BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Square 456 Associates

BZA Application No. 16387
Public Hearing: September 2, 1998
ANC 2C

STATEMENT OF THE APPLICANT

OFFICE OF ZONING
DISTRICT OF COLUMBIA
'98 AUG 19 P3:12

I.
Nature Of Relief Sought

This is an application pursuant to §§3108.1 and 3107.2 of the Zoning Regulations (Title 11, DCMR) for a special exception under §411.11 to allow roof structures not meeting the normal set back requirements and for a variance from the requirements of ¶1706.22(g) of the Downtown Development (DD) District to permit commercial development to proceed prior to the issuance of the certificate of occupancy for permitted off-site affordable housing. All required on-site and permitted off-site preferred uses are provided as part of this development. The requested relief would allow: (1) the construction of an office and retail building as an addition to the existing American Association of Retired Persons (AARP) building located at 601 E Street, N.W.; (2) the renovation and reconstruction of and an addition to the former Hecht's building and the adjoining buildings at 511-517 7th Street, N.W., to be used for office, arts and retail purposes; and (3) the renovation of and additions to the Murray Building and 625-627 E Street, N.W., for residential purposes with ground floor retail and arts uses. The Subject Property is located in the DD/C-4 District, and consists of Lots 37, 39, 868 and 869 in Square 456.

The proposed development will essentially complete the development of this key square in the Gallery Place subarea of Downtown, immediately across F Street from the MCI Center and just north of the existing Penn Quarter residential area. The proposed development would include on-site housing, arts, retail and office uses, as well as an agreement to construct affordable housing off-site at the Golden Rule Plaza site, located on the west side of New Jersey Avenue between New York Avenue and K Street, N.W.

BZA
CASE # 16387
EXHIBIT # 22

Board of Zoning Adjustment
District of Columbia
CASE NO.16387
EXHIBIT NO.22A1

II.
Jurisdiction Of The Board

The Board of Zoning Adjustment has jurisdiction to grant the requested variance and special exception relief pursuant to §§3108.1 and 3107.2 of the Zoning Regulations.

III.
Background Of The Case

The Subject Property is located in Square 456, which is bounded by F Street to the north, E Street to the south, 6th Street to the east and 7th Street to the west. The Subject Property comprises the major developable portion of the Square, excluding only the OBA Federal building at the southwest corner of the intersection of 6th and F Streets, the building now occupied by the District Chop House at 509 7th Street and the existing AARP building at 601 E Street. The Subject Property is improved with: the seven story terra cotta building known as the Hecht Company Addition (hereinafter "Hecht's") at 626 F Street, N.W., and the four adjoining buildings to the south at 511-517 7th Street, N.W., containing four, five and six stories; the four story Murray Building at 501-507 7th Street, N.W., also known as the Dime Savings Bank building; and the two, three and four story buildings at 625-627-629 E Street, N.W. A plat of the subject square identifying the components of the Subject Property is attached as Exhibit A. The Subject Property contains approximately 89,375 square feet.

The proposed development is a comprehensive integral development "package", which meets the varied and interrelated requirements of the DD District as well as the historic preservation and design requirements imposed by the process under the District's historic preservation law. The project includes: (1) a substantial arts component with high ceilings; (2) the first housing to be constructed in the area without the involvement of the Pennsylvania Avenue Development Commission (PADC), facing the existing Lansburgh's development and a proposed housing site in Square 457 to the south; (3) a significant off-site affordable housing component, comprising approximately 127 units of low and moderate income housing, targeted for senior citizens, at the Golden Rule Plaza site; (4) the preservation and integration into the project of portions of the vacant historic buildings on the site, including Hecht's with its ornamental terra

cotta facades and water tower; and (5) the development of commercial office and additional retail space in a manner compatible with the existing structures. These important components of the proposed project have been carefully integrated to form a successful project.

The total gross floor area ("GFA") of the proposed development is 736,405 square feet or 8.24 FAR. Space devoted to arts uses will total approximately 29,791 square feet of GFA equivalent. In addition, the project can accommodate additional retail space on the first floor of the Murray Building, in the new building to be constructed along F Street and elsewhere in the project. The total office and retail GFA is approximately 664,612 square feet. Parking spaces for 615 to 657 cars will be provided below-grade, with access from F Street and, through the AARP garage, from E Street.

The project includes on-site housing of approximately fifty-five apartment units. There will be a total of 56,240 square feet of GFA devoted to housing in the Murray Building, which will be expanded by six floors, and in 625-627 E Street. Within the floor area specified, the number and size of units will be subject to market demand. The building at 629 E Street is not a contributing building to the historic district and has been approved for demolition. That area will become a courtyard between the two residential components. The project also includes an off-site affordable housing component, as permitted by §1706.6(c). The project will account for 0.8 FAR of the required housing through a $500,000 joint venture with Golden Rule Plaza, Inc., a project sponsored by The Bible Way Church located in a DD/C-2-C District. Golden Rule Plaza has a GFA of approximately 131,000 square feet and will contain approximately 127 units for housing for low and moderate income persons.

As proposed and explained herein, this project is wholly consistent with the goals of the city, meets all of the preferred use requirements of the Downtown Development District and will be a substantial contribution to the Downtown area.

IV.
Exhibits In Support Of The Application

Before proceeding with the discussion of the merits of this application, the following additional materials are submitted:

Exhibit A:	A plan of the Square showing the components of the Subject Property.
Exhibit B:	A portion of the Sanborn Atlas showing the Subject Property outlined in red.
Exhibit C:	A portion of the Zoning Map showing the Subject Square outlined in red.
Exhibit D:	Surveyor's Plat of the property.
Exhibit E:	Photographs of the Subject Property.
Exhibit F:	Boundaries of the Downtown Historic District designated pursuant to D.C. Law 2-144.
Exhibit G:	Order of the Mayor's Agent, dated September 11, 1996.
Exhibit H:	Report, dated April 28, 1995, of the Office of Planning to the Zoning Commission in Case No. 94-20.
Exhibit I:	Outline of testimony of Pamela Benoit, representative of Square 456 Associates, Applicant.
Exhibit J:	Outline of testimony of the Architect.
Exhibit K:	Outline of testimony of Steven E. Sher, Director of Zoning Services, Wilkes, Artis, Hedrick & Lane, Chartered, expert in land planning and zoning.
Exhibit L:	Outline of testimony of William A. Davis, Jr., owner's representative of Golden Rule Plaza, Inc..
Exhibit M:	Architectural Plans (submitted separately).
Exhibit N:	Plan showing the location of roof structures for which special exception relief is sought.
Exhibit O:	Zoning Commission Order Nos. 681 and 787.
Exhibit P:	Summary of compliance with provisions of ¶1706.22(c), the computation of total project cost and contribution for affordable housing if the contribution option had been selected pursuant to §1706.23, et seq.

V.
The Applicant Is Entitled To Special Exception Relief from the Roof Structure Setback Requirements Under the Existing Zoning Regulations

As the Board is aware, a special exception use is a use predeemed compatible with other uses permitted in that particular zoning classification provided that the specific regulatory requirements are met. In reviewing applications for a special exception, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements set forth in the appropriate section. If the

Applicant meets its burden, the Board must ordinarily grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 965 (1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (1973). Through the exhibits, testimony and other evidence before the Board, the Applicant will establish that it complies with all applicable provisions under the Zoning Regulations.

Based on the testimony of witnesses, the exhibits and statements presented, the Applicant will demonstrate that the proposed exception will be in complete harmony with the use, height, bulk and design of existing and neighboring structures, and in harmony with the general purpose and intent of the Zoning Regulations and Maps, and will not tend to affect adversely the use of neighboring property.

The special exception relief required relates to the setback of two of the penthouses located on the proposed building. Under §411.11 of the Zoning Regulations, the Board of Zoning Adjustment may approve the location, design, number, or any other aspect of a roof structure even if it does not comply with the setback requirements of §770.7, where it would be impractical because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable. The Board has the power to approve a roof structure under §411.11, provided that the intent and purpose of the chapter and title of the Zoning Regulations are not materially impaired by the structure, and the light and air of adjacent buildings are not affected adversely.

The relief requested under this provision results because of the constraints in designing the addition to Hecht's and the four adjoining structures in the historic district and because of the small size of the Murray Building lot. The inability to meet the technical setback requirements is due to design considerations and the need to accommodate the mechanical equipment of the structures. The penthouses have been located as far away as possible from their respective street fronts in order that they will not be visible from the street. The result is that the penthouses are not set back the required eighteen feet, six inches from the edge of the roof mostly on the interior of the

square. The light and air of the adjacent structures will not be adversely affected by the penthouse locations.

The locations of the penthouses for which relief is sought is indicated on the plat attached as Exhibit N and are described as follows:

(1) The penthouse located on the building which is a combination of Hecht's and the four adjoining buildings at 511-517 7th Street, is required to be set back 18.5 feet from all edges of the roof. The penthouse is setback twenty-two feet (at its closest point) from the edge of the roof facing 7th Street, 49.08 feet from the edge of the roof facing F Street and twenty-four feet from the edge of the roof facing the District Chop House building at 509 7th Street. A portion of a wall of the penthouse has no setback on the south wall of the building facing the court at the rear. This is an existing condition which remains with no change. The east wall of the penthouse also faces the court separating Hecht's from the new building to be constructed on F Street. A portion of the existing penthouse east wall is setback only 8.5 feet from the edge of the roof facing that court. The line of the new penthouse extending to the south follows that same 8.5 foot setback, to match the existing historic penthouse. This portion of the new penthouse requires approval from the BZA as not meeting the 1:1 setback requirement.

The location and configuration of the penthouse is in direct response to the adaptive reuse of Hecht's. The reconstruction of the building includes the demolition of approximately one-third of the rear of the building including the old elevator and service core. This demolition is required in order to comply with the building code and to accommodate the reuse of the building. The rehabilitation of the project is designed to eliminate, to the extent possible, the visibility from the street of the existing court and the water tower. Full compliance with the Regulations is impractical since it would result in an inefficient use of the building due to location of the elevator cores. Further, full compliance with the Regulations would be contrary with the recommendations and objectives of the HPRB. The light and air of the adjacent structures will not be adversely affected.

Because of the historic nature of the buildings and pursuant to recommendations by the HPRB and the D.C. Preservation League, this penthouse is set

back as far as possible from the 7th Street property line. This location reduces the visibility of the penthouse from the street. Given the setbacks of the new construction behind the historic 7th Street structures, it would be architecturally impossible to locate the penthouse so as not to require special exception relief from the setback requirements.

(2) The penthouse located on the roof of the expanded Murray Building is setback the required 18.5 feet for an 18.5 foot high penthouse from the east and west edges of the roof, the side facing 7th Street and the side facing the courtyard on the east side of the building. The penthouse is setback only fifteen feet from the north and south edges of the roof, the side facing E Street and the side facing the District Chop House building to the north. The site of the Murray Building, Lot 39, is only seventy-five feet wide in a north-south direction. If the full 18.5 foot setback was provided on all four sides, a width of only thirty-eight feet would be available for a penthouse containing all of the elevator equipment, stairs and mechanical equipment necessary to service the ten story apartment building. Given the location of the lobby and core and the layout of apartment units around the perimeter of the building, that amount of space is not sufficient to allow for the proper operating of the apartment building.

The Applicant notes that further approvals from the HPRB and the Mayor's Agent are required to obtain construction permits. The Applicant reserves the right to make changes in the final design, as may be required by HPRB and the Mayor's Agent, provided that those changes do not diminish the various roof structure setbacks shown on the plans for which special exception relief is required.

VI.
Application Complies with the Requirements of the Downtown Development District

The Downtown Development (DD) District applies through various area-wide use requirements (§1702) and design standards (§1701) and through five subareas: retail, arts, Chinatown, housing and historic preservation. The Subject Property is located in whole or in part in three subareas: the Downtown Arts District (§1704), Housing Priority Area C (§1706) and Historic Preservation (§1707). Computations demonstrating compliance with the DD District preferred use requirements were

previously submitted to the Office of Planning and the Zoning Commission in connection with a text amendment including portions of Square 456 in the Downtown Historic District subarea (See Exhibit H). As more fully set forth below based on current computations, the proposed development meets all of the requirements of the DD District.

Areawide design standards:

- No credit is sought for arcades, nor are any arcades provided (§§1701.1 and 1701.2).
- Ninety-six percent of the streetwall of new construction is within four feet of the property line between the subject property and each abutting street frontage (§1701.3).
- There is no driveway leading to required parking on 7th Street (§1701.4).
- Along 7th Street, 61.5 percent of the streetwall is devoted to windows and entrances (§1701.5).

Areawide use requirements:

- Fifty percent of the ground floor of Hecht's and the addition will be devoted to uses listed in §§1710 and 1711 (§1702.1); this requirement does not apply to apartment houses (the Murray Building and 625-627 E Street).
- Preferred uses are provided as discussed for the subareas, below (§1702.2).

Downtown Arts District:

- A minimum of 1.0 FAR equivalent of floor area (89,374 square feet) must be devoted to uses listed in §§1710 and 1711 (§1704.3).
- Of that amount, 0.25 FAR equivalent (or 22,344 square feet) must be devoted to certain specified arts uses (e.g., art gallery, artist studio, performing arts space) (¶1704.3(a)).
- The total requirement may be met by proving 0.5 FAR equivalent (44,687 square feet) of uses from those listed in ¶1704.3(a) (¶1704.3(b)).
- Floor area devoted to arts uses listed in ¶1704.3(a) with ceiling heights of twelve feet or greater count towards the minimum requirement at one and one-half times the actual floor area (§1704.10).

- 29,791 square feet of arts use will be provided, all devoted to those uses specified in ¶1704.3(a) and all having a ceiling height of twelve feet or greater.

Housing Priority Area C:

- A maximum of 10.0 FAR is permitted (¶1706.6(a)).
- A minimum of 2.0 FAR (102,478 square feet) must be devoted to residential use (¶1706.6(b)).
- Up to 0.8 FAR of the residential requirement (40,991 square feet) may be provided off-site as affordable housing anywhere in the District of Columbia (¶1706.6(c)).
- Up to 0.5 FAR of the residential requirement (25,620 square feet) may be met through bonus density for arts uses (§§1704.8 and 1706.12).
- There is no residential requirement for a lot limited to an on-site FAR of 6.0 by the Historic Preservation requirements (§1706.20).
- The housing requirement will be satisfied as follows:
    - 56,240 square feet (1.1 FAR) will be provided on-site;
    - 40,991 square feet (0.8 FAR) will be provided as affordable housing off-site on the Golden Rule Plaza site; and
    - 5,247 square feet (0.1 FAR) will be off-set through bonuses earned for the arts uses.

Historic Preservation:

- Designated sites are limited to an on-site FAR of 6.0 (§1707.4)
- Multi-lot sites which include sites limited to 6.0 FAR and sites not limited may average the permitted FARs to achieve a composite FAR for the entire development (§1707.4).
- Lots 868, 37 and 39 are limited to 6.0 FAR; lot 869 is allowed the maximum 10.0 FAR.
- The composite FAR is 8.24.

Combined Lot Development

- Two or more lots may be combined for the purpose of achieving required FAR equivalent for preferred uses (§1708.1).

- Lots may be in same square or different squares (¶1708.1(a)).
- Preferred uses may be transferred from the sending lot to the receiving lot (¶1708.1(e)).
- The maximum permitted floor area and the minimum required floor area for preferred uses shall be calculated as if the combined lots were one lot and the total project shall conform to the maximum and minimum floor area requirements (¶1708.1(h)).
- The transfer of preferred uses must be documented and recorded in the land records (¶1708.1(j)).
- The applicant proposes to use combined lot development to transfer the housing requirement of Lot 869 (the vacant parking lot) to Lots 37 and 39 (the Murray Building and 625-627 E Street) and to transfer the arts requirement from Lot 869 (the vacant parking lot) and Lots 37 and 39 (the Murray Building and 625-627 E Street) to Lot 868 (Hecht's and 511-517 E Street). The maximum overall gross floor area and the minimum floor area for preferred uses meet the requirements, as set forth above.

The Applicant notes that there are a wide range of options allowed under the DD District regulations for meeting the preferred use requirements. The Applicant reserves the right to adjust the preferred uses as otherwise permitted by the Zoning Regulations, provided that the Applicant will not reduce the amount of on-site housing shown on the plans submitted to the Board. The Applicant further notes that the project may be eligible for transferable development rights (TDRs) under the provisions of the various applicable subareas. This application does not address TDRs and has no bearing on the right of the Applicant to earn and send TDRs under the Regulations.

VII.
Applicant is Entitled to Variance Relief Under the Zoning Regulations

The Applicant seeks a variance regarding the vesting of its right to occupy the nonresidential portion of its development, which affects the timing of the contribution to be made as part of the joint venture with Golden Rule Plaza, Inc., to construct off-site

affordable housing. The requirements applicable to off-site affordable housing are set forth in §1706.22, as follows:

(a) The owner or developer of the development site in the DD District that generates the affordable housing component may construct the affordable dwelling units or may joint venture with either a nonprofit housing sponsor or a for-profit builder-developer;

(b) Construction of the affordable dwelling units may be either construction of a new building or buildings or rehabilitation of an existing building or buildings;

(c) The total project cost, including acquisition, rehabilitation and long-term subsidy, shall be not less than the amount that the project would be obligated to contribute if the financial contribution option specified in §§1706.24 through 1706.26 had been pursued;

(d) If construction or rehabilitation of the required square footage of affordable housing does not reach the required financial threshold specified in paragraph (c), the remaining housing requirement may be met by financial contribution to a housing trust fund or by construction or rehabilitation of additional units of housing;

(e) If the affordable dwelling units are provided by rehabilitation, the building(s) shall have been previously in nonresidential use, or if previously in residential use, shall either have been vacant for not less than three (3) years prior to rehabilitation or, if occupied, shall be a tenant- sponsored purchase of the building;

(f) The Director, Department of Housing and Community Development, or the administrator of the D.C. Housing Production Trust Fund, shall certify to the Zoning Administrator the following:

(1) That suitable legal and financial arrangements have been made to assure that the housing qualifies and will be continued as affordable dwelling units for not less than twenty (20) years;

(2) That the expenditure of funds per dwelling unit and the use of the funds in combination with other financial leverage, is an effective means of assisting in the production of affordable housing; and

(3) That all conditions in §§1706.22 through 1706.27 of this section have been met; and

(g) No certificate of occupancy shall be issued for the nonresidential development within the DD District until a certificate of occupancy has been issued for the affordable dwelling units.

The proposed off-site affordable housing will be constructed through a joint venture with Golden Rule Plaza, Inc., which is a nonprofit subsidiary of The Bible Way Church formed specifically for the purpose of developing a housing project for persons

of low and moderate income. The project will include approximately 131,000 square feet and contain approximately 127 units in a new seven story building. The project is located in a DD/C-2-C District, on the northern edge of Downtown. The total project cost, approximately $12.5 million, far exceeds the value of the contribution which would have been required ($1.37 million) if the Applicant had elected to proceed through the contribution option. The computation of the contribution is set forth in Exhibit P. The financing associated with the project will insure that the project remains for affordable housing for at least a twenty year period.

