

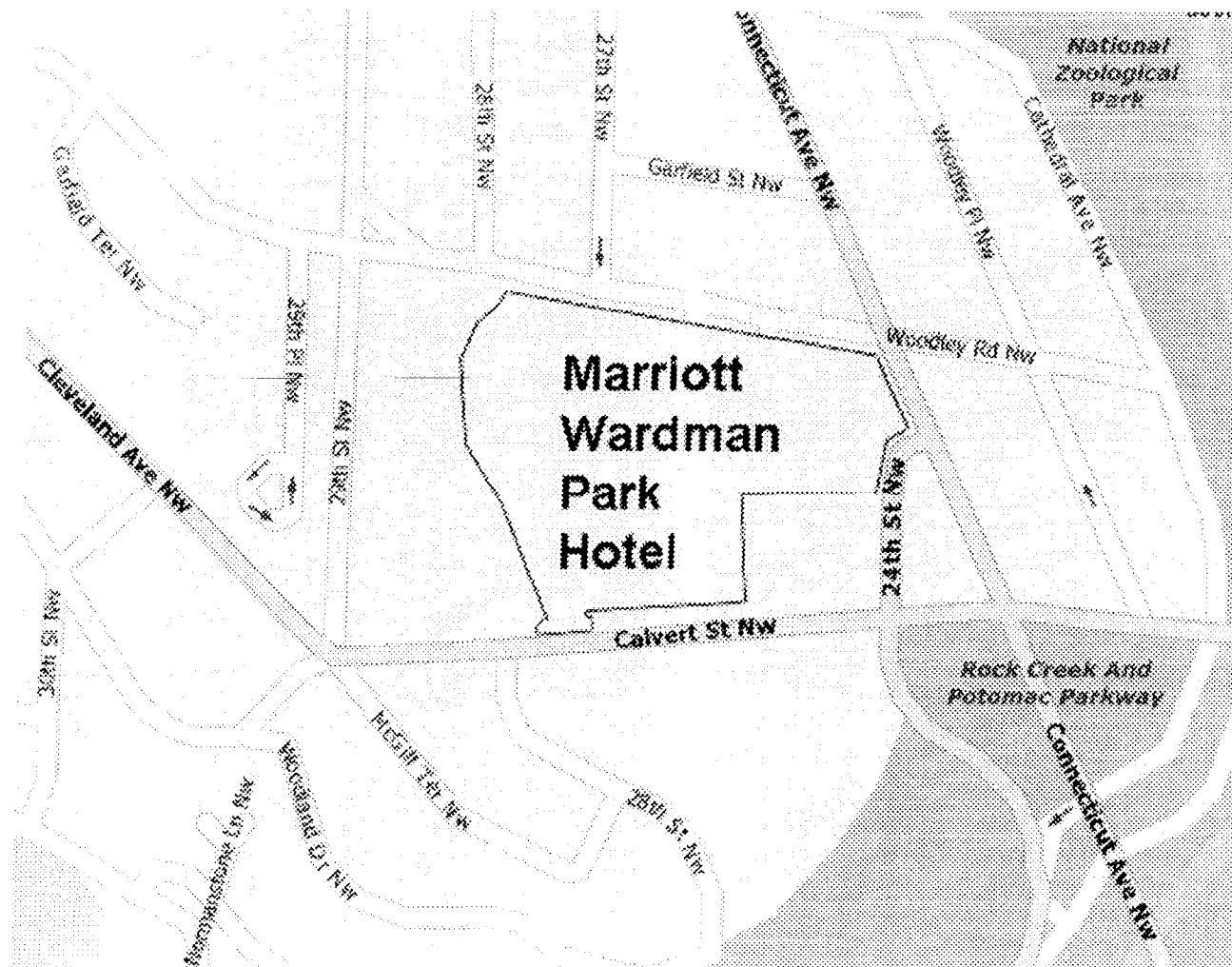
Appeal No. 17538

**ADVISORY NEIGHBORHOOD
COMMISSION 3C**

AND

**WOODLEY PARK COMMUNITY
ASSOCIATION**

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17538
EXHIBIT NO. 21





Appeal No. 17538

1 -- Calvert Street (looking north)



Appeal No. 17538

2 -- 24th Street (looking west)



