GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director

DATE: October 2, 2000

SUBJECT: BZA Application #16603 (Fidelity Limited Liability)
5th and Massachusetts Ave. Apartments

BZA
Case No. 16603
Exhibit No. 45

I. APPLICATION IN BRIEF

Fidelity Limited Liability wishes to facilitate the construction of an apartment building in Square 517, Lot 50, in the near-northwest section of Washington. The applicant is not itself the developer of the proposed project; it expects to contract for the actual development. The site has been zoned recently to DD/C-2-C. Pursuant to 11 DCMR §3104.1, the Applicant has applied for variances from the following sections:

- §774.1, rear yard setback;
- §773.3, recreational space requirement;
- §1706.7, maximum permitted FAR.

II. OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

OP's analysis indicates the applicant meets the tests for the requested variances. Based on this, and on the project's substantial furtherance of the goals the Comprehensive Plan, the Ward 2 Plan, and several sector plans OP is in the process of completing, the Office of Planning recommends the Board approve all of the variances requested by the applicant.

III. SITE AND AREA DESCRIPTION

Square 517 in northwest Washington is essentially triangular in shape, bounded by a short section of I Street and Massachusetts Avenue on the north, H Street on the south and 5th Street

Board of Zoning Adjustment
District of Columbia
CASE NO.16603
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NW on the west. The subject parcel – Lot 50 -- is shown in the center of the attached orthographic photo. The proposed project's site plan is also attached.

The parcel is located on the northwest corner of Square 517, with western frontage on 5th Street, northern frontage on the short section of I Street and Massachusetts Avenue, a southern boundary along an alley, which runs east to west from 5th Street south of Massachusetts Avenue, and an eastern boundary along the continuation of the aforementioned alley as it runs north to Massachusetts Avenue.

To the north, across I Street and the 160-foot right-of way of Massachusetts Avenue is federal reservation/park No. 72, a commercial surface parking lot, the House of Ruth women's shelter, a used-car lot, and a mix of one, two and three story row structures – many of which are vacant. To the east, across an alley, are several vacant buildings, a parking lot, restaurant and a vacant 19th century firehouse. Across the southern alley is a 3 story brick building fronting on 5th Street. It is part of the downtown historic district and is occupied by the Blinded Veterans Association. The D.C. Lung Association is adjacent to the Blinded Veterans Association on H Street,. Also on H Street, a relatively modern 10-story apartment building known as Judiciary House occupies the remainder of the block. To the west, across the 80 foot right-of-way of 5th Street is the Corinthian Baptist Church and the Gospel Mission Building, with the Red Roof Inn, and several parking lots to the southwest.

The site and surrounding areas are shown in the attached perspective photographs.

IV. PROJECT DESCRIPTION

The apartment building at Fifth Street and Massachusetts Avenue is proposed by the applicant to be a 130 foot tall, 14 story, L-shaped building. The building design is somewhat schematic at this point, and the final design will depend on the plans drawn by the successful bidder. The description that follows, however, is expected to be quite close to the final product, given extensive discussions between the applicant and the prospective bidders.

The project will contain approximately 464, 470 gross square feet, and have a 10.36 FAR. There will be roughly 440 residential units, and, possibly, some modest retail space on the ground floor. The apartments are expected to be studio, 1 bedroom and 2 bedroom units. There will be two elevator-cores, one for each of the two legs of the "L" shape. The building will face north, with its main entrance on I Street and Massachusetts Avenue. The applicant plans to have a U-shaped driveway and *porte cochere.* as well as the entrance to the underground parking along the I Street frontage. The northern portion, along Massachusetts Avenue, will be set back from the street as part of a 45-foot greensward design for this L'Enfant street. The south side of the building directly abuts the alley. A small landscaped area, a three-berth loading bay, and an additional small green space break up the south face of the building as it fronts the alley.

Recreation space is being provided in two main locations. First, a room that is tentatively programmed as a fitness room will connect to a small landscaped area on the building's south side, next to an alley. The second recreation area is a rooftop room and observation patio on the east side of the building. This would have significant skyline views, including several national landmarks.

