

March 2, 2007

VIA HAND DELIVERY

Zoning Commission of the District of Columbia  
One Judiciary Square, Suite 210-South  
441 Fourth Street, N.W.  
Washington, D.C. 20001

# 06-03A

D.C. REC  
MAR 2 2 PM 2:56

Re: ZC Case 06-03 -- 100 M Street, S.E.: Request for Minor Modification of Plans the Zoning Commission Previously Reviewed and Approved under Provisions of the Capitol Gateway Overlay

Honorable Members of the Commission:

This firm represents the owner of the property located at 100 M Street, S.E., that was subject to design review under the provisions of the Capitol Gateway overlay district under ZC Case 06-03, approved at the end of the hearing May 25, 2006. Since that approval, the owner has determined a need for certain modifications to the approved plans. This letter constitutes the application for approval of these changes as minor modifications; the letter is accompanied by --

- A filing fee of \$400, determined as applicable to "any other action where review of a specific site or building plan was required" (§ 3040.4).
- Architectural and landscape plans illustrating the changes requested, along with corresponding diagrams from the plans as originally approved.

This letter also explains and justifies the modifications requested.

We believe the application for minor modifications is complete and acceptable for filing and, if possible, decision at a Special Meeting the Commission might establish shortly after its meeting of March 12, 2007. The scope of the modifications runs only to the design review already approved under the Capitol Gateway overlay and does not bear on any other relief sought and approved at the prior hearing. Thus, our request at this juncture is that on March 12 you determine if you would be willing to set this request for decision as part of the agenda of the Special Public Meeting already contemplated for the evening of March 26 or any other date that month after March 12 when the Commission has hearings scheduled.

Given the need for certain minor modifications, we are taking the opportunity to update you about refinements to the "embellishment" at the Southwest corner of the building. We feel this is in keeping with the original approval but ask that you either confirm this as not needing formal review or request approval of this as a "minor modification" along with the others requested at this time.

ZONING COMMISSION  
District of Columbia

CASE NO. 06-03A  
EXHIBIT NO. 1  
EXHIBIT NO. 1

### **DESCRIPTION OF CHANGES SOUGHT AND JUSTIFICATION**

**1a. Minor Modification of Western (First Street) Façade at Ground Level and Adjacent Landscaping (Public Space):**

The Government of the District of Columbia's Department of Transportation has decided to reconstruct and widen the portion of First Street, S.E., that abuts the site as part of a larger effort related to that right of way. This widening will eliminate the "public parking" between the edge of the sidewalk closest to the building and the property line; thus, it will no longer be possible to create an outdoor seating area. The total width roadway is expanding to provide additional lanes for vehicles and bicycles. Thus, the walkway between the curb and the eastern property line is being reduced. Specifically, the total width of the combined sidewalk and "public parking" east of the "cartway" reduces from about thirty-two feet (32 ft.) to just twenty feet (20 ft.). Moreover, the plan removes all "public parking" that had previously existed between the property line and the closer edge of the public sidewalk.

The **minor modifications requested** eliminates the seating area and patio at the grade of the ground floor, raises the height of the First Street entrance door, and shortens the height of the glazing to the base of the new, higher ground level.

**1b. Additional Flexibility for Western (First Street) Ground Floor Façade and Utilization of the Retail Area Facing First Street:**

Market factors may require that the western retail be developed with more than one retail tenant. If so, the number, nature, and location of entrances from First Street, S.E., would have to change in ways that cannot, until tenants are secured, be accurately projected.

Thus, these **minor modifications also seek flexibility** to make changes in the first floor façade of the retail area along First Street without further review by the Zoning Commission relating to adding a second retail entrance. The changes to the façade of the building would not substantially reduce the ***linear*** extent of clear glass. If more than one retail tenant space is created, this would also require at least one more glass door and possibly a solid fire exit at the northern limit of that façade, adjacent to the vehicular entrance to the parking garage (possibly converting one five-foot window module to a solid wall/fire exit at that end of the façade).

**2. Modifications Sought for Eastern Retail Area and Establishing a Fitness Room:**

The original plans for the eastern retail area called for a "clear ceiling" height of 13' 8" that was approved for the full depth of that retail area. However, that clear height is achieved only by having an undesirable six inch (6") step down to that level from the plane of the entrance. The owner feels such a step is less desirable to a successful M Street experience than maintaining the stated and approved "clear ceiling" height of that space.

In addition, prospective tenants are requesting a dedicated fitness/exercise facility that was absent from the plans originally proposed and approved. Converting a portion of the eastern retail area to an accessory fitness use would still leave at least 46 percent of the ground floor's gross floor area in retail use, well in excess of the 35 percent requirement for "preferred uses". As first proposed and approved, the eastern retail space extends much deeper from its entrance than is sought by the retail market (depth of more than 50 feet is marginal at best).

The **minor modifications requested** would –

- Reduce the depth of the eastern retail area to at least 45 feet from the southern face of the building.
- Establish a fitness area as an accessory use in the windowless area between the rear portion of the eastern retail area (as depicted in the plans initially reviewed and approved) and the loading dock. As an accessory use, the finished plane of this floor area would be raised to be the same as that of the lobby and other areas of the main building, thereby resolving access requirements to all such areas by persons with mobility limitations.
- Raise the plane of the floor of this retail area from the benchmark of 18.83 feet by half a foot (0.5 ft.) to 19.34 feet, matching the finished grade of the sidewalk and the paved five-foot setback area along M Street. Raising the floor would have the consequence of reducing the clear height of the ceiling from thirteen feet eight inches (13' 8") to ***at least*** thirteen feet two inches (13' 2"). As a percentage of the fourteen foot (14' 0") requirement that became effective February 16, 2007, the clear height of this ceiling as approved represented 97.6 percent of the height standard being considered as a text amendment when the project was reviewed and approved on May 25, 2006; the "clear height" is still over 95 percent (95.2 %) of the height now normally required under terms of the just-adopted regulation.

### 3. **Minor Modification to Percentage of Glazing on Eastern Face of Building**

Plan review within the Department of Consumer and Regulatory Affairs revealed that the eastern face of plans called for about fifty two percent of the side to be glazed. This portion of the site abuts another property, currently undeveloped. The applicable regulations limit such openings to forty five percent (45 %). The **minor modification requested** reduces glazing so that it complies with this standard.

Please note that the original and revised plans call for "identical materials" on all four sides of the building. Thus, the quality of materials and finish will be comparable from all vantage points.

### **Impact of These Minor Modifications on Requirements of Section 1604:**

As previously stated, the combined **retail** areas would constitute at least 46 percent of the ground floor's gross floor area, well over the minimum percentage requirement for the area of "preferred uses" on the ground floor in the Capitol Gateway overlay district (35 percent, §1604.4).