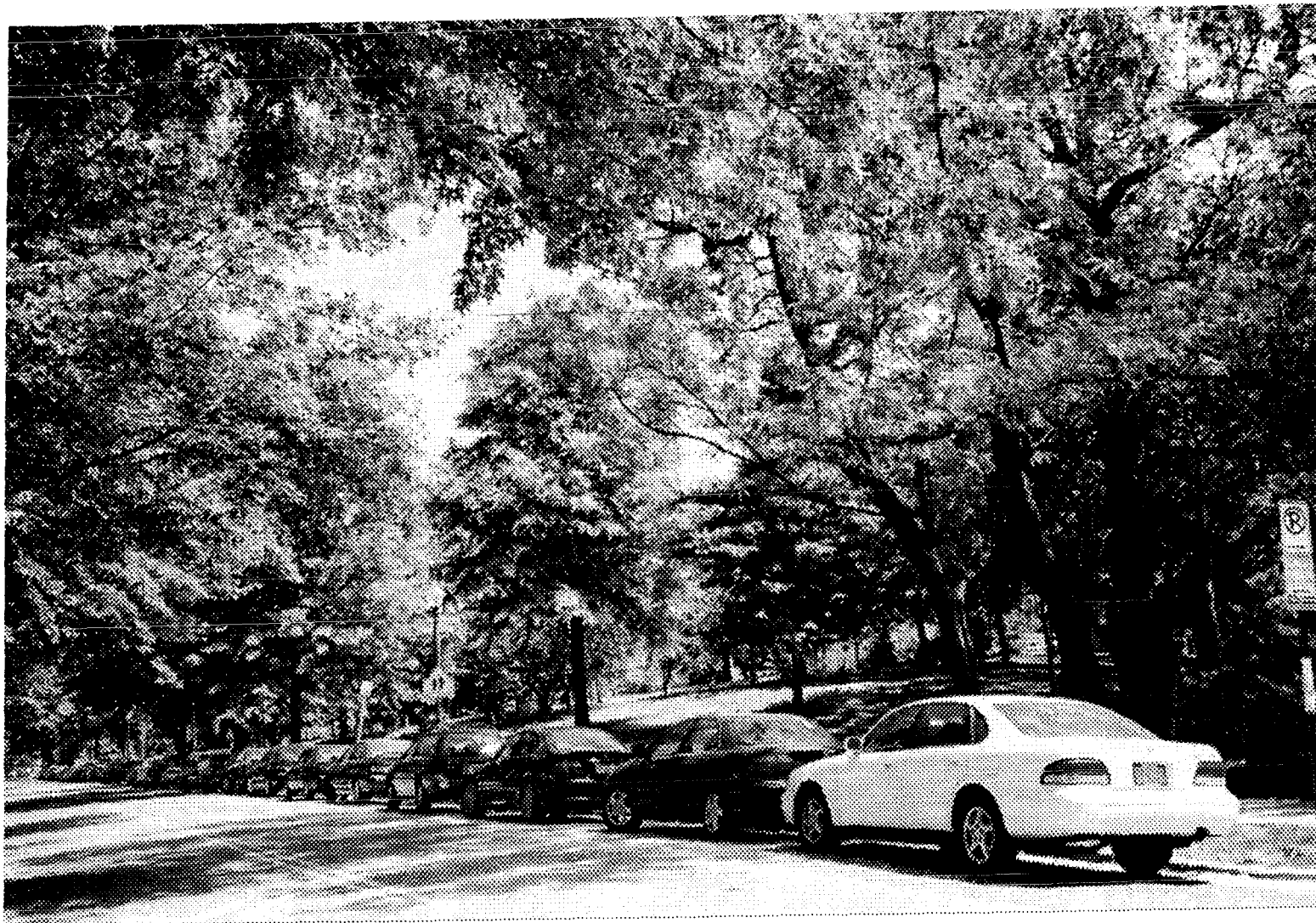
3 --Connecticut Ave & Woodley Road (looking south)



4 -- Woodley Road (looking south)



