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June 15, 2005

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D.C. OFFICE OF ZONING
2005 JUN 15 PM 12:32

Carol Mitten, Chair
D.C. Zoning Commission
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

RE: Second Supplemental Submission – Affordable Housing, Nonprofit Use
Zoning Commission Case No. 03-~~03~~ 30 (734 1st Street, S.W.)

Dear Ms. Mitten and Members of the Commission:

The Applicant has reviewed the Office of Planning ("OP") report recommending approval in Case 03-03. The OP report raises a couple of issues regarding affordable housing and the procedural questions regarding the proposed nonprofit office use that the Applicant would like to provide additional information about. This submission is intended to address these two matters, plus a summary of a revised position on the case taken by Advisory Neighborhood Commission ("ANC") 6D.

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1. **Affordable Dwelling Unit.** As correctly summarized in the OP report, the Applicant's proffer on affordable housing is one unit having at least 700 square feet of floor area, for a term of twenty (20) years and on a rental basis. OP expressed several concerns about some of these features, to which the Applicant responds below.

03-30
47

Standard Unit. OP indicates that this will be a rental unit in a condominium building and that therefore the unit will not be "as inconspicuous as possible." Response: The affordable unit is in the stacking plan for the building. It is the same size and has the same layout as the other units in the "stack." It is a ground floor unit but it also features

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District of Columbia
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EXHIBIT NO.47

its own patio. This affordable unit may not have the exact same interior finishes or brand of appliances as other units, but it will otherwise be indiscernible from the other units in the building. It will also not be the only rental space in the building since the nonprofit space will be rental space. To the condominium board, the owner/developer of the building will be the owner of the condominium. More importantly, as with nearly all condominiums, it is likely that some of the initial condo sales will be to investors who rent out their units. Finally, over time as many of the initial condo owners move on to single family or other accommodations, some owners will hold on to their units and rent them out.

Affordable Housing Benefit. The Applicant further notes that an affordable rental unit for 20 years will likely provide a greater contribution to affordable housing than a condominium unit, which may tend to be occupied by the original owner for the required time period (currently ten years) and then sold at a market rate. Over the 20-year time span proposed for the rental apartment, several households in the qualifying income levels are likely to benefit from the affordable rent levels.

Selection Process. OP expressed a concern about how the affordable unit will be administered, stating a preference for the standard procedure administered by DCHD. However, DHCD does not currently have an operational program in place and the Applicant believes that targeting a moderate income employee of the nonprofit space or artist associate with the proposed Corcoran project to be developed across the street on the old Randall School site is a logical, beneficial and appropriate alternate. The Applicant will adhere to annual reporting requirements to DHCD for ease of administration and monitoring.

In the event that OP and the Commission reject the Applicant's proffer to manage the selection process as outlined above, the Applicant will participate in a DHCD-managed selection process upon its establishment.

2. **Nonprofit Use.** The applicant has proffered nonprofit use of the historic church sanctuary as a project amenity that will foster substantial openness in the former church sanctuary space. The Office of Planning report concurs with the benefits of nonprofit use in this space, subject to certain conditions.

Approval Procedure. The application requests that the Zoning Commission approve the nonprofit use as a special exception allowed for historic buildings as a special exception under § 217. The OP report notes that the Zoning Commission expressed reservations at its setdown meeting as to whether § 217 was applicable to the subject building.

One of the procedural options set forth in OP's report is that "the Zoning Commission could provide relief to permit this use as part of the PUD based on the associated community benefit – a preference for this non-conforming use over conforming ones such as residential. The proposed use, limited by the list of restrictions proposed by the applicant, would permit the intact retention and preservation of the historic church volume." (p. 4) The applicant is fully supportive of this approach and urges the Commission to proceed in that fashion. If the Commission decides not to proceed under the community benefit/PUD approach, the applicant suggests below that § 217 may well be applicable.

