OUTLINE OF TESTIMONY
Nathan W. Gross, AICP
Board of Zoning Adjustment Application No. 17194
July 20, 2004

The subject townhouse at 1708 16th Street, N.W. has four-and-one-half stories, was constructed in the 1890s and has approximately 5,500 square feet of floor area. The Property is a contributing building in the 16th Street Historic District. Zoning: DC/R-5-D.

There are four parking spaces at the rear of the house, accessed from a 15-foot-wide alley.

For the past 13 years the building has been operated as a nine-room Bed and Breakfast establishment known as The Brenton, utilizing a Certificate of Occupancy ("C of O") for a 9-room rooming and boarding house.

The application requests a special exception for a bed and breakfast ("B & B") having six sleeping rooms, and a special exception or variance for two additional sleeping rooms for a total of eight.

There will be no outside employees, no ABC license and no weddings, receptions or similar events at the premises.

Two Special Exceptions – See attached sheet.

203.4(a) A home occupation shall be clearly secondary to the use of the dwelling for residential purposes.

- The floor area restriction of 25 % for home occupations is specifically waived for B & Bs. Thus, the intent of the home occupations rules is not necessarily for a B & B to be secondary.
- Owners will be full-time residents
- Guests by time of week will be concentrated on weekends
- There will be no weddings, receptions or other social events
- Exterior and interior appearance remain completely residential

203.4(m) The practitioner shall have no more than eight clients or customers on the premises in any one-hour period.

- Despite a degree of literal noncompliance, the intent of avoiding frequent and undue congregation of people and traffic is complied with:
- For four days per week, the occupancy will be primarily the family plus an occasional guest, and compliance will be achieved.
- On weekends when there is full occupancy, there will be times when there are more that 8 persons on the premises, but this will primarily be only at night and

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early morning. The remainder of the time, the guests will be visiting tourist and other sites in the city.

- This provision is clearly not geared to B & B use. Legislative history is that this was directed at practicing psychologists.
- This provision is designed to prevent numerous arrivals and departures, vehicular traffic, etc. Clearly not relevant to the Akwaaba DC, which will have no weddings or receptions.

Purpose and Intent of Zoning Regulations

- 2.5 FAR vs 3.5 allowed
- 45' high vs. 90' allowed
- Modest intensity of use. R-5-D allows rooming house, dormitory, clinic, hospital, places of worship and other more intensive uses as a matter of right.
- The adaptive reuse of historic buildings is strongly supported by the Comprehensive Plan, the purposes of the Dupont Circle overlay district and the home occupations regulations themselves.
- B & B use is better for preserving interior historic features than would be a conversion to apartments, such as the adjacent building and many others in the neighborhood.

No Adverse Effect on Neighboring Property/Public Good – addressed by special exception criteria

- External effects on neighbors of eight rooms operating part time is not really distinguishable from six.
- The principal use is a single-family dwelling – there isn't even a C of O. The previous use since 1989 was for principal use as a B & B using a rooming and boarding house C of O. The proposed use is a substantial reduction in intensity of use.
- Commuter pattern/activity noise: adjacent office use, adjacent 6-unit condo, apt. house and office buildings at the corners. This is a high-intensity, mixed-use neighborhood on an arterial street.

Place of Public Assembly Issue

Akwaaba Inn will be much less intensive than Swann House or the proposed (but denied) Tutorsky Mansion:

- No outside employees vs. 2 (Swann) or 6 (Tutorsky)
- No weddings or receptions vs. 5 per month
- Quiet evenings vs. outside catered events up to 11 p.m.
- Places of public assembly are discouraged by the home occupation rules
- Note that in an "inn" places of public assembly are not allowed, and even in hotels they are limited to the maximum commercial FAR
- Because of the great difference in facts between the above-cited cases and the instant application, the Applicant believes the Board can approve the increase

from six to eight rooms as a second special exception rather than as a variance. The Akwaaba DC application represents simply a modest numerical increase in the number of sleeping rooms. It is a purely residential use, albeit a transient residential use.

