BZA
Case No. 16915
Exhibit No. 87

D.C. ... 8:41

To: Board of Zoning Appeal

From: Joseph D. Rich, on behalf of opponents to special exception sought for 2828 Hurst Terrace, NW

9/19/02

Re: BZA Application #16915 - Application for Special Exception

This brief is filed on behalf of all persons ("opponents") in the immediate neighborhood of 2828 Hurst Terrace NW who are opposed to the application for a special exception for a child development center at 2828 Hurst Terrace filed by Barbara Allan and Christine Lonergan. A petition signed by opponents is attached hereto as Attachment 1. In addition, most of those who signed the petition have sought party status as a group. Residents on Hurst Terrace seeking party status all suffer the same adverse impact from the school and are entitled to party status as a group.[1]

At the hearing, the opponents request a time equal to that provided to the applicants to present their opposition.

I. The Opponents

The school at issue is located in an R-1 neighborhood on Hurst Terrace and its adverse impact falls almost exclusively on residents who live on Hurst Terrace and at the Hurst Terrace-Garfield Street intersection. All residents of Hurst Terrace, except the two residents next door to 2828 Hurst Terrace, as well as several residents at the Hurst Terrace-Garfield Street intersection, have signed the petition in opposition and most have also submitted letters in opposition which are in the

[1] Three persons - William Allan, husband of the applicant, Mary Beth Durant, a teacher at the school, and Jennifer Gagnon - have applied for party status in support of the application. See Exhibits 67, 68 and 72. The opponents object to the BZA granting such status. None has complied with the requirements for party status set forth in of 11 DCMR 3106.2. Moreover, Mr. Allan as husband of the applicant and Ms. Durant, as an employee at the school, have personal interests in this matter which makes their appearance as parties inappropriate.

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record.[2]

Neighbors in opposition have not opposed previous applications for special exceptions filed in 1984, 1987 and 1992. Four of the opponents had children attend the school in the past - prior to 1984 when the school was for 8-10 children and when almost all of whom were walked to school by their parents. At that time the school operated without a special exception. In 1984, after these children no longer attended the school, Ms. Allan expanded the school and sought her first special exception. She received the support of these neighbors because of their desire to help her out at a time in her life when she had gone through a divorce and was a single mother.

Many of the other opponents moved into the neighborhood in recent years. None of the opponents had knowledge of the child development center when they bought there property. This is set forth in several of the letters in the record from Hurst Terrace opponents. One indicates that had she known about the school when she purchased, she would have had second thoughts about buying on the block, or not paid as much for their homes, if she had known.[3]

Although conditions have become increasingly intolerable over the years that this school has grown and changed, residents of Hurst Terrace were friends of Ms. Allan's and did not object

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[2] There are also several other residents who live within 200 feet of 2828 Hurst on North Glade Street and Fulton Street, and a few of the opponents live on these blocks. But, these residents are not subjected to any of the serious traffic and parking congestion that residents of Hurst Terrace experience, and thus are not adversely affected by the school to anywhere near the degree that the opponents are. See Attachment 2. It is thus misleading for Ms. Allan to state in her brief that a majority of persons within 200 feet support the application. Moreover, it is not clear what the extent of "support" for the application is. For instance, the adjoining neighbors on Hurst Terrace who did not join the opponents have informed the opponents that they wish to remain neutral, not that they "support" the application.

[3] The claim in Ms. Allan's brief that "many of the current neighbors bought houses on the street knowing there was a center already there" is simply not true.

or complain because of this friendship. Particularly important in this continued patience and tolerance was an understanding that the special exception would be limited to Barbara Allan only and that the school would revert to a single family residence when she ceased operating it. The 1984 and 1987 special exceptions specifically limited operation of the facility to Barbara Allan. It was only recently that Ms. Allan made known her plan to retire in a few years and sell the residence and school business to Christine Lonergan, someone who has never lived near or on Hurst Terrace. See Application, Exhibit 3. Ms. Lonergan is a co-applicant for this special exception. Upon learning of this plan, the opponents made known to Ms. Allan their opposition to the continuation of the school business beyond the time that she lived in the home. Such a transfer will mean that the school business is likely to become a permanent school business beyond Ms. Allan's operation. We asked her to reconsider this plan at an August 20 meeting, but she refused.[4]

