

JORDAN & KEYS, PLLC

ATTORNEYS AT LAW

SUITE 710

1400 SIXTEENTH STREET, N.W.

WASHINGTON, D. C. 20036-2217

(202) 483-8300

FACSIMILE (202) 328-6153

gkeys@jordankeys.com

GEORGE R. KEYS, JR.†

†Also Admitted in Maryland

OF COUNSEL:

HAROLD E. JORDAN

November 14, 2011

NOV 15

HAND-DELIVERED

Meridith Moldenhauer, Esq., Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W. - Room 210 South
Washington, D.C. 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18272
EXHIBIT NO. 34

Re: Keener-Squire Properties, on behalf of the First Baptist Church - Application No. 18272

Dear Ms. Moldenhauer:

This firm represents approximately sixty-five (65) residents of the Richmond Condominium building located at 1401 17th Street, N.W., who have styled themselves as the Richmond Group and reside directly across O Street from the subject property. On behalf of the Richmond Group, we enclose herewith a statement in oppositions and accompanying exhibits and urge the Board to deny the requested variance and special exception relief.

1. There Are No Extraordinary or Exceptional Conditions Affecting the Subject Property.

Unquestionably the First Baptist Church is a contributing building in the Sixteenth Street Historic District and it was so identified at the time the district was established and listed on the National Register on August 25, 1978.¹ When the Sixteenth Street Historic District was amended in 2007 to extend the boundary south of Scott Circle to The White House, the District of Columbia Historic Preservation Office made the effort to clarify the "period of significance" in the historic district to 1815-1959.² In this 2007 document First Baptist Church was described as "0181-0851 --- 1326-1330 16th Street --- 1955 --- Contributing." The edifice known as First Baptist Church was

¹The National Register of Historic Places Inventory - Nomination Form – that was submitted on June 17, 1977, cited First Baptist Church (No. 55 within the Sixteenth Street Historic District) as "1326 16th Street --- 1888/1950's ---- 1950's Gothic --- Contributing."

²National Register of Historic Places – Registration Form, dated May 15, 2007 (Exhibit 1)

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completed in 1955, and situated on lot 0851 in Square 181. The R.H. Baist Atlas (1965) at Vol. 1, Map 13 shows the modern First Baptist Church situated on its lot (Exhibit 2). The record makes clear that the “contributing building” both in 1978 and in 2007 was the First Baptist Church erected in 1955. In 1955, First Baptist Church did not own all of the land that would later comprise Lot 163, Square 181.³

In Application No. 13317 (Exhibit 4), First Baptist Church came before the D.C. Board of Zoning Adjustment seeking a variance from the open court requirements in order to construct an addition to First Baptist Church. In that application, First Baptist Church identified the subject property as Lots 28-30, 855-858, 861 and 852. In the Findings of Fact, the BZA noted:

10. The applicant does not anticipate future growth requiring increased lot occupancy. Rather, the proposed addition is designed to meet any possible future expansion needs by adding one or two more stories.

Shortly after the BZA’s decision granting the variance relief on October 1, 1980, First Baptist Church subdivided all of the lots it owned within Square 181 into a single lot of record, known as Lot 163.⁴

The purpose of recounting this history is to make a distinction between the “contributing building” and the annex joined to it sometime after 1980, so that what is being proposed in this application is not an addition to a “contributing building”, but rather an addition to an addition. There is no functional relationship between the residential addition and the “contributing structure”, indeed, they will be owned by separate parties. It is a complete fiction that the residential building is somehow an addition to the “contributing structure”.

The Applicant contends that its own neglect of the church and annex buildings is an extraordinary and exceptional circumstance. The Applicant also contends that the subject property is exceptional because it is large, split-zoned and fronts on three streets, and is narrow in relation to its length. As the history of this parcel shows the Applicant slowly and deliberately assembled the subject property, piece by piece, over the years of its existence in the District of Columbia. The Applicant knowingly created the very conditions of which it now complains. These contentions are in the nature of “self-inflicted hardships” which the BZA should not overlook in evaluating how the conditions relate to the second part of the variance test: practical difficulty.

³Lots 23, 24, 25, 26, 27 and 28 were acquired by First Baptist Church in four transactions on November 3, 1953, August 3, 1959 and November 16, 1972 (Exhibit 3).

⁴“Subdivision Square 181”, recorded in Book 172, Page 42, October 30, 1980 (Exhibit 5).

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2. The Practical Difficulties Cited Do Not Arise from the Cited Conditions.

The Applicant's twin goals are: to defray the estimated \$5 million in deferred maintenance and to create an endowment for its program needs and to avoid any interruption in or inconvenience to existing church programs. To achieve the former, the Applicant need to put the maximum amount of building into the available space it has allocated for the purpose. To achieve the latter, the Applicant has determined that none of the residential building can be built anywhere else other than the unoccupied portions of the subject property.

The fact that First Baptist Church is a "contributing building" within the Sixteenth Street Historic District does not limit what can be done with the vacant land within Lot 163.

The fact that the subject property fronts on three streets is actually an advantage to the Applicant's building maximization goal because it eliminates the need for a rear yard by permitting the rear yard requirement to be measured from the middle of 17th Street. Accordingly, the Applicant is able to build virtually "lot line to lot line" on the vacant land.

The fact that the subject property is split-zoned or narrow does not prevent the Applicant from developing a residential building in conformity with the underlying zoning. What is does prevent is the development of a residential building with an effective FAR of 9.0 and 100% lot occupancy when the underlying zoning permits 4.0 FAR in the SP-1 and 6.0 FAR in the SP-2 portions of the site.⁵ The bonus density from the Inclusionary Zoning regulations would boost FAR by 20% in both zones.

The District of Columbia Court of Appeals in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972) reversed the BZA and held that an area variance cannot be granted on the ground that property which produces reasonable income when conforming to regulations will, if put to another use, yield a greater return. Likewise, the Zoning Commission in Order No. 02-37 (*Sua Sponte* Review of Board of Zoning Adjustment Application No. 16869 of King's Creek LLC (Dec. 9, 2002) found that the BZA granted variance relief so excessive in relation to the exceptional conditions and practical difficulties that it amounted to an illegal rezoning of the property.

"The Applicant simply chose to design an addition in such a way as to create the need for excessive zoning relief." *Order No. 02-37*, at p. 3.

⁵Although the Applicant does not describe the residential building in this way, the proposed building would be erected on vacant land that is 30% SP-2 (3,454 sq. ft.) and 70% SP-1 (8900 sq. ft.) with 100% lot occupancy and a 9.0 FAR.

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“If the relief granted is too great and out of all proportion to the practical difficulties claimed, it can amount to a *de facto* amendment of the zoning regulations or map and a rezoning of the property.” *Order No. 02-37*, at p. 4.

3. The Application Harms the Public Good and the Zone Plan

The subject property and all of the land on the north side of O Street, N.W. in Square 181, including the Richmond Condominium at 1401 17th Street, N.W. lie within the Dupont Circle Overlay District (11 DCMR *Zoning* (Feb. 2003) § 1501, *et seq.*), which was first established in 1992. One of the purposes of the Dupont Circle Overlay District is to “[p]reserve areas planned as open gardens and backyards and protect the light, air and privacy they provide.” The BZA has previously construed this provision as extending protection to open gardens from the deprivation of light and air by proposed development. See Decision and Order in BZA Application No. 17337-A (N Street Follies Ltd.).