The Zoning Commission's and OP's expressed concern is that § 217 applies to "The use of existing residential buildings and the land on which they are located . . ."

(§ 217.1)) The applicant would argue that, among the relatively few cases decided under this section, at least two cases involved buildings not constructed for residential use and not in residential use prior to approval under § 217 by the Board of Zoning Adjustment ("BZA" or the "Board").

BZA Precedents. In at least two cases, the Board has granted approval of nonprofit use in buildings that were not residential in construction or prior use. The first is Application No. 15945 of the Anthony Bowen Building Trust at 1816 12th Street, N.W., dated June 1, 1994. This building was constructed in 1908-12 as the home of the nation's first African-American YMCA established in 1853. This is not a residential building. (BZA order is not attached as it is a Summary Order.)

The second precedent is Application No. 14244, dated February 13, 1985. As indicated in Finding of Fact No. 4 in the Order (a copy of which is attached as *Exhibit A*):

> *4. The subject site is presently improved with a three-story structure built by the Christ Child society for use as a boy's club.*

Finding of Fact No. 8 indicates that the subject property included a two-story gymnasium. Clearly, the subject building was not constructed as a residence. Although the building had been approved in 1980 (BZA # 13227) for conversion to residential use (apartments), that conversion never occurred, as the building was vacant from 1979 to the time of Case No. 14244 in 1985.[1] Thus, at the time of the Board's approval, the building had never been a residential building and was constructed as a nonresidential building.

Another parallel precedent is that in Zoning Commission Case No. 03-09 the Zoning Commission and the Office of Planning are considering text amendments to §

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[1] See Finding of Fact No. 4 in BZA # 14244.

217 or a new § 222 that would allow this special exception process to approve nonprofit office use of former public school buildings. These would, of course, be nonresidential structures making use of the special exception process for adaptive reuse.

The Applicant accordingly requests that in the event that the Commission rejects the PUD flexibility approach recommended by OP, that the Commission consider the proposed nonprofit office use as a special exception within the PUD. The Applicant's Pre-Hearing Statement addresses the relevant criteria for approval.

Specific Nonprofit User. BZA Application No. 14244 referenced above also approved nonprofit office use generically without a specific occupant having been identified. This was accomplished by setting forth criteria as to the number of employees, parking spaces, strict signage limitations, hours of operation and no exterior alterations to the building. In the instant PUD, the applicant has offered a series of such operational limitations in the hope that the Commission will grant a comparable approval.

The ability to attract an actual nonprofit office occupant is much more difficult if the nonprofit must delay occupancy by a number of months for a public hearing process with the possibility of denial.

Finding of Fact No. 5 in BZA # 14244 indicates that the subject building was vacant for at least six years prior to the public hearing. Finding #7 states, in part:

> *7. The most active interest in the building to date has been for nonprofit office use. However, prospective purchasers have expressed hesitancy to follow through because of the uncertainty of the zoning process and the amount of time necessary to secure zoning approval. As a result of the protracted delay in the ability to sell the property, the vacant building has fallen into disrepair.*

The historic church in the instant PUD application has now been vacant for approximately four years. In the interest of allowing the Applicant to be able to secure a

nonprofit user in a reasonable time frame and to proceed with this historic preservation-mixed use project, the Applicant requests that the Zoning Commission approve the nonprofit use generically with the limitations previously offered but without further public review.

The OP report agrees with nearly all of the proposed restrictions – 40 employees, lighting, number of parking spaces, no commercial manufacture or sale of products on the premises and hours of operation. Any exterior sign would be subject to approval by the Historic Preservation Review Board ("HPRB"). OP would like to have "volunteers" included in the limitation on employees. OP also suggests but does not specifically recommend, limitations on evening events. The applicant is very concerned that too many restrictions will severely limit its ability to lease the space to a nonprofit user, thus jeopardizing the feasibility of the entire project. Nonprofit users of the size projected in this project (± 10,000 square feet) have other options which rarely present such limitations and as such would have little incentive to accept such limitations.

