GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director

DATE: September 13, 2000

SUBJECT: BZA Application 16601, NJA Development Partners, LP (New Jersey Avenue @ 2nd Street, S.E.)

APPLICATION IN BRIEF

NJA Development Partners wishes to construct a mixed-use apartment building and hotel, with retail space, in a C-3-C zone on New Jersey Avenue in southeast Washington. It has applied for:

1. A special exception for setting back roof structures at less than a 1:1 ratio from the edge of the roof (Section 411.11);

2. A variance from the residential recreation space requirement (Section 773.3);

3. A variance from the requirement to use Transfer Development Rights as the mechanism for increasing the FAR from 8.5 to 10 (Sections 1709.5 and 1709.18).

OFFICE OF PLANNING RECOMMENDATION-IN- BRIEF

The Office of Planning (OP) strongly *recommends* the Board approve both variances and the special exception. They meet the tests of the zoning regulations, are not inconsistent with the Comprehensive Plan, and represent an unexpected opportunity to begin the development of a mixed-use neighborhood in an area that has been targeted for revitalization for several decades. It is critical to the future of the Near Southeast, and to the District as a whole, that this project be realized.

BZA Case No. 16601 Exhibit No. 29

Board of Zoning Adjustment
District of Columbia
CASE NO.16601
EXHIBIT NO.29

THE APPLICANT'S PROPOSAL

The applicant wishes to construct a mixed-use building on Square 741, Lots 7,8, 13,14, 16-18, 20-36, 801, 803, 804, 807-809, and a public alley which the applicant has applied to have closed. L, M, and 2nd Streets, S.E., and New Jersey Avenue, S.E. bound the block. The site is 48,108 square feet and would occupy the block's entire perimeter, with the exception of the 770 square foot Lot 19, at the southeast corner of the block. (Lot 19 is improved with an operating convenience/grocery store).

The proposed building would be 130 feet high, have plate-to-plate heights that would enable construction of 14 stories, and would have an overall FAR of 9.64. There would be two levels of parking, for approximately 130 cars, under the entire structure.

Functionally, the building is best considered as if, above grade, it were two joined buildings. One part would be a C-shaped, approximately 371-unit apartment building that would occupy the northern and central portions of the site, along all of the K Street frontage, two-thirds of the 2nd Street frontage, and ¾ of the New Jersey Avenue frontage. The second part would be a rectangular-shaped hotel on the southern side of a central courtyard. It would have its principal public face on L Street, S.E., and would also wrap the southeastern and southwestern corners onto 2nd Street and New Jersey Avenue.

The first floor is intended to have entrances for the apartments and the hotel, recreational facilities shared by both; a sit-down restaurant; some retail; and, on 2nd Street, the entrance to the parking garage. The garage would be entered at mid-block on 2nd Street. Loading dock entrances for the hotel would be basically where the to-be-closed public alley is off of 2nd street.

SITE AND AREA DESCRIPTION

The site is in the Capitol South Receiving Area for Transferable Development Rights (TDRs). It is improved with several small vacant buildings near 2nd and L Streets, S.E., as well as a large former warehouse on the K Street frontage. Adjacent to the southeastern boundary of the proposed development is the 770 square foot Lot 19, which is improved with an occupied two-story convenience/grocery store. Although the grocery store currently conducts its loading operations from the front, on L Street, it would continue to have access from the rear through the to-be-privatized alley leading to the proposed hotel's loading docks.

To the north, across K Street is a District storage facility currently used to store DPW vehicles and equipment. To the east is a three-block long north-south public reservation formerly occupied by the Washington Canal, then by open space, and now used for school bus parking. The low-rise portion of the Arthur Capper Dwellings apartments is located just east of the school bus parking. To the west, across New Jersey Avenue are two medium-to-large scale industrial buildings, the Matthews Baptist Church and an

electric parts warehouse. Farther south on the far side of New Jersey Avenue is one of two entrances to the Navy Yard Metro station.

