

goulston&sturrs
counsellors at law

David Avitabile
davitabile@goulstonsturrs.com
202-721-1137 (tel)
202-263-0528 (fax)

RECEIVED
D.C. OFFICE OF PLANNING
MARCH 18 PM 2:55

March 18, 2014

D C. Board of Zoning Adjustment
Office of Zoning
441 4th Street NW, Suite 210
Washington, DC 20001

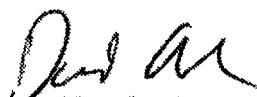
Re Application No. 18685, Application of Pollinger Shannon & Luchs ("Applicant") for Variance and Special Exception Relief for Property Located at 1200 1st Street NE (Square 672, Lot 856) ("Property")

Dear Members of the Board:

Enclosed please find the Applicant's pre-hearing statement, which includes a statement of satisfaction of the burden of proof and updated plans. Please note that: (1) the property description is updated to refer to the correct lot (Lot 856) and (2) the requested relief has been updated to eliminate the request for roof structure setback relief and add a request for variance relief from the limitation on mechanical equipment above a roof structure.

We look forward to presenting this application to the Board on April 1, 2014

Sincerely,


David Avitabile

Attachments

cc: Endrice Elliott, D.C. Office of Planning
Julie Henson, District Department of Transportation
ANC 6C

I, David Avitabile, hereby certify that a copy of this document and attachments was served by electronic mail on the above cc.s on March 18, 2014

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18685
EXHIBIT NO. 28


David Avitabile

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

Application of Pollinger, Shannon & Luchs
ANC 6C

BZA Application No. 18685
Hearing Date: April 1, 2014

STATEMENT OF THE APPLICANT

This is the application of Pollinger, Shannon & Luchs ("Applicant") for variance and special exception relief to permit the addition of solar panels to a commercial office building. The property that is the subject of this application is located at 1200 1st Street NE (Square 672, Lot 856¹) ("Property"). The Property is located in the C-3-C Zone District.

I. NATURE OF RELIEF SOUGHT AND JURISDICTION OF THE BOARD

The Applicant requests that the Board of Zoning Adjustment (the "BZA" or the "Board") approve variance relief from Section 770.6 to locate mechanical equipment on top of a roof structure and special exception under Section 411.11 (roof structure) for relief from the requirement to enclose mechanical equipment.² The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.2 and 3104.1).

II. DESCRIPTION OF THE PROPERTY AND PROJECT

The Property is located in the northeast quadrant of the District in the NoMa neighborhood and in Ward 6. The property is rectangular in shape and contains approximately 34,405 square feet of land area. It is a corner lot with frontage on M Street NE, 1st Street NE, and Patterson Street NE. The Property is in the C-3-C Zone District. The surrounding area contains a mix of office, residential, hotel, and retail uses.

¹ The initial application identified the property as lot 849.

² The initial application did not request variance relief. The initial application also requested relief from the setback requirements, but such relief is no longer required.

The Property is improved with a 12-story commercial office building (“Building”). The District Department of the Environment (“DDOE”) is a tenant in the Building. The Applicant and DDOE desire to install solar panels on the roof of the Building in the locations shown on the attached drawings. Two of the solar panels are located on top of the mechanical penthouse; the third solar panel is located on top of the roof to the south of the mechanical penthouse. The solar panels range in height from 7 to 8 feet tall. (This is reduced from the initial application.)

DDOE desires to install the solar panels to demonstrate leadership in energy and environmental design, contribute to the District of Columbia’s Renewable Portfolio Standard solar carve-out, and support DC-based green jobs in the local clean energy economy. The solar panel installation is a pilot program for the retrofit of a commercial green roof with solar panels as well as a pilot program for the permitting, interconnection, and installation of solar panels on a building of this size and height. Finally, the panels will serve as a practical and interactive educational tool.

