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September 27, 2005

2005 SEP 27 PM 4:26
RECEIVED
D.C. Office of Zoning

BY MESSENGER

Ms. Jerrily R. Kress, FAIA
Director
Office of Zoning
441 Fourth Street, N.W., Suite 210
Washington, D.C. 20001

Re: Submission of Pre-Hearing Statement; BZA Application No. 17386; Department of Parks and Recreation; Square 2667, Lot 74

Dear Ms. Kress:

Please find enclosed the original and twenty (20) copies of the above-referenced Pre-Hearing Statement for filing with the Board of Zoning Adjustment.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,

Lyle M. Blanchard

271493v1
Enclosures

cc: All Copies By First Class Mail
Ms. Kimberly A. Flowers (w/encl.)
Ms. Karen Thomas (w/encl.)
Mr. Deairich R. Hunter (w/encl.)
Mr. Michael Valentine (w/encl.)
Walter S. Page, AIA (w/encl.)
John Patrick Brown, Jr., Esquire (w/o encl.)

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17386
EXHIBIT NO. 21

Board of Zoning Adjustment
District of Columbia
CASE NO. 17386
EXHIBIT NO. 21

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Re: Application of the
D.C. Department of Parks and Recreation

BZA Application No. 17386
Public Hearing: October 11, 2005
ANC 1B

PRE-HEARING STATEMENT OF THE APPLICANT

September 27, 2005

This Pre-Hearing Statement ("Statement") is submitted on behalf of the property owner, D.C. Department of Parks and Recreation ("Applicant"), by its attorneys, Greenstein DeLorme & Luchs, P.C., by John Patrick Brown, Jr., Esquire and Lyle M. Blanchard, Esquire, in support of the application for special exceptions, area variances, and, if necessary (in the alternative) a use variance as described below.

I. Introduction

Summary of Application. The Application seeks special exceptions pursuant to the Zoning Regulations, 11 DCMR § 3104.1 to allow the percentage of lot occupancy to exceed 20% (§ 403), and a public recreation and community center to exceed 40,000 square feet (§408.1), and for area variances pursuant to 11 DCMR § 3103.2 to allow a height of building to exceed 45 feet (§ 400.14), from the parking requirement that one parking space be provided for each 2,000 square feet of gross floor area of building (§ 2101.1) and from the requirement that automobile parking spaces be a minimum of nine (9) feet in width and nineteen (19) feet in length (2115.1) and, if necessary (in the alternative) a use variance to allow office use for an educational incubator by the D.C. Department of Parks and Recreation on the fourth floor of a public recreation and community center.

II. Background

Property Description; Existing Zoning. The property is located at 2809 15th Street and 1480 Girard Street, N.W. (Square 2667, Lot 74) ("Property" or "Site"). The current use of the Property is as a vacant lot and recreational park and playground. (See copy of attached Site Plan Exhibit "A").

The Property is bounded on the north by Girard Street, N.W., on the west by 15th Street, N.W. and on the south by a five story multifamily building (2801 15th Street, N.W.) and to the east of the park by rowhouse dwellings on Girard Street, N.W. The existing park and playground was renovated in 2002-2004 by the Applicant after an extensive community planning process.

The Site is located in the D/R-5-B and R-5-B Zone Districts, but is not within a historic district. The R-5-B District allows matter-of-right uses which include a public recreation and community center (§ 201.1(r)).

Existing and Intended Use. The Department of Parks and Recreation (the "Department" or "DPR") assumed control of the park portion of the Property in 2000. The Property was transferred from the former Redevelopment Land Agency ("RLA") which had the Property in its inventory for a number of years. There had been a history of violence and other criminal activity in the park, most notably in 1999 when there were three murders in less than 90 days. It was an open air drug market and had become a public nuisance property in the minds of community members. The Department, with the assistance of the Ward One Councilmember, received the building site portion of the Property into its inventory in 2002. There had been a multi-year lease by the District dating from 1995 of the then existing buildings (See photographs attached as Exhibit "B") but this was never realized.

