BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of
NJA Development Partners, LP

BZA Application No. 16601
Public Hearing: September 19, 2000
ANC 6-B

OFFICE OF ZONING
DISTRICT OF COLUMBIA
'00 SEP -5 P4:02

STATEMENT OF THE APPLICANT

I.
Nature Of Relief Sought

This is an application pursuant to 11 DCMR Sections 3104.1 and 3013.2 for a special exception, under §411.11 of the Zoning Regulations, to allow multiple roof structures not meeting the normal setback requirements, for a variance from the requirement of §1709 to use Transferable Development Rights (TDRs), and for a variance from the residential recreation space requirement of §773.3. The requested relief is necessary to permit the construction of a 14-story apartment house and hotel in the C-3-C District in Square 741, located at the intersections of New Jersey Avenue, K Street, L Street, and 2nd Street, SE (Square 741, Lots 7, 8, 13, 14, 16-18, 20 –36, 801, 803, 804, 807-809, and a public alley to be closed.)

II.
Jurisdiction Of The Board

The Board has jurisdiction to grant the requested special exception and variance relief pursuant to §§3104.1 and 3103.2 of the Zoning Regulations.

BZA
Case No. 16601
Exhibit No. 27

Board of Zoning Adjustment
District of Columbia
CASE NO.16601
EXHIBIT NO.27

III.
Background Of The Case

A. Description of the Subject Property

The subject property occupies virtually the entirety of Square 741, bounded to the north by K Street, SE, to the east by 2nd Street, SE, to the south by L Street, SE, and to the west by New Jersey Avenue, SE. The subject property includes a public alley to be closed and all lots in Square 741, with the exception of Lot 19 in the southeasternmost corner of the square. The property contains 48, 108 square feet in total lot area. Maps of the subject property and surrounding properties are included as Exhibit A.

The northern portion of the subject property, along K Street, SE, is occupied by a large commercial building that was formerly utilized as a warehouse. The subject property is also currently improved with a number of vacant buildings located in the southeastern portion of the square along 2nd and L Streets, SE.

The subject property is zoned C-3-C and is included within the Capitol South Receiving Area for Transferable Development Rights (TDRs), established by §1709.18 of the Zoning Regulations. The subject property prior to June 10, 1996 was located in the C-M Zone before receiving its present C-3-C Zoning designation.

B. Description of the Surrounding Area

As described above, the subject property is bounded by K Street, SE, 2nd Street, SE, L Street, SE, and New Jersey Avenue, SE. Directly north of the subject property, across K Street, SE, a storage facility owned by the District of Columbia occupies the entirety of Square 739.

Adjacent to the eastern portion of the subject property, in Square 768, are the Arthur Capper Dwellings apartments and a vacant area utilized for school bus parking.

Along the south side of L Street, SE, is Square 742, an unusually small, virtually triangular-shaped square that contains vacant property, automotive-related industrial uses including a truck painting facility at 1109-1113 2nd Street, SE, and an auto painting shop at 1120 New Jersey Avenue, SE.

West of the subject property, in Square 740, are located more large scale industrial structures, at 1017 and 1029 New Jersey Avenue, SE.

Diagonally opposite the subject property, in Square 743, are the Matthews Baptist Church at 1103 New Jersey Avenue, SE, and an electric parts warehouse at 107 L Street, SE. This square contains an entrance to the Navy Yard metrorail station, one block south of the subject property.

C. Description of the Proposal

The Applicant intends to construct an apartment house and hotel with a height of 130 feet and 9.64 total FAR. (See Exhibit C).

The apartment house portion of the Applicant's project is proposed to measure 10 FAR and contain approximately 371 units. The apartment house portion has a C-shaped footprint, fronting approximately 144' (97' at all levels above the ground level) along 2nd Street, SE, approximately 242' along K Street, SE, and approximately 244' along New Jersey Avenue, SE. The hotel portion is proposed to be located in the southern portion of the square and to maintain approximately 162' of frontage along L Street, SE. The project is also proposed to contain two below-grade floors to provide parking for the occupants of both the apartment house and the hotel.

As proposed and explained herein, this project is wholly consistent with the goals of the city and will make a substantial contribution to the District of Columbia, and especially to this developing area, by providing much desired residential (both market rate and subsidized) and hotel opportunities in the Washington Navy Yard area.

The proposed project complies with all applicable use provisions set forth in the Zoning Regulations for the Capitol South TDR Receiving Zone/C-3-C Zone. Importantly, the project does not propose any significant office use.

IV.
Exhibits In Support Of The Application

Exhibit A:	Portions of the Baist and Sanborn Atlases showing the Subject Property outlined in red.
Exhibit B:	A portion of the Zoning Map showing the Subject Square highlighted in red.
Exhibit C:	Architectural Drawings.
Exhibit D:	Surveyor's Plat of the Subject Property.
Exhibit E:	A portion of the Zoning Map showing the Boundary of the Capitol South Receiving Zone.
Exhibit F:	Zoning Commission Order No. 860, Case No. 97-14Z, October 19, 1998.
Exhibit G:	Outline of testimony of Representative of NJA Development Partners, LP, Applicant.
Exhibit H:	Outline of testimony of Architect Steven Gang, SKG Architects.
Exhibit I:	Outline of testimony of Richard Harps, Real Estate Valuation Expert.
Exhibit J:	Outline of testimony of Land Planning Expert.
Exhibit K:	Zoning Commission Order No. 797, Case No. 95-7, June 10, 1996.

V.
The Applicant Meets the Requirements for Special Exception Relief Under Section 411.11 of the Existing Zoning Regulations

Special exception relief is required from the roof structure setback requirements. 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 695 (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.

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 §770.6, 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.

In order to accommodate three elevator cores, rooftop mechanical equipment and stair access to and from the roof level from both the apartment

and hotel, the Applicant proposes to provide four enclosed penthouse structures, three of which are to enclose elevator machinery, stair access and mechanical equipment and measure 18 feet 6 inches in height, and the fourth enclosure to provide stair access to the roof from the hotel portion and measures 9 feet 6 inches in height.

Number of Roof Structures:

Section 411.4 of the Zoning Regulations provides that when separate elevator cores are required, there may be one roof enclosure for each elevator core provided. The three rooftop enclosures on the apartment house portion, each measuring 18 feet 6 inches, meet this requirement since all three enclosures are provided as housing for elevator core and related mechanical equipment. The fourth rooftop enclosure, much smaller than the three elevator core enclosures, is required to be provided for the hotel for Building Code/emergency egress purposes. As a result, the Applicant requests that the Board approve this additional roof structure, per §411.11, because full compliance with §411.3 and 411.4 would be unreasonable and would render the proposed hotel non-compliant with the Building Code.

The number of roof structures could possibly be reduced through a connection approximately 165 feet in length. However, such a connection would be a waste of resources in that it would serve no useful purpose for the building.

Location of Roof Structures:

Furthermore, §770.6(b) of the Zoning Regulations provides that such roof structures must be set back from all exterior walls a distance at least equal to their respective heights above the roof. In this instance, the setback requirement from exterior walls would be no less than 18 feet 6 inches for the three elevator core and stair enclosures and 9 feet 6 inches for the hotel stair corridor enclosure. The Applicant is physically unable to comply with the setback requirement for these four enclosures as a direct result of Building Code compliance issues and design considerations based on the proposed dual uses of the subject property as an apartment house and hotel.

With regard to the three elevator core and stair enclosures, the Applicant is limited by the Building Code as to the amount of distance allowed between emergency egresses. Likewise, the double-loaded corridor nature of both apartment houses and hotels largely dictates the location of the elevators and stairs, and consequently, their roof structures. Thus, for example, the elevator core and stair enclosure located nearest the intersection of K and 2nd Streets, SE, is restricted in the distance it can be separated from the elevator core enclosure located at the bend in the building, closest to the intersection of K Street and New Jersey Avenue, SE. Likewise, both roof structures are further limited in their respective locations by the necessarily central line of the double-loaded corridor.

A final limitation on the location of the roof structures is created by the design of the building which is set back 10 feet along New Jersey Avenue, SE, at the eleventh floor of the apartment house portion. In so doing, the width of that portion of the building is reduced from 65 feet to 55 feet, further restricting the location of the corridor and, thus, the stairs and elevator banks and their roof structures. For example, an 18 feet 6 inches tall roof structure must be set back a total of 37 feet from exterior walls. All roof structures meet the set back requirements from their respective street frontages.

On a related note, especially with regard to the elevator core roof enclosure closest to the intersection of New Jersey Avenue and K Streets, SE, the Applicant has placed the structure so as to minimize the noncompliance with §770.6(b)'s one-to-one stepback from all exterior walls. The 10 feet set back at the eleventh floor essentially provides more than sufficient setback from arguably the most prominent frontage of the building, at the corner of New Jersey and K Street, SE.

It is also important to note that the Applicant is proposing to construct a building on the subject property comprised of two distinct uses, an apartment house and a hotel. While the two uses will share certain ground floor and below grade public spaces such as the pool, the restaurant/dining room and the parking garage, they otherwise will operate independently of one another. This separation of uses further dictates the locations of the elevators and staircases throughout the building and, consequently, the locations of the various roof structures.

Despite the comparatively large size of the subject property, the residential nature of the proposed building dictates a design that allows direct access to air and light throughout the building. In the present case, this design consideration has resulted in a roughly C-shaped building. Were the Applicant pursuing development of an office building, the footprint could more readily occupy the entirety of the subject property and the roof structures could likewise comply with the requirement of §770.6(b) to set back from all exterior walls a distance at least equal to their respective heights above the roof. However, the double-loaded corridor nature of residential development, especially in the C-shaped configuration proposed by the Applicant as a result of the unusual size and shape of the property, requires special exception relief from this requirement.

With one small exception discussed above, the proposed roof structures will comply with the one-to-one setback from exterior walls except along the interior of the C-shaped building. Thus, any shortcoming in complying with the roof setback is well mitigated by the fact that these structures will nonetheless be set back significantly from the street frontages of the proposed building.

For the above-stated reasons, the Applicant contends that its roof level plan is in harmony with the purpose and intent of the Zoning Regulations and special exception relief from the roof setback requirement of 11 DCMR §770.6(b) is appropriate in the instant case pursuant to §411.11.

VI.
The Applicant is Entitled to Variance Relief Under the Zoning Regulations

The Applicant is seeking variance relief from two sections of the Zoning Regulations: (1) from the requirement of §1709 to use TDRs to achieve a permitted height of 130 feet and density of 10 FAR for residential use; and (2) from the residential recreation space requirement of §773.3. Variance relief from these sections is necessary in order for the Applicant to proceed with this important multi-use project.

1. Variance Relief from §1709:

Section 1709 of the Zoning Regulations authorizes the transfer of development rights from qualifying projects within the Downtown Development District (DD) to receiving lots located elsewhere in the DD or to various TDR receiving zones established by that section. The transfer of these development rights to lots in the established receiving zones effectively increases the development rights available on those receiving lots from the underlying established zoning to the amount specified in §1709. In the case of the subject property, Square 741 is zoned C-3-C and is located within the Capitol South TDR Receiving Zone.

As discussed above, the Applicant seeks to construct a building on the subject property that is a combination of apartment house and hotel uses. The Applicant has designed its building to fit within a development envelope that

exceeds the C-3-C zoning underlying the subject property. Instead, the Applicant's project fits that envelope uniquely provided for properties that are located within the Capitol South TDR Receiving Zone as established in §1709.

Therefore, the height and density proposed on the site has been deemed appropriate by the Zoning Commission in Order No. 860 from a land planning perspective. (See Exhibit F.) The only issue here is the Applicant's desire to utilize that permitted height and density for residential purposes without the necessity of acquiring TDRs. The Applicant is not requesting relief from this provision with respect to the hotel portion of the project, for which TDRs are being acquired to exceed 6.5 FAR.

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

The subject property is affected by a number of exceptional conditions that qualify it for variance relief, including its location, configuration and zoning history.

Location:

The subject property is one of only 14 squares in the C-3-C Zone designated to form the Capitol South TDR Receiving Zone, pursuant to §1709.18. As discussed above, that designation essentially provides for development in those 14 squares to exceed the area limits of the C-3-C Zone, essentially to the limits for the C-4 Zone.

Furthermore, among those 14 squares in the Capitol South Receiving Zone, Square 741, the square which is occupied almost entirely by the subject property, is one of only 4 such squares (695, 739, 741 and 742) that abut residentially zoned squares. In addition, Square 741 is located immediately to the west of existing multi-family housing, the Arthur Capper townhouse apartments development across 2nd Street, SE, in Square 768. The subject square is also located only one block from the Navy Yard metrorail station on M Street, SE, and from the Washington Navy Yard and Southeast Federal Center which are currently undergoing significant redevelopment with commercial, retail, residential and recreational uses contemplated. As a result, the subject property is unusually well located to provide high density residential use in an area undergoing extensive redevelopment.

Size and Configuration:

In addition to its extraordinary location within the Capitol South Receiving Zone, the subject property is exceptional in that it occupies virtually the entirety of Square 741, encompassing approximately 48,000 square feet of largely, unimproved, vacant, economically idle property. The building proposed to be developed for the site will have prominent frontages on New Jersey Avenue, on K Street and on L Street, SE. The development of a property of this exceptional size and prominent location so near M Street, SE, the Southeast Federal Center

and Navy Yard will likely signal the tone of future development of the Capitol South Receiving Zone and surrounding properties.