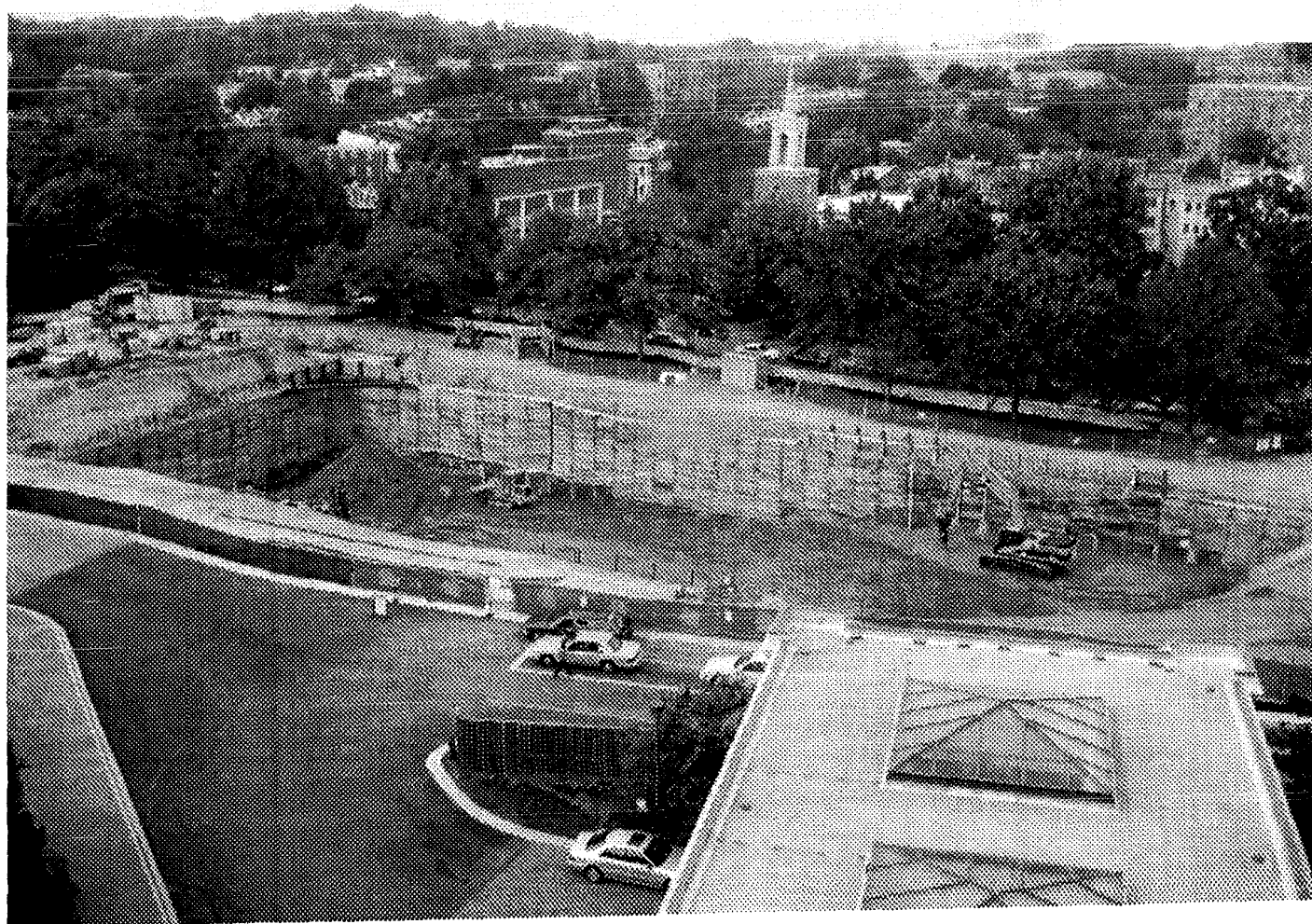
5 -- Woodley Road before construction (looking east)



