BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA
2000 SEP -6 P 5:20

STATEMENT OF REASONS IN SUPPORT OF APPLICATION FOR VARIANCE RELIEF FOR 770 5TH STREET, N.W. (LOTS 35, 818, 819, 821, 822, 823 AND 827 AND THE EAST-WEST ALLEY CLOSED PURSUANT TO D.C. LAW 13-1896, IN SQUARE 486)

INTRODUCTION

This application, filed pursuant to Section 3104.1 of the Zoning Regulations, requests the following relief in connection with the development of a high-rise luxury apartment building at 770 5th Street, N. W. (Lots 35, 818, 819, 821, 822, 823 and 827 and the east-west alley closed pursuant to D.C. Law 13-1896, Square 486): (1) a variance from the required recreation space requirements under Section 773; and (2) a variance from the preferred retail/arts 0.5 FAR floor area ratio requirement under Section 1705.3. The subject property is located in the DD/C-2-C District.

THE SUBJECT PROPERTY

770 5th Street, N.W. is located along 5th Street, N.W. in the block between H Street and G Streets, N.W. in the Chinatown area of the Downtown. The subject property is a mid-block parcel; its only frontage is on 5th Street. It is currently used as a surface parking lot. The lot has a total 23,842.5 square inclusive of the east west alley which was closed pursuant to D.C. Law § 13-1896.

Located immediately to the north, the subject property is bordered by the 10-story Red Roof Inn which is located at the corner of 5th and H Streets, N.W. To the south is a four-story

BZA
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Exhibit No. 28

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historic building which is occupied by the Burger King restaurant located at the corner of 5th and G Streets N.W. To the west the subject property is bordered by a north-south public alley which bisects Square 486. The Baist Atlas and Sanborn maps of Square 486 are attached hereto as Exhibit "A".

THE APPLICANT

Since the BZA application was filed, the subject property has been conveyed to AvalonBay Communities, Inc. ("AvalonBay"). AvalonBay is a publicly traded company and one of the nation's leading REIT's (Real Estate Investment Trust). A fully integrated company, AvalonBay specializes in the development, acquisition, redevelopment, construction and management of institutional-quality multifamily residential communities and mixed-use properties in high barrier-to-entry markets of the United States. These markets include Northern and Southern California as well as selected states in the Mid-Atlantic, Northeast, Midwest and Pacific Northwest regions of the United States.

AvalonBay's solid record of development, management and redevelopment achievements has been recognized by the National Association of Home Builders ("NAHB"). AvalonBay was named "NAHB Development Company of the year for 1998/1999" and the "Property Management Company of the Year for 1996/1997." The NAHB also named the Company's Longwood Towers development as the "Best Rehabilitation of a Multifamily Property & Best Mid or Highrise" in 1999 and its Avalon Grove project as the "Best Mid-or High Rise Apartment Community of the Year" in 1998.

AvalonBay owns 4,500 apartment units in the Washington Metropolitan area primarily concentrated in northern Virginia. The proposed project is AvalonBay's first new development

project in the District of Columbia, although the Company owns one other high rise apartment building in the District which it purchased from another developer.

SURROUNDING AREA

The subject property occupies a pivotal position in between a number of distinct areas of the Downtown. First, the subject property borders the Judiciary Square area which is located to the south and east of the site. Judiciary Square is dominated by federal and D.C. Courts and governmental offices on the south and east, the National Building Museum (formerly Pension Building) and Government Accounting Office on the north, and the Security and Exchange Commission and the Washington Metropolitan Transit Authority (WMATA or Metro), on the west.

The subject property is also located on the eastern edge of Chinatown which consists of Chinese retail and office uses as well as one Chinese-oriented apartment house - the Wah Luck House. Chinatown also contains a number of smaller, underdeveloped and vacant sites. Finally, the subject property is located only one block away from the new MCI Center and the burgeoning 7th Street entertainment retail and arts district. (See Exhibit "B", for a Three Dimensional Map of the Subject Property and Surrounding Area.)

Within the subject square, is the 10-story Red Roof Inn building located immediately to the north of the subject property. Immediately to the south, is a 4-story building which contains a Burger King restaurant on the first floor. Immediately, to the west, the subject property is bordered by a north-south alley which bisects the Square. On the west side of the alley are several vacant lots and older mid-rise structures in need of redevelopment.

Across 5th Street from the subject property, is the St. Mary's Catholic Church complex which consists of the Church, Rectory and an old school building which is now devoted

professional office uses. All of these buildings are historic landmarks. Also across 5th Street from the subject property is the western wing of the General Accounting Office, which fronts on G Street.

The height and bulk of development in the area surrounding the subject property varies, but generally can be described as medium to high density development.

ZONING OF SUBJECT PROPERTY

The subject property is zoned DD/C-2-C. "DD" is an abbreviation for the Downtown Development District which is an overlay zone mapped in conjunction with the underlying C-2-C zone. Adopted by the Zoning Commission in 1991, the purpose of the DD District is to provide zoning incentives and requirements to implement the Downtown Plan objective of creating a lively mix of uses in the Downtown. The DD District is divided into subareas and the subject property is included in both Housing Priority Area "B" and Chinatown subareas.

Under the applicable DD/C-2-C zoning, the subject property can be developed to a maximum FAR of 8.0 or 8.5 (if the additional .5 FAR is devoted to residential use). A maximum height of 110 feet is permitted if the building is connected at or above-grade with the adjacent Red Roof Inn which fronts on H Street (which has a 90 foot width). The Housing Priority Area B provisions of the DD overlay impose special residential use requirements on the subject property. A minimum of 4.5 FAR of residential uses must be provided onsite or accounted for offsite in a combined lot development within the Housing Priority B area.

The DD overlay also requires that the equivalent of 0.5 FAR be devoted to preferred retail and/or arts uses in any new development of the subject property. A listing of the preferred retail/arts uses of the Zoning Regulations are provided in §§1710 and 1711. The purpose of the preferred retail/arts use requirement is to promote activity at the street level.

The development of the subject property is also subject to the typical C-2-C development standards including lot occupancy (80%), rear yard setback (15 feet), and parking (1 space per 4 dwelling units). Another C-2-C standard which is at issue in this variance request is the residential recreation space requirement which requires the provision of residential recreation space in an amount equivalent to 15% of the residential space developed on the site. (§773).

The basis for the recreational space requirement appears to be a perceived need for recreation space alternatives in the commercial zone districts. With respect to the subject property, which is located within one block of the new MCI Center and numerous, new restaurant and entertainment uses along 7th Street, no shortage of recreational alternatives is anticipated.

THE PROPOSED PROJECT

The Applicant is proposing to develop the subject property with a high-rise, luxury apartment building to be called Avalon at Gallery Place. The project will offer rental apartments and AvalonBay will retain ownership of the building and manage it.

The proposed project is one of the first new projects to be developed east of the new MCI Center and the first residential project to be developed in the Downtown without the help of some type of government subsidy. Previous new residential development Downtown has occurred on property which was formerly owned by governmental entities such as the former Pennsylvania Avenue Development Corporation (PADC). Such development benefited from land cost write-downs.

The proposed project has 12 stores and rises to a height of 110 feet. The project will be connected to the adjacent Red Roof Inn and, for zoning purposes, will be considered an addition to the Inn taking its height measurements from H Street which is 90 feet wide. The project will

also utilize unused FAR from the Red Roof Inn site, which will be combined with the subject property into a single lot of record. As a result, the project will contain approximately 224,782 gross square feet, but the project FAR calculated together with the Inn site, is 8.5. The proposed building is set back 15 feet from the rear lot line and occupies only 80% of the lot as required by the Zoning Regulations.

The proposed project exceeds the minimum 4.5 FAR residential requirement and AvalonBay intends to include the subject property in a combined lot development at a later date so that the proposed project can satisfy the minimum housing requirements of another site in the Housing Priority Area B. The combined lot development will enable AvalonBay to transfer the unused commercial FAR, thereby generating income for the proposed project. Because AvalonBay will self-finance the development of the project, the development of the proposed project can proceed at this time, without the immediate benefit of a combined lot development. However, the financial benefit of a combined lot development will be critical to the economic success of the project over the long term.

The application of the DD overlay provisions to the subject property is complicated and AvalonBay has engaged in detailed consultations with District zoning and planning officials to ensure that the zoning relief being requested is correct and sufficient. Attached hereto as Exhibit "C" is a copy of a letter to the Zoning Administrator, which has been countersigned by the Zoning Administrator, detailing and confirming a number of the zoning interpretations at issue.