Finally, OP suggests that any partitions for office space in the former church space be temporary and not impact the visual appearance of the church viewed from the exterior. The standard that the HPRB has set is that any interior partitions shall not be visible from the exterior. The applicant believes that this correctly addresses the issue.

Context: Lack of Adverse Effects. The applicant believes that in this location, the number of limitations offered is more than ample, given the local traffic situation, historic church use of the property, space and buffering from nearby residential uses and the fact that this is a small property and project across the street from what is projected to be a

large project, the reuse/redevelopment of the former Randall Junior High School complex.

Applicant would emphasize again the small size of the proposed nonprofit use, especially in consideration of the land use context. The historic church itself, as a place of worship for many years, generated frequent, large assemblies of people, not only for Sunday services, but for week night services and other accessory church-related uses (dinners, meetings of church organizations, perhaps bazaars) as well.

Existing residential uses abut the PUD Site on the north, west and southwest. But on the north the residences are 60 feet removed from the PUD site, and to the west and southwest the nearest existing residences are approximately 180 feet from the PUD project. None of these residential buildings uses Delaware Avenue or H Street for vehicular access, which is instead from G Street, S.W.[2]

To the east of the PUD Site is the large green space of the Randall Recreation Center (which is also a significant activity center), and to the south is the former Randall School complex of several large, interconnected buildings occupying a large city square of 2.4 acres. This site is currently being offered for reuse and redevelopment, with the expectation that it will be a large activity center. If it is the Corcoran School of Art, there will likely be no limitations on numbers of evening events, as evening activities are a normal part of school use. The applicant in the instant PUD case would request that no limitation be set on evening events, recognizing that the nonprofit space is small and that any occasional evening events would represent very little increase over the normal evening activity of the large use to the south.

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[2] See the "Site Context Map" attached as *Exhibit B.*

Perhaps most important of all is the fact that the condominium association will not accept a "problem" nonprofit association, and the owner-developer will not jeopardize the financial viability of the full project by selecting a nonprofit that would weaken sales of the condominium apartments.

Given all of the foregoing considerations, the applicant hopes that the Zoning Commission will approve nonprofit use with the requested limitations but without a requirement to return for a public hearing process to review the specific occupant. We are not aware of what adverse effects, beyond those items being restricted, might be expected to occur that would be adverse to the public interest or unusual for this location.

3. Advisory Neighborhood Commission 6D. The position of ANC 6D on this application has vacillated over time. On November 8, 2004 the ANC adopted a motion to support the PUD. At its May 2005 meeting, the ANC voted to oppose the application. However, at its recent meeting of June 13, 2005, ANC 6D reconsidered its May vote in opposition to the PUD and voted to rescind that action. No new position was established however, as a motion to approve failed on a tie vote.

Thank you for your consideration of this application.

Respectfully submitted,

ARNOLD & PORTER LLP

Cynthia A. Giordano

Nathan W. Gross, AICP

Attachments

Cc: ANC 6D (Via Hand Delivery on June 15, 2005)
Office of Planning

Exhibit A: **Board of Zoning Adjustment Order No. 14244**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14244, of SOS Ventures, pursuant to Subsection 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.412 to use all floors of the subject premises as offices for a non-profit organization in an R-4 District at premises 608 Massachusetts Avenue, N.E. (Square 865, Lot 820).

HEARING DATE: February 13, 1985
DECISION DATE: February 13, 1985 (Bench Decision)

FINDINGS OF FACT:

1. The subject application appeared on the preliminary calendar of the public hearing of February 13, 1985. The applicant had failed to comply with Section 302.3 of the Supplemental Rules of Practice and Procedure before the BZA in that the posting of the public hearing notice on the subject property was incomplete. The property was posted for seventeen days on the Massachusetts Avenue frontage of the property. The C Street frontage of the property was posted for thirteen days, rather than fifteen days as required by the Rules. A supplemental affidavit of Posting was filed on February 8, 1985, explaining the error. On the basis of the supplemental affidavit, the Chairperson waived the Rules and the application proceeded on its merits.

