CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Decision & Order was served this __ day of December, 2001, by mailing a copy of the same via U.S. Mail, postage prepaid, to the following parties:

Richard B. Nettler, Esquire, and

Jeannine Rustad Zigner, Esquire,

Robins, Kaplan, Miller & Ciresi L.L.P.

1801 K Street, NW, Suite 1200

Washington, DC 20006

Counsel for Applicant

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D.C. Office of Planning

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and

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Historic Preservation Office

D.C. Office of Planning

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_____

Certifying Party, DCRA, OAD

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[1] The *Window Standards* were adopted by the HPRB on January 25, 2001.

[2] HPA #99-245 and OG #99-129.

[3] Applicant's Exhibit #4, CFA Transmittal Letter.

[4] HPA #99-398 and OG #99-185.

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.192A4

[5] HPA #01-056 and OG #01-021.

[6] Hereinafter all references to the final OGB and CFA recommendations will be referenced as the CFA.

[7] In *HPA No. 91-518*, the building owner was allowed to use double glazed windows to replace the windows on a contributing building to the Sheridan Kalorama Historic District and to use "non-complying" windows on less visible facades. However, the owner's proposal for replacement windows on the important facades was rejected because, after it was agreed that the owner could use double glazed windows, the owner developed a new proposal, which significantly altered the profile and configuration of the approved replacement windows. *Id.* at p. 17.

[8] *See* 64 Stat. 903, codified at D.C. Code, Sec. 6-1201 *et. seq.* The district includes Reservoir Road and Dumbarton Oaks Park roughly bound on the north, Rock Creek Park on the east, the Potomac River on the south, and Glover-Archbold Parkway on the west.

[9] In H.P.A. #96-214 and H.P.A. #96-342, involving the former Little Tavern at 1301 Wisconsin Avenue, N.W., the Mayor's Agent found that the historic district was established to protect properties constructed in Georgetown's early history, i.e., the first 50 years of the nation's existence, and since there had been no cataloguing or designation regarding contributing and noncontributing buildings in the historic district, including the 1930's Little Tavern building, alterations would be reviewed to determine whether they were consistent with the character of the historic district which was sought to be protected by its Congressional designation. Similarly, the HPRB authorized the demolition of the 1914 Cherry Hill Apartment building, located at 1024 Wisconsin Avenue, N.W., because it was not a contributing building to the historic district. *See HPA 86-383* (June 18, 1986) that allowed the construction of the building which is presently used as the Embassy of Thailand, directly across from the subject site.

[10] *See* D.C. Code, Secs. 6-1102(10) and 6-1101(b) (2001, ed.)

[11] *See The National Register Bulletin, How to Complete the National Register Registration Form,* p 42.

[12] HPA #214 & #342, 1301 Wisconsin Avenue, N.W. at p. 7. (1997).

[13] The court upheld the Mayor's rejection of the recommendation of the CFA and the OGB with regard to the development of Washington Harbor in Georgetown. *See also In the Matter of Lot 831 – Square 1232, 1301 Wisconsin Avenue, N.W.*, H.P.A. Nos. 96-214 and 96-342.

Document is also available in PDF format.]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Adjudication
941 North Capitol Street, N.E., Suite #9100
P.O. Box 37140
Washington, D.C. 20013-7200



IN RE:

APPLICATION OF LOBERT PROPERTIES
Alteration of Storefront and Windows

3061 M Street, N.W.,
Washington, D.C.

Square 1209
Lot 868
H.P.A. No. 02-398
O.G. No. 02-223

DECISION AND ORDER

Background

This case came before Rohulamin Quander, Administrative Law Judge ("ALJ") and designated Mayor's Agent for Historic Preservation ("Mayor's Agent"), on September 4, 2002, upon the request for an administrative hearing filed by George Gordon, agent for LoBert Properties, the owner of the property at 3061 M Street, N.W. (Square 1209, Lot 868). LoBert Properties ("Applicant" or "Owner") appealed the recommendation of the Old Georgetown Board ("OGB") to deny issuance of a building permit to alter the storefront and windows of the retail building at 3061 M Street, N.W., located in the Georgetown Historic District (the "historic district"). The Applicant contends that the proposed alteration is consistent with the purposes of the District's historic preservation law. The hearing was convened on September 4, 2002, and conducted pursuant to the provisions of Title 10 of the District of Columbia Municipal Regulations (DCMR). The record was closed at the conclusion of the hearing, except to allow the submission of certain requested documents.