Zoning History:

The subject property is further exceptional as a result of its unusual zoning history. The subject square was originally zoned C-M-2, a classification it retained until June 10, 1996 when it was rezoned to C-3-C pursuant to Zoning Commission Order No. 797. (See Exhibit K.) Commercial Light Manufacturing (C-M) and General Industry (M) zoning is still widespread in the neighboring squares, both north and south of Square 741. Prior to its rezoning to C-3-C, residential use, as contemplated by this Application, was prohibited in the C-M-2 Zone. While residential use is permitted under C-3-C zoning, the C-M history of the square indicates that residential use was not historically contemplated for the subject property. That position is reinforced by the 1994 Comprehensive Plan Amendments whose generalized land use map includes the subject property within the medium-high density commercial land use category. (10 DCMR §1137.71.) Likewise, with the subject square's designation in 1998 as a TDR receiving zone, it was anticipated that the 14 squares comprising the receiving zone would be developed primarily with offices, utilizing the TDR mechanism. The Zoning Commission record in Case No. 860 does not indicate any contemplation that TDRs would be purchased to construct residential development. Of the 15 to 20 transactions which have occurred to date, the

Applicant is unaware of any project where TDRs were purchased to construct residential development. This certainly constitutes an exceptional situation. The zoning history of a site may constitute an exceptional condition in a variance application. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A2d 1091 (1979).

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

The Applicant proposes to develop a combined-use building of apartment house and hotel use. The apartment house portion of the project is proposed to be 14 stories, 130 feet tall, and possess an FAR of 10. The hotel is proposed to occupy 8.72 FAR. The combined density of the project is proposed to be approximately 9.65 FAR. As discussed above, this building envelope is permitted as a matter of right in the Capitol South Receiving Zone with the acquisition of TDRs.

Without the additional building envelope provided to properties within the receiving zone, Applicant will not be able to develop a viable residential project on the subject property. Simply, the economics of the project do not permit development limited to the 6.5 FAR and 90 feet height of the underlying C-3-C Zone. The subject property, and those around it, are generally expected to be developed for commercial use, as evidenced generally by the C-3-C zoning classification as well as by the TDR mechanism which established the subject

property as a lot to receive the commercial density. These facts are further evidenced in the price of the land. Likewise, development and management costs of a residential property further increase the difficulties of establishing residential use in a commercial zone.

Essentially, the receiving zone designation allows a property owner in need of an increased development envelope to make its project feasible simply by purchasing the additional density. Unfortunately in the present case, the Applicant simply cannot purchase the needed additional density and still be able to provide an economically feasible residential development, even more so when the Applicant is proposing to provide 20 percent of the residential units at subsidized levels.

If the requested relief were denied, the Applicant would be forced to build a commercial project, either hotel or office, on the subject property and the apartment house, including a significant percentage of affordable housing, would be lost.

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

The Applicant proposes to construct the subject building with no substantial detriment to the public good, and with no substantial impairment to the intent, purpose and integrity of the Zoning Regulations and Map.

Public Good:

Above all else, the Applicant's project will provide a major source of new housing in an area that is in the nascent stage of significant redevelopment, with thousands of new jobs being created at the Navy Yard, the Southeast Federal Center and along M Street, SE. It also offers hotel use for these commercial centers as well as for the existing residential in surrounding squares. And, it makes productive use of an unusually large urban site that has long stood dormant and economically idle, and that has ceased providing any fiscal benefit to the District.

A further benefit of the proposed project is the potential it has to spur similar quality development on neighboring properties. It sets an important precedent for residential uses in this vicinity, a use that has been publicly heralded by community members.

Finally, a combined use residential and hotel project of the height and density proposed by the Applicant will actually present a smaller development envelope than would an office project if it were to be developed to 10 FAR. Owing to the smaller floor-to-ceiling ratio for residential than for office use, residential projects occupy more FAR than do office projects of equivalent height and bulk. (See BZA Order No. 16581).

Zone Plan:

The grant of variance relief from §1709 in the present case would effectively serve as an FAR variance to accommodate development of a preferred use, with one significant difference. That difference is the fact that, by creating the Capitol South Receiving Zone in 1998 (Zoning Commission Order No. 860 - See Exhibit F), the Zoning Commission essentially provided for a wholesale exemption from the underlying C-3-C zoning for those properties willing and able to purchase the additional height and density. Thus, unlike in most other cases involving a variance request for increased density, in the present circumstance, the increased FAR has already been considered and approved as consistent with the Zone Plan. And this circumstance is anticipated by property owners both within the receiving zone and abutting it.

Importantly, the grant of variance relief in the present case would likewise not undermine the larger TDR mechanism as a useful tool of community planning. The Capitol South and other receiving zones were created in recent years in order to provide a tangible reward for sensitive development in the DD, development that involved historic preservation and the creation of numerous bonus uses downtown. The various receiving zones were chosen as locations suitable for more dense commercial development, locations where historic preservation and bonus uses such as housing and arts use were less in issue. In the present case, more recent planning, including such efforts as the Office of Planning's Near Southeast Neighborhood and Waterfront Planning Workshop,

has indicated a general preference for a substantial mixture of uses, commercial, residential, retail and recreational, in this area. Residential and combined use of the property furthers its rezoning from C-M (residential not permitted pursuant to §800.4) to C-3-C where residential is permitted as a matter of right.

Furthermore, with respect to potentially undermining the TDR mechanism, in the macro-environment of TDRs for the District, the proposed project would remove only a miniscule amount of demand from the TDR market. To that end, the likelihood is quite small that other property owners will pursue residential uses over more economically feasible commercial development in the Capitol South Receiving Zone. Of course, even if they did, the result would be a dramatic increase in the supply of new housing in an area that is in the midst of commercial rejuvenation.

Finally, it is noteworthy that the Applicant is requesting variance relief from §1709 only for the amount of FAR (3.5) needed for the apartment house portion of the project. The Applicant is in the process of acquiring TDRs for the more commercially viable hotel project.

For all the above-stated reasons, the Application qualifies for variance relief from §1709 of the Zoning Regulations.

1. Variance Relief from §773.3:

The residential recreation space requirement of 10 percent of the area of the apartment building, or 34,744 square feet in the present case, cannot physically be met on the site. As set forth below, the Application meets the three-part test for area variance relief from §773.3 of the Zoning Regulations.

Section 773.1 provides that "when all or a portion of a building in a C-1, C-2, C-3, C-4, or C-5 district is devoted to a residential use other than a single family dwelling, flat, or hotel, recreation space shall be provided that is safe, secure, and suitably equipped or landscaped for the active or passive recreation use of the residents."(emphasis added.)

Furthermore, §773.3 requires that in the C-3-B and C-3-C Zones not less than 10 percent of the gross floor area devoted to residential use shall be devoted to residential recreation space. Because the Applicant cannot provide the required amount of residential recreation space as part of the proposed project, variance relief is required.

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

As discussed above, the subject property is affected by exceptional conditions involving its location, size, configuration and zoning history. The subject square is among an extraordinary few number of squares that were designated by the Zoning Commission as suitable to receive increased building

height and density as part of the TDR mechanism. Further, of those few designated squares, the subject property is located in an exceptionally appropriate location for high density residential and hotel development. Finally, and especially relevant to the residential recreation space requirement, the subject property is an exceptionally large and unusually configured property.

The subject property's exceptional size underlies the overall scope of the Applicant's proposed project. The subject property measures approximately 48,000 square feet, with roughly 35,000 square feet proposed to be devoted to the apartment house portion of the project. Few other residential properties have been undertaken in the District on such large parcels of land since the residential recreation space requirement was included in the Zoning Regulations.

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

The Applicant proposes to develop the apartment house portion of its project to 10 FAR. With approximately 34,745 square feet of land area allocated to the apartment house portion of the subject property, the resulting proposed gross floor area of the apartment house would be 347,443 square feet. Pursuant to §773.3, 10 percent of the gross floor area devoted to residential use in the C-3-C and C-3-C Zones shall be provided as residential recreation space. In the present case, the resulting residential recreation space requirement is 34, 745,

equivalent to the entire site area devoted to the apartment house portion of the project.

The Applicant proposes to devote approximately 15,155 square feet of residential gross floor area to residential recreation space, in the form of a courtyard (8,643 square feet), a pool (2,620 square feet), a clubhouse (1,792 square feet) and a meeting/party room (2,100 square feet).

The Applicant cannot economically or physically afford to devote any additional gross floor area for residential recreation space. As discussed above, the economics of the proposed project prevent the Applicant from developing a viable residential project on the subject property without the additional density provided through a variance from §1709, especially in light of the Applicant's intention to devote 20 percent of the residential units to affordable housing. For the same reasons of project economics, the Applicant is not able to devote any additional residential gross floor area to recreation space.

Likewise, owing to the unusual configuration of the subject property, including frontage along three comparatively prominent streets and the diagonal boundary line created by New Jersey Avenue, SE, the Applicant is physically unable to provide any more residential recreation space. The Applicant's only other option for providing a meaningful amount of outdoor residential recreation space is through a roof top feature. However, the Applicant has determined that the expense of such a feature would be disproportionately greater than the

amount of residential recreation space generated, especially in light of the number of roof structures required to be provided.

For all the above reasons, the strict application of §773.3 would result in a practical difficulty for the Applicant.

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

Variance relief from the residential recreation space requirement of §773.3 can be granted in the present case without substantial detriment either to the public good or to the zone plan.

Public Good:

As proposed, the Applicant's project provides a significant amount of residential recreation space, essentially one-half the amount of the subject property's land area proposed to be devoted to residential use and one-third of the land area of the entire property. Furthermore, this residential recreation space is proposed to be provided through a variety of very practical and distinct forms, namely a courtyard, a pool, a clubhouse and a meeting/party room, amply providing both active and passive recreation space for residents and guests alike.

Zone Plan:

By providing a significant amount and meaningful variety of residential recreation space, the Applicant is fully complying with the spirit of §773 of the Zoning Regulations. In support of that contention, the Applicant notes that §773.3 requires residential projects in the C-4 and C-5(PAD) Zones to provide only 5 percent of gross floor area to residential recreation space, ostensibly owing to the high density nature of the projects and the comparative high price of such commercial land. As stated above, the receiving zone designation in §1709 entails expansion of the zoning envelope (for building height and density) for the subject property from C-3-C to essentially C-4. As such, the Applicant suggests that that, for purposes of the residential recreation space requirement, the subject property is more appropriately evaluated as property with the C-4 Zone designation. And under such an evaluation, a C-4 zoned property with a 34,745 square feet residential land area and 10 FAR matter of right zoning would yield approximately 17,300 square feet of residential recreation space. The 15,155 proposed to be provided by the Applicant on the subject property is very much in keeping with the lesser required amount.

For all the above reasons, the Application qualifies for variance relief from §773.3 of the Zoning Regulations.

VII.
Witnesses

A. Representative of the Applicant, NJA Development Partners, LP.

B. Steven Gang, Project Architect, SKG Architects.

C. Richard Harps, Real Estate Valuation Expert.

D. Expert in Land Planning.

VIII.
Conclusion

For the reasons stated above, the requested relief meets the applicable standards of special exception and variance relief under the Zoning Regulations. The Applicant therefore requests that the Board grant the application.

Respectfully submitted,

WILKES ARTIS, CHARTERED

By _____
Norman M. Glasgow, Jr.

_____
Dennis R. Hughes

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September, 2000
#205305v.2




737
Canal St.
I STREET
SQ. 738
NEW
SQ. 739
CANAL
STREET
K STREET
SQ. 740
SQ. 741
JERSEY STREET
L STREET
I. ST.
SQ. N-743
M STREET
AVENUE
2 ND STREET
826
SQ. 742
36
I
2ND STREET S.E.
SQ. 768
SQ. 769
2ND
M