### **Refinements to the Embellishment at the Rooftop at the Southwestern Corner of the Building**

Study of the rooftop embellishment after the hearing of May 25, 2006 has resulted in a **reduction** in its total area (reducing its overall “footprint” of about 1,400 square feet to 1,300 square feet). In addition, the embellishment is now somewhat more “open” than was suggested in the diagrams included in the materials reviewed and approved at the hearing May 25, 2006.. Finally, the structural elements needed to support the embellishment are located where they can carry the load safely with minimal bulk. In particular, the original support system initially located just **north** of the vertical element of the First Street façade is been relocated just **south** of that vertical design element. At the same time, the volume of the support structure is reduced. While this support structure appears in both the original and proposed western elevations, it does not appear in the original eastern elevation as it was totally obscured by the overall rooftop penthouse. In the eastern elevation showing minor modifications to address the glazing code issue, the support structure is depicted, but with faint lines as it is at the far western end of the building; it is not attached to the penthouse itself. The enclosed comparative roof diagrams add further clarification.

Should the Commission determine that the change in the embellishment and its support structure is one that should be approved as a minor modification, Applicant submits the change has no impact on any of the specific standards for design review in Section 1604 and that the change proposed remains consistent with the general terms guiding review and approval under §§ 1604.1 and 1604.2.

### **Urgency of Request**

The project is already well underway.

- All **raze** permits were issued in September 2006 and the smaller buildings and structures that had been on portions of the property were removed.
- The excavation, sheeting and shoring permit was issued October 10, 2006 (Permit 98697) and the foundation is being excavated at this time. This excavation work will be completed by the end of this March.
- The public space approvals are in hand for the placement of transformer vaults in the location shown on the revised plans along the southernmost segment of the property along its western side (First Street, S.E.)
- The plans the Zoning Commission approved are the basis of the plans submitted for actual building permits. Those “permit plans” have been approved, with one exception, by the Department of Consumer and Regulatory Affairs (“DCRA”). Approvals by the District of Columbia Water and Sewer Authority (“WASA”) and the District of Columbia Department of Health (“DoH”) are anticipated shortly.

The exception within DCRA relates to the percentage of glazing on the eastern and northern face of the property, where the prior plans provided just over fifty percent glazed when the applicable regulations limit glazing to forty five percent (45 %). This exception leads to one of the “minor modifications” now sought for the eastern face of the building, which is within the Capitol Gateway overlay.

- Foundations can, with approvals in hand or imminent (i.e., approvals from WASA and DoH), start to be poured April 2, 2007. Requiring a hearing for the changes sought would add time and considerable uncertainty to the construction program. For example, if the ZC determined a hearing to be necessary at any meeting this March, the hearing could not take place until after full Notice was provided including publication in the D.C. Register. This would propel the hearing date to June or later, depending on other matters to be heard.

As such, the owner seeks approval, as allowed, of these changes as minor modifications as soon as possible, without a hearing as a Consent Calendar item during your monthly meeting of March 12, 2007 or at a Special Meeting later that month (see below).

**Advisory Neighborhood Commission 6-D (No Other Parties):**

Kindly note that copies of this letter and the materials that accompany it are being delivered, simultaneously, to the Office of Planning and to Advisory Neighborhood Commission 6-D ("ANC 6-D"), the ANC in whose area the site is located that was an automatic party to the original case. That ANC filed a letter of support in the original application. There were no other parties to the original case. We understand that ANC 6-D has its next regular monthly meeting March 12.

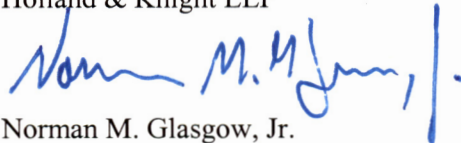
By setting the date for the Zoning Commission's decision as March 26, or any other date the Zoning Commission could meet after March 12, ANC 6-D will have had full Notice of the question, opportunity to meet and act, and be able to advise you of their position on the minor modifications requested. They will also have had far more than the seven (7) days they are accorded under the applicable regulations (§ 3030.8) in which to respond.

**Office of Planning:**

We have copied this request and plans to the Office of Planning so that it can inform you of its views on the minor modifications requested when you consider this request.

Thank you.

Holland & Knight LLP



Norman M. Glasgow, Jr.



Lindsley Williams  
Land Use, Planning and Zoning Consultant

**Enclosures (in All Sets Except as Noted)**

- Filing Fee Check (to Office of Zoning Only)
- Zoning Commission Order 06-03 (May 25, 2006)
- Portions of Plans Approved by ZC Order 06-03 and Corresponding Plans Depicting Modifications Sought or Areas Where Flexibility is Sought

cc: Advisory Neighborhood Commission 6-D (By Courier to the ANC Office and Each Member)  
Office of Planning (By Courier)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION ORDER NO. 06-03**

**Z.C. Case No. 06-03**

**(100 M Street, S.E., LLC – 100 M Street, S.E.)**

**May 25, 2006**

**CASE NO. 06-03 (Capitol Gateway Overlay District Review within Square 743-N, Lots 58-61, 63-66, 801-805, 813, part of lot 822, and a portion of a public alley to be closed – 100 M Street, S.E.)** arising from the application from 100 M St. SE, LLC (the “Applicant”), on behalf of Square 743, Inc., et al, owners of the property.

The Applicant sought review and approval of new development along M Street, S.E., pursuant to the Capitol Gateway Overlay District provisions set forth in § 1604. In addition, the Applicant sought special exception approval, pursuant to 11 DCMR § 1604.9 for (a) special exception relief from the rear yard requirements set forth in § 774 and (b) variance relief from certain court requirements of § 776.

**Note:** The application was initially filed February 1, 2006, and a hearing was scheduled to take place April 6, 2006, seeking approval for overall design and relief from rear yard requirements. Subsequently, the Applicant determined relief would also be needed from the court requirements and amended the application to include this issue. The initial hearing was rescheduled to May 25, 2006, covering the entire scope of the issues noted above.

**HEARING DATE:** May 25, 2006

**DECISION DATE:** May 25, 2006 (Bench Decision)

**SUMMARY ORDER**

**Self-Certified:**

The zoning review requested in this case was self-certified as were the elements of zoning relief requested, the latter pursuant to 11 DCMR §§ 1604.9 and 3113.2.

The property that is the subject of this application consists of approximately 26,400 square feet of land area and is located at 100 M Street, S.E. The property is bounded to the east by a public alley, to the south by M Street, S.E., to the west by 1<sup>st</sup> Street, S.E., and to the north by adjacent



property. The property is currently vacant and is zoned CG/C-3-C, a district in which office uses are permitted as a matter-of-right within the Capitol Gateway Overlay.

The Applicant proposes to redevelop the property with a new twelve-story office building with ground floor retail. Four levels of below-grade parking will be provided. The floor area ratio ("FAR") of the property will be 10.0 FAR. The building height will measure no more than 130 feet. Vehicular access to required parking will be provided from 1<sup>st</sup> Street, S.E.

The Commission provided proper and timely notice of the public hearing on this application, by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 6D, the Office of Planning ("OP"), and to owners of property within 200 feet of the site. The site that is the subject of the application is located within the jurisdiction of ANC 6D. ANC 6D provided a letter of support for the project to the Commission. OP submitted a report and testified at the hearing in support of the application.

As required by 11 DCMR § 1604, the Commission required the Applicant to satisfy the burden of proving the elements that are necessary to approve the overall project under § 1604; establish the case for relief from rear yard requirements under §§ 774, 1604.9, and 3104; and satisfy the requirements for variance relief from court requirements pursuant to §§ 776, 1604.9, and 3103.