Golden Rule Plaza, Inc., has requested the applicant to post its $500,000 payment as part of the joint venture prior to the settlement on the permanent financing, in order to decrease the borrowing component of the project's financing. Golden Rule Plaza, Inc., anticipates that the financing will be in place this fall, and that the project will proceed promptly thereafter. The applicant is prepared to place the funds in escrow now so that they are available to Golden Rule Plaza, Inc., at the time of settlement. However, the Applicant needs assurance that, once it has made its commitment and disbursed the funds, it is able to proceed with the construction and occupancy of its entire development, including both the residential and nonresidential components. The Applicant therefore requires a variance from the requirements of ¶1706.22(g), to allow the certificate of occupancy for the nonresidential portion of the proposed development to be issued on its own time frame, without regard to whether the certificate of occupancy has been issued for the Golden Rule Plaza project.

Through discussions with the Office of Planning, the Applicant has agreed to hold the money in escrow for a period not to exceed two years from the date of approval of this application, to give Golden Rule Plaza, Inc., a sufficient and reasonable length of time and every opportunity to close on its construction loan. If Golden Rule Plaza, Inc., has not proceeded within two years, after consultation with the Office of Planning, the Applicant will file an appropriate alternative plan with the Board as to how the $500,000 will be used for affordable housing as the only issue in that further proceeding.

A. The Requested Variance is an Area Variance.

The burden of proof for variance relief is well established. The Applicant must demonstrate that the Subject Property is unique, that the strict application of the Zoning Regulations will result in practical difficulties and undue hardship to the Applicant and that the granting of the variance will not cause substantial detriment to the public good nor impair the intent, purpose or integrity of the zone plan. *Palmer v. BZA*, 287 A.2d 535, 541 (D.C. 1972).

The nature of the relief requested in this case is that of an area variance and not a use variance. All of the uses which are included as a part of this application are uses permitted as a matter-of-right in the DD/C-4 District. As demonstrated above, the project complies with all of the preferred use requirements of the DD District.

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

The Subject Property is affected by a number of exceptional situations and conditions which make it expressly unique. These situations and conditions, which are described in more detail below, include: (1) the impact of the existing Hecht's building and the other buildings located within the Downtown Historic District and the requirements to comply with D.C. law 2-144; and (2) the multiple overlays of the DD District, including the housing, arts and historic preservation requirements.

The Subject Property is located partially within and partially outside the Downtown Historic District designated pursuant to D.C. Law 2-144 (see Exhibit F). Pursuant to the requirements of the Law, the proposed project has been reviewed by the Historic Preservation Review Board and the Mayor's Agent. The project has been approved by the Mayor's Agent as to the demolition, additions and new construction proposed (see Exhibit G). The approved design which complied with historic preservation requirements included retention of major portions of Hecht's, as well as setbacks at the upper levels of the addition behind the buildings at 511-517 7th Street. The floors of the 7th Street buildings are at different levels, requiring additional elevators and more unusual, difficult and expensive construction to integrate these parts into a single operational building.

Perhaps of greater consequence, the Subject Property is affected by three different subarea requirements from the DD District: arts, housing and historic preservation. There is no other privately-owned property similarly affected. The Applicant has spent many years since the adoption of the DD District determining how to cope with the impact of the three overlapping requirements. The proposed development includes all of the preferred uses required by the DD District, taking advantage of the requirements, incentives and offsets permitted. The mix of uses, including housing on the Murray Building and 625-627 E Street sites, arts on the Hecht's site and retail and office on the other parts of the property is a difficult and unique mixture to achieve. No other project has yet to proceed to include housing as required by the DD District.

The D.C. Court of Appeals has found that an "extraordinary or exceptional situation or condition" may arise from factors other than the physical aspects of the property. See *Monaco v. D.C. Board of Zoning Adjustment,* 407 A.2d 1091 (D.C. App. 1979) and *De Azcarate v. D.C. Board of Zoning Adjustment*, 388 A.2d 1233 (D.C. App. 1978). In this case, the DD District, with all of its complications and overlays, was imposed on the property after the first phase of the project, the AARP building, was begun and after planning for development of the site had proceeded. At the request of the Applicant, the Zoning Commission expressly modified the DD District to allow the Applicant to put together a feasible development package which included on-site housing. See Exhibit O. This regulatory background comprises the same kind of factors which the Court found to sustain the grant of variances in *Monaco* and *De Azcarate.*

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

The Applicant is desirous of proceeding promptly with development of the Subject Property. Because the project includes an off-site affordable housing component, permitted by the Regulations to satisfy the housing requirements, the eventual occupancy of the nonresidential portion of the project is at risk subject to the completion and occupancy of a project which is not controlled by the Applicant.

The financing of affordable housing projects requires the careful assembly and coordination of many different elements. The Applicant's $500,000 commitment is an important component of the Golden Rule Plaza project.

There is every expectation that the Golden Rule Plaza project will proceed in the near future and will be ready for occupancy prior to the nonresidential portion of the Subject Property. However, there are a multitude of factors, some outside the control of both the Applicant and Golden Rule Plaza, Inc., which could cause that project to be delayed. If the Applicant was to construct its project and then was unable to occupy it because the Golden Rule Plaza project was not complete, the Applicant would suffer an extreme difficulty in being unable to use the property for any permitted nonresidential use. No prudent real estate investor or developer would proceed without being assured of being able to occupy and use the property once construction was complete.

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

As described above, the development of the Subject Property complies with all of the use and design requirements of the DD District. The approval of this application will allow the development of the Subject Property to proceed, including on-site residential, arts, retail and office. This project will contain the first housing constructed in the DD District without the support or backing of the PADC. This is an important site for the city, in the changing Gallery Place neighborhood, across from the MCI Center. Replacement of the existing parking lot and unused buildings with a lively mix of uses in well-designed buildings will be beneficial to the city and help achieve the balance desired by the Comprehensive Plan and the zone plan.

Similarly, the transfer of funds to Golden Rule Plaza, Inc., at the time most beneficial to the predevelopment activities for its project will help achieve other important goals for the city. The construction of 127 units of affordable housing targeted for senior citizens on the edge of Downtown will increase the supply of a kind of housing still in desperate need. No other zoning relief is now required to construct the Golden Rule Plaza project, so the intent, purposes and integrity of the Regulations will be maintained.

VIII.
Witnesses

A. Pamela Benoit, representative of the Applicant.

B. Colden Florance, KCF-SHG, expert witness in architecture.

C. Steven E. Sher, Director of Zoning Services, Wilkes, Artis, Hedrick & Lane, Chartered, expert witness in land planning and zoning.

D. William A. Davis, Jr., owner's representative of Golden Rule Plaza, Inc.

IX.
Conclusion

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicant therefore requests that the Board grant the application, subject to the following condition:

> Within thirty days after the issuance of the Board's order, the Applicant shall place $500,000 in an escrow account for the benefit of Golden Rule Plaza, Inc., to be made available to Golden Rule Plaza, Inc., at the time of settlement on the financing for the low and moderate income housing project to be constructed on the west side of New Jersey Avenue between New York Avenue and K Street. After placing the $500,000 in escrow, the Applicant may proceed to construct and occupy the development in Square 456. In the event that the Golden Rule Plaza project has not settled on its financing and drawn down the funds in the escrow account within two years of the date of the Board's order, the Applicant shall consult with the Office of Planning to determine an appropriate alternative plan as to how the funds will be used for affordable housing, and shall submit that plan to the Board in an appropriate motion. The submission of such an alternative plan in no manner affects the rights granted by this order enabling the applicant to proceed with the mixed-use development on the subject site.

In addition, some but not all of the various approvals necessary to proceed with the subject development have already been obtained. Further review and approval by the HPRB and the Mayor's Agent is required. The subject property is on the market and the actual future development of the site may be undertaken by a developer other than the present owner. The developer must be able to adjust the design of the building to respond to market conditions at the time the project goes forward, to comply with the requirements of future tenants of the building, not now known. The Applicant therefore requests that the Board's order contain the following provision:

The Applicant may modify the design of the building subject to approval under D.C. Law 2-144, provided that those changes do not diminish the roof structure setbacks shown on the plans for which special exception relief is required, and may otherwise comply with the provision of preferred uses so long as all the requirements of the Zoning Regulations are met, provided that the Applicant shall not reduce the amount of on-site housing shown on the plans submitted to the Board.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
CHARTERED

By _____
Norman M. Glasgow, Jr.
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006
(202) 457-7800

August 19, 1998

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 681
Case No. 89-25
(Downtown Development
District - Text and Map Amendment)
December 17, 1990

The Zoning Commission for the District of Columbia initiated this case to consider and adopt appropriate amendments to the Zoning Regulations to further certain of the development policies and land use objectives that are contained in the Land Use and Downtown Plan Elements of the Comprehensive Plan for the National Capital.

The particular focal points of this proceeding are sections 902 through 915 (Downtown land use objective and supporting policies; and Downtown Retail, Residential, Hotel, Private Office, Arts, Cultural, Entertainment, and other land use objectives, and supporting policies); Sections 922 through 925 (Downtown Historic Preservation objectives and policies); Sections 939 and 940 (Downtown Economic objectives and supporting policies); Sections 951 and 952 (Downtown Retail Core objectives and supporting policies); Sections 953 through 962 (Gallery Place, Chinatown, Convention Center Area, Pennsylvania Avenue West, and Market Square objectives and supporting policies); Sections 965 and 966 (Mount Vernon Square objectives and supporting policies); Sections 981 and 982 (Downtown Zoning and Other Land Use Controls objectives and supporting policies); Section 1127 (Chinatown Special Treatment Area); and Sections 1129 and 1130 (Downtown Arts District objectives and supporting policies).

The Zoning Commission has given due consideration to D.C. Law 8-129, the District of Columbia Comprehensive Plan Amendments Act of 1989. By D.C Law 8-129, the Council adopted a number of amendments to the District of Columbia Comprehensive Plan. In no respect, however, did it amend any of the cited sections. Indeed, the Council adopted no amendment - none - to Title IX of the Comprehensive Plan, that is, the Downtown Plan Element.

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As the Commission observed in Zoning Commission Order No. 609 (Z.C. Case No. 88-7; Downtown SHOP - Text and Map Amendments):

> The policies by which the Commission must be guided have been adopted. It is evident that the Executive Branch and Council considered them with care. The charge of the Zoning Commission is not to assess and revise those policies, but to implement them, by adopting Zoning Regulations that are not inconsistent with the established objectives and policies for ... Downtown.

Of particular import for the Commission's deliberations are Sections 981 and 982 of the Comprehensive Plan:

Sec. 981 Downtown Zoning and Other Land Use Controls Objectives

The Downtown zoning and other land use controls objectives are to:

(1) Select zone districts and zoning techniques that are consistent with the Downtown Element; and

(2) Use public development sites to achieve the objectives of the Downtown Element.

Sec. 982. Policies in Support of the Downtown Zoning and Other Land Use Controls Objectives

The policies established in support of the Downtown zoning and other use controls objectives are as follows:

(1) Recommend zoning for Downtown that takes into account the targets of the Downtown land use objectives;

(2) Prepare new zoning regulations that provide appropriate incentives for key land uses, such as residential, hotel, theater and arts-related facilities, and historic preservation;

(3) Consider including performance bonuses and administrative reviews wherever possible in the Zoning Regulations of the District of Columbia that provide for incentives;

(4) Use appropriate zoning text and map

changes, including overlay zones, to achieve Downtown Element objectives, including but not limited to the following:

(A) Obtaining mixed-use development with residential development south of Massachusetts Avenue;

(B) Obtaining mixed-use development west and south of Mount Vernon Square, to Pennsylvania Avenue, N.W., using office development where appropriate as a catalyst for new housing and hotels;

(C) Obtaining retail use, especially on the ground floor, in the retail core, Gallery Place, Market Square, and Chinatown subareas;

(D) Obtaining arts and entertainment use in the Gallery Place area and portions of the retail core and Chinatown;

(5) Provide that the Zoning Regulations of the District of Columbia applicable to the retail core and other areas of Downtown where retail uses are to be concentrated should implement the desired objectives by requiring that a portion of the building space be devoted to retail use, and by including standards for frontages (These standards should foster active, street-oriented retail uses on the ground floors of selected streets.); and

(6) Use the opportunity of public development sites, such as urban renewal sites, WMATA joint development sites, University of the District of Columbia site, and PADC sites, to implement key objectives and policies of the Downtown

Element, especially with respect to Downtown land use and design.

On November 17, 1989, the Office of Planning submitted proposed amendments to the Zoning Regulations and Map to establish a Downtown Development District ("DDD"). The Commission determined that the Office of Planning proposal presented a sound basis for the consideration of amendments, and decided on December 14, 1989, to set the proposal for hearing, together with certain elements of alternative proposals that had been submitted by the D.C. Preservation League, the Downtown Cluster of Congregations, and the National Capital Area Chapter of the American Planning Association.

Beginning on February 22, 1990, the Commission conducted 9 hearing sessions in this proceeding, in the course of which 134 witnesses spoke and the total pages of the several transcripts reached 1,498. In addition, after preliminary development of proposed revisions to the proposal, the Commission invited additional written public comments on the revised proposals for residential and mixed-use development. This comment period began on July 16, 1990, and extended until September 11, 1990.

Notice of Proposed Rulemaking was published in the D.C. Register on October 26, 1990. The notice established a deadline of November 26, 1990 for the submission of written comments. The deadline was extended to December 3, 1990, except that the Council was allowed until December 12, 1990, to submit its comments. On October 24, 1990, the Zoning Commission referred the proposed amendments to the National Capital Planning Commission ("NCPC") for review and comment. By report dated December 6, 1990, NCPC found that the objectives of the proposed text amendment and mapping are not inconsistent with the Comprehensive Plan for the National Capital, but at this time, in the absence of actual physical proposals, NCPC is unable to assess the impact that the development requirements may have on the Federal establishment or other Federal interests in the National Capital.

The issues that confront the Zoning Commission in this case present choices among competing public policies that all have merit. The choice is not among several policies that are wrongly motivated and one that is salutary.

As framed by the record in this proceeding, the central thrust of the varying contentions that have been presented is as follows:

- The case is simple: The Zoning Commission must simply follow the Comprehensive Plan, and adopt

- Zoning Regulations that will follow the Plan's clear directions about housing, historic preservation, arts and related uses, and other mixed use goals and objectives.

- The Plan's goals and objectives, albeit worthy, are not realistic, and cannot be achieved without major public subsidies in addition to zoning bonuses and incentives. Zoning cannot do it alone.

- As proposed, the DDD regulations would be unreasonably destructive of land values.

- To the extent that commercial development in the proposed DDD area is able to generate funds for housing, the funds should be allocated for affordable housing and, in particular, for the development of affordable housing in areas where it will be less costly than in the DDD area.

The Commission has considered these arguments with care, and to the extent that it concludes that it can find authority in the Comprehensive Plan, it has developed a zoning regulation that accommodates those concerns. To some extent, those concerns may have to be presented to the legislative body for further resolution.

The policy that the Zoning Commission undertakes to implement is one that the Commission is not free to reject or to revise. That authority rests elsewhere. And it is clear that the Commission may not look to the Plan's broadly-stated goals and objectives in various areas of public policy as overriding explicitly-stated land use goals and objectives for the Downtown area. If the Commission were to do so, it would use the Plan to destroy the Plan. This the Commission will not do.

The proposed rulemaking responded to a number of concerns that were expressed during the public hearings about various specific provisions of the text. Those changes will not be set forth in detail here.

Comments on the proposed rulemaking have presented a number of specific issues for the Commission to consider, and the Commission has examined those issues. In this Order, the Commission discusses the issues of primary importance. Although it has considered the other matters, it has determined that explicit comment is not required about each point.

The Commission has determined to allow increased floor area in the DDD, and to increase the proportion of off-site housing available in connection with projects to the south of Massachusetts Avenue. The Commission has concluded that this adjustment remains faithful to the mandate of the Comprehensive Plan, and responds to concerns about affordable housing and the viability of the DDD amendments.

A number of comments urge exemptions or other special treatment for particular squares. Except for a relatively small number of sites that are subject to the authority of the Pennsylvania Avenue Development Corporation ("PADC"), the Commission has concluded that specialized treatment to accommodate particular sites would not be reasonable. As to the PADC squares, the Commission will issue a further notice of proposed rulemaking.

The Commission has determined to amend the language of proposed subsection 1707.4 to allow composite FAR for combined development sites in the historic area.

The Commission is not persuaded that subsection 1700.6, as adopted, is beyond the scope of the notice of public hearing. The public hearing notice alerted all interested persons to a comprehensive proposal. The Commission received documents and heard testimony that was fully as comprehensive. The public hearing notice squarely framed the central issue: What Zoning Regulations would reasonably implement the goals and policies of the District for the Downtown area? Persons from varying perspectives, including the development community, presented alternatives that were different from the explicit text, but which were without doubt, "reasonably related to" the text and other matters set forth in the hearing notice.

The Commission also believes that the D.C. Administrative Procedure Act provides procedures that supplement those set forth in the Zoning Act. That is, the notice of proposed rulemaking provided an additional process for addressing the specific proposed amendments to the Zoning Regulations that were developed or refined through the hearing process.

Another concern related to the elimination of the bonus ratio factor for transferred development rights (TDR's). This proposed change responded to the expressed views that too many TDRs would be created for the available development sites, and that the DDD text should be shortened, simplified, and clarified.

A comment suggests that this change would be beyond the scope of the public hearing notice. The Commission is not

persuaded that this is so. The public hearing notice set forth the entire proposed text of Chapter 17, and also said:

> The Zoning Commission will consider the OP proposal, certain alternatives that are set forth in this notice, any modification thereto, or alternative proposals that are presented and reasonably related to matters that are set forth in this notice.

Participants in the hearing certainly recognized that TDR transfer ratios were reasonably related to the proposal, and those ratios were discussed. In fact, the commentators that press the notice issue observed the following in comments submitted on April 6:

> It is... extremely important to bring the supply and demand for bonus development into a different balance. The most pressing need is to create additional receiving areas where the development rights can be used. However, with particular regard to the historic preservation issue, the balance can be helped by reducing the potential supply of TDRs by allowing a greater level of on-site development...

Suffice it to say, if the notice of public hearings reasonably presented an issue about the balance between the supply of and demand for TDRs, and a reduction of the supply of TDRs as an answer, then it afforded notice that the Zoning Commission would address such issues.

The Commission has fully considered Council Resolution 8-318, in which the Council expressed its opinion about the proposed action of the Commission. The Commission welcomes the engaged deliberations of the Council in the planning and zoning process. The Commission and the Council share the responsibility and authority in this process in a way that is different from that of all other participants: the Council and the Commission make the decisions that will take effect; others may help, guide, exhort, lobby, cajole, criticize, declaim, or press the case in all public forums; however, the Council decides and acts, and this Commission decides and acts.