The Richmond Condominium is subject to Zoning Commission Order No. 431 in Case No. 83-17C, August 16, 1984 (Resources Conservation Center PUD), which, *inter alia*, ordered that the PUD applicant establish and maintain, as a public amenity, a one-acre ‘formal park-like garden with trees, a fountain, flowering plants, bushes and shrubs’ (the “public garden”) directly across O Street from the subject property. We have attached several pictures of the public garden (Exhibit 6). The Zoning Commission further ordered that the public garden be open from 8:00 am to sunset, on a daily basis. The proposed building which lies to the south of the “public garden” established pursuant to will have an adverse impact upon the sunlight received by the garden with a consequent deleterious effect on the existing trees, shrubs and landscaping of the garden. As an example of the effect of sunlight, we attach a statement from the landscaper that maintains the public garden and two photographs showing the effect of location in the public garden on two identical stands of plant material, one facing the existing church building, the other facing the subject property (Exhibit 7).

The shadow studies produced by the Applicant, which purport to show no harm, are inadequate for several reasons. First, they arbitrarily depict only conditions at 10:00 am and 2:00 pm. The Richmond Group believes that the shadow studies should show impacts for the entire span of time that the public garden is in daily use. Second, the Applicant compares the proposed building with a hypothetical “matter-of-right” building without examining the existing conditions from which one can measure the actual impacts on the public garden of development on the subject property. Third, the Richmond Group believes that the penthouse of the matter-of-right building is exaggerated in size, thereby raising the profile and shadow effect of such a building in comparison with the proposed building.

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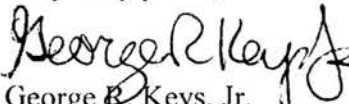
Meridith Moldenhauer, Esq., Chairperson
D.C. Board of Zoning Adjustment
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In addition to the impact on the public garden, the loss of sunlight impacts the hedonic benefit to the users of the public garden and the residents of The Richmond who reside on the south and southeast facing sides of the Richmond Condominium building, especially those having balconies and a large array of windows overlooking the public garden and the subject property.

4. Conclusion.

In order to reach its financial target with the least disturbance to itself, the Applicant asks the BZA to ignore the SP-1 and SP-2 zoning of the vacant land and to shift the entire burden of a 9.0 FAR building without regard to its impact on adjacent properties or the requirements of the Dupont Circle Overlay District. What is, in effect, a map amendment and a request to exceed normal development parameters should be denied by the BZA and the Applicant directed to apply to the Zoning Commission under the PUD guidelines.

Very truly yours,


George R. Keys, Jr.

Enclosures

cc: Mary Carolyn Brown, Esq.
Advisory Neighborhood Commission 2B
Kay Marlin

United States Department of the Interior
National Park Service

**NATIONAL REGISTER OF HISTORIC PLACES
REGISTRATION FORM**

This form is for use in nominating or requesting determinations for individual properties or districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

Historic name: Sixteenth Street Historic District (Boundary Increase)

Other names/site number: _____

2. Location

Street & Number: 16th Street, N.W. ☐ Not for Publication

City or town: District of Columbia ☐ Vicinity

State: Washington Code: DC County: District of Columbia Code: 001 Zip Code: 20036/20009

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this ☒ nomination ☐ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ☒ meets ☐ does not meet the National Register criteria. I recommend that this property be considered significant ☐ nationally ☐ statewide ☒ locally. ((☐ See continuation sheet for additional comments.))

DAVID MALONEY, ACTING SHPD 5-15-2007
Signature of certifying official/Title Date

DC HISTORIC PRESERVATION OFFICE/OFFICE OF PLANNING
State or Federal agency and bureau

In my opinion, the property ☐ meets ☐ does not meet the National Register criteria. ((☐ See continuation sheet for additional comments.))

Signature of certifying official/Title Date

State or Federal agency and bureau

4. National Park Service Certification

I, hereby, certify that this property is:

☐ entered in the National Register.

() see continuation sheet

☐ determined eligible for the National Register

() see continuation sheet

☐ determined not eligible for the National Register

☐ removed from the National Register

☐ other, (explain:)

Signature of the Keeper

Date of Action

Exhibit

**United States Department of the Interior
National Park Service
NATIONAL REGISTER OF HISTORIC PLACES
Continuation Sheet**

Sixteenth Street Historic District, Washington, D.C. (Boundary Increase)
Section number 8 Page 13

proximity to the White House, exudes a strong and palpable feeling of prestige that is similarly integral to the streetscape.

As the primary route leading to the city's symbolic center, 16th Street has, since its layout, offered a distinguished address. The street has been sought after by prominent individuals for residences, by congregations for churches, by foreign dignitaries for embassies, and by heads of national organizations and trade associations intent upon establishing a notable presence in the nation's capital for their headquarters offices. This allure of location has ensured the prestigious viability of 16th Street throughout its history and has encouraged the varied and high quality collection of building types. Indeed, it is this mixture and academic eclecticism of 19th century row houses, freestanding mansions, apartment buildings, churches and 20th-century institutional buildings that provides continuity to the several-mile long linear stretch of the street from the White House to Florida Avenue.

While the 1978 National Register nomination recognizes the development along the section of 16th Street north of Scott Circle, the full history and import of the architecture of the street within the original city limits is more aptly understood through the designation of the stretch of 16th Street from the White House on the south to Florida Avenue on the north. The stretches of 16th Street north of the original city limits, such as Meridian Hill and beyond to the border with Montgomery County, have not yet been comprehensively surveyed or studied, and have therefore not been evaluated for inclusion within the 16th Street Historic District.