From 1999 through 2002, the Applicant held a series of planning charettes at All Soul's Unitarian Church on 16th Street, N.W. The initial plan was for the park only. However, as the process evolved, the existing buildings on the western portion of the Property and their development potential were added to the concept. The community was involved in the multi-year planning process from the inception, due to their outrage at the crime and violence being manifested at the Girard Street Park. The Applicant attended meetings called by community residents who requested that the property be transferred to the Applicant from the RLA. There were planning sessions at the Church and at the Park, from which evolved the "FROGS" organization – Friends of Girard Street Park. All told, there were approximately 15 meetings hosted by All Souls Church and facilitated by the Ward One Councilmember and by the former minister, John D'Taye. Participants in the meetings included congregants of All Souls, members of FROGS, the ANC Commissioners, members of the Columbia Heights Youth Club and Asian-American Lead.

The current improvements consist of a vacant lot and a recreational park and playground, including a basketball court and open play area, circular pathways, tot lot (for ages 2-5), playground (for ages 6-12), water spray area and a pavilion. The Applicant renovated the existing park from 2002 through 2004 as the result of an extensive planning process with the community, which involved numerous charettes. As the planning of the park developed, the Applicant and the community turned their focus on the two vacant buildings which occupied the portion of the Property (former Lots 2, 800 and 817) where the new public recreation center will be built. These vacant buildings were owned by the former Redevelopment Land Agency (RLA) and had over the years become an attractive nuisance as drug dealers and other persons involved

in questionable and destabilizing behavior frequented the buildings. The community asked that this portion of the Property be put to good use by having the Applicant construct a new, state-of-the- art public recreation and community center. The Applicant razed the former buildings in 2004. During the planning process, the Applicant developed a proposal for a five and a half story public recreation and community center, the Columbia Heights Community Center ("Project"), which would include programs and activities that responded to the community's specific requests. The proposed building will contain a variety of programs as discussed in greater detail below.

III. Argument

Statement of Satisfaction of Burden of Proof for Zoning Relief Sought. The Applicant submits that, based upon its Application and the materials submitted in conjunction therewith, including this Statement, and the evidence to be presented at the public hearing, it has satisfied the applicable legal standards and burdens of proof for the special exceptions, area variances, and use variance requested. Specifically, the Application will satisfy the requirements of Sections 3104.1 and 3103.2 of the Zoning Regulations.

A. Special Exceptions

For special exception relief, the Applicant must show that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and that the special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

Lot Occupancy: With regard to the special exception relief from Section 403 for lot occupancy, the Applicant is requesting a minor increase of only three percent (3%) above the

20% threshold for permitted lot occupancy. Section 403.3 gives the Applicant the option to request a special exception for lot occupancy in excess of 20% up to 40%, provided that the agency shows that the increase is consistent with agency policy of preserving open space.

The Applicant's goal is to create and maintain a scenic, ecological and recreational system of parks and facilities in the District of Columbia that will benefit local residents and visitors. While this is the Department's goal for the entire District of Columbia, the neighborhood where the Property is located offers it own unique challenges. Columbia Heights is a densely populated urban community, with limited open space and limited indoor facilities. The demands of the community for increased interior access for youth and adolescents – inclusive of a gymnasium were the basis for the building concept and its lot occupancy. (See the attached Site Plan, Exhibit "A".)

Responding to the community's needs, there is an increased emphasis on after-school and evening programming for youth while parents are working and for seasonal programming during school breaks. Because the concept for the park never included extensive athletic programming, such as field sports, the demand for interior activities expanded. This was also directly attributable to the series of traumatic crimes which had plagued this neighborhood.

Although the proposed structure of the Project exceeds the matter of right lot occupancy, the relatively minor 3% increase in occupancy is offset by the benefits provided to the community while maintaining the vast majority of the existing open space, facilities and programs. These benefits include increased programmable space for adolescents inclusive of the culinary arts, sound recording, program development space in the evenings and the opportunity to

offer indoor programs to youth and their parents who are apprehensive about teens congregating outdoors and unsupervised. Fifteenth Street, N.W. is a densely populated corridor, with little opportunities for youth to congregate in a positive environment. The Department's offerings will reduce the number of idle youth lingering outside on the streets by providing positive alternatives to community residents to pursue opportunities of their design in the new Community Center. Thus, the proposed public recreation and community center will offer state of the art recreational/leisure time activities in a safe, managed, supervised and structured environment as well as the existing outdoor facilities.

This new Center and the large park immediately adjacent to the east will complement each other. The Department revived the open and green space, which prior to 2004 was unusable by the community. DPR has already provided increased outdoor recreational opportunities to this community, which for years had no safe, usable open space at their disposal.

