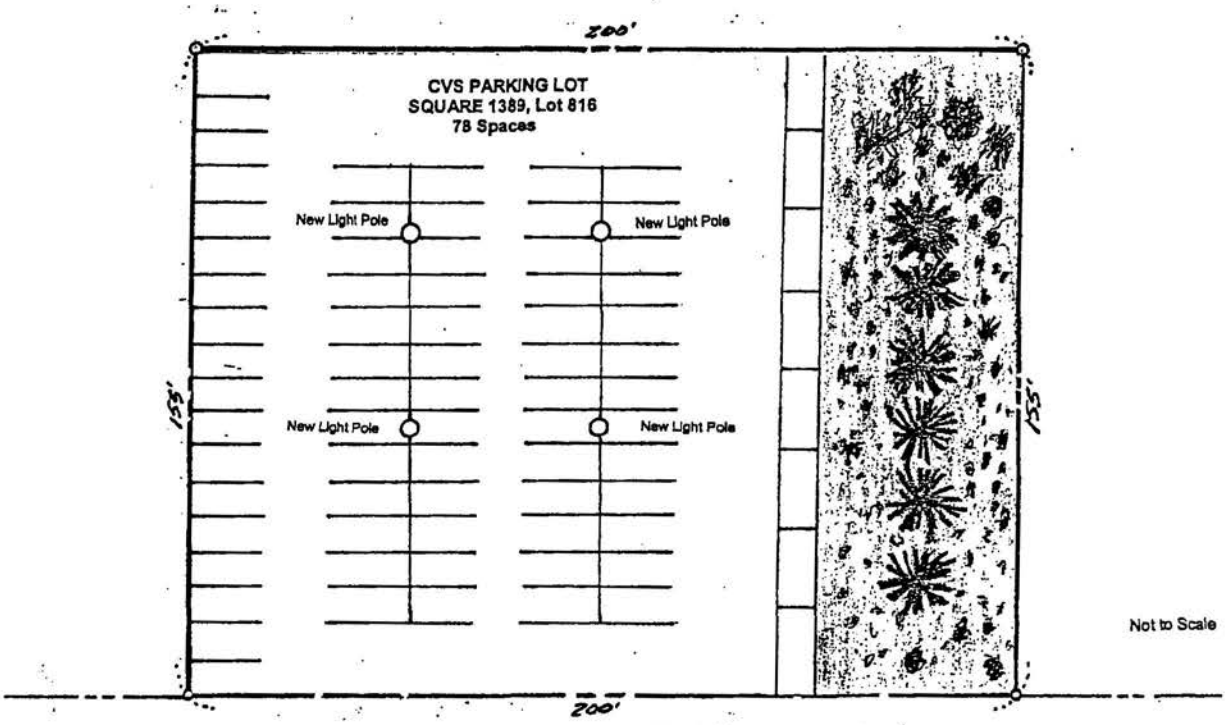
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I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

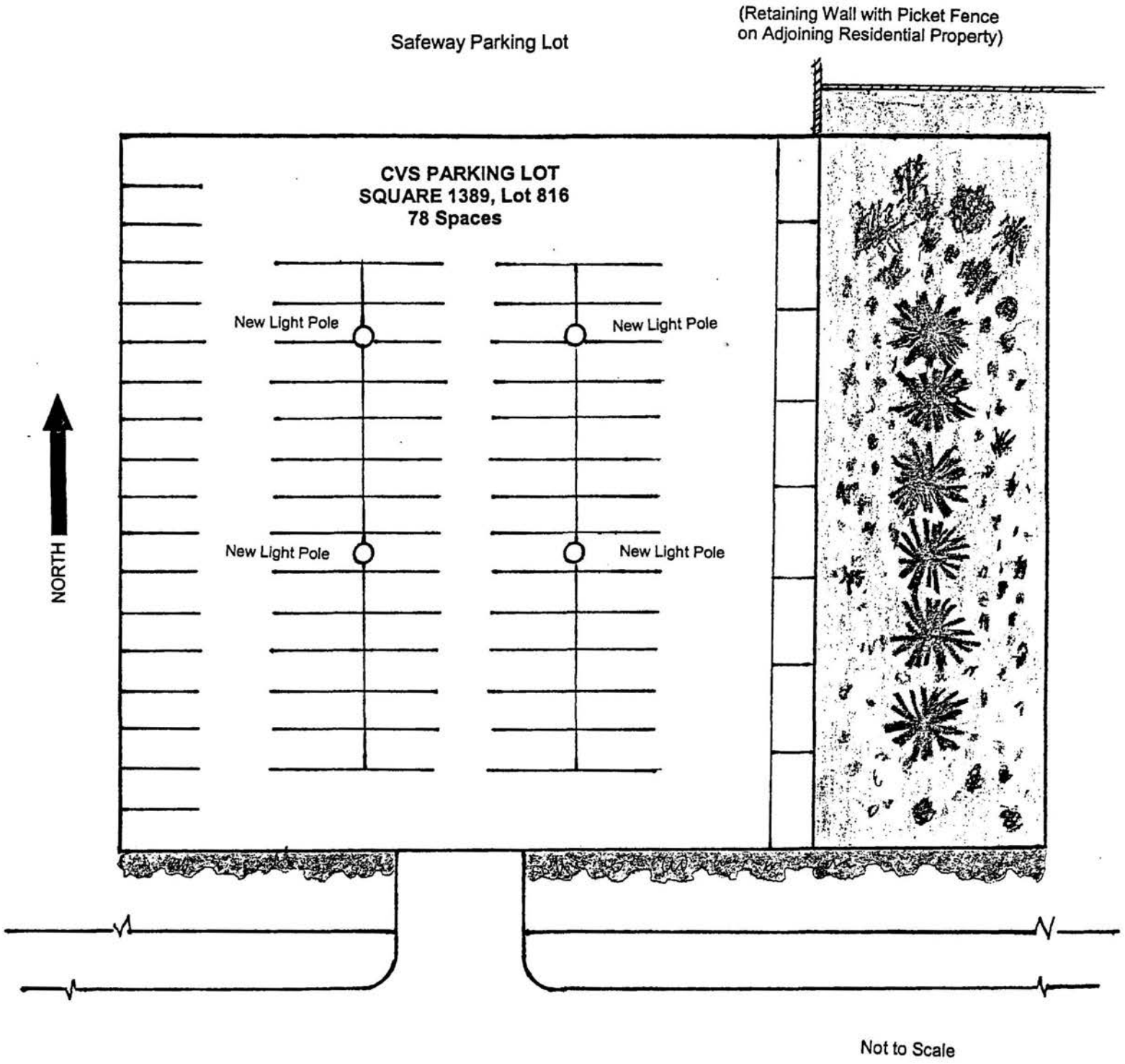
NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