III. THE APPLICATION MEETS THE REQUIREMENTS FOR AN AREA VARIANCE

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested variance from the limitation on mechanical equipment on top of a roof structure.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

Here, the Property is unique because it is a relatively long and narrow lot that is improved with an existing office building that is similarly long and narrow. The shape and size of the lot results in a mechanical penthouse that occupies much of the roof area of the Building. See Site Plan SB-0 in Exhibit 7 of the Record. Finally, the Property is unique because of its tenant, DDOE, and the tenant's mission to promote environmental sustainability in the District of Columbia.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors

for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

In this case, the practical difficulty in complying with the limitation on mechanical equipment above a roof structure results from the exceptional conditions affecting the Property. The tenant and Applicant want to install solar panels because of DDOE's particular agency goals and mission. Because of the relative narrowness of the lot and the size of the existing mechanical penthouse, the Building's available roof area is relatively small and similarly narrow. Furthermore, because of the height of the roof structure, the available open areas to the north, west and east of the roof structure have limited sun exposure that would inhibit the functionality of solar panels. Therefore, the only place to locate the solar panels desired by DDOE is to place them either to the south of the roof structure or on top of the roof structure. The Applicant has proposed one solar panel to the south of the roof structure, but there is no remaining area available for the remaining desired panels.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variances can be granted without causing any adverse impact on the neighboring properties. No adjacent property is impacted by the variance, because the solar panels comply with the setback requirement and will therefore not be visible from the street. Furthermore, the variance will permit the installation of solar panels, which are an environmentally-friendly and sustainable alternative energy source.

IV. THIS APPLICATION SATISFIES THE CRITERIA FOR A SPECIAL EXCEPTION FOR A ROOF STRUCTURE NOT MEETING ALL REQUIREMENTS

Section 411.11 provides that “where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the [Board] shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements...” Accordingly, under this Section, the Board may approve a roof structure that does not enclose all mechanical equipment under Section 411.6 when compliance would be restrictive, prohibitively costly, or unreasonable because of conditions of relating to the building.

Here, complying with the requirement for enclosing all mechanical equipment would be unnecessarily restrictive and unreasonable, because it would block sunlight exposure to the solar panels and defeat their purpose for installation. The solar panels must be exposed in order to properly function. The Applicant has reduced the height of the solar panels so that the total height of the roof structure plus solar panels will comply with the setback requirements, which will minimize their visual impact. Therefore, it will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