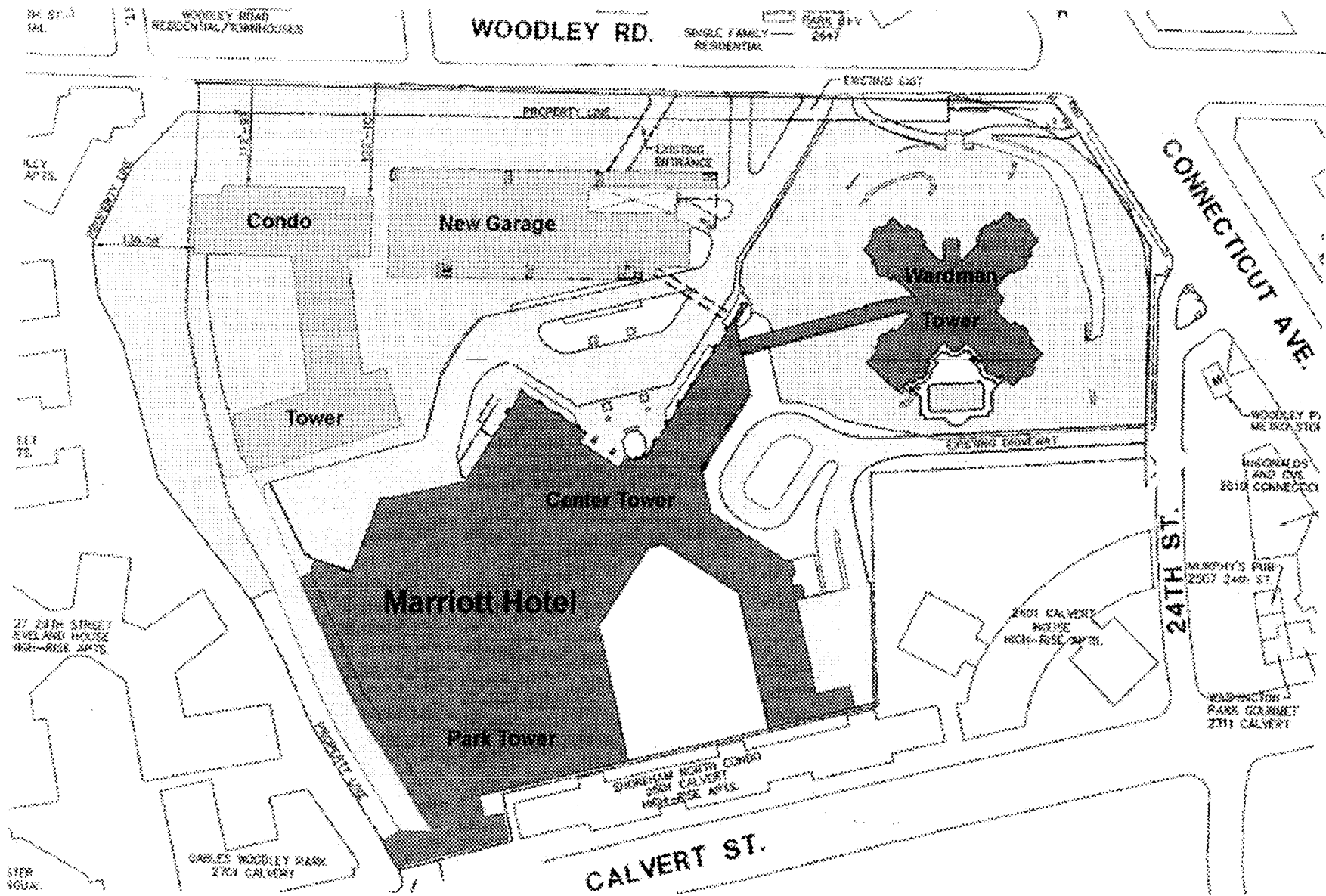
Woodley Road – current view



Appeal No. 17538



The plan for the site



Three violations of Zoning Regulations:

1. The garage is an accessory building, but isn't being built where an accessory building may be built.
2. This construction violates the special rules of section 350.4(d).
3. The Permits were issued without the Zoning Administrator's assuring that the plans complied with the rules.

The Garage Is in the Wrong Place

This garage is an accessory building.

JBG told DCRA it was a separate building (Attachment A, page 1 and Attachment F, page 1) and an accessory use (Attachment E, page 3).

The Zoning Regulations say it is:

- An accessory building is “a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building.”
- A hotel garage is a use customarily incidental and subordinate to a hotel.
- “The parking garage is an accessory to the hotel use” See *Samuel Leeds*, Appeal No. 8713, Order at 3 (BZA April 13, 1966).

The Garage Is in the Wrong Place

The Zoning Regulations prescribe where an accessory parking garage may be located.

Sections 2301.2 and 2500 require that such a garage be located either:

- a. in the rear yard or
- b. within the main building.

JGB does not disagree that this is the requirement.

The Garage Is in the Wrong Place

This garage is not in the rear yard.

JBG doesn't argue that it is in the rear yard.

The Zoning Regulations define a "rear yard" as "a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title." The Woodley Road side of the Hotel isn't the rear of the Hotel – it's the front.

The Zoning Regulations do not allow a property owner to decide which line is the rear lot line. If an owner could do that, it would make the rear yard requirement meaningless.

The Garage Is in the Wrong Place

This garage is not within the main building.

The garage is not even part of the main building.