- The request here is simply to utilize two bedrooms on the top floor of the house that would otherwise remain vacant. They have been renovated and furnished for Bed and Breakfast use at some expense. Given their location three stories above the residence of the owner-occupants, these rooms have little if any utility to them.

Use Variance

"[A] past history of zoning approvals, even when erroneously made, leading property owners to good faith deferential reliance on approvals, may constitute other extraordinary situation. *Monaco v. BZA*, 409 A. 2nd 1067, 1972 n. 17 (D.C. 1979); *De Azcarate v. BZA*, 388 A.2nd 1233, 1236 (D.C. 1978)."[1]

On pages 3-4 of this Statement is a summary of the owners' experience of economic hardship brought about substantially by reliance upon inaccurate information and advice from DCRA officials about the ability to operate a Bed and Breakfast use as a matter of right, and/or taking over the authorization for an existing nine-room Bed and Breakfast with 13 years of operation. The Applicant's personal statement of these events is attached as *Exhibit H.*

The change from a principal use as a Bed and Breakfast with 9 sleeping rooms to one with two sleeping rooms is a major financial loss. No doubt a significant premium was included in the purchase price due to the value of the existing business.

The decision to purchase this property was based substantially on inaccurate information received from government officials. The misinformation overcomes the Applicant's burden of demonstrating that this is not a self-imposed hardship – according to the court in the De Azcarate and other cases. In that case, the court upheld the Board's grant of a variance from the lot width requirements

Area Variance

203.10(d) – A request to modify more than two provisions must be a variance. Unmodified, this means an area variance. This is a flexibility clause; to allow flexibility by authorizing an application for a use variance would be restrictive, not flexible.

The accessory apartment provisions explicitly state use variance, indicating that where the regulations refer to variance generically the likely intent is an area variance.

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[1] From "Area and Use Variances," undated.

SPECIAL EXCEPTION ALLOWED

203.8(c) The maximum number of sleeping rooms [in a B & B] shall be two (2).

Two sleeping rooms are allowed as a matter of right.

Except: (1) Pursuant to § 203.10(b), the maximum number of rooms may be increased to . . . six (6) in a dwelling [within a historic building].

Six sleeping rooms are allowed as a special exception in a historic building.

203.10(b) An applicant for a home occupation that is permitted by §§ 203.6 through 203.8 may request the Board to modify no more than two of the conditions enumerated in §§ 203.4 through 203.8; provided that the general purposes and intent of this section are complied with.

Bed and Breakfast is one of the uses allowed in 203.6 through 203.8.

All of the conditions in 303.4 through 203.8 are eligible, at the applicant's choice, to be submitted for special exception relief, e.g.