II. Position of Opponents

While we believe the evidence in this case is sufficient to deny the application, the opponents do not wish to shut the school down, contrary to statements in Ms. Allan's brief and in many of the letters of support.[5] Rather, because of the significant changes in circumstances at the school and on the block since the

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[4] Our concern about, and opposition to, Ms. Lonergan's buying and operating the school business was increased when it was recently learned that she has operated a summer camp for twenty children at her present home at 4751 Berkeley Terrace, apparently without a special exception.

[5] Opponents specifically informed Ms. Allan at the August 20 meeting that we did not desire to shut the school down. Thus, the claim in her brief that since many of us sent our children to the school in the past, we "no longer have a need for it and want to shut it down" is particularly objectionable. (Brief, p.6) As noted above, many of us supported and tolerated the school for the almost twenty years since our children attended the school, out of our friendship for Ms. Allan. Nor is it true, as charged in several letters submitted in support, that the opponents are mostly retired persons. Only one resident of Hurst Terrace - a 95 year old woman across the street from the school - is retired and only Barbara Allan has indicated plans to retire. All others are fully employed.

last special exception was granted, and other reasons discussed below, we seek a special exception which contains the same conditions as those recommended by ANC 3-D in their September 5 letter (Exhibit 70), with the following modifications:

(1) The special exception should be limited to no more than three years for several reasons. First, given the change of circumstances found by the ANC (and discussed in detail below), any extension should be limited to three years to review whether or not the adverse conditions now existing at the school continue in the future. Second, because a new traffic plan is being implemented, and increased parking problems have already surfaced as a result of this plan, a review of the special exception and this plan in the near future should be required. Third, a Strategic Neighborhood Action Plan (SNAP) for the Ward 3 area in which the school is located was adopted in 2001. This plan expressed concerns of citizens with encroachment of institutions like this school into quiet, residential neighborhoods. There is a possibility that the continuing planning process will result in changes to the city plan in the future, making a review of this special exception in the near future a prudent course.[6]

(2) The special exception should include a condition to reduce the student cap to 8-10 students, to be phased in over three years. In light of the discussion below about the normal size of child development centers in residential homes, this is a more appropriate level for a school located in a residential home on a street such as Hurst Terrace.

(3) The special exception should include a condition that the school be permitted only as long as the property is a residence. This is to protect against potential future use of the house as a dedicated school facility, not as a residence.

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[6] Ultimately, we think a school of this size and with its long waiting list and demand should be relocated to an appropriate facility like a church or other facility which could be dedicated solely to use as a school. A special exception limited to three years would permit time for the owner of the school to find a suitable location.

III. **Argument**

Barbara's Montessori School is located in the residence of Barbara Allan. The school is located in a R-1 zoned neighborhood and "the R-1 district is designed to protect quiet residential areas now developed with one family detached dwellings," 11 DCMR 200.1. Pursuant to 11 DCMR 3104.1 the BZA is permitted to grant special exceptions in such neighborhoods where:

> "in the judgment of the Board, these special exceptions will 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 Maps.

Standards for granting a special exception for a child development center are governed by Section 205. This section includes the following provisions:

> 205.3: The center shall be located and designed to create **no** objectionable traffic condition and no unsafe condition for dropping off or picking up children. (Emphasis added)
>
> 205.4: The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors.
>
> 205.5: The center, including any outdoor play space shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions.
>
> 205.8: The Board may approve more than one child development center in a square or within 1,000 feet of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse effect on the neighborhood due to traffic, noise operations, or other similar factors.

