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February 11, 2003

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By Hand Delivery

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

Re: BZA Application No. 16970
National Child Research Center
3209 Highland Place, N.W.; Square 2072, Lot 30

Dear Chairman Griffis and Members of the Board:

In its report dated February 7, 2003, the Office of Planning has raised an issue concerning whether the subject application should also include a request for special exception relief pursuant to Section 2516 of the Zoning Regulations. The Applicant, the National Child Research Center ("NCRC") does not believe that additional special exception relief is required based on the past precedent of the Board and the consistent prior interpretations of the Zoning Administrator. In the event the BZA agrees with OP, however, NCRC requests that the subject application be amended to include a request for additional special exception relief pursuant to Section 2516.

Section 2516 Does Not Apply

Section 2516 states that it applies to the construction of two or more "principal buildings" on a single subdivided lot. NCRC submits that the proposed new construction of a building with classroom and indoor motor space is not a principal building but rather an accessory building to its preschool use and thus Section 2516 does not apply.

This interpretation is consistent with prior decisions of the Zoning Administrator and the Board of Zoning Adjustment in approving special exceptions for the following schools, none of which required additional relief under Section 2516 even through the BZA was approving use and construction of multiple buildings on a single subdivided lot. (Copies of the plats are attached.)

BZA
Case No. 16970
Exhibit No. 113

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.113

The Lab School
The Maret School
The National Cathedral School
The Washington Ethical Society (nursery school)
The Levine School
The Naylor Road Preschool
The Washington International School

This interpretation is also consistent with the D.C. Court of Appeals decisions in the Georgetown University, George Washington University and American University cases, all of which approved buildings on university campuses in residential districts as accessory buildings on the same lot as the principal use, without the additional requirement for special exception review under Section 2516. (*See, e.g., Citizens Coalition v. DC BZA,* 619 A.2d 940 (DC 1993), which approved construction of a power plant on the Georgetown University campus as accessory.)

This interpretation is also consistent with the D.C. Court of Appeals decision in the National Cathedral School ("NCS") case in which the court held that the athletic facility developed by NCS on the same lot as its other buildings was an accessory building and use, despite the neighborhood's complaints that it was too large and that it was not accessory. (*See, e.g.* BZA Order No. 16433, and the court's decision in *National Cathedral Neighborhood Association v. DC BZA,* copies of which are attached.)

This interpretation is also consistent with the prior decisions of the BZA in the following cases, all of which apply the requirements of Section 2516 to new residential development on sites with theoretical lots: BZA Order No. 16637 for construction of four single-family detached dwellings; BZA Order No. 16904 for a new residential development; BZA Order No. 16705 for a new residential development with theoretical lots; BZA Order No. 16457 for a new residential development of single-family and garden apartments. (Copies of these orders are attached.)

NCRC is unaware of any school case in which the Zoning Administrator or the BZA has required a special exception under Section 2516 in addition to the special exception for the school or preschool.

For all of these reasons, NCRC does not believe that Section 2516 applies. In the event the BZA disagrees, however, then NCRC would like to amend its application to include this additional area of relief so that the case is advertised and heard on this basis.

No Further Advertisement or Notice is Needed

NCRC requests that the continuation of the public hearing include this additional area of relief and that no further advertisement or notice is needed. All parties to the case are present at the February 11, 2003 public hearing to hear the Board's decision on the amendment and continuance. NCRC will post the property with this additional area of relief and all parties can address this issue in their testimony at the continued hearing. That notice fully complies with the DC APA's requirement that all parties shall be given "reasonable notice" and that "if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto." (Section 1-1509, DCAPA.)