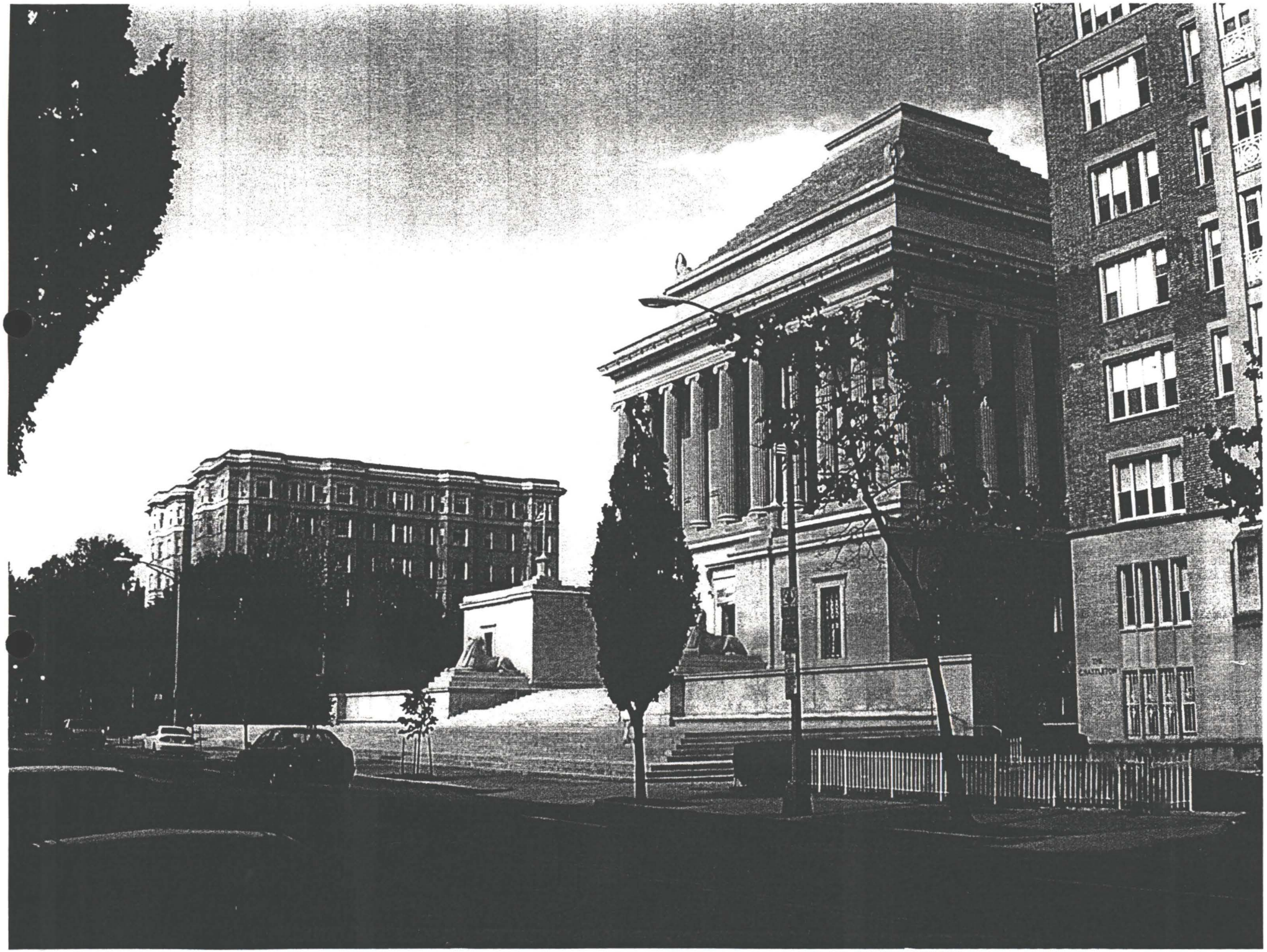
More than one outside employee (203.4(d)).
Production of some noxious odors (203.4(i).
More than 8 clients on premises in one hour period (203.4(m).
Illuminated sign (203.5(d).
Tutoring of more than 5 students at one time (203.7(a).

And: Maximum number of sleeping rooms in excess of 6 in a historic building (203.8(c)(1).