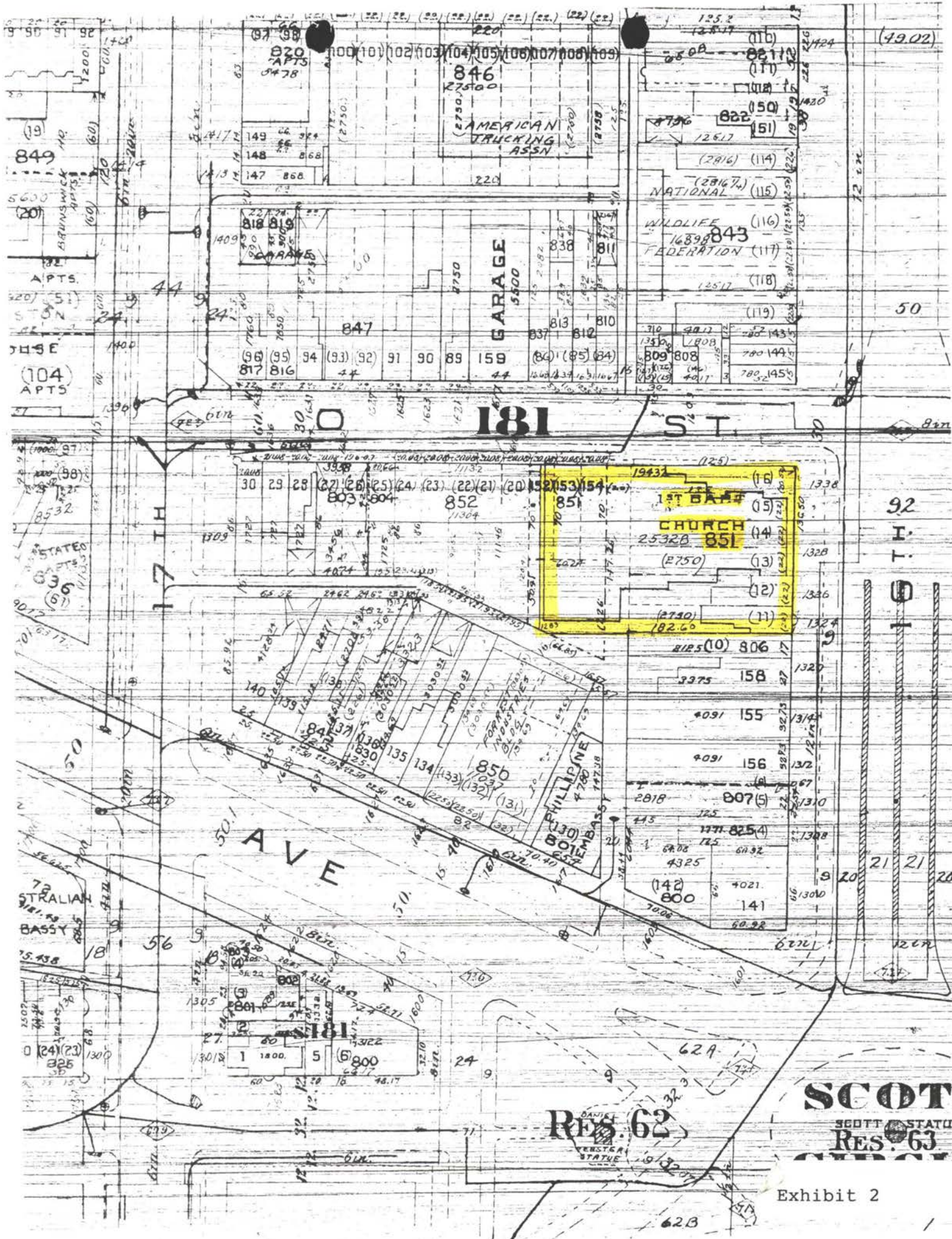
Period of Significance

The existing National Register nomination for the historic district does not state a Period of Significance, though a 1930 end-date had been in use since 1990 when it was established by the D.C. Historic Preservation Office. This amended National Register nomination establishes a more firm Period of Significance, based upon a more thorough study of the 20th-century building trends along the street. The Period of Significance thus extends from 1815 when St. John's Church—the oldest surviving building along the street, exclusive of the White House—was erected, to 1959 when the Moreschi Building (the International Hod Carriers' Union building) at 905 16th Street was completed. The Moreschi building provides an appropriate end-date to the period of significance for 16th Street for two principal reasons: 1) the building represents the last of the national trade associations that needed a zoning adjustment, thus securing its monumental presence on 16th Street; and 2) the building represents the final architectural expression along the street of design that is well within the Modern era, but still rooted in the more traditional building forms of the past.

NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET: List of Resources

16th Street Historic District (Boundary Increase)

ID Number	Building Name (Historic)	Address	Date	Status
0179-0106	[mansion/16th Street NW/1628]	1628 16th Street NW	1890	Contributing
0179-0812	Barclay Apartments	1616 16th Street NW	1924	Contributing
0179-0813	Ravenel (The)	1604-1610 16th Street NW	1929	Contributing
0179-0817	[apartment house/16th Street NW/1600]	1600 16th Street NW	1940	Contributing
0180-0042	[rowhouse/16th Street NW/1536]	1536 16th Street NW	1884	Contributing
0180-0043	[rowhouse/16th Street NW/1534]	1534 16th Street NW	1900	Contributing
0180-0044	Harris (R.) House	1532 16th Street NW	1894	Contributing
0180-0084	The Church Place Condominium (Churchill Apartment)	1520 16th Street NW	1963	Non-Contributing
0180-0085	Foundry United Methodist Church	1500-1510 16th Street NW	1904	Contributing
0180-0801	Hightowers Apartments	1530 16th Street NW	1938	Contributing
0181-0162	Australian Embassy	1601 Massachusetts Avenue NW	1968	Non-Contributing
0181-0821	Embassy (The)	1424 16th Street NW	1917	Contributing
0181-0822	[rowhouse/16th Street NW/1420]	1420 16th Street NW	1915	Contributing
0181-0851	First Baptist Church	1326-1330 16th Street NW	1955	Contributing
0181-0870	National Wildlife Federation	1400-1412 16th Street NW	1987-1988	Non-Contributing
0182-0053	[apartment building/16th Street/1222]	1222 16th Street NW	1920	Contributing
0182-0055	Carmody (John R.) House	1220 16th Street NW	1883	Contributing (altered)
0182-0056	Bliss (Alonzo) House	1218 16th Street NW	1907	Contributing
0182-0057	Bulkley (Mrs. Virginia) House	1216 16th Street NW	1891	Contributing
0182-0058	[rowhouse/16th Street NW/1214]	1214 16th Street NW	1915	Contributing
0182-0059	[rowhouse/16 th Street NW/1212]	1212 16 th Street NW	1915	Contributing
0182-830	Courtyard Marriott	1600 Rhode Island Avenue NW	2004	Non-Contributing
0182-0819	Jefferson Hotel	1200-1210 16th Street NW	1922	Contributing
0183-0091	Mitchell (Harrison) House	1128 16th Street NW	1908-1909	Contributing
0183-0105	Pall Mall Apartments	1112 16th Street NW	1940	Contributing
0183-0800	SAIL Charter School	1100-1102 16th Street NW	1908	Contributing (altered)



SCOT
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RES. 63

Exhibit 2

24823

BOOK PAGE

11286 107

K.

This Deed made this 3rd day of August

in the year

Nineteen hundred and fifty-nine _____ by and between BEATRICE R. RICHARDSON, widow, not remarried, party hereto of the first part; and TRUSTEES OF THE FIRST BAPTIST CHURCH OF THE CITY OF WASHINGTON (also known as FIRST BAPTIST CHURCH), a religious society duly incorporated under the Laws in force in the District of Columbia, party hereto of the second part.

Witnesseth, that for and in consideration of the sum of TEN

Dollars

the said party _____ of the first _____ part do es grant _____ unto the

said party _____ of the second part, in fee simple.

the following described land and premises, with the improvements, easements and appurtenances thereto belonging, situate in the District of Columbia namely:

Lot 23 in the subdivision made by William M. and Mary W. Merrick of lots in Square 181, as per plat recorded in Liber W. F., Folio 17 of the Records of the Office of the Surveyor of the District of Columbia.

To Have and to Hold

the same unto and to the use of the said party _____

hereto of the second _____ part in fee simple.

And

the said party hereto of the first part _____ does

hereby covenant to warrant specially the property hereby conveyed, and to execute such further

assurances of said land as may be requisite.

Witness

her hand and seal on the day and year first hereinabove written.

Signed, sealed and delivered in the presence of

Beatrice R. Richardson

SEAL

SEAL

SEAL

DISTRICT OF COLUMBIA

TO WIT:

I, Robert E. Lemmond

a Notary Public in and for the said

District

do hereby certify that

BEATRICE R. RICHARDSON,

widow, not remarried,

party to a certain Deed bearing date on the 3rd day of August

A.D. 18 59, and hereto annexed, personally appeared before me in the said District

the said BEATRICE R. RICHARDSON

being personally well known to me as the person who executed the said Deed, and acknowledged the same to be her act and deed.

Signed under my hand and official seal this 3rd

A.D. 18 59.



Deed

BEATRICE R. RICHARDSON

TO

TRUSTEES OF THE FIRST BAPTIST
CHURCH OF THE CITY OF WASHINGTON
D.C. (also known as FIRST BAPTIST
CHURCH)

Received for Record on the _____
day of _____ A.D. 18 _____
at _____ O'Clock M., and recorded
in Liber No. 11286 at folio 107
one of the Land Records for the District of
Columbia, and examined by

Recorder

THE REAL ESTATE TITLE INSURANCE
COMPANY
THE COLUMBIA TITLE INSURANCE
COMPANY
1422 H Street, N.W., Washington 5, D. C.

PAGE OF STRIP 5, ARKING, WASHINGTON, D. C.

#189, 500

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0 00119 655-308

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24824

BOOK

PAGE

SEP 1 2 01 P M

K.

11286

108

This Deed made this 24 day of August in the year

Nineteen hundred and fifty-nine, by and between VIRGINIA B. BROWN,
Widow, not remarried, devisee under the Will of John M. Butler, deceased,
party hereto of the first part; and TRUSTEES OF THE FIRST BAPTIST CHURCH OF
THE CITY OF WASHINGTON, (also known as First Baptist Church), a religious
society, duly incorporated under the Laws in force in the District of
Columbia, party hereto of the second part.