There would be between 2 and 3 levels of underground parking, providing space for between 226 and 339 vehicles – i.e., 0.5 to 0.8 spaces per residential unit

The following chart is based on the most recent figures provided by the applicant. Applicant has indicated that gross square footage (and therefore the FAR) as well as the recreation space may not be exact, final figures, due to ongoing discussions the applicant is having with the project's intended final developer. OP's report is based on the figures indicated below. Our recommendations allow for the uncertainties indicated by the applicant by couching certain recommendations in terms of recommended maximum or minimum allowable square footages, FAR's and percentages. (See final page of this report):

Element	Proposed	Required/Allowed	Citation	Differential
Lot Size	44,833 SF	N/A		N/A
Building lot coverage and gsf footprint	80 %; 35,866 gsf	80%; 35,866		N/A
Height	130 feet maximum, w/ set-backs above 110', plus roof structures	130 feet, w/ 1:1 setback above 110' on side facing Mass Ave.	Sec. 1701.7	N/A
Number of Floors	14	N/A		N/A
Gross Square Footage	464,470 maximum	304,861	Sec. 1706.4	159,609 gsf *variance needed*
Floor Area Ratio (FAR)	10.36 maximum	8.5	Sec. 1706.7 (b)	1.86 *variance needed*
Recreation Space	3.9 %, i.e, 18,200 maximum	15% of GFA; i.e., 69,670.5 sf	Sec. 773.3	11%, i.e., 55,470 sf *variance needed*
Parking Spaces	226-339	Approx. 110		116 to 229 in excess of requirement
Parking Spaces per Unit	.5 - .8	.25 minimum required; more allowed	Sec. 2101.1	.25 to .55
Rear Yard	None	15 feet	Sec. 774.1	15 feet; *variance needed*

V. RELATIONSHIP OF APPLICATION TO THE COMPREHENSIVE PLAN

In the Comprehensive Plan, there are several references to facilitating the development of housing in this section of downtown. Chief of these is the goal set in 900.7, which states:

900.7 A significant residential community is necessary to a vital Downtown. A general target of five thousand four hundred (5,400) residential units has been established, a significant increase from the base of one thousand eight hundred (1,800) units.

Another section particularly relevant to this case is found in 903.2:

903.2 (c) Facilitate the mixed-use development of Massachusetts Avenue, NW, that emphasizes the residential component of that mix, primarily in high-rise apartment buildings, and coordinate development to avoid substantial time lag between the nonresidential development;

903.2 (d) Encourage residential use as part of mixed-use projects south of Massachusetts Avenue, NW;

903.2 (i) Encourage improvement and development of residential areas adjacent to and near downtown.

Square 517 is located on the northern edge of Downtown, where the Chinatown, Judiciary Square and NOMA neighborhoods border each other. It is (as of mid-September, 2000) within the Downtown Development District, in an area where the construction of several thousand units of new housing is a primary goal of the development plans for Downtown, Chinatown and NOMA, alike. The Comprehensive Plan clearly supports the idea of facilitating the development of housing in this location.

The almost-completed Downtown Action Plan (described in more detail below) estimates that, even with the completion of all the housing required by zoning for the DDD area, there will still be a shortage of over 1,000 units from the 5,400-unit target for the area south of Massachusetts Avenue. Clearly, if the relief requested in this application were granted, it would assist in closing that gap.

VI. CURRENT ZONING

On September 21, 2000 the property received approval by the Zoning Commission to be rezoned from HR/SP-2 to DD/C-2-C. When the Downtown Development District (DD) was created in 1990, the site was covered by an approved PUD. Even though the DD regulations specifically listed Square 517, the Zoning Regulations state that when a PUD expires, the property reverts to its "pre-existing" zoning (§2408.14). Therefore to ensure consistency with the DD regulations the Zoning Commission made this largely technical change.

The DD overlay designation is designed to encourage housing in downtown. The table below outlines DD requirements and incentives and compares them with the C-2-C, DD-C-2-C, and C-4 designations.

