

ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA

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RE: Application of Stonebridge Associates,)
5401, LLC, on behalf of 5401 Western)
Avenue Associates, LLC, and the Louise) Case No. 02-17
Lisner Home for Aged Women, for)
Approval of a Consolidated Planned Unit)
Unit Development and Zoning Map)
Amendment for Property at Western Ave,)
N.W., and Military Road, N.W.)
Square 1663, Lots 7 and 805.)

**MEMORANDUM OF FRIENDSHIP HEIGHTS ORGANIZATION FOR
REASONABLE DEVELOPMENT ON INADEQUACY OF POSTED NOTICE**

Friendship Heights Organization for Responsible Development and the individual neighbors who have also been admitted as a party in opposition in this Planned Unit Development ("PUD") case (Hazel F. Rebold, Betsey and Steven Kuhn and Jackie L. Braitman)(collectively ("FhORD") submit the following memorandum in accordance with the Commission's order at the 14 November 2002 allowing parties to make a supplemental submission regarding the adequacy of the posted notice in this case. For the reasons set out below, FHORD submits that notice in this case was not properly given and that the hearing should be rescheduled and renoticed.

1. This is a PUD case that affects two parcels of property: Lot 805 (the "Washington Clinic" site, located at 5401 Western Avenue, NW) and a portion of Lot 7 (the "Lisner Home" site, located at 5425 Western Avenue, NW). The applicant proposes the construction of two new buildings, one (the condominium building) on the Washington Clinic site and the second (the day care facility) on the Lisner Home site.

ZONING COMMISSION
District of Columbia
Case 02-17
Board 176

ZONING COMMISSION
District of Columbia
CASE NO.02-17
EXHIBIT NO.176

The notice requirements in section 3015.2 of the Zoning Regulations state that notice in the D.C. Register include the "lot, square, and street address of the property involved." Notice by mail to persons who own property within 200 feet "of the property included in the application" is required under section 3015.3(a). When PUD approval is sought, the applicant "shall give additional notice of the public hearing by posting the property with notice of hearing at least forth (40) days in advance of the hearing." Of particular relevance here is section 3015.5, which states that the notice that is required by section 3015.4 "to be placed upon applicant's property shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property."

"The property" in this case is not simply the Washington Clinic site, but also the Lisner Home site, yet the application and the notices provided to the public have somewhat obscured that fact. The application recites only the Washington Clinic street address, *i.e.*, 5401 Western Avenue, even though the affected property also includes the Lisner Home site, which has a separate street address (5425 Western Avenue). This omission of the Lisner Home site carries forward into the notice submitted to the D.C. Register, which advises the public that the only affected property is at 5401 Western Avenue, even though section 3015.2 requires notice of the "street address of the property involved," even though "the property" at 5425 Western Avenue" is plainly "involved" in this case.

The Affidavit of Posting (Ex. 63 in the record, attached in relevant part as FhORD Ex. 1) continues this omission. The affiant candidly admits that notice was

posted at only *one* site -- the Washington Clinic site – even though the applicant proposes to construct *two* buildings on *two* pieces of property on *two* separate lots that have *two* separate street addresses. The Affidavit of Posting makes it clear that the posted notices were sited in a way that passersby might reasonably believe that only the Washington Clinic site was at issue. There was no notice whatsoever that the Lisner Home "property" was also an essential part of this PUD application. There was thus no posting on "the [Lisner Home] property" much less in "in front of each existing building located on the [Lisner Home] subject property."

The applicant's omissions were called to the Commission's attention in several letters by Hazel F. Rebold, the earliest of which was docketed on 9 October 2002, only nine days after the Affidavit of Posting (FhORD Ex. 2). Citing section 3015.5, Ms. Rebold advised that the only posting was on the Washington Clinic site and stated that the Zoning Regulations require more extensive posting.

Moreover, to the extent that there was posting on the Washington Clinic site, the record suggests that it was somewhat if not largely ineffectual. A letter from Marilyn J. Simon, another neighbor, dated 22 October 2002 (FhORD Ex. 3), documents with photographs that on 17 October 2002 there was only one notice posted on the street frontage of the Washington Clinic, one sign that had fallen and no notices on the Lisner Home site or Clinic building. Ms. Rebold filed a separate letter on 27 October 2002 (FhORD Ex. 4) confirming that on that date, there was only one poster on Military Road, which was next to a building door that was behind a bush and thus outside the "plain view of the public," 60 feet from the "street frontage." This is

inconsistent with section 3015.5, as was the lack of notice then in front of the Washington Clinic or Lisner Home.