Therefore, through the extensive process of planning and input from the community, the park and playground portion of the Property was renovated in a manner consistent with the Department's policy for open space and with consideration given for the future development and lot occupancy of the proposed public recreation and community center. Due to the extensive involvement of the community in the planning process, the increased lot occupancy will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. Further, the increase in lot occupancy is in harmony with the Zoning Regulations and Zoning Maps because it is well within the range of lot occupancy (at the lower range) adopted by the Zoning Commission as suitable for a special exception.

Density: With regard to the special exception relief from Section 408.1 for density, the Zoning Regulations allow a matter-of-right maximum density of 40,000 sq. ft. of gross floor area unless approved by the Board as a special exception. The Applicant is proposing a density of 47,330 sq. ft. and the difference is directly attributable to the programmatic requests of community residents, and specifically, the inclusion of a gymnasium. This will be the only publicly accessible gym in the Department's inventory in Ward One. Given the disproportionate level of density (and height) required by the gymnasium, additional gross floor area is required to meet the operational and programmatic needs of the facility.

The programming at this site, drawn from the recommendations and review of the charette participants, will include a music lab/sound studio, culinary arts, literacy reinforcement, a gymnasium for basketball, volleyball, dance and performance space. These programs are designed to be indoors and will decrease the use of the adjoining courts at Girard Street Park. DPR will provide a staffing presence to encourage youth to participate inside, and will offer, for the first time along this corridor, managed, supervised, structured programming for youth and their families well into the evenings.

The massing of the increasing density is similar to the adjacent multi-family residential building immediately to the south on 15th Street. The apartment buildings which formerly stood on the Property were boarded up for more than five years. However, these buildings were constantly being used by vagrants and for drug trafficking, and there was a constant fear of arson or accidental fire. As the buildings were being razed in March, 2004 the Department was processing a Subdivision application to combine the lots on which these derelict buildings stood (Lots 2, 800 and 804) with the lot that comprises the park. Even with the larger record lot area,

the programmatic requirements of the community and Department drove the massing of the building to the amount requested for the special exception. Even with the additional gross floor area, the massing of the building should not tend to impact neighbors adversely as the adjacent building to the south will continue to receive the benefits of the open parkland directly to the east.

Thus, throughout the planning process the Applicant sought community input and the proposed massing of building on the lot is such that it will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. Further, the increase in density is in harmony with the Zoning Regulations and Zoning Maps because an increase in density is provided for as a special exception under the Zoning Regulations adopted for public recreation and community centers.

B. Variances

For area variance relief, the Applicant must first show that the property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition.

The Property is (A) unique in shape and (B) has an exceptional condition. The Site has a unique L-shape with a significantly longer frontage on Girard Street (256.12 feet) than on 15th Street (90 feet). Thus, the Site wraps asymmetrically around the entire northwestern side of Square 2667. In addition, the site has a much higher percentage of street frontage than most other sites and it continues through to the south to Fairmont Street and University Place, N.W. as shown in the building plat submitted as Tab 5 of the original Application. The Property also has an unusual condition in that the western portion has been used for many years as a public park.

Additionally, the site is the only DC controlled property in the area available for use and development of a playground and adjacent community and recreational center.

The second prong of the area variance test is that strict application of the Zoning Regulations would result in a peculiar and exceptional practical difficulty. The Applicant submits that the Application complies with this requirement because the unique conditions of the Property (discussed above) result in and cause such practical difficulty.

Height: The maximum height allowed for a recreation and community center is 45 feet pursuant to Section 400.14. The Applicant requests an additional nine (9') feet of height. The additional height is directly attributable to practical difficulties due to the unique shape of the Property and the need to retain as much of the existing open park land as possible. The height requested is also driven by the height requirements of the gymnasium to clear the ceiling when competing in basketball, volleyball, indoor hockey and similar activities. Further, the mass and fenestration of the proposed Columbia Heights Community Center is consistent with the demolished structures and adjoining apartment building, which, at 5 ½ stories, is approximately 55'-0" above grade.

As a cost saving measure, the basement slabs and foundations, of the demolished buildings, were broken up and left in place as structural fill for the proposed Community Center. Excavation to provide for a basement floor would have necessitated complete site excavation and the need to provide sheeting and shoring for much of the site perimeter and also the need to underpin the foundation of the adjacent apartment building. These additional construction requirements would have significantly increased the construction cost of the building. Due to budgetary constraints, the increased cost of providing a basement floor would have resulted in a

reduction of the approved program spaces developed through input from citizens at community meetings. DPR opted to spend its limited resources by investing in the development of the program spaces, as required by the residents, above grade, rather than commit to spending the associated cost of excavation for a basement floor which would have eliminated the need for the height variance.