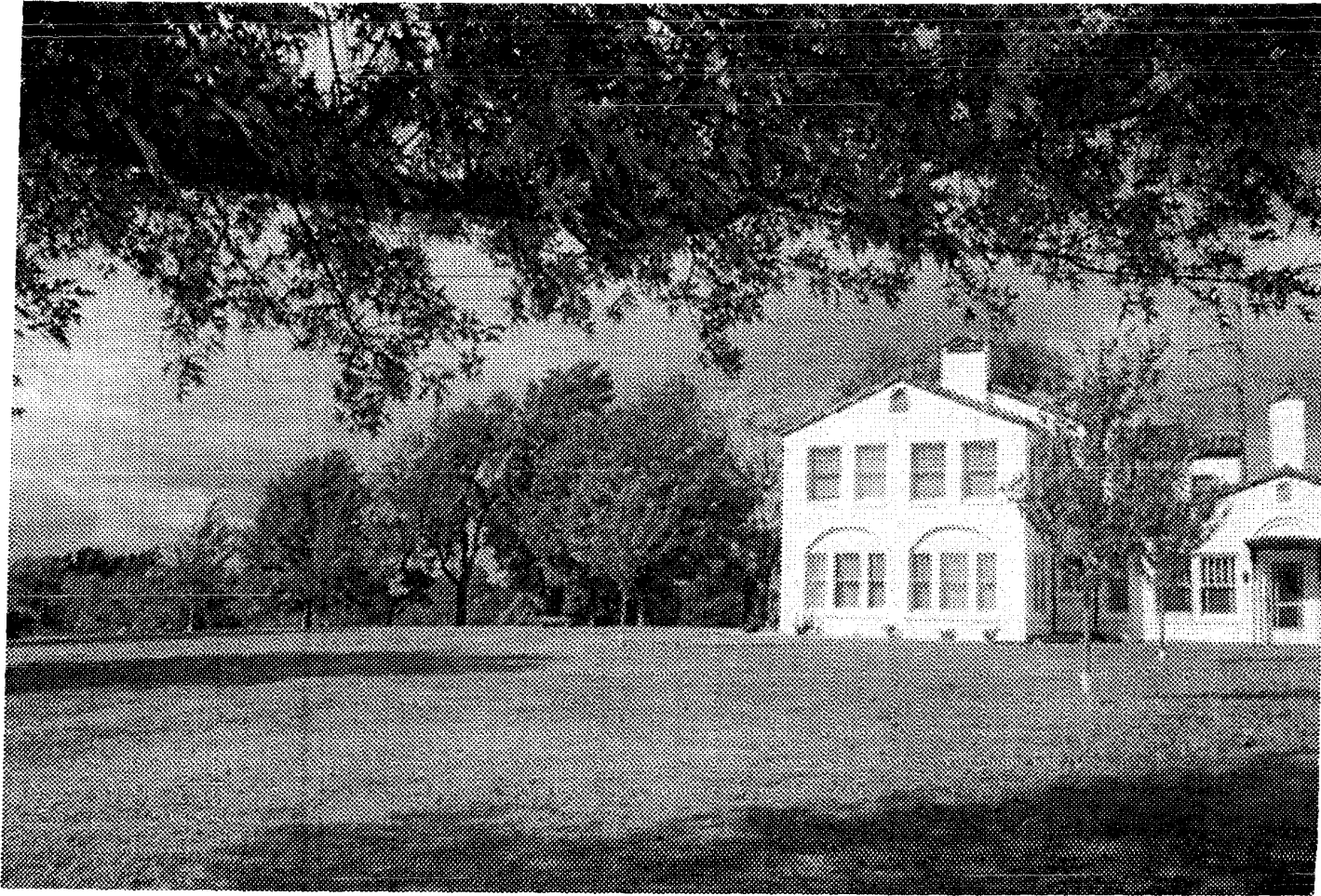
JBG told DCRA that the garage was a separate building (Attachments A, page 1 and F, page 1), not an addition to an existing building.

The Zoning Regulations say it's a separate building because, "The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building" and "When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building."