The surrounding area is a generally under-improved locale of former or marginal industrial structures, and the not-completely-occupied Arthur Capper Dwellings homes. It is south of the freeway that divides Near Southeast from Capitol Hill, and east of South Capitol Street and the Southwest (former) urban renewal area. The area south of the site is a mixture of the soon-to-be redeveloped Southeast Federal Center, the booming Washington Navy Yard, and the burgeoning office corridor the private market is developing in conjunction with the increase of personnel at the Navy Yard. The Van Ness Elementary School is nearby.

COMPREHENSIVE PLAN AND CURRENT PLANNING CONTEXT

The Comprehensive Plan designates the area for Medium-High Density Commercial Uses, which also allows for similarly dense residential uses. Until 1996 the area had been considered a place for offices and revitalized manufacturing uses. In 1996, the area was rezoned from industrial to C-3-C, effectively excluding all but grandfathered industrial uses.

This planning trend away from industrial uses is continuing in current City planning efforts. A community planning workshop held this summer for this portion of the near Southeast and Buzzard Point waterfront recommended a further mixing of uses. It suggested that medium to high-density office and residential uses should be located north of M Street and south of the Eisenhower freeway, and medium density residential, office and cultural uses should be located towards the south, between M Street and the Anacostia riverfront. This Fall, the Office of Planning will be submitting its final report on the currently vested rezoning for this area. This is intended to govern zoning for the area until additional recommendations can be developed in late 2000, that more accurately reflect the year-long waterfront planning efforts now underway.

THE SPECIAL EXCEPTIONS AND VARIANCE APPLICATIONS, AND OP RECOMMENDATIONS

1.A. Special Exception to Have 4 Penthouse Structures, Rather Than 1.

Although Section 411.3 specifies that penthouses shall be placed in one structure, Section 411.4 allows there to be one enclosure for each elevator core at each roof level. Three of the four proposed roof structures would be typical 18'6" high penthouses housing elevator cores required by Building Code. Two would also contain emergency egress stairs. One of these stairs for the apartment building would appear as if part of the elevator core for the hotel. These three structures are thus in compliance with this section.

The fourth roof structure, however, is for a 9'6" emergency egress stair for the hotel, not for an elevator. This structure is not in compliance with this section and the applicant requests the Board approve this fourth structure as a special exception, rather than rendering the hotel non-compliant with the building code through the elimination of the fourth roof structure.

As the applicant notes, an approximately 160 to 165 foot enclosure could be built to connect the third and fourth roof structures, thus rendering the building compliant. This strikes the Office of Planning as an extreme measure that would be prohibitively costly, or unreasonable under Section 411.11.

The Office of Planning (OP) *recommends* that the Board of Zoning Adjustment (BZA) approve this special exception for number of roof structures provided that:

- The applicant is able to clarify that the location of the emergency egress stair for the hotel is at the location shown in Appendix C, Sheet 4, rather than in Appendix C, Sheet 5 (examples attached);

- The applicant agrees to design the roof structures as-if they were "towers" above the main building; i.e., face all sides of the roof structures with the same type materials and level of finishes as the principal building facades; that the footprint of the structures be approximately the same size; that the height of all four roof structures be a uniform 18'6"; that there be a clear termination to the top of the roof structures, consistent with the detailing of the top of the principal building facades. OP feels that it is particularly important to set a high level of design for such a prominent structure, along an original L'Enfant avenue with a vista that frames the connection between the high-elevation U.S. Capitol with the lower-elevation Anacostia River. It would be unfortunate to have roof structures in this location treated with the lesser level of design attention usually accorded them.

1.B. Special Exception to the Location of the Roof Structures (with respect to set-back from exterior walls).

Section 770.6 requires that all roof structures be set back in a 1:1 ratio from all exterior walls. This means 18'6" for three of the four roof structures and 9'6" for the fourth roof structure, should the Board approve the above special exception for the number of roof structures. (All four would be required to be set-back 18'6" should the BZA adopt OP's recommendation with respect to uniformity of the height of all four roof structures). Clearly, the very use of this proposed combination of an apartment building and a hotel building on such a large site makes it impossible to meet this requirement. The 48,000 + lot size and its chamfered-square shape dictates a central courtyard design for residential and hotel uses. Such a design means that the zoning regulations require the applicant to respond not just to setbacks from the typical four exterior walls, but from at least eight such walls.