As mentioned, there have been numerous community meetings to discuss the details of this project. To date, there is no documented opposition to the construction of the Columbia Heights Community Center as currently proposed. The residents are eagerly anticipating the construction of this facility for several additional reasons, including the immediate benefit of employment opportunities for residents during building construction, and the long-term benefit of increased real estate value and the potential for increasing their quality of life by having easy access to recreational activities and facilities within walking distance of their homes and the safe haven created by this use. Thus, the increased height of this facility does not seem to be of great concern to the residents impacted by the proposed Columbia Heights Community Center.

The increase in height is reasonable in consideration of (i) the practical difficulties inherent in the Property, (ii) the constraints inherent in expanding below grade and (iii) the programmatic goals of providing a publicly accessible gymnasium.

Parking. The Applicant requests a variance to reduce the number of parking spaces from the 22 required pursuant to Section 2101.1 to eight (8) spaces and a variance to reduce the size of these spaces from the nine (9') feet by 19 feet required pursuant to Section 2101.15 to eight and a half (8.5') feet by 18 feet. The need for reduced number of parking spaces also results from the practical difficulties due to the shape of the Property and the need to retain as much open park

land as possible. As explained above, below grade parking is not an option due to the inherent substantial increases in construction costs. Further, the Department does not want to sacrifice the outdoor recreation space for parking (i.e., not sacrificing the outdoor basketball court located on the northern side of the park which was renovated in July, 2004). Also, the design of the building and its purpose is for local pedestrian access. This is not a commuter facility. Users are projected to be immediate community residents. Additionally, should additional residents wish to utilize the facilities there is a variety of public transportation within a one-block radius, including Metro Bus access from both 14th and 16th Streets, N.W..

The closest Metro Rail station is located at 14th and Irving Streets, N.W., four blocks away (one block east and three blocks north). There are Metro Bus stops close by as well (see attached Exhibit "C"). There is a Metro Bus stop at 14th and Girard Streets, N.W., one block away, and a stop at 16th and Fuller Streets, N.W., two blocks to the southwest.

The usual complement of full time DPR employees for a public recreation or community center is approximately five (5) employees: a site manager, a maintenance person and several recreation specialists. In addition, the programs discussed previously start and end at different times during the day and are offered on different days of the week, so a strict application of the one parking space per 2,000 sq. ft. of gross floor area does not reflect the variable schedule of programs using the space and related demand for parking. Thus, while the exact programmatic offerings are still being developed for this Project, there could be an approximate number of full time equivalent positions during the week of 20 employees. The Department is in the process of developing a Metro check or similar program for its employees. Also there are a total of 48 parking spaces at the DPR headquarters located a few blocks to the northwest at 3149 16th Street,

N.W. Of these 48 employees' spaces, at least 14 spaces will be made available for persons who want to attend programs at the Columbia Heights Community Center.

Most programs at the Project will be for children who do not drive, and a majority of programs that could attract drivers will begin after 3:00 p.m. when the DPR headquarters lot is least utilized. DPR will post signs at the Project to advise the public of the available of overflow parking spaces at DPR headquarters.

With regard to the reduced size of the parking spaces at the Project, the spaces were slightly reduced in size (i.e., one half foot narrower and one foot shorter but are still larger than a 8' x 16' compact parking space) in an effort to maximize the number of spaces that could be provided within the limited area designated and available for parking inside the building. The design of the parking garage area does not compromise the required turning radii or drive aisle width. The reduced size of the parking spaces, like the number of spaces, results from the practical difficulties due to the shape of the Property and the need to retain as much open park land as possible.

The reduction in the number and size of the parking spaces is reasonable in consideration of (i) the practical difficulties inherent in the Property, (ii) the constraints inherent in expanding below grade or onto the outdoor park area, (iii) the programmatic goals of Project which are designed primarily for children in the neighborhood who do not drive, and (iv) the availability of alternative means of transportation to and from the Project and the availability of parking offsite for employees and residents.