A representative of the Anacostia Waterfront Corporation ("AWC"), whose jurisdiction includes the land in this case, offered testimony on the Applicant's consultation with it during the time leading up to the hearing, noting the improvements made as the design was refined and the Applicant's commitment to dedicate substantial ground floor area to "preferred" retail uses.

No persons or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party. Based upon the record before the Commission, having given great weight to the views of the ANC, having considered the testimony of AWC, and having considered the report and testimony OP provided in this case, the Commission concludes that the applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1604, 774, 776, 3103, and 3104, including the specific standards relating to exceptional or extraordinary situation related to the property that creates a practical difficulty for the owner to comply with the court requirements of the Zoning Regulations when the relief sought for that can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3000.8, the Commission has determined to waive the requirement of 11 DCMR § 3028.8, that the Order be accompanied by findings of fact and conclusions of law. The waiver will not affect the rights of any party and is not prohibited by law.

It is, therefore **ORDERED** that this application be **GRANTED**.

VOTE: 4-1-0 (Gregory N. Jeffries, Anthony J. Hood, Carol J. Mitten, and  
Michael G. Turnbull to approve; John Parsons, opposed)

**BY ORDER OF THE D.C. ZONING COMMISSION**

**Each concurring member approved the issuance of this Order.**

ATTESTED BY:

  
JERRILY R. KRESS, FAIA  
DIRECTOR, OFFICE OF ZONING

FINAL DATE OF ORDER: JUN 14 2006

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE 10 DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE COMMISSION ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED.

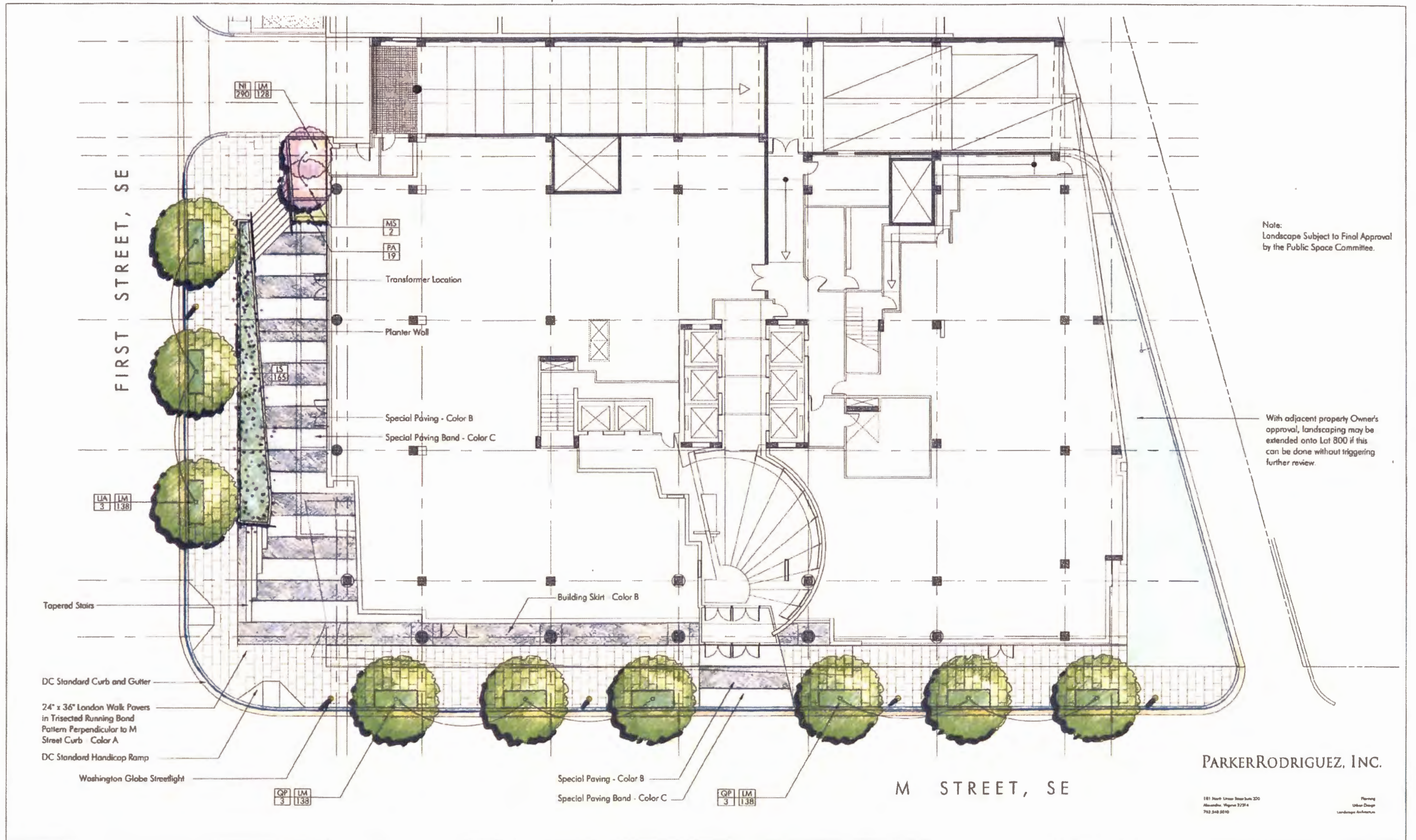
THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL



APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION THAT IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