Exhibit A



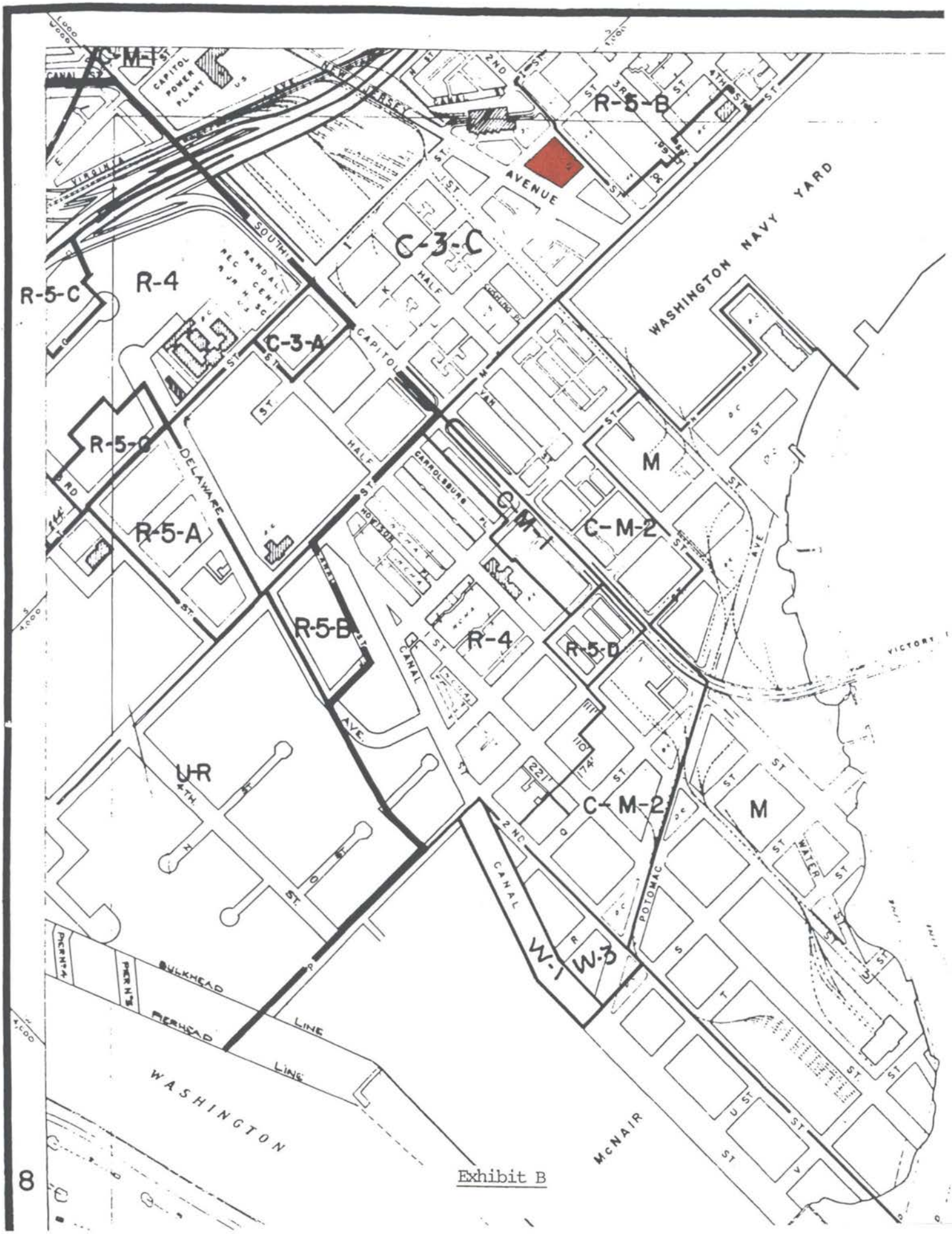
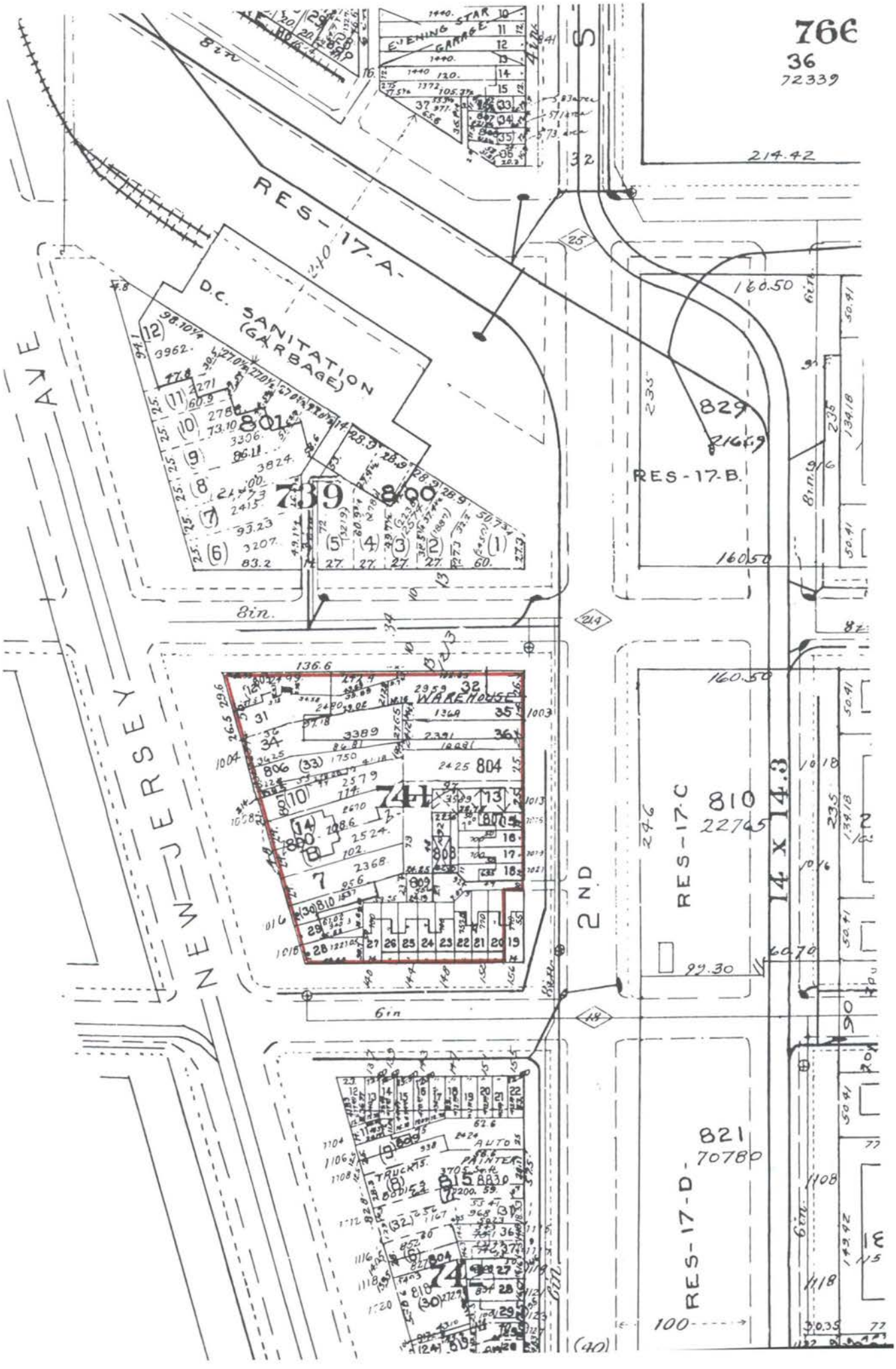
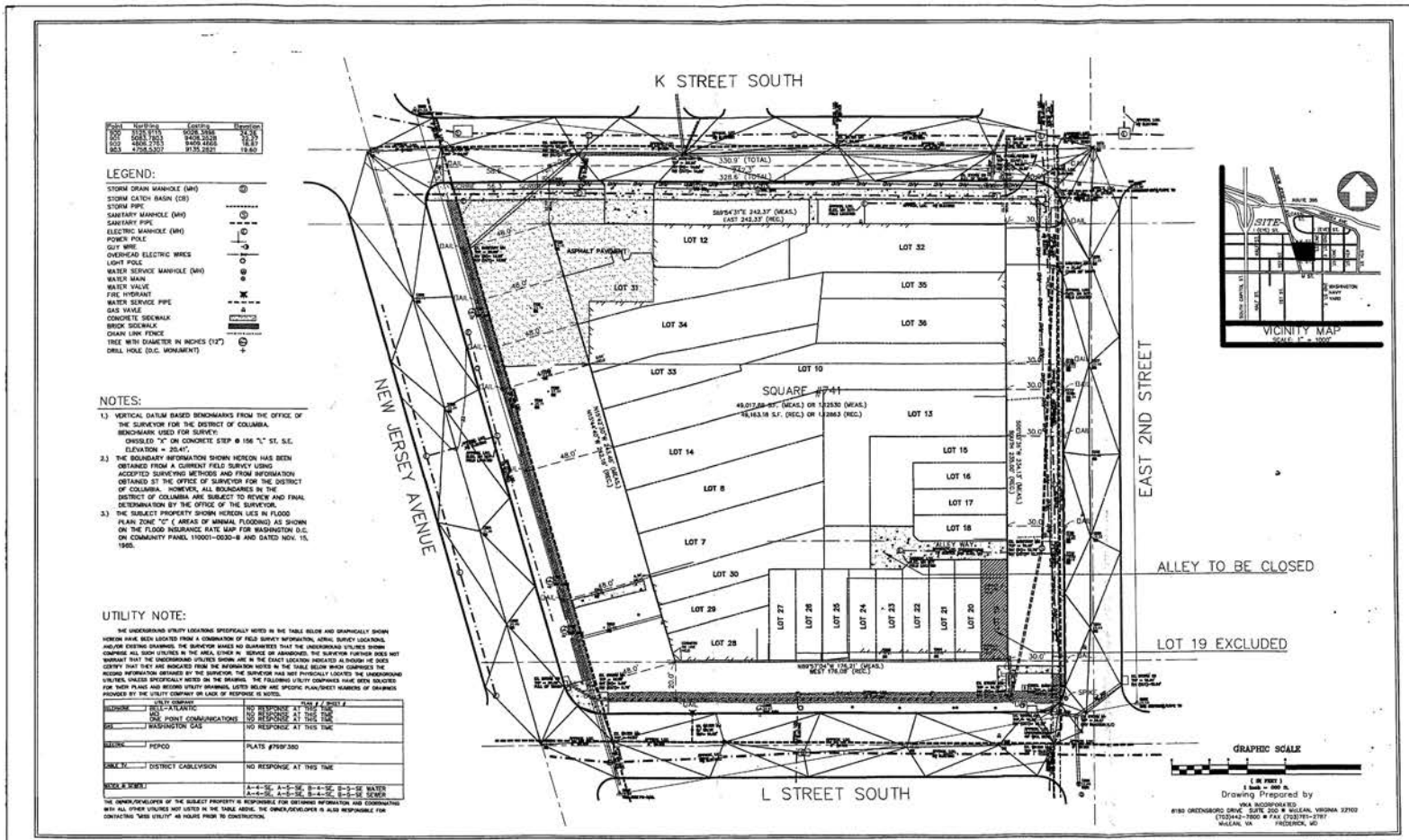

C-M-1
CAPITOL POWER PLANT
R-5-B
AVENUE
WASHINGTON NAVY YARD
C-3-C
R-5-C
R-4
C-3-A
CAPITOL
R-5-D
DELAWARE
R-5-A
M
C-M-1
C-M-2
R-5-B
R-4
R-5-D
UR
C-M-2
M
CANAL
W-1
W-3
POTOMAC
BULKHEAD LINE
PIERHEAD LINE
WASHINGTON
McNAIR

Exhibit B


766
36
72339
214.42
RES-17-A
D.C. SANITATION (GARBAGE)
739
800
801
829
RES-17-B.
160.50
NEW JERSEY AVE
2ND S
WAREHOUSE
741
804
806
808
809
810
22745
RES-17-C
14 X 14.3
99.30
821
70780
RES-17-D
AUTO PAINTER
TRUCKS
BODIES
8in.
6in.
100


RAILROAD AV. S.E.
EVENING STAR GARAGE
DISTRICT OF COLUMBIA DEPT. OF SANITATION
2ND
I ST. S.E.
K ST. S.E.
L ST. S.E.
M ST. S.E.
1ST ST. S.E.
2ND ST. S.E.
NEW JERSEY AV. S.E.
738
739
740
741
742
743
250
WHOL. TOBACCO
MATTHEWS BAPTIST CHURCH
METRO SUBWAY ENTR.
AUTO PARKING
D.C. SCHOOL BUS PARK'G
SCALE OF FEET
0 30 60 120
© 1928, DEC. 1997, THE SANBORN MAP CO., INC.
266





Point	Northing	Easting	Elevation
500	11335.9715	9026.3886	24.56
501	9083.7803	9408.2528	22.27
502	4806.2753	9409.4805	18.87
503	4758.5307	9135.2821	19.60

LEGEND:

- STORM DRAIN MANHOLE (MH)
- STORM CATCH BASIN (CB)
- STORM PIPE
- SANITARY MANHOLE (MH)
- SANITARY PIPE
- ELECTRIC MANHOLE (MH)
- POWER POLE
- GUY WIRE
- OVERHEAD ELECTRIC WIRES
- LIGHT POLE
- WATER SERVICE MANHOLE (MH)
- WATER MAIN
- WATER VALVE
- FIRE HYDRANT
- WATER SERVICE PIPE
- GAS VALVE
- CONCRETE SIDEWALK
- BRICK SIDEWALK
- CHAIN LINK FENCE
- TREE WITH DIAMETER IN INCHES (12")
- DRILL HOLE (D.C. MONUMENT)

NOTES:

1.) VERTICAL DATUM BASED BENCHMARKS FROM THE OFFICE OF THE SURVEYOR FOR THE DISTRICT OF COLUMBIA. BENCHMARK USED FOR SURVEY:
CHISSLED "X" ON CONCRETE STEP @ 156 "L" ST. S.E.
ELEVATION = 20.41'.

2.) THE BOUNDARY INFORMATION SHOWN HEREON HAS BEEN OBTAINED FROM A CURRENT FIELD SURVEY USING ACCEPTED SURVEYING METHODS AND FROM INFORMATION OBTAINED ST THE OFFICE OF SURVEYOR FOR THE DISTRICT OF COLUMBIA. HOWEVER, ALL BOUNDARIES IN THE DISTRICT OF COLUMBIA ARE SUBJECT TO REVIEW AND FINAL DETERMINATION BY THE OFFICE OF THE SURVEYOR.

3.) THE SUBJECT PROPERTY SHOWN HEREON LIES IN FLOOD PLAIN ZONE "C" (AREAS OF MINIMAL FLOODING) AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR WASHINGTON D.C. ON COMMUNITY PANEL 110001-0030-B AND DATED NOV. 15, 1985.