The proposed apartment building will contain 209 units, ground floor retail space and three levels of underground parking containing approximately 150 spaces. The project architect, Eric Colbert and Associates, has designed a highly articulated, brick facade for the building which respects, and complements the historic St. Mary's Catholic Church complex located across

5th Street N.W. and the adjacent historic structure at the corner of 5th and G Streets. The project design has received final design approval from the Fine Arts Commission which has jurisdiction due to the location of the project adjacent to important federal buildings including the National Building Museum and the Judiciary Square complex.

The proposed project is also subject to the Chinatown Design Guidelines and the Applicant has consulted with the Chinatown Steering Committee regarding the application of the guidelines to the project. As a result, the project incorporates a number of Asian streetscape elements including the introduction of Chinese zodiac signs in the paving along 5th Street, Chinese design lanterns, tree and planter boxes, and Chinese landscape design including the planting of gingko trees. The building will also feature Chinese-theme handrails on the front facade. The building facade will have a Chinese design transom window above the front entry door and the four building bays will incorporate Chinese design details. Finally, the building name will be displayed in both English and Chinese.

PLANNING CONTEXT

The proposed project helps to meets a key Downtown planning goal of establishing a critical mass of housing in the Downtown. The overall objective of the Downtown Element of the Comprehensive Plan is to create a "Living Downtown." The key land use concept is to create a balanced mixture of uses to attract and serve a variety of users and to sustain activity in the Downtown area beyond the typical 9:00 a.m. to 5:00 p.m. work week. According to the Downtown Element, the most important uses are retail, hotel, residential, and arts and cultural uses.

The proposed project will implement the housing use objectives, specifically the objective that residential use should extend through Chinatown to connect a planned residential

area north of Massachusetts Avenue (now called the Mt. Vernon Triangle) with the recently developed, Pennsylvania Quarter area. The proposed project will play a critical role in establishing the essential link between these two areas of concentrated housing. The proposed project will also conform to the Plan's land use objectives for Chinatown, which provides that Chinatown should continue to be a "mixed-use residential neighborhood with housing, community facilities, and professional offices" (10 DCMR 900.50).

The Downtown Plan calls for continuous monitoring by the Office of Planning to assess implementation progress. Current assessment efforts have recently produced a summary outline of the current status of the Downtown entitled the "Downtown Action Plan." The Action Plan, a copy of which is attached hereto as Exhibit "D", makes a number of points which are relevant to the proposed project. It notes that the Downtown is approaching build-out with less than 10% of the land remaining undeveloped, but that the amount of housing development achieved falls short of the targeted goal. Specifically, the Action Plan indicates that only 3,300 units of the targeted 12,500 units have been built.

The Action Plan recommends a number of measures to stimulate additional housing including tax incentives. A key recommendation is to stimulate new housing development is "increase flexibility in the Zoning Regulations to support housing." This variance application, which requests minor deviations from the zoning requirements for a critical new housing development in the Chinatown area of the Downtown, is consistent with this recommendation.

Finally, the Downtown Action Plan advocates that actions be taken to strengthen sub-areas with district identities and functions. Chinatown is identified as one such sub-area which is "in transition" and in need of economic development.

The Comprehensive Plan generalized land use map designates the subject property within the mixed-use high density residential and high density commercial land use category.

VARIANCE RELIEF REQUESTED

The Applicant is requesting two forms of variance relief which are necessary to proceed with the proposed project: (1) a variance from the residential recreational space requirements (equivalent to 15% of the gross floor area devoted to residential uses); and (2) a variance from the 0.5 FAR preferred retail and arts use requirements.

1. Residential Recreation Space Variance

First, a variance from the residential recreation space requirements of the underlying C-2-C Zone (Section 773) is requested. Section 773 provides that in the various commercial zone districts ("C" zones), specified amounts of "residential recreation space" must be provided. "Residential recreation space" is defined as space that is "safe, secure, and suitably equipped or landscaped for active or passive recreation use of the tenants" (Section 773.1). The Regulations further provide that the recreation space may be located at the ground level, on the rooftop, or within the building (Section 773.4), but than no less than 50% of the total recreation space shall be outdoors (Section 773.8). The amount of residential recreation space required decreases as the permitted density increases in the commercial zone districts. For example, the requirement is 20% of the gross floor area devoted to residential space for the C-1 - C-2-A districts, 15% for the C-2-B-C-3-A zones, 10% for the C-3-B and C-3-C zones, and 5% for the C-4 and C-5 districts.

With respect to the subject property, which is zoned DD/C-2-C, the amount required is 15% of the gross floor area of the residential space provided. Based upon a total gross floor area of approximately 207,000 square feet which will be devoted to residential use in the proposed project, a strict application of the Zoning Regulations would require an extraordinary total amount of residential recreation space equivalent to approximately 31,050 square feet, approximately 15,525 square feet of which must be provided outdoors.

The Applicant intends to provide approximately 5,000 square feet of recreation space on the rooftop. In addition, the fitness center located on the first floor of the building will include an additional 1,000 square feet, for a total of approximately 6,000 square feet of recreation space to be provided in the project. A variance reducing the requirement to this amount is requested.

Additional recreation space cannot be provided on the building rooftop because of essential mechanical equipment and penthouse enclosure dominate the remainder of the roof. Nor can additional recreation space be provided in the 15 foot rear yard area. This area is adjacent to an active public alley and most of it will be used for loading facilities and access to the project parking garage (no curb cuts are permitted on 5th Street, N.W.). Finally, locating additional recreation space elsewhere in the building is neither an economically feasible nor a desirable option. Contrary to Downtown housing objectives, it would reduce the amount of housing which could be provided in the building.

It should also be noted that the residential recreation space requirement is of dubious value and probably has been misapplied in the context of the DD District. A vestige of the underlying C-2-C zone, its application in the DD District, was probably not fully considered when the DD District was adopted.

First, the requirement appears to conflict with the purposes of the DD zone which is to attract new Downtown residents who will activate the street and frequent the retail, entertainment, and cultural recreational activities which are mandated by the DD zoning. Second, the requirement, which ordinarily is reduced in the higher density zone districts, was not adjusted to take into account the increased density which can be achieved with the DD overlay.

For example, outside the DD District, the applicable 15% requirement for the C-2-C zone ordinarily applies to a maximum density of only 6.0 FAR. But, in the DD District, the maximum density in the C-2-C zone increases to 8.5. A recreation space requirement of only 5% would be

necessary for an 8.5 FAR development (i.e., the standard applicable to the C-4 District), outside the DD District. With respect to the proposed project, the amount of recreation space to be provided comes close to this 5% standard.

2. Preferred Retail/Arts Space Variance

The Applicant is also requesting a variance to reduce the overall amount of space which must be devoted to preferred retail and/or arts uses. The applicable 0.5 FAR requirement, (approximately 11,920 square feet) would necessitate that the majority of the first floor of the proposed building would have to be devoted to such uses.

A rental apartment building of the high quality proposed here must include ample support space on the first floor of the building for property rental and management offices and a well appointed reception/lobby area. A health/fitness club and a business/computer center for building residents are also desirable amenities which are included in the proposed project. These areas reduce the amount of space available for preferred uses on the first floor of the proposed building since most of the central portion of the first floor will be devoted to these residential-oriented uses. However, the Applicant has provided for a block of approximately 7,000 square feet for retail use adjacent to this core area at the southern end of the building. According, to the Applicants' retail leasing consultant, Madison Retail Group, this space offers the best potential for attracting a restaurant or other retail tenant(s). The Applicant will also provide a second, smaller retail space at the opposite, northern end of the building consisting of approximately 1,800 square feet.

According to Madison Retail, the non-retail oriented nature of the subject property limits the marketability of retail use on the subject property. Retail uses thrive in the presence of other nearby retail uses which help to draw potential customers. Surrounded by government office and

institutional uses, there are very few retail uses near the subject property to help support retail space in the proposed building.

Further, the site is too far from the burgeoning 7th Street entertainment retail area to benefit from these retail uses. Notwithstanding this lack of proximity for marketing purposes, it would be contrary to Downtown planning goals to attempt to draw customers from the 7th Street entertainment retail district. The Downtown Element and the Action Plan seek to promote and concentrate entertainment retail uses at this location. The alternative of leaving unleased retail space vacant and dark is not a desirable condition in an apartment building.

Madison Retail is confident that the subject property can probably sustain a restaurant which will probably draw most of its business at lunchtime and that the southern corner of the building is the best place within the building to attract such a tenant. As a result, the 7,000 square feet of retail space on the first floor will be set aside for a restaurant or other preferred retail/arts use.