As presently designed, three of the four roof structures meet the setback requirements from the street-facing building walls. (These walls are stepped-back from the lower façade at floors 11-14). The fourth roof structure – the emergency stair near the corner of L and 2nd Street – meets the set back requirement from L Street, but not from the wall along Lot 19 (provided the roof structure location comports with Sheet 4 rather than Sheet 5).

However, none of these roof structures meet the setback requirement from the exterior walls of the central courtyard. As the applicant notes, were this to be a 48,000 square foot floor plate office building on this site – a use permitted under C-3-C zoning, there would not be a set-back requirement from the interior of the property. In OP's view, were Section 770.6 to be strictly applied, the size and shape of the property would inhibit the provision of desirable apartment and hotel uses at this difficult location. The nature of the uses brings with them certain operating difficulties, and adherence to Section 770.6 would be unduly restrictive. With the possible exception of the setback from the wall abutting the grocery store on Lot 19, complying with the setback requirements only for the exterior walls facing the perimeter of the site would not impair the intent of the chapter and title, nor adversely affect the light and air of adjacent buildings.[1]

OP *recommends* the Board grant the application for special exception to the setback requirements of Section 770.6 (b) for all roof structures, other than the southeastern-most structure provided that the applicant:

- Meets the design guidelines specified above under number of roof structures.

OP further *recommends* that the Board grant the application for special exception to the setback requirements for the southeastern-most roof structure provided that the applicant:

- Meets the design guidelines specified above under number of roof structures;
- Sets back in a 1:1 ratio the roof structure that is now flush with the wall at the property line shared with Lot 19;
- Refine the design of the blank wall adjacent to Lot 19 so it incorporates patterns and -- on the upper floors -- possibly windows, that reflect the rhythms, fenestration, and materials of the proposed apartment building façade on 2nd Street;

[1] Until the last decade the Zoning Commission typically calculated set-backs from the exterior walls facing the building line.

2. Variance Relief from Rooftop Recreation Requirements of Section 773.3

The applicant has asked for a variance that would allow it to devote to recreational use less than the required 10% of the residential gross floor area. With 347,443 square feet of the proposed building being devoted to residential use, 34,745 square feet are required to be devoted to recreational use. This would be approximately .8 acre – equivalent to the entire site area devoted to the residential portion of the building. This is a very significant recreational allocation for an in-town high-rise building that is likely to rent approximately 80% of its units at market rate.

The applicant could, of course, reduce the size of the building so that it could better achieve the required 1:10 ratio of recreational to residential space. In its request for variance relief from Section 1709, the applicant argues that the economics of the site require exceptional residential density to allow the project to succeed. If this is the case, reducing the size of the project to achieve the required recreational space would result in a project too small to succeed.

This is a common problem for in-town apartment buildings. The draft recommendations of the Mayor's Downtown Housing Task Force acknowledge this problem. The final report will likely propose changes for the Zoning Commission to consider to reduce the required recreational space in C-3 and C-4 zones, in order to make central city housing construction more feasible.

In conjunction with its arguments for relief from the requirements of Section 1709, the applicant notes the effective similarities between the height and densities of a C-3-C building in a receiving zone, and the height and density of a C-4 building. For C-4 properties, the recreation space requirement is 5% of the residential gross square footage -- presumably because of a combination of land economics and the likely market appeal of buildings in C-4 locations. The Office of Planning finds considerable logic in such a line of argument.

OP has explored the possibility of the applicant's providing additional recreational space on the roof of the apartment building. As is often the case with new construction, the combination of the overhead-cable design of elevator systems, plus building code and fire code requirements, do not seem to allow for the provision of such space. To give elevator access to the space without building a penthouse higher than 18'6" would require using a side mounted elevator -- not typical equipment for a 130' high building. The additional fire stairs that would be required for rooftop recreation space that compensated for the recreational deficiencies of the building as proposed would require additional roof-to-ground emergency egress shafts that would impinge on the economics of the building. As the applicant notes, it is the applicant's "intention" to devote 20% of the apartments to affordable housing, thus further reducing the building's revenue stream.

As noted in the application, the applicant intends to devote a clear 6,500 square feet to recreation space that would include a pool, clubhouse and meeting room/party room.

Less clearly, the applicant states that the 8,643 square foot courtyard would also serve as recreational space.