UTILITY NOTE:

THE UNDERGROUND UTILITY LOCATIONS SPECIFICALLY NOTED IN THE TABLE BELOW AND GRAPHICALLY SHOWN HEREON HAVE BEEN LOCATED FROM A COMBINATION OF FIELD SURVEY INFORMATION, AERIAL SURVEY LOCATIONS, AND/OR EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE INDICATED FROM THE INFORMATION NOTED IN THE TABLE BELOW WHICH COMPRISES THE RECORD INFORMATION OBTAINED BY THE SURVEYOR. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES, UNLESS SPECIFICALLY NOTED ON THE DRAWING. THE FOLLOWING UTILITY COMPANIES HAVE BEEN SOLICITED FOR THEIR PLANS AND RECORD UTILITY DRAWINGS, LISTED BELOW ARE SPECIFIC PLAN/SHEET NUMBERS OF DRAWINGS PROVIDED BY THE UTILITY COMPANY OR LACK OF RESPONSE IS NOTED.

UTILITY	UTILITY COMPANY	PLAN # / SHEET #
TELEPHONE	BELL-ATLANTIC	NO RESPONSE AT THIS TIME
	MCI POINT COMMUNICATIONS	NO RESPONSE AT THIS TIME
GAS	WASHINGTON GAS	NO RESPONSE AT THIS TIME
ELECTRIC	PEPCO	PLATS #709/380
CABLE TV	DISTRICT CABLEVISION	NO RESPONSE AT THIS TIME
WATER & SEWER		A-4-SE, A-5-SE, B-4-SE, B-5-SE WATER A-4-SE, A-5-SE, B-4-SE, B-5-SE SEWER

THE OWNER/DEVELOPER OF THE SUBJECT PROPERTY IS RESPONSIBLE FOR OBTAINING INFORMATION AND COORDINATING WITH ALL OTHER UTILITIES NOT LISTED IN THE TABLE ABOVE. THE OWNER/DEVELOPER IS ALSO RESPONSIBLE FOR CONTACTING "MISS UTILITY" 48 HOURS PRIOR TO CONSTRUCTION.

Drawing Prepared by
VIKA INCORPORATED
8180 GREENSBORO DRIVE, SUITE 200 ■ MCLEAN, VIRGINIA 22102
(703)442-7800 ■ FAX (703)761-2787
MCLEAN, VA FREDERICK, MD

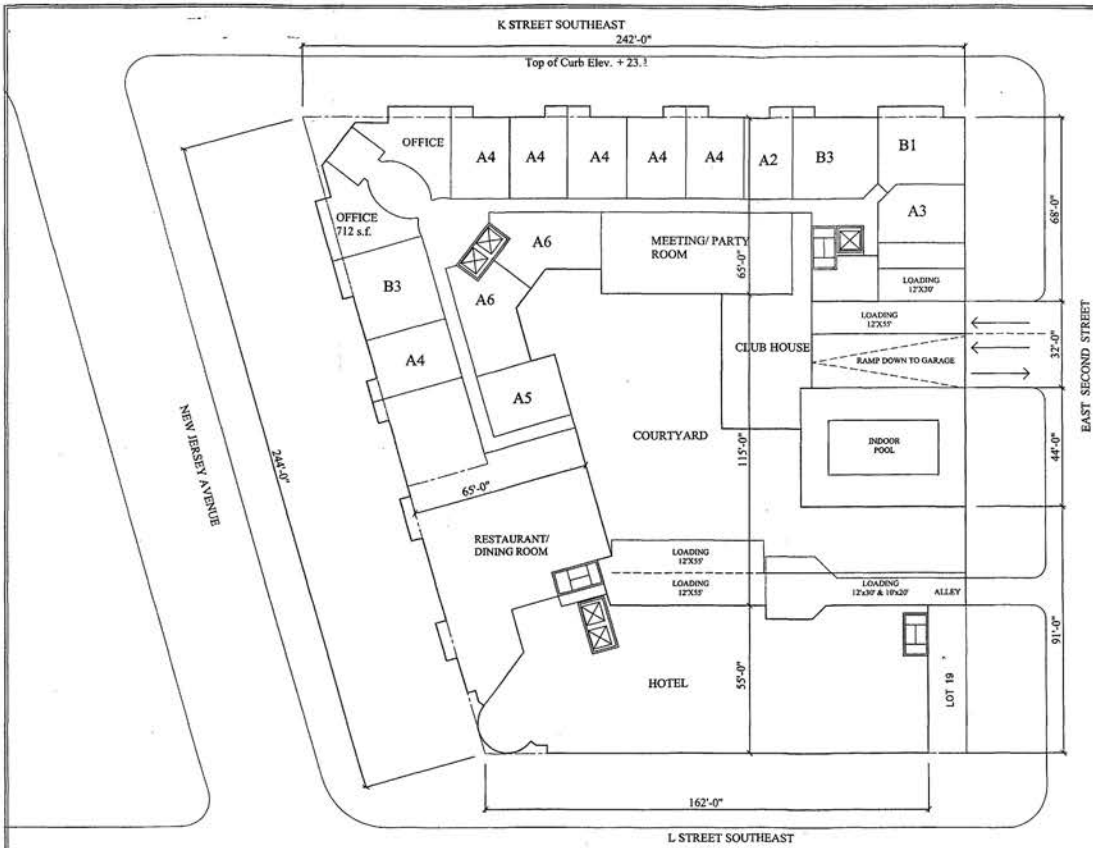
Valhal Corp.

Capitol Hill Towers

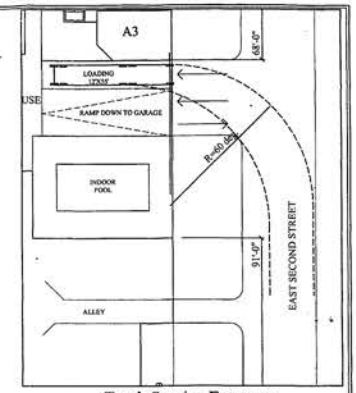
SKG ARCHITECTS & PLANNERS

1

SCALE 1:20 | DATE 9.5.00



Ground Floor Plan



Truck Service Entrance

GENERAL NOTES

Existing Zoning	DD/C-3-C
Area of Site (Less Lot 19) Measured	48,107.9 SF
Residential Land Area	34,744.3 SF
Hotel Land Area	13,363.6 SF
Residential Gross Floor Area	347,443 SF
Hotel Gross Floor Area	116,570 SF
Max. FAR Allowed	10
Total Area	481,079 SF
Residential FAR	10
Hotel FAR	8.72
Recreational Space Req'd. 347,443 SF x 10% =	34,744.3 SF
Recreational Space Provided	
Courtyard	8643 SF
Indoor Pool	2620 SF
Club House	1792 SF
Meeting / Party Room	2100 SF
	15,155 SF

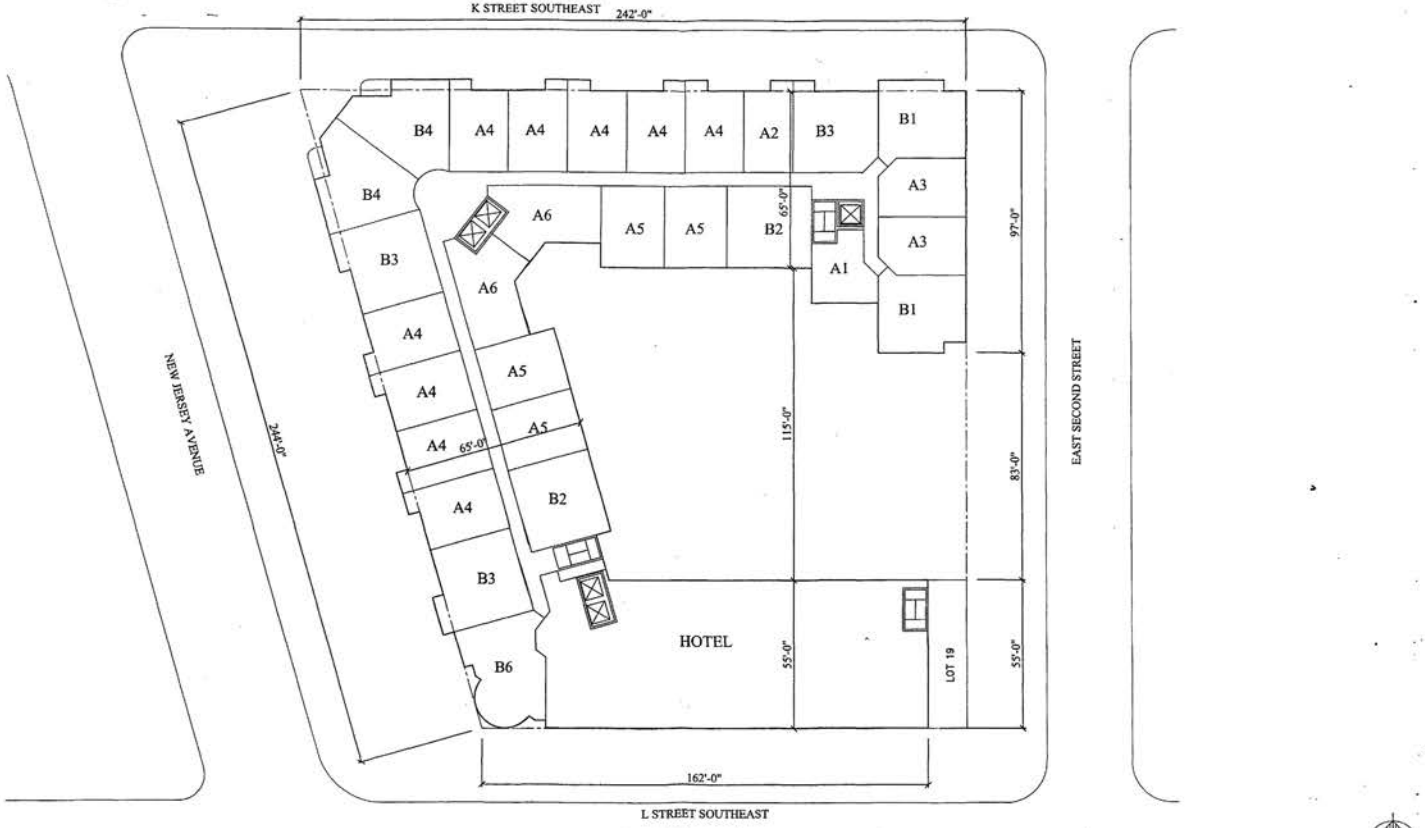
Valhal Corp. & Avis Capital Group

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

2

SCALE 1/16"=1'-0" | DATE 9.5.00



Typical Floor Plan Floors 2-10

Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

3

SCALE 1/16"=1'-0" DATE 9.5.80



Typical Floor Plan Floors 11-14

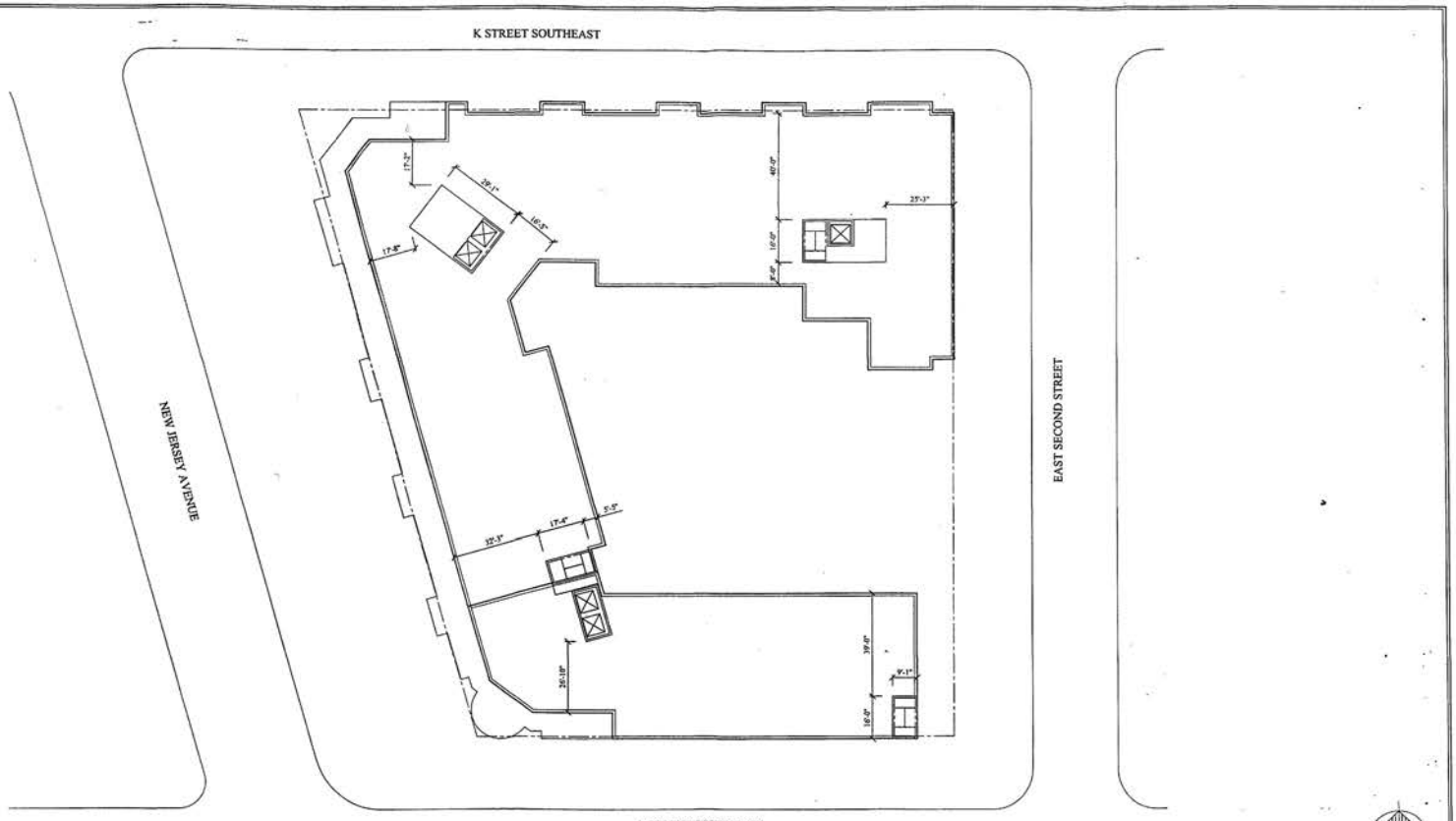
Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