The 1,800 square foot space located at the north end of the building, adjacent to the Inn, is considered more problematic by Madison, from a leasing standpoint. With respect to this space, the Applicant will attempt to lease the space to preferred retail/arts users. However, the Applicant would like to retain the flexibility to lease the space for professional office such as a doctor or optometrist or another permitted, albeit non-preferred, commercial use.

In summary, the variance is requested to reduce the preferred retail requirement to the 7,000 square feet retail space provided on the first floor at the south end of the building. Permitting the requested decrease in the preferred retail/arts requirements for the proposed residential project is consistent with the overall thrust of DD retail provisions which significantly reduce, or eliminate altogether, preferred retail requirements for residential developments. For example, while the area-wide use provisions set forth in § 1702 generally require that buildings

which abut specified streets shall devote at least 50% of the ground floor to preferred retail/arts uses, apartment houses are specifically exempted from the requirement (§ 1702.1(c)). Another example, specific to Chinatown, is the reduction in the amount of FAR which must be devoted to preferred retail/arts uses from 1.0 to 0.5 FAR for buildings that provide required residential uses (§ 1705.3). Since residential uses promote round-the-clock street level activity, additional retail uses are not as critical in residential buildings to achieve this purpose.

PROPOSED PROJECT MEETS LEGAL TEST FOR AN AREA VARIANCE

A variance from the FAR requirements of a particular zone district is an area variance. Palmer v. BZA, 287 A.2d 535, 541 (D.C. 1972); Association for the Preservation of 1700 Block of N Street, N. W. v. BZA, 382 A.2d 674, 677 (D.C. 1978). The legal test which justifies the granting of an area variance is quite specific and should not be confused with the test for a use variance, which imposes a greater burden of proof.

The standard by which the BZA can, and should, approve an area variance is set forth in Section 3103 of the Zoning Regulations and has been clearly defined by the District of Columbia courts, Carliner v. BZA, 412 A.2d 52, 53 (D.C. 1980). The burden of proof for an area variance is met when the following conditions are shown to exist:

(a) the property is "unique because of its size, shape, topography or other extraordinary or exceptional situation or condition";

(b) by reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in "exceptional practical difficulties"; and

(c) the variance will not cause "substantial detriment to the public good" and will not impair the "intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map".

A. The Subject Property is Unique and Exceptional

770 5th Street, N.W. meets the "unique and exceptional" requirement. The property is unique and exceptional in that it is a critical site for the realization of the Downtown's land use goals for Chinatown and for meeting the City's targeted housing goals for the Downtown. The subject site is an important link between concentrations of housing in the Penn Quarter and the Mount Vernon Triangle area. It is the only privately-owned, assembled site in Chinatown of sufficient size to provide a major, new housing development. No other private site in Chinatown has the potential to bridge this gap.

B. A Strict Application of the Residential Recreation and Preferred Retail/Arts Requirements Will Result in "Exceptional Practical Difficulties"

The District of Columbia Court of Appeals has found that "exceptional practical difficulties" are established by demonstrating that strict compliance with the Zoning Regulations would be "unnecessarily burdensome" on the applicant. Russell v. D.C. BZA, 402 A.2d 1231 (D.C. 1979). In previous FAR variance cases, the Board found that the undesirability of leaving entire floors or portions thereof vacant (Application Nos. 13459, 13473) constitute "exceptional practical difficulties".

The District of Columbia Court of Appeals has also upheld BZA findings of "exceptional practical difficulties" which are based on economic considerations. Monaco v. District of Columbia Board of Zoning Adjustment, 409 A.2d 1067 (D.C. 1979) and Association of the Preservation of 1700 Block of N Street, N.W. v. District of Columbia Board of Zoning Adjustment, 384 A2d 674 (D.C. 1977).

In the instant case, the strict application of the residential recreation space and preferred retail/arts uses would be unnecessarily burdensome on the Applicant, would adversely affect the project's economic feasibility, and would affect the Applicant's ability to provide a sufficient concentration of housing to meet the Downtown planning goals. These impacts constitute exceptional practical difficulties.

C. A Variance Will Not Cause "Substantial Detriment to the Public Good" nor Impair the "Intent, Purpose or Integrity" of the Zoning Regulations

The variance requested will not cause "substantial detriment to the public good." To the contrary, the proposed project furthers key Downtown planning objects to obtain a critical mass of new housing in the Downtown and to provide a link between the two planned, major concentrations of Downtown housing -- the Pennsylvania Quarter and the Mt. Vernon Triangle area. The proposed project will also help Chinatown to turn the corner from an area still in transition to an established mixed-use community in the Downtown with a distinctive Chinese influenced identity.

The proposed variance also furthers the purpose and intent of the Zoning Regulations and Map. It implements several key objectives of the Downtown Development District with respect to new Downtown housing development and the stabilization and enhancement of Chinatown with only minor deviations from its preferred retail/arts use quotas and the C-2-C District which are questionable relevance in this Downtown context. The proposed project will also generate substantial jobs and tax revenues for the City.

CONCLUSION

At the upcoming public hearing on this application scheduled for September 19, 2000, the Applicant will submit additional evidence in support of the Application. The following witnesses will also testify on behalf of the Applicant:

Matthew Birenbaum, Vice-President, AvalonBay Communities, Inc.;

Eric Colbert, Eric Colbert and Associates; and

Edward Rubin, Principal, Madison Retail Group.

For all of the reasons set forth above, the Applicant requests approval of the requested variance relief.