The section of this report dealing with the surrounding context and plans for the area note that the exceptionally wide median between 2nd and Canal Streets is public property that is proposed to be returned to public park uses once another storage location can be found for the school buses currently parked there. Once redeveloped, this public space would provide several acres of parkland adjacent to the proposed apartment building. Such space would be even more convenient to the apartments if a secure secondary entrance, in additional to the principal entrance on New Jersey Avenue, were added to the building's 2nd Street frontage or in the courtyard that opens onto 2nd Street. In addition, the Waterfront Initiative expects to increase the amounts and desirability of nearby waterfront recreation space.

For these reasons, OP feels that a variance from the requirements of Section 773 could be granted without substantial detriment to the public good, or without impairing the intent, purpose and integrity of the zone plan or, for that matter, the small area and cluster plans currently being developed for the area.

OP *recommends* that the Board grant relief from the recreational area requirements of Section 773 provided that the applicant:

- Agrees to landscape at least 80 % of the 8,643 square foot courtyard and include active recreational uses in at least 30% of the courtyard area.

- Provide a secure entrance and exit for apartment residents on the 2nd Street frontage or from the courtyard to 2nd Street;

- Reserve the meeting room/party room in the hotel portion of the building, and the pool, for activities catering to residents of the apartment building for at least 6 hours per month.

3. Variance Relief from Section 1709's Restrictions on Achieving Maximum Height and Density Allowances for a Residential Use in the Capitol South Receiving Zone Without the Purchase of TDR's.

The C-3-C zone normally allows a 90' building height and a 6.5 FAR. However, in the Capitol South Receiving Zone, of which Square 741 is a part, the maximum height is 130' and the highest FAR is 10.0 for buildings that front on streets that have a right of way of at least 110 feet. The proposed project fronts on New Jersey Avenue, a street with such a right of way.

The applicant is in negotiations to purchase TDRs for the 8.72 FAR commercial, and potentially more viable, hotel portion of the proposed project. Relief from Section 1709 is not requested for the hotel part of the project.

However, the apartment portion of the project, even in the current market, is a riskier proposition at this location than would be the office building or hotel typically constructed in a C-3-C zone. The applicant is requesting relief from Section 1709 to allow the apartment building to reach the same height and density *without* the purchase of TDRs than a commercial structure would be allowed *with* the purchase of TDRs.

Pages 11-20 of the Applicant's Statement go into considerable detail about why the applicant believes that as-if matter-of-right heights and FAR for residential uses in a receiving zone, and particularly at this subject location, should be the same as those allowed for commercial uses that purchase TDRs. The applicant states that without this relief, the project economics would require the building of an entirely commercial structure – either hotel or office or some combination of the two – and the first major apartment house ever planned for Near Southeast and the Anacostia waterfront would not get built. The city would lose 371 units of housing, 80% of it market rate and 20% of it dedicated to affordable housing for residents with Section 8 vouchers.

The applicant argues that the subject property is in an exceptional location and of an exceptional size and configuration, and is in the process of writing an exceptional zoning history:

- It is one of only 14 squares in the Capitol South receiving zone, and one of only 4 that abut residential areas;
- The zone and the square have already been found suitable for the requested 130-foot height and 10 FAR;
- The Zoning Commission has already decided the above height and FAR would not be detrimental to the public good, nor an impediment to the intent of the zone plan. Were it otherwise, the Commission would not have allowed these heights and densities as part of the receiving zone;
- The 130 heights and 10 FAR are already expected by adjacent and nearby property owners as a condition of the receiving zone designation;
- The sale of TDRs were intended to enable the provision of a less remunerative good – central city housing – in return for the purchase of a more-than-compensatory increase in a more remunerative commercial use – office buildings or hotels. The applicant argues, correctly, that providing housing in this location is congruent with recently articulated city and federal planning objectives for this area, and, probably correctly, that the location is riskier and less remunerative than central city housing.
- To date, no TDRs have been purchased to construct residential uses. It would be exceptional to do so.

