Law Offices
STEPHEN N. GELL
A Professional Corporation

1101 30th St. N.W.
Fifth Floor
Washington, D.C. 20007
Telephone: (202) 625-8311
Facsimile: (703) 522-5503

October 16, 2002

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

RECEIVED
D.C. BOARD OF ZONING ADJUSTMENT
2002 OCT 16 PM 4:13

Re: BZA Case No. 16920
1629 21st Street, N.W. Square 93, Lot 122
Burton Marinkovich Fine Arts, William Bass

Dear Mr. Griffis:

During our discussions with neighbors we have been sensitive to the concerns expressed and have undertaken several assurances. In the spirit of that negotiation effort, we hereby express our willingness to have the following conditions imposed on the granting of the special exception:

1. When the Gallery participates in art walks or other joint gallery showings, or when it sponsors Gallery openings to which the general public is invited, no alcohol will be served. These shall be limited to 12 per year. Gallery events limited to personal invitation will not serve alcoholic beverages except wine and beer. Events will end at 11: p.m.

2. Security lighting will be sufficient to provide reasonable security but will be directed away from neighboring windows. Those lights not directed at the building will utilize low glare lights.

3. The Gallery will encourage Metro use by noting, in its advertisements and invitations, the proximity of the Metro Station at Q street and Connecticut Ave. It will also encourage guests to use public parking facilities.

Enclosed is a list of galleries that have opened or closed since 1993. It was prepared by viewing the gallery signs, reviewing gallery association publications and cross checking certificates of occupancy. By our count, there has been a significant net

BZA
Case No. 16920
Exhibit No. 42

Board of Zoning Adjustment
District of Columbia
CASE NO.16920
EXHIBIT NO.42

loss of galleries during that period. The list does not include the Phillips expansion of its museum, a different use established under a different set of guidelines. In addition, the expansion has not occurred yet.

Thank you for your consideration. Please call if there are any questions.

Yours very truly,

Stephen N. Gell

cc: Andrea Marinkovich
William Bass
Vince Micone, Chair, ANC 2B

BURTON MARINKOVICH
FINE ART

October 5, 2002

GALLERY CLOSINGS IN DUPONT CIRCLE SINCE 1993

NEIGHBORHOOD OF 1629 21ST STREET

Manfred Baumgartner Galleries
2016 R Street
moved to New York about two years ago

America Oh Yes!
2020 R Street
moved out this year

Addison/Ripley Gallery
9 Hillyer Court
moved to Georgetown 1999-2000

Brody's Gallery
1706 21st Street
closed in 1993

Jo Tartt Gallery
2017 Q Street
closed in 2000

Joanna Tyler Gallery of Contemporary Photography
1727 21st Street
closed in 1994

Kimberly Gallery
1621 21st Street
closed in 1998

OTHER PARTS OF DUPONT CIRCLE

Nancy Drysdale Gallery
2103 O Street
closed in about 1996

Henri Gallery
1500 21st Street
closed in 1995

1506 Twenty-first, NW • Washington, DC 20036 • Tel: 202-296-6563 • Fax: 202-296-6901

BURTON MARINKOVICH

FINE ART

Veerhoff Gallery
1604 17th Street
closed (?)

Venable Neslage Galleries
1803 Connecticut Avenue
closed (?)

Touchstone Gallery
1607 17th Street
moved to 7th Street

Fine Art & Artists
1710 Court
moved to Georgetown

* Galleries Magazine (local gallery listing) lists 30 galleries under Dupont Circle in November 1993; 16 galleries are listed in October 2002

GALLERY OPENING IN DUPONT CIRCLE SINCE 1993

NEIGHBORHOOD OF 1629 21ST STREET

Ira Pinto Gallery
1621 21st Street
(takes place of Kimberly Gallery)

Gary Edwards Gallery
9 Hillyer Court
(takes place of Addison/Ripley)

Fondo del Sol Gallery
2112 R Street
*only new gallery in neighborhood since 1993 currently in operation

OTHER PARTS OF DUPONT CIRCLE

Conner Contemporary Art
1730 Connecticut Avenue

Global Fine Art
1732 Connecticut Avenue

1506 Twenty-first, NW • Washington, DC 20036 • Tel: 202-296-6563 • Fax: 202-296-6901

Lindsley Williams is an experienced land use planner and has extensive knowledge of the comprehensive planning processes (with both Federal and "municipal" components), and the zoning regulations of the District of Columbia. He has appeared as an expert witness in before the Zoning Commission of the District of Columbia, and has provided assistance to clients with matters pending before the Board of Zoning Adjustment. Mr. Williams has also testified as an expert in the Superior Court of the District of Columbia and been deposed as an expert in zoning matters before that Court.

He also has extensive knowledge of the permitting process of the District of Columbia, and its relationship to the locally prevailing building code (BOCA), and the designation of historic areas and properties, and their relationship to both the permitting process and relevant aspects of zoning procedures where historic designations play a role.