Witnesseth, that for and in consideration of the sum of TEN

Dollars

the said party y of the first part do CS grant unto the

said party y of the second part, in fee simple.

the following described land and premises, with the improvements, easements and appurte-
nances thereunto belonging, situate in the District of Columbia namely:

Lot 24 in William M. and Mary W. Merrick's subdivision of part of Square
181, as per plat recorded in Liber W. F., Folio 17 of the Records of
the Office of the Surveyor of the District of Columbia.



To Have and to Hold the same unto and to the use of the said party y

hereto of the second part in fee simple.

And the said party hereto of the first part does
hereby covenant to warrant specially the property hereby conveyed, and to execute such further
assurances of said land as may be requisite.

Witness her hand and seal on the day and year first heretofore written.

Signed, sealed and delivered in the presence of:

Virginia B. Brown

SEAL

SEAL

SEAL

SEAL

DISTRICT OF COLUMBIA

TO WIT:

BOOK PAGE
11288 110

Virginia B. Brown

a Notary Public in and for the said
District of COLUMBIA

Widow, not remarried,

do hereby certify that

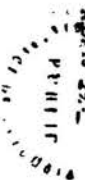
partly to a certain Deed bearing date on the 3d day of August
A.D. 1959, and hereto annexed personally appeared before me in the said District

the said VIRGINIA B. BROWN

being personally well known to me as the person who executed the said Deed, and acknowl-

edged the same to be their act and deed.

Witness my hand and official seal this 3d day of August



Virginia B. Brown
Notary Public

24824

Deed

VIRGINIA B. BROWN

TO

TRUSTEES OF THE FIRST BAPTIST
CHURCH OF THE CITY OF
WASHINGTON (also known as
FIRST BAPTIST CHURCH)

Received for Record on the _____
day of _____ A.D. 19____
at _____ O'Clock _____ M., and recorded
in Liber No. 11286 at folio 109
one of the Land Records for the District of
Columbia, and examined by

Recorder

THE REAL ESTATE TITLE INSURANCE
COMPANY
THE COLUMBIA TITLE INSURANCE
COMPANY
1422 H Street, N.W., Washington 5, D. C.

PRINTED BY BYRON S. ADAMS, WASHINGTON, D. C.

189,603

RECORDED & INDEXED
FEB 19 1960
62-301

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10365 265

65124

This Deed

Feb 10 1 22 PM '55

Made this 3rd day of November in the year Nineteen hundred and

fifty-three by and between ELGIN SMITH, widower, party of the
first party; and Trustees of First Baptist Church of the City of
Washington, D.C., a religious corporation duly organized under the
laws of the District of Columbia, parties of the second part:

Witnesseth, that for and in consideration of the sum of Ten Dollars (\$10.00), said party
of the first part does grant unto the said parties of the second part,
in fee simple, as Trustees,

the following described land and premises, with the improvements, easements and appurtenances, thereto
belonging situate in the District of Columbia, to-wit: 25 26

Parts of lots numbered twenty-five (25) and twenty-six (26)
in Merrick's subdivision of lots in Square numbered One Hundred and
Eighty-one (181), as per plat recorded in the Office of the Surveyor
for the District of Columbia in Liber W.F. at folio 17, described as
follows: Beginning for the same on O Street at a point 7 inches West
of the Northeast corner of said Lot 26 and running thence South
parallel with the division line between said Lots 25 and 26, 42 feet;
thence East 1 foot 2 inches; thence South parallel with said division
line, 44 feet to an alley; thence East on said alley, 19.50 feet to
the Southeast corner of said Lot 25; thence North along the East line
of said lot 25, 86 feet to O Street; thence West on said Street, 20
feet 8 inches to the point of beginning.

To Have and to Hold do, same unto and to the use of the said parties hereto of the
second part, in fee simple, as Trustees,

And the said party of the first part
hereby covenants to warrant specially the property hereby conveyed, and to execute such further assurances
of said land as may be requisite.

Witness his hand and seal on the day and year first hereinbefore written

Signed, sealed and delivered in presence of,

Matthew

Elgin Smith (SEAL)
(SEAL)
(SEAL)

DISTRICT OF COLUMBIA

to wit:

J. John H. Stadtler

a Notary Public in and for the

said District do hereby certify that Elgin Smith,

part y to and who is personally well known to me as the person who executed the foregoing and annexed Deed bearing date on the 3rd day of November, A. D. 1953 personally appeared before me in the aforesaid District and acknowledged the same to be his act and deed.

Given under my hand and seal this 3rd day November A. D. 1953.

John H. Stadtler
Notary Public, D. C.
John H. Stadtler



300

FEB-10-55 434469 C • 5124 -- 53

Mail to:

Elgin Smith

1344-16-14-11 NW

05124

TO

Trustees of Elgin Smith

Church of the City of Washington,

U.C.

Recorded for Record on the day

of A. D. 19

at o'clock M. and recorded in Liber No. 2261 at folio 265, one of the Land Records for the District of Columbia and examined by

FEB 10 1955

Record

The District Title Insurance Co.
The Lawyers Title Insurance Co.
The Washington Title Insurance Co.
1613 EYE STREET, NORTHWEST
Washington, D. C.

mail over

E.P.O.

This Deed, Made this 16th day of November

In the year one thousand

LTIC
405460
SV

nine hundred and seventy-two, by and between
HAZEL H. WENTWORTH,
divorced and not remarried,

TRUSTEES OF THE FIRST BAPTIST CHURCH OF THE CITY OF WASHINGTON, D. C., party of the first part, and

party of the second part.

Witnesseth, That in consideration of

Dollars.

the part of the first part do hereby grant unto the part of the second part, in fee simple, all piece or parcel of

land, together with the improvements, rights, privileges and appurtenances to the same belonging, situate in the DISTRICT OF COLUMBIA, described as follows, to wit:
Lot numbered 27 and parts of Lots numbered 25 and 26 in W. M. Merrick and others' subdivision of part of Square numbered 181, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber W. F., at folio 17, and described as follows: BEGINNING at the Northwest corner of Lot 27, thence East on O Street, 39 feet, 7 inches to a point 7 inches West of the Northeast corner of said Lot 26; thence South 42 feet; thence East 1 foot 2 inches; thence South 44 feet to point 19 feet, 6 inches West of the Southeast corner of Lot 25; thence West along rear line of Lots 25, 26, 27, 40 feet 9 inches to the Southwest corner of said Lot 27; thence North 86 feet, to O Street and the place of beginning; and part of Lot 26 in Merrick's subdivision of lots in Square 181 as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber W. F., at folio 17 and in survey book 176 at page 67 described as follows: The East 7 inches front on O Street by 42 feet in depth of said lot 26.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lots numbered 858 and 855 respectively in Square numbered 181.

ALSO

Lot numbered 28 in Merrick's subdivision of lots in Square numbered 181 as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber W. F., at folio 17.

And, the said party of the first part covenant that she will warrant specially the property hereby conveyed; and that she will execute such further assurances of said land as may be requisite.

Witness, her hand and seal the day and year first hereinbefore written.

Hazel H. Wentworth
HAZEL H. WENTWORTH [SEAL]
[SEAL]

DISTRICT OF COLUMBIA, } TO-WIT:

I, E. T. Paxton, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY that

HAZEL H. WENTWORTH

who is personally well known to me as party to and who executed the annexed deed bearing date the 16th day of November A. D. 1972, personally appeared before me in the said District and acknowledged the same to be her act and deed.

Witness my hand and official seal this 16th day of November A. D. 1972



E. T. Paxton
Notary Public

25757

Nov 28 3 33 PM '72

LTIC 405460

Berd

HAZEL H. WENTWORTH

TO

THE FIRST BAPTIST CHURCH
OF THE CITY OF
WASHINGTON, D. C.