That there was never any posting of the Lisner Home site – and that the existing posting was inadequate – are confirmed by two Affidavits of Maintenance filed by the applicant (Record Exs. 139 and 140). These affidavits confirm the neighbors' testimony that the posting was spotty at best, given that signs had to be replaced on six dates in October and one in November.

In sum, there was no attempt to post notice on the Lisner Home property even though it is plainly separate from the Washington Clinic property, as evidenced by the facts that it has a separate lot number and separate street address and will be the site of a separate building if this PUD application should be granted. Accordingly, given the failure to satisfy section 3015 of the Zoning Regulations, the case should be rescheduled and renoticed.

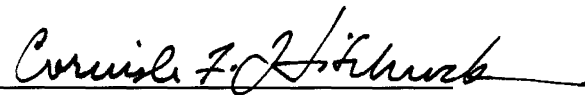
2. We respond briefly to the suggestion made by the applicant's counsel at the 14 November hearing that this request for relief is moot, given the fact that the Commission undertook to hear the applicant's case-in-chief on that occasion. Nothing could be further from the truth. If anything, following proper notice and posting procedures at this point would be in the best interest of all concerned.

For the first time since the community heard about a possible PUD application roughly a year ago, the community now – finally – understands the scope of the plan that the applicant is asking the Commission to approve. Although the Commission allowed the applicant to put on its direct case at the 14 November hearing, the

hearing was suspended at an ideal point for renoticing and rescheduling further proceedings. Affected neighbors, no less than the Commission, now understand what exactly the applicant wants to build, now that the March and August versions of this application have been discarded. This would be a convenient time to renotice and reschedule this case, to tell the public what this case really involves, to let interested members of the public review the transcript and record and to shape any views and testimony accordingly, and to pick up where things left off on the 14th.

For these reasons, FhORD asks that this matter be considered as a preliminary matter on 12 December 2002 and that the Commission direct the hearing be rescheduled to a time sufficient to let notice be posted in the proper manner on both the Washington Clinic property and the Lisner Home property.

Respectfully submitted,



Andrea C. Ferster
Cornish F. Hitchcock
1100 17th Street, N.W. 10th Floor
Washington, D.C. 20036
(202) 974-5111

Counsel for FhORD, Hazel F. Rebold, Betsey
and Stephen Kuhn, and Jackie L. Braitman

5 December 2002

CERTIFICATE OF SERVICE

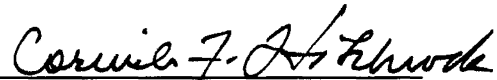
I hereby certify this 5th day of December 2002 that this Memorandum was served by first-class mail, except as otherwise indicated, upon:

Whayne S. Quin, Esq.
Christine Moseley Shiker, Esq.
Holland and Knight
2099 Pennsylvania Ave., N.W. Suite 100
Washington, D.C. 20006
(And via facsimile: 955-5564)

Andrew Altman, Director
Office of Planning
801 North Capitol Street, N.W. Suite 4000
Washington, D.C. 20002

ANC 3E
P.O. Box 9953 Friendship Station
Washington, D.C. 20016

ANC3G/4G
PO Box 6252, NW Station
Washington, DC 20015



Cornish F. Hitchcock

BEFORE
THE DISTRICT OF COLUMBIA
ZONING COMMISSION

NOTICE: See other side of affidavit form for instructions.

In Re: PUD and Map Amendment, Sq. 1163, Case No.: ZC 02-17
Lot 805 and Portion of Lot 7, 5401 Western
Ave., NW

AFFIDAVIT OF POSTING

DISTRICT OF COLUMBIA, ss:

Freda Hobar, being first duly sworn, does
hereby depose and say that:

I, Freda Hobar, on September 26, 2002
(Date)
at 10:25 am, caused 2 Zoning Notice(s) furnished by the
(Time)

Secretary to the Zoning Commission to be posted on private property
known as 5401 Western Avenue, N.W.

(Address of Premises)

in plain view of the public on the following street frontages:

I caused to be taken 2 photographs(s), attached
(Number)
hereto, of the Zoning Notice(s) in place which fairly depict each
Zoning Notice as seen by the public. The photographs are numbered
and correspond to the following street frontages:

Number

Street Frontages

1
2

5400 block Military & Western Avenue, NW
5401 Western Avenue, NW

Freda Hobar
Signature

Subscribed and sworn to before me this 20th day of September, 2002.