For eight years, concurrent with his full-time Federal employment as a Commissioned Officer of the U.S. Public Health Service, Mr. Williams served on the Zoning Commission of the District of Columbia including serving as its Chairperson and Vice Chairperson. By virtue of that position, Mr. Williams also served, as did other Commission members, as one of the members of the Board of Zoning Adjustment.

While serving on the Commission itself, Mr. Williams participated in a wide variety of matters appropriate to its jurisdiction, which in the District of Columbia includes the approval (or disapproval) of rezonings and Planned Unit Developments -- matters most often decided in other jurisdictions by a local elective body such as a City or County Council. During his tenure, the Zoning Commission considered and decided an average of two cases per month. These included significant, and hotly debated, development proposals and complex reforms of the Zoning Regulations themselves in areas of policy (e.g., rules applicable within given zones, map changes) and technical matters (e.g., standards for parking and loading).

While serving as one of the "rotating" members of the Board of Zoning Adjustment, Mr. Williams considered typical requests for variances and special exceptions, along with appeals of decisions reached by the Zoning Administrator. Under District rules, the Board of Zoning Adjustment is the body that reviews and approves "campus plans" on which approval of individual development projects of local institutions of higher learning rest. He also suggested ways by which the Board could streamline its processes, which were adopted.

Mr. Williams is widely regarded in matters of land use, planning and zoning. After retiring from his career of active-duty as a PHS officer (August 1966 - September 1996), and in addition to providing planning advice to various clients, Mr. Williams served as Co-Chairperson of a Task Force designed to produce the legislative materials needed by which the Council of the District of Columbia could proceed to adopt reforms identified by the Business Regulatory Reform Commission (BRRC). This effort involved bringing together more than a dozen land use professionals (mainly attorneys), analyzing each of the nearly 100 recommendations, and preparing a written report for the Council and its committee on Consumer and Regulatory Affairs. That report, along with the underlying recommendations of the BRRC, formed the basis for statutory changes that were effected within six months of the start of the Task Force -- a remarkably short time in the District of Columbia where final approval of statutory changes includes normal review by the Mayor, but also additional reviews by the District of Columbia

Financial Responsibility and Management Assistance Authority (commonly called the "Control Board") and further layover before the United States Congress.

Mr. Williams served as one of two key individuals in the contract awarded by the "Control Board" to the law firm of Holland & Knight, LLP, which reviewed regulations and procedures affecting building and land use in the District of Columbia. Mr. Williams not only identified the processes but also the key organizing principles of the database in which findings were captured and then analyzed. This led to that firm's recommending, with input from Mr. Williams and others, a wide-ranging number of changes streamlining procedures and reducing requirements.

Mr. Williams served as Director for Land Use within the Office of the Deputy Mayor for Planning and Economic Development, Government of the District of Columbia. Mr. Williams provided guidance to staff of the Office of Planning at a time when it had no director, and helped the Director assume his duties once appointed. In the course of this, he provided advice on planning and zoning issues that formed the nucleus of the positions enunciated by municipal officials.

Mr. Williams is currently affiliated with the law firm of Holland & Knight LLP as a land use, planning, and zoning consultant. This relationship, which became effective March 1, 2002, followed a period of part-time employment by that firm (April 2000-Feburary 2002). He currently provides professional services to that firm's clients through their organization, while providing independent advice to others from time to time.

Mr. Williams is a member of the Economic Development Committee of the District of Columbia Building Industry Association. Mr. Williams has also served or as a member of the Board of several voluntary organizations, including Property Owners' Association of Deep Creek Lake (Garrett County, Maryland), and Cleveland Park Historic Society.

Within the domain of urban planning, Mr. Williams has not been involved solely in "land use" and zoning issues. For nearly thirty years, he has had substantial involvement in transportation issues in the communities in which he has resided, including: conducting comprehensive analysis of transportation issues generated by major hotel on surrounding residential community, including parking and many other issues resulting in improved plan and facilities; organizing and planning for the elimination of "reversible" lanes on a minor arterial (Reno Road – 34th Street, NW); recommending revisions to the configuration of Metro stations, and particularly elevator and escalator locations that the Washington Metropolitan Area Transit Authority (WMATA) accepted before construction (Van Ness, Cleveland Park, Woodley Park-Zoo); recommending design changes to WMATA, which were adopted, immediately following opening of its first major escalator (Rosslyn. Mr. Williams was appointed to Transportation Citizen's Advisory Committee, Washington Metropolitan Area Council of Governments for two two-year terms, elected within to serve as Vice Chairperson.

Mr. Williams received a Bachelor of Arts in Sociology with honors from Haverford College, and a Masters in Regional Planning from the University of North Carolina at Chapel Hill.

Report on Board of Zoning Adjustment Case Number 16920 ("Bass Art Gallery")

Square 93, Lot 122 (1629 21st Street, NW)

by Lindsley Williams

Land Use, Planning and Zoning Consultant

Overview:

This report provides the Board with my observations and conclusions regarding the above-captioned application. The applicant seeks approval to establish an art gallery as a Special Exception within a portion of the subject premises, specifically within its first floor and part of its second floor.