It is for those reasons, and in the spirit of welcoming guidance from the body with which the Commission shares its task, that the Commission has considered Council Resolution 8-318.

The Commission has had a full opportunity during the proceedings in this case to reflect upon the premises for the Resolution, which are set forth in it, because others have

presented substantially similar views to the Commission.

Participants in this proceeding must accept, as this Commission must accept, the unequivocal premise that the Comprehensive Plan is the lodestar for the Commission. It is not enough for others to suggest that the Commission should, or may, establish another zoning policy that is superior to the one that is set forth in the Comprehensive Plan. This the Commission clearly may not do. The Commission must be guided by the Plan, and with a genuine disposition to effect the goals and policies that the Plan establishes.

The Commission recognizes that implementation of the Downtown Development District will be demanding. It will demand resourcefulness and discipline from developers and from the District government. The case is made persuasively that zoning can not do it alone, that subsidies beyond zoning incentives may be needed. Other regulations may need reconsideration to provide greater incentives. But from zoning "can not do it alone," it does not follow that zoning should do nothing. And, above all, it does not follow that the Zoning Commission, charged as it is with adopting Zoning Regulations that are not inconsistent with the Comprehensive Plan, may evade that obligation simply because other implementing action, beyond the Commission's authority, may also be reasonably required. The District Charter does not provide that the Zoning Regulations shall not be inconsistent with the Comprehensive Plan only when "zoning can do it alone."

The Commission reads the Comprehensive Plan as requiring the Zoning Commission to exercise the zoning power to adopt zoning regulations that are appropriate to achieve the Downtown Element land use objectives and which take into account the targets of those objectives. This the Commission does by its approval of final action in this order.

The Commission thanks all participants in this proceeding for their work and engaged participation. The Commission anticipates that the Council, Executive Branch, and other participants may wish to reflect further on the Downtown Element and its relation to the general Land Use Element. The Commission would fully welcome any further development and refinement in the Comprehensive Plan of the goals and policies that are at hand in this proceeding. And if the Council amends the Comprehensive Plan so as to require further consideration by this Commission, the Commission will act timely, and once more with a genuine disposition to effect the goals and policies that the Comprehensive Plan establishes.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments of the Zoning Regulations and Map to establish and map a Downtown Development District. The specific amendments are as follows:

1. Revise Title 11, District of Columbia Municipal Regulations (The Zoning Regulations), Chapter 17, to read as follows:

Chapter 17 DOWNTOWN DEVELOPMENT DISTRICT

1700 GENERAL PROVISIONS

1700.1 The Downtown Development (DD) District is applied to the core of the Downtown area, including subareas identified in the Comprehensive Plan as the Retail Core (Shopping District), the Arts District, Gallery Place, Chinatown, Market Square, Convention Center, and Mount Vernon Square. Also encompassed in this core Downtown area are areas designated for historic preservation and housing-mixed use, which areas overlap geographically with the subareas. The boundaries of the DD District are indicated in Map A, which is appended to this chapter. All street locations in this overlay zone are in N.W. Washington.

1700.2 The purpose of the Downtown Development District is to help accomplish the land use and development policies of the Comprehensive Plan relating to the affected sectors of Downtown. The adopted planning policies for this area are primarily contained in 10 DCMR, Chapter 9, Downtown Plan and 10 DCMR, Chapter 10, Land Use. Some of the most important general purposes are to:

(a) Create a balanced mixture of uses by means of incentives and requirements for critically important land uses identified in the Plan, including retail, hotel, residential, entertainment, arts and cultural uses;

(b) Guide and regulate office development, which is generally favored by market forces over the other desired uses, so as to further the land use objectives for retail, hotel,

residential, entertainment, arts and cultural uses;

(c) Protect historic historic buildings and places while permitting sensitive and compatible new development subject to the historic preservation review process of D.C. Law 2-144;

(d) Substantially achieve the specific land use and development policies for the following Downtown subareas: Retail Core, Gallery Place, Convention Center, Chinatown, Pennsylvania Avenue West, Market Square, Mount Vernon Square, and Judiciary Square;

(e) Guide the design of buildings to be generally consistent with the urban design, street orientation and design, and historic preservation policies of the Downtown Element of the Comprehensive Plan;

(f) Foster growth opportunities for and retention of small and minority businesses; and

(g) Provide adequate and visually acceptable short-term parking and consolidated loading facilities having access primarily from streets other than F, G, and 7th Streets.

1700.3 The Downtown Development District and the underlying zoning shall together constitute the zoning regulations for the geographic area referred to in Subsection 1700.1. Where there are conflicts between this chapter and the underlying zoning, the provisions of the DD overlay shall govern.

1700.4 The requirements and incentives of this chapter shall apply to all new buildings and to all other buildings where any additions, alterations or repairs within any twelve (12) month period exceed one hundred percent (100%) of the assessed value of the building as set forth in the records of the Office of Property Assessment as of the date of the building permit application; provided that:

a) The cost basis for alterations or additions to an existing building shall be the amount indicated by the applicant on the application for a building permit;

b) The assessed value of the building shall be the value as set forth in records of the Office of Property Assessment as of the date of the building permit application; and

c) In the case of an addition, the requirements and incentives of this chapter shall apply only to the addition.

1700.5 An applicant for a building permit or a certificate of occupancy involving 10,000 square feet or more of gross floor area within the DD District shall provide a copy of the application, or of those portions of the application affected by the DD overlay zone provisions, to the Director, Office of Planning, at the time of filing with the Zoning Administrator; the Director, Office of Planning shall, within ten (10) days of the filing, provide the Zoning Administrator with a memorandum setting forth the Director's interpretation of DD requirements, incentives and other effects.

1700.6 A Planned Unit Development in the DD District shall be subject to the following provisions in addition to those of Chapter 24 of this title:

(a) The PUD shall only be granted for projects that are superior in achieving the purposes of this chapter and the adopted objectives and policies of the Downtown Element of the Comprehensive Plan;

(b) The PUD process shall not be used to reduce requirements in this chapter for housing or preferred uses, specifically retail, service, entertainment, arts and residential uses;

(c) Except as provided in Sub-section 1706.7 the guideline FAR for a PUD may be granted only after the applicant has demonstrated to the Zoning Commission that transferable development rights have been purchased to the maximum feasible extent prior to the request for additional density in excess of that amount; and

(d) Notwithstanding paragraphs (b) and (c) of this sub-section, if a planned unit development is proposed to govern development

of the University of the District of Columbia campus and other uses in Squares 401, 402, 425 and 426, the PUD shall be guided by the applicable policies of the Comprehensive Plan.

1701 AREA-WIDE DESIGN STANDARDS

1701.1 The floor area ratio credit for open arcades as provided in Section 2515 of this title is not applicable in the DD District.

1701.2 Any open arcade in the DD District shall extend the length of an entire block frontage, or shall connect with an open arcade in an abutting building in such fashion as to provide a continuous walkway.

1701.3 Not less than seventy-five percent (75%) of each streetwall of new construction to a height of not less than fifteen feet (15') shall be constructed to, or within four feet (4') of, the property line between the subject lot and each abutting street right-of-way.

1701.4 Along the following street frontages the provisions of Subsection 2117.8(c)(1) of this title are modified so as to prohibit the construction or use of a driveway providing access from the adjacent public street to required parking spaces or loading berths on the subject lot:

(a) F Street, N.W., from 7th to 15th Streets;
(b) G Street, N.W., from 7th to 15th Streets;
(c) 10th Street, N.W., from E to F Streets;
(d) 7th Street, N.W., from Pennsylvania Avenue to Mount Vernon Square;
(e) H Street, N.W., from 5th to 8th Streets;
(f) Pennsylvania Avenue, N.W., from 6th to 15th Streets; and
(g) Indiana Avenue, N.W., from 6th to 7th Streets.

1701.5 Along the street frontages listed in Subsection 1701.4, and those listed in paragraph (c) below, not less than fifty percent (50%) of the surface area of any streetwall at the ground floor level of each building shall be devoted to display

windows and to entrances to commercial uses or to the building; provided, that:

(a) Such windows shall use clear, or low emissivity glass, except for decorative or architectural accent;

(b) Entrances to the building, excluding vehicular entrances, shall be separated by not more than fifty feet (50') on average for the linear frontage of the building; and

(c) The additional applicable street frontages shall be E Street, N.W., from 6th to 14th Streets; 10th through 13th Streets, N.W., from E to H Streets; 9th Street, N.W., from E to I Streets; 14th and 15th Streets, N.W., from Pennsylvania Avenue to New York Avenue; I Street, N.W., from 5th to 7th Streets; and 8th Street, from Pennsylvania Avenue to Mt. Vernon Square.

1701.6 The requirements of Subsections 1701.1 through 1701.5 shall not apply to a department store, theater, hotel, apartment house, or church or other place of worship.

1701.7 Except in the underlying R-5-B, R-5-D, C-2-A, and C-3-A Districts, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; provided, that a building that fronts on Massachusetts Avenue or on Mount Vernon Square shall be designed and built so that no part of the building shall project above a plane drawn at a forty-five (45) degree angle from a line located one hundred ten feet (110') above the property line abutting Massachusetts Avenue or Mount Vernon Square.

1702 AREA-WIDE USE PROVISIONS

1702.1 Each building that faces or abuts a street segment identified in Subsection 1701.4 or 1701.5 shall devote not less than fifty percent (50%) of the gross floor area of the ground floor to permitted retail, service, arts and entertainment uses listed in Subsections 1710.1 and 1711.1; provided that:

(a) Not more than twenty percent (20%) of the required ground level space shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices;

(b) The uses specified in paragraph (a) shall account for no more than thirty percent (30%) of the total space requirement for commercial preferred uses in a building, as provided in Sections 1703 through 1705 of this chapter; and

(c) This ground level use requirement shall not apply to a building that is entirely devoted to hotel or apartment house use, or to a church or other place of worship.

1702.2 Each building shall provide on-site or account for off-site, gross floor area equivalent devoted to preferred uses; provided that:

(a) Preferred uses shall be provided and located according to the guidelines by Downtown Subarea as set forth in Sections 1703 through 1706 of this chapter;

(b) For the purposes of this chapter, cellar space devoted to preferred uses other than residential uses shall count towards the minimum requirement without affecting the permitted maximum bulk of the building;

(c) The net leasable area occupied by the required preferred uses shall be no less than eighty percent (80%) of the gross floor area allocated to these uses; and

(d) The uses listed in Subsection 1712.1 are deemed office uses in the DD District for purposes of FAR computations.

1702.3 A child development center or a child development home shall count at one-and-one-half (1 1/2) times its actual gross floor area towards the nonresidential preferred use requirement of any subarea; provided, that the child development center will be open and operating during normal business hours at least five (5) days each week and fifty (50) weeks each calendar year, excluding public holidays.

1702.4 An existing department store, theater, hotel or apartment house shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot unless such conversion or replacement has been reviewed and approved by the Board of Zoning Adjustment pursuant to Subsection 3107.2 of this title.

1702.5 If a church or other place of worship that is in use on the effective date of this chapter is later included in a redevelopment, the portion that continues as a church or place of worship shall be exempt from the requirements of this section.

1702.6 A parking lot, parking garage, or parking spaces at or above grade in a building, shall be permitted as follows:

(a) The parking facility shall be permitted as a matter-of-right if it provides only short-term parking and all of the parking spaces are leased to merchants or a park-and-shop organization;

(b) The parking facility shall be permitted as a matter-of-right if it provides parking only for residents; and

(c) The parking facility shall require Board of Zoning Adjustment approval pursuant to Subsection 3107.2 of this title if it provides all-day, commuter parking.

1702.7 A building in Square 404 excluding Lot 813 or in Square 405 north of a line extending the midpoint of G Place eastward from 9th to 8th Street, which properties are outside the subarea boundaries provided in Sections 1703 through 1706, shall provide preferred uses according to one of the following provisions, at the election of the property owner:

(a) Preferred uses may be provided according to the requirements and incentives of any one of the following sections: 1703, 1704, 1705 or 1706;

(b) As an alternative to paragraph (a), the property owner may develop not less than 1.5 FAR of bonus office density received from

another site or sites within the DD District, pursuant to the provisions of Section 1709; and

(c) If bonus density is developed pursuant to paragraph (a) or transferable development rights pursuant to paragraph (b), the maximum permitted FAR shall be 9.5 in Square 405 and 8.5 in Square 404.

1703 DOWNTOWN SHOPPING DISTRICT

1703.1 The principal policies and objectives for the Downtown Shopping District (SHOP), or Retail Core, derived from the Comprehensive Plan, are to:

(a) 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.;

(b) Strengthen the character and identity of the District by means of physical design standards which ensure the following:

(1) New Buildings constructed to the property line and primarily oriented to the street rather than to internal spaces;

(2) 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; and

(3) A pedestrian environment with ample sidewalks interrupted by a minimum of vehicular driveways, especially along F and G Streets.

1703.2 The provisions of this section apply to the general area identified in the Comprehensive Plan as the Retail Core, or Downtown Shopping District, comprising squares 223, 224, 225, 252, 253, 254, 288, 289, 290, 319, 320, 321, 345, 346, 347, 375, 376, and 377. This area is bounded by H Street

and New York Avenue, N.W. on the north, E Street and Pennsylvania Avenue on the south, 9th Street on the east, and 15th Street on the west.

1703.3 Each new or altered building shall devote not less than either 1.5 or 2.0 FAR equivalent to retail and personal service uses listed in Section 1710 or the arts uses listed in Section 1711; provided, that:

(a) For the purposes of this chapter, space devoted to preferred uses in cellar space shall count towards meeting the minimum requirement without affecting the permitted maximum bulk of the building;

(b) The 2.0 FAR equivalent in preferred uses shall apply to the following squares and portions of squares: Square 375 (northern half, that is, north of G Place), Square 346, Square 320, Square 321, Square 319 (southern half, that is Lot 29), Square 288 (southern half, that is Lot 56 only), Square 289, Square 253, Square 254 (northern half, that is, Lot 53 and that part of Lot 835 which is north of the eastern extension of the south boundary of Lot 53), Square 290 (northern half, that is, Lot 43), and Square 224 (Lot 824);

(c) Property in other squares and any building in the SHOP District having six (6) floors or less at and above grade shall devote not less than 1.5 FAR equivalent to preferred uses; and

(d) In the applicable sector of the Downtown Arts District, that is, Squares 254, 290, 321, 347, 377, 376 and 375 (south of G Place), uses which are set forth in Section 1711 shall comprise not less than fifty percent (50%) of the floor area required to be devoted to preferred uses.

1703.4 A building that provides gross floor area for preferred uses of the required 1.5 or 2.0 FAR equivalent, and which includes any of the bonus uses indicated below, may count the floor area devoted to such use or uses at the bonus ratio

indicated for the purpose of earning bonus density:

		Space Devoted to the bonus use		Proportionate number of square feet of additional gross floor area earned for on-site or off-site development
(a)	Department Store	1	to	3
(b)	Legitimate Theater	1	to	2
(c)	Anchor store; movie theater; performing arts space; small, minority or displaced business	1	to	1

1703.5 In the ARTS District sector of SHOP, as identified geographically in paragraph 1703.3(d), a building shall be eligible for the bonuses specified in paragraphs 1704.6(a), (b) and (c).

1703.6 If a building in the SHOP District uses bonus density, the maximum permitted FAR shall be 10.5 for a building permitted a height of 130 feet and 9.5 for a building permitted a lesser height.

1704 DOWNTOWN ARTS DISTRICT

1704.1 The policies and objectives for the Downtown Arts District, as defined in the Comprehensive Plan, including the Gallery Place subarea of Downtown and portions of the Retail Core, Market Square, Convention Center and Chinatown subareas, are to:

(a) Retain, expand and support a concentration of spaces and activities for the arts and artists, including the performing and visual arts, cultural facilities, entertainment and arts-related retail uses;

(b) Create two strong arts-entertainment corridors within this area: a spine of theaters, movie theaters, restaurants, nightclubs and arts-related retail uses along E Street from 6th to 14th Street, N.W.; and a pedestrian-oriented concentration of museums, art galleries, other performing or visual arts uses, and festive retail-entertainment uses along 7th Street from Pennsylvania Avenue to north of G Street; and

(c) Encourage the general development pattern indicated in the Comprehensive Plan for the Arts District east of the Retail Core, specifically a mixture of residential, office and hotel developemnt on upper floors of buildings, with arts, specialty retail and entertainment uses predominating on the lower levels of the buildings.

1704.2 The provisions of this section apply to properties in the following squares and portions of squares: 291, 322, 348, 406, 407, 408, 431, 432, 455, 456, 457, 458, 459, 460, and those portions of squares 405, 429, and 454 that are south of a line extending the midpoint of G Place eastward from 9th Street to 6th Street.

1704.3 Each new or altered building shall devote not less than 1.0 FAR equivalent to arts and entertainment-related uses from Section 1711 and retail and service uses from Section 1710; provided that:

(a) Not less than 0.25 FAR equivalent of the required space shall be devoted to one or more of the following uses: 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, or television and radio broadcast studio;

(b) A building may comply with requirements of this subsection by devoting 0.5 FAR equivalent to uses listed in paragraph (a), in which case the 1.0 FAR equivalent of total preferred uses is not required, and bonus

density is earned in excess of the 0.5 FAR equivalent of uses from paragraph (a);

(c) A building that provides 1.5 FAR or more of residential uses shall have a reduced requirement of 0.5 FAR equilavent of preferred uses from Sections 1710 and 1711, of which no less than fifty percent (50%) shall be Section 1711 uses;

(d) Squares located in both the Arts District as delineated in the Comprehensive Plan and the SHOP District shall be subject to the arts and retail provisions of Section 1703, SHOP District, as specifically provided in Paragraph 1703.3(d); and

(e) A building located on a lot of 5,000 square feet or less and having a height of six (6) floors or less at and above grade shall have a preferred use requirement of not less than 0.75 FAR equivalent of uses from Sections 1710 and 1711 combined, and shall not have a residential use requirement as provided in Section 1706.

1704.4 An unenclosed sidewalk cafe shall count towards the preferred use requirement of Subsection 1704.3, exclusive of paragraph (a); provided, that:

(a) The countable sidewalk or atrium area for this purpose shall not exceed 1,000 square feet; and

(b) Sidewalk or atrium area on the lot or on adjacent public space is countable as a restaurant use provided that the sidewalk cafe is operated from a restaurant located on the subject lot.

1704.5 An art exhibition area shall count towards the preferred use requirement of Subsection 1704.3 exclusive of Paragraph (a); provided, that:

(a) The countable area for this purpose shall be not more than twenty percent (20%) of the total requirement for preferred uses specified in Subsection 1704.3;

(b) The space shall be open to the public during normal business hours at least five (5) days per week and fifty (50) weeks per year;

(c) The art exhibitions shall be curated by an art gallery or a professional curator;

(d) The exhibitions shall change at least four times per year with the exception that up to twenty percent (20%) of the art works may be a permanent exhibition; and

(e) At least two of the exhibits, or a majority of the total art works displayed on an annual basis shall be offered for sale to the public.