Pursuant to section 6-1105 of the D.C. Historic Landmark and Historic District Protection Act ("Act"), the application was considered by the OGB and the U.S. Commission of Fine Arts ("CFA") under the provisions of the Old Georgetown Act (D.C. Code, Sec. 6-1201 *et seq.*), both of which recommended against issuance of the alteration permit. By letter dated June 21, 2002, OGB concluded, and CFA concurred, that the proposed alterations would adversely affect the historic character of the building and that the existing storefront and windows should be retained. Based on this determination, the Applicant requested an administrative hearing before the Mayor's Agent.

Richard H. Levy, managing principle of The Levy Group, Limited LLC, and George Gordon, AIA, testified on behalf of the Applicant in support of the proposed alterations. Carolyn Brown, Esq., of Holland & Knight LLP, served as legal advisor to the Applicant and submitted a letter to the record dated August 14, 2002, outlining the arguments to be proffered by the Applicant at the hearing and demonstrating how the alterations are consistent with the purposes of the preservation law.

Based on the record taken as a whole, including the evidence submitted at the hearing, the request made by the Applicant and the recommendations of the OGB and the CFA, the Mayor's Agent concludes that the application for alteration to the storefront and to install new windows should be **GRANTED.**

Issues

The issues to be decided are: 1) whether the Applicant's proposed application to alter the storefront and windows of the subject retail building is necessary in the public interest because it is consistent with the purposes of the Act and compatible with the historic district; and 2) whether 3061 M Street, N.W., is a "contributing building" to the historic district, as that term is defined and interpreted under the Act.

Findings of Fact

The Mayor's Agent, having received all the evidence presented in this matter, and having reviewed same and having given the proper weight to the expert testimony presented, now makes the following Findings of Fact:

1. The Levy Group, as agent for LoBert Properties, seeks approval of an alteration permit to change the storefront and install new windows on the façade of the existing retail building at 3061 M Street, N.W., located at Lot 868 in Square 1209.

2. Constructed in 1942 on the site of what was previously a vacant lot, the building is located on the north side of M Street in the historic district. (App. Exhib. #3) The masonry building is three stories in height and reflects the vernacular Art Moderne style. A deeply recessed central entrance characterizes the storefront, with show windows lining either side of the recess. The ground floor level has been used for a variety of retail purposes over the years and is currently vacant. Originally intended to have casement windows, the openings in the upper floors consist of six-over-six double hung sash windows, which are typical of Colonial Revival architecture and inconsistent with the predominant Art Moderne features of the street façade.

3. The façade of the building was altered in 1995. The original art glass façade panels were badly deteriorated and, because there was not a suitable substitute, they were replicated with metal/porcelain panels. The curved glass of the show windows was cracked and broken, and replaced with sectional glass. The windows on the upper floors were also replaced with new weather-tight sashes that matched the original ones.

4. In order to accommodate the needs of a new tenant, the Applicant now proposes to install new square show windows at the ground floor level consisting of glass in steel framing. The metal/porcelain panels and recessed entrance would be eliminated, with the new entrance flush with the front building line. The six-over-six windows on the upper floors would be replaced with metal casement windows. The contemporary treatment of the altered façade reflects Art Moderne design elements in order to be consistent with the original design intent for the building. The elimination of the recessed entrance will also redress safety issues posed by vandals and vagrants who hide or sleep in this area of the building and use it as a public bathroom.

5. On May 16, 2002, the Applicant filed a building permit application for the proposed alterations with the Building and Land Regulation Administration of the D.C. Department of Consumer and Regulatory Affairs. The application was forwarded to OGB for consideration. At its June 6, meeting, the OGB determined that the proposed changes were not compatible with the "historic building." OGB stated that the removal of any historic fabric or windows was not consistent with the building or the historic district. The CFA adopted this position at its June 20 meeting, and forwarded the following recommendation it to the Mayor's Agent:

Recommend AGAINST issuance of permit for proposed alterations to storefront and replacement windows. Proposed alterations would adversely affect the historic character of the building. Existing storefront and windows should be

retained....