OP is persuaded by the applicant's arguments that the location, size, configuration and zoning history of the site are exceptional and that the strict application of the zoning regulations would result in a practical difficulty that would likely result in the failure to provide a publicly desirable good. Moreover, OP finds these arguments to be persuasive enough to warrant further OP study of whether all mixed market-rate and affordable housing uses in all receiving zones should be allowed to achieve maximum height and FAR without the purchase of TDRs, reserving the purchase requirements for the more privately lucrative and likely-to-be-provided commercial uses.

OP further notes that, from an urban design standpoint, a 130 foot height along New Jersey Avenue would better frame the vista between the Anacostia River and the Capitol, given the partial interruption of the vista's lower elevations by the Eisenhower Freeway and the WASA pumping station at the Southeast Federal Center. The building would effectively have a two-block public space buffer between it and the lower-rise portions of the Arthur Capper dwellings. It would not block the views from the mid-rise apartments to the east at Arthur Capper, which have exposures only to the north and south.

Finally, with respect to the impact on the TDR market, should the Board provide the requested relief, OP agrees with the applicant's contention that the impact would be minimal. In the recent past, OP has argued strongly against de-concentrating the geographic targeting of downtown Housing Opportunity Areas. This was notably the case in the OP argument for the recent case where Summit Properties applied to use combined lot provisions for the residential redevelopment of the United Mine Workers Building at McPherson Square. Our arguments were based on the need to develop housing in concentrated areas downtown, in order to achieve a critical mass for viable neighborhoods. OP argued that McPherson Square and the Housing Opportunity Areas are close enough and similar enough to compete for essentially the same housing markets.

This is not the case for the Capitol South receiving zone and downtown. The waterfront area and the downtown constitute different and complementary market options for housing in the regional core. OP is committed to the development of a vital mixed-use neighborhood in Near Southeast.

OP recommends that the Board approve this variance from Section 1709 provided that the applicant:

- Agrees in writing to reserve at least 20% of the total number of apartment units for affordable housing in accordance with an agreement with DCHFA;

- Agrees in writing, as part of the conditions for either BZA approval, or City Council alley closing approval, to allow rear access to Lot 19 for so long as the property on Lot 19 remains unincorporated into the proposed hotel and apartment project.

COMMUNITY COMMENTS

Notice of this application, and a summary of it have been circulated to all ANC 6-B. No comments had been received as of the date of this report. However, the ANC's Planning and Development Committee has voted to support the project. The full ANC will meet and likely vote on September 12. A positive vote is anticipated.

The ANC did not comment on the designation of the Capitol South receiving zone in 1998, nor on the 1996 rezoning of the area from C-M to C-3-C. OP will call the ANC chair the week of September 11 to follow up on the Office of Zoning's notice.

AGENCY COMMENTS

OP has met with the Department of Public Works, the Department of Housing and Community Development, and the District of Columbia Housing Agency about this project. All agencies have been supportive of this project in oral comments and in discussions to help improve its impact. None of these agencies have indicated problems with the special exception and variance applications, and all were supportive of the area's 1996 rezoning from C-M to C-3-C. However, none of these agencies have yet written formal comments on this application. OP will follow up with these agencies the week of September 11 to remind them of their opportunity to comment and/or testify.

SUMMARY RECOMMENDATION

OP finds that the application demonstrates the exceptional circumstances and practical difficulties, and the lack of adverse impacts on neighboring properties, that would justify the Board of Zoning Adjustment's finding for a special exception for multiple roof structures not meeting the normal setback requirements from exterior walls and Section 411; for a variance from the residential space requirement of Section 773; and for a variance from Section 1709's requirement to use TDRs to achieve the requested height and FAR for the apartment building portion of the project.

OP strongly *recommends* the Board approve the application consistent with the plans submitted, subject to inclusion of the clarifications, design changes, and written agreements suggested by OP in this report, as part of the conditions accompanying the Board's order. The project offers the city an opportunity to initiate significant mixed-use and mixed-income revitalization of this area on a scale and with timing that the City had not expected so soon. It is not inconsistent with the Comprehensive Plan and is entirely consistent with the plans now being developed for the area in conjunction with the rehabilitation of the Arthur Capper dwellings, the former Capital Gateway urban renewal area, M Street, the Southeast Federal Center and the Anacostia riverfront.