1704.6 A building which provides the required 1.0 gross floor area equivalent for preferred uses specified in Subsection 1704.3, and which includes any of the bonus uses indicated below, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

		Space Devoted to the bonus use		Proportionate number of square feet of additional gross floor area earned for on-site or off-site development
(a)	Art center, art school, performing arts space, legitimate theater or museum, in excess in each of 40,000 case s.f. of gross floor area as provided in Subsection 1704.8	1	to	3
(b)	Art Gallery or Museum located on 7th or G Street;	1	to	2

	legitimate theater, artist studio, artist live-work space, art center, art school, performing arts and rehearsal space			
(c)	Uses listed in 1704.3(a); small, minority or displaced business; and	1	to	1
(d)	Other uses from sections 1710 and 1711, in excess of the 1.0 FAR equivalent required by Subsection 1704.3, not to be counted in addition to bonus floor area from paragraphs (a) through (c) of this Subsection	1	to	0.5

1704.7 An art center or art school may qualify for this bonus despite being located in more than one building; provided, that:

(a) The buildings are located within a radius of 2,000 feet of the centermost building; and

(b) The art school or art center shall be operated under centralized management as a single institution.

1704.8 Bonus density from arts uses not to exceed 0.5 FAR may be used to develop office space in lieu of residential space as required in Section 1706 of this chapter.

1704.9 A nonprofit arts use shall be entitled to twenty-five percent (25%) of density bonus in excess of the bonus ratio indicated in Subsection 1704.6.

1704.10 Floor area devoted to an arts use listed in

paragraph 1704.3(a) that has a ceiling height greater than twelve feet (12') shall count towards the minimum required square footage at a rate of one-and-one-half times the actual floor area devoted to the use.

1705 CHINATOWN

1705.1 The principal policies and objectives from the Comprehensive Plan for the Chinatown area are to:

(a) Protect and enhance Chinatown as Downtown's only ethnic cultural area;

(b) 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;

(c) 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; and

(d) Protect existing housing and the most important historic buildings with suitable preservation controls, residential and commercial zones and economic incentives.

1705.2 The provisions of this section apply to properties in the following squares: 428, 452, 453, 485, and 486, and those portions of squares 429 and 454 that are north of a line extending the midpoint of G Place eastward from 9th Street to 6th Street.

1705.3 Each building that fronts on H Street from 5th to 8th Street, on 7th Street for a distance of one-half (1/2) block north and south of H Street, or on 6th Street for a distance of one-half (1/2) block south of H Street, shall devote not less than 1.0 FAR equivalent to retail service and entertainment uses from Sections 1710 and 1711 and wholesaling accessory to those uses; provided, that this requirement shall be 0.5 FAR equivalent for a building that fronts on any other street segment in Chinatown or for a building that

provides on-site or off-site, a residential component as required by Section 1706.

1705.4 In Square 485, a residential building that is brought up to building code and is covenanted to continue in residential use for twenty (20) years or longer shall be eligible for transferable development rights equal to the floor area maintained in residential use.

1705.5 A building that provides the required 1.0 gross floor area equivalent for preferred uses specified in subsection 1705.3, and that includes any of the bonus uses indicated below, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

		Space Devoted to the bonus use		Proportionate number of square feet of additional gross floor area earned for on-site or off-site development
(a)	Uses from sections 1710 and 1711, in excess of the 1.0 FAR equivalent required by paragraph 1705.3	1	to	1
(b)	Small, minority or displaced business	1	to	1

1706 RESIDENTIAL AND MIXED USE DEVELOPMENT

1706.1 The policies and objectives for residential use and development in and near Downtown as specified in the Comprehensive Plan are to:

(a) Encourage construction of new housing and retention of existing housing so that a

sizeable residential component is created that will help accomplish the balanced mixture of uses essential to a "Living Downtown";

(b) Create the greatest concentration of housing in the Mount Vernon Square area;

(c) Encourage residential and mixed use development along Massachusetts Avenue;

(d) Promote mixed use development including residential use south of Massachusetts Avenue, extending to the south through Judiciary Square north, Chinatown, and Gallery Place; and

(e) Support the significant residential development in the Market Square subarea in the 7th Street and Pennsylvania Avenue area.

1706.2 The housing requirements and incentives of this section shall be applicable only in the Housing Priority Area, which is depicted in Map B and which is described by squares in Subsection 1706.8.

1706.3 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 provided in this section.

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.

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.

1706.6 In the DD/C-4 zone the following residential and mixed use provisions shall apply:

(a) The maximum FAR shall be 10.0 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 building shall provide on-site or account for off-site in a combined lot development no less than 2.0 FAR of residential use;

(c) Up to 0.8 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

(d) 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 0.8 FAR.

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:

(a) The increase in gross floor area may be achieved by receiving transferable development rights as provided in Section 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.

1706.8 For the purposes of permitting and governing combined lot developments as provided by Section 1708, the Housing Priority Area is divided into three (3) subareas as follows:

(a) Housing Priority Area A, the Mount Vernon Square North area, is located north of Massachusetts Avenue and comprises the DD/C-2-C and DD/C-3-C zoned squares and parts of squares numbered 369, 370, 401, 402, 425, 426, 450, 451, 483, 484, W484, 514, 515, N515, 516, S516, 525, 526, 527, 528, 556, and 558;

(b) Housing Priority Area B, the Mount Vernon Square South area, comprises the DD/C-2-C and DD/C-3-C zoned properties that are located south of Massachusetts Avenue, including squares and parts of squares numbered 247, 283, 284, 316, 342, 371, 372, 452, 453, 485, 486, 517, and 529; and

(c) Housing Priority Area C, the Downtown Core area, comprises the DD/C-4 zoned properties that are located south of H Street, including squares and parts of squares numbered 406, 407, 408, 454, 455, 456, 457, 458, 459, and 460.

1706.9 Combined lot development as authorized and governed by Section 1708 may be used by two or more properties within any one of the three identified Housing Priority Areas, but not by properties in different Housing Priority Areas.

1706.10 A residential building in existence as of the effective date of this chapter shall be eligible to count its gross floor area towards the residential use requirements of this section; provided, that:

(a) The building shall be continued in residential use, or, if vacant, shall be

brought up to building code and covenanted to continue in residential use for twenty (20) years or longer;

(b) If the residential gross floor area of the building is less than the residential use requirement of the lot, there shall be no additional residential requirement for that lot; and,

(c) If the residential gross floor area of the building exceeds the required amount of residential use for the lot, the excess gross floor area may be used in a combined lot development to help meet the residential requirement of another lot or lots.

1706.11 No minimum residential use requirement shall apply in Square 485.

1706.12 Bonus density derived from arts uses in the Arts District pursuant to Sub-section 1704.6 and bonus density derived from the bonus provisions of Sub-section 1705.5 pertaining to the Chinatown subarea may be used to substitute office space for up to 0.5 FAR of residential use as required by this section.

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.

1706.14 In the Housing Priority Area the maximum height of a building shall be as provided in Sub-sections 1701.6 and 1706.15 of this chapter.

1706.15 A building constructed on a lot fronting on M Street shall be limited to a maximum height of sixty (60) feet to a depth of forty (40) feet from the lot line on M Street.

1706.16 In Housing Priority Area A, for each square foot of gross floor area devoted to one of the preferred uses listed below, the project shall earn one square foot of bonus gross floor area:

(a) Grocery store;
(b) Dry cleaner or laundry;
(c) Drug store;
(d) Hardware store;
(e) Variety store; and
(f) Child development center.

1706.17 In Housing Priority Areas B and C, each square foot of grocery store use shall earn two (2) square feet of bonus floor area.

1706.18 Renovation of a nonresidential building in existence as of the effective date of this chapter and having a height of six (6) floors or less at and above grade shall not trigger a housing requirement as provided in this Section.

1706.19 A hotel or inn established pursuant to special exception approval in an SP District shall be deemed a conforming use in a DD/R-5 Zone. The hotel or inn shall continue to be governed by the conditions of the Board of Zoning Adjustment Order granting the use. Enlargement or other changes shall be governed by Subsection 3107.2 of this title.

1706.20 These residential requirements shall not apply to any lot restricted to a maximum development of 6.0 FAR pursuant to Sub-section 1707.4.

1706.21 RESERVED

1707 HISTORIC PRESERVATION

1707.1 The most directly applicable policies and objectives from the Comprehensive Plan and other adopted policies for Downtown may be summarized as follows:

(a) Preserve the unique character and fabric of historic buildings, the Downtown Historic District, and the Pennsylvania Avenue Historic Site;

(b) 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;

(c) Restrict permitted building bulk on critical historic frontages and lots with historic buildings so as 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;

(d) Permit flexibility as to building height, rear yard and court requirements so as 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;

(e) Provide appropriate economic incentives to encourage preservation, including suitable on-site density and transferable development rights; and

(f) 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."

1707.2 The provisions of this section apply to historic landmarks and to specified properties within the Downtown Historic District and Pennsylvania Avenue Historic Site.

1707.3 Uses within buildings in the historic districts and landmark sites within the DD District are governed by the underlying zones and the special use requirements and incentives provided in Sections 1703 through 1706 of this chapter.

1707.4 The permitted on-site floor area ratio (FAR) for any permitted use shall be 6.0 on each of the lots and squares listed below; provided that in a multi-lot development or combined lot development within a single square, the permitted 6.0 FAR may be averaged with the permitted FARs of other lots

that are part of the development, so as to achieve a composite FAR for the entire development.

(a) Square 320, Lots 17, 800, 808, 809, and 810;
(b) Square 346;
(c) Square 347, Lots 18, 189, 800 through 801, and 818 through 826;
(d) Square 376, Lots 36 through 46, 48, 63, 64, 70, 801, 802, and 803 ;
(e) Square 377, Lots 35, 819 through 821, 823 through 829, 846, and 847;
(f) Square 406, Lots 11, 15, 807, 808, 809, and 814;
(g) Square 428, Lots 16, 17, 801, 802, 803, 804, and 808 through 815;
(h) Square 429;
(i) Square 452, Lots 26 through 29, 800, 802 through 806, and 817 through 824;
(j) Square 453, Lots 24 through 31, 40, 50, 811, 812, 813, 815 through 819, 821, 831 through 834, 839 (48), and 842 ;
(k) Square 454, Lots 827 and 829 through 835;
(l) Square 518, Lots 845 through 855.
(m) Square 405, Lot 839;
(n) Square 408, Lot 820;
(o) All of Square 429 1/2;
(p) All of Square 430;
(q) Square 431, Lots 23, 806, 807, 814, 815, 816, and 822;
(r) Square 432, Lots 809, 810, 811, 812, Part of Lot 815, and 816;
(s) Square 458, Lots 7, 8, 807, 809, 810, 811, 812, 818, 816, 820, 821, 822, and 823;
(t) Square 459, Lot 809;
(u) Square 460, Lots 802, 803, 804, 805, and 808;
(v) All of Square 485;
(w) Square 517, Lots 20, 46, 834, and 835;
(x) Square 457, Lots 36, 822, 823, 824, 825, 826, 871, and 872;

1707.5 A project in the Downtown Historic District, the Pennsylvania Avenue Historic Site, or an individual historic landmark is not eligible to construct bonus density on-site, but may transfer bonus density to other sites in the Downtown Development (DD) District, or to sites in a receiving zone as delineated in Section 1709; provided, that:

(a) The preserved building or part thereof shall be a historic landmark or shall be building within the Downtown Historic District or the Pennsylvania Avenue Historic site, which has been preserved in whole or in part pursuant to D.C. Law 2-144 and regulations pursuant thereto;

(b) The property shall be one of those properties identified in subsection 1707.4 and accordingly restricted in on-site density to 6.0 FAR or shall be an historic landmark that has an FAR of 6.0 or less including any existing or proposed additions;

(c) Undeveloped gross floor area of up to 4.0 may be transferred from the historic sending lot to a lot or lots elsewhere in the DD District or in a receiving zone; provided, that:

(1) Each (1) square foot of unused density less than the matter-of-right commercial density of the underlying zone shall earn one (1) square foot of transferable development rights; and,

(2) The matter-of-right densities of the applicable underlying zones are deemed to be 10.0 or 8.5 FAR in the DD/C-4 District pursuant to Subsections 771.2 and 771.5 of this title, 6.5 FAR in the DD/C-3-C District and 2.0 FAR in the DD/C-2-C District.

(d) Prior to the execution of a covenant transferring floor area, as provided in paragraphs 1708(h) through (p) the owner of the sending site shall have restored the historic building, buildings or parts thereof, pursuant to plans approved by the Historic Preservation Review Board; provided, that in the alternative, the Historic Preservation Review Board may certify to the Zoning Administrator that an acceptable timetable for restoration of the historic building has been agreed to by the applicant, together with suitable enforcement measures.

(e) A historic building that has been renovated or restored pursuant to approval of the

Historic Preservation Review Board approval within a 10-year period prior to the effective date of this chapter shall not be eligible to earn transferable development rights; and

(f) Bonus density, if any, generated by bonus uses on the sending lot may be transferred in addition to the transferable development rights provided in this subsection for restricted density on the historic site.

1707.6 The rear and side yard requirements of the underlying zone district shall not apply in the Downtown Historic District or Pennsylvania Avenue Historic Site.

1707.7 A historic landmark or a contributing building in a historic district that has a gross floor area in excess of the 6.0 FAR limit specified in Subsection 1707.4 shall be permitted to occupy all floors of the building for permitted uses.

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:

(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 Sections 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, such combined lot developments shall be limited to lots located within the same subarea as defined in each of the following Sections of this chapter: 1703, 1704, 1705 and 1706;

(d) When combined lot development involves a transfer of bonus density to another lot or lot, by itself or in addition to linkage, such density transfer may occur to any lot or lots within the DD District or in a receiving zone as provided in Section 1709 of this chapter, except as excluded by other provisions of this chapter and title;

(e) 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;

(f) 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;

(g) 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 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 years after the issuance of the Certificate of Occupancy for the sending site;

(h) No transfer of required gross floor area for preferred uses or of bonus floor area, shall be effective under this section unless an instrument, legally sufficient in both form and content to effect such a transfer in a form approved by the Corporation Counsel, and in content approved 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;

(i) In the case of historic preservation the instrument of transfer shall effect a binding reduction in the unused development rights under this zoning ordinance otherwise available to the sending lot, to the extent of the rights transferred;

(j) In the case of bonus density derived from a use bonus, the instrument of transfer shall indicate the size of the applicable bonus use or uses in square feet of gross floor area and the location of bonus uses by reference to appropriate plans, and shall effect a requirement that bonus uses shall continue in operation on the sending lot;

(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;

(l) If more than one transfer of development rights is made from a sending lot, the second transfer and all subsequent transfers shall be numbered "two" and sequentially, and the instrument of transfer shall include the names of the transferors and transferees involved in all previous transfers, including the amount of gross floor area transferred and the dates of recordation of each transfer;

(m) 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;

(n) The notice of restrictions and transfer shall run with the title and deed to each affected lot;

(o) 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 floor area;

(p) The notice of restrictions and transfer shall run with the title and deed to each affected lot; and

(q) A building that has been constructed or that is under construction as of the effective date of this chapter is not eligible to earn bonus density or transferable development rights, nor to utilize the combined lot development provisions.

1709 TRANSFERABLE DEVELOPMENT RIGHTS

1709.1 The combined lot development provision of Section 1708 may be used to transfer bonus floor area from a project within the DD District to a receiving lot or lots located in the Downtown East, New Downtown, or other receiving zones or sites pursuant to the provisions of this section.

1709.2 Transferable development rights shall be generated either by bonus uses pursuant to the subarea provisions of Sections 1703 through 1705 of this chapter, or by historic preservation as provided in Section 1707.

1709.3 The Downtown East receiving zone consists of the C-3-C and HR/C-3-C zoned portions of Squares numbered 565, 567, 569 through 574, 625, 626, 627, and 628 through 631.

1709.4 The New Downtown receiving zone consists of the C-3-C zoned portions of Squares numbered 72 through 73, 74, 76, 78, 85, 86, 99, 100, and 116 through 118.

1709.5 If the height of a receiving building exceeds the height that the provisions of this title allow as a matter-of-right for a building located on an abutting lot, including a lot that is separated from the receiving lot by an alley, no part of the receiving building shall project above a plane drawn at a forty-five (45) degree angle from a line that is:

a) Directly above the zone district boundary line between such abutting lot and the receiving lot; and

b) Above such boundary line by the distance of the matter-of-right height that this title allow as for such abutting lot.

1709.6 In the New Downtown receiving zones, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; and the maximum permitted floor area ratio shall be 10.0 for buildings permitted a height of 130 feet, and 9.0 for buildings permitted a lesser height.

1709.7 In the New Downtown receiving zone the height of a receiving building may not be measured from a point that fronts on New Hampshire Avenue.

1709.8 In the Downtown East receiving zone the maximum permitted gross floor area for any permitted uses shall be 9.0 and the maximum permitted building height shall be one hundred ten feet (110').

1709.9 In addition to the matter-of-right transfers authorized by this Section, a lot that is approved and developed as a Planned Unit Development pursuant to chapter 24 of this title may serve as a receiving site for transferable development rights; provided that:

(a) The Planned Unit Development shall be located in a receiving zone or in a DD/C-2-C, DD/C-3-C or DD/C-4 zone;

(b) The maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; and the maximum permitted gross floor area shall be 10.5 for buildings permitted a height of 130 feet and 9.5 for buildings permitted a lesser height; and

(c) Development rights may not be transferred to a lot that is within the site of a Planned Unit Development approved prior to October, 1989, nor to an historic landmark or a lot in an historic district.