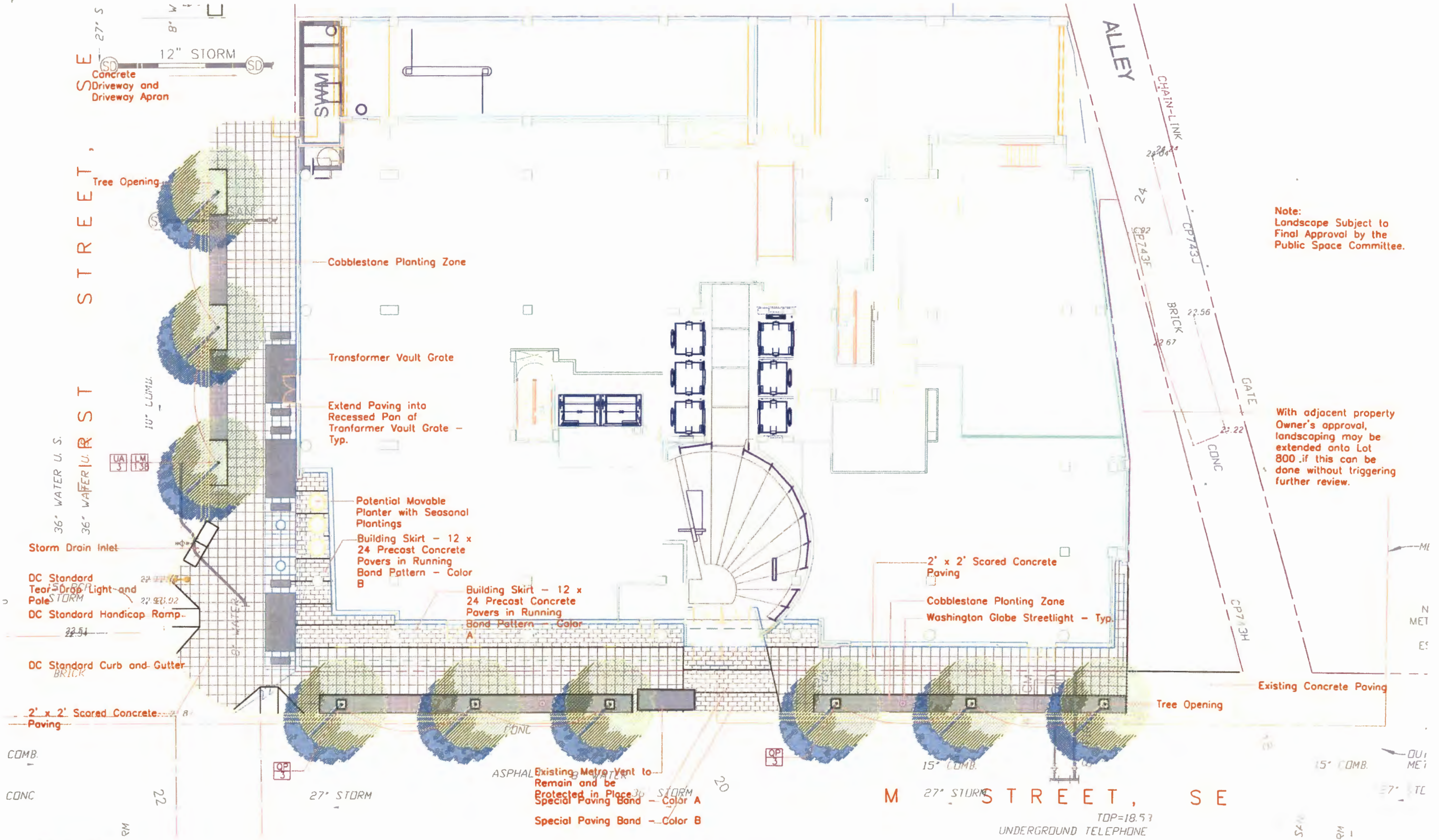
**100 M STREET S.E.**  
**WASHINGTON, DC**  
**OFFICE BUILDING**  
**REQUEST FOR MODIFICATIONS - ZONING**

INDEX	BOARD OF ZONING REQUEST FOR MODIFICATION SET (02/28/07)
COVER	INDEX
L-1	ORIGINAL LANDSCAPE PLAN RENDERING
L-1R	REVISED LANDSCAPE PLAN RENDERING
A-3	ORIGINAL FIRST AND SECOND FLOOR PLAN
A-3R	REVISED FIRST FLOOR PLAN
A-6	ORIGINAL PENTHOUSE - ROOF PLAN
A-6R	REVISED PENTHOUSE - ROOF PLAN
A-11	ORIGINAL EAST ELEVATION
A-11R	REVISED EAST ELEVATION
A-12	ORIGINAL WEST ELEVATION
A-12R	REVISED WEST ELEVATION



100 M STREET S.E. OFFICE BUILDING





Note:  
Landscape Subject to  
Final Approval by the  
Public Space Committee.

With adjacent property  
Owner's approval,  
landscaping may be  
extended onto Lot  
800 if this can be  
done without triggering  
further review.



Opus Architects & Engineers, Inc.