Not to Scale

U STREET

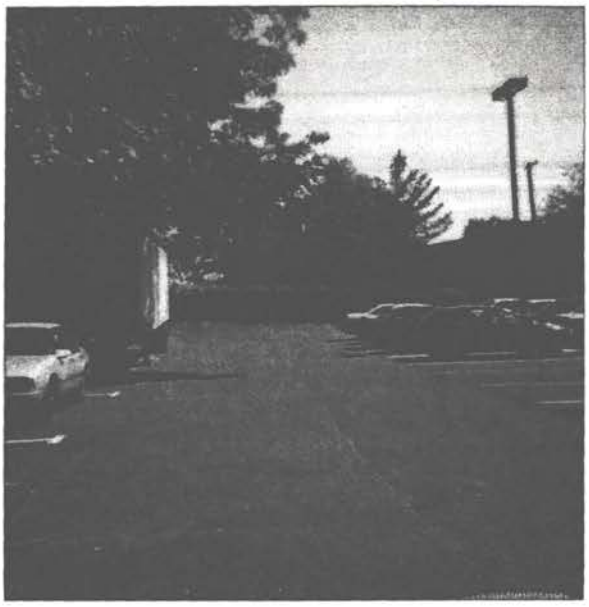
SITE PLAN
(not to scale)





Photographs of CVS Parking Lot
4817 U Street, N.W.
(Square 1389, Lot 816)







GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

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

DECISION AND ORDER

SELF-CERTIFICATION

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

FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. The applicant indicated that no dangerous or otherwise objectionable conditions would result from the continued operation of the subject parking lot. Access to the lot is well marked. The access driveway includes separate entry and exit lanes thereby minimizing the risk of traffic conflicts upon entering and exiting the lot. The applicant further indicated that it would complete, at its sole expense, the unfinished portion of public sidewalk adjacent to the parking lot on U Street between the Safeway store and the entrance to the parking lot, to further protect pedestrian safety.

18. The application also stated that the present character and future development of the neighborhood would not be adversely affected by continued use of the site as a parking lot. The lot has been a feature of the neighborhood since at least 1946 and serves to alleviate parking congestion in the area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a special exception to continue a parking lot use in an R-1-B District. The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property. The applicant must also meet the applicable requirements of section 213 regulating parking lots.

The Board concludes that the applicant meets the requirements of section 213 regulating parking lots and the application meets the standards for granting the requested special exception.

The Board is of the opinion that granting the subject application is in harmony with the general purpose and intent of the Zoning Regulations and Map. Further, it is the view of the Board that to grant the application will not adversely affect the use of neighboring property in accordance with the Regulations and Map.

The Board has afforded the ANC the "great weight" to which it is entitled.

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

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

2. All areas devoted to driveways, access lanes, and parking areas shall be paved and maintained with bituminous concrete or brick materials, or a combination of these materials, which forms an all-weather impervious surface, and which is a minimum of four inches in thickness.

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

4. No other use shall be conducted from or upon the premises, and no structure other than an attendant's shelter shall be erected or used upon the premises unless the use or structure is otherwise permitted in the district in which the parking lot is located.

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

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

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

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

9. All parts of the lot not devoted to parking areas, driveways, access lanes, attendant's shelter, or required screening walls shall be kept free of refuse and debris and shall be paved or landscaped.

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

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

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

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

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: SEP 26 2001

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICCATION NO. 16722

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

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Attested by: Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director

Attest No. 16722/jkn

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OUTLINE OF TESTIMONY
OF REPRESENTATIVE OF CVS

I. Introduction

   A. Position with CVS

   B. Scope of Responsibilities Related to MacArthur Blvd. Store

II. Need for Parking Lot

   A. CVS Patrons

   B. Neighborhood Businesses

   C. Overspill Parking from Residential Streets

III. Operations and Maintenance of Lot

   A. Maintenance Issues

   B. Service Contract

IV. Community Relations

   A. Advisory Neighborhood Commission

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V. Special Exception Standards for Renewal

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VI. Conclusions