1710 RETAIL AND SERVICE USES

1710.1 For the purposes of this chapter, the following uses are preferred retail and personal/consumer service uses:

(a) Anchor Store
(b) Antique Store
(c) Apparel and Accessories Store
(d) Appliance Store
(e) Auction House
(f) Auto and Home Supply Stores, excluding installations
(g) Bank Loan Office, Savings & Loan, Credit Union, or Other Financial Institution
(h) Bakery, limited to baking of food sold on premises
(i) Bicycle Shop
(j) Barber or Beauty Shop
(k) Candy Store
(l) Child Development Center
(m) Computer Store
(n) Cosmetic Store
(o) Camera Store
(p) Delicatessen
(q) Department Store
(r) Dressmaking or Tailor Shop
(s) Drug Store
(t) Dry Cleaners
(u) Fabric Store
(v) Fast Food Restaurant, excluding drive-through
(w) Florist and Plant Stores
(x) Furniture Store
(y) Gift, Novelty and Souvenir Shop
(z) Grocery Store

(a) (a) Hardware Store
(b) (b) Health or Exercise Studio
(c) (c) Hobby, Toys and Game Shop
(d) (d) Home Furnishings Store
(e) (e) Jewelry Store
(f) (f) Liquor Store
(g) (g) Luggage and Leather Goods Store
(h) (h) Newsstand
(i) (i) Office Supplies and Equipment Store
(j) (j) Optician
(k) (k) Paint Store
(l) (l) Pet Store
(m) (m) Printing, Fast Copy Service
(n) (n) Radio, Television and Consumer

Electronics Store
(o) (o) Secondhand Store
(p) (p) Shoe Repair and Shoeshine Parlor
(q) (q) Shoe Store
(r) (r) Specialty Food Store
(s) (s) Sporting Goods Store
(t) (t) Telegraph Store
(u) (u) Tobacco Store
(v) (v) Travel Agency, Ticket Office
(w) (w) Variety Store
(x) (x) Video Tape Rental; and
(y) (y) Other similar personal/consumer service establishment or retail uses, including assemblage and repair clearly incidental to the principal use.

1711 ARTS USES AND ARTS-RELATED USES

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

(a) Art Center
(b) Art Exhibition Area
(c) Art Gallery
(d) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking
(e) Artist Live-work space
(f) Artist Studio
(g) Artists' Supply Store
(h) Arts Organizations, Administrative Offices of
(i) Arts Services, including set design, and restoration of art works
(j) Assembly hall, auditorium, public hall, or other performing arts space, including rehearsal/pre-production space or concert hall
(k) Book Store
(l) Cabaret
(m) Dance Hall, Discotheque, or Ballroom
(n) Dinner Theater
(o) Drinking Place, including bar, nightclub, or cocktail lounge
(p) Legitimate Theater
(q) Movie Theater
(r) Museum
(s) Performing Arts Ticket Office or Booking

Agency
(t) Photographic Studio
(u) Picture Framing Shop
(v) Record Store, Musical Instruments Store
(w) Restaurant; and
(x) Television and Radio Broadcast Studio

1712 OFFICE SPACE USES

1712.1 For the purposes of this chapter, the following users are office space uses and not preferred uses:

(a) Accountant
(b) Architect
(c) Attorney
(d) Bail Bondsman
(e) Counseling Service
(f) Consultant - General
(g) Dentist, Doctor, or Medical Office
(h) Employment Agency
(i) Escrow Agent
(j) Government
(k) Health Clinic
(l) Insurance Broker
(m) Laboratory
(n) Landscape Architect
(o) Mortgage Broker
(p) Real Estate Agent, Appraiser, Broker, Developer
(q) Stockbroker
(r) Tax Preparer
(s) Title Company
(t) Trust Company; and
(u) Utility Company, Offices of

1799 DEFINITIONS

1799.1 For purposes of this chapter, the following definitions shall apply:

Anchor store - a single retail store, having between 60,000 and 90,000 square feet of gross leasable area, and which is operated under a single Certificate of Occupancy;

Art center - A multifunctional arts use that: (a) comprises two or more distinct arts uses integrated under single management and a single Certificate of Occupancy; (b) includes but is not limited to uses such as art gallery, artist studio, art school, performing arts space, administrative offices of arts organizations, movie theater, artist live-work space; (c) occupies part or all of a single building or a group of buildings that are within a radius of 2,000 feet of the centermost building;

Art exhibition area - a building lobby or part of a lobby, or another publicly accessible room on the basement, first or second floors of a building, which space is designed and used for the public display and sale of works of art;

Department store - a single retail store, in excess of 90,000 square feet of gross leasable area, that: (a) is involved in the sale of, among other things, apparel and furnishing; (b) is organized into departments or sections which are integrated under single management; and (c) is operated under a single Certificate of Occupancy;

Displaced downtown business - a business which occupies a building on or after the date on which a demolition permit has been issued for that building, or which occupied a building which was demolished after January 1, 1986;

Gross leasable area - the sum of the floor area occupied by the business or use, as measured from the exterior faces of the walls encompassing the space, and including any stairways, elevator shafts, escalators, or mechanical areas inside the perimeter walls of the business use. In a building occupied by multiple tenants or multiple uses, the central elevator core or cores, associated lobbies, stairways, and mechanical areas shall be excluded from gross leasable area, if they serve the building as a whole;

Minority business - a Certified Minority Business as designated by the District of Columbia Minority Business Opportunity Commission;

Net leasable area - the sum of the floor area occupied by the business or use, as measured from

the interior faces of the walls encompassing the space, and excluding any portion of the space devoted to mechanical equipment, lobby area, stairways, or elevators, if that portion of space serves the building as a whole;

Performing arts center - one or more facilities that provide space for the performing arts, including but not limited to concert halls and legitimate theaters;

Residential uses - those uses defined in section 199 of this title as apartments, apartment houses, bachelor apartments, and rooming and boarding houses; and

Small business - a business which occupies 2,000 square feet or less of net leasable area and which provides evidence of not being franchise operated.

2. Amend the Zoning Map as follows:

A. Rezone to DD/R-5-B:

1. Square 482;

2. In Square 449, those Lots and portions of Lots now zoned R-5-D;

3. In Square 514, Lots 26, 27, 44, 45, 47, 51 through 53, 56, 57, 62 through 66, 77, 80, 81, 813 through 815, 817, 824 through 830, 832 through 850, and 855 through 860; and

4. In Square 524, Lots 4, 5, 14 through 19, 801, and 804.

B. Rezone to DD/R-5-D:

1. All of Squares 282, 315 and 341;

2. In Square 246, Lot 806;

3. In Square 247, those lots now zoned SP-2 (without HR overlay);

4. In Square 283, Lots 826 and 827;

5. In Square 485, those lots north of the east-west alley;

6. In Square 517, Lot 49; and

7. In Square 453, Lot 52.

C. Rezone to DD/C-2-C:

1. All of Squares numbered 401, 425, 451, 483, 484, 486, 515, N515, 516, S516, 525 through 529, 556, and 558;

2. In Square 369, those lots now zoned SP-2;

3. Those lots now zoned HR/SP-2 in Squares numbered 247, 283, 284, 316, 342, 370, 371, and 518;

4. In Square 485, those lots south of the east-west alley;

5. In Square 450, Lots 4, 6, 22 through 25, 33 35, 812 through 818, 820, 821, 825, and 830 through 832;

6. In Square 517, all lots except Lot 49;

7. In Square 449, those lots and portions of lots now zoned C-2-C;

8. In Square 514, Lots 5, 40 through 43, 58 through 61, 67, 68, 78, 800 through 807, 851, 853, and 854; and

9. In Square 524, Lots 3, 6 through 13, and 803.

D. Rezone to DD/C-2-A:

In Square 369, those lots now zoned C-2-A.

E. Rezone to DD/C-3-A:

In Square 450, Lots 15 through 17, 20, 21, 34, 37, and 805 through 811.

F. Rezone to DD/C-3-C:

1. All of Squares numbered 317, 343, 344, 372 through 374, 402, 403, 404, 426, 427, 428, W484, 452, 453, 459, and 460; and

2. Those lots now zoned C-3-C in Squares numbered 284, 316, 342, and 371.

G. Rezone to DD/C-4:

1. All of Squares numbered 223, 224, 252, 253, 288, 289, 290, 319 through 321, 345 through 347, 375 through 377, 405 through 408, 429 through 432, and 454 through 458.

H. Rezone to DD/C-5:

1. All of Squares numbered 225, 254, 291, 322 and 348.

3. Insert new Section 3204, to read as follows:

3204 VESTING OF TRANSFERRED DEVELOPMENT RIGHTS

3204.1 Notwithstanding the provisions of subsections 3202.5 and 3202.6 of this title, gross floor area that is transferred pursuant to this title shall remain available for the life of the development on the receiving lot, subject to the following provisions:

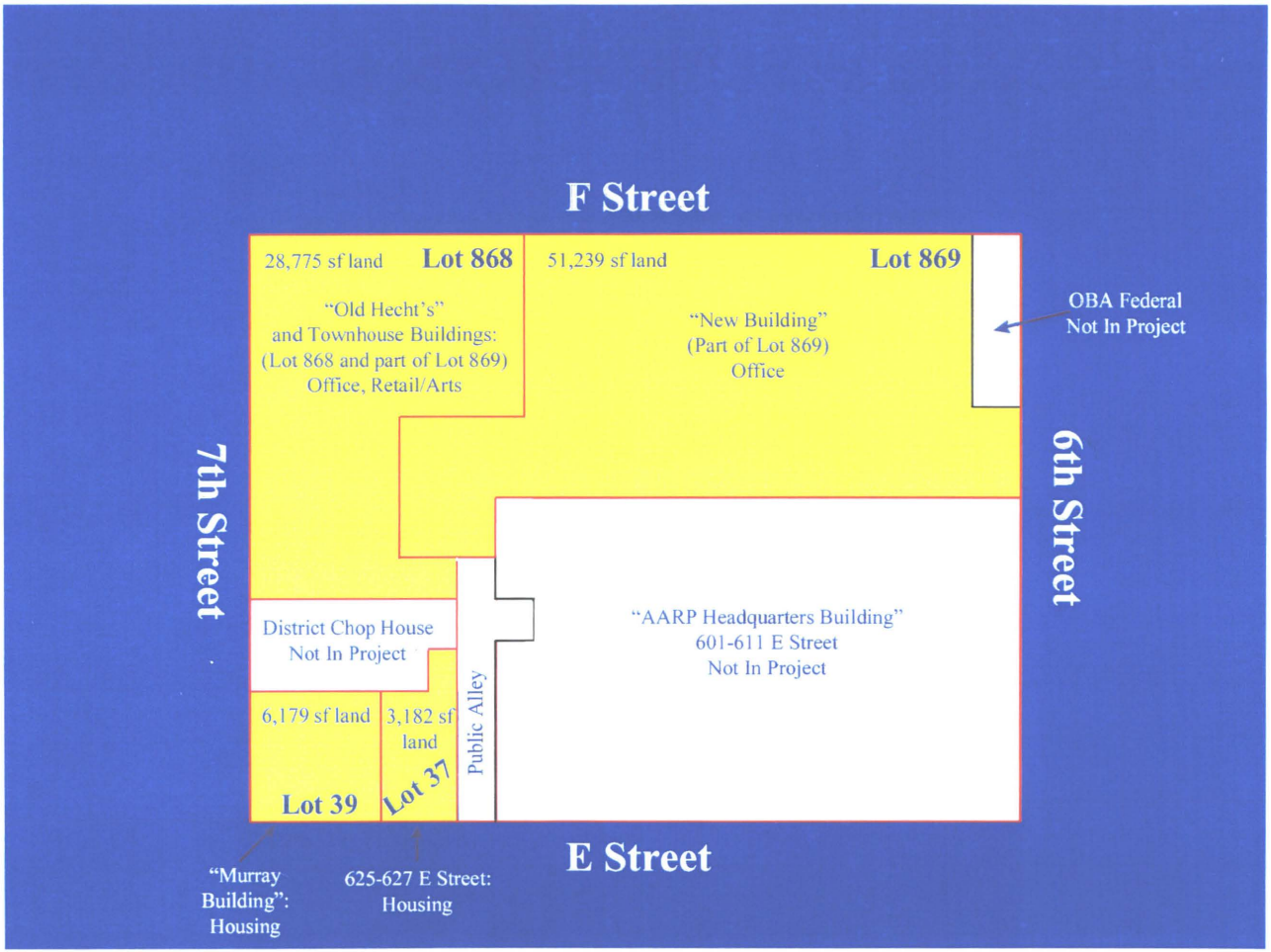
(a) Within thirty calendar days of the execution of the written agreement that effects the transfer, the parties to the transfer shall file a true copy of the agreement with the Zoning Administrator; and

(b) The transfer agreement shall be valid for a period of 25 years after its execution, within which time an application shall be filed for each building permit that is required to implement the transfer.

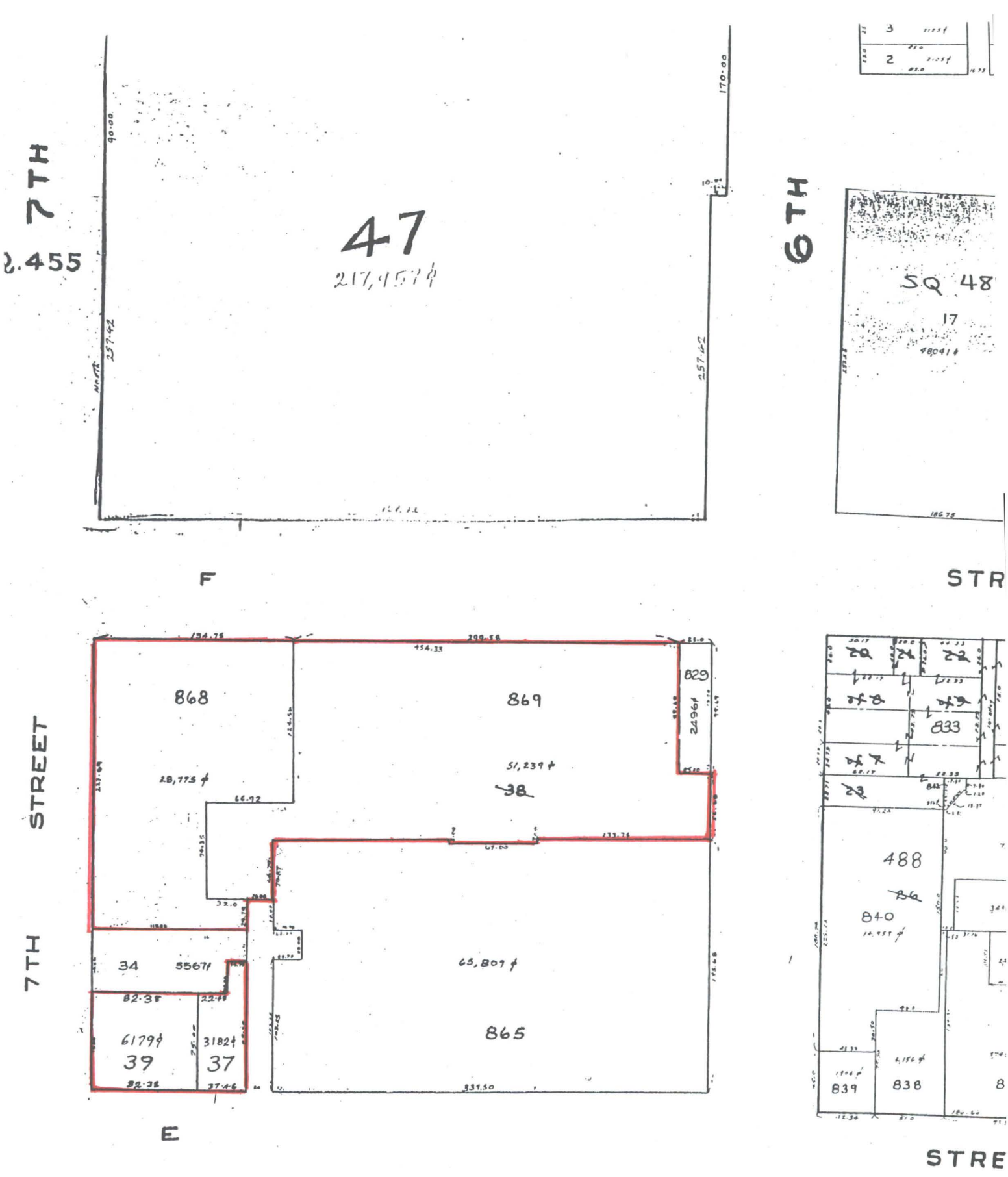
4. Redesignate current section 3204 as Section 3205.

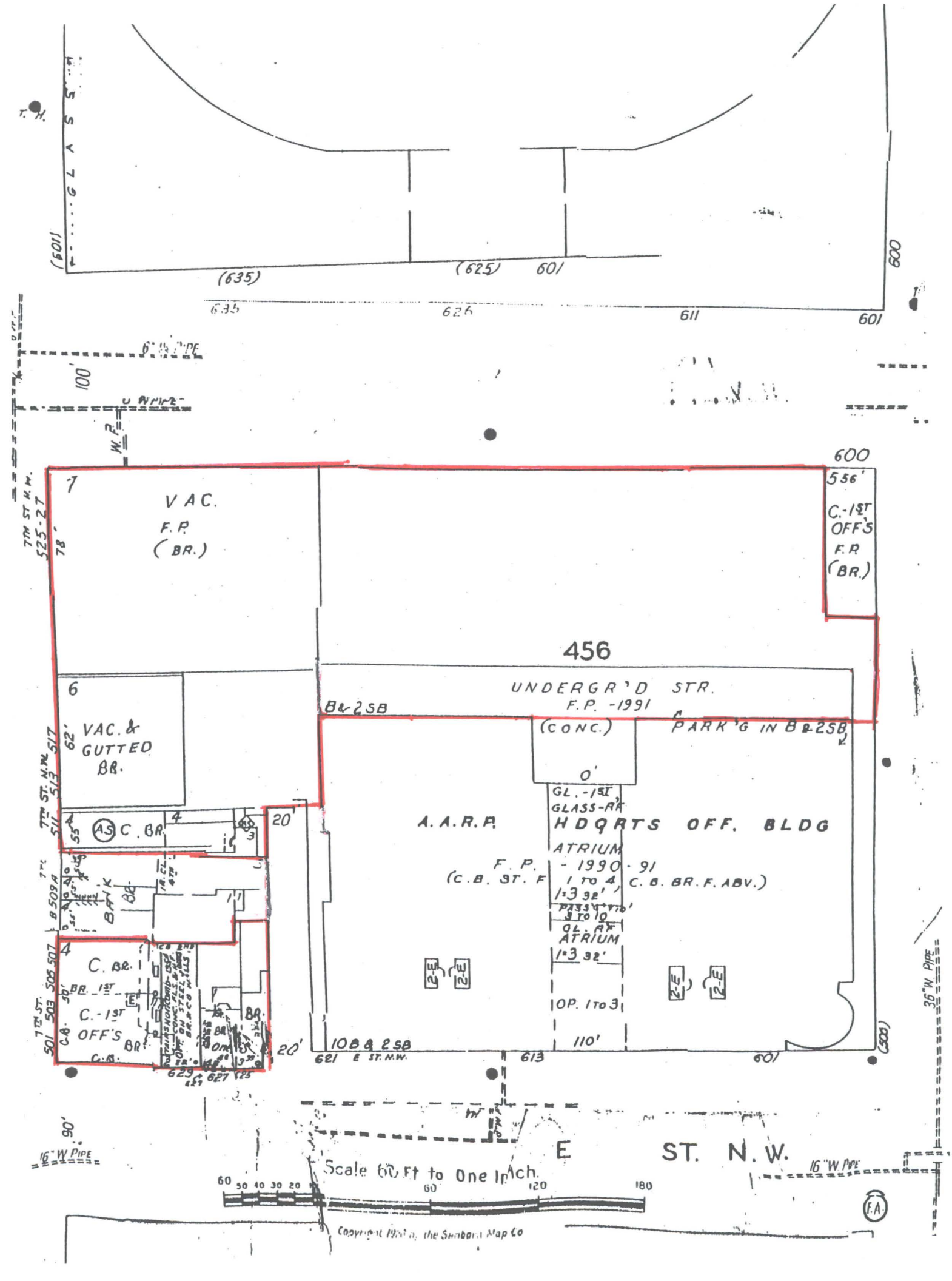
The Commission has determined that the changes made in the final rulemaking are not so substantive as to require a further notice of proposed rulemaking.