Respectfully submitted,

LINOWES AND BLOCHER LLP

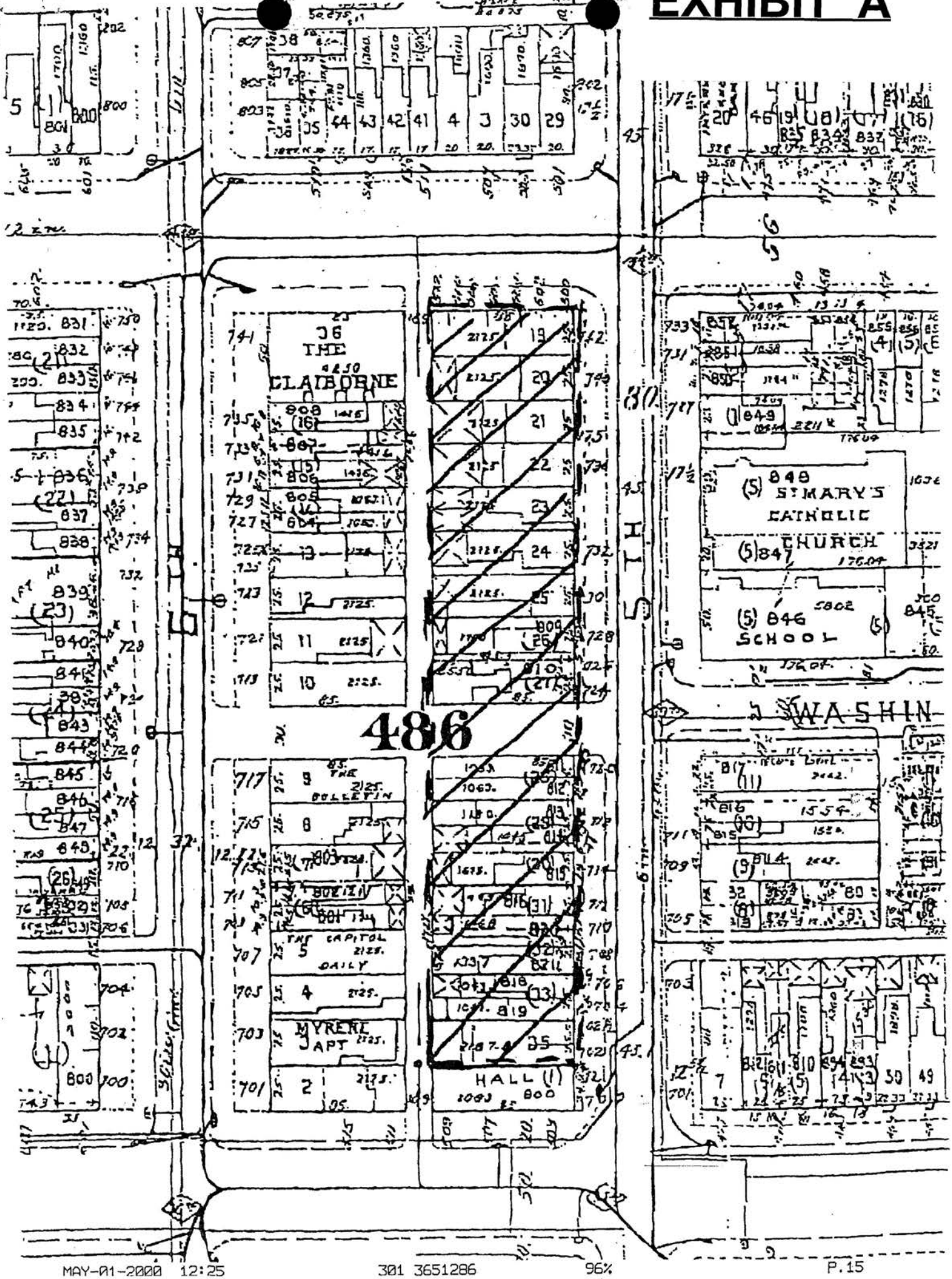
Cynthia A. Giordano

Enclosures

cc: Ellen McCarthy, Office of Planning
Art Rogers, Office of Planning

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EXHIBIT A


486
THE CLAIBORNE
ST MARY'S CATHOLIC CHURCH
SCHOOL
HALL
MYRERL APT
THE BULLETIN
THE CAPITOL DAILY
WASHIN


(363)
WASHINGTON, D.C. VOL. I
16
(134-135)
COMFORT INN MOTEL
198 - RT.
F.P. - 1988 (BR.)
C. - 1ST
PARK'G
CONC
PARK'G - RT.
G PL. N.W.
PARK'G
PRINT'S. BR.
APTS. BR.
REST. BR.
B.C.
5TH ST. N.W.
27
28
6TH ST. N.W.
5TH ST. N.W.
3RD ST. N.W.
88 & 2SB
PARK'G 2 SBSTS
FP - 1972-73 (CONC PANELS)
487
50' X 210'
PENT HQ
METRO SUBWAY UNDER STRUCTURE WITH UNDERGROUND AT. LEVEL
METRO OPERATIONS CONTROL CENTER OFF. BLDG.
D.C. FIRE DEPT.
THE CANTERBURY APTS
78 & 2SB
14-R. BR.
8-R. BR.

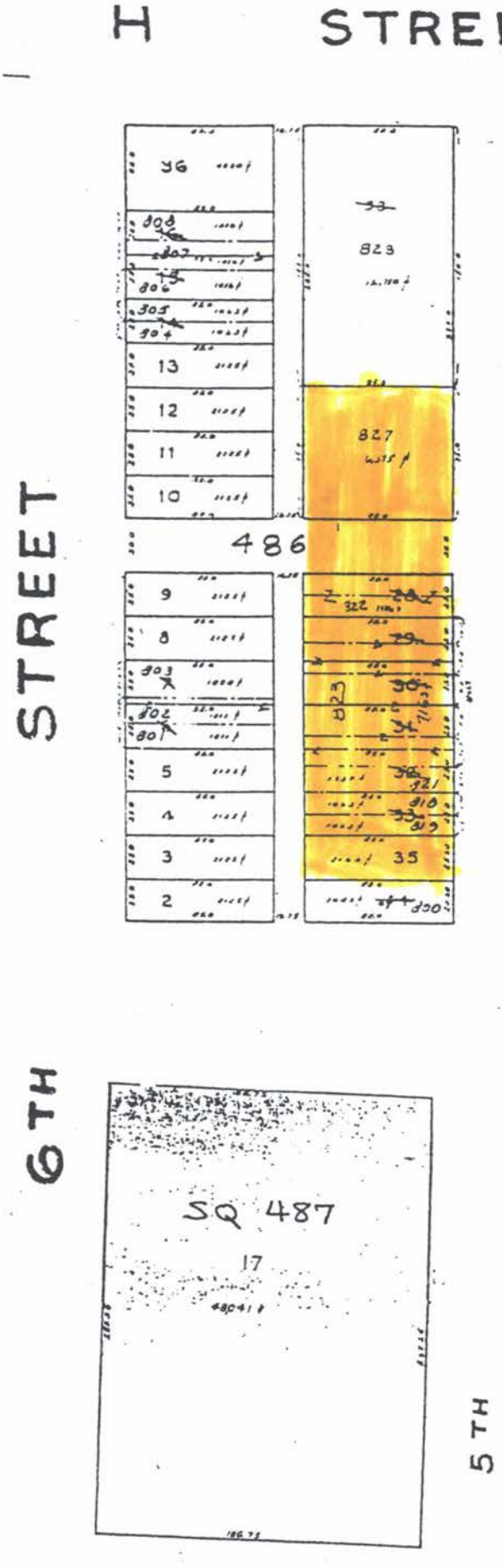
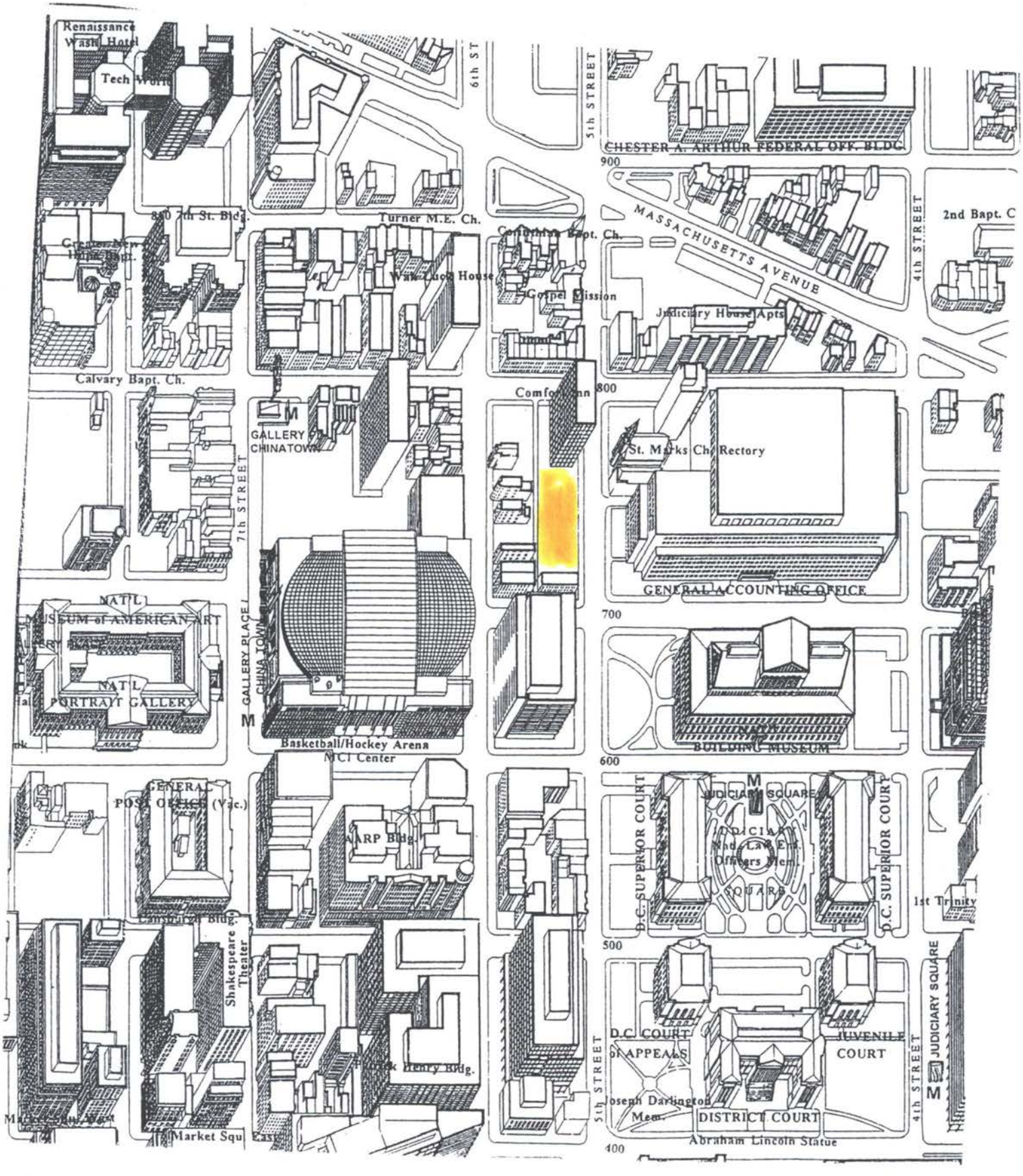

H STREET
STREET
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827
35
823
6TH
SQ 487
17
5TH
STREET