	Base C-2-C	DD/C-2-C	Requirements	Base C-4
Height	90 feet	110' on 90' streets 130' on Mass Ave.	1:1 set-back above 110' on Mass Ave.	130' on 110' streets
FAR	6.0 Residential 2.0 Other	8.0 + 0.5 w/ Residential; i.e., 8.5	4.5 Residential (minimum) 0.5 Retail (NA to housing)	8.5 or 10, depending upon the width of street in front
Special Incentives		Generation of TDR	Housing must be built on site, or must be transferred via Combined Lot Mechanism	
Residential Lot Coverage	80%	80%		100%
Recreation Space	15%	15%		5%
Rear Yard	Below 20' height, 15' from center of Alley Above 20' height, 15 from alley curb.	Same as C-2-C		2.5" per vertical foot of building height

In effect, the applicant's proposed development comes closest to approximating a development in a C-4 zone on a 110' Street (i.e., Mass. Ave); although even at C-4, this project would still require zoning relief of .36 FAR (Secs.771.5, 770.4); 1% for recreation space (Sec. 773.3) ; and 17 feet for rear yard requirements (Sec. 774.1).

VII. ZONING HISTORY OF PROJECT AREA AND PRECEDENTS FOR ZONING RELIEF TO ENCOURAGE DOWNTOWN HOUSING

History

The Zoning Commission undertook a major rezoning of a portion of Downtown, including Square 517 and the surrounding area, in 1990 in the Downtown Development District case (Zoning Commission Case No. 89-25; Zoning Commission Order 681, adopted December 17, 1990 and effective January 18, 1991). A large area, generally bounded by G Street on the south, New York Avenue on the north, 6th Street on the west and 3rd Street on the east was rezoned to DD/C-2-C, a zoning overlay district intended to achieve a mix of residential and commercial development. The previous zoning in the southern portion of this larger area was HR/SP-2. Zoning Commission Order 681 generally rezoned that area to DD/C-2-C.

There are three exceptions to the general pattern of rezoning to DD/C-2-C in the area noted above.

- First, in the 1990 DD District rezoning, a portion of Square 517 facing on H Street, N.W. was rezoned to DD/R-5-D to relate to and protect the existing Judiciary Square apartment building.

- Second, in the 1990 DD District rezoning, the northern portion of Square 485 to the west of Square 517 was rezoned from HR/SP-2 to DD/R-5-D to reflect the pattern of residential buildings and use on that portion of the Square. Square 485 is also included in the Downtown Historic District. In addition, the adjacent southeast corner of Square 453 was rezoned from R-5-D to DD/R-5-D to reflect and protect the existing Wah Luck House (apartment building). Note that both of these small DD/R-5-D areas later became DD/R-5-E when the R-5 districts were renumbered later in the mid-1990s.

- Finally, in Zoning Commission Case No. 81-15C, Zoning Commission Order No. 369, the Zoning Commission approved a Planned Unit Development (PUD) for a hotel/office development on this site. The underlying zoning with the PUD was changed from HR/SP-2 to HR/C-3-C. The Order for this PUD was extended several times but expired in October 1987. The zoning on this property then reverted from the HR/C-3-C (with the PUD) to HR/SP-2.

A new PUD with an office and residential mix was soon proposed for the site. The underlying zoning was again to be changed from HR/SP-2 to HR/C-3-C. The Zoning Commission approved this new PUD, adopting Zoning Commission Order No. 639 on February 12, 1990. Note that this activity on the second PUD was taking place approximately one year before the Downtown Development District was approved in late 1990.

It is important to note that the Housing Priority Areas designated in the DD, with their incentives and requirements, are falling well short of the number of housing units set as a goal by the Comprehensive Plan (5,400). A large part of this shortfall may have been due to the extended down-cycle the District's real estate market faced in the first half of the 1990's. Since about 1997, a notable resurgence in housing interest downtown has coincided with a once-again booming office market. Despite having to compete with the office market, there are several significant new housing projects planned for downtown, all of which have received or have asked for some form of incentive or relief to be completed. These include:

- Square 454, Gallery Place - a mixed-use development partially subsidized by the use of TIF financing.
- Square 457, (vicinity of Clara Barton offices) - resulting from a General Services Administration RFP, which wrote down the cost of land.
- Square 486, Avalon Bay - received relief from recreation space and retail requirements.
- Square 377, JBG - Project has applied to be included in the Housing Priority C to receive DD incentives.
- Square 516, American Housing Partnership - a mixed income project receiving HFA financing.

Current Housing-Related Rezoning Efforts

In an effort to fulfill the goals for housing in the downtown, the District has undertaken two separate-but-related efforts. First is the Mayor's Downtown Housing Task Force (1999-2000), which looked at the problems facing the development of housing downtown. Second was the Downtown Action Plan (circa 1998-2000), which coordinated the findings and recommendations of several task forces into a report with a comprehensive set of recommendations and implementation steps to complete the goals and objectives of the Comprehensive Plan.

