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BY HAND

Meredith Moldenhauer, Chair
Board of Zoning Adjustment
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Washington DC 20001

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Reference Number
031342.00001

Re: Appeal of Steuart Investment Company
BZA Appeal No. 18041
Applicant's Pre-Hearing Statement

Dear Chairperson Moldenhauer and Members of the Board:

Enclosed herewith for filing is an original and 20 copies of the Applicant's Pre-Hearing Statement in the above-referenced matter.

Counsel regrets the delay in filing this document with the Board, and respectfully requests that, pursuant to 11 DCMR § 3100.5, the Board waive its own rule under 11 DCMR § 3112.10 requiring this Pre-Hearing Statement to be filed no less than 14 days in advance of the hearing on this matter, which is presently scheduled for April 6, 2010. Counsel was, as you know, tied up before the Board of Zoning Adjustment for the entirety of Tuesday, March 23, 2010 in Case No. 17337, which was an unexpected continuation of the extremely long hearing of March 16, 2010 in that matter and required further preparation.

We do not believe that the delay in filing will prejudice any party, as we have notified counsel for the Zoning Administrator, and have provided a copy of this filing via electronic mail to both the Zoning Administrator and the Advisory Neighborhood Commission. Moreover, the Appellant is not relying on any new information that was not referenced in our previous communications with the Zoning Administrator prior to filing the instant appeal.

We look forward to the Board's consideration of this matter on April 6, 2010.

BOARD OF ZONING ADJUSTMENT
District of Columbia

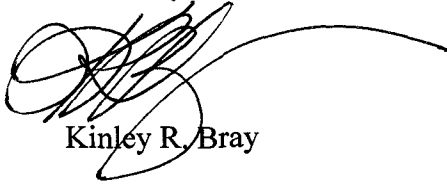
CASE NO. 18041
EXHIBIT NO. 18

GENBUS/729234.1

Meredith
Moldenhauer, Chair
March 26, 2010
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Arent Fox

Sincerely,

A handwritten signature in black ink, appearing to be "Kinley R. Bray", with a long, sweeping horizontal line extending to the right.

Cc: Jay Surabian, OAG, Counsel for the Zoning Administrator
Advisory Neighborhood Commission 6C

GENBUS/729234.1

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

**In Re: Appeal of Steuart Investment Company
BZA Appeal No. 18041**

Hearing Date: April 6, 2010

PRE-HEARING STATEMENT OF THE APPELLANT

I. Introduction

This Pre-Hearing Statement of the Appellant, Steuart Investment Company (“Appellant” or “Steuart”) is submitted in support of the above-referenced appeal and supplements the materials previously filed in this case. The instant case is an appeal of a determination by the Zoning Administrator dated October 20, 2009 that a proposed combined lot development does not comply with the requirements of Chapter 17 of the Zoning Regulations.¹

The Appellant (and Steuart Square N515/A Company, a subsidiary of Steuart Investment Company) is the owner of the entirety of Square 483 (“Square 483”) and Lot 62 in Square N515 (“Lot 62”). Square 483 is bounded by Fifth Street, Sixth Street, K Street, and New York Avenue, N.W., and is zoned DD/C-3-C. Square 483 contains 56,339 square feet of land, and the Appellant proposes to develop the entire property for commercial uses. Square 483 is in Housing Priority A.

Lot 62 is located in the western portion of Square N515, which is triangular in shape and formed by L, Fourth, and Fifth Streets, N.W. and New York Avenue, N.W. Lot 62 is zoned DD/C-2-C. Lot 62 contains 42,824 square feet of land area. The Appellant intends to develop Lot 62 as an all-residential building. Lot 62 is also located within Housing Priority A.

The Appellant proposed a combined lot development, pursuant to the provisions of 11 DCMR § 1706, wherein all the permitted commercial development to which Lot 62 is entitled

¹ Title 11, District of Columbia Municipal Regulations (2001), as amended.

would be transferred to Square 483, and all of the residential development which Square 483 must, under the requirements of the Downtown Development District Overlay, either develop on-site or account for off-site through a combined lot development, would be transferred to Lot 62 (the "Proposed CLD"). The Appellant sought review by the Zoning Administrator, sending a memorandum through counsel dated April 1, 2009, attached as Exhibit A hereto, wherein counsel requested confirmation that the Proposed CLD complied with the requirements of Chapter 17 of the Zoning Regulations.

On May 22, 2009, the Appellant met with the Zoning Administrator to discuss the Proposed CLD. The Zoning Administrator asked the Appellant to re-send the written summary previously sent on April 1, 2009, which described how the Proposed CLD met all of the requirements of Chapter 17 of the Zoning Regulations.

On August 12, 2009, the Appellant and the Zoning Administrator met for a second time, and discussed the requirements of Chapter 17, specifically the language found in 11 DCMR § 1706.7(b). The Appellant provided a written summary of its research to show that the Proposed CLD met the requirements of Chapter 17. The Zoning Administrator asked the Appellant to provide a draft reliance letter for his review. On August 31, 2009, the Appellant sent a draft reliance letter and additional exhibits to the Zoning Administrator for his review and approval. The draft reliance letter is attached hereto as Exhibit B and outlines in great detail the analysis required for all combined lot developments pursuant to all of the applicable requirements found in Chapter 17 of the Zoning Regulations.

On October 20, 2009, the Zoning Administrator issued a written determination letter finding that the Proposed CLD did not comply with Chapter 17, citing only 11 DCMR §

1706.7(b)(2) as the basis for such determination. See Exhibit C, attached hereto. It is from this October 20, 2009 determination that we appeal.

II. **Factual Background**

A. *Residential Requirements*

Together, Square 483 and Lot 62 comprise 99,163 square feet of land area. Pursuant to 11 DCMR § 1706.5(b), each lot in the DD/C-3-C zone shall provide on site, or account for off site in a combined lot development, no less than 3.5 FAR of residential use. Thus, any development on Square 483, which is located within the DD/C-3-C zone, must provide 3.5 FAR or 197,187 (3.5 x 56,339 sf) square feet of residential uses, either on site or off site through a combined lot development.

Pursuant to 11 DCMR § 1706.4(b), each lot in the DD/C-2-C zone shall provide on site, or account for off site in a combined lot development, no less than 4.5 FAR of residential use. Thus, any development on Lot 62 must provide 4.5 FAR or 192,708 (4.5 x 42,824 sf) square feet of residential uses, either on site or off site through a combined lot development. Combined, Square 483 and Lot 62 are required to develop a minimum of 389,895 square feet of residential uses (197,187 + 192,708).

B. *Commercial Entitlements*

Square 483, located in the DD/C-3-C zone district, is entitled to a permitted commercial density of 6.0 FAR as a matter of right, which equates to 338,0334 square feet of floor area, based on the land area in the square (56,339 square feet). Lot 62 is entitled to a permitted commercial density of 3.5 FAR as a matter of right, which equates to 149,884 square feet of floor area, based on the land area of the lot (42,824 square feet). Combined, the two properties are entitled to develop a maximum of 487,918 square feet of commercial uses, without

consideration of any applicable transferable development rights (“TDRs”) or any available bonus density.

Combined, Square 483 and Lot 62 yield 877,813 square feet of required residential floor area *and* maximum permitted commercial area.

The Proposed Combined Lot Development shifts all residential uses to Lot 62 and all commercial uses to Square 483. Thus, 3.5 FAR of commercial density from Lot 62 in Square 515N is shifted to Square 483, and conversely, 3.5 FAR of residential density is shifted from Square 483 to Lot 62. This proposed transfer ensures that the minimum required residential density for both lots is constructed, while the maximum commercial density for both lots is not exceeded. Prior to application of any applicable bonus density, the shift of the minimum residential requirement and maximum commercial entitlement creates an overall FAR of the Proposed Combined Lot Development of 8.85 FAR. This is calculated by adding the required residential uses (389,895) and the maximum commercial entitlement (487,918) and dividing by the combined lot area (99,163).

C. *TDRs*

Pursuant to 11 DCMR § 1706.7(a)(1), an additional .5 FAR of density is available to each lot through the receipt of TDRs. The Appellant proposes to transfer the .5 FAR available to Lot 62 pursuant to 11 DCMR § 1706.7(a)(1) to Square 483 as part of the Proposed Combined Lot Development. Thus, the Appellant is using a total of 49,582 square feet of TDRs.

III. **The Proposed Combined Lot Development Meets the Requirements of Chapter 17**

Combined lot developments in the Downtown Development District are governed by 11 DCMR § 1708, which provides that two (2) or more lots, located either in the same square or in

different squares, may be combined for the purposes of achieving the required FAR equivalent for preferred uses. § 1708.1(a). In addition to transfers of required minimum residential density pursuant to 11 DCMR § 1706.4, 11 DCMR § 1708.1(a) clearly states that combined lot developments shall be eligible for the density and area allowances permitted in 11 DCMR § 1703, 1704, 1705, and 1706.

The concept of combined lot development was included in the Downtown Development District Overlay (the “DD Overlay”) in Zoning Commission Case No. 89-25 to assist in accomplishing a “balanced mixture of uses comprising a ‘Living Downtown’”, which had been called for in the Comprehensive Plan. The DD Overlay put into place requirements for “preferred uses”, particularly housing, retail and arts, while acknowledging that most property in the Downtown area already had a base amount of matter-of-right commercial density; therefore, the combined lot would permit owners of property that had both a commercial entitlement and a new residential (or other preferred use) requirement to combine those requirements among two or more lots so as to avoid the difficulties in vertically integrating mixed uses. The proposal was explicit about wishing to provide the greatest flexibility to the private sector to work out how much density would be transferred among lots, for what use, and for what price. In its Final Report to the Zoning Commission on Case No. 89-25, dated February 16, 1990² (logged as Exhibit 184), the Office of Planning explained:

Two or more lots are permitted to combine their development rights and obligations to:

- *Provide locational flexibility regarding the preferred uses...*
- *Permit a horizontal mix of uses (especially offices and apartments), that often is more efficient and more marketable than a vertical mix*

² Attached hereto as Exhibit D.

- *Create the legal framework for two or more sites to be linked for purposes of sharing or transferring bonus density*

Pursuant to 11 DCMR § 1708.1(g), the maximum permitted gross floor area for all uses, the minimum required gross floor area for preferred uses, and bonus density, if applicable, ***shall each be calculated as if the combined lots were one lot***, and the ***total project*** shall conform with the maximum and minimum gross floor area requirements (emphasis added). Thus, in computing the minimum required gross floor area, maximum permitted gross floor area, and any bonus density, if applicable, the total combined land area of the two parcels is the basis for the calculation.

11 DCMR § 1708.1(i) states that “no allocation of gross floor area for required uses shall be effective unless an instrument, legally sufficient to effect such a transfer, is filed with the Zoning Administrator and recorded in the land records of the District of Columbia against all lots included in the combined lot development.” The recordation of this instrument permanently binds together the two lots and ensures that the lots are never again looked at independently, because they have been developed as if they were a single lot. The instrument runs with the land in perpetuity, burdens all lots involved in the allocation of gross floor area for required preferred uses, and “binds the present and future owners of the lot receiving the FAR to reserve, design, construct, cause to be occupied, and maintain in perpetuity an area on-site equal to the gross floor area of required preferred uses received.” 11 DCMR § 1708.1(j)(2)-(4).

11 DCMR § 1708.1(j) states further that the covenant must include “the maximum permitted gross floor areas for all uses on ***all lots***, the minimum required gross floor areas for preferred uses on ***all lots***, and the gross floor area allocated. The covenant shall further state that, after the transfer, the ***combined lots*** conform to the maximum and minimum gross floor area

requirements on the lots” (emphasis added). The recorded instrument requires a calculation or accounting of all floor area required, permitted, and allocated among the parcels included in the combined lot development on the basis of the entire development, not on each individual parcel.

The Office of Planning confirms this understanding that the combined lot, and its accompanying covenant, look to the entire amalgam of uses to determine whether the CLD complies with requirements, not the FAR of each individual lot. In its Public Hearing Report to the Zoning Commission on Downtown zoning, as part of the Zoning Revision effort, ZC #08-06-10: Downtown, dated October 15, 2009, OP explained:

In both types of combined lots [DD as well as CR, Capitol Gateway and Uptown Arts], the participating lots may also reallocate commercial density, which means that the building on one lot may exceed the matter of right FAR provided that the aggregate FAR with the combined lots stays within matter of right limits.

IV. **The Zoning Administrator Erred in Determining that the Proposed Combined Lot Development violates 11 DCMR § 1706.7(b)(2).**

The Zoning Administrator’s October 20, 2009 determination letter includes an erroneous interpretation of 11 DCMR § 1706.7(b)(2). Moreover, the Zoning Administrator has read that section in isolation and does not analyze whether the Proposed Combined Lot Development meets the other requirements of the DD Overlay. The entirety of 11 DCMR § 1706.7 reads as follows:

1706.7 To assist in the development of residential and preferred uses, the following *density bonuses* may be used:

- (a) The maximum gross floor area permitted under §§ 1706.4, 1706.5, and 1706.6 *may be increased* by 0.5 FAR up to a maximum of 8.5 FAR in the DD/C-2-C

Overlay District, 10.0 FAR in the DD/C-3-C Overlay District, and 10.5 FAR in the DD/C-4 Overlay District; ***provided the increase in gross floor area is achieved by:***

- (1) Receiving transferable development rights as provided in § 1709, which gross floor area may be devoted to any permitted use on the receiving lot;
- (2) Constructing or assisting affordable
- (3) Generating retail bonus density as provided in § 1706.16.

(b) Except for historic landmarks and properties listed in § 1707.4 in the Downtown Historic District, ***the maximum FAR limitations*** in §§ 1706.4, 1706.5, and 1706.6 ***shall not apply*** to any lot that devotes the ***increase*** in gross floor area entirely to residential use on-site; ***provided:***

- (1) The ***increase*** in gross floor area shall not be used to meet the minimum residential requirements of §§ 1706.4, 1706.5, or 1706.6; and
- (2) The maximum residential FAR th

ZONE DISTRICT OF THE LOT RECEIVING HOUSING	MAXIMUM ALLOWABLE COMBINED LOT TRANSFER (FAR)
DD/C-2-C	3.5
DD/C-3-C	6.0
DD/C-4	8.0

(emphasis added).

The Zoning Administrator simply concludes, without analyzing the Proposed Combined Lot Development against the minimum requirements and maximum permitted densities for each use, that because more than 3.5 FAR is being received by Lot 62—regardless of whether that FAR represents underlying density or bonus density — the proposed transfer violates 11 DCMR § 1706.7(b)(2) and no further analysis is required. This is in clear error, and, contrary to the rules of statutory construction as discussed further below, provides an absurd result.

The proposed Combined Lot Development does not violate 11 DCMR § 1706.7(b)(2), which limits the amount of *bonus* residential density. The underlying densities in the Combined Lot Development have been calculated using the base densities of each lot, and adhering to the maximum permitted gross floor area for all uses on each lot as enumerated in 11 DCMR § 1706.4(a) and 11 DCMR § 1706.5(a). See Exhibit E, attached, which is a graphic representation of the movement of underlying density (entitlement and requirements) from one lot to another in the Proposed CLD. No bonus density is being generated or is proposed to be transferred, therefore 11 DCMR § 1706.7(b)(2) does not apply. The plain meaning of the regulation is clear.

V. **The Legislative History Demonstrates that 11 DCMR § 1706.7(b) was not meant to apply to underlying density entitlements and residential requirements created by the DD Overlay.**

If the plain language of 11 DCMR § 1706.7(b) is not straightforward, we turn to the legislative history. *Washington Gas Light Co. v. Public Service Com'n of the District of Columbia*, 982 A2d 691 (2009) (If the meaning of a statute is not clear on its face, courts may look to secondary sources, such as legislative history.) In this case, the Zoning Administrator determined that the plain meaning of 11 DCMR § 1706.7(b) bars any transfer of density in

excess of 3.5 FAR via combined lot development, despite language contained within that section which explicitly states that it is to apply to bonus density only.

The “primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used.” *Peoples’ Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (1983)(citing *Varlea v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 64 (D.C. 1980). Nevertheless, stated the Court in *Peoples’*, “it is appropriate to look beyond the plain meaning of statutory language in several different situations.” *Id.*, at 754. “First...an in-depth consideration of alternative constructions that could be ascribed to statutory language may reveal ambiguities that the court must resolve.” *Id.* (citing *Sanker v. United States*, 374 A.2d 304, 307)(1977). “Second, the literal meaning of a statute will not be followed when it produces absurd results.” *Id.* “Third, whenever possible, the words of a statute are to be construed to avoid ‘obvious injustice.’” *Id.* (internal citations omitted). And “finally, a court may refuse to adhere strictly to the plain wording of a statute in order to ‘effectuate the legislative purpose.’” *Id.* (internal citations omitted). The Zoning Administrator’s determination on the basis of 11 DCMR § 1706.7(b)(2), read in isolation, produces an absurd result, and one that is directly contrary to the very purposes of the DD Overlay in general and the Combined Lot Development provisions in particular.

In 1982, the Mayor’s Downtown Committee published its Recommendations for the Downtown Plan, which focused on the importance of creating a “Living Downtown.” The document acknowledged that the portion of the Central Business District around Connecticut Avenue and K Street had seen considerable investment and redevelopment, but it lacked street vitality, especially at night and on weekends, and lacked design character. The Downtown Committee saw redevelopment marching eastward toward the traditional Downtown, between

the White House and the Capitol, and wished to make sure that the “old” Downtown would be a dynamic, mixed-use area after it was redeveloped. It recommended adopting land use actions to require housing, arts and retail, and to encourage preservation of significant historic buildings or districts.

Those recommendations were later incorporated into the District’s first Comprehensive Plan in 1984. In 1989, a small group of activists petitioned the Zoning Commission to adopt a set of zoning regulations to guarantee this mix of uses (ZC Case No. 89-25). In 1991, after numerous rancorous public hearings, the Commission adopted the Downtown Development District Overlay Zone.

In attempting to guarantee that housing would be built in areas where the plan had encouraged mixed-use, the Zoning Commission faced a dilemma. Most of the area was zoned to permit commercial development, with either SP or C zoning. Developers argued that any land required to build housing would be worth nothing; that no one would be willing to build, or live in Downtown residential buildings. A compromise of sorts was reached. For the most part, the matter of right commercial density entitlement was preserved for each lot, and a residential requirement was added as well. Recognizing that few developers were likely to build a building with commercial and residential together, the DD then provided for “combined lot development”, whereby developers, in a private market transaction, could swap commercial and residential entitlements. The presumption was that developers wishing to construct commercial uses, which were assumed to be more profitable, would compensate developers wishing to build residential in exchange for relieving the commercial site of its housing requirements. In order to be certain that the housing would actually be constructed, the regulations required that no commercial developer who was part of a combined lot transaction would be able to obtain his or

her certificate of occupancy until the certificate of occupancy for the corresponding residential project had been received.

The Office of Planning, in describing the new combined lot development method, explained to the Zoning Commission:

Second is linkage, or combined lot development. This provision, in its simplest form, simply allows two different lots or more to combine to meet the requirement. Taking the Shop [District], already adopted as an example, if there is a 1.5 FAR requirement on two lots, one of the lots can provide more of the preferred uses and the other one less.

And the idea is that you still get your total quantity in the sub-area, mainly the retail core, where we want a concentration of shopping. But if it is convenient and economically viable for one of the properties to have more of the use – let's say one of them was going to put in a multi-level apparel store and was going to provide 2.5 FAR, then actually computing a covenant, and presumably a market rate transfer payment between the property owners, one owner provides a greater concentration of retail, the other one less.

*But the area, as a whole, achieves that critical mass. So this approach is intended to provide some locational flexibility regarding the use of different sizes and designs of buildings, and in some cases, **particularly housing, it is intended to permit a horizontal mixture of uses which is more economically feasible and practical in many ways.***

Transcript, Zoning Commission Case No. 89-25, February 22, 1990 at pp. 44-45 (emphasis added).

The Office of Planning continued on, dealing separately with bonus density, stating:

*Bonus uses are certain extra-special uses in the particular sub area...those get extra credit in earning bonus office density regarding the total bulk of the building. So going back to the **base requirement** for preferred uses, that **has to be met**, within that space. Let's say that that had to be 15,000 square feet of Arts and Retail combined, and that 10,000 square feet of that space was a movie theatre earning a 1 to 1 bonus. The developer can then put an **extra** 10,000 square feet of office space on top of the building. So that is leverage **in addition to the base requirement.***

Id., at pp. 45-46 (emphasis added).

Finally, OP noted in a memorandum to the Zoning Commission dated May 11, 1990 that the general consensus of testifiers at the public hearing was that “property owners should be able to calculate project FAR on a ***combined basis*** for all of the lots involved in a project.”

In 2000, the Office of Planning proposed additional changes to the DD Overlay in Zoning Commission Case No. 00-30TA based on additional work by the *Mayor’s Task Force on Housing and the Downtown Action Plan*. In a Set Down report dated October 6, 2000, the Office of Planning noted that the initial DD Overlay combined lot development provisions were developed to “spread the burden and allow for a system of compensation.” See Exhibit F, attached, at p. 4.

*The Combined Lot mechanism also dealt with the reality that housing requirements were imposed above commercial density, in order to **avoid eroding the commercial “entitlement.”** While that preserved the commercial value, the resulting housing requirement was generally too small to constitute sufficient FAR for a residential building. Thus, in order to have sufficient numbers of units for efficient operation, the housing requirement of more than one site needed to be combined. Housing and Office uses could be transferred between properties by agreement of two owners. However, as a precaution the site receiving office development would not be able to proceed until the site receiving the housing use had received its Certificate of Occupancy.*

Id. (emphasis added). OP identified several problems with the existing combined lot development provisions, most of which related to timing of delivery of the residential following construction of office uses. See *Downtown Housing Amendments, A Presentation to the Zoning Commission*, dated February 12, 2000, attached as Exhibit G. Initially, OP proposed eliminating all density limitations on residential development under the Height Act. Its rationale was that lifting such requirements would: (1) encourage the production of residential units by lifting FAR restrictions, (2) make marginal properties more developable, and (3) lower the operating costs for a project by distributing the cost among more units. There was a concern expressed that development of extra housing units should not be used to generate excess commercial

development for transfer elsewhere in the DD. Thus, the Office of Planning's presentation stated "the **extra** density should not be eligible to generate TDRs, engage in Combined Lot Transfers, or meet the minimum housing requirements." *Id.*

Zoning Commission Case No. 00-30TA proposed elimination of the matter of right density caps as long as the resulting increased (bonus) density was used for housing:

*The Task Force recommends that in areas of the DD with a height limit of 130 feet, density **increases** should be permitted for housing use only...to ensure that these changes actually provide more housing, the Office of Planning has provided sample language that limits the amount of FAR that can be transferred via combined lot.*

October 6, 2000 Report, p. 6. The Office of Planning's initial recommended language simply stated that "no maximum FAR shall be applicable to any building that is devoted solely to residential uses...provided that any such building shall comply with the maximum permitted building height requirements..." *Id.* at Attachment One, Section I(A)(1)(B)(1). Proposed section 1706.7(e) then stated that any such *increase* could not be used to accept the transfer of residential use through a combined lot development, thus reducing the overall number of units built.

In what was eventually codified as Section 1706.7(b), this bonus density, above the matter of right maximums, was permitted "provided" that it could not be used to reduce the minimum residential requirements and it was subject to the maximum FAR limitations in 1706.7(b)(2). It is clear, since the limitation in 1706.7(b)(2) is part of the provisions that govern 1706.7(b), coming after the restrictive term "provided", and since the proposed combined lot is not using **any** of the density bonuses provided in 1706.7(b), that the limitations in subsection (b)(2) do not apply.

Reading 11 DCMR § 1706.7(b)(2) in isolation as a limitation on the base residential requirement that may be transferred in a combined lot produces the absurd result of limiting the number of housing units that may be placed in an area in which a greater number of residential units should be located. Additionally, such a reading has the effect of thwarting the intended legislative purpose of the combined lot development provisions as a whole, which was providing “locational flexibility” and a horizontal mix of units across properties, instead of a vertical mix. Under the Zoning Administrator’s interpretation, the Appellant would either be required to engage in a second combined lot development transaction elsewhere, reducing the total number of residential units that will be built in the Mt. Vernon Square area, or, he would be required to build a small residential component in a predominantly commercial building in the higher density, more valuable, C-3-C zone.

Finally, the Zoning Administrator’s reading is directly contrary to the rules of construction enunciated in *Peoples’*, *supra*, in that it would create, rather than avoid, an obvious injustice. In 2003-2004, the Office of Planning (OP) recognized that the market for development was beginning to turn to the area north of Downtown, across Massachusetts Avenue. OP and the major property owners realized that, since most of the land in the so-called Mt. Vernon Triangle (located between Massachusetts and New York Avenues, from 7th to New Jersey Avenue) was vacant or severely underutilized, there was an opportunity to create a new neighborhood, but it would require the development of a shared vision. When the Office of Planning was developing the Mt. Vernon Triangle Plan, it determined, in conjunction with a Task Force of stakeholders, that K Street should be encouraged to develop as a primary retail destination, to take advantage of its very wide sidewalks, conducive to outdoor cafes, and its location as the east-west spine of the neighborhood. The intersection of 5th and K Streets was

felt to be the logical “100% corner” – the heart of the retail area and a mini-town center, in effect, for the new Mt. Vernon Triangle neighborhood. In order to create an attractive public space to complement that function, OP suggested that building heights be limited to 50 feet in a 36’ by 36’ module closest to the intersection on all squares abutting that intersection, which includes Steuart’s Square 483; in addition, the minimum floor to ceiling height for that module was set at 22’. A further height setback was suggested at 100’, for modules adjacent to that one, with at least 50% of the space having a minimum floor to ceiling height of 22’, and the remainder having a minimum ceiling height of 14’. (11DCMR §§1723-1725) The net effect of these recommendations substantially eroded the FAR envelope on Square 483, but Steuart Investment Company not only did not object, but readily supported the zoning regulations, which were adopted by the Zoning Commission in Order 04-18 in April, 2006.

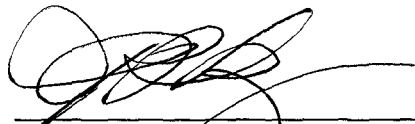
VI. **Conclusion**

The transfer of required residential FAR from Square 483 to Lot 62 in Square 515N includes only the 3.5 FAR of residential use required to be provided on Square 483 within the matter of right envelope; none of it is “bonus density” restricted by 11 DCMR § 1706.7(b)(2). Moreover, the Combined Lot Development complies with both the maximum and minimum gross floor area requirements as calculated together as one lot and balances these required minimums and permitted maximums among the lots as if they were a single lot. For the foregoing reasons, we urge that the Board reverse the determination of the Zoning Administrator and GRANT the requested appeal.