2. In BZA Order No. 13227, dated July 7, 1980, the Board grant to the subject applicant for the subject property special exception and variance relief to use the property as a twelve unit apartment house. In that Order, the Board approved a parking layout for seven parking spaces in the basement with access via a ramp from Massachusetts Avenue. The Board incorporated that parking plan from the record of Application No. 13227 into the subject record and identified it as Exhibit No. 29 of this record.

3. The subject property is located in an R-4 District on the south side of Massachusetts Avenue between 6th and 7th Streets, N.E. The lot is a through lot, also having frontage on C Street, N.E. The premises is known as 608 Massachusetts Avenue, N.E.

4. The subject site is presently improved with a three story structure built by the Christ Child Society for use as a boy's club. In 1976, the property was sold to the Police Association. In June of 1979, the applicant herein purchased

the property. The property has been vacant since it was sold by the Police Association. The structure, built in 1932, contains a floor area ratio in excess of 2.0

5. Since 1979, the applicant has searched for suitable adaptive reuse of the building. The applicant engaged the firm of Dale Denton Real Estate, Inc., for the purpose of selling the property. The property has been marketed for over five years. Since 1980, the property has been shown at least once per month to prospective purchasers. Some of the uses proposed were matter-of-right uses, e.g. private club or medical clinic, and others would require BZA relief. None of the prospective purchasers were interested in acquiring the building for residential use.

6. The applicant performed an analysis of the viability of residential use of the building. In today's market, the development of ten units in the building would cost in excess of $1.3 million. Due to the interior configuration, this is the maximum number of units feasible for the building. The different elevations of the front and rear portions of the building also creates a floor to floor height problem.

7. The most active interest in the building to date has been for nonprofit office use. However, prospective purchasers have expressed hesitancy to follow through because of the uncertainty of the zoning process and the amount of time necessary to secure zoning approval. As a result of this protracted delay in the ability to sell the property, the vacant building has fallen into disrepair. This deterioration will continue as long as the building remains vacant and unoccupied. In order to put this long vacant structure to a reasonable and viable use and to make the property more attractive for sale, the applicant is seeking special exception relief for nonprofit office use in accordance with the existing zoning of the property.

8. The building will contain approximately 16,680 square feet of gross floor area when the two-story gymnasium in the rear of the building is divided into two floors. However, the configuration is such that there will be only about 13,345 square feet of net usable area. Accordingly, the applicant would expect that the property will accommodate a maximum of fifty-five employees. Seven parking spaces will be created in the basement, with access via a ramp from Massachusetts Avenue. This configuration of the gymnasium and the cellar area was a part of the previous approval by the Board in Order No. 13227.

9. The hours of operation will be typical of other nonprofit office uses in the area, i.e. from 8:30 A.M. to 5:30 P.M. weekdays, with some evening and weekend hours. The applicant would also limit the exterior signage on the

building to a size not to exceed 144 square inches, as in the form of a plaque.

10. The building is located within the boundaries of the Capitol Hill Historic District, a Category II historic place, and also is in the Stanton Square Historic Area, a Category III historic place. The building contains approximately 13,400 square feet of gross floor area.

11. Although not individually designated as a historic landmark, the building forms an important part of the character of the Capitol Hill Historic District. Recognizing this, the applicant believes it would be contrary to the public interest to demolish or substantially alter the exterior of the building. Instead, the applicant proposes to renovate the building with the intention of preserving its architectural design and uniqueness. The applicant will also undertake the necessary repair and restoration work to enhance the appearance of the building and grounds.