The application process requires the Board to evaluate whether the applicant satisfies the criteria for the Special Exception set forth with §361 of the Zoning Regulations. I conclude that the application satisfies those criteria, and that those are the only criteria that can be considered in this situation. Relief granted through a Special Exception process has already been determined, by the Zoning Commission when it created the applicable standards, to be appropriate provided the regulatory standards are met, as I believe they are. 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,* 423 A.2nd 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment,* 305 A. 2nd 516, 518 (D.C. 1973). If the applicant meets the burden, the Board must ordinarily grant the application.

Standard for Review to Establish an Art Gallery:

Section 361, which was established in 1988 by the Zoning Commission, provides as follows:

> **361 ART GALLERIES (R-5)**
>
> 361.1 An art gallery shall be permitted as a special exception in an R-5 District if approved by the Board of Zoning Adjustment under § 3104, and subject to the provisions of this section.
>
> 361.2 The art gallery shall be located and operated so that it is not likely to become objectionable to adjoining and nearby property because of objectionable noise, pedestrian and vehicular traffic, hours of operation, or other objectionable conditions.
>
> 361.3 The Board shall consider, and regulate, if necessary, the anticipated frequency, number of attendees, and other characteristics of show openings or other group gatherings.
>
> 361.4 Adequate off-street parking, but not less than that required by chapter 21 of this title, shall be provided to accommodate occupants, employees, and visitors likely to come to the gallery by automobile.
>
> 361.5 The proposed use shall not adversely affect the present character or future development of the surrounding area.
>
> 361.6 The Board may require special treatment in the way of design, screening of buildings and parking, signs, exterior and interior lighting, or other requirements it deems necessary to protect adjacent and nearby properties.
>
> SOURCE: Final Rulemaking published at 35 DCR 465, 468 (January 22, 1988).

This Report:

This report first locates the site within the prevailing Zone plan, the prevailing Comprehensive Plan, the current Dupont Circle historic district, and the District's Roadway network and roadway classification system.

The report then looks at the land uses in the areas surrounding the subject site, uses that dominate the essential character of the area during the day, evening, and weekends.

The report then looks at art galleries in the area.

Finally, the report evaluates the modest proposal of the applicant in the context of the foregoing and the specific tests of the Zoning Regulations.

In summary, the application meets all tests of the regulations and should be approved.

Site Placement within the District of Columbia's Zoning Classifications:

The applicant's site is located at the southeastern corner of 21st and R Streets, NW --- one block west of Connecticut Avenue, slightly north of Dupont Circle. Most of the block on which the applicant's site is located and surrounding it "carry" two overlay zones in addition to one base zoning. The combination is denoted "D/DC/R-5-B," interpreted to read Diplomatic overlay, Dupont Circle overlay, and R-5-B zoning.