The Mayor's Task Force investigated the obstacles facing housing downtown and prepared a set of recommendations designed to help housing development overcome those obstacles. The chief obstacle was seen as the need for housing to compete for land at prices driven by the office market. The focus of the task force's recommendation was, therefore, methods by which the playing field could be leveled. The recommendations most relevant to this case are:

- Allow greater density in the DD for housing built on streets that permit buildings to reach 130 feet in height. This is based on the fact that housing does not have the same slab-to-slab height requirements that offices have. New offices typically require 12 to 13 feet between floors for HVAC and telecommunication systems. However, housing development has fewer requirements on the space between floors. Therefore more floors (and therefore greater FAR) can be achieved on the same site.

VIII. RELIEF REQUESTED

The Applicant is requesting variance relief from Subsections 1706.7 (FAR limits), 773.4 (Recreation Space), and 774.1 (Rear Yard). The applicants reasons for requesting these variances, and the OP response to each request, follows.

A. §1706.7 – Request for FAR Variance

§1706.7: The maximum permitted gross floor area may be increased by 0.5 FAR up to a maximum of 8,5 FAR in the DD/C-2-C District, 10.0 FAR in the DD/C-3-C District, and 10.5 FAR in the DD/C-4 District; Provided, that the following occurs:

(b) The increased gross floor area may be entirely devoted to residential use;

The applicant requests an FAR of 10.36.

The Applicant has cited three exceptional situations that arise from the site's situation as the basis for a variance to increase the density beyond the already extended density of the DD. In OP's opinion, two of these are most relevant to the case:

- The applicant has stated that the triangular shape of the property impacts the configuration of the units, "such that additional FAR is necessary to allow the developer … to make the Project economically viable".

  OP Response: OP notes that the proposed building design includes many unusually shaped units and odd circulation space angles, presumably in response to the site's shape. These parcel-dictated shapes may well reduce the market rates that can be charged for residential units on an already expensive downtown site.

- The site is in the easternmost section of the Downtown Development District, an expensive land area where the City strongly encourages construction of housing. The applicant describes the paucity of new, unsubsidized residential construction in this area, making the construction of an all-housing project at this site somewhat risky from a market standpoint.

  OP Response: OP notes, and the BZA is aware of, the market conditions that have long mitigated against the construction of housing in such a location. As noted above, OP is already considering recommending new zoning regulations that would allow greater density for residential buildings that are on streets permitting heights of 130 feet and are in the DD. A set down report for these proposed changes is being prepared for the Zoning Commission's review, a copy of which may be available for presentation to the BZA at the hearing for this case. Not only would the project the applicant wishes to facilitate not impair the intent and integrity of the zone plan, it is consistent with the objectives of the very zone plan changes OP will be soon proposing to the Zoning Commission.

B. §773.3 – Request for Recreational Space Variance

§773.3 In a C-2-C district, an area equal to not less than 15% of the gross floor area devoted to residential use shall be provided as residential recreation space.

The applicant proposes to provide approximately 4% of the gross floor area as recreation space. The space is likely to provide a fitness facility and adjacent garden on the first floor, and a meeting/party room and roof deck on the top floor.

OP Response: OP notes that the alternative to the proposed variance is to drastically reduce the amount of housing the project would provide – an alternative that would likely result in the project's not being built, and a substantial contribution to the City's downtown housing objectives not being realized.

Given the proximity of other public open space along and across Massachusetts Avenue, as well as the substantial public entertainment, cultural and recreational amenities in the adjacent downtown and National Mall areas, OP feels that the 4% gfa devoted to recreation space is not inappropriate. This percentage is quite close to that required for C-4 districts, a zone whose parameters this proposed project closely approximates, because of the increased density provided for C-2-C projects as a matter of right in the DD District. In addition, at least in the initial stages of the downtown housing resurgence, the demographic market for such housing units is likely to have only minimal on-site recreation needs.

C/ §774.1 – Request for Rear Yard Requirement Variance

§774.1 Except as provided in this section, a rear yard shall be provided for each structure located in a Commercial district, the minimum depth of which shall be 15 feet for a structure in a C-2-C district.