The applicants cannot meet their burden under these provisions. Already, after conducting a full hearing concerning this application in July and September, ANC 3D reached the following conclusion:

"Since the last zoning exception was approved ten years ago for a child development center at [2828 Hurst Terrace], there has been great increased traffic to the vicinity caused by the enlargement of Key School across the street and the greater density of residential and commercial uses in the neighborhood as well as an increase in the number of students at this center who are driven rather than walked to school." (Emphasis added)

The evidence discussed below supports both this finding as well as additional findings indicating the adverse and objectionable conditions residents on Hurst Terrace must endure because of the school. It has evolved into a major business on a small residential block, and a child development center of this size located in a residential home, on a quiet residential block like Hurst Terrace is very rare, if not one of a kind. Traffic and parking congestion has increased significantly since the last special exception was granted. In sum, we would submit that the special exception regulations never were intended to permit a major school business like Barbara's Montessori School on a small residential block like Hurst Terrace.

1. Nature and Size of the School

The school is an incorporated business serving preschool age children. Past special exceptions capped student enrollment at a high level for such a facility - 20 students in 1984 and 1987 and 23 students in 1992. However, there have been in excess of 40 children enrolled in some years, albeit not every day of the week.[7] Tuition is substantial, making the school akin to a mini private school. As such, a major school business is being operated on a quiet, residential street which is zoned R-1.[8]

Barbara's Montessori School is different from all child

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[7] By comparison, St. Patrick's School is seeking a special exception for a school for 60 middle school students in a facility on Mac Arthur Blvd. used for institutional use in the past.

[8] Moreover, it is a school business that has apparently been out of compliance with at least one requirement of such a business. The school uses residential trash pick-up provided by the city even though private trash pick-up is required for a school of this size.

development centers in Ward 3. Evidence will show that almost all child development centers are not located in residential homes where the operator of the facility resides. Out of 32 child development centers in Ward 3, all but four are operated in facilities appropriate for a school of this size, like churches, synagogues, existing school facilities, business facilities such as that operated by Fannie Mae or professional child care businesses operating in a non-residential facility. Of the four that operate out a residential home like Barbara's Montessori School, the other three enroll only 4 or 5 children.

In sum, operating a school business the size and magnitude of Barbara's Montessori School out of a residential home appears to be an exception to child development centers in Ward 3. In these circumstances, it is very misleading for Ms. Allan to claim in her brief that this is a "tiny" child development center. Indeed, we would submit that the BZA should reduce the student cap on the school to be consistent with other centers located in residential homes.

B. **Traffic**

The BZA exceptions granted in 1984 and 1987 included the following findings:

> "Ms. Allan testified that the majority of children live within walking distance of the site. No more than five children reside outside the immediate area and they are dropped off and picked up by parents who work in the area." Finding #16, 1987 Order.
>
> "The site is located on a local street, having a minimum volume of through traffic and primarily serving as access to the properties fronting on it. The street [was] lightly traversed, and experience[d] its greatest traffic volumes during arrival and departure times at the Key Elementary School." Finding # 15, 1984 Order.

Since these findings were made, there have been significant changes in the school, and in Hurst Terrace itself, which have resulted in a major increase in traffic on the block and in a significant adverse impact on Hurst Terrace residents. First, the nature of Barbara's Montessori School has changed significantly since the earlier exceptions. In direct contradiction to BZA finding #16 above, virtually all students

now attending the school have for many years been driven to school. Almost all live outside the immediate Hurst Terrace neighborhood, including many from Maryland or Virginia.

As a result, the school generates a greatly increased volume of traffic compared to what was expected and intended in earlier special exceptions. At drop-off and pick-up time, the line of cars coming to the school has often extended down Hurst Terrace to Garfield Street. This has caused significant problems for the residents, including the following:

1. Because many of the parents drive large SUVs and often get out of their cars to chat, the one open lane on the street is blocked, making it difficult or impossible for cars to drive on Hurst Terrace. See Attachment 3 (photographs of line of cars, December, 2001);[9]

2. Because of this traffic congestion, residents of the block have had their driveways blocked, their parked cars blocked, been unable to return to their home at noon for lunch, been forced to park down the street from where they live when returning from errands, and have had contractors who have encountered difficulty in working at their property. Several residents operate small home businesses and are at home all day. They especially feel the impact of this traffic congestion.