4

SCALE 1/16"=1'-0" DATE 9.5.00



Roof Floor Plan

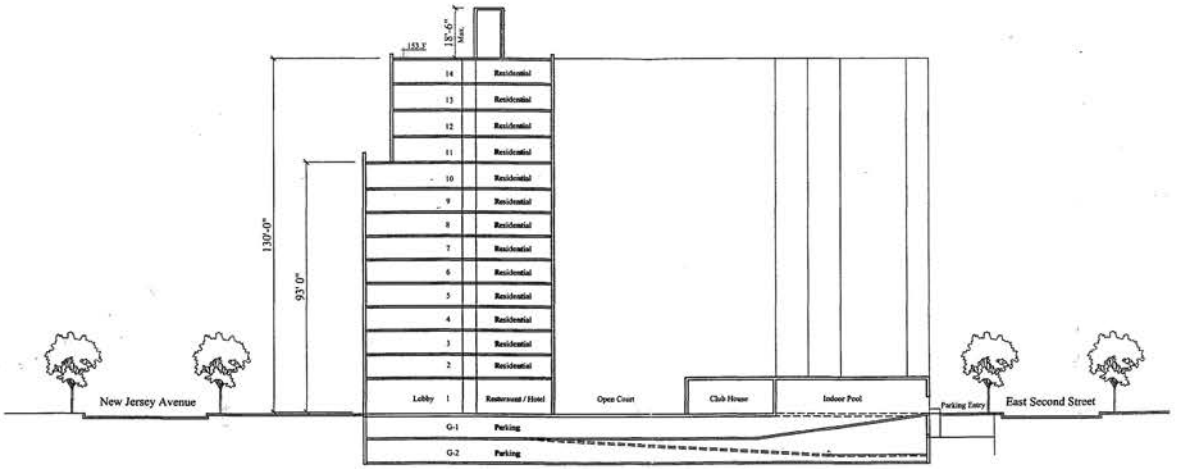
Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

5

SCALE 1/16"=1'-0" DATE 9.5.00



Section

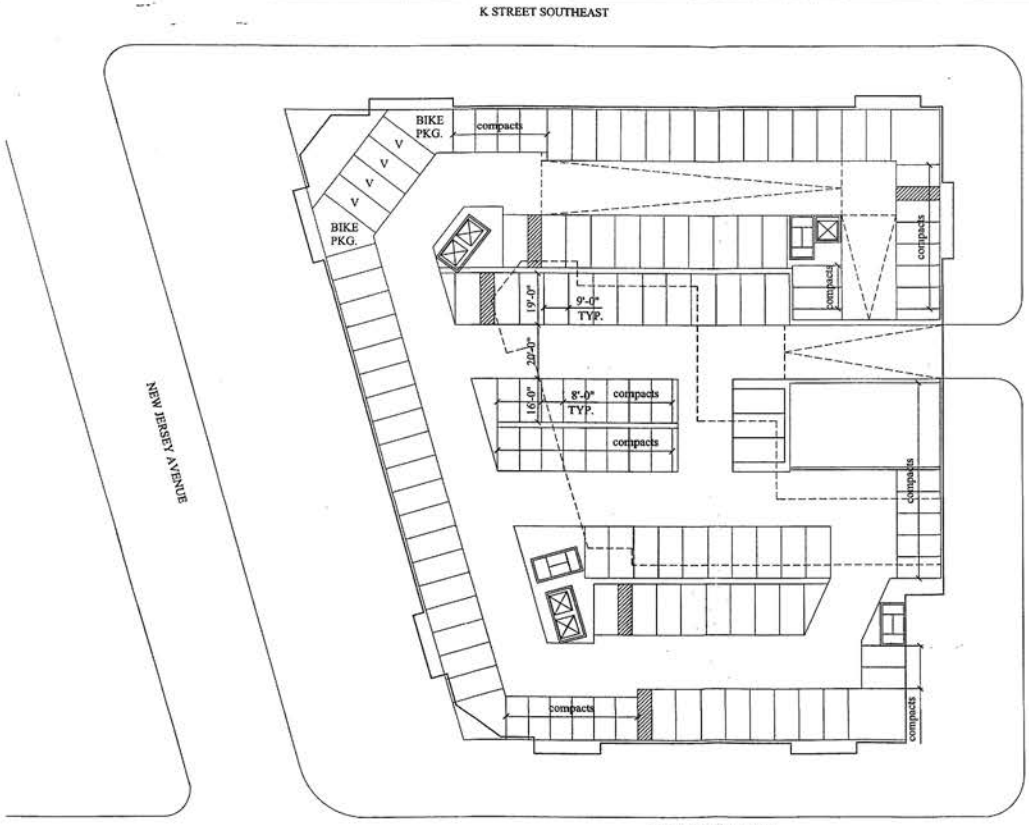
Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

6

SCALE 1/16"=1'-0" | DATE 9.5.00



GENERAL NOTES

Residential Parking -
Min. 1 space per 4 units
371 Units/4 = 93 Spaces req'd.

Hotel Parking -
Min. 1 space per 4 rooms useable for sleeping
169 rooms/4 = 43 Spaces req'd.

PARKING COUNT G1

	Standard		Compact		
Residential =	55		22		
Hotel =	36		17		
TOTAL=	91	+	39	=	130

PARKING COUNT TOTALS (G1+G2)

	Standard		Compact		
Residential =	124		76		(6-HC)
Hotel =	36		17		(4-HC)
TOTAL=	157	+	89	=	246 (10-HC)

Parking G1

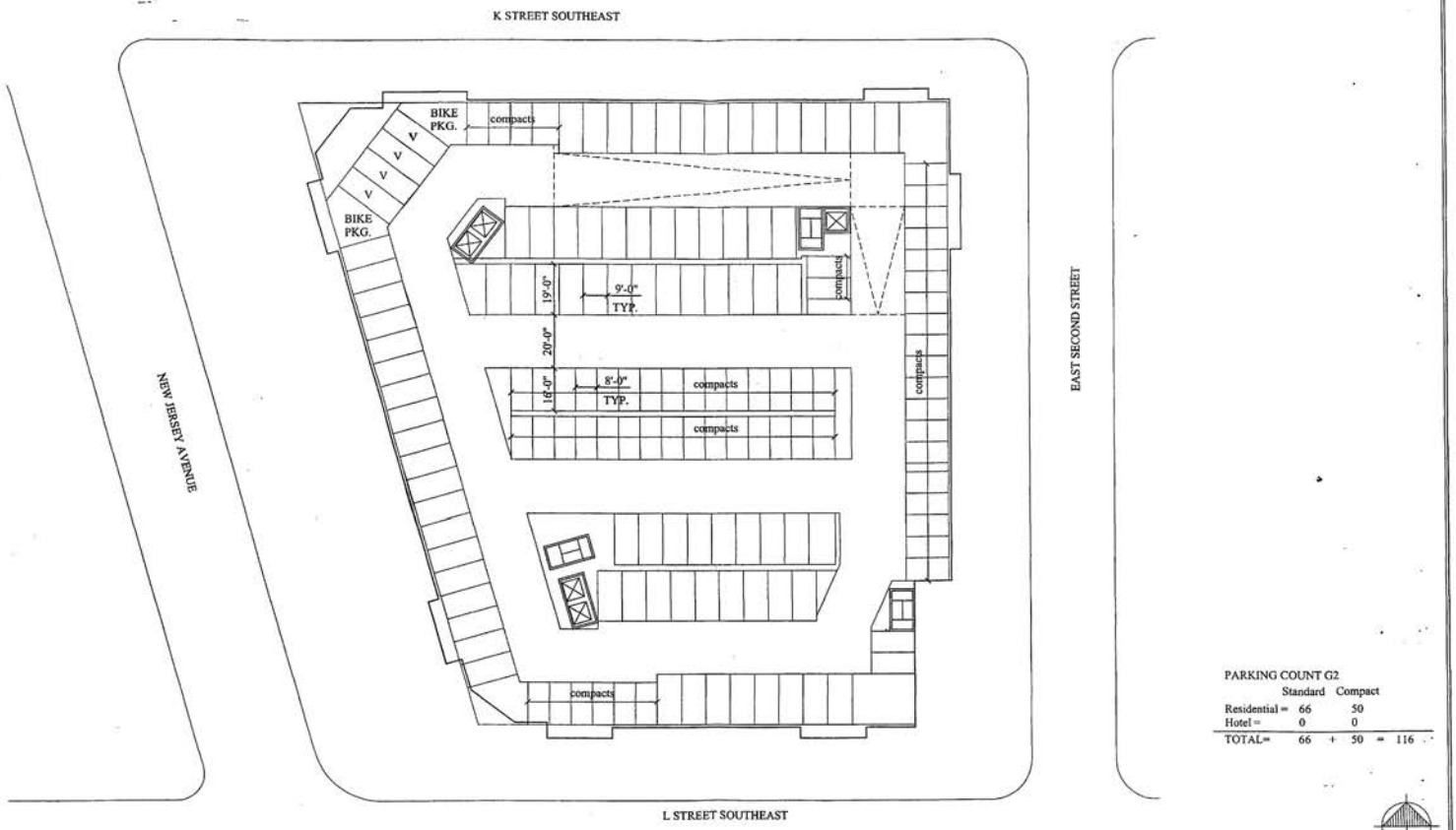
Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

7

SCALE 1/16"=1'-0" DATE 9.5.00



PARKING COUNT G2

	Standard		Compact		
Residential =	66		50		
Hotel =	0		0		
TOTAL=	66	+	50	=	116

Parking G2

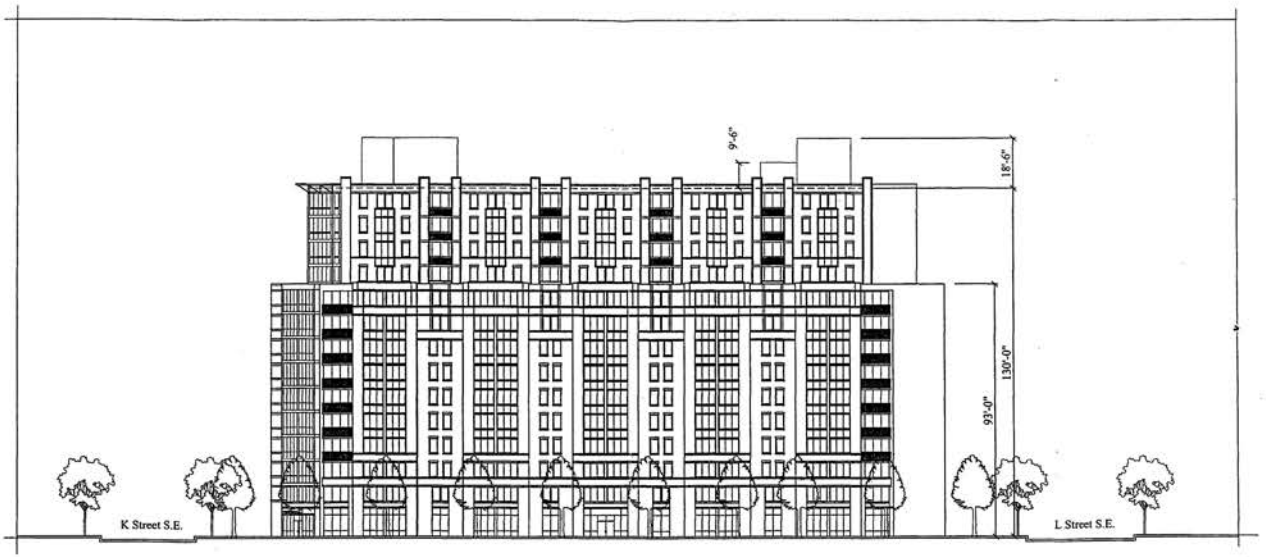
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Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