6. Prior to the OGB meeting, George Gordon, AIA, architect for the project, and Richard Levy, manager of the property, met with the staff of the Historic Preservation Review Board ("HPRB") to review the proposed alterations to ensure their compatibility with the historic district. Upon receiving the negative recommendation from OGB, Mr. Gordon met a second time with HPRB staff to discuss an appropriate course of action. The staff advised Mr. Gordon that the building was not contributing to the character of the Georgetown Historic District and that the Applicant could request a hearing before the Mayor's Agent to decide the merits of the application. By letter dated June 21, 2002, the Historic Preservation Division of the D.C. Office of Planning formally notified the Applicant of its right to a hearing in this matter. On July 3, 2002, Mr. Gordon requested a hearing, which was then scheduled for September 4, 2002.

7. Richard Levy was recognized as an expert in redevelopment of historic properties with a particular focus in the Georgetown Historic District. During the past fifteen years with The Levy Group, which manages a portfolio of approximately 30 properties in Georgetown, he has personally been involved with the renovation of over 40 sites for the past twelve years, all of which were reviewed and approved by the OGB. Mr. Levy testified at the hearing on the evolving character of the historic district, and that as a native Washingtonian who was raised in the 3000 block of M Street in Georgetown, he has personal knowledge of the business cycles, retail trends, and prevailing tastes in appropriate architectural design affecting the commercial sector of Georgetown during the past several decades. He noted that for historic districts such as Georgetown to be organic, vibrant, functioning urban areas that are not meant to be frozen in time, they must evolve with changing retail trends and tenant needs without compromising their historic features.

8. George Gordon, AIA, was recognized as an expert in architecture. His experience included numerous renovations and alterations to buildings located in the historic district, many of which were performed in conjunction with The Levy Group. Mr. Gordon also testified as to the type and scope of storefront alterations that have been deemed compatible with the historic district and his personal involvement with over a dozen of those design renovations. Mr. Levy and Mr. Gordon provided photographic and written documentation of eight commercial historic buildings that they had renovated within the last ten to twelve years, all of which have been approved by OGB as compatible with the historic district. (App. Exhibs. ##1a-1k, 5, 6, 7, 8, 9, & 10) Each of them involved similar contemporary stylistic changes mid- to late-nineteenth century buildings to accommodate new tenants, changing retail needs and evolving design trends for commercial businesses.

Discussion and Evaluation of the Evidence

The Mayor's Agent has been requested to approve the alteration of the façade on a building located in the Georgetown Historic District, that would result in a major change in the entire street level front entrance of a building that is located in the District. If granted, the effect of this decision would significantly alter the appearance of a building that the OGB and CFA have each determined should not be altered, on the basis that the requested change would not be compatible with the building or the historic district, and if granted, would impose an adverse impact upon the district. The Applicant has taken strenuous exception with both the OGB's and CFA's respective positions, asserting that: a) the building does not contribute to the character of the historic district, as the year of its construction, 1942, falls outside of the period of significance, which is limited to "the early years"; and b) both the OGB and CFA applied too high a legal standard of evaluation for non contributing buildings under the law, which erroneously resulted in their rejection of this Application

The Applicant cited several precedents for storefront alterations which were approved in the historic district, several of which were 19th or early 20th Century buildings which, unquestionably were historic buildings and an integral part of the historic district. Among the precedents cited were the buildings at 3017-23 M Street, N.W., which date from the mid-nineteenth century, and were renovated approximately three years ago. Originally constructed as

one building, the structure has been partitioned over the years into two buildings. (App. Exhib. #1e) The extensive renovations returned the structures to a single building and included significant storefront alterations. (App. Exhib. #1g) A new contemporary design comprised of expansive glass areas, which required the removal of some original historic fabric, was approved by the OGB. The OGB noted that the new storefront would preserve a large part of the existing window openings. (App. Exhib. #10)

