CORRECTED

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

Minutes
December 18, 1978

I. The meeting was called to order by Lindsley Williams at 8:04pm. Present were: Haugen, Arons, Williams, Coram, Rothschild, and Grinnell. Kopff arrived later. Pitts and McGrath were absent.

II. The minutes of November 27, 1978 were distributed. Adoption was postponed.

III. Grinnell gave the monthly treasurer's report, which is attached.

$8,758.85 balance at start of reporting period
(432.41) expenses
1,671.25 1st quarter funding
9,863.03 balance currently on hand

These figures are in error - see attached report

Phil Mendelson noted that the balance as of the last Commission meeting was different than the balance at the start of this reporting period. Grinnell said he would look into this. Thereupon, the Commission adopted the report.

IV. Williams reviewed the agenda and procedures for handling residents' concerns--the town hall segment of the meeting.

A. Nancy Raskin presented a verbal proposal for a $1408 grant to provide a teacher and basic equipment for the music program at Oyster School.

B. Bill Robinson presented a verbal proposal for ANC funding to provide an architect in residence at John Eaton School. The National Endowment for the Humanities has already said it will provide up to $4000 in matching funds. The school is undergoing renovation.

Both of these funding proposals will be considered, along with the Hearst School proposal received at the November meeting, by Bernie Arons' committee.

C. Saudi Arabia Chancery BZA application: Grinnell read a letter from Hugh Allen to the Board of Zoning Adjustment. It requested that the ANC be able to withdraw its support of the application, as stated in its letter of December 4th to the Board, thereby giving the Commission the opportunity to review the issue at tonight's meeting. Rothschild objected that he had understood that the ANC would not withdraw its letter but rather would not be opposed to a motion to postpone to be made by Tim Corcoran.

Mssrs. Corcoran and Kelly, representing a number of the property owners in the area of the proposed chancery, addressed the Commission. They had delivered to the Commission, prior to the meeting,

a "Joint Statement In Opposition To Chancery Application Of The Royal Kingdom Of Saudi Arabia." Williams then noted some of the issues that were surfacing:

- The number of parking spaces required versus the number proposed
- The width of driveways and aisles
- The number of square feet for chancery use (11,599) and of the entire building (16,000)
- Traffic dangers
- Limited immunity/enforceability
- General compatibility
- Jurisdictions of both the BZA and the ANC

Whayne Quin and Sam Condit spoke on behalf of the application. It was noted that restoration plans for the Chancery would cost over $1 million. Quin also said that the Saudis would support implementation of the 2 hour commuter parking ban program to meet the neighborhood's concern regarding parking, and that he would be willing to get the Ambassador to sign the proposed plan as being the final plan.

Both attorneys were given the opportunity to rebut each other. Kopff asked for residents in attendance to speak. Bertha Burling, Wayne Parrish, Ralph Dweck, Rene Barozzi, and Alec Levin did. Between them concerns were raised as to lighting, automobile fumes/exhaust, trash, parking, nighttime emptiness, office use in a residential neighborhood, and so forth.

The Chair asked that the Planning and Zoning Committee consider this issue further and that it attempt to work with the neighborhood residents to adopt a recommendation for the Commission to consider at the January 22nd 3C meeting. He suggested that perhaps one or more letters to government agencies might be necessary in order to resolve all issues. Hugh Allen said he would try to schedule a meeting for early January and seek, in part, to use the meeting to achieve an agreement between the parties.

D. The Embassy of Iran has applied for a map change to extend the Diplomatic Zone to include the property (which it owns) adjacent to its embassy. The Zoning Commission will decide on January 11th whether or not to grant a hearing on the application. A motion was moved and approved (Kopff abstaining) for Hugh Allen to prepare a letter on behalf of the Commission opposing the application and seeking to avoid the granting of a hearing.

V. Other issues:

A. Two documents prepared by the Anne Blaine Harrison Institute pertaining to the ABC Board were distributed. One is a list of licensees in the 3C area. The other is a memorandum of comments and proposed revisions regarding D.C. Council Bill 2-272. At Rothschild's request, Phil Mendelson was asked to prepare a map showing the locations of the licensees. The Chair asked Kopff to coordinate the development of the Commission's position on Bill 2-272; Kopff proposed to work with the Institute to: 1) consolidate comments of Commissioners; 2) re-cast as a new bill; 3) challenge ABC Board members; 4) broaden input/issue to other ANC's and citizen groups.

B. Chin's Restaurant liquor license renewal: Haugen reported that she had sent a letter of support in her capacity as a Single Member District Commissioner. It was moved and approved by the Commission that a letter be sent endorsing her SMD position (Kopff abstained).

C. Susan Aramaki, of the Harrison Institute, was asked about expenses incurred to date by the ANC. She has spent about 1/4 to 1/3 of her billable time to date (42 hours) while Bob Stumberg has spent about 5 hours as has the typist. Williams said the Commission has received a signed contract from the Institute.

D. Zoning Commission case #78-12: Aramaki said the case has not been withdrawn but the Municipal Planning Office may revise it. She also reported that proposed changes in the PUD process have been put off.

E. The Commission has received a letter from Joe Parker, Chairman of the Executive Fellowship Group D.C., requesting referrals and contributions for a Christmas dinner. Mendelson was asked to draft a letter of response pointing out that ANC's are prohibited by law from buying refreshments.

F. The Commission adopted by consensus Lindsley Williams' December 4th letter to Mr. Theodore Lutz regarding the name of the Woodley Park Metro station.

G. Williams asked the Commission to approve the sending of a letter, to be drafted, to the Fine Arts Commission concerning designating bridges for historic preservation. The Commission would eventually pay a filing fee (approximately $100) to urge such designation. Bridges in the Commission area that would be affected are the Massachusetts Avenue, Taft, Klingle Valley, and Calvert Street. The Commission granted approval by consensus.

H. A draft letter to the president of the CBI-Fairmac Corporation, congratulating him on the proposed sale of McLean Gardens to the tenants, was presented. Kopff said he was distressed that moderate income rental housing was not included in current plans for the complex. The Commission gave approval for the letter to be sent with some minor modifications.

I. Coram raised the problem of changes in the rules surrounding use of the Police Station Community Room. The Commission has received a letter regarding this from the McLean Gardens Residents Association. The new rules preclude reservations being made more than 30 days in advance. The Commission felt that community groups, wishing to reserve the room for certain days of the month throughout the year should have that right. The Commission also noted that it is a government group that should be able to reserve the room for the fourth Monday throughout the year. The new rule was seen as disruptive. By consensus it was decided that a letter, using the Residents Association's letter as a basis, should be sent to the Police Chief.

J. Deb Baker-Hall reported on the work she has done to date on putting together a 3C newsletter. Grinnell commented that the articles should not be too detailed; the Commission needs to just publicize its existence first. The copy will hopefully be ready for the Commission's review at its January meeting. Kopff suggested that a draft outline be submitted to each Commissioner to get input and a final form.

K. Williams mentioned two items for the Commissioners to consider before the next meeting: election of officers for 1979 and review of the Saudi and Iranian Chancery applications. He proposed that there be an informal meeting the week of January 15, 1979.

Before adjournment there was informal discussion regarding the Saudi case and the ABC license renewal cases. The Harrison Institute will draft a letter including neighborhood reactions. It will survey people within the BZA notice area and

will mention the 1977 poll done in response to the Macomb house issue (re. Foreign Missions And International Agencies Element to the Comprehensive Plan). The letter will question the rules adopted under Zoning cases 77-45 & 46. Does article 72, or 46, apply as to parking? What amount of square footage will be in actual chancery use? The Commission has been supportive of embassies, but chanceries are inherently office use.

VI. The meeting adjourned at 12:10am.

Attached to the file copy of these minutes are the following:

- Joint Statement In Opposition referred to in item IV.C of these minutes
- Draft letter to The BZA regarding the Saudi Chancery case
- Map of the area affected by the Saudi Chancery
- List of liquor licensees within the 3C area
- Harrison Institute memorandum regarding Bill 2-272
- Dec. 7, 1978 letter to 3C from the D.C. Executive Fellowship Group
- Dec. 4, 1978 letter to Theodore Lutz from the Commission
- Draft letter to CBI-Fairmac Corporation
- Dec. 4, 1978 letter to the BZA re. the Maret School from the Commission
- Dec. 4, 1978 letter to the BZA re. the Saudi Chancery from the Commission

-Also attached: December Treasurer's Report

Respectfully Submitted
for the Commission:

Phil Mendelson

Attested as approved & Corrected:

Katherine V. Coram
Recording Secretary

BEFORE THE NEIGHBORHOOD ADVISORY COMMISSION

3 - C

In re Chancery Application of ROYAL KINGDOM OF SAUDI ARABIA for the property at 2929 Massachusetts Avenue, N. W.	))))	Board of Zoning Adjustment Application No. 12826

JOINT STATEMENT IN OPPOSITION TO CHANCERY APPLICATION OF THE ROYAL KINGDOM OF SAUDI ARABIA

Mrs. Bertha B. Burling, Mr. and Mrs. Wayne W. Parrish, Mrs. J. Scott Appleby, Mrs. Sallie L. Murphy, Dr. and Mrs. A. Levin, Mrs. Donald G. Herzberg, Dr. A. S. Schwartzman, and Mr. and Mrs. Ralph Dweck, (the "neighborhood residents"), all of whom reside in the immediate neighborhood of 2929 Massachusetts Avenue, N. W. (the "subject property") hereby oppose the Board of Zoning Adjustment ("BZA") application of the Royal Kingdom of Saudi Arabia ("Saudi Arabia") to use the subject property as a chancery. The neighborhood residents submit, for reasons discussed more fully below, that the chancery use proposed is unlawful, incompatible with neighborhood development, fails to satisfy the criteria of Section 4603 of the District of Columbia Zoning Regulations, as added by Order No. 236, effective September 22, 1978 (the "Zoning Regulations"). 1/ Accordingly, the Advisory Neighborhood Commission (the "ANC") should decline the request of Saudi Arabia for a favorable recommendation of its application to the BZA.

1/ Copies of Zoning Commission Orders No. 236 and 237 (September 14, 1978) and the Zoning Regulations and Map amendments promulgated therein are attached as Exhibit A.

Function of the ANC

As stated by the Court of Appeals in Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1377 (D.C. App. 1977), [2/] under the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (the "Home Rule Act") and the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, D. C. Law 1-58 (1976), codified as D. C. Code Section 1-171a et seq. (1973 ed., 1977 Supp.) (the "ANC Act"), the "ANC's exist, and are granted statutory rights, powers, and duties, for the benefit of the neighborhood residents they represent . . . . [and], the very statutory scheme of the ANC Act is designed to assure effective presentation of neighborhood views through the ANC instrumentality." (Emphasis added).

One mechanism for the expression of neighborhood views by the ANC's is set forth in Section 13 of the ANC Act, D. C. Code Section 1-171i(a):

> Each Advisory Neighborhood Commission . . . may advise the Council of the District of Columbia, the Mayor and each Executive Agency and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social service programs, education, health, safety and sanitation which affect that Commission area.

2/ A copy of this decision is attached as Exhibit B.

The ANC Act, D. C. Code Section 1-171i(d), further provides as to written recommendations forwarded to the appropriate agency by the ANC's that "[t]he issues and concerns raised in the recommendations . . . shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken." (Emphasis supplied). 3/

In keeping with this statutory scheme and the independent, advisory function of the ANC thereunder, the neighborhood residents submit that the ANC (unlike the BZA) is not limited in its consideration of or recommendation on governmental action by regulations adopted by the Zoning Commission. Specifically, although the BZA lacks jurisdiction to amend or modify the Zoning Regulations and Map, D. C. Code Section 5-420, and may be limited in its determination of Neighborhood compatibility of a proposed chancery to the standards enumerated in Section 4603 of these Regulations (although we do not concede the latter point), the ANC's advisory authority is limited only by the "neighborhood issues and concerns" it perceives. For that reason, this statement will address, in addition to the Section 4603 criteria, considerations of compatibility with the neighborhood in general and legality of the regulations upon which the present chancery application is premised.

3/ The Court in Kopff, supra, at 1384, interpreted the "great weight" requirement of this Section to mean that the agency must make "explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each" in its decision. (Emphasis in original).

Statutory and Regulatory Background

A. Zoning Regulations Relating to Chanceries Prior to 1964.

Prior to 1958, the location of chanceries was not subject to regulation by any District of Columbia agency or department. In that year, however, as part of a comprehensive revision of the Zoning Regulations, chanceries were determined to be essentially business uses and, therefore, precluded from locating in any residence district as a matter of right. Under Zoning Regulations adopted at that time chanceries were permitted in residence districts by special exception approval from the Board of Zoning Adjustment ("BZA"). 4/

B. The Chancery Act of 1964.

In 1964, the Congress passed the Chancery Act, 5/ or the Fulbright Act as it is also known, which provides, in pertinent part, that "[a]fter October 13, 1964, . . . no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted on any land, . . . within any district or zone restricted . . . to use for residential purposes." 6/ Under another provision of the Act, chancery facilities are permitted in districts or zones restricted to use for medium and high density apartments (R-5-C and R-5-D districts), but only by special exception approval under enumerated criteria. 7/

4/ Zoning Regulations Section 3101.410 (May 12, 1958).

5/ Pub.L.No. 88-659, 78 Stat. 1091 (October 13, 1964).

6/ D. C. Code Section 5-418(c).

7/ D.C. Code Section 5-418(d).

The Chancery Act has been read by operation of law into the Zoning Regulations, [8/] so that, since the Act's effective date, new chanceries have been precluded from locating in districts zoned R-1 (including R-1-A and R-1-B), R-2, R-3, R-4, R-5-A and R-5-B, permitted by special exception approval by the Board in R-5-C, R-5-D, W, C-R and S-P districts, [9/] and entitled to locate in other zoning districts as a matter of right.

C. The Foreign Missions Element and Implementing Zoning Amendments.

During 1977, the National Capital Planning Commission ("NCPC"), working in cooperation with the United States Department of State ("State Department") and the Municipal Planning Office ("MPO"), proposed a so-called "Foreign Missions and International Agencies Element and Related Modifications to Other Elements of the Comprehensive Plan for the National Capital" (the "Foreign Missions Element"), pursuant to its statutory function. [10/] The Foreign Missions Element, formally adopted by the NCPC on October 6, 1977, set goals, objectives, criteria and policies to facilitate the future location of chanceries and included a diagram indicating those areas which, in the NCPC's opinion, were suitable for the location of chanceries. Significantly, the Foreign Missions Element recommended

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8/ Chapter 3, Article 31, Section 3101.410, n.

9/ Except as otherwise provided in D.C. Code Section 5-418A, relating to the continued use and maintenance of existing chanceries.

10/ See D.C. Code Section 1-1004(a), also codified as 40 U.S.C. Section 71c(a).

that chanceries be permitted in lower density residential areas along Sixteenth Street and Massachusetts Avenue, Northwest, in spite of the Chancery Act's proscription of new chanceries in such areas. Section 313.82 and 313.92 of the Foreign Missions Element suggested that the Zoning Commission adopt implementing regulations to make the Zoning Regulations "not inconsistent with the criteria and plan policies" of the Element. 11/

Upon adoption of the Foreign Missions Element, the Zoning Commission directed the MPO to prepare proposed regulations and maps implementing the NCPC's recommendations. Sponsored by the Zoning Commission, those proposed amendments to the Zoning Regulations and Map were docketed as Zoning Commission Cases No. 77-45 and 77-46.

The Zoning Commission's initially proposed regulations provided for "Diplomatic Overlay Districts" (the "Overlay Districts") to be superimposed on existing zoning districts. Chanceries were to be permitted as of right in areas designated for chancery use by the Foreign Missions Element. Public hearings on the initially proposed amendments were scheduled for January 23, 1978. Even before the hearings commenced, however, problems with the proposals under the Chancery Act became apparent.

On January 16, 1978, at the request of the State Department, the law firm of Wilkes and Artis submitted for the Zoning

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11/ D.C. Code Section 5-414 states, inter alia, that "[z]oning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capitol . . ."

Commission's record a memorandum of law "address[ing] legal concerns about the proposed amendments in view of the goals of the State Department. 12/ Addressing the Chancery Act problem specifically, the memorandum concluded "[s]ince the overlay zones would permit chanceries in R-1 through R-5-B zones while keeping underlying zoning in 'full force and effect,' a conflict appears to result with the Congressional mandate in the Chancery Act." The Sheridan-Kalorama Advisory Neighborhood Commission 1-D, on January 23, 1978, advised the Zoning Commission by letter of its opinion that "[t]o the extent that the proposed [Diplomatic] District overlaps [the] lower density residential zones, it is unlawful under the Chancery Act as this Act has been construed by the Corporation Counsel in formal opinions which he has given the Zoning Commission on March 20, 1976, May 10, 1967, June 19, 1967 and July 9, 1971." On the same day, the Commission received a letter from the author and sponsor of the Chancery Act, Senator J. William Fulbright. 13/ Senator Fulbright advised the Commission, in pertinent part, as follows:

> I have read the proposal of the [Zoning Commission], which is inconsistent with the Chancery Act of 1964.
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> It is my opinion that the proposal . . . to alter the zoning regulations applicable

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12/ A copy of this memorandum is attached as Exhibit C.

13/ A copy of Senator Fulbright's letter is attached as Exhibit D.

> to residential areas is in conflict with the Chancery Act of 1964. The proposal . . . would circumvent the law -- it would evade and defeat the clear intent of the law without repealing it. It would create confusion and instability in the areas concerned.
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> The orderly and legal procedure to effect such a change in the zoning regulations would be to procure a repeal of the law by Congress.

Subsequent to the first day of hearings, the Commission received a letter from Senator Thomas J. McIntyre, [14/] the Conference Chairman on the Chancery Act, who stated:

* * *

> It is my belief that the Commission's proposal to alter the zoning regulations applicable to residential areas is inconsistent with the [Chancery] Act.

* * *

> Any such change would, in my view, require Congressional rather than administrative action . . .

14/ A copy of Senator McIntyre's letter is attached as Exhibit E.

At the outset of the second day of hearings on February 27, 1978, 15/ the Commission announced that it had

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15/ On February 22, 1978, City Councilmembers Polly Shackleton and Marion Barry introduced Bill 2-291, the "Location of Chanceries Amendment of 1978." Section 2(d) of that Bill proposed to add a new subsection (d) to the Chancery Act providing:

> No district or area which is restricted in accordance with this act to use for residential purposes shall be rezoned to permit the construction, alteration, repair, conversion, or occupancy of a building for use as a chancery.

The Shackleton-Barry bill was referred to the Committee on Housing and Urban Development which conducted a public hearing on the measure on August 14, 1978. On June 14, 1978, the Committee voted to table the Bill until its next meeting and to submit certain technical amendments to another pending bill, No. 2-237, the "District of Columbia Goals and Policies Act of 1978," to reflect the intended effect of the Shackleton-Barry Bill. At the Committee's meeting of July 12, 1978, Bill 2-291 was reconsidered, debated and amended to clarify that its restriction on rezoning at residence districts was to be limited to restrictions "in effect on July 1, 1978." The amendment was unanimously recommended for passage by the full Council. However, on or about November 1, 1978, the City Council, for reasons not apparent, voted to table the measure indefinitely.

decided to redraft its regulations and to permit chanceries in lower-density residential areas by special exception approval by the Board, rather than as of right, under the revised proposed regulations. The Chairman of the Commission, Walter B. Lewis, stated that because of the serious questions raised as to the legality of the originally proposed amendments under the Chancery Act, he would request a memorandum of law from the Corporation Counsel addressing the subject.

On May 17, 1978, the Zoning Commission published its second proposal to amend the Zoning Regulations and Map relating to the location of chanceries, incorporating the special exception provisions outlined during the February 27, 1978 hearing. Public hearings were held on this proposal on June 22 and June 29, 1978.

During the course of its public hearings on the first and second proposed map and text amendments in Cases 77-45 and 77-46, a majority of the eight ANC's testifying and/or submitting written statements for the record expressed serious concern as to a conflict between the proposals and the Chancery Act.

On July 7, 1978, one week after the final day of public hearings on the proposed Zoning Amendments, the Corporation Counsel, responsive to a Commission request of June 26, 1978, submitted a legal memorandum of the Chancery Act problem. 16/ That memorandum, after discussion and analysis of relevant provisions of the Zoning Laws, the Foreign Missions Element and the

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16/ A copy of the legal memorandum of the Corporation Counsel is attached as Exhibit F.

proposed amendments, concluded that "[a]lthough it cannot be gainsaid that the creation of certain of these new [diplomatic] zones would create an appreciable legal question as to inconsistency with the Chancery Act, it is my opinion that their establishment is, at the least, legally defensible."

The Zoning Commission, on September 14, 1978, adopted amendments to the Zoning Regulations and Map in Cases No. 77-45 and 77-46. 17/

The text amendments in Case 77-45, at Section 4602, create a new zoning designation, the "Mixed Use Diplomatic (D) District" (the "(D) District"). In accordance with Section 4602.1, the (D) District is to be "mapped at suitable locations in implementation of the [Foreign Missions] Element" in the following manner:

> The mapping shall be in combination with any District mapped at such location and shall not be in lieu of such District. All uses, buildings and structures permitted in accordance with this Section and the appropriate Sections of the regulations for the District with which the mapped (D) District is combined shall be permitted in such combined Districts. All restrictions and prohibitions provided with respect to either of the Districts so combined shall also apply, except as specifically modified by this Article. (Footnote omitted) (Emphasis in original)

In any area where the (D) District has been so mapped, a chancery is a "permitted use, provided that the [BZA] determines

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17/ Zoning Commission Orders No. 236 and 237.

after a public hearing that the proposed [c]hancery is not incompatible with the present and proposed development of the neighborhood." Section 4603.1. In arriving at a determination of compatibility, the BZA must find that the proposed chancery use meets certain criteria specified in the amendments, Sections 4603.2 - 4603.28 and 4604.2, and may "require such special treatment and impose such reasonable conditions as it shall deem necessary to mitigate any adverse impacts . . ." Section 4604.3.

The map amendments in Case No. 77-46 chart the (D) District in combination with other existing districts as suggested in the Foreign Missions Element, including the lower-density residence zones along Massachusetts Avenue, Northwest, from Dupont Circle to Observatory Circle and Sixteenth Street, Northwest, North to Park Road.

In accordance with these amendments, the premises at 2929 Massachusetts Avenue which previously had been zoned R-1-A was redesignated D-R-1-A.

Pursuant to Section 3.62 of the Rules of Practice and Procedure before the Commission, the text and map amendments in Cases No. 77-45 and 77-46 became effective on September 22, 1978. 18/

18/ Saudi Arabia, which owns the property at 2929 Massachusetts Avenue, on October 24, 1978, filed the present application for a determination by the BZA under Section 4603.1 of the Regulations that the use of such property for chancery pruposes will not be incompatible with neighborhood development.

The Zoning Commission's Chancery Regulations are in Violation of the Chancery Act

As previously noted, the Chancery Act, in pertinent part, mandates that:

> After October 13, 1964, . . . no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted on any land, . . . within any district or zone restricted . . . to use for residential purposes. D.C. Code Sec. 5-418(c).

Under another subsection of the Act, foreign diplomatic office facilities are permitted in districts or zones restricted to use for medium-high and high density apartments (i.e., the R-5-C and R-5-D districts), but only by special exception approval under enumerated criteria. D.C. Code Sec. 5-418(d).

The unequivocal Congressional intent to totally prohibit establishment of new chanceries in residential areas zoned R-5-B or lower, facially evident in the statutory language, is similarly apparent in the legislative history of the Act.

Expressing views of the House conferees on the Chancery Bill, S. 646, Congressman Multer forcefully stated that the legislation was intended to:

> . . . restrict the embassy-chancery combination or the chancery alone from going into the strictly residential areas. (Emphasis supplied) (Cong. Rec. H. 23684, Daily ed., October 2, 1964).

Such office facilities, he emphasized, would not be permitted "under any circumstances." (Id.)

Senator McIntyre, also a member of the Conference Committee, reported to the Senate that "with certain specified exceptions (not here relevant), no new chancery location may be established in residential zones." (Cong. Rec. S. 23526, Daily ed., October 2, 1964).

Another important point which emerges from the legislative history of the Chancery Act is the Congressional awareness of the need for a comprehensive plan relating to location of chancery facilities, such as that adopted by the NCPC, and realization that implementation of such a plan would require legislative amendment or repeal of the Act. In this regard, Senator McIntyre stated:

> The conferees were unanimous in feeling that the present bill represents a fair solution to the chancery problem in Washington, for the time being. Hope was expressed that it might be possible, at a later date, to consider a more long-term solution to the problem, possibly in the nature of a special chancery area or precinct. (Cong. Rec. S. 23526, Daily ed., October 2, 1964).

This interpretation of the legislative purpose underlying the Chancery Act is corroborated in the letters of Senator McIntyre and former Senator Fulbright to the Zoning Commission, discussed supra.

In response to the unambiguous, unequivocal language and manifest purpose of the Chancery Act, the Zoning Regulations

relating to chanceries lamely counter that the Diplomatic district is "mixed use" zone. Section 4601. Such an assertion might have some persuasive force if the Regulations effected complete, "top-to-bottom" rezoning in affected areas. However, since the apparent design and only effect of the (D) District as applied to lower-density residential areas, is to permit chanceries where they are prohibited by statute, the contention that a bona fide "mixed use" district results in nothing more than unmitigated semantics and an affront to common sense. The Regulations attempt to accomplish, by means of the artless fiction of the Diplomatic District precisely the result which Congress, by statute, has proscribed.

There is no question that the Zoning Commission is vested with broad jurisdiction under the Zoning Act, D.C. Code Section 5-412(e), to "execute all the powers and perform all the duties with respect to zoning in the District . . ." including the promulgation of regulations. D.C. Code Section 5-413. However, that jurisdiction does not include the power to modify a statute of Congress by regulatory fiat:

> The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law -- for no such power can be delegated by Congress -- but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity. Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U.S. 129,134 (1936); see also Dixon v. United States, 381 U.S. 68, 74 (1965).

By purporting to permit chanceries in the same lower density residential areas where Congress, by the Chancery Act, clearly prohibited them, the Chancery Regulations represent an attempt by the Zoning Commission to amend or repeal the Chancery Act and are, accordingly, void as a matter of law.

The Proposed Chancery is Incompatible With the Present and Proposed Development of the Neighborhood

Section 4603.1 of the Regulations adopted by the Zoning Commission, pursuant to which Saudi Arabia submitted the present chancery application, provides that "[i]n areas mapped D, R-5-C, R-5-D, or SP, a chancery is a permitted use, provided that the [BZA] determines after a public hearing that the proposed Chancery is not incompatible with the present and proposed development of the neighborhood." (Emphasis supplied). In arriving at that determination, the BZA must find that the several requirements of Section 4603.2 are satisfied and may "require such special treatment and impose such reasonable conditions as it shall deem necessary to mitigate any adverse impacts identified in accordance with Sections 4603 and 4604." Sections 4603.2 and 4604.3. As noted by the Sheridan-Kalorama Neighborhood Council, et al. in a statement in opposition to the companion BZA chancery application of Bangladesh, BZA Docket No. 12822, at 12-15, 19/

19/ A copy of the Sheridan Kalorama Neighborhood Council's Statement is attached as Exhibit G.

repeated emphasis is placed on the importance of "a careful review by the [BZA] to assure compatibility with affected neighborhoods" in the 84-page statement of reasons "setting forth the basis for [the Zoning Commission's] decision" to adopt the map and text amendments by Orders No. 236 and 237.

In applying the requirements of Section 4603.2 to the facts in the present case, the ANC should bear in mind that for purposes of BZA proceedings, the burden of proof as to neighborhood incompatibility will lie with the applicant, Saudi Arabia, Section 8203.6 of the Zoning Regulations and D. C. Code Section 1-1509(b), and that it must establish by substantial evidence that the chancery use is and will be [20/] compatible with the development of the neighborhood, not only on the day the application may be approved but for the foreseeable future as well.

The neighborhood relevant to the determination of compatibility is the area bounded by Edgevale Terrace on the North, Massachusetts Avenue on the South, Rock Creek Drive on the East, and 30th Street on the West. The area so defined is exclusively residential at present. Although there are combined embassy/chancery properties to the South, across Massachusetts Avenue, and to the West, across 30th Street, these residence and office

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20/ Section 1201.2 of the Zoning Regulations states that "[w]ords used in the present tense include the future." Moreover, the Zoning Commission's chancery regulations expressly require a finding of compatibility with the neighborhood's proposed development. Sections 4603.1 and 4603.2.

facilities are physically separated from the neighborhood by streets and/ in the case of the Iranian Embassy/Chancery across 30th Street, also screened by a large, well-foliated yard.

Additionally, it must be noted that the only property in the neighborhood within the (D) District other than the subject property is owned and used by Saudi Arabia as its embassy, and, therefore, is unavailable for chancery use. Even if the BZA approves the present application, the neighborhood will, with a single exception, remain exclusively residential.

A. The Architectural Design and Arrangement of Off-Street Parking Spaces Conflicts with the Character of the Neighborhood

Under Section 4603.21 of the Zoning Regulations, the design and arrangement of off-street parking spaces must be found to be in keeping with the character of this exclusively residential neighborhood. The application and architectural plans filed with the BZA by Saudi Arabia conclusively establish that this requirement is not met.

According to Applicant's statement, at page 4, 15 on-site parking spaces 9' x 19' will be provided for the use of employees and visitors of the chancery, (exclusive of spaces in the garage and circular driveway) and "[a]pproximately 25 on-site spaces will be provided with attendant parking." It is unclear whether this representation relates to parking in a small courtyard (approximately 59' x 60") in the rear of the building or to other on-site parking locations as well. In any event, the number of spaces available in the rear courtyard is neither 15 nor 25, but less than 10.

Although not revealed in Applicant's statement or Architectural Plans, in order to provide parking in the rear of the building, the existing driveway (9'), which was adequate under Section 7206.6 of the Zoning Regulations for the originally intended single-family dwelling use, must be widened to 14', as required under Section 7206.7. To accomplish this widening, a portion of either the building or the East garden wall must be demolished. 21/

Saudi Arabia's architectural plans, as mentioned above, show 15 parking spaces in the small courtyard in the rear of the building. Each space appears to satisfy the 9' x 19' per space requirement of Section 7204.1. However, the aisle at the East perimeter of the area is 9' in clear width, not the required 14'. Section 7206.5; see Section 7206.4, 7206.7. Additionally, an aisle 14' wide is necessary for accessibility and manuevering between rows of two or more cars. Section 7206.5. Such an aisle is not depicted on the architectural plan which, in fact, indicates no aisle or aisles whatsoever. 22/ If parking spaces in

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21/ Since this demolition would be an "alteration" of a "structure" within the meaning of Section 4604.2, a revised site plan should be submitted to the ANC and to other reviewing Federal and local agencies (particularly the Historic Preservation officer). See Section 4604.1.

22/ Applicant perhaps accounts for the absence of an aisle between rows of parking spaces by the presence of a parking attendant. The simple answer to such an argument is that Section 7206 of the Regulations, relating to on-site parking, provides no exception to its requirements in such a case.

the rear yard are brought into conformity with requirements of the above Zoning Regulations, the number of available spaces will be reduced from 15 to approximately 8.

Since the on-site parking capacity of the rear yard is only 8 cars (9 cars including the garage space), and the circular driveway is 10' in width and consequently would be blocked to visitor traffic if used for parking, it is not apparent where on the premises Saudi Arabia intends to provide parking for 15 to 25 automobiles.

More importantly, the presence of a parking lot for 9, 15, 25 or more cars in the rear yard of a former residence is totally incompatible with the character of this exclusively residential area. No existing residence in the neighborhood has on-site parking for more than four cars and such spaces are provided in private garages. No other residence has, or proposes to have, a parking facility in the rear yard for 9 to 25 automobiles.

Aside from the obvious noise, pollution, and fire hazards posed during office hours and evening social functions by the presence of a parking lot, the emptiness and high intensity lighting (which Saudi Arabia will presumably need for motorist safety and ambassadorial and consular security) of the lot at night will be deleterious to the family life and former tranquil neighborhood environment.

B. Off-Street Parking Spaces are not Provided at the Required Minimum Ratio

Pursuant to Section 4603.25 of the Zoning Regulations, off-street parking spaces must be provided at a ratio of not less than one space for every 800 square feet of "gross floor area devoted to chancery use."

The Applicant, at p. 1 of its statement, contends that although the subject building contains approximately 16,000 square feet of gross floor area, only 11,599 square feet will be devoted to chancery use. On that basis, it claims to be required by the regulations to provide 14 on-site parking spaces. Applicant has evidently misread the Zoning Commission's regulations.

Section 1202, as amended by Order No. 236, contains the following definition of the term "chancery:"

> The site and any building or buildings therein containing offices of a Foreign Mission and used for diplomatic, legation or consular functions. The term chancery shall include a chancery-annex or the business offices of those attaches of a foreign government who are under the personal direction and superintendence of the chief of mission and who are engaged in diplomatic activities recognized as such by the Department of State, Federal Government. The term chancery shall not include the business offices of nondiplomatic missions of foreign governments, such as purchasing, financial, educational, or other missions of a comparable nondiplomatic nature.

In the same Section, "gross floor area" is defined as:

> [t]he sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls and from the center line of walls separating two buildings. The term gross floor area shall include basements, elevator shafts and stairwells at each story, floor space used for mechanical equipment (with structural headroom of six feet six inches or more), penthouses, attic space (whether or not a floor has actually been laid, providing structural headroom of six feet, six inches or more), interior balconies, and mezzanines. The term gross floor area shall not include cellars and outside balconies which do not exceed a projection of 6 feet beyond the exterior walls of the building.

There can be no question that the intended use of the entire subject premises is as a chancery. In Saudi Arabia's statement of existing and intended use, attached to its application, it represents that the BZA's permission is sought "to use the subject property as a chancery" and the application, itself, in a space for entry of the "Proposed Use of the Property" reads: "Chancery of the Royal Kingdom of Saudi Arabia."

If a portion of the residence at 2929 Massachusetts Avenue is not to be "devoted to chancery use," Saudi Arabia is plainly under an obligation to advise the ANC and BZA as to what other use or uses are contemplated. Since the applicant has not sought non-conforming use treatment, any additional use

of the property must be one of those set forth in Section 3101 (R-1 districts, one-family detached dwellings) of the Zoning Regulations. See Section 4602.1.

Furthermore, we suggest to the ANC that the phrase "devoted to chancery use" in Section 4603.25 was included in the regulations to clarify the method for computing gross floor area in cases involving combined chancery/embassy uses, and not in situations such as the present case. 23/

The neighborhood residents submit that the gross floor area figure relevant for purposes of Section 4603.25 is 16,000 square feet. Therefore, Saudi Arabia is required to furnish a minimum 20, rather than 14, on-site parking spaces. For reasons noted above, it does not appear that such a large number of on-site spaces can be provided without alteration of structure and palpable harm to the neighborhood.

C. The Chancery Use of the Subject Property Will Create Dangerous and Objectionable Traffic Conditions

Under Section 4603.28, a finding by the BZA that the proposed chancery use will not "create dangerous or other objectionable traffic conditions" is required. However, even if the applicant could provide the minimum amount of on-site parking mandated under Section 4603.25, discussed supra, there would still be an inadequate number of on-site parking spaces

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23/ The subject property cannot be used as an embassy, in whole or in part, since the "official residence of [the] ambassador" is in an adjacent structure. Section 1202, as amended.

for chancery employees and visitors. Consequently, employees and visitors would be forced to park, legally or otherwise, on the already congested neighborhood streets predictably resulting in traffic hazards.