Respectfully submitted,

ARENT FOX LLP

March 26, 2010



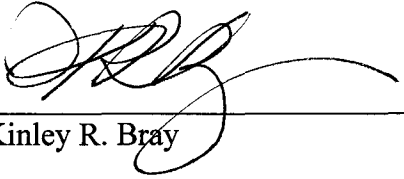
Kinley R. Bray
1050 Connecticut Avenue NW
Washington D.C. 20036
(202) 715-8572

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2010, a copy of the foregoing was mailed, first class, postage pre-paid, and sent via electronic mail, to the following:

Jay Surabian, Esq.
Assistant Attorney General
Office of the Attorney General for the District of Columbia
Office of the General Counsel for the Department of Consumer and Regulatory Affairs
1100 4th Street S.W.
Washington D.C. 20024
Jay.surabian@dc.gov

Advisory Neighborhood Commission 6C
PO Box 77876
Washington DC 20013
6C02@anc.dc.gov
kwirt@crs.loc.gov


Kinley R. Bray

A

Arent Fox

Memorandum

Ellen McCarthy
Director, Planning and Land Use
202.857.6455 DIRECT
202.857.6395 FAX
mccarthy.ellen@arentfox.com

Date: April 1, 2009

To: Matt LeGrant,
Zoning Administrator

Cc: Guy Steuart, III

From: Ellen M. McCarthy

Re: Combined Lot Development (CLD) for Squares 483 and 515N

The purpose of this memo is to obtain confirmation that a proposed combined lot development (CLD) between Square 483 and Lot 62 in Square 515N meets the requirements of 11 DCMR § 1708. As shown in the analysis enclosed as Attachment A, the combined lots together meet the requirements for minimum preferred uses and maximum total densities earned, and therefore, are in compliance with the Zoning Regulations. We hereby request your confirmation of this analysis, and have attached a proposed zoning reliance letter for your review and signature. Upon receipt of your letter, we will proceed to prepare the covenant for the CLD.

Square 483, which is bounded by 5th and 6th, K and L Streets, NW, is zoned DD/C-3-C, and is proposed to house an office building. Lot 62 on Square 515 N, located in the triangle between L, 5th and 4th Streets and New York Avenue, NW, is proposed for residential use, and is classified within the DD/C-2-C zone.

Attached as Exhibit A is a table showing the calculations of preferred uses and density transfers involved in this CLD. Square 483 contains 56,339 square feet of land area and Lot 62 in Square 515 N contains 42,824 square feet of land area, for a total combined land area of 99,163 square feet. The total underlying density of both lots, before any TDR bonuses permitted in the DD, is 877,816, or 8.85 FAR. With available bonuses through TDRs, the maximum permitted FAR is 9.35.

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The minimum required residential density, based on a minimum of 3.5 FAR on the DD/C-3-C zoned Square 483 and a minimum of 4.5 FAR on the DD/C-2-C zoned Lot 62 in Square 515 N, is 389,896 square feet, or 3.93 FAR based on the combined land area. The maximum commercial density, based on a maximum of 6.0 FAR in the DD/C-3-C zoned Square 483 and a maximum of 3.5 FAR on the DD/C-2-C zoned Lot 62 in Square 515 N, is 487,919 (excluding any bonus density available through TDR transfers). The CLD proposes to place all commercial density on Square 483, and all residential density on Lot 62 in Square 515 N. Utilizing the available .5 FAR bonus density available through TDRs, total commercial density is proposed at 537,501 square feet (5.42 overall FAR), and total residential is proposed at 389,896 square feet (3.93 overall FAR), for a combined overall FAR of 9.35.

Purpose and Intent of the Downtown Development District

As part of our review of this particular combined lot development, we have extensively reviewed the record of the original case which established the Downtown Development District (DDD) Overlay and created the concept of combined lot developments in the District.

The Downtown Development District Overlay was proposed in Zoning Commission Case No. 89-25 to implement the policies of the Mayor's Downtown Committee, as had already been incorporated in the 1984 Comprehensive Plan. As the Office of Planning noted in their February 16, 1990 report to the Zoning Commission, specifically with regard to the area in question, the policies of the Comprehensive Plan which the DDD Overlay was designed to meet included encouraging new housing to achieve "the balanced mixture of uses comprising a 'Living Downtown'," in particular, to "Create the greatest housing concentration in the Mt. Vernon Square area." (See p.6. "Downtown Development District Overview and Basic Concepts")

Combined Lot Mechanism

The purpose of the combined lot provision was to meet that goal, while acknowledging that most property in the Downtown area already had a base amount of matter-of-right commercial density; therefore, the combined lot would permit owners of property that had both a commercial entitlement and a residential requirement to combine those requirements between two or more lots, so as to avoid the awkwardness of constructing a building, for example, which would be forced to vertically integrate commercial and residential uses all within one building. The proposal was explicit about wishing to provide the greatest flexibility to the private sector to work out how much would be transferred, for what use and what price.

In its Final Report to the Zoning Commission on Case 89-25, dated February 16, 1990, and logged as Exhibit 184, the Office of Planning provided the following explanation the combined lot mechanism:

Linkage/Combined Lot Development

Two or more lots are permitted to combine their development rights and obligations to:

- provide locational flexibility regarding the preferred uses (a varying mixture of preferred and other uses are permitted on the sites in a flexible way, but the quantity desired in the subarea is achieved)
- permit a horizontal mix of uses (especially offices and apartments), that often is more efficient and more marketable than a vertical mix
- create the legal framework for two or more sites to be linked for purposes of sharing or transferring bonus density

Thus the regulations provide for the required preferred uses to be shifted between lots, provided that **“each lot in the Housing Priority Area shall provide on-site or account for off-site by combined lot development residential use and development as required”** (11 DCMR, §1706.3 – emphasis added). The section of the regulations specifically devoted to Combined Lot requirements further specifies that the “maximum permitted gross floor area for all uses, the minimum required gross floor area for preferred uses, and bonus density, if applicable, **shall each be calculated as if the combined lots were one lot, and the total project shall conform with the maximum and minimum gross floor area requirements.**” (11 DCMR §1708.1(g), emphasis added). Thus, the combined lots are treated as one with respect to aggregate density and mixture of uses. A thorough review of the record indicates that the concern was always that the appropriate mix would be achieved within each area, and not on each individual lot.

In the record for #89-25, OP illustrated for the Commission how it intended for the Combined Lot provisions to work, in an OP document, entitled “Downtown Development District Overview and Basic Concepts”, exhibit 36, using very similar language to that quoted above:

Two or more lots are permitted to combine their development rights and obligations to:

- Provide locational flexibility regarding the preferred uses – a varying mixture of preferred and other uses are permitted on the sites in a flexible way, but the **total quantity desired in the subarea is achieved**; (emphasis added)
- Permit a horizontal mix of uses (especially offices and apartments), which often is more efficient and is more marketable than a vertical mix;
- Create the legal framework for two or more sites to be linked for purposes of sharing or transferring bonus density;
- Achieve housing by linkage. It is an important mechanism to enable one or more office buildings to underwrite an apartment house. (pp.1-2)

Again, the Office of Planning report indicates that the combined lot provisions were intended to be a “legal framework” providing for more flexible distribution of preferred uses,

subject to the sole test that the project as a whole conform to the requirements. An attachment to the February 16, 1990 report also contained a provision at that point numbered 1709.1(k):

The instrument of transfer shall increase the development rights under this zoning ordinance otherwise available to the receiving lot, to the extent of the rights transferred for the life of the development on the receiving lot. (p.32)

The Proposed CLD

Some concern has been expressed about the proposed CLD, because §1706.7(b)(2), which applies to the bonus density provisions adopted a decade after the original DDD, limits the amount of “bonus density” that can be transferred to no more than 3.5 FAR. However, “bonus density” in 1706(b)(2) is clearly referring to the bonus created when the Zoning Commission removed the maximum density limits in the DDD for residential development, making it subject only to the Height Act limits. In this instance, the only “bonus density” being transferred is the .5 FAR bonus generated under §1706.3 by providing on-site or by CLD off-site residential development. A review of Exhibit A makes it clear that the proposed CLD fully meets the requirements for preferred uses if both lots are combined into one lot for the purposes of §1708. Square N515A will, as a result of “receiving” the housing density from Square 483 and “sending” its commercial density, be at total density of 9.09, if it were measured only from the standpoint of that square alone. However, since the regulations require that both lots be considered as one for zoning purposes, based on the aggregate density and mixture of uses, the proposed CLD conforms with the applicable regulations.

Further guidance as to the fact that the two lots are to be considered as one is provided in §1708.1(j)(5), which outlines what must be included in the CLD covenant to be recorded among the land records. One requirement is that the covenant state:

... the maximum permitted gross floor areas for all uses on all lots, the minimum required gross floor areas for preferred uses on all lots, and the gross floor area allocated. The covenant shall further state that, after the transfer, the combined lots conform to the maximum and minimum gross floor area requirements on the lots. (emphasis added)

Summary

In short, the proposed combined lot covenant conforms to the Zoning Regulations because:

1. The purpose of the DDD Overlay was to achieve a “Living Downtown” with a balance of uses, with a strong preference for residential use. Combined lot development was created as a

tool to permit that to happen with flexibility accorded to individual lots, so long as the preferred use goals were achieved in the overall development.

2. Taken together as one lot, the proposed combined lot development meets all preferred use requirements.

3. The proposed combined lot development does not exceed the maximum permitted density for the overall development.

**SQUARES 483 AND N515(62) - COMBINED LOT DEVELOPMENT
DENSITY ANALYSIS**

	<u>483</u>	<u>N515 62</u>	<u>Combined</u>
Land Area:	56,339	42,824	99,163
Zoning	DD/C3C	DD/C2C	
Commercial Density FAR	6.0	3.5	4.92
Commercial Density GFA	338,034	149,885	487,919
Required Residential FAR	3.5	4.5	3.93
Required Residential GFA	197,187	192,710	389,896
Total Underlying Density of Lots	535,221	342,595	877,816
FAR Density Before any TDR Bonus	9.5	8.0	8.85
Commercial Density TDRs (FAR)	0.5	0.5	
Commercial Density TDRs (GFA)	28,170	21,412	49,582
Total GFA Permitted with TDR	563,390	364,007	927,397
Total FAR Density	10.0	8.5	9.35
<u>Commercial Density Components Placed on- 483</u>			
Commercial Density - 483	338,034		
Commercial Density -N515 (62)	149,885		
TDRs - 483	28,170		
TDRs - N515 62	21,412		
<u>Total Commercial Density</u>	537,501		
	9.54		
<u>Residential Density Required - Placed on N515(62)</u>			
Required Residential 483		197,187	
Required Residential N515(62)		192,710	
<u>Total Required Residential Density</u>		389,896	
		9.10	
Totals after CLD Transfer			927,397

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B

Bray, Kinley

From: Bray, Kinley
Sent: Monday, August 31, 2009 7:45 PM
To: LeGrant, Matt (DCRA)
Cc: guy3@steuart.com; jalexander@albemarlegroup.com; McCarthy, Ellen
Subject: Draft Reliance Letter--Combined Lot Development / Steuart Investment Co.
Attachments: draft reliance letter v4.DOC.DOC; LeGrant attachment CLD- v4.xls.XLS; Square 483 Lot 9 and Square N515 Lot 62 CLD; RE: Memo re: Steuart CLDs

Matt,

As you requested at the conclusion of our meeting on August 12, we have prepared the attached reliance letter and related, revised exhibit detailing the transaction for your review and approval. I am also attaching the original memo we prepared, and Guy Steuart's most recent e-mail, for your information.

Please let us know if you have any questions or require further information in reviewing the proposed CLD. We look forward to hearing from you soon.

Thanks,

Kinley

Kinley Dumas Bray
Attorney

Arent Fox LLP | Attorneys at Law
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
202.715.8572 DIRECT | 202.857.6395 FAX
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[DATE]

Kinley R. Bray, Esq.
Ellen McCarthy, Director of Planning and Land Use
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington DC 20036

Re: Proposed Combined Lot Development between Square 483 and Lot 62 in Square 515N

Dear Ms. Bray and Ms. McCarthy:

Following our meetings on May 22, 2009 and August 12, 2009 regarding the proposed combined lot development between properties owned by your clients, Steuart Investment Co. and Steuart Square N515/A Company, located in Square 483 and on Lot 62 in Square 515N (the "Combined Lot Development" or "Proposed Development"), I have reviewed the applicable regulations and have determined that, based on the information below and the spreadsheet attached hereto as Exhibit A,¹ the Combined Lot Development complies with the requirements of the Downtown Development District of the D.C. Zoning Regulations.

1. Pursuant to 11 DCMR § 1706.3, each lot in the Housing Priority Area must provide on-site, or account for off-site by combined lot development as required by § 1706. The lots included in the Proposed Development are both located in Housing Priority Area A, pursuant to 11 DCMR § 1706.8.
2. Square 483, which is bounded by Fifth Street, Sixth Street, K Street, and New York Avenue, NW, is zoned DD/C-3-C, and is proposed to house an office building. Square 483 contains 56,339 square feet of land area. (B2)
3. Lot 62 in Square 515N is located in the western portion of the Square, which is triangular in shape and formed by L, Fourth, and Fifth Streets, NW and New York Avenue, NW. Lot 62 is zoned DD/C-2-C and is proposed for residential use. Lot 62 contains 42,824 square feet of land area. (C2)
4. Together, Square 483 and Lot 62 in Square 515N comprise 99,163 square feet of land area. (D2)
5. Pursuant to § 1706.5(b), each lot in the DD/C-3-C zone shall provide on-site, or account for off-site in a combined lot development, no less than 3.5 FAR of residential use. Thus, any development on Square 483 must provide 3.5 FAR or

¹ The spreadsheet attached hereto as Exhibit A is referred to throughout this memorandum by reference to specific columns and rows (i.e., "A1").

197,187 (3.5 x 56,339 sf) square feet of residential uses, either on-site or off-site through a combined lot development. (B6)

6. Pursuant to § 1706.4(b), each lot in the DD/C-2-C zone shall provide on-site, or account for off-site in a combined lot development, no less than 4.5 FAR of residential use. Thus, any development on Lot 62 in Square 515N must provide 4.5 FAR or 192,708 (4.5 x 42,824 sf) square feet of residential uses, either on-site or off-site through a combined lot development. (C6)
7. Combined, Square 483 and Lot 62 in Square 515N are required to develop a minimum of 389,895 square feet of residential uses (197,187 + 192,708). (D6)
8. Square 483, located in the DD/C-3-C zone district, is entitled to a permitted commercial density of 6.0 FAR as a matter of right, which equates to 338,034 square feet of floor area, based on the land area in the Square (56,339 square feet). (B9)
9. Lot 62 in Square 515N, located in the DD/C-2-C zone district, is entitled to a permitted commercial density of 3.5 FAR as a matter of right, which equates to 149,884 square feet of floor area, based on the land area of the lot (42,824 square feet). (C9)
10. Combined, Square 483 and Lot 62 in Square 515N are entitled to develop a maximum of 487,918 square feet of commercial uses (338,034 + 149,884), without consideration of applicable Transferable Development Rights ("TDRs") or available bonus density. (D9)
11. Combined, Square 483 and Lot 62 in Square 515N yield 877,813 square feet of required residential floor area and maximum permitted commercial area. (D11)
12. The Proposed Development shifts all residential uses to Lot 62 in Square 515N and all commercial uses to Square 483. Thus, 3.5 FAR of commercial density from Lot 62 in Square 515N is shifted to Square 483 (B17), and conversely, 4.5 FAR of residential density is shifted from Square 483 to Lot 62 in Square 515N (C23).
13. Prior to application of any applicable bonus density, the overall FAR of the Combined Lot Development is 8.85 ((389,895 square feet of required residential uses, all on Square 515N, Lot 62 + 487,918 square feet of entitled commercial uses, all on Square 483) / 99,163 square feet of land area). (D29)
14. Pursuant to 11 DCMR § 1706.7(a)(1), an additional .5 FAR is available to each lot through the receipt of TDRs. The applicant proposes to transfer the .5 FAR available to Lot 62 in Square 515N pursuant to 11 DCMR § 1706.7(a)(1) to Square 483 in the Combined Lot Development. Thus, the applicant is using a

total of 49,582 square feet of TDRs in the Combined Lot Development. (C34, D34)

15. Combined lot developments in the Downtown Development District are governed by 11 DCMR § 1708, which provides that two (2) or more lots, located either in the same square or in different squares, may be combined for the purposes of achieving the required FAR equivalent for preferred uses. § 1708.1(a).
16. In addition to transfers of required minimum residential density pursuant to 11 DCMR § 1706.4, 11 DCMR § 1708.1(a) clearly states that combined lot developments shall be eligible for the density and area allowances permitted in 11 DCMR § 1703, 1704, 1705, and 1706. Thus, the use of a combined lot development does not preclude the application of additional density generated through TDRs once initial residential requirements have been met.
17. The concept of combined lot development was included in the Downtown Development District Overlay in Zoning Commission Case No. 89-25 to assist in accomplishing a “balanced mixture of uses comprising a ‘Living Downtown’”, which had been called for in the Comprehensive Plan. The DD overlay put into place requirements for “preferred uses”, particularly housing, retail and arts, while acknowledging that most property in the Downtown area already had a base amount of matter-of-right commercial density; therefore, the combined lot would permit owners of property that had both a commercial entitlement and a new residential (or other preferred use) requirement to combine those requirements among two or more lots so as to avoid the difficulties in vertically integrating mixed uses. The proposal was explicit about wishing to provide the greatest flexibility to the private sector to work out how much density would be transferred among lots, for what use, and for what price. In its Final Report to the Zoning Commission on Case No. 89-25, dated February 16, 1990 (logged as Exhibit 184), the Office of Planning explained:

Two or more lots are permitted to combine their development rights and obligations to:

- *Provide locational flexibility regarding the preferred uses...*
- *Permit a horizontal mix of uses (especially offices and apartments), that often is more efficient and more marketable than a vertical mix*
- *Create the legal framework for two or more sites to be linked for purposes of sharing or transferring bonus density*

18. Pursuant to 11 DCMR § 1708.1(g), the maximum permitted gross floor area for all uses, the minimum required gross floor area for preferred uses, and bonus density, if applicable, ***shall each be calculated as if the combined lots were one***

lot, and the *total project* shall conform with the maximum and minimum gross floor area requirements (emphasis added). Thus, in computing the minimum required gross floor area, maximum permitted gross floor area, and any bonus density, if applicable, the total combined land area of the two parcels is the basis for the calculation. The total combined land area of the Combined Lot Development is 99,163 square feet. (D2)

19. 11 DCMR § 1708.1(i) states that “no allocation of gross floor area for required uses shall be effective unless an instrument, legally sufficient to effect such a transfer, is filed with the Zoning Administrator and recorded in the land records of the District of Columbia against all lots included in the combined lot development.” The recordation of this instrument permanently binds together the two lots and ensures that the lots are never again looked at independently, because they have been developed as if they were a single lot. The instrument runs with the land in perpetuity, burdens all lots involved in the allocation of gross floor area for required preferred uses, and “binds the present and future owners of the lot receiving the FAR to reserve, design, construct, cause to be occupied, and maintain in perpetuity an area on-site equal to the gross floor area of required preferred uses received.” 11 DCMR § 1708.1(j)(2)-(4).
20. 11 DCMR § 1708.1(j) states further that the covenant must include “the maximum permitted gross floor areas for all uses on *all lots*, the minimum required gross floor areas for preferred uses on *all lots*, and the gross floor area allocated. The covenant shall further state that, after the transfer, the *combined lots* conform to the maximum and minimum gross floor area requirements on the lots” (emphasis added). The recorded instrument requires a calculation or accounting of all floor area required, permitted, and allocated among the parcels included in the combined lot development on the basis of the entire development, not on each individual parcel.
21. The proposed Combined Lot Development does not violate 11 DCMR § 1706.7(b)(2), which limits the amount of *bonus* residential density. The underlying densities in the Combined Lot Development have been calculated using the base densities of each lot, and adhering to the maximum permitted gross floor area for all uses on each lot as enumerated in 11 DCMR § 1706.4(a) and 11 DCMR § 1706.5(a). (See B11-12, C11-12)
22. An additional .5 FAR of density devoted to any permitted use is available on each lot through application of transferable development rights pursuant to 11 DCMR § 1706.7(a)(1),:

To assist in the development of residential and preferred uses, the following density bonuses may be used:

- (a) The maximum gross floor area permitted under §§ 1706.4, 1706.5, and 1706.6 may be increased by 0.5 FAR...provided the increase in gross floor area is achieved by:*
 - (1) Receiving transferable development rights as provided in § 1709, which gross floor area may be devoted to any permitted use on the receiving lot;*

In this instance, the TDR's have been purchased from other projects in the area.

- 23. The Zoning Commission, at the time of adoption, regarded this additional .5 FAR of density in effect as matter of right, through compliance with the housing requirements or purchase of TDR's, rather than "bonus density" per se. Once an additional .5 FAR was applied using TDRs or other prescribed methods, additional "bonus" density for housing could then be available, pursuant to 1706.7(b), subject to the limitations in that subsection, a provision which was added more than a decade after the original .5 entitlement was established. At the Zoning Commission hearing on September 17, 1990, Chairman Boasberg, referring to proposed section 1706.7, stated:

*Going on to 1706.7, this was the section which allowed the TDR's, and basically what it said was that we will allow this **extra** FAR, but you have to use it first for these transferable development rights which came from the historic, and the idea was to make those valuable, since they were limited in FAR, the transfer would become valuable, and so we gave them, in effect, the matter of right to use that.*

Zoning Commission Transcript, Case No. 89-25, September 17, 1990, at pp. 141-142 (emphasis added).

- 24. The transfer of required residential FAR from Square 483 to Lot 62 in Square 515N includes only the 3.5 FAR of residential use required to be provided on Square 483; none of it is "bonus density" restricted by 11 DCMR § 1706.7(b)(2).
- 25. The Combined Lot Development complies with both the maximum and minimum gross floor area requirements as calculated together as one lot and balances these required minimums and permitted maximums among the lots as if they were a single lot.

Accordingly, the Combined Lot Development as described in this letter and as detailed on the attached Exhibit A complies with the requirements of Chapter 17 of the

Zoning Regulations. Should you have any questions, please let me know as soon as possible.

Sincerely,

Matthew LeGrant
Zoning Administrator

EXHIBIT A
Steuart Investments Proposed Combined Lot Development
Square 483 and Square N515, Lot 62

	A	B	C	D
1		Square 483	Square N515 Lot 62	Combined
2	Land Area:	56,339	42,824	99,163
3	Zoning	DD/C3C	DD/C2C	
4				
5	Minimum Required Residential FAR	3.5	4.5	3.93
6	Minimum Required Residential GFA	197,187	192,708	389,895
7				
8	Maximum Permitted (Matter of Right) Commercial Density FAR	6.0	3.5	4.92
9	Maximum Permitted (Matter of Right) Commercial Density GFA	338,034	149,884	487,918
10				
11	Total Underlying Density of Lots	535,221	342,592	877,813
12	FAR Density Before any TDRs	9.5	8.0	8.85
13				
14				
15	Commercial Density Components Placed on- 483			
16	Commercial Density - 483	338,034		
17	Commercial Density -N515 (62)	149,884		
18	Total Permitted Commercial Density	487,918		
19				
20	FAR/Square 483 after transfer	8.66		
21				
22	Residential Density Required - Placed on N515(62)			
23	Required Residential 483		197,187	
24	Required Residential N515(62)		192,708	
25	Total Required Residential Density		389,895	
26				
27	FAR Square 515N Lot 62 after transfer		9.10	
28				
29	Overall Density of the Combined Lots prior to TDRs			8.85
30	(GFA Square 483 + GFA Lot 62 Square 515N / Combined Area)			
31				
32	Additional Density through TDRs (already purchased & recorded)			
33	Commercial Density TDRs (FAR)	0.5	0.5	
34	Commercial Density TDRs (GFA)	28,170	21,412	49,582
35	TDR Density Applied to Square 483	49,582		
36				
37	Total Density of Square 483 (GFA with TDRs)	537,501		
38	FAR Square 483 (With TDRs)	9.54		
39				
40	Total GFA Permitted with TDRs	563,390	364,004	927,396
41	Total FAR Density Permitted with TDRs	10.0	8.5	9.35
42				
43	Proposed Density of Combined Lot Development	537,501	389,895	927,396

Bray, Kinley

From: McCarthy, Ellen
Sent: Friday, July 17, 2009 12:13 PM
To: McCarthy, Ellen; LeGrant, Matt (DCRA)
Cc: Bray, Kinley
Subject: RE: Memo re: Steuart CLDs

Attachments: 672306_3.DOC

Hi Matt,

So sorry to hear from Kinley that you were under the weather. My husband had a similar infliction, and I know he was in great pain and discomfort. Hope things are resolved.

I just wanted to remind you about the Steuart CLD. I'm attaching another copy of our memo. Please let me know if you need any additional materials.

Thanks.

Ellen



672306_3.DOC

From: McCarthy, Ellen
Sent: Friday, June 19, 2009 11:19 AM
To: LeGrant, Matt (DCRA)
Cc: Bray, Kinley
Subject: Memo re: Steuart CLDs

Matt,

Per our recent discussion, I am forwarding you another copy of the memo re: the CLD for Squares 483 and 515. You were going to take a look and see if we needed to send any further info. The client has been asking me about the status, so I thought I'd visit it again with you.

Thanks.

Ellen

<< File: 672306_3.DOC >>

Bray, Kinley

From: guy3@steuart.com
Sent: Monday, August 03, 2009 10:18 AM
To: matthew.legrant@dc.gov
Cc: McCarthy, Ellen; Bray, Kinley
Subject: Square 483 Lot 9 and Square N515 Lot 62 CLD
Attachments: LeGrant attachment CLD.xls

Mr. LeGrant:

First, thank you for devoting time to trying navigate the Combined Lot Development I am trying to effect in the Mount Vernon neighborhood on the referenced lots. As a practical matter, I remain puzzled at the self-inflicted 'complexity' we are struggling with as we parse the regulations. As fully acknowledged, the primary goal of the combined lot development regulation is to achieve the established goals for housing and other preferred uses by permitting those uses to be combined across one or more sites, instead of mandating that they must be applied within each individual site. In its simplest contextual application, lots may be combined to permit sensible development by exchanging use designations amongst the combined parcels, which are to be treated as one parcel; the assessment of whether or not mandatory use minimums are achieved while maximum use densities are not abrogated is to be applied to that overall development, as if it were one parcel.

I offer simple facts that might wrest some plain understanding from the heap of legalese:

Square 483 Lot 9 (DD/C3C) under its base zoning requires that I build 3.5x FAR of residential use: (56,339 sf x 3.5=197,187 sf). It permits commercial density of 338,034 sf, but only if the residential is built (56,339sf x 6.0 =338,034 sf). Likewise, Square N515 Lot 62 (DD/C2C) has a mandatory residential use of 192,708 sf: (42,824 x 4.5= 192,708 sf) and a commercial maximum density of 149,884 sf (42,824 x 3.5 FAR). Together, the two sites yield 877,813 sf of mandated residential and permitted commercial, which is a combined FAR density of 8.85. This is straightforward and unarguable.

As I understand the intent of the CLD objectives and interpret its rules and regulations, the ability to shift residential to one site and commercial to the other encourages the development of residential projects by simplifying design, project financability and project feasibility given various site constraints and requirements attendant to the differing lots and uses. The thinking was, use commercial development to help subsidize development of housing, but permit each project to stand on its own, fundamentally. Frankly, I think this was sound logic and good planning. Certain sites lend themselves better to residential use or commercial use, but not every site makes sense as a mixed-use development. Were the rules written to make each site mixed-use, we'd never have achieved the objective of providing residential dwellings, absent the flexibility to move uses within a combination of lots.

I understood the CLD rules to be pretty straightforward in application to our two lots: divvy up the 877,813 sf amongst the two parcels: 487,918 sf of commercial on Square 483, Lot 9; and 389,895 sf of residential on Square N515 A, Lot 62. I inferred that the two lots were to be treated as one in the amount of density permitted, meaning I could do as I am seeking inasmuch as the total base density hasn't been altered. (I am ignoring any use of TDR density for the sake of keeping this as simple as possible in narrative).