EXHIBIT B


Renaissance Washington Hotel
Tech World
800 7th St. Bldg.
Turner M.E. Ch.
6th ST
5th STREET
CHESTER A. ARTHUR FEDERAL OFF. BLDG.
900
MASSACHUSETTS AVENUE
4th STREET
2nd Bapt. C
Gospel Mission
Judiciary House Apts
Calvary Bapt. Ch.
800
GALLERY PL CHINATOWN
7th STREET
St. Marks Ch. Rectory
GENERAL ACCOUNTING OFFICE
700
NAT'L MUSEUM of AMERICAN ART
NAT'L PORTRAIT GALLERY
GALLERY PLACE / CHINA TOWN
Basketball/Hockey Arena
MCI Center
BUILDING MUSEUM
600
GENERAL POST OFFICE (Vac.)
JUDICIARY SQUARE
D.C. SUPERIOR COURT
D.C. SUPERIOR COURT
1st Trinity
500
Shakespeare Theater
Market Squ
D.C. COURT of APPEALS
JUVENILE COURT
5th STREET
4th STREET
JUDICIARY SQUARE
Joseph Darlington Mem.
DISTRICT COURT
Abraham Lincoln Statue
400

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April 11, 2000

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BY MESSENGER

EXHIBIT C

Mr. Michael D. Johnson
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Room 2000
Washington, D.C. 20002

Re: 770 5th Street, N.W., Square 486, Lots 818, 819, 821, 822, 823 and 827 (the "Subject Property"); AvalonBay Communities ("AvalonBay")

Dear Mr. Johnson:

This letter is in follow up to our meeting on April 7, 2000 regarding AvalonBay's planned development of the Subject Property. The meeting was attended by Armando Lourenzo, Ellen McCarthy, Jill Dennis and you, as well as representatives of AvalonBay and their architect, Eric Colbert. An outline of the issues discussed at the meeting is attached hereto. The purpose of this letter is to obtain your written confirmation as to our interpretation of several issues pertaining to application of the Downtown Development District ("DD") regulations to the development of the Subject Property.

AvalonBay intends to develop the Subject Property with a high-rise luxury apartment building under the applicable DD/C-2-C zoning (the "Project"). The Project will be constructed as an addition to the Red Roof Inn (the "hotel"). It will share a single lot of record with the hotel and will be connected to the hotel.

As we discussed at our meeting, we are requesting that you confirm the following interpretations regarding the application of DD regulations with respect to the Project by signing this letter. Your signature will also indicate your confirmation to AvalonBay as to the applicability to the Project of your previous interpretations with respect to the Subject Property as set forth in a letter to Jacques Depuy, Esquire, dated January 3, 1999, (a copy of which is attached hereto and incorporated herein).

1) Upon development of the adjacent hotel, an Agreement for Allocation of Development Rights (the "Allocation Agreement") was executed and recorded in the land records. The Allocation Agreement (a copy of which is attached hereto) allocates unused FAR from the hotel site to the Subject Property. AvalonBay seeks your confirmation that the unused FAR from the hotel site

may be developed on the Subject Property, subject to compliance with the height and other applicable development standards. We request that you confirm by countersigning this letter below that this excess FAR may be developed on the Subject Property such that the FAR of Subject Property can exceed 8.5 provided that the overall maximum FAR for both the Subject Property and the hotel property does not exceed 8.5. Further:

A) The amount of unused FAR from the hotel site which is available for development on the Subject Property will be determined by subtracting the amount of FAR which is currently provided on the hotel property (as evidenced by the applicable Zoning Computation Sheet for the hotel or the approved permit plans) from the currently permissible, maximum FAR for the hotel site. Legally established under the previous HR/SP-2 zoning of the site, the hotel is a conforming use under the existing zoning and the maximum permissible FAR of 8.5 under the existing DD/C-2-C zoning shall apply in determining the excess FAR from the hotel site. Consequently, 12,750 SF (the land area of the hotel site) x 8.5 (the maximum permissible FAR) minus 85,375 SF (hotel density) equals 23,000 SF of excess FAR which is available for development on the Subject Property as residential use.

B) In a future combined lot development including the Subject Property and another property to be determined at a later date which property is to be developed as a commercial site (the "Future Commercial Property"), the total FAR to be permitted on the Subject Property, the Hotel property and the Future Commercial Property together will be limited to the sum of:

   i) 8.5 times the combined land area of the Subject Property and the Hotel property; and

   ii) the land area of the Future Commercial Property, multiplied by the maximum applicable FAR of the Future Commercial Property.

The minimum residential requirement under the future combined lot development will be equal to the sum of:

   i) 4.5 times the land area of the Subject Property; and

ii) the applicable minimum residential FAR of the Future Commercial Property.

In other words, the land area of the Hotel property will not be included in the calculation of the minimum residential requirement, and any and all residential development constructed on the Subject Property may apply against this requirement.

2) Finally, we request your confirmation that should AvalonBay proceed with the Project prior to identifying and combining with another lot for the purpose of implementing a combined lot development, AvalonBay retains its right to proceed with a combined lot development at a later date and that the residential space developed on the Subject Property may be utilized to meet the minimum residential requirements of the combined lot development. Upon development of the Subject Property, AvalonBay will execute and record a legal instrument as required by § 1708.1(j), which instrument will state AvalonBay's intention to participate in a combined lot development with an unspecified lot.

Thank you in advance for your assistance in this matter. Please do not hesitate to contact the undersigned with any questions or for additional information.

Very truly yours,

LINOWES AND BLOCHER LLP

Cynthia A. Giordano

cc: Armando Lourenco (via Messenger w/ attachments)
Ellen McCarthy (via Messenger w/ attachments)
Jill Dennis (via Messenger w/ attachments)
Jacques DePuy, Esquire (via U. S. Mail, w/o attachments)
Matthew Birenbaum (via U. S. Mail, w/ attachments)
Betsy Weingarten (via U. S. Mail, w/ attachments)

ACKNOWLEDGED AND AGREED

Michael D. Johnson
Zoning Administrator

Date: April 12, 2000

IMANAGE: 187286 v.1 03317.0003
Ed. 4/11/2000 10:07 AM SA

EXHIBIT D



Downtown Action Plan

Government of the District of Columbia

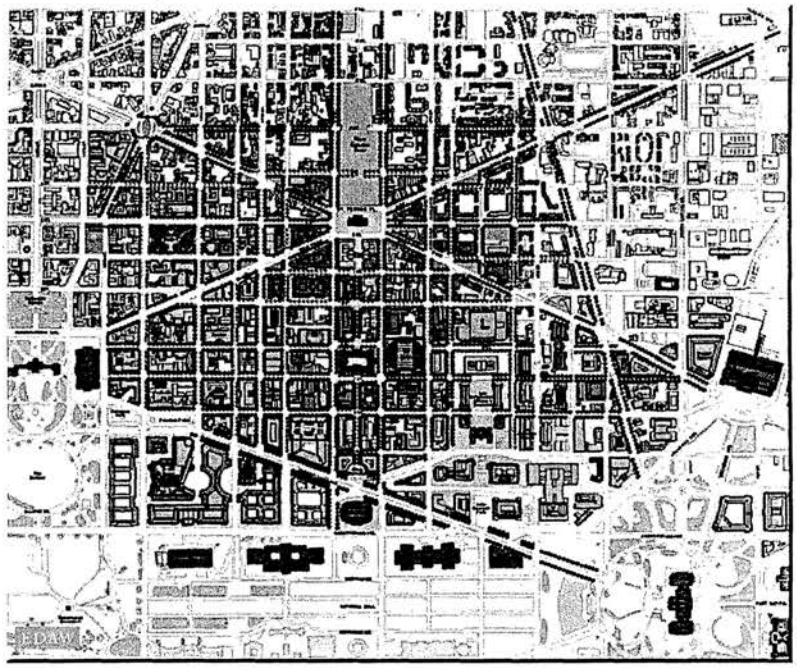
Office of Planning

EDAW, INC.