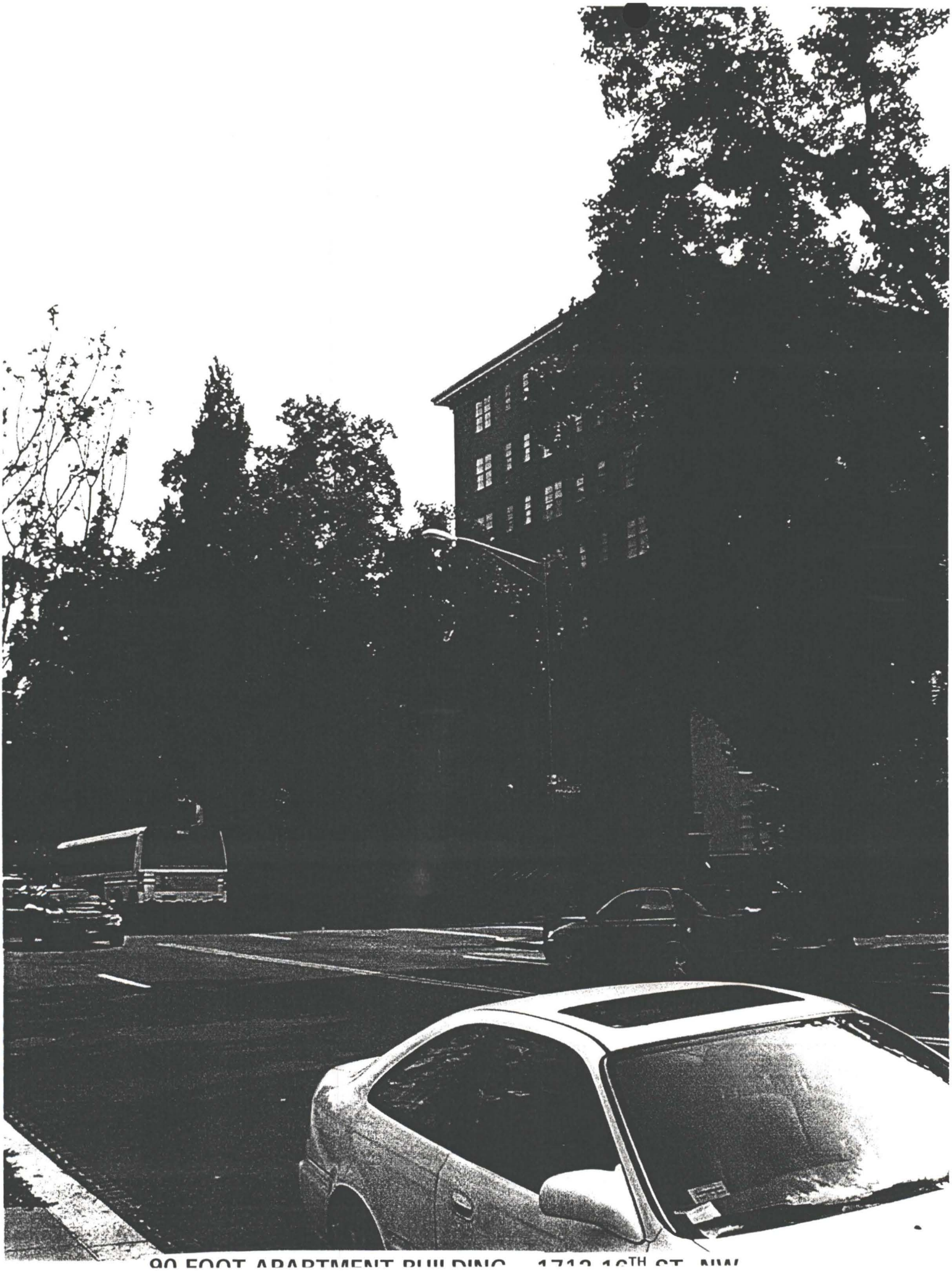
Paragraph 203.10(b) is a generalized relief or flexibility clause. It is clearly designed to address any number of minor deviations from the standards that might be reasonable upon special exception review. There is absolutely no exclusion of the number of sleeping rooms in a B & B from consideration as a special exception. It is still a discretionary decision, of course. But this relief is eligible to be considered as a special exception.