F Street
28,775 sf land
Lot 868
"Old Hecht's"
and Townhouse Buildings:
(Lot 868 and part of Lot 869)
Office, Retail/Arts
51,239 sf land
Lot 869
"New Building"
(Part of Lot 869)
Office
OBA Federal
Not In Project
7th Street
6th Street
District Chop House
Not In Project
"AARP Headquarters Building"
601-611 E Street
Not In Project
Public Alley
6,179 sf land
Lot 39
3,182 sf land
Lot 37
E Street
"Murray Building": Housing
625-627 E Street: Housing

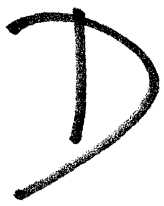



7TH
2.455
47
217,957 ±
170·00
90·00
257·42
257·42
F
6TH
SQ 48
17
48041 ±
STR
STREET
7TH
868
869
829
2496 ±
28,775 ±
51,239 ±
38
66·92
133·74
34
55671
82·38
22·78
61794
39
31824
37
82·38
37·46
65,807 ±
865
839·50
E
833
488
B4
840
14,957 ±
839
838
STRE


GLASS
(601)
(635)
(625)
601
600
635
626
611
601
100'
W. P.
600
556'
C.-1ST
OFF'S
F.R
(BR.)
7
VAC.
F.P.
(BR.)
78'
7TH ST N.W.
525-27
456
6
VAC. &
GUTTED
BR.
62'
513-17
UNDERGR'D STR.
F.P. -1991
B & 2 SB
(CONC.)
PARK'G IN B & 2 SB
0'
GL.-1ST
GLASS-RR
A.A.R.P.
HDQRTS OFF. BLDG
ATRIUM
F.P.
- 1990-91
(C.B. 3T. F 1 TO 4, C.B. BR. F. ABV.)
1=3 32'
PASS'G 7 TO 9
9 TO 10
GL. RF
ATRIUM
1=3 32'
OP. 1 TO 3
110'
2-E
2-E
2-E
2-E
7TH ST.
501 503 505 507
509A
C. BR.
BR. 1ST
C.-1ST
OFF'S
C.B.
BR.
4
3
20'
10 B & 2 SB
621 E ST. N.W.
613
601
629
627
625
36" W. PIPE
16" W. PIPE
90'
E ST. N.W.
Scale 60 Ft to One Inch.
60 50 40 30 20
60
120
180
F.A.
Copyright 1991 by the Sanborn Map Co

C


JUDICIARY SQUARE
DD/C-4
SP-2
C-3-C
INDIANA
PENNSYLVANIA
MARKET PL.
ST.
E ST.
D ST.
DD/C-3-C
DD/C-5



Form 907–R. D.

Surveyor's Office
DISTRICT OF COLUMBIA

Washington, D. C., 7-8, 19 58

Plat, *for Building Permit of* [illegible]

Recorded in Book [illegible] *page* [illegible]

Scale: 1 inch = 40 *feet*

S. O. C658'2

Furnished to WM. C. [illegible] HOUSE LINE

Asst. Surveyor, District of Columbia.

Per DH

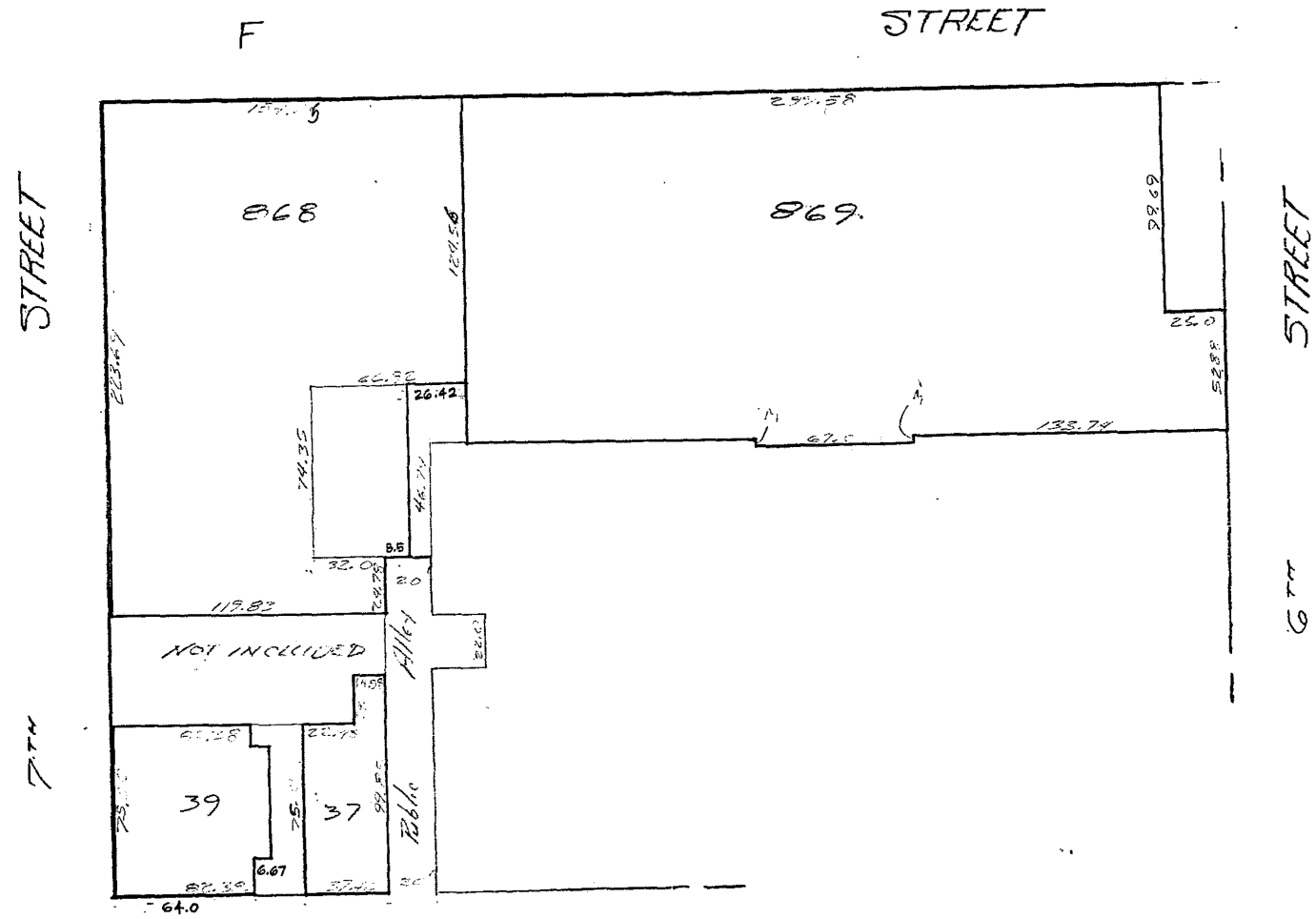
D.M.S.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plan as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb or alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property).

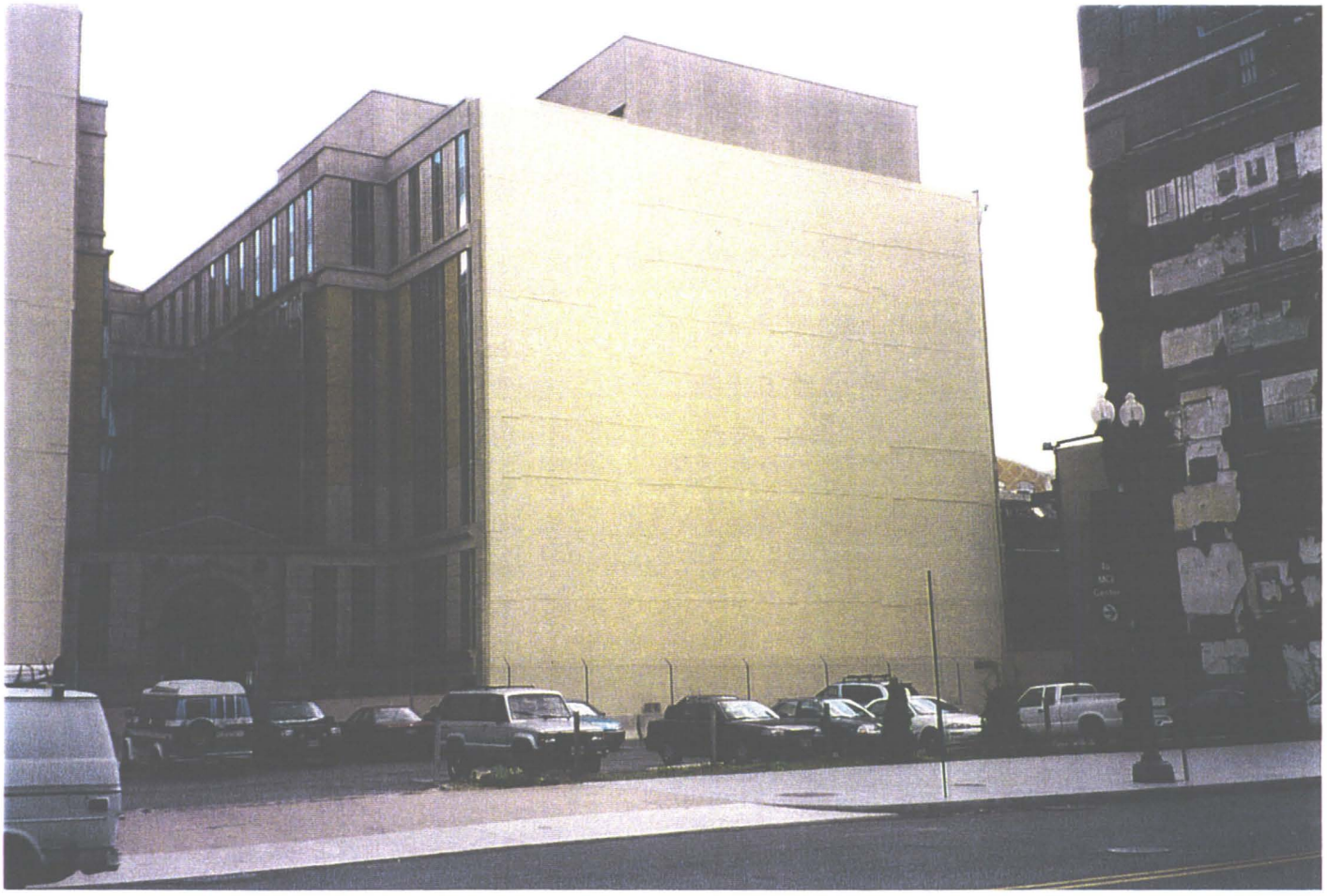
Date _____

_____
(Signature of owner or his authorized agent)

NOTE: DATA SHOWN ON ASSESSMENT AND TAXATION LOTS OR PARCELS ARE PER RECORDS OF ASSESSOR, D. C. BUT DO NOT NECESSARILY AGREE WITH DEED DESCRIPTION.







View of the parking lot on the south side of F Street between 6th and 7th Streets
from the north side of F Street looking southeast
(AARP Building, 601 E Street, in the background;
side of the Hecht's building to the right)

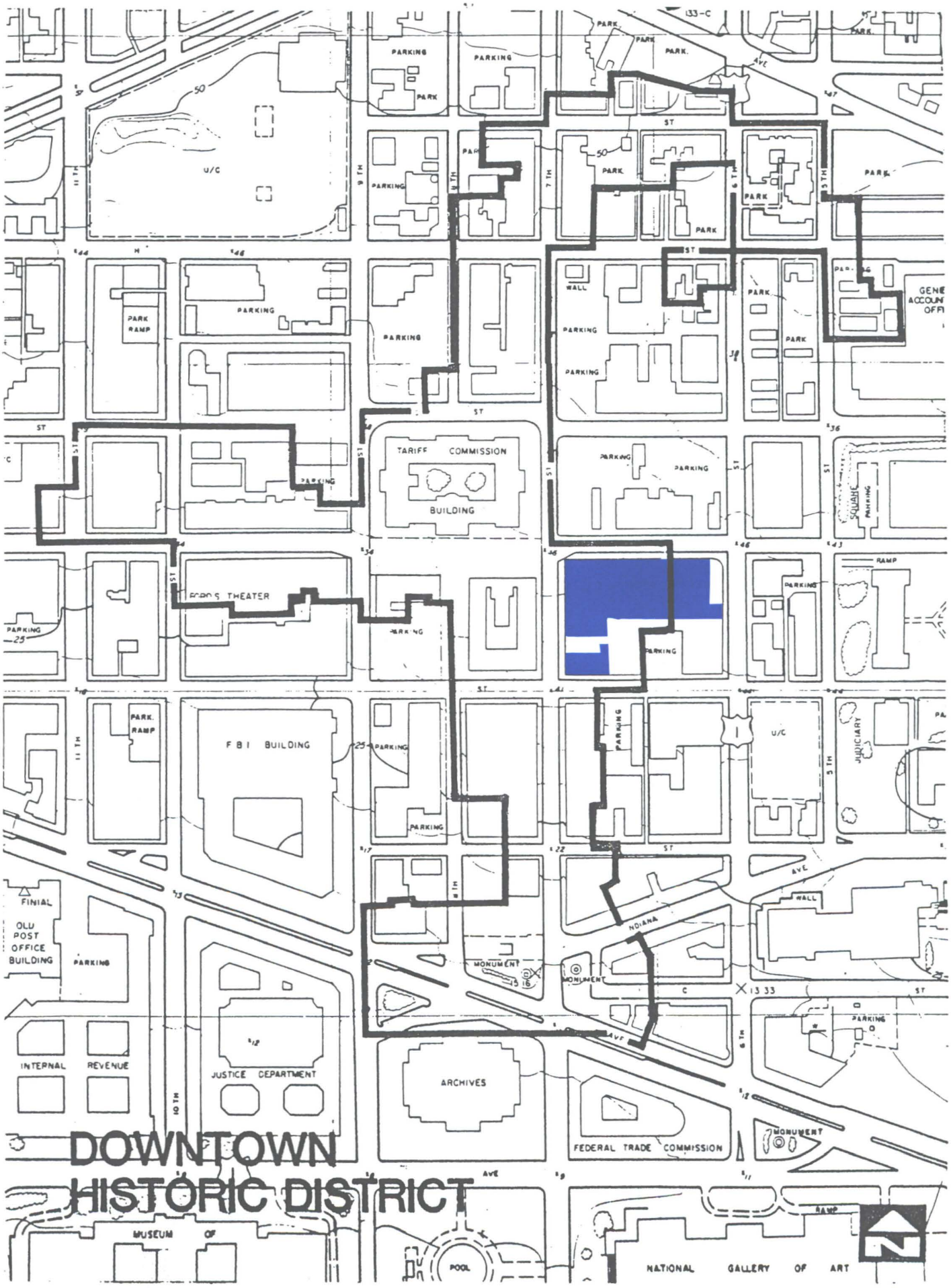


View of the Murray Building and 625-627 E Street
on the northeast corner of the intersection of 7th and E Streets, N.W.,
from the southwest corner of the intersection of 7th and E Streets, looking northeast



View of the former Hecht's Department Store and the four adjoining structures on the southeast corner of the intersection of 7th and F Streets, NW from the west side of 7th Street north of F Street, looking southeast

F


DOWNTOWN
HISTORIC DISTRICT
TARIFF COMMISSION BUILDING
FORD'S THEATER
F B I BUILDING
OLD POST OFFICE BUILDING
INTERNAL REVENUE
JUSTICE DEPARTMENT
ARCHIVES
FEDERAL TRADE COMMISSION
NATIONAL GALLERY OF ART
MUSEUM OF
POOL
JUDICIARY SQUARE
PARKING
PARK
PARK RAMP
MONUMENT
INDIANA AVE
11 TH
10 TH
9 TH
7 TH
6 TH
5 TH



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
614 H STREET, N.W.
WASHINGTON, D.C. 20001

IN THE MATTER OF:	
SQUARE 456, OLD HECHT COMPANY DEPARTMENT STORE COMPLEX	HPA Nos. 95-440-448
Applications for Partial Demolition Permits 501-507, 511, 513, 515 and 517 7th Street, N.W. 626 F Street, N.W.	
and	
Conceptual Applications for Alterations and New Construction 501-507 7th Street, N.W., 626 F Street, N.W., and 625-627 E Street, N.W.	

DECISION AND ORDER

The hearing before the Mayor's Agent for Historic Preservation was held on December 4, 1995. Present and testifying at the hearing were Norman M. Glasgow, Jr., Esq., of Wilkes, Artis, Hedrick & Lane, Chartered, representing Square 456 Associates (the "Applicant"); Christopher Reutershan (project manager), Emily Eig (architectural historian), Colden Florance, FAIA (project architect), Mary Oehrlein, FAIA (preservation architect), and Anne Adams (architectural historian), witnesses for the Applicant; Richard Busch, Administrator of the D.C. Preservation League (DCPL), speaking in support of the applications; and Cornish Hitchcock, Esq., on behalf of the Committee of 100 on the Federal City (Committee), a party in support of the applications.

BACKGROUND

This matter came before the Mayor's Agent for D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978, D.C. Code Ann. § 5-1001 et seq. (1994 Repl.) ("the Act"), on December 4, 1995, based on applications for partial demolition of the buildings located at 501-507, 511, 513, 515 and 517 7th Street, N.W., and 626 F Street, N.W., in Square 456, the site of the former Hecht Company Department Store complex. Pursuant to sections 5-1002 and 5-1004 of the Act, Square 456 Associates, the Applicant in this proceeding, requested that the Mayor's Agent find the applications necessary in the public interest in order to construct a project of special merit as defined under the Act.

The project, which includes the former Hecht Department Store building, calls for partial demolition of six buildings on the site, restoration of historic facades, and alterations and new construction behind the facades. The Historic Preservation Review Board reviewed the demolition applications and a conceptional design review for the project at its meeting of October 26, 1995, and adopted the Historic Preservation Division staff recommendation for approval as a project of special merit. The Concept Applications for Alterations and New Construction were not before the Mayor's Agent.