Respectfully submitted,

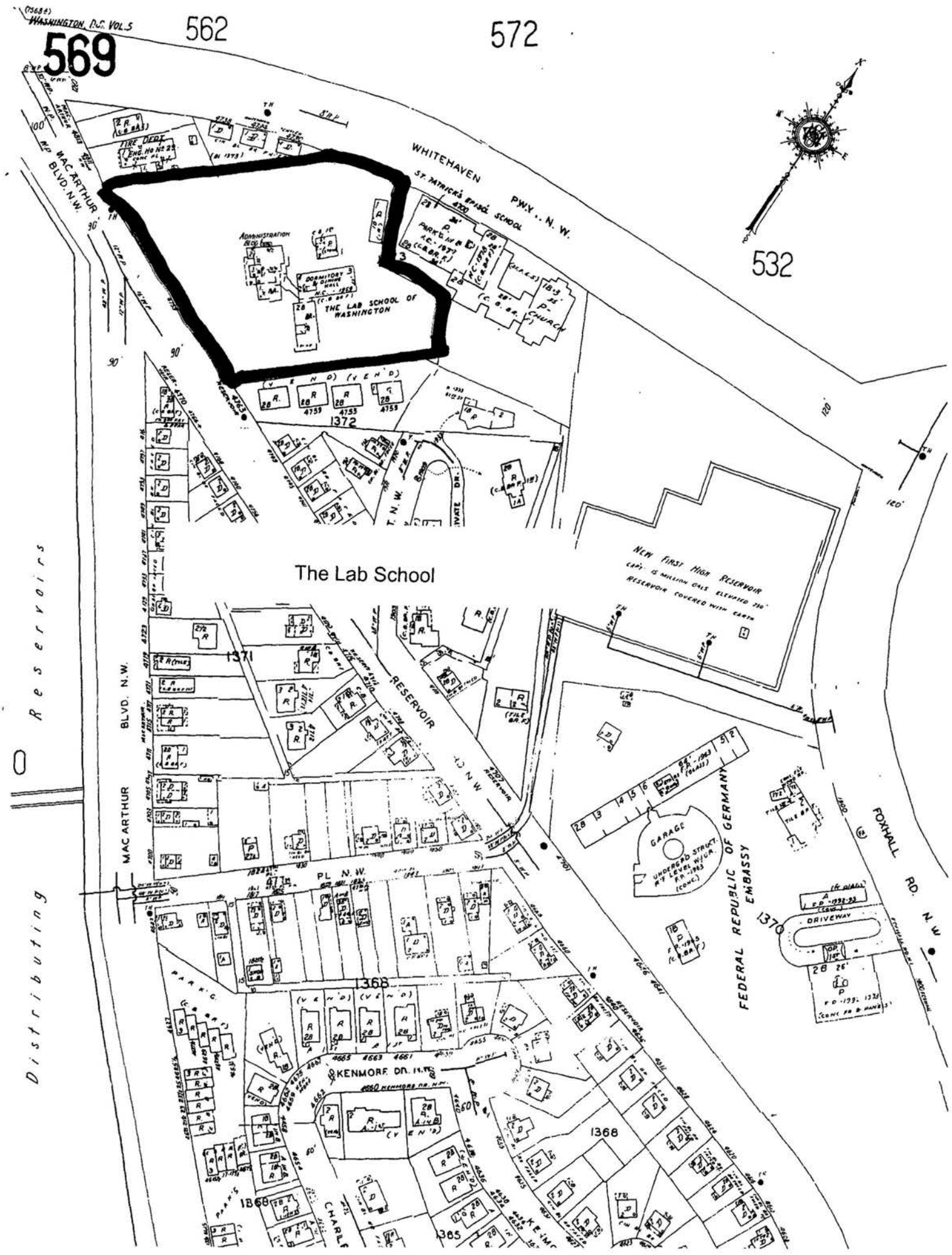
SHAW PITTMAN, LLP

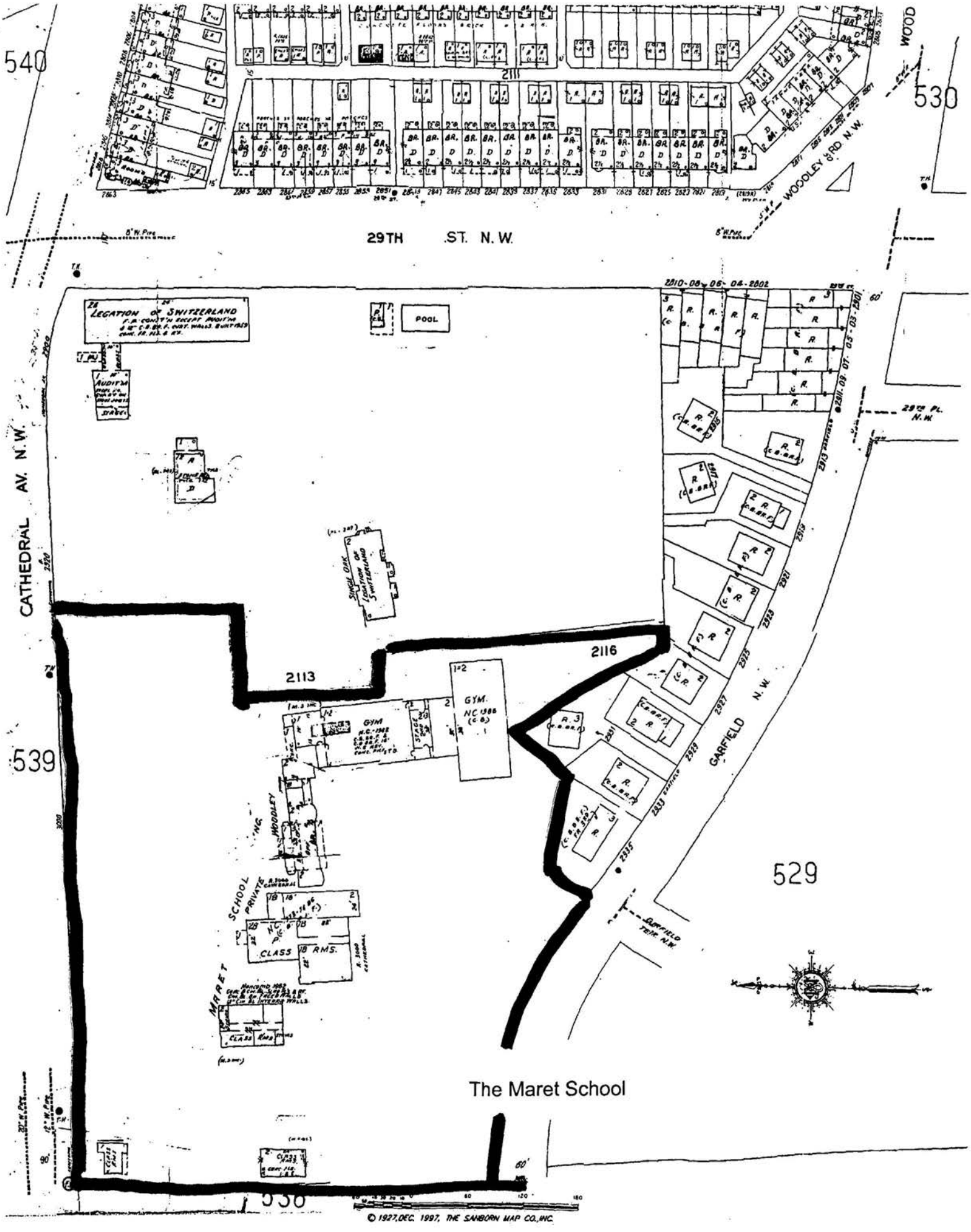
By _____
Maureen E. Dwyer

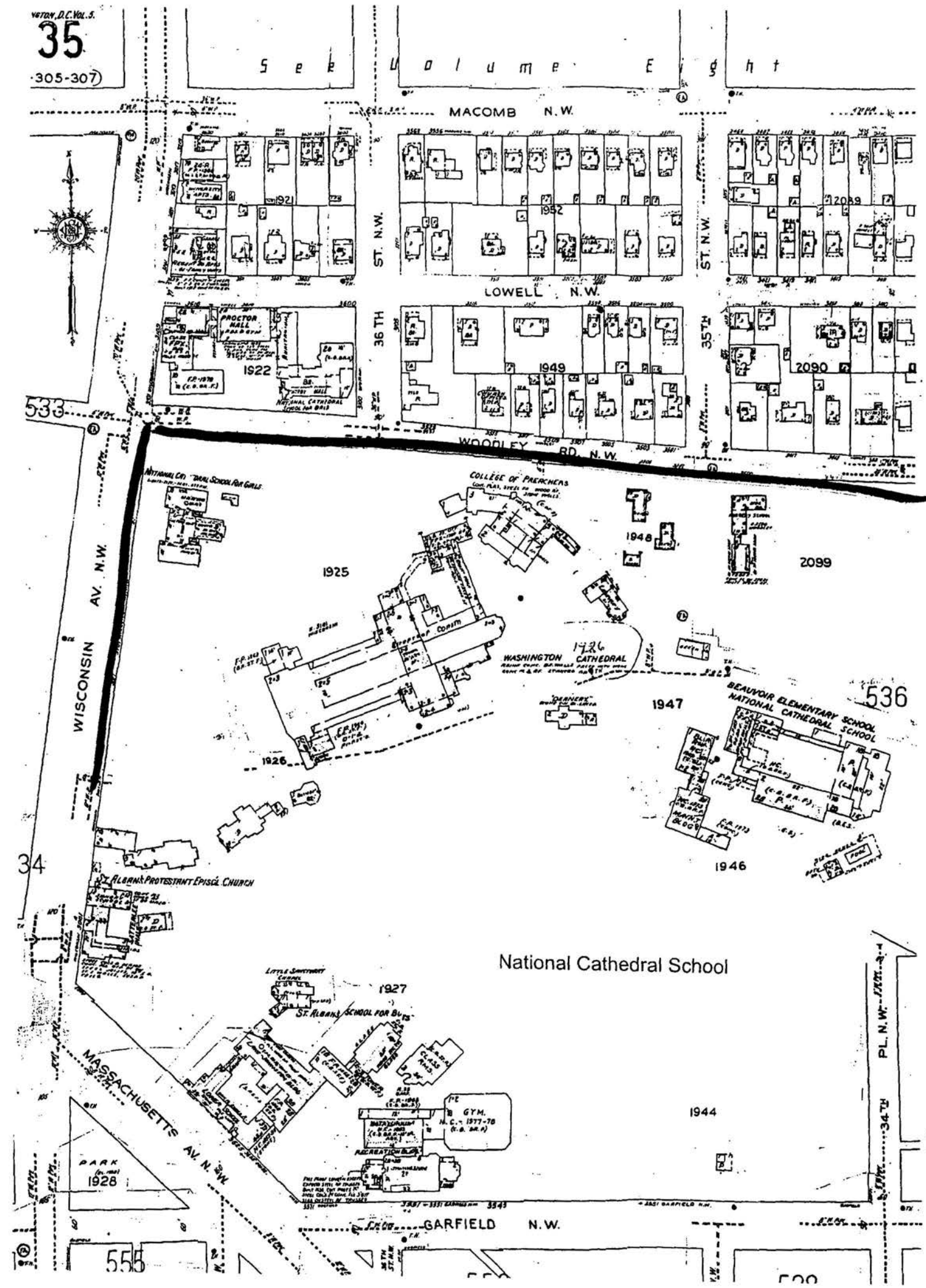
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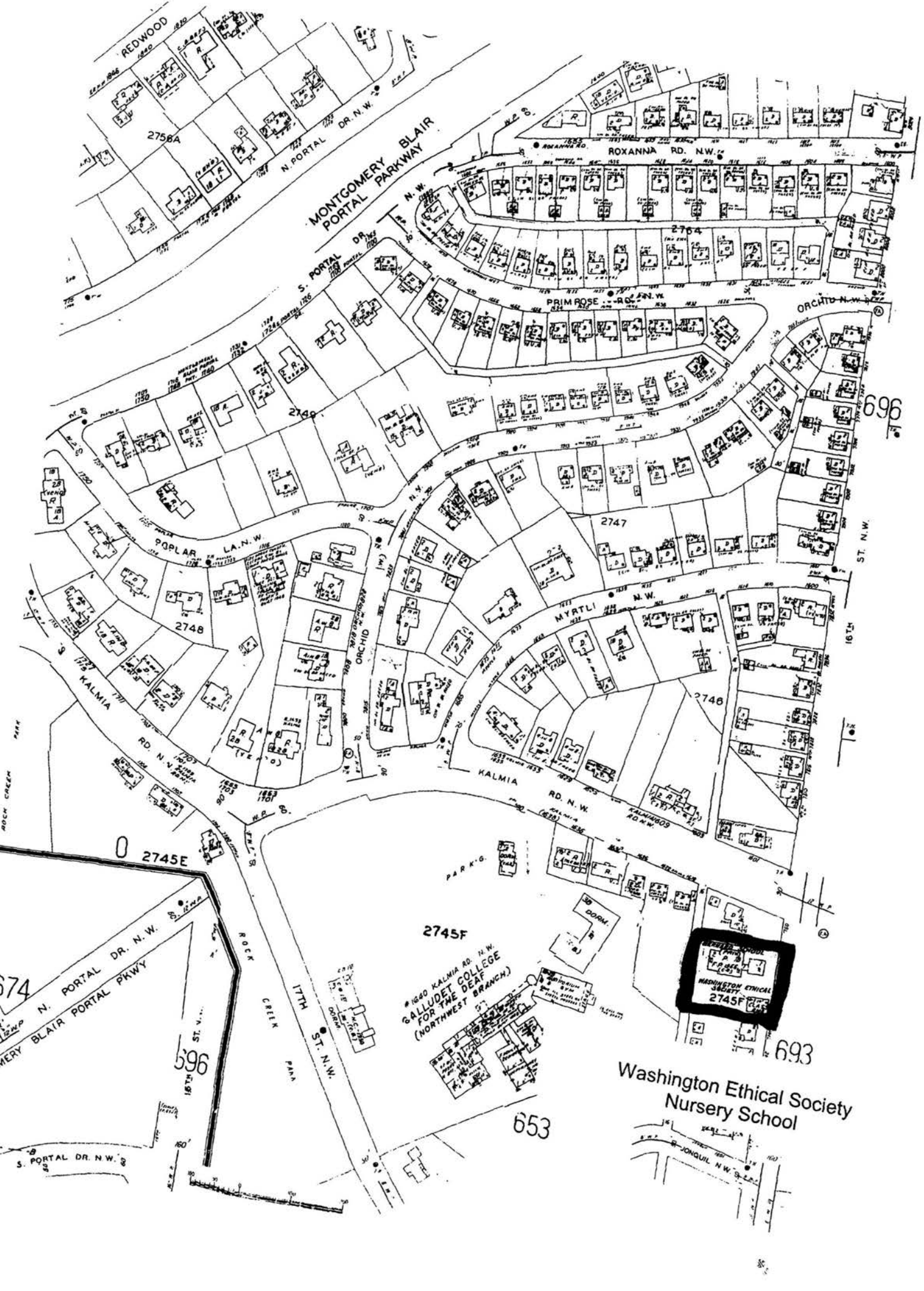
cc: Alan Bergstein, Office of Corporation Counsel
Ken Laden, DDOT
Ellen McCarthy, OP
ANC 3C

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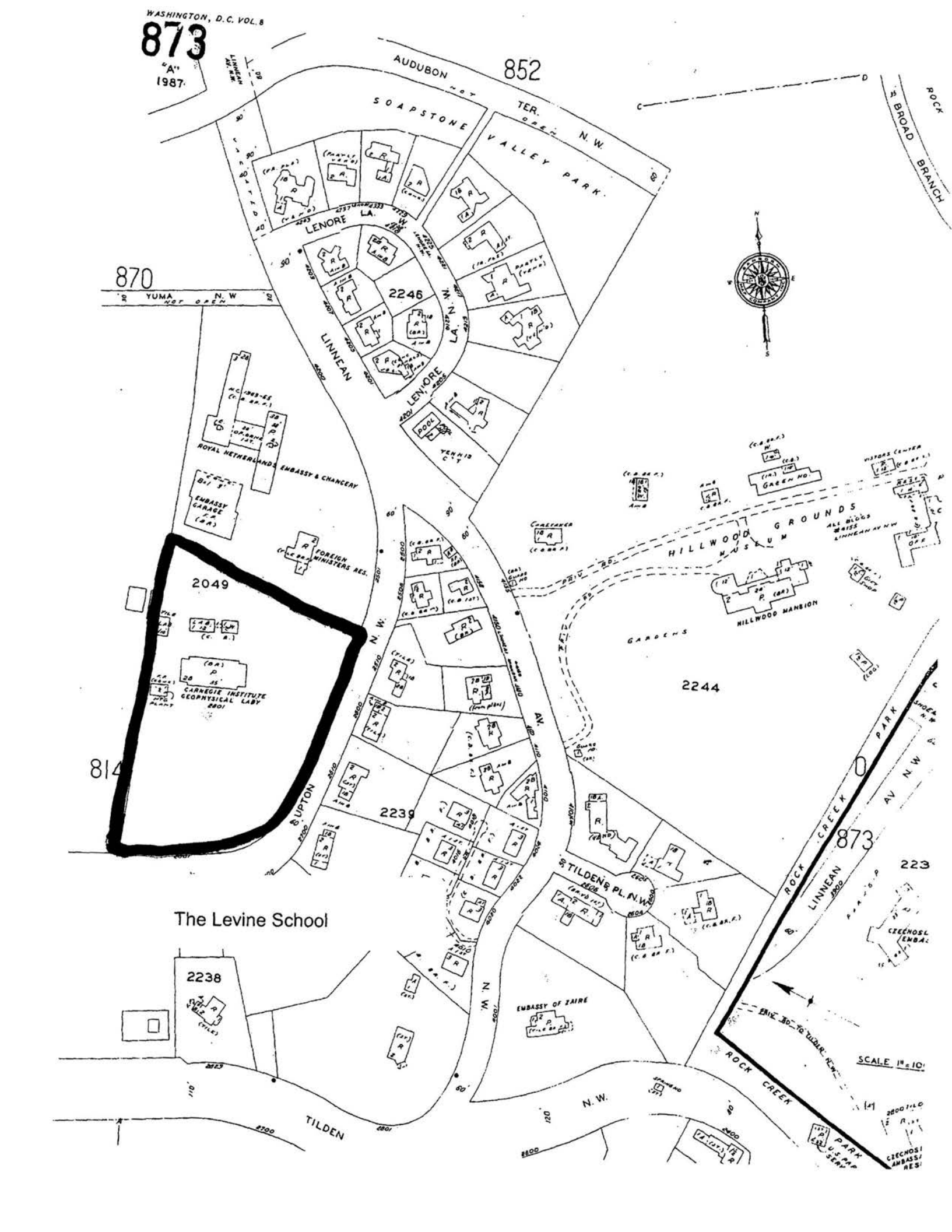