To alleviate this serious problem, the BZA pursuant to its authority under Section 4604.3, should impose a requirement that the Applicant provide sufficient on-site parking for all chancery employees and visitors anticipated in the immediate and foreseeable future.

Applicant's statement at page 3, asserts that "[t]he chancery will have an estimated average daily staff of 25 persons, although a total of approximately 35 persons will be employed in the facility," and that the proposed chancery use "is anticipated to generate a maximum visitor count per day of 25 and an average at any one time of six visitors." Based upon these figures and estimated modal splits, applicant's traffic consultant projects maximum employee and visitor parking demands of 17 and 2, respectively.

The average number of persons employed in the chancery is not an appropriate or reliable basis for determining parking demand. The neighborhood residents submit that, for that purpose, the number of employees should be computed in accordance with Section 7207.12 of the Zoning Regulations:

> The number of employees shall be computed on the basis of the greatest number of persons to be employed at any one period during the day or night.

For parking demand purposes, the chancery must be considered to have 35 employees. Using the same modal split estimates as applicant's traffic consultant, 25 employee parking spaces are necessary.

Turning to the question of visitor parking, if, as estimated by the traffic consultant, 20% of the peak accumulation of chancery visitors will arrive by car (i.e., two persons), a minimum of three or four visitor parking spaces will be required. Without provision for at least one more space then the average number of visitors, overlapping chancery appointments predictably will result in vehicles having to stand on Rock Creek Drive or Massachusetts Avenue until on-site parking becomes available, or to park illegally on either thoroughfare.

To assure adequate on-site visitor and employee parking for the immediate future, at least 28 to 29 spaces are indicated. Future parking demands may be greater, however, and the BZA should impose a requirement that adequate on-site parking be provided at all times as a condition of approving Saudi Arabia's application.

Finally, in keeping with the business office character of the proposed use, Saudi Arabia should be required to provide a loading berth.

D. If the Application is Conditionally Recommended, the ANC Should Also Recommend a Limited Waiver of Sovereign Immunity for Purposes of Enforcing Any Conditions

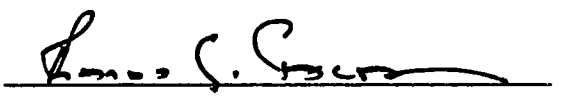
The neighborhood residents strongly believe that applicant should be directed by the ANC and BZA to file a revised site plan showing all demolition and construction necessary to provide sufficient on-site parking in compliance with Section 7206 of the Zoning Regulations, and that all interested parties should be afforded an opportunity to cross-examine applicant and its experts as to that revised plan during the BZA hearing. If, however, the ANC is inclined to conditionally recommend the application, we submit that it should also recommend as a condition of approval that Saudi Arabia provide a limited waiver of its sovereign immunity to guarantee that all conditions will be observed. Absent a waiver of foreign sovereign immunity, neither the neighborhood residents nor the District of Columbia government will have a remedy at law to enforce any condition imposed by the BZA and any such condition may be ignored with total impunity.

E. Conclusion

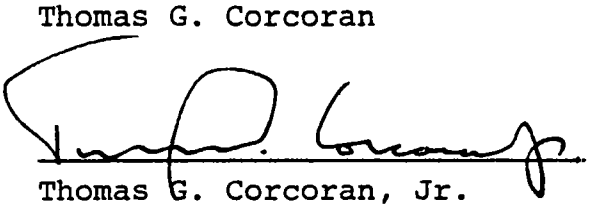
Wholly apart from policy decisions embodied in the Zoning Commission's new regulations as to the location of chanceries in residential districts, this case presents several serious issues for consideration by the ANC and resolution by the BZA. Not the least of these is the question of whether, in order to furnish adequate parking to its visitors and

employees, a foreign government should be permitted to place a busy parking lot in an otherwise exclusively residential community. Such a facility on the scale required for the chancery of Saudi Arabia is radically out of character with the present and proposed development of the neighborhood.

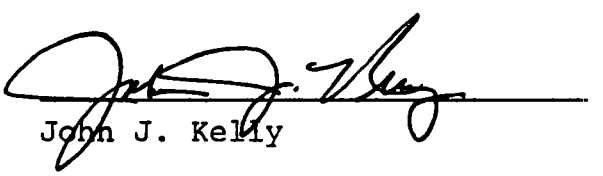
Respectfully submitted,



Thomas G. Corcoran



Thomas G. Corcoran, Jr.



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Dated: December 15, 1978

EXHIBIT A

Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 236
CASE NO. 77-45
September 14, 1978

Pursuant to notice, public hearings of the District of Columbia Zoning Commission were held on January 23, February 27, June 22 and June 29, 1978 to consider proposed amendments to the text of the Zoning Regulations. Such amendments proposed to revise the regulations concerning the location of embassies, chanceries and international agencies, including the creation of a new Diplomatic District.

As a companion Order to this case, the Commission is also adopting Order No. 237, mapping the Diplomatic District at various locations in the District of Columbia. The Commission is also issuing a full statement of reasons, setting forth the basis for its decision on both the text and map cases.

The Commission believes that the amendments contained herein are in the best interests of the District of Columbia and are consistent with the intent and purposes of the Zoning Regulations and the Zoning Act. The Commission therefore hereby Orders adoption of those amendments to the Zoning Regulations specified in the document entitled "Zoning Text Amendment for Chanceries and International Agencies," dated September 14, 1978, a copy of which is attached hereto and made a part hereof.

Vote of the Commission taken at the public meeting held on July 24, 1978: 3-0 (Walter B. Lewis, George M. White and John G. Parsons to approve the changes, Theodore F. Mariani and Ruby B. McZier not present, not voting).

WALTER B. LEWIS
Chairman

STEVEN E. SHER
Executive Director

This order was adopted by the Zoning Commission at its public meeting held on September 14, 1978 by a vote of 4-0 (John G. Parsons, Theodore F. Mariani and Walter B. Lewis to adopt, Ruby B. McZier to adopt by proxy, George M. White not present, not voting).

In accordance with Section 3.62 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, these amendments to the Zoning Regulations are effective on 22 SEP 1978.

September 14, 1978

ZONING TEXT AMENDMENT FOR CHANCERIES AND INTERNATIONAL AGENCIES

Z. C. CASE 77-45

The proposed amendment is, as follows:

I. Amend and add new definitions in Section 1202, as follows:

A. Delete the existing chancery definition and substitute the following:

> Chancery: The site and any building or buildings therein containing offices of a Foreign Mission and used for diplomatic, legation or consular functions. The term chancery shall include a chancery-annex or the business offices of those attaches of a foreign government who are under the personal direction and superintendence of the chief of mission and who are engaged in diplomatic activities recognized as such by the Department of State, Federal Government. The term chancery shall not include the business offices of nondiplomatic missions of foreign governments, such as purchasing, financial, educational, or other missions of a comparable nondiplomatic nature.

B. Delete the existing embassy definition and substitute the following:

> Embassy: The official residence of an ambassador or other chief of a diplomatic mission or that portion of a combined chancery/embassy devoted to use as such official residence.

C. Insert a definition of an historic district, as follows:

> Historic District: means an area, place, site, vicinity, or neighborhood, designated as such by the Joint Committee on Landmarks of the National Capital for inclusion in the District of Columbia Inventory of Historic Sites.

D. Insert a definition of an historic landmark, as follows:

> Historic Landmark: means a building, structure, site, place, monument, work of art or other similar object, designated as such by the Joint Committee on Landmarks of the National Capital for inclusion in the District of Columbia Inventory of Historic Sites.

E. Insert a definition of an international agency, as follows:

> International Agency: A public international agency which has been designated by Executive Order of the President as entitled to the privileges, exemptions, and immunities of the International Organization Immunities Act of 1945, as amended.

II. Add a new Article 46, as follows:

ARTICLE 46

MIXED USE DIPLOMATIC DISTRICT (D) AND RELATED PROVISIONS FOR THE LOCATION OF CHANCERIES AND INTERNATIONAL AGENCIES

Section 4601 -- Preamble

This Article establishes regulations for the location of Chanceries and International Agencies, provides a review process to give special care to the protection of residential areas, and encourages the location of chanceries in commercial and mixed use Districts. The regulations are adopted in implementation of the Foreign Missions and Inter-

national Agencies Element of the Comprehensive Plan for the National Capital and other applicable provisions of law governing foreign missions and international agencies.

It provides that Chanceries may locate in medium-high and high density residential areas in commercial areas and in mixed use areas. It establishes a Mixed Use Diplomatic (D) District to be mapped in implementation of the Foreign Missions Element.
It establishes standards for the review of locations of Chanceries in the (D) District and certain other specified Districts to assure that the Chancery is not incompatible with the present and proposed development of the neighborhood.

This Article also provides for the location of embassies in Districts where residences are permitted and for the location of international agencies in Districts where offices are permitted.

Section 4602 -- Mixed Use Diplomatic (D) District

4602.1 -- The Mixed Use Diplomatic (D) District shall be mapped at suitable locations in implementation of the Foreign Missions and International Agencies Element. The mapping shall be in combination with any District mapped at such location and shall not be in lieu of such District. All uses, buildings and structures permitted in accordance with this Section and the appropriate Sections of the regulations for the District with which the mapped (D) District is combined shall be permitted in such combined Districts. All restrictions and prohibitions provided with respect to either of the Districts so combined shall also apply, except as specifically modified by this Article.1/

1/ The D District is always mapped in combination with another District. The provisions of both Districts apply. For example, where a D District is mapped together with an R-5-B District, the regulations of the D District and the regulations of the R-5-B District in regard to height, bulk and density apply to any chancery use. Such a combined designation will show on the Zoning Map as D/R-5-B.

Section 4603 -- Review Standards

4603.1 -- In areas mapped D, R-5-C, R-5-D, or SP, a Chancery is a permitted use, provided that the Board of Zoning Adjustment determines after a public hearing that the proposed Chancery is not incompatible with the present and proposed development of the neighborhood.[2/]

4603.2 -- In determining that the proposed chancery is not incompatible with the present and proposed development of the neighborhood, the Board of Zoning Adjustment must find that:

4603.21 -- The architectural design and the arrangement of all structures and of off-street parking spaces are in keeping with the character of the neighborhood.

4603.22 -- The height of the building does not exceed the maximum permitted in the applicable single or combined District in which it is located.

4603.23 -- The percent of lot occupancy does not exceed the maximum permitted and the minimum yard and court requirements are met in the applicable single or combined District in which it is located.

4603.24 -- The maximum FAR does not exceed the FAR prescribed for the applicable single District or the combined Districts in which it is located or an FAR of 1.5, whichever is greater.

4603.25 -- Except for Chanceries located in an R-5-C or R-5-D District, off-street parking spaces will be provided at a ratio of not less than one such space for every eight hundred (800) square feet of gross floor area devoted to chancery use.

2/ For complementary use provisions and relevant development standards see:

R-5-C and R-5-D, 3105.4, 3201, 3301, 3302, 3303, 3304, 3305, 3306, and 3308;

SP, 4101.4, 4201, 4301, 4302, 4303, 4304, 4305, 4306, and 4307; and

4603.26 -- In an R-5-C District, off-street parking spaces will be provided at a ratio of not less than one such space for each twelve hundred (1,200) square feet of gross floor area devoted to Chancery use.

4603.27 -- In an R-5-D District off-street parking spaces will be provided at a ratio of not less than one such space for each one thousand eight hundred (1,800) square feet of gross floor area devoted to Chancery use.

4603.28 -- The use will not create dangerous or other objectionable traffic conditions.

Section 4604 -- Process

4604.1 -- The Board of Zoning Adjustment shall refer the application and site plan to the District of Columbia Municipal Planning Office (MPO) for coordination, review and report, said report to include any recommendations with respect to the application and site plan of other District departments and agencies including the Departments of Transportation, Environmental Servies, and Housing and Community Development. Comment also shall be requested of the U. S. Department of State, the National Capital Planning Commission, and in areas of its jurisdiction, the U. S. Commission of Fine Arts.

4604.2 -- When the chancery is to be located in a designated historic district or historic landmark, the application shall be referred to the Historic Preservation Officer of the District of Columbia for a report on the impact of the proposed chancery on said district or landmark. To facilitate this review the applicant shall, at the request of the Historic Preservation Officer, submit exterior elevations of all buildings, and structures showing any proposed extension, alterations or additions. When mutually agreed, the Board of Zoning Adjustment shall have authority to arrange concurrent hearings with the Historic Preservation Officer.

4604.3 -- In making its determination that the proposed chancery is not incompatible with the present and proposed development of the neighborhood, the Board of Zoning Adjustment may require such special treatment and impose such reasonable conditions as it shall deem necessary to mitigate any adverse impacts identified in accordance with Sections 4603 and 4604. Such conditions may include but are not limited to the location of structures and facilities, off-street parking apaces, loading berths, curb cuts, and requirements for screening, noise control and the protection of historic districts and historic landmarks.

Section 4605 -- Chanceries in Other Districts

4605.1 -- In a W, CR, C-2-B, C-3, C-4 or C-5 District a chancery use shall be established in accordance with the height, yard, court, lot occupancy, floor area ratio, parking space and loading berth requirements of the District in which it is proposed to be located.3/

4605.2 -- Chancery uses existing on 22 SEP 1978 (effective date of this amendment) may expand where located or be replaced by other chancery uses in accordance with this Article, provided that in any R-1-A, R-1-B, R-2, R-3. R-4, R-5-A, R-5-B, C-1, C-2-A or SP District any additions to the buildings or structures used as a chancery are approved in accordance with the provisions of Sections 4603 and 4604.4/

3/ For complementary use provisions and relevant development standards see:

W, 4402, 4403, 4404, 4405, 4406, and 4407;
CR, 4502, 4503, 4504, 4505, 4506, and 4507; and
C-2-B, C-3, C-4, and C-5, 5102, 5201, 5301, 5302, 5303, 5304, 5305, 5306, and 5307.

4/ For complementary use provisions and relevant development standards see:

R-1-A, R-1-B, R-2, R-3, R-4, R-5-A, and R-5-B, 3101, 3201, 3301, 3302, 3302, 3304, 3305, 3306, and 3307; and

C-1 and C-2-A, 5101.3, 5102, 5201, 5301, 5302, 5303, 5304 5305 and 5306.

Section 4606 -- Embassies

4606.1 -- An embassy shall be permitted in any District except a C-M or M District, subject to the standards of use, occupancy and development of such District.5/

Section 4607 -- International Agencies

4607.1 -- An international agency shall be permitted in any SP, W, CR, C-2-B, C-3, C-4, or C-5 District provided that:

4607.11 -- The international agency is established in accordance with the standards of use, occupancy and development of the District in which it is located.

4607.12 -- In an SP District the establishment of international agency is approved in accordance with the provisions of Sections 4603 and 4604.6/

5/ For complementary use provisions and relevant development standards see:

R-1-A, R-1-B, R-2, R-3, R-4, R-5, 3101.3, 3201, 3301, 3302, 3303, 3304, 3305, 3306, 3307 and 3308; SP, W, CR and C, Articles 41, 42, 43, 44, 45, and Chapter 5.

6/ For complementary use provisions and relevant development standards see:

SP, 4101.4, and Articles 42 and 43; W and CR. Articles 44 and 45; C-2-B, 5102.3 and Articles 52, 53, and 54; and C-3, 5103, 5104, and Articles 52, 53, and 54.

Section 4608 -- Pending PUD Applications

4608.1 -- All valid applications to locate chanceries or international agencies under procedures of the planned unit development process (PUD) filed before October 6, 1977 and pending on 22 SEP 1978 (effective date of this amendment) may, at the option of the applicant, continue to be processed under those procedures.7/

III. Other sections of the Zoning Regulations shall be amended, as follows:

A. Amend Sub-section 3101.310, Residential Use Regulations, as follows:

3101.310 -- Embassy, pursuant to the provisions of Article 46, Section 4606.

B. Add a new paragraph as follows:

3101.313 -- Chancery use existing on 22 SEP 1978 (effective date of this amendment) provided that before any additions to buildings or structures shall be made, the Board of Zoning Adjustment determines after a public hearing that the proposed use and the building in which the use is to be located are compatible with the present and proposed development of the neighborhood, pursuant to the provisions of Article 46, Subsection 4605.2

7/ For relevant PUD procedures and development standards see 7501.

C. Delete existing paragraph 3101.410 and the related foot note. Renumber existing paragraph 3101.411 to become 3101.410, renumbering subsequent paragraphs.

D. Add a new paragraph as follows:

3105.46 -- Chancery in the R-5-C and R-5-D Districts, provided that the Board of Zoning Adjustment determines after a public hearing that the proposed use and the building in which the use is to be located are not incompatible with the present and proposed development of the neighborhood, pursuant to the provisions of Article 46, Sections 4601, 4603 and 4604.

E. Amend the SP District regulations as follows:

1. Delete chanceries from the list of uses in Sub-section 4101.35 and 4101.42.

2. Add a new paragraph:

4101.49 -- Chancery or international agency, provided that the Board of Zoning Adjustment determines after a public hearing that the proposed use and the building in which the use is to be located are not incompatible with the present and proposed development of the neighborhood, pursuant to the provisions of Article 46, Sections 4603, 4604, and 4605 or 4607.

F. Amend the W and CR District regulations by adding the following paragraphs:

4402.220 -- Chancery or international agency, pursuant to the provisions of Article 46, Sections 4605 or 4607.

4402.221 -- Chancery or international agency, pursuant to the provisions of Article 46, Sections 4605 or 4607.

G. Amend the C-1 District regulations as follows:

5101.37 -- Office, except new chanceries and international agencies.

5101.39 -- Chancery use existing on 22 SEP 1978 (effective date of this amendment) provided that before any additions to buildings or structures shall be made, the Board of Zoning Adjustment determines after a public hearing that the proposed use and the building in which the use is to be located are not incompatible with the present and proposed development of the neighborhood, pursuant to the provisions of Article 46 and Subsection 4605.

H. Amend the C-2 District regulations as follows:

5102.37 -- Chancery or international agency in the C-2-B District, pursuant to the provisions of Article 46, Sections 4605.1 and 4607.1.

I. Amend the C-M District regulations to add a new paragraph 6101.34, renumbering subsequent paragraphs.

6101.34 -- Chancery or international agency use existing on 22 SEP 1978 (effective date of this amendment).

Add to the end of Paragraph 6101.31 the following:

"and chanceries and international agencies".

J. Amend Subsection 8207.2, as follows:

1. Delete the following:

Chancery, any R District, 3101.410 and New Office building - chancery, SP District,4101.42.

2. Add the following:

Chancery, expansion	Any R District	3101.313, 4603, 4604
Chancery	R-5-C or R-5-D	3105.46, 4603, 4604
	SP	4101.49, 4603, 4604
International Agency	SP	4101.49, 4603, 4604

K. Amend Section 2101 to include the D District, as follows:

2101.17 -- Mixed Use Diplomatic District D -- Low and medium density.

Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 237
CASE NO. 77-46
September 14, 1978

Pursuant to notice, public hearings of the District of Columbia Zoning Commission were held on January 23, February 27, June 22 and June 29, 1978 to consider proposed amendments to the Zoning Map. Such amendments proposed to designate certain areas within the District of Columbia with Diplomatic Overlay Districts.

As a companion Order to this case, the Commission is also adopting Order No. 236, creating the Diplomatic District and otherwise regulating the location of embassies, chanceries and international agencies. The Commission is also issuing a full statement of reasons setting forth the basis for its decisions on both the map and text cases.

The Commission believes that the amendments contained herein are in the best interests of the District of Columbia and are consistent with the intent and purposes of the Zoning Regulations and the Zoning Act. The Commission therefore hereby orders adoption of those amendments to the Zoning Map specified in the document entitled "Diplomatic Zone Mapping," dated September 14, 1978, a copy of which is attached hereto and made a part hereof.

Vote of the Commission taken at the public meeting held on July 24, 1978: 3-0 (John G. Parsons, George M. White and Walter B. Lewis to approve the changes, Theodore F. Mariani and Ruby B. McZier not present, not voting).

WALTER B. LEWIS
Chairman

STEVEN E. SHER
Executive Director

This order was adopted by the Zoning Commission at its public meeting held on September 14, 1978 by a vote of 4-0 (Theodore F. Mariani, John G. Parsons and Walter B. Lewis to adopt, Ruby B. McZier to adopt by proxy, George M. White, not present, not voting).

In accordance with Section 3.62 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, these amendments to the Zoning Map are effective on 22 SEP 1978.

DIPLOMATIC ZONE MAPPING

September 14, 1978

Designation of the Diplomatic (D) Districts in combination with other Districts shall be as shown on the attached maps and described as follows:

MAP CHANGE INSTRUCTIONS

Square 2577 ---- That portion of the square zoned R-5-B shall become D/R-5-B.

Square 2669 ---- Lot 815 fronting on Columbia Road; lots 28 through 34 fronting on the north side of Harvard Street ; lots 22 through 27 fronting on the south side of Harvard Street; lots 818 through 824 fronting on the north side of Girard Street; and lots 1, 2, 18, 19, 800, 807 and 817 fronting on 15th Street, shall become D/R-5-B.

Square 2666 ---- That portion of the square bounded by Fuller Street, 15th Street, Euclid Street and the public alley running paralled to 15th Street, including lots 196, 197 and 198 shall become D/R-5-B.

Square 2663 ---- That portion of the square between 15th Street and the public alley running parallel to 15th Street shall become D/R-5-B.

Square 2662 ---- That portion of the square between 15th Street and the public alley running parallel to 15th Street, including all lots fronting on 15th

Street and lots 179, 180, 181, 185, 186, 187 and 864 fronting on Chapin Street, shall become D/R-5-B.

Square 2578 ---- That portion of the square zoned R-5-B shall become D/R-5-B.

Square 2575 ---- That portion of the square zoned R-5-B shall become D/R-5-B.

Square 2571 ---- That portion of the square zoned R-5-B shall become D/R-5-B.

Square 2568 ---- That portion of the square zoned R-5-B shall become D/R-5-B.

Square 1939 ---- Lot 38 fronting on 35th Street; all the lots fronting on Massachusetts Avenue; and lots 19, 20,and 810 fronting on 34th Street shall become D/R-1-B.

Square 2122 ---- Lots 21, 20 and 6 fronting on 34th Street and all lots fronting on Massachusetts Avenue shall become D/R-1-A.

Square 2145 ---- Lots 817, 814 and 815 fronting on 30th Street and all lots fronting on Massachusetts Avenue shall become D/R-1-A.

Square 2198 ---- Lot 809 fronting on 30th Street and Massachusetts Avenue and lot 808 fronting on Rock Creek Drive and Massachusetts Avenue shall become D/R-1-A.

Square 2147 ---- That portion of the square zoned R-5-A shall become D/R-5-A and that portion zoned R-1-A shall become D/R-1-A.

Square 2155 ---- All lots fronting on the south side of Whitehaven Street and zoned R-1-A shall become D/R-1-A.

Square 1299 ---- That portion of lots 1008 and 1011 zoned R-1-B shall become D/R-1-B.

Square 2500 ---- All lots fronting on Massachusetts Avenue and lots 841, 874 and 853 shall become D/R-3.

Square 2507 ---- The entire square shall become D/R-3.

Square 2511 ---- The entire square shall become D/R-3.

Square 2501 ---- Lots 808, 8, 9 and 10 fronting on Water Side Drive; lots 11 and 12 fronting on Massachusetts Avenue; and lots 13, 14, 15, 807 and 806 fronting on Belmont Road shall become D/R-1-B.

Square 2505 ---- Lots 22, 809, 808 and 20 fronting on Tracy Place and all lots fronting on Massachusetts Avenue and California Street shall become D/R-1-B.

Square 2506 ---- Lots 28, 29 and 30 fronting on California Street; all lots fronting on Massachusetts Avenue; and lots 41, 42 and 800 fronting on 24th Street shall become D/R-1-B.

Square 2517 ---- Lots 32, 802, 46, 37, 36, 816 and 814 fronting on "S" Street; lots 815, 813 and 808 fronting on 24th Street; lots 807, 48, 47 and 14 fronting on Massachusetts Avenue; and lots 811, 8 and 7 fronting on Decatur Place shall become D/R-1-B.

Square 2516 ---- Lots 817, 818, 22, 61, 60 and 63 fronting on Decatur Place; all lots fronting on Massachusetts Avenue; and all lots fronting on "R" Street shall become D/R-3.

Square 2512 ---- The entire square shall become D/R-3.

Square 2513 ---- The entire square shall become D/R-3.

Square 2514 ---- That portion of the square zoned R-3 shall become D/R-3 and that portion of the square zoned R-5-B shall become D/R-5-B.

Square 2515 ---- The entire square shall become D/R-3.

Square 2533 ---- The entire square shall become D/R-3.

Square 65 ---- The entire square shall become D/R-5-B.

Square 66 ---- That portion of the square zoned R-5-B shall become D/R-5-B.

Square 92 ---- That portion of the square zoned R-5-B shall become D/R-5-B.

Square 93 ---- That portion of the square zoned R-5-B shall become D/R-5-B.

Square 2527 ---- Lots 46, 86 and 87 fronting on Wyoming Avenue shall become D/R-1-B.

Square 2202 ---- The entire square shall become D/C-2-A.

Square 2203 ---- The entire square shall become D/C-2-A.

Square 150 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 151 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 175 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 176 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 189 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 190 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 204 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 205 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 154 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 155 ---- Those portions of the square zoned C-2-A shall become D/C-2-A.

Square 178 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 179 ---- Those portions of the square zoned C-2-A shall become D/C-2-A.

Square 180 ---- Those portions of the square zoned C-2-A shall become D/C-2-A.

Square 95 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 48 ---- The entire square shall become D/C-2-A.

Square 68 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1194 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1195 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1196 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1197 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1198 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1199 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1200 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1202 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1203 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1204 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1205 ---- Those portions of the square zoned C-2-A shall become D/C-2-A.

Square 1206 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1207 ---- The entire square shall become D/C-2-A.

Square 1208 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1209 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1210 and 1212 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1214 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1218 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1231 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1232 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1243 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1244 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1255 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1256 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1271 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1272 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1279 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1280 ---- Those portions of the square zoned C-2-A shall become D/C-2-A.

Square 1290 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1295 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1298 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 2154 ---- That portion of the square zoned C-2-A shall become D/C-2-A.

Square 1299 ---- Those portions of the square zoned C-2-A shall become D/C-2-A.

Square 1300 ---- Those portions of the square zoned C-2-A shall become D/C-2-A.

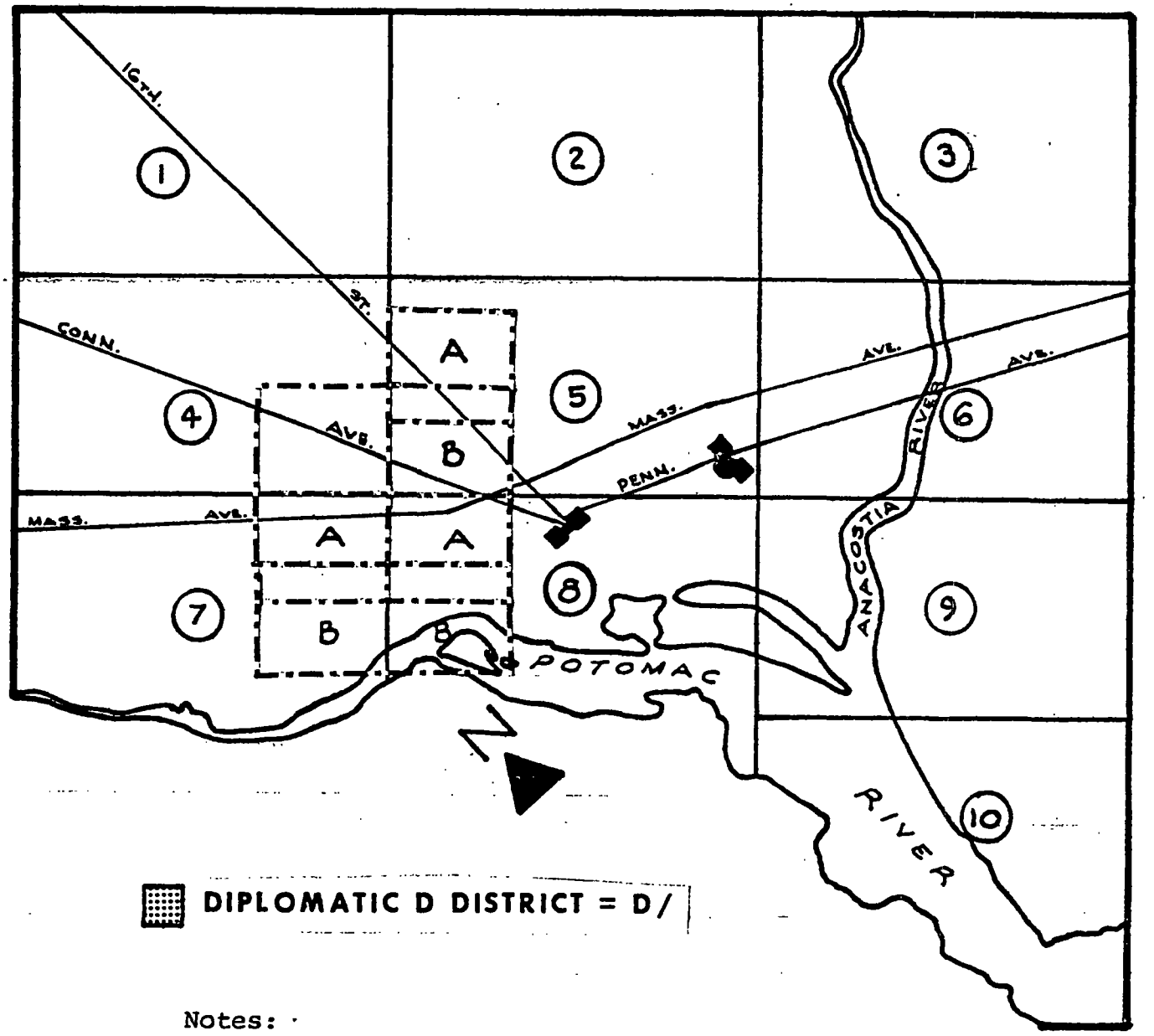
Note that all references to squares and lots are from the Baist Atlas, Volumes 1 and 3 on record in the Office of the Zoning Secretariat.

Z. C. Case No. 77-46

MIXED USE DIPLOMATIC (D) DISTRICT

MAPS

ZONING ATLAS INDEX MAP



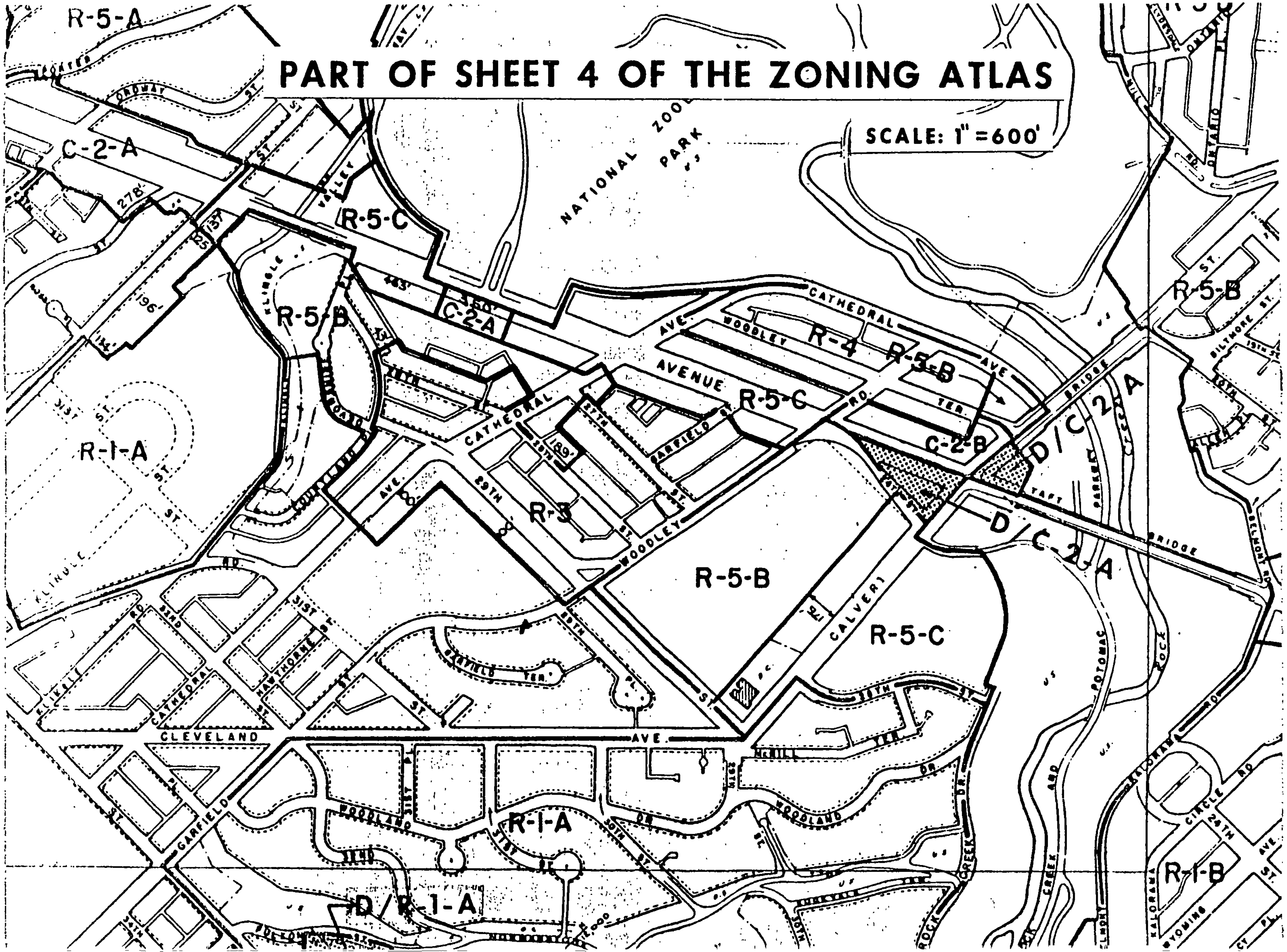
Notes:

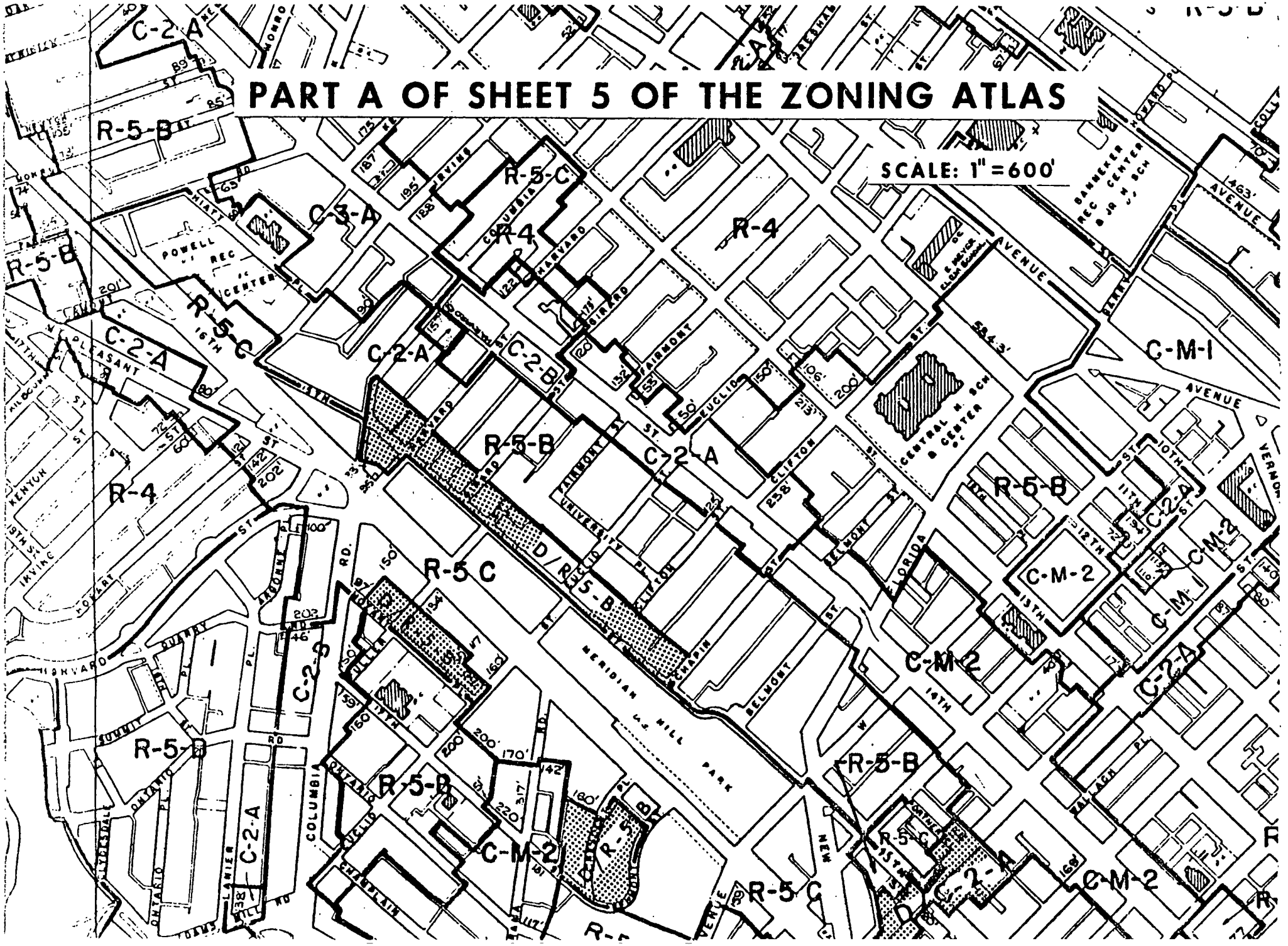
The shading on these maps is provided for information only.