Received for Record on the
day of , A. D. 19
at o'clock M., and recorded in
Lib. No. 1418 at Folio 623
one of the Land Records for the
DISTRICT OF COLUMBIA
and examined by
[Signature]
Recorder.

Lawyers Title Insurance Corporation
of Richmond, Virginia
WASHINGTON BRANCH OFFICE
1825 "K" Street, N. W.
Washington, D. C. 20006
223-3000

After Recording

Mail to ... First Baptist Church
Address ... 1625 Mr. Kennedy
1625 First Street, N. W.
Washington, D. C. 20006

STATE OF
COUNTY OF

State and County, DO HEREBY CERTIFY that

who personally well known to me as part
date the day of
the said State and County [21520] the year 19
[21520] 21-82-ADA
[21520] my hand and official seal this
day of
A. D. 19

Notary Public.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13317 of First Baptist Church of Washington, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the open court requirements (Sub-section 4305.1) for a proposed addition to the church in an SP-1 and SP-2 District at the premises 1326 - 16th Street, N.W., (Square 181, Lots 28-30, 855-858, 861 and 852).

HEARING DATE: July 30, 1980

DECISION DATES: September 3 and October 1, 1980

FINDINGS OF FACT:

1. Prior to the hearing, the applicant requested the Board to consider a variance from the closed court requirement in addition to the open court variance requested in the original application. The closed court requirements for the SP District are set forth in Sub-section 4305.1, the same sub-section cited in the advertisement. The standard against which a variance is to be judged, Paragraph 8207.11 of the Regulations, is the same regardless of the variance requested.

2. The Zoning Review Branch originally determined that the relief required would be by way of a variance from Sub-section 4305.1 of the Zoning Regulations. The case was so advertised. Subsequent review by counsel for applicant and the Chief of the Zoning Review Branch revealed that relief could be granted as a special exception under Sub-section 4305.3, which allows waiver of the minimum court width requirements.

3. The Board allowed the applicant to present its case and reserved judgement on whether a special exception rather than variance relief was appropriate, until evidence was presented as to the applicant's compliance with the conditions of Sub-section 4305.3.

4. The subject property is located on the south side of O Street and includes all the property between 16th and 17th Street, N.W. Pursuant to Zoning Commission Order No. 282, dated June 14, 1979, all of the applicant's property included in this application except Lots 28 and 29 was rezoned from SP-2 to SP-1. Lots 28 and 29 continue to be zoned SP-2.

5. The property is presently improved with a three story plus basement brick building, fronting on 16th Street known as 1326 - 16th Street, N.W. The building is used as the First Baptist Church of Washington, and contains church and church office functions. The building was constructed in 1955. The remaining property to the west of the building is used as a surface parking lot.

6. The applicant proposes to build a Sunday School addition immediately to the west of the existing church facility. The gross floor area of the proposed addition is 31,439 square feet.

7. The land on which the Sunday School is proposed to be erected is presently utilized as a parking lot for members of the congregation. In BZA Appeal No. 13012, the Board granted approval for continuation of the lot for a three year period but denied the applicant's requested variance for operation of the subject lot as a commuter parking lot. The Board's determination in that case is the subject of an appeal in the District of Columbia Court of Appeals at present.

8. The proposed addition has been planned for several years. Actual construction has been delayed until such time as the congregation raised sufficient funds to pay for the building. The congregation is presently ready to go forward with the project. The applicant has been forced to hold its Sunday School classes in the chancel of the church itself and in space rented from neighbors, in order to meet the congregation's increased needs.

9. The proposed addition will match the existing church facility in style and building materials, and will have contiguous floor levels. It will contain Sunday School educational facilities for kindergarten through high school grades, a library, and some recreational and social facilities for church-related group meetings. It will also contain some office facilities for church staff members. However, none of the offices will face the interior courtyard proposed by the applicant, and the various facilities abutting the court will not all be used simultaneously. The proposed addition is neither an office building nor an apartment house. The proposed addition is an addition to the church.

10. The applicant does not anticipate future growth requiring increased lot occupancy. Rather, the proposed addition is designed to meet any possible future expansion needs by adding on one or two more stories. The proposed addition is well below the maximum FAR and height requirements.

11. The proposed east wall of the new addition would fully extend to the south lot line on the subject site, approximately 11.59 feet further south than the existing west wall of the church building. Since the existing church building was not built face-on-line to the south lot line, erection of the proposed addition would turn the space south of the existing building into a non-conforming open court at this juncture, measuring 11.59 feet in width rather than the thirty feet required pursuant to Sub-section 4305.1.

12. The lower two levels of the existing west facade of the church project further to the west than do the upper two stories of the existing church building. The proposed addition will enclose that area and make it a closed court. The upper portions of the proposed closed court are in conformance with the minimum court width requirements, measuring 30.5 in width. The length of the court is approximately fifty-one feet. However, the lowest level of the court will have a dimension of only 22.5 feet, less than the thirty feet normally required.

13. The southern lot boundaries of the subject site are irregularly shaped adjacent to a public alley, which runs north from Massachusetts Avenue and parallel to 16th Street, then turns ninety degrees and runs in a slightly zigzagged manner west towards 17th Street, N.W.

14. A landscaped pedestrian way exists between the existing church facility and the adjacent Australian Embassy building to the south of the subject site. The pedestrian way runs between 16th Street, N.W. and that point where the public alley turns from its north-south direction to run westerly out to 17th Street. This landscaped area lies jointly on the applicant's and the Australian Embassy properties and is maintained by an agreement between the applicant and the Embassy.

15. Substantial open space exists at the proposed juncture between the existing building and the new addition, because of the width of the public alley and the open space between the Australian Embassy and the existing church.

16. A representative of the owner of the Forest Industries Building, which abuts the alley opposite the proposed addition on the south, testified that it had no objection to the proposed addition.

17. The Board finds that the proposed addition will not adversely affect the light, air or ventilation of adjacent structures abutting the alley.

18. Since the length of the interior court is fifty-one feet, the actual square footage of open area on the lower level is about 1150 square feet, in excess of the minimum 900 square feet required by the Zoning Regulations.

19. The courtyard windows do not open on office spaces, but rather community areas such as library or classrooms; therefore, no intrusion on private areas occurs.

20. The project architect testified and the Board finds that as a result of the proposed addition no apartment window will be located within forty feet directly in front of another window or within eighteen feet of a blank wall and no office window shall be located within thirty feet directly in front of a window nor within eighteen feet of a blank wall.

21. Representatives of ANC 2B and the Dupont Circle Citizen's Association appeared in opposition to the subject application. The ANC representative submitted written testimony to the Board. The ANC's concerns centered on possible utilization of part of the remaining area for parking and its desires to have the remaining portions of the lot instead be utilized for residential development. A representative of the Dupont Circle Citizen's Association stated that the proposed addition would interfere with the light, air and ventilation of the Forest Industries Building across the public alley to the south, in spite of the fact that a representative of the owner of that building appeared in support of the subject application.

22. The application was also apposed by the owner of property located at 1530 O Street, N.W. This owner objected to the Board considering any application from the subject applicant while the applicant continued to operate a parking lot in apparent violation of orders of the Board.

23. In responding to the issues and concerns raised by the individuals and groups in opposition, the Board finds as follows:

- (a) The issue before the Board in this application is whether to grant a special exception or variance to allow the applicant to construct an addition to the existing building with two courts which do not meet the normal minimum width requirements. Whether the applicant plans to develop the remaining portion of its property is not material or germane to the application.