3. On one occasion, emergency medical vehicles were impeded by school traffic in their efforts to reach the home of a resident who needed to be transported to the hospital for emergency surgery. The children of the 95 year old resident expressed in their letter of opposition a concern that the same dangerous condition may exist for their mother were she to need emergency medical attention.

Second, in recent years, Hurst Terrace has become a cut-thru for traffic attempting to avoid the traffic build-up at the corner of MacArthur Blvd. and Arizona Avenue. In short, Hurst Terrace is no longer a "lightly traversed" street referred to in Finding #15 above, and the traffic from the school has a far more detrimental impact on the block than it did when earlier special exceptions were granted.

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[9] Additional photos will be submitted at the hearing.

Third, Key School, a public school on Hurst Terrace, has been undergoing a major addition in the past two years and when completed will increase its student enrollment and faculty at least 50%. The construction in this period has added to the traffic congestion on the block as well. It is unlikely to improve when the school is completed because of the substantial increase in its enrollment.[10]

Fourth, the neighborhood density has increased in recent years due to new, large homes and increased business formation on Mac Arthur Blvd. Moreover, there are more home businesses on Hurst Terrace than the past. This, like other changes on the block, means the adverse impact from traffic and parking congestion from the school is significantly increased.

In sum, since the last special exception was granted ten years ago, there has been a major increase in traffic congestion on Hurst Terrace, much of it resulting from the change in the nature of the school which has increased traffic at the child development center. Section 11 DCMR 205.3 specifically states that the "center shall be located and designed to create **no** objectionable traffic condition." Ms. Allan cannot meet her burden of demonstrating this, and given the magnitude of this school business, this center is no longer appropriate for a small, residential block like Hurst Terrace.

Ms. Allan argues that her recently developed "traffic plan" will address the increased traffic congestion.[11] The ANC recommendation includes specific conditions incorporating this plan. While these conditions will help alleviate traffic congestion in front of the school, it cannot fully address the traffic problem. As this plan has been implemented since the

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[10] Key School does not presently operate a child development center, but were such a facility added to the school, Section 205.8 would impact the continuation of Barbara's School.

[11] In the past, Ms. Allan placed traffic cones in front of her house to improve access to the traffic dropping off and picking up children. It did not prevent the traffic lines discussed above. Moreover, under D.C. regulations, "no person or authority shall place or maintain any traffic control or device upon any street . . . except by permission of the Director of Public Works." See 18 DCMR 2102.1. To our knowledge no such approval has been received.

start of school, many parents now park on the street to comply with the limitation on the size of traffic lines on the street. This adds to the parking problems on the block. Moreover, the plan tends to spread the traffic congestion around the neighborhood. By limiting how many cars can be lined up in front of the school - which is the central component of the plan - other arriving cars have to circle the block waiting for their turn, thus creating increased traffic on small residential streets such as Dana Place, Eskridge Terrace and Garfield Street.

B. Parking

At the time of the 1984 special exception, the BZA found:

> ". . . on-street parking is widely available and there is sufficient space available on-street to accommodate traffic movements to and from the site." 1984 BZA Order, Finding #19

As the nature of the school and of Hurst Terrace have changed over the years, this is no longer true and significant parking problems have developed on the block.

Initially, it is important to emphasize that this school, which has enrolled more than 40 children in some years, has never provided any off-street parking. Ms. Allan's house has a small driveway in which a vehicle that she owns is parked. All employees and visitors must find parking on Hurst Terrace or Garfield Street.

With increased parking on the block from the expansion of Key School and the increased density in the neighborhood, the lack of off-street parking at the center school has had an increasingly negative impact on parking on the street. With competition for parking spaces from Key School teachers, employees and visitors from Barbara's School must park on Hurst Terrace or on Garfield Street. This has interfered with parking available for residents in front of their homes, especially when parents visit the school. Indeed, on days when special events are held and parents visit the school, the immediate neighborhood is overrun with traffic, with many cars parked up and down Hurst Terrace and on to Garfield Street, sometimes illegally. See Attachment 4 (photographs taken as recently as September 9, 2002) indicating the major parking congestion caused when parents

attend special events like the opening of school.[12]

Like the traffic issue, what once was a manageable problem on a "lightly traversed" street has become a very serious problem for residents who live on Hurst Terrace and the Hurst/Garfield intersection.