Under the third prong of the variance test, the Project will provide substantial benefits to the community. There will also be a lack of adverse impacts from the variances requested

resulting in no "substantial detriment to the public good" and no substantial impairment of "the intent, purpose and integrity of the Zoning Regulations and Map." With regard to additional height, the community will have the substantial benefit of the publicly accessible gymnasium and the increased height will be set back from the adjoining residential building to the south and thus will not adversely impact the residents of the neighboring property. With regard to parking, the reduced parking is offset by the limited demand, the nearby Metrobus stops and Metrorail station and the available of parking at the Department's headquarters on 16th Street, N.W.

Use Variance: The Applicant requests a use variance, if necessary (in the alternative), to allow office use for an educational incubator by the D.C. Department of Parks and Recreation on the fourth floor of a public recreation and community center. Such a variance may be unnecessary if the Board finds that the proposed use falls within the definition for a public recreation and community center. Specifically, the Department seeks to use approximately one-eighth (12.5%) of the proposed community center building (approximately 5,940 square feet) for an educational training/incubator function in space located on the fourth floor for a limited number of Department of Parks and Recreation ("DPR") staff to develop new program concepts for the Columbia Heights community. These new programs would serve the Columbia Heights community directly. If they prove to be successful, these program concepts will be used at other recreation and community centers across the District of Columbia.. The Applicant believes that the incubator/training space is a use permitted by the definition of a public recreation and community center, which specifically allows "a range of health and wellness, cultural, and arts and crafts activities, and educational classes and services." However, in the event the Board

disagrees with the Applicant's interpretation, the Applicant has requested – in the alternative – a use variance for this space.

The only difference between the test for an area variance and a use variance is in the second prong of the test which uses the undue hardship standard (instead of the practical difficulties standard) as to whether strict enforcement of the Zoning Regulations and the Zoning Map is unfair (Lenkin v. BZA, 428 A. 2d 356, 360 n. 3 (D.C. 1981); Monaco v. BZA, 407 A. 2d 1072 (D.C. 1980)). As to the first prong concerning a unique physical aspect or condition, we have shown above that the Property is unique in shape and has an exceptional condition. It is this exceptional condition the prior use as a park owned by the District of Columbia and used for recreational purposes that drives the Applicant to make this request for a use variance. The Department in response to the needs of the community is seeking to meet these needs by providing long overdue and necessary programs and activities to an underserved neighborhood. The community deserves the best that the Applicant can provide at this recreational Property. If the Board considers the proposed educational incubator use to be akin to an office use which would not be allowed in the R-5-B zone district as a matter-of-right use, then denying this use to this community and neighborhood which has suffered so much from the prior disuse and dangerous activity would be unfair and an undue hardship on the Department and community.

Without the requested use variance, the Department would be forced to establish a separate, commercially zoned location for these activities which would create the financial and operational burden of operating two facilities and force the community to seek different services at different locations rather than the more common sense and practical one-stop concept. Other communities and neighborhoods have resources and locations available to provide a fair and

balanced range of services as the Department moves to renovate and construct public recreation and community centers throughout the District of Columbia. Columbia Heights is limited in that this is the only Property where the Applicant could provide such an educational incubator use in the immediate area. Thus, the strict application of the Zoning Regulations and the Zoning Maps would result in an undue hardship and unfair result for the Applicant and the community it serves.

As mentioned previously, under the third prong of the variance test, the Project will provide substantial benefits to the community. There will also be a lack of adverse impacts from the use variance requested resulting in no "substantial detriment to the public good" and no substantial impairment of "the intent, purpose and integrity of the Zoning Regulations and Map." With regard to proposed educational incubator use, the community will have the substantial benefit of programs and training developed specifically for the Columbia Heights community and as such these programs will be designed so that they will not adversely impact the residents of the neighboring property.

IV. Witnesses

Witnesses. The following witnesses will testify in support of the Application:

1. Ms. Kimberley A. Flowers, Director, DPR (with Mr. Neil Rodgers, Ms. Lisa Franklin-Kelly and Ms. Leslie Scholl of DPR)

2. Mr. Michael A. Valentine, RA, The Temple Group, Inc.

3. Walter S. Page, AIA, Leo A. Daly

Lit of Exhibits:

A. Site Plan

B. Photographs of former buildings

C. Aerial photograph of nearby Metrobus stops and Metrorail station locations

VI. Conclusion

For the reasons set forth above, the D.C. Department of Parks and Recreation, by and through counsel, submits that the Applicant has satisfied all applicable zoning requirements and the requisite burden of proof and, therefore, the Application should be granted.