8

SCALE 1/16"=1'-0" DATE 9.5.08



New Jersey Avenue S.E. Elevation

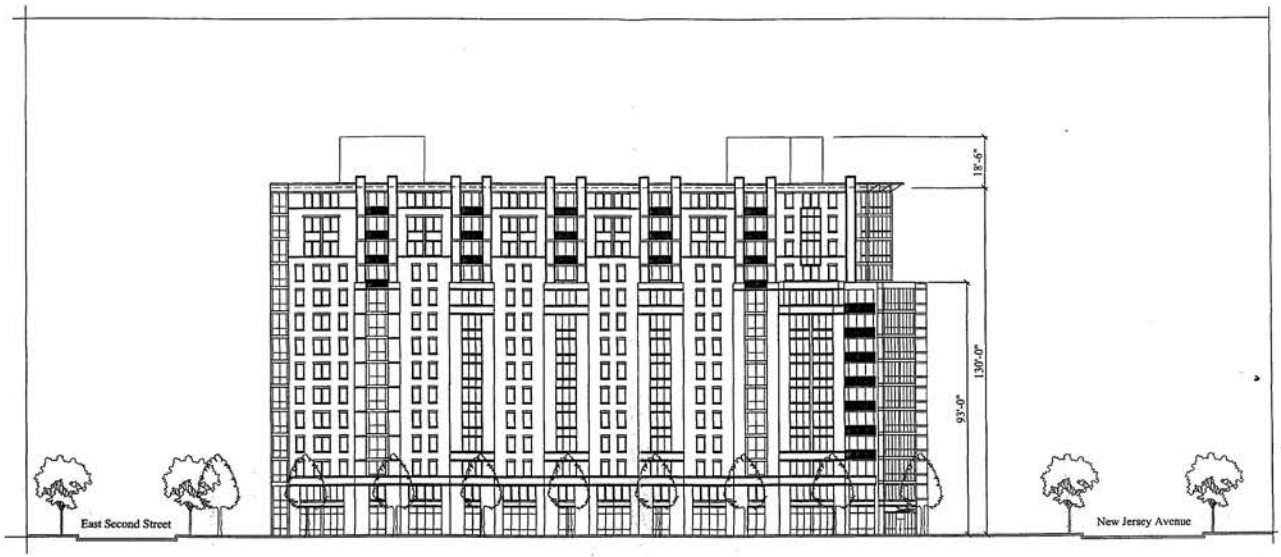
Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

9

SCALE 1/16"=1'-0" | DATE 9.5.00



K Street S.E. Elevation

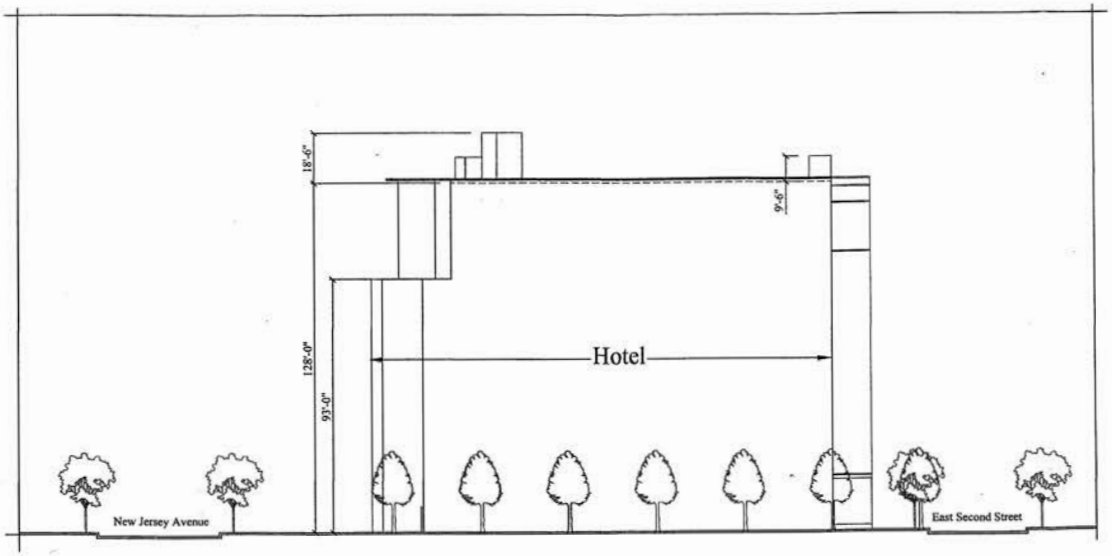
Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

10

SCALE 1/16"=1'-0" DATE 9.8.00



L Street S.E. Elevation

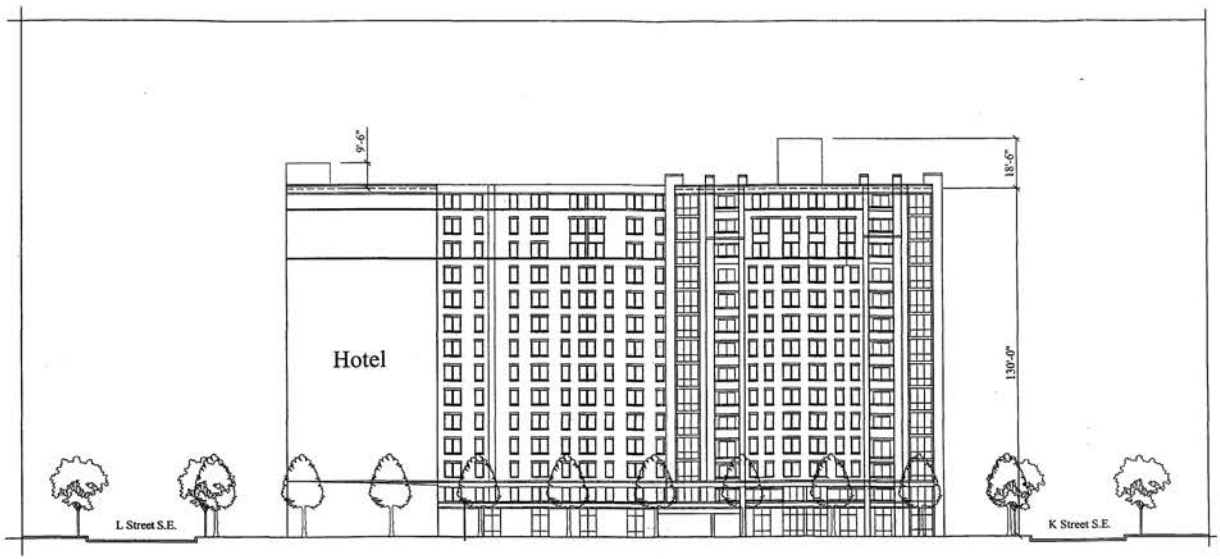
Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

11

SCALE 1/16"=1'-0" DATE 9.5.80



East Second Street S.E. Elevation

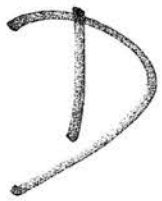
Valhal Corp.

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

12

SCALE 1/16"=1'-0" DATE 9.5.00



DISTRICT OF COLUMBIA

Washington, D. C., 3-28, 2000

Plat, for Building Permit of SQ 741

Recorded in Book PER SUR. page PAPERS

Scale: 1 inch = 20 feet

S. O. 8259

Furnished to WAHL

Surveyor, District of Columbia

Per DA

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted 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 4/7/00

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.

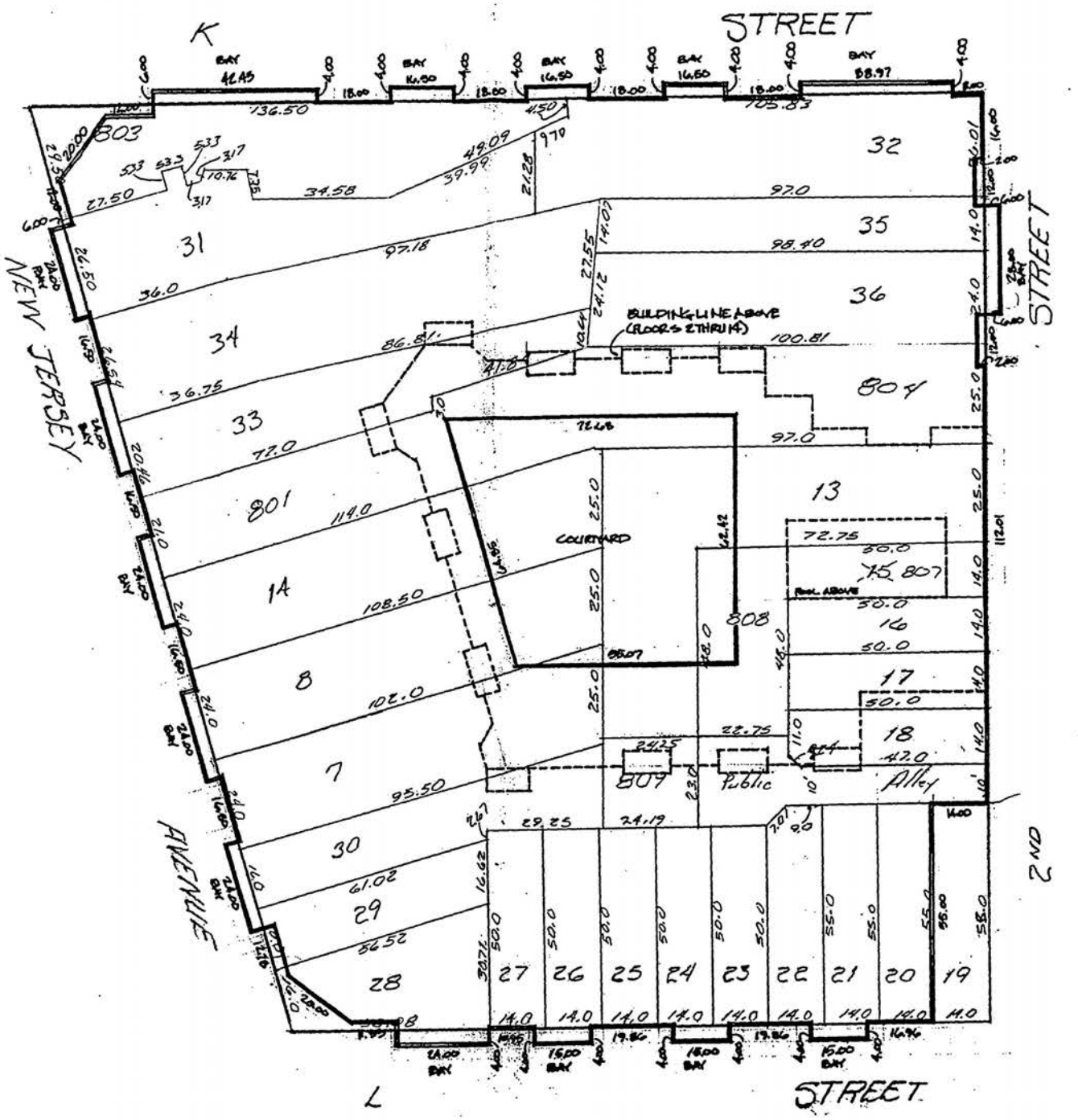


Exhibit D



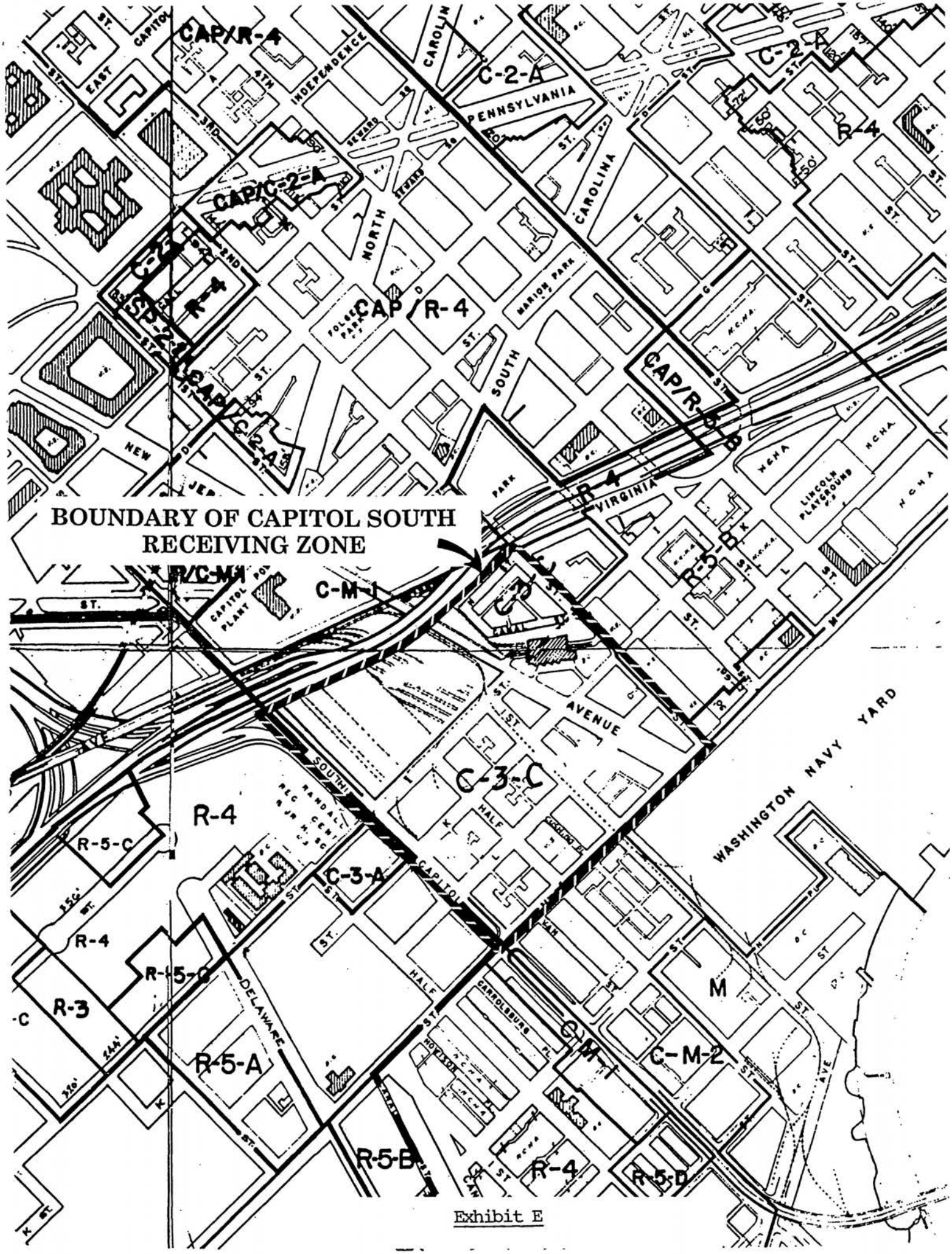

BOUNDARY OF CAPITOL SOUTH
RECEIVING ZONE
CAP/R-4
C-2-A
PENNSYLVANIA
CAROLINA
INDEPENDENCE
CAP/C-2-A
NORTH
SOUTH
CAP/R-4
MARION PARK
POLICE PARK
SP-2
R-4
CAP/C-2-A
CAP/R-5-B
VIRGINIA
PARK
NCHA
LINCOLN PLAYGROUND
R-5-B
R/C-M-1
C-M-1
CAPITOL POWER PLANT
C-3-C
AVENUE
WASHINGTON NAVY YARD
SOUTH
RANDALL REC. JR. HIGH SCHOOL
R-4
R-5-C
C-3-A
CAPITOL
HALF
R-4
R-5-C
R-3
DELAWARE
R-5-A
R-5-B
CARROLLSBURG
HOPKINS
C-M-1
C-M-2
M
R-4
R-5-D
AVE

Exhibit E

F

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 860

Case No. 97-14Z
(DD Text and Map Amendments)
October 19, 1998

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the Office of Planning (OP) requesting the Commission to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, and to amend the Zoning Map of the District of Columbia. Amendments to the text of the Zoning Regulations and the zoning map are authorized pursuant to the Zoning Act [Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413 (1981)].