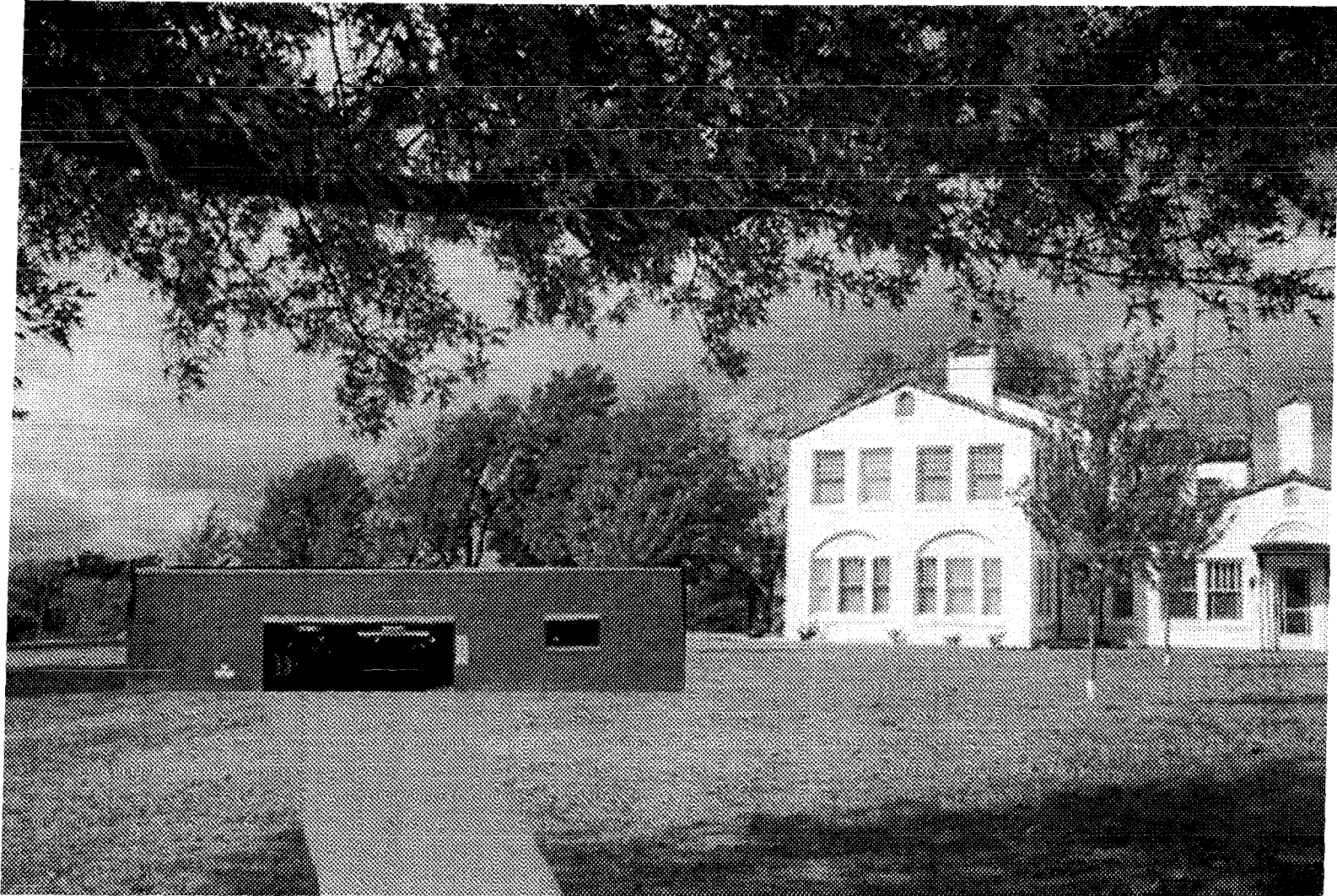
And even if it were part of the main building, it would still not be "within" it, as required by the regulations.

Appeal No. 17538

This rule makes sense...