12. The neighborhood surrounding the subject property includes a mixture of residential and non-residential uses. Within a one-block radius of the site are R-4, R-5-B, R-5-C and C-2-A zoning districts. The subject property has had a long history of nondwelling type uses, such as a community center and a private club. Such social activity-oriented uses created a great deal of in and out traffic by building occupants and visitors, with the potential for generating noise and other external deleterious effects. The most recent use of the building by the Police Association included gatherings throughout the year of up to 250-300 persons. No parking spaces were provided on-site for the previous uses. The Board finds that the proposed nonprofit office use will be, by its nature, quieter, less dense and less obtrusive than the previous socially oriented uses. As such, there will be no adverse effect on neighboring properties.

13. The Board finds that the rehabilitation and occupancy of this long vacant structure in a manner and style in keeping with the Capitol Hill Historic District will improve the character of the neighborhood and will have a positive impact on neighboring properties. The Board will impose conditions with regard to hours of operation, maximum number of employee occupants of the property, limitations on exterior signage and other similar restrictions so as to insure that there will be no adverse effect on the neighborhood.

14. The Board finds that no required parking spaces have ever been located on site during the life of the building. The building is entitled to a parking credit from the prior private club use equal to the parking requirement for non-profit office use. Therefore, no parking spaces are required for the proposed use under the Zoning Regulations.

The applicant proposes to convert the cellar area of the building to a parking garage for seven vehicles.

15. The Board finds that there will be minimal adverse traffic impact from the proposed use. There is two hour parking along Massachusetts Avenue and C Street in the vicinity of the proposed use. The Union Station Metrorail stop is located up Massachusetts Avenue five blocks from the subject site. Eleven bus lines travel within three blocks of the subject site, providing rush hour, nonrush hour, evening and weekend service. In addition, there is a public parking lot as well as a supply of unrestricted on-street parking in close proximity to the site. The applicant's traffic expert testified that sixteen drivers would normally be expected to drive to a use such as the proposed use. With seven spaces on site, the other nine drivers would have several options, including car pools and use of public transportation. The applicant's real estate witness testified that, in his experience, many workers in nonprofit offices on Capitol Hill live on Capitol Hill, and therefore walk or take public transportation to work.

16. No goods, chattel, wares or other merchandise would be commercially created, exchanged or sold, except for the sale of publications, materials or other items related to the purposes of the nonprofit organizations.

17. The Board finds that this proposal includes construction of the driveway and garage area in the cellar, and the inclusion of a second floor area in the existing gymnasium. These proposals were previously approved in concept by the Joint Committee on Landmarks and by this Board in BZA Application No. 13227.

18. Two individual neighbors of the property spoke in support of the application, including the owner of the abutting property to the west of the site. They testified that the building, once beautiful, has become an eyesore in the neighborhood and an attraction to vandals and vagrants. They testified that the rehabilitation of the structure will be an improvement to the neighborhood.

19. The Department of Public Works (DPW), by memorandum dated February 6, 1985, reported that Massachusetts Avenue is a minor arterial with a paved width of fifty feet and an average daily traffic volume of approximately 7,000 vehicles near the site. Residential permit parking is permitted on both sides of the street. Sixth Street is a minor arterial, one-way eastbound, with a paved width of forty-four feet and an average daily traffic volume of 6,700 vehicles near the site. East of Massachusetts Avenue, along Stanton Park, parking is prohibited on 6th Street. West of Stanton Park, residential permit parking is allowed on both sides of the street. Seventh Street is a two-way local street, with a

paved width of thirty-two feet. On the south side of the street, one-hour metered parking is allowed between 7:00 A.M. and 6:30 P.M. On the north side, parking is unrestricted.

20. The applicant's traffic consultant has estimated that sixteen employees are likely to drive to the site. The DPW concurred in this estimate, and was of the opinion that amount of additional traffic will not have an adverse effect on the street system.

21. No parking spaces now exist on-site. The applicant proposes to provide seven parking spaces in the basement of the building, with access via a ramp from Massachusetts Avenue. Because of the tight configuration of the site, access to these underground spaces from C Street via the existing ten foot alley is not possible.