The OP petition, filed on August 21, 1997, requested the Zoning Commission to schedule a public hearing to consider a number of remaining text and map amendments to effectuate the 1994 Comprehensive Plan amendments to Downtown land use and zoning. The proposed zoning changes are intended to complete the actions needed to eliminate inconsistencies between existing zoning and the Downtown Element of the Comprehensive Plan.

At a regular public meeting on October 23, 1997, the Zoning Commission authorized a public hearing on the OP petition. Accordingly, the public hearing in this case was properly noticed for February 23, 1998 and was conducted in accordance with the provisions of 11 DCMR 3021.

At that hearing, the Commission heard the presentations of OP representatives from the law firms of Wilkes, Artis, Hedrick and Lane and Arnold and Porter, various community groups, a number of private firms, and interested citizens.

By reports dated August 21, 1997, and January 7 and February 13, 1998, and by testimony presented at the public hearing, the OP recommended approval of the proposed amendments. The proposed text amendments affect Chapter 17 of 11 DCMR. The single map amendment in this case recommends rezoning Square 491 from C-3-C to DD/C-4.

No Advisory Neighborhood Commission (ANC) testified either in support of or in opposition to the proposed text and map amendments in this case.

Testimony in support of the proposed text and map amendments was presented by the law firm of Arnold and Porter, the firm of Counts and Kanne, Mr. Thomas Duffy, Square 456 Associates, 1108 K Street Associates, Union Station Venture, the law firm of Greenbaum and Rose Potomac

Capital Investment Corporation, Bear Saint Properties, Phillip Companies, and the law firm of Wilkes, Artis, Hedrick and Lane. A number of concerns and suggestions were put forth for the Commission to consider. The general consensus of those testifying was that the text and map amendments proposed in this case merit close attention and evaluation, and, in a number of instances, form the basis for further analysis. A number of modifications to the proposed language were suggested. Overall, the proposed amendments would stimulate Downtown investment and development in a number of important ways and would make residential development more feasible.

At the close of the hearing, the Commission left the record open until March 31, 1998. The Commission also requested that OP provide additional information regarding the geographical limits of the proposed Capital South receiving zone and a number of housing issues.

By memorandum, dated March 31, 1998, OP provided the Commission with the requested information. By memorandum dated April 9, 1998, OP submitted to the Commission a public hearing summary that outlined the key points of each proposed amendment, the testimony presented at the hearing regarding each proposed amendment, and the OP recommendation. Accordingly, OP's recommendations following the hearing are as follows:

1. Amend Subsection 1700.2 by adding "as amended" to the reference to the Comprehensive Plan at the end of the paragraph.

2. Amend Subsections 1700.1, 1704.1 and 1706.1 by replacing "Market Square" with "Pennsylvania Quarter."

3. Revise Subsections 1706.3 through 1706.6 to increase the permitted "buyout" from 40 percent to 50 percent from required on-site housing south of Massachusetts Avenue to enable it to be constructed or rehabilitated off-site anywhere in the District as low and moderate income housing.

4. Amend Paragraph 1706.8(c) to add Square 491 (DOES) to Housing Priority Area C.

5. Amend Subsection 1700.11 to eliminate any housing requirement for the property in squares 454 and 455 already occupied by the MCI Center.

6. Amend Subsection 1706.3 to add bonus density or TDR's for <u>on-site housing</u> at the rate of 2 to 1 for affordable housing, 1 to 1 for market rate housing north of Massachusetts Avenue, and either 1.5 or 2 to 1 for market rate housing south of Massachusetts Avenue.

7. Renumber existing Subsections 1709.17 through 1709.21 to 1709.20 through 1709.24 to allow for the new subsections in No. 8 below.

8. Add new Subsections 1709.17 through 1709.19 to establish the North Capitol, Capitol South, and Southwest receiving zones for the receipt of TDRs sent from Downtown. Existing Subsection 1709.18 should be modified to read as follows:

1709.18 In the New Downtown, North Capitol, Capitol South and Southwest 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 one hundred thirty feet (130 ft.), and 9.0 for buildings permitted a lesser height.

1709.19 Amend the Zoning Map to rezone Square 491 (DOES) from C-3-C to DC/C-4.

By memorandum, dated May 1, 1998, OP provided the Commission with a clarification on the issue of incompatible height at the north and south ends of 2nd Street, S.E. in the proposed Capitol South receiving zone that was raised at the public hearing. OP suggested that the eastern boundary of the receiving zone might be relocated along 2nd Street, S.E. (excluding squares 766, 769 and 800) to buffer the mostly two-story residential structures in the adjacent Arthur Capper housing project.

At its regular monthly meeting on April 13, 1998, the Commission deferred proposed action on this case until May. Accordingly, at a special public meeting on May 18, 1998, the Commission discussed several issues in general as well as each proposed amendment in the order as advertised in the public hearing notice for the case. The Office of Planning also participated at length in the discussion. As a result, the Commission decided to defer a decision on proposed amendment item No. 3 as advertised in the public hearing notice and as discussed in OP's hearing summary report (refer to item No. 3 as previously provided in this order on page two). Because of the complicated implications involved with the "buyout" provisions, and the timing of other upcoming actions relative to this issue, the Commission decided to conduct a separate public hearing relative to item No. 3. Item No. 8 of the public hearing notice (and OP's hearing summary report) was modified by the Commission by eliminating squares 766, 769 and 800 in Subsection 1709.18 in response to OP's recommended relocation of the eastern boundary of the Capitol South receiving zone.

The Commission opined that the concerns and views expressed during the hearing proceedings had been discussed and considered, and that several issues must still be resolved. Accordingly, the Commission took proposed action to approve the text and map amendments, with item No. 8 being modified and item No. 3 to be reheard in a separate public hearing.

A notice of Proposed Rulemaking was published in the D.C. Register on August 14, 1998 and was referred earlier to the Office of the Corporation Counsel (OCC), the Zoning Administrator (ZA), OP and the National Capital Planning Commission (NCPC) for appropriate comments. With this, the Commission received comments from OCC, NCPC, the law firm of Wilkes, Artis, Hedrick and Lane, and the Downtown Housing Now Committee.

The proposed decision to approve the text and map amendments was referred to NCPC under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. In a letter, dated August 7, 1998, NCPC indicated that the proposed amendments would not adversely

affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

Comments received from Wilkes, Artis, Hedrick and Lane requested that modifications be made to the Notice of Proposed Rulemaking relative to Subsections 1709.18 and 1706.3(b). The Downtown Housing Now Committee requested that Subsection 1706.11 be redrafted.

The Zoning Commission believes that the proposed text and map amendments included herein will provide a workable mechanism to achieve the objectives of Chapter 17 of the Zoning Regulations regarding the effectuation of the 1994 Comprehensive Plan amendments to Downtown land use and zoning. These final actions will assist in eliminating the remaining inconsistencies between existing zoning and the Downtown Element of the Comprehensive Plan. Further, the Commission believes that its decision to approve the text and map amendments set forth in this order is in the best interests of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations, Zoning Map, and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the following amendments to the Zoning Regulations and Map:

A. Title 11 DCMR, Chapter 17, DOWNTOWN DEVELOPMENT DISTRICT, is amended as follows:

1. Sections 1700.1, 1704.1 and 1706.1(e) are amended by deleting the phrase "Market Square" wherever it appears and substituting the phrase "Pennsylvania Quarter" in its place.

2. Section 1700.2 is amended to read as follows:

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, entitled "Downtown Plan" and 10 DCMR, chapter 10, entitled "Land Use", as amended.

B. Title 11 DCMR, Chapter 17, Section 1706, RESIDENTIAL AND MIXED USE DEVELOPMENT, is amended as follows:

1. Section 1706.3 is amended to read as follows:

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; Provided further, that a building or a combined

lot development that provides new residential uses on-site shall earn bonus density or transferable development rights as follows:

(a) Residential development north of Massachusetts Avenue shall earn one square foot of bonus density or transferable development rights for each square foot of residential use developed;

(b) Residential development south of Massachusetts Avenue shall earn two square feet of bonus density or transferable development rights for each square foot of residential use developed; and

(c) Residential development that qualifies as affordable dwelling units as defined in Subsection 1799.1 of this chapter shall earn two square feet of bonus density or transferable development rights for each square foot of affordable housing developed.

2. Section 1706.8(c)is amended to read as follows:

1706.8(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, 431, 432, 454, 455, 456, 457, 458, 459, 460 and 491.

3. Section 1706.11 is amended to read as follows:

1706.11 No minimum residential use requirement shall apply in Square 485, nor to any lot or lots in Square 455 or the southern part of Square 454 improved with a sports arena.

C. Title 11 DCMR, Chapter 17, Section 1709, TRANSFERABLE DEVELOPMENT RIGHTS, is amended by:

1. Adding three new sections numbered 1709.17 through 1709.19 to read as follows:

1709.17 The North Capitol receiving zone consists of Squares 668 through 677, 709 through 713, and 715, each zoned C-3-C.

1709.18 The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, and N743, each zoned C-3-C.

1709.19 The Southwest receiving zone consists of Squares 268, 270, 299, 300, 327, 386, 387, 463 through 466, 493 through 495, and 536 through 538, each zoned C-3-C.

2. Existing Subsection 1709.18 is amended to read as follows:

   1709.18 In the New Downtown, North Capitol, Capitol South, and Southwest receiving zones, the maximum permitted building height shall be 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 one hundred thirty feet (130 ft.) and 9.0 for buildings permitted a lesser height.

3. Existing subsections 1709.17 through 1709.21 are accordingly redesignated subsections 1704.20 through 1704.24.

D. The proposed amendment to the Zoning Map is as follows:

   -rezone Square 491 from C-3-C to DD/C-4.

Vote of the Zoning Commission taken at a special public meeting on May 18, 1998: 3-0 (Jerrily R. Kress, Herbert M. Franklin, and John G. Parsons, to approve, as amended).

This order was adopted by the Zoning Commission at its public meeting on October 19, 1998, 3-0: (John G. Parsons, Herbert M. Franklin and Jerrily R. Kress, to approve, as amended.

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on OCT 30 1998.

JERRILY R. KRESS, FAIA
Chairperson
Zoning Commission

SHERI M. PRUITT-WILLIAMS
Interim Director
Office of Zoning

zco860/KWK/LJP



BOARD OF ZONING ADJUSTMENT
APPLICATION No. 16601

Outline of Testimony of Representative of Applicant
NJA Development Partners, LP

I. INTRODUCTION

II. DESCRIPTION OF SUBJECT PROPERTY AND VICINITY

III. NATURE OF PROPOSED USES

IV. VARIANCE AND SPECIAL EXCEPTION RELIEF NEEDED TO CONSTRUCT PROJECT

V. AFFORDABLE HOUSING COMPONENT FOR RESIDENTIAL PROJECT

Exhibit G



BOARD OF ZONING ADJUSTMENT
APPLICATION No. 16601

Outline of Testimony of
Architect Steven Gang
SKG Architects

I. INTRODUCTION AND PROFESSIONAL QUALIFICATIONS

II. SITE AND LOCATION DESCRIPTION

A. Overview of Site, Surrounding Area and Land Use
Site Planning – size and configuration

III. PROJECT DESIGN

A. Discussion of Combined Use Nature of Project
B. Review of Mass and Height of Apartment House Portion of Building
C. Floor Plans
D. Residential Recreation Space
E. Roof Structures

IV. CONCLUSION

Exhibit H



OUTLINE OF TESTIMONY
OF
RICHARD HARPS

I. Identification

II. Subject Site and Environs

A. Existing Conditions

B. Navy Yard

C. Office Buildings

D. No Other Residential Development

III. Analysis of Residential Component of Project

IV. Need for Variance Relief

209177

Exhibit I



BOARD OF ZONING ADJUSTMENT
APPLICATION No. 16601

Outline of Testimony of
Land Planning Expert

I. INTRODUCTION

II. SITE AND LOCATION DESCRIPTION

A. Overview of Subject Property and Vicinity

III. VARIANCES

A. Subject Property is Affected by Exceptional Situation or Condition
1. Location
2. Size
3. Configuration
4. Zoning History

B. Practical Difficulty

C. Relief Without Substantial Detriment to Public Good or Zone Plan

IV. SPECIAL EXCEPTION FOR ROOF STRUCTURES

V. CONCLUSION

Exhibit J



Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 797
Case No. 95-7
(Map Amendment - Capitol South Area Rezoning)
June 10, 1996

The Zoning Commission for the District of Columbia initiated this case in response to a rezoning proposal of the Capitol South area, submitted by the District of Columbia Office of Planning (OP). The proposal is based on a land use and rezoning study completed by the OP. The proposal recommended zoning map amendments for the Capital South Sector of Near Southeast to eliminate inconsistencies between the existing zoning in the city and the Comprehensive Plan, pursuant to Section 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. Amendments to the Zoning Map are authorized pursuant to the Zoning Act [Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413(1981)].