Through the CLD, I am shifting residential development obligations to Parcel N 515 Lot 62, which can accommodate all mandatory use in one residential project; thus, the FAR for the minimum residential density of Lot 62 and Lot 9 when combined would be 3.93 (389,895/(56,339+42,824)). I would allocate all commercial density to Square 483, Lot 9. Accordingly, the maximum commercial density permitted by the construction of the mandatory residential is 4.92x (487,918 sf / (56,339 sf +42,824 sf)). With respect to Lot 62 solely, residential FAR is 9.10. With respect to Lot 9, the commercial density is 8.66. However, in my understanding of the purpose of the CLD, those singular metrics are irrelevant, in that both lots are to be treated as one lot when it comes to allocating the mandated and permitted uses.

3/22/2010

In fact, the two properties effectively become one, in terms of the zoning aspect of property rights, as they are permanently tied together through the covenant which must be executed. The covenant running with both properties ensures that the lots are never again looked at independently, because they have been developed as if they were one.

The singular metric that seems to give pause to the Office of the Attorney General is the 9.10 density of Lot 62 exceeding the underlying density by a FAR factor of approximately 1.10 FAR (9.10-8.0), or 47,303 sf. Thus, the overly narrow argument ensues that the 1.10 density is a use of 'bonus density' and therefore in conflict with a section of the code (later added) that doesn't allow 'bonus residential density' to satisfy mandated housing requirements of a commercial site. But, conversely, that argument ignores that I am 'underdensifying' Lot 9, when measured by that lot's permitted density of $9.5 \times 56,339 = 535,220\text{sf}$ vs. the 487,918sf (a 47,303 sf net loss).

Clearly the calculus in this instance is upset by the use of different denominators in trying to parse the code; and to avoid conflicts of this sort, I suspect, is why the "two lots are to be treated as one", in assessing the required minimum and maximum densities.

Were I to follow the logic of the Office of the Attorney General, I need to add more residential receiving land to accept the residential I am entitled to build on Lot 9, but wish to send to Lot 62 and stay within a base density cap of 8.0x under the DD/C2C zoning code. As a consequence, I need to find a receiving lot, that within a 3.5 receiving envelope, can accommodate 47,303 sf of the residential density being sent from Lot 9, Square 483.

That works out to 13,515 sf of DD/C2C land with an 8.0 FAR, of which 4.5 FAR is mandated residential, the remaining 3.5 FAR of its commercial designation is then used to accept Lot 9's residential. Lo and behold, the parcel of ground needed to build residential sent from Square 483, Lot 9 has to be the same size as the sending lot (56,339 sf.), at a minimum. It seems odd to suggest that when combining lots of differing zoning, the underlying residential FAR of the more densely zoned parcel is the governor for determining lot sizes acceptable for reciprocity when good land use would suggest we use resources more wisely.

In contrast, the Office of the Attorney General is suggesting one must build more residential housing in a combined lot development than would be mandated were the lots developed independently as mixed use. Is that a carrot or a stick? Whichever one one might suggest the logic to be, it is in conflict with the over-arching flexibility of allowing owners of multiple lots trade uses to which those lots are entitled independently. Personally, I don't see where any bonus density is being used to satisfy a residential requirement of a commercial site. In this instance, in fact, I could argue otherwise: residential entitlement is being stripped from the underlying lots when combined.

I am hoping this sheds perspective on the pending CLD and, of course, I am free to meet again in hopes that you reach a conclusion on the merits of this case, soon. I've attached for your reference the Excel table that shows the densities in the respective lots, singularly and combined. I look forward to our meeting.

SQUARES 483 AND N515(62) - COMBINED LOT DEVELOPMENT
DENSITY ANALYSIS

	<u>483</u>	<u>N515 62</u>	<u>Combined</u>
Land Area:	56,339	42,824	99,163
Zoning	DD/C3C	DD/C2C	
Commercial Density FAR	6.0	3.5	4.92
Commercial Density GFA	338,034	149,885	487,919
Required Residential FAR	3.5	4.5	3.93
Required Residential GFA	197,187	192,710	389,896
Total Underlying Density of Lots	535,221	342,595	877,816
FAR Density Before any TDR Bonus	9.5	8.0	8.85
Commercial Density TDRs (FAR)	0.5	0.5	
Commercial Density TDRs (GFA)	28,170	21,412	49,582
Total GFA Permitted with TDR	563,390	364,007	927,397
Total FAR Density	10.0	8.5	9.35
<u>Commercial Density Components Placed on- 483</u>			
Commercial Density - 483	338,034		
Commercial Density -N515 (62)	149,885		
<u>Total Commercial Density</u>	487,919		
	FAR/Lot 9 after transfer	8.66	
TDRs - 483	28,170		
TDRs - N515 62	21,412		
<u>Total Commercial Density (With TDRS)</u>	537,501		
	FAR Lot 9 (With TDRs)	9.54	
<u>Residential Density Required - Placed on N515(62)</u>			
Required Residential 483		197,187	
Required Residential N515(62)		192,710	
<u>Total Required Residential Density</u>		389,896	
	FAR Square 515N Lot 62 after transfer	9.10	
Totals after CLD Transfer			927,397

Bray, Kinley

From: McCarthy, Ellen
Sent: Friday, July 17, 2009 12:13 PM
To: McCarthy, Ellen; LeGrant, Matt (DCRA)
Cc: Bray, Kinley
Subject: RE: Memo re: Steuart CLDs

Attachments: 672306_3.DOC

Hi Matt,

So sorry to hear from Kinley that you were under the weather. My husband had a similar infliction, and I know he was in great pain and discomfort. Hope things are resolved.

I just wanted to remind you about the Steuart CLD. I'm attaching another copy of our memo. Please let me know if you need any additional materials.

Thanks.

Ellen



672306_3.DOC

From: McCarthy, Ellen
Sent: Friday, June 19, 2009 11:19 AM
To: LeGrant, Matt (DCRA)
Cc: Bray, Kinley
Subject: Memo re: Steuart CLDs

Matt,

Per our recent discussion, I am forwarding you another copy of the memo re: the CLD for Squares 483 and 515. You were going to take a look and see if we needed to send any further info. The client has been asking me about the status, so I thought I'd visit it again with you.

Thanks.

Ellen

<< File: 672306_3.DOC >>

C

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



October 20, 2009

Kinley R. Bray, Esq. and Ellen McCarthy, Director of Planning and Land Use
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

Re: Proposed Combined Lot Development - Square 483 & Lot 62 in Square 515N

Dear Ms. Bray and Ms. McCarthy:

Following our meetings on May 22nd, August 12th, and October 9th, 2009 regarding the proposed Combined Lot Development (CLD) between properties owned by your clients, Steuart Investment Co. and Steuart Square N515/A Company, located on Lot 9 in Square 483 and on Lot 62 in Square 515N, I have reviewed the applicable regulations and have determined that the proposed CLD does not comply with the requirements of Chapter 17, the Downtown Development District (DD) of the D.C. Zoning Regulations.

The provision governing the proposed CLD transaction is 11 DCMR 1706.7(b)(2), as provided below:

- (b) *Except for historic landmarks and properties listed in § 1707.4 in the Downtown Historic District, the maximum FAR limitations in §§ 1706.4, 1706.5, and 1706.6 shall not apply to any lot that devotes the increase in gross floor area entirely to residential use on-site, provided:*
- (1) *The increase in gross floor area shall not be used to meet the minimum residential requirements of §§ 1706.4, 1706.5, or 1706.6; and*
- (2) *The maximum residential FAR that may be accepted through combined lot development is listed in the following table:*

ZONE DISTRICT OF THE LOT RECEIVING HOUSING	MAXIMUM ALLOWABLE COMBINED LOT TRANSFER (FAR)
DD/C-2-C	3.5
DD/C-3-C	6.0
DD/C-4	8.0

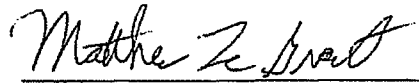
October 20, 2009
Letter on Steuart CLD

Based on your representations, Lot 62 in Square 515N (the "Residential Receiving Lot") is zoned DD/C-2-C, contains 42,824 square feet of land area, and has a minimum residential requirement of 4.5 FAR. Further, Lot 9 in Square 483 (the "Non-Residential Sending Lot") is zoned DD/C-3-C, contains 56,339 square feet of land area, and has a minimum residential requirement of 3.5 FAR. Pursuant to § 1706.7(b)(2), the Residential Receiving Lot may receive no more than 3.5 FAR, or 149,885 square feet, of residential uses through CLD. Since the proposed CLD provides for the Residential Receiving Lot to receive residential square feet in excess of 3.5 FAR, § 1706.7(b)(2) prohibits the CLD transaction.

Accordingly, I cannot approve the CLD as described your email and attachments of October 15, 2009, as it does not comply with the requirements of Chapter 17 of the Zoning Regulations.

Should you have any questions, please contact me.

Sincerely,



Matthew Le Grant
Zoning Administrator

D

Government of the District of Columbia

Office of the
Director



Office of Planning
415 12th Street, N.W.,
Washington, D.C. 20004

M E M O R A N D U M

FEB 16 1990

TO: D.C. Zoning Commission

FROM: Fred L. Greene
Director

SUBJECT: Zoning Commission Case No. 89-25 (Downtown Development District), Final Report

The purpose of this memorandum is to transmit the final report on the proposed Downtown Development District. In as much as it is being submitted four days later than the normal deadline of ten days, we are requesting a waiver to accept the report. The report is divided into four major parts as described below.

The first report is entitled "Rezoning for a Living Downtown." This is a basic explanatory report about the reasons for undertaking the case, and the zoning techniques and specific proposals employed. A number of maps are included.

The second major attachment consists of a copy of the advertised text of the Downtown Development (DD) District, together with explanatory and policy comments by the Office of Planning.

The third attachment is a copy of the first two chapters of Downtown D.C.: Recommendations for the Downtown Plan, Mayor's Downtown Committee, 1982. This report provides the detailed and quite sophisticated planning analysis and policies that resulted directly in adoption of the detailed Downtown Element of the Comprehensive Plan in 1984. These are the general overview chapters of the report. The concepts found in this report have been the basis for various actions by public and private entities towards achieving the ingredients of a "Living Downtown."

Finally, a copy of the Major Policies, overall Land Use Objective, and Downtown Zoning and Other Land Use Controls, is attached. The Comprehensive Plan was adopted in 1984-85 and provides the most important policy and legal framework for this

ZONING COMMISSION

CASE No. 89-25

EXHIBIT No. 184

1990 FEB 16 AM 11:12

ZONING SECRETARIAT
DISTRICT OF COLUMBIA

gmu v/h/t

major zoning action. The Home Rule Act requires that the Zoning Map and Regulations be "not inconsistent" with the Comprehensive Plan.

In addition to this general report on the case, the Office of Planning intends to submit additional specialized materials on the major geographic subareas governed by the overlay zone. These materials will be submitted in advance of the applicable public hearing session projects to be devoted to the topic, e.g., Arts District. The materials will include more detailed subarea plan objectives from the foregoing documents, plus further analysis and development examples relating to the particular subject matter. These materials will provide a basis for OP's testimony on each subarea.

Recommendation

We recommend adoption of the proposed zoning map amendments and the overlay zone advertised in this case. We believe that this report represents a balanced and objective way of accomplishing the goals of the Downtown Element of the Comprehensive Plan. We believe that, when adopted, the mix of uses necessary to achieve the "living downtown" concept will be realized. We anticipate that as development proceeds, more housing, arts and retail will be integrated as well as the preservation of our precious historic resources in our downtown.

We appreciate the Commission's assistance in this most challenging effort and look forward to participating further at the public hearings.

REZONING FOR A LIVING DOWNTOWN

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REZONING FOR A LIVING DOWNTOWN

I. BACKGROUND

Downtown Washington, between the Capitol and the White House, is in the midst of a major economic and physical rejuvenation after an extended period of decline. In the nineteenth century and until about half of the twentieth century, Downtown was the commercial heart of the city and region. In addition to office buildings, the area included hotels, department stores, movie theaters, apartments, retail shops and other active uses, all resulting in busy streets and evening as well as daytime activity.

In the 1960s and 1970s, competition with suburban development hastened the decline of Washington's Downtown. Although major office development continued in the heart of D.C., it occurred north and west of the White House establishing a New Downtown. This New Downtown, also known as the "Golden Triangle" or "K Street-Connecticut Avenue Corridor" became the preferred location for high-rent office tenants. It also became known for a repetitive design of new box-like office buildings, deserted streets after dark and a limited amount of hotels, retail shops, historic buildings and open space.

Meanwhile, the traditional Downtown -- extending from the White House to the Capitol and from Pennsylvania Avenue north to M Street was losing buildings, employees, retail stores, and dwellings. Land clearance for future development resulted in surface parking lots and partially assembled sites. Remaining buildings housed struggling businesses that were no longer supported by a thriving economic climate and people.

Extensive Metrorail construction, due to the large number of stations at the center of the regional system, created further temporary economic decline while increasing access for

future rejuvenation and redevelopment. Three major department stores continued to operate, but other major stores, such as Kanns, Lansburgh's and Morton's, went out of business. Many historic buildings were retained, partly because of the lack of economic development pressure that would have caused their demolition. National tourist destinations such as Ford's Theater, the FBI Building and the museums on the Mall attracted visitors, but they generally did not linger Downtown for food, shopping or entertainment.

In the 1970s, District of Columbia planners and the development community repeatedly discussed two questions:

- o When, if ever, will office development stop moving northward towards Dupont Circle and westward towards Rock Creek and instead turn back east of 15th Street and help rejuvenate the traditional Downtown area?
- o How can the city link the tourist destinations on the Mall to the Downtown area north of Pennsylvania Avenue so that the nation's visitors can enjoy a revitalized Downtown and become part of the market support needed to bring it back?

In the early 1980s, answers to both of these important questions began to unfold. Office development moved eastward into the Franklin Square area and, more rapidly, down Pennsylvania Avenue, a prime location long suffering from decline. The opening of the Metrorail system, with the Metro Center and Gallery Place stations at the focal point of all the Metrorail lines, gave the area a major boost due to rapid and convenient access from all over the region. Economic and political conditions fueled the efforts of the Pennsylvania Avenue Development Corporation to redevelop Pennsylvania Avenue.

Under the authority of the District's strong Historic Preservation Act of 1978, a growing number of historic buildings were preserved and adapted to new uses. Frequently, preservation of historic buildings occurred in combination with new high density development that provided the financial support for high-quality renovation of historic buildings.

Several developments began to create pedestrian movement across Pennsylvania from the Mall: the increased use of Metrorail by tourists to get Downtown, the attractive mixed use redevelopment of Pennsylvania Avenue, the reopening of the National Theater and the development of two major

festival marketplaces in strategic locations -- the Post Office Pavillion and the Shops at National Place. The construction of the Convention Center was another major initiative of the District government that began revitalizing the Downtown area.

Downtown was, therefore, on the verge of a rebirth, but the type of future development and the activity pattern remained in question. Would new potentials be realized or would the same "K Street" pattern be repeated? Recognizing that Downtown faced an extended period of redevelopment and needed a visionary plan to guide the area's future, Mayor Marion Barry called for the creation of a "Living Downtown" and appointed the Mayor's Downtown Committee in 1981. The committee included business people, community representatives, developers, attorneys, labor representatives, planners, architects and others. The result was a highly sophisticated, idealistic but pragmatic plan carefully laid out in a 1982 report, Downtown, D.C: Recommendations for the Downtown Plan. This Plan, in turn, was the basis for the detailed Downtown Element of the Comprehensive Plan, proposed by the Mayor and adopted in 1984 by the D.C. Council.

The critical elements in achieving a "Living Downtown" include: a balanced mix of uses including retail, hotel, office, residential, arts and culture; preservation and adaptive reuse of historic buildings; strengthened and distinctive Chinatown; development of distinct and diverse subareas referred to in the plan as the Retail Core, Gallery Place, the Arts District, Pennsylvania Avenue West, Market Square, Convention Center, Chinatown, Mount Vernon Square, Franklin Square, Judiciary Square and Downtown East; and an enhanced pedestrian environment in the area. Together, these elements are intended to make Downtown a people place that is active in the evening and on weekends as well as during work hours. Downtown would accommodate the most concentrated economic activity and generate substantial tax revenues for the city. The area would achieve an exciting and high quality living and working environment that would also be attractive to millions of visitors for the future.

Subsection 900.3 of the Comprehensive Plan provides a brief summary of the land use objective for Downtown:
"The key land use concept for Downtown is a balanced mixture of uses to attract a variety of persons, such as District residents, suburban residents, and out-of-town visitors. The most important uses are retail, hotel, residential, and arts

and culture. Although private office space will also be important, the concept of the "Living Downtown" recognizes that special efforts will be needed to attract the other desired uses."

The Home Rule Act requires zoning in the city to be "not inconsistent" with the Comprehensive Plan. Hence, an important aspect of this zoning case is to achieve zoning that is generally consistent with the Comprehensive Plan, based in turn on the vision of the Mayor's Downtown Committee. A variety of nonzoning actions have been and will continue to be undertaken to implement the Downtown Plan. The proposed zoning actions summarized in this report, "Rezoning for a Living Downtown," are a crucial part of a broad strategy to sustain a vibrant Downtown. Zoning is not the complete answer, but the critical land use mix will not be achieved without revised zoning regulations. The major rebuilding now occurring in Downtown will shape the area's future for decades to come. It is important to secure the optimum physical development pattern, with the lively mix of uses, urban design quality and distinct subareas as called for in the plan.

The natural and powerful urge of the marketplace is universally large-scale office development, like the K Street pattern. Several negative trends may follow a policy of continuing the existing office zoning and granting piecemeal rezonings over a period of years. They include:

- the loss of distinctive subareas with special character and interest for visitors other than commuters, e.g., Chinatown
- a missed opportunity to achieve geographic concentrations of uses such as arts-related uses in the Arts District
- very little residential development and demolition of remaining housing
- greater demolition pressure on historic buildings, and large scale development in the historic districts as well as elsewhere, resulting in a monotonous pattern of boxy office buildings throughout the area
- a large, sprawling office development area, accompanied by escalating land prices making nonoffice development infeasible, a land clearance area extending northward from the expanding office area and creating a "no man's land"

moving northward in advance of office development, and an eight-hour Downtown that does not achieve its economic potential for evening activity or its potential to attract visitors, shoppers, tourists and others on evenings and weekends

The challenge is to accommodate major office development in proper locations while also protecting, enhancing and adding to the phenomenal array of assets enjoyed by this relatively small area. These assets include:

- a location between the White House and the U.S. Capitol, flanked by the Federal Triangle and the Mall with its museums, galleries, open space and monuments along the entire southern boundary
- the greatest access by Metrorail of any location in the entire region, in that all Metro lines intersect at Metro Center or Gallery Place
- numerous active and diverse uses well-dispersed throughout the area: hotels, the Convention Center, three department stores, retail uses concentrated along F and G streets, six or eight active churches, several performing-arts theaters plus proposed movie theaters and two major festival marketplaces -- the Old Post Office Pavillion and the Shops at National Place
- major museums in Downtown, including the National Portrait Gallery, National Museum of American Art, the National Building Museum and the National Museum of Women in the Arts
- a distinctive Chinatown neighborhood with special uses and design features
- a large number of historic buildings with diverse architectural design and scale -- a natural home for active uses on multiple floors and a magnet of character and interest to draw people to Downtown
- an attractive pattern of streets, avenues and open spaces based on the L'Enfant Plan

Downtown is in the midst of a huge rebuilding cycle that will be completed in 10 to 20 years. The physical character of the area for the next 50 years and beyond, and much of its potential to achieve a vibrant mix of uses, will be determined by this construction of buildings designed to last

for many years. An opportunity exists to achieve one of the great downtowns of the world, or to let it slide by in the interest of short-term economic development and tax revenues. Both economic development and tax revenues were fully accounted for by the preparers and adopters of the Comprehensive Plan. In the long run, a vibrant, mixed use Downtown will be more economically productive than a single-purpose Downtown.

The District government is working with the private sector and federal and regional agencies to create a Living Downtown. This cooperative effort was formalized in 1984 when the Downtown Partnership was created.

Zoning is one important part of the range of actions that are needed. Zoning changes cannot accomplish the entire job, but zoning changes are needed to prevent negative trends and to make possible some of the more exciting potentials of Downtown D.C.: a Downtown with exciting diversity of precincts and activities; with old and new buildings at varying scales; with daytime, evening and weekend shopping, cultural and entertainment activities; and residential areas that provide additional pedestrians who help humanize the area. In short, we can achieve a Downtown that will become recognized as an attractive, interesting and educational place to visit, live and work -- a "Living Downtown."

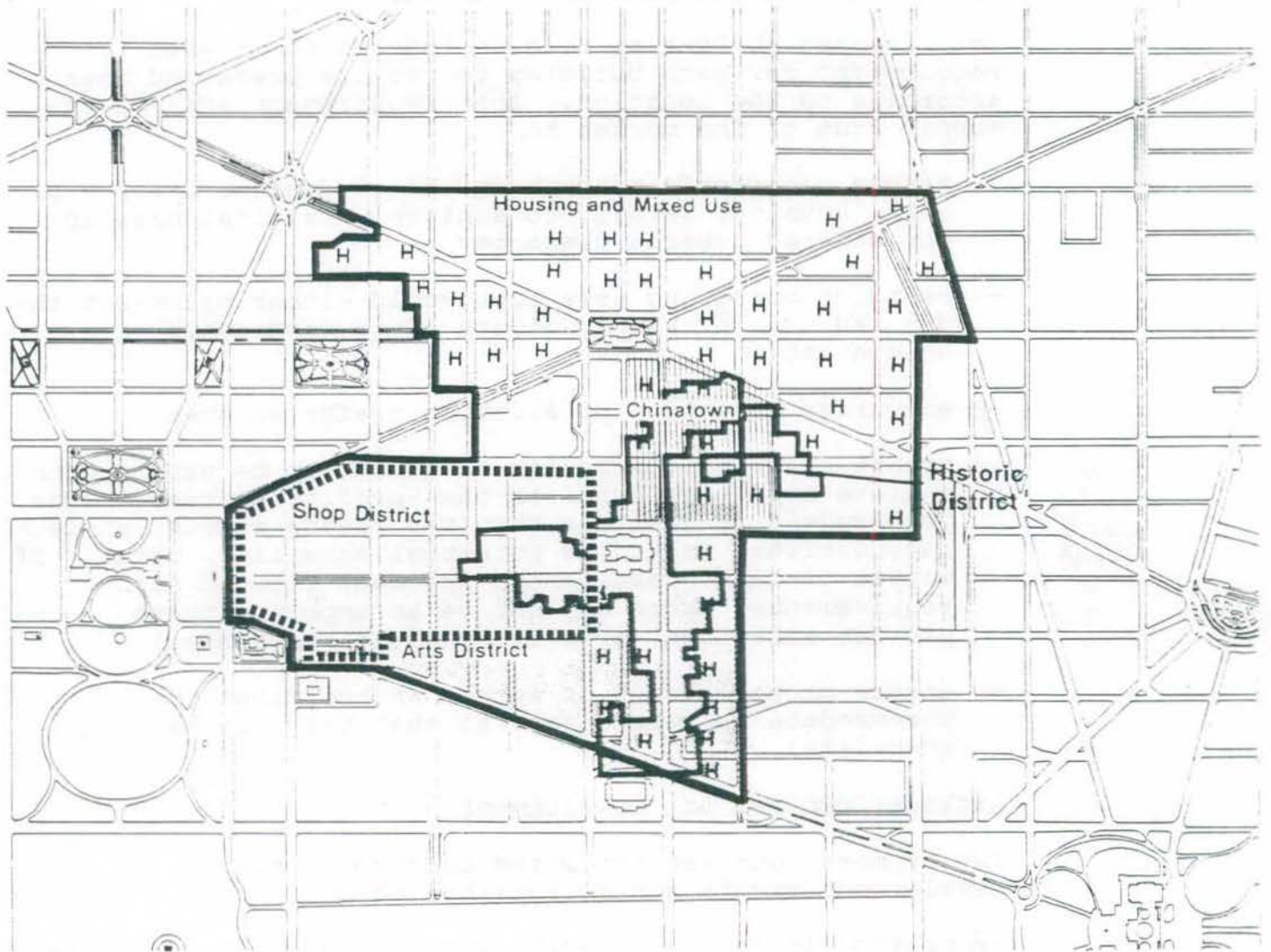
The remainder of this report is a summary and explanation, with maps, of the key elements of this major zoning action.

II. SUMMARY OF ZONING METHODS

A combination of a zoning overlay and some rezoning of existing districts is proposed.

o Boundaries

The area proposed for the Downtown Development (DD) Overlay zone includes the mixed use areas specified in the Comprehensive Plan, e.g., the Shopping District (Retail Core); Arts District (including Gallery Place, Market Square, parts of Chinatown and the SHOP District); Chinatown, the Downtown Historic District and other historic sites, and housing/mixed uses areas, such as Mt. Vernon Square. However, it excludes precincts designated for predominantly office development, e.g., Judiciary Square (south), Franklin Square and Downtown East.



**Downtown Development District --
Major Subareas**

o Space Requirement for Preferred Uses

The proposed DD Overlay zone includes a floor area requirement for each building to provide preferred uses according to the location. This requirement acts on the supply side of the market to

- assure geographic concentrations of desired uses, e.g., arts, housing, retail, to achieve a critical mass in the desired subarea character
- restrict competing uses that would either price-out the desired uses or simply dilute their geographic concentration
- encourage retention of existing preferred uses
- create the opportunity for subsidies to be provided to achieve important but less-than-profitable uses. (The requirement is a hurdle that may create a delay while negotiations, including potential subsidies, occur. If matter-of-right development proceeds without such requirements, there may not be an opportunity to provide subsidies, even if money is available.)
- ensure proper design of spaces in buildings to accommodate preferred uses so that they can be successful

o Linkage/Combined Lot Development

Two or more lots are permitted to combine their development rights and obligations to

- provide locational flexibility regarding the preferred uses (a varying mixture of preferred and other uses are permitted on the sites in a flexible way, but the total quantity desired in the subarea is achieved)
- permit a horizontal mix of uses (especially offices and apartments), that often is more efficient and more marketable than a vertical mix
- create the legal framework for two or more sites to be linked for purposes of sharing or transferring bonus density

- achieve housing by linkage (It is an important mechanism to enable one or more office buildings to underwrite an apartment house.)

o Bonus Density

Additional office density is granted in exchange for providing pivotal uses, excess amounts of preferred uses or for historic preservation.

- Our very strong office market makes this an important and powerful tool, although our height limits constrain the quantity of bonus density per site, and relatively few sites have the physical potential to develop the bonus space.
- The concept of using the Downtown office development economic engine to help subsidize the desired mix of uses is a basic concept from the Comprehensive Plan.
- The bonus office space is a powerful subsidy not only because of current value, but because of the universally-held expectation that office space will continue to escalate in value over a long period of time and will be reappraised at higher values as rents increase. Consequently, if the use being subsidized is linked financially and legally to the bonus office component, an effective long-term subsidy mechanism is created.

o Transferable Development Rights (TDRs)

TDR provisions permit bonus density to be transferred from a sending site -- where bonus density is earned -- to a receiving site, where additional office density can be built and will be consistent with land use plans.

- Bonuses are earned by either preserving historic buildings or partial preservation, together with compatible new development at less than normal density; or by providing critically important uses ("anchor" uses) specified by Downtown subarea, e.g., department store in the SHOP District, theater or art school in the arts district, apartments in the housing/mixed uses areas, etc.
- Two receiving zones are in the process of being adopted Downtown East and New Downtown.