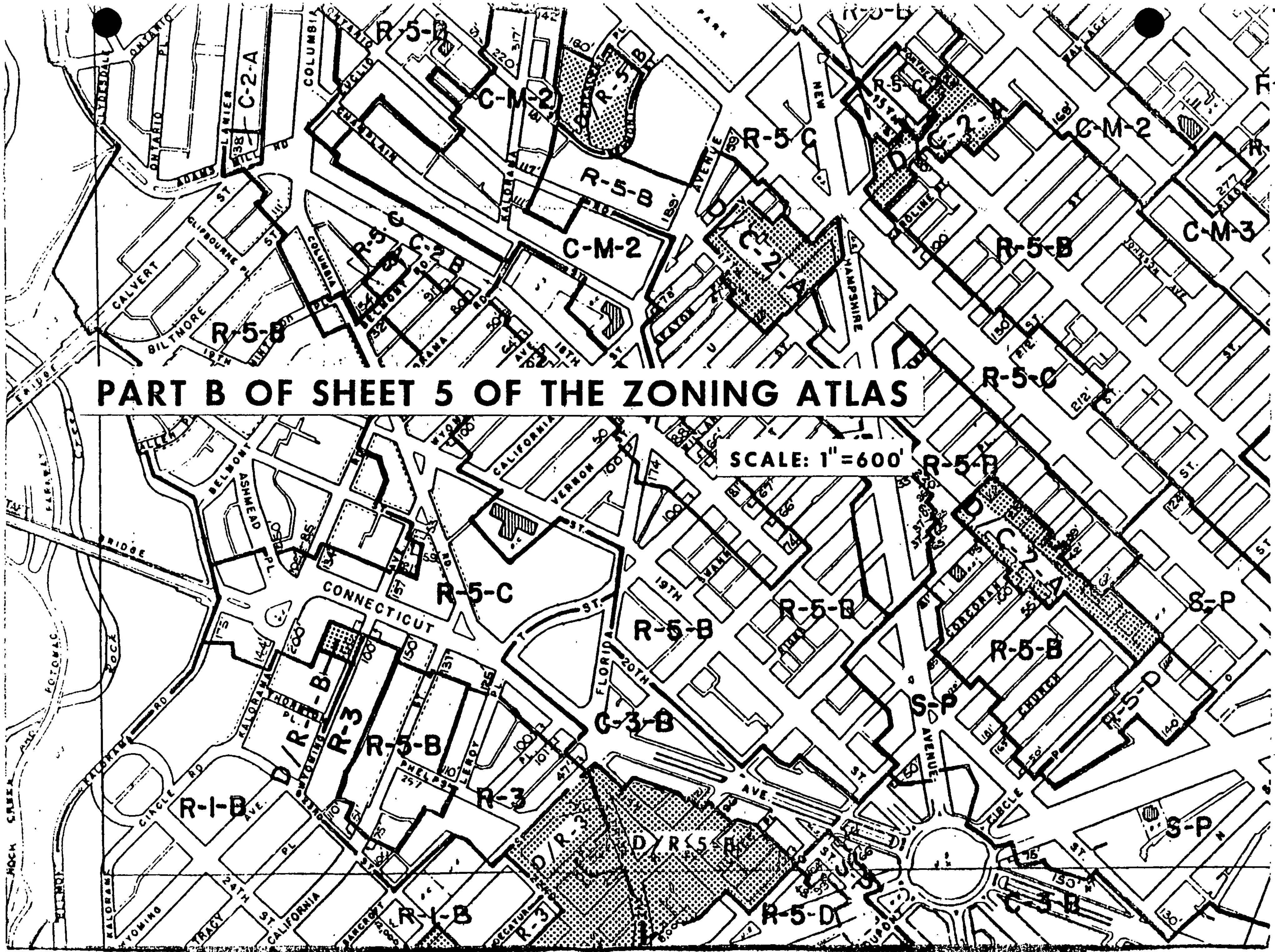
These maps can be pasted into the Zoning Atlas to update same.

PART OF SHEET 4 OF THE ZONING ATLAS

SCALE: 1" = 600'

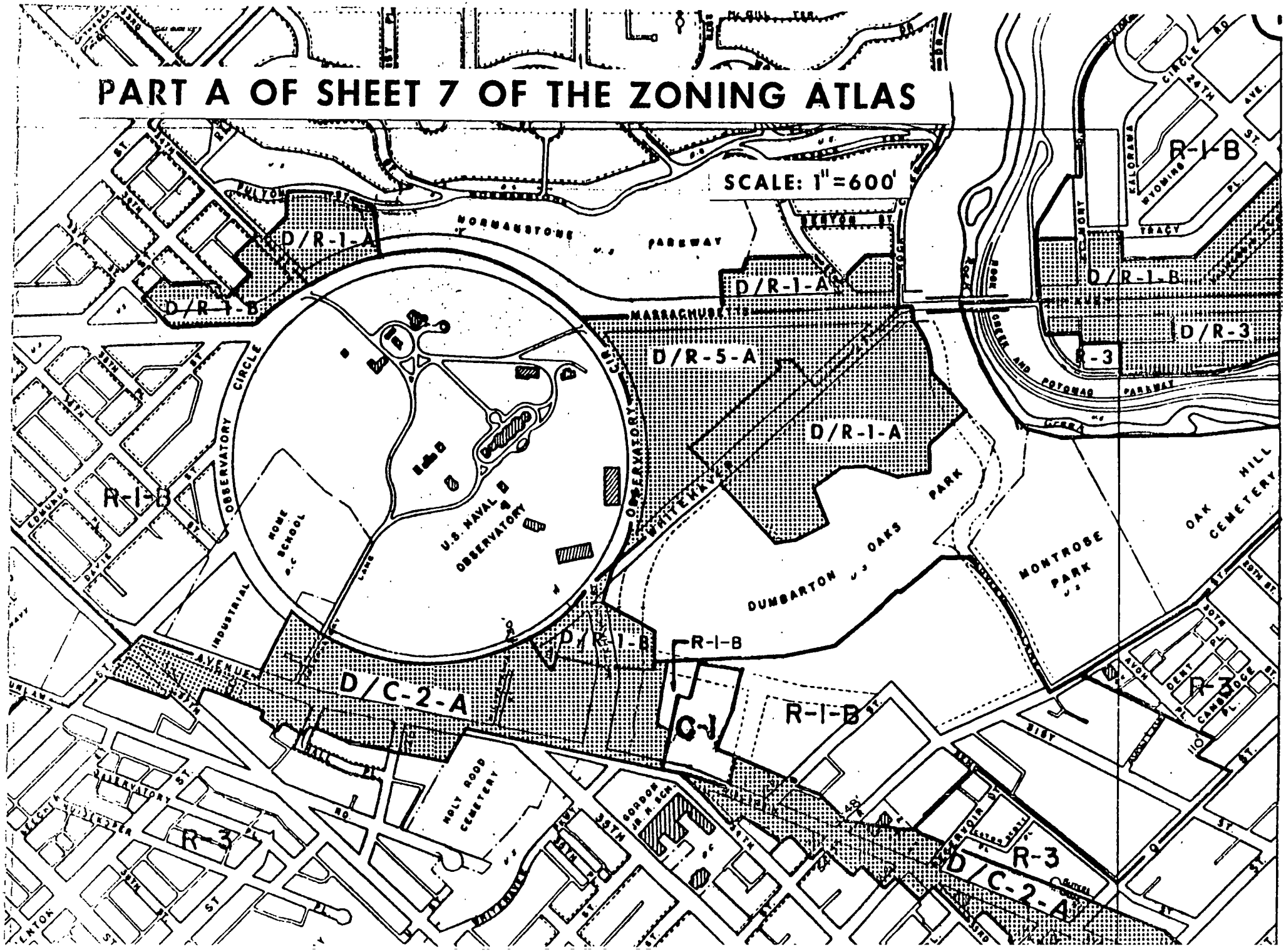


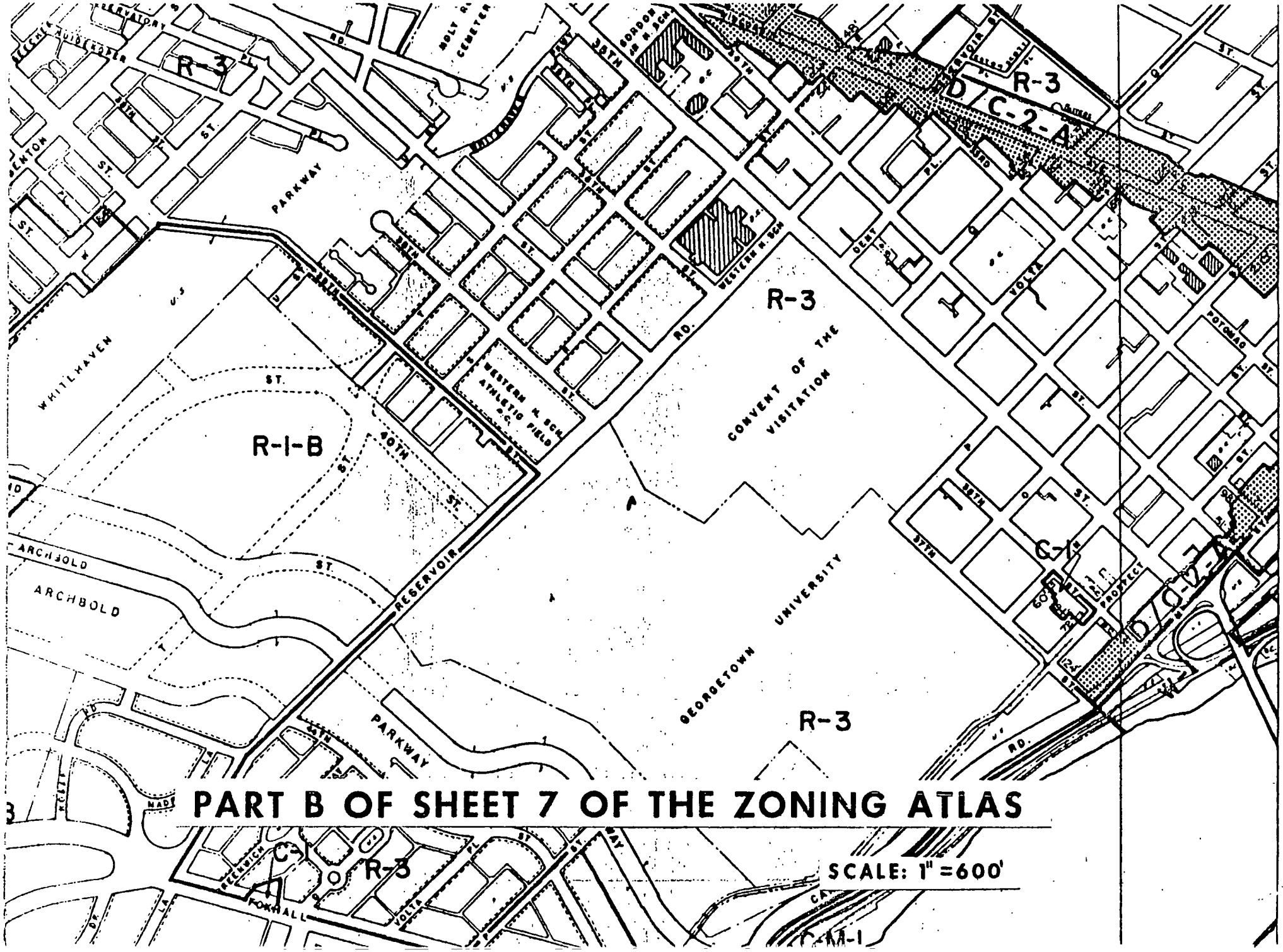

PART A OF SHEET 5 OF THE ZONING ATLAS
SCALE: 1" = 600'
C-2-A
R-5-B
R-5-C
C-3-A
R-4
C-2-B
C-M-1
C-M-2
D/R-5-B
MERIDIAN HILL PARK
POWELL REC CENTER
BANNEKER REC CENTER & JR. H. SCH.
CENTRAL H. SCH & CENTER
E. MEYER CLEM. SCH.
16TH ST.
14TH ST.
13TH ST.
12TH ST.
11TH ST.
10TH ST.
IRVING ST.
COLUMBIA RD.
HARVARD ST.
FAIRMONT ST.
EUCLID ST.
CLIFTON ST.
BELMONT ST.
FLORIDA AVE.
463' AVENUE
584.3'



PART B OF SHEET 5 OF THE ZONING ATLAS
SCALE: 1"=600'
R-5-B
R-5-C
R-5-D
C-2-A
C-2-B
C-M-2
C-M-3
C-3-B
D/C-2-A
D/R-5-B
D/R-3
R-3
R-1-B
S-P
CONNECTICUT
CALIFORNIA
VERNON
FLORIDA
CALVERT
BILTMORE
COLUMBIA
CHAMPLAIN
KALORAMA
HAMPSHIRE
CORCORAN
CHURCH
BRIDGE
CIRCLE
AVENUE
PHELPS
LEROY
WYOMING
TRACY
BANCROFT
DECATUR
19TH
20TH
24TH
ASHMEAD
BELMONT
CLIFBOURNE

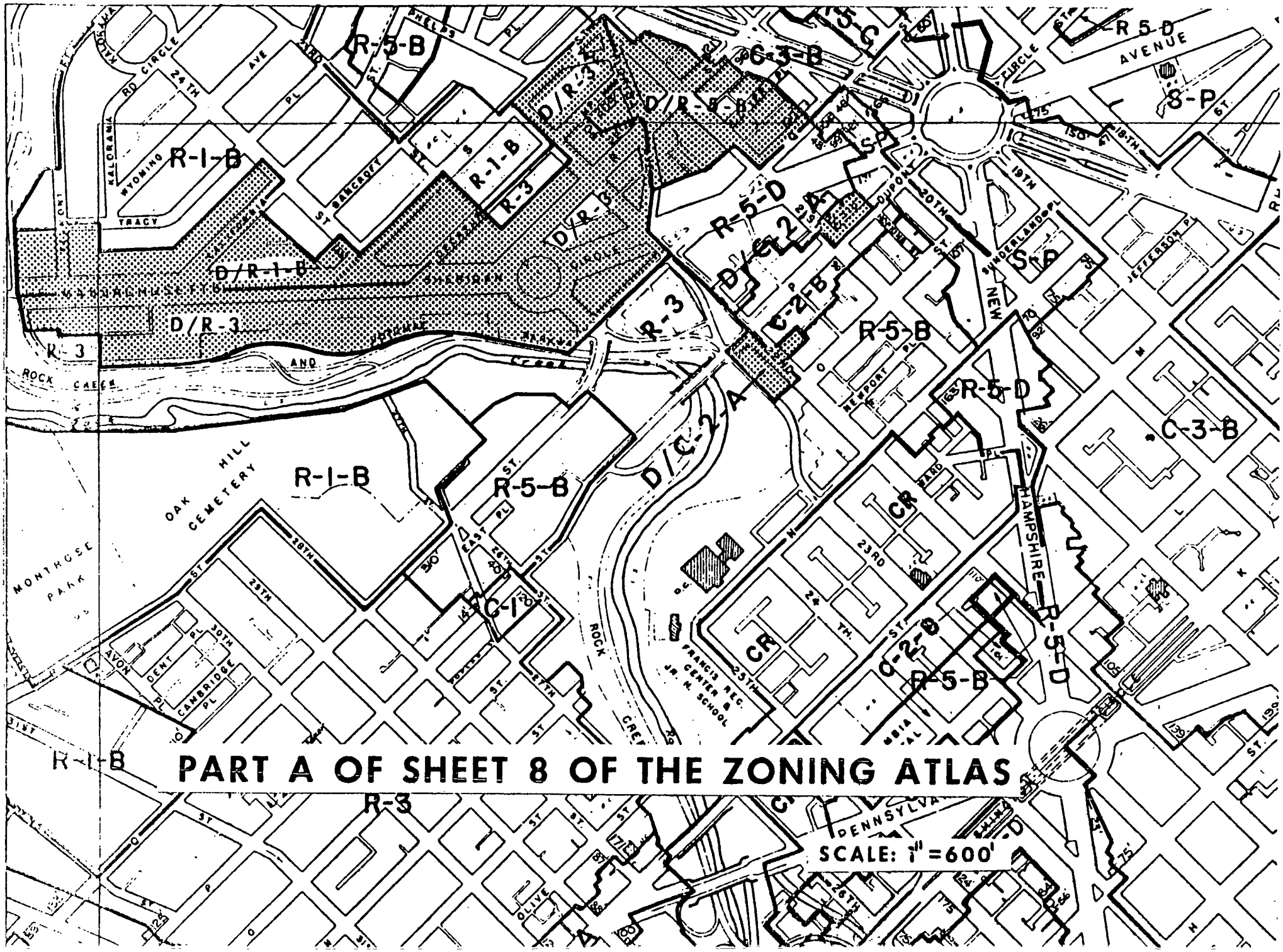
PART A OF SHEET 7 OF THE ZONING ATLAS





PART B OF SHEET 7 OF THE ZONING ATLAS

SCALE: 1" =600'


R-5-B
C-3-B
R-5-D
S-P
R-1-B
D/R-3
D/R-1-B
R-3
D/C-2-A
C-2-B
R-5-B
S-A
C-3-B
OAK HILL CEMETERY
C-1
CR
C-2-B
R-5-B
R-5-D
R-1-B
R-3
PART A OF SHEET 8 OF THE ZONING ATLAS
SCALE: 1" = 600'

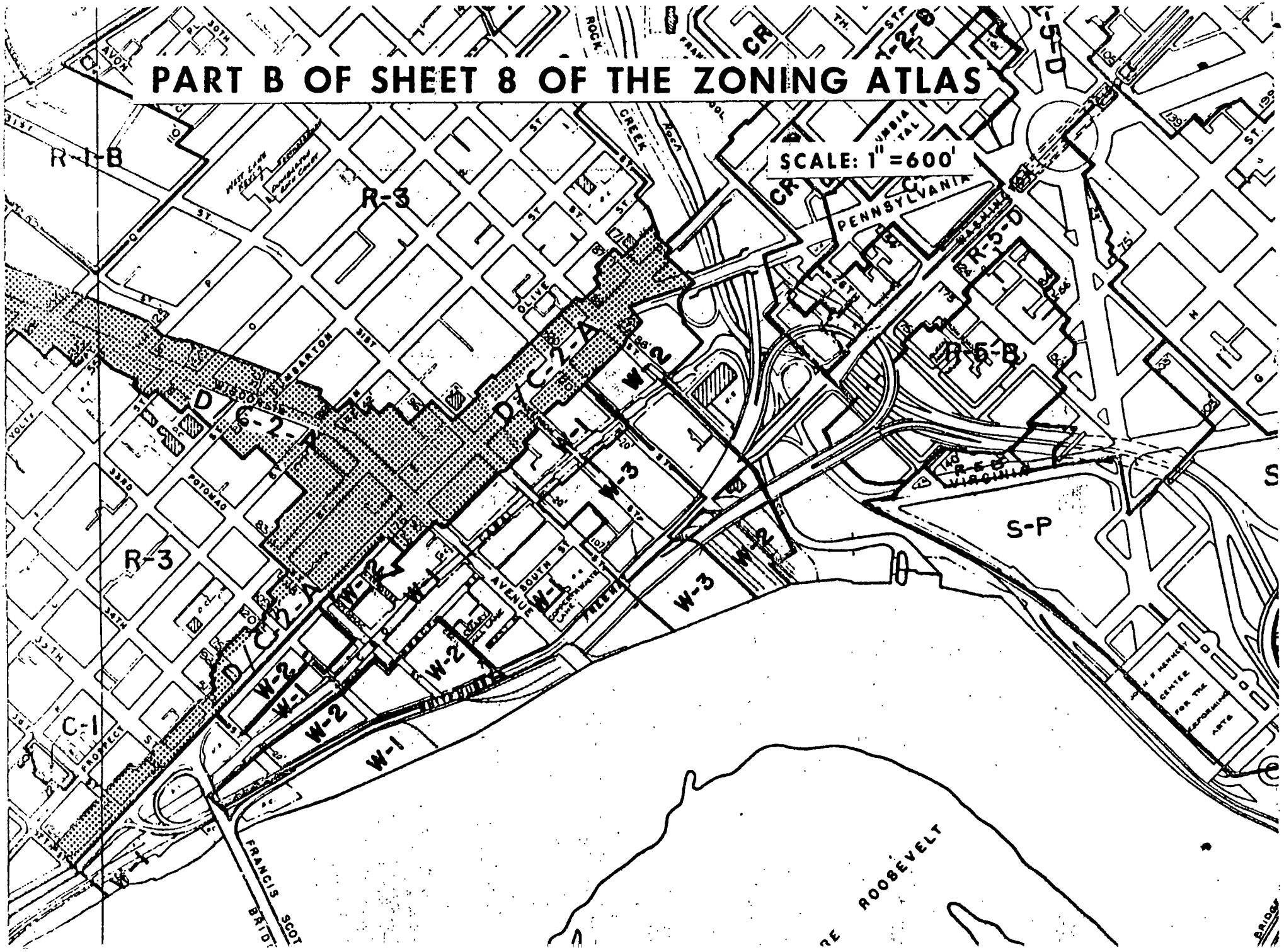

PART B OF SHEET 8 OF THE ZONING ATLAS
SCALE: 1" = 600'
R-1-B
R-3
R-5-D
R-5-B
C-1
C-2-A
D/C-2-A
W-1
W-2
W-3
S-P
PENNSYLVANIA
AVENUE
POTOMAC
PROSPECT
OLIVE
ROOSEVELT
FRANCIS SCOT
BRIDGE
JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

EXHIBIT B

Gary KOPFF et al., Petitioners,

v.

DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD et al., Respondents,

C. J. K., Incorporated, Intervenor.

No. 11374.

District of Columbia Court of Appeals.

Argued Sept. 23, 1977.

Decided Dec. 30, 1977.

Rehearing Denied March 6, 1978.

An advisory neighborhood commission and its members sought review of the action of the District of Columbia Alcoholic Beverage Control Board in issuing a "Class C" liquor license. The Court of Appeals, Ferren, J., held, inter alia, that the Board committed reversible error by failure to notify known remonstrants of the rescheduling of the hearing on the application for a liquor license, in failing to post notice of the rescheduled hearing on the applicant's premises, and in failing to give "great weight" to the issues and concerns of the affected neighborhood commissions.

Reversed and remanded for further proceedings.

1. Intoxicating Liquors ⇐75(2)

Advisory neighborhood commission had no capacity to seek court review of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license; area residents who were commission members, however, had standing to initiate such review and to assert rights of commission itself. D.C.C.E. §§ 1–171a et seq., 1–171i(g), 1–1502(b)(9), 1–1510, 25–111(g), 25–114, 25–115(b); D.C.C.E. Court of Appeals Rules, rule 15.

2. Intoxicating Liquors ⇐75(1)

Validity of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license was not mooted as issue by virtue of fact that, after license was initially issued and before court review of Board's action was completed, license was renewed and renewal was not contested. D.C.C.E. §§ 11–101(2)(A), 11–705(b), 25–111(g), 25–115(b); U.S.C.A.Const. art. 1, § 1 et seq.; art. 3, § 1 et seq.

3. Intoxicating Liquors ⇐65

Duties and responsibilities of the Advisory Neighborhood Commissions Act of 1975 requires timely written notice to advisory neighborhood commissions in adjudicative situation such as issuance of particular liquor notice, and requirement of such special notice is not limited to legislative actions. D.C.C.E. §§ 1–171, 1–171(d), 1–171i, 1–171i(a, c).

4. District of Columbia ⇐2

Every proposed governmental decision affecting neighborhood planning and development, as defined in duties and responsibilities of Advisory Neighborhood Commissions Act of 1975, for which prior hearing is required by law is sufficiently significant to require written notice pursuant to such Act to affected advisory neighborhood commission or commissions. D.C.C.E. § 1–171i(c).

5. Intoxicating Liquors ⇐65

Alcoholic Beverage Control Board erred when it failed to give special notice to affected advisory neighborhood commission before it issued liquor license; such error was cured, however, when actual notice was given to affected ANC's by individual remonstrants. D.C.C.E. § 1–171i(c).

6. Intoxicating Liquors ⇐75(7)

In proceedings on application for liquor license, District of Columbia Alcoholic Beverage Control Board committed reversible error in failing to comply with applicable statute by giving notice of rescheduled hearing on license application to known remonstrants and by failing to post such notice on applicant's premises. D.C.C.E. §§ 1–1509(a), 25–115(b).

7. Intoxicating Liquors ⇐65

Requirement that notice of hearing on application for liquor license be given to known remonstrants applied to reschedulings of such hearings. D.C.C.E. § 25–115(b).

8. District of Columbia ⇐2

Requirement of duties and responsibilities of Advisory Neighborhood Commissions Act of 1975 that "great weight" be given to all issues and concern raised by advisory neighborhood commission in all cases where written notice to ANC is required does not imply that greater deference must be given than that accorded ordinary citizens' groups or that ANCs be accorded agency expertise or presumption of deference; requirement means, rather, that agency must elaborate, with precision, its response to ANC issues and concerns. D.C. C.E. § 1–171i(d).

See publication Words and Phrases for other judicial constructions and definitions.

9. Intoxicating Liquors ⇐69

In proceedings before District of Columbia Alcoholic Beverage Control Board on application for liquor license, requirement in duties and responsibilities of the Advisory Neighborhood Commissions Act of 1975 that "great weight" be given to views of advisory neighborhood commissions implied that explicit reference should be given by Board to each ANC issue and concern as such, that specific findings and conclusions with respect to each should be made, and that ANC be acknowledged as source of issue or concern. D.C.C.E. §§ 1–171i(d), 25–115(b).

10. Administrative Law and Procedure ⇐815

Failure to apply generous principles of admissibility of evidence prevailing in administrative proceedings can be basis for reversal of agency decision, although prejudice must be shown.

11. Intoxicating Liquors ⇐70

In proceedings on application for liquor license, District of Columbia Alcoholic Beverage Control Board did not abuse its discretion in refusing to consider hearsay summaries of residents' views about proposed license and information concerning potential congestive impact of metro station under construction nearby. D.C.C.E. § 25–111(g).

12. Intoxicating Liquors ⇐70

In proceeding on application for issuance of liquor license, District of Columbia Alcoholic Beverage Control Board entered findings which were adequate to address each contested issue, including saturation of liquor licenses, parking in traffic, refuse storage, character of neighborhood, and neighborhood wishes and desires. D.C. C.E. §§ 1–1509(e), 1–1510, 25–107, 25–115.

13. Intoxicating Liquors ⇐70

Substantial evidence supported action of District of Columbia Alcoholic Beverage Control Board in issuing "Class C" liquor license in connection with proposed Irish family restaurant. D.C.C.E. §§ 1–1509(e), 1–1510(3)(E), 25–111(g).

14. Intoxicating Liquors ⇐70

In proceedings on application for issuance of Class C liquor license, District of Columbia Alcoholic Beverage Control Board was not required to define relevant neighborhood as being coextensive with boundaries of advisory neighborhood commission which opposed issuance of license. D.C.C.E. §§ 1–1509(e), 1–1510(3)(E), 25–111(g).

Sari B. Marmur, with whom Jason Newman and Johnny Barnes were on the briefs, for petitioners.

Edward E. Schwab, Asst. Corp. Counsel, Washington, D. C., with whom John R. Risher, Jr., Corp. Counsel, Louis P. Robbins, Principal Deputy Corp. Counsel, and Richard W. Barton, Deputy Corp. Counsel, Washington, D. C., were on the brief, for respondent District of Columbia Alcoholic Beverage Control Board.

J. E. Bindeman, Washington, D. C., with whom Leonard W. Burka and Stuart L. Bindeman, Washington, D. C., were on the brief, for intervenor.

Before KELLY, NEBEKER, and FERREN, Associate Judges.

FERREN, Associate Judge:

We are presented with a petition to review the issuance of a "Class C" liquor

license by the Alcoholic Beverage Control Board ("ABC Board") to the intervenor, C.J.K., Inc. ("C.J.K."). Many of the questions presented involve commonly alleged procedural irregularities; the central issue, however, is a matter of first impression—the role of the recently created Advisory Neighborhood Commissions ("ANCs") in ABC Board hearings. For reasons elaborated below, we remand this proceeding to the ABC Board for a new hearing, in order to cure defects in the notice of the hearing on original issuance of the license, and to assure that the Board gives "great weight" to the "issues and concerns" of the ANC, as required by statute. We do not, however, order revocation of C.J.K.'s license; it shall remain in effect pending the outcome of the next hearing.

Our discussion proceeds as follows: Part I describes the ABC Board proceedings at issue. Part II considers the capacity of ANCs to petition for judicial review, the standing of area residents to assert violations of ANC rights, and the alleged mootness of the present petition. Part III covers questions about notice—the failure of the ABC Board to give "special notice" to affected ANCs, to give personal notice to known remonstrants, and to post notice on C.J.K.'s premises. Part IV addresses questions about the Board's obligation to give "great weight" to the "issues and concerns" of affected ANCs. Part V deals with the Board's evidentiary rulings, particularly the exclusion of an ANC resolution, of a neighborhood survey of residents' views, and of certain data respecting the impact of a Metro station under construction nearby. Finally, Part VI discusses the adequacy of the ABC Board's findings and conclusions.

I. *ABC Board Proceedings*

The intervenor, C.J.K., intending to operate an Irish family restaurant, applied on April 22, 1976, for a Class C liquor license for the premises located at 3412 Connecticut Avenue, N.W.[1] As required by statute, D.C.Code 1973, § 25–115(b), the ABC Board posted and published notice of the date for hearing on the application, May 20, 1976. Two neighborhood residents, Judy and Gary Kopff, are among the petitioners here.[2] They collected the signatures of thirty-eight remonstrants on a petition opposing the grant of the license, and submitted the petition to the Board.[3]

For reasons apparently connected with the substantial protest, the ABC Board rescheduled the hearing for June 9, 1976. The Board published notice of the rescheduling, as required, and also personally notified Judy Kopff; but the Board did not notify other known remonstrants or post notice of the new date on the premises. After conducting a contested hearing on June 9, 1976, during which nine individuals testified for the applicant and four remonstrants testified against, the Board determined, by findings of fact and conclusions of law, that the location was "appropriate for the license desired." On September 21, 1976, the Board ordered that the license be issued "upon compliance by the applicant with all remaining requirements of this and other appropriate municipal agencies." C.J.K. complied, and the license eventually was issued on January 14, 1977.[4] In the

1. D.C.Code 1973, § 25–111(g), provides for issuance of a "Retailer's License, class C . . . only for a bona fide restaurant, hotel, or club . . . . [which license] shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. . . ."

2. Petitioners include: Gary Kopff and Judy Kopff; Advisory Neighborhood Commissions 3–C and 3–F; ANC 3–C Commissioners Neal Krucoff, Kay McGrath, Lindsley Williams, Katherine Coram, Charles Vanway, Jr., Sam Smith, Thomas Corcoran, Jr., and Ruth Hougen; ANC 3–F Commissioners Stephen P. Belcher, Jacob D. Kolper, Mark Novitch, Barry Zamoff, and Mitchell H. Sindler. The Commissioners petition both in their official capacities and as individuals.

3. The notice statute, D.C.Code 1973, § 25–115(b), uses the term "remonstrants" to describe those who oppose issuance of a liquor license.

4. By force of D.C.Code 1973, § 25–114, this license expired 17 days later on January 31, 1977. Meanwhile, on December 20, 1976, C.J.K. had applied for "renewal" for the new

meantime, this petition for judicial review had been filed on October 6, 1976. *See* D.C.Code 1977 Supp., § 1510; D.C.App.R. 15.

II. *ANC Capacity to Petition for Judicial Review; Alleged Mootness of the Petition*

The ABC Board and C.J.K. have raised two potential barriers to this court's resolving the issues raised by the petitioners. First, they contend that the ANCs and the ANC Commissioners ought to be dismissed as parties to this proceeding because D.C. Code 1977 Supp., § 1–171i(g) precludes ANCs from initiating court actions. Second, they maintain that the expiration of the 1976–77 license and unprotested issuance of a 1977–78 license to C.J.K. have mooted the petition. Before considering the merits of petitioners' arguments, therefore, we must resolve these two issues.

A. *Capacity to Initiate Legal Action*

[1] The Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, D.C.Law 1–58, March 26, 1976, now codified in D.C.Code 1977 Supp., § 1–171a *et seq.* (the "ANC Act"), contains a specific prohibition against initiation of legal actions by ANCs. The pertinent subsection states:

> The Commission shall not have the power to initiate a legal action in the Courts of the District of Columbia or in the Federal courts, provided that this limitation does not apply to or prohibit any Commission from bringing suit as a citizen.[5] The Commission may petition the Council through the Special Committee on Advisory Neighborhood Commissions or such successor committee should the Commission feel legal redress is required. [D.C.Code 1977 Supp., § 1–171i(g).]

The ABC Board and C.J.K. maintain that this language forbids the ANCs and ANC Commissioners to file the present petition.