V. CONCLUSION

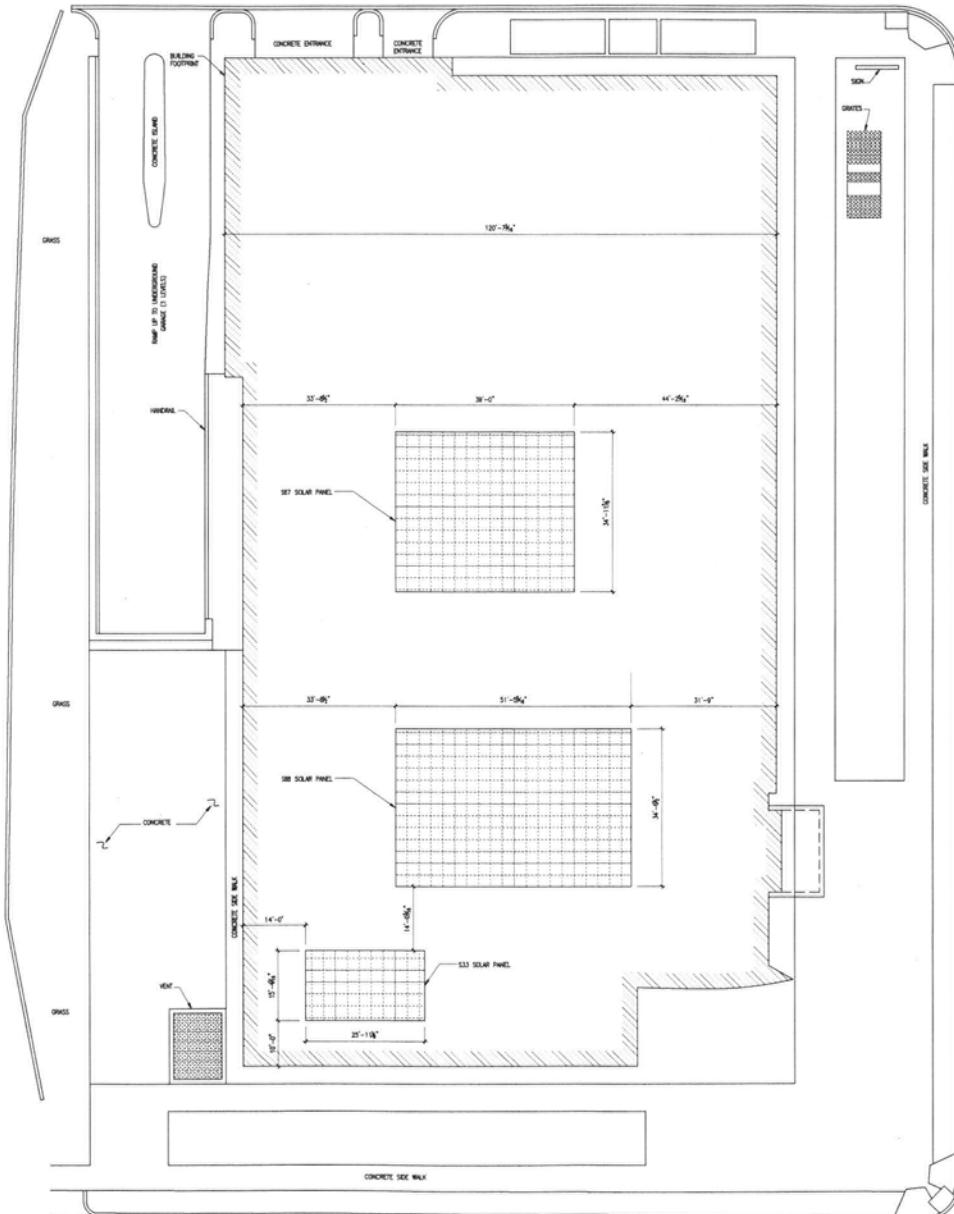
For all of the above reasons, the Applicant is entitled to the requested variance and special exception relief in this case.