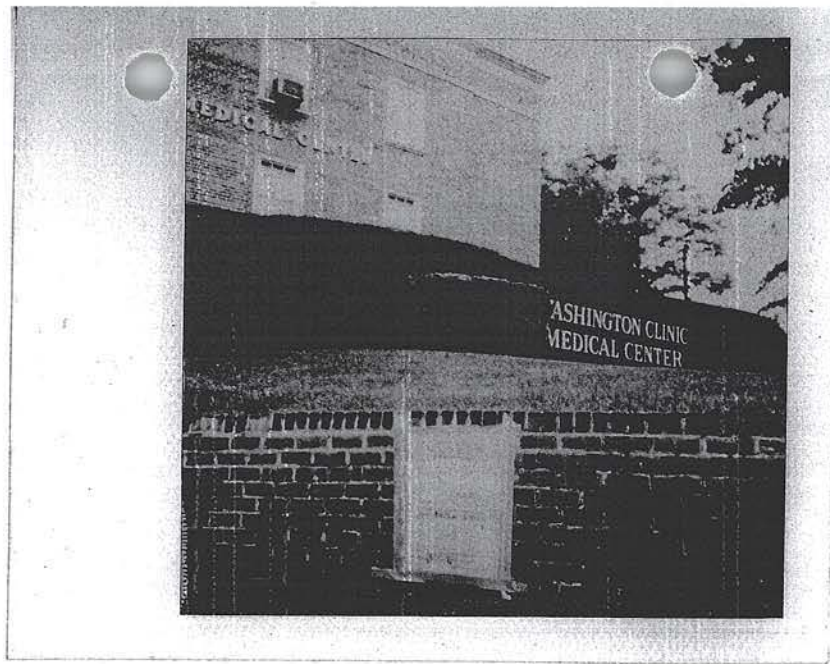
Jerilyn A. Spach
Notary Public, D. C.

My Commission expires:

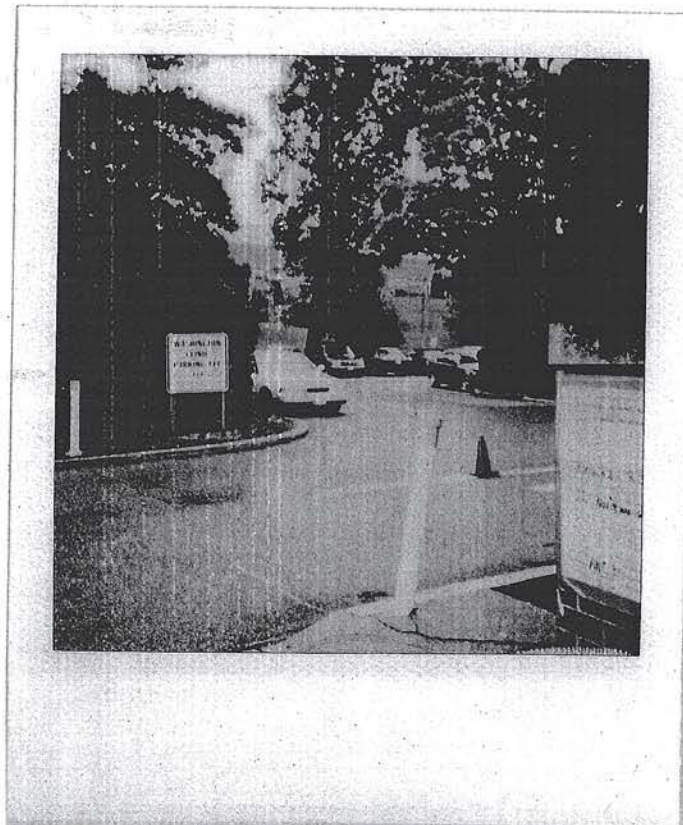
JERILYN A. SPACH
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires May 31, 2003

Attach photograph here.

See Instruction No. 1



5400 Block Military Road & Western Avenue, N.W.



5401 Western Avenue, N.W.

10-09-02

Carol Mitten, Chairman
Zoning Commission
District of Columbia Office of Zoning
441 4th Street, NW, Suite 210-S
Washington, DC 20001

RE: #ZC 02-17 (Stonebridge Associates)

I wrote to you on 09-22-02 to report a number of mistakes in the NOTICE OF PUBLIC HEARING that I received regarding ZC 02-17. On 10-04-02, I spoke to Sara Jo Bardin, who said that a REVISED NOTICE OF PUBLIC HEARING was issued, which I requested and received by e-mail. However, I have not received a mailed hard copy of this corrected version, and I assume that the other parties to whom this is required to be sent also have not received it.

I am concerned not only with the mailed notices, but also with the posters required on the subject site to inform the public of the hearing.