20 JULY 2000

PURPOSE

- Provide a Framework to Guide Future Growth
- Complete Downtown to Establish a Unified Setting
- Take Action on Priority Initiatives to Achieve Results





TARGETS

USE	TARGET	RESULT	TAX REVENUE
Residential	7,500 units	9,000 residents	$ 20 – 30 million
Retail	1 million s.f. New (700,000 s.f. Repositioned)	5,000 workers	$ 50 million
Arts & Culture	1,600 new seats	500 workers	(Captured by Retail)
Hotel / Tourism	3,000 new rooms	2,500 workers	$ 25 million
Office	3.5 to 5 million s.f.	15,000 workers	$ 20 – 25 million
Total	-	23,000 Jobs	$ 115 – 130 million



ISSUES

- Downtown is Approaching Build-Out (less than 10% is undeveloped)
- Real Estate Market Extremely Active ($ 3.5 bill. in new development)
- Key Sites Need Critical Decisions (Convention Center, Mt. Vernon Triangle)
- Housing Development is Short of Goal (3,300 existing of 12,500 target)
- Nature of Downtown Retail is Evolving (entertain., cultural, national, etc.)
- Downtown Arts are in Jeopardy (theaters, galleries, artist space)
- New Convention Center Needs Hotels (4 sites for approx. 3,000 rooms)
- Limited Sites for Office Development (3.5 to 5 m.s.f of potential space)
- Physical Character has Uneven Quality (open space, streets, buildings)
- Impediments to Downtown Circulation (closed streets, parking, movement)



KEY RECOMMENDATIONS

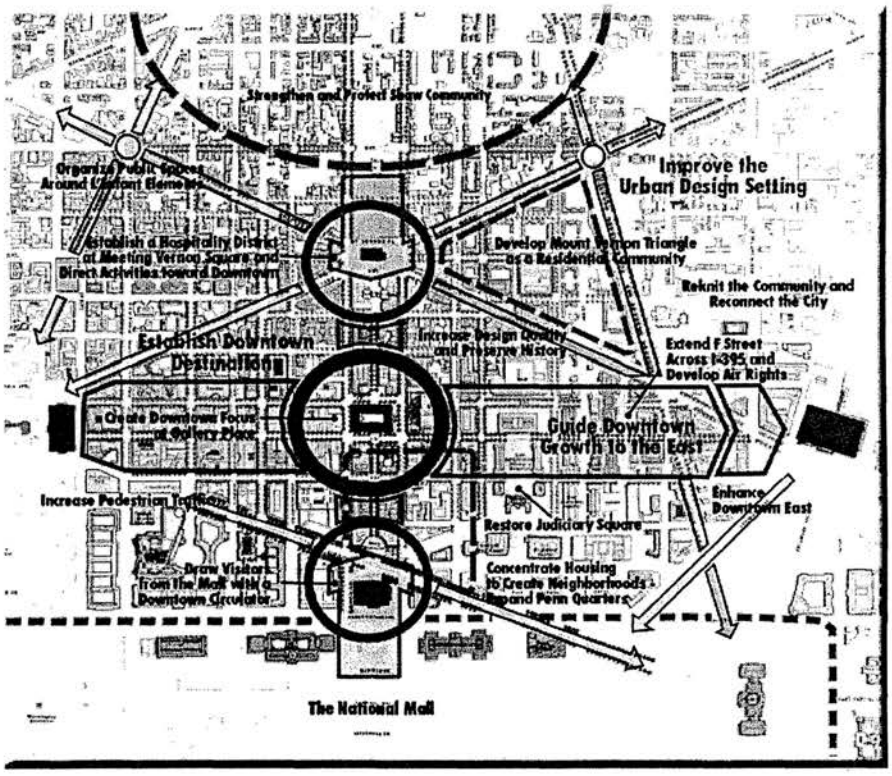
- Organize $3-5 Million Annual Program for Streetscape Improvements
- Allocate Funds for the Downtown Circulator
- Implement the BID's Public Space Management Program
- Institute a Downtown Development Corporation
- Dedicate Funds for Downtown Job Training and Placement Programs
- Increase Flexibility in Zoning Regulations to Support Housing
- Adopt Tax Abatement for Housing
- Expand Enterprise Zone for Housing
- Develop an Area-Wide TIF Program
- Determine Preferred Uses on Public Sites
- Initiate Residential Development of Mt. Vernon Triangle
- Plan for Extension of F Street Across I-395 to Develop Air Rights
- Establish Hospitality District at Mt. Vernon Square
- Evaluate MLK Library for Cultural Center and/or New Library

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GUIDING PRINCIPLES:

Provide a Framework for Decisions

- **Establish Downtown Destinations to Attract Visitors**
- **Guide Downtown Growth to the East**
- **Improve the Urban Design Setting**



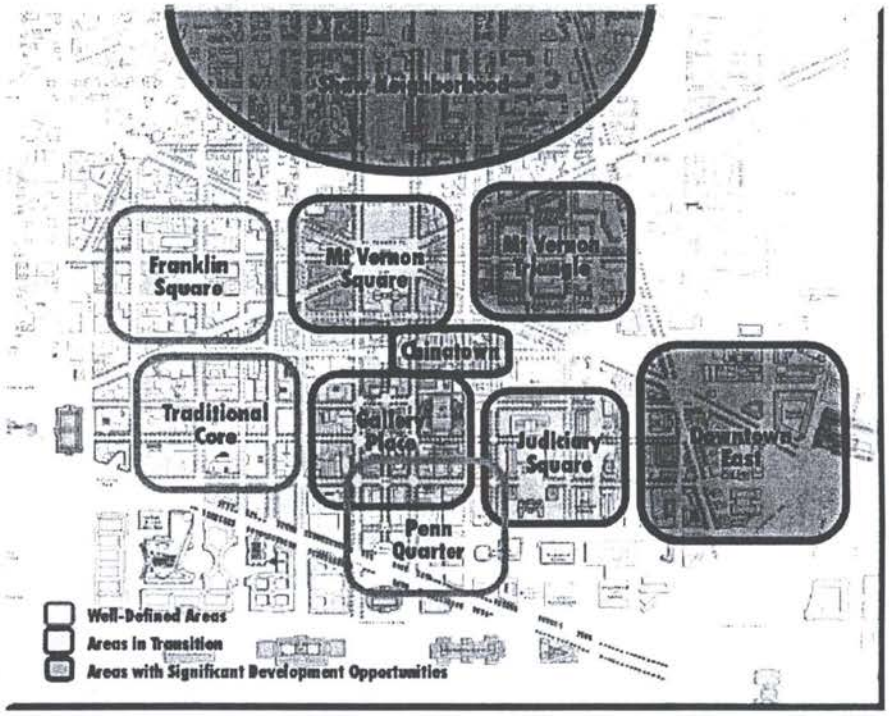
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LAND USE:

Strengthen Sub-Areas with Distinct Identities and Functions

- **Well-Defined Areas**
  - Franklin Square
  - Traditional Downtown Core
  - Penn Quarter
- **Areas in Transition**
  - Mt. Vernon Square
  - Chinatown
  - Gallery Place
  - Judiciary Square
- **Areas with Significant Potential**
  - Shaw
  - Mt. Vernon Triangle
  - Downtown East



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RESIDENTIAL

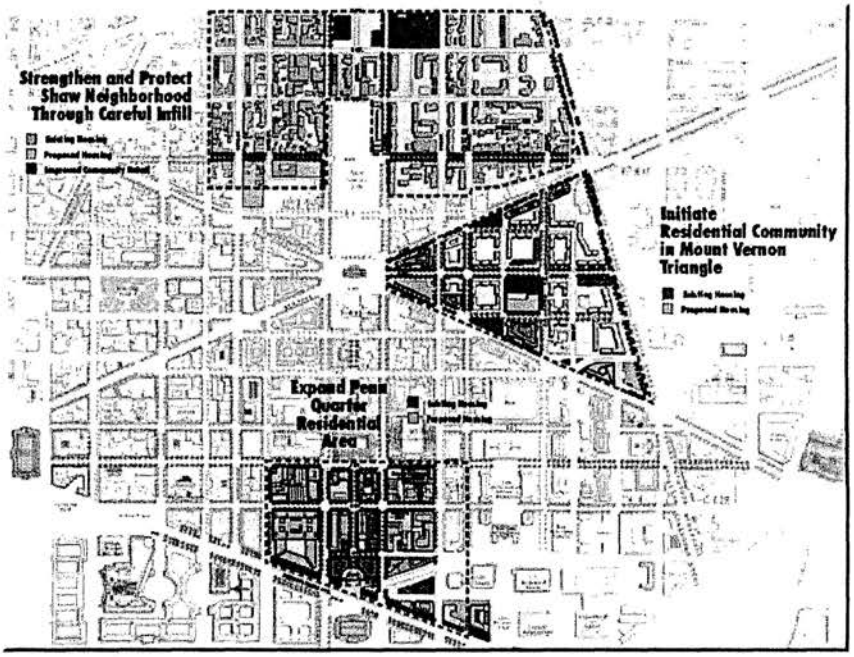
STRATEGIES

Concentrate Housing to Create Neighborhoods

- **Expand the Existing Penn Quarter Residential Area**
- **Initiate the Residential Development of Mount Vernon Triangle**
- **Strengthen and Protect the Existing Shaw Community**

ISSUES **Housing Development is Short of Goal (3,300 existing of 12,500 target)**