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WHITEHAVEN PKWY., N.W.
MAC ARTHUR BLVD. N.W.
ST. PATRICK'S EPISC. SCHOOL
ADMINISTRATION BLDG.
DORMITORY & DINING HALL
THE LAB SCHOOL OF WASHINGTON
PARK
CHURCH
RESERVOIR
1372
The Lab School
NEW FIRST HIGH RESERVOIR
CAP. 15 MILLION GALS. ELEVATED 210'
RESERVOIR COVERED WITH EARTH
1371
RESERVOIR
MAC ARTHUR BLVD. N.W.
PL. N.W.
FEDERAL REPUBLIC OF GERMANY
EMBASSY
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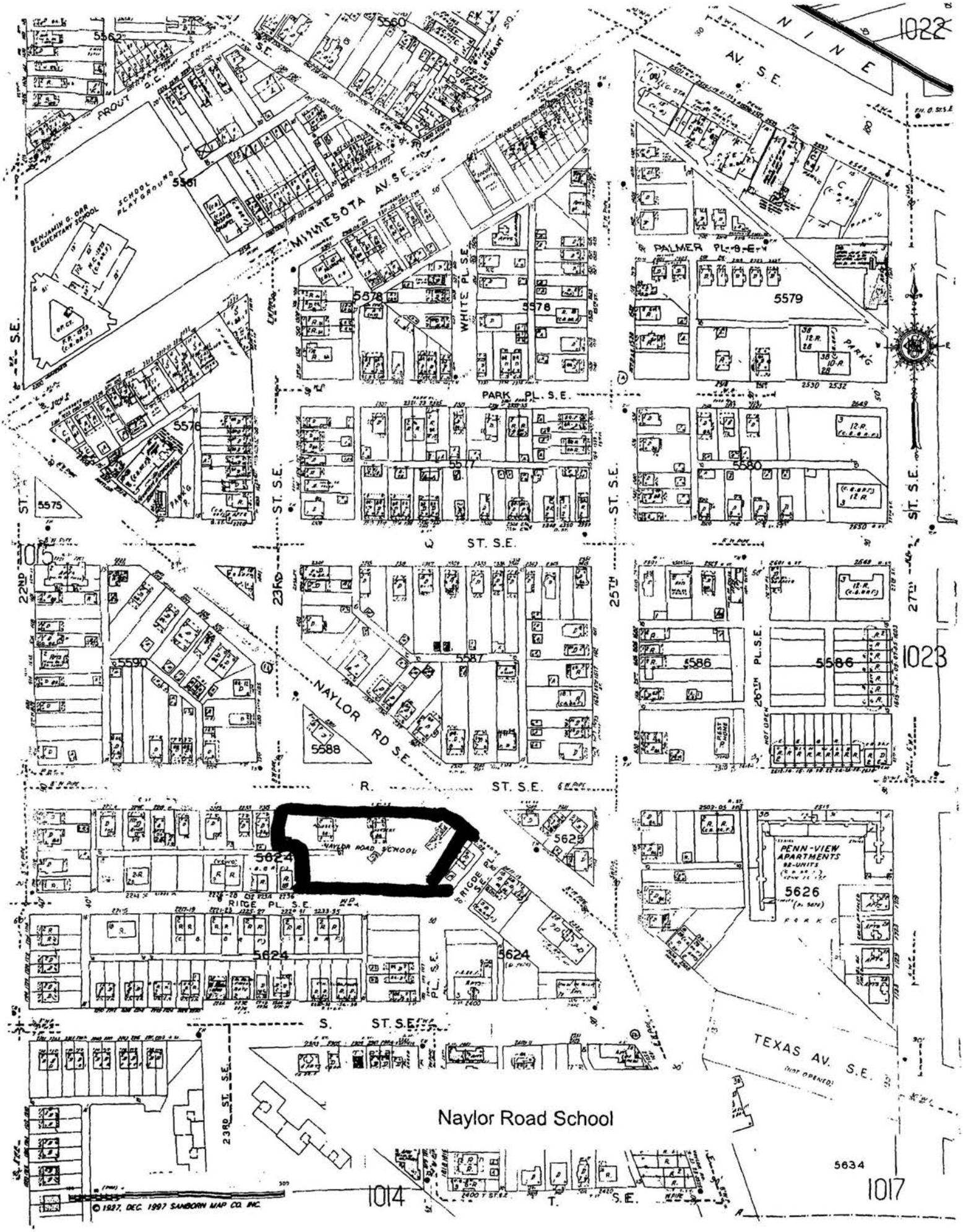

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LEGATION OF SWITZERLAND
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The Maret School
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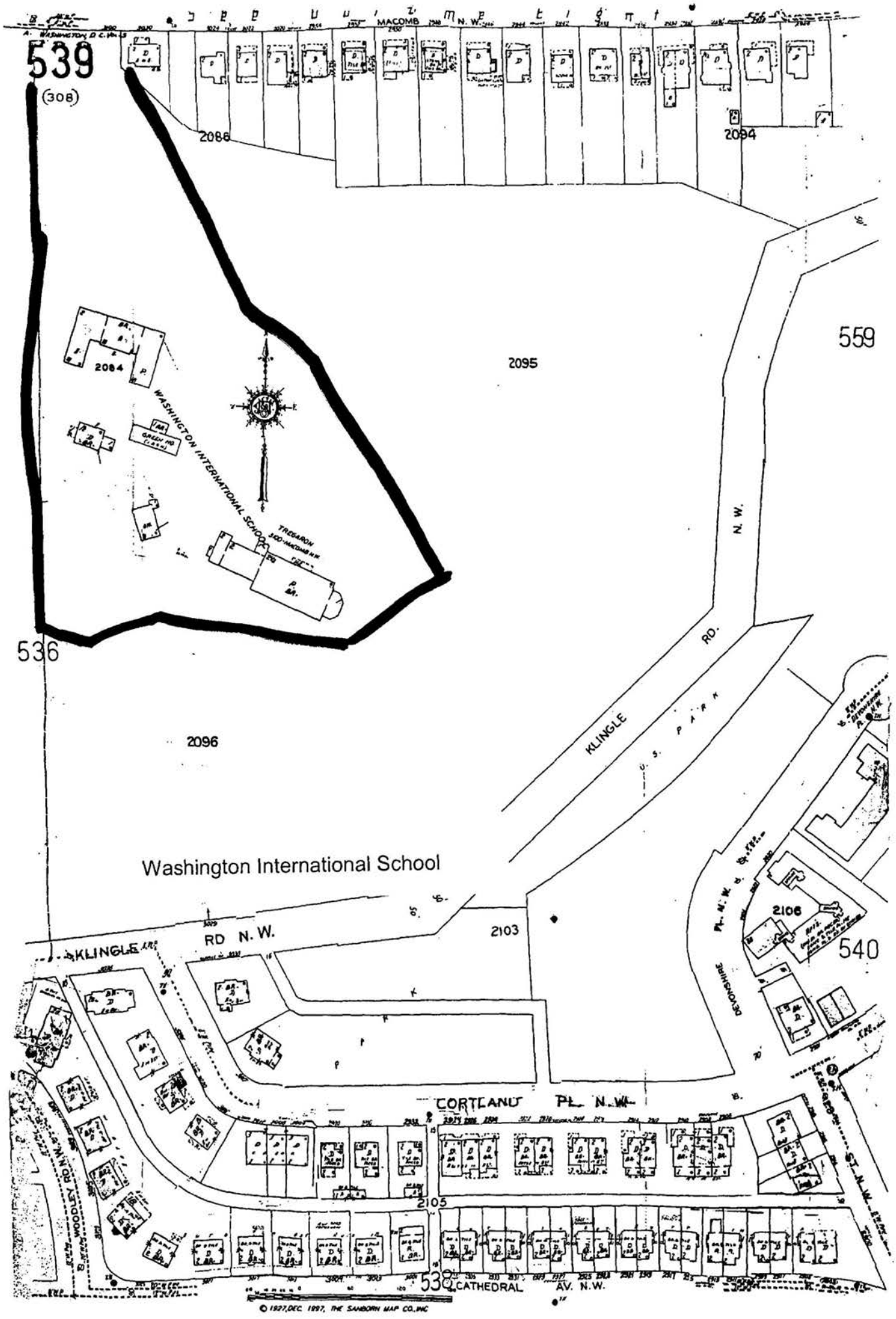

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See Volume Eight
MACOMB N.W.
ST. N.W.
LOWELL N.W.
36TH
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1921
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PROCTOR HALL
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WOODLEY RD. N.W.
NATIONAL CATHEDRAL SCHOOL FOR GIRLS
COLLEGE OF PREACHERS
1948
2099
1925
WISCONSIN AV. N.W.
WASHINGTON CATHEDRAL
1926
1947
536
BEAUVOIR ELEMENTARY SCHOOL
NATIONAL CATHEDRAL SCHOOL
1946
34
ST. ALBAN'S PROTESTANT EPISC. CHURCH
National Cathedral School
1927
ST. ALBAN'S SCHOOL FOR BOYS
MASSACHUSETTS AV. N.W.
GYM.
1944
PARK
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GARFIELD N.W.
34TH PL. N.W.
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Washington Ethical Society
Nursery School


WASHINGTON, D.C. VOL. 8
873
"A"
1987
AUDUBON NOT OPEN TER. N.W.
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SOAPSTONE VALLEY PARK
ROCK BROAD BRANCH
LENORE LA. N.W.
LENORE LA. N.W.
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YUMA N.W. NOT OPEN
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LINNEAN
POOL
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ROYAL NETHERLANDS EMBASSY & CHANCERY
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FOREIGN MINISTERS RES.
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S. UPTON
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AV.
HILLWOOD GROUNDS
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GARDENS
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ROCK CREEK PARK
LINNEAN AV N.W.
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S. TILDEN ST. PL. N.W.
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Naylor Road School


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CATHEDRAL AV. N.W.
WOODLEY RD. N.W.
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

CORRECTED ORDER

***Application No. 16433** of the Protestant Episcopal Cathedral Foundation of the District of Columbia ("the National Cathedral") on behalf of The National Cathedral School ("NCS" or "Applicant") pursuant to 11 DCMR § 3108.1, for a special exception under 11 DCMR § 206 to allow the construction of a girls' athletic facility at a private school in an R-1-B District on the grounds of the National Cathedral, 3500 Woodley Road, N.W. (Square 1944, Lot 25).

HEARING DATE: April 14, 1999
DECISION DATE: June 2, 1999

FINDING OF FACT, CONCLUSIONS OF LAW AND ORDER

*This order replaces the Board's order dated August 11, 1999, and corrects the vote on page 10 from 3-0 to 4-0.