4. Encroachment of Schools into Residential Neighborhoods

Since its inception, this school has evolved into a lucrative mini-private school. Its continuation on a quiet, small, residential street is an example of the type of intrusion of institutions and schools into residential neighborhoods that has caused major concern in Ward 3.

This kind of intrusion has become the subject of a SNAP plan for Ward 3 and the issue is being considered now by city planning officials. Such encroachment on a small block like Hurst Terrace should not be permitted to continue, and especially should not be permitted to be made permanent.

5. **The Length of the Special Exception**

In her brief, Ms. Allan goes to great length arguing for a special exception which will run indefinitely or for at least ten years. Such an extension is will ensure that the adverse conditions on the opponents from the school will continue indefinitely and perhaps permanently should not be permitted. On page 4, above, we have set forth the reasons for limiting such an exception to no more than three years. Here, we respond to Ms. Allan's arguments.

Ms. Allan argues that the cost incurred in running the

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[12] In her brief, Ms. Allan argues that because D.C. regulations do not require that off street parking be provided at child developments centers unless there are more than four employees at the child development center (11 DCMR 2101.1), parking is not an issue. However, given the size of the school and number of parents that visit it on various occasions, parking is very much an issue for the opponents in that the school increases parking congestion in front of their homes. At a minimum, the parking congestion caused by the school "tends to affect adversely the use of neighboring property." 11 DCMR 3401

school requires a longer limitation because "no rational person would take on the expense of purchasing the house and business" without such an extension. We submit that this argument highlights the impropriety of extending the special exception beyond three years. The argument indicates the magnitude of the business operation on the block, something we believe the BZA should be discouraging in residential neighborhoods like ours.

Ms. Allan argues that the BZA has the authority to review the special exception in the future if its conditions are violated. Our concern is not with potential violations of any conditions. Rather, changing conditions at the school and on Hurst Terrace have resulted in a school business inappropriate for the block. While we believe existing conditions justify denial of the application, we think that, at a minimum, the special exception should be of short duration to permit review of whether it is appropriate in the near future.

Ms. Allan argues that a limited special exception will deter educators from opening needed preschool facilities. But, we believe there should be deterrence of establishing a school of this size in a residential home. As discussed above, child development centers in residential homes are generally far smaller than this - four or five children. A special exception of unlimited duration would encourage, not deter, schools of this size in a residential home. Rather, special exceptions of unlimited duration for child development centers should only be provided to facilities appropriate for a school of this size. To take the example used in Ms. Allan's brief -- Palisades Community Church - which is located in the type of facility that a school of this size should be located, has been granted a special exception with an indefinite duration. This is not surprising given the fact that there was no neighborhood opposition and the facility is appropriate for a school of this size. That certainly is not true in this case.

IV. Conclusion

For the reasons stated above, the BZA should deny the special exception sought by Ms. Allan. Special exceptions for child development centers of this size should not be permitted to operate in residential homes on a small, residential street like Hurst Terrace. Any special exception permitted should include conditions limiting (1) its duration to three years so it does not become a permanent fixture on our block; and, (2) its size to

make it consistent with other child development centers that operate out of residential homes.

