

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
441 4th Street, N.W.
Washington, D.C. 20001

Appeal of Valor 1350 Maryland, LLC

Appeal No. 18439

DISTRICT OF COLUMBIA'S PRE-HEARING STATEMENT

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), by and through undersigned counsel, respectfully submits its Pre-Hearing Statement in opposition to the appeal filed by Valor 1350 Maryland, LLC ("Appellant") on July 3, 2012.

Appellant initially appealed DCRA's issuance of Building Permit No. B1107494, which was issued on May 4, 2012 and allowed for the establishment of a gasoline service station at 1400 Maryland Ave., NE (the "Property") pursuant to BZA Order No. 17825. On November 13, 2012, Appellant filed a motion with the Board seeking to amend its appeal to include Building Permit No. B1209455, which was issued on November 1. Building Permit No. B1209455 allowed for the alteration of the layout of the existing building on the Property to establish a grocery store use. The Board must deny this appeal as Appellant has not identified a zoning error with either permit.

In BZA Order No. 17825, the Board granted a special exception allowing for the establishment of a gasoline service station at the Property. That order was issued on January 26, 2010. The plans submitted to the Board as part of that case show that the applicant intended to

alter the existing, one story building on site and to use it to house a convenience store.¹ The alterations to the existing building included demolishing the front portion of the building to reduce the size of the building by 385 sq. ft. *See* BZA Order No. 17825 at p. 9 and the Proposed Site Plan labeled as Exhibit 60 in Case No. 17825 attached hereto as Exhibit A.

On or about May 31, 2011, the application for Building Permit no. B1107494 was filed. Initially, the plans for that permit included the floor lay out plan for the grocery store, but those plans were revised to change the use of that space to storage. *See* Ground Lessee's Opposition filed on November 20, 2012 at Exhibit A. Building Permit no. B1107494 was then issued on May 4, 2012 and construction began.

On May 24, 2012, the application for Building Permit No. B1209455 was filed with DCRA. The proposed scope of work for that permit was to include the grocery store use into the existing building. *See* Ground Lessee's Opposition filed on November 20, 2012 at Exhibit B.

This appeal was filed on July 3, 2012. ANC 6A filed a separate appeal on July 2, 2012 (BZA appeal No. 18438), but subsequently withdrew that appeal on October 12, 2012.

1) Gas station use is permitted under BZA Order No. 17825

It should be beyond dispute that there is no error in DCRA's approval of the gasoline service station use. The application for the building permit to establish the gas station was filed within two years of the issuance of the BZA order and thus did not expire under 11 DCMR § 3130.

¹ For purposes of consistency and accuracy, the convenience store will hereafter be referred to as a "grocery store". Notwithstanding the Board's use of the term "convenience store" in BZA Order No. 17825, that use is not an established use under the Zoning Regulations. The Board has previously determined that, for the purposes of the Zoning Regulations, a convenience store is synonymous with a grocery store, which is an established use. *See* BZA Order No. 18146 at p. 4. Accordingly, the term "grocery store" appears on Building Permit No. B1209455.

2) Grocery store use is permitted as a matter of right

The grocery store on the Property is permitted as an accessory use to the gas station and it would also be permitted as a principal use in the HS-A Overlay. A grocery store is allowed as a matter of right under 11 DCMR § 701.4, which is incorporated into the HS-A Overlay by 11 DCMR §§ 1302.2 and 1320.3.

3) Alterations to the existing building are not subject to the new H Street Overlay design standards

Appellant, in its Motion to Amend the appeal, argues that the one-story building on the Property is now subject to recently enacted design requirements of the H Street Overlay. Specifically, Appellant cites 11 DCMR §§ 1342.2 and 1324.10, which were created by Zoning Commission Order No. 10-19 (issued December 20, 2011).

The alterations to the building under Building Permit No. B1107494 were authorized by the Board in BZA Order No. 17825 and are not subject to subsequent amendments of the Zoning Regulations. The Board approved the site plan that it received as a part of that application. The site plan clearly indicates that the building will be reduced in size and the Board incorporated that into the text of its order. *See Exhibit A* and *BZA Order No. 17825* at p. 9, 11. Accordingly, the Ground Lessee is correct that under 11 DCMR § 3202.6, the building permit is subject to the Zoning Regulations in effect on the date BZA Order No. 17825 was promulgated.