-- Sites in the Central Employment Area zoned C-3-C and C-4 are proposed in the DD zone as major additional receiving areas, provided that a Planned Unit Development (PUD) or design review is processed on the receiving site. These are predominately office precincts with good transportation access. There are a few underused sites able to receive bonus density as part of new construction. A large number of sites are developed with older buildings or even relatively new buildings (15 to 20 years old) that suffer from an obsolete design or functional layout and a low rent schedule. Some of these buildings may be rehabilitated with new, high quality exterior design and materials, with a minor addition of built floor area, by filling in the required setback area in pre-1980, C-4 buildings. In other cases an older building may be demolished and rebuilt. In either renovation or redevelopment, the driving forces are the very high rents currently being achieved relative to older rent schedules, the corollary trend of using higher quality materials and design, and some increases in density made possible by TDR. Several policy factors should be noted:

- (a) Even a limited number of TDR connections can make a major difference in achieving a "Living Downtown."
- (b) The bonus density can be earned in the near future in the DD District and constructed much later on the receiving site.
- (c) The attractiveness of all of the potential receiving zones and sites will increase steadily as Downtown approaches office build-out in the next 10 years.
- (d) These scattered infill sites and the adopted receiving zones are in higher quality office locations than other receiving areas that could be considered. North Capitol Street and Buzzard Point have not been ruled out as future receiving zones. However, there are some inherent planning constraints in both areas, and both areas will command significantly lower office rents than the Central Employment Area during the most important time period for TDRs.

o Rezoning: Rationale for Changes in Underlying Base Zones

Sound base zoning is needed for the overlay to work effectively. Limited but important rezoning actions are recommended, principally to increase permitted housing density, to conserve existing housing, to permit retail where it is not now permitted and to reduce the scale of new development on critical historic frontages. The proposed map changes and the reasons for making them are summarized below.

- (1) Delete HR Overlay from Map in DD area: The Hotel-Residential (HR) Overlay zone provides only voluntary incentives for residential development. These incentives will rarely be used in today's strong office market. HR does not permit linkage or transferable development rights, important tools for achieving housing. The HR would be left in place in Downtown East, providing the alternative of mixed use development rather than solely commercial development (with or without TDRs). One mixed use project including residential development for Georgetown University is in the final planning stages in Downtown East.
- (2) Replace Existing SP-2 Zones: Special Purpose designation (SP) does not permit retail in key locations (including part of Chinatown), has obsolete office controls (including nominal Board of Zoning Adjustment (BZA) review) and has a limited range of office tenants. It is mapped in some locations that are developed with good quality medium and high density apartments, and implies a policy of conversion for office use or demolition for office development. The latter areas are proposed for rezoning from SP-2 to R-5-D.
- (3) R-5-D, SP-2 and C-2-C to DD/C-2-C: This rezoning would apply to much of the northern, mixed use sector (Judiciary North, Mt. Vernon Square subareas especially), where Comprehensive Plan policies emphasize the residential component. C-2-C permits upzoning of height and density in the present R-5-D area (precluded by Height Act if property remains in a residential zone). An 8.5 FAR and the maximum height allowed under the Height Act are permitted for residential, mixed use developments and commercial developments linked with housing.

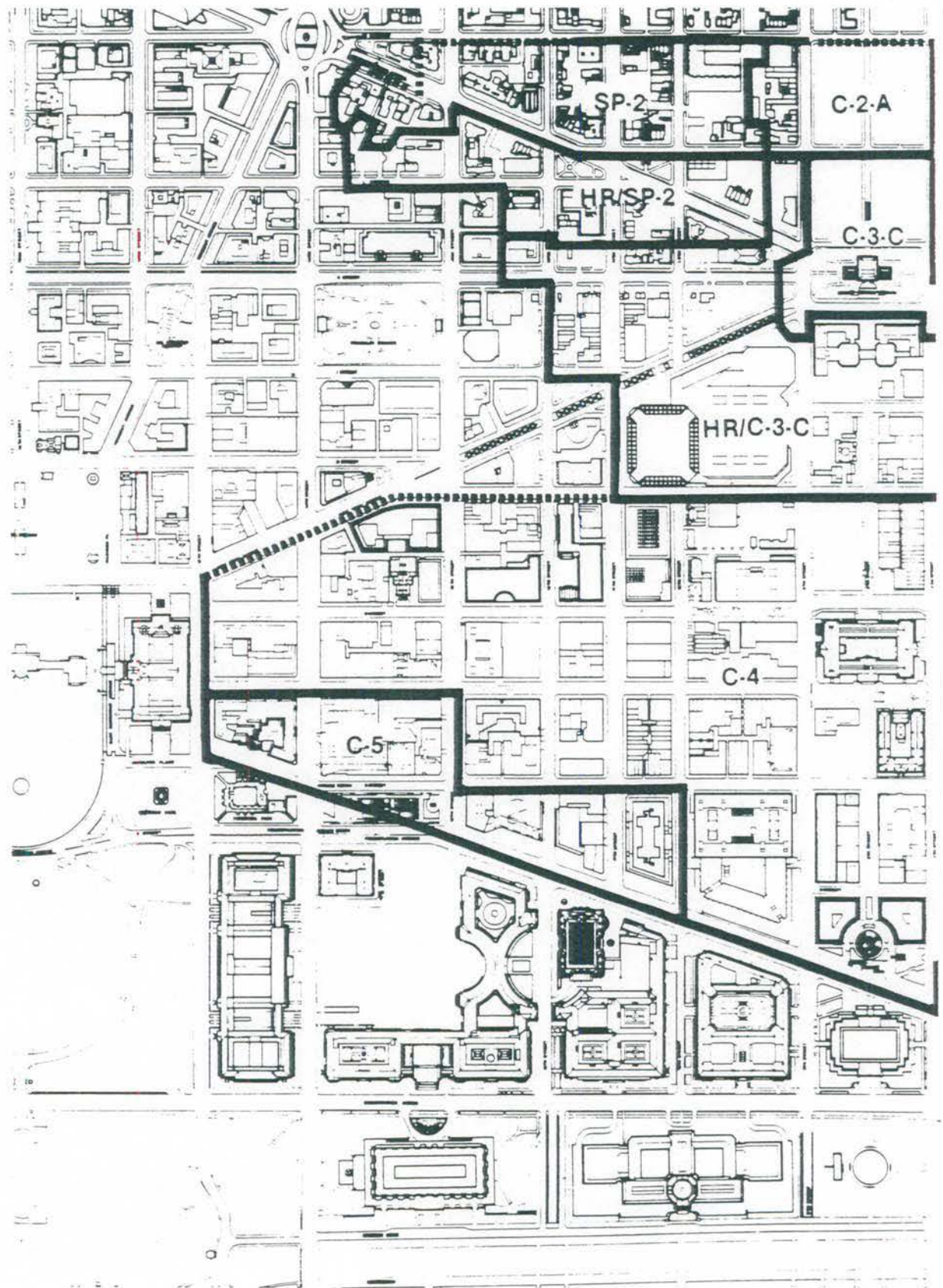
- (4) R-5-D to C-3-A: This historic landmark group of buildings on the east frontage of Seventh Street between New York Avenue and L Street should not have high density residential or high density mixed use zoning. The C-3-A zoning will permit these moderate scale, historic commercial buildings to be restored with a mix of commercial uses. The upper floors are not realistically suited for conversion to residential uses.
- (5) Retain C-2-A: This location is the west frontage of Ninth Street from L to M streets. It is a largely intact group of late nineteenth to early-twentieth century commercial buildings substantially occupied today by small businesses. The commercial row is isolated by large land areas available for redevelopment that will take a number of years to complete. Continuation of business activity and building fabric on this frontage is preferable to premature demolition. In the future, after most redevelopment has occurred, a change in policy could be considered.
- (6) C-3-C and C-4 to DD/C-3-C and DD/C-4: The underlying zone boundaries are retained, but the DD Overlay adds numerous incentives and requirements.

o Special Provisions for Small Buildings

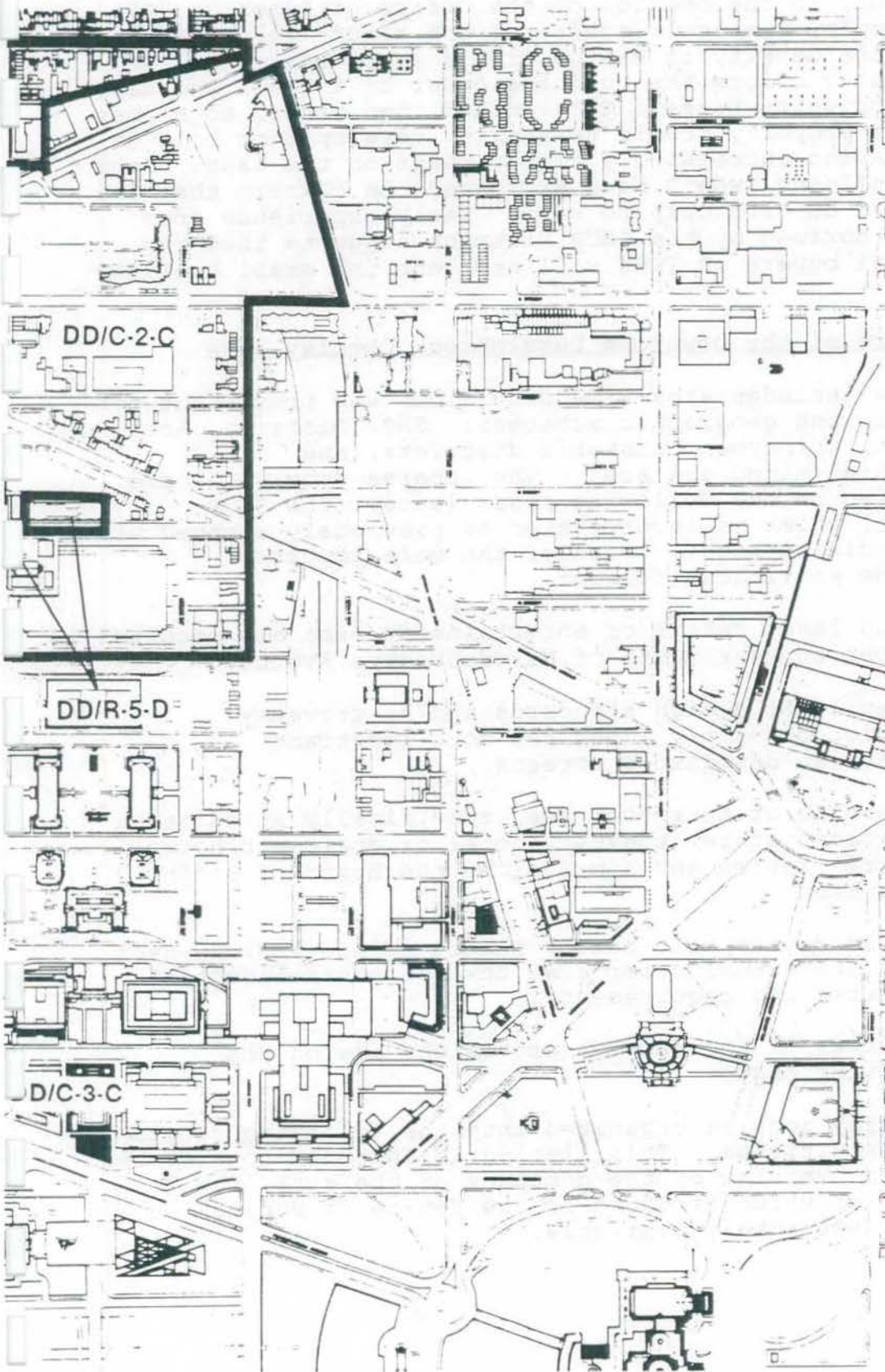
The DD overlay zone has several provisions for small buildings of six stories or less including

- reduced requirements for commercial preferred uses
- waiver from required housing component where applicable
- transferable development rights for buildings in designated historic frontages

These provisions are intended to encourage continuation of small buildings and occupancy by active uses. We do not want to exempt small buildings from the zone because of the importance of continuity of preferred uses at ground level. The small buildings are also well-suited to take advantage of linkage provisions because the upper floors are better suited for active uses than for office space. Under the provisions indicated above, the burdens of being subject to the zone are limited and the opportunities are



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Proposed Zoning Downtown
Development District

maximized, in the opinion of the Office of Planning (OP). For example, the lower preferred use requirement means that bonus density is earned from a lower base; the TDR opportunity offers the business owner of a small building the opportunity to sell TDRs rather than having to either sell the property itself to a major developer or hold on while paying increasingly higher taxes on the land. Some small building owners have expressed the concern that the TDRs will be difficult to sell. Early experience from TDRs authorized by the SHOP District suggests that the potential buyers of TDRs will seek out the small building owners.

o Structure of the Downtown Development Overlay Zone

The zone includes area-wide provisions and provisions for the following geographic subareas: SHOP District, Arts District, Chinatown, historic districts, and residential/mixed use area. The subarea provisions are summarized on the following pages (except the SHOP District, which is incorporated as previously adopted with minor modifications). Some of the more important area-wide provisions follow:

- Ground level retail or entertainment uses are required on most streets south of Massachusetts Avenue.
- Street level design standards and/or driveway restrictions apply along the most important pedestrian-designated streets.
- Conversion of an anchor use, specifically an existing department store, theater, hotel or apartment house, requires review and approval by the Board of Zoning Adjustment.
- A child development center counts at one and one-half times its actual floor area towards non-residential preferred use requirements.
- Summaries of the subarea provisions are on the following pages.

The overlay zone is organized into the following section numbers and titles. This listing is intended to give the reader an overview of the contents of the zone, the entirety of which is found in the Notice of Public Hearing, separately available.

- 1700 General Provisions
- 1701 Area-Wide Design Standards
- 1702 Area-Wide Use Provisions
- 1703 Downtown Shopping District
- 1704 Downtown Arts District
- 1705 Chinatown
- 1706 Residential and Mixed Use Development
- 1707 Historic Preservation
- 1708 Development Flexibility and Bonuses
- 1709 Combined Lot Development
- 1710 Transferable Development Rights
- 1711 Exceptions
- 1712 Waivers
- 1713 Retail and Service Uses
- 1714 Arts Uses and Arts-Related Uses
- 1715 Office Space Users
- 1716 Definitions

On the following pages of this report the provisions of the five major areas regulated by the zone are discussed. These are the Shopping District (SHOP), the Arts District, Chinatown, Residential-Mixed Use, and historic preservation.

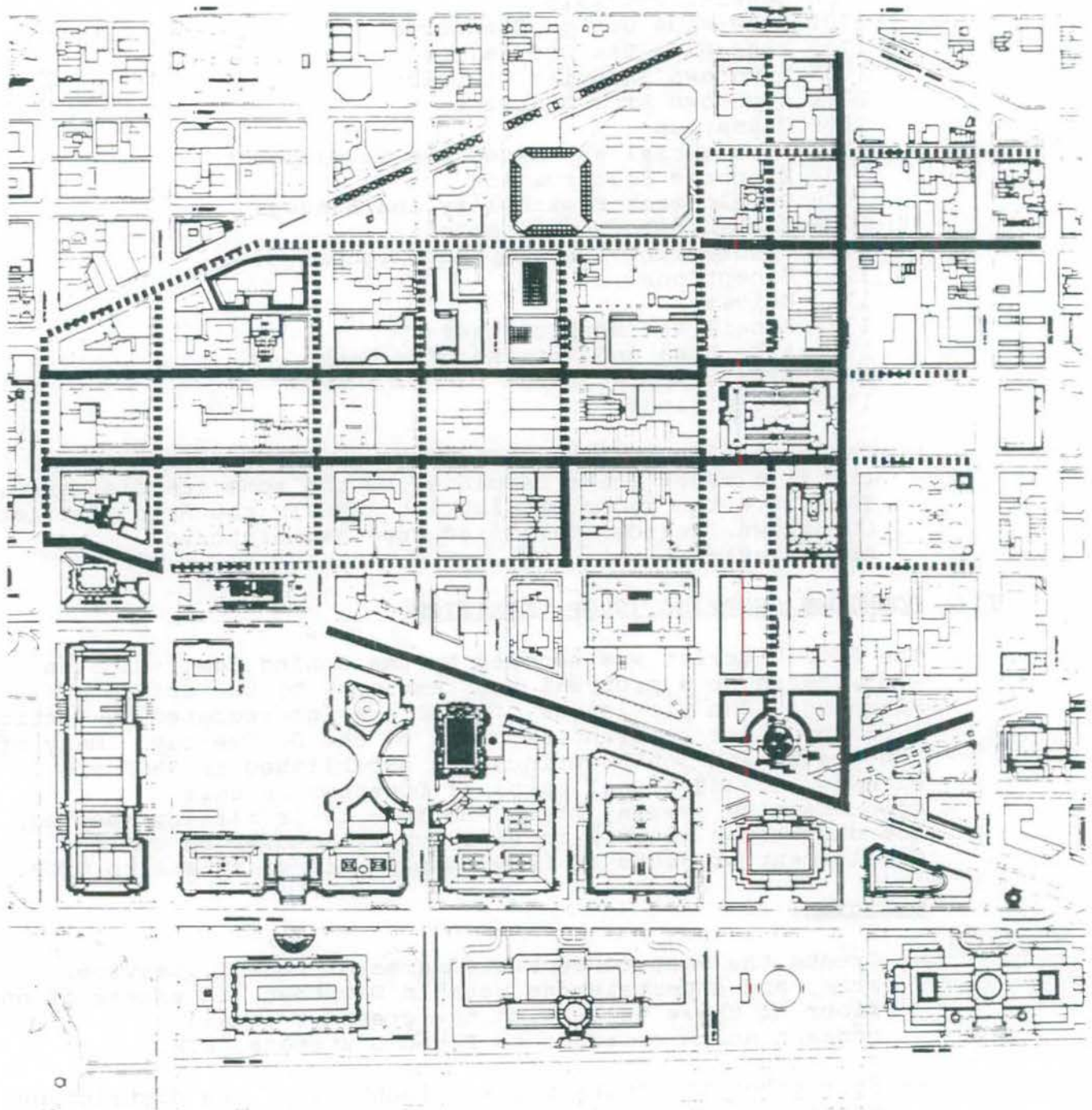
III. DOWNTOWN SHOPPING (SHOP) DISTRICT

The SHOP District was adopted by the Zoning Commission in 1989, based on a proposal and testimony by the Office of Planning. The provisions of SHOP are incorporated in Section 1703 and other relevant sections of the DD Overlay. Many of the design and zoning principles established in SHOP are extended to additional parts of Downtown in this comprehensive overlay zone. Because it is already adopted, the discussion of SHOP in this report focuses on current development projects as they comply with or relate to SHOP.

Policies:

- Create the most concentrated area of retail, service, arts, and entertainment uses in Downtown, in excess of one floor of these uses, with the greatest retail concentration oriented to F and G streets, N.W.
- Strengthen the character and identity of the district by means of physical design standards which ensure the following:

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Pedestrian Oriented Street Controls

-  Driveway Prohibited and Street Level Design Standards Apply
-  Street Level Standards Apply

- + new buildings constructed to the property line and primarily oriented to the street rather than to internal spaces
- + continuous retail, service, and entertainment uses on the ground level of buildings, with ample display windows and frequent store entrances to the outdoor pedestrian circulation system
- + a pedestrian environment with ample sidewalks interrupted by a minimum of vehicular driveways, especially along F and G streets

Zoning Requirements and Incentives

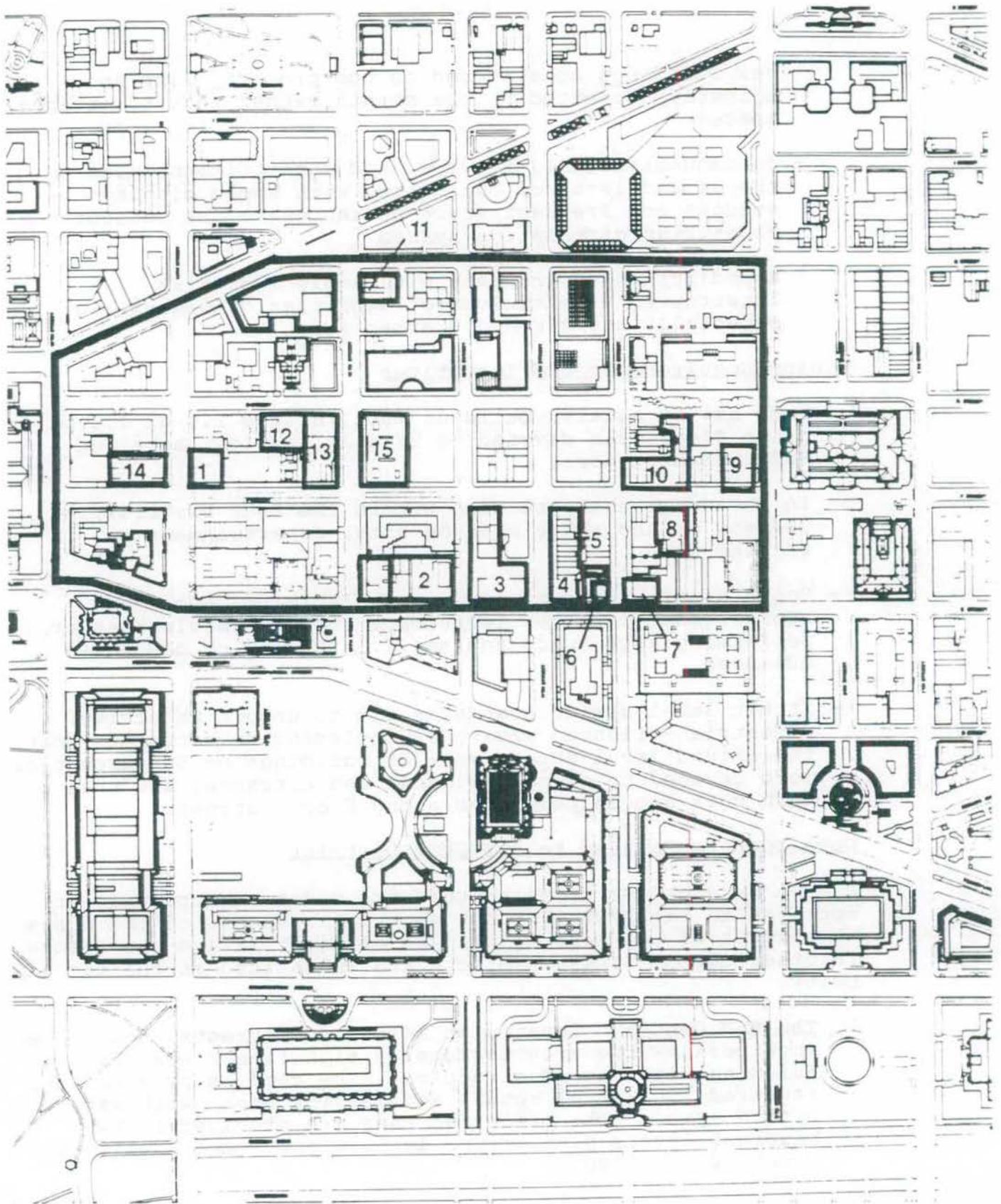
- Each new or altered building must include 2.0 or 1.5 of gross floor area devoted to retail, service, arts and entertainment uses.
- In buildings that are also within the Arts District, 50 percent of the space must be arts, entertainment or related uses.
- Bonus density incentives are available to department stores, anchor store, legitimate theater, movie theater, performing arts space and small, minority or displaced business.
- Street level design standards aim to ensure an active, pedestrian-oriented ambience, including requirements that the ground level street wall of buildings be 50 percent or more devoted to display windows and entrances and that curb cuts not be permitted along F or G street.

Developments Related to the SHOP District

Eleven development projects that are under construction or approved in the SHOP District show positive use of the bonus incentives of the zone as well as straightforward compliance in other cases. These projects are summarized on the map and below.

1. The NBW Center. Located at 14th and F streets, the center incorporates the architecturally significant Westory Building with new construction. The complex provides the required 2.0 FAR of retail and service uses, with major office space. The preferred uses are provided on two basement levels plus ground level. The complex will be completed in 1990.

14a



Shop District

2. Garfinckel's. This department store is the western anchor of the Retail Core. Plans are now proceeding to consolidate the retail space on four floors and convert the upper three floors to private office space. Total retail space will decrease slightly from the present amount, but will be more efficiently arranged. Under the provisions of the SHOP District, the conversion must be approved by the Board of Zoning Adjustment.
3. Warner Theater. The historic Warner Theater is being restored and functionally improved for theater use as part of the redevelopment of the southern half of Square 290. The office component of development includes bonus density earned by the theater pursuant to SHOP. This bonus density will help to subsidize the theater use. The project also includes the required 1.5 FAR of arts and retail uses combined, including restaurants and function rooms connecting to the theater foyer. The bonus density is built as two floors of extra office space on-site, leaving additional TDRs which may be transferred elsewhere in the future.
4. 555 12th Street. Manufacturer's Realty is preparing to construct an office/retail complex at this site occupying approximately three-fourths of Square 421. The project includes several levels of retail space totalling approximately 142,000 square feet of floor area. Of this, just over 100,000 square feet is reserved for department store use by a 20-year covenant.

The department store will face E Street with the additional retail space on two levels facing 12th Street and F Street. The department store generates a large amount of bonus density that will increase the project from 8.5 to 11.46 FAR. The latter density required an FAR variance so that more than the normal level of bonus density could be achieved. OP is satisfied that the building design is very high quality despite the large amount of density. Construction is expected to begin in 1990.

5. 555 - 11th Street. This is a major office-retail-entertainment development by the Carr Company approved as a project of special merit by the Mayor's Agent for D.C. Law 2-144 (Historic Preservation). It combines high-density new development with preservation of a number of historic building facades. Six movie theaters, having a total of approximately 1,500 seats, are

included and earn bonus density for potential use off-site. The required 1.5 FAR of retail and entertainment uses combined is exceeded.

- 6 & 7. Historic Buildings on 10th Street. Two buildings within the Pennsylvania Avenue historic site are in advanced negotiations for transfer of development rights to a receiving site pursuant to SHOP provisions. They are the historic Stags Tavern (new Irving Sporting Goods), important historically and architecturally, and the building now occupied by the Lincoln House Restaurant (504-508 - 10th Street). Both are part of the important 10th Street setting for Ford's Theater. Because of transferred development rights, the preservation of the buildings with very limited potential for additions is made more feasible and is required by covenant.
8. 930 F Street. This project is a major preservation/new development, incorporating the facades of the Atlantic Building and three small buildings along F Street. The project was approved under a special merit order by the Mayor's Agent for D.C. Law 2-144 (Historic Preservation). The project incorporates a number of special historic preservation and design features and will include a small museum and more than a floor of retail space, including space reserved for a cabaret. The project was approved under the SHOP regulations as originally advertised.
9. Lansburghs Furniture Store (old Masonic Temple). This project at 901 F Street is an especially important landmark building. The building occupies part of a 22,000-square-foot site, now a parking lot. A developer is proposing to transfer some FAR off-site, renovate the landmark and locate preferred uses in the renovated building/new construction on-site.
10. E Street - St. Patrick's Church. The Kaempfer Company is planning a new office/retail/arts building on the St. Patrick's site. The building will include preservation of historic frontages on the 900 block of F Street (north side) with substantial retail and arts space. Because of restricted density, TDRs would be generated for use off-site.
11. The Homer Building. Scheduled for completion in 1990 by the John Akridge Company, the building is a "special merit" historic preservation project, with the building permit issued prior to SHOP. However, one of the

provisions of the special merit agreement is for the developer to provide 106,000 square feet of retail space (2.35 FAR) on four levels (ground, mezzanine and two below grade).