Pursuant to D.C. Code § 5-1004, before the Mayor may issue a permit to demolish or partially demolish buildings that contribute to the character of an historic district, the Mayor must find that the demolition is necessary in the public interest because it is either consistent with the purposes of the preservation law or necessary to allow for the construction of a project of special merit, or that failure to issue a permit will result in unreasonable economic hardships to the owner. The Applicant claims that the proposed demolitions are necessary in the public interest in order to construct a project of special merit. Specifically, the project, which contains a mix of uses including office use, has significant benefits to the District of Columbia by virtue of its substantial and exemplary preservation component, substantial housing component which could serve as a catalyst for future private-sector housing development in the area, and arts and retail uses which constitute "specific features of land planning and other social benefits having a high priority for community services." D.C. Code § 5-1002(11).

There were no parties or persons in opposition to the applications. The D.C. Office of Planning filed a letter in support of the applications.

Preliminary Issues

At the commencement of the hearing, the Applicant requested leave to file its statement after the 20-day requirement under 10 DCMR 2516.3 (1994) due to the temporary closure of the D.C. government. The Mayor's Agent granted the request and accepted the statement into the record.

FINDINGS OF FACT

1. The Applicant is the owner of Lots 857, 867 and 34 in Square 456, premise addresses 501-507, 511, 513, 515, and 517 7th Street, N.W., and 626 F Street, N.W. The Applicant is the contract purchaser of the building at 625-627 E Street, N.W. (Tr. 18.) Christopher Reutershan, President of Christopher Reutershan and Associates, development consultant to Square 456 Associates, testified that the Equitable Life Assurance Society of the United States (the "Equitable") is the managing general partner of the Applicant. Mr. Reutershan submitted Equitable's audited financial statement for the year ending December 31, 1994, indicating total assets in excess of $94 billion. Mr. Reutershan testified that based on these assets, the Applicant has the financial capability to complete the project (Tr. 19-20).

2. The buildings at 501-507, 511, 513, 515, and 517 7th Street, N.W., 626 F Street, N.W., and 625-627 E Street, N.W., are located within the boundaries of the Downtown Historic District, which is listed in the D.C. Inventory of Historic Sites and eligible for listing in the National Register of Historic Places. (Applicant's Prehearing Statement, November 20, 1995 ("App. Stmt."), 1.) The buildings contribute to the character of the historic district. None of the buildings is individually listed in the D.C. Inventory of Historic Sites or the National Register of Historic Places and none of their interiors is protected under the Act. (App. Stmt., 5.)

3. The Applicant plans to redevelop the historic buildings by constructing a new eight- and nine-story commercial building on the site comprised of housing, offices and retail space. The project will retain the majority of the building at 626 F Street, N.W., and the historic facades of the structures at 501-507, 511, 513, 515, and 517 7th Street, N.W.

4. The rehabilitation of the building at 625-627 E Street, N.W., will include an addition to the rear of 627 E Street, N.W., and above a portion of 625 E Street, N.W. 625-627 E Street, N.W., consists of what were originally two separate buildings, constructed at different times by different owners. At this time, the two structures are connected internally, function as a single building, and stand on a single lot. (App. Stmt., 1-2.)

5. Architectural historian Emily Eig testified that she had conducted extensive research on the historic buildings consistent with accepted practices in her profession. Her research assisted the architects in understanding the historical and architectural significance of the buildings and in developing an appropriate period of significance to guide the restoration efforts that are a major part of this redevelopment project. (Mayor's Agent Hearing Transcript, December 4, 1995 ("Tr."), Tr. 22-23.)

6. The 500 block of 7th Street, N.W., is an important block along 7th Street and in the Downtown Historic District. (App. Stmt., 7.) In its decision designating this historic district, the Joint Committee on Landmarks noted that the 500 block of Seventh Street consists of an "interrelated group of compatible commercial buildings" that "complement each other though designed in a variety of styles." The decision further highlights the "finely articulated, rhythmic facades" of these buildings (App. Stmt., Exh. 6, 6-7). There is no mention of any significant interior space.

7. The Hecht Company Department Store had a significant impact on the development of this block in the Historic District. (Tr. 23-25; 28; 32.) The largest and most prominent of the buildings in this block is the 1924 Hecht Company Addition. (Tr. 32; App. Stmt., 6.) Designed by Jarvis Hunt, the nationally prominent department store architect, the building is a dominant, visual landmark in the area. Its white, highly articulated terra cotta facades demands attention as it anchors the north end of the block. (App. Stmt., 6; Tr. 32-33.) Currently vacant, the building suffers from neglect. (Tr. 32.) The building retains its significant exterior architectural characteristics, including its terra cotta facades, and some significant interior features. The clock from 1924 remains in place. (Tr. 32-33.)

8. The earliest buildings in the block occupied by the Hecht Company were 513 and 515 7th Street, N.W. (Tr. 23.) Originally constructed as speculative buildings, they were converted for department store use and the wall between them removed. (Tr. 24.) A third building, constructed in 1903 at 517 7th Street, N.W., was structurally linked with the others. The Hecht Company also expanded southward to 511 7th

Street, N.W., which was originally built for the German American Insurance Company. In 1924, these buildings became part of the large terra cotta addition constructed at the corner of 7th and F Streets, N.W. (Tr. 24-25.) During the 1950s, the original appearance of the buildings was extensively altered, primarily at the street level, as part of a modernization project. (Tr. 25.)

9. The building known as the Murray Building at 501-507 7th Street, N.W., was constructed in 1868 as an office building. (App. Stmt., 6; Tr. 25-26.) In 1909, the facades of the Murray Building were extensively altered in accordance with plans prepared by Appleton P. Clark, Jr. One of the leading local architects of his day, Clark changed the building from a Second Empire mansard-roofed structure to a more classically inspired expression of the early twentieth-century architectural aesthetic. (App. Stmt., 6.) In 1926, portions of the first floor were altered on the interior and exterior, including the relocation of the main entrance and reconfiguration of the storefronts, to accommodate a bank. (Tr. 26.) The building was again extensively altered during the 1950s and 1970s. (Tr. 31.)

10. The two structures which comprise the single building at 625-627 E Street, N.W., known as the Insect Club, the name of the current tenant, date from the mid-nineteenth century. (Tr. 27.) Originally constructed as separate buildings, the structures are now joined on the interior and function as one building. The street facades have also been extensively altered over the years. (Tr. 27.) No partial demolition permit application has been submitted for these addresses. (Tr. 27.) The alterations and additions proposed for the Insect Club are part of the conceptual design scheme approved by the HPRB. (Tr. 27.)

11. Ms. Eig testified that the proposed partial demolitions will allow for the construction of a project that will greatly enhance the block through the restoration of the facades of the buildings to their historic 1924 appearances. (Tr. 33-34.) The Murray Building facade will be restored to its 1909 appearance, based upon archival drawings. This facade restoration presents a unique opportunity since few storefronts from the period survive and it is unusual to locate drawings which provide the level of detail required for such restoration work. (Tr. 29, 34.) The pedestrian and retail-oriented character of 7th Street, N.W., will be restored and enhanced. As a result, the Historic District as a whole will benefit, both historically and architecturally. (Tr. 33, 34; App. Stmt., 7.)

12. Colden Florance, the project architect, reiterated the conclusions of Ms. Eig that, due to extensive interior demolition, floor realignments, and new structural systems, with the exception of the 1924 Hecht Company Addition, the only remaining historic elements of the rest of the buildings are their facades. (Tr. 37.)

13. Mr. Florance testified that the proposed redevelopment project is a model of adaptive reuse. (Tr. 36.) He stated that the partial demolition contemplated for the 1924 Hecht Company Addition entails the removal of the existing escalators, the elevator bay, stairs, and other interior fabric that is not significant. The entrance vestibule and interior columns on the first floor, which help define the historic character of the building, will be retained. (Tr. 43.)

14. Mr. Florance testified that all but the facades of the buildings at 511-517 7th Street, N.W., will be demolished. Part of the buildings had been demolished already after being condemned as dangerous. None of the fabric being removed is either original to the buildings or has any historic significance. (Tr. 43-44.)

15. Mr. Florance stated that the new construction contemplated for the site will include approximately 200,000 square feet of office space in the 1924 Hecht Company Addition, and above and behind the buildings at 511-517 7th Street, N.W. (Tr. 37.) The ground floor, throughout the project, will be devoted to retail, with a concentration of arts retail. Approximately 55,000 square feet of residential space will be constructed on the site, with the majority located behind and above the facades of the Murray Building at 501-507 7th Street, N.W. (Tr. 39.) Mr. Florance stated that it is necessary to remove the interior structure of the Murray Building, which has no historic fabric remaining, in order to meet building and fire safety codes for residential buildings. (Tr. 45.)

16. Mr. Florance testified that the interior of 625-627 E Street, N.W., will also be altered and additions will be constructed at the rear of the building and above part of 625 E Street, N.W. The rehabilitated building will include a portion of the project's residential component. (Tr. 39, 40.)

17. Mr. Florance concluded by stating that the proposed redevelopment project fulfills the city's goals for a living downtown, meets the objectives of the Comprehensive Plan, and complements the priorities of the Pennsylvania Avenue Development Corporation . (Tr. 49.)

18. Mary Oehrlein, the project's preservation architect, testified that the preservation component of the redevelopment scheme is a significant element of the special merit project. (Tr. 63.) Ms. Oehrlein stated that archival research and photographic documentation will be conducted to standards used by the Historic American Building Survey prior to commencement of any construction. (Tr. 51.) Additionally, she stated that the restoration and rehabilitation work for the retained portions of the buildings will be based on this documentation and will be performed in accordance with the Secretary of Interior's Standards. (Tr. 51.) Ms. Oehrlein reviewed in detail the exact level of restoration and rehabilitation contemplated for each of the historic buildings and facades. (Tr. 51-63.)

19. Anne Adams, architectural historian, testified that the proposed redevelopment project is one of special merit by virtue of its significant preservation component and its specific features of land planning and social benefits that are a priority for the city. These planning and social benefits include historic preservation, housing, arts and retail uses that are part of a single, coordinated project. (Tr. 62-64.)

20. Ms. Adams stated that this block of 7th Street, N.W., is a critical component of the 7th Street commercial corridor and the Downtown Historic District by virtue of its various design and architectural features. In particular, she stated that the 1924 terra cotta addition to the Hecht Company Department Store is not only important to the collection of historic buildings on the block, but is also a major visual landmark in the broader downtown community. (Tr. 65.)

21. Ms. Adams testified that the proposed redevelopment project will return this 7th Street block to its appearance in 1924, the most appropriate period of significance for this portion of the Downtown Historic District. It will strengthen the pedestrian and retail oriented nature of 7th Street, and enhance the public's understanding of the Historic District. (Tr. 65.) The preservation, restoration and enhancement of the facades in the Historic District constitute a significant benefit having a high priority for the city. (Tr. 67.)

22. Ms. Adams testified that the special features of land planning which constitute special merit relate to the housing component of the project. She stated that the housing exceeds that which is required under the zoning regulations and sets an exemplary standard for housing in the downtown area. (Tr. 68; Mr. Florance, Tr. 39.) Further, it will serve as a catalyst for achieving the goals of a living downtown

by producing a critical mass of housing in the area, which is a high priority for the city under the Downtown Plan.

23. Ms. Adams further stated that this project will serve as an important link between the housing advocated by the Comprehensive Plan in the Mr. Vernon Square and Chinatown areas, and existing housing along 7th Street and Pennsylvania Avenue. Additionally, Ms. Adams noted that no public funds will be expended to generate the residential component of the project. (Tr. 68, 69.)

24. Ms. Adams also stated that the project includes arts and retail uses which further contribute to the "living downtown" contemplated under the Comprehensive Plan. (Tr. 69.)

25. Ms. Adams testified that the partial demolition of the six historic buildings is necessary to achieve the significant special merit benefits of this large project. (Tr. 64.)

26. Richard Busch, representing the D.C. Preservation League, testified in support of the partial demolition applications associated with the redevelopment project. (Tr. 71, 72.)

27. Cornish Hitchcock, representing the Committee of 100 on the Federal City, also testified in support of the redevelopment project and its proposed partial demolitions because the project meets the test of special merit based on a significant preservation component in the proposed project, on the very broad and unified proposal to enhance and strengthen the entire city block and streetscape along 7th Street, and on the project's housing component which will link the existing and planned housing from Market Square to Chinatown and Mount Vernon Square. (Tr. 77, 78.) Mr. Hitchcock emphasized that the special merit found in the housing component was not based on numbers of units or percentages, but rather on the benefits to the neighborhood and the role of the housing as a catalyst in advancing the District of Columbia's goal of residential housing in the area. (Tr. 78, 81.) He added that the Committee was supporting the revised proposal under the terms of a compromise with the Applicant which will resolve pending litigation over the earlier Mayor's Agent's decision involving this site. (Tr. 74, 76.)

28. By letter dated November 13, 1995, the Office of Planning (OP) stated its

support for the Applicant's requested partial demolition permits in order to construct a project of special merit at the proposed site. OP noted that this project is one of special merit due to its various elements which further the Downtown Plan and its objectives of providing arts, retail and housing, along with office use. OP further stated that it views this project as a potential catalyst to spur other private sector residential development in the area of the Penn Quarter neighborhood.

CONCLUSIONS OF LAW

Based on the Record as established before the Mayor's Agent, the following conclusions of law are made:

Jurisdiction

29. D.C. Code §5-1004 sets forth the Mayor's authority (which has been delegated to the Mayor's Agent) and procedures with respect to issuing demolition permits.

30. Before the Mayor may issue a permit to demolish an historic landmark or a building or structure in an historic district, the Mayor shall review the permit application in accordance with D.C. Code §5-1004 which provides in pertinent part that the "Mayor shall after a public hearing, make the finding required by subsection (e) of this section ...." D.C. Code §5-1004(c). D.C. Code §5-1004(e) states that "[n]o permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest...."

31. Administrative Issuance Number 2-Delegation-54G, dated July 6, 1995, delegates the authority to conduct hearings as the Mayor's Agent for Historic Preservation under sections 5 through 9, 12 and 13 of D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978, to the undersigned.

Necessary in the Public Interest

32. The standard for review for a permit for demolition in an historic district is D.C. Code §5-1004(e), which requires that no permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest, or that

failure to issue a permit will result in unreasonable economic hardship to the owner.

33. The term "public interest" is further defined under D.C. Code §5-1002(10) in two ways: (1) that the demolition is necessary to construct a project of special merit, or (2) that the demolition is consistent with the purposes of the Act.

34. Since the Applicant has based its claim on one of special merit, it bears the burden of proof to establish that the granting of the permits is necessary in the public interest to allow construction of a project of special merit.

35. Special merit means a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community service. D.C. Code §5-1002(11).

36. The Applicant in the instant case has sustained its burden of proof that the granting of permits for the partial demolition of six buildings is in fact necessary in the public interest in order to allow the construction of a project of special merit.

37. This mixed-use project, with its significant housing component which may be a catalyst for other private-sector residential development in the area, its art and retail uses, and its exemplary preservation component whereby an important block in the Downtown Historic District will be preserved, restored and rehabilitated, is itself a project of special merit. It provides "significant benefits to the District of Columbia and to the community by virtue of specific features of land planning, or social or other benefits having a high priority for community service." See D.C. Code §5-1002(11).

38. Specifically, the introduction of housing to the site is a significant social benefit and feature of land planning because it could serve as a catalyst for similar non-government subsidized housing in the area and provide a critical link between the housing at Market Square developed by the Pennsylvania Avenue Development Corporation to the south, and housing that exists and is contemplated in Chinatown and the Mount Vernon Square area to the north. Likewise, the arts and retail uses will enhance the city's cultural and commercial elements that are encouraged by the Comprehensive Plan. Together, these components, along with the significant

preservation component proposed and the prospect of redeveloping and restoring an entire, and historically significant block in the Downtown Historic District, constitute a project of special merit as defined under section 5-1002 of the Act.

39. In those instances in which the Mayor's Agent finds that demolition is necessary to allow the construction of a project of special merit, no demolition permit shall be issued unless a permit for new construction is issued simultaneously under D.C. Code §5-1007 and the owner demonstrates the ability to complete the project (D.C. Code §5-1004(h)).

40. There is a reasonable expectation that the Applicant possesses sufficient financial ability to complete the project by virtue of the $94 billion assets of its managing partner, the Equitable Life Assurance Society of the United States, and no further evidence need be submitted on this issue.

ORDER

ACCORDINGLY, it is this 11th day of September, 1996, ORDERED that Applications H.P.A. Nos. 95-443, 95-444, 95-445, 95-446, 95-447, and 95-448 for the partial demolition of the buildings known as 501-507, 511, 513, 515, and 517 7th Street, N.W., and 626 F Street, N.W., be, and the same are hereby, GRANTED; thus REAFFIRMING the Order from the bench on December 4, 1995, and, it is

FURTHER ORDERED that pursuant to D.C. Code §5-1004(h), no demolition permit shall be issued unless a permit for new construction is issued simultaneously; and, it is

FURTHER ORDERED that pursuant to D.C. Code §5-1012(a), this Decision and Order shall not become final until fifteen (15) days after issuance.

Miriam Hellen Jones
Mayor's Agent for D.C. Law 2-144

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order was mailed, postage prepaid, to the following on this 12th day of September, 1996:

Norman M Glasgow, Jr.
Wilkes Artis Hedrick & Lane, Chartered
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006

Cornish Hitchcock
Committee of 100 on the Federal City
1600 20th Street, N.W.
Washington, D.C. 20009-1001

Richard Busch
D.C. Preservation League
1511 K Street, N.W.
Washington, D.C. 20006

Miriam Hellen Jones

H

Government of the District of Columbia

Office of the
Director

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

'95 APR 28 P1:40

APR 26 1995

MEMORANDUM

TO: D.C. Zoning Commission

FROM: Albert G. Dobbins, III
Director

SUBJECT: Zoning Commission Case No. 94-20 (Petition to Amend Subsection 1707.4 of the Zoning Regulations)

BACKGROUND

This case derives from a petition to amend a portion of Subsection 1707.4 of the Zoning Regulations. Section 1707 comprises the historic preservation provisions of the Downtown Development District (DDD). The petitioner, Square 456 Associates, owns lots 867 and 857 in Square 456, and requests that Lot 857 and part of Lot 867 be included in the lots and squares enumerated in Sub-section 1707.4.

The properties listed in this sub-section are located in the Downtown Historic District and/or the Pennsylvania Avenue historic area and are subject to both development restrictions and incentives pursuant to the DDD regulations. The restriction is that on-site development is limited to a maximum of 6.0 FAR, which may be for commercial or any other permitted use. The purpose of this provision is to encourage restoration of historic buildings while also providing a modest degree of excess density for the construction of additions (which are subject to historic preservation exterior design review as well as controls over any demolition involved). In addition to compatible historic design, the general objective is to ensure a reduced scale of buildings in the historic district compared to the normal height and bulk of buildings in Downtown.