TARGETS **7,500 new units, 9,000 residents, $ 20-$30 million tax revenue**



ACTIONS

- **Increase Flexibility in Zoning Regulations to Support Housing**
- **Apply DDD Overlay Consistently**
- **Increase Residential Density within Height Limits**
- **Build Housing on City-Owned Sites**

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RETAIL

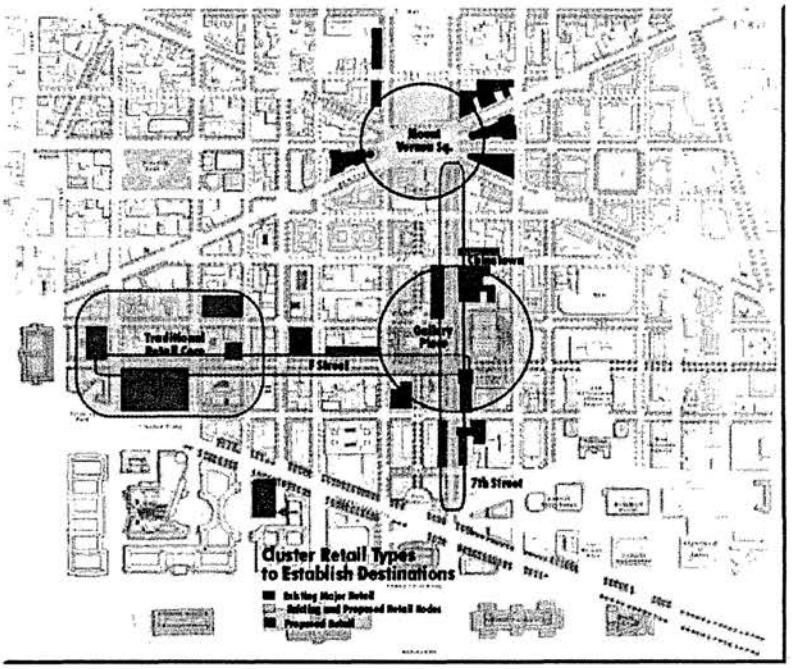
STRATEGIES

Cluster New Retail Types to Strengthen Existing Areas

- **Establish Gallery Place (7th St.) as a Center for Entertainment Retail**
- **Strengthen the Traditional Retail Core (F St.)**
- **Encourage Retail at Mount Vernon Square**

ISSUES **Nature of Downtown Retail is Evolving (entertain., cultural, national, etc.)**

TARGETS **1 m.s.f. new, 5,000 workers, $ 50 million tax revenue**



ACTIONS

- **Improve Streetscapes and Public Spaces**
- **Develop Area-Wide TIF Program**
- **Establish Retail Support Corporation**
- **Focus Retail Development on 7th and F Streets .**

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ARTS

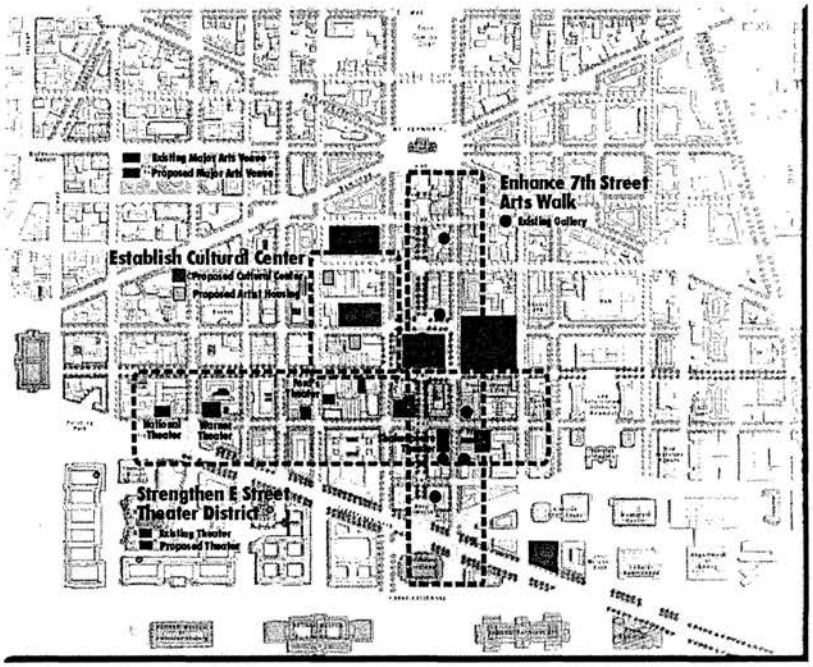
STRATEGIES

Strengthen the Arts Presence to Anchor Downtown

- **Retain and Expand the E Street Theater District**
- **Cluster Art Galleries Along 7th Street Arts Walk**
- **Attract Major Cultural Venues to Downtown**
- **Establish a Cultural Center and Live/Work Housing for Artists**

ISSUES **Downtown Arts are in Jeopardy (theaters, galleries, artist space)**

TARGETS **1,600 new seats, 500 workers, tax revenue within retail**



ACTIONS

- **Provide Public Appropriations for Cultural Facilities**
- **Increase Funding for Cultural Development Corporation**
- **Evaluate Feasibility of MLK for Cultural Center**

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HOTELS

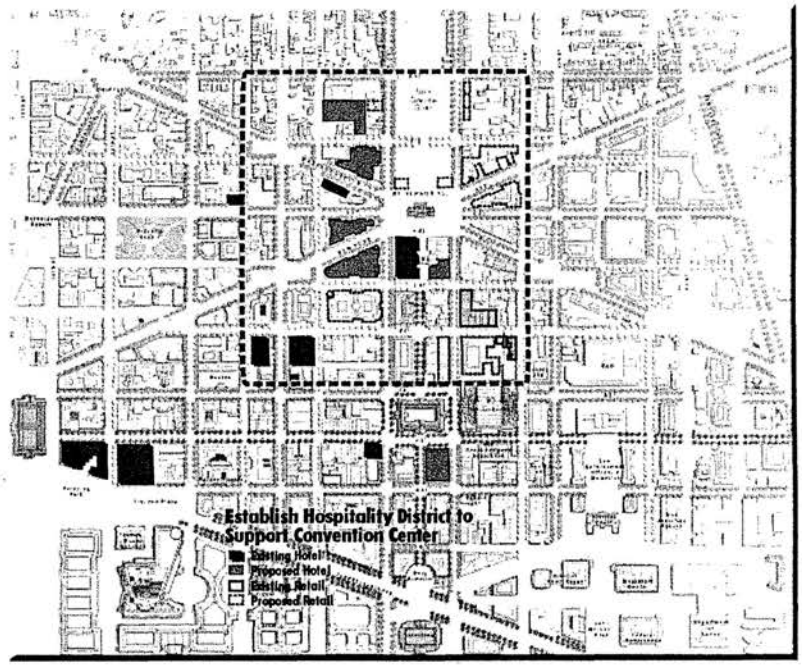
STRATEGIES

Establish a Hospitality District to Support the New Convention Center

- **Encourage Convention Hotels within the Hospitality District**
- **Support the Hospitality District with Retail Services**

ISSUES **New Convention Center Needs Hotels (4 sites for approx. 3,000 rooms)**

TARGETS **3,000 new rooms, 2,500 workers, $ 25 million tax revenue**



ACTIONS

- **Determine Future Use of Convention Center Site**
- **Provide Incentives for Convention Hotels**
- **Coordinate Hospitality Marketing and Promote Downtown Offerings**

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OFFICE

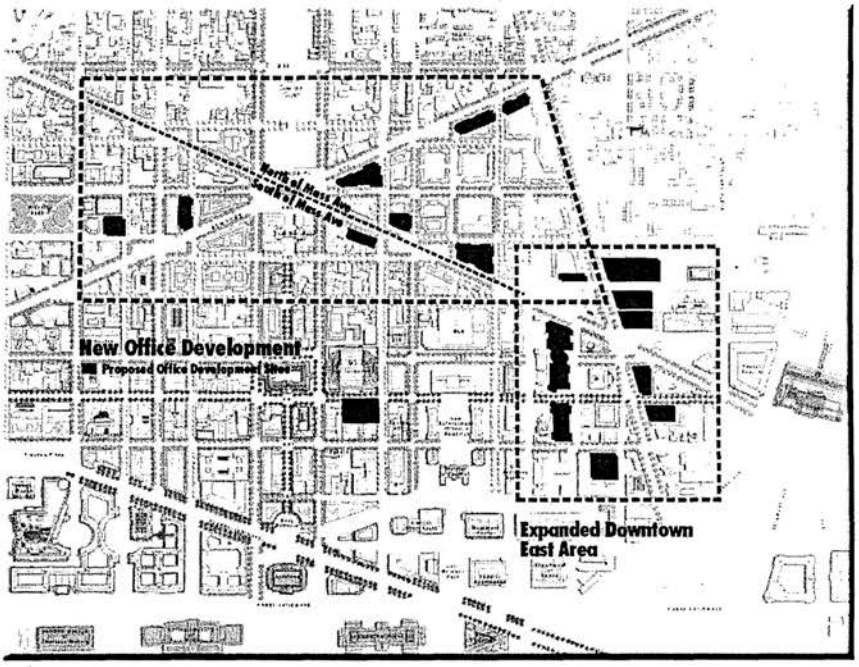
STRATEGIES

Identify Growth Areas to Connect Employment Centers

- **Guide Office Growth to the East**
- **Complete Development of the Traditional Downtown with Sensitivity to Residential Areas**