Petitioners counter by arguing that the petition for review is not an "initiation" of legal action within the meaning of § 1–171i(g); they say it is a secondary, follow-up step in a process initiated by C.J.K.'s filing of a liquor license application and the ABC Board's holding of an administrative hearing. In support of this contention, petitioners assert that the statutory purpose behind the institution of ANCs—*i. e.*, the creation of "grass roots" organizations capable of identifying and communicating local opinions to legislative and administrative officials—will be defeated if ANCs are not able to seek judicial vindication of their statutory rights when administrative agencies ignore them. As further support for their interpretation, petitioners note that judicial review of administrative determinations is favored; thus, any legislative intention to abridge such review must be shown by clear and convincing evidence. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 141, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967); *Rusk v. Cort*, 369 U.S. 367, 82 S.Ct. 787, 7 L.Ed.2d 809 (1962). Petitioners can perceive no intention in § 1–171i(g) to deny ANCs the generous review provisions of the District of Columbia Administrative Procedure Act (the "DCAPA"). D.C.Code 1977 Supp., § 1–1510. In the context of agency action, therefore, they read § 1–171i(g) to forbid only collateral attacks in court, not judicial review.

Initially, we acknowledge the general availability of judicial review of agency decisions. The DCAPA affords such review to "[a]ny person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case . . . ." D.C.Code 1977 Supp., § 1–1510. The "persons" entitled to

license year, February 1, 1977, to January 31, 1978. On January 25, 1977, that application was granted after the posting of notice as required by law. D.C.Code 1973, § 25–115(b). Notice by publication is not required for renewals. *Id.* The renewed license is currently in effect.

5. Respondents observe that this reference to a "Commission . . . bringing suit as a citizen" is a typographical error which should read "Commissioner." We agree. It is the only logical explanation of the phrase in context. Petitioners do not contest this explanation.

review include "public or private organizations of any character . . . ." D.C. Code 1977 Supp. § 1–1502(b)(9). By the terms of this section alone, ANCs clearly would have the capacity to petition this court for review. Section 1–171i(g), however, was enacted after the DCAPA and constitutes a specific limitation on the power of an ANC to litigate. Therefore, if § 1–171i(g) applies to petitions for court review of administrative action, it supersedes the DCAPA.

We conclude that § 1–171i(g) does proscribe such petitions. ANCs are forbidden to "initiate a legal action in the Courts of the District of Columbia or in the Federal courts . . . ." By focusing solely on the word "initiate"—and stressing that the matter of C.J.K.'s license was initiated at the ABC Board, not in court—petitioners overlook the complete prohibition. Section 1–171i(g) forbids an ANC to "*initiate a legal action.* . . ." [Emphasis added.] A petition for judicial review of an agency decision is a wholly separate "legal action"; in contrast with an appeal from a trial court decision, it is not inherently a part of—not a continuation of—the administrative process initiated at the agency level. *See Federal Radio Comm'n v. Nelson Bros. Co.*, 289 U.S. 266, 274–78, 53 S.Ct. 627, 77 L.Ed. 1166 (1932) (Hughes, C. J.); *Red River Broadcasting Co. v. F. C. C.*, 69 App.D.C. 1, 3, 98 F.2d 282, 284 n. 2 (1938); *Indiana Alcoholic Beverage Comm'n v. B & T Distributors, Inc.*, 141 Ind.App. 343, 228 N.E.2d 35, 36–37 (1967); *Southern Ry. Co. v. Public Service Comm'n*, 195 S.C. 247, 10 S.E.2d 769, 772 (1940). It "is similar in nature to an equitable proceeding to restrain the enforcement of an invalid administrative order." *Red River Broadcasting Co. v. F. C. C., supra*, 69 App.D.C. at 3, 98 F.2d at 284 n. 2. Thus, we find unpersuasive the petitioners' argument that the ANCs have not "initiated" the legal action before our court.

Furthermore, petitioners overlook the balance of the prohibition—that an ANC shall not "initiate a legal action *in the Courts.* . . ." We conclude that this language conveys an unqualified intent to preclude ANCs from coming to courts as the initiators of *judicial* action, without regard to whether, as petitioners contend, the "legal action" itself was actually "initiated" at the agency level.[6] There is no basis in the words of the statute or in the legislative history[7] for concluding that the District Council intended to permit ANCs to seek judicial review of governmental agency action while—as petitioners concede—prohibiting ANC actions in the trial court against both public and private bodies. It is likely that the ANCs' principal litigative interest, if allowed by statute, would be review of agency actions, given the variety of governmental impacts which the ANCs are chartered to scrutinize—as this very petition exemplifies. We believe that the District Council would not have enacted the blanket prohibition in § 1–171i(g) had it intended to exempt such a major—if not the major—source of potential ANC litigation.

Our conclusion is buttressed, finally, by the last sentence of § 1–171i(g), which suggests that ANCs should petition the District Council if "legal redress is required." In summary, the role of the ANCs is "advisory," as their very name suggests; they do not have an enforcement responsibility—or authority.

Our conclusion, however, does not mean that the ANCs' right to advise cannot be protected. To the contrary, we hold that

6. We do not consider the application of § 1–171i(g) to an ANC effort to intervene or file an amicus brief in a court proceeding initiated and substantially financed by others.

7. We find no support for petitioners' position in the language of a bill proposed prior to adoption of the ANC Act. Bill 1–193, Section 12(f), 22 D.C.R. 1813, 1816–17, October 10, 1976, provided:

> Each Advisory Neighborhood Commission shall have the power to lobby and to present its view to any federal or District agency *but shall not have power to bring suit against any federal or District agencies.* [Emphasis added.]

Because the reasons for the change are not apparent, and reasonable arguments based upon such modification might be made in support of both sides of the present controversy, we place no reliance on this legislative event.

ANC area residents (including ANC Commissioners as individual citizens) have standing to initiate legal action to assert the rights of the ANC itself.[8] We recognize this legal standing of ANC area residents[9] because they satisfy the threshold requirements: injury in fact and assertion of an injury arguably within the "zone of interests" sought to be protected or regulated by the statute in question. *Data Processing Service v. Camp*, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970); *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832, 25 L.Ed.2d 192 (1970).[10]

ANCs exist, and are granted statutory rights, powers, and duties, for the benefit of the neighborhood residents they represent. If an ANC's statutory rights are violated and, as a consequence, the performance of its advisory duties is hindered, the actual injury is suffered by the residents themselves; they are the ones harmed by the ANC's inadequate presentation of neighborhood views. Further, the very statutory scheme of the ANC Act is designed to assure effective presentation of neighborhood views through the ANC instrumentality. Thus, any injury to the rights of residents to advise their government is clearly within the zone of interests which the ANC Act seeks to protect. Accordingly, the criteria for standing to seek judicial review of alleged violations of ANC rights are met by area residents. They are "persons aggrieved" by agency action that violates ANC rights; they have suffered "injury in fact" (*see* IV, *infra*) within the "zone of interests" sought to be protected by the ANC Act and other statutes involved in this case. *See* III and IV, *infra*.

In summary, ANCs 3–C and 3–F, as well as the Commissioners of each in their official rolls, have no capacity to assert the claims in this petition for review and must be dismissed as parties. Nonetheless, the Commissioners and the other petitioner-residents have standing to assert such claims as individuals. Therefore, unless the petition is moot, the court must address all arguments raised, including those involving the rights of the ANCs themselves.

B. *Mootness*

[2] The second preliminary hurdle concerns the alleged mootness of the petition for review of the ABC Board's decision granting a 1976–1977 license. That license expired on January 31, 1977; a 1977–1978 license is now in effect.

In anticipation of the statutory expiration date of the initial license, C.J.K. reapplied in December, 1976, for the year commencing February 1, 1977. The Board scheduled a hearing for January 25, 1977. On that day petitioners filed a protest letter with the Board; on that day, too, the Board reissued the license. Respondents claim that the expiration of the old license and issuance of a new license upon C.J.K.'s reapplication mooted the only controversy (*i. e.*, the challenge to the expired license) because petitioners either did not contest, or did not contest in timely fashion, the reapplication. Petitioners deny the insufficiency of their protest. Moreover, they maintain that the petition is not moot in any event because a favorable court decision can affect the validity of the reissued license. We agree with petitioners.

The doctrine of mootness has emerged to assure that the courts limit their decisions to the resolution of live cases and contro-

8. *See American University Park Citizens Association v. Burka*, D.C.Super.Ct., Civ. No. 11437–76, June 23, 1977, in which Judge Ugast reached the same conclusion.

9. An "area resident" is an individual who resides within the boundaries of a particular "Advisory Neighborhood Commission area" (D.C. Code 1977 Supp., § 1–171a) for which an Advisory Neighborhood Commission has been established. D.C.Code 1977 Supp., § 1–171c.

10. The extension of the right to seek judicial review of agency actions to "persons aggrieved" (5 U.S.C. § 702; D.C.Code 1977 Supp., § 1–1510) does not abrogate these ordinary judicial standing requirements. *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); *Data Processing Service v. Camp*, *supra*.

versies between specific parties.[11] A court should not render a decision if it "cannot affect the matter in issue in the case before it." *Mills v. Green*, 159 U.S. 651, 653, 16 S.Ct. 132, 133, 40 L.Ed. 293 (1895); *Alpert v. Wolf*, D.C.Mun.App., 73 A.2d 525, 528 (1950). The ABC Board and C.J.K. contend that the omission of a timely protest and demand for a hearing on the reissuance of C.J.K.'s license resulted in disappearance of the subject matter, dissolution of the controversy, and consequent negation of this court's power to affect the rights of the parties. Respondents are wrong for several reasons.

We note, first, that prior to January 25, 1977, counsel for petitioners reached an understanding with counsel for C.J.K. confirming that petitioners continued to protest C.J.K.'s liquor license but that no purpose would be served by putting everyone concerned through another hearing. Petitioners also informed the Board of their continuing objections by letter of January 25, 1977.[12] Because, as a practical matter, a second hearing only four months after the Board's initial decision in all likelihood would have been futile, petitioners' election to pursue their remedy in this court to final resolution (after reaching an understanding with C.J.K. and apprising the Board of their position) was reasonable. Their actions were adequate to preserve their right to contest the hearing upon initial issuance of the license to C.J.K.

Second, the decision of this court will have an impact on the rights of the parties. We note from the Board's own regulations that if the Board had initially denied C.J.K.'s application, it could not have entertained a second application for a one-year period. 3 DCRR § 2.4(a). Therefore, if the initial license ought not to have been granted, the current, renewal license could not have been issued. In other words, if petitioners prevail in this court and at a new, properly constituted Board hearing, the result will be not merely a refusal to grant the initial license but also, by virtue of 3 DCRR § 2.4(a), a revocation of the second license.

We must recognize, finally, in view of the October 6, 1976, petition for review by this court, the understanding between petitioners' and C.J.K.'s counsel, the petitioners' January 25, 1977, letter to the Board, and, in all probability, the pro forma nature[13] of the renewal of the license on January 25, 1977, that C.J.K.'s 1977–78 license *is* the very subject matter of the present case. If we were not to take this position, there would be a premium on seeking initial issuance of a license very near the end of the statutory license year (January 31), in the hope that a February 1 renewal could be accomplished to moot any potential litigation. Therefore, regardless of regulation 3 DCRR § 2.4(a), circumscribing the Board's power to consider reapplications, we are not powerless to affect the current license. It is, in actuality, the end product of the allegedly defective hearing.

Thus, the mere "renewal" of the license while opposition to its original issuance continued by letter to the Board and by petition to this court did not moot the controversy. We must, therefore, proceed to resolve the issues raised by the petition.

11. Although the District of Columbia Court of Appeals has been established by Congress pursuant to Article I of the Constitution rather than Article III, D.C.Code 1973, § 11–101(2)(A); *Palmore v. United States*, 411 U.S. 389, 406–07, 93 S.Ct. 1670, 36 L.Ed.2d 342 (1973), our jurisdiction is limited by the same "case or controversy" requirement, *see* D.C.Code 1973, § 11–705(b), as that imposed on the Article III courts since *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 5 L.Ed. 257 (1821).

12. Possible untimeliness of the protest under the strict terms of the Board's regulations ought not to bar review here. *See* 3 DCRR § 21.6(b)(3) (commands that "written objections filed pursuant to a notice concerning . . . reissuance . . . shall . . . be filed at least five (5) calendar days prior to the date of hearing as stated in said notice"). Petitioners did strike an agreement with counsel for C.J.K. to the effect that another hearing would serve no purpose. In addition, the Board did receive the protest letter on the date set for hearing. Thus, petitioners made a good faith effort to preserve their objections.

13. Recall that only posting, not publication, of notice is required when a renewal is sought. *See* note 4, *supra*.

III. *Notice*

Petitioners complain of three separate deficiencies in the Board's notice procedures for the rescheduled hearing, namely (1) the failure to dispatch "special notice" to the two ANCs concerned about the pending application, (2) the failure to notify known remonstrants of the rescheduling of the hearing on the application, and (3) the failure to post notice of the rescheduled hearing on C.J.K.'s premises.

A. *Special Notice to Advisory Neighborhood Commissions*

At the ABC Board hearing, petitioners insisted that the Board had erred by not directing special notice [14] to ANCs 3–C and 3–F, as required by two statutes:

—Section 738 of the District of Columbia Self-Government and Governmental Reorganization Act, Pub.L.No.93–198, 87 Stat. 774 (1973) (the "Home Rule Act"), and

—Section 13 (codified as § 1–171i) of the ANC Act, *supra*.

In response, the Board sought the opinion of the District's Corporation Counsel. On August 23, 1976, prior to the Board's decision, the Corporation Counsel issued an opinion rejecting the necessity of special notice in these circumstances. The Board relied on this statutory interpretation in its findings, conclusions, and order, and urges us to affirm the Corporation Counsel's view.

We are presented with a question of first impression about the proper interpretation of the Congressional and District Council legislation governing ANCs. Our analysis begins with the Home Rule Act, specifically § 738(c)(1) and § 738(d), which provide:

> (c) Each advisory neighborhood commission—
>
> (1) *may advise* the District government on matters of *public policy* including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;
>
> . . . . . .
>
> (d) *In the manner provided by act of the Council,* in addition to any other notice required by law, *timely notice shall be given to each advisory neighborhood commission of requested or proposed* zoning changes, variances, public improvements, *licenses* or permits *of significance to neighborhood planning and development* within its neighborhood commission area for its review, comment, and recommendation. [Emphasis added.]

The "manner provided by act of the Council" for implementing this "timely notice" provision in § 738(d) is elaborated in § 13 of the ANC Act, codified in D.C.Code 1977 Supp., § 1–171i(a)–(c):

> (a) *Each Advisory Neighborhood Commission* (hereinafter in sections 1–171i to 1–171*l* the "Commission") *may advise* the Council of the District of Columbia, the Mayor and each Executive Agency and *all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy* including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation *which affect the Commission area.* For the purposes of this act, proposed actions of *District government policy* shall be the same as those for which prior notice of proposed rule-making is required pursuant to section 1–1505(a) [the DCAPA] or as pertains to the Council of the District of Columbia.
>
> (b) *Thirty days written notice of such District government action or proposed actions shall be given by mail to each Commission affected by said actions,* except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. . .

14. "Special notice" refers to the "thirty-days' written notice . . . by mail" mandated by D.C.Code 1977 Supp., § 1–171i(b).

(c) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the Executive Branch or independent agency. *In addition to those notices required in subsection (a) above, each agency, board and commission shall,* before the award of any grant funds to a citizen organization or group, or *before the formulation of any final policy decision or guideline with respect to* grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, *licenses,* or permits *affecting said Commission area,* the District Budget and city goals, and priorities, proposed changes in District government service delivery and the opening of any proposed facility systems, *provide to each affected Commission notice of the proposed action as required by subsection* (b). Each District of Columbia agency shall maintain a record of such notices sent to each Commission. [Emphasis added.]

The Corporation Counsel's opinion essentially states that ANCs are only entitled to "thirty days written notice" of legislative (*i. e.,* rule-making and District Council) proposals; special notice is not required in adjudicative situations, such as issuance of a liquor license. More specifically, § 1–171i(a) calls for ANC advice "with respect to all proposed matters of District Government *policy,*" and then defines all "proposed actions of District government *policy* . . . as those for which prior notice of proposed *rule-making* is required . . . or as pertains to the *Council of the District of Columbia.*" [Emphasis added.] Similarly, § 1–171i(c) calls for thirty-days' notice to "each affected" ANC, pursuant to § 1–171i(b), "before the formulation of any final *policy* decision or guideline with respect to . . . *licenses* . . . affecting said Commission area." It follows, say the respondents, in reliance on the Corporation Counsel, that ANCs are only entitled to special, thirty-day notice of rule-making or other legislative activity concerning the issuance of liquor licenses generally. Both § 1–171i(a) and § 1–171i(c), they say, refer to *policy* formulation, not to implementation through the adjudicative process.

Our primary task must be to effectuate the intent of Congress and the District Council, as expressed in the Home Rule and ANC Acts, respectively. *See Bailey v. United States,* D.C.App., 223 A.2d 190, 191 (1966). Mindful of the fact that the ANC Act was adopted for the express purpose of implementing the Home Rule Act (as it pertains to ANCs), we see revealing parallels that clarify the legislative intent—and do so contrary to the Corporation Counsel's interpretation.

Section 1–171i(a) of the ANC Act, by virtue of its reference to the DCAPA and to the District Council, is confined to general policy decisions—to rule-making or District Council action. It virtually *tracks* the language of § 738(c)(1) of the Home Rule Act, a subsection likewise concerned solely with policy determinations. On the other hand, § 1–171i(c) of the ANC Act, the subsection which petitioners find applicable to C.J.K.'s liquor license application, enumerates "additional" matters requiring special notice. In so doing it is notably similar to § 738(d) of the Home Rule Act. In fact, the language in the two statutes requiring notice to ANCs of "requested or proposed zoning changes, variances, public improvements, licenses, or permits" is identical. We find the similarities—including the quoted identities—to be more than coincidental. We see in such likeness the intent that § 1–171i(c) specifically implement § 738(d)'s mandate that "timely notice *shall* be given . . . of requested or proposed . . . *licenses* . . . of significance to neighborhood planning and development within its neighborhood commission area. . . ." [Emphasis added.]

[3] By focusing on the parallels between the two Acts, and thus reading § 738(d) and § 1–171i(c) together, we conclude that § 1–171i(c) requires timely written notice to ANCs in adjudicative situations, such as the issuance of particular liquor licenses; we do not believe that the words "policy decision or guideline," as used in § 1–171i(c), indi-

cate an intent to limit such special notice to legislative-type actions. We have three reasons: First, most of the matters enumerated in § 1–171i(c) are specific activities directed at an ANC area. "Proposed zoning changes, variances, public improvements, licenses, or permits," for example, are usually discrete, local issues rather than the subjects of general policy-making. Second, if § 1–171i(c) were limited to legislative activities, it would be wholly redundant when compared with the earlier "legislative" provision, § 1–171i(a). Statutory interpretations which result in redundancy are disfavored. *Wirtz v. Cascade Employer's Ass'n, Inc., of Pacific Northwest*, 219 F.Supp. 84 (D.D.C.1963). Finally, § 738(d) of the Home Rule Act itself manifests an intention that timely notice be given of *all* "requested or proposed zoning changes, variances, public improvements, licenses or permits of significance" to a neighborhood—clearly discrete events. Absent adoption of the ANC Act, probably no one seriously would contend that only legislative activity is "of significance" to a neighborhood, and that § 738(d) accordingly limits timely notice to requested or proposed legislative actions. If, therefore, we were to limit the provisions of § 1–171i(c) to legislative concerns, we would eviscerate the express language of the Home Rule Act itself.[15]

Still, the above analysis informs us only that § 738(d) and § 1–171i(c) embrace more than proposed policy decisions. It does not tell us how much more. An ANC is not necessarily entitled to special, thirty-day notice of *every* neighborhood matter listed in § 1–171i(c) of the ANC Act, for § 738(d) of the Home Rule Act limits such notice to matters "*of significance* to neighborhood planning and development." [Emphasis added.]

[4] We do not intend, on the basis of this one case, to propose an inflexible standard for determining "significance" in every situation. At a minimum, however, we have concluded, and accordingly hold, that every proposed governmental decision affecting neighborhood planning and development, as defined in § 1–171i(c), for which a *prior hearing* is required by law is sufficiently significant to require written notice, pursuant to § 1–171i(b), to the affected ANC or ANCs.[16] The legislative decision to require a public hearing is an implicit determination of considerable significance of a proposed action. Because some form of public notice will already be required in such situations, the additional demand of special notice to affected ANCs will not be unduly burdensome. (The burden will be even less in connection with an ABC Board hearing, for the Board is required in any event to notify all known remonstrants personally when a hearing is scheduled. 3 DCRR § 20.1; *see* III.B., *infra*.)

We do not imply that all administrative agency matters for which hearings are *not* required are automatically excluded from the realm of significance. While it is difficult to conceive of many matters, not requiring a hearing, which would be sufficiently significant to neighborhood planning and development to warrant special notice to an ANC, we do not wish categorically to exclude all such cases.

[5] The implications of our analysis for this case are as follows: The ABC Board's statutory and regulatory frameworks provide for noticed hearings on liquor license applications and reapplications.[17] Therefore, such applications are of significance to neighborhood planning and development and special notice, *i. e.*, thirty-days written

15. Petitioners argue that if § 1–171i cannot be read consistently with § 738, the former must yield to the latter by virtue of the Supremacy Clause (U.S.Const. art. VI, § 2). Since we do not find these sections irreconcilable, we do not express an opinion on this question of the constitutional relationship between the Home Rule Act and its implementing legislation promulgated by the District of Columbia Council.

16. Respondents have not contested petitioners' claim that *two* ANCs, 3–C and 3–F, were entitled to special notice, and the record does not make clear why both are affected here. We assume that their boundary line runs very close to C.J.K.'s premises.

17. D.C.Code 1973, § 25–115(b); 3 DCRR § 20.1 *et seq.*

notice pursuant to D.C.Code 1977 Supp., § 1–171i(b), must be sent to all affected ANCs. We hold that the Board's failure in this case to give such notice to ANCs 3–C and 3–F was error.

The ABC Board and C.J.K. have maintained, nevertheless, that even if special notice had been required, the technical failure to comply with the statute did not prejudice ANCs 3–C and 3–F because they had received actual notice. We agree that the error here was cured by actual notice; it is therefore not reversible.

> The requirements of procedural due process are met if upon review the court is satisfied that a complainant was given an adequate opportunity to prepare and present its position . . . and that no prejudice resulted from the originally deficient notice.

Watergate Improvement Ass'n v. Public Service Commission, D.C.App., 326 A.2d 778 (1974). *See Schiffmann v. District of Columbia A.B.C. Board*, D.C.App., 302 A.2d 235 (1973). Petitioners concede in their brief that Gary and Judy Kopff themselves notified ANCs 3–C and 3–F of the hearing on C.J.K.'s application, that the ANCs met and adopted resolutions expressing their positions on the matter, and that representatives attended the hearing and were prepared to present the ANCs' views and recommendations. We therefore can perceive no prejudice from the technical defect. While petitioners assert prejudice, they do not specify its manner or impact. We are satisfied that actual notice remedied the error and rendered it non-reversible.

B. *The Requirements of Notice to Known Remonstrants and of Posting Notice on the Premises*

The basic statutory scheme underlying the creation and operation of the Alcoholic Beverage Control Board specifies that

> [b]efore granting a [Class C retailers] license . . . the Board shall give notice by advertisement published once a week and for at least two weeks in some newspaper of general circulation in the District of Columbia. . . . *There shall also be posted by the Board a notice, in a conspicuous place, on the outside of the premises. This notice* shall state that remonstrants are entitled to be heard before the granting of such license and *shall name the same time and place for such hearing as set out in the public advertisement* . . . [D.C.Code 1973, § 25–115(b); emphasis added.]

In addition, the Board's implementing regulations state that

> [t]he Board shall . . . notify all persons required to be heard in any hearing or proceeding before it . . . [including] *remonstrants, if known.* The notice shall include information relating to the nature of said hearing or proceeding and *the time and place when and where* said hearing or proceeding will be conducted. [3 DCRR § 20.1; emphasis added.]

[6, 7] Petitioners complain that upon rescheduling the hearing on C.J.K.'s application, the ABC Board failed to comply with this statute and regulation.[18] The Board does not deny that it failed to post notice of the rescheduled hearing; nor does the Board deny that it neglected to notify the known remonstrants. Instead, the Board and C.J.K. argue that actual notice to all petitioners present at the rescheduled hearing cured the technical defect, that the notice mailed to Mrs. Kopff sufficed for all other known remonstrants, and that "no person allegedly without notice has appeared in protest." The Board's defenses to its admitted failures to comply with the statutory notice requirements are not sound.[19]

18. Petitioners also argue that the Board violated the DCAPA. That act, however, is not a solid basis for reliance, for it merely requires "reasonable notice" to "parties." D.C.Code 1977 Supp., § 1–1509(a).

19. Although respondents do not contend that the statutes and regulations are inapplicable to "reschedulings," it is important to emphasize that reschedulings of administrative hearings are subject to the same notice requirements as initial schedulings. The literal statutory terms mandate inclusion of the "time" of the hearing

First, specific notice to Mrs. Kopff cannot fulfill the Board's duty to notify all known remonstrants. Even though the Kopffs collected and presented to the Board the signatures of neighbors who did object to the application, they did not assume the Board's statutory responsibility. We cannot endorse the Board's attempt to shift to private persons its responsibility for the notification of known remonstrants. Additionally, actual notice to individuals who did appear cannot remedy the lack of notice either to those who were known but not apprised of the rescheduling, or to those who might have seen an accurate "posting" on the premises—but did not. Absent potential witnesses remain prejudiced. Accordingly, the Board violated both its duty to notify "known remonstrants," 3 DCRR § 20.1, and its duty to post notice on the premises. D.C.Code 1973, § 25–115(b). Neither deficiency could be cured by actual notice to those who appeared.

The Board's and C.J.K.'s reliance on this court's opinion in *Schiffmann v. District of Columbia A.B.C. Board, supra*, is misplaced. There, this court held that actual notice to the petitioners cured, as to them, any failure to give notice by publication. Petitioners here, however, do not assert a lack of notice to themselves. They assert the rights of those who were entitled to notice but did not receive it and, as a consequence, did not appear at the hearing. (Respondents do not challenge petitioners' standing to assert these rights.) The argument that "no person allegedly without notice has appeared in protest" is illogical. We cannot expect unnotified individuals to petition for review of an ABC Board decision of which they still may not be aware. We hold, therefore, that in failing to give the notices required by D.C.Code 1973, § 25–115(b) and 3 DCRR § 20.1, the Board did not afford all potentially concerned individuals an adequate opportunity to be heard. As a result, the Board's capacity for effective assessment of "neighborhood wishes" was impaired.[20] We shall not speculate about how many more would have attended the hearing if proper notice had been given, or about whether additional attendance would have contributed to the dialogue. That is irrelevant. Because a statutory right to due notice has been violated and cannot be cured until everyone receives notice, the error cannot be deemed harmless.[21]

IV. *Attribution of "Great Weight" to the "Issues and Concerns" of Advisory Neighborhood Commissions*

D.C.Code 1977 Supp., § 1–171i(d) provides, in pertinent part:

> *Each Commission so notified [i. e., in writing] . . . shall forward its written recommendations* . . . to the appropriate agency . . . . *The issues and concerns* raised in the recommendations *of the Commission shall be given great weight* during the deliberations by the governmental agency *and those issues shall be discussed in the written rationale* for the governmental decision taken. [Emphasis added.]

This subsection mandates that the ABC Board give "great weight" to all "issues and concerns" raised by ANCs in all cases where written notice to ANCs is required. Our next task, therefore, is to determine the meaning of the statutory words "great weight."

[8] Petitioners assert, first, that the recommendations of citizens' groups are normally given "careful consideration" in administrative proceedings. They maintain that the legislative choice of the term "great weight," rather than "careful consideration," in the ANC context must imply greater deference than that accorded ordinary citizens' groups. Second, petitioners

in posted, published, and mailed notices. Certainly, this time must be accurately stated and kept current, lest the very purpose of notification—provision of an opportunity to be heard—would be defeated.

20. *See* D.C.Code 1973, § 25–115(a)6.

21. The reference in the Board's findings of fact to the paucity of witnesses who appeared to oppose the license implies a possibility that a greater number of opponents could have influenced the Board's decision. Rec. at 274, ¶ 40.

stress the canon of statutory construction which declares that legal terminology ordinarily should be given its accepted legal meaning. They then cite cases holding that an expert agency's construction of its own enabling statute should be given "great weight," and that a court should adopt the agency's construction unless it is unreasonable. Petitioners urge us to conclude that ANC recommendations are entitled to similar deference at agency hearings. We are not persuaded.

First, the cases cited by petitioners do not establish a "careful consideration" standard for citizens' group concerns, nor do they define such terms.[22] Thus, these cases do not provide a reference point for defining the "great weight" standard. Second, ANC recommendations, whether in a legislative or administrative context, are not analogous to legal interpretations of enabling statutes by expert administrative agencies charged with regulatory or other governmental responsibilities. If the Board were to afford the degree of weight to ANC judgments urged by petitioners, it would tread perilously close to, if not cross into, the realm of improper delegation of its governmental authority to a private party. True—the ANCs have governmental responsibilities in the sense that they are created by statute, elected by the general public, and funded by the taxpayers. But neither Congress nor the District Council has even hinted at granting ANCs responsibilities for governmental operations. They are advisory only. To construe their enabling statutes in a way that would grant the ANCs "expert" status, entitled to special deference as such, would be to sanction interference with the established pattern of governmental relationships. We find no such intention in either the Home Rule Act or the ANC Act.

We conclude that "great weight," as used in the ANC Act, does not build in some kind of quantum or presumption of deference to be accorded ANCs. It means, rather, that an agency must elaborate, with precision, its response to the ANC issues and concerns. It is a statutory method of forcing an agency to come to grips with the ANC view—to deal with it in detail, without slippage. In doing so an agency must focus particular attention not only on the issues and concerns as pressed by an ANC, but also on the fact that the ANC, as a representative body, is the group making the recommendation. That is, the agency must articulate why the particular ANC itself, given its vantage point, does—or does not—offer persuasive advice under the circumstances. In summary, government agencies are charged to pay specific attention to the source, as well as the content, of ANC recommendations, giving them whatever deference they merit in the context of the entire proceedings, including the evidence and views presented by others.

[9] Although "great weight" in this context is not a quantum requirement, we do not accept respondents' view that the ANC itself need not be mentioned in an ABC Board decision, as long as the "issues and concerns" of the ANC receive the requisite consideration. To the contrary, we believe that "great weight" implies explicit reference to each ANC issue and concern *as such*, as well as specific findings and conclusions with respect to each. Although the statutory language literally does not require such acknowledgment of the ANC source, we have concluded—and hold—that such acknowledgment is implicit in the very purpose of § 1–171i(d) of the ANC Act. It is necessary not only to assure compliance with the "great weight" mandate but also to facilitate judicial review. Without such attribution, there is a danger that an agen-

22. *Citizens Ass'n of Georgetown, Inc. v. Alcoholic Beverage Control Board*, D.C.App., 268 A.2d 801 (1970); *Sophia's Inc. v. Alcoholic Beverage Control Board*, D.C.App., 268 A.2d 799 (1970). Both cases simply deal with the general requirement that the Board find premises "appropriate" in light of neighborhood wishes and character. In *Georgetown* the Board had noted that it had given "careful consideration" to the protests of both residents and the citizens' association. The court, however, did not adopt that language as a standard of review for the Board.

cy, while dealing with ANC issues and concerns, would not analyze the matter in a way that evidences serious attention to the ANC source itself.

In this case, the ABC Board failed to give "great weight" to the issues and concerns of ANCs 3–C and 3–F, as we have construed that standard. It is unclear whether the Board even admitted into evidence the resolution of ANC 3–C. *See V, infra.* In any event, it *is* clear that the Board was not cognizant of its duty to give ANC issues great weight.[23] Under the circumstances, we must remand the case to the Board for explicit consideration of the ANC positions upon rehearing.

V. *Evidentiary Rulings*

In ruling upon the admissibility of evidence at the hearing, the Board was subject to two specific constraints. First, the DCAPA permits administrative agencies to receive "any oral or documentary evidence" but mandates the exclusion of "irrelevant, immaterial and unduly repetitious evidence." D.C.Code 1977 Supp., § 1–1509(b). Second, the Board's own regulation, 3 DCRR § 20.5, limits the evidence at hearings to

> . . . material evidence relative to the issues arising in the proceeding as may be necessary to protect the public interest or to prevent injustice. Evidence will be excluded in the discretion of the Board if it is repetitious or redundant. The Board shall determine the materiality, relevance and probative value of any evidence submitted.

Petitioners assert that three of the Board's evidentiary rulings, namely the exclusion of ANC 3–C's resolution opposing the license, Mr. Kopff's neighborhood survey, and Mr. Smith's "Metro" data, violated these guidelines. Petitioners maintain that the Board ignored the principle of liberal, flexible admission of evidence in administrative proceedings.

[10] The case law and other legal authorities recognize that the strict rules of evidence applicable to the trial of cases are of limited use in the administrative arena. Because there is no jury to shield, and individual agency members are presumed capable of properly assessing the reliability and weight of evidence, greater flexibility and discretion as to admission are permitted. 2 Davis, Administrative Law Treatise § 14.01 *et seq.* (1958). Failure to apply these generous principles of admissibility can be a basis for reversal of an ageney decision, although prejudice must be shown. *Wallace v. District Unemployment Comp. Board*, D.C.App., 294 A.2d 177 (1972); *Carter-Wallace, Inc. v. Gardner*, 417 F.2d 1086 (4th Cir. 1969). Our present inquiry, therefore, is whether the Board erred in excluding the specified items and, if so, whether prejudice resulted.

A. *The ANC Resolution*

ANC 3–C became aware of the pending application when notified by Mr. Kopff. Subsequently, at a regular meeting, the ANC discussed the application and adopted a resolution to oppose it. Commissioner Sam Smith submitted this resolution to the ABC Board at the hearing.

It is difficult to determine whether the resolution of ANC 3–C was or was not admitted over hearsay objections; the Board took admissibility under advisement. Considering our conclusion that ANC issues and concerns are entitled to great weight, as well as the ANC's statutory mandate to forward its recommendations to the Board, exclusion would have been error. In this instance, however, even if we assume that the resolution was erroneously excluded on hearsay grounds, we need not evaluate prejudice. Because we are remanding for other reasons, we merely suggest that the Board not exclude such evidence at the new hearing.

23. When witness Arthur Meigs inquired whether the Board intended to give the ANCs' recommendations great weight, Chairman Hill replied, "The Board will consider all evidence having relevance to this case."

B. *Mr. Kopff's Survey and Mr. Smith's Metro Data*

[11] Mr. Kopff proffered a survey of residents' views about the proposed license. Mr. Smith proposed to summarize information regarding the potential congestive impact of a Metro station under construction nearby. Although the Board could have admitted both of these items despite their hearsay nature, it had discretion under the applicable guidelines to reject the evidence as unreliable; and, even if this evidence should have been admitted, the Board could have discounted both items as having no probative value. We can find neither an abuse of discretion nor prejudice to petitioners from the rulings.

VI. *Adequacy of the ABC Board's Findings and Conclusions*

We could end the inquiry without evaluating the Board's findings and conclusions, for they were based upon testimony derived from incomplete notice of the June 9, 1976, hearing. There are, nevertheless, good reasons to address the Board's determinations. First, the parties should not resubmit the matter to the Board with apprehensions about how we view the proceedings to date. Second, the question whether C.J.K.'s license should remain in effect pending a new determination cannot be resolved properly without evaluating what took place at the last hearing.[24]

Petitioners have advanced two challenges to the sufficiency of the Board's findings and conclusions: (A) that the findings of fact and conclusions of law are fatally incomplete and lacking in detail, and (B) that such findings and conclusions are not supported by substantial evidence.