As of this afternoon (10-09-02), there are only posters placed on Western Ave. at the street frontage of the Washington Clinic. According to the regulation cited below, I believe the applicant is required to post the revised notices of the public hearing in these 6 locations:

1. at the street frontage of the Washington Clinic on Military Rd.
2. at the street frontage of the Lisner Home on Military Rd.
3. at the street frontage of the Washington Clinic on Western Ave.
4. at the street frontage of the Lisner Home on Western Ave.
5. on the front of the Washington Clinic building
6. on the front of the Lisner Home building

3015.5 The notice required by §3015.4 to be placed upon applicant's property shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property.

The hearing is scheduled for November 14. Many parties remain uninformed about the hearing date and the issues of this application, while other parties are *misinformed*.

Hazel F. Rebold
4228 Military Rd., NW
Washington, DC 20015-2933

5241 43rd Street, NW
Washington, D.C. 20015
October 22, 2002

Carol Mitten, Chairman
Zoning Commission
District of Columbia Office of Zoning
441 Fourth Street, NW, Suite 210-S
Washington, D.C. 20001

RE: ZC # 02-17 (STONEBRIDGE ASSOCIATES)

I am writing to present documentation showing that the Applicant has not posted the required revised notices of the Application and Hearing on the Clinic and Lisner properties. I am attaching copies of photographs that were taken on October 17, 2002 between 3:00 and 3:30 pm. If it would be helpful, color copies as JPEG files, each picture approximately 90 kilobytes can be provided.

It is my understanding that the Applicant is required to post the revised notices in 6 locations:

1. the street frontage of the Washington Clinic on Military Road
2. the street frontage of the Lisner Home on Military Road
3. the Street frontage of the Washington Clinic on Western Avenue
4. the street frontage of the Lisner Home on Western Avenue
5. the front of the Washington Clinic building, and
6. the front of the Lisner Home building.

As you can see from the attached photos, on October 17, 2002, there was one notice posted on the street frontage of the Washington Clinic on Western Avenue. Another notice on the street frontage of the Washington Clinic on Western Avenue had fallen down. There were no notices on the street frontage of the Lisner Home on either Military Road or Western Avenue, and there were no notices on the front of the Washington Clinic building. I did not walk up the hill to photograph the front of the Lisner Home building. In addition, if someone had happened to see the original posting, they are unlikely to notice that the information had been revised.

I hope this information is useful in determining whether the Applicants have posted the required notices as provided for in §3015.

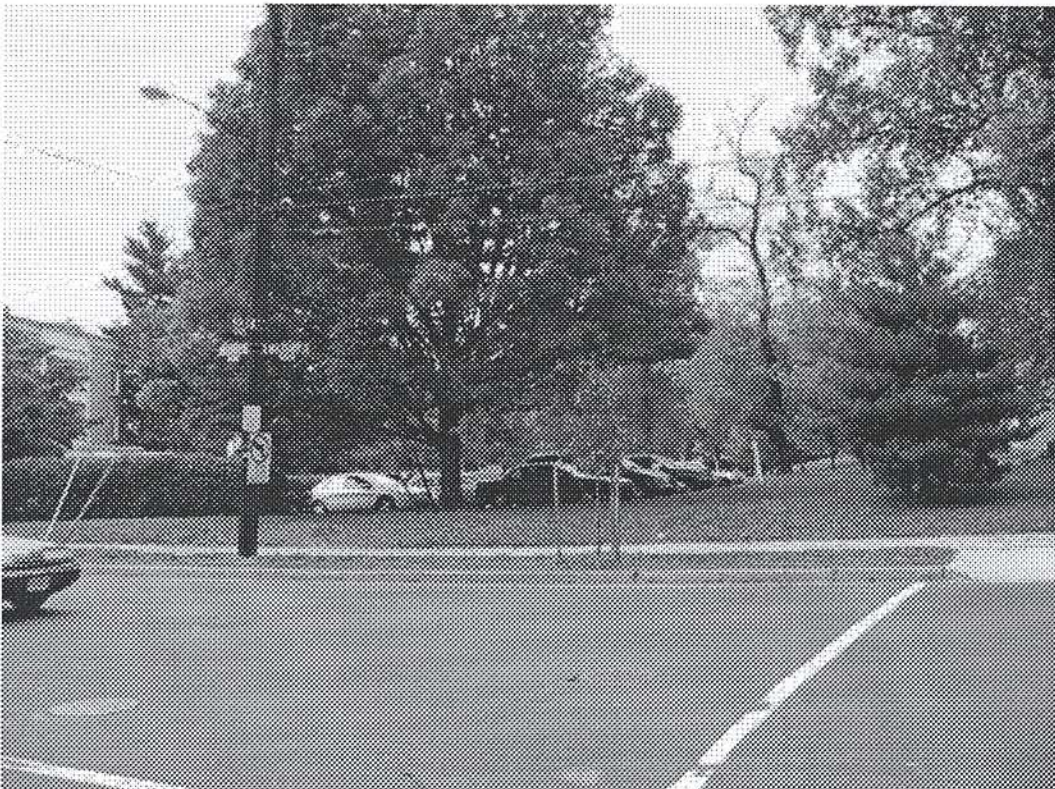
Sincerely,

Marilyn J. Simon

October 17, 2002, 3:00 pm
No notices on Military Road frontage of Lisner or Clinic portions