Even if the Board determines 11 DCMR § 3202.6 does not apply here, the alterations to the existing building are allowed as a matter of right. The amendments to the H Street Overlay under Zoning Commission Order No. 10-19, made the building on the Property nonconforming. Under 11 DCMR § 2001.2, structural alterations to a nonconforming structure are permitted.

Here, the nonconforming building was reduced in size by 385 sq. ft. No nonconforming aspects of the building were expanded or enlarged.

While, the Board has held that razing a nonconforming building limits the property owner's rights to reconstruct, that was not the case here. *See e.g. Appeal No. 17747 of Stephanie Wallace* (October 30, 2009) (nonconforming house could not be reconstructed after it had been "completely demolished"). The building on the Property was not razed. The entire rear wall and portions of both side walls remained during construction. The demolition of a portion of a nonconforming building is permitted as a matter of right. *See e.g. Application No. 17341 of Simon Bell and John Roegner* (July 6, 2005) (no BZA relief needed to reduce size of nonconforming building).

4) Appellant's other objections do not constitute a zoning error

The other issues Appellant raises do not identify an error in administering the Zoning Regulations. Specifically, the median strip required by the Board under Condition No. 11 in BZA Order No. 17825 has been installed. Additionally, an application to combine lots 803 and 21 into a single record lot has been submitted to the District of Columbia Office of the Surveyor. Due to the length in time in processing a subdivision application and to avoid unnecessary delay, DCRA allows permit applicants to obtain building permits and begin construction while the subdivision is pending, provided that the subdivision is complete before the final inspection is made.

Accordingly, Building Permit nos. B1107494 and B1209455 were not issued in error and the Board must deny this appeal.

Respectfully Submitted,

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Attorney General for the District of Columbia

MELINDA M. BOLLING
General Counsel for the Department of Consumer
and Regulatory Affairs

November 26, 2012



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Department of Consumer and Regulatory Affairs
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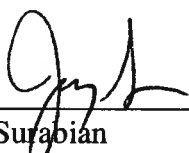
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served by email, this 26th day of November 2012, to the following:

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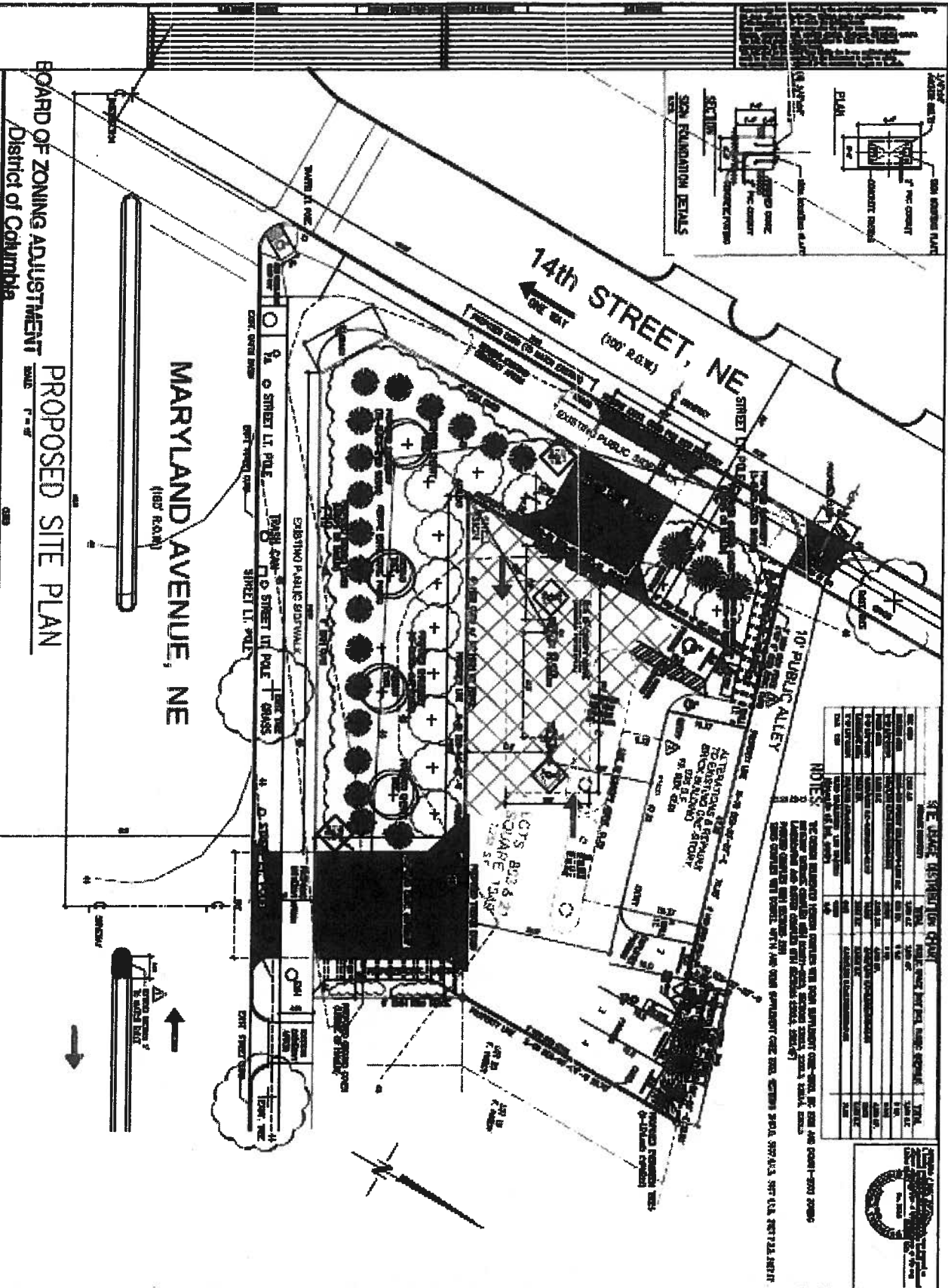
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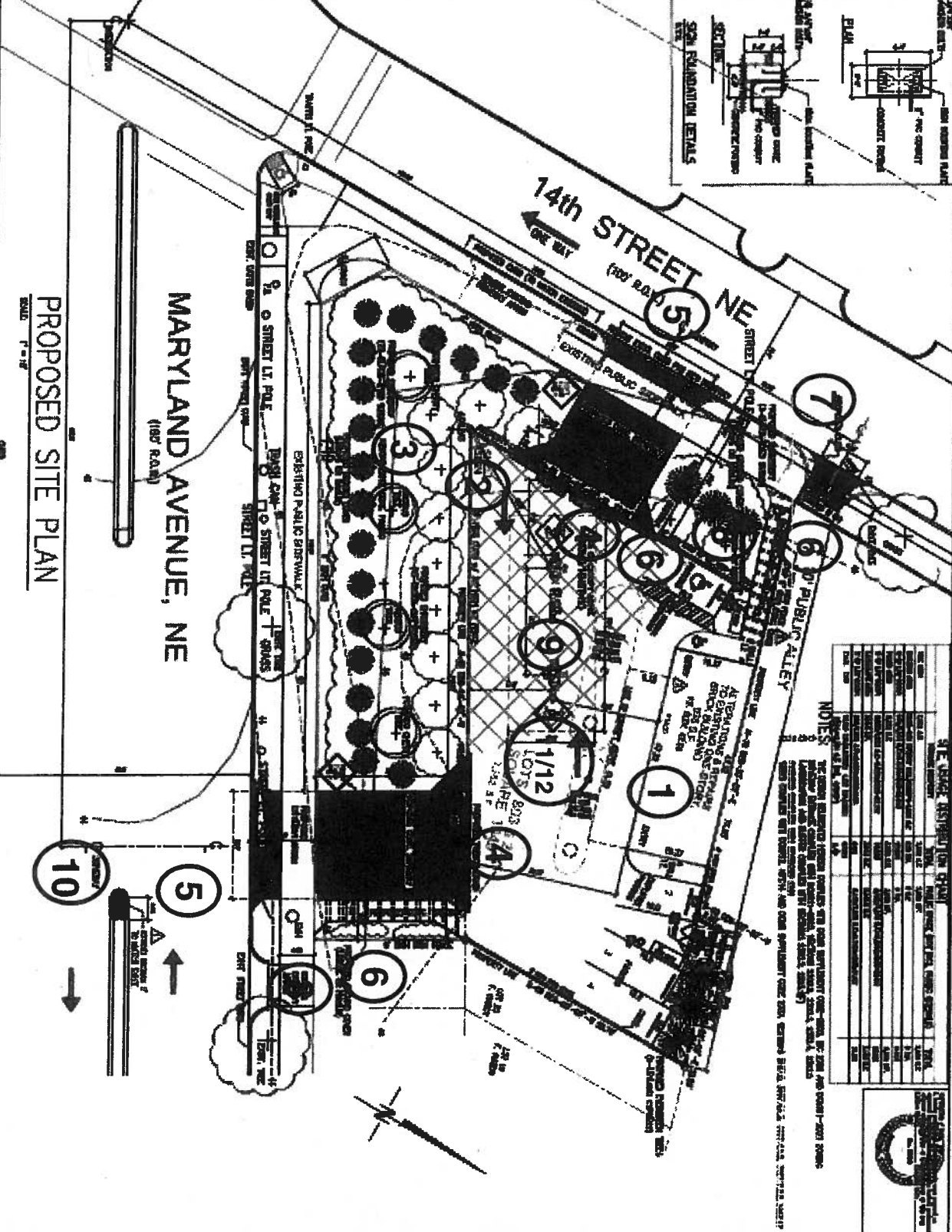
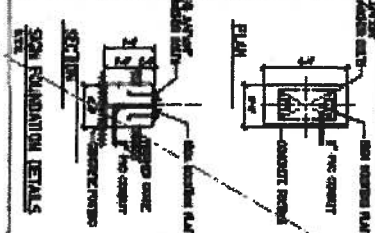