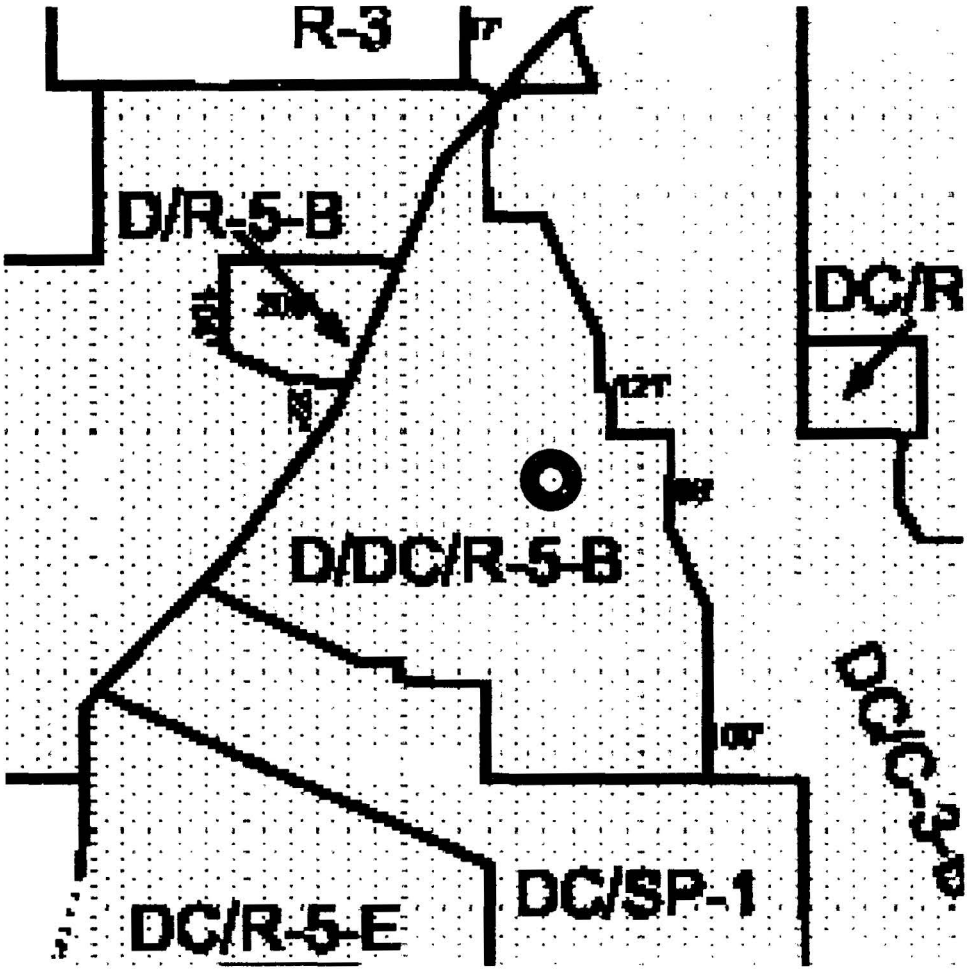
- The "Diplomatic" overlay zone means that the area is one that the Zoning Commission has determined to be presumptively appropriate as a location for chanceries, which are offices of foreign governments. While such a use requires approval as a "Special Exception" by the Foreign Mission Board of Zoning Adjustment, these cases are heard as rulemaking rather than as a "contested" type of a case (such as that of the instant case).
- The "Dupont Circle" overlay zone provides additional restrictions on Planned Unit Development ("PUD") cases that the Zoning Commission then addresses in the course of specific PUD applications. The DC overlay bans driveways to required parking and loading spaces to and from specific segments of Connecticut Avenue, including portions immediately north and south of R Street on the blocks in question. It also bans "drive-through" accessory uses from being established or expanded.
- The R-5-B base zoning is within the larger sphere of Residential zones. In general, the R-5 zones are areas allowing apartment houses, ranging from low density/garden/walkup apartments of limited height (R-5-A) to high-density apartment buildings. In practice, the R-5-B zone was and remains applied to significant areas of the District of Columbia whose structures were larger three- and four-story row houses, as was the subject property (and those adjacent to it) in an earlier part of its (and their) existence(s).

Zone District	Max. Height	Max. Lot Occupancy	Max. FAR
R-5-A	40 Feet	40 Percent	0.9
R-5-B	***50 Feet***	***60 Percent***	***1.8***
R-5-C	60 Feet	75 Percent	3.0
R-5-D	90 Feet	75 Percent	3.5
R-5-E	90 Feet	75 Percent	6.0

The R-5-B zone is the most restrictive zone in the overall set of zones allowing new apartment buildings as a matter of right. While new apartments are allowed in the R-5-A zone, they are subject to BZA approval as a Special Exception. Apartment conversions are also allowed in the R-4 zone, but the buildings must have been established prior to 1958.

It is also appropriate to note that other non-residential uses are allowed as a matter of right in the R-5-B zone, uses first allowed in the R-4 zone. These include *museums*, hospitals, sanitariums, clinics for humans (not veterinary), and *private clubs*. Until 1978, the allowed uses also included hotels, and at least one of them then existing remains today adding character to the area and extending the hours at which streets are active. Hotels also occupy portions of adjacent areas zoned DC/SP-1. All these uses then mingle with and complement purely residential uses. As these uses are variously established and located, they shape the character and quality of an area.

Extract of District of Columbia Zoning Map from Office of Zoning website:



Site Location Relative to the Comprehensive Plan & Generalized Land Use Map:

The zoning for the area in question appears to be "not inconsistent with" the pertinent provisions of the Comprehensive Plan for the Nation's Capital and its Generalized Land Use Map.

While not specifically before the Board, in this case the Board may take comfort in that the area does not present a fundament discrepancy as to the proper zoning for the site and area surrounding it. Specifically, the Land Use Element and Map provide that the area is one favoring moderate density residential uses to the west of the medium density commericial uses that face Connecticut Avenue. Residential uses include appropriate institutional uses when the institutions are not so extensive as to dominate a block, when typically the Land Use Map then specifies "Institutional" uses instead.

(No diagram included on this point)

Site Placement Within the District of Columbia's Functional Classification of its Roadway Network:

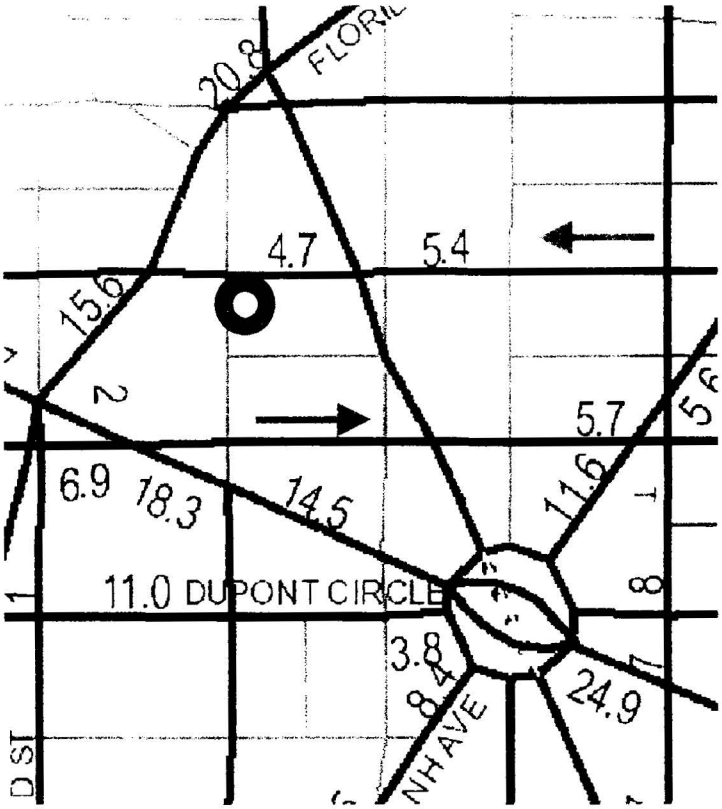
The applicant's site is located at the southeastern corner of 21st and R Streets, NW --- one block west of Connecticut Avenue, slightly north of Dupont Circle.

- R Street is classified as a "minor arterial" in the District of Columbia Transportation system. It operates one-way, westbound, from New York Avenue, just west of North Capitol Street, to Massachusetts Avenue (at Sheridan Circle). Parking is not allowed along the southern side of the 2000 and 2100 blocks of R Street during morning and evening rush hours. When parking is allowed, it is limited by parking meters. A portion of the southern side of the 2000 block is set aside, between rush hours, as a loading area for "commercial vehicles." This commercial loading area is established mid-way through the 2000 block, well inside the Residential zone boundary line. On an average day, 4.7 thousand vehicles pass by, about one fifth the daily traffic of either Massachusetts or Connecticut Avenues. This traffic volume, along with the twice daily purge of parked vehicles on the south side of R Street during rush hours, is consistent with an active urban environment. This is not, therefore, a site along a bucolic country lane, Spring Valley, or even nearby Kalorama Triangle neighborhoods.

- The segment of 21st Street that passes the subject site begins at Florida Avenue, NW, one block north and proceeds south until it reaches Constitution Avenue, where it ends (at the National Mall). This segment of 21st Street operates one-way, southbound, over this entire distance. The portion of 21st Street that passes the subject site is currently classified as a local street in the District of Columbia highway plan. Nevertheless, southbound vehicles from Connecticut and Florida Avenues encounter a signalized intersection at Florida Avenue with a specific left arrow phase to permit turns into southbound 21st Street without conflict from northbound drivers along Florida Avenue, signalization that is rarely provided for access to purely local streets. District records have no daily traffic count for 21st Street between Florida and Massachusetts Avenue, NW. Parking is allowed on both sides of 21st north of R Street at all times, with non-residents being restricted to two hours weekdays. The same applies to the northern portion of 21st south of R Street, but changes mid-way on both sides where other rules are established affecting access to and from the Phillips Gallery, with meters on the west side south of the alley/driveway into Square 66 and diplomatic parking on the east side.. In fact, the only route private coaches can take to bring handicapped visitors to or take them from the Phillips Gallery is along the same segment of 21st Street as that of the applicant's property (others are now supposedly instructed to use a bus stop along Massachusetts Avenue). Within the Highway Classification standards, the Phillips would be considered a "major traffic generator." This fact alone suggests that 21st Street might appropriately be classified as a "collector" instead of its present classification as a "local" street.

- One way streets are often "paired." R Street is paired with Q Street, one block south of the subject site. Q Street is also classified as a minor arterial, whose one way operation eastbound begins at Massachusetts Avenue and continues until it reaches Florida Avenue just west of North Capitol Street, NW.

Extract of Average Daily Traffic Count map from District of Columbia Department of Transportation website:



R Street

21st Street

Site Placement within the Dupont Circle Historic District:

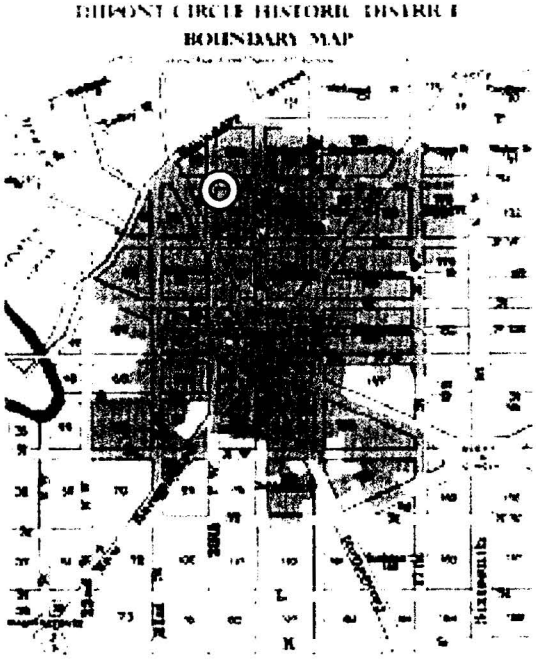
The Dupont Circle Historic District has now existed for about thirty years. It is recognized in both District and Federal registries. Its original boundaries, somewhat expanded since first sought and approved, included Florida Avenue between Massachusetts Avenue and Connecticut Avenue – a segment of what was earlier called "Boundary Street," which was a main route from Maryland's agricultural areas to the port of Georgetown.