Military Road frontage of Lisner portion



Military Road portion of Lisner and Clinic portions

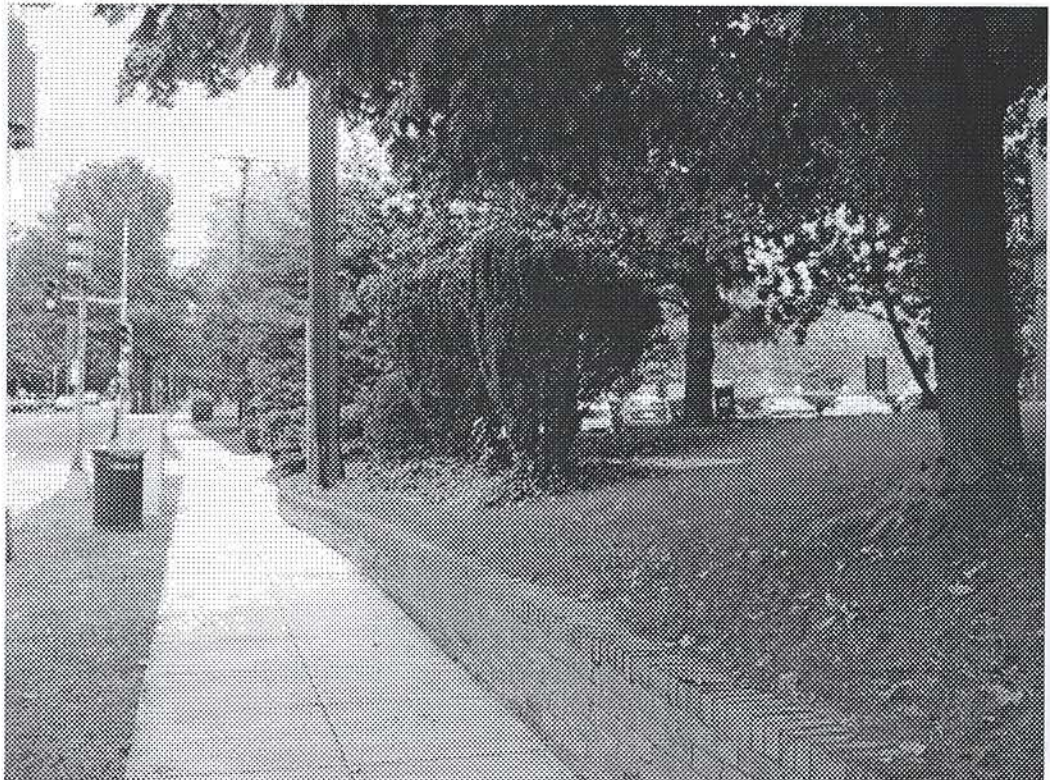
October 17, 2002: 3:00 pm
No Notices on Military Road frontage of the Clinic