Jay Surabian

EXHIBIT A



SEAL REGISTERED PROFESSIONAL ENGINEER STATE OF DISTRICT OF COLUMBIA NO. 12345 DATE: 12/15/2011	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION	HAZARD AND AEROSOL HAZARD IDENTIFICATION HAZARD DESCRIPTION HAZARD SEVERITY HAZARD MITIGATION
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NOTES

1. SEE SHEET 151-101 FOR PLAN.
2. ALL DIMENSIONS ARE IN FEET AND INCHES.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
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PROPOSED SITE PLAN
 SCALE: 1" = 10'

MARYLAND AVENUE, NE
 (100' R.O.W.)

14th STREET NE
 (100' R.O.W.)

NOTES

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2. ALL DIMENSIONS ARE IN FEET AND INCHES.

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10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

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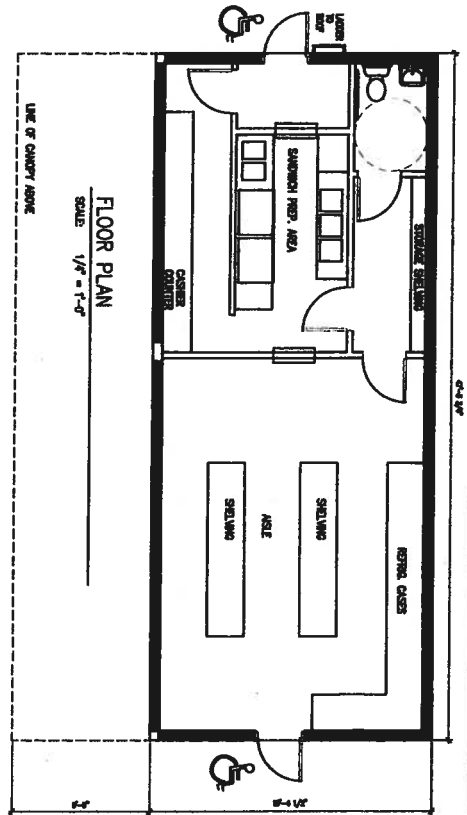
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PROPOSED SITE PLAN