Respectfully submitted,
GOULSTON & STORRS, PC

/s/
David Avitable

PATTERSON STREET, NE

CAPITAL PLAZA III, LLC
LOT 851 SQUARE 672



M STREET, NE

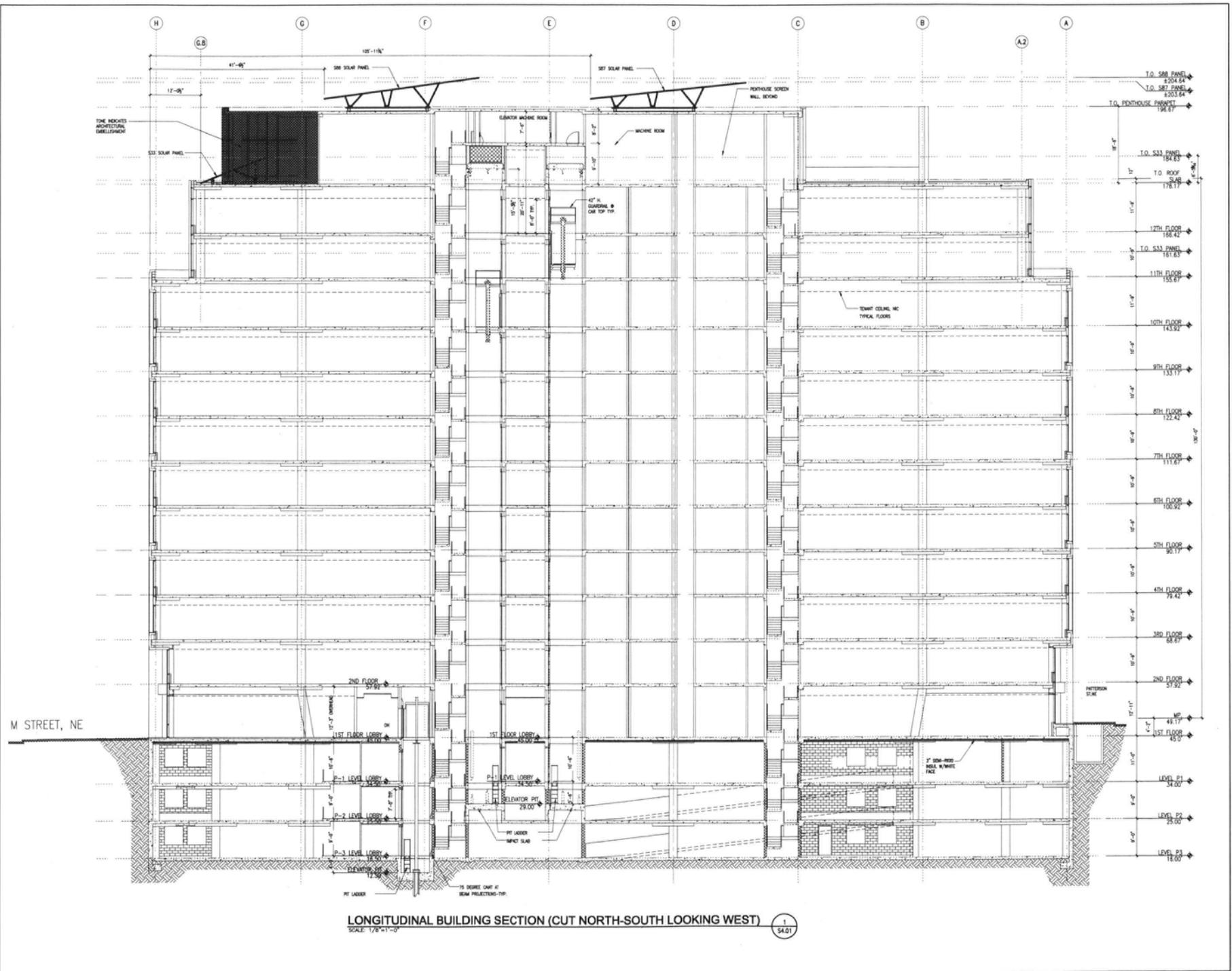
BUILDING LAYOUT

SCALE: 1/100 (1'-0")

\$101



OWNER	[Redacted]
CONSULTANT	[Redacted]
SK&A	Brinklow, Kehnemui & Associates, P.A. CONSULTING STRUCTURAL ENGINEERS 10200 PARK OF OTTAWA AVENUE BETHESDA, MD 20886 TEL: (301) 861-6600 FAX: (301) 861-6604
CAPITAL PLAZA I 1200 STREET FACADE REPAIRS WASHIN' DC	[Redacted]
KEY PLAN	[Redacted]
SEAL	[Redacted]
REVISIONS	[Redacted]
DRAWN BY: BFB CHECKED BY: HSW SK&A JOB NO: 12-626 DATE: 03-13-14 SCALE: AS SHOWN	[Redacted]
TITLE: BUILDING LAYOUT	[Redacted]
S1.01	[Redacted]



OWNER
CONSULTANT
SK&A
Sklar, Kehrmann & Associates, P.A.
CONSULTING STRUCTURAL ENGINEERS
10300 PARK POTOMAC AVENUE
SUITE 300
POTOMAC, MARYLAND 20884
TEL: (301) 891-4441
FAX: (301) 891-6966