A. *The Completeness and Detail of the Board's Findings and Conclusions*

The DCAPA specifies that all contested case decisions and orders must be "accompanied by findings of fact and conclusions of law," and that the "findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact." D.C.Code 1977 Supp., § 1–1509(e).[25] In *Palmer v. Board of Zoning Adjustments*, D.C.App., 287 A.2d 535, 538 (1972), we have interpreted this provision to require

> findings of fact *of a basic or underlying nature* necessary to a determination of ultimate facts, usually stated in terms of the statutory criteria. Without such findings there is no guarantee that "cases [will] be decided according to the evidence and the law, rather than arbitrarily or from extra-legal considerations" [footnotes omitted; emphasis added].

We stated that such findings were essential for "intelligent judicial review." *Id.*

24. Our court, as appropriate to the circumstances, has authority to "affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require . . . [and] may order a stay upon appropriate terms." D.C.Code 1977 Supp., § 1–1510.

25. The Board's own regulatory scheme, 3 DCRR § 21.7, adopted pursuant to D.C. Code 1973, § 25–107, imposes additional requirements:

> (a) Within a reasonable time after the close of a hearing of an original application, or the transfer of an existing license to a new location, the Board shall make specific Findings of Fact as required under the provisions of Sections 14(a)6 and 14(c) of the ABC Act [D.C.Code 1973, § 25–115(a)(6) and § 25–115(c)] and Section 21.2 of this title. Such findings shall include but not be limited to the following:
>
> (1) the boundaries of previously defined neighborhood;
>
> (2) a finding under Section 14(a)6 of the ABC Act as to the appropriateness of the place for which the license is sought, considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired;
>
> (3) a finding as to the applicability of Section 14(c) of the ABC Act [pertaining to written objections of real property owners within 600 feet of the property];
>
> (4) a finding as to the applicability of Section 21.2 of this title [precluding issuance of a license within 400 feet of schools, churches, and public recreation areas]; and
>
> (5) that the place for which the license is sought to be issued is or is not appropriate.
>
> (b) The Board shall make Findings of Fact and Conclusions necessary for a proper determination of said hearing.

[12] Petitioners contend that the ABC Board's findings do not address each contested issue and, therefore, that they thwart effective appellate review. They rely specifically upon 3 DCRR § 21.7(a)(2), *supra* note 25, and the omission of particular attention to potential Metro station impact. We find the Board's written findings and conclusions adequate (based on the evidence presented); we reject these assignments of error.

The Board made specific findings on all the issues raised by the petitioners: (1) saturation of liquor licenses, (2) parking and traffic, (3) refuse storage, (4) the character of the neighborhood, and (5) neighborhood wishes and desires. The Board also made all the findings specifically required by the Alcoholic Beverage Control statutes and regulations. D.C.Code 1973, § 25–115; 3 DCRR § 21.7. The Board accordingly demonstrated the necessary concern for all contested issues and paid particular attention to the statutory elements of neighborhood surroundings (including Metro impact upon parking) and residents' wishes. *See* 3 DCRR § 21.7(a)(2). The findings upon each issue, moreover, are sufficiently detailed for the effective performance of this court's review duties; *i. e.*, assessment of the rationality of and evidentiary support for the Board's conclusions.

B. *Substantiality of the Evidence*

"Findings of fact and conclusions of law shall be *supported by and in accordance with* the reliable, probative, and *substantial evidence.*" D.C.Code 1977 Supp., § 1–1509(e). [Emphasis added.] Therefore, even though we have determined that the Board's findings are sufficiently complete and detailed, we must reverse if we find that the Board failed to support its findings and conclusions with substantial evidence. D.C.Code 1977 Supp., § 1–1510(3)(E).

Substantial evidence has been defined as "more than a mere scintilla"; *i. e.*, "such relevant evidence as reasonable minds might accept as adequate to support the conclusion." *Vestry of Grace Parish v. District of Columbia A.B.C. Board*, D.C.App., 366 A.2d 1110, 1112 (1976). While the existence of this quantum of evidence is necessary, it is not sufficient, for there also

> . . . must be a *demonstration* in the findings *of a "rational connection* between facts found and the choice made." [*Brewington v. District of Columbia Board of Appeals and Review*, D.C.App., 299 A.2d 145, 147 (1973); citation omitted; latter emphasis added.] [26]

[13, 14] After a thorough review of the hearing record and the Board's determinations, we have concluded that for each of the five issues posed by petitioners, the Board could point to "more than a mere scintilla" of rationally connected evidentiary support. We must therefore reject petitioners' contention here.[27]

VII. *Conclusion*

We hold that the Board committed reversible error by its (1) failure to notify

26. It is thus our duty to assess both substantiality and the logical connection between the evidence and conclusions, but not to substitute our judgment for that of the administrative agency. *Schiffmann v. District of Columbia A.B.C. Board, supra.* *See* D.C.Code 1977 Supp., § 1–1510(3)(E).

27. Petitioners allege one additional error in the Board's failure to define the relevant neighborhood, for the purpose of C.J.K.'s application, as coextensive with ANC boundaries. They cite no authority for this proposition. The only pertinent regulation of the Board's power and duty to specify the affected neighborhood is in 3 DCRR § 21.1, which states:

> Upon the filing of an application for the issuance of an original or the transfer to a different location of an existing license, except a retailer's license Class E or F, the Board shall promptly delineate or define the boundary lines of the 'neighborhood' under Section 14(a)6 of the ABC Act and shall in all advertisements and public notices published or posted concerning said applications set forth the boundary lines of such 'neighborhood' to the nearest public roadway, natural boundary or thoroughfare.

We find no mandate there, or in the ANC Act or elsewhere, for conforming the neighborhood to ANC boundaries, and we decline to engage in the judicial legislation necessary to create and impose such a requirement upon the Board.

known remonstrants of the rescheduling of the hearing on C.J.K.'s application from May 20, 1976, to June 9, 1976, (2) failure to post notice of the rescheduled hearing on the C.J.K. premises, and (3) failure to give great weight to the issues and concerns of the affected ANCs. We further hold that it was error (although not a basis for reversal here) not to deliver written notice to ANCs 3–C and 3–F at least thirty days before the initial and rescheduled hearing dates. We therefore remand the proceeding to the ABC Board for prompt conduct of a new hearing upon the appropriateness of issuing a Class C retailer's license to C.J.K.

One final comment. Because the Board's findings and conclusions, based on the evidence before it (which included the issues and concerns of ANCs 3–C and 3–F), were sufficiently detailed and supported by substantial evidence, it would be inequitable to terminate C.J.K.'s 1977–78 license prior to a new determination by the ABC Board itself in conformity with this opinion. Thus, C.J.K.'s Class C retailer's license shall remain in effect until further order of the ABC Board, timely made.

Remanded for further proceedings.

David T. HOLT, Appellant,

v.

UNITED STATES, Appellee.

Robert L. HOWARD, Appellant,

v.

UNITED STATES, Appellee.

Nos. 10918 and 10920.

District of Columbia Court of Appeals.

Argued Oct. 20, 1977.

Decided Jan. 10, 1978.

Defendants were convicted by a jury in the Superior Court, District of Columbia, Eugene N. Hamilton, J., of unlawful possession of a dangerous drug. Defendants appealed. The District of Columbia Court of Appeals, Gallagher, J., held that: (1) where detective testified only as to his opinion of one defendant's condition at time of offense and at no time had any knowledge of a subsequent chemical test, there was no abuse of discretion in refusing to admit test results during cross-examination of the detective, and (2) in view of evidence of guilt and in view of dubious value of rebuttal testimony which had been given by the Government, i. e., the detective's testimony that the one defendant appeared to be in a "narcotics stupor" and only partially coherent at time of arrest, it was not reversible error for the trial judge to refuse to allow a continuance so that defense might locate an unidentified expert witness who assertedly could give surrebuttal testimony concerning results of the chemical test performed on defendant the morning following his arrest.

Affirmed.

1. Criminal Law ⇐264

Even if unnecessary delay in arraignment was to be assumed, defendant was not entitled to dismissal of charges against him but rather, at best, was entitled to move to suppress any evidence gained by reason of delay. D.C.C.E. SCR, Criminal Rule 5(a).

2. Criminal Law ⇐700

Defendant in dangerous drug prosecution was not entitled to relief on ground that urine test results should have been furnished to defense counsel and that Government knowingly presented false testimony in view of fact that results of test were as readily available to defense counsel as to prosecutor, who did not see test results until they were produced at trial by defense. D.C.C.E. § 33–702(a)(4).

3. Witnesses ⇐271(3)

Where detective testified only as to his opinion of defendant's condition at time of

EXHIBIT C

MEMORANDUM

TO: Department of State, Attention: Harold Burman, Esquire

FROM: Wilkes & Artis

DATE: January 16, 1978

RE: Zoning Commission Cases No. 77-45 and No. 77-46; Text and mapping amendments to Zoning Regulations for chanceries and international agencies

LEGAL MEMORANDUM TO DEPARTMENT OF STATE REGARDING PROPOSED TEXT AND MAP AMENDMENTS TO THE DISTRICT OF COLUMBIA ZONING REGULATIONS (ZONING COMMISSION CASES NO. 77-45 AND No. 77-46)

I. Introduction

The Zoning Commission of the District of Columbia is considering proposed text and map amendments to the District of Columbia Zoning Regulations which would substantially change the right of chanceries (foreign missions) and international agencies to locate within the District of Columbia. The catalyst for the proposed changes are the recent proceedings and adoption by the National Capital Planning Commission (NCPC) of what NCPC terms "Foreign Missions and International Agencies Element and Related Modifications to Other Elements of the Comprehensive Plan for the National Capital." Without direct comment on the legal authority of the NCPC to adopt such an "Element and Related Modifications to Other Elements of the Comprehensive Plan for the National Capital" under the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), this Legal Memorandum, as requested, will address legal concerns about the proposed amendments in view of the goals of the State Department previously discussed with us.

II.
History of Zoning Regulations Related to Chanceries and International Organizations

Prior to 1958, chanceries were permitted in any and all zoning districts in the District of Columbia as a matter of right. In fact, prior to 1957, a certificate of occupancy was not required for such chancery uses. International agencies were treated as office uses permitted in zones where other offices were permitted (S-P, C-1, etc.).

In 1958, the Zoning Regulations were amended in the comprehensive rezoning of the City and new chanceries were then permitted in all residential zones by special exception approval of the Board of Zoning Adjustment. In S-P zones, chanceries were permitted in buildings constructed prior to 1958 as a matter of right and in new buildings only by special exception approval of the Board of Zoning Adjustment. In all other commercial and industrial zones, chanceries were permitted as a matter of right.

In 1964, Congress enacted the Chancery Act (see, §5-418, et seq., D.C. Code (1973)). The Chancery Act, by its terms, essentially prohibited new chanceries in all residential zones except for the medium-high or high density zones (at that time, R-5-C and R-5-D) wherein they were permitted by special exception approval by the Board of Zoning Adjustment under criteria set forth in the Chancery Act. No restrictions are contained in that Act for Special Purpose, Commerical or Industrial zones regarding the establishment of chanceries. The provisions of the Chancery Act by operation of law have been read into the Zoning Regulations so that, at present, chanceries are precluded from being established in the R-1, R-2, R-3, R-4, R-5-A and R-5-B zones, permitted by special exception from the Board of Zoning Adjustment in the R-5-C, R-5-D, W, C-R and S-P zones, and permitted as a matter of right in all other existing zones. International agencies continued to be governed in the general classifications of offices.

The proposed text amendments of Case No. 77-45 would repeal all previous Zoning Regulation provisions governing chanceries and international agencies except as provided in the amendments and would create what have been termed "overlay" zones, which are to be superimposed over existing zoning classifications. In the D-1 overlay zoning classification, chanceries, but not international agencies, would be permitted as a matter of right except with regard to a building or structure which has been designated an historic landmark, in which case Board of Zoning Adjustment approval as a special exception (proposed Section 4603.2) would be required. In the D-2 overlay zones, chanceries and international agencies would be permitted as a matter of right except with regard to a building or structure designated an historic landmark, in which case either use requires Board of Zoning Adjustment approval as a special exception (proposed Section 4603.3).

The proposed map amendments of Case No. 77-46 would propose the D-1 and D-2 overlay zones "generally in accordance" with the Foreign Missions and International Agencies Element adopted by NCPC. The actual mapping proposed has been submitted to you in plat form.

III.
Points of Legal Concern
Regarding Proposed Text and Map Amendments

A. The overlay zones may be in conflict with the Chancery Act provisions.

The proposed text and map amendments contemplate "overlay" zones which could and would apply to any and all existing zoning districts in the District of Columbia. Proposed Section 4601 provides in pertinent part that, "The zoning map for the existing underlying districts and the Zoning Regulations applying thereto shall remain in full force and effect." (Emphasis added.) Section 4602.1 provides that:

> "In any area where a D-1 or D-2 overlay district is mapped, any use permitted in the underlying district as a matter of right and any use that is prohibited shall continue to be permitted or prohibited in accordance with the established underlying district regulations."

Section 4603.2 permits chanceries in the D-1 overlay district as a special exception in historic landmarks and Section 4603.3 permits both chanceries and international agencies in historic landmarks by special exception, both regardless of underlying zoning classifications.

Under the Chancery Act, Congress prohibited the establishment of chanceries in the R-1 through R-5-B zones and specifically permitted in R-5-C and R-5-D zones by special exception. No prohibition is provided in the Act for chanceries locating in the S-P, Commercial or Industrial Districts. Since the overlay zones would permit chanceries in R-1 through R-5-B zones while keeping underlying zoning in "full force and effect," a conflict appears to result with the Congressional mandate in the Chancery Act. Likewise, where Congress has specifically permitted chanceries in the medium-high and high density residential apartment zones, the overlay district, by its terms, may prohibit the location of chanceries within that zone. Again, a direct conflict may result.

Not only does there appear to be a conflict with the Chancery Act and probably the Federal pre-emption dealing with chanceries on the subject, but there is also a direct conflict with Section 4603.1 since, under that section, any special exception permitted in the underlying zone would be permitted in the overlay zone.

As to the policy goals of the State Department, it should be noted that, while the map does include portions of Massachusetts Avenue and the International Center site, the location of chanceries is restricted as to other areas of the City. Consideration, perhaps, should be given to the fact that, if International Center cannot increase in size, there will be a need for more flexibility of location in other areas of the City, especially for smaller governments.

B. Prohibition of chanceries and international agencies from commercial and industrial areas does not appear to have a rational basis.

Under the proposed text and maps, chanceries and international agencies will be prohibited in commercial and industrial zones unless the overlays specifically cover the zones. Yet, chanceries and international agencies are clearly "office" uses with, as far as we are aware, such attributes and impact as other office uses. In fact, our experience indicates that in many situations the chancery uses are far less dense than the normal commercial office use.

The Zoning Commission under the Zoning Enabling Act regulates the use of land under criteria set forth in the Act. The Zoning Commission decisions for restricting land use must be rational and not be arbitrary or capricious. Since the purpose of zoning is to control land use and to encourage stability of land use, serious question of rational basis for excluding chanceries from commercial and industrial zones wherein other office uses are permitted arises.

A practical problem illustrates the situation. Under Section 8104.2, only one certificate of occupancy is required for an office building in commercial and industrial zones. Assuming an owner has a certificate of occupancy for a building containing office use, no further certificate of occupancy is required. To refuse a chancery or international agency occupancy within the building or to permit such uses presents a problem and an enforcement problem.

C. <u>The overlay zones create a problem of "uniformity" of zoning districts</u>.

The Zoning Enabling Act provides (§5-413, D.C. Code (1973)), that, "all such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts." Thus, there is a requirement of uniformity within zoning districts. Under the overlay concept, property owners of the same

underlying zoning classification would be treated in a non-uniform and different manner from other owners. This, in turn, seriously affects his right of use, his evaluation of property as well as assessment of property.

D. Concept of implementing a detailed map raises serious questions as to delegation of authority and jurisdiction problem of Zoning Commission.

The only agency with authority and jurisdiction to zone through regulations and maps in the City is the Zoning Commission, which acts in a quasi-legislative capacity. On the other hand, with regard to the function of planning (essentially an executive function), both the Mayor as the planning agency for the City and the National Capital Planning Commission as the central planning agency for Federal activities play an important role. The distinction between the planning and zoning functions have recently been recognized by the District of Columbia Court of Appeals in Capitol Hill Restoration Society v. Zoning Commission of the District of Columbia, No. 9130 (decided November 23, 1977), where the Court at Slip Op. 16-17 noted that NCPC does not have a veto over the Zoning Commission rulings.

Without question, NCPC has a vital interest and important role regarding the Federal interest. See, §§1-1004(a), 1-1002(a)(ii), 1-1002(a)(iv)(D) and 1-1002(e), D.C. Code (1977 Supp.).

In Case No. 77-46, the amending proposals call for mapping "generally in accordance with" the documents adopted by NCPC. The legal problem presented is not that the Zoning Commission should not give due regard to NCPC's general recommendations but with regard to the detailed map furnished by NCPC to the Zoning Commission. In other words, if an NCPC map with detailed geographic and other parameters are binding upon the Zoning Commission to the extent that it cannot exercise its statutory authority under the Enabling Act and deviate from the NCPC map, then a delegation problem exists. In our opinion, again assuming without comment the authority of NCPC to promulgate the element in the form that it is submitted, a textual criteria in policy terms could be appropriately respected

by the Zoning Commission. An example of the problem that exists would be a decision by the Zoning Commission not to apply the restrictive overlay to certain commercial areas of the City or to apply the overlay to areas of the City extending beyond the detailed map. If the Zoning Commission makes these decisions on the basis of its Congressional mandate, no problem exists. However, if the Zoning Commission fails to follow its Congressional mandate in favor of the detailed map, the delegation problem is created. The Zoning Commission may wish to ask the NCPC to reconsider its "Foreign Missions and International Agencies Element" in this regard.

IV.
Conclusion

In its present form, it is our opinion that very serious legal and practical problems will result if the proposed text and map in Cases No. 77-45 and No. 77-46 are adopted. If further information or discussions are appropriate, we are ready to meet with you at any convenient time.

WILKES & ARTIS

By _____
Norman M. Glasgow

_____
Whayne S. Quin

EXHIBIT D

J. WILLIAM FULBRIGHT

January 23, 1978

Mr. Stephen E. Sher
Executive Director
Zoning Commission of the
District of Columbia
Room 9, District Bldg.
14th and E Streets, N.W.
Washington, D. C.

RE: Zoning Commission
Cases 77-45 and 77-46

Dear Mr. Sher:

I write as a long-time resident of the Sheridan-Kalorama neighborhood and in support of the presentation of the Sheridan-Kalorama Advisory Neighborhood Commission 1-D, dated January 23, 1978. In addition, I was a member of the United States Senate in 1964 when the Congress enacted the Chancery Act of 1964 and am familiar with the purpose of that Act.

I have read the proposal of the National Capital Planning Commission, which is inconsistent with the Chancery Act of 1964.

It is my opinion that the proposal of the NCPC to alter the zoning regulations applicable to residential areas is in conflict with the Chancery Act of 1964. The appropriate way legally to bring about such a change would be to have Congress repeal the Chancery Act of 1964. The proposal of the NCPC would circumvent the law -- it would evade and defeat the clear intent of the law without repealing it. It would create confusion and instability in the areas concerned.

The orderly and legal procedure to effectuate such a change in the zoning regulations would be to procure a repeal of the law by Congress.

I urge the Zoning Commission to reject the proposal of the National Capital Planning Commission.

Sincerely,

J. W. Fulbright

BC: Mr. George Blow

EXHIBIT E

THOMAS J. McINTYRE
NEW HAMPSHIRE

COMMITTEES:
ARMED SERVICES
CHAIRMAN, SUBCOMMITTEE ON RESEARCH AND DEVELOPMENT
BANKING, HOUSING, AND URBAN AFFAIRS
CHAIRMAN, SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SELECT COMMITTEE ON SMALL BUSINESS
CHAIRMAN, SUBCOMMITTEE ON GOVERNMENT REGULATION

United States Senate
WASHINGTON, D.C. 20510

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February 23, 1978

Mr. Stephen E. Sher
Executive Director
Zoning Commission of the District
of Columbia
Room 9 District Building
14th and E Streets, N.W.
Washington, D.C.

Re: Zoning Commission
Cases 77-45 and 77-46

Dear Mr. Sher:

I am writing to you concerning the proposal of the National Capital Planning Commission.

In 1964 I served as a member of the District of Columbia Committee of the United States Senate and worked on passage of the Chancery Act, including service on the conference committee on the bill. It is my belief that the Commission's proposal to alter the zoning regulations applicable to residential areas is inconsistent with the Act. I believe this is clear from the enclosed copy of the statement I made in presenting the conference report to the Senate on October 2, 1964.

Any such change would, in my view, require Congressional rather than administrative action, and I hope, for that reason, that the NCPC proposal will be rejected by the Zoning Commission.

Sincerely,

Thomas J. McIntyre
United States Senator

TJM:Wm
Encl.

LOCATION OF CHANCERIES IN THE DISTRICT OF COLUMBIA—CONFERENCE REPORT

Mr. McINTYRE. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 646) to prohibit the location of chanceries and other business offices of foreign governments in any residential area in the District of Columbia. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. WALTERS in the chair). The report will be read for the information of the Senate.

The legislative clerk read the report. (For conference report, see House proceedings of today.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. McINTYRE. Mr. President, the bill, S. 646, which was reported by the conferees is, in my opinion, a fair and reasonable resolution of the problem which has confronted the residents of the District of Columbia, the U.S. Government, and the governments of foreign nations seeking locations in the District of Columbia for chancery buildings.

The bill which the conferees have reported clearly spells out the requirements which foreign governments must meet in order to locate chanceries in the District.

With certain specified exceptions, no new chancery locations may be established in residential zones. The Senate conferees adopted provisions of the House bill which would allow chanceries to be located in medium high density and high density apartment zones, subject to explicit standards of available off-street parking space, building height, and architectural design. Chanceries will be allowed to locate in all other zones, including special purpose, commercial, and industrial zones.

The House bill had included a provision allowing small chanceries employing less than seven persons to locate in all residential zones. The House receded from this position in the face of the argument so ably presented by the distinguished Senator from Oregon [Mr. MORSE] that such a provision might well turn out to be virtually unenforcible.

Sections 2 and 4 of the bill approved by the conferees represent a strengthening of the provision included in the original Senate bill designed to protect the rights of owners of buildings now legally used as chanceries.

Section 4 was intended to meet the specific case of a building in any residential zone when the most recent legal use of that building has been as a chancery by a foreign government. Section 4 would allow that building to be used as a chancery by another foreign government in the future. Thus, the owners of the building, who may have expended considerable sums of money in altering their building to make it suitable for chancery use, will not have to lose their investment solely because their present tenants move out. Of course, as the House report pointed out, the right to use a building as a chancery in the future "could be specifically abandoned by the owner of such property or by demonstration that, as a matter of fact, the use had been otherwise abandoned."

The conferees were unanimous in feeling that the present bill represents a fair solution to the chancery problem in Washington, for the time being. Hope was expressed that it might be possible, at a later date, to consider a more long-term solution to the problem, possibly in the nature of a special chancery area, or precinct.

Mr. KUCHEL. Mr. President, will the Senator from New Hampshire yield?

Mr. McINTYRE. I am glad to yield.

Mr. KUCHEL. I should like to make some legislative history. Let us assume that Black Acre in the city of Washington constitutes present nonconforming use. Do I correctly understand that there is nothing in the bill which would affect the rights of the owners of Black Acre to continue that nonconforming use so long as the nonconforming use remains the same, regardless of tenants?

Mr. McINTYRE. The Senator from California is correct. The bill goes out of its way to protect existing vested rights in the Black Acre situation. If the Black Acre owners have a nonconforming use they are entitled to certain vested rights that would not be affected by the bill.

Mr. KUCHEL. Even though the tenants hasten to change, if the nonconforming use is set aside for another government?

Mr. McINTYRE. The Senator is correct. My admonition to him is that a nonconforming use is a right with its own legal standing. The owners of Black Acre cannot expand upon the use. By the same token, it could very well be legally abandoned.

Mr. KUCHEL. Could be?

Mr. McINTYRE. Could be; but at the discretion of the owners.

Mr. KUCHEL. Mr. President, I ask unanimous consent to have printed in the RECORD a copy of my letter to the Senator from New Hampshire [Mr. McINTYRE] on this subject.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 29, 1964.

Hon. THOMAS J. McINTYRE,
U.S. Senate,
Washington, D.C.

DEAR TOM: As you know, I have had a longstanding interest in S. 646 dealing with foreign chanceries located in the District of Columbia. One of my California constituents owns the building which is now leased to the Jamaican Government as a chancery. This building has always been used as a chancery and, although in a residential district, indeed, the sister-in-law of my constituent lives next door, it is not suitable because of its size for use as a private residence. I deeply appreciated your entering into a colloquy with me on this matter when S. 646 passed the Senate.

I have studied both the House and the Senate reports on this legislation and I feel that the provisions with regard to the right of an individual to continue a long established nonconforming use, such as is true in the case of a grocery located in a residential neighborhood prior to the establishment of a zoning law or regulation, is not clear with reference to the type of situation in which my constituent finds himself. I therefore wonder if it might be possible for you to raise this question when the conferees meet and see if some agreement could be reached in principle on this matter so that the appropriate legislative language might be drafted. I think the principle here is that a person using a building on the date of the adoption of the zoning regulations, say May 12, 1958, should be permitted to continue to use that property to the same extent and in the same manner as it was being used at that time and during the period which ends with the enactment of the bill now before the conferees. I would hope that such a continued use, as a chancery in this case, would not be subject to new provisions which would restrict the reasonable use of that property in residential areas.

With kindest regards.

Sincerely yours,

THOMAS H. KUCHEL.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. FULBRIGHT subsequently said: Mr. President, a moment ago, when the chancery bill conference report was acted on, I wished to say a word of commendation for the Senator from New Hampshire [Mr. McINTYRE] for the fine work he did in bringing to final passage the chancery legislation, and to express my appreciation to the senior Senator from Oregon [Mr. MORSE] for the contribution he made in working out what I believe to be a very sound procedure for the location of foreign chanceries in the city of Washington.

It has been a troublesome problem for many years. It has caused a great deal of ill feeling between our country and foreign countries. I believe the formula which the bill has adopted is a sound formula and one that we can live with. It will go far toward settling this troublesome problem.

Mr. MORSE. Mr. President, I join the Senator from Arkansas in expressing my appreciation to the Senator from New Hampshire [Mr. McINTYRE] for working out what I think is a very sound principle to govern the location of chanceries in the District of Columbia.

It was my privilege to work with the Senator from New Hampshire as one of the conferees. I want the record to show that credit for that fine conference report should go to the Senator from New Hampshire [Mr. McINTYRE]. Every suggestion he made I thought was a very sound one and I was very glad to go into conference supporting his hand in those recommendations.

TRIBUTES TO SENATOR WALTERS OF TENNESSEE

Mr. RUSSELL. Mr. President, it now appears that the 88th Congress will adjourn sometime this evening, and before Senators leave I wish to make a brief statement.

I desire to say a few words with respect to the distinguished occupant of the chair, the junior Senator from Tennessee [Mr. WALTERS] and his brief period of service in this body.

EXHIBIT F

D.C.-44
May 1967

Memorandum Government of the District of Columbia

Department, Corporation Counsel
Agency, Office: LCD:ELC:jd
#UBD80948

TO: Steven E. Sher
Executive Director
Zoning Secretariat

FROM: Louis P. Robbins LPR
Acting Corporation Counsel, D.C.

Date: July 7, 1978

SUBJECT: Zoning Commission Cases No. 77-45 and 77-46 (Diplomatic Zones) (LCD No. UBD80948)

By Memorandum dated June 26, 1978, you asked that this Office review several issues which have developed with respect to the above-captioned matters. This memorandum is in response to that request. I have also reviewed the accompanying materials which you sent.

One central factor which relates to your questions is the Chancery Act of October 13, 1964, Pub. L. 88-659, 78 Stat. 1091, as amended, which is codified at Sec. 5-418(b) through 5-418d, D.C. Code, 1973 ed. Sec. 5-418 provides, in pertinent part:

> §5-418. Maximum height of buildings-Restrictions on location and use of chanceries and embassies-Definitions.
>
> * * *
>
> (b) After October 13, 1964, a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building anywhere in the District of Columbia, other than a district or zone restricted in accordance with this Act to use for industrial purposes, for use by such government as an embassy.
>
> (c) After October 13, 1964, except as otherwise provided in subsection (d) of this section, no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is

J-3226-74

to be conducted on any land, regardless of the date such land was acquired, within any district or zone restricted in accordance with this Act to use for residential purposes.

(d) After October 13, 1964, a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery within any district or zone restricted in accordance with this Act to use for medium-high density apartments or high density apartments if the Board of Zoning Adjustment shall determine after a public hearing that the proposed use and the building in which the use is to be conducted are compatible with the present and proposed development of the neighborhood. In determining compatibility the Board of Zoning Adjustment must find that -

(1) in districts or zones restricted in accordance with this Act to use for medium-high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each twelve hundred square feet of gross floor area; and

(2) in districts or zones restricted in accordance with this Act to use for high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each one thousand eight hundred square feet of gross floor area; and

(3) the height of the building does not exceed the maximum permitted in the district or zone in which it is located; and

(4) the architectural design and the arrangement of all structures and off-street parking spaces are in keeping with the character of the neighborhood.

(e) As used in this section, the term -

(1) "embassy" means a building used as the official residence of the chief of a diplomatic mission of a foreign government.

(2) "chancery" means a building containing business offices of the chief of a diplomatic mission of a foreign government where official business of such government is conducted, and such term shall include any chancery annex, and the business offices of attaches of a foreign government who are under the personal direction and superintendence of the chief of the mission of such government. Such term shall not include business offices of nondiplomatic missions of foreign governments such as purchasing, financial, educational, or other missions of comparable nondiplomatic nature.

(3) "person" means any individual who is subject to direction by the chief of mission of a foreign government and is engaged in diplomatic activities recognized as such by the Secretary of State.

The Act essentially provides that an embassy shall be permitted in any zone other than one which is industrial; and that no new chancery shall be permitted in a residential zone, except, if the BZA makes certain findings, in a zone where medium-high density or high density apartments are permitted. The Act is silent as to the location of chanceries in mixed-use zones, commercial zones, or industrial zones. The foregoing is not intended to delineate precisely the effect of the Act, but merely to set forth its general scheme. No published judicial opinion has addressed the meaning of the Act. This Office has prepared several legal opinions, one of which is referred to hereinafter.

The questions which you raise center on the inter-relationship of the Self-Government Act's planning and zoning provisions, the Foreign Missions and International Agencies Element of the Comprehensive Plan, the Zoning Regulations, and the Chancery Act.

The Plan Element was adopted by the NCPC on October 6, 1977, pursuant to its authority under Section 1-1004(a), D.C. Code,

1973 ed., 1977 Supp., (also codified as 40 U.S.C. 71c(a)). That Section provides, in pertinent part:

> §1-1004. Comprehensive plan for the National Capital-Elements-Procedure.
>
> (a) The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal developments or projects in the environs *** .

This and related provisions of the Home Rule Act reflect the Congressional recognition that, while local planning goals should be determined by the District Government, the Federal interest in the National Capital required that a Federal agency exercise planning authority with respect to the Federal interest. It is a given that the District's function as host city to the representatives of foreign governments is an integral part of the Federal Government's conduct of foreign relations. Thus, the Congress provided that the District's "planning responsibility shall not extend to *** international projects and developments in the District, as determined by the *** [NCPC]." (Sec. 1-1002(a)(2) D.C. Code, 1973 ed., 1977 Supp.) It is, of course, beyond dispute that Federal and international projects can have as great a potential for local impact as do the land planning elements for which the District Government is responsible. Nevertheless, it must be recognized that the Congress, in the Home Rule Act, gave the NCPC the planning responsibility to balance the Federal and local interests with respect to Federal or international projects and developments. By virtue of its promulgation of the Element, the NCPC has exercised its judgment as to the appropriate balance with respect to foreign missions and international agencies.

The NCPC having adopted the aforesaid Element, it is the responsibility of the Zoning Commission to address the matter of promulgating such amendments to the zoning maps and regulations as will render them not inconsistent with the Plan Element. Such amendments must also conform to the requirements of the Chancery Act.

In a May 10, 1967 opinion, the Corporation Counsel concluded that the Chancery Act did not limit the location of future chanceries to land on which chanceries could have been located at the time the Act was enacted. Although the opinion was principally directed to the question of the application of Section 7501 of

the Zoning Regulations, it would be erroneous to suggest that the Congress in any respect viewed the residentially-zoned districts as cast in concrete as of October 13, 1964.

The proposed amendments now being considered would either establish several overlay Districts or create new "diplomatic, special purpose or mixed use zones." Under the overlay concept, in the D-1 districts chanceries would be permitted as a matter of right, with BZA review added to supplement review by the Zoning Regulation Division. In the D-2 District, chanceries and international agencies would be permitted in accord with the provisions of the underlying districts. Wherever a D-1 or D-2 District is mapped the zoning map for the underlying district, and the Regulations applicable thereto, would remain in effect. The effect would therefore be to create a number of mixed-use zones, such as, for example, R-4-C/D-1, R-1-A/D-1, R-3/D-1, C-2-A/D-2, and S-P/D-2.

The alternative concept would establish diplomatic or other zones allowing diplomatic use and such other uses as the Commission would conclude to be appropriate with diplomatic use. This latter alternative recommends itself to me because it would require the Commission to decide which other uses could reasonably be allowed in a diplomatic zone. This decision-making process would be beneficial in itself, even if the ultimate mix of permitted uses proves to be the same as that mix which would result from the overlay scheme.

Although it cannot be gainsaid that the creation of certain of these new zones would create an appreciable legal question as to inconsistency with the Chancery Act, it is my opinion that their establishment is, at the least, legally defensible. The Chancery Act did not amend the authority of the Zoning Commission to amend the Zoning Regulations, whether to create and map new zones or to amend the map as to those districts which had been created by 1964. In particular, as I have noted above, the Act did not purport to restrict the Commission's exercise of its police power to amend the 1964 mapping of lower density residential neighborhoods, based upon sound planning considerations.

The Home Rule Act, which leaves all zoning power with the Zoning Commission, vests the Federal planning authority with the NCPC. Moreover, the Congress has provided that when that planning authority is exercised by the promulgation of a comprehensive plan element, the Zoning Regulations are not to be inconsistent therewith. The Federal planning considerations which underlie the NCPC's exercise of its statutory authority

must be recognized as being as sound a legal predicate for zoning amendments as would be purely local planning considerations. That is, just as the Chancery Act would not foreclose, for example, the establishment of an R-5-C or C-1 strip zone adjacent to Massachusetts Avenue, between Dupont Circle and 35th Street, if local planning considerations, consistent with the over-all scheme of the Zoning Regulations, reasonably supported such amendments, so too would Federal planning considerations permit zoning changes. The NCPC, as the Federal agency with the responsibility therefor, and with a responsibility also to consider the local ramifications of Federal developments, has determined that such Federal considerations justify promulgation of a Plan Element, the implementation of which will require, inter alia, amendments of the Zoning Regulations and Maps.

Thus, although zoning implementation of the Element would inevitably lead to changes in the mapped character of certain areas of the city, such changes are not proscribed by the Chancery Act. All that Act requires is that such changes be grounded upon zone Districts which are of such a character that they are intended to contemplate chanceries as a logical element thereof, rather than as a deviation therefrom. The proposed regulations are based on implementation of the NCPC's considered judgment as to what classifications are reasonably appropriate to accommodate foreign missions and international agencies. In particular, the historic and continuing characteristics of 16th Street and Massachusetts Avenue support the NCPC treatment of those main corridors. Inasmuch as there appears a reasonable predicate for the proposed treatment thereof, it is axiomatic that such classifications should pass constitutional muster.