- (b) The adequacy of light and air to the adjoining building has been dealt with in previous findings. In addition, the Board finds that the existing area between the two buildings, which is one of the courts in question, will not be decreased by the applicant.
- (c) The orders of the Board denying in total and in part two parking lot applications filed by the applicant have been appealed to the District of Columbia Court of Appeals by the applicant. Whether action is to be taken to force termination of those lots pending a decision by the Court on the appeals is not in the hands of the Board. The Board further notes that it is bound to decide a case on the basis of the requirements of the Zoning Regulations. The other actions and credibility of the applicant are not at issue herein.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that both requested variances deal with the same section of the Regulations. The Board concludes that all of the testimony and evidence presented was reasonably directed at both the special exception and variance issues. The Board concludes that sufficient notice was available to all parties of the issues at hand in this case.

Based on the evidence of record, the Board concludes that the applicant has met the conditions of Sub-section 4305.3 allowing the Board to grant a waiver of the minimum court width requirements of Sub-section 4305.1. Accordingly, the Board has addressed the applicant's request as one for a special exception pursuant to Sub-section 8207.2 rather than variance relief in accordance with the provisions of Paragraph 8207.11.

As to the open court, the existence of the landscaped area and the public alley between the abutting property to the south of the church creates open space allowing sufficient light, air and ventilation to and safeguarding the privacy of existing surrounding users.

As to the interior court, the greater width of the courtyard dimensions on the upper levels and the length of the court on all levels sufficiently safeguards the privacy of church members utilizing the existing and proposed facilities facing the proposed court. The overall square footage of open area in the court on all levels adequately provides light, air, and ventilation to the proposed public activity and class room facilities on the lower two levels.

Therefore, granting the special exception for both the open court and the interior court is in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely surrounding property use in accordance with the Zoning Regulations.

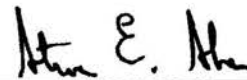
The Board has given great weight to the concerns by the ANC representative. The concerns expressed by both the ANC and the Dupont Circle Citizen's Association in opposition to this application centered on possible accessory parking use and future development of the remaining portion of the subject site. In particular, the ANC desired that those presently unbuilt portions of the subject site be used for residential development. These concerns not germane to the subject application. The use of this parcel by the applicant for church and related purposes is a matter of right. The applicant is under no obligation to sell off its property for residential development.

In light of the foregoing findings and conclusions, the Board concludes that it is not required to address the issue related to variance relief, since the applicant has met the requirements for the granting of a special exception. Accordingly, it is ORDERED that the application is hereby GRANTED as a special exception.

VOTE: 4-0 (William F. McIntosh, Charles R. Norris, Connie Fortune and Leonard L. McCants to grant, Theodore F. Mariani not voting not having heard the case).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 1 DEC 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "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 LICENSES, INVESTIGATIONS AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13317, of First Baptist Church of Washington, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the open court requirements (Sub-section 4305.1) for a proposed addition to the church in an SP-1 and SP-2 District at the premises 1326 - 16th Street, N.W., (Square 181, Lots 28-30, 855-858, 861 and 852).

HEARING DATE: July 30, 1980

DECISION DATES: September 3 and October 1, 1980

DISPOSITION: The application was GRANTED as a special exception under Sub-section 4305.3 of the Zoning Regulations by a vote of 4-0 (William F. McIntosh, Charles R. Norris, Connie Fortune and Leonard L. McCants to GRANT; Theodore F. Mariani not voting, not having heard the case).

FINAL DATE OF ORDER: December 1, 1980

ORDER

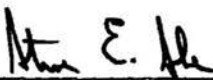
The opposition filed a timely motion for Reconsideration and STAY of the Board's Order of December 1, 1980 granting the subject application. The basis for the motion for reconsideration was that the Board erred in granting the special exception since by so doing, the Board in effect rewarded the applicant for violating the Board's Orders Nos. 13012 and 13096. Those Orders denied applications by the same applicant to continue operations of parking lots on the very same lot which is the subject of this application and a lot within one block of the site. The opposition argued that approval of this application would not be in harmony with the statutory purpose of the Zoning Regulations. The opposition further requested the Board to enter an interim STAY on the effectiveness of the Board's Order until the motion for Reconsideration is considered by the Board to prevent the applicant from applying for and receiving permits while the motion was being considered. Upon consideration of the movant's motions and the applicant's response thereto, the Board concludes that the opposition raises no new issues which the Board had not previously addressed and that the Board committed no error in deciding the subject application.

The issues of the movant were presented thoroughly at the public hearing. No materially different evidence has been submitted in support of movant's motions that the Board had not considered previously. The issues were addressed in the Order. Accordingly, it is ORDERED that the MOTION for RECONSIDERATION is DENIED. The MOTION to STAY is therefore MOOT.

VOTE: (3-0 (William F. McIntosh, Charles R. Norris and Connie Fortune to DENY; Theodore F. Mariani and Douglas J. Patton not voting, not having heard the case).

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

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 23 JAN 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "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."

THE UNDERSIGNED OWNERS, BEING FIRST DULY SWORN, CERTIFIED, DEPOSED AND SAID THAT SEE 26 THE OWNERS IN FEE SIMPLE OF THE PROPERTY MENTIONED BELOW THAT NO OTHER PERSON OR PERSONS THAN THE UNDERSIGNED OWNERS HAVE ANY INTEREST OR CLAIM THEREIN EXCEPT FOR EXISTING TRUSTS NOTED BELOW THAT THE UNDERSIGNED IS IN PLACE FULL OCCUPATION THEREOF THAT THERE ARE NO SUTS OR ACTIONS PENDING AFFECTING THE TITLE TO SAID PROPERTY THAT THERE ARE ARE TRUSTS OR SAID PROPERTY HEREBY COMBINES LOTS 13, 14, 15, 16 AND LOTS 20 THRU 30 AND THE REMAINDER OF LOT 12 IN SQUARE 181 (BOOK W.F. PAGE 17) AND LOTS 153, 154 AND THE REMAINDER OF LOTS IN SQUARE 181 (BOOK 80, PAGE 36) AND ALLEY CLOSED (BOOK 120, PAGE 12) INTO ONE LOT AND PART OF A NEW SQUARE 181 AS SHOWN HEREON AND REQUESTS THAT THIS SUBDIVISION BE APPROVED AND RECORDED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA.

Witness our hands and seals this 21st day of October 1980

WITNESSES

OWNERS

TRUSTEES OF FIRST BAPTIST CHURCH WASHINGTON, D.C.

<u>Karen M. Conke</u>	<u>Samuel D. McIlwain</u>
<u>Bidhi H. White</u>	<u>Samuel D. McIlwain</u>
<u>Karen M. Conke</u>	<u>Edmund C. Bornemann</u>
<u>Bidhi H. White</u>	<u>Edmund C. Bornemann</u>
<u>Karen M. Conke</u>	<u>James M. Clark</u>
<u>Bidhi H. White</u>	<u>James M. Clark</u>

Subscribed and sworn before me this 21st day of October 1980
Patricia L. Lerner
Notary public
My commission expires 9/1/84

APPROVED
THE NATIONAL BANK
OF WASHINGTON
By Scott Miller SENIOR V.P.

TRUSTEES UNDER EXISTING TRUST(S)

National Savings Trust Company Trustee
By [Signature]
REAL ESTATE OFFICER

SURVEYOR'S OFFICE, D.C.