October 17, 2002: 3:00 pm
No Notices on Military Road frontage of the Clinic



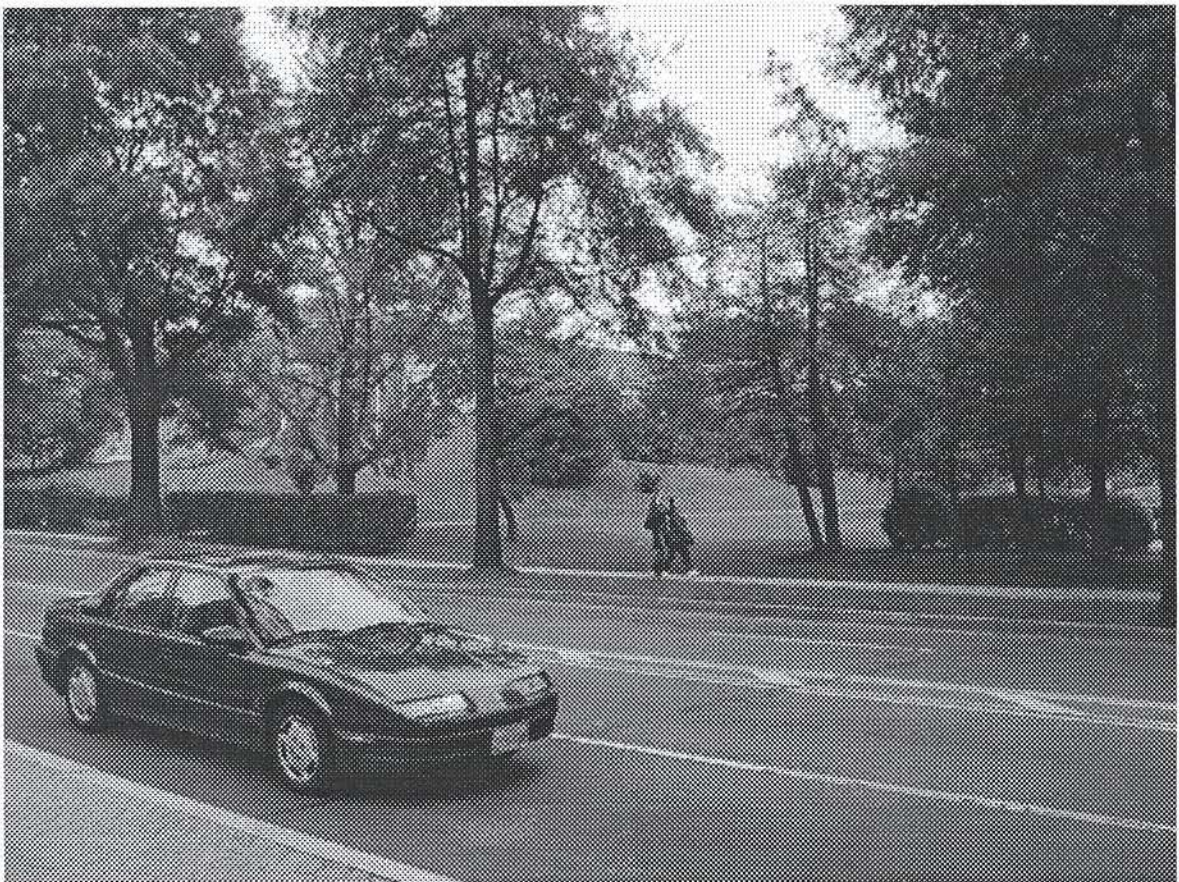
October 17, 2002, 3:00 pm
Western Avenue: One Notice on Clinic Frontage, None on Lisner



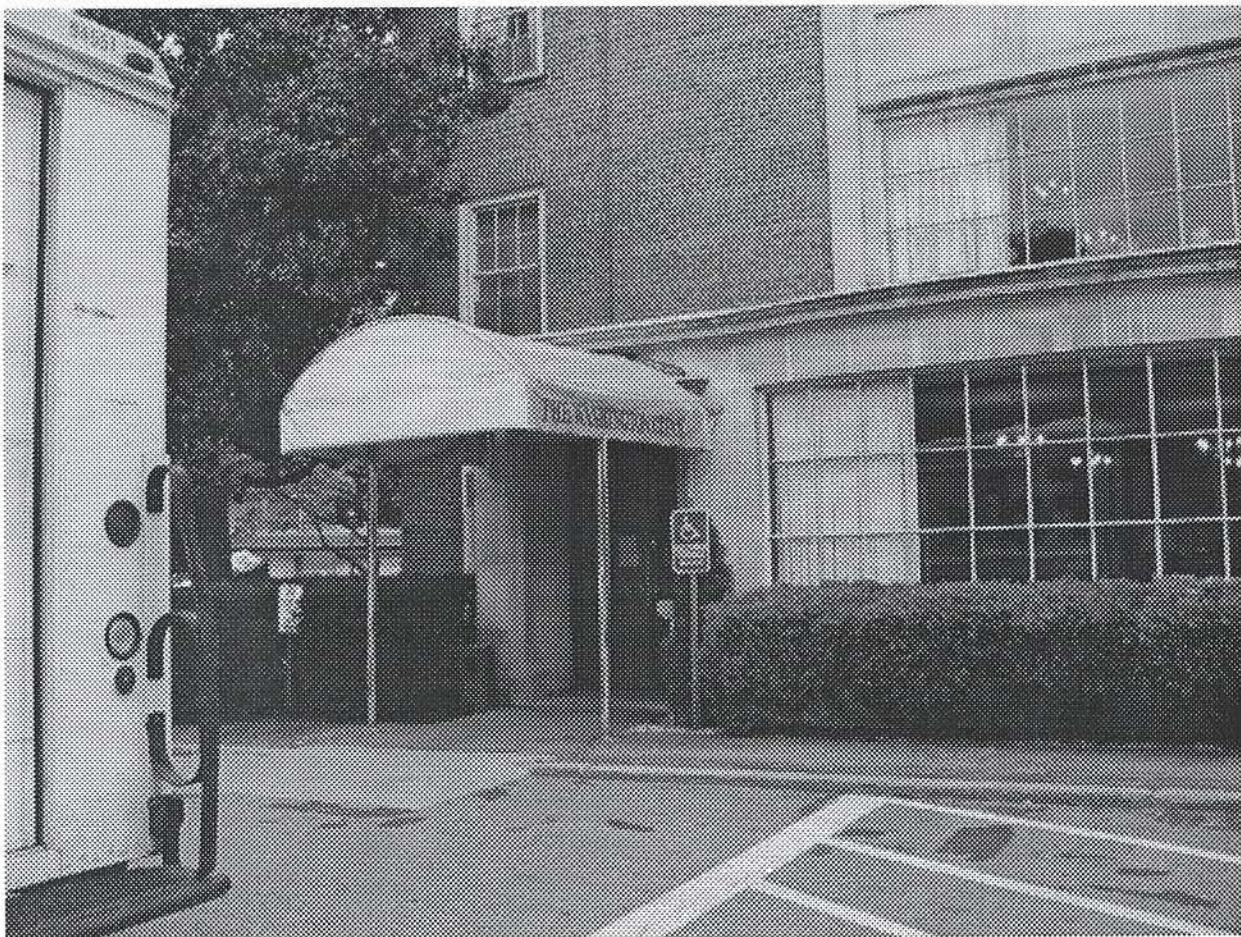
October 17, 2002, 3:00 pm
Western Avenue: One Notice on Clinic Frontage, None on Lisner