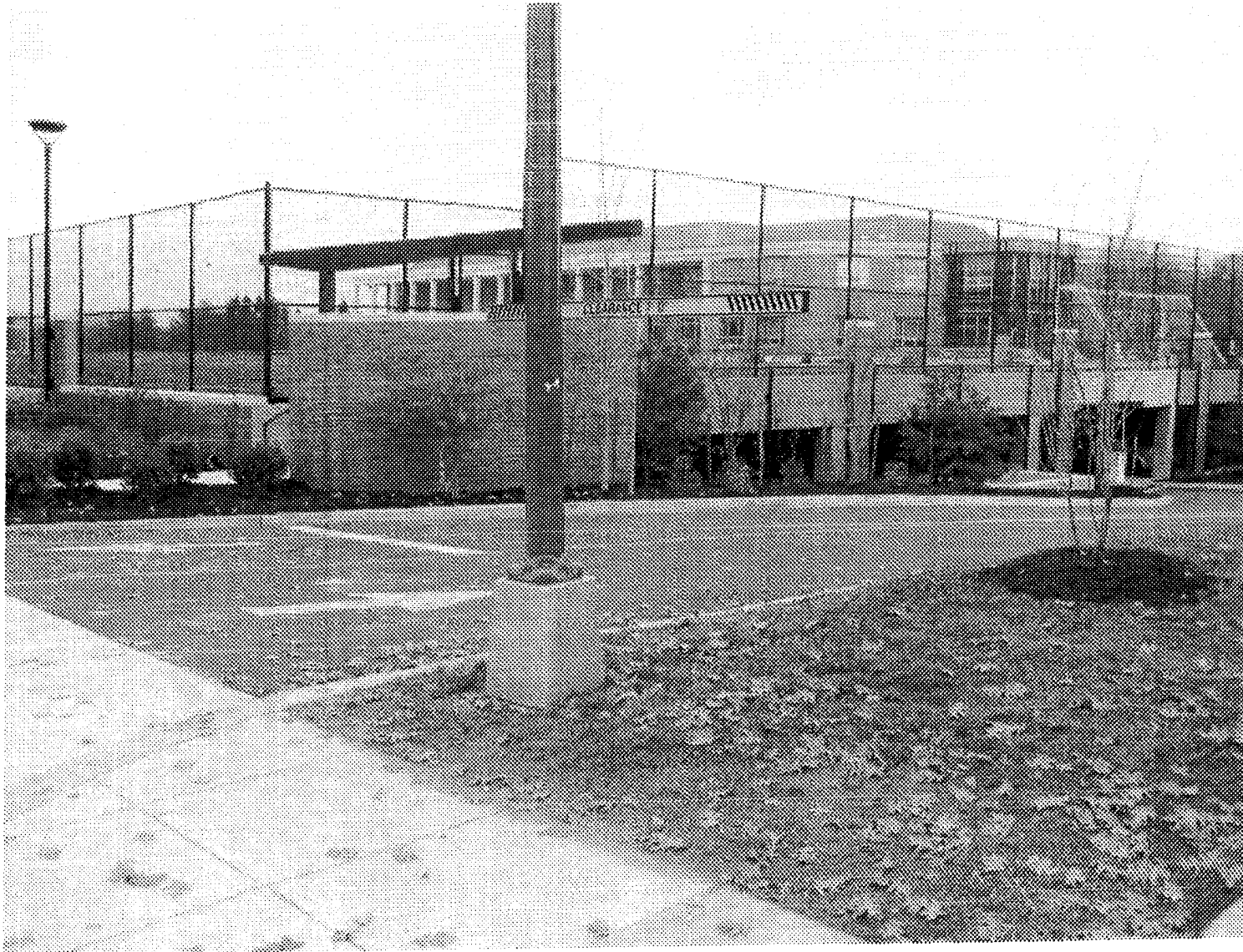


Appeal No. 17538



Closer to home...

Appeal No. 17538



JBG says the garage is “entirely underground” (page 2).

That’s not true

- The 30-foot wide, 60-foot long access ramp that’s right by the front property line
- The 660 square foot elevator/stair enclosure that’s 15 feet high
- The six other above grade components.

JBG Letter to the Board	What JBG told DCRA												
Garage is not a separate building	Kevin Keenan 4445 United Ave. LANGLEY, MD 20885 202-233-3755 11. Type of Proposed Work (check all applicable boxes) <table><tr><td>☒ New Building</td><td>☐ Retaining Wall</td><td>☐ Garage</td></tr><tr><td>☐ Addition</td><td>☐ Fence</td><td>☒ Sign</td></tr><tr><td>☐ Alteration and Repair</td><td>☐ Deck</td><td>☐ Projection</td></tr><tr><td>☐ Raze Building</td><td>☐ Awning</td><td>☐ Other (Specify)</td></tr></table> *False statements or misrepresentation of facts on a permit application and/or plans is subject to criminal penalties pursuant to DC law 22-2405	☒ New Building	☐ Retaining Wall	☐ Garage	☐ Addition	☐ Fence	☒ Sign	☐ Alteration and Repair	☐ Deck	☐ Projection	☐ Raze Building	☐ Awning	☐ Other (Specify)
☒ New Building	☐ Retaining Wall	☐ Garage											
☐ Addition	☐ Fence	☒ Sign											
☐ Alteration and Repair	☐ Deck	☐ Projection											
☐ Raze Building	☐ Awning	☐ Other (Specify)											
	7. SCOPE OF WORK ☒ New Building ☐ Addition to existing building ☐ Alteration of existing building												
Garage is not accessory structure	Resolved NOTE: As a matter-of-right accessory use.												

350 R-5 DISTRICTS: GENERAL PROVISIONS

- 350.1 The R-5 Districts are General Residence Districts designed to permit flexibility of design by permitting in a single district, except as provided in §§ 350 through 361, all types of urban residential development if they conform to the height, density, and area requirements established for these districts under chapter 4 of this title. The R-5 Districts shall also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts.
- 350.2 The R-5 Districts are subdivided into R-5-A, R-5-B, R-5-C, R-5-D, and R-5-E Districts. In R-5-A Districts, only a low height and density shall be permitted; in R-5-B, a moderate height and density shall be permitted; in R-5-C, a medium height and density shall be permitted; and in R-5-D and R-5-E, a relatively high height and medium-high density shall be permitted.
- 350.3 Except as provided in chapters 20 through 25 of this title, in any R-5 District, no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for one (1) or more of the uses listed in §§ 350 through 361.
- 350.4 The following uses shall be permitted as a matter of right in an R-5 District:
- (a) Any use permitted in the R-4 District subject to the requirements of §§ 353 and 410;
 - (b) *Consolidation or horizontal annex;*
 - (c) Multiple dwellings, subject to the requirements of §§ 353 and 410; provided, that in an apartment house, accommodations may be provided only to residents who stay at the premises a substantial part of the week;
 - (d) Hotel, only in R-5-B, R-5-C, R-5-D, or R-5-E Districts, in existence as of May 15, 1960, with a valid Certificate of Occupancy or a valid application for a building permit; provided, that the gross floor area of the hotel may not be increased and the total area within the hotel devoted to function rooms, eating space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodelled, or structurally altered;
 - (e) Residence for teachers or staff of private schools;
 - (f) Transient residential care homes, community residence facility, or health care facility for seven (7) or fifteen (15) persons, not including resident supervisors or staff and their families; provided, that there is no property containing an existing community-based residential facility for seven (7) or more persons either in the same square or within a radius of five hundred feet (500 ft.) from any portion of the subject property; and