12. Thirteen Ten G Street. This office building is under construction and will be completed in late 1991. The building permit was issued prior to the passage of SHOP. In addition to ground floor retail, the developer (John Akridge Company) has designed space on the B-1 level which can be used as retail space.
13. Thirteenth and H Streets. A new office/retail building is being constructed in accordance with the SHOP provisions, including 1.5 FAR of retail space.

The Retail Targets:

The level of required retail, service and entertainment space in the adopted SHOP District is 1.5 or 2.0 FAR equivalent, depending on the location. These requirements will concentrate more than one level of retail space throughout the Retail Core subarea of Downtown within the range of the land use target in the Comprehensive Plan.

No specific retail target was adopted in the plan for the Retail Core separate from Downtown as a whole. The Mayor's Downtown Committee report specified a target of 2.7 million square feet of floor area, based on a 1981 market study that found 2.72 million square feet would be supportable by the market. This target was for a "restricted" retail core oriented to F and G streets. In the SHOP District case, the Office of Business and Economic Development (OBED) and OP calculated the Mayor's Downtown Committee targets for the "full" retail core as 3.035 million square feet of floor area. This was done using the committee's square by square development projections under the plan for the blocks included in the full retail core.

At the conclusion of the SHOP case, the Office of Planning's final report indicated that the retail core (shopping district) has 1,403,856 square feet of existing retail and related uses that will remain. Based on the final SHOP requirements of 1.5 and 2.0 FAR, OP projected that approximately an additional one million square feet of retail, service, financial, eating and drinking uses would be generated, for a total of 2.5 to 2.4 million square feet. This degree of shortfall has been accepted as reasonable.

The actual level achieved in 10 to 20 years will depend upon numerous variables such as the fourth department store, the success of entertainment uses in adding to the base of potential shoppers attracted Downtown on evenings and weekends and the relative success of public or private efforts in such matters as marketing, validated parking programs and shuttle bus service.

IV. ARTS DISTRICT

Policies:

- create a concentration of activities relating to performing and visual arts, cultural facilities, entertainment and arts-related retail
- create two key arts corridors: the E Street theater spine, with theaters, movie theaters, restaurants, nightclubs, arts-related retail; and the Seventh Street arts walk, a pedestrian-oriented concentration of museums, art galleries, other visual or performing arts uses and "festive retail"
- encourage the general development pattern adopted in the Comprehensive Plan regarding non-arts uses (generally upper floor uses): mix of residential, office and hotel uses.
- the Arts District includes parts of Gallery Place, Market Square, Pennsylvania Avenue West, and Shopping District subareas.

Zoning Requirements and Incentives:

- Each new or altered building must include 1.0 of gross floor area (FAR) devoted to arts, retail and entertainment uses combined (1704.3).
- A limited portion of the space (0.25 FAR) must be "true" arts uses, as specified [1704.3(a)]. If 0.5 of arts uses are provided, there is no additional retail requirement [1704.3(b)].
- The same specified uses also earn bonus office density (1704.7). These uses are: art center, art exhibition area, art gallery, art school, artist live-work space, artist studio, performing arts space, cabaret, dance hall, dinner theater, legitimate theater, movie theater, museum, television or radio broadcast studio.

- Certain blocks in the Arts District are also designated in the Downtown Plan for mixed use development including residential. The residential requirements and incentives are set forth in the residential section of the DD Overlay (1706). Projects developed with a housing component have a reduced arts and retail requirement [1704.3(c)]. Conversely, projects that earn bonus density from arts uses earn a limited reduction in the amount of housing required (1704.10).
- Bonus office density can be developed on-site (except historic sites) or off-site anywhere in the DD commercial area or in the receiving areas (1704.6, 1708).
- Required arts and arts-related uses may be provided off-site elsewhere in the Arts District via combined lot development except for ground level uses (1709).
- Art exhibition area and unenclosed sidewalk cafe (normally located in public or semi-public space) count towards preferred use requirements (1704.4, 1704.5).
- The largest bonus density ratio is for major arts facilities that would be "anchors," i.e., would provide multiple positive impacts on other preferred uses and the desired character of the Arts District [1704.7(a)].

Rationale for Arts District Zoning Provisions:

- Policies are condensed from adopted provisions of the Comprehensive Plan.
- A geographic concentration of arts, arts-related retail, entertainment, and "festive retail" uses in a pedestrian-oriented environment is needed for an arts district to become known and popular and to survive over a period of years.
- E Street is envisioned, and is rapidly evolving as the performing arts center of Downtown, anchored by the National, the Warner and Ford's theaters, the theater in the Lansburgh's development plus the proposed six movie theaters at 11th and E streets. Seventh Street is to be predominantly visual arts plus miscellaneous support uses and entertainment. The anchors are the national museums on the Mall (south) and the National Portrait Gallery/National Museum of American Art at Gallery Place (north), plus the Washington Project for the Arts and the District's Stables

Art Center in between. The National Building Museum on F Street, two blocks east of Seventh Street, is another attraction.

- Each building must contribute its "share" of the desired use mix, so that there is continuity of active arts and arts-related uses as well as general fairness among property owners and developers.
- The schedule of preferred uses in the Arts District includes arts uses, "festive retail" uses and arts-related retail uses, all intended to contribute to the desired use mix and ambience of the area.
- A certain amount of the space must be true arts uses, or the result could be simply a restaurant row or festive retail area without the necessary base of actual arts uses.
- Residential development is quite unprofitable in the Downtown core, but is called for in the plan as part of the 18-hour activity and support for retail and entertainment uses needed for a living Downtown. Developers who are providing the apartments accordingly have a lesser arts/retail requirement. Also, developers who provide important, anchor arts uses, such as a major art school or art center, have a somewhat reduced residential requirement.
- Washington's strong office market is the principal subsidy employed in the DD zone to achieve the preferred mix of other uses. For maximum utility, the office bonus density should be usable on as many sites as feasible. However, the required arts and arts-related uses, must be provided within the Arts District (on-site or off-site) or the necessary geographic focus would be lost.

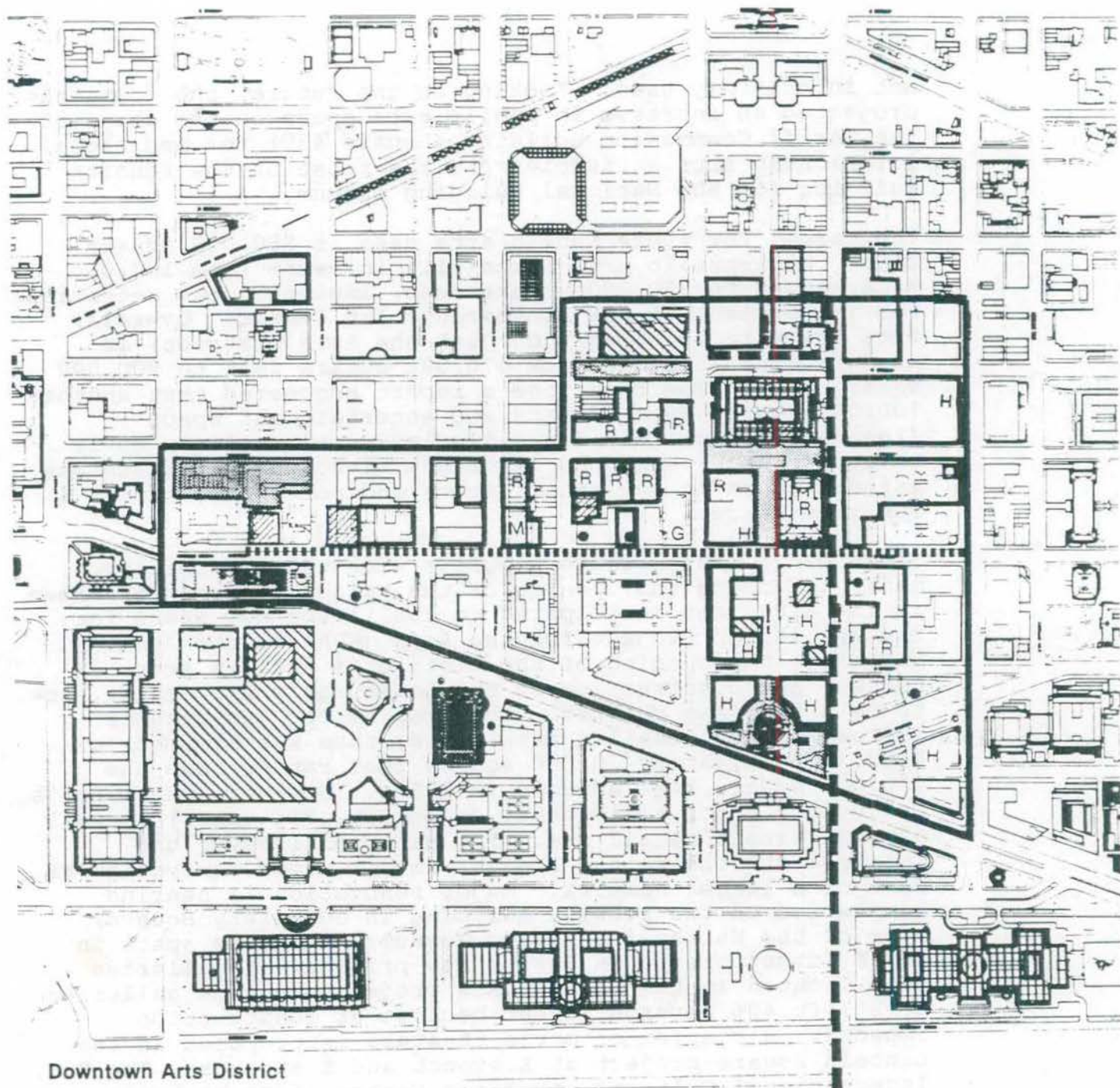
The Target for Arts Uses

According to the Mayor's Downtown Committee, the arts is key to sparking Downtown activity and animation, even though arts space is relatively limited compared to other major uses. Arts uses in Downtown in 1982 totaled 470,000 square feet, not including arts-related retail space. Major public arts uses are found in the National Portrait/Gallery/National Museum of American Art at Gallery Place and Peterson House, the house museum where Lincoln died. These uses total 320,000 square feet. Another 150,000 square feet of semi-public arts space was counted in the old Lansburgh's Arts Center, though that space was

not intensively used. Looking to the future, the committee projected an increase in public arts space in the reuse of the Tariff Commission Building (Square 430) for additional Smithsonian arts activities and the reuse of the Pension Building for the National Building Museum.

The target for these public arts uses is 650,000 square feet. Semi-public arts space will increase from 150,000 square feet to 250,000 square feet, including the retention and improvement of the Lansburgh's Art Center. Overall, arts space in Downtown (not just the Arts District) is projected to increase from 470,000 square feet to 900,000 square feet. The committee's report suggested that another 700,000 square feet of arts and entertainment space (restaurants, private art galleries, art supplies, movie theaters, etc.) would be important although this space was assumed to be in the retail space and not broken out as a separate target.

Since 1982, considerable progress with the arts has been made, including the opening of the National Museum of Women in the Arts (not anticipated in 1982); the new space for the Washington Project for the Arts (WPA) in the Jennifer Building; the opening of the District's Stables Arts Center; and construction of the Lansburgh's Art Center, now to be a 500-seat theater. The program for Lansburgh's includes a much smaller arts center than was assumed in 1982 (approximately 30,000 square feet rather than the 150,000 square feet assumed in 1982). However, Lansburgh's includes a major residential component (385 units) as well as significant retail use. The National Theater has reopened and the Warner Theater is now under renovation as part of a larger complex. Major renovation is nearing completion on the Pension Building in Judiciary Square, home of the National Building Museum. The arts space in 901 E Street opened in 1989. New private art galleries have located in the Gallery Row project but some galleries have left 406 Seventh Street because of construction impacts. A complex of movie theaters is proposed in the Lincoln Square project at Eleventh and E streets. The U.S. International Cultural and Trade Center is to be built in the Federal Triangle just south of Downtown. It will include a large theater (approximately 2,000 seats), three smaller theaters and exhibit and retail space. It forms a major new anchor of arts and arts-related activities at the west end of the E Street Theater Spine.



Downtown Arts District

 Downtown Arts District Boundary

 E Street Theatre Spine

 7th Street Arts Walk

 Theatre/Performing Arts Space

 Museum

 Arts or Cultural Center

 Festival Retail Marketplace

 Open Air Performing Spaces

 Major Development Site

 Renovation or Preservation - Involved

 Housing - Under Construction or Proposed

 Movie Theaters - Future

 Art Galleries

 Cabaret/Nightclub

- protect existing housing and the most important historic buildings with suitable preservation controls, residential and commercial zones and economic incentives
- obtain a Chinese design character for new and renovated buildings. (Chinese design is achieved through a separate design review process which includes review and recommendation from the Chinatown Steering Committee.)

Zoning Requirements and Incentives:

- On key commercial frontages in the heart of Chinatown, one-fourth of the ground floor space must be for businesses selling goods or services of predominantly Asian cultural origin; the Zoning Administrator can refer an application to the Director of the Office of Planning for advice on complying uses [1705.3(a)].
- Including the above-referenced space, a total of 1.0 FAR of retail, service and entertainment uses must be provided. This is consistent with Chinatown's location near the Convention Center and overlapping with the Arts District. This additional requirement is waived for projects having a substantial housing component, leaving housing/mixed-use buildings with a requirement of only ground level retail including 0.25 FAR of Asian businesses [1705.3(b)].
- Preserved housing in Square 485 earns either linkage or transferable development rights off-site (1705.4). This block is predominantly residential in use and is also located within the Downtown Historic District.
- Portions of Chinatown are rezoned from SP-2 to C-2-C so as to remove the anomaly that portions of Chinatown are not now permitted retail use and development. This is especially important for H Street between Fifth and Sixth streets, N.W.
- Certain street frontages within the Downtown Historic District land constituting about one-half of Chinatown are proposed for on-site density restrictions and incentives including transferable development rights and automatic waiver of required housing development that would otherwise apply [1707.4, 1707.5, 1706.5(i)]. In these locations, office-retail development within or as additions to historic buildings is the favored land use policy. In most locations this is a reduction from 6.5 FAR commercial permitted in the underlying C-3-C zone to 6.0 FAR on-site.

Recent work by the Office of Planning and the Arts team of the Downtown Partnership has focused on the importance of achieving 1) a concentration of arts uses along the Seventh Street Arts Walk and encircling the National Portrait Gallery/National Museum of American Art and 2) achieving additional performing spaces, cabarets and restaurants along E Street and in other parts of the Arts District, such as the 900 block of F Street. Applying the arts requirements of the DD District to major remaining development sites indicates approximately 126,000 square feet of arts and arts-related space will be produced. Another 84,330 square feet of arts space is proposed on the Pennsylvania Avenue Development Corporation's sites and the Gallery Place Urban Renewal site that are exempt from the DD District. This will mean a total of approximately 445,000 square feet of additional arts and arts-related space in Downtown.

The critical mass of arts uses in Downtown can be achieved with the help of the DD District. However, quantity of floor space for arts uses is not the sole objective. The spatial arrangement of the arts space, especially along Seventh Street, around Gallery Place and along E Street is critical. Associated retail space and ongoing management of the arts spaces is also necessary. The arts teams of the Downtown Partnership has been meeting with the developers in the Arts District to help forge a continuing commitment to the arts in Downtown.

V. CHINATOWN

Policies:

- protect and enhance Chinatown as Downtown's only ethnic cultural area
- maintain and expand the existing concentration of retail uses emphasizing Chinese and Asian merchandise and related wholesale operations serving residents, visitors, tourists and business travelers
- reinforce the area's economic viability by encouraging mixed-use development, including substantial housing; cultural and community facilities, offices, retail and wholesale businesses, and hotels

should be conserved. The plan calls for Chinatown to be more than a tourist attraction, but a residential and commercial area as well. A Chinese residential presence is important in assuring that a reasonable mix and quantity of Chinese businesses will continue and expand in the area.

Chinatown Planning and Zoning Concepts

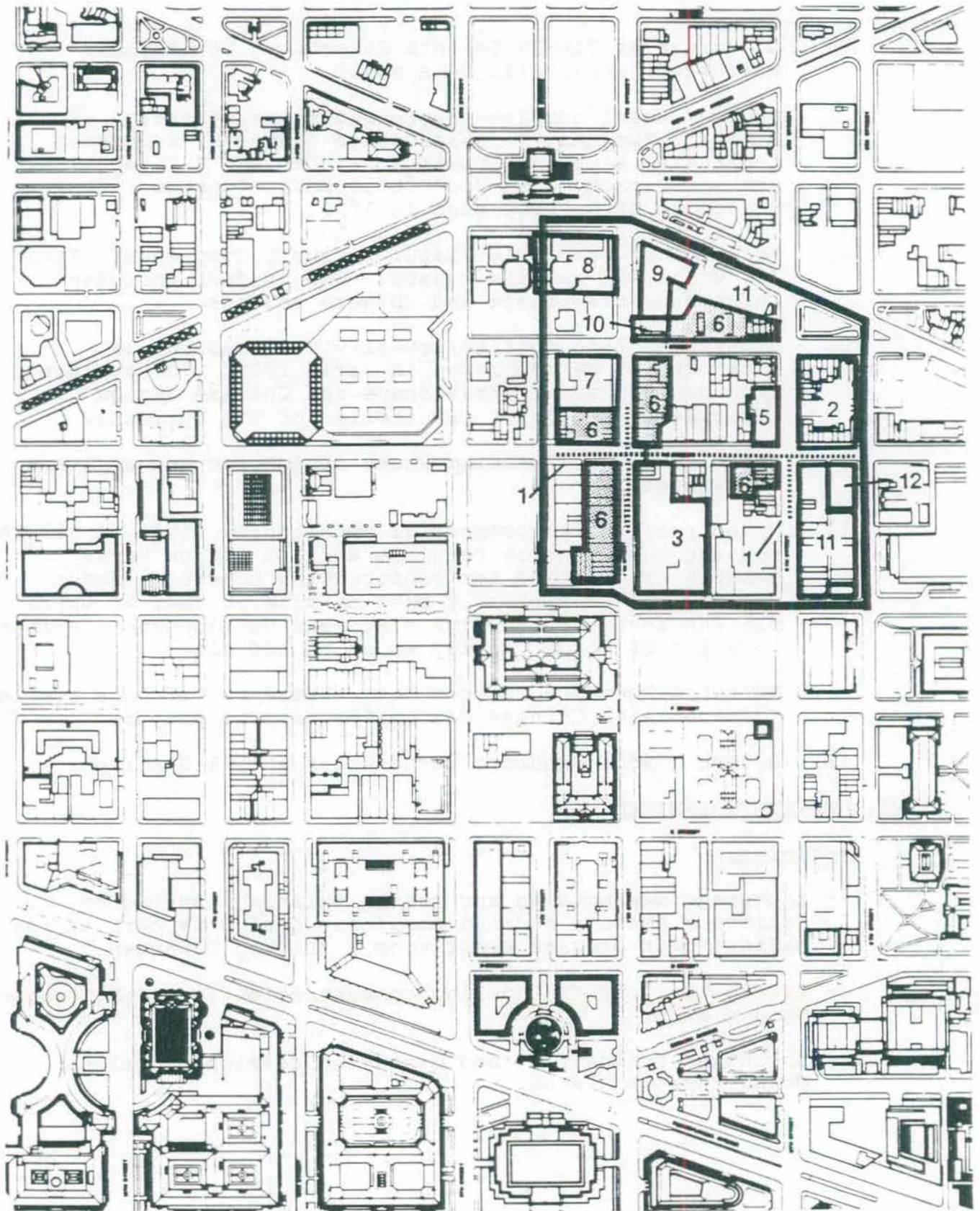
1. The ground floors of buildings along the primary shopping and activity streets of Chinatown (H Street plus segments of Seventh and Sixth streets) are required to have one-fourth of the floor space devoted to businesses that sell goods and services of Asian cultural origin.
2. Square 485 includes significant medium density housing. This square, together with the Wah Luck House across Sixth Street, comprises the largest concentration of existing housing in Chinatown. Remaining housing elsewhere in Chinatown is primarily in apartment units above commercial establishments. All of Square 485 is also within the Downtown Historic District. The Downtown Development District provides economic incentives for maintaining housing. The H Street frontage is rezoned from SP-2 to C-2-C in order to permit retail use, consistent with the role of H Street as one of the main activity streets of Chinatown. This change is called for in the Downtown Plan. The remainder of Square 485 is rezoned from SP-2 to R-5-D to conserve housing and provide housing maintenance incentives.
3. The developer of the Far East Center, a major office/retail complex with Chinese design features, has reached an agreement with the District to construct 160 housing units off-site in or near Chinatown.
4. Chinatown Archway.
5. Wah Luck House, completed in 1982, provides 153 units of elderly housing, a community room and a Chinese garden.
6. Street frontages in the Downtown Historic District that are to be limited to 6.0 FAR of development, so that, with design review by the D.C. Historic Preservation Board, new construction will be more compatible in scale and character with the historic building fabric. The presently permitted 8.5 FAR is difficult to accommodate in reasonable scale on the indicated shallow frontages with relatively low historic buildings.

The additional density normally allowed (under HR or DD) for residential or hotel development is waived as a trade-off for economically viable historic preservation.

- Properties outside the designated historic frontages have a housing requirement on-site of either 2.0 FAR in the DD/C-3-C locations or 3.5 FAR in the DD/C-2-C locations (1706.5).
- Small to moderate-sized buildings have a reduced retail requirement and are not subject to a housing requirement.

Rationale for Chinatown Zoning Provisions:

- The Comprehensive Plan calls for continuing and enhancing Chinatown as an important part of the diverse mix of uses and buildings making up the "Living Downtown."
- As office and mixed-use development enters the Chinatown area, there is the possibility that standard retail and service uses will be located in the ground floor of office buildings. Distinctive Chinatown businesses, other than restaurants, could eventually disappear. Major tenants of new office buildings have a strong role in determining ground floor retail and service tenants and may prefer specialty or premium retail uses plus general service establishments (dry cleaners, deli) over the necessary component of Asian businesses needed to retain a significant concentration of such uses. Requiring at least a minimum amount of Asian businesses will help prevent a "Disneyland Chinatown," i.e., a Chinatown that looks Chinese (in design character) but has only a limited range of Chinese businesses.
- Zoning cannot require business ownership or management by ethnic origin. The important factor is the type of goods and services provided. These are difficult to specify in a matter-of-right list; accordingly, the OP's Director is involved in reviewing each application. The Director may consult the Chinatown Steering Committee or other knowledgeable people as necessary.
- The most significant concentration of housing in Chinatown is in Square 485 and Wah Luck House, across the street. These locations are separately protected by rezoning and incentives. This square is within the Historic District and proposed for R-5-D zoning. Other existing housing



Chinatown - Planning and Development Concepts

7. A project at 710-28 Seventh Street, by Development Resources, Inc., will be a major office/retail complex incorporating preservation of landmark facades, Chinese design features, a Chinese Courtyard, a Chinese Kiosk at Eighth and I streets, N.W., and arts space. The project is under construction and scheduled to be completed in 1991.
8. Phase II of Techworld Plaza, recently completed. Phase III will fill out the square. The project includes Chinatown streetscape and Chinese gardens.
9. Mediatech Plaza (office/retail/video studios) is scheduled to be completed in early 1990. The building includes Chinatown streetscape and Chinese design features on the first two stories of the building.
10. Marlo Furniture Building where renovation and expansion is planned.
11. Mixed residential-commercial opportunity site. A 3.5 FAR housing component is required and 2:1 office bonus density is provided for constructing housing. Bonus density can be partially used on-site in that an extra 0.5 FAR is permitted with mixed-use development. Primary location of bonus density would be off-site.
12. Existing Downtown Comfort Inn. Phase two of this complex (office) with Chinese design features is proposed.
13. Recent (1989) landmark restoration at 501 G Street.

VI. RESIDENTIAL/MIXED USE

Policies:

- Encourage new housing and retain existing housing to achieve a sizable housing component needed as part of the balanced mix of uses comprising a "Living Downtown."
- Create the greatest housing concentration in the Mt. Vernon Square area.
- Encourage residential and mixed-use development along Massachusetts Avenue.

- Promote mixed-use development including residential use south of Massachusetts Avenue in the Judiciary Square (north), Chinatown, Mt. Vernon Square, Gallery Place and Market Square subareas.

Zoning Requirements and Incentives:

- A majority of the zoning map amendments in this case aim to conserve existing housing and encourage new housing mixed-use development. These are primarily from SP-2 to R-5-D and from R-5-D to R-5-B, and are concentrated in the northern part of the area (see proposed zoning map).
 - A residential or mixed-use/residential building is granted an 8.5 or 9.0 total FAR and up to a 130-foot building height as restricted by street width [1701.7, 1706.4(g), 1706.5(f), 1708.2].
 - A 1:1 building setback is required at the 110-foot level for buildings fronting on Massachusetts Avenue or Mr. Vernon Square (1701.7).
 - Housing construction must be in same time frame as any linked commercial development (1706.2).
 - Mt. Vernon Square Housing Priority Area A (north of Massachusetts Avenue):
 - + There is a strong residential emphasis, including rezoning from HR/SP-2 and R-5-D to DD/C-2-C.
 - + Each building must provide a 4.0 FAR of residential use, on-site or in linkage with other sites.
- Ground level or basement retail is optional; the remainder of building must be residential except for bonus office density earned.
- + Bonus office density is earned on a 1:1 basis for the actual floor area of housing built, or by providing a grocery store, dry cleaner/laundry, drug store, hardware store, variety store or child development center.
 - + The bonus office density may be used on-site or off-site anywhere in the DD zone or a receiving zone or site.