22. Given the estimate that sixteen employees will arrive at the site by car, the DPW was of the opinion that these seven on-site parking spaces will not be sufficient to meet the parking demand generated by the proposed office use. The DPW recommended that in order to minimize overspill parking in the residential neighborhood surrounding the site, the applicant should arrange to secure an appropriate number of parking spaces for employee use at a parking lot in the vicinity of the site, such as the one mentioned in the traffic consultant's report. The DPW also suggested that the circular driveway shown on the applicant's site plan be eliminated, to reduce the number of new curb cuts on Massachusetts Avenue to the one required for parking access. The Board concurs with the reasoning and recommendation of the DPW.

23. Advisory Neighborhood Commission 6A filed no report on the application.

24. The Stanton Park Neighborhood Association Land Use Committee filed a letter opposing the proposed use of the building. No reasons were given for the opposition.

25. The Capitol Hill Restoration Society (CHRS) Zoning Committee filed a letter opposing the application. The bases of the opposition were that the proposed use is inconsistent with the residential zoning, that parking is inadequate, and that lack of a present tenant does not allow a reasonable basis for approving the proposed use. For the reasons set forth below, the Board does not concur with the recommendation of the CHRS.

26. There were no persons in opposition to this application at the public hearing. There were two letters of opposition in the record, on the grounds that the opposition wanted residential use of the property, not commercial use.

27. In addressing the concerns of the opposition, the Board finds that the applicant is seeking its relief through a special exception and not a use variance. The applicant has no burden to prove that the subject site cannot be used for residential purposes. Also the lack of a present tenant for the site does not preclude estimating the number of persons who would use the offices. In this case, the applicant's witness estimated that one person would occupy 365 square feet of office space. Contrary to the statement of the CHRS, the Board finds the evidence on parking adduced by the applicant's traffic witness and the report of the DPW to be persuasive. As conditioned below by the Board, if any adverse traffic impact is created, it will be minimal.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires that the proposal meet the requirements of Paragraph 3101.412 and that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and the relief will not tend to affect adversely the use of neighboring property.

Based upon the record in this case, the Board concludes that the applicant has met all of the requirements and standards for special exception relief. A grant of the requested relief will promote a reasonable and viable use of this long-vacant and decaying use, consistent with other similar uses found in the neighborhood and throughout the Capitol Hill area. On-site parking will be provided, unlike the previous uses in the structure. The proposed use will not have the potential for adverse external impacts that existed from the long history of socially-oriented activities on the site.

The proposed use is permitted as a special exception, provided that the appropriate requirements are met. The Board concludes that those requirements have been met and that the proposed use is also consistent with the intent and purpose of the Zoning Regulations, to insure that property is put to productive uses and does not remain unused. The Board further concludes that the proposed use will not tend to adversely affect the use of neighboring property, and will be in harmony with the Zoning Regulations and map.

Accordingly, it is ORDERED that this application is GRANTED SUBJECT to the FOLLOWING CONDITIONS:

1. The number of employees at the subject premises shall not exceed fifty-five.

2. Seven parking spaces shall be provided in the basement as shown on the plans marked as Exhibit No. 29 of the record.

3. The applicant shall provide five additional parking spaces at a commercial facility in the area.

4. Any signs used to advertise the use shall be flat against the wall, non-illuminated and shall not exceed 144 square inches in size.