Section 350.4 permits certain hotels in a residential zone.

“The following uses shall be permitted as a matter of right in an R-5 District:

“(d) Hotel, only in R-5-B, R-5-C, R-5-D, or R-5-E Districts, in existence as of May 16, 1980, with a valid Certificate of Occupancy or a valid application for a building permit; provided, that the gross floor area of the hotel may not be increased and the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodeled, or structurally altered;”

This Construction Violates Section 350.4

This rule was adopted in 1980 to prevent the further encroachment and expansion of hotels in residential areas and to protect residential neighborhoods from the negative impacts of hotel operations.

“The Board is of the opinion that the Zoning Commission intended to protect existing hotel uses in residential districts *as they existed*.” *2660 Woodley Road Joint Venture*, Application No. 16072, Order at 12 (BZA May 1, 1996) (emphasis added).

“[T]he Zoning Commission expressly declined to make hotels in residential zones nonconforming uses and this [sic] subject to the provision of Article 71. Instead, existing hotels were ‘grandfathered’ pursuant to the provisions of Paragraph 3105.34.” Statement of Applicant, *Application of the Washington Sheraton Corp.*, BZA Application No. 14072, at 5 (Jan. 11, 1984).

“The Zoning Commission chose to ‘freeze’ existing hotels in their 1980 position, while still permitting them as a matter-of-right.” [Hotel Owner’s] Opposition to Motion To Dismiss, *2660 Woodley Road Joint Venture*, Application No. 16072, at 4 (Apr. 16, 1996).

This Construction Violates Section 350.4

“The following uses shall be permitted as a matter of right in an R-5 District:

“(d) Hotel, only in R-5-B, R-5-C, R-5-D, or R-5-E Districts, in existence as of May 16, 1980, with a valid Certificate of Occupancy or a valid application for a building permit....”

This says that the only hotel that is permitted in an R-5 District is a hotel that was in existence in 1980. If a hotel wasn't in existence in 1980, then it's not allowed in an R-5 District.

The Zoning regulations define a “hotel” as “a building or part of a building” that is used in a certain way. So, to be allowed under section 350.4, “a building or part of a building” had to have been in existence and used as a hotel in 1980.

[A] building or part of a building” that was not in existence as a hotel in 1980 is prohibited in an R-5 District.

The garage is a separate building, it was not in existence in 1980, and, therefore, it may not be built now.

This Construction Violates Section 350.4

Section 350.4(d) authorizes only certain types of construction projects on a grandfathered hotel: “An existing hotel may be repaired, renovated, remodeled, or structurally altered.” Any other project is prohibited.

This project violates this provision for two reasons:

1. The only work that is permitted is work on “an existing hotel.” An “existing hotel” is an existing “building or part of a building.” This work isn’t being done on an existing building or part of a building.
2. This project is not one of the four enumerated permitted types.

This Construction Violates Section 350.4

Section 350.4(d) prohibits the expansion of the commercial aspects of a hotel:

“[T]he total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased.”

The Regulations’ definition of a hotel requires, “All areas within a hotel shall be included in one (1) of the following categories:” commercial adjuncts, exhibit space, function rooms, guestroom areas and service areas.

This Construction Violates Section 350.4

A garage does not fit within any of these definitions. It's not a "service area," as JBG claims. A garage supports *all* the areas within the hotel.

Therefore, the area of the garage must be allocated among the five "hotel" areas in order to determine whether the "total area" of the commercial functions has increased. This wasn't done.

The Permits were issued without the Zoning Administrator's assuring that the plans complied with the rules.

“I caveat this determination in that the calculations provided by JBG are preliminary and that the Office of Zoning Administrator staff will have to ensure that all submitted plans cumulatively comply with the zoning requirements.”