Made for: Trustees First Baptist Church
Drawn by: R. Kyle (S.O. 02422)
and computations by: Robert C. Key
in Book 172 page 42
in Book 80 sheet 50-302

DEPARTMENT OF FINANCE AND REVENUE

Oct - 29 - 1980

I certify to the following statements are correct:

1. Owners name agrees with our record: 10-29-80 CL
2. Real estate taxes are paid to: 12-31-80 CL
3. There are no unpaid real estate taxes: 10-29-80 CL
4. There are no unpaid special assessments: 10-29-80 CL

William J. Bell
Associate Director, Assessment Administration

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

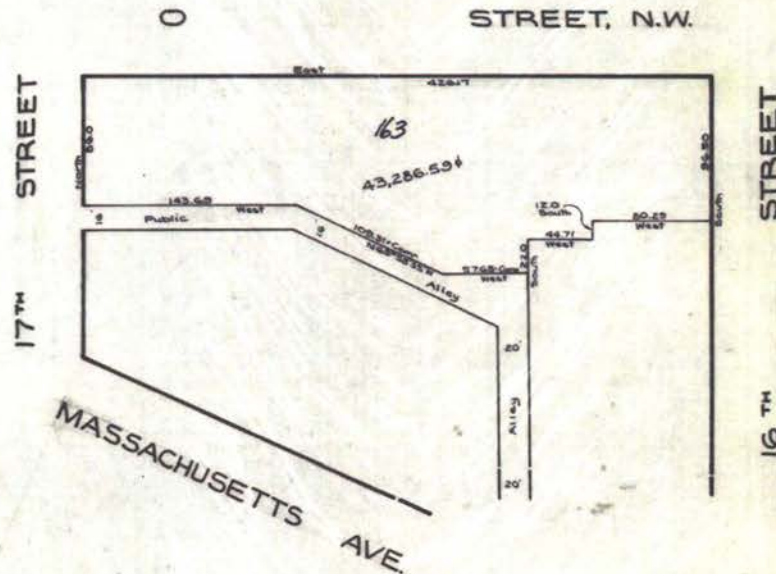
October 29 1980

I certify that this subdivision complies with the zoning regulations of the District of Columbia, "BZA No. 13317"

Zoning: "S.P.1 and S.P.2" 10/29/80

James E. Bass
Deputy Zoning Administrator

SUBDIVISION SQUARE 181



OFFICE OF THE SURVEYOR

October 30 1980

I certify that the subdivision shown hereon is correct and is hereby approved for record in this office.

[Signature]
Acting Surveyor, D.C.



Park, central pla
w/ fountain



Park, view west to
The Richmond



Park, east view
under The Richmond



Park, looking to-
ward subject prop



November 14, 2011

Meridith Moldenhauer, Esq., Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W. - Room 210 South
Washington, D.C. 20001

Re: Keener-Squire Properties, on behalf of the First Baptist Church - Application No. 18272

Dear Ms. Moldenhauer:

The undersigned is the President of Landscape Designs, Inc. ("LDI") and offers this statement at the request of The Richmond Group, a number of residents of The Richmond Condominium who oppose the variance relief requested to enable the construction of an apartment building across the 1600-block of O Street, N.W.

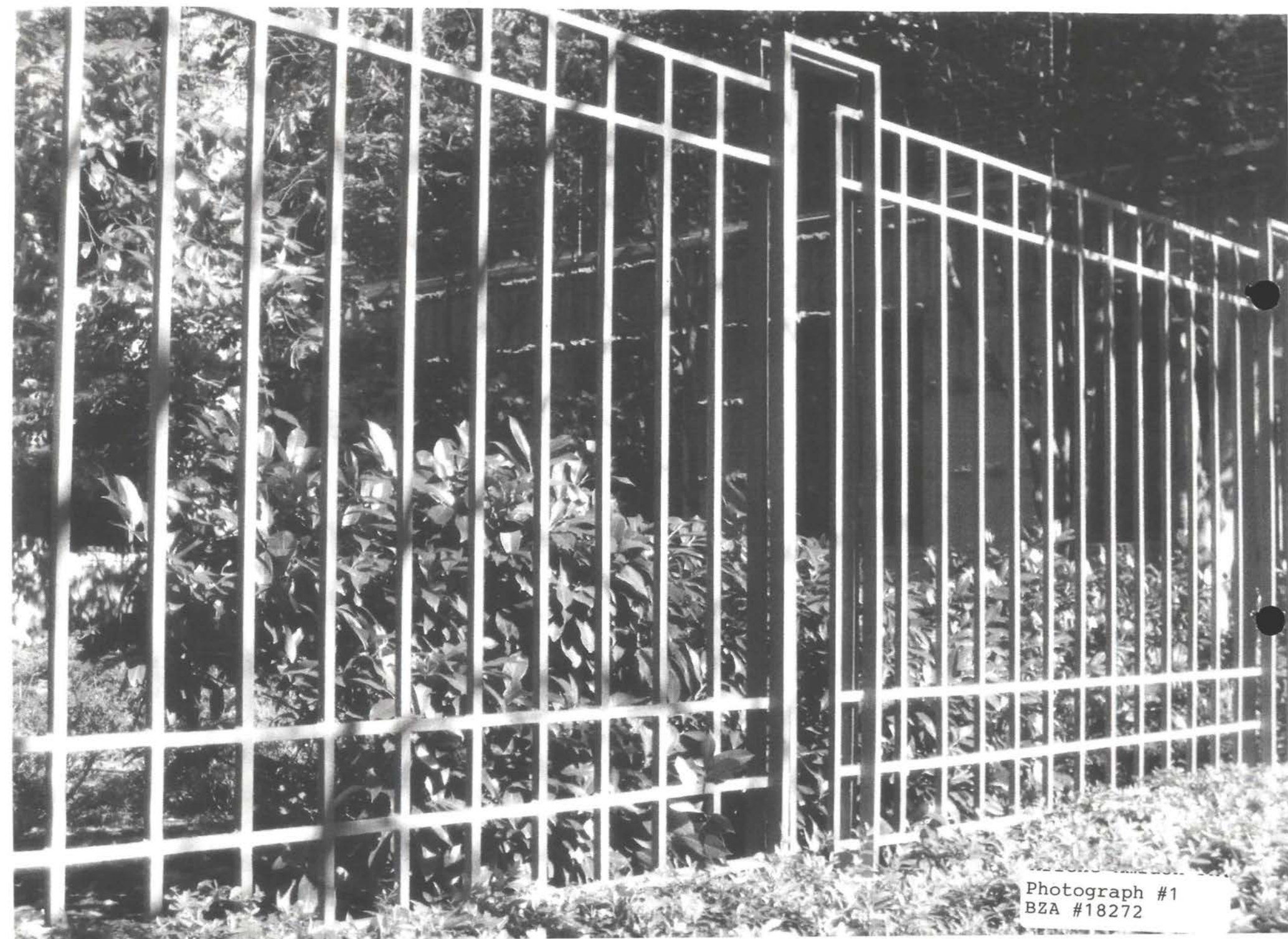
1. LDI is an Accokeek, Maryland-based firm offering landscape installation, design/build and maintenance services to residential and commercial clients and has been in business since 1988.
2. LDI has provided landscaping services for the plaza and garden at the Resources Conservation Center since 1992 and in that capacity the undersigned is very familiar with the site conditions and the plant species installed in the plaza and garden.
3. The undersigned has examined the attached photographs and based upon a recent site visit on October 26, 2011, believes the photographs fairly depict conditions at the site.
4. The two photographs show separate stands of Skip Cherrylaurels (*prunus laurocerasus* "Schipkaensis") which LDI installed on the same day approximately 3 years ago inside the perimeter fence along O Street in two locations on either side of the entry gate. Photograph #1 shows the plants to the east of the entry gate and Photograph #2 shows the plants to the west of the entry gate.
5. At the time of installation, the plants shown in the photographs were of the same size and quality and the soil conditions in the two locations were comparable.
6. The two sets plants evidence very different rates of growth with the plants facing the First Baptist Church parking lot being more than twice the size of the plants opposite the First Baptist Church building.

Janet Gaskins, President
Landscape Designs, Inc.