5. The normal hours of operation shall not exceed from 8:30 A.M. to 6:00 P.M. Monday through Friday.

6. There shall be no exterior alterations to the subject structure.

VOTE: 4-0 (William F. McIntosh, John G. Parsons, Douglas J. Patton and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
STEVEN E. SHER
Executive Director

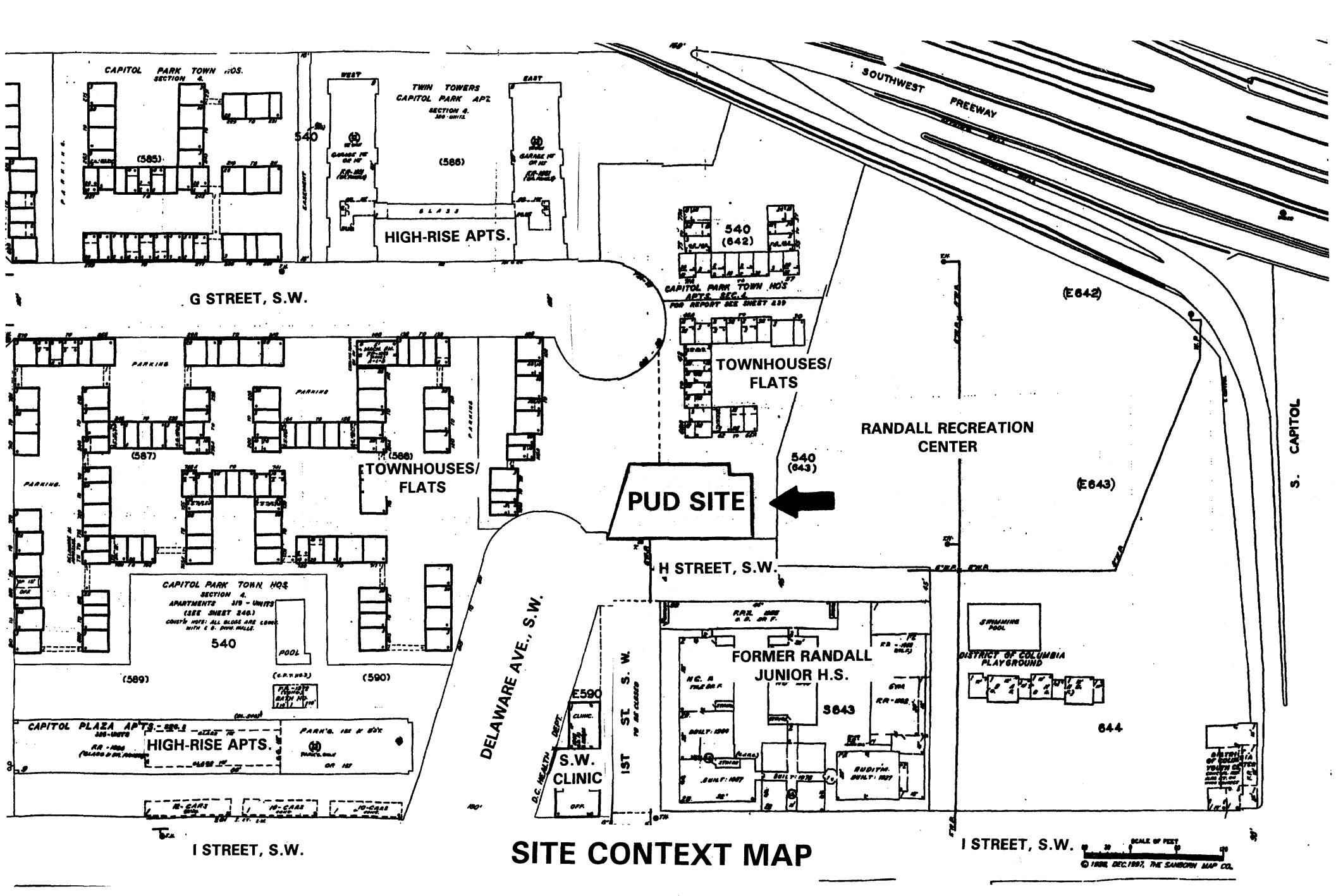
FINAL DATE OF ORDER: 23 APR 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14244order/LJPC

Exhibit B: **Site Context Map**



SITE CONTEXT MAP