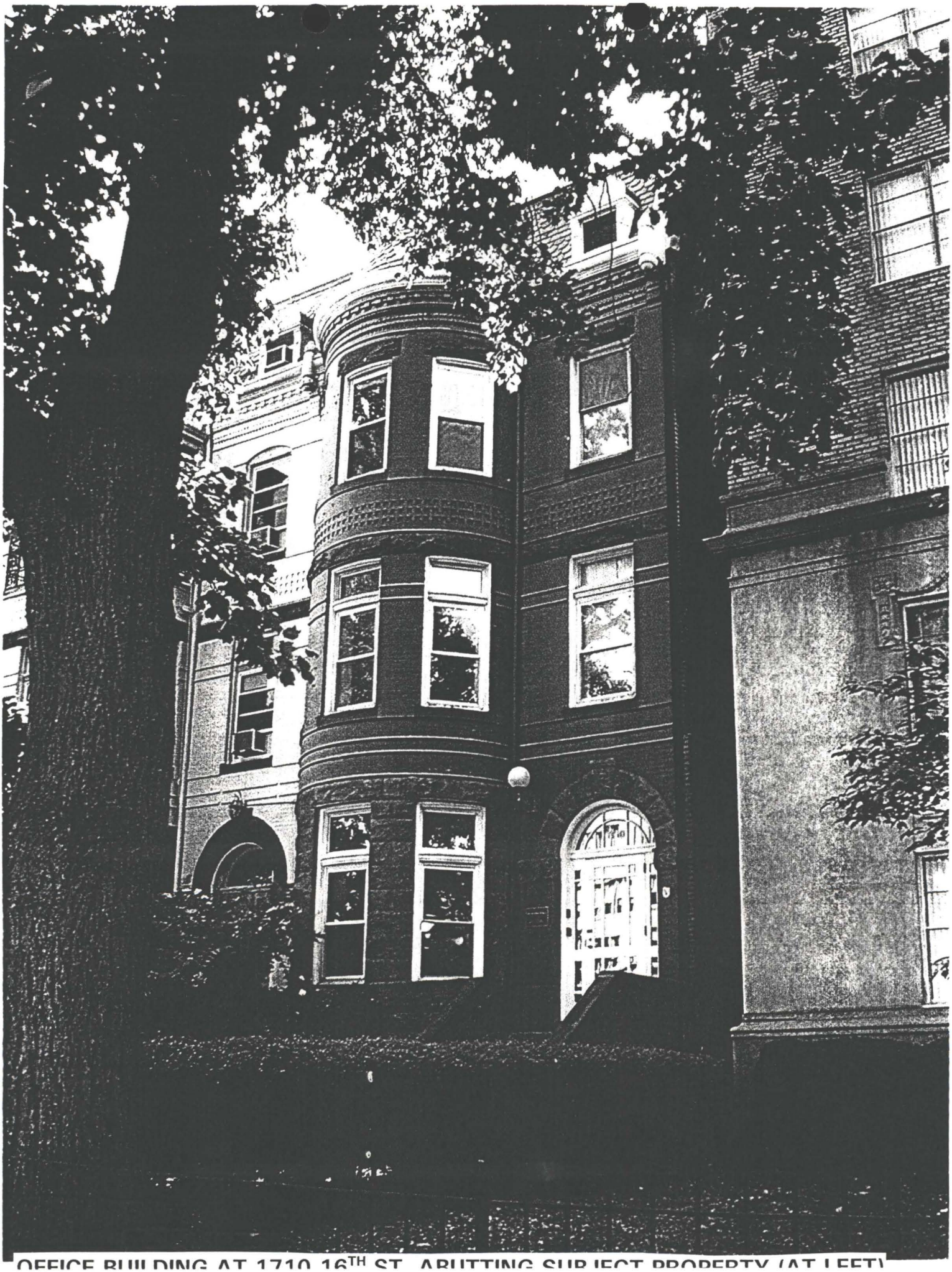
CHASTLETON APARTMENT BUILDING — 1701 16 ST. NW