It should be emphasized that the existence of the NCPC Plan Element will not serve as a substitute for findings by the Zoning Commission which will support its ultimate action. Such findings will be required.

For the foregoing reasons, it is my opinion that it would not violate the Chancery Act for the Zoning Commission to create and map diplomatic zone districts, either by the overlay concept or by creating other new zones, in a manner which is not inconsistent with the NCPC Plan Element. Nor do I find any substantial equal protection question in allowing chanceries where other types of offices are not allowed. The NCPC Element sets forth factors which it found to warrant treatment of chancery offices in a manner which is different from that accorded other offices. Those factors are reasonable on their face. A "long trail of failure" attests to the extremely heavy burden which is borne by those who would seek judicial invalidation of legislative

classifications. New Jersey Restaurant Association v. Holderman, 131 A.2d 773, 776 (N.J., 1957). It should also be clear in this respect that the Zoning Commission is not the appropriate forum to rule upon the validity, as a matter of law, of the NCPC Element.

The other questions which you raise do not arise directly out of the applicability of the Chancery Act. Rather, they center on the extent to which the Zoning Regulations may deviate from that which is set forth in the Element without becoming inconsistent therewith. This type of question was addressed generally in a January 19, 1978 memorandum from me to Mr. Gilbert. A copy of that memorandum is attached. As indicated therein, a meaningful legal opinion must be predicated upon specific proposals, including the Commission's reasons for the inclusion of the greater or lesser area. In addition, it must be recognized that the ultimate evaluation of any question of inconsistency can only occur after NCPC review and in the light of the NCPC's comments. At this stage of the process, it should generally suffice to say that it would be unreasonable to read either the Self-Government Act or the Element criteria as precluding effective local decision-making by the Zoning Commission.

It is appropriate to express my views at this time on the specific proposal to permit chanceries and international agencies in all commercial and mixed-use districts outside the areas mapped for diplomatic zones. It is not an expressed goal or objective of the Plan Element to protect the unmapped commercial and mixed-use districts from intrusion by chanceries, nor would it be reasonable to conclude that chanceries and international agencies could not locate in such districts harmoniously with the other uses permitted therein. This is to be contrasted with the objective that "special care [be] given to protecting residential areas." Element, par. 313.31. In addition, while it is a stated objective to "[a]ssure a choice of locations *** in reasonable proximity to Federal office and other Foreign Missions and International Agencies", (Ibid) no objective to require location in such areas is indicated. The Element goals and objectives clearly bear on any question of inconsistency. Therefore, without pre-judging a response to future NCPC comment on the point, it does not appear to me that the proposal to permit chanceries and international agencies in all commercial and mixed-use zones is inconsistent with the Plan Element. In any event, it is to be expected as a normal part of the process that the Zoning Commission may from time to time propose action which may in some respect require the NCPC, during its review, to re-evaluate a plan element it has adopted.

Another question you raise relates to the propriety of allowing chanceries under certain conditions only with BZA review. The NCPC view is that the language of paragraph 313.41 of the Element requires implementation through matter-of-right zoning. It is my opinion that the Zoning Regulations would not be inconsistent with the Plan Element merely because they may permit chanceries through BZA review. It is noteworthy that Congress, in the Chancery Act, used the phrase "shall be permitted" in relation to permitting chanceries only with BZA approval. Sec. 5-418(d), D.C. Code, 1973 ed., supra.

The thrust of what is reasonably required is that the criteria which must be met before a chancery can be located, whether after review only by the Zoning Regulation Division or after review by both the BZA and that Division, must be sufficiently predictable of attainment that a foreign government will be able to assure itself that it can conform to the criteria. That is, the criteria should not leave room for argumentative opposition, which in fact would be grounded upon case-by-case opposition to any chancery, but in form would be grounded upon the opportunity for challenge which vague criteria would afford. It is significant that one of the purposes of the Chancery Act was to redress "[t]he lack of a clear law setting up criteria for the location of chanceries [which] made it extremely difficult to explain the basis for a particular decision which rejected *** or approved *** an application for a special exception." H.R. Rep. No. 1727, 88th Cong. 2d Sess. 4 (1964). Given that Congressional intention to provide clear criteria for chancery location, it would be logically within the Commission's authority to adopt criteria to control where chanceries "shall be permitted" which are equivalent in their general character and degree of specificity to the criteria which the Congress deemed appropriate in Section 5-418(d), supra, and which relate to the compatibility of the building and the use "with the present and proposed development of the neighborhood."

The Chancery Act thus demonstrates that BZA review is not inherently inconsistent with matter-of-right zoning. Proposed Section 4602 would not give the BZA authority to deny approval outright. I therefore see no basis for a contention that it would be inconsistent with the Element.

One problem with that Section, however, is that it provides for certain agency referrals and reports without clearly granting the BZA authority to impose conditions related to such reports. That is, for example, a Department of Environmental Services report would be sought, but there is no mention of the imposition

of conditions relating to environmental concerns. This sort of anomaly should be eliminated.

LPR

Attachments

EXHIBIT G

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Chancery Application of) PEOPLES REPUBLIC OF BANGLADESH) for the property at) 2501 Massachusetts Avenue, N. W.)	Application No. 12822

STATEMENT OF THE SHERIDAN KALORAMA NEIGHBORHOOD COUNCIL, KENNETH P. MCKINNON, ESQ. AND SIDNEY S. ZLOTNICK, ESQ. IN OPPOSITION TO THE APPLICATION

Background

The Peoples Republic of Bangladesh (PRB) was on notice when it acquired the residence at 2501 Massachusetts Avenue, Northwest, in the first part of 1977 that the alteration or use of the property as a chancery was not permitted under the Zoning Regulations of the District of Columbia.*/ (Exhibit 1)

On August 1, 1977, the Administrator of the Building and Zoning Regulation Administration was informed by Kenneth P. McKinnon, an abutting property owner, that PRB intended to use 2501 Massachusetts Avenue, Northwest, as a chancery. (Exhibit 2) James E. Bess, Assistant Chief of the Zoning Regulation Division, replied to Mr.

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*/ This property is zoned R-1-B. See footnote to Section 3101.410, noting that "chanceries were removed from the list of permitted uses in R-1, R-2, R-3, R-4, R-5-A and R-5-B Districts by the Chancery Act of 1964 (October 13, 1964, 73 Stat. 1091); Appendix H."

McKinnon as follows:

> "The records of this Department have been checked regarding any request to use the property at 2501 Massachusetts Avenue, N. W. as a Chancery for the People's Republic of Bangladesh. Nothing has been received at this time. However, the information you furnished has been given the Office of Protocol, U.S. Department of State. It is my understanding that a response is being forwarded to you from the State Department.
>
> "Your letter is being made a part of the record in this office. The concerns you express are fully appreciated by this office and you may be assured that any requests for occupancy permit or building permit will be reviewed in light of the Chancery Act of 1964." (Exhibit 3)

On November 15, 1977, James J. Fahey, Acting Chief of the Zoning Regulation Division, wrote the Assistant Chief of Protocol of the Department of State as follows:

> "This office is in receipt of complaints from abutting property owners regarding repair work in progress at 2501 Massachusetts Avenue, N. W., owned by the Embassy of Bangladesh.
>
> "It is also the abutting property owners' fear that the building is, in fact, being renovated for Chancery purposes in violation of both the Chancery Act and the D.C. Zoning Regulations, as the above property is located in the 'R-1-B' District.
>
> "An inspection of the property by a representative of this office disclosed work was in progress without benefit of permits. We were unable to determine, however, the proposed use of the building.

"It is requested that you use the good graces of your office to persuade the Embassy to cease all work until the necessary approvals and permits are secured." (Exhibit 4)

On November 17, 1977, the abutting property owners commenced an action in the Superior Court for the District of Columbia against the contractors who were engaged in a construction job at 2501 Massachusetts Avenue, Northwest. Sidney S. Zlotnick, Evelyn D. Zlotnick and Kenneth P. McKinnon v. Leapley Company, Inc. and James J. Gross Construction Co., Civil Action No. 11435-77. The following day the Court found "that the construction in question involves substantial alteration of the premises which were formerly used as a private residence; that the subject premises are zoned R-1-B for Residential use as a single family dwelling. It appears to the satisfaction of the Court that the intended use of the premises by the Government of Bangladesh, and the reason it has caused the current alteration and construction is to effect use of the property for office and/or chancery purposes." (Exhibit 5, p.2) The Court further found "that no building permits have been obtained by the owner or contractor or subcontractors for the work which has already been accomplished nor for the work that appears to be proposed to be accomplished. In view of the equipment, materials, and

trucks at the site, such permits would be required for alterations involving plumbing and electrical work as well as for installation of an elevator. It appears that installation of an elevator is contemplated and electrical work is, or will be performed by the contractors. Other building permits which are often obtained by owners of properties for work similar to that undertaken at the present time have also not been obtained but are necessary for Defendants to proceed with such work.

"The building in question is presently not occupied by the owners and it appears that the necessary renovation could be accomplished within a brief period of time. If such work is accomplished within the next few days, the premises could be occupied for a use inconsistent with the laws of the District of Columbia. The Government of Bangladesh has made application for a zoning variance for the subject premises which would permit the use of the property for other than a single family dwelling; to date that application has not been granted.

"D.C. Code §5-418(c) provides:

> 'After October 13, 1964, except as otherwise provided in Subsection of this section, no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted on any land,

> regardless of the date such land was acquired within any district or zone restricted in accordance with this Act to use for residential purposes.'

"If the Government of Bangladesh occupies the premises in violation of the above-quoted in statutory provision, there is no effective means to control the use of the premises by that foreign government. The only effective control is to enforce statutory requirements governing the alteration of the premises which would effect the utilization of those premises for purposes inconsistent with the law." (Exhibit 5, pp.2-3)

The Court ordered that the defendants be precluded "from performing any construction tasks without first obtaining the necessary approvals and permits from the D.C. Government. . . ." (Exhibit 5, p.4)

On November 18, 1977, the same day the Court issued its order, PRB, by Humayun Kabir, Minister, under seal of the Embassy, executed an application for a permit to make alterations to 2501 Massachusetts Avenue, Northwest. (Exhibit 6) These alterations included the installation of "elevator pit and plunger for future elevator" and the removal and relocation of "interior non-bearing partitions." The application, which recites that "THE APPLICANT AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS APPEARING ON BOTH

SIDES OF THIS APPLICATION," was completed as follows:

"Use of building: Present-residence/proposed-residence"

"If use is residential, how many living units? Present-one/proposed-one"

This application was sent to the Department of State which, on November 29, 1977, wrote Mr. Fahey as follows:

> "The Protocol Office has now received an official communication from the Embassy stating that it desires to make repairs and alterations to the building and that both its present and proposed use is residential. I have enclosed the Embassy's permit application as well as a copy of the Embassy's communication to us.
>
> "In transmitting the application to your office, the Department of State wishes to point out that it is not thereby endorsing it, nor is the Department verifying that the proposed plans, as given in the architectural drawings, indicate the kind of modifications consistent with use of the building for purely residential purposes. We of course must defer to your judgment in technical matters of this kind. You may feel that an inspection of the premises is necessary before your staff can reach a decision on the application; if so, we shall be glad to take any steps within our power to arrange for an appointment for that purpose." (Exhibit 7)

Following a hearing on November 22, 1977 the Superior Court on December 2, 1977 continued the injunction against construction without the necessary permits from the District of Columbia.

On December 8, 1977, Mr. Fahey informed the Protocol Office that he would have to have a completed Form EDP-180. (Exhibit 8) On December 12, 1977, PRB by Mr. Kabir certi-

fied to the Landmark Committee on this form:

"Type of work: Alteration - Repair"

"Type of structure: Dwelling" (Exhibit 9)

On December 15 and 22, 1977, John R. Risher, Jr., Esq., Corporation Counsel, addressed memoranda to James W. Hill, Director of the Department of Economic Development. Mr. Risher wrote on December 15, 1977:

> "It is the position of this Office that because of §5-418(c), D.C. Code, 1973 ed., no foreign government may, as of right, 'construct, alter, repair, convert, or occupy a building for use as a chancery. . .within any district or zone restricted in accordance with this Act to use for residential purposes.' Instead, the repair or conversion of a building for use as a chancery in the District of Columbia in any residential district is permissible only in R-5-C and R-5-D districts, provided it is approved by the Board of Zoning Adjustment. §5-418(d); §3105.1, Zoning Regulations.
>
> "Section 5-422 makes it unlawful, inter alia, to convert or alter any building without a building permit, and further provides that no such permit shall issue unless the plans for the proposed work fully conform to §§5-413 through 5-428, including §5-418, and regulations adopted thereunder. Any alteration, conversion or use in violation of those provisions is specifically declared unlawful." (Exhibit 10, p.2)
>
> * * *
>
> "Mr. Fahey, Acting Chief of the Zoning Regulation Division, reports that he has received a letter from the Assistant Chief of Protocol at the

> State Department forwarding a completed permit application and architectural drawings.2/ An attached communication from the Bangladesh Government states that 'the present intended use of the building is for residential purposes.' The permit application contains the same statement.
>
> "In view of the foregoing, it appears that we have adequate assurances in respect to the present use of the subject premises.
>
> "2/ We are advised that the State Department declined to endorse this statement of intent primarily because of the neighbors' concerns and the pending zoning case, No. 77-31." (Exhibit 10, p.3)

On December 22, 1977, Mr. Risher advised Mr. Hill:

> "After careful consideration of this matter and upon the advice of Mr. James Fahey, Acting Chief, Zoning Regulation Division, we have concluded that the plans are consistent with the residential purpose of the contemplated work announced by the Bangladesh Government in its permit application. Therefore, we have advised BZRA to issue the requested permit. However, in order to insure compliance with the conditions of such approval, we request that your Department carefully monitor this matter with respect to actual alteration and use of the premises." (Exhibit 11)

Thus the face of the permit application (Exhibit 6) bears the handwritten notation "memo Corp. Counsel 12/22/77" and a stamp: "Complies with requirement of zoning regulations" initialed by J. E. Bess, Deputy Zoning Administrator (December 27, 1977). The word "residence" is lined out and the word "dwelling" substituted as the present and proposed uses.

Permit No. B257228, issued on December 27, 1977, authorized the Embassy of Bangladesh to perform the work with the understanding that the building was "to be occupied as DWELLING." (Exhibit 12) The Department of State was informed (Exhibit 13). Once the permit issued, the construction work resumed.*/

On February 22, 1978, Mr. McKinnon unsuccessfully sought revocation of the permits on the ground that they were obtained by "a transparent scheme to subvert local zoning and building code requirements." (Exhibit 15) On April 18, 1978, Sheridan Kalorama Neighborhood Council (SKNC) wrote Ambassador Siddiqi as follows:

> "We welcome your government as an associate member of the Sheridan Kalorama Neighborhood Council upon representations which we understand that you have made to officials of the Government of the District of Columbia that you intend to occupy the residence at 2501 Massachusetts Avenue, N. W. as an embassy-residence, as permitted by law.
>
> "Regrettably, a number of the workmen now engaged in remodeling the building have stated to neighbors that the building is to be used as a chancery, which is not permitted by the Chancery Act of 1964; . . ." (Exhibit 16)

SKNC received no reply.

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*/ Upon motion, the Superior Court on June 7, 1978 dismissed the action against the contractors (without prejudice to the plaintiffs) as moot. (Exhibit 14)

Not long thereafter, PRB filed an application for a certificate of occupancy "to use the subject premises as a Chancery/Embassy." This was disapproved by Mr. Fahey on September 29, 1978. (Exhibit 17)

The pending application was filed with the Board of Zoning Adjustment on October 12, 1978.

Jurisdiction

The Application is for permission to "provide two floors of the building for chancery use." SKNC respectfully submits that the Board of Zoning Adjustment lacks jurisdiction to hear this application for use of a property zoned R-1-B as a chancery on the ground that the Zoning Commission's orders numbered 236 and 237, effective September 22, 1978, creating the Diplomatic District, are unlawful as applied to properties so zoned.

Present and Proposed Use

The application completed by PRB on October 6, 1978*/

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*/ The application dated October 6, 1978 (BZA #1) was forwarded to the Board of Zoning Adjustment on October 11, 1978 by Richard Gookin, Assistant Chief of Protocol (BZA #5), and filed October 12, 1978.

showed:

"Present Use of Property: Embassy"

"Proposed Use of Property: Embassy, 1 floor; Chancery, 2 floors."

In a "Statement of Existing and Intended Use" filed with the application, it is stated that "the subject property is . . .used by the Ambassador for residential purposes." (BZA #4) The clear thrust of the application and supporting statement was that 2501 Massachusetts Avenue was then and would continue to be "the official residence of an ambassador or other chief of a diplomatic mission or that portion of a combined chancery/embassy devoted to use as such official residence." (See Section 1202 of the Zoning Regulations, as amended by Order No. 236, effective September 22, 1978.) This is not a fact. The ambassador's residence then and now is at 4 Highboro Court, Bethesda, Maryland. Indeed, counsel for PRB so stated to the Municipal Planning Office in a submission dated November 27, 1978 and filed with the Board of Zoning Adjustment November 28, 1978. (BZA #75) And it is clear from the "Statement of Intended Use" that the third floor is "designed for residential and representational purposes for official visitors." This is not within the definition of "Embassy."

Article 46

The application is filed under new Article 46 of the Zoning Regulations. Article 46 "establishes standards for the review of locations of Chanceries in the (D) District. . .to assure that the Chancery is not incompatible with the present and proposed development of the neighborhood." (Section 4601 - Preamble)

The application of PRB wholly fails to meet the standards of Article 46, and must be denied.

In issuing orders numbered 236 and 237, the Zoning Commission also issued on September 14, 1978 "a full statement of reasons setting forth the basis for its decision on both the maps and text cases." In the 84-page statement the Zoning Commission repeatedly emphasized the importance of "a careful review by the Board of Zoning Adjustment to assure compatibility with affected neighborhoods." (p.1)

> Page 2: Central to this accommodation is the review process established for areas where such accommodation may be required.
>
> Page 3: The Mixed Use Diplomatic (D) District mapping has been established within a firm regulatory structure in order to give appropriate protection to areas which may include existing residential uses located adjacent to or in the vicinity of "Embassy Row" areas.

Pages 8-9: In creating this mixed-use zone, the Zoning Commission has recognized as well the need to ensure that chancery location is subject to controls which will assure that the impact of chancery uses will not adversely affect the residential and other uses permitted in the mixed-use zones.

Page 10: The Commission has provided additional procedures within the regulations to ensure that, when diplomatic development does take place within close proximity to residential uses, special care will be given to the protection of residential uses and the character of the neighborhood.

Page 11A: As part of its action this Commission has established policies, review procedures and standards to guide future actions of the Board of Zoning Adjustment in regard to diplomatic development and has provided the Board with the regulatory framework to ensure the protection and integrity of the mixed-use neighborhoods.

Pages 16-17: On the basis of the record of the hearings, the Zoning Commission directed the Municipal Planning Office to prepare modifications to the proposed regulations and maps to accomplish the following:

* * *

3) Provide for a strict review of proposals to locate chanceries in certain mixed-use areas and in neighborhood commercial locations.

Page 18: The Zoning Commission decided to provide a Mixed Use Diplomatic (D) District to be mapped in conjunction with the existing District at certain locations within the NCPC diagram.*/ Chanceries could locate in these Districts sub-

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*/ The NCPC overlay map dated March 24, 1977, attached to the PRB application as Exhibit I, was rejected by the Zoning Commission as too broad in its coverage. The relevant maps are embraced in Zoning Commission Order No. 237.

ject to height and bulk restrictions of the existing District and subject also to review by the Board of Zoning Adjustment for compatibility with the neighborhood.

Page 61: The Zoning Commission has strengthened the review process to provide more restrictive development criteria. . . .

Page 62: The Zoning Commission has recognized the parking problem associated with chancery development and has adopted specific and strict parking standards as part of the BZA review process to ensure compatibility.

Page 83: The Zoning Commission is strongly committed to the protection of neighborhoods which include residential uses in the District, and the Zoning Commission believes that this protection cannot be ensured unless the Board of Zoning Adjustment has the power to review and approve the location and characteristics of chanceries within or immediately adjacent to such neighborhoods. For this reason the Zoning Commission finds that consistency with the objectives of Section 313.311 and the obligation to maintain the stability of neighborhoods which include residential uses require the full compatibility review adopted in this order. (Emphasis added)

There is in the file a letter from the Chairman of the National Capital Planning Commission, dated November 29, 1978, observing that "the Comprehensive Plan requires that a chancery use at this location shall be permitted as a 'matter of right.'" This is precisely what the Zoning Commission refused to accept. See page 82 of the Zoning Commission's Statement of Reasons in Cases 77-45 and 77-46:

"The most serious problem presented by the NCPC recommendations is the request that chancery use be permitted as a matter-of-right in those

areas in or immediately adjacent to primarily residential areas. The Zoning Commission received extensive testimony before it, especially from numerous Advisory Neighborhood Commissions that neighborhoods which contain residential uses must be protected, and that the proposed review procedure was essential to assure that protection."

The Proposed Chancery Is Not Compatible With the Present and Proposed Development Of the Neighborhood

The neighborhood surrounding 2501 Massachusetts Avenue, Northwest is one of privately owned, single family residences. See Exhibit 18, which was received in evidence in Zoning Commission hearings held on February 27, 1978 in Cases 77-45 and 77-46. The abutting properties on Massachusetts Avenue and California Street are handsome residences which, together with 2501 Massachusetts Avenue provide a dignified and attractive setting at this point in the city. See Exhibits 19-20 (showing Zlotnick residence and 2501 Massachusetts Avenue) and Exhibit 21 (showing McKinnon residence). The applicant, which has the burden of proof (see Section 8203.6 of the Zoning Regulations), cannot show that the proposed use of 2501 Massachusetts Avenue as a chancery is compatible with the present and proposed development of the neighborhood. (See Section 4603.1)

Under Section 4603.21 of the Zoning Regulations "the Board of Zoning Adjustment must find that. . .off-street parking spaces are in keeping with the character of the neighborhood." In this case the Historic Preservation officer for the District of Columbia has expressed deep concern:

> "After reviewing the material originally submitted for review, as well as the revised site plan provided by Mr. Robinson of your staff on December 1, 1978, I am deeply concerned about the potential adverse impact which the proposed parking on the site, under either of the submitted plans, will have on significant architectural and historic qualities of the Massachusetts Avenue Historic District. Given the configuration of the lot, its small size and the proximity of the building on the lot to its neighbors, I am of the opinion that the intensity of parking proposed in front of this distinguished building, as indicated on the initial site plan, and particularly in the rear garden, as indicated on the revised site plan, will have a highly undesirable impact on significant residential qualities of 2501 Massachusetts Avenue, as well as of its immediate neighbors in the Massachusetts Avenue Historic District." (Emphasis added)

The Department of Housing and Community Development found the site plan to be "unacceptable" and concluded that "we cannot recommend favorable action on this application."

The Municipal Planning Office found that "the use of the rear portions of the site for off-street parking would be incompatible with the abutting residential properties,

particularly 2445 California Street" (Analysis ¶1) and recommended that "the application as proposed be denied." It should also be noted that there is no present access for an automobile to the rear portion of the site and that any "bulldozed" access would be only 11.71 feet in width and would not meet the requirement of 14 feet for a driveway.*/ The use would create dangerous or other objectionable traffic conditions within the meaning of Section 4603.28 of the Zoning Regulations. Parking in the rear yard here would produce air and noise pollution and a fire hazard to abutting properties.

Provision for off-street parking must be "in keeping with the character of the neighborhood." As then Corporation Counsel C. Francis Murphy emphasized in his formal opinion of July 9, 1971:

> "The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for such purposes. The regulations are designed to stabilize such areas and to promote a suitable environment for family life." (Emphasis added)

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*/ Under Section 7206.7 of the Zoning Regulations, "driveways which provide accessibility to parking spaces accessory to any structure other than a one-family dwelling or a flat shall not be less than 14 feet in width and have a maximum grade of not more than 12% with a vertical transition at intersections." The width here is 11.71 feet -- sufficient for a one-family dwelling (Section 7206.6) but not for a chancery.

Off-street parking which is secured by black-topping the front or rear gardens of a residence is not consistent with the promotion of "a suitable environment for family life." The neighborhood resident must contend with a parking lot next door -- full of automobiles during the day and deserted at night. From the standpoint of maintaining a family environment, parking lot desolation may be even more damaging than traffic on the streets.

On-street parking for more than two hours simply does not exist here. The City Council of the District of Columbia instituted the Residential Permit Parking Program in the Sheridan Kalorama area upon a determination that "the institution of the residential permit parking program in the Sheridan Kalorama area will further the goal of the District of Columbia air quality program by reducing the number of vehicle miles traveled in this area, and will reduce traffic congestion and illegal parking in the area." The Constitutionality of this ban has been upheld. The parking prohibition is in effect in the 2400 block of California Street, Northwest, and in the 2400-2500 blocks of Massachusetts Avenue, Northwest. As we read the statement of PRB, p.4, the Ambassador, 7 officers and 6 employees (one-third of the 18, who are expected to "car pool") use

automobiles. Thus there will be a minimum of 14 automobiles competing for 9 off-street parking places. It follows that many of the automobiles may be expected to park all day within the neighborhood in zones restricted to two-hour parking.

Under Section 4603.23 of the Zoning Regulations, "the Board of Zoning Adjustment must find that. . .the percentage of lot occupancy does not exceed the maximum permitted." In an R-1-B District that is 40%. (Section 3303.1) PRB states in its own filing with the Board that "the percent of occupancy is 45%." (See Supplement to Memorandum in Support of Application, ¶3, BZA #75.) This is because the PRB has enclosed the porch which is shown on earlier plats. What was a porch is now a two-story enclosed structure and must be counted in lot occupancy.*/

Further, under Section 4603, complementary use provisions include Section 3305 (see footnote 2 to Section 4603.1). These include a minimum width of each side yard of eight feet. (Section 3305.1) This is not met by this building. (Exhibit 22)

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*/ This presumably explains MPO's lot occupancy percentage figure of 38%.

Conclusion

As stated in Section 3101.1 of the District of Columbia Zoning Regulations, "the R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for such purposes. The regulations are designed to stabilize such areas and to promote a suitable environment for family life. For that reason only a few additional and compatible uses are permitted." As of December 5, 1978, letters from neighbors on file in opposition*/ number 74. (Exhibit 23) ANC 1D opposes the application. Others are expected to file statements or appear at the hearing today. The Zoning Commission in issuing orders numbered 236 and 237 provided that the Board of Zoning Adjustment must determine that the proposed chancery

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*/ As of December 5, the only letters urging approval of the PRB application are from the Protocol Office and PRB's present landlord. Contrary to the suggestion made by PRB on page 6 of its memorandum (BZA #4) that its present chancery may be returned to the city tax rolls, the owner of 3421 Massachusetts Avenue, Northwest -- the present chancery -- intends to sell the site to El Salvador as a chancery if and when the PRB move. (See BZA #13)

is not incompatible with the present and proposed development of the neighborhood. The Board cannot so find on this record.

Respectfully submitted,

George Blow
Patton, Boggs & Blow
2550 M Street, N. W.
Washington, D. C. 20037

Counsel for Sheridan Kalorama
Neighborhood Council,
Kenneth P. McKinnon, and
Sidney S. Zlotnick.

Dated: December 6, 1978

DEC 18 1978

Drafted by Tim Corcoran

Steven E. Sher, Executive Director
Board of Zoning Adjustment
Government of the District of Columbia
District Building, Room 9-A
Washington, D.C. 20004

Dear Mr. Sher:

The purpose of this letter is to inform the members of the Board of Zoning Adjustment, you, and your staff of the position taken by Advisory Neighborhood Commission (ANC) 3-C after reconsideration of the application, identified as #12826, of the Royal Kingdom of Saudi Arabia to locate a chancery at 2929 Massachusetts Avenue, N.W. This letter supercedes our earlier recommendation of December 4, 1978.

This matter was reconsidered by this ANC at its regularly scheduled meeting on the evening of Monday, December 18. The applicant was represented by Mr. Whayne Quinn; several neighborhood residents were represented by Mr. Thomas G. Corcoran, Jr. and Mr. John J. Kelly. As discussed below, this Commission is opposed to granting of the permit to establish a chancery of the Royal Kingdom of Saudi Arabia at 2929 Massachusetts on grounds that the Zoning Commission's Map and Text Amendments relating to chanceries, effective September 22, 1978, are violative of the Chancery Act of 1964, the chancery application of Saudi Arabia fails to meet the requirements of Sections 4603.21, 4603.25 and 4603.28 of the Zoning Regulations, as added by Zoning Commission Order 236, and the establishment of a chancery on the subject premises, as proposed by Saudi Arabia, is incompatible with neighborhood development.

The Chancery Act of 1964, D.C. Code Sec. 5-418(c), provides that "[a]fter October 13, 1964, ... no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery

where official business of such government is to be conducted on any land, ... within any district or zone restricted ... to use for residential purposes." It is the opinion of this ANC that the Board lacks jurisdiction to consider the chancery application of Saudi Arabia since Zoning Commission Orders No. 236 and 237, insofar as they purport to permit chanceries in residential districts, are in direct conflict with the above language and the legislative purpose of the Chancery Act.

Additionally, this ANC, as you know, is on record as opposing the establishment of chanceries "as a matter of right" in any residential area. Assuming arguendo the validity of the Zoning Regulations as to chanceries, we believe that the present application and future chancery applications should be governed by the requirements of Subsection 8207.2 (Special Exceptions) as well as by Section 4603. We therefore urge you, and the members of the Board, to bring this procedural modification -- which has implications for many other situations -- to the attention of the Zoning Commission so that it may take appropriate steps to confer upon the Board the broad authority the special exception process provides to protect residential areas from the potentially adverse character of a chancery use, i.e., that of an "office" in ordinary language.

Under Section 4603 and 4604 of the Zoning Regulations, several conditions must be satisfied before a chancery can be permitted. Under Subsection 4603.1, the Board is directed to determine after a public hearing that the proposed chancery "... is not incompatible with the present and proposed development of the neighborhood." To make that determination, the Board, pursuant to Subsection 4603.2, must make findings with respect to a number of issues.

Subsections 4603.25 and 4603.28 both relate to an issue of concern to us, specifically that sufficient off-street parking be provided on the chancery grounds to insure that the chancery will create the type of traffic problem addressed in Subsection 4603.28. We cannot find on the basis of the application and site plan of Saudi Arabia that the requirements of these Subsections have been met.

Subsection 4603.25 requires that one on-site parking space be provided for each 800 square feet of "gross floor area devoted to chancery use." Contrary to the assertion of Saudi Arabia that only 11,599 square feet of gross floor area will be devoted to chancery use, we conclude that the entire gross floor area of the building at 2929 Massachusetts Avenue, N.W., i.e., 16,000 square feet, will be used for "diplomatic, legation or consular functions" under Section 1202, as amended, and therefore, that the applicant is required to provide a minimum of 20 on-site parking spaces. This conclusion is consistent with the intended use indicated in Saudi Arabia's application and statement of existing and intended use.

Even if the applicant provides the minimum number of on-site parking spaces required under Subsection 4603.25, we are concerned that there will still be inadequate on-site parking facilities for the chancery's 35 employees and 25 daily visitors and, therefore, that there will be a probability that the chancery use will create the "dangerous or other objectionable traffic conditions" addressed in Subsection 4603.28. This ANC recommends that Saudi Arabia be required, pursuant to the Board's authority under Subsection 4604.3, to provide at least 28 to 30 on-site parking spaces. In keeping with the commercial character of the proposed chancery, the chancery should also be re-

quired to have a loading berth.

If the applicant makes provision for 15 to 25 on-site parking spaces, as it proposes to do, or the greater number recommended by this ANC, their design and arrangement cannot be in keeping with the character of the surrounding, exclusively residential neighborhood. No residence in that neighborhood has parking on the premises for more than four cars and those spaces are provided in private garages. No property owner, other than the applicant has, or proposes to have, a parking facility for 15, 25, or more automobiles. Apart from noise, pollution, and the fire hazard posed by a busy parking lot during daylight office hours and evening social functions, the emptiness of the parking lot at night will have an adverse effect on the character of this residential area.

We wish to call to the Board's attention that, as far as this ANC can ascertain, the 15 to 25 on-site parking spaces shown on applicant's site plan do not meet the requirements of Subsection 7206.5 (14 foot aisles at perimeter of parking lot and between rows of two or more cars), and that the access driveway must be widened under Subsection 7206.7 from 9 feet to 14 feet (requiring demolition of a portion of the building or east garden wall).

For these reasons, we conclude that the proposed Saudi Arabian chancery use of the property at 2929 Massachusetts Avenue, N.W., will have serious adverse effects on the character of the neighborhood, and that no one or more reasonable conditions imposed under Subsection 4604.3 will render the use "not incompatible with the present and proposed development of the neighborhood." Nevertheless, if contrary to this recommendation the Board finds that the proposed chancery use can be approved subject to conditions, we urge the

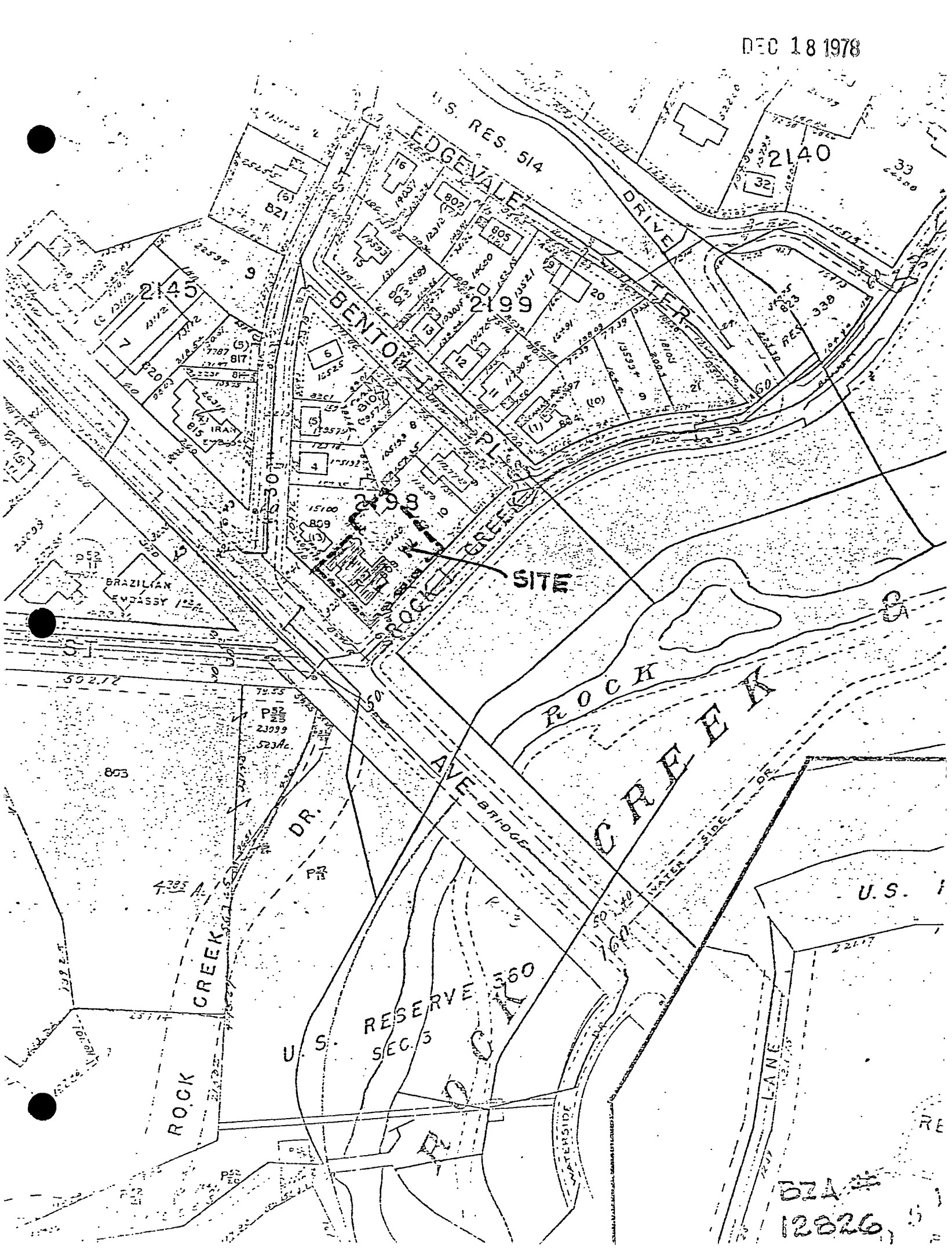
Board to require the applicant to formally waive its sovereign immunity to the extent necessary to legally enforce such conditions.