ATTACHMENT 1

Opponents to Application

1. Hannah and Mike Mazer, 5001 Hurst Terr.
2. Carol and Larry Beaver, 5002 Hurst Terr.
3. Meredith Olson, 5049 Garfield Street
4. Antonia Geber, 5035 Garfield
5. Mary Leonard, 5030 Garfield
6. Sherry and Joe Rich, 2847 Hurst Terr.
7. Kate Martin, 2843 Hurst Terr.
8. Christine Allison, 2840 Hurst Terr.
9. Ursula Daniel, 2839 Hurst Terr.
10. Susan Smith, 2835 Hurst Terr.
11. Nick and Lynn Kauffman, 2831 Hurst Terr.
12. Kathy Sternberg, 2831 Hurst Terr.
13. Lucy Cohen (through her daughters), 2827 Hurst Terr.
14. Peter Whitmore, 2820 Hurst Terr.
15. Dana and Helen Dalrymple, 2825 Arizona Ave.
16. William Fraser, 2827 Arizona Ave.
17. Susan Spaulding, 5150 Fulton Street

March 10, 2002

Dear Barbara and Bill Allan:

This is to give you notice of our opposition to a renewal of the special exception you presently hold to operate a child development center at 2828 Hurst Terrace pursuant to Section 205 of the D.C. Municipal Regulations. Although you have not responded thus far to our expressed request to meet with you we hope you will do so in the very near future.

1. Neil and Lynn Kauffman
2. Sherry Rich 2847 - Hurst Ter NW
3. Joe Rich "
4. Christine Allison. 2840 Hurst Terrace
5. K Stanton 2831 Hurst Terrace
6. [illegible] 2839 Hurst Terrace
7. [illegible] 2875 Hurst TERRACE
8. Mary K. Leonard 5030 Garfield St. NW
9. [illegible] 2843 Hurst Terr NW
10. [illegible] 2820 Hurst Terr N.W.
11. Carol W. Reaper 5002 Hurst Terr. N.W.
12. [illegible] 5002 Hurst Terr, N.W.
13. [illegible] 5001 Hurst Ter. NW
14. [illegible] 5001 " " "
15. Meredith A Flom 5049 Garfield
16.

July 12, 2002

D.C. Board Zoning Board of Adjustment:

The following residents do not support the continuance of a special exception for the operation of a child development center at 2828 Hurst Terrace NW.

Increased commuter and commercial traffic along the MacArthur Boulevard corridor and a major expansion of Key Elementary School have already burdened our small residential area with extra traffic congestion and parking problems. The child development center at 2828 Hurst has no appropriate parking for parents or employees and at times has caused unsafe traffic congestion. It has quadrupled its enrollment since it was founded.

We are especially opposed to a special exception being attached to property, as has been requested by the owner and operator of the property and business, with the purpose of selling the combined enterprise.

Thank you for your consideration.

	Signature	Address
1)	Susan Spaulding SUSAN R.G. SPAULDING	5150 FULTON ST NW WDC 20016
2)	Helen W. Dalrymple Helen W. Dalrymple	2825 Arizona Ave NW 2825 Arizona Ave, N.W.
3)	DANA G. DALRYMPLE Dana G. Dalrymple	
4)		2840 Hurst Terrace NW 2827 Arizona Av. NW
5)		
6)		
7)	Leslie Daniel	2839 Hurst Ter. NW
8)	Carol W Barner	5002 Hurst Terr. N.W.
9)	Larry Beard	5002 Hurst Terr, N.W.
10)		

Kate Mazer 2543 Hurst Terr NW

11. Hannah C. Mazer 5001 Hurst Ter. NW

12.

13.

14.

15.

16.

17.

18.

19.

20.