PROCEDURAL HISTORY

1. The application to construct an athletic facility at NCS was filed on December 31, 1998. The application was submitted as two alternatives, the only difference in the alternatives being the inclusion of an existing building, known as the gatehouse, at the southeast corner of Woodley Road and Beauvoir Drive.

2. Petitions in opposition to the application were submitted to the BZA by the National Cathedral Neighborhood Association ("NCNA") on February 19, 1999, by the Cleveland Park Citizen's Association ("CPCA") on March 1, 1999, and by citizens in the neighborhood, prior to the initial BZA hearing on the application.

3. The Board first heard testimony on the application at its regularly scheduled meeting on March 5, 1999.[1] A continuance was granted for April 14, 1999.

4. On May 5, 1999, at its regularly scheduled public meeting, the Board waived its rules pursuant to 11 DCMR § 3301.1 to accept late-filed documents. The Board then postponed its decision on the NCS application in order to further evaluate legal issues raised by the opposition and the Applicant.

5. On June 2, 1999, the Board approved the application, subject to all conditions agreed to by NCS, ANC 3C, and CPCA.

[1] Testimony primarily concerned the issue of party status.

SUMMARY OF HEARING

1. At the April 14, 1999 public hearing, the BZA heard from the Applicant (represented by the law firm of Wilkes, Artis, Hedrick & Lane) and the opposition (represented by the law firm of Hunton & Williams), and from the Office of Planning ("OP"), NCNA, ANC 3C, CPCA, and numerous witnesses from the community.

2. Office of Planning, by memorandum dated February 26, 1999 and by testimony at the public hearing, recommended approval of the application subject to the conditions included in the ANC 3C resolution and usage guidelines of February 22, 1999. The basis of OP's recommendation included: the facility will be built to minimize impacts on the surrounding community, ample parking will be provided, and the student enrollment will not increase. At the hearing, OP also submitted a report by the Historic Preservation Review Board ("HPRB").[2]

3. Both the Applicant and the opposition showed videotapes of the proposed facility. These tapes were submitted into the record.

4. Representatives from the CPCA stated that their organization supports the application, provided that the conditions contained in their April 11th, 1999 usage agreement with NCS would be included in the order.

5. The NCNA opposed the application at the hearing. The NCNA witnesses testified that the proposed athletic facility does not meet the requirements of § 206 of the Zoning Regulations and is therefore likely to become objectionable to adjoining and nearby property owners. Specifically, the NCNA claimed that the size of the proposed facility was excessive, especially when compared to other such facilities; that use of the facility by non-students would negatively impact neighbors; that the facility would cause traffic problems; and, that parking in the area would be adversely affected by the proposed athletic facility. The NCNA also asserted that the community had not been adequately consulted regarding the proposed facility and its suggestions for the facility had only been minimally incorporated in the plans for the athletic facility. The NCNA submitted a petition with the signatures of over 300 nearby residents opposing the proposed facility. The NCNA also submitted a letter from the National Trust for Historic Preservation opposing demolition of the gatehouse and urging that the facility be built in a scale respectful to the neighborhood.

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[2] The report, written by HPRB staff and adopted by HPRB at its January, 1999 meeting, approved the proposed athletic facility subject to certain conditions which included: sinking the athletic facility further into the ground, moving the facility further south, additional design development for the eastern elevation facing 34th Street, and consideration of a more acceptable alternative to the proposed chain link fence that would enclose the field on top of the athletic facility. Subsequently, at its February 25, 1999 public meeting, the HPRB determined that the gatehouse cannot be torn down and that other materials must be considered for the proposed fencing on top of the athletic facility. The applicant's motion to reconsider the determination was denied.

6. Ruthanne Miller, the Commissioner for ANC 3C09, requested at the hearing that any liaison committee to be established by the citizens and NCS be comprised of a greater number of individuals. In particular, she recommended that more of the committee members be representatives of ANC 3C.

7. Witnesses for the Applicant, most of which lived in the surrounding area, submitted letters and testified in support of proposed athletic facility. They focused primarily on: the need for quality schools within the District; the importance of giving young women access to athletics; the respect with which NCS has treated the desires of the surrounding community; and the lack of an existing negative impact on the surrounding community by NCS.

8. Witnesses from the surrounding area also submitted letters and testified in opposition to the application. Their assertions included: community outreach was not comprehensive enough; not enough parking would be provided; the proposed facility is too large; the proposed facility is in the wrong place; traffic will be negatively impacted; and ANC 3C had not adequately addressed their concerns.

9. A letter from the Stoddard Soccer League supporting the NCS application was read aloud at the hearing and submitted into the record.

10. The Applicant's traffic expert, by report and by testimony, asserted that the athletic facility would have no adverse impact on traffic in the area. The expert stated that the traffic operation along Woodley Road and in the intersections studied would remain within acceptable levels. The opposition's traffic expert, however, stated that the Applicant's traffic report is not comprehensive enough and that there was likely to be adverse impact from traffic if the facility is built as proposed.

11. At the close of the hearing, the Board decided that the record was to be left open until April 27th to admit the ANC resolution of April 26th and draft orders from the Applicant and the opposition. The Board stated that responses to these submissions submitted before the May 5th hearing would also be accepted into the record.[3]

FINDINGS OF FACT[4]

1. The National Cathedral grounds ("the Close") consists of approximately 57 acres of land in Northwest Washington, D.C., on which are located the National Cathedral, NCS, St. Alban's Church, St. Alban's School, the Beauvoir School, the College of Preachers, residences and accessory buildings. The Close is bounded by Massachusetts Avenue and Garfield Street to the south, Wisconsin Avenue to the west, Woodley Road to the north, and 34th Street to the east.

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[3] In total, the documents accepted into the record after close of the April 14th the hearing were: a draft order from the Applicant, received on April 27, 1999; a draft order from the opposition, received on April 29, 1999; the ANC 3C resolution of April 26, 1999, received on April 30, 1999; a letter from ANC 3C-09 Commissioner Ruthanne Miller, received on April 29, 1999; a response from the opposition, received on May 3, 1999; and a response from the Applicant, received on May 3, 1999.

[4] Findings based on testimonial evidence will be followed by a bracket indicating the source.

2. The portion of the Close that is the subject of this application is zoned R-1-B.

3. The school consists of three main buildings: Hearst Hall, Woodley North, and Whitby Hall. Hearst Hall is located in the northwest corner of the Close and on Lot 25, the same lot as the proposed athletic facility. Hearst Hall houses the Upper School and most of the NCS administrative offices, and served as the center of all operations of NCS until 1917. Woodley North and Whitby Hall, located in Lot 22, are separated from the Close by Woodley Road and are on a site bounded by Wisconsin Avenue to the west, 36th Street to the east, Lowell Street to the north, and Woodley Road to the south.

4. The BZA previously approved an addition to Whitby Hall (Order No. 15691) which included a condition that NCS school enrollment not exceeds 546 students, and the total number of full-time equivalent staff not exceeds 105.

5. NCS' current athletic facilities are located at the northeast corner of the Close, adjacent to 34th Street and Woodley Road, N.W., and include two non-regulation-size athletic fields, eight tennis courts, and related support facilities. The proposed athletic facilities will be located on and under these existing facilities.

6. The NCS application provides for construction of a new 83,160 sq. ft. athletic facility (including a field house, 4 multi-use courts, a 3,500 sq. ft. weight room, locker rooms, an elevated indoor track and a climbing wall), two associated grass athletic fields, a 4,360 sq. ft. entry pavilion, and a 16,000 sq. ft. parking garage.

7. Approximately 4,360 square feet of the athletic facility will be above grade. 17 feet of the proposed field house will rise above the grade of Woodley Road, and about 27 feet of the building will rise above the grade of the lower field along 34th Street. No other structures are to be built in conjunction with the athletic facility will be in excess of 40 feet. The subject structure will have a rear yard set back of 240 feet, the east side yard will be set back 228 feet, and the west side yard will be set back 72 feet.

8. The proposed project also calls for the construction of walls and fences around the athletic facility. The wall at Woodley Road, N.W., will have a height of four feet, two inches at its west end and ten feet, two inches at its east end. The wall at the lower east elevation will be between nineteen feet, four inches to twenty-two feet, two inches. The proposed height of the wall was reduced in order to address ANC 3C concerns. The athletic fence will be constructed to a height of eight feet.

9. The physical characteristics of the buildings included in the proposed facility will remain the same whether the existing gatehouse is included in the plans for the facility or is demolished.

10. The level of interscholastic competition at the school will not change significantly with construction of the new facilities. The increased use that will result from the facility will primarily come from the intramural and fitness activities of the student body.

11. The applicant's plans, and the CPCA and ANC 3C usage agreements with NCS, include measures and conditions to address the issues of noise, traffic, the visual impact of the facility, and construction.

a) With respect to noise, the plans and agreements provide that: there will be no field lighting for night use of the fields; some of the sports formerly played above grade will now be played below grade; use of the playing fields will be allowed from 9:00 a.m. to 8:30 p.m. on weekdays, from 9:00 a.m. to 6:00 p.m. on Saturdays, noon to 5:00 p.m. on Sundays, and in the summer from 8:00 a.m. to 6:00 p.m. on weekdays only; non-NCS/Foundation use of the athletic fields will be allowed from 10:00 a.m. to 6:00 p.m. on Saturday, noon to 5:00 p.m. on Sunday, and in the summer from 10:00 a.m. to 7:00 p.m. on weekdays, 10:00 a.m. to 6:00 p.m. on Saturday, noon to 5:00 on Sunday, and is limited to 40 people on the field at one time; the proposed building will be set back from the nearest residences along Woodley Road, N.W., and 34th Street, N.W.

b) In order to alleviate present and future traffic congestion, the Applicant plans to change the current Beauvoir Drive circulation pattern to provide a connection to South Drive with a one-way circulation on Beauvoir Drive. [Applicant, T. 80-85, 371-72]. Also, the Applicant's traffic expert concluded, and the Board finds, that the proposed facility will not have a noticeable impact on traffic on Woodley Road or nearby intersections.

c) The landscape treatments included in the project increase the amount of open space on the Close, provide landscape edge treatments that screen views of the proposed athletic center, and place the proposed athletic facilities in a setting that is compatible with the character of the neighborhood. [Applicant, T. 75].

d) NCS is providing 53 parking spaces, in addition to the 85 already on the site, for use in conjunction with the facility. [Applicant, T. 87]. [5]

e) A preliminary construction management plan was developed through discussions with surrounding neighbors, ANC 3C, and other citizens' groups, and includes the following elements:

1) The portion of the lower athletic field least visible to the neighbors will be the staging area for the construction site.
2) Flagmen will be used to direct traffic where the trucks come in and out of the Close.
3) The Applicant has agreed to a construction schedule from 7:00 a.m. to 7:00 p.m., Monday through Saturday.
4) The construction contractor will be required to provide an off site parking facility for its workers.

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[5] In addition, parking provided after 3:30 p.m. includes approximately 30 spaces in the Beauvoir School parking lot and up to 90 parking spaces on South Drive at the College of Preachers.

5) The Applicant will develop a liaison committee to monitor construction and address any construction-related problems.