Respectfully submitted,

GREENSTEIN, DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

By: _____
Lyle M. Blanchard

271294v2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Pre-hearing Statement of the Applicant was mailed, first-class, postage prepaid, this 27th day of September 2005, to:

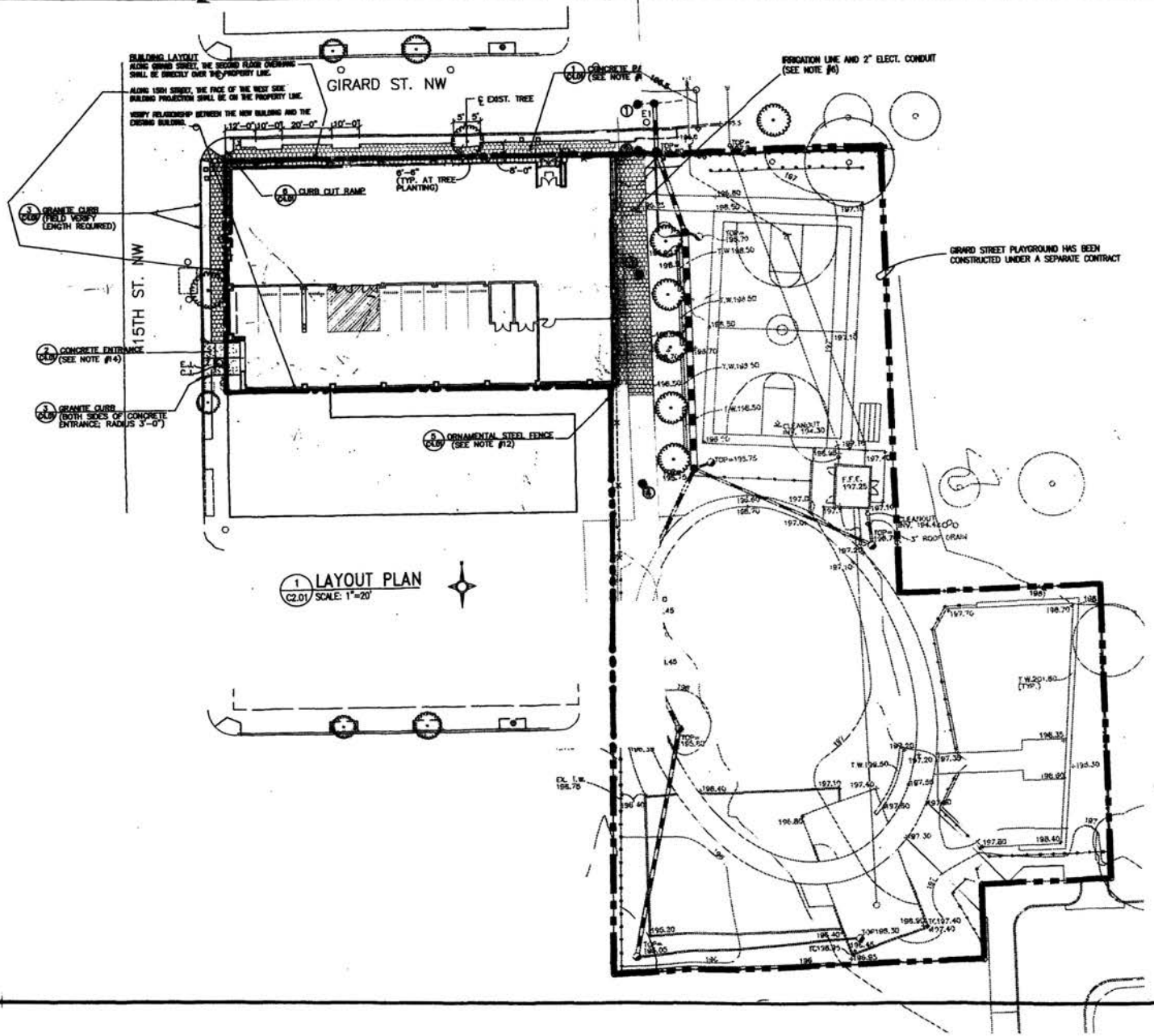
Advisory Neighborhood Commission 1B
c/o Deairich R. Hunter, Chair
P.O. Box 73710
Washington, D.C. 20056