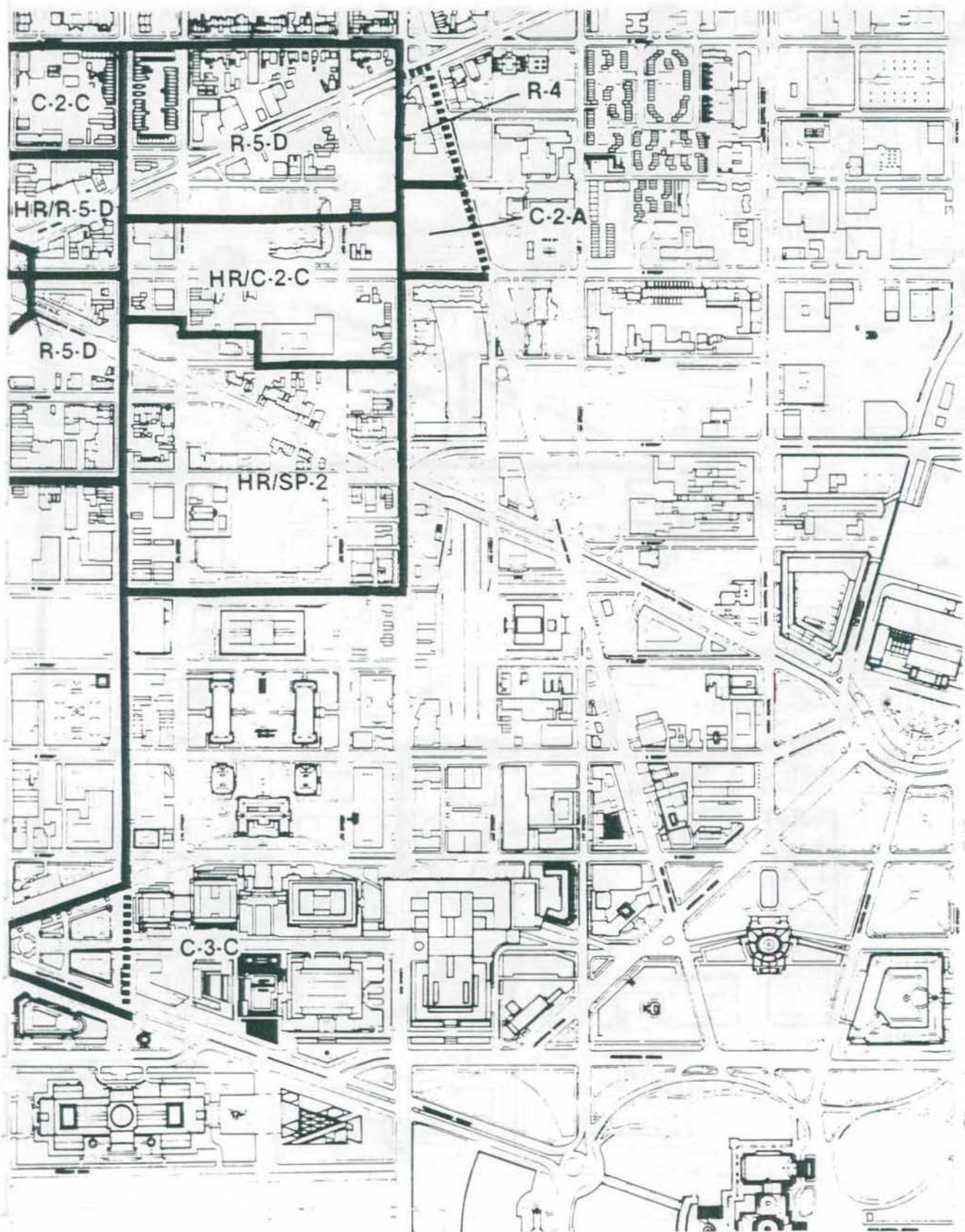
- + As an alternative to bonus density, any residential development in excess of the required 4.0 FAR may be linked with a site in Downtown, fulfilling a specified portion of that site's housing requirement [1706.4(f)].
- + If bonus density is built entirely on-site, maximum development is 8.5 FAR -- 4.0 residential, 4.0 office, plus ground level retail.

-- Downtown Housing Area B (south of Massachusetts Avenue):

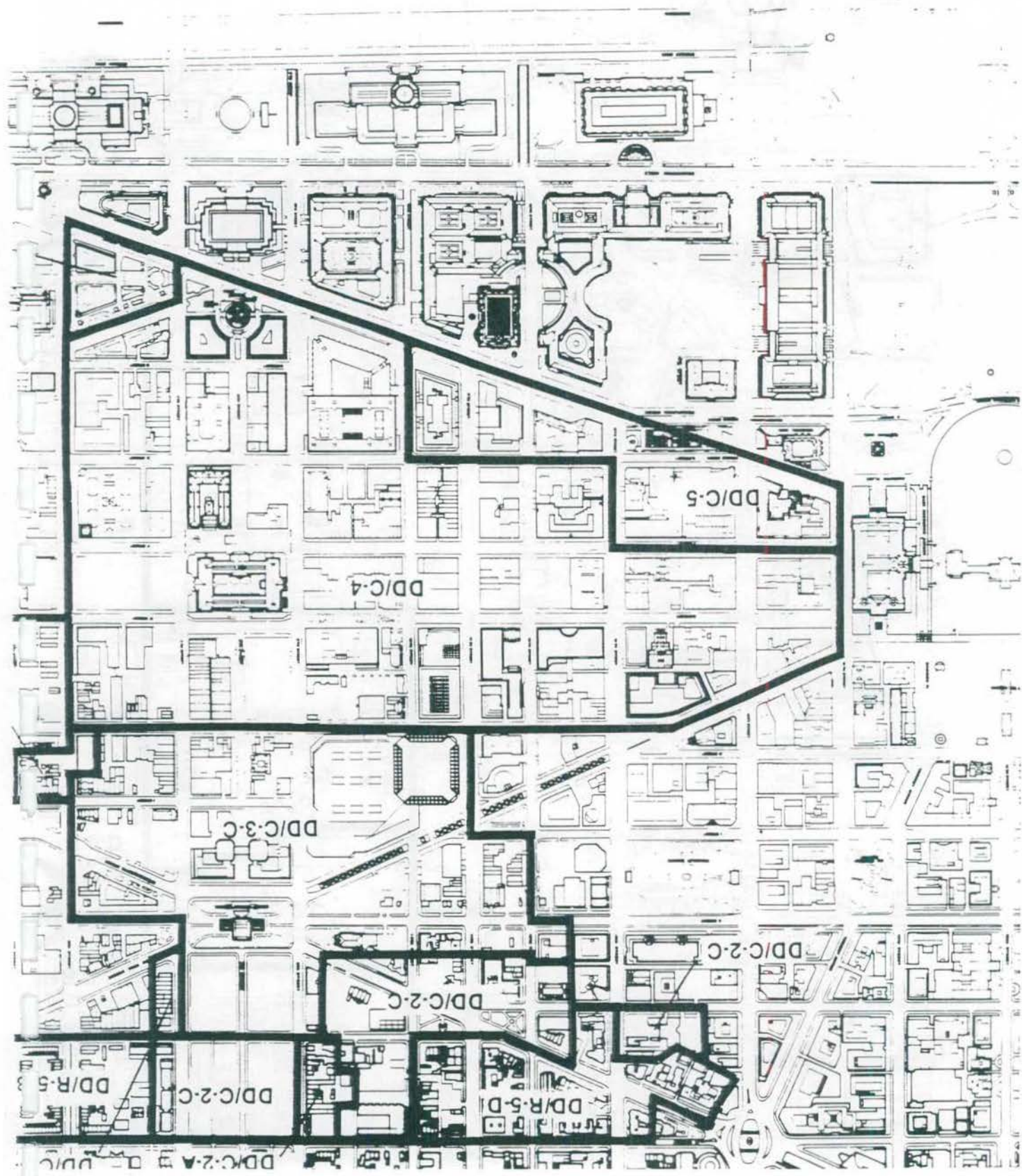
- + This area includes specified squares in several subareas: Chinatown, Judiciary Square (north of G Street), Gallery Place, Mt. Vernon Square and Market Square.
- + Rezone HR/SP-2 areas to DD/C-2-C. C-3-C and C-4 areas remain. Existing high density apartment buildings are rezoned to R-5-D.
- + In commercial zones each building must provide a specified residential component ranging from 1.5 to 3.5 FAR depending on the zone.
- + Housing may be provided on-site or in linkage with other sites in the Downtown Housing Area. This is matter-of-right, private sector linkage enabling off-site office development to subsidize a residential development. Covenants are required. The form of ownership, transfer payments, appraisals, etc., are left to the private sector in the interest of efficiency and consideration of specific location and value factors as these change over time.
- + Housing linkage, with sites north of Massachusetts Avenue, can meet a specified portion, but not all, of the housing requirement of a site in Downtown.

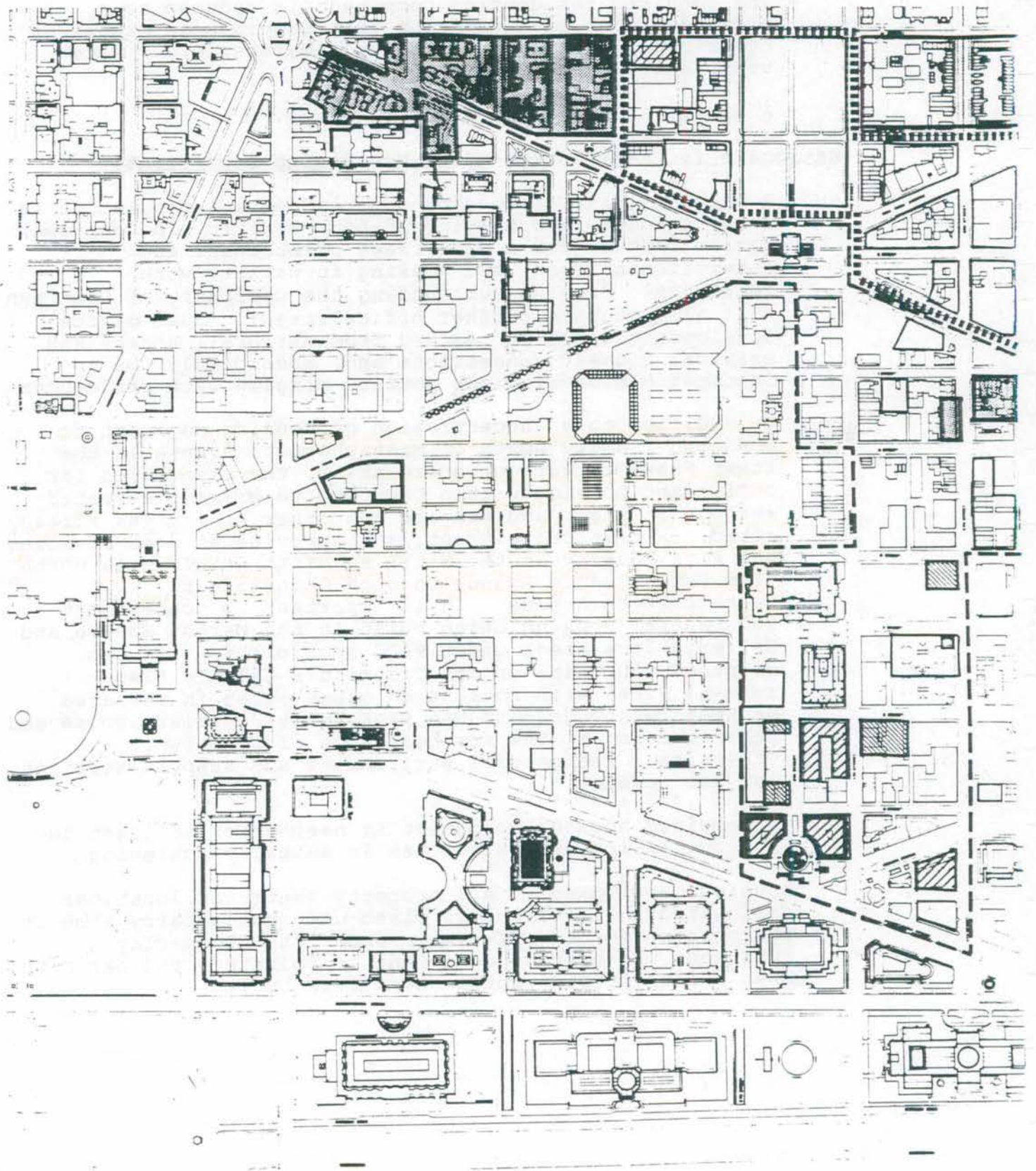
Major office density bonus is provided for construction of new housing. A somewhat lesser bonus is granted for rehabilitation of existing housing with a long-term covenant assuring residential use.

- + A portion of the bonus density may be used on-site (in excess of the normal FAR limit), and TDRs are permitted to receiving zones.



Existing Zoning

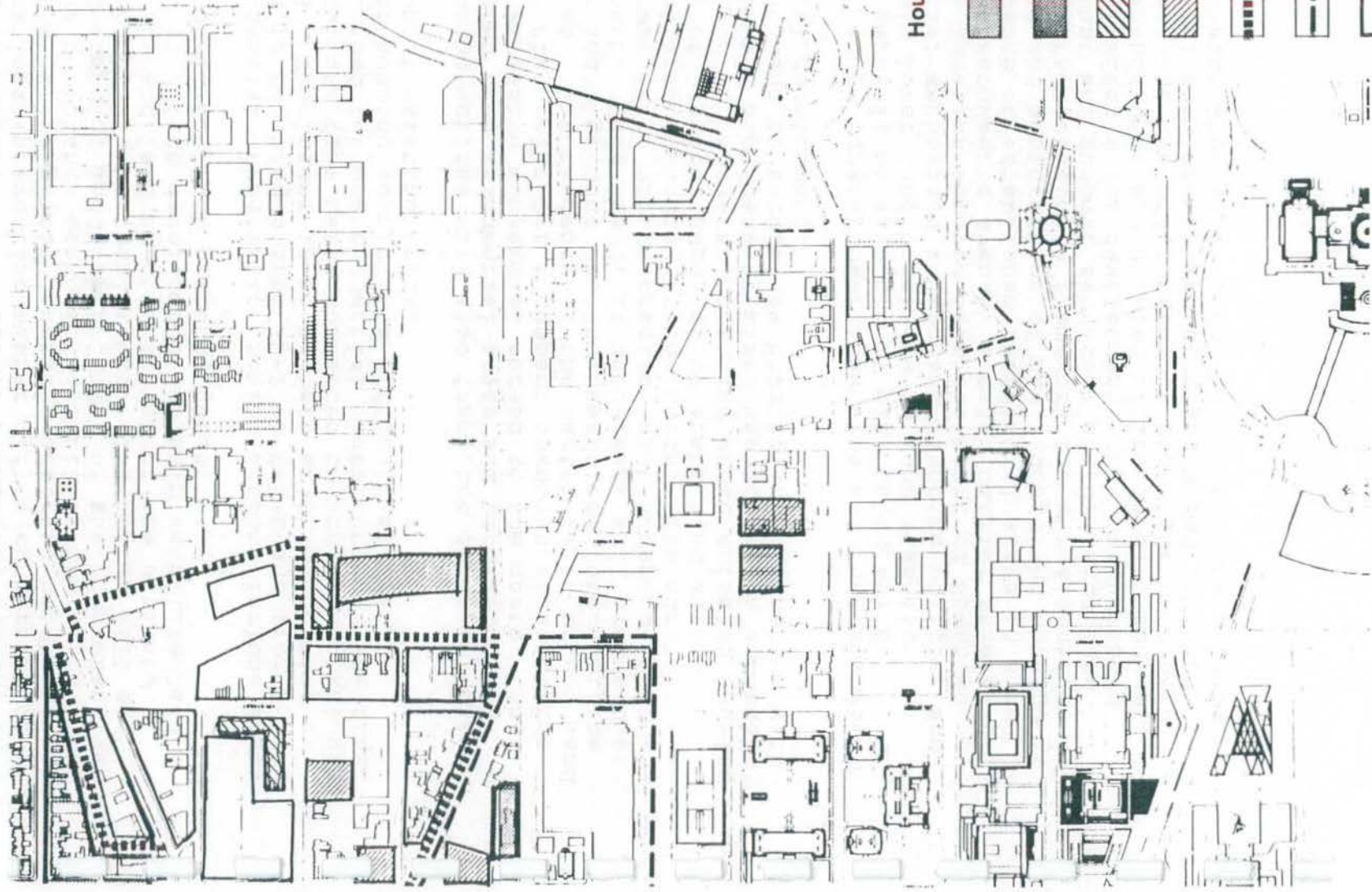




- + The required residential component is reduced to a limited extent in a building that provides an excess of other bonus uses as governed by subareas, e.g., arts uses, Asian businesses.
- + A grocery store earns multiple bonus.

Rationale for Residential-Mixed Use Zoning Provisions:

- A critical mass of housing and residential population is a key element in achieving 18-hour activity in Downtown, market support for a wide range of business and entertainment uses, and housing in walk-to-work locations. Housing surrounding the periphery of Downtown will also contain further office sprawl. Such office development would be removed from Metrorail access and critical highway connections and, accordingly, be an incompatible development pattern mingled with residences.
- In addition to a concentration of housing adjacent to Downtown (namely north of Massachusetts Avenue in the lower Shaw/Mt. Vernon Square area), the plan calls for sufficient housing within Downtown to prevent deserted streets at night and enhance the other objectives already cited. A critical element is to provide an area of mixed use with housing in the Sixth to Ninth Street area north from Pennsylvania Avenue through Chinatown to Massachusetts Avenue. It is important to connect the substantial housing being built in the Market Square and Gallery Place areas under PADC sponsorship (and the proposed 250 units on the District's Gallery Place renewal site) with housing on other sites in the area between Lansburghs and Wah Luck House/Judiciary House and other housing at the northern edge of Downtown. Otherwise a residential environment and support services may not develop.
- A required housing component is needed for at least two reasons: fairness and success in actually achieving housing development. All property owners in locations designated in the Plan for mixed-use should carry some of the burden, on- or off-site. Under the HR Overlay approach, the housing component is voluntary and has not been built although hotels have been built.



Housing Concepts

R-5-B

R-5-D

Constructed or Under Construction

Approved or Proposed for Construction

Housing Priority Area A

Housing Priority Area B

Mixed Use Opportunity Sites

- Rezoning is needed: a) to conserve existing housing in some locations (preventing either office conversion or demolition) b) to permit increased building height in some locations to enhance economic feasibility and c) to enact the long-standing land use policies of the Comprehensive Plan into definitive regulations. The latter will end uncertainty and land speculation about the ultimate boundary of office development and help stabilize land values consistent with planning goals.
- The residential conservation zoning actions include areas proposed to be changed from SP-2 to R-5-D and from R-5-D to R-5-B. The intent is to protect existing housing concentrations from being converted to nonresidential uses or demolished for nonresidential construction. The first source of housing supply in a difficult market is retention of existing stock.
- The rezoning actions will also frame the outer periphery of Downtown with residential areas and population and contain excessive commercial spread to the north. The Downtown Plan calls for a compact Downtown with diverse activities. The tendency of the market is to extend land assembly and clearance ever northward for future office development. This trend, if unchecked, will create over time a very large office precinct with a depopulated, declining area expanding to the north. The northern boundary of Downtown needs to be stabilized with a combination of conservation zoning where existing housing is viable and high-density mixed use zoning on underused or vacant land to secure new housing in combination with commercial development.
- The Mt. Vernon Square/Lower Shaw area has the greatest housing emphasis because of: a) plan policies; b) relatively lower land costs due to long-standing residential-emphasized zoning and planning policies and due to a location removed from the heart of Downtown across Massachusetts Avenue, a major barrier street; c) the presence of established residential areas in some locations and construction of new, subsidized housing in recent years, creating a framework for a residential environment and support services; and d) large land parcels available for development. Key neighborhood retail anchor uses are granted office density bonuses. This bonus and the office density bonus for providing residential development may be transferred south of Massachusetts Avenue or to any receiving zone or site,

where the office space will have a higher market value and greater subsidy benefit. Limiting commercial use to the ground floor or basement of a building in this area means that a development that is not linked to other sites will be a predominantly residential building without the complications of multiple elevator cores and security for separate commercial floors. Additional bonus density can, of course, be earned by constructing more than the required amount of housing.

- In Downtown south of Massachusetts Avenue a larger component of commercial development is permitted, together with a residential component. Linkage is critical in permitting one or more office developments to subsidize residential development and in permitting an efficient and functional horizontal allocation of residential and commercial components among sites. This avoids the problems of "sandwich" buildings that have multiple commercial floors plus residential floors on top. A major, transferable density bonus is provided for housing development. To help accommodate this, additional matter-of-right density is permitted (that level of density would not be appropriate north of Massachusetts Avenue). Equally or more important, expanded possibilities for receiving sites are provided in the TDR provisions. The bonus density provided will be quite lucrative if the bonus office density can be built in a premium greater Downtown location.

The Target for Residential Units:

The report of the Mayor's Downtown Committee in 1982 stressed obtaining housing in Downtown to help achieve activity in the evening and on weekends and to create a permanent Downtown community. The committee addressed the Downtown area as then defined, extending from Pennsylvania Avenue north to M Street and from North Capitol Street and Third Street on the east to 15th Street on the west. The Downtown Development District extends north to M Street and includes all the areas indicated for housing in the Downtown Plan.

Downtown housing in 1980 totaled 4,080 units, mostly in old and some relatively new apartment buildings along Massachusetts Avenue. Other housing units were scattered through other areas of Downtown, including Chinatown and the "row house area" north of New York Avenue and east of Seventh Street.

The committee's report assumed that 3,070 of the units existing in 1980 would remain by the year 2000 and that many of them would undergo some rehabilitation in that period. Thus, the assumption was approximately 1,000 units, mostly in older small buildings, would be lost over the 1980-2000 period.

The Mayor's Downtown Committee set a target of 9,340 new units by the year 2000, or a total of 12,410 units. Reaching this target would mean that Downtown of the future would have a population about the size of Dupont Circle. The location of housing is also important. The Downtown Plan calls for housing to extend north from Pennsylvania Avenue through Gallery Place and Chinatown, with a major concentration north of Massachusetts Avenue. Of the 9,340 new units, 4,095 units were proposed to be south of Massachusetts Avenue and 5,245 were to be north of Massachusetts Avenue.

In 1988, the Mayor's Committee on Downtown Housing reviewed the target numbers and found that they were still feasible. The committee's 1988 report indicated that a variety of measures, including zoning, would be necessary to reach the residential target. However, they advised that more units would have to be shifted north of Massachusetts Avenue.

A total of 889 residential units have been completed since 1980. Another 745 units are under construction, all in the Pennsylvania Avenue area and 1,756 units are now proposed. The total of completed, under construction and proposed housing is 3,390 units. Assuming that all these units are completed, an additional 5,950 units will be necessary to reach the target of 9,340 new units.

Calculating the housing that will be achieved as a result of the DD District is not an exact science because various combinations of bonuses, TDRs and combined lot development are possible.

The Office of Planning has taken the simplest approach to calculating housing units, applying the required FARs to major development. Apartment units were derived based on an average of 900 gross square feet per unit, primarily vacant and underused sites. Additional assumptions were made about several urban renewal and public development sites. Based on these calculations, pursuant to DD requirements, approximately 6,200 units would be

obtained. This is about 250 units over the 5,950 units necessary to reach the target. A larger portion of the housing units are provided north of Massachusetts Avenue rather than south, compared to previous projection. This is a close margin and requires full development of all potential sites. It does indicate that the residential targets can be achieved. Finally, the residential conservation zoning actions involved in this case will greatly help the retention of existing housing.

VII. HISTORIC PRESERVATION

Policies:

- preserve the unique character and fabric of historic buildings, the Downtown Historic District and the Pennsylvania Avenue National Historic Site;
- encourage restoration and adaptive reuse of historic landmarks and adaptive reuse of contributing buildings in historic districts, together with compatible alterations and compatible new construction;
- restrict permitted building bulk on critical historic frontages and lots with historic buildings to encourage preservation of historic buildings and assure a suitable scale of new construction in historic districts, especially in projects combining new development with preservation;
- permit flexibility as to building height, rear yard and court requirements to allow maximum design flexibility for the massing and sculpting of the restricted building mass in relationship to the scale and character of affected historic buildings on the lot and nearby subject to the exterior design review and controls exercised by the Historic Preservation Review Board;
- provide appropriate economic incentives to encourage preservation, including suitable on-site density and transferable development rights; and,
- encourage occupancy of historic buildings by active uses such as arts, cultural, entertainment, retail and small business uses, in keeping with the potential of historic buildings to make multiple contributions to the character of a "Living Downtown."

Zoning Requirements and Incentives:

- Preferred uses and bonus uses of the applicable Downtown subarea apply to historic buildings and preservation/development projects (1707.3).
- Small buildings of six floors or less have reduced requirements for preferred uses. A larger preservation-new development project is subject to the normal use requirements of the SHOP, Arts District, Chinatown and residential-mixed use provisions.
- Certain critical historic frontages are restricted to a reduced density of 6.0 FAR in the interest of historic scale and character and reduced demolition pressures on historic buildings (1707.4).
- A preserved historic building or a preservation/development project constructed at less than full density earns multiple TDRs in the interest of financially supporting historic preservation and reduced building scale on-site (1707.5).
- Maximum flexibility is permitted as of right regarding yard and court requirements and building height (1707.6). The Historic Preservation Review Board exercises design review over all affected development projects.

Rationale for Historic Preservation Zoning Provisions:

- The policies are adopted from the Comprehensive Plan and historic preservation laws and policies.
- Washington has a concentration of historic buildings in the Gallery Place, Chinatown, Market Square and part of the Retail Core. These zoning requirements will assist in maintaining this special concentration.
- Uses are and should be regulated separately from the building preservation and scale of development. Historic buildings, additions and infill buildings will undergo design review by the Historic Preservation Review Board. But the uses (and to a degree the buildings' character) will be different according to the subarea -- Retail Core, Arts District, Chinatown, or residential.

- In Washington as elsewhere in the country, transferring density away from historic sites serves at least two purposes: it preserves the scale and setting of the historic building or frontage, and provides a financial subsidy for preservation and the lower building scale on the historic site.
- The locations proposed for a specific restricted density are primarily those with shallow lots, smaller historic buildings, and locations where there is a physically limited opportunity for compatible high density development in conjunction with preservation of historic buildings and parts of buildings. The height and yard flexibility gives the architect of a combined preservation/new development project maximum flexibility for a design that sets back from historic buildings and otherwise creatively relates new development to the historic fabric. The building is subject to required design review by the Historic Preservation Review Board.