October 17, 2002, 3:00 pm
Western Avenue: One Notice on Clinic Frontage, None on Lisner



October 17, 2002, 3:00 pm
No notices on the Front of the Washington Clinic



10-27-02

Carol Mitten, Chairman
Zoning Commission
District of Columbia Office of Zoning
441 4th Street, NW, Suite 210-S
Washington, DC 20001

RE: #ZC 02-17 (Stonebridge Associates)

I am requesting that this hearing be postponed until such time as notice to the neighborhood can be given in full accordance with the regulations, at least 40 days prior to any new date set for hearing this case.

The posting on the subject site to inform the public of this hearing is totally inadequate, and I do not understand how it can go forward on November 14 when this requirement is being so blatantly ignored by the Applicant. I live directly across Military Rd. from the subject site and observe it daily.

The regulations state:

3015.5 The notice required by §3015.4 to be placed upon applicant's property shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property.

I am enclosing photographs that I took today, 18 days before the hearing.

I have photographed the entire street frontage of the site along Military Rd., so that you may see the one poster there. It is certainly well out of "plain view of the public" (behind a bush), and considerably removed from "the street frontage," almost 60 feet from the sidewalk.

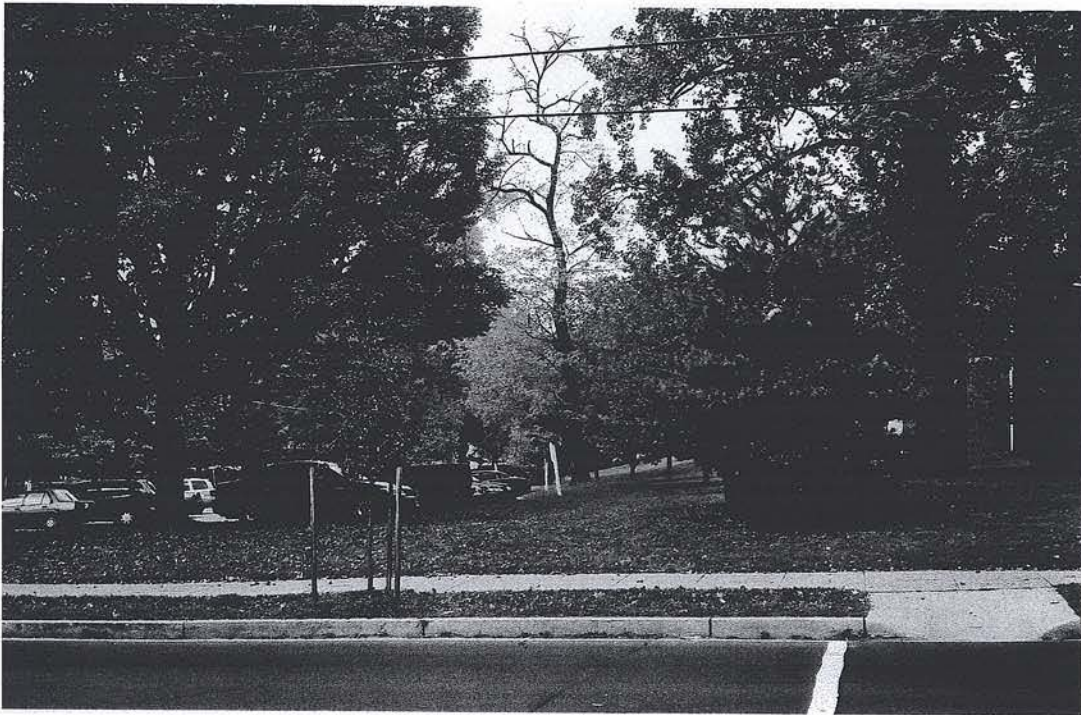
There are no notices on the front of either of the 2 buildings involved (the Washington Clinic and the Lisner Home), and there is no notice anywhere on the Lisner part of this site. The involvement of any portion of Lisner's land in this development is extremely important, yet there is nothing to indicate this to anyone looking at any part of the Lisner property.