§774.3 Apartment and office windows shall be separated from other buildings that contain facing windows a distance sufficient to provide light and air and to protect the privacy of building occupants.

§774.4 In determining distances between windows in buildings facing each other, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be sufficient to provide adequate light and privacy to the rooms.

The applicant requests a variance from the rear yard requirement, stating that, because of the irregular shape of the site, the project would not be economically feasible without construction of the number of units that relief from the rear yard requirement would enable.

OP Response: The goal behind the rear yard requirement is to ensure the provision of light and air for the units at the rear of a proposed building, and for any building that may exist or be constructed across from the rear of the proposed building.

OP notes that the project is designed to meet many of the District's efforts to encourage housing in the downtown. While OP has expressed to the developer its concern that the requested variance from the rear yard requirement may reduce the light and air of units on the south ("long" alley) side of the building, OP feels that, in balance, the variance is justified given the extraordinary contribution the project will make to realizing long-desired goals for downtown housing. In addition, the applicant argues that the reduced desirability of the rear lower level units will be compensated for by reduced price.

Further, the variance is not likely to cause substantial detriment to the public or to the intent, purpose and integrity of the zone plan. The rear yard requirements were written at a time when artificially controlled air was not as prevalent in apartment buildings, and when the downtown population mix of those requiring greatest access to natural light and

air -- children and the elderly -- was greater than in current market conditions. The properties across the alley bordering this proposed project on the south are currently either of low height or set back from alley to a greater degree than the zoning regulations require. Although there is some risk that future by-right redevelopment of these sites could affect the quality of light and air for those apartments along the southern edge of the applicant's proposed project, that is less likely in this case because the two buildings on the southwestern corner of the square are included in the Downtown Historic District, and therefore are subject to protection from demolition of the existing structures and a density cap of 6.0 FAR. OP feels that as the new downtown housing market becomes more established, it will be important to monitor the cumulative impact of possible variances from the rear yard requirement.

COMMUNITY COMMENTS

ANC 2-C has voted to recommend approval of the project. There is no community opposition in the case record, nor is OP aware of any other opposition having been registered to the requested relief, or to the proposed project.

AGENCY COMMENTS

OP would normally have circulated such an application to the Department of Public Works (DPW) for its comments on traffic and parking impacts. However, because the applicant is proposing to construct parking in excess of that required, and because the proposed residential project would have considerably less impact on traffic than the commercial structure that could be constructed by-right on this site, OP has not requested DPW comments.

SUMMARY RECOMMENDATION

OP finds that the application demonstrates that the subject site is of an unusual shape, such that a strict application of the zoning regulations would impose a practical difficulty on the applicant; that in the requested instances, variance relief can be granted without substantial detriment to the public good and without impacting the intent, purpose and integrity of the zone plan and that, in fact, the construction of the project would substantially further long-stated public goals for downtown housing and increased tax base, as embodied in the Comprehensive Plan, the Ward 2 Plan, the 1984 Plan for a Living Downtown, and the draft (2000) Downtown Action Plan.