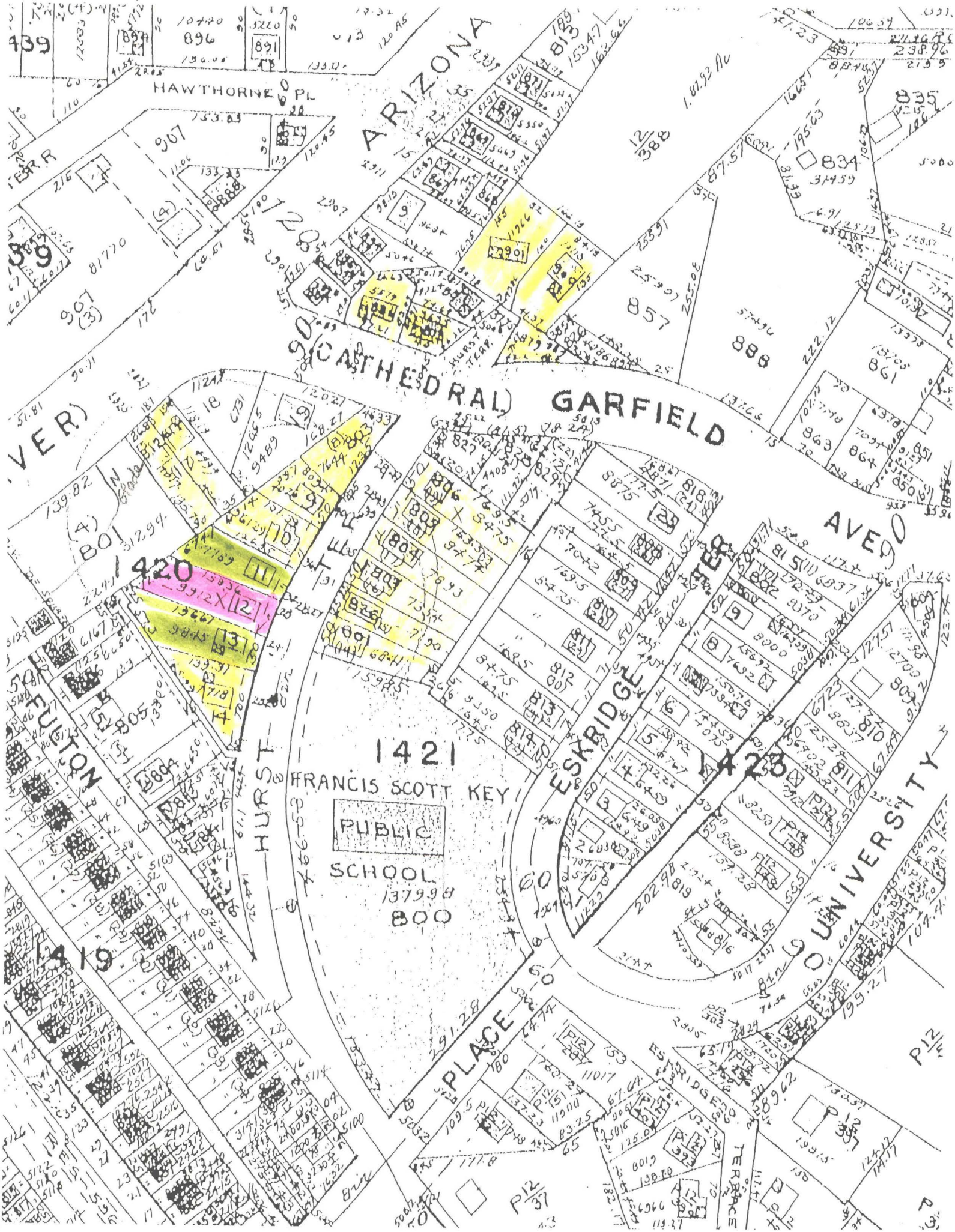
ATTACHMENT 2

Map of Hurst Terrace/Garfield Street Locating Opponents

Pink -- Location of School

Yellow -- Opponents

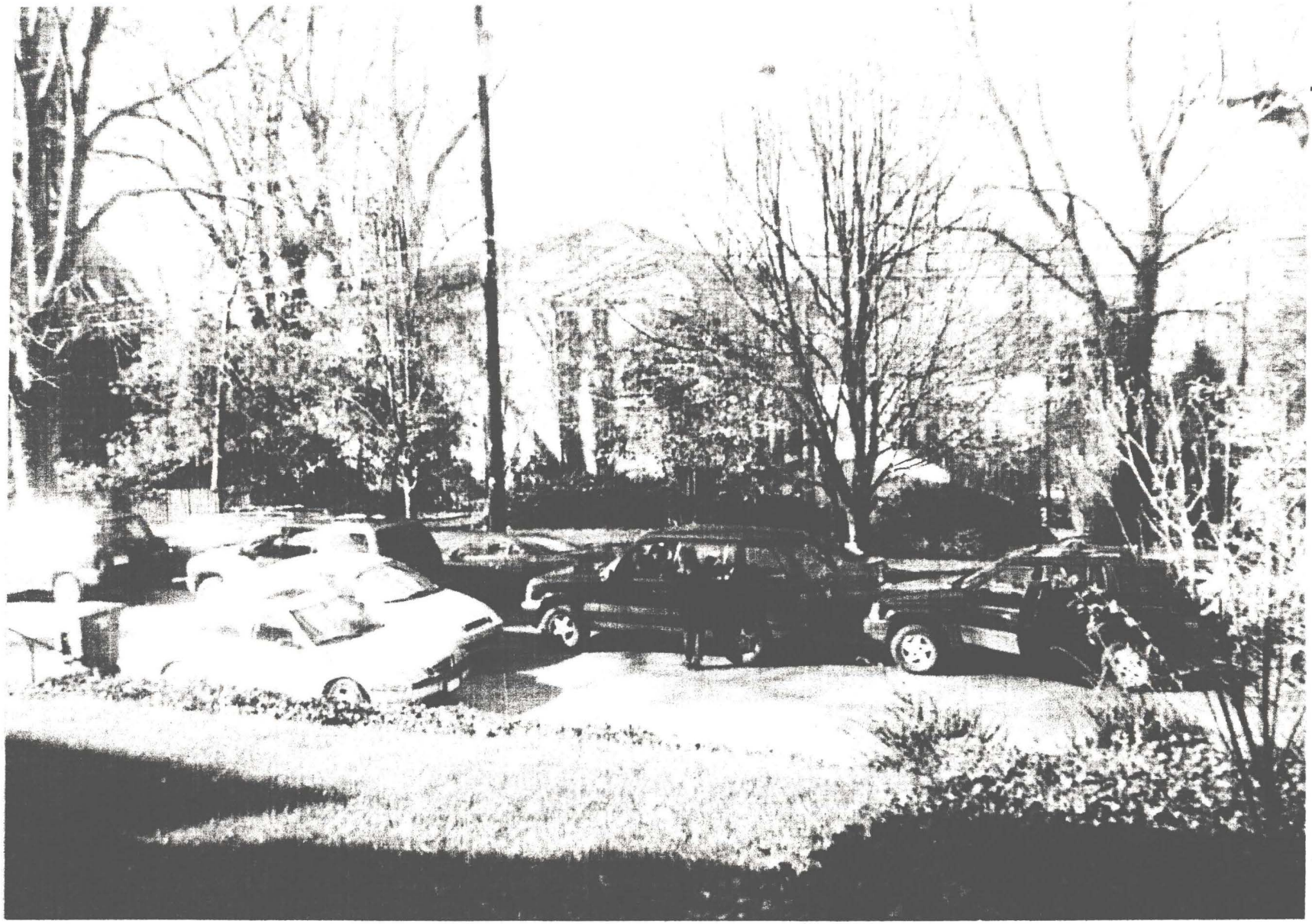
Green -- Neutral


ARIZONA
HAWTHORNE PL
(CATHEDRAL) GARFIELD
AVE
ESKRIDGE
UNIVERSITY
HURST
TERR
PLACE
1420
1421
1423
1419
FRANCIS SCOTT KEY
PUBLIC
SCHOOL
137998
800
907
896
891
857
888
861
863
864
834
835
805
801
807
(3)
(4)
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(12)
(13)
(14)

ATTACHMENT 3

Photographs taken December 1, 2001

Traffic Lines Extending from School to Garfield Street



12/01 Taken from 2847 Hurst Terrace at Garfield Street interscction

ATTACHMENT 4

Photographs taken May, 2002 and September 9, 2002

Parking Congestion on Hurst Terrace and Garfield Street



Garfield Street
at Hurst Terrace intersection
with cars parked from Arizona Ave
to Eskridge Terrace.
9/02



Garfield Street
near Eskridge Terrace intersection
9/02



Hurst Terrace and Garfield Street NW

5/02



Garfield Street and Hurst Terrace NW

5/02