Thank you for considering our views.

BY RESOLUTION OF THE COMMISSION,

Lindsley Williams, Chairperson

DEC 18 1978


U.S. RES. 514
FOGEVALE
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BENTON
PL
ROCK CREEK
SITE
2140
2145
2199
2198
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TYPES OF LICENSES
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CLASS "A" OFF SALE-BEER -WINE & LIQUOR (PACKAGE GOODS)

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CLASS "C" ON SALE - BEER, WINE & LIQUOR (RESTAURANT)

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CLASS "L" CONSUMPTION ON PREMISES CLUBS -bring own bottle leave on premises.

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RETAILERS		WHOLESALERS	
"A"	343	"A"	11
"B"	327	"B"	9
"C"	633		
"D"	56		
"L"	3		
TOTAL	1,362		20

POCKET DIRECTORY
WASHINGTON D C
ALCOHOLIC BEVERAGES LICENSEES
APRIL 15, 1978

This Directory lists all Retail Liquor Licensees in the District of Columbia alphabetically and numerically by streets and all Wholesalers alphabetically by classification.

Numbers at the right prefixed by letters A, B, C, D & L are License Numbers. Numbers prefixed by three letters are telephone numbers. Postal Zone Numbers in parenthesis appear after the street numbers. The final numbers in parenthesis are the application numbers. This list includes officers of the Corporations and the name of the Licensee or Licensees in every case. Information upon which it is based has been carefully checked to make it as accurate as possible.

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2301 (20008) 2301 CALVERT INC
T/A INDIAN CURRY HOUSE CX997
Birendra Pradhan-Dir- (9191)
Pres & Tr-Inder Sharma-Dir-VP-
Sec - Sumitra Pradhan-Dir
265-7344

2309 (20008) C12179
Mohammed Aman Sulaimani
T/A KHYBER PASS REST 338-1896
(11181) or 234-4632

2317-19 (20008) ITALIAN GARDENS
INC (8662) 234-4550
Angelo De Finis Pres
Michael DeFinis VP CW285
Marie DeFinis Sec
T/A ANGIE'S

2331 CALVERT STREET NW (20008)
LIN, INC. B13365
T/A GROCERY STORE (9107)
Ru-Tseng Lin, Pr.
Mary Lin Ruagn, VP
Lily Lin, Sec. Tr.
FORMERLY Lowthorp Market Inc.
T/A Same Helen Lowthorp,
Laurence E. Seibel & Barbara
Williams

CALVERT STREET - NW

2500 (20008) LESTER MEHLMAN C11264
DAVID H ADDIS Ad 4-0700
STEVEN F TICHO
& JUNAS CORP (103)
GENERAL PARTNERS FOR
SHOREHAM MAT & CO
A Limited Partnership
T/A SHOREHAM AMERICANA
HOTEL & MOTOR INN

CATHEDRAL AVE : 3800-4100

CATHEDRAL AVENUE - NW

4000 CATHEDRAL AVENUE NW (20016)
MEDDAY INC C8721
T/A THE WESTCHESTER DINING RM
Chris Krikris Pr-Dir (9352)
Helen Krikris Sec-Tr-Dir
4000 John A Kendrick - Dir
CHANGE OF OFFICERS: FORMERLY
Edw Chas Day-Pr; Michael B Day
4201 VP & Doris Ann Welch Sec-Tr
Day, VP & Doris Ann Welch,
Sec. Tr.

4000 (20016) Joseph W Rotter BW965
T/A WESTCHESTER DRUGS
(9279) 337-2090

4201 (20016) Cecil R Hodges BX216
T/A TOWERS MARKET
(9492) 363-7600

NECTICUT AVE : 2500 - 4100

2600 (20008) BRISTOL LIQUORS INC AX144
T/A SHERRY'S OF CONN AVE (260)
Jay Talpalar Pres Ad 4-9200
Beverly Ann Talpalar Sec-Treas
Eleanor T Rosenfeld VP

CONNECTICUT AVENUE - NW (CONT'D)

2603 (20008) 2603 CONN AVE IN
T/A OLD STEIN PUB CW7
Robert Zanville Pres-T
Celia Zanville VP-Sec
(6206) 2

CONNECTICUT AVE : 2500-4100 (CONT.)

2605 (20008) PEGASUS INC C11784
T/A TUCSON CANTINA 462-6410
Erle C Burke Pres- Dir (9821)
Thomas P Jouannet VP-Dir
Patrick J Croker Sec-Tr-Dir

2606 (20008) ARBAUGH'S REST INC
T/A ARBAUGH'S REST C9581
Eva M Scheirer Pres (4144)
Belle Spiegel VP
Walter Appelgate Sec Ad 4-8980

2610 (20008) VINTAGE WINE &
LIQUOR STORE INC A2134
T/A VINTAGE Co 5-1302
William B Berman Pres (1609)
Josephine Berman Sec-Treas

2614 (20008) CHIN'S REST INC
T/A CHIN'S REST CW326
Henry K S Yee Pres-Tr-Mgr
Jean P Yee VP 483-8400
Wee Gee Dung Sec (5005)

CONNECTICUT AVENUE - NW (CONT'D)

2619-2621 (20008) MONOCRUSOS INC
T/A GARVIN'S GRILL C11466
Elizabeth Monocrusos Pr- Sec
Harry S Monocrusos VP-Treas
(3009) Ad 4-7143

2637 (20008) Angelo Carrasco
T/A CAFE ARGENTINA C11749
(5724) 265-2964

2643 (200008) L & R BARON INC
T/A THE BARONS GOURMET DELI
Louis Solomon Baron Pr-Tr-Dir
Rae Rebecca Baron Treas
Jay Baron VP-Dir B12025
(332-3555) (10876)

2645 (20008) TEDDY'S INC A11607
T/A RED SKIN LIQUORS
Charles F Cave Pres (117)
Robert Engleman VP 332-0777
Elizabeth Engleman Sec

2649-51 (20008) NAPOLEON'S INC
T/A SAME (2706) Co 5-8955
Alexander B Stuart Pres
Seth W Heartfield Jr VP &
Sec & Treas C8090

CONNECTICUT AVENUE - NW

2653 (20008) PETITTO ENTERPRISES
INC (11014) C13003
T/A PETITTO'S RISTORANTE
D'ITALIA 667-5350
Bryon Geo Petitto Pres
Roger Petitto Sec-Treas
Karen M Shannon VP

2655 (20008) Gust A Trakas CX758
T/A SEA FAIR 667-5115
(9956)

2915 (20008) ARABIAN NIGHTS CORP
T/A ARABIAN NIGHTS DX148
Younan Isho Pres 232-6684
Albert Esses VP (9422)
Ludovina Dias Isho Sec-Treas

3000 (20008) CRABTREE CAFE INC
T/A OXFORD TAVERN C11232
Pat Harrington Pres-Treas
Wanda Harrington VP-Sec
(2944) Co 5-7976

3000 (20008) Howard S Garfinkle
T/A CATHEDRAL LIQUOR STORE
Co 5-6060 (254) A11023

3133 (20008) Ann Clair Brosius
T/A KENNEDY WARREN DINING
ROOM CW041
(8444) Ad 4-9100

CONNECTICUT AVENUE - NW (CONT'D)

3309-11 (20008) GERARD INC C11239
T/A L'ESCARGOT Wo 6-9555
Gerard Pain Pres-Treas
Jehan Hispiche VP-Sec
Robert E Wood Dir (5781)

3319 (20008) CONREG INC C11015
T/A GALLAGHER'S PUB 686-9189
Conan Gallagher Pres
Virginia M Gallagher Sec-Tr
Solomon A Stern Dir (5539)

3321 (20008) SNOOPY DONUTS CORP
T/A PLEASANT'S BASKET REST
Dr Jawad Hussein Pres
Sayeck Y Michael VP C13014
Rosolin Garfinkel Sec
(11204) 244-6241

3333-A CONNECTICUT AVE NW (20008)
SILBEE INCORPORATED CW875
T/A THE SPORTS NUT (8568)
George Comert, Pr. Tr. Dir.
Wanda Comert, VP Dir.
3411 Stephen E. Smith, Dir.
FORMERLY Arthur Glidden, Pr. Wanda
M. Comert, VP & Geo. C. Comert,

3412 CONN. AVENUE NW (20008)
CJK INCORPORATED C11830
T/A IRELAND'S FOUR (10970) 30
PROVINCES
John D. Barry, Pr. Tr. 60
Kevin H. Finnie, VP Sec.
John J. Cooleen, Dir.
Change of officer: Christy Hughes,
Tr. was replaced by
John J. Cooleen, Dir.

3411-19 (20008) ROMA REST INC
T/A SAME (1359) C4366
Robert D Abbo Pres-Treas
Anna A Abbo VP 363-6611
Mirella R Abbo Sec

CONNECTICUT AVENUE - NW (CONT'D)

3423-25 (20008) WOODLEY WINE &
LIQUOR INC AX027
T/A WOODLEY LIQUORS (22)
Edward Sands Pres Wo 6-4400
Roberta A Sands VP
Frances E Rosenfield Treas
Lillian Rosenfield Sec

3433 (20008) Y & S ENTERPRISES INC
T/A THE FAR INN REST CX934
Peter Sivers Pr-Tr 363-0941
Ellen M Sivers VP-Sec (3741)

3514 (20008) R & S ENTERPRISES INC
T/A CHIK'N BUCKET B13067
Howard Marvin Rothenberg
Pres-Treas-Board Member (11230)
Steven Frank Segal VP-Sec
Bd Member 966-2740

3516 (20008) CAFFE ITALIANO INC
T/A CAFFE ITALIANO C12031
Diego Floreno Pres-Tr-Dir
Ivana Floreno Sec-Dir (10803)
Thomas Redmond Jr Dir 966-2172

3524-26 (20008) D C CATERING CO INC
T/A YENCHING PALACE C6766
Jane L Shaw Pres 362-8200
S V Lung VP (5541)
C Y Shaw Sec-Treas

CONNECTICUT AVENUE - NW (CONT'D)

3529 (20008) A J R CORP A11314
T/A AMBASSADOR WINES & LIQUORS
John H Aulbach Jr Pres-Treas
Albert W Paddy Jr VP-Sec
John H Aulbach Sr Dir (508)

3530 (20008) Sang Vath Tith B12184
T/A 7-ELEVEN
(2558) 977-0105

CONNECTICUT AVE : 2500 - 4100 (CONT.)

3601 (20008) CSIKO'S REST INC CX634
T/A CSIKOS REST (7780)
Erzsebet Thuleweit Pres-Mgr
Stephen Benedek Sec
Zsoit Takacs VP
H Rainer Thukweit Treas

DEVONSHIRE PLACE : 2700

DEVONSHIRE PLACE- NW
2737 (20008) WOODLEY DELIC INC
T/A WOODLEY PARK DELIC BW589
John Demestihas Pres-Treas
Peter Demestihas VP 462-5444
Antonia Johnson Sec (1382)

MASSACHUSETTS AVE : 2600 - 4200

3700 MASSACHUSETTS AVE NW (20016)
DELTAR CORPORATION C11389
T/A La'FLEUR (10708)
Behnan E. Zanganeh, Pr. Tr. Dir.
Isadore Zelkovitz, VP Dir.
Louis N. Nichols, Sec. Dir.
FORMERLY Behnan Ebrahim Zanganeh, Pr.
Isadore Zelkovitz, VP, Louis N.
Nichols, Sec. & Behnam Ebrahimi
Zanganeh, Tr.

MASSACHUSETTS AVENUE - NW (CONT'D)
4000 (20016) Lawrence H Weisfeld
T/A 4000 MASSACHUSETTS MARKET
966-2982 (6488) BX840
4201 (20016) BERKSHIRE FOOD & DRUG
INC (8308) B9856
Louis Shankman Pres Em 3-6546
Ida Shankman Sec-Treas

MACOMB STREET : 3700 - 3800

MACOMB STREET - NW
3703 (20016) HAN E STEFFEY A11801
T/A MACOMB LIQUORS
(1584) 966-4122
3709 (20016) MACOMB INC CW621
T/A WIT'S END 966-6167
Benjamin L Mendelson Pres
Dena I Mendelson Sec-Treas
Richard B Mendelson VP (5022)

NEWARK ST. : 3700 -- NOTHING-

[redacted]ONSON AVE : 2300 - 4300

2309 (20007) Kajiro & Junko Inoue
T/A SAMURAI SUSHIKO C13055
(11224) 333-4187

2321 WISCONSIN AVENUE NW (20007)
FINBAR, INC. C13380
T/A IRELAND'S 32 (9706)
John P. Barry, Pr.
Kevin H. Finnie, VP Sec.
John J. Cooleen, Tr.
FORMERLY Thomas J. Offutt Jr.
& Janet E. Offutt

WISCONSON AVE : 2300-4300 (CONT.)

WISCONSIN AVENUE - NW (CONT'D)

2434 (20007) OLD EUROPE INC C7634
Hans Lichtenstein Pres
Otto Lichtenstein Treas-Sec
Karl J Herold VP
(6432) Fe 3-7600

2436 (20007) & 2437 -37TH ST - NW
PEARSON'S LIQUOR ANNEX INC
T/A PEARSON'S LIQUOR ANNEX
Samuel Eisenberg Pres-Treas
Sarah Eisenberg Sec-VP A2212
(2226) Fe 3-6666

2444 (20007) APOLLO FOOD STORES INC
T/A G & G MARKET B10011
Herman Deutsch Pres Fe 3-5300
Jose A Veiga Sec-Treas (1939)
Jorge E Morales VP

2505 (20007) EMBASSY CORP C10049
T/A WELLINGTON HOUSE (10169)
Cyrus Katzen Pres-Treas
Sylvia KATZEN VP
Harry Cohen Sec

3226-30 (20016) CHARLES OF CAPITOL HILL INC B11436
T/A CHARLES OF CAPITOL HILL
Morton B Dubin Pres-Tr-Dir
Linda K Dubin Sec-Dir (6855)
Helene D Hollander Dir

WISCONSIN AVENUE - NW (CONT'D)

3238 (20016) ZEBRA CORP CW095
T/A ZEBRA ROOM Em 2-8307
Harold Lake Pres (5069)
Bernard J Fell VP-Sec
Herbert Aiken Treas

3300 (20016) SINERA INC AW411
T/A BURKA'S LIQUOR & WINE
Sidney Danneman Pres-Treas
Nettie Danneman Sec
(192) Wo 6-7676

3308-10 (20016) MOON PALACE REST INC T/A MOON PALACE REST
Anna P Yee Pres C9656
Anthony J Russo Sec Em 2-6645
Gim Sam Wong Treas (8131)

4110 WISCONSIN AVENUE NW (20016)
MARRIOTT CORP. CX784
T/A PHINEAS PRIME RIB (9971)
4200 J. W. Marriott Jr., Pr.
Robert E. Koehler, VP
Robert B. Morris, Sec.
4201 Gary L. Wilson, Tr.
CHANGE OF TRADE NAME: Formerly
T/A Franklin Stove
Carolyn E Goldman VP-Sec
(Em 2-2575)

4200 WISCONSIN AVE. NW (20016)
G & G INVESTMENTS INC. C12180
T/A ----- (11183)
Gus A. Ladas, Pr. Tr. Dir.
George P. Mallios, VP Sec. Dir.
Dimitri P. Mallios. Dir.
Carolyn E Goldman VP-Sec
(Em 2-2575)

4201 (20016) LEEDS INC A9955
T/A LEEDS' BEVERAGES (2659)
Donald Goldman Pres-Treas
Carolyn E Goldman VP-Sec
(Em 2-2575)

WISCONSIN AVENUE - NW (CONT'D)

2404 (20007) FLOWER DRUM REST INC
T/A FLOWER DRUM REST 337-3
Kenneth Paul Lee Dir C12
Linda Lee Pres & Dir (10113
John Lee VP &Dir
Charles T Woo Treas-Dir
Mary Park Sec-Dir

2408 (20007) GROG & TANKARD INC
T/A GROG & TANKARD CW
Maria Fabian Pres-Tr 333-3
James P O'Donnell Sec (8960

2412 (20007) 2412 CORP C12
T/A CY'S 965-2
Max C Gould Pres (9040)
William Hix Sec-Treas
Donald D Hardy VP

2418 (20007) CALVERT DELIC INC
T/A CALVERT DELIC B11
Maurice A Goodhart Pr-Mgr
Adelaide V Williams Sec-Treas
William C Johnson Dir
(5795) 337-7

WISCONSON AVE : 2300-4300 (CONT.)

WISCONSIN AVENUE - NW (CONT'D)

4226 WISCONSIN AVENUE NW (20016)
MERIT INCORPORATED C11731
T/A BABE'S (10238)
4231 Jacquline H. Karas, Pr. Tr. Dir.
Emanuel S. Karas, VP Dir.
Douglas B. Diehn, Sec. Dir.
CHANGE OF OFFICERS: FORMERLY
Alan L. Meltzer, Pr. Dir.
Steven L Newmyer Sec-Treas

4237-39 (20016) LA RIVIERA 11 INC
T/A MANNY'S PIZZERIA C12124
Emanuel J Alahouzos Pr-Dir-Mgr
William J Alahouzos VP-Tr-Dir
James T Bray Sec-Dir
Michael Vario Dir (7970)

4323 WISCONSIN AVE. NW (20016)
TENLEY CIRCLE, INC. CX441
T/A MR. HENRY'S (9700)
TENLEY CIRCLE
Mohammad Azimi, Pr. Dir.
Hassan Azimi, Sec. Tr. Dir.
4425 Michael Razeghi, VP Dir.
FORMERLY Alan L. Meltzer, Pr.
Tr. Dir., Michael T. McKenna,
VP Sec. Dir., & Robert C. Enk, Dir.

4231-33 (20016) C12019
ARMAND'S CHICAGO PIZZERIA INC
T/A ARMAND'S CHICAGO PIZZERIA
Lewis N Newmyer Pres 244-1100
James E Blumenthal VP (8933)
Steven L Newmyer Sec-Treas

WISCONSIN AVENUE - NW

4238 (20016) WM GOTTLIEB A3022
T/A FRIENDSHIP LIQS (2142)
966-2123

WOOLY ROAD : 2600

WOODLEY ROAD - NW

2660 (20008) WASHINGTON SHERATON
CORP T/A SHERATON PARK HOTEL
Howard P James Pres C9083
N Ronald Silberstein Sec
L N Schwiebert VP (78)
Hardy A Hasenfuss Treas

STREET : 2600

24TH STREET - NW

2605 (20008) JODEE INC CX942
T/A ARTY'S (9665)
Anthony F Natoli Pres
Joanne Natoli VP-Mgr
Dolores Moscarello Sec-Treas

THE ANNE BLAINE HARRISON
INSTITUTE FOR PUBLIC LAW
GEORGETOWN UNIVERSITY LAW CENTER
605 G ST., N.W. - SUITE 401
WASHINGTON, D.C. 20001
202-624-8235

December 18, 1978

M E M O R A N D U M

TO: Advisory Neighborhood Commission 3C

FROM: Suzan Aramaki

RE: Alcoholic Beverage Control Board Rules of Procedure Amendments, Bill 2-272
DRAFT REVISIONS

The following comments and proposed revisions to Bill 2-272 (hereafter cited as the Bill) have been developed from the concerns and suggestions expressed by a number of sources, including Gary Kopff, Courts Oulahan, and the Harrison Institute staff. This memorandum is in draft form and therefore further comments or revisions may be added later. While the outline below corresponds roughly to the structure of the Bill itself, it is basically topical.

I. Generally

In approaching the amendments to the rules of the Alcoholic Beverage Control Board (the Board) from the perspective of citizen organizations in general and Advisory Neighborhood Commissions in particular, several objectives must be kept in mind.

(A) Limit unnecessary Board discretion: Past experience with the Board has indicated that the Board tends to be resistant to the concerns of citizen groups.

As a result where the Board has been given discretion it has been more likely to exercise that discretion in favor of applicants. For this reason efforts should be made to limit Board discretion where it is not necessary, and where the Board is given discretion, there should be standards by which a court can conduct a meaningful review.

(B) Make the Board's rules and practices more accessible to laymen: This objective has two basic components.

(1) Draft the rules in simple language that a layman can understand. This entails the elimination of legal terms which can be as easily expressed in plain language.

(2) The rules should codify the practices and holdings of the Board and the holdings of the D.C. Court of Appeals, thereby making such holdings and practices more accessible to parties like citizen groups who may not have access to attorneys accustomed to practicing before the Board.

(C) Remove ambiguity from the rules: While the effect of ambiguity and poor drafting may often be to allow the Board discretion in interpretation where it may not otherwise have been intended, the real objective here is to reduce uncertainty as to what the law is.

II. Definitions

(A) Sources:

(1) COMMENTS: Section 20.1 incorporates the definitions of the Alcoholic Beverage Control Act, D.C. Code § 25-103 (1973 ed.) and Chapter I of the Board's Rules. However since the Rules are subject to the D.C. Administrative Procedures Act, 1 D.C. Code § 1502 (hereafter cited as the D.C. A.P.A.) and since the D.C. A.P.A. contains definitions for terms otherwise left undefined, the definitions of the D.C. A.P.A. should be incorporated as well.

(2) RECOMMENDATIONS: § 20.1(a) should be revised to read:

"(a) Definitions contained in Section 3 of the Alcoholic Beverage Control Act, D.C. Code § 25-103 (1973 Ed.), in Chapter I, Part 1 of these rules, and in D.C. Code § 1502 (1977 Supp.), are hereby made a part of this Chapter."

(B) Notice to Show Cause Hearing and Protest Hearing:

(1) COMMENTS: While neither definition in 20.1(b) and (c) expressly incorporates the D.C. A.P.A. definition of a "contested case", such a provision would be unnecessary since the Board as well as the D.C. Court of Appeals have consistently applied the contested case requirements to notice to show cause hearings and protest hearings.

(2) RECOMMENDATIONS: No change.

(C) Party:

(1) COMMENTS: In § 20.1(d)(1)b an ambiguous reference is made to "Government" as a party to a notice to show

cause hearing. The term could refer to any government body (e.g. federal government) or within the D.C. government it could include the City Council. It is doubtful that either interpretation would be intended.

(2) RECOMMENDATION: Delete "Government" and add "c. Any party as defined by D.C. Code § 1502(10);" This provides a more succinct reference to the Mayor or any D.C. agency, without including the Council.

(3) COMMENTS: ANCs should be expressly included as parties to both notice to show cause hearings and protest hearings for two reasons:

a. To remove any doubt that ANCs are entitled to participation in such hearings; and

b. To provide a guideline for determining which ANC(s) is affected and thereby to remove any potential for abuse of discretion in determining which ANC(s) represents the neighborhood affected by the application.

(4) RECOMMENDATION: At § 20.1(d)(1)c and (2)c add:

"c. The Advisory Neighborhood Commission(s) for the delineated neighborhood as determined under Section 21.1 of this chapter;"

This will guarantee that any ANC falling within a 600 foot radius of the applicant's premises will

be a party.

III. Effective Date

(A) COMMENTS: Section 20.2 provides for the effective date of the Bill. This section has two problems:

(1) It is ambiguous, since it provides for an effective date but then indicates that the new Rules will not become effective until "thereafter", i.e. the next day.

(2) There would be a problem with fairness and due process since the rules would become effective for pending cases. The courts seem to be able to apply old statutes to cases which arose before the statute was changed, and there appears to be no reason, aside from convenience, why the Board cannot do the same.

(B) RECOMMENDATIONS: The following deletions (crossed out) and revisions (underlined) should be made:

"These Rules shall take effect on _____, 1979 ~~1977~~, and ~~thereafter they~~ shall apply to ~~all cases received by the Board or then pending but not heard;~~ any application for a license or transfer of a license filed on or after _____, 1979, or to any notice to show cause hearing initiated on or after _____, 1979; provided that ~~no such pending case shall be disposed of solely on the ground that either party failed to comply with these Rules, unless~~

~~after notice and expiration of a fixed, reasonable time to comply, such defeciency has not been corrected.~~ the parties to any proceeding pending on _____, 1979, may stipulate to the use of procedures provided by these Rules."

IV. Waiver of Rules

(A) COMMENTS: Section 20.4 gives the Board virtually unbridled discretion in waiving the Rules and could result in insulating Board errors from judicial review. Aside from the fact that once waived, any departure from the Rules would be unreviewable, the initial decision to waive the Rules would not be susceptible to review by a court because the guidelines by which the Board would make such a decision -- "in the interest of justice or to prevent hardship" -- provide no standard by which a court could determine whether the Board's exercise of discretion could be overruled as arbitrary and capricious.

(B) RECOMMENDATION: Delete the entire section.

V. Rules of Construction

(A) COMMENTS: Some provision must be made for the possibility that a conflict could arise between the Rules and the D.C. A.P.A. or between different sections of the Rules. In the former case the D.C. A.P.A. would prevail. Section 20.3 accomplishes this.

(B) RECOMMENDATIONS: No change.

VI. Notice

(A) COMMENTS: Section 20.6 prescribes the requirements for notice to all parties. Of crucial importance here is the notice to the public through newspaper and placard on the applicant's premises. Since potential opponents of an application are not entitled to personal notice until they have filed as protestants or remonstrants, the adequacy of public notice is a prerequisite for effective citizen participation. In the past applicants have been known to post a single notice on an inconspicuous place of their premises in order to minimize opposition. More detailed posting requirements are necessary to eliminate this abuse.

(B) RECOMMENDATION: The last sentence of Section 20.62 should be revised as follows:

"The Board shall also post at least two copies of such notices in a conspicuous places on the outside of the premises sought to be licensed, in order readily and visibly to inform the public of such application."

VII. Time Limitations

(A) COMMENT: Section 20.73 allows the Board to extend or shorten any time period under the Rules, for good cause. This provision in essence amounts to the same type of waiver of rules found in Section 20.4. While the Board should have the discretion to extend time

periods, since an extension would be less likely to prejudice parties, there should be some limit on the Board's discretion to shorten a time period. Unfortunately nothing short of eliminating such discretion would effectively protect the rights of potential remonstrants and protestants, since even where all parties consented to a shortened time period, the shortening of filing periods could preclude potential parties from filing.

(B) RECOMMENDATION: Delete "or shortened" from Section 20.73.

VIII. Service of Papers

(A) COMMENT: Section 20.8 provides for service of papers "by personal delivery, registered or certified mail, by telegram, or as otherwise authorized by law." Courts currently allow service by an attorney of record to be accomplished by first class U.S. Mail. Where an attorney is serving papers the means currently provided represent unnecessary expenses, especially where many parties are involved.

(B) RECOMMENDATIONS:

(1) At the end of Section 20.82 add:

"Service by an attorney of record may be made by first class U.S. Mail."

(2) At the end of Section 20.83 add:

"(e) Upon deposit by first class U.S. Mail, properly stamped and addressed, by an attorney of record."

IX. Failure to Appear fo a Hearing

(A) COMMENTS: Section 20.9 in its present form gives the Board unbridled discretion to proceed without a party when that party fails to appear at a hearing. Some provision should be made for allowing parties legitimately unable to attend (e.g. in hospital) to have their views heard. While the interests of the Board in expediting cases deserves some weight, particluarly where numerous parties are involved, the interests of legitimately absent parties can be accommodated by allowing them as a matter of right to subsequently present written testimony for the record, subject to the limitations of Section20.19. As an additional comment, the term ex parte should be replaced, since it may not be fully understood by laymen.

(B) RECOMMENDATIONS: At the end of Section 20.9 delete "ex parte" and add "without the participation of such party. Where any party failing to appear presents an excusable reason for their absence, that party shall have the right to present written testimony or evidence for the record, subject to the limitations of Section 20.19."

X. Written Statement of Appearance

(A) COMMENTS: Section 20.113 requires persons appearing in a representative capacity to file a statement giving their name, address, telephone number, and

representative capacity. It is unlikely that this provision would have any chilling effect on citizen participation, since unlike attorneys, representatives are not legally bound to continue representation once an appearance has been entered. Moreover, the Board has a legitimate interest in having information in the record indicating who a representative is and how he can be contacted.

(B) RECOMMENDATION: No change.

XI. Required Representation

(A) COMMENTS: Section 20.114 gives the Board discretion to urge a party to obtain an attorney and to give such a party a reasonable time to do so, "in the interests of justice, of conserving time, or of facilitating preparation ofan adequate record". This section has the practical effect of favoring protestants and respondants rather than applicants, since applicants generally retain counsel on their own, while protestants will often appear at hearings without counsel. Any additional opportunity to obtain counsel will therefore be more likely to benefit protestants.

XII. Inspection of Files; Confidential Materials

(A) COMMENTS: Section 20.12 regulates access to records of Board proceedings. While in its present form Section 20.121 limits access to interested parties, the Freedom of Information Act of 1976, D.C. Law 1-96,

mandates public access to Board records except for that information which is expressly exempt. Criminal records and financial records which the Board uses to determine an applicant's fitness are among the exempt information. Under § 20.122, however, access to such information is not limited with respect to parties to a proceeding when the Board relies on such information. In that respect, it is important to note that ANCs would qualify as interested parties and would therefore have access to Board records, provided the revised definition of "party" in Section 20.1(d) is accepted.

(B) RECOMMENDATION: No change.

XII. Offers of Proof

(A) COMMENTS: Documentary evidence which is submitted as an offer of proof should be expressly made a part of the record. This could be accomplished by having the last sentence of Section 20.15 read as indicated below.

(B) RECOMMENDATION: Revise the last sentence of Section 20.15 to read:

"If the excluded evidence is documentary, a copy of such written evidence shall be marked for identification and entered into the record as an offer of proof."

This will guarantee that such evidence is preserved in the event that an appeal is taken.

XIII. Findings of Fact and Conclusions of Law

(A) COMMENTS: In order to avoid disputes as to what time period should be applied for submitting proposed

findings of fact and conclusions of law, a definite time period should be set. Where a case warranted extra time, the Board would still have authority to extend the time period under Section 20.73.

(B) RECOMMENDATIONS: The first sentence of Section 20.201 should be revised to read:

"The Board may require counsel to submit Proposed Findings of Fact and Conclusions of Law within twenty (20) days after the transcript in the proceeding becomes available, by written notice of the Board to each party."

XIV. Ex Parte Communications

(A) Some provision should be made to eliminate ex parte communications between members of the Board and participants. Such a measure should be taken both to protect Board members from improper pressure and to protect parties not participating in the ex parte communication from being prejudiced. Mr. Oulahan drafted a possible amendment to cover such communications.

XV. Delineation of Neighborhood

(A) The delineation of the neighborhood becomes extremely important in light of the way it affects which ANC will be given notice of an application or proceeding. In the past there has been a problem with the more or less arbitrary manner in which Board has determined

neighborhood boundaries. Section 21.12 has eliminated much of this problem by requiring that boundaries be not less than 600 feet from the proposed premises. While suggestions have been entertained that an additional requirement be imposed to have the boundaries be equidistant from the premises, such a requirement would have more of a limiting function on the size of the delineated neighborhood when construed in conjunction with Section 21.12. Any requirement which would limit the size of the delineated neighborhood would only serve to eliminate the standing of those excluded from the neighborhood by such a limitation. Just as importantly, such a limitation could eliminate an ANC as a participant when that ANC would otherwise be marginally included in the delineated neighborhood.

(B) RECOMMENDATION: No change.

DEC 18 1978

DISTRICT OF COLUMBIA
EXECUTIVE FELLOWSHIP GROUP

Thursday December 7, 1978

Dear Advisory Neighborhood Commission Chairpersons:

The Executive Fellowship Group is a volunteer organization made up of District Government and other Agencies and Organizations Employees working in fellowship doing programs and projects for less fortunate residents of the District of Columbia.

On Thursday December 21, 1978 the Executive Fellowship Group will sponsor a Christmas Dinner and Program at the D.C. Armory from 5:00 p.m. to 7:00 p.m. for six hundred families by invitation only. In addition, each child 15 years and under will receive a gift.

Last year the Advisory Neighborhood Commissions participated by referring families, making financial contributions, and donations of 20 lbs. Turkeys.

The Advisory Neighborhood Commissions are requested to participate again this year by referring families and making financial contributions. Checks are to be made out to "The Executive Fellowship Group D.C. and forwarded to Mrs. Wilhelmina Marshall, District Building 1350 E Street, N.W., Washington, D.C. 20004. Mrs. Marshall's telephone number is 727-6343. When referring families, please use a 3X5 note card; write out Name, Address, Zip Code and Telephone Number of the family, also indicate Age and Sex of each child of the family so gifts can be prepared and invitations with appropriate number of passes can be included for the family.

Please call your Ward Community Service Staff to arrange for getting your family referral cards to the appropriate source on time. December 13th is the cut off date for accepting referral cards.

Wards 2 & 3 Judy Rodgers & Bennie Peterson/673-7544
Wards 1 & 6 Jim Bullock/673-7462
Wards 4 & 5 Al Chastine/727-0380
Wards 7 & 8 Freddy Dawkins/563-0600

Thank you for your continuous cooperation.

Joseph L. Parker, Chairman
Steering Committee
Executive Fellowship Group D.C.

3-C Record
DEC 18 1978

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

December 4, 1978

Mr. Theodore Lutz, General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, D.C. 20001

Dear Mr. Lutz:

Recent news stories indicate that the Board of the Washington Metropolitan Area Transit Authority (WMATA) will soon be taking actions that could result in the modification of the names of some stations in the overall Metrorail system. This letter is written on behalf of the 10,000 residents of Woodley Park located along Connecticut Avenue just north of Rock Creek Park.

You are, no doubt, already familiar with Doug Feaver's article in the Washington Post of Monday, November 27 (a copy is enclosed for your convenience). His story relates, in part, to the so-called "Zoological Park" station, scheduled to open in 1981. This is the station most of these 10,000 residents will use.

The purpose of this letter is to ask you and your staff to review the files WMATA developed following public hearings in 1971 in this community and recommend an appropriate change to the WMATA Board. The name of the station was of concern to both then Council Chairman Hahn (see Post article) and residents of the area, a fact reflected in both oral and written testimony. There was a general sentiment that the proposed name, "Zoological Park," was inappropriate and that something like "Woodley Park," "Woodley Park -- Zoo," or "Woodley Park/Zoo" would be much preferable.