The two incentives provided in Section 1707 are as follows. First, unused development rights of up to 4.0 FAR may be transferred to a receiving lot or lot within the DDD boundaries or within either of two designated receiving zones for transferable development rights (TDRs). The object of this provision is to provide some financial remuneration to assist in the restoration of the historic properties and to provide a degree of compensation for the restrictions on on-site development. The second incentive is that the enumerated historic properties are not subject to a housing requirement in locations where such a requirement might normally apply pursuant to DDD provisions.

For reasons that are discussed in the body of this report, the subject properties were not included in Sub-section 1707.4 in the advertised text of the DDD regulations; nor, obviously, in the decision. The applicant requests that its properties be included and thereby become subject to the restrictions and incentives.

PLANNING AND ZONING ISSUES

The Office of Planning (OP) considers the following to be the key planning and zoning issues in the case.

1. **Text Amendment – Applicable Lots.** In the adoption of the Downtown Development District, the Zoning Commission included the entirety of the Downtown Historic District within the historic preservation provisions of 1707.4, with the exception of the lots along the 7th Street frontage of Square 456. This inclusive approach was adopted based on a petition by the D.C. Preservation League. The Preservation League did not include the subject frontage in its petition because it had a covenant with the property owner governing some critical development and preservation/restoration matters. (A copy of the covenant is found in Exhibit B of the application.) Accordingly, the subject properties were subject to some preservation-related development restrictions, but did not become formally subject to the restrictions and incentives of the DDD related to historic properties. This exclusion also left the properties subject to a housing requirement, a regulatory outcome that the then property owner concurred in.

The applicant now requests that Lot 857 and a part of Lot 867, owned by Square 456 Associates, be included in Sub-section 1707.4. In its Preliminary Report of February 3, 1995, OP noted that this action, if adopted by the Commission would leave out two adjacent historic lots (lots 34 and 37) owned by other persons. The Zoning Commission agreed to include these lots in the Notice of Public Hearing for this case. OP believes that the text amendment should include lots 34 and 37 based on the issues discussed in the following three paragraphs.

The buildings on these lots are relatively small-scale (35 - 40 feet, approximately) and are separated from each other by petitioner's corner property on Lot 57, which is proposed to be enlarged as part of the petitioner's development plans, described in the next section of this report. A copy of applicant's Exhibit A, "Land Holdings in Square 456," is attached to this report. The petitioner's proposal would include in Sub-section 1707.4 the properties indicated on Exhibit A as, "Old Hecht Company Complex," "Ferree Parcel" and "Murray Parcel."

The two lots that would not be included in 1707.4 under petitioner's proposal are indicated as 509 - 7th Street, N.W., and 625-627 E Street, N.W. Both are indicated as "Not Included In Project." The bank building at 509 - 7th Street and the two small buildings on Lot 37 are considered "contributing" buildings in the historic district. See OP's "Note" on Exhibit A.

The two "out" lots should be included in 1707.4 if applicant's properties are included, so that the purposes of Section 1707 of the DDD are fulfilled. The properties should uniformly be limited in scale to a maximum of 6.0 FAR, consistent with the historic preservation policies in DDD and elsewhere to establish a reduced building density within which the historic preservation process governs exterior design and requested demolitions or partial demolitions. If the two lots in question are included in 1707.4, they will no longer be subject to a housing requirement. If the applicant's lots achieve historic preservation status, the other similarly situated lots should receive equal treatment.

2. **Proposed Restoration and New Development.** The applicant has prepared plans for renovation, adaptive reuse and new development of the properties owned by Square 456 Associates. Please refer again to the plat found in Exhibit A attached to this report. The proposed development would renovate the main frame of the existing, "old" Hecht Company building and construct an addition that continues behind the facades of the adjacent 7th Street buildings, including the "dogleg" portion of the "Old Hecht Company Complex" and the "Ferree Parcel." The new construction and the renovated parts of the historic buildings would be joined as a single building complex and would be occupied with arts uses at and below grade and offices on the upper floors.

The large, vacant property along F Street (indicated as "Area Previously Demolished") would be developed with a major office building, projected to be expansion space for the adjacent American Association of Retired Persons (AARP) headquarters building that was built several years ago in the southeastern corner of the square. The AARP expansion site is subject to a

housing requirement under the provisions of DDD. The housing requirement is proposed to be provided on Lot 857 ("Murray Parcel") at the corner of 7th and E streets, N.W. This would be accomplished by renovation of the building together with a major addition on top of the existing building.

A Combined Lot Development agreement would legally link the Murray parcel with the AARP expansion site, so that the small apartment building on the Murray parcel can count as the required housing for the AARP expansion site. Combined Lot Development agreements are authorized by the DDD provisions to facilitate the provision of preferred uses by two or more property owners acting in concert. The preferred uses can be allocated unevenly among the participating lots, so long as the normally required amount of preferred uses is provided. The required covenant is recorded with the lots to assure compliance.

3. **Zoning Controls/Combined Lot Development.** One of the applicant's purposes in requesting the proposed text amendment is to be able to proceed with the development as a matter-of-right, rather than to require a Board of Zoning Adjustment (BZA) variance to reduce the housing requirement. Under the present DDD regulations the proposed development would fall short of the housing requirement by approximately 25 percent. If the proposed amendment is adopted, so that Lot 857 and the indicated portion of Lot 867 are included in 1707.4, the required housing will be reduced to an extent that will allow the project to be built as a matter-of-right. Note that the portion of Lot 867 that is proposed to be included in 1707.4 is the area indicated on Exhibit A as "Old Hecht Company Complex." This boundary is in the process of being formally established as an Assessment and Taxation (A & T) Lot, as depicted in applicant's Exhibit D, "Plat of Computation." A copy of this plat is attached to this report as Exhibit B. The land area of the proposed A & T lot is 28,775.2 s.f.

The project has been approved by the Mayor's Agent for Historic Preservation and by the Historic Preservation Review Board (HPRB). The overall development scheme includes approximately 668,544 s.f. of commercial space (7.76 FAR), including 43,463 s.f. of arts uses (0.50 FAR), plus 43,203 s.f. of residential space (0.50 FAR). Attached to this report as Exhibit C are two pages from a project summary and zoning computations provided to OP by the applicant. The project aims to comply with DDD requirements as indicated in the floor area chart and the following explanation under the heading, "Zoning Compliance." The applicant's specified development package will be contained in the Combined Lot Development covenant; this legal mechanism is a requirement for this project to be carried out. This is because the rights and obligations under DDD relating to all of the uses involved are shared among the several lots.

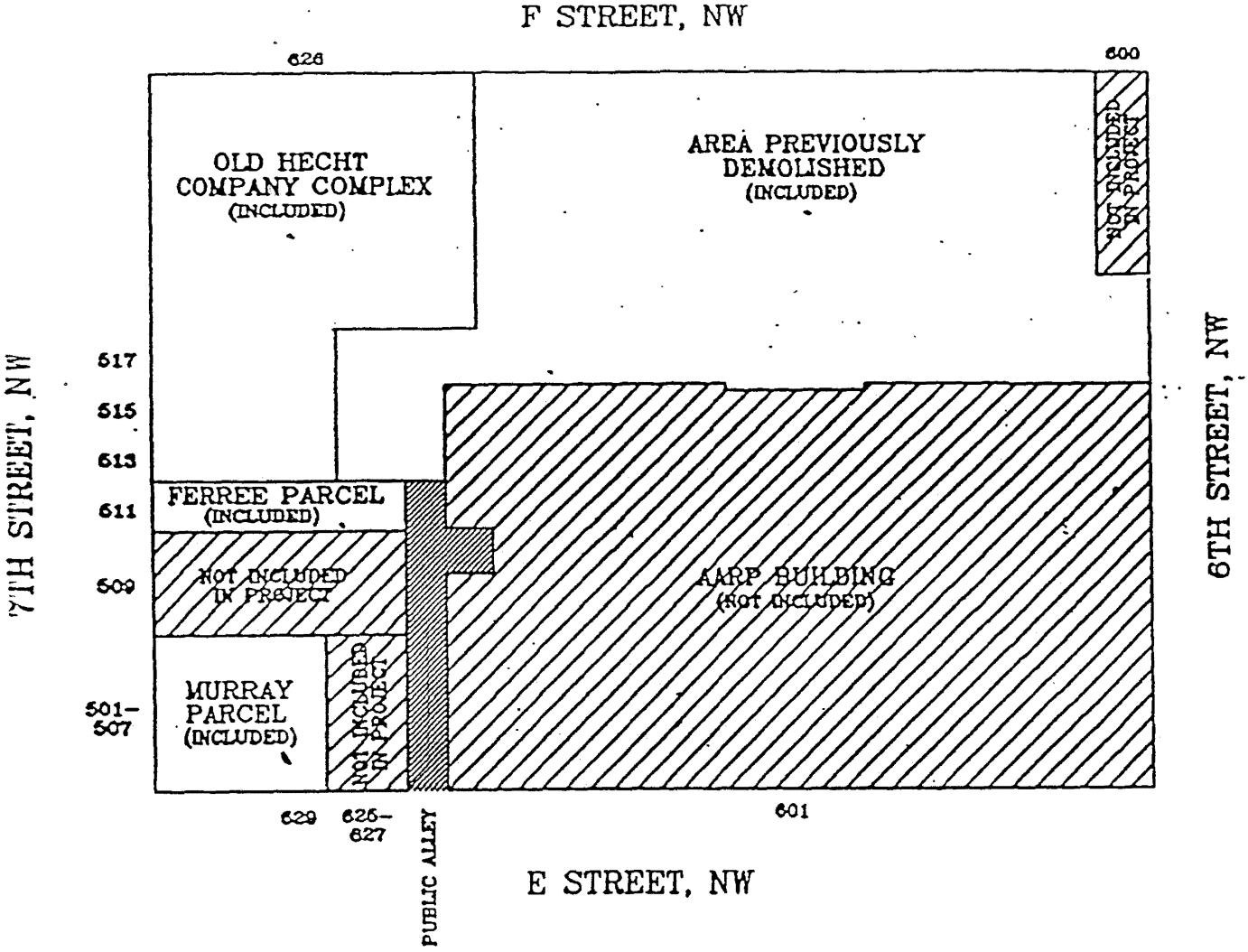
The Combined Lot Development agreement is intended to ensure compliance with the zoning and historic preservation requirements. Accordingly, OP has asked the applicant to provide a copy of its draft Combined Lot Development covenant to the record of this case. This will provide assurances to the public that, if the text amendment is approved, the matter-of-right project that is built and occupied will be as depicted and approved.

RECOMMENDATION

For the reasons outlined above, the Office of Planning recommends that the text amendments be adopted as advertised in the Notice of Public Hearing.

Attachments

EXHIBIT A

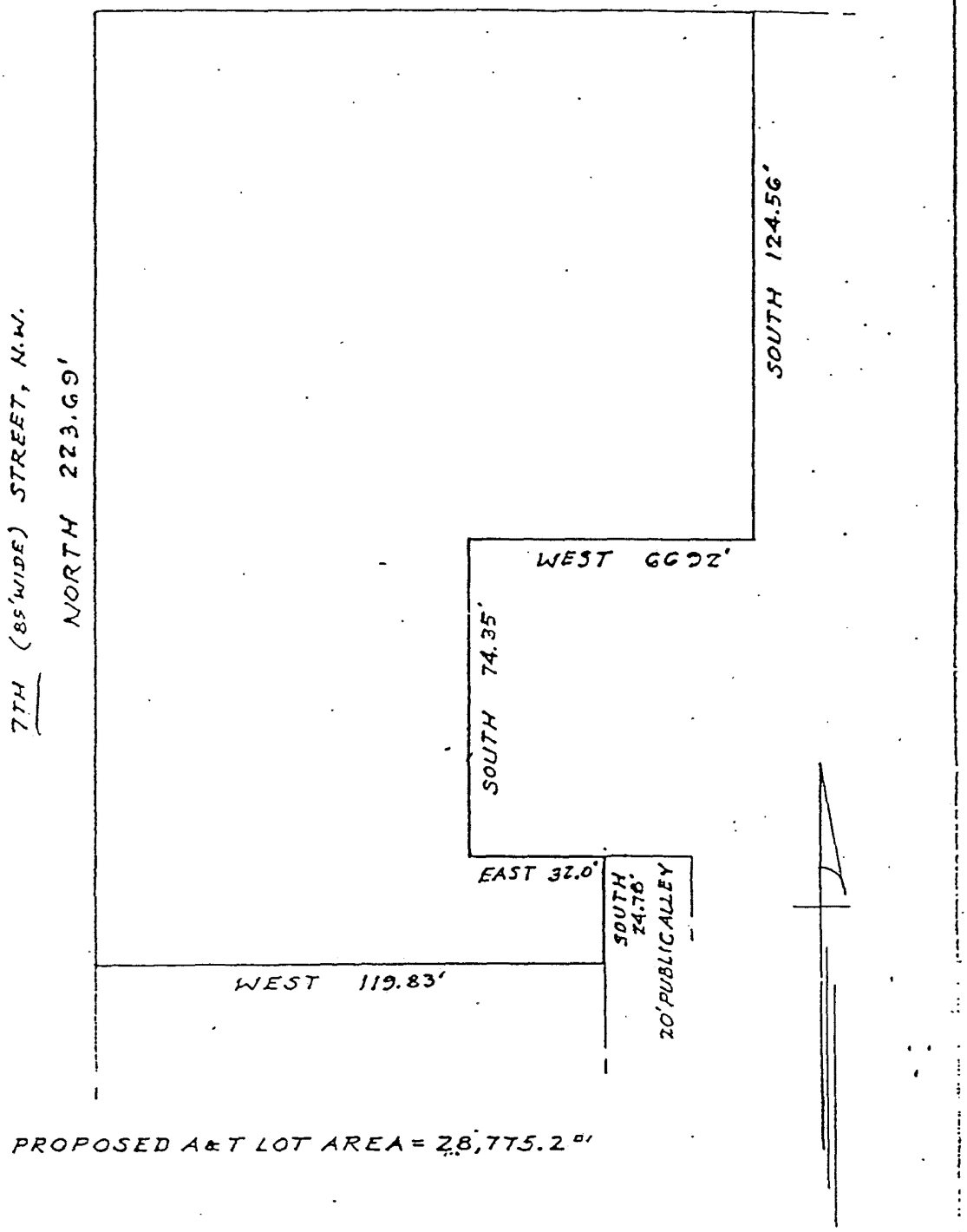


Square 456 Associates

LAND HOLDINGS IN SQ. 456, NW WASHINGTON, DC

NOTE (Office of Planning): Some comments will clarify the effect of the proposed text amendments on the properties in Square 456. Petitioner's property and proposed preservation-new development project includes those four areas indicated as "Included." The large lot on F Street indicated as "Area Previously Demolished" is part of Lot 867; it is vacant, not proposed for inclusion in 1707.4, and would thus remain subject to DDD housing requirements. The adjacent "Old Hecht Company Complex" and the "Ferree Parcel" constitute the remaining part of Lot 867, which would be included in 1707.4 pursuant to this petition and therefore be subject to historic preservation provisions of DDD. Lot 867 is in the process of being divided into two Assessment and Taxation lots along the boundaries indicated. OP's recommendation is simply to add to 1707.4 the two lots shown as "Not Included," i.e., the bank building at 509 - 7th Street, N.W. (Lot 34) and the two buildings on Lot 37 at 625 - 627 E Street, N.W. In this way, the historic frontage along or oriented to 7th Street would be uniformly included in the historic preservation provisions of DDD.

EXHIBIT B



PROPOSED A&T LOT AREA = 28,775.2 SQ.FT.

PLAT OF COMPUTATION

PROPOSED A&T LOT PART OF SQUARE 456
7TH & F STS., N.W., WASHINGTON, D.C.

SQUARE 456 ASSOC.

SCALE: 1"=30'0" NOV. 17, 1994
BERNARD F. LOCRAFT CIVIL ENGINEERS
WASHINGTON, D.C.

Revised Nov. 12, 1994

C-7156-1

EXHIBIT C

The Project:

The project proposes to construct two buildings on the site. The Murray building would be enlarged and converted to an apartment house. The existing Hecht's would be used for office and arts uses. A new office building addition would be built in one or more phases. This addition would incorporate portions of the historic buildings on 7th Street and would include new construction on the vacant land behind these buildings and to the east of Hecht's. The new office building addition would connect to the existing AARP building.

The project would use the combined lot development provisions available as a matter-of-right under the DD District. The zoning computations for the project are as follows:

PROPOSED	Murray Building	Hecht's/AARP Addition	Overall Project
Lot area (square feet)	6,179	80,215	86,394
Height (feet)	110	120	
Total FAR	7.34	8.33	8.26
Total gross floor area (square feet)	45,365	668,544	713,909
Commercial FAR	0.35	8.33	7.76
Commercial gross floor area, including arts (square feet)	2,163	668,544	670,707
Arts FAR equivalent	N/A	0.54	0.50
Arts gross floor area equivalent (square feet)	N/A	43,463	43,463
Residential FAR	6.99	N/A	0.50
Residential gross floor area (square feet)	43,203	N/A	43,203
Number of residential units	45	N/A	45
Average gross floor area per unit (square feet)	960	N/A	960

Zoning Compliance:

The overall density permitted for the site under DD/C-4 is 10.0 FAR. As noted above, the project proposes an overall FAR of 8.26. Because the on-site FAR is not limited to 6.0 by §1707.4, the project is not able to use TDRs to make up the difference between the maximum that is permitted and what is proposed.

Under the Downtown Development District as it presently applies to the site, the project must account for 1.0 FAR equivalent of arts uses and 2.0 FAR of on-site or off-site residential uses. The regulations set out several methods that may be used to satisfy the arts and housing requirements:

Arts

- Under §1704.3(b), the minimum 1.0 requirement may be reduced to 0.5 FAR equivalent if the space is devoted to those uses listed in ¶1704.3(a) (e.g., art center, art exhibition area or art gallery).

- Under §1704.10, space devoted to uses from ¶1704.3(a) which has a ceiling height of twelve feet or more counts at one and one-half times its actual area.

Applying both of those provisions, the actual floor area (28,975 square feet) on the first floor and in the first cellar to be devoted to art galleries and art exhibition area, counted one and one-half times (for a total of 43,463 square feet), exceeds 0.5 FAR equivalent (43,197 square feet).

Housing

- Because the property is not now limited by §1707.4, housing must be provided for the entire 86,394 square foot site.

- Under ¶1706.6(c), up to 0.8 FAR of the residential requirement may be met by constructing or by financially assisting affordable housing off-site.

- Under §1706.12, up to 0.5 FAR of bonus density earned under §1704.6 for arts uses may be substituted for required residential uses.

Applying both of those provisions, the on-site residential requirement may be reduced from 2.0 FAR to 0.7 FAR, or 60,476 square feet. The project proposes to contain 43,203 square feet of residential plus a commitment to provide an additional 0.8 FAR, or 69,115 square feet or its equivalent, off-site. The project is thus 17,273 square feet short of the minimum residential required on the site.