SCOTTISH RITE TEMPLE AND 90-FOOT APARTMENT BUILDING



90 FOOT APARTMENT BUILDING – 1712 16TH ST. NW



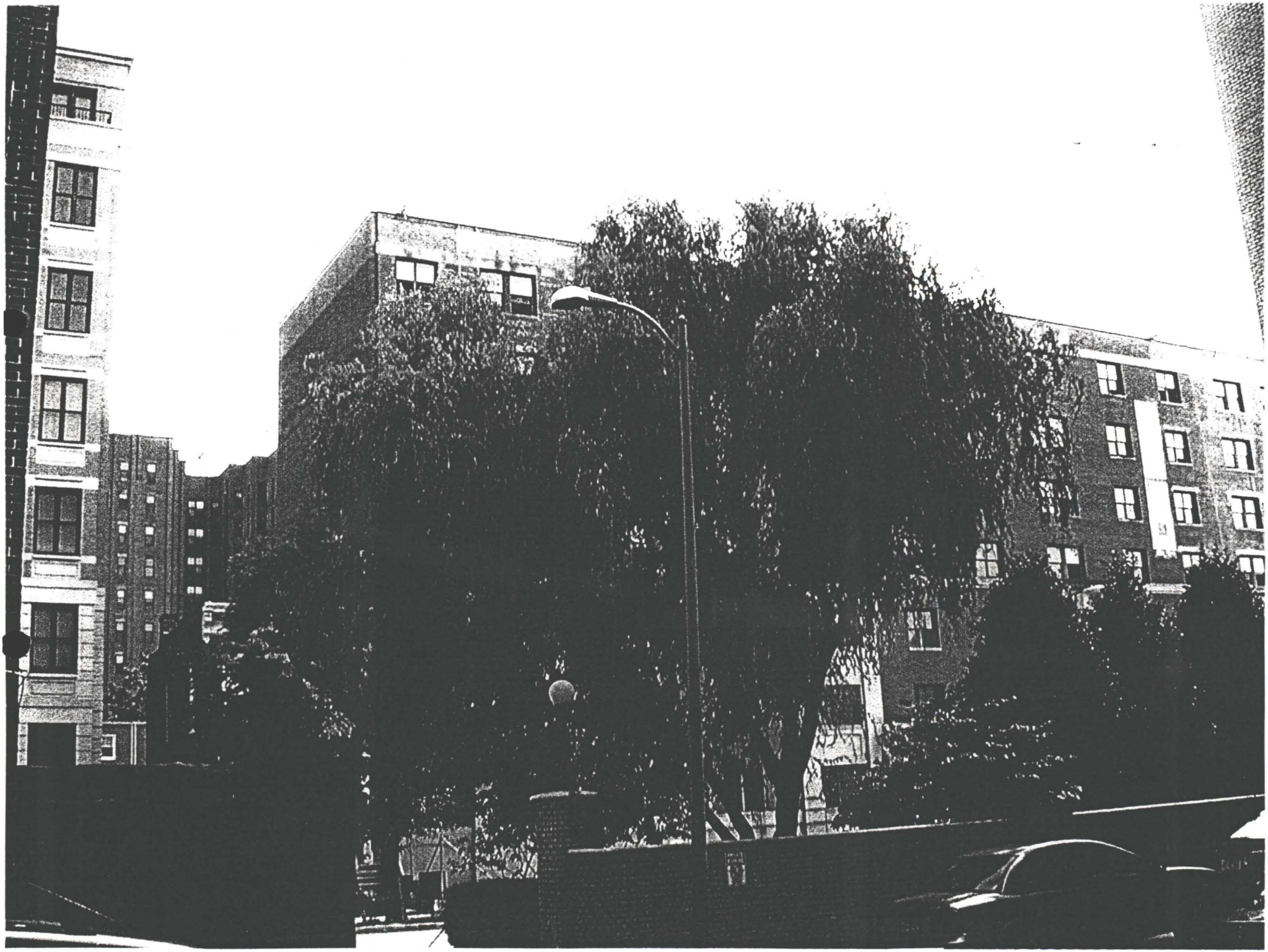
OFFICE BUILDING AT 1710 16TH ST., ABUTTING SUBJECT PROPERTY (AT LEFT)