12. ANC 3C filed a resolution with the Board dated February 22, 1999, after holding four public meetings to discuss the NCS application. The resolution supported the application for the proposed athletic facility subject to certain requests intended to address potential adverse impacts upon the neighborhood. The requests included:

a) Limit after school and non-school usage of the athletic and establish a liaison committee to oversee such usage.
b) Reduce parking and traffic problems.
c) Manage construction so as to minimize impact on the neighborhood.
d) Reduce size of proposed wall along Woodley Road.

13. The CPCA, on April 3, 1999, passed a resolution in opposition to the proposed athletic facility. However, the CPCA stated that it would withdraw its opposition if the terms of the April 11, 1999 usage agreement[6] arrived at through its negotiations with NCS were incorporated in the BZA order. The Usage Agreement contains:

a) Limitations on hours of use.
b) Limitations on sound amplification.
c) Requirement of availability of parking in the parking garage when facilities are in use.
d) Requirements regarding the placement of signs for traffic control in the neighborhood.
e) Requirements regarding traffic control during events.
f) Limitations on NCS/Foundation and community use.
g) A provision providing for the establishment of a liaison committee composed of NCS, NCS/Foundation, CPCA, Cleveland Park Historical Society, ANC 3C, NCNA, and adjacent property owners.

14. ANC 3C, in its second resolution of April 26, 1999, partially rescinded and revised its February 22, 1999 resolution, voting 5-1 to adopt the April 3, 1999 CPCA agreement in its entirety and a number of additional provisions.[7] The additional provisions contain:

a) Landscaping requirements.
b) A requirement of staff presence in parking garage.
c) Restrictions on use of facility for non-athletic events.

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[6] The usage agreement was signed by the Chair of the NCS Governing Board, the NCS Headmistress, the Chair of the CPCA Zoning Committee, and the CPCA President.

[7] The Commissioner for ANC 3C-09, a single member district, voted against the resolution, objecting to the provisions restricting the amount of people on an athletic field at any one time to 40, restricting the amount of people present at any one time inside the proposed building to 50, and limiting the use of the building by non-NCS members.

d) A prohibition on sale of memberships to the facility.
e) Liaison committee meeting obligations.
f) Parking requirements, including providing additional underground parking beyond that proposed in the application if feasible.
g) Measures to minimize the effect of construction of the facility, including establishment of a construction liaison committee. The resolution also attached a "Construction and operation Conditions".

15. The applicant has agreed to be bound by the ANC 3C resolution. [Applicant T. 121-24].

16. In the event of a contradiction or incompatibility with respect to any particular provision of the CPCA Usage Agreement and the ANC 3C April 26 resolution, the applicant agrees that the more restrictive of the two will govern. *Id.*

CONCLUSIONS OF LAW AND ORDER[8]

The Applicant is seeking to construct an athletic facility at a private school in an R-1-B District. The proposed facility could not be constructed as a matter of right under its current zoning category. Thus, the Applicant is seeking an expansion of an existing special exception use (private school).

The BZA is authorized to hear and decide requests for special exceptions pursuant to Section 8 of the Zoning Act of 1938. Private schools are identified among the uses permitted as special exceptions in an R-1 zone (11 DCMR § 206.1).

In order to obtain a special exception, Section 3108 of the Zoning Regulations requires applicants to demonstrate that the proposed use will be 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 in accordance with the Zoning Regulations and Maps.

In addition, Section 206.2 of the Zoning Regulations requires that the private school be located so that is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

The Board finds that the applicant has met its burden in demonstrating that the new athletic facility is in harmony with the purpose and intent of the Zoning Regulations and Maps and is not likely to become objectionable to, or adversely affect, adjoining and nearby property owners because of noise, the number of students, or present otherwise objectionable conditions. The Board notes that the facility, to be built on top of and underneath existing athletic fields, [F.F. 5] will be located near a school campus and church compound in an area where it will not have a deleterious effect on the community. The design of the facility will minimize noise and visual exposure, [F.F. 7, 8, 11]. Specifically, the height of the wall and athletic facility will not have adverse impacts on properties to the north, across Woodley Road, while open space at the location of the facility will be in harmony with such properties. As to the number of students, the enrollment level will remain the same, in accordance with a previous BZA Order [F.F. 4],

[8] References to Findings of Fact will be designated as "F.F.__" .

and the amount of athletic competition will not change significantly. [F.F. 5, 10]. As to the issue of traffic, the Board accepts the opinion of the Applicant's traffic expert that no significant traffic problems for the surrounding area will result from use of the proposed facility. [F.F. 11] Also, the traffic circulation changes to Beauvoir Drive are expected to prevent traffic congestion adjacent to the facility. *Id.*

In order to ensure that the proposed facility will not adversely affect the neighborhood, the Board's approval is made subject to the terms of the usage agreement between the Applicant and the CPCA and the conditions in ANC 3C's April 26, 1999 revision of its February 22, 1999 resolution (including the conditions of the attached "Construction and Operation Conditions"). The usage agreement and ANC resolution are incorporated in this order as Appendix A and B, respectively. These terms and conditions, developed through discussions with NCS, represent a substantial accommodation of the concerns of the neighborhood through the imposition of restrictions and limitations on NCS's construction and use of the proposed facility. Concerns addressed by the terms and conditions chiefly relate to after school and non-school use of the facility, parking and traffic, and impact on the community during construction of the facility. [F.F. 13, 14]. In addition, the liaison committee to be established under the agreements will serve as a vehicle through which future citizen requests and concerns may be addressed. The Board, in approving this application and in making its approval subject to the conditions agreed to by the ANC, has taken into account the ANC's unique vantage point and found its advice persuasive. In doing so, the Board gave the ANC the great weight to which it is entitled.

Section 206.3 of the Zoning Regulations requires ample parking space, no less than that required by Chapter 21 of the Zoning Regulations which governs parking. Pursuant to such Regulations, NCS will be required to provide a total of 110 parking spaces at the facility. NCS plans to construct at least 53 additional spaces bringing the total to 138 at the facility. [F.F. 11] Therefore, the parking provided will exceed regulatory requirements.

Section 400.1 of the Zoning Regulations allows structures in an R-1-B District to be built to a maximum height of 40 feet. An institutional building, such as the proposed field house, may be erected to a height not exceeding 90 feet, provided that it is removed from all lot lines a distance of not less than one foot for each foot in excess of that authorized in the district in which it is located. No structures to be built in conjunction with the athletic facility will be in excess of 40 feet (the proposed field house will reach a height of almost 27 feet). [F.F. 7] Thus, the proposed athletic facility is in conformance with the Zoning Regulations height limitations for an R-1-B District.

Additionally, to approve an expansion of a special exception, the use must also be either part of, or accessory to, the existing special exception principal use. Thus, the use must be characterized as either principal or accessory. The opposition argues that the proposed athletic facility is neither and that a use variance is required. The Board disagrees.

The Board concludes that the athletic facility is an extension of the principal use. Athletics is a form of education, and thus the athletic facilities are educational facilities. It, therefore, follows that the applicant need only meet the standard for a private school special exception. However, even if it the proposed athletic facility could not be fairly characterized as an extension of the

existing principal use, it would nevertheless meet the test for accessory uses as set forth in the Zoning Regulations.[9]

The Zoning Regulations define "accessory use" as: "a use customarily incidental and subordinate to the principal use, and located on the same lot as the principal use." 11 DCMR § 199.1.

1. Customarily Incidental and Subordinate Test

Under the first part of the "accessory use" definition, the Board must determine whether this facility can be characterized as customarily incidental and subordinate to a private school.

An athletic facility is nearly always provided to students of a private school and can be characterized as customarily incidental and subordinate to a private school. The Board has previously approved a number of athletic facilities in conjunction with private schools under a special exception, thus establishing that at least the first part of this test has been met in the past. *See BZA Order No.16273, Lab School* (Board granted a special exception to private school to construct a 18,800 square foot athletic facility which included a gym, a pool, athletic courts, and exercise equipment for up to 310 students). The Board finds that this application is for an athletic facility, and not a community center as alleged by those in opposition to the application and that the characteristics of this facility allow it to be categorized as accessory to a private school.

2. Same Lot Test

Next, the definition of "accessory use" requires that the proposed use be on the same lot as the principal use.

At NCS, Hearst Hall is on the same lot as the proposed athletic facility. This leaves the other two halls on a lot across the street from the lot on which proposed athletic facility will be built. The Board concludes that, under the circumstances presented here, the "same lot" part of the test is satisfied even though only part of the school is on the same lot as the athletic facility.[10] A different interpretation would produce the absurd result of the Board granting the special exception with respect to the Upper School, and requiring a variance for the Lower and Middle schools.

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[9] The definition of "public school" contained in 11 DCMR § 199 is not helpful to this analysis. The preamble to the 1968 rulemaking that established the definition stated that the definition was intended to "permit the District of Columbia Board of Education greater flexibility in the location and design of public school buildings in residential zones. . .". 15 DCR 29. This language it makes clear the definition was devised to favor the unimpeded development of public schools as matter of right uses. Thus, the definition was inteded to be narrowly applied and not expanded by analogy to other uses.

[10] The Board notes that the existing facilities on the same lot as the proposed use are substantial and include the school's main administrative offices, [F.F. 3] moreover, the use originated from this same lot. [F.F. 3].

For the reasons stated above, it is hereby **ORDERED** that the application be **GRANTED** with respect to either of the two plans submitted[11] in the application subject to the following **CONDITIONS:**

1. The Applicant shall comply with each and every term set forth in the CPCA - NCS Usage Agreement of April 11, 1999, attached hereto as Appendix A; and

2. The Applicant shall comply with each and every condition set forth in the ANC 3C resolution of February 22, 1999 as amended by the ANC resolution of April 26, 1999, attached hereto as Appendix B, including each and every condition contained in the "Construction and Operation Conditions".

In the event of a contradiction or incompatibility with respect to any particular provisions of the CPCA Usage Agreement and the ANC 3C's April 26, 1999, revision of its February 22, 1999, resolution, the more restrictive of the two will govern. Both agreements include establishment of a liaison committee. The membership of this committee will be the same under the terms of both agreements. Therefore, the Board finds that the establishment of one liaison committee will satisfy both agreements.

A violation of any of these conditions shall be considered a failure to comply with this Order. The violation shall be deemed recurring. Chapter 32 of the Zoning Regulations sets forth provisions with respect to enforcement and penalties for violations of the regulations. Section 3205 requires compliance with conditions in orders of the Board and provides that, if a building permit or certificate of occupancy has been issued pursuant to a decision of the Board to approve a special exception, then each condition to the approval of that special exception shall be treated as a condition to the issuance of the building permit or certificate of occupancy as well. 11 DCMR § 3205.4 (1995). Failure to abide by the conditions, in whole or in part, shall be grounds for the revocation of any building permits or certificate of occupancy issued pursuant to this order

VOTE: 4-0 (Betty King, John Parsons, Sheila Cross Reid, and Jerry Gilreath to grant.)

THE DECISION TO GRANT THE APPLICATION WAS MADE BY THE BOARD OF ZONING ADJUSTMENT AT ITS PUBLIC MEETING OF JUNE 2, 1999.