Ms. Karen Thomas
Office of Planning
801 North Capitol Street, N.E.
Fourth Floor
Washington, D.C. 20002

Lyle M. Blanchard

EXHIBIT "A"

[See attached Site Plan]



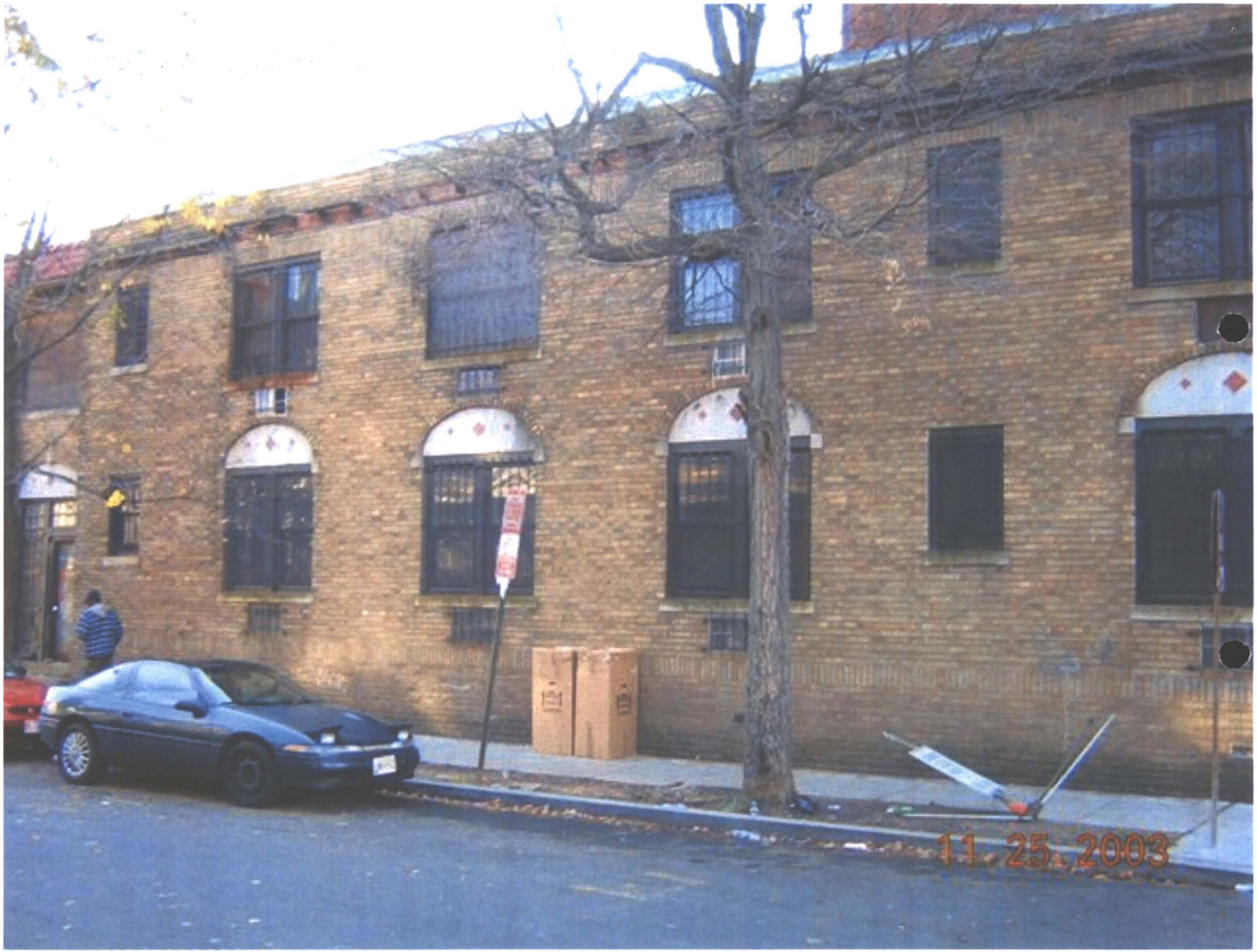
DISTRICT OF COLUMBIA
PARKS AND RECREATION

PROPOSED COLUMBIA HEIGHTS COMMUNITY CENTER
&
EXISTING PLAYGROUND

EXHIBIT "B"

[See attached Photographs of Former Buildings]