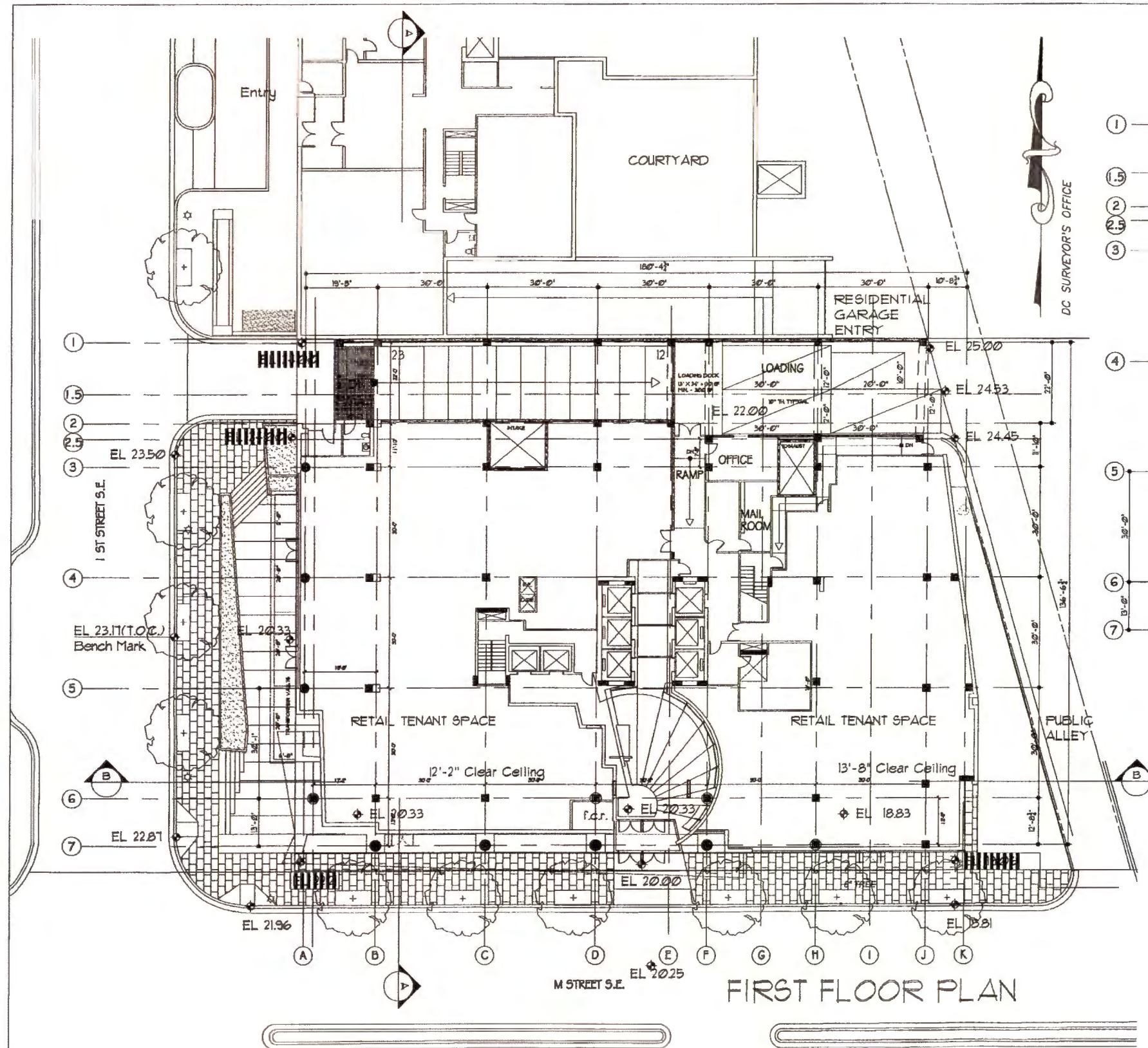
100 M STREET

Washington, DC

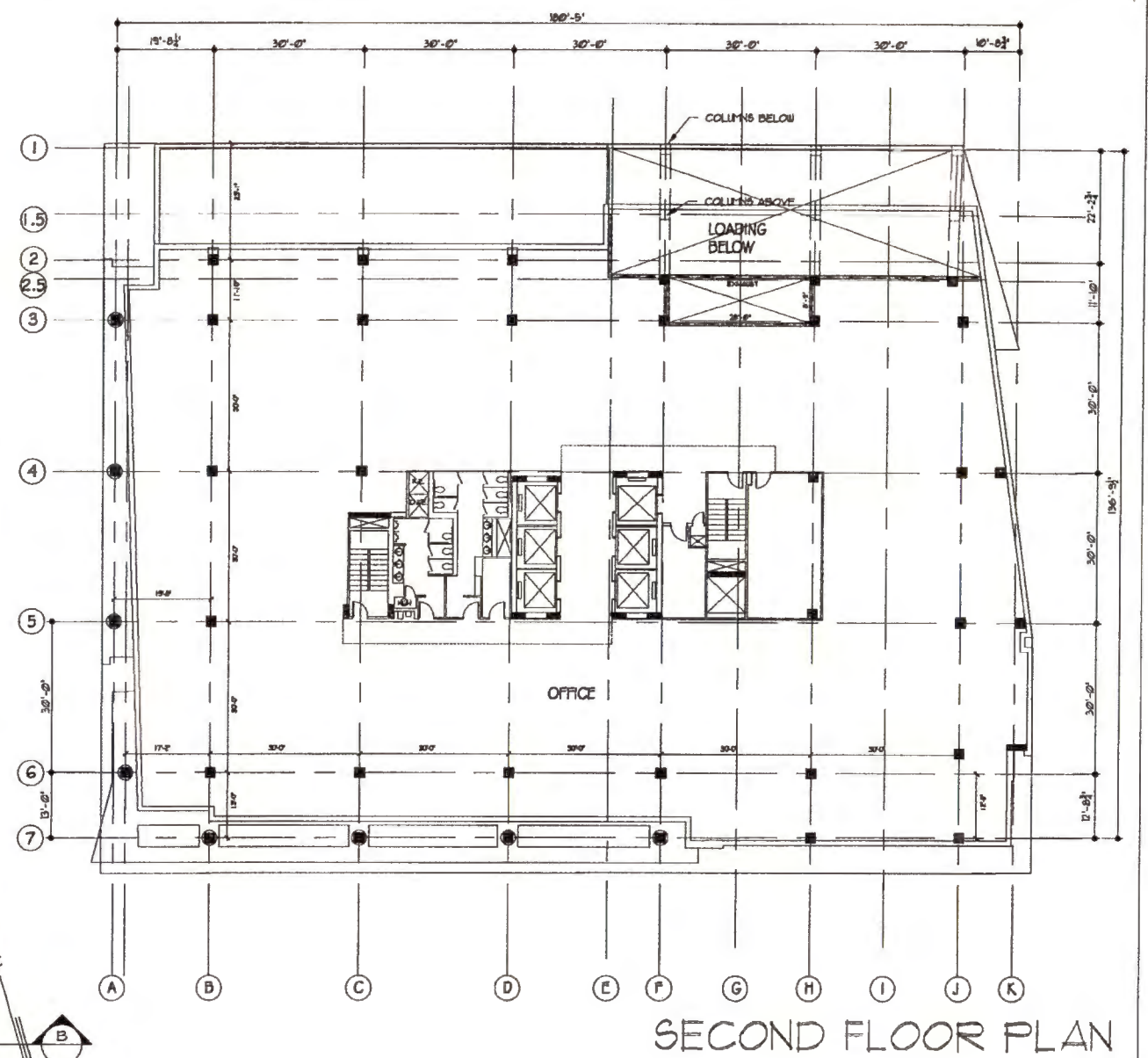
Request for Modifications\_Zoning (02/28/07)