ISSUES **Limited Sites for Office Development (3.5 to 5 m.s.f of potential space)**

TARGETS **3.5 to 5 m.s.f., 15,000 workers, $ 20-$25 million tax revenue**



ACTIONS

- **Provide Flexibility in Combined Lot Program**
- **Conduct Engineering Analysis of I-395 Air Rights**
- **Focus Office Development on Downtown East and the H Street Corridor**

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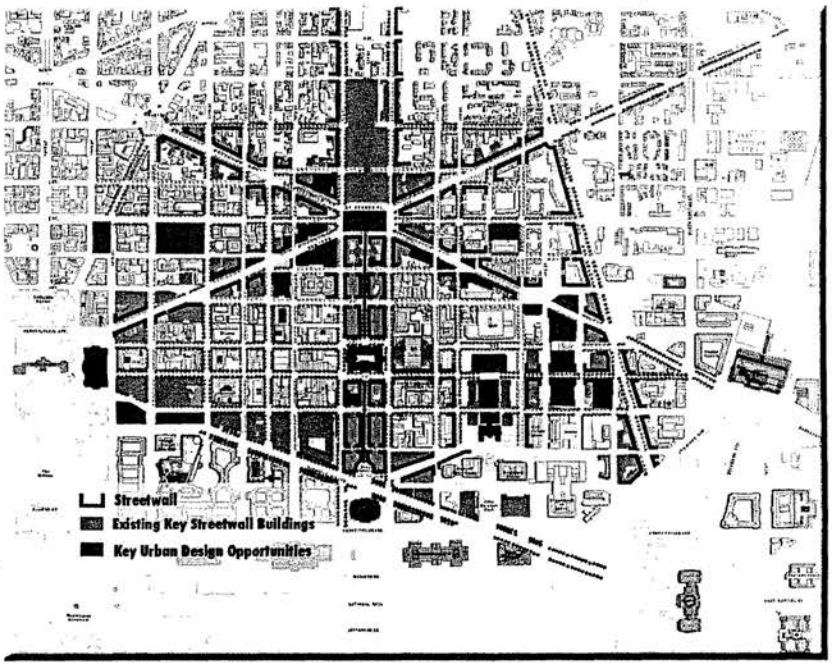


URBAN DESIGN

STRATEGIES

Enhance Downtown as a Physical Place

- **Improve Open Space Quality**
- **Create a Hierarchy of Streetscapes**
- **Raise Streetwall Quality**
- **Preserve Historic Resources**



ACTIONS

- **Implement Streetscape Improvements**
- **Adopt Great Streets Program**
- **Encourage Sidewalk Cafes**

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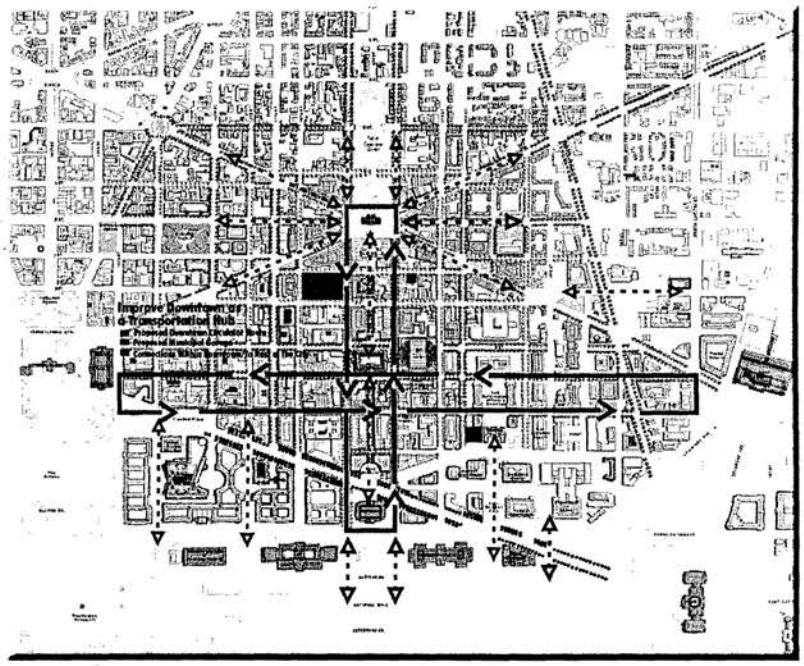


TRANSPORTATION

STRATEGIES

Improve Downtown as a Transportation Hub

- **Strengthen Connections Within Downtown and to the Rest of the City**
- **Implement the "Park Once" Concept**



ACTIONS

- **Reopen Streets**
- **Provide Funding for Downtown Circulator**
- **Implement Traffic Management Programs**
- **Examine the Need for Municipal Garages**

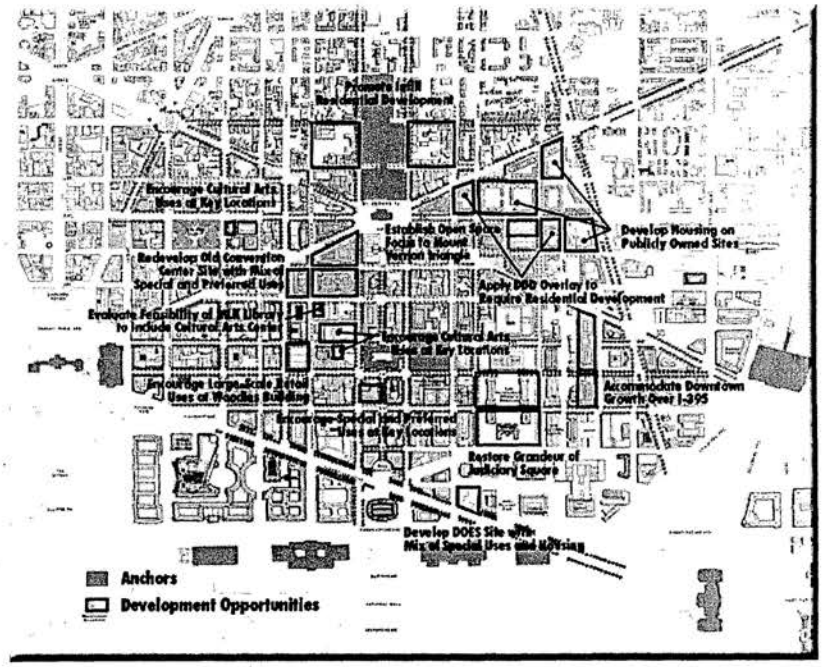
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IMPLEMENTATION

STRATEGIES

Capitalize on Key Opportunity Sites

- **Convention Center Site -**
  Special and Preferred Uses
- **DOES Building -**
  Special Uses and Housing
- **Mount Vernon Triangle -**
  Residential with Retail
- **I-395 Air Rights -**
  Commercial with Retail
- **Shaw Community -**
  In-fill Residential



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KEY RECOMMENDATIONS

	Timeframe (Months)
☐ Organize $3-5M Annual Program for Streetscape Improvements	Ongoing
☐ Allocate Funds for the Downtown Circulator	12
☐ Implement the BID's Public Space Management Program	12
☐ Institute a Downtown Development Corporation	3
☐ Dedicate Funds for Downtown Job Training and Placement Programs	12
☐ Increase Flexibility in Zoning Regulations to Support Housing	3
☐ Adopt Tax Abatement for Housing	6
☐ Expand Enterprise Zone for Housing	6
☐ Develop an Area-Wide TIF Program	12
☐ Determine Preferred Uses on Public Sites	9
☐ Initiate Residential Development of Mt. Vernon Triangle	6
☐ Plan for Extension of F Street Across I-395 to Develop Air Rights	12
☐ Establish Hospitality District at Mt. Vernon Square	6
☐ Evaluate MLK Library for Cultural Center and/or New Library	12