The two ground floor retail spaces at 3271-73 M Street, N.W., were also consolidated into one space, with extensive storefront alterations. (App. Exhibs. #1h & #1i; #8 & #9) Six-over-six double-hung sash windows were removed and replaced with one-over-one sash contemporary windows. Similar alterations were made to the commercial building at 3342 M Street, N.W., to accommodate a furniture store tenant. The design approved by OGB included contemporary steel framed glazing for the new storefront. (App. Exhib. #5) Similarly, the renovations for the late-nineteenth century building at 3077 M Street, N.W., located at the corner of 31st and M Streets, also included a metal-glass vocabulary designed to fit within the existing window openings. (App. Exhib. #6) Renovated to accommodate the retail tenant Pottery Barn, the alterations approved by OGB called for the removal of some historic fabric on the 31st Street elevation and the then-existing aluminum storefront. Similar removal of historic fabric was approved by the OGB for the storefront alterations at 3071 M Street, N.W. Two wooden bays on either side of the entrance were removed as part of an aggressive renovation project. The project was approved because the design changes were compatible with the character of the historic district. (App. Exhib. #7)

Other Georgetown Historic Districts structures where storefronts have been recently altered to include the removal of existing fabric, pursuit to approval by the OGB include: 1313-1319 M Street (App. Exhib. #1a & #1b); 3278-3284 M Street (App. Exhib. #1c & #1d); 3077 M Street (App. Exhib. #6); and 3342 M Street (App. Exhib. #5) While this record does not reflect the exact nature of the fabric that was removed from the facades of this groups of buildings, it is clear from this record, as well as the prior record of proceedings held before the OGB, that numerous approvals have been issued by the OGB which included façade alterations of contributing buildings in the historic district, some of which approvals likewise included the removal of certain buildings' original 19th Century-early 20th Century fabric.

Pamela Bell, a member of Kate Spade LLC, the prospective tenant for 3061 M Street, N.W., testified as to the retail needs and marketing philosophy of its store. Kate Spade, a manufacturer, wholesaler and retailer of designer handbags, leather goods and accessories for women, specifically targets high-end fashionable retail neighborhoods in historic areas for its stores. As part of the build-out for its shops in San Francisco, Chicago, New York and other historic areas, Kate Spade has used contemporary storefronts that provide an updated look consistent with its retail image, while at the same time respecting the character of the historic buildings and districts. Ms. Bell testified that Kate Spade is sensitive to the historic qualities of Georgetown and believes the proposed storefront alterations are consistent with the historic district.

Because it dates from 1942, the building at 3061 M Street, N.W., does not contribute to the character of the historic district. (App. Exhibs. #2, #4a & #4b) The building falls outside the period of significance for Georgetown, which is limited to its "early years." This finding is consistent with previous Mayor's Agent rulings in *Little Tavern* (HPA Nos. 96-214 and 96-342) and *Kew Gardens* (HPA No. 01-149; December 4, 2001) where earlier buildings dating from the 1920s and 1930s were deemed "non-contributing." Thus, 3061 M Street cannot be deemed an historic building for purposes of review under the Act. Any proposed alterations to non-contributing buildings must be evaluated under a lower threshold of whether the proposed alterations are consistent and compatible with the character of the historic district, and not whether the alterations are compatible with or appropriate for the building itself.

Consistent with prior decisions of the OGB, CFA and this Mayor's Agent regarding other buildings within the historic district, and based upon the Mayor's Agent's evaluation of compatible alterations, the proposed storefront alterations to 3061 M Street meet the test of "generally consistent in character with the historic district." The substantial evidence of record demonstrates that similar alterations have been made to contributing buildings in the

historic district without compromising the character of historic Georgetown. Consequently, the proposed alterations to a non-contributing building will likewise be consistent and compatible with the historic district.

The Mayor's Agent carefully considered the final recommendation of the OGB against approval of this application, which recommendation was adopted by the CFA. However, the Mayor's Agent determines that the OGB applied the stricter standard of review which is reserved for contributing buildings and historic landmarks. The OGB recommended a denial of the application on the basis that the alterations are incompatible with the "historic building." As stated above, however, the building is not historic because it falls outside the period of significance for Georgetown. Rather, OGB should have evaluated the alterations under the lesser standard of compatibility with the district, and erred in recommending against approval of the changes on the basis that changes were incompatible with the building. The Mayor's Agent is of the opinion that even if OGB had correctly applied the stricter standard, the ample precedents set by previous OGB and Mayor's Agent approvals indicates that the proposed alterations at 3061 M Street are compatible with the Georgetown Historic District.