L-1R





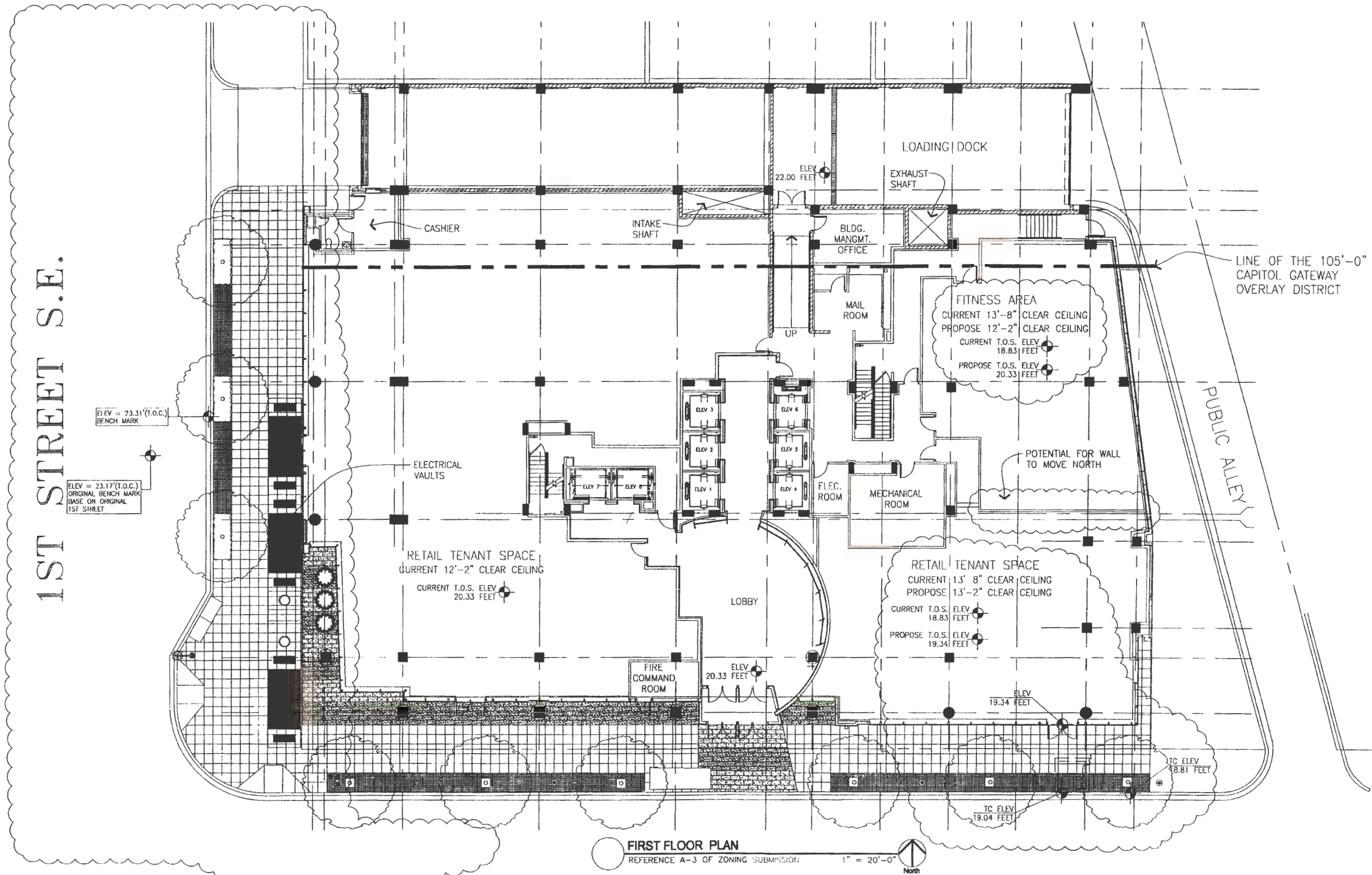
FIRST FLOOR PLAN



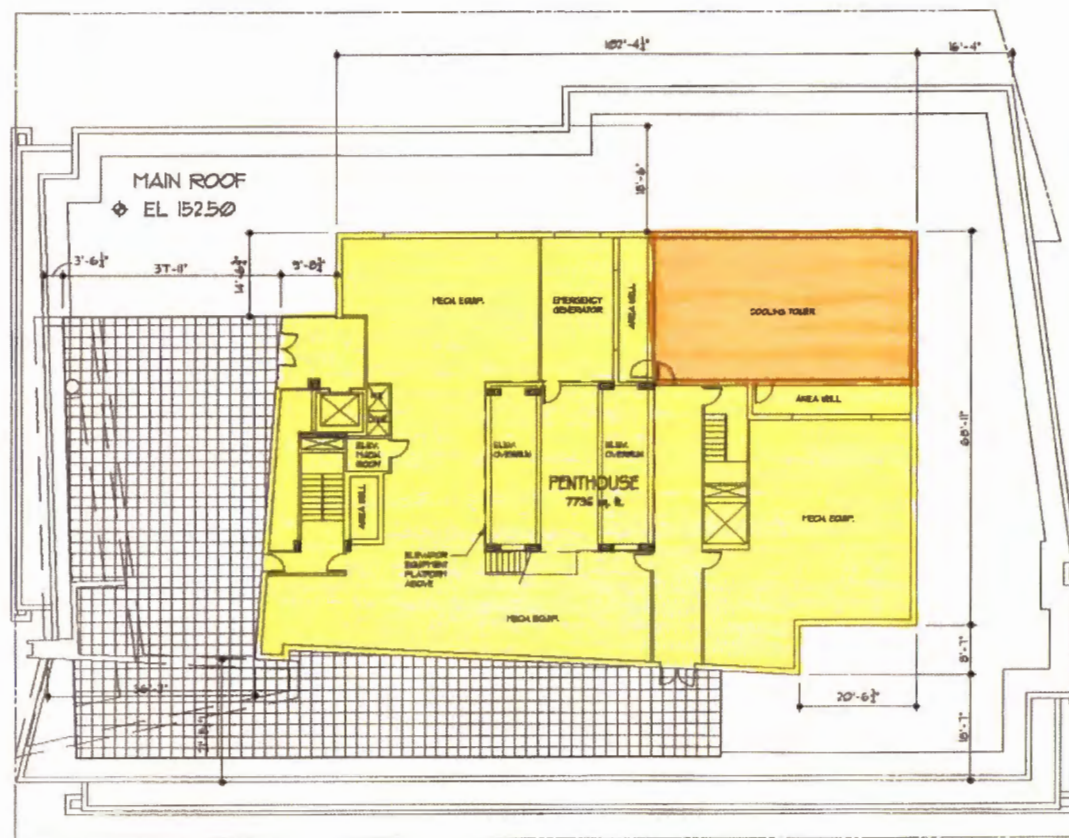
SECOND FLOOR PLAN

100 M STREET S.E. OFFICE BUILDING



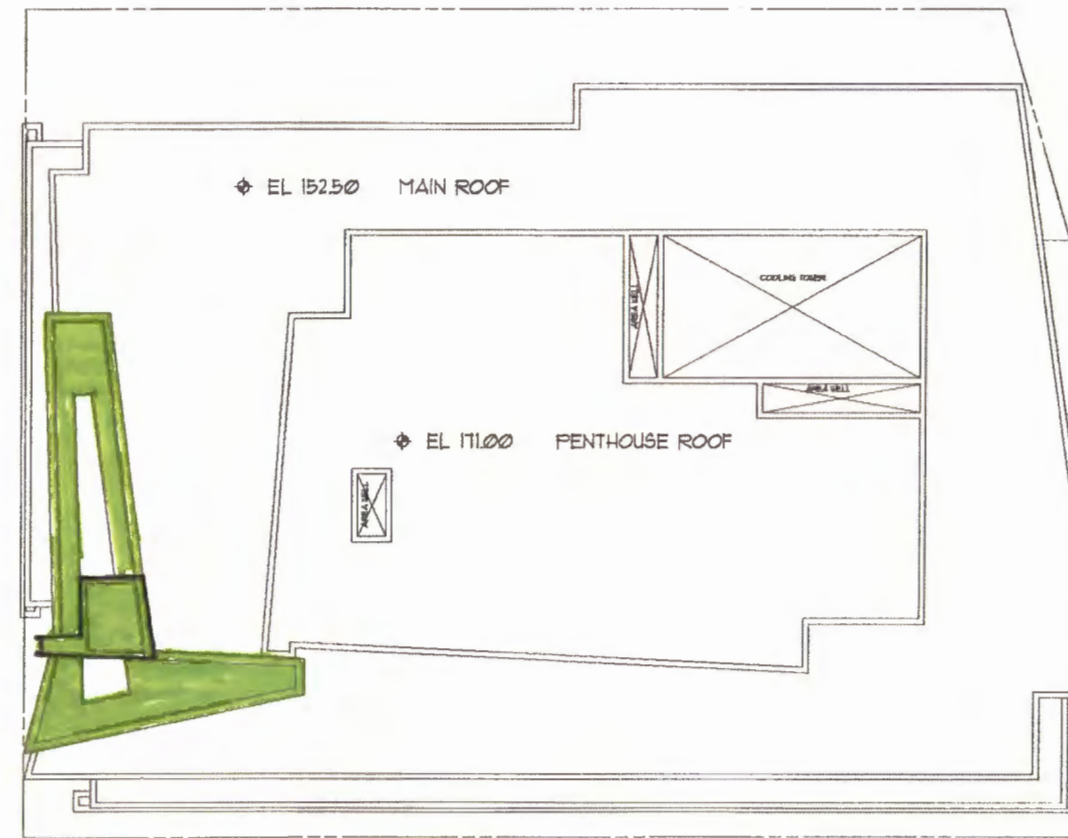