By memorandum dated June 2, 1995, OP petitioned the Zoning Commission to rezone the Capitol South Sector of Near Southeast from C-M-1, C-M-2, and C-M-3 to C-3-C. The OP appended the rezoning and land use study of the area to the petition.

The Capitol South area that was the subject of the land use and rezoning study and the rezoning proposal is situated between M Street on the south (opposite the Southeast Federal Center and the Navy Yard), the Southeast Freeway on the north, South Capitol Street on the west, 2nd and 4th Streets, S.E. on the east.

The purpose of this rezoning initiative is to implement the provisions of the Comprehensive Plan for the National Capital that require that zoning not be inconsistent with the Comprehensive Plan. The OP recommended rezoning the Capitol South area from C-M-1, C-M-2 and C-M-3 to C-3-C. The specific areas targeted for the rezoning initiative include, all C-M zoned properties in squares numbered 695, 696, N697, 697, 698, N699, 699, 737 through 742, N743, 766 and 769, and property zoned R-5-B in the southern half of Square 800.

On June 12, 1995, at its regular monthly meeting, the Zoning Commission reviewed the land use and rezoning study and considered the OP report, and authorized the scheduling of a public hearing on Case No. 95-7.

The Commission indicated in the public hearing of the case that it would receive testimony and written submissions about, and would consider adoption of other alternative proposals that were reasonably related to the scope of the proposed amendments that were set forth in the notice of public hearing.

Pursuant to notice, a public hearing was held by the Zoning Commission on November 20, 1995 to consider the proposed amendments to the zoning map. The hearing session was conducted in accordance with the provisions of 11 DCMR 3021.

At the hearing session, the Commission heard the presentation of the OP, the testimony of four expert witnesses presented by the law firm of Wilkes, Artis, Hedrick and Lane, on behalf of property owners in the area.

By memorandum dated November 13, 1995 and through testimony at the hearing the OP presented the land use and rezoning study that triggered the map amendment proposal. The OP indicated that the land use and rezoning study was undertaken in furtherance of the policy guidance of the Comprehensive Plan for the National Capital, and in response to the mission of the OP and the Zoning Commission to eliminate inconsistencies between the existing zoning in the city and the Comprehensive Plan.

The OP testified that the land use and rezoning study is a part of a series of government-initiated rezonings that constitute the "Zoning Consistency Project." The purpose of the Zoning Consistency Project is to recommend changes in the Zoning Map that will make zoning and future developments not inconsistent with the Comprehensive Plan.

The OP pointed out that the Mayor and the Zoning Commission are obligated under the Home Rule Act to eliminate inconsistencies between existing zoning and the Comprehensive Plan. OP is the Mayor's lead agency in this effort and has provided to the Zoning Commission a citywide package of recommended zone changes within the schedule established by the Comprehensive Plan Amendments Act of 1989. (D.C. Law 8-129).

The OP also noted that the critical importance of securing zone changes is to ensure that building permits and occupancy permits allow new uses, conversions and new developments that are consistent with the adopted Comprehensive Plan, and to avoid the establishment of buildings, uses and long-term facilities that are contrary to the intent of the Plan. The OP further noted that zoning changes must occur in a reasonably timely manner in order to ensure real implementation of the land use aspects of the Plan.

The OP stated that the Generalized Land Use Map designation of the Land Use Element for Capitol South is medium-high density commercial and that the boundary of the medium high-density commercial area was amended by the 1994 amendments to the Comprehensive Plan to include the southern half of Squares 769 and 800 along the north side of M Street, between 2nd and 4th Streets. OP reaffirmed its preliminary recommendation that C-M-1, C-M-2 and C-M-3 (commercial-manufacturing classifications) zoned properties in the area, and the properties zoned R-5-B in the southern half of Square 800 be changed to C-3-C.

The C-M-1 District permits development of low bulk commercial and light manufacturing uses to a maximum floor area ratio (FAR) of 3.0, and a maximum height of three stories/40 feet, with new residential uses prohibited.

The C-M-2 District permits medium bulk commercial and light manufacturing uses, to a maximum floor area ratio (FAR) of 4.0 and a maximum height limit of 60 feet, with new residential uses prohibited.

The C-M-3 District permits high bulk commercial and light manufacturing, to a maximum floor area ratio (FAR) of 6.0 and a maximum height of 90 feet with new residential uses prohibited.

The C-3-C District permits matter of right major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of 100 percent.

Additionally, the OP stated that the Capitol South area is a declining industrial and heavy commercial area that was zoned prior to 1958. OP observed a number of important assets that will encourage future commercial development in the area. The Comprehensive Plan dictates a change in the general land use pattern and zoning from Professional and Technical Employment (PTE) and industrial uses to medium high density office development.

The report also discussed the District's former transfer station in Square 739, now used for the storage of Department of Public Works trucks and equipment. It recommended that the site be zoned on condition that a new location could be found for the site's existing function.

The law firm of Wilkes, Artis, Hedrick and Lane testified on behalf of property owners in the area, in support of the proposal. The testimony in supporting the OP recommended C-3-C zoning, indicated that the Generalized Land Use map of the Comprehensive Plan has designated the area high density commercial since 1958 and that

C-3-C zoning is more in tune with the general characteristics of the area. The testimony concluded that C-3-C will have, in the long term, a positive impact on development in the area, and is not inconsistent with the Comprehensive Plan.

A traffic and transportation consulting firm, Robert L. Morris, Inc. conducted a study and presented an area traffic analysis of the Capitol South Sector of the Near Southeast that is being targeted for the rezoning. The study analyzed the traffic and the transportation aspects of the area under the existing C-M zones and the proposed C-3-C zone district. The study compared the C-M zones' traffic patterns with the probable C-3-C traffic patterns and determined that there is not a significant difference in terms of traffic impact of C-M or C-3-C development on the area. The report added that C-3-C will be appropriate zoning for the area.

Harps and Harps, Inc., a Land Economist and Real Estate Appraisal firm submitted written testimony into the record of the case. The testimony addressed issues that included, but were not limited to the description of the neighborhood; comparative analysis of existing and proposed zoning classifications, potentials for future development of the area under existing and proposed zoning classifications; and the effects of the proposed zoning change on the stability of land values in the area.

The testimony, after the evaluation of the above factors, stated that the history of similar areas over the past ten years, indicates that office development is more likely to occur with the C-3-C zoning due both to slightly increased FAR and significantly reduced parking requirements. The testimony further indicated that C-3-C would be a logical extension of the Capitol grounds, the Southwest Federal offices and a reasonable location for spin-off development associated with the Southeast Federal Center. In conclusion, the testimony opined that under the Comprehensive Plan, the Capitol South area, as a medium/high density commercial area, has a potential for future development. It is an area where the Comprehensive Plan and general market parameters are in sync and moving in the same direction.

At the request of the Single-Member District (SMD) 6B02 representative, the Commission left the record of the case open, at the close of the hearing session for additional written comments to be submitted into the record of the case.

In a post-hearing submission dated December 26, 1995, the SMD-6B02, pointed out that the OP has not given sufficient reasons to recommend a height of 90 feet for buildings in the area. The letter recommended that 60 feet should be considered the maximum allowable height.

On February 12, 1996, at its regular monthly meeting, the Commission considered the post-hearing submissions, reviewed the testimony gathered in the course of the hearing and discussed the OP Summary Abstract dated December 21, 1995. The summary abstract gave a synopsis of the testimony presented at the hearing and buttressed the OP recommendation that C-3-C is appropriate for the area considering the Comprehensive Plan designation for the area and the current development patterns in the area.

Advisory Neighborhood Commission (ANC) 6B did not testify or submit comments to the record for the Commission to consider. However, the Single-Member District representative (ANC-6B02) submitted written comments into the record for consideration.

After reviewing and considering the post-hearing submissions, testimony from the hearing, and the summary abstract, the Commission concurred with the OP that C-3-C is suitable and consistent with the development pattern of the area and the Comprehensive Plan designation for the area, based on the following findings:

1. The Comprehensive Plan designates the area for medium high density commercial use, and a development opportunity area that stimulates development, promotes stability and improves neighborhood quality. C-3-C zoning is usually interpreted to be not inconsistent with the medium-high density commercial designation.

2. The area is near to the U.S. Capitol complex, the Navy Yard, and the Southeast Federal Center, all of which are major employment centers. Public and private agencies or firms needing to do business with the U.S. Congress and/or the Supreme Court might find Capitol South a convenient location.

3. The C-3-C zone is generally considered to be consistent with the medium-high density commercial land use category. C-3-C is a medium-high density commercial zone that permits a maximum FAR of 6.5 for office, retail, hotel and mixed uses, a maximum building height of 90 feet and a maximum lot occupancy of 100 percent.

4. C-3-C zoning for the area will ensure continuity in the development pattern and actualize the Comprehensive Plan provisions for the area.

Based on the above findings, the Zoning Commission determined that C-3-C is the most appropriate zoning category for the Capitol South area of Near Southeast and that its decision to rezone the affected squares from C-M zone districts to C-3-C is in the best interest of

the District of Columbia, and is not inconsistent with the Comprehensive Plan for the National Capital. The Zoning Commission also concluded that leaving the site of the transfer station industrially zoned, when rezoning to C-3-C was taking place all around it, would result in an inconsistency with the Comprehensive Plan, and an island housing an incompatible use in the midst of a medium-high density commercial development. Accordingly, the Commission took proposed action to approve the proposal, on February 12, 1996.

The proposed action of the Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC by report dated April 4, 1996, found that the proposed map amendment would not adversely affect the Federal Establishment or other Federal interest in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. Nevertheless, NCPC indicated that vistas along South Capitol Street, especially as seen from the Anacostia Park setting are a Federal concern and urged that in the event of future planned unit development (PUD) applications that special vista studies be conducted along South Capitol Street as part of the Zoning Commission's review process.

After reviewing and considering the report of the NCPC, the Zoning Commission concurs with NCPC's concern regarding the vistas along South Capitol Street, and determined that special vista studies should be conducted along South Capitol Street as part of the Commission's review of any PUD application in the affected area.

The Zoning Commission did not accord "great weight" consideration to any Advisory Neighborhood Commission in this case, because no ANC provided a written report with concerns and issues for the Commission to consider.

A notice of proposed rulemaking was published in the D.C. Register on March 29, 1996 for a thirty (30) day public notice and comment period. The proposed rulemaking was referred to the Zoning Administrator (ZA) and OP for review and comments.

The Commission did not receive additional comments as a result of the referrals, but received a letter from the law firm of Wilkes, Artis, Hedrick and Lane re-affirming its support for the proposed action published in the notice of proposed rulemaking.

The Commission is of the opinion that all contentious issues raised at the public hearing have been adequately addressed since there were no comments submitted into the record as a result of the proposed rulemaking.

The Commission believes that its decision to rezone all C-M zoned properties in squares numbered 695, 696, 697, N-677, 698, N-699, 699, 737 through 742, N-743, 766 and 769, and property zoned R-5-B in the southern half of Square 800 to C-3-C will further implement the provisions of the Comprehensive Plan, which requires that zoning not be inconsistent with the Comprehensive Plan.

The Commission also believes that the approval of the zoning change is in the best interest of the District of Columbia, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, and in view of the fact that no new issues were raised after the publication of the proposed rulemaking, the Zoning Commission for the District of Columbia hereby orders APPROVAL of the amendments to the Zoning Map of the District of Columbia. The specific amendments are as follows:

Amend the Zoning Map as Follows:

> Rezone all C-M-1, C-M-2 and C-M-3 zoned properties in squares numbered 695, 696, N697, 697, 698, N699, 699, 737 through 742, N743, 766 and 769, and property zoned R-5-B in the southern half of Square 800, to C-3-C.

Vote of the Commission taken at the regular monthly meeting on February 12, 1996 3-0: (Maybelle Taylor Bennett, Jerrily R. Kress, to approve, John G. Parsons, to approve by absentee vote; - William L. Ensign, not voting, not present).

This Order was adopted by the Zoning Commission at its regular monthly meeting on June 10, 1996 by a vote of 3-0: (Maybelle Taylor Bennett, John G. Parsons and Jerrily R. Kress, to adopt - William L. Ensign, not voting, not present; Howard R. Croft, not voting, not having participated in the case).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on JUL 26 1996.

Jerrily R. Kress
JERRILY R. KRESS
Chairperson
Zoning Commission

Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director
Office of Zoning

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