OP recommends the Board of Zoning Adjustment

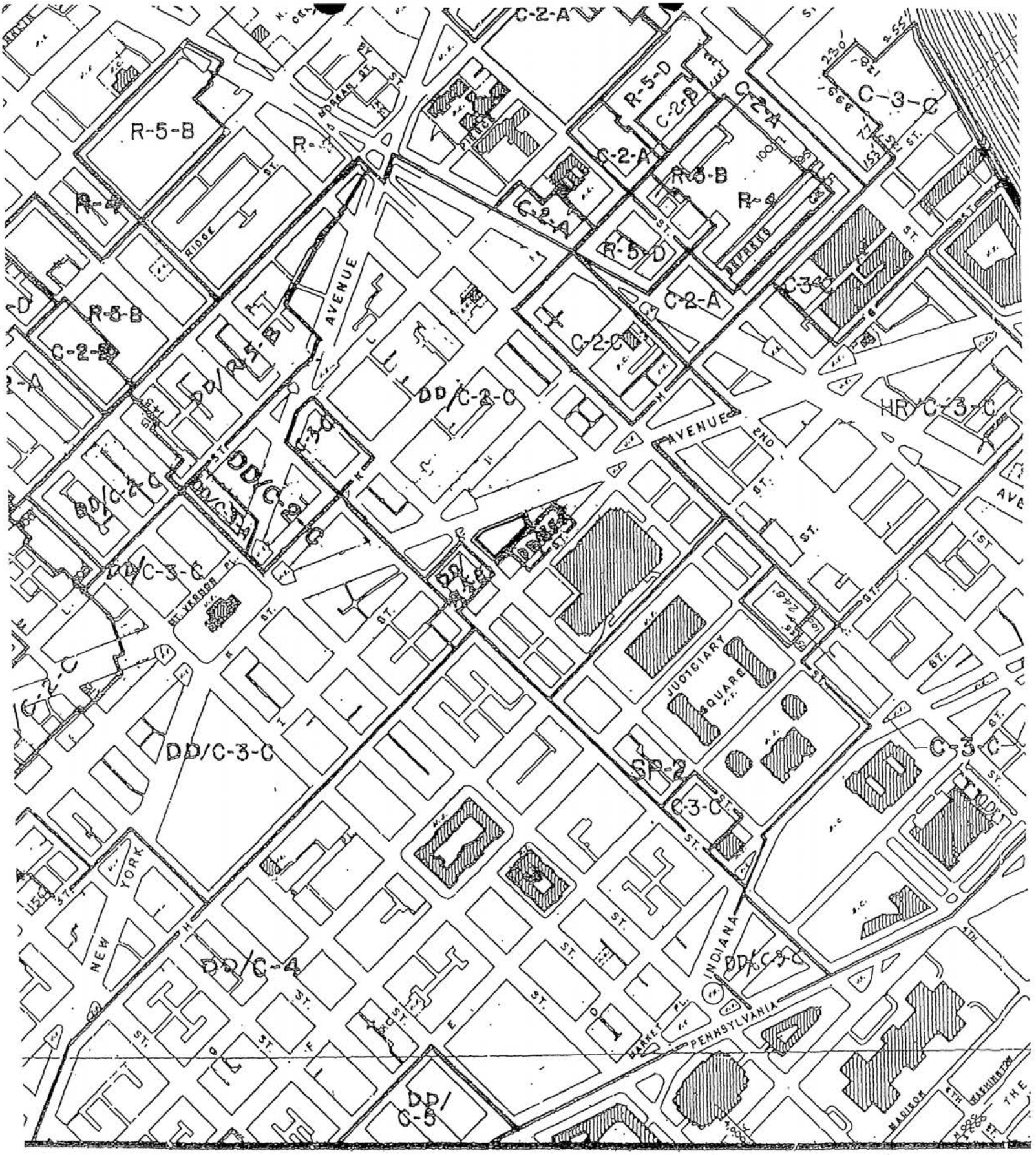
- Grant all variance requests;
- Because of the applicant's desire to preserve a certain amount of flexibility for the ultimate project developer and because of the applicant's uncertainty about exact square

footages the final project developer may build, condition the approval to the submitted plans, citing, in particular, the following maximum and minimum figures:

-
    - the building's gross square footage shall be no more than 467,470 gsf
    - the building's FAR shall no greater than 10.36;
    - the project's recreation space shall be no less than the larger of 18,200 square feet or 3.9 percent of the building's gross square footage;