Attachments
Aa/sc



Site Location: The project is outlined above and below in black. In the top photo, the Eisenhower Freeway is to the north, at the top, and the Anacostia River is to the south , at the bottom. New Jersey Avenue is the diagonal street running northwest to southeast in the center of the photo. In the bottom photo, the site boundaries are K Street (north), 2nd St (east) L Street (south) and N.J. Ave. (west). To the right of the site is the public space where school busses are parked. M Street, S.E. is at the bottom.

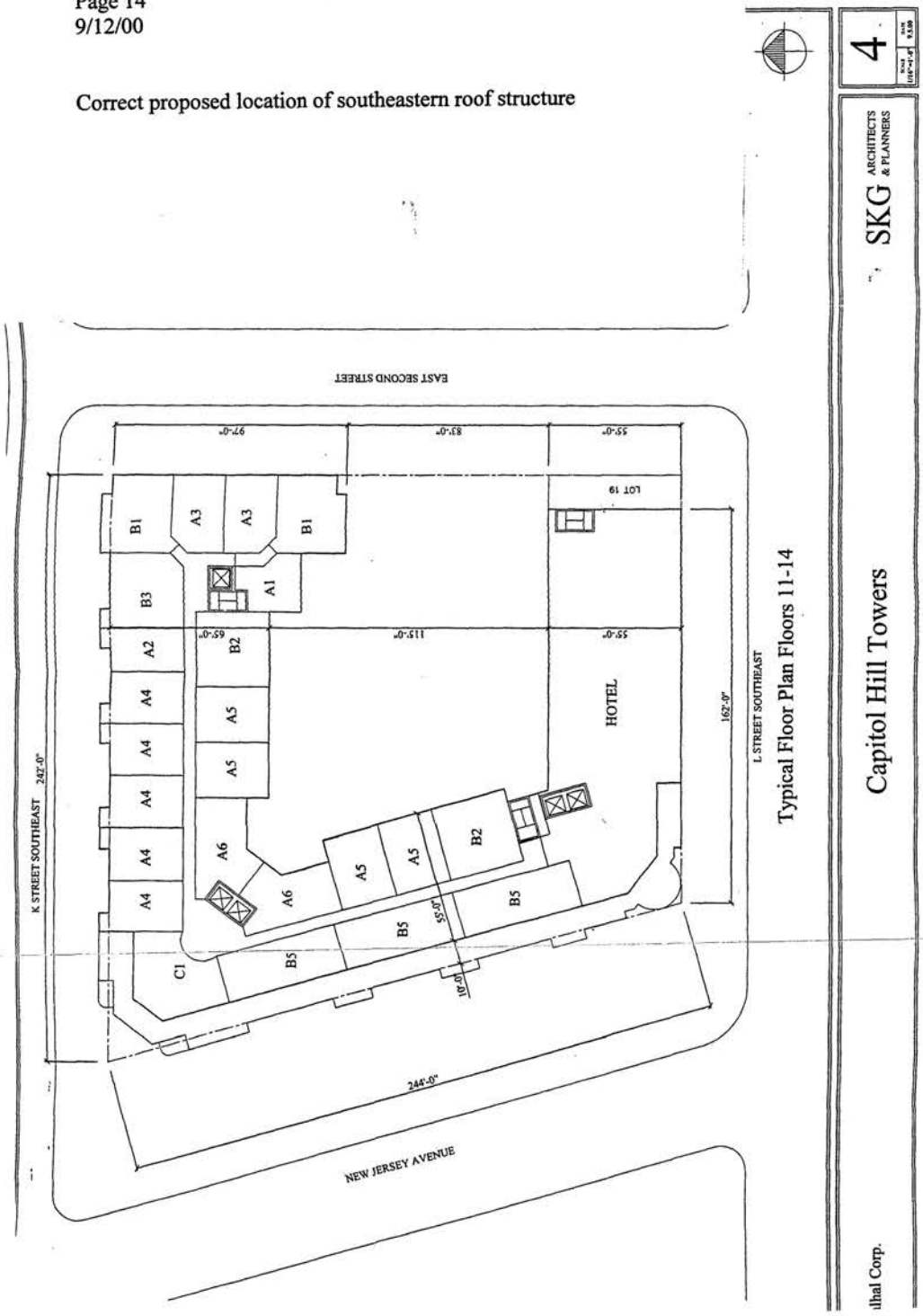




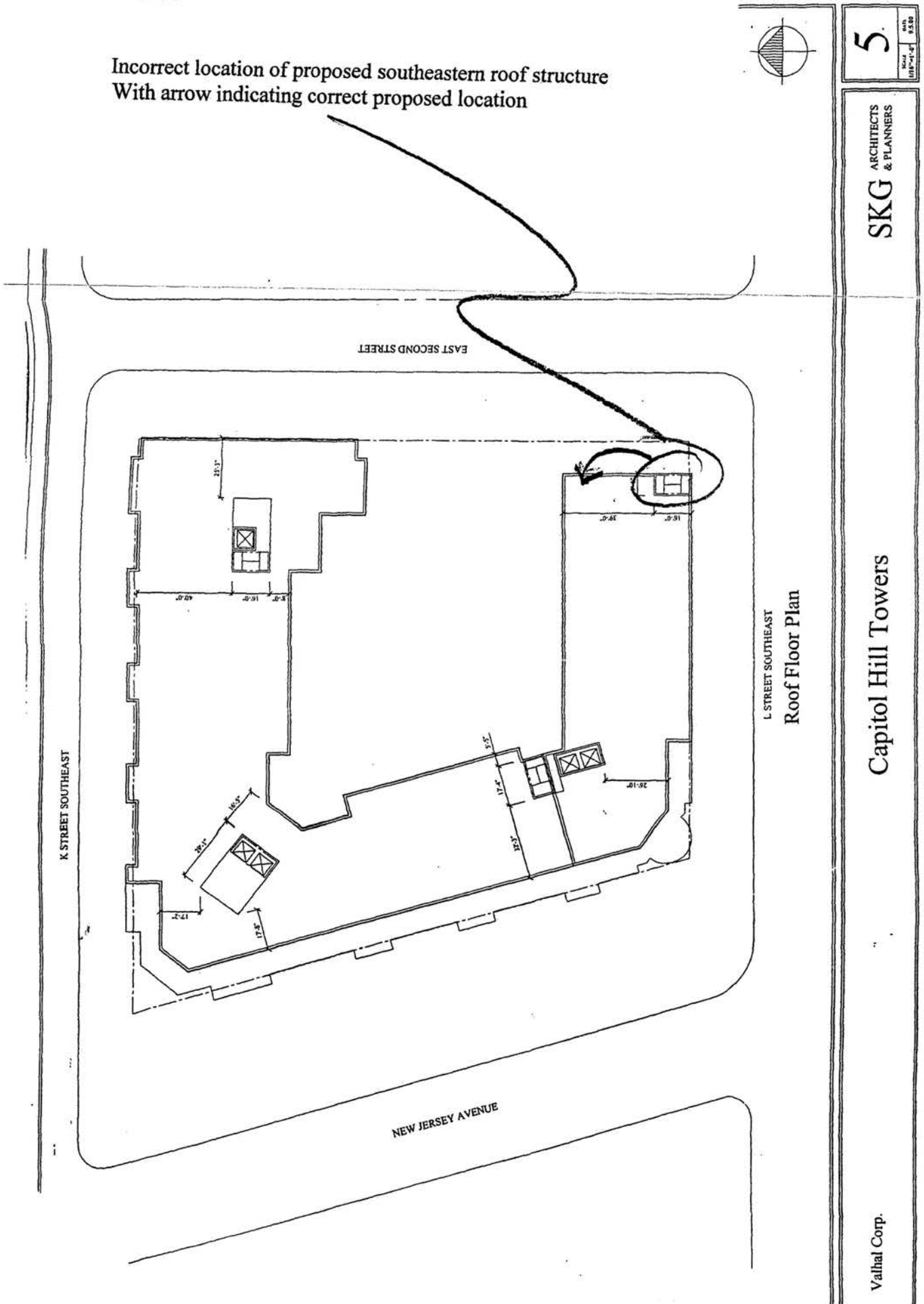
2nd St. and New Jersey Avenue, S.E.: Star Market Would Remain. "Blank" Wall of Hotel Would be To Left of Front Market Face.
Picture Below Shows Where Current Alley Would Become Privatized, But Access Would Remain to Star Market's Rear, and to Hotel Loading Docks.