EACH CONCURRING MEMBER OF THE BOARD HAS READ AND APPROVED THE ISSUANCE OF THIS ORDER AND AUTHORIZED THE UNDERSIGNED TO EXECUTE IT ON THEIR BEHALF.

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[11] In doing so, the Board in no way absolves that applicant from complying with the law pertaining to Historic Preservation or authorizes any action that is inconsisent with those laws or with any determination made pursuant to those laws.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Jerrily Kress
JERRILY KRESS, FAIA
DIRECTOR

Final date of Order: AUG 17 1999

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISION OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 310.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH A PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16433

As Director of the Office of Zoning, I hereby certify and attest that on AUG 17 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Wayne S. Quin
Wilkes, Artis, Hedrick and Lane
1666 K Street, N.W., Suite 1100
Washington, DC 20006

Ruthanne G. Miller, Commissioner
Advisory Neighborhood Commission 3C09
2737 Devonshire Place, N.W.
Washington, DC 20008

Nat'l Cathedral Neighborhood Assoc.
C/o Thomas E. Dernoga
Gray & Dernoga
6510 Paper Place
Highland, Maryland 20777

Nat'l Cathedral Neighborhood Assoc.
C/o Richard L. Aguglia
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006-1109

Ann Hume Loikow, Chairperson
Advisory Neighborhood Commission 3C
2737 Devonshire Place, N.W.
Washington, DC 20008

ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
DIRECTOR

DISTRICT OF COLUMBIA COURT OF APPEALS

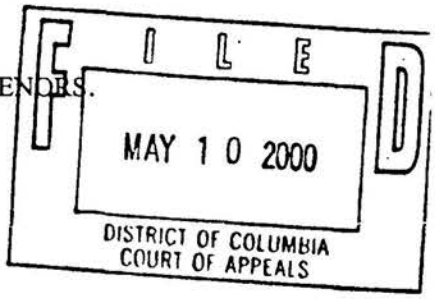
No. 99-AA-1230

NATIONAL CATHEDRAL NEIGHBORHOOD ASSOCIATION, *et al.*, PETITIONERS,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT.

PROTESTANT EPISCOPAL CATHEDRAL FOUNDATION, INTERVENORS.



Petition for Review of a Decision of the
District of Columbia Board of Zoning Adjustment

(Argued May 2, 2000 Decided May 10, 2000)

Before FARRELL and REID, *Associate Judges*, and PRYOR, *Senior Judge.*

MEMORANDUM OPINION AND JUDGMENT

Petitioners seek reversal of a decision of the Board of Zoning Adjustment (BZA or the Board) granting intervenors' application for a special exception permitting construction of a new athletic facility for the use of the National Cathedral School (the School). Petitioners make an array of arguments, including that the BZA erroneously found the proposed facility to be either (a) an extension of the principal use or (b) an accessory use of the School, failed to consider the cumulative impact not just of the sports facility but of all the uses of intervenors' property — including the new facility — on the surrounding neighborhood, and failed to reconcile the proposed construction with the requirements of the Comprehensive Plan. Finding none of these arguments a sufficient basis for reversal of the BZA's decision, we affirm.

Petitioners acknowledge both the BZA's limited role with respect to the grant or denial of a special exception[1] and this court's limited role in reviewing the Board's

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[1] In evaluating requests for special exceptions, the Board "is limited to a determination whether the exception sought meets the requirements" of the particular regulation on which the application is based. The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, "the Board ordinarily must grant [the] application."

(continued...)

decision.[2] The BZA found that the proposed facility met the requirements of a special exception. *See Citizens Coalition v. District of Columbia Bd. of Zoning Adjustment*, 619 A.2d 940, 947-48 (D.C. 1993). Specifically, the BZA found that the facility constitutes either an extension of the principal use of the school or an "accessory use." Because the Board's finding that it is an accessory use is sustainable, we need not consider whether the facility is reasonably characterized as an extension of the principle use. Petitioners argue that because of the size and mass of the proposed structure it cannot reasonably be termed "incidental to and subordinate to the principle use," 11 DCMR § 199 (defining "accessory use"). We disagree. Functionally there is no question that athletic facilities, and the buildings housing them, are an adjunct to the educational mission of a school. *Cf.* 11 DCMR § 199 (defining "public school"). Nor does anything in the regulation imply that a facility loses that character when it reaches a certain size. In any case, the BZA made no finding that the proposed structure is too large for its intended purposes. The Board found that only 4,360 of the total 83,160 square feet comprising the structure would be built above ground, and that the height of the building is well within the regulatory limit. *See* 11 DCMR § 400.1. Nothing in the size or mass required the Board to conclude that use of the proposed structure could not be considered accessory.[3]

This court has also stated that "'the degree of impact upon the surrounding residential neighborhood is the most reasonable test of the appropriateness of an accessory use.'" *Citizens Coalition*, 619 A.2d at 952 (citation omitted). The BZA found that the proposed facility, to be built largely underground, has been designed to "minimize noise and visual exposure," and specifically that "the height of the wall and athletic facility will not have adverse impacts on properties to the north, across Woodley Road, while open space at the location . . . will be in harmony with such properties." Although petitioners dispute these findings, we are unable to say that they lack substantial support in the record.[4]

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[1](...continued)
French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1032-33 (D.C. 1995) (citations omitted).

[2] "We must uphold decisions made by the BZA if they rationally flow from findings of fact supported by substantial evidence in the record as a whole." *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949, 953 (D.C. 1990) (citations omitted). That is so "even though we might have reached another result." *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).

[3] The BZA could also properly find that the building met the "same lot" test for an accessory use. *See* 11 DCMR § 199. In contrast to the separate locations involved in *Hilton Hotels Corp. v. District of Columbia Bd. of Zoning Adjustment*, 363 A.2d 670 (D.C. 1976), here the Upper School is located on the same lot as the proposed facility, and the Lower and Middle Schools are situated directly across the street.

[4] The Board found, for example, that the proposed height of the wall had been reduced to address concerns of ANC3C. The Board also found that there would be sizeable set backs on three sides of the structure. Evidence further allowed a finding that, while on the
(continued...)

The BZA expressly made its approval contingent on intervenors' compliance with written usage agreements between intervenors, the ANC, and the Cleveland Park Citizens Association (CPCA) designed "to address the issues of noise, traffic, the visual impact of the facility, and construction."

Nor are we persuaded by petitioners' argument that the BZA viewed the proposed construction in artificial isolation, without considering the cumulative impact of (for example) traffic generated by the National Cathedral site overall. Assuming that the Board was required to take into account existing deficiencies in parking availability on the site, it nevertheless could fairly conclude — as it did — that the proposed facility would not add to the effects of that shortage.[5] A project otherwise justified could not be held hostage, as it were, to existing traffic problems caused by the attraction of the Cathedral site generally.

Finally, although the BZA is required to "look to the District elements [of the Comprehensive Plan] for general policy guidance" in passing upon applications, 10 DCMR § 112, nothing in those elements is inconsistent with the Board's reasoned approval of the proposed facility. The National Cathedral is, indeed, to "be protected from nearby dense development that would despoil its setting." 10 DCMR § 1400.2 (c)(2). Testimony before the BZA permitted it fairly to conclude that the design of the predominantly underground facility will further the goal of maximizing the amount of open space on the Cathedral site.

We have considered petitioner's remaining arguments and reject them as well.

Affirmed.

FOR THE COURT:

GARLAND PINKSTON, JR.
Clerk

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[4](...continued)
fourth (or Woodley Road) side the set back would be much shorter, a berm and landscaping would serve as a visual buffer.

[5] The Board found that the proposed construction would add 53 parking spaces to the 85 already on the site, and that existing traffic patterns were to be altered "to alleviate present and future traffic congestion." The agreements with the ANC and the CPCA were likewise intended to achieve partial amelioration of traffic problems.

From our repeated references to the ANC agreement, it goes without saying, that we reject petitioners' argument that the Board failed to give "great weight" to the ANC's recommendations. Subject to compliance with the agreements, the ANC in fact approved construction of the facility, as had the Office of Planning.

No. 99-AA-1230

Copies to:

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Washington, DC 20006

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Application No. 16637 of Alex R. Boyar, pursuant to 11 DCMR 3104.1, for a special exception under Section 2516 to permit a theoretical lot line subdivision to allow the construction of four single-family detached dwellings in an R-1-B District at premises 4427 Potomac Avenue, N.W. (Square 1356, Lots 21 and 22).

HEARING DATE:	November 8, 2000
DECISION DATE:	November 8, 2000 (Bench Decision)

SUMMARY ORDER

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, by mail to Advisory Neighborhood Commission (ANC) 2E, and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2E. ANC 2E, which is automatically a party to this application, submitted a report unanimously approving the application.

The Board approved the application at its November 8, 2000 public hearing; however, required that the Applicant provide additional information prior to release of the order. The Board requested the following information:

- A Construction Management Plan;
- An updated Site Plan;
- Letter from the Zoning Administrator's office regarding compliance with lot line orientation pursuant to Section 2516.5(d);
- A copy of the letter that was sent to the National Park Service; and,
- A final landscaping and grading plan.

The Board discussed the Applicant's submissions at a Special Public Meeting on November 21, 2000, and approved the issuance of the Order with the conditions identified herein. The Board also indicated that although the Applicant provided only a 40-foot turning area for vehicles within the property, consistent with Section 2516.6(d), this diameter is acceptable in light of the number of dwellings to be constructed and the amount of parking being provided on-site.

The Applicant provided the requested information to the Board, the Office of Planning and to Advisory Neighborhood Commission 2E. Advisory Neighborhood Commission 2E advised the Board that all of the commissioners reviewed the Construction Management Plan and had no objection to the plan.

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

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR Subsection 3104.1 and Section 2516, that the requested relief can be granted in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

Construction Management

1. The Applicant shall abide by the conditions identified in the Construction Management Plan (Exhibit No. 34). The following shall amend the plan:

    - Exterior construction shall be limited to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday.

    - The Applicant shall discuss with Advisory Neighborhood Commission 2E the route that will be used for construction traffic. A document identifying the traffic route of construction vehicles is to be filed with the ANC.

    - All vehicles related to on-site construction shall be parked on the premises.

    - There shall be no unnecessary idling of vehicles on neighborhood streets.

    - The hauling route, within two blocks of the site, shall be washed down as needed, and construction debris removed.

- Portable toilets shall be provided on-site.

Community Contact

2. The Applicant shall provide to ANC 2E the name and telephone number of a person to be contacted during construction, regarding complaints or other issues.

Design

3. The dwellings shall be designed to be compatible with the character and style of structures in the Palisades neighborhood. The design of the structures shall be submitted to ANC 2E for review.

Pursuant to 11 DCMR 3101.6, the Board waived the requirement of 11 DCMR 3125.3 that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0 (Rodney Moulden, Sheila Cross Reid, Carol Mitten and Robert Sockwell to approve.)