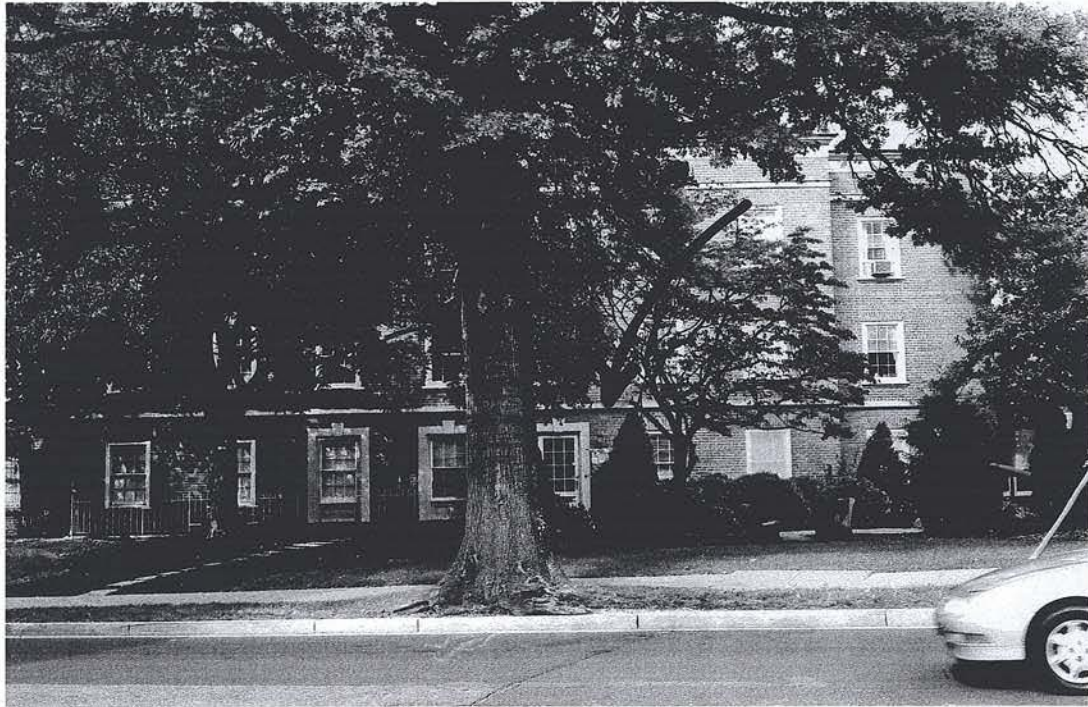
According to 3015.7, Stonebridge was required to submit a sworn affidavit with photos of each sign posted, 30 days prior to the hearing. I cannot imagine how they could have satisfactorily done this.

Please delay this hearing so that proper notice can be given to all interested parties.

Hazel F. Rebold
4228 Military Rd., NW
Washington, DC 20015-2933

All of these photos were taken 10-27-02, which is 18 days before the hearing scheduled for case ZC 02-17 (Stonebridge Associates). The series shows the entire Military Rd. frontage of the subject site. It begins at the eastern end, which is currently part of the Lisner Home (this is directly across from my house).





This shows the only poster visible from Military Rd. It is almost 60 feet from the sidewalk, behind a bush. (It is next to a seldom used side door to the Washington Clinic)