As the Mayor's Agent found in *Kew Gardens*, their advice is helpful and quite often persuasive, but it is not binding on the Mayor's Agent. The Mayor's Agent need not follow the advice, and can receive and rely upon additional contrary advice, so long as he demonstrates that the recommendation was considered and rejected on a rational basis. *See Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1193 (D.C. 1982). Here, for the reasons stated above, the Mayor's Agent rejects the advice of the CFA and determines, in agreement with the Applicant's position in this matter, that the proposed storefront alteration and windows are compatible with the Georgetown Historic District and that the application should be approved. At its regularly scheduled meeting held on June 4, 2002, Advisory Neighborhood Commission (ANC) 2E met, and with a quorum present, voted that it had no objections to Applicant's plans, except that the ANC recommended that the existing base below the glazing should remain. Based upon the record before him, it is not clear to the Mayor's Agent exactly what "existing base below the glazing should remain" refers to. However, the Mayor's Agent will accord great weight to the ANC's general recommendation that the Applicant's plans be approved, but will leave it up to the staff of the HPRB to determine whether it is practical or possible to retain the base below the existing glazing.

CONCLUSIONS OF LAW

The foregoing having been considered, the Mayor's agent now makes the following Conclusions of Law:

1. The proposed changes to the storefront and windows at 3061 M Street, N.W., would cause a change in the exterior appearance of the building, which is located in an historic district, and thus constitutes an alteration pursuant to the historic preservation law, D.C. Code, Sec. 6-1102 (2001 ed.).

2. The new storefront and windows are consistent with the Art Moderne style and scale of the non-contributing building and are similar to other approved alterations to historic commercial buildings in the Georgetown Historic District.

3. The historic preservation law states that "[n]o permit [for alteration] shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner." D.C. Code, Secs. 6-1105(f). The Applicant has met its burden of showing that the proposed alterations are consistent with the purposes of the Act, and are, therefore, considered necessary in the public interest.

4. "Necessary in the public interest" means consistent with the purposes of the Act, which are, "with respect to properties in historic districts, to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use"; and "to assure that alterations of existing structures are compatible with the character of the historic district...." *See* D.C. Code, Sec. 6-1102(10) and 6-1101(b)(1)(B).

5. The property at 3061 M Street, N.W., constructed in 1942 with subsequent alterations, is not listed as a contributing building in the historic district or as an historic landmark as that term is defined and interpreted under the Act. Therefore, the test to be applied is whether the alterations are consistent with the purposes of the Act and compatible with the character of the historic district. The Mayor's Agent concludes that the application to alter the storefront and windows of 3061 M Street, N.W., is compatible with the historic district and consistent with the purposes of the Act.

6. The recommendations of the OGB and the CFA against issuance of a building permit for this work should be rejected, but, pursuant to D.C. Code, Sec. 1-309.10(d), the recommendation of ANC 2E is accorded great weight in the Mayor's Agent's consideration.

ORDER

ACCORDINGLY, it is this **24th day of September, 2002,**

ORDERED that the Applicant's request for a building permit to alter the storefront and windows of 3061 M Street, N.W., be and the same is hereby **GRANTED**; and it is

FURTHER ORDERED that, pursuant to 10 DCMR 2523.4, this Order will take effect fifteen (15) days from the date of its service as evidenced by the following Certificate of Service in accordance with 10 DCMR 2503.5(c).

ROHULAMIN QUANDER

ADMINISTRATIVE LAW JUDGE, AND

MAYOR'S AGENT FOR HISTORIC PRESERVATION, D.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Decision and Order was served this _____ day of September, 2002, by mailing a copy of the same via U.S. Mail, postage prepaid, to the following:

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Certifying Party, DCRA, OAD

DISTRICT OF COLUMBIA
INVENTORY OF HISTORIC SITES

UPDATED TO JULY 1, 2002

PENDING DESIGNATION APPLICATIONS

(Properties nominated for historic landmark designation are protected by law pending designation)

Alabama Avenue Commercial Center
2818, 2824, 2830-32 and 2834 Alabama Avenue, SE
Built 1944-48, Evan J. Conner, architect