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: DEC - 1 2000

PURSUANT TO D.C. CODE SEC. 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1999), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3125.9 "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

BAB/11.29.00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

BZA APPLICATION NO. 16637

As Director of the Office of Zoning, I hereby certify and attest that on DEC - 1 2000 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter and who is listed below:

Alex Boyar
4221 38th Street, N.W.
Washington, DC 20016

Peter Pulsifer, Chairperson
Advisory Neighborhood Commission 2E
St. John's Episcopal Church
3265 S Street, N.W.
Washington, DC 20007

Fran Goldstein
SMD Commissioner ANC 2E02
3928 Highwood Court, N.W.
Washington, DC 20007

Councilmember Jack Evans
Ward Two
441 4th Street, N.W., Suite 703
Washington, DC 20001

Toye Bello, Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

ATTESTED BY: Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16904 of Capitol Apartment Property Associates LP, pursuant to 11 DCMR § 3104.1, for a special exception for a new residential development under section 353, a special exception to allow a group of buildings to be erected and deemed a single building under section 410, and a special exception to allow two or more principal buildings on a single subdivided lot under section 2516, for the construction of 96 apartment units in an R-5-A District at premises 3701-23 4th Street, S.E., 3708-22 2nd Street, S.E., and 200-208 Wilmington Place, S.E. (Square 6092, Lots 25-29).

HEARING DATE: July 30, 2002
DECISION DATE: September 4, 2002

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 8C and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 8C. ANC 8C, which is automatically a party to the application, filed a written statement in support of the application. The Office of Planning submitted a report in support of the application. The District Department of Transportation (DDOT) submitted a report having no objection to the application.

As directed by 11 DCMR § 3119.2, the Board has required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1, 2516, 410 and 353. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met its burden of proof, pursuant to 11 DCMR § 3104.1, for a special exception under § 2116, and that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application be **GRANTED.**

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis Etherly, Jr., Anne M. Renshaw to approve, Anthony J. Hood to approve by proxy, David A. Zaidain not present, not voting).

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, Office of Zoning

Final Date of Order: SEP - 9 2002

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 THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). 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. NOTE IN SECTION 2-

1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16904

As Director of the Office of Zoning, I hereby certify and attest that on SEP - 9 2002 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

George R. Keys, Jr., Esq.
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Virginia L. Major, Commissioner 8C07
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Robert Kelly, Zoning Administrator
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441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16705 of Stanton Road Housing, LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1 for special exceptions under section 353 and subsection 2516.5 for a new residential development having theoretical lots and variances under section 402 from the floor area ratio requirements, and under section 403 from the lot occupancy requirements for the construction of 25 townhouses in the R-5-A and R-4 Districts at Stanton and Douglas Roads, S.E. (Square 5870, Lots 65, part of Lots 64, 66, 67, 811, 818, 859 and 860).

HEARING DATE: May 29, 2001
DECISSION DATE: May 29, 2001

SUMMARY ORDER

SELF- CERTIFICATION

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 8A, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP) for review and report.

The subject property is located within the jurisdiction of ANC 8A. ANC 8A, which is automatically a party to this application, did not participate in this case. The OP submitted a report recommending conditional approval of the application. The Department of Public Works submitted a report stating that it had no objection to the application. The Department of Housing and Community Development submitted a letter in support of the application.

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

Based upon the record before the Board and having given great weight to the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proof, under 11 DCMR §§ 3103.2, 402, and 403 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose,

and integrity of the zoning plan as embodied in the Zoning Regulations and Map. The Board further concludes that the Applicant has met the burden of proof under 11 DCMR §§ 3104 .1, 353, and 2516.5 that the granting of the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, It is therefore **ORDERED** that the application be **GRANTED.**

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0-1 (*John G. Parsons, Susan M. Hinton, Sheila Cross Reid, and Geoffrey H. Griffis to approve; Anne M. Renshaw abstaining*)

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, Office of Zoning

Final Date of Order: JUN 19 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.

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 APPLICATION NO. 16705

As Director of the Office of Zoning, I hereby certify and attest that on JUN 19 2001 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class, postage prepaid or sent by 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, FAIA
Director, Office of Zoning

ATT/16705anc8A

KJ1
19057/JDC

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16457 of Kass MA, L.L.C., as amended, pursuant to 11 DCMR 3108.1 (new 3104.1), for special exceptions under Subsections 410 and 2516 to allow the construction of 33 new single-family detached dwellings with garages in a theoretical lot subdivision and 176 luxury garden apartments in the R-5-A and R-5-B Districts at premises bounded by Good Hope Road, SE, between 24th Street, SE to the east, and 18th Street, SE to the west (Square 5735, Parcels 219/96, 220/31 and Square 5765, Lot 804 and Parcel 219/138).[1]

HEARING DATE: May 5, 1999
DECISION DATE: June 2, 1999

ORDER

SUMMARY OF EVIDENCE:

A. Record of Evidence

The application was advertised for the construction of 33 single-family dwelling units; however, the project consists of 37 single-family units. Four units would be constructed on record lots, as a matter-of-right.

The site is located in the Southeast quadrant of the District of Columbia, on the south side of Good Hope Road, SE, between 24th Street to the east and 18th Street, SE to the west. The site (15.8 acres) consists of two parcels of land: the East Parcel and the West Parcel. A portion of Fort Stanton Park that fronts on Good Hope Road separates the two parcels.

The East Parcel consists of Square 5735, Parcels 219/96 and 220/31. The East Parcel contains 355,227 square feet (8.15 acres) of land area. This parcel is rectangular in shape and has a frontage along Good Hope Road of approximately 535 feet. The East Parcel is currently vacant with virtually no vegetation and abuts Fort Stanton Park on its western and southern boundaries. The East Parcel is located entirely in the R-5-A District.

The West Parcel consists of Square 5765, Lot 804 and Parcel 219/138. The West Parcel is vacant, irregularly shaped, and contains approximately 332,365 square feet (7.63 acres) of land area. The West Parcel has a frontage of 760 feet along Good Hope Road and 360 feet along U Street. The West Parcel abuts Fort Stanton Park on its southern and eastern boundaries. The

[1] The application was corrected to reflect the correct square and parcel numbers.

West Parcel is split-zoned with approximately two-thirds in the R-5-B District and one-third in the R-5-A District.

The subject property is located in the Fairlawn/Woodland neighborhoods. The East Parcel is located in Ward 8 and the West Parcel is located in Ward 6. A mix of housing types characterizes the area surrounding the site. To the north and west of the site are single-family dwellings. To the north, northeast and southeast of the site are garden and high-rise apartment buildings. The multi-family dwellings include: the 672-unit Marbury Plaza high-rise building; the 213-unit Skyland Garden Apartments; and, the 231-unit Park Naylor Apartments. The Good Hope Marketplace Shopping Center, which is located at Good Hope Road and Alabama Avenue, is the nearest commercial area to the site. Ketcham Elementary School is located to the west of the site at 15th and U Streets, SE, and the Anacostia Branch Public Library is located directly to the north of the site at 18th Street and Good Hope Road. Metrobus provides transportation service to the area.

The proposed development is referred to as "Woodmont". The Applicant indicated that the firm, KSI Services, Inc, has developed similar planned communities throughout the Washington Metropolitan Area and manages all of its properties. The planned residential community consists of two components: the development of 37 single-family detached homes and 176 units of apartments in six multi-family buildings. The Applicant indicated that the project is economically feasible, only if the multi-family component is constructed. Without construction of the apartments units, the single-family component would not be possible. The Applicant committed to long-term ownership and control (25 years or more) of the apartment component. The following information identifies key features of each component:

- Single-Family Homes at Woodmont (West Parcel)

    1. Construction of 37 units - 33 units on a theoretical subdivision and four units on record lots.
    2. The owner-occupied homes would be constructed on approximately 7.6 acres.
    3. Combined lot occupancy would be 15 percent (40 percent permitted).
    4. Floor area ratio .3 (.9 permitted).
    5. The size of each lot would range from 5,500 s.f. to 7,500+ s.f.
    6. Construction of a 25-foot wide private roadway, Wagner Street SE. Access to 33 dwelling units would be from the private street. Four units would have access from Good Hope Road.
    7. One or two-car garages for each unit.
    8. Construction of a new private roadway from 18th Street.
    9. Establishment of a homeowners/tenants association.

- Apartment Houses at Woodmont (East Parcel)

    1. 176 rental units
       40 two-bedrooms/two-bathrooms (925 square feet)
       76 two-bedrooms/two-bathrooms (1010 square feet)
       60 three-bedrooms/two-bathrooms (1175 square feet)

    2. Twelve garden apartment buildings constructed on approximately 8.1 acres.

    3. Construction of a private roadway from Good Hope Road.

    4. Height of buildings - 3 and 4 stories.

    5. Floor area ratio .64 (.9 permitted).

    6. Lot occupancy 20 percent (40 percent permitted).

    7. 176 parking spaces – to include spaces for visitors and physically challenged persons.

    8. Gated community with controlled access.

    9. Operated by a management company.

    10. 48 units are ADA (American With Disabilities Act) accessible.

    11. Amenities – pool, fitness center, clubhouse, after-school enrichment and computer training and children's play area. Initiation of the Rent-To-Buy Program. Residents would accrue equity in their apartment units that would eventually go toward the purchase of a home.

Zoning

The Applicant indicated that both components of the project are matter-of-right uses and that the project meets all zoning requirements of the R-5-A and R-5-B districts. No variances or other deviations from the Zoning Regulations are required. The Board, however, is required to review theoretical lot subdivisions, under Section 2516 of the Zoning Regulations, and site plan review of anything but single-family detached dwelling units in the R-5-A District, under Section 410. Accordingly, two Special Exceptions are required by the Zoning Regulations for the type of development, which is proposed.

Traffic/Parking

The Applicant submitted a Traffic Impact Analysis (Exhibit 33, Tab D). The study concluded that the area surrounding the site would be adequate to accommodate the proposed development. Minor capacity deficiencies would occur at two intersections (AM peak hour only) due to congestion along the major commuter routes. The proposed development, however, would not create any significant capacity, safety, or operational deficiencies within the study area road network, and would not adversely impact the health, safety and general welfare of roadway users.

The major findings of the traffic study are:

a) The key intersections within the study area currently operate at acceptable Levels of Service, with the exception of Good Hope Road at 25th Street, SE during the morning peak hour period.

   The intersection is signalized, and a solution to the problem could be making minor adjustments in the signal timing and phasing. The result would be additional capacity and greater efficiency of the intersection, depending on the time of day and the directional flow of traffic.

b) The traffic levels of usage for all key roadways considered have remained generally stable over the past several years; and on some roadways, traffic volumes have decreased.

c) A study (license plate survey) conducted along Good Hope Road, SE within vicinity of the study area indicates that over 75 percent of the vehicles are registered out-of-state. In conjunction, travel time surveys along Pennsylvania Avenue between Southern Avenue, I-295, and Branch Avenue show extreme levels of congestion.

d) Analysis of traffic volumes projected to the year 2001 shows that levels of service will continue to be acceptable with the exception of Good Hope Road at 25th Street, SE during the morning peak.

e) It is projected that the parking supply for the proposed development would be adequate.

f) Transit service along the Good Hope Road corridor has adequate capacity to accommodate potential demand from the proposed development.

The Applicant is proposing to provide 216 parking spaces. Of the total number of spaces, 176 would be provided for the apartments and 40 for the single-family homes. The Applicant indicated that based on a study of the area and similar types of projects the firm has constructed, the number of proposed parking spaces would be sufficient to satisfy the project's parking needs.