The Dupont Circle area was first developed in the 1880's, following "Boss" Alexander Shepherd's efforts to supplant the few scattered residences and Slash Run's fetid discharges into Rock Creek with then modern infrastructure in the 1870's. The early landmarks were mansions, many now demolished. They created the environment that survives to this day in which others built substantial homes, established schools and institutions, public transportation, and the "parking" system that remains in place throughout the area, including the site subject to the instant case – a band of public space between private properties and the abutting public sidewalks and roadways. Apartment houses were also part of this mix, built with "hotel-like" features (Pamphlet), some of which replaced earlier mansion/residences. By the early 1900's, Connecticut Avenue was on its way to becoming a premier shopping district, to rival "Fifth Avenue in New York and the Rue de la Paix in Paris" (Pamphlet). While we are now generations past original residents and businesses, each left legacies that form the basis of the present Dupont Circle area and community.

As the Pamphlet concludes, "Dupont Circle has historically been a center of intellectual, *artistic*, scientific, educational, diplomatic, and political life in the city and the nation. Its enduring institutions include the Phillips Collection . . .[and] the Cosmos Club . . . ." (emphasis added). Both of the cited institutions are located on the Square facing the subject site (Square 66).

The building that is the focus of this case is one of the surviving row homes and "contributes" to the character of the area. The applicant will demonstrate that the relief sought, if approved, will be in harmony with that as no changes are contemplated to the external attributes of the portion of the building or its "parking" at issue in the case.

Extract of Map of Dupont Circle Historic District:



Land Uses in the Area Surrounding the Subject Site:

21st Street

West Side, South of R Street:

By far, the most dominant of the uses in the area is the nationally acclaimed Phillips Gallery, a museum located along 21st Street one portion of which also faces Q Street to the south. It is a facility with which the Board has had recent knowledge, brought to its attention when that facility sought permission (which was granted, with conditions) to expand. Information from that case establishes that it receives an average of 400 visitors each weekday that it is open, and close to double that every weekend.

The Phillips Gallery is one of several non-residential uses taking place on Square 66. Almost as well known as the Phillips, the Cosmos Club provides lodging and hospitality to club members from its premises at the corner of Massachusetts and Florida Avenues. The Cosmos Club has also been the subject of various BZA cases over the years, which establish its levels daily activity pattern, partly residential but also as a place where members and guests come for dining, meetings, or other events and then depart.

North of the 1618 21st Street is a set of buildings known as 1622 and 1624 21st Street. Those properties are identified as ones owned by the Society Missionaries of Africa. Assessment records declare the use as a miscellaneous one for transient, residential purposes. The property is in institutional ownership. I carried out no further investigation as to the range of uses to which that property is put. (This property was the subject of a BZA case in 1992, #15648; the issue was an area variance for a property the Board's summary order for approval that characterized the property as residential.)

The properties north of those owned by the Missionaries of Africa along 21st Street on the west side to R Street appear from observation and tax records to be in conventional residential use, some as condominiums and independent parking spaces serving them.

East Side, South of R Street:

The Chancery of the nation of Morocco is located at the northeastern corner of 21st and Q Streets, occupying half of the frontage of 21st between Q and Hillier Place, NW. Uses north of the chancery, to R Street, include row houses and one other art gallery, the latter located at 1621 21st Street (Ira Pinto Gallery).

North of R, Both Sides

Residential uses are the norm north of R Street along 21st Street, either row house or as condominiums. But, among them are other uses, including one art gallery (Geoffrey Diner, at 1730). Businesses occupy the commercially zoned portion of 21st Street at its northern tip, properties that include frontage on Connecticut Avenue as well. In the past, the Board had approved use of one of the properties on the east side in the Residentially zoned portion for use as a gallery. That gallery has since closed.

R Street

South Side, from Connecticut to 21st Street

The southwestern corner of Connecticut Avenue at R Street NW is zoned commercial and now is developed with an office building. Immediately west of it is a chancery, that of the nation of Tchad, about eight residences in row houses (some with multiple buttons at the door, suggesting apartments within) and a at least four art galleries (two at 2010: Affrica and Gallery K); 2021 (Marsha Mateyaka), and 2030 (English basement of subject property, Robert Brown Gallery).

Continuing west, still on the southern side, there are several additional residences and five more galleries (at 2106, Alex Gallery and Gallery A; at 2108, Anton and Studio Galleries); at 2112 (Fonda del Sol); and 2114 (Burdick Gallery).