Correct proposed location of southeastern roof structure

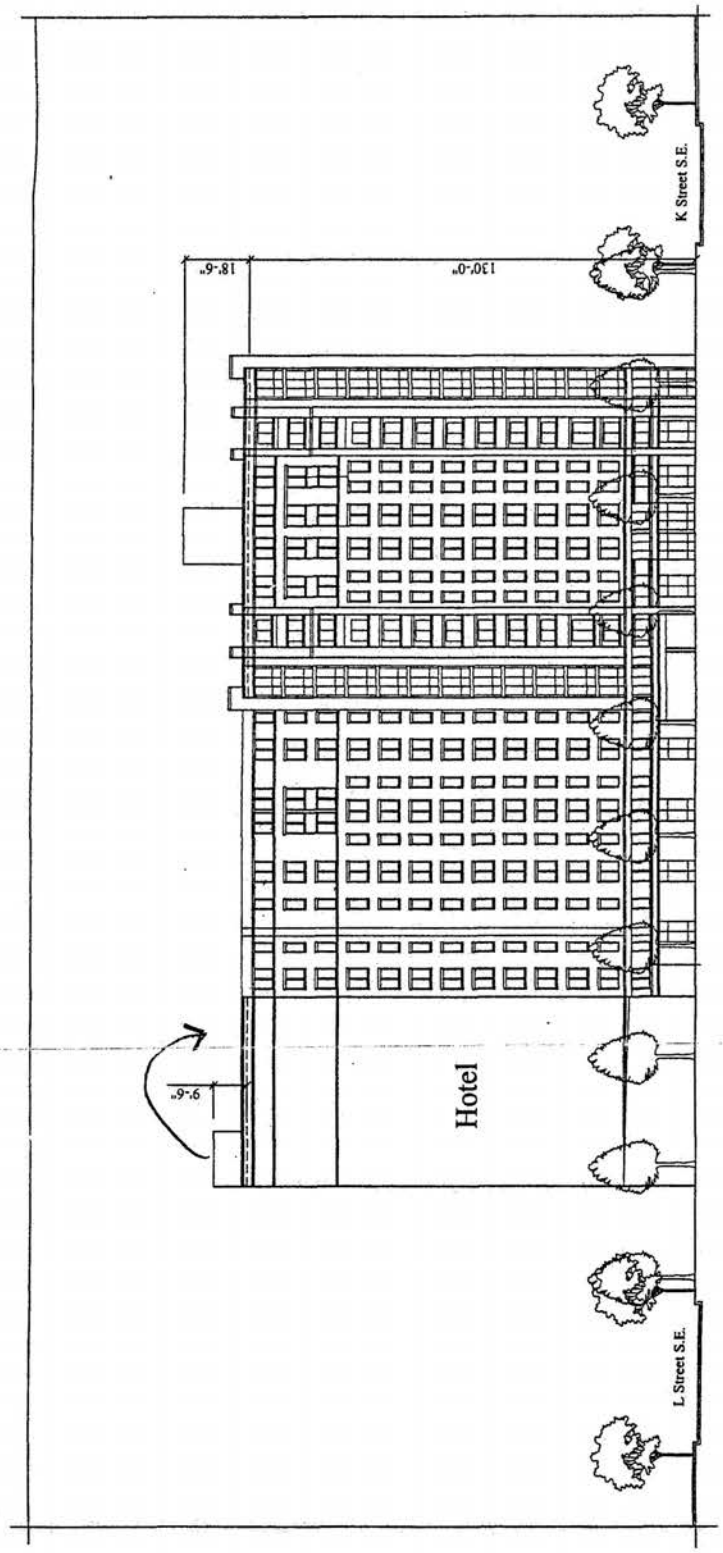


Incorrect location of proposed southeastern roof structure
With arrow indicating correct proposed location



Incorrect location of southeastern roof structure
With arrow indicating correct location

Note blank wall of hotel



East Second Street S.E. Elevation

Capitol Hill Towers

SKG ARCHITECTS & PLANNERS

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[redacted]hal Corp.