Attachments

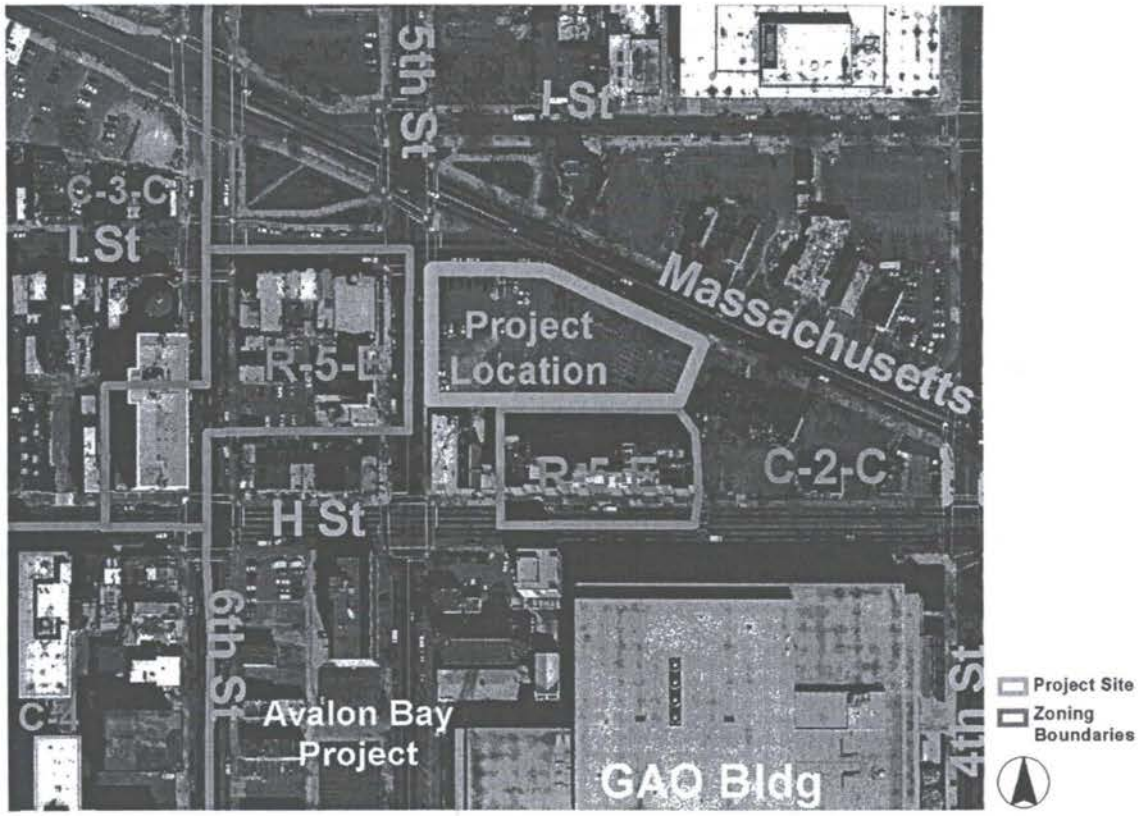
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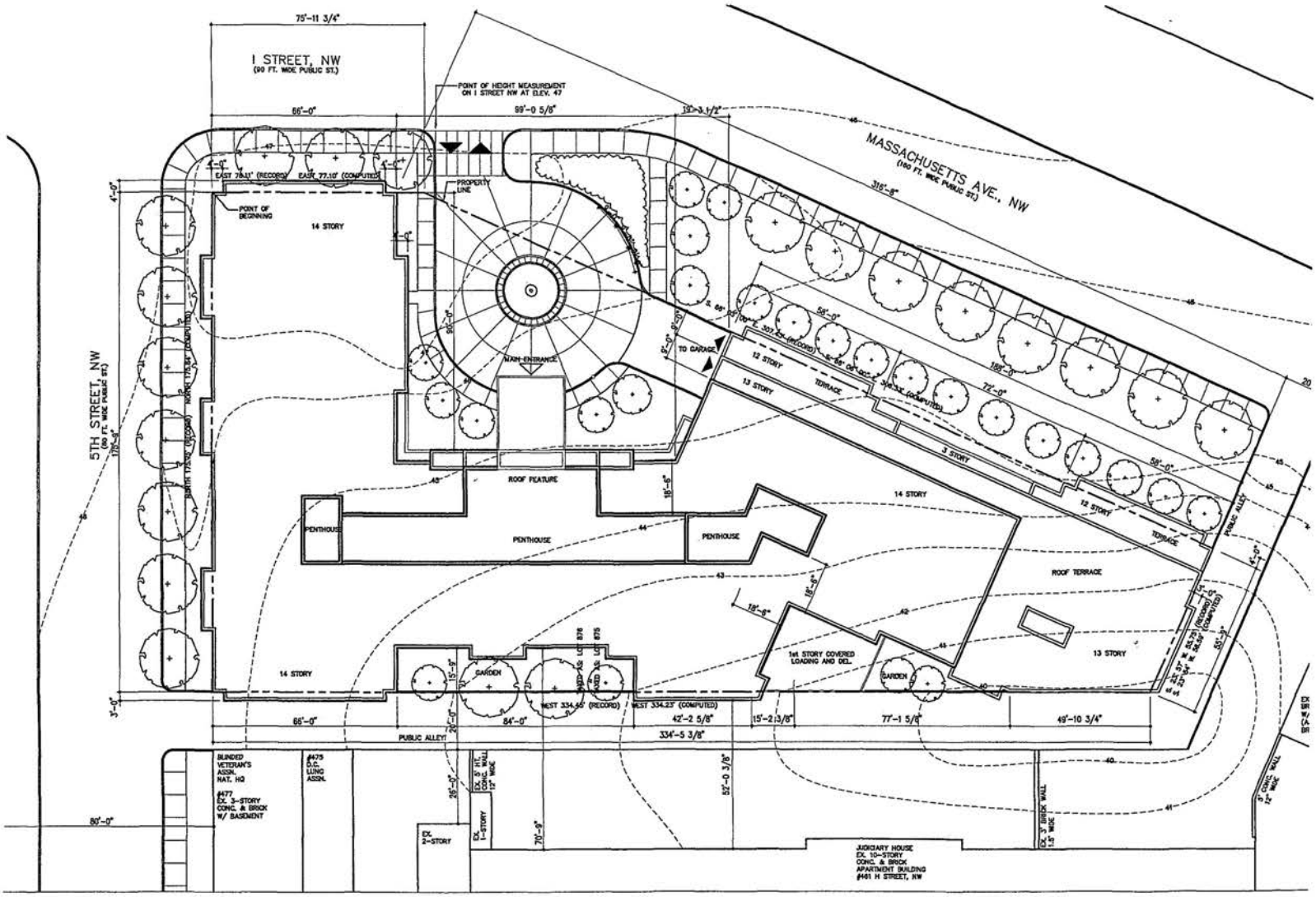
COLUMBIA