11 25 2003


11.25.2003


DO NOT
ENTER
11 25 2003


11 25 2003

11 25 2003


11.25.2003


11.25.2003

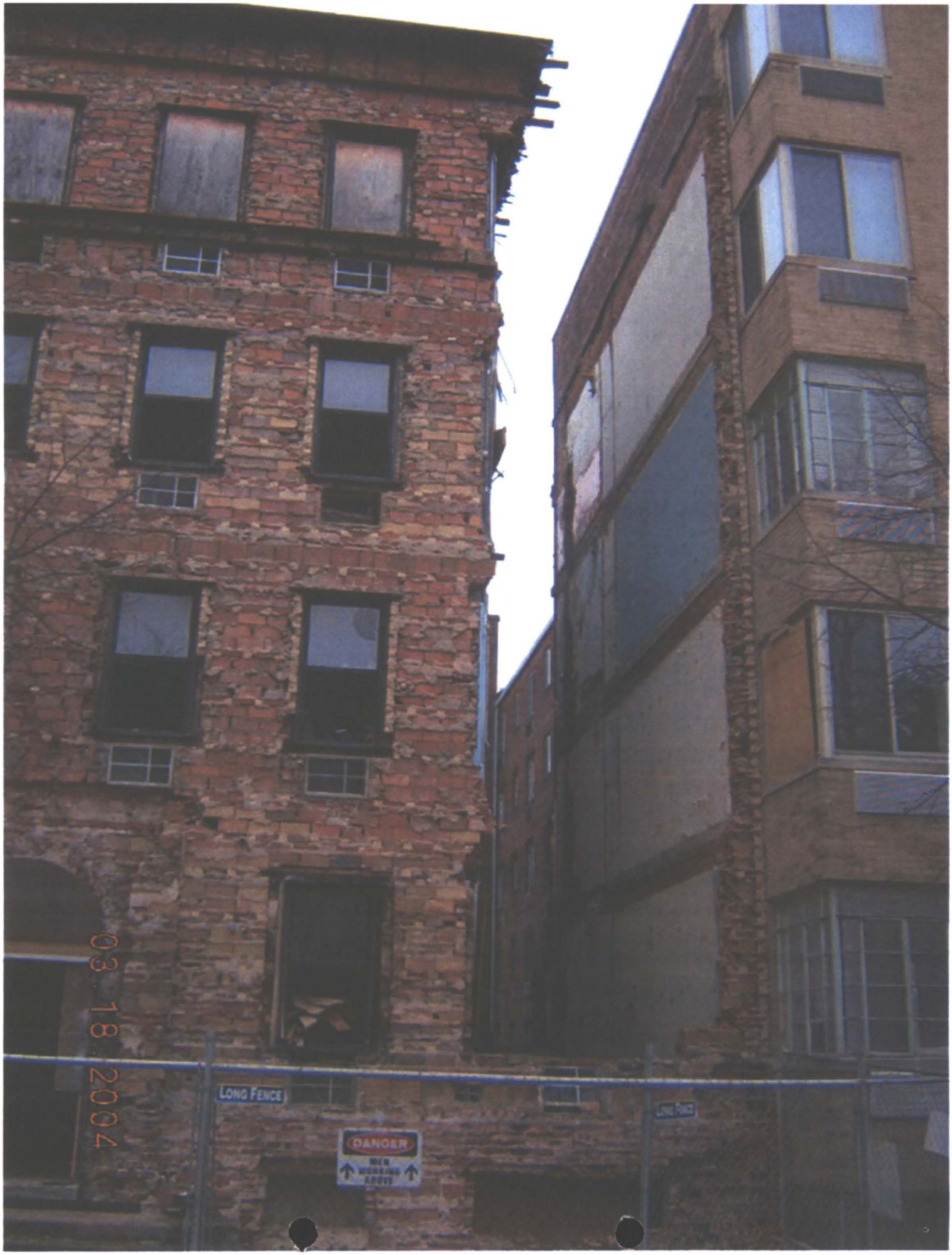

03.18.2004
LONG FENCE
DANGER

EXHIBIT "C"

[See attached Aerial Photograph of Nearby Metrobus and Metrorail Locations]


IRVING ST.
HARVARD ST.
1480 girard street nw, washington dc
COLUMBIA ROAD
Image © 2005 Sanborn
N
W
E
S
LEGEND
METRO BUS STOPS
COLUMBIA HEIGHTS
METRO STATION