Regarding this matter, WMATA informed residents later in 1971 or early 1972 that the name was adopted by WMATA's Board and could not be changed. Period. Hopefully, there is now some chance to correct what is clearly an incomplete and somewhat misleading name. I urge you to recommend one of the more appropriate names suggested by the community to the WMATA Board for adoption. I, for one, prefer "Woodley Park/Zoo" and know this to be the community's preference as well.

Thank you for your help and interest.

Sincerely,

Lindsley Williams

Lindsley Williams, Chairperson

Enclosure

cc: WMATA Board Members and Alternates
from the District of Columbia:
Honorable Walter Washington
Honorable Jerry A. Moore, Jr.
Honorable Willie Hardy
Douglas N. Schneider, Jr.
Honorable David Clarke
Honorable Polly Shackleton

Stop for Zoo Is Half Mile Away

What's in a Subway Station Name? Sometimes Less Than You May Think

By Douglas B. Feaver
Washington Post Staff Writer

On a hot August day a few years hence, after Metro's Red Line finally reaches north up Connecticut Avenue, some nice young parents from Iowa with a couple of small children in tow will set off by subway to see the pandas at the National Zoo—and will find themselves at the Sheraton Park instead.

This will happen because the Metro station named Zoological Park is 2,280 feet—almost half a mile—from the entrance to the zoo. The station, whose entrance is to be in a triangle bounded by 24th Street, Connecticut Avenue and Calvert Street, is located in an area generally known as Woodley Park.

There's more. The southern entrance to the Cleveland Park Station, at Connecticut Avenue and Ordway Street NW, will be 106 feet closer to the zoo entrance than the Zoological Park station.

Will Metro put up signs, big signs that people can see, telling tourists that it is easier to get to the zoo from the Cleveland Park Station than the zoo station? Better yet, will Metro change the name of the Zoological Park station to Woodley Park or to something else that describes its location more accurately?

The first question is unanswered. Historically, this desk receives more complaints about inadequate information and confusing signs in the Metro stations than about any other subject save Farecard.

The second question comes up only because the Metro Board decided at a recent meeting to schedule a discussion on renaming some of Metro's stations. The planned Federal City College station, for example, obviously should become something else, because Federal City College no longer exists.

Commentary

The subject of station names has been a trying one for Metro over the years and has involved cabinet officers, neighborhood associations and city council chairmen. Despite all this good advice, Metro has some dandies:

• Stadium Armory. This could more accurately have been called the Hospital-Jail station, but that doesn't have quite the same ring. First Lady Rosalynn Carter, on a recent subway ride to D. C. General Hospital, asked Metro General Manager Theodore C. Lutz to include the hospital in the announcements as trains approached the Stadium-Armory station. Metro's train operators now do just that. Nobody has asked that the jail be mentioned.

• Foggy Bottom-George Washington University. The center of the real Foggy Bottom is alleged to be several blocks to the south of the station by people who claim to know. George Washington University is almost entirely to the east, but was added to the station name after entreaties from university officials. Washington Circle is one block away. Why not Washington Circle?

• Metro Center. The tracks of two Metro lines cross here. A lot of people think that Metro headquarters is located here as well, but it isn't. It is near Judiciary Square, which once was to be named Municipal Center. "What else would you call Metro Center?" asked Metro spokesman Cody Pfanstiehl. "How about 12th and G Streets?!" he was asked. "Too logical," he said.

• Federal Center Southwest. That name comes from Eliot Richardson, who noticed back in September 1971 that a station right outside his very own Department of Health, Education and Welfare was going to be named Voice of America, which was located in one of Richardson's buildings. "The Voice of America is by far the smallest agency in the Southwest area," the HEW secretary sniffed in a letter. He recommended as an alternative the name the station now bears.

• Farragut North/Farragut West. This set of names for two distinct, totally unconnected stations on two different lines apparently happened because nobody could figure out what else to do. In the beginning, only one line was planned for the neighborhood. The station was to be called, reasonably enough, Farragut Square. When the other line and another station were added, it just got too hard.

"We thought about calling Farragut West 17th Street," said Pfanstiehl, "but there are two 17th Streets there, you know." Each 17th Street now has its own Farragut station.

The Eastern Market station started out on Metro maps as Marine Barracks, a name much favored by Jackson Graham, a retired Army general who was then Metro general manager. The Capitol Hill Restoration Society, which was trying to save Eastern Market from demolition at the time, lobbied, wrote letters, attended hearings, and won Eastern Market. Either name would have been appropriate. Pennsylvania Avenue and 8th Street SE might have been more helpful, however.

That brings us back to Zoological Park. According to Pfanstiehl, the Zoological Park station was originally to be located at the entrance to the zoo. When the station was moved, the name moved with it. In February 1971, City Council Chairman Gilbert Hahn Jr. wrote the Metro Board and said:

"I would like to call attention to the inappropriateness of the name 'Zoological Park' for a station which is not only blocks away from the entrance to the Zoo but is located in a distinctly different commercial area . . ."

City Council chairmen change. Subway stations move. But the names remain.

add anything? hopes progress to settlement without other complication

December 12, 1978

Mr. J.D. Lee, President
CBI-Fairmac Corporation
3118 So. Abingdon Street
Arlington, Virginia 22206

Dear Mr. Lee:

I am writing to express my support and congratulations for your recent decision to sign a contract to sell McLean Gardens to the McLean Gardens Residents Association. This event is important--both in terms of the on-going controversy between you and the tenants and in terms of the city's housing situation.

ANC-3C has frequently gone on record in support of the tenants and, in fact, has long recognized the legitimacy of the McLean Gardens Residents Association. But our role is that of an elected body with grass-roots community support and interest. As such, we are supposed to serve all sectors of the community.

It is for this reason that I am pleased with the prospective sale; not that it is a victory for any one party but that it is an event the entire community can celebrate.

If The Commission can be of any assistance, please do not hesitate to call.

Sincerely,

Lindsley Williams
Chairperson

enc. resolution

cc:The McLean Gardens Residents Association
Mitch
Polly
Nadine
Walter
Others

3-C Record

DEC 18 1978

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

December 4, 1978

Steven E. Sher, Executive Director
Board of Zoning Adjustment
Government of the District of Columbia
District Building, 14th and E Streets, NW
Washington, D.C. 20004

Dear Mr. Sher:

The purpose of this letter is to inform the members of the Board of Zoning Adjustment, you, and your staff of the position adopted by Advisory Neighborhood Commission 3-C in connection with the application of Maret School, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.42 for permission to construct and art room and auditorium addition to the Maret School in the R-1-B and R-3 Districts at the premises 3000 Cathedral Avenue, N.W. (Square 2113, Lot 843). This matter is in your file identified as #12821.

Advisory Neighborhood Commission 3C considered this application at its regularly scheduled meeting the evening of Monday, November 27.

The materials presented to us by the applicant included a brochure "Maret Development Fund," a question and answer sheet "Building Campaign Facts," and an architectural drawing showing the proposed addition. The first two of these are enclosed for your information.

The Maret School has been a neighborhood asset for a number of years. Both through the contents of the enclosed materials and in direct testimony, the applicant informed us that the proposed addition would not result in an expansion in terms of numbers of students or faculty. Moreover, the proposed addition is consistent with the "Plan for Woodley Park" developed and approved by area residents. Finally, the Commission is aware of no opposition to the proposed addition from nearby neighbors.

Therefore, this Commission voted unanimously to support the granting of special exception requested by the applicant, Maret School, Inc.

BY RESOLUTION OF THE COMMISSION,

Lindsley Williams

Lindsley Williams, Chairperson

Enclosures

cc: Maret School, Inc.
Honorable Polly Shackleton

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

November 9, 1978

Kay C. McGrath, Chairperson
Advisory Neighborhood Commission 3C
Woodley Park Towers
2737 Devonshire Place, N. W.
Washington, D. C. 20008

Dear Ms. McGrath :

This is to advise you that a public hearing has been scheduled by the Board of Zoning Adjustment to consider the following application located within the boundaries of your ANC:

12821 ANC 3C — Application of Maret School, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.42 for permission to construct an art room and auditorium addition to the Maret School in the R-1-B and R-3 Districts at the premises 3000 Cathedral Avenue, N.W., (Square 2113, Lot 843).

This hearing will be held on Wed. Dec. 13, 1978, in Room 11-A of the District Building, 14th & "E" Streets, N. W. Cases in this area are scheduled to be heard between 9:00 a.m. and 1:00 p.m. The formal notice of public hearing will appear in the D C Register.

The Municipal Planning Office reviews many of the applications before the Board, to assist the Board in reaching a decision. To find out if the MPO is reviewing this application, or to communicate your views to the MPO regarding this application at this time, contact Mr. Kenneth T. Hammond, Director, Zoning Division, MPO, Suite 600, Munsey Building, 1329 "E" Street, N. W. If you wish further information on the technical aspects of the application or on the procedures which will govern consideration of this case, contact Mr. Hammond (629-5706) or the Zoning Secretariat, Room 9-A, District Building, Washington, D. C., 20004, telephone number 629-4426.

If you wish to forward comments in writing directly to the Board, such comments should be addressed to the Board at Room 9-A, District Building, Washington, D. C., 20004.

Very truly yours,

STEVEN E. SHER
Executive Director

lb

The Maret School

3000 Cathedral Avenue, N.W.

Washington, D.C. 20008

(202) 483-5710

MARET DEVELOPMENT FUND

The Maret School, founded in 1911 and relocated on the Woodley Estate in 1954, announces the Maret Development Fund. Alumni, past and present parents, friends and faculty are being asked to join the Fund in an ongoing quest for support of the school's programs.

MARET 1978

Over the past years, Maret has emerged as a leader among the private schools in the Washington, D.C. area. We have become known for requiring academic excellence while respecting individual capabilities and interests. As a result, the number of applicants has increased, while attrition has declined sharply. We have reached our enrollment capacity of 400 students.

Unfortunately, our existing teaching facilities are occupied over 90% of the time. This is a serious problem since effective teaching, tutorials, parent conferences, counseling, small discussions and rehearsals are restricted and hampered by the tightness of our scheduling. We need more space and we need it now.

BUILDING CAMPAIGN 1978-79

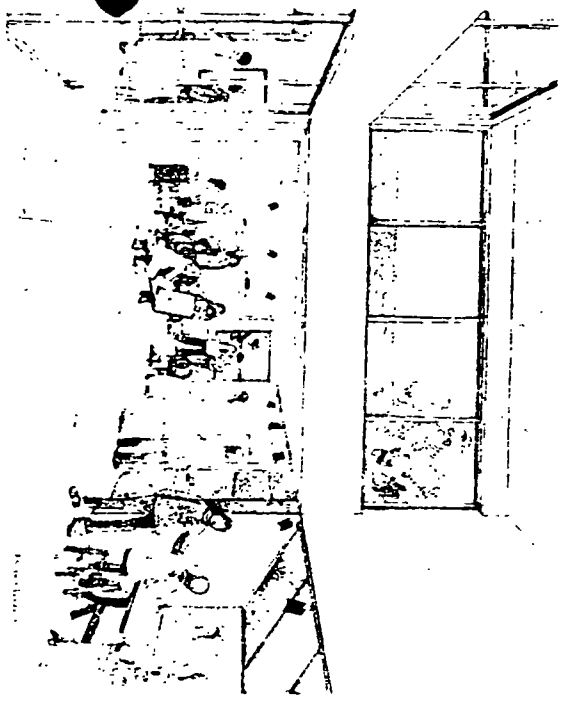
The Maret Development Fund will be used for the building of a floor and a half on top of the "new building," an expansion planned by the architects but insufficiently financed in 1968 during the initial construction of the building.

This addition, according to a Board feasibility study, will give us the required and absolutely necessary 10,000 square feet.

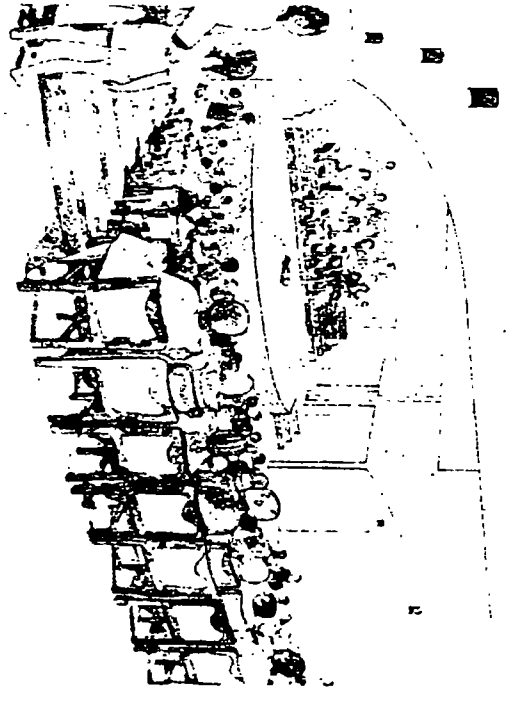
The proposed addition will effectually provide 25% more classrooms, an improvement which will benefit math, science, language and humanities, and will accomplish the following direct departmental gains:

- 10% increase in useable gymnasium space
- 20% increase in library space
- 100% increase in drama rehearsal space
- 200% increase in music space
- sound-proof music practice rooms, art rooms with sky-lights, lower school classrooms, teacher offices
- all-purpose lecture hall for drama, music, classes, meetings, special theatre productions, parent-lecture series, student council meetings, independent school conferences, in-house artistic performances

The proposed addition will cost $700,000. Construction will begin in April 1979, and the addition will be completed and ready for use by February 1980.



ART STUDIO



MULTI-PURPOSE AUDITORIUM

MARET DEVELOPMENT FUND

This addition does not imply an expansion of the school population. With 400 students and 50-plus faculty, we are at maximum size for maintaining the kind of attention to students that sets Maret apart from other schools. The building program will bring our facilities abreast of the standard of excellence already achieved in other areas. To help maintain these standards of excellence, we need your participation in the Maret Development Fund.

Through pledges we plan to raise half, $350,000, of the total cost. We will ask each of Maret's 350 families to make three-year pledges towards our goal. Alumni, past parents, friends and faculty also will be solicited to contribute towards this goal.

PLEDGE CATEGORIES

may be paid over a three year period

up to $	750	Contributor ($250 a year)
	1,000	Friend
	2,500	Donor
	5,000	Patron
	10,000	Benefactor

STATISTICS OF GROWTH 1973-1978

In the past five years Maret has become one of the outstanding area schools. We have developed an excellent faculty and curriculum, top college admissions, and an active and dedicated parent body, while maintaining our commitment to serve a diverse student body in imaginative and supportive ways. This can be expressed by the following statistics:

	1974	1975	1976	1977	1978
enrollment	246	286	318	388	400
new applications	112	224	294	341	420
% of attrition	50	21.8	23.7	18.4	11.5

Recent Maret graduates have been accepted by the following institutions, among others: Chicago, Duke, Williams, Bennington, Middlebury, Harvard, Stanford, Georgia Tech, Yale, Columbia, Bucknell, Catholic, Georgetown, Tulane, Mt. Holyoke, University of Virginia, St. John's College, Antioch, Smith, Tufts, Maryland, Rollins, Occidental, Oberlin, Mercer, Howard, Colby, Brown, University of New Zealand, Michigan, Bowdoin and the University of Pennsylvania.

The Maret School

3000 Cathedral Avenue, N.W.

Washington, D.C. 20008

(202) 483-5710

BUILDING CAMPAIGN FACTS -- 1978

1. What is the proposal?

   a. To add 10,000 square feet of space to the "New Building." This will complete the third floor, and will add a fourth floor.

2. For what will the 10,000 square feet of space be used?

   a. Specifically, two art rooms with skylights, two new classrooms, a music rehearsal room, two music practice rooms, and an all-purpose room that seats 108 people and will be used for rehearsals, classes, meetings, special theatre productions, parent-lecture series, student council meetings, independent school subject conferences, and small in-house artistic performances.

   b. Generally, to make classroom space available 30% of the time, instead of the less than 8% they are now free. This will enable teachers to have offices, permanent classrooms, and space which is free from the sound of music and other barriers to effective teaching. It will also allow the kind of *ad hoc* counseling, tutoring and guidance to take place quickly and quietly without teachers and students having to wait for or to search for appropriate space

3. Why was this site chosen?

   a. The original design of the building anticipated the addition of the proposed floor and a half Therefore, the supports for the addition exist, as do the heating and lighting basic equipment which need only to be completed.

   b. We do not want to give up any of the grounds for a separate building. The athletic field is occupied most of the day, and always after school; a certain number of parking spaces is essential; the front, beautiful lawn cannot be touched without great harm to the dignity of the campus.

   c. The 10,000 square feet provide what we need for overflow of specialty programs (art, drama, music) and frees the classrooms for other uses. Therefore, all disciplines profit. It also adds two new classrooms.

4. Why art, music and drama?

   a. They have special needs for sound-proofing, skylights, seating, quiet, lighting, and instrument storage that would be more expensive to remodel in existing space than to build from the beginning.

   b. The needs of the other departments will be met when former art and music space becomes available for academic classes. Music will not be rehearsing next door, rooms will not be taken over by another department during "free" periods, and teachers will be able to remain in their rooms so students can find them for consultations, counseling, tutoring and other matters.

5. What else will be expanded?

   a. Nothing. The proposed construction will enable the student population to remain at 400.

6. How is the campaign being structured?

   a. Michael Sonnenreich is heading up the Special Gifts Campaign in which 15 volunteers are soliciting large gifts from another 60 of our parents.

   b. Clem Alpert is heading up the General Gifts Campaign in which 50 parent volunteers are soliciting general gifts from the parent body at large. These 50 volunteers have been organized by 26 class leaders who were chosen by three division leaders: Connie Durnan for K-4, Kathleen Kenety for 5-8, and Rosemary Monagan for 9-12.

   c. The Steering Committee is comprised of Mr. Sturtevant, Mr. Sonnenreich, Dr. Alpert, Sally Collier who is the school's coordinator for the campaign, Jeanne Preston who is in charge of publicity and literature, Joan Thomas who is President of the Parents' Association, and Lenore Ehrig and Don Calomiris who are President and Vice-President of the Board of Trustees.

7. What is the total cost of the proposed addition, and how is this being financed?

   a. The total cost is $700,000. We have an accomodation loan for construction from Union First and a take-out loan from Perpetual both for $600,000, the latter payable over 25 years. The loans are pegged at prime plus a point.

   b. Half of the total cost is being mortgaged. $230,000 is being sought from the General Gifts Campaign, and $120,000 is being sought from the Special Gifts Campaign.

   c. There are approximately 335 families at Maret. The average amount per family being sought is $250 a year for three years, or $750. Some scholarship families will not be able to pledge this amount. Many, of course, will be able to pledge more.

8. Are the gifts tax-deductible?

   a. Yes. Maret is a non-profit institution.

9. Are there naming gifts available?

   a. Yes. $1500 will pay for a seat in the all-purpose room. These gifts will be solicited in the General Gifts Campaign.

   b. A gift of over $50,000 will name the all-purpose room. Gifts of $35,000 will name one of the two art rooms or the music rehearsal room. $20,000 will name one of the two classrooms, and $6000 will name one of the two music practice rooms.

10. When will the campaign end, and when will construction begin and end?

   a. The initial phase of the campaign will be completed by January 1979. Construction will begin in April 1979 and is scheduled to be finished by February 1980.

11. Will it hurt the school to take on such a large mortgage?

   a. No. Over $400,000 in debts have been paid since 1974 when Peter Sturtevant took the headmaster's job. The new mortgage is payable over 25 years.

12. If people do not want to make a contribution to a building program, but are willing to contribute to some other aspect of the school, is this allowed?

    a. Absolutely.

13. What happens if the goal is not reached?

    a. There are various options open should such an eventuality occur.

14. What is the history of and what will happen to the Annual Giving during these three years?

    a. During the last three years with only a letter and a follow-up call, the Annual Giving increased from $10,000 to $25,000 to nearly $35,000. About 45% of the parents participated in this.

    b. The Annual Giving program will be suspended for the next three years.

15. Will tuition go up during the next three years?

    a. That is difficult to predict. Probably it will, with the increase undeterminable now. Its probable rise, however, will be independent of the building program.

16. Why do people come to Maret?

    a. Curricular

        1) careful placement of all students in courses geared to their abilities; easy movement to another course if misplaced at beginning of year

        2) chance for faster-paced to achieve excellence; advanced courses in all subject areas; teachers well-equipped and willing to give tutorials or tutoring, whichever may be appropriate

        3) variety of courses offered in all subject areas

    b. Extra-Curricular

        1) full range of activities available in sports, drama, literary options (newspaper, yearbook, magazine), language clubs, photography, music, debating

        2) small enough school for same kids to participate in diverse activities: i.e. a skinny kid can play football and still have the lead in the play, and be smart

    c. Personal Attention

        1) extensive and active advisor system oversees all students in most parts of their lives; school remains small enough that the faculty knows most of the students; teachers are advised and counseled on how to become advisors and counselors

        2) student-faculty ratio is just over seven to one

4) over 70 parent conferences were held in 1977-78 with full faculty representation to review difficulties child was having; open door of headmaster and others to meet on ad hoc basis at any time to discuss problems; for these conferences teachers often have met ahead and discussed what they think is best for the student, what the parents might do, and what they as teachers should do to help remedy the situation

5) commitment to the student follows beyond Maret; excellent college admissions done by headmaster and assistant; 30-40 colleges visit Maret to talk with interested students; hours spent matching interests and abilities with college's programs

6) achievement of the nearly impossible task of demanding the very best of students and having them achieve it, while at the same time responding to individual abilities, interests and concerns; makes Maret different from many other schools where the academic programs overwhelm the personal concern and caring, or where the personal concern and caring submerge the academic demands

d. Special Features

1) Intensive Study Week (ISW): once a year for a week, grades 5-8 and 9-12 suspend regular classes and sign up for mini-courses offered by teachers, some outsiders and occasionally a student

2) Ninety-nine percent of our teachers are full-time. That means their extra energy and time and commitment belong to us during work hours. New teachers are taught by example and by long conversations how to work with our advisor system, how to develop peripheral vision so that they assume responsibility for all students and not just for the ones they teach. They quickly learn that some of the most important teaching occurs after class, and that they must be present during free periods to catch the overflow of concerns, questions, fears and general vissitudes attendant in great doses upon those passing through the 5-18 years.

3) The most oft-heard remark from visitors concerns the friendly atmosphere, the familial air, the relaxed, yet strong sense of purpose feeling there is in classrooms visited.

4) Wide range of students: 10% foreign, 10% scholarships, 12% black, wide I.Q. and achievement range. All this helps to keep competition between students at a minimum, yet at the same time the teachers know the students well enough to demand the very best from each one.

5) The effort column on the report card is as important to the faculty and administration as the grade column is. A student who is getting high grades but who has an undesirable attitude will be discussed as seriously as the one who tries his or her very best yet is unable to make good grades. Very seldom is the latter ever asked to leave.

3-C Record

DEC 18 1978

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

December 4, 1978

Steven E. Sher, Executive Director
Board of Zoning Adjustment
Government of the District of Columbia
District Building, Room 9-A
Washington, D.C. 20004

Dear Mr. Sher:

The purpose of this letter is to inform the members of the Board of Zoning Adjustment, you, and your staff of the position taken by Advisory Neighborhood Commission (ANC) 3-C in connection with the application, identified as #12826, of the Royal Kingdom of Saudi Arabia to locate a chancery at 2929 Massachusetts Avenue, N.W., a location within the boundaries of this ANC recently zoned "D/R-1-A" by the Zoning Commission.

This matter was considered in two stages by this ANC. First, the application was studied by our Planning and Zoning Committee. Second, their recommendation was considered by the ANC at its regularly scheduled meeting the evening of Monday, November 27. This letter contains the Commission's recommendations, ones which are in accord with those of our Planning and Zoning Committee. The applicant was represented by Mr. Whayne Quin and Ms. Nancy Dutton at both meetings.

As you know, we were first informed of this application through your letter of November 3. It informed us that the application was being filed under both sub-section 8207.2 of the Zoning Regulations and under section 4603 relating, respectively, to special exceptions and chanceries. Later in the month we received your letter of November 21 informing us that the application would not be governed by the requirements of section 8207.2 (special exceptions) due, presumably, to the guidance provided you in the Deputy Corporation Counsel's memorandum of November 17. We do not contest this guidance in connection with this application.

As discussed below, subject to certain conditions, this Commission voted to support the granting of the permit to establish the chancery of the Royal Kingdom of Saudi Arabia at 2929 Massachusetts Avenue, NW. However, we are also on record as opposing the establishment of chanceries "as a matter of right" in any residential district. We therefore urge you, and the members of the Board, to bring this procedural modification -- which has implications for many other situations -- to the attention of the Zoning Commission so that it may take appropriate steps to provide the Board with the broad authority the special exception process provides to protect residential areas from the potentially adverse character of a chancery use, i.e. that of an "office" in ordinary language.

While we oppose chanceries "as a matter of right," we did not oppose the "D" overlay of the existing R-1-A district involved at the specific site of the proposed chancery at 2929 Massachusetts Avenue, N.W. (Square 2198, Lot 14). We did, and continue to, oppose other "D" overlays in the recent action of the Zoning Commission.

As you know, newly established sections 4603 and 4604 of the Zoning Regulations establish several conditions that a chancery must satisfy before it can be permitted. Under sub-section 4603.1 the Board is directed to determine after a public hearing that the proposed chancery "... is not incompatible with the present and proposed development of the neighborhood." To make that determination, the Board (pursuant to sub-section 4603.2) must make findings with respect to a number of issues.

Sub-sections 4603.25 and 4603.28 both relate to an issue of concern to us, specifically that sufficient off-street parking be provided on the chancery grounds to insure that the chancery will not create the type of traffic problem addressed in sub-section 4603.28. Thus, we strongly recommend that, in addition to requiring the maximum number of off-street parking spaces required by section 4603.25, the Board obtain a written assurance from the applicant that all employees of the chancery who drive to that location will park on chancery grounds, not in the surrounding residential area. We understand the applicant's representatives, Mr. Quin and Ms. Dutton, are prepared to supply this assurance. (The Board has the authority to impose such a condition under sub-section 4604.3 which states that the Board may "... require such reasonable conditions as it shall deem necessary to mitigate any adverse impacts identified in accordance with Sections 4603 and 4604.") Advisory Neighborhood Commission 3-C's support of the application is subject to such a condition.

The proposed plans for a chancery include the building of stairs along the eastern face of the site connecting the chancery's passport office to Rock Creek Drive. While we wish to remain neutral on the issue of the stairway which has been proposed, we would strongly object to any vehicular access route in the form of a curb cut as we believe this would lead to objectionable traffic conditions.

Inasmuch as the applicant proposes no enlargement of the present building and their other representations to us concerning the number of employees (total not over 35, no more than 25 at any one time of day), amount of activity (generally open 9 am to 5 pm, but closing to the public at 1 pm), and the like are acceptable from a neighborhood standpoint, ANC 3-C concludes that the proposed Saudi Arabian chancery would not adversely affect the neighborhood as long as the above conditions are met. However, this may not be true with regard to other possible uses of the property and, for that reason, we request that the Board's findings and actions, if favorable to the applicant, not automatically be tranferable to other parties. Subject to the above-mentioned conditions, we support the granting of the permit for the Royal Kingdom of Saudi Arabia to operate a chancery at 2929 Massachusetts Avenue, N.W.

As noted previously, we are concerned about parking in the adjacent residential area. It is presently used by "commuters" for all-day parking. This is inconsistent with the residential character of the area and detracts from the vista of Rock Creek Park both from Massachusetts Avenue and from Rock Creek Drive adjacent to the proposed chancery.

We are, by copy of this letter, suggesting that the Department of Transportation take such steps as may be needed to have the east side of Rock Creek Drive from Massachusetts Avenue, N.W. to Benton Street, N.W. established as a "No Parking Anytime" area (to restore and preserve the scenic vista) and to have the west side of Rock Creek Drive between the same two points, which is along a retaining wall, established as part of the "residential permit" zone. Such "residential permit" zones permit non-residents to park up to two hours; this, we believe, is sufficient for parties having business at the chancery to accomplish what would ordinarily be needed and is preferable to a general "two hour" zone that would affect everyone.

Thank you for considering our views.

BY RESOLUTION OF THE COMMISSION,

Lindsley Williams

Lindsley Williams, Chairperson

cc: Honorable Polly Shackleton
Mr. Quin
Ms. Dutton
Mr. Brophy (D.O.T.)

Minutes
December 18, 1978

I. The meeting was called to order by Lindsley Williams at 8:04pm. Present were: Haugen, Arons, Williams, Coram, Rothschild, and Grinnell. Kopff arrived later. Pitts was absent, as was McGrath.

II. The minutes of November 27, 1978 were distributed. Adoption was postponed.

III. Grinnell gave the monthly treasurer's report (attached).

$8,758.85	balance at start of reporting period
(432.41)	expenses
1,671.25	1st quarter funding
9,863.03	balance currently on hand

Phil Mendelson noted that the balance as of the last Commission meeting was different than the balance at the start of this reporting period. Grinnell said he would look into this. Thereupon, the Commission adopted the report.

IV. Williams reviewed the agenda and procedures for handling residents' concerns--the town hall segment of the meeting.

A. Nancy Raskin presented a verbal proposal for a $1408 grant to provide a teacher and basic equipment for the music program at Oyster School.

B. Bill Robinson presented a verbal proposal for ANC funding to provide an architect in residence at John Eaton School. The National Endowment for the Humanities has already said it will provide up to $4000 in matching funds. The school is undergoing renovation.

Both of these funding proposals will be considered, along with the Hearst School proposal received at the November meeting, by Bernie Arons' committee.

C. Saudi Arabia Chancery BZA application: Grinnell read a letter from Hugh Allen to the Board of Zoning Adjustment. It requested that the ANC be able to withdraw its support of the application, as stated in its letter of December 4th to the Board, thereby giving the Commission the opportunity to review the issue at tonight's meeting. Rothschild objected that he had understood that the ANC would not withdraw its letter but rather would not be opposed to a motion to postpone to be made by Tim Corcoran.

Mssrs. Corcoran and Kelly, representing a number of the property owners in the area of the proposed chancery, addressed the Commission. They had delivered to the Commission, prior to the meeting,

a "Joint Statement In Opposition To Chancery Application Of The Royal Kingdom Of Saudi Arabia." Williams then noted some of the issues that were surfacing:

- The number of parking spaces required versus the number proposed
- The width of driveways and aisles
- The number of square feet for chancery use (11,599) and of the entire building (16,000)
- Traffic dangers
- Limited immunity/enforceability
- General compatibility
- Jurisdictions of both the BZA and the ANC

Whayne Quin and Sam Condit spoke on behalf of the application. It was noted that restoration plans for the Chancery would cost over $1 million. Quin also said that the Saudis would support implementation of the 2 hour commuter parking ban program to meet the neighborhood's concern regarding parking, and that he would be willing to get the Ambassador to sign the proposed plan as being the final plan.

Both attorneys were given the opportunity to rebut each other. Kopff asked for residents in attendance to speak. Bertha Burling, Wayne Parrish, Ralph Dweck, Rene Barozzi, and Alec Levin did. Between them concerns were raised as to lighting, automobile fumes/exhaust, trash, parking, nighttime emptiness, office use in a residential neighborhood, and so forth.

The Chair asked that the Planning and Zoning Committee consider this issue further and that it attempt to work with the neighborhood residents to adopt a recommendation for the Commission to consider at the January 22nd 3C meeting. He suggested that perhaps one or more letters to government agencies might be necessary in order to resolve all issues. Hugh Allen said he would try to schedule a meeting for early January and seek, in part, to use the meeting to achieve an agreement between the parties.

D. The Embassy of Iran has applied for a map change to extend the Diplomatic Zone to include the property (which it owns) adjacent to its embassy. The Zoning Commission will decide on January 11th whether or not to grant a hearing on the application. A motion was moved and approved (Kopff abstaining) for Hugh Allen to prepare a letter on behalf of the Commission opposing the application and seeking to avoid the granting of a hearing.

V. Other issues:

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VI. The meeting adjourned at 12:10am.

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Respectfully Submitted
for the Commission:

Phil Mendelson

Attested as approved & Corrected:

Katherine V. Coram
Recording Secretary

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

Minutes
December 18, 1978

I. The meeting was called to order by Lindsley Williams at 8:04pm. Present were: Haugen, Arons, Williams, Coram, Rothschild, and Grinnell. Kopff arrived later. Pitts was absent. McGrath was absent

II. The minutes of November 27, 1978 were distributed. Adoption was postponed.

III. Grinnell gave the monthly treasurer's report: a copy of which is attached

$8,758.85	balance at start of reporting period
(432.41)	expenses
1,671.25	1st quarter funding
9,863.03	balance currently on hand

Not accurate $134.66

Phil Mendelson noted that the balance as of the last Commission meeting was different than the balance at the start of this reporting period. Grinnell said he would look into this. Thereupon, the Commission adopted the report.

IV. Williams reviewed the agenda and procedures for handling residents' concerns--the town hall segment of the meeting.

A. Nancy Raskin presented a verbal proposal for a $1408 grant to provide a teacher and basic equipment for the music program at Oyster School.

B. Bill Robinson presented a verbal proposal for ANC funding to provide an architect in residence at John Eaton School. The National Endowment for the Humanities has already said it will provide up to $4000 in matching funds. The school is undergoing renovation.

Both of these funding proposals will be considered, along with the Hearst School proposal received at the November meeting, by Bernie Arons' committee.

C. Saudi Arabia Chancery BZA application: Grinnell read a letter from Hugh Allen to the Board of Zoning Adjustment. It requested that the ANC be able to withdraw its support of the application, as stated in its letter of December 4th to the Board, thereby giving the Commission the opportunity to review the issue at tonight's meeting. Rothschild objected that he had understood that the ANC would not withdraw its letter but rather would not be opposed to a motion to postpone to be made by Tim Corcoran.

Mssrs. Corcoran and Kelly, representing a number of the property owners in the area of the proposed chancery, addressed the Commission. They had delivered to the Commission, prior to the meeting,

a "Joint Statement In Opposition To Chancery Application Of The Royal Kingdom Of Saudi Arabia." Williams then noted some of the issues that were surfacing:

- The number of parking spaces required versus the number proposed
- The width of driveways and aisles
- The number of square feet for chancery use (11,599) and of the entire building (16,000)
- Traffic dangers
- Limited immunity/enforceability
- General compatibility
- Jurisdictions of both the BZA and the ANC

Whayne Quin and Sam Condit spoke on behalf of the application. It was noted that restoration plans for the Chancery would cost over $1 million. Quin also said that the Saudis would support implementation of the 2 hour commuter parking ban program to meet the neighborhood's concern regarding parking, and that he would be willing to get the Ambassador to sign the proposed plan as being the final plan.

Both attorneys were given the opportunity to rebut each other. Kopff asked for residents in attendance to speak. Bertha Burling, Wayne Parrish, Ralph Dweck, Rene Barozzi, and Alec Levin did. Between them concerns were raised as to lighting, automobile fumes/exhaust, trash, parking, nighttime emptiness, office use in a residential neighborhood, and so forth.

The Chair asked that the Planning and Zoning Committee consider this issue further and that it attempt to work with the neighborhood residents to adopt a recommendation for the Commission to consider at the January 22nd 3C meeting. He suggested that perhaps one or more letters to government agencies might be necessary in order to resolve all issues. Hugh Allen said he would try to schedule a meeting for early January and seek, in part, to use the meeting to achieve an agreement between the parties.

D. The Embassy of Iran has applied for a map change to extend the Diplomatic Zone to include the property (which it owns) adjacent to its embassy. The Zoning Commission will decide on January 11th whether or not to grant a hearing on the application. A motion was moved and approved (Kopff abstaining) for Hugh Allen to prepare a letter on behalf of the Commission opposing the application and seeking to avoid the granting of a hearing.

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