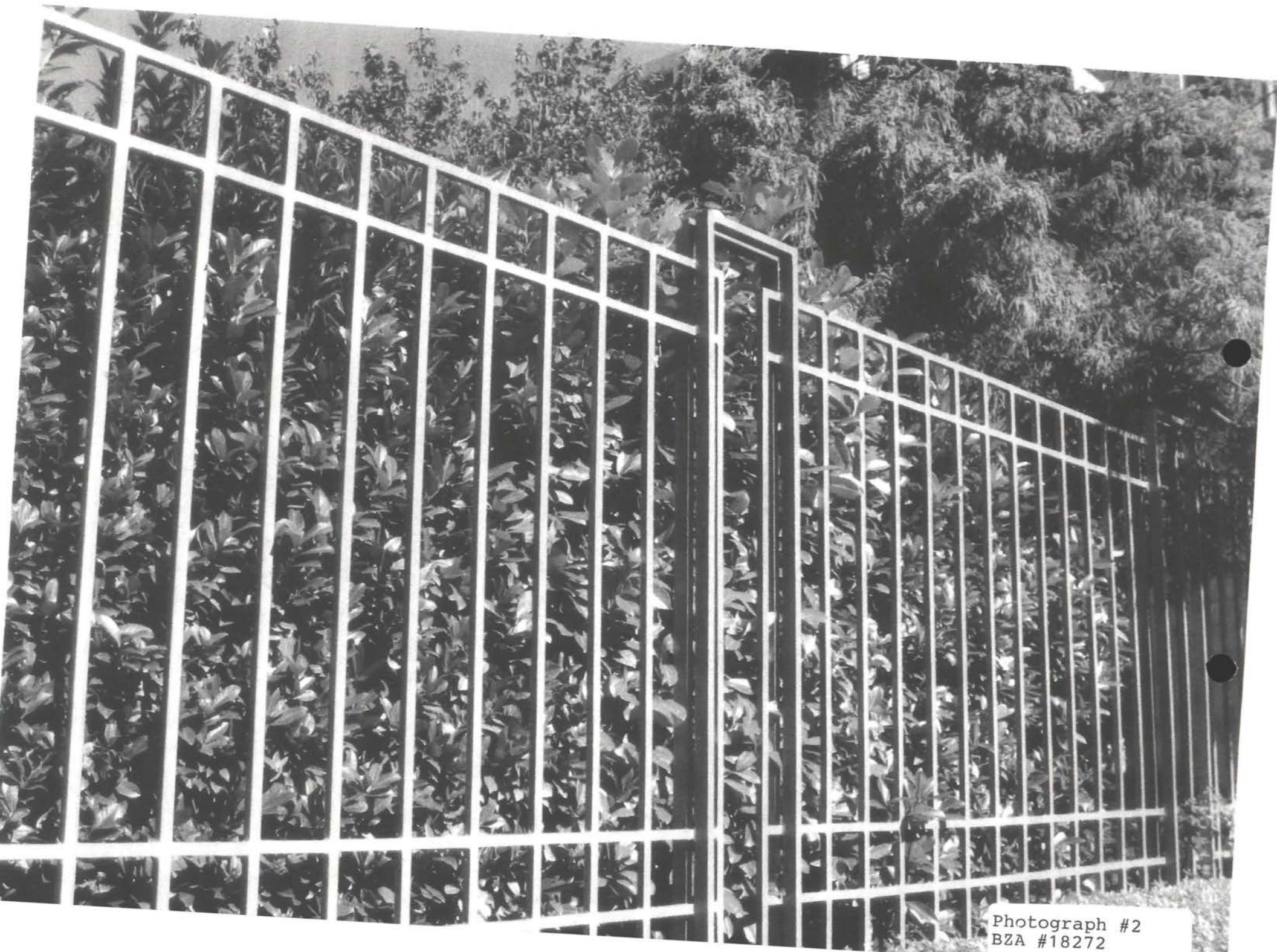
Exhibit 7



Park, view east to
office building



Photograph #1
BZA #18272



Photograph #2
BZA #18272



Public Alley
(facing east)



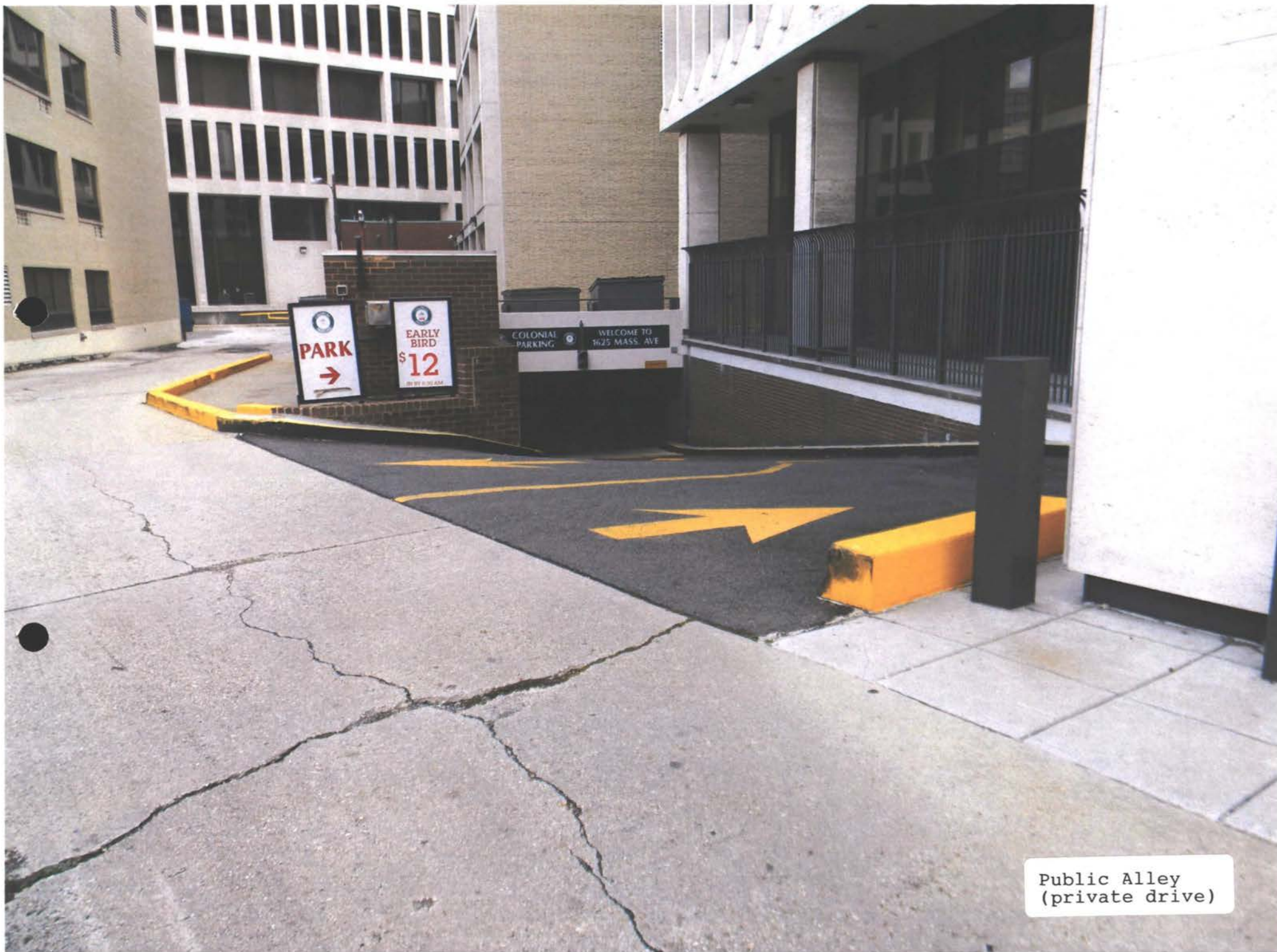
Public Alley
(private drive)



Park, view south
subject property



Park, view south
subject property



Public Alley
(private drive)



Public Alley
(facing east)



Photograph #2
BZA #18272



Park, view east to
office building