Returning west along R from Florida Avenue, one finds the Nora Restaurant (a non-conforming use operating year round and nearly every evening), another Gallery (at 2105, Tartt), then crossing 21st one finds additional residences along with a property used for professional offices (at 2015) and, at the Connecticut Avenue corner, a restaurant, the latter located within the commercial zone (Teaism).

What is/are the dominant use(s)?

I reviewed assessment records for the properties in the D/DC/R-5-B zoned area. When I did this, I found 151 records. Of these 10 were for ones assessors deemed "non-conforming" (not the same meaning as the same term in zoning context). One hundred and eleven were residential, including some condominium units and condominium parking spaces. The balance was other uses. Thus, by count, residential uses outnumber other uses. I do not know how many persons live in the area, but would guess that the average property contains 2 to 3 persons, more in apartments, fewer in condominiums. Thus, the resident population might be about 300 to 400 – just the number of persons that are expected to visit the Phillips on a weekday. The Phillips, of course, is but one of many properties within and surrounding this area.

By valuation, however, the picture differs. The 111 "residential" uses carry a total proposed 2003 assessment of nearly $73 million. The other uses carry a proposed assessment exceeding $69 million. These include proposed valuations for tax-exempt properties that may not have been subject to annual reviews for some time. For example, the three distinct parts of the Phillips complex carry assessments totaling less than $17 million.

I conclude that the area is one where residential uses are established and function side-by-side with institutional and other non-residential uses. I reject any notion that residential uses "dominate" the area in question on the basis of street frontage, street character, trip generation, and valuations. Rather, residential uses exist. Under the Zoning regulations, they are entitled to protection from adverse impacts of uses that can only be established by Special Exception, a question to which I will turn shortly.

Where are the Art Galleries and Other Major Non-Residential Uses?

I sought out and located information so as to establish a roster of art galleries in the Dupont Circle Area, past and present. I mapped the information for those inside the D/DC/R-5-B portion of the "triangle" formed by Connecticut, Massachusetts, and Florida Avenues. I also mapped other significant non-residential uses in the same area.

The result appears on the following page.

The specific galleries shown are those from the following list of Dupont Circle Galleries within the specified study area:

R Street:

2010 Africa and Gallery K (2 galleries)
2012 Mateyka
2030 Robert Brown *(basement of subject property)*

2106 Alex
2108 Anton and Studio (2 galleries)
2112 Fondo del Sol
2114 Burdick

21st Street

Phillips (various addresses)
1621 Pinto

1730 Diner Gallery

Q Street:

2023 Tartt
2029 Pensler

Hillyer Place:

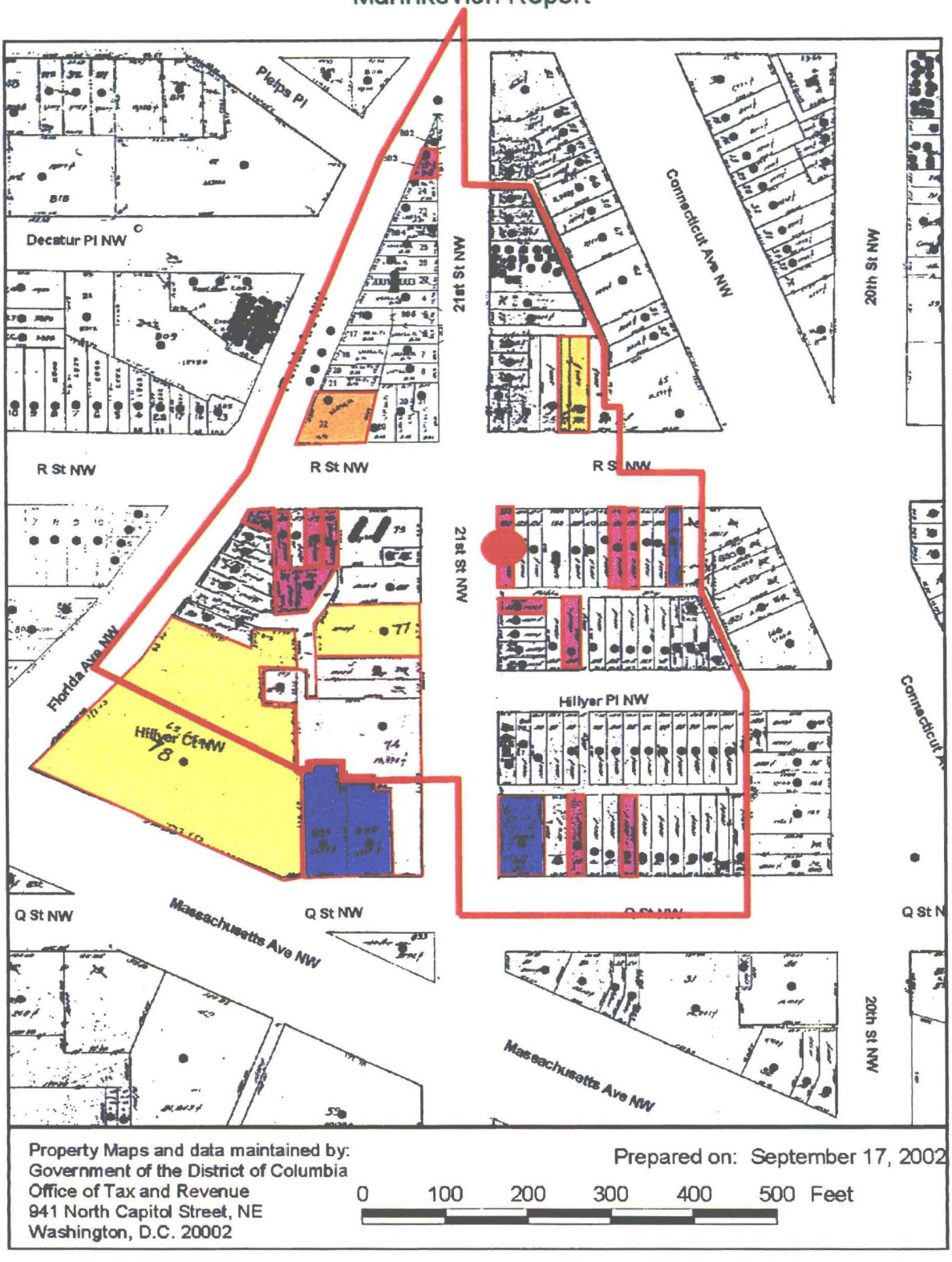
2025 Haslem

Hillyer Court (within Square 66).

9 Foundry Gallery

The applicant has assembled some information about galleries in the area of the site. This information indicates that more gallery locations have closed since 1990 than have opened. Of those that opened, the usual pattern was that one gallery replaced another. I am reviewing this information and will present my findings and conclusions on this point at the hearing.

There have been no applications before the BZA to establish new galleries in the past decade. The most recent case was from 1990, involving a property at the north end of 21st Street, a former storefront property. That sought both a use variance and authorization to establish an art gallery. The former was denied; the latter was granted, but limited to ten years. The are gallery permitted was established, but disappeared since that time.



Gallery | **Museum** | **Chancery** | **Club/Inst** | **Restraurant/Ofc**

Finally, this report evaluates the modest proposal of the applicant in the context of the foregoing and the specific tests of the Zoning Regulations.

- Will there be "objectionable noise, pedestrian and vehicular traffic, hours of operation, or other objectionable conditions? No, the nature of this gallery is, and will be, such that no such issue arises. Art work makes no noise. Pedestrian and vehicular traffic will be a miniscule proportion of that that already exists in the area, and the gallery's hours are within those of other area uses that are not residential, including evenings and weekends. Signage will be strictly limited. Outdoor lighting will be subdued. The "parking" will be maintained.
- What about "frequency, number of attendees, and other characteristics of show openings or other group gatherings?" The applicant has proposed clear standards to ensure that events are infrequent, quiet, and appropriate for the area. Conditions to which the applicant has agreed include:

  1. *The Gallery agrees that it will operate the gallery and residential portions of the property in such a way that it will not have a negative impact on the neighborhood.*
  2. *When the Gallery participates in art walks or other joint gallery showings, or when it sponsors Gallery openings to which the general public is invited, no alcohol will be served. These shall be limited to 12 per year. Gallery events limited to personal invitation will not serve alcoholic beverages except wine and beer. Events will end at 11: p.m.*
  3. *Security lighting will be sufficient to provide reasonable security but will be directed away from neighboring windows. Those lights not directed at the building will utilize low glare lights.*
  4. *Tenants shall adhere to all security rules adopted by the Gallery. Moreover, noise and lights shall not be permitted to intrude on the neighborhood in a negative fashion.*
  5. *The Gallery will encourage Metro use by noting, in its advertisements and invitations, the proximity of the Metro Station at Q street and Connecticut Ave. It will also encourage guests to use public parking facilities.*

- What about having ". . .adequate off-street parking, but not less than that required by chapter 21 of this title, shall be provided to accommodate occupants, employees, and visitors likely to come to the gallery by automobile?" The property includes a garage and other areas where a two full sized automobiles may park, perhaps three under some circumstances. However, the total square footage of the application is less than 3,000 square feet. Thus, there is no parking requirement in the first place. Moreover, even if it were required by the normal schedule, the property is a contributing building to the historic district and is thus eligible for waiver of whatever parking and loading standards might otherwise apply.
- Will the proposed art gallery ". . . adversely affect the present character or future development of the surrounding are?" Clearly not. The present and future character of the area are shaped by the major uses already established and are fully protected by the established historic district, prevailing zoning standards and regulations. The above conditions ensure that the proposed art gallery will exist and operate in a manner that is fully within the present and future character of the area.

Accordingly, the application should be approved – with the conditions proposed.