CAPITAL PLAZA I
1200 STREET
FACADE REPAIRS
WASHIN DC

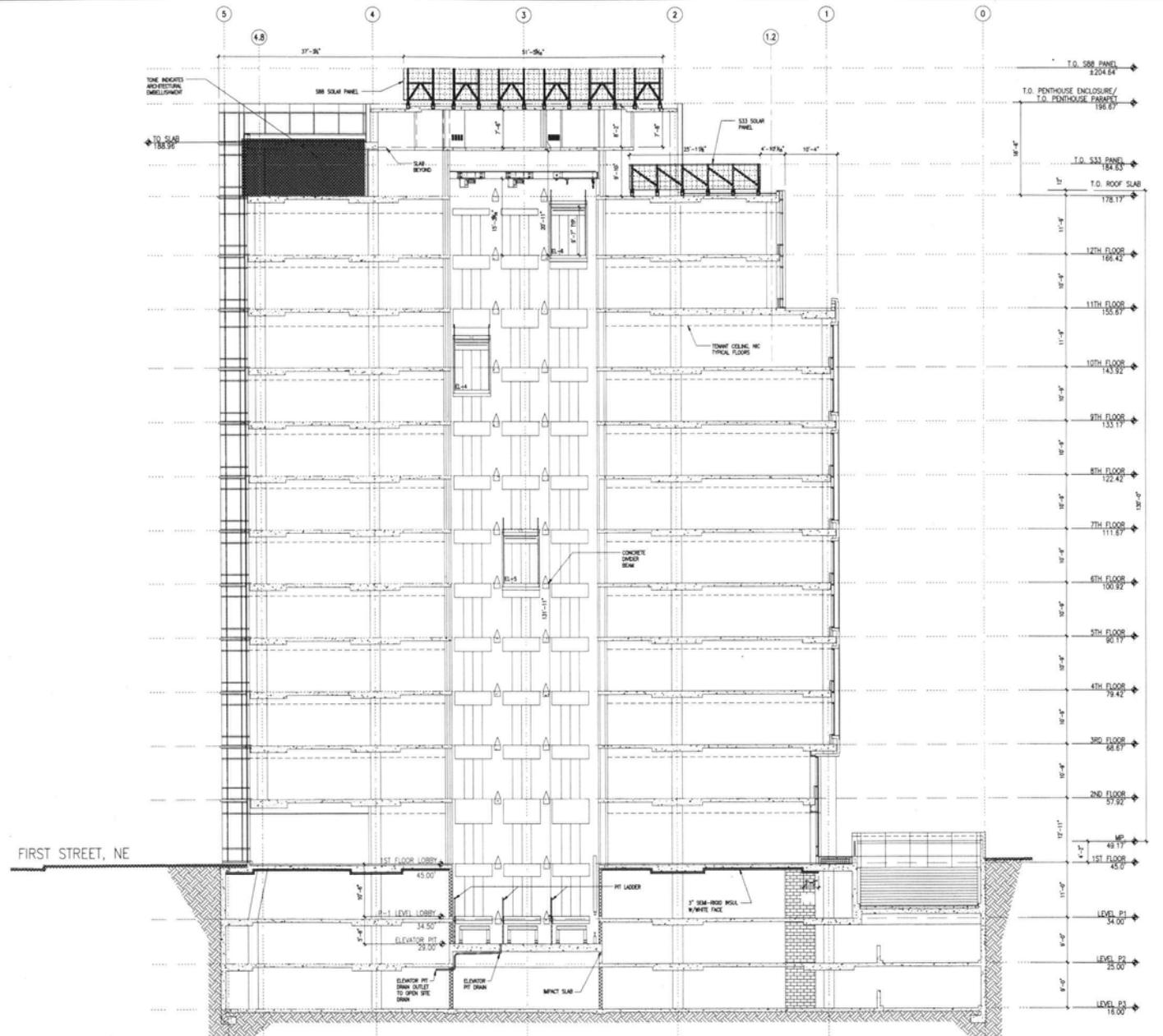
KEY PLAN

REVISIONS

DRAWN BY: BFS
CHECKED BY: HOW
SK&A JOB NO: 12-526
DATE: 03-12-14
SCALE: AS SHOWN

TITLE: LONGITUDINAL
BUILDING SECTION
(CUT NORTH SOUTH
LOOKING WEST)

S4.01



TRANSVERSE BUILDING SECTION (CUT EAST-WEST LOOKING SOUTH)

S4.02

TRANSVERSE
BUILDING SECTION
(CUT EAST-WEST
LOOKING SOUTH)

VISION

11

Y PLAN

1000

CONSULTANT

SK&A

elovs, Kehnemui & Associates, P.A.
CONSULTING STRUCTURAL ENGINEERS
12805 PARK POTOMAC AVENUE
SUITE 300
POTOMAC, MARYLAND 20884
TEL: (301) 881-1441
FAX: (301) 881-8884

CAPITAL PLAZA I
11200 STREET
FAÇADE REPAIRS
WASHIN' DC