Atlas Theater and Shops
1313-31 H Street, NE
Built 1938, John J. Zink, architect

Capital Traction Company Car Barn (Decatur Street Car Barn)
4615 14th Street, NW
Built 1906; Wood, Donn & Deming, architects

Carpenters Building
1010 10th Street/1001 K Street, NW
Built 1926; O. Harvey Miller, architect

Franklin School (Interiors)
13th & K Streets, NW
Built 1865-69; Adolph Cluss, architect

Gage School
2035 2nd Street, NW
Built 1904-08, Lemuel Norris, architect

Grant School (School Without Walls High School)
2130 G Street, NW
Built 1882, Office of the Building Inspector/James B. Brady, architect

Peter Grogan Company Building
819 7th Street, NW
Built 1891; Julius Germuiller, architect

Christian Heurich Mansion (Interior)
1307 New Hampshire Avenue, NW
Built 1892-94; John Granville Meyers, architect; Charles H. and Hugo F. Huber, interior designers; Appleton P. Clark, architect of 1914 addition

Immaculate Conception Church, School, Rectory, and Residence
707 and 711 N Street, NW; 1315 and 1317 8th Street, NW
Built 1860s to 1908; various architects



Nuns of the Battlefield Monument (Rhode Island Avenue and M Street, NW): Erected 1924 (Jerome Connor, sculptor; Ward Brown, architect); situated on an element of the L'Enfant Plan

Brigadier General Albert Pike Statue (Constitution Avenue and 3rd Street, NW): Erected 1901 (Gaetano Trentanove, sculptor); relocated 1977; situated on an element of the L'Enfant Plan

Major General John A. Rawlins Statue (Rawlins Park, 18th & E Streets, NW): Erected 1872 (Joseph A. Bailey, sculptor); re-erected 1931; situated on an element of the L'Enfant Plan

Brevet Lt. General Winfield Scott Statue (Scott Circle, NW): Erected 1874 (Henry Kirke Brown, sculptor); situated on an element of the L'Enfant Plan and Sixteenth Street HD

General Phillip H. Sheridan Statue (Sheridan Circle, NW): Erected 1908 (Gutzon Borglum, sculptor; Henry Winslow, architect); within Massachusetts Avenue and Sheridan-Kalorama HDs

General William Tecumseh Sherman Memorial (Pennsylvania Avenue and 15th Street, NW): Erected 1903 (Carl Rohl-Smith et al., sculptors); situated on an element of the L'Enfant Plan

Dr. Benjamin F. Stephenson, Grand Army of the Republic Memorial (7th and C Streets, NW): Erected 1909 (John Massey Rhine, sculptor; Rankin, Kellogg & Crane, architects); situated on an element of the L'Enfant Plan; within Downtown HD and Pennsylvania Avenue NHS

Major General George H. Thomas Statue (Thomas Circle, NW): Erected 1879 (John Quincy Adams Ward, sculptor); situated on an element of the L'Enfant Plan

Cleveland Park Historic District
Roughly bounded by Klingle and Woodley Roads on the south, Wisconsin Avenue on the west, Rodman and Tilden Streets on the north, and the rear of properties on the east side of Connecticut Avenue on the east
Includes approximately 1000 buildings c. 1880-1941; DC listing 11/8/64 (preliminary identification), designated 11/19/86 (effective 4/27/87); NR listing 4/27/87

Clifton Terrace
1308, 1312 and 1350 Clifton Street, NW
Built by Harry Wardman in 1914-15, Clifton Terrace is a significant example of the noted Washington builder's work, as well as the apartment building designs of architects Frank Russell White and A.M. Schneider. Inspired by the ideals of the garden city movement, Clifton Terrace is a large, three-building complex of Classical Revival buildings sited on one of the city's most important streetcar thoroughfares. In conjunction with other apartment buildings along 14th Street, Clifton Terrace helped formed an impressive corridor of modestly appointed apartment buildings that had enormous appeal to Washington's expanding federal and middle income workforce in the early 1900s. DC designation September 26, 2001.