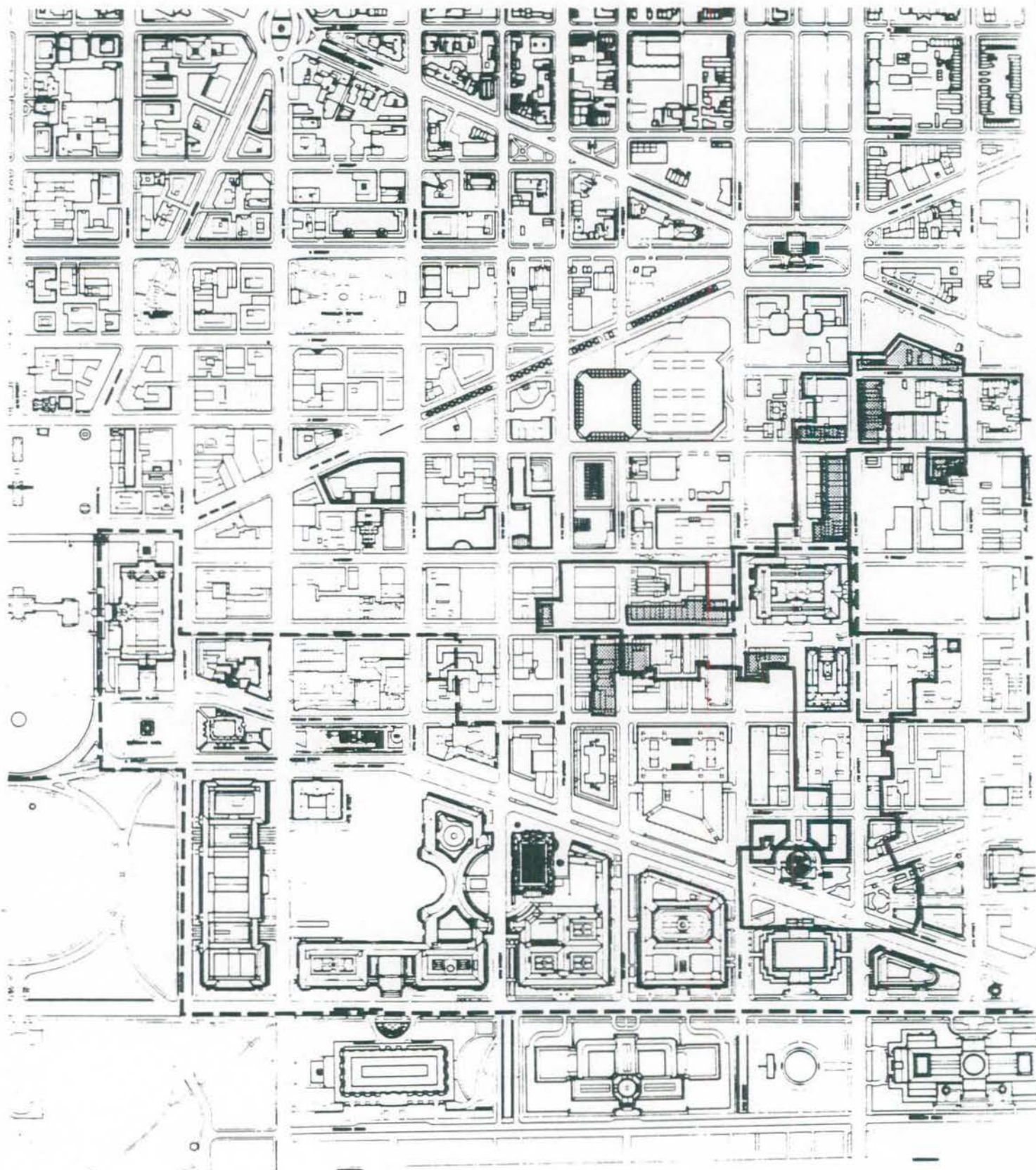
VIII. CONCLUSION

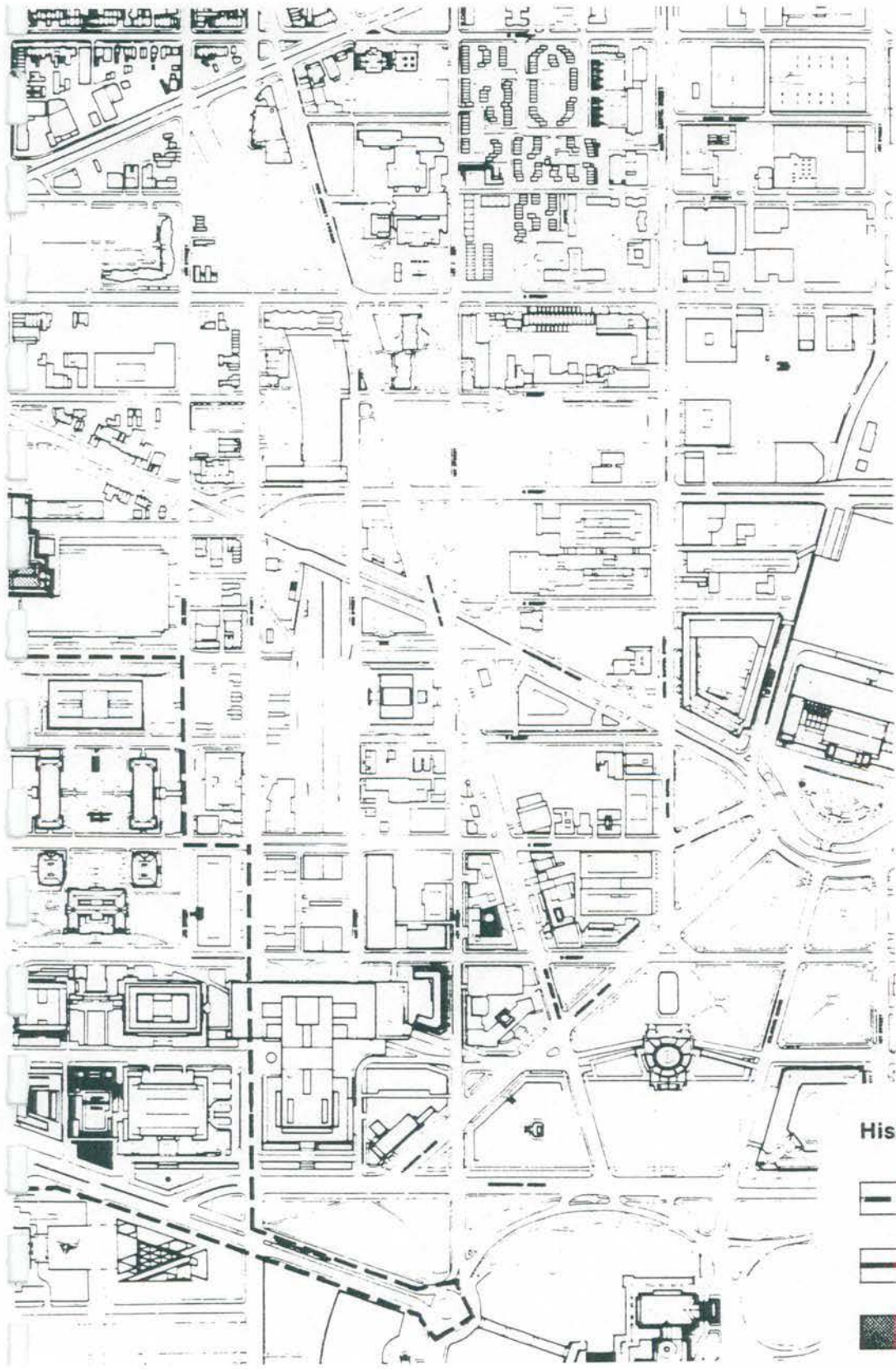
Since the work of the Mayor's Downtown Committee in the early 1980s and the adoption of the Comprehensive Plan in 1984-85, a great many government and private actions have been taken to carry out the vision for Downtown Washington. The D.C. Downtown Partnership, a public-private cooperative effort, was formed in 1984, and has successfully undertaken a variety of promotional and coordination activities on behalf of Downtown. Most of the government actions taken to date have been other than zoning. Zoning changes in Downtown, as recommended in the current Zoning Commission cases involving the Downtown Development District discussed in this report, is one important action among a range of actions that are needed.

Zoning changes cannot accomplish the entire job, obviously, but zoning changes are needed to prevent negative trends and to make possible some of the more exciting potentials of Downtown D.C.: a Downtown with exciting diversity of precincts and activities; of old and new buildings at varying scales; with daytime, evening and weekend shopping, cultural and entertainment activities; and surrounded by residential areas that also filter into the Downtown area, providing additional pedestrians who help humanize the area. In short, we can

achieve a Downtown that will become known as attractive, interesting and educational to visit, live and work -- a "Living Downtown."

The Office of Planning and the Zoning Commission have successfully completed phase one of this important rezoning of Downtown, in the adoption of the Downtown Shopping District, "SHOP," on 1989. The map amendments and the Downtown Development Overlay District proposed in this report would complete the task of rezoning Downtown for a successful future. The public hearings on this critical case begin on February 22, 1990.

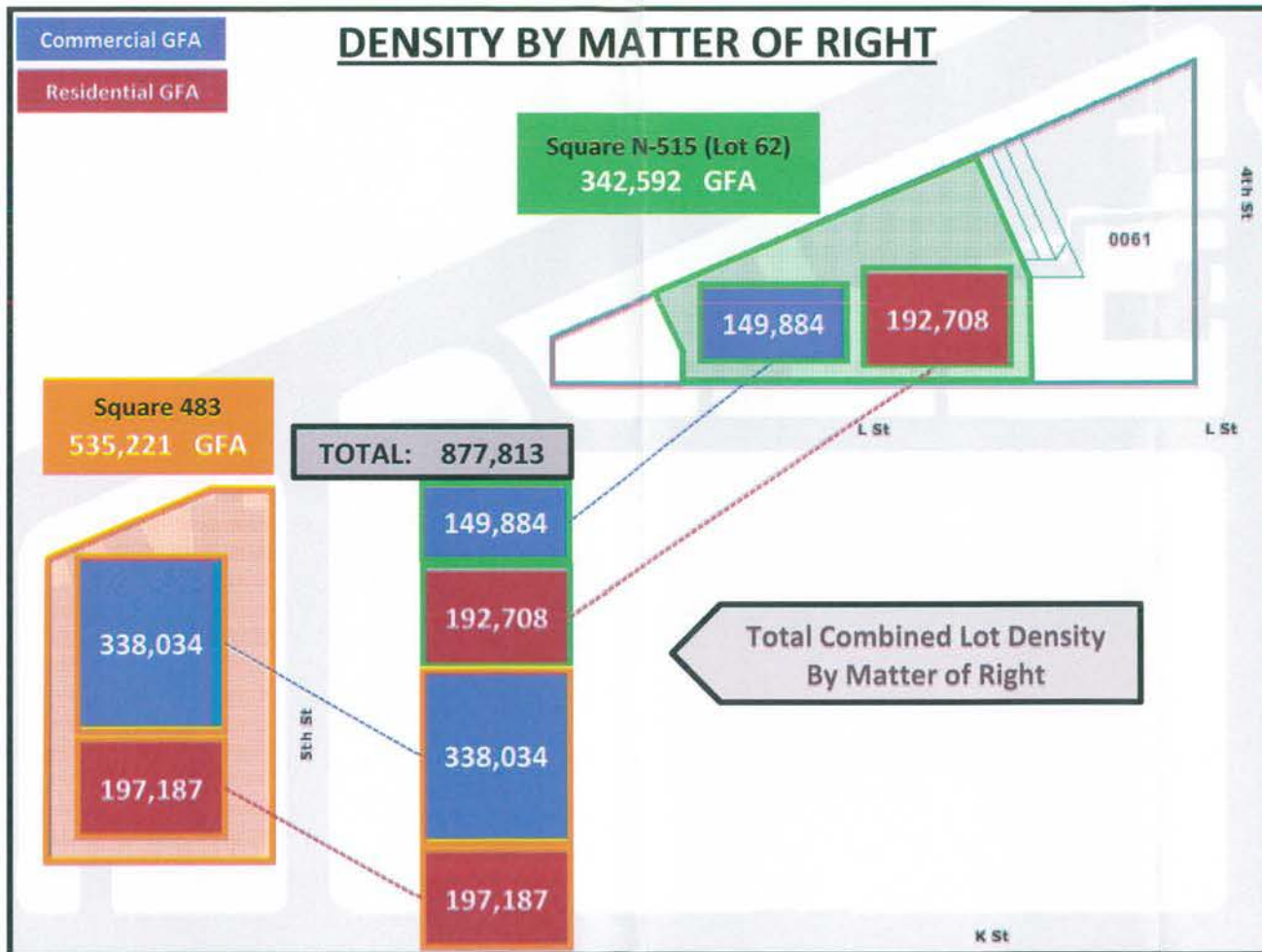


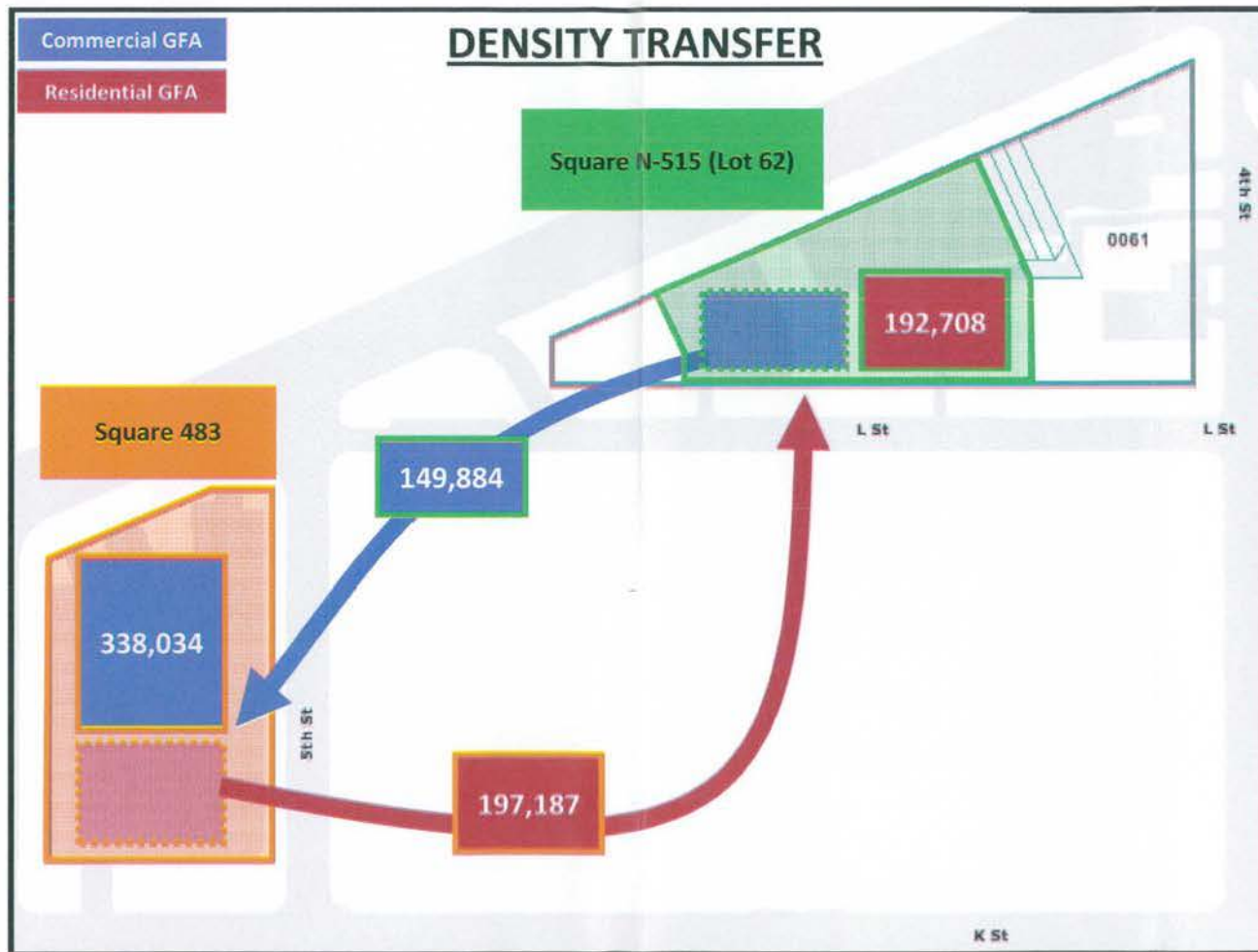


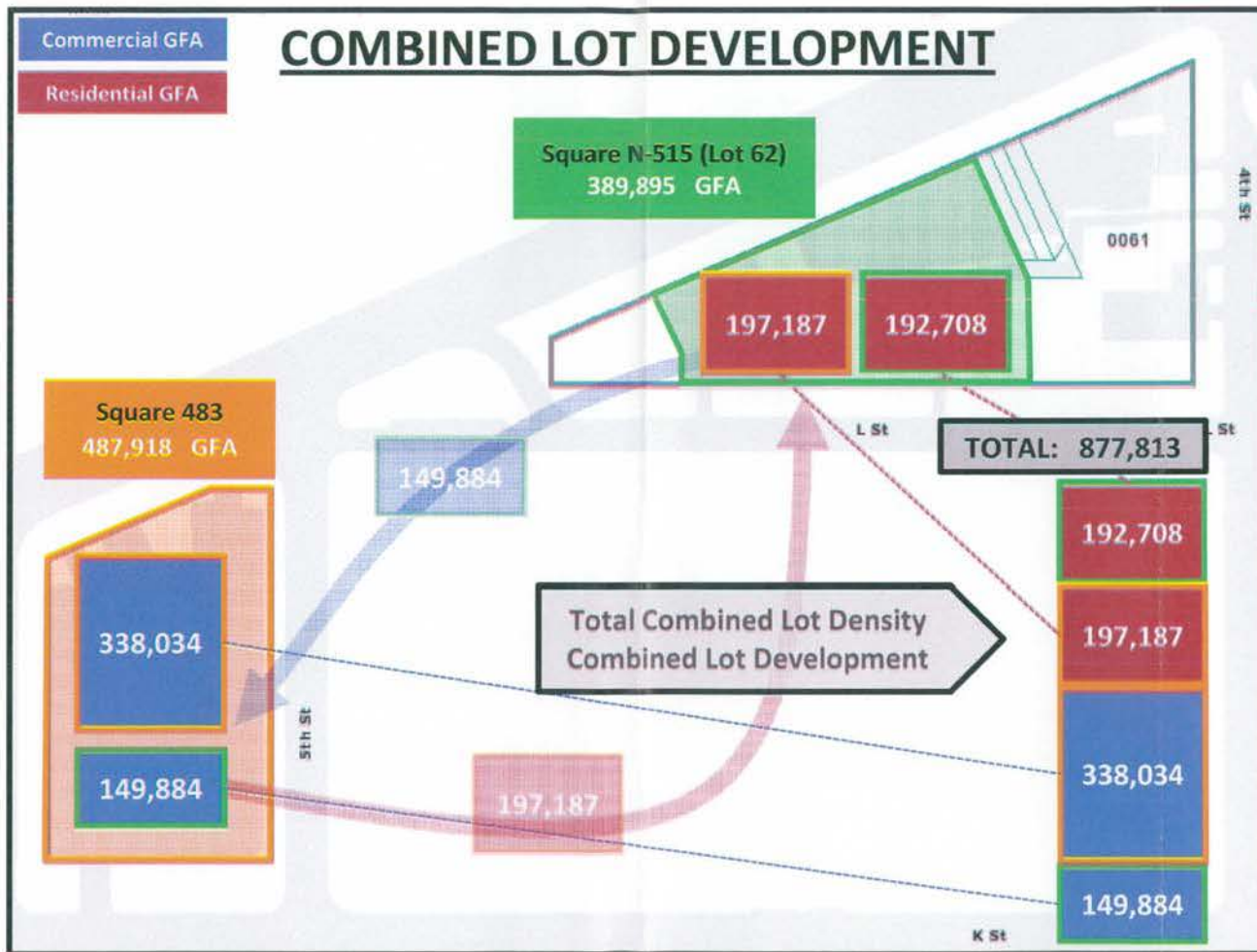
Historic Preservation

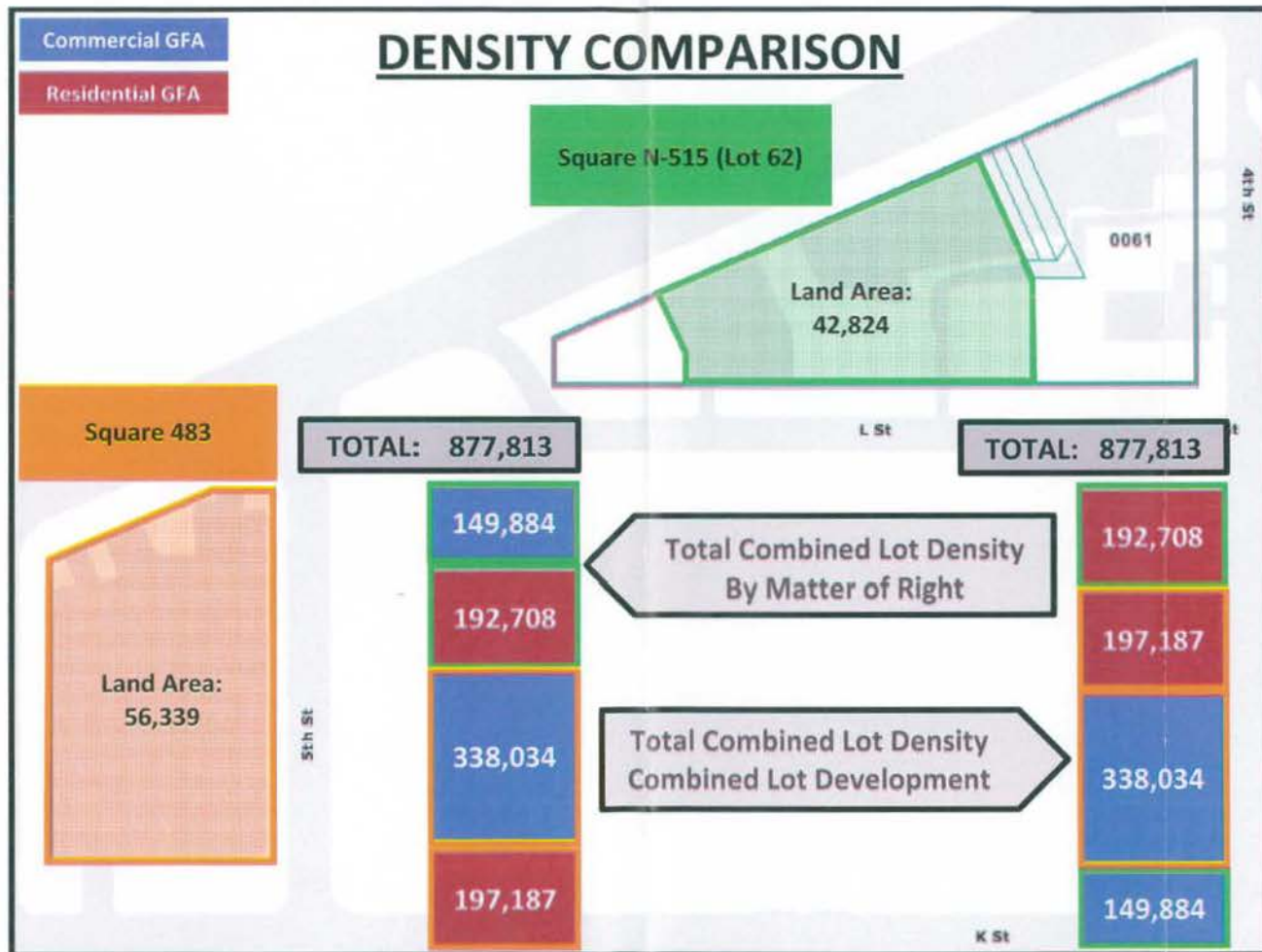
-  Pennsylvania Avenue National Historic Site
-  Downtown Historic District
-  Critical Frontage

E

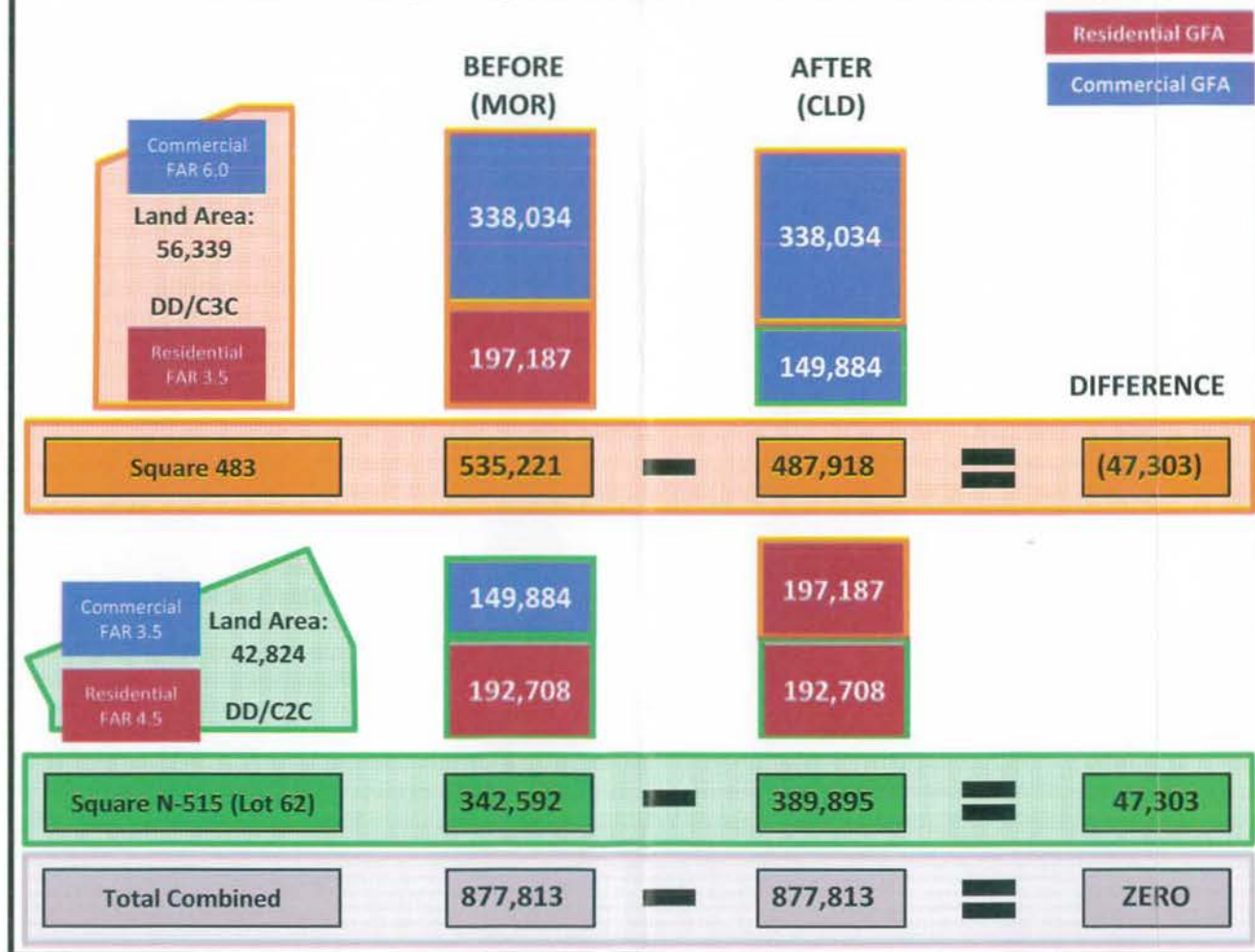








COMMERCIAL & RESIDENTIAL DENSITY COMPARISON: MATTER OF RIGHT (MOR) vs. COMBINED LOT DEVELOPMENT (CLD)



F

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

Memorandum

TO: District of Columbia Zoning Commission
FROM: Andrew Altman
DATE: October 6, 2000
SUBJECT: Downtown Development District Zoning Changes Set Down Report

0151
OCT 10 10 13 12

This set down report summarizes the Office of Planning's review of changes to the Downtown Development District Zoning Regulations recommended by the Mayor's Downtown Housing Task Force and the Downtown Action Plan. It also provides an outline of the report the Office of Planning will prepare for the public hearing on these matters.

BACKGROUND

Over the past two years the District has undertaken two distinct, but related efforts with the goal of completing the development of Downtown particularly as it is defined by the boundaries of the Downtown Development District. The first of these efforts, the *Downtown Action Plan* began in 1998 with the purpose of researching and identifying a clear set of public and private sector actions that would be needed to realize an active and thriving downtown. The *Action Plan* started with the policy objectives stated in previous work such as *Downtown DC: Recommendations for the Downtown Plan* (1982), *Comprehensive Plan* (1996), and the zoning changes suggested by *Rezoning for a Living Downtown* (1990) and enacted by the Title 11, Chapter 17, the Downtown Development District (1991). In addition the Interactive Downtown Task Force started in 1996 also provided useful insight.

Second was the Mayor's Task Force on Housing, which looked specifically at the problems the development of housing faces in the downtown real estate market. In April of 1999, Mayor Williams convened the Task Force made of members of the development community and various housing advocates. In early 2000, a draft of the Task Force's findings was delivered to the District. Office of Planning, which has been overseeing the production of the

ZONING COMMISSION

CASE No. 00-30T

EXHIBIT No. 1

Downtown Action Plan, asked the consultant to incorporate the findings of the Task Force into the Action Plan so a comprehensive set of recommendations could be delivered. The Downtown Action Plan was publicly vetted on August of this year.

Somewhat separate to this effort, but still a related and important resource is the North of Massachusetts (NoMa) Area Study for the area defined by Massachusetts Avenue, NW, New York Avenue, NW, and North Capitol.