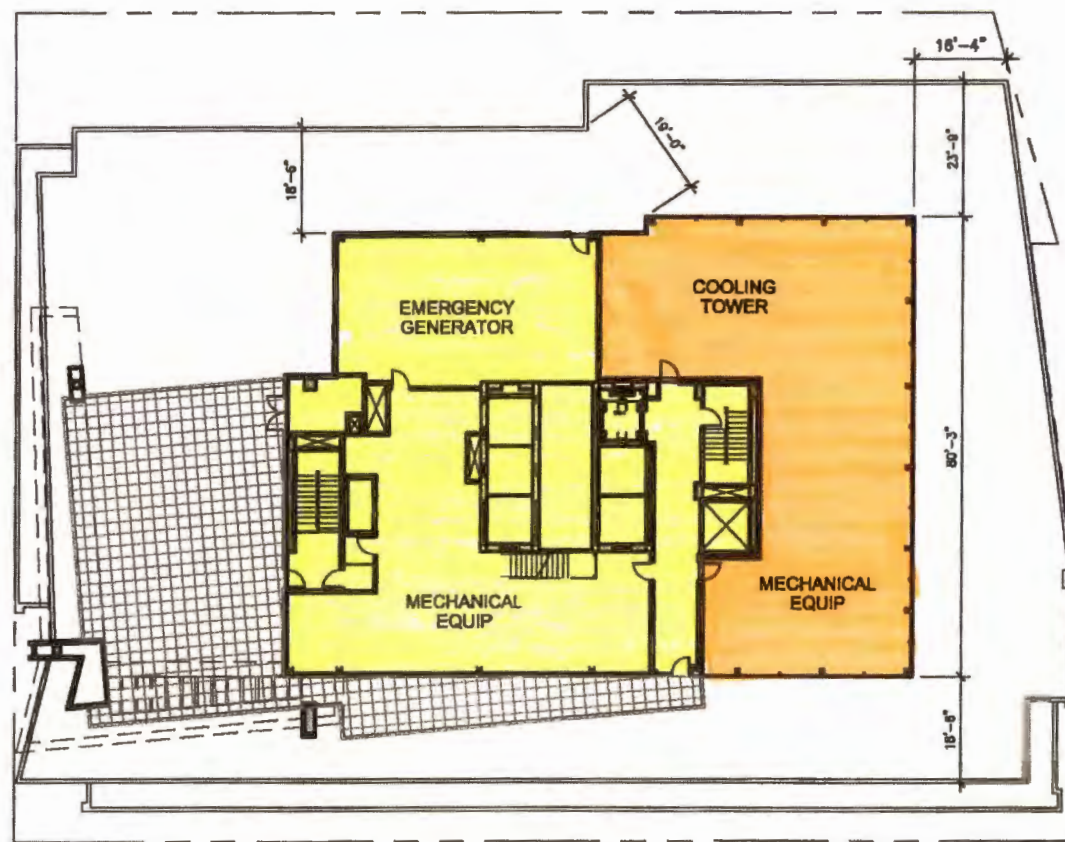


NOTE:  
MECHANICAL PENTHOUSE MAY  
DECREASE IN SIZE AS THE  
MECHANICAL DESIGN DEVELOPS  
BUT WILL NOT INCREASE IN AREA  
OR ENCROACH ON THE 10'-0" SETBACK  
FROM THE ROOF EDGE.