MAP


Federal Triangle
White House
The Ellipse
Washington Monument
The Mall
Smithsonian
Archives
Memorial
Federal Triangle
District Building
Penn Quarter
Mount Vernon Square
Chinatown
Gallery Place
Metro Center
Logan Circle
Dupont Circle
Shaw
Howard University
Georgetown
CONSTITUTION
INDEPENDENCE
MASSACHUSETTS
NEW YORK
RHODE ISLAND
FLORIDA
VIRGINIA
EXHIBIT F



Source: DC Office of Planning, Planning & Design Information Techonoogy, Sept. 2000



OARD OF ZONING ADJUSTMENT SUBMITTAL C G INVESTMENTS, INC. 5TH & MASSACHUSETTS AVENUE APT

ARCHITECTURE PLANNING INTERIOR DESIGN

WASHINGTON,

1. View of the subject property (parking lot) looking south from Massachusetts Avenue, N.W. The building in the background is the 10 story Judiciary House apartment building.



2. View of the subject property looking northeast from 5th Street, N.W.



3. View looking northwest across the intersection of 5th and Massachusetts Avenue, N.W. from the subject property. The brown building in the background is the National Public Radio office building.



4. View looking north across Massachusetts Avenue at the 3 story row dwelling occupied by the House of Ruth.



5. View looking northeast at parking lot located across Massachusetts Avenue, N.W. The building in the background is the Chester Arthur federal office building which fronts on the south side of I Street, N.W.



6. View of the streetscape on the northside of Massachusetts Avenue, N.W. between 4th and 5th Streets, N.W.



7. View of the boarded buildings including a defunct fire engine company located directly north of the subject property.



8. Restaurant and accessory parking lot located on the eastern most corner of the subject square.



9. Two photographs of the buildings located to the south of the subject property looking along H Street, N.W. The large building to the left in the first photo is the Judiciary House apartments.





10. U.S. General Accounting Office building located to the south of the subject property on H Street, N.W.



11. View of the properties located to the west of the subject property, including the Corinthian Baptist Church on the southwest corner of 5th & I Streets, N.W.



12. View of the Gospel Rescue Mission located across 5th Street to the east of the subject property.



13. View of the streetscape of the southside of H Street, N.W. looking west from 5th Street, N.W.



14. Red Roof Inn on the southwest corner of the intersection of 5th and H Streets, N.W.





FROM NORTHEAST CORNER OF EYE STREET, N.W. & 5TH STREET, N.W.



FROM NORTH SIDE OF MASSACHUSETTS AVENUE, N.W.



FROM WEST SIDE OF 5TH STREET, N.W.



FROM NORTHWEST CORNER OF THE PROPERTY