With public comments on the Downtown Action Plan now received and the NoMa Study in its final phases, the Office of Planning is now prepared to begin the implementation of these recommendations. These efforts have resulted in several recommendations to be reviewed by the Zoning Commission, they are:

- Adjustment to the Combined Lot transfer mechanism to allow transfer of housing/office use to be active upon approval
- Increase the density for residential development on streets in the DD, which permit 130-foot tall buildings.

To these, the Office of Planning also wishes to add an adjustment to the Recreation Space requirement so it will accurately reflect the density permitted.

SUMMARY OF OFFICE OF PLANNING RECOMMENDATION

The Office of Planning Recommends that the Zoning Commission holds a public hearing to discuss these items.

COMPREHENSIVE PLAN

The Comprehensive Plan makes several references to downtown housing that are important to consider when reviewing these recommendations. First and foremost, a "living" downtown is a major theme of the Plan and re-establishing a residential community in the heart of the District (104.1) is an important part of this. To achieve a living downtown, the Comprehensive Plan set a goal of 5,400 residential units as a general goal (900.7). Currently the District may potentially fall well short of this goal if conditions do not change. In downtown at this time, there are only 1,750 residential units.

Other references to downtown housing in the Plan include:

- Encourage residential use as part of mixed-use projects south of Massachusetts Avenue, NW (903.2 (d));
- Encourage improvement and development of residential areas adjacent to and near downtown (903.2 (i));

- Prepare new zoning regulations that provide appropriate incentives for key land uses, such as residential, hotel, theatre, and arts-related facilities and historic preservation (940.2 (b)).
- High density residential to be adjacent to the Central Employment Area (find citation)
- Support the retention of established residential neighborhoods adjacent to the CEA

The language found in the Comprehensive Plan supports thorough review of the changes suggested by this case.

ZONING

History

The current zoning of the area that is now the Downtown Development District can be traced from the 1950's up through the 1970's when the major development in the Central Employment Area during this time was in the Connecticut Avenue/K Street area. Almost all of this development was new office buildings, with limited retail and only a few other uses (residential, hotel and arts), limited historic preservation and limited urban design amenities. Substantial redevelopment in the city's original Downtown area, between North Capitol Street and 15th Street, N.W., north of Pennsylvania Avenue, had yet to get underway. The area was deteriorated and presented a significant redevelopment opportunity. Especially in the 1970s, there was growing government and community concern about the "K Street look," a general expression that reflected the lack of a mix of uses, historic preservation and urban design amenities in the area west of 15th Street, N.W. There was also recognition that the original Downtown area east of 15th Street, N.W. was on the verge of significant renewal and there was a growing determination that the redevelopment of that area should aim for a higher standard than "K Street." The concept of a "Living Downtown" was first outlined in 1979.

The big "drivers" in 1979 included the near-completion of the Metrorail system in Downtown, early work of the Pennsylvania Avenue Development Corporation, the planned convention center moving toward construction, a growing demand for new office space and the availability of development sites east of 15th Street. Concepts and choices for a Living Downtown were outlined in the OP report, *A Living Downtown for Washington D.C.: Planning Concepts* (May 1981), and a similar document by the Greater Washington Board of Trade. The Mayor's Downtown Committee was appointed at the same time. After a year of work, the Mayor's Downtown Committee outlined a new vision for Downtown in its report, *Downtown D.C.: Recommendations for the Downtown Plan* (July, 1982). Those recommendations were adopted almost intact as Title IX: Downtown Plan Element" of the ***District Elements of the Comprehensive Plan for the National Capital*** when the Plan was adopted by the City Council in 1984.

The Downtown Plan had strong objectives and policies relating to preferred uses (retail, residential, hotel and arts). There were also strong policies relating to historic preservation,

among them the use of a full range of implementation tools, including transfers of development rights (Sec. 911.5(a)). Targets for new housing units and housing areas were outlined.

Planning work for the Downtown Development (DD) District overlay, began in the late 1980s. The SHOP District, which focused on mixing retail use into a core area was adopted in 1989. Hearings by the Zoning Commission on the DD District began in February 1990. The report, *Rezoning for a Living Downtown* (February 1990) provided the recommendations that were the basis for the DD, which was adopted as Chapter 17 of the Zoning Regulations in December of 1991 (as seen on the following page).

Current Regulations

In order to spur development in downtown, the DD created a comprehensive set of requirements and incentives. One of these was the creation of Housing Priority Areas, which offer the opportunity for greater density along with a requirement for a certain amount of FAR for housing. Table 1, below outlines impact on density in these priority areas.

DISTRICT	BASE DENSITY	DEVELOPMENT DISTRICT BONUS	MINIMUM RESIDENTIAL REQUIREMENT	RESIDENTIAL BONUSES	MAXIMUM DENSITY
C-2-C	6.0	2.0	4.5	0.5	8.5
C-3-C	6.5	3.0	3.5	0.5	10.0
C-4	8.5	1.5	2.0	0.5	10.5

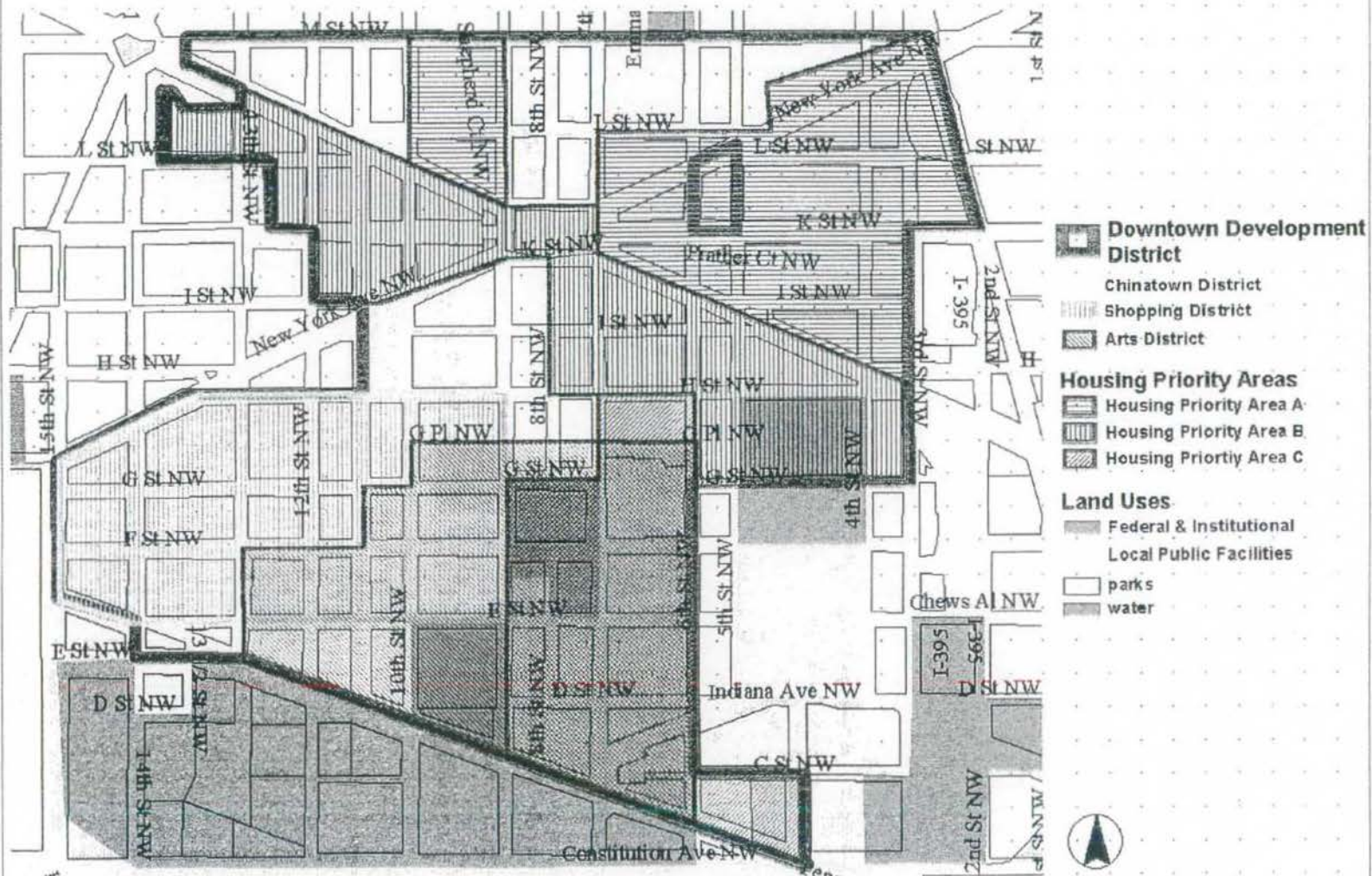
Table 1.

In addition, the DD created the Combined Lot Transfer mechanism. Concern was expressed that simply rezoning certain areas for residential use unfairly penalized landowners in those areas deemed appropriate for housing. Combined Lot Development was developed to spread the burden and allow for a system of compensation. The Combined Lot mechanism also dealt with the reality that housing requirements were imposed above commercial density, in order to avoid eroding the commercial "entitlement". While that preserved the commercial value, the resulting housing requirement was generally too small to constitute sufficient FAR for a residential building. Thus, in order to have sufficient numbers of units for efficient operation, the housing requirement of more than one site needed to be combined. Housing and Office use could be transferred between properties by agreement of the two owners. However, as a precaution the site receiving office development would not be able to proceed until the site receiving the housing use had received its Certificate of Occupancy.

PROPOSED ZONING MODIFICATIONS

As mentioned above, the Mayor's Task Force investigated the obstacles facing housing in the Downtown and prepared a set of recommendations designed to help housing development

Downtown Development District



Source: DC Office of Planning, Planning & Design Technology, Oct. 2000

overcome those obstacles. Chief of the obstacles is the need for housing to compete for land at prices driven by the office market. The focus of the task force's recommendation was therefore methods by which the playing field could be leveled. The Task Force identified regulatory changes necessary to facilitate downtown housing development and provided sample language (see Attachment 1). Summaries of the Task Force recommendations most relevant to zoning are as follows:

Residential Density

Currently housing and office have the same FAR limitations even though they have different floor-to-floor height requirements, market demands, and infrastructure needs. Increasing a site's allowable density can improve the property's potential revenue, thereby making it more competitive with office space.

The Task Force recommends that in areas of the DD with a height limit of 130 feet, density increases should be permitted for housing use only. The Task Force notes that FAR for housing under optimal conditions could be increased from 10.0 to 13.0. As an example this recommendation would enable a developer of a 20,000 square foot lot to go from a 200,000 square foot building to 260,000 square feet. To ensure these changes actually provide more housing, the Office of Planning has provided sample language that limits the amount of FAR that can be transferred via combined lot. This will be more thoroughly discussed in OP's final report.

The goal of Combined Lot Zoning was to develop a method where the differences in value could be transferred among owners, rather than burdened by a few. Another approach is to balance the value of uses so that housing downtown can compete with commercial development. Allowing housing greater density through reducing floor height restrictions has previously been a possibility through PUD applications. FAR is designed to control a building's impact on its neighborhood. While releasing the regulation of FAR and allowing it to be determined by the market does not address the potential impacts, such as traffic congestion, density of development in downtown DC is still regulated by height limits, lot coverage requirement, and yard setbacks. Therefore, this report recommends that the Zoning Commission review allowing housing density to be free of FAR limitation in the DD on properties where the height limit is 130 feet.

Combined Lot Transfers

The Task Force has proposed that developers should be able to "sell" their housing requirement to a receiving site, which would agree to enter into a covenant creating a permanent requirement for housing on the receiving site. The money pledged to the receiver would be escrowed into a development account. The money in escrow could only be used when permits are drawn or when the first construction draw is made. The primary issue, which will be addressed in more detail by OP's final report, is how to enforce the permanency of the covenant and guarantee housing is developed in an appropriate time.

The Task Force also raised the issue of allowing Combined Lot Transfers of use to occur between the "B" and "C" Housing Priority Areas. However, no consensus was reached. Housing Priority Area C was created deliberately separate to cover C-4 area, where presumably

land values were highest and where the bulk of the PADC housing was being created, in order to compliment that housing and help create a critical mass for a true neighborhood. Concern was expressed that relaxing the B & C restrictions would dilute this critical mass. In addition, the housing being built on Square 457 with land cost subsidy from GSA would potentially absorb much of what is required

Recreation Space

As the recent interest in downtown housing has grown over the past several months, another issue has been raised. Residential development in commercially zoned areas has a recreation space requirement based on a percentage of the total square feet of the project. The table below breaks down the requirement zone by zone.

DISTRICT	PERCENTAGE OF GROSS FLOOR AREA
C-1, C-2-A	20%
C-2-B, C-2-C, C-3-A	15%
C-3-B, C-3-C	10%
C-4, C-5 (PAD)	5%

Table 2.

The DD permits housing projects to achieve greater density then they normally would. This greater density also means a corresponding increase in the total square footage of required recreation space. However, the percentage used to calculate the appropriate amount of recreation space is from the base underlying classification not the equivalent that DD the bonus achieves. Table 1 illustrates that the density of the DD/C-2-C (8.5) is equivalent to the base C-4 (also 8.5), however in Table 2 the required recreation space of the C-2-C (15%) is much greater than the C-4 (5%). Several factors suggest this should be reviewed. They are:

- Downtown sites where housing is competitive tend to be small or irregularly shaped with little opportunity for outdoor space on the ground floor.
- In the DD, with lot coverage requirements reducing potential floor area, the required recreation space even with the use of available roof top space, will add up to greater than one entire floor, as demonstrated by Table 3.
- The goal of the Downtown Development District is the creation of a lively downtown with active pedestrian use. Downtown has many recreational and entertainment activities that residents should be encouraged to use. Reduction of available private recreation space in dense urban areas should be helpful in shifting activity to public recreation area.

DISTRICT	LAND AREA	MAXIMUM FAR	TOTAL SQ FT	RECREATION REQUIREMENT	REQUIRED REC SPACE
C-2-C	20,000	6.0	120,000	15%	18,000
DD/C-2-C	20,000	8.5	170,000	15%	25,500
C-4	20,000	8.5	170,000	5%	8,500

Table 3

CONCLUSION

The Office of Planning finds that the recommendations discussed above are in accordance with the goals and policies of the Comprehensive Plan and should therefore be considered by the Zoning Commission for public hearing. The focus of concerns to be discussed in the Office of Planning's final report are developing a sufficient enforcement mechanism to guarantee housing production through Combined Lot and the overall effect of much higher residential densities on downtown and the quality of housing. For the Zoning Commissions consideration, the Office Planning has provided sample language that addresses our initial concerns (see Attachment 2). Information and a discussion of our concerns will be provided in OP's final report to the Zoning Commission

AA/ar

ATTACHMENT ONE

SAMPLE ZONING TEXT AMENDMENTS
AND STATUTORY REVISIONS TO IMPLEMENT
HOUSING TASK FORCE RECOMMENDATIONS

I. ZONING TEXT AMENDMENTS

A. Modify Restrictions Regarding Combined Lot Developments Between Certain Housing Priority Areas

1. Revise Section 1706.9 of the Zoning Regulations by deleting the words “, but not by properties in different Housing Priority Areas” and inserting, in lieu thereof, the words “and by two (2) or more properties located within Housing Priority Area B and Housing Priority Area C, but not by properties located in Housing Priority Area A and (or in conjunction with) properties located in any other Housing Priority Area.”

B. Permit Additional Floors of Housing Subject to Existing Building Height Restrictions As a Consequence of Lesser Floor-to-Ceiling Height Requirements of Residential Development

1. Add a new Subsection 1706.28 as follows:

1706.28 Notwithstanding Sections 1706.4, 1706.5, 1706.6 or 1706.7, no maximum FAR shall be applicable to any building that is devoted solely to residential uses or to a combination of residential uses and retail, service, arts and entertainment uses listed in Sections 1710.1 and 1711.1; Provided, that any such building shall comply with the maximum permitted building height requirements of Sections 1701.7 and 1706.15. This subsection shall be specifically inapplicable to any building that contains any uses specified in Section 1712.1.

C. Revise the Combined Lot Development Requirements to Permit the Development of a “Sending Site” Upon the Recordation of a Declaration of Covenants on the “Receiving Site”

1. Delete Section 1706.13 and insert, in lieu thereof, the following:

1706.13 If a development project includes both required residential uses and nonresidential uses, whether on the same lot or in a combined lot development, no building permit for the development of the nonresidential uses shall be issued until the following requirements are met:

- (a) A declaration of covenants running with the land in form satisfactory to the Zoning Administrator shall be recorded against

the property of the receiving lot that requires the receiving lot to be developed only in accordance with the preferred use requirements of this chapter;

- (b) The declaration of covenants shall name as a beneficiary at least one nonprofit organization that is satisfactory to the Zoning Administrator and the Director of the Office of Planning. The declaration of covenants shall require that the instrument shall not be amended or terminated without the consent of the beneficiaries. The Zoning Administrator shall be authorized to assess the declarant such fees as are reasonably necessary to pay the expenses of the beneficiaries.
- (c) The owner of the sending site shall deliver to the Zoning Administrator a certification prepared by a generally recognized title company that all monetary consideration paid or to be paid to the owner of the receiving site has been placed in an escrow account and will be available to the owner of the receiving site only upon (i) the issuance of a building permit for the construction of a building containing the preferred uses and (ii) 50% completion of the residential project (as certified to the Zoning Administrator by the architect for the residential project).

2. Make conforming amendments to Section 1708 as necessary.

II. STATUTORY REVISIONS

A. Establish a 10 Year Ad Valorem Tax Abatement for New Residential Development in the Downtown Development District

1. D.C. Code Section 47-801 is amended by adding a new subsection to read as follows:

___ Notwithstanding subsection () of this section, the assessed value of all real property located in the Downtown Development District (as defined below) that is improved by new construction or a building addition devoted solely to residential uses (as defined below) or residential uses in combination with other preferred uses (as defined below) subsequent to the effective date of this Act shall be the assessed value of such property established pursuant to the provisions of this title during the tax year that immediately preceded the start of construction of such new construction or the commencement of such addition. Such assessed value shall continue for a period of ten consecutive tax years provided that such new construction or building addition is commenced during or prior to tax year 2005.

___ This Act shall not affect the right of a real property owner pursuant to section 426a of the District of Columbia Real Property Tax Revision Act of 1974, effective March 17, 1993

(D.C. Law 9-241; D.C. Code Section 47-825.1) to appeal from the assessment of the tax year that immediately preceded the start of construction of any new construction or the commencement of any addition.

__. For the purposes of this Act, the term "Downtown Development District" shall have the meaning ascribed to it in Chapter 17 of the Zoning Regulations of the District of Columbia (11 DCMR Zoning), as amended, the term "residential uses" shall be as defined in Section 1799.1 of the Zoning Regulations of the District of Columbia, as amended, and the term "preferred uses" shall mean those retail, service, arts and entertainment uses listed in Sections 1710 and 1711 of the Zoning Regulations of the District of Columbia, as amended.

__. The provisions of this Section shall be inapplicable to any person who or any property which receives any benefits from the Tax Increment Financing Authorization Act of 1998 or any amendments thereto.

Sample Zoning Text Amendments and Statutory Revisions to Implement
Housing task Force Recommendations
Downtown Housing Zoning Text Amendments
Draft Text

- 1706.4 In the DD/C-2-C zone the following residential and mixed use provisions shall apply:
- (a) The maximum FAR shall be 8.0 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;
 - (b) Each lot shall provide on-site or account for off-site in a combined development no less than 4.5 FAR of residential use;
 - (c) On a lot that is south of Massachusetts Avenue, up to 1.8 FAR this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section;
 - (d) On a lot that is north of Massachusetts Avenue, up to 1.35 FAR of this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and
 - (e) If such affordable housing is provided off-site, commercial or nonresidential FAR may be substituted on-site or in a combined lot development by the same amount of gross floor area as the affordable housing up to the maximum limit of 1.8 FAR south of Massachusetts Avenue or 1.35 FAR north of Massachusetts Avenue.
 - (f) **The area of residential recreation space required by §773 may be reduced to 5% of the gross floor area devoted to residential use provided the bonus granted by this provision is used solely for residential uses.**
 - (g) **The increase in gross floor area provided by this subsection may not be used to accept the transfer of residential use through a combined lot development.**
- 1706.5 In the DD/C-3-C zone the following residential and mixed use provisions shall apply:
- (a) The maximum FAR shall be 9.5 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;
 - (b) Each lot shall provide on-site or account for off-site in a combined lot development no less than 3.5 FAR of residential use;
 - (c) On a lot that is south of Massachusetts Avenue, up to 1.4 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section;
 - (d) On a lot that is north of Massachusetts Avenue, up to 1.05 FAR of the residential requirement may be met by constructing or financially assisting

affordable housing as defined in this chapter and as governed further by the provisions of this section; and

- (e) If such affordable housing is provided off-site pursuant to paragraph (c) or (d) of this subsection, commercial or nonresidential FAR may be substituted on-site, or in a combined lot development, by the same amount of gross floor area as the affordable housing, up to the maximum limit of 1.4 FAR south of Massachusetts Avenue or 1.05 north of Massachusetts Avenue.
- (f) **The area of residential recreation space required by §773 may be reduced to 5% of the gross floor area devoted to residential use provided the bonus granted by this provision is used for residential uses.**
- (g) **The increase in gross floor area provided by this subsection may not be used to accept the transfer of residential use through a combined lot development.**

1706.7 The maximum permitted gross floor area may be increased by 0.5 FAR up to a maximum of 8.5 FAR in the DD/C-2-C District, 10.0 FAR in the DD/C-3-C District, and 10.5 FAR in the DD/C-4 District; Provided, that the following occurs:

- (a) The increase in gross floor area may be achieved by receiving transferable development rights as provided in § 1709, which floor area may be devoted to any permitted use on the receiving site;
- (b) The increased gross floor area may be entirely devoted to residential use; and
- (c) The increase may be earned by constructing or assisting affordable housing as defined in this chapter and as further governed by the provisions of this section, or by earning retail bonus density as provided in paragraph 1706.16.
- (d) **Notwithstanding Sections 1706.4, 1706.5, or 1706.6, no maximum FAR shall be applicable to any building that is devoted solely to residential uses or to a combinations of residential uses and retail, service, arts and entertainment uses listed in Sections 1710.1 and 1711.1; Provided, that any such building shall comply with the maximum permitted building height requirements of Sections 1701.7 and 1703.15 and the yard and lot occupancy requirements of the applicable zone. This subsection shall be specifically inapplicable to any building that contains any uses specified in Section 1712.1.**
- (e) **The increase in gross floor area provided by subsection 1706.7(d) may not be used to accept the transfer of residential use through a combined lot development.**

1706.13 If a development project includes both required residential uses and nonresidential uses, ~~whether on the same lot or in a combined lot development,~~ no Certificate of Occupancy shall be issued for the nonresidential space until a Certificate of Occupancy has been issued for the residential space: Provided, that, the following requirements are met:

- (a) A mixed residential-commercial project for which the Pennsylvania Avenue Development Corporation and a private developer have executed a contract requiring commencement of construction of the residential portion of the project by a date certain, may comply with the timing requirements of §1708.1(f) instead of the timing requirements of this subsection; and
- (b) At least seventy-five percent (75%) of the commercial development that triggers the residential use requirement shall comply with the timing requirements of this subsection.

1708 COMBINED LOT DEVELOPMENT

- 1708.1 Two or more lots may be combined for the purpose of achieving the required FAR equivalent for preferred uses or to transfer bonus density from one lot to one or more other lots; Provided, that the following occurs:
- (a) The lots may be located in the same square or in different squares;
 - (b) A combined lot development shall be eligible for the density and area allowances permitted in §§1703, 1704, 1705 and 1706;
 - (c) When combined lot development involves only linkage, i.e., the allocation of gross floor area required by this chapter to be devoted to preferred uses (hereinafter “linkage project”), such combined lot developments shall be limited to lots located within the same subarea as defined in §§1703, 1704, 1705, and 1706, except as provided in §1708.1(d);
 - (d) Notwithstanding the requirements of paragraph (c) of this subsection and of §1706.9 of this chapter, a historic property that is identified and governed by §1707.4 of this chapter, is eligible to serve as the location of required residential uses within a combined lot development, even if the historic properties are located outside the Housing Priority Area as established in §1706.2.
 - (e) In a linkage project, the required floor area to be devoted to preferred uses may be transferred from the sending lot to a receiving lot, on which the required space for preferred uses shall be incorporated into the building design and occupied: Provided, that any applicable ground level uses required on any affected lot shall not be transferred, but shall be provided on each sending lot and receiving lot;
 - (f) In a linkage project, the certificate of occupancy for the development sending FAR for preferred uses to another development may be revoked, if no building permit for the receiving site has been issued to the developer within three (3) years after the issuance of the certificate of occupancy for the sending site, or if no certificate of occupancy for the receiving site has been issued within five (5) years after the issuance of the certificate of occupancy for the sending site;
 - (g) **If a development project includes both required residential uses and nonresidential uses in a combined lot development, no building permit for the development of the nonresidential uses shall be issued until the following requirements are met:**

- (i) A declaration of covenants running with the land in form satisfactory to the Zoning Administrator shall be recorded against the property of the receiving lot that requires the receiving lot to be developed only in accordance with the preferred use requirements of this chapter;
 - (ii) The declaration of covenants shall name as a beneficiary the District of Columbia and at least one nonprofit housing advocate organization that is satisfactory to the Zoning Administrator and the Director of the Office of Planning. The declaration of covenants shall require that the instrument shall not be amended or terminated without the consent of the beneficiaries and on substantial change in circumstances. The covenant shall require the declarant to pay such fees as are reasonably necessary to pay the expenses of the beneficiaries.
 - (iii) The owner of the sending site shall deliver to the Zoning Administrator a certification prepared by a generally recognized title company that all monetary consideration paid or to be paid to the owner of the receiving site has been placed in an escrow account and will be available to the owner of the receiving site only upon (i) the issuance of a building permit for the construction of a building containing the preferred uses and (ii) 50% completion of the residential project (as certified to the Zoning Administrator by the architect for the residential property.
 - (iv) If a certificate of occupancy for residential project has not been issued within 5 years of the date of occupancy for the sending site the escrow any accrued interest shall be released to the DC Housing Production Trust Fund, at the request of the owner of the receiving site a 3-year extension may be granted if the Zoning Administrator determines that the receiver has acted in good faith and best effort.
- (h) When combined lot development involves a transfer of bonus density to another lot or lots, by itself or in addition to a linkage project, such density transfer may occur to any lot or lots within the DD District or in a receiving zone as provided in §1709 of this chapter, except as excluded by other provisions of this chapter and title;
- (i) The maximum permitted floor area for all uses, the minimum required floor area for preferred uses, and bonus density, if applicable, shall each be calculated as if the combined lots were one lot, and the total project shall conform with the maximum and minimum floor area requirements;
- (j) A building that has been constructed or that is under construction as of January 18, 1991 is not eligible to utilize the combined lot development provisions, nor to earn bonus density or transferable development rights pursuant to §1709;
- (k) No transfer of required gross floor area for preferred uses shall be effective under this section unless an instrument, approved by the Corporation Counsel to be legally sufficient to effect such a transfer and approved in content by the Director,

Office of Planning and the Zoning Administrator, has been entered into among all of the parties concerned, including the District of Columbia:

- (l) A certified copy of the instrument of transfer shall be filed with the Zoning Administrator, Department of Consumer and Regulatory Affairs, prior to approval by said Department of any building permit application affected by such transfer;
- (m) The document shall be recorded in the office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this arrangement for transfer of required floor area or bonus area; and
- (n) The notice of restrictions and transfer shall run with the title and deed to each affected lot.