Environmental Evaluation

A portion of Fort Stanton Park, divides the single-family homes and the garden apartments. The Applicant indicated that concerns regarding storm water drainage and treatment were discussed with the DC Department of Public Works, Storm Water Management Branch. As a result of those discussions, the Applicant was informed that the Park Service property would not be impacted by storm water from the site. Specifically, storm water would be collected from the site, held in a storm water detention vault, and piped out through a closed conduit system under Good Hope Road. In addition, every effort would be made to assure adequate pest management control.

The Applicant indicated that extensive work was undertaken on environmental issues at the site. The work included a wetland delineation completed on both properties, which meets federal standards, and discussions were held with the District's Department of Health, Division of Environmental Services.

B. Report of Government Agencies

Council member Sharon Ambrose, indicated in correspondence dated May 5, 1999, that she supports the citizens of the Fairlawn community in their opposition to the application. Councilmember Ambrose stated that the citizens are very concerned that the density of the apartment buildings being proposed will erode the basic residential character of their community. The Fairlawn community suffers from a growing number of badly maintained and some abandoned multi-family buildings. The Council member indicated that while the townhouses are compatible with the development objectives of the Comprehensive Plan, the proposed apartments move the community in a different direction.

The DC Department of Housing and Community Development (DHCD), by memorandum dated April 12, 1999, supported the application. DHCD indicated that the multi-family garden apartment buildings would add to the stability of the existing garden apartment community. The proposed development complies with Sections 410 and 2516 of the Zoning Regulations. The single-family dwellings will add, needed, high quality, housing to East of the River housing stock. The opportunity for home ownership and the tax base of Wards 6 and 8 will be increased. The development will be in harmony with the general purpose and intent of the Zoning Regulations and Map (Exhibit 31).

The Department of Public Works (DPW) stated that the proposed development can be accommodated within an acceptable level of service -- the roadway system can handle traffic generated by the development (Exhibit 53). DPW stated that the 216 parking spaces that the Applicant is proposing are in compliance with the requirements of the Zoning Regulations. However, it appears that the proposed upscale development would generate more parking demand. To accommodate both residents and their guests and to minimize parking spillover into the neighboring residential area, the Applicant should be required to provide 1.1 parking spaces per dwelling unit, or 22 additional parking spaces.

C. Advisory Neighborhood Commission (ANC) Comments

The single-family component of the project would be located in Ward 6 (ANC 6C) and multi-family component would be located in Ward 8 (ANC 8B). Advisory Neighborhood Commission 6C did not submit any comments on the application.

Advisory Neighborhood Commission 8B submitted a letter stating that the Commission is not opposed to the plan for construction of the 176 apartment units; however, the Commission has some reservation (Exhibit No. 37). In the past, properties have been developed in the community, only to be deserted by developers after profits were received. The deserted developments have become havens for crime and other uses. The Commission wants some assurance that the Applicant will manage the properties for at least 25 years. Commission

members would prefer to have single-family homes built on the site to build the economic tax base needed to improve schools, encourage new businesses, and improve the area's job market.

D. Testimony of Opponents

Thelma E. Jones represented herself and the Fairlawn Citizens Association. By correspondence dated April 26, 1999, the Fairlawn Citizens Association voted, unanimously, to oppose the application. The citizens' association representative stated that the Applicant made a presentation on the proposed project at its January 19, 1999 meeting. Plans were presented and information given to the Board at the public hearing that was not discussed with the community. In addition, at the community meeting, residents stringently voiced their objection to any more apartment buildings being built in the community; however, they welcomed and supported single-family dwellings (Exhibit 56).

The Fairlawn Citizens Association submitted a petition, on behalf of approximately 150 residents, indicating that the community is strongly opposed to the project (Exhibit 39). The petition indicates that the residents would prefer to have single-family homes constructed on the site because rental apartment units would increase the density of the area, create congestion, and stretch limited community services (to include overcrowding at Ketcham Elementary School). Ms. Jones indicated that residential projects have been constructed in close proximity to the site where there is deterioration, absentee ownership, vandalism, lack of maintenance, abuse and drug infestation. In addition, the Skyland Apartments, Altamont Apartments, and Marlbury Plaza are apartment complexes that have a high vacancy rate.

Ms. Jones and four other community residents testified that the Applicant did not satisfactorily address the community's concerns about soil erosion and water runoff. Specifically, when rain falls heavily, there is approximately two to four-feet of water that build up on some parts of Good Hope Road. Within the vicinity of the site, water seeps up from an underground stream. There is water leakage into the basement of homes that are located close to the site.

The community residents testified that there is a significant amount of existing traffic congestion in the neighborhood. Local traffic, when intermingled with commuter traffic, causes a negative impact on the local roadways. If the neighborhood's population were significantly increased, current traffic bottlenecks would spillover onto local roadways.

The Frederick Douglass Community Improvement Council presented testimony in opposition to the application because the project would cause increased congestion in the community (Exhibits 34 and 52). The Council's president, Carolyn Johns Gray, supported the position taken by the Fairlawn Citizens Association.

The National Park Service testified that the site is problematic because it contains major environmental and design problems. The Park Service representatives indicated that they did not receive an updated set of plans on the project until the day prior to the hearing; therefore, their review was based on plans that were initially filed. In order for the project to not have a negative impact on Park Service land, more substantive information about how the Applicant would treat the site so that it is more environmentally sensitive would be required.

The property abuts Fort Stanton Park. The parkland is a part of the Fort Circle Park system, which is essential to the Nation's Capitol for many reasons, including preservation of the wooded forest ridge that creates the topographic bowl of the city. The elevation in the vicinity of the site is very high (an average of 200 feet). The tree cover on top of that is approximately 90 feet. Therefore, from a marketing perspective, the proposed development would have significant views. The Park Service representatives indicated that approximately 50 feet of the buildings would be visible above the treetop or the tree line of the ridge. This would be of detriment to the sight line of the parkland. Further, the height of the apartment buildings would be 62 feet, which means that these buildings would be visible from the Anacostia Freeway - one of the areas that becomes the viewing point for this wooded ridge around the Potomac River.

The apartment complex would be constructed on substantially fill land and there is massive erosion on the site. The Park Service representatives indicated that the rubble site has been a source of problem since 1986. They were dissatisfied with submitted plans concerning the stability of the rubble fill, how erosion and water run-off from the rubble would be treated, and whether the site is capable of sustaining the level of development that is proposed. The Park Service representatives indicated that it would be the Applicant's responsibility to screen the site with the appropriate vegetation.

The Fort Circle Parks are contiguous to or adjoining wetlands. The single-family homes would be constructed on wetlands and the District government requires preservation of wetlands. The Park Service representatives stated that they were not sure how much of the wetlands in that area could be disturbed. In addition, the site is of great concern because there is a potential for rare and endangered plants and animals to be destroyed.

The project would cost more than one million dollars; therefore, based on the District's Department of Health requirements, an Environmental Assessment would be required, and possibly an Environmental Impact Statement. Important design elements to be considered for this project are: placement and orientation of the buildings, height, and screening capabilities. The Park Service is not necessarily opposed to the project in principle; however, more specific plans are required. For example, plans would be required to show how the slopes between the garden apartments and the Park Service property would be treated, and what mitigation efforts would be used to offset any potential adverse impacts.

FINDINGS OF FACT:

The Board finds that significant environmental concerns exist at the site. The Applicant at the public hearing did not satisfactorily address these concerns, nor did the Board receive post-hearing submissions from the Applicant or the Park Service to allay the environmental concerns. The Applicant did not address the specific environmental concerns of the National Park Service. Information was not provided concerning how the vistas from the apartment buildings would affect the sight line from Federal parklands, to include Fort Stanton Park and the wooded ridge around the Potomac River. The apartment buildings would be constructed on land that is a rubble fill and there is on-site erosion. There are slopes between the garden apartments and the Park Service property. The single-family dwellings would be constructed on wetlands. There are rear species of invertebrates and vegetation on Park Service land that could be affected by the proposed development. Plans were not filed by the Applicant to identify how the aforementioned problems with the site would be treated, and to ensure the Board that these problems would not have negative impacts on the surrounding residential neighborhood.

The Board finds that if an Environmental Assessment report were required for this project that process is not within its purview; it is under the auspices of the District of Columbia Department of Health.

The Board finds that residential developments have been constructed along other Federal parklands without negative impacts. However, reasonable and appropriate mitigation measures have been used so that these developments do not have a detrimental impact the abutting communities. The Board was not convinced that the Applicant explored all appropriate environmental mitigation measures at the site.

The Board supports and encourages the single-family residential component of the project. However, the Board finds troubling the density of the project's multi-family component. The Board received substantial testimony from community residents that, in the vicinity of the site, there are many apartment buildings that have a high vacancy rate; that commuter traffic, when mingled with local traffic, causes congestion on the area's roadways; and, if not managed properly, on-site parking would spill-over onto the streets. As such, if the area's residential population were significantly increased, existing difficulties would be exacerbated. In addition, the Board takes note of Council member Sharon Ambrose's comment, which states that the proposed apartment development moves the community away from the objectives of the Comprehensive Plan for the Fairlawn neighborhood.

The Board finds that the application meets the zoning requirements for specific items such as lot occupancy, floor area ratio, and setbacks. However, the Board does not agree with the Applicant that the project is a matter-of-right development. The Zoning Regulations require that the Board review all residential developments in the R-5-A and R-5-B districts, except single-family detached and semi-detached dwelling units.

The Board considered the views of ANC 8B but was unable to give "great weight" to the ANC's position. The ANC's written report did not follow the requirements identified by Section 3307 the Zoning Regulations. Specifically, the report did not indicate: that the ANC gave proper

notice of the public hearing to the community; when the ANC's meeting was held to consider the application; if a quorum was present at the public meeting; and, the vote on the motion to adopt the report to the Board.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record and findings of fact, the Board concludes that the Applicant is seeking special exceptions under Subsections 410 and 2516 to allow the construction of 33 new single-family detached dwellings with garages, and construction of 176 garden apartment units on theoretical lot subdivisions. The special exceptions must meet the criteria set forth in Section 3108.1 (new 3104.1) of the Zoning Regulations which requires that the application be in harmony with the general purpose and intent of the Zoning Regulations and Map and not tend to affect adversely the use of neighboring property. The Board is of the opinion that there are significant environmental issues that were not addressed by the Applicant. Those issues would have serious negative impacts on the community. The Board is of the opinion that the density of the proposed apartments would cause negative impacts on the community, as a result of additional vehicles associated with traffic and parking. For these reasons, the Board concludes that the Applicant has not met the burden of proof. It is therefore **ORDERED** that the application be **DENIED**.

VOTE: 3-1 (Sheila Cross Reid, Anthony Hood and Betty King to **DENY**; Jerry Gilreath opposed to the motion.)

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

ATTESTED BY: _____
JERRILY R. KRESS
DIRECTOR

FINAL DATE OF ORDER: NOV - 5 1999

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

10.29.99/BAB

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16457

As Director of the Office of Zoning, I hereby certify and attest that on NOV - 5 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: _____
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