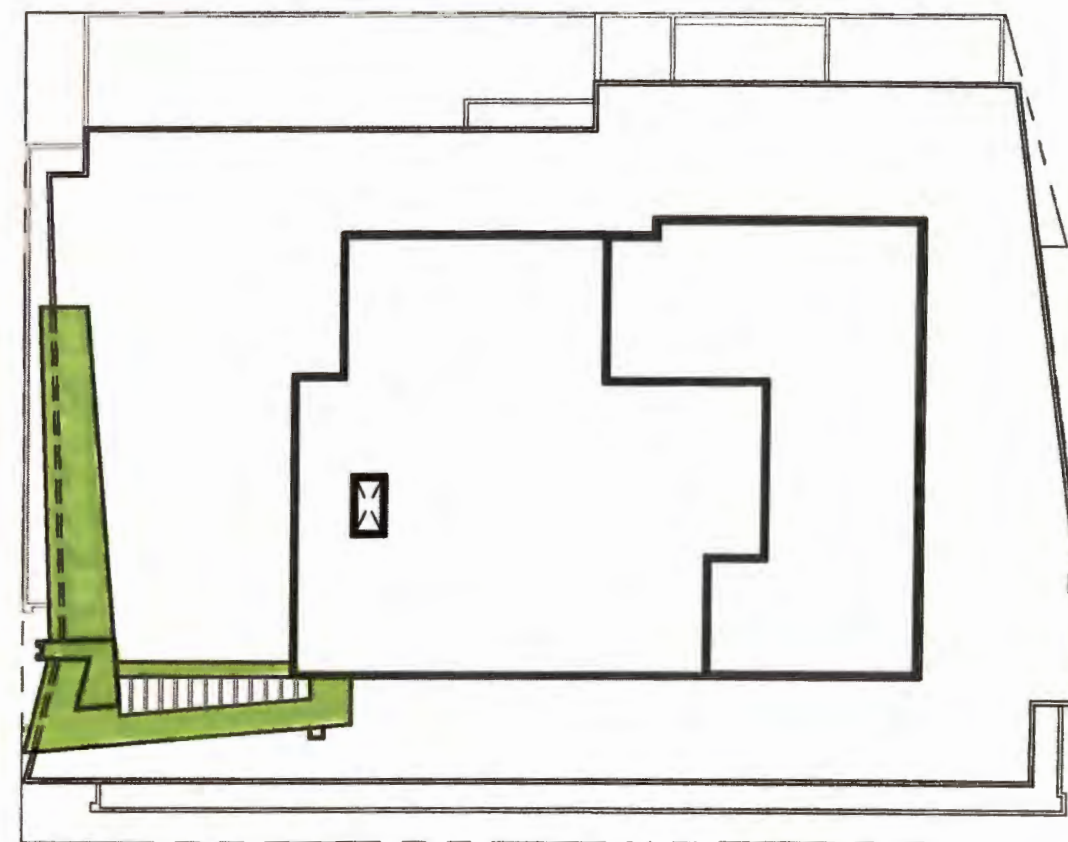
PENTHOUSE



ROOF PLAN



PENTHOUSE PLAN  
REFERENCE A-6 OF ZONING SUBMISSION  
1/32" = 1'-0" North

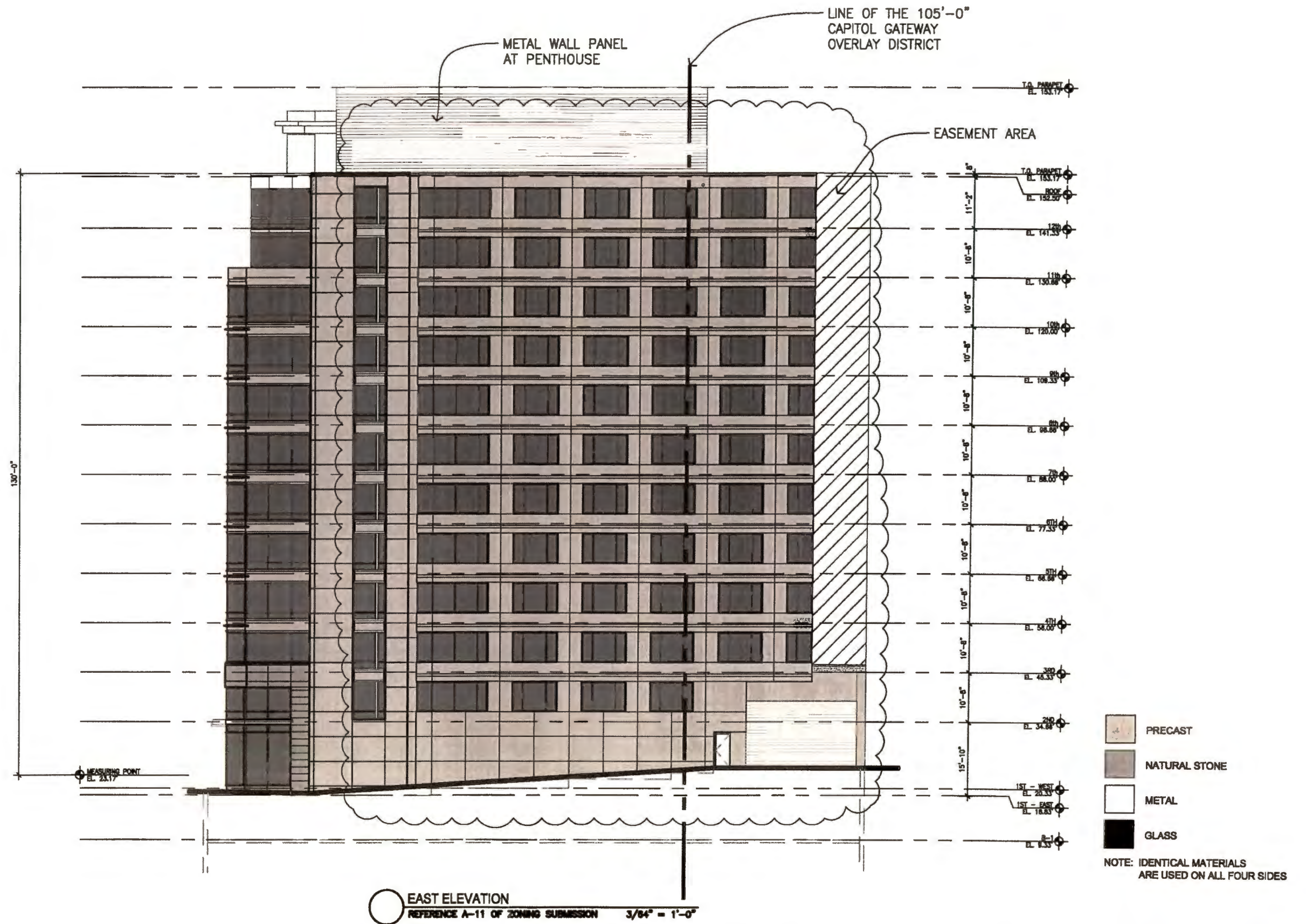


ROOF PLAN  
REFERENCE A-6 OF ZONING SUBMISSION  
1/32" = 1'-0" North



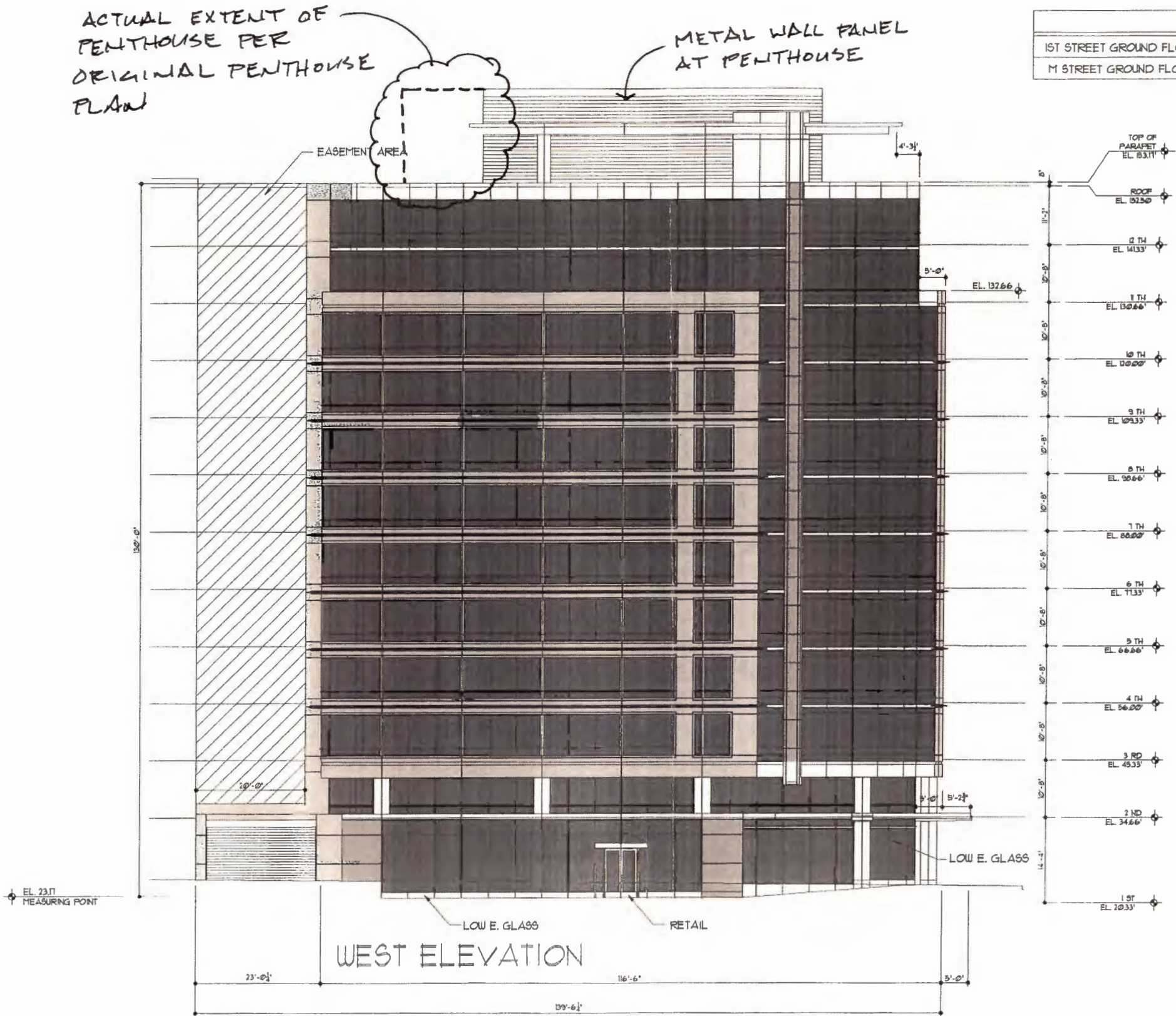








	ELEV. AREA	SOLID AREA	DISPLAY AREA
1ST STREET GROUND FLOOR ELEVATION AREA	1551	234	85%
M STREET GROUND FLOOR ELEVATION AREA	4044	290	93 %



NOTE:  
ALL GLASS TO BE CLEAR LOW-E.  
THE OFFICE FLOORS MAY HAVE A  
SLIGHTLY HIGHER SHADING COEFFICIENT  
THAN THE RETAIL LEVEL WHEN FINAL  
MECHANICAL COORDINATION TAKES  
PLACE.

- PRECAST
- NATURAL STONE
- METAL
- GLASS

100 M STREET S.E. OFFICE BUILDING