Cloverdale (Pierce Shoemaker House)
2600 Tilden Street, NW
Built c. 1810; remodeled 1876, 1910; DC listing 11/8/64, NR listing 8/9/90

Codman Carriage House and Stable
1415 22nd Street, NW
Architecturally important example of a unified private carriage house and stable; rare example of a once essential support facility for the city's large mansions (*see Codman-Davis House*); notable work of nationally renowned architect Ogden Codman, Jr., built for his cousin, New England heiress Martha Codman; 2 stories, with French Renaissance facades of pressed brick and stucco, built 1907; DC designation 12/19/95

Codman-Davis House

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

EXHIBIT
BZA No. 16970
3a (CPN)

Application No. 14583, of Edward A. Markowitz, (the "Applicant") pursuant to Paragraph 8207.11 (11 DCMR 3107.2), for variances from the provisions of Sub-section 3301.6 (11 DCMR 401.6) prohibiting construction of a dwelling on a lot which does not have street frontage and from the provisions of Sub-section 8103.3 (11 DCMR 3202.3) prohibiting construction of a dwelling on an assessment and taxation lot which has not been converted to a record lot to construct a single family dwelling in an R-1-A District at premises known as 2329 Porter Street or 3525 Williamsburg Lane, N.W., (Square 2294, Lot 821).

HEARING DATE: April 22, 1987
DECISION DATE: May 6, 1987

FINDINGS OF FACT:

1. The site, known as premises 2329 Porter Street or 3525 Williamsburg Lane, N.W. is located to the east of Williamsburg Lane and to the north of Porter Street. The site is in the R-1-A District.

2. The site comprises approximately 16,211 square feet. It is irregularly shaped and unimproved . The site is bounded by Rock Creek Park to the north, east and south and lots improved with single family homes to the west. The site has no street frontage.

3. In 1930 a plot was recorded with the office of the surveyor as part of the District of Columbia highway plan which envisioned a Quebec Street linkage with Porter Street, which would have provided direct access to the subject site via a public roadway system.

4. The Quebec Street linkage proposal was abandoned in 1953 when 24th Street, now Williamsburg Lane, was cut through.

5. On May 13, 1980, Michael Minkoff, LTD, then record owner of the subject premises duly executed a declaration of covenants binding on future owners and for the benefit of owners of property abutting the subject premises (the "Declaration of Covenants"). The Declaration of Covenants provided that the subject premises would be improved, if at all, with no more than two residential dwelling structures.

6. By Board of Zoning Adjustment (the "Board") Order No. 13178, dated July 28, 1980, the Board approved an application to allow for no mor than two theoretical building sites. The record of the prior Order was incorporated in the subject application. Construction of the proposed dwellings for the subject site was not commenced within a six month period as provided by the prior order and has not commenced thereafter.

7. The site has no street frontage but is served by two right-of-ways, Clifton Avenue from Porter Street and Roosevelt Drive from Williamsburg Drive. The right-of-ways are approximately 25 feet in width and partially improved with macadam and gravel.

8. Advisory Neighborhood Commission (ANC) 3C submitted no recommendation on the application. A member of the ANC testifying on behalf of the Commissioner's Zoning Committee stated that the Committee did not have any objections to the application if it complied with the Declaration of Covenants.

9. Neighbors of the site testified that they were of the opinion that the house should be constructed within the parameters set forth in the Declaration of Covenants. The Board concurs.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the burden of proof. The Board notes that the site is unique and affected by several extraordinary or exceptional conditions. The size of the lot is approximately 16,211 square feet which is far in excess of the minimum required for a detached dwelling in an R-1-A District. The site is land-locked under the Zoning Regulations in that it has no direct street access to the public roadways. Although the site is land-locked it is serviced by private right-of-ways which give direct access to public streets.

The Board further concludes that the proposed single-family dwelling on the site would cause no substantial detriment to the public good nor substantially impair the intent, purpose and integrity of the zone plan. Accordingly,

it is hereby ORDERED that the application is GRANTED SUBJECT to the CONDITION that construction shall be in accordance with the plans marked as Exhibit No. 31A of the record.

VOTE: 5-0 (William F. McIntosh, Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to grant; Lindsley Williams to grant by proxy).

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

ATTESTED BY: _____
EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: JUL 29 1987

UNDER 11 DCMR 3103.1 "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 SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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