LEGEND

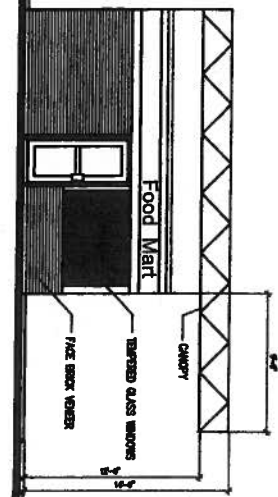
1	EXISTING BUILDING	2	EXISTING PARKING
3	EXISTING DRIVEWAY	4	EXISTING LANDSCAPE
5	EXISTING STREET	6	EXISTING ALLEY
7	EXISTING SIDEWALK	8	EXISTING CURB
9	EXISTING FENCE	10	EXISTING SIGN

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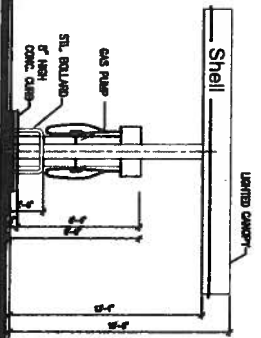


FLOOR PLAN
SCALE: 1/4" = 1'-0"

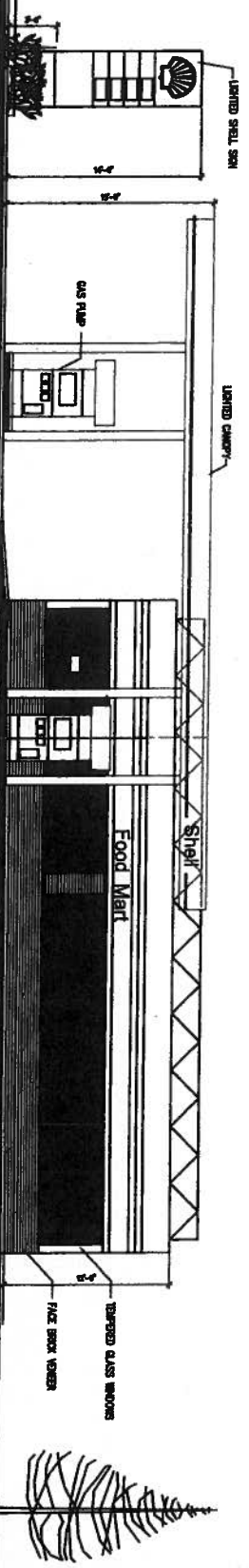
LINE OF CARRY AWAY



LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



FRONT ELEVATION
SCALE: 1/4" = 1'-0"



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**DWG. PERIODICALLY
MAINTENANCE
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SPRINGFIELD, VA 22151
(703) 750-6810**

Project Name / Address
FOOD MART-CONVENIENCE STORE
1400 MARYLAND AVENUE, NE
WASHINGTON, D.C. 20002

LOT: 1049
LOT AREA: 7,282 SF
APPLICABLE CODES: 2002 DCOR SUPP.
USE GROUP: 12
CONSTRUCTION TYPE: 2A

Revision	Date	By
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

ARCHITECTURAL
FOOD MART-CONVENIENCE STORE
FLOOR PLAN
ROOF PLAN

07/16/02
A1

Site Plan Changes

1. **Building** – size reduced by 385 sq.ft to improve vehicular circulation; façade to be brick per neighbor's request; 2 glass doors added to side entrances for security.
2. **Shell Fuel Cost Sign** – repositioned onto private property; sign size to conform with DCRA standards.
3. **Landscaping** – will plant shrubs and flowers not to exceed 42" on public space; conform with DDOT and OP guidelines including more ground cover and ornamental trees.
4. **Trench drains** on private property.
5. **Curb cuts** – reduced to one curb cut on each street; 14th St. curb cut moved North per DDOT suggestion.
6. **Perimeter Fence** – 6" high curb with 36" iron fence around perimeter of private property to keep vehicles off public space.
7. **No entrance to property from alley.**
8. **Sidewalks** provided to convenience mart (Maryland Avenue sidewalk added at suggestion of DDOT)
9. **Reduced Gas Dispensers and Pumps** – 2 gas dispensers and 4 pumps instead of 4 dispensers and 8 pumps.
10. **Median Strip on Maryland Avenue** – Extended 5' to the West.
11. **"Keep Right" Signs** at pumps for driver safety.
12. **Directional Arrows** imprinted in pavement for driver safety.