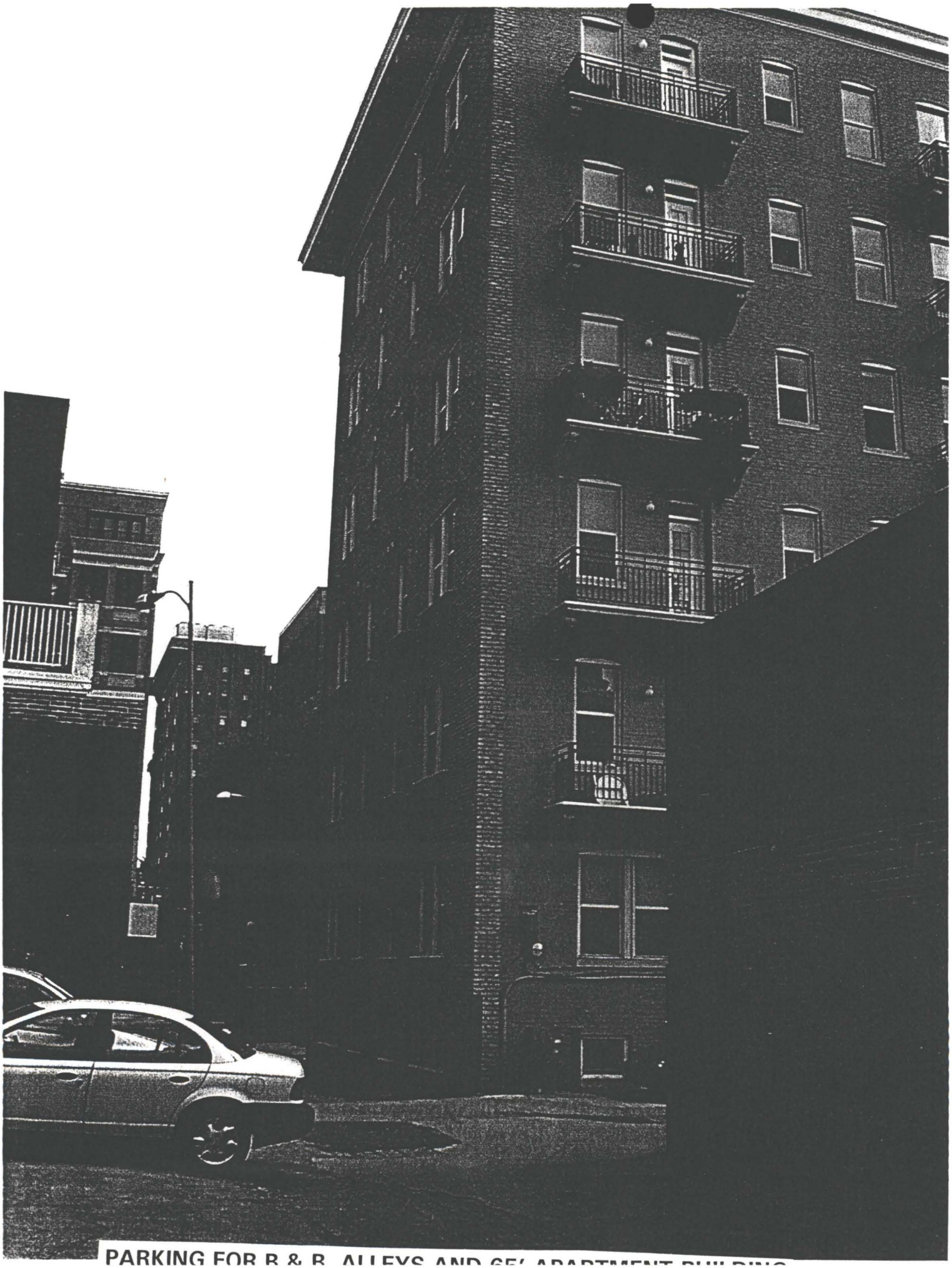
FIVE STORY OFFICE BUILDING AT 1700 16TH ST. NW



90 FOOT APARTMENT BUILDING AT 16TH & R STS. NW



90-FOOT APARTMENT BUILDING AT 1610-1632 R ST. NW


PARKING FOR B & B ALLEYS AND 65' APARTMENT BUILDING