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October 17, 2000

OCT 17 00 03:26 PM
DIST

BY MESSENGER

Ms. Sherri Pruitt
Office of Zoning
Suite 210
441 Fourth Street, N.W.
Washington, D.C. 20001

Re: BZA Application Number 16629; Penn Capital, LLC; 233 Pennsylvania Avenue, S.E.

Dear Ms. Pruitt:

Enclosed herewith are one original and eight (8) copies of the Applicant's Pre-Hearing Statement in the referenced proceeding. Attached to the Pre-Hearing Statement are Exhibits "A" through "D."

Copies of the enclosures are being hand-delivered this date to the Office of Planning and mailed this date to the Capitol Hill Restoration Society and ANC 6-B.

Please call me with any questions you may have. Thank you.

Sincerely,

Jacques B. DePuy

JBD/dmh:144241
Enclosures

cc: Office of Planning (Attn: Maxine Brown Roberts) (via hand delivery)
Capitol Hill Restoration Society
ANC 6-B
Mr. John Sargent
(All copies w/encls.)

BZA
Case No. 16629
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16629
EXHIBIT NO.28

PRE-HEARING STATEMENT IN SUPPORT OF AN APPLICATION FOR AN AREA VARIANCE TO ALLOW THE THIRD FLOOR OF 233 PENNSYLVANIA AVENUE, S.E. TO BE USED FOR GENERAL OFFICE USE; BZA APPLICATION NUMBER 16629

THIS PRE-HEARING STATEMENT is submitted on behalf of Penn Capital, LLC ("Applicant") by its attorneys, Greenstein DeLorme & Luchs, P.C., by Jacques B. DePuy, Esquire, in support of an application for an area variance pursuant to Section 3107.2 of the Zoning Regulations to allow the third floor of 233 Pennsylvania Avenue, S.E. ("Property") to be used for general office use.

I.

The Property is located in the Capitol Hill Historic District and the Capital Interest District (CAP Zoning Overlay District) and is zoned CAP/C-2-A. The Property has been zoned C-2-A for over forty (40) years, from 1958 to the present, and was included in the CAP Overlay District in 1985. The Property is located in a commercially zoned district that extends along Pennsylvania Avenue, S.E. from Second Street, S.E. to Fourth Street, S.E. (See excerpt of Zoning Map attached hereto as Exhibit "A".)

The buildings on both the south and north sides of the 200 block and the 300 block of Pennsylvania Avenue, S.E. have been used since the late 1800s and throughout the entire twentieth century for commercial purposes. During such time, these buildings have been occupied by offices, retail establishments and service facilities.

Buildings in these blocks customarily contain a variety of retail and service uses at street level and office uses on the upper floors. Current uses within the south side of the 200 block of Pennsylvania Avenue, S.E., include a book store, several restaurants, two (2) banks, a liquor store, a beauty salon, offices for nonprofit organizations and offices for general office purposes.

The south side of the 200 block of Pennsylvania Avenue, S.E. is improved with 2-story and 3-story brick and masonry buildings. (See a photographic elevation of the buildings located on the south side of the 200 block of Pennsylvania Avenue, S.E. attached as Exhibit "B".) The Property is the only four-story building located along the south side of the block. (Id.)

The third floor of the subject building, which is the subject of Application No. 16629, was most recently used for office use. However, no certificate of occupancy was apparently obtained for such use. The third floor has been vacant for approximately five (5) years. The third floor is long and narrow, is irregularly shaped and contains a significant amount of interior space that does not receive natural light or air. [As discussed below, providing such light or air to this space would be impractical or impossible.] The third floors of all of the other buildings in this bock, with the sole exception of the Property, are occupied by commercial tenants. (See Exhibit "B".)

II.

By this Application, the Applicant is seeking an area variance to allow the use of the third floor of 233 Pennsylvania Avenue, S.E. for general office use. Such use is in excess of the allowable 1.5 commercial floor area ratio ("FAR") set forth in the CAP/C-2-A zone district. The building currently contains 1,750 square feet of ground floor commercial use and, pursuant to the applicable FAR provisions, the owner may use a total of 3,718.5 square feet of gross floor area of the building for commercial purposes. By using the second floor (which can be used as a matter of right) and proposing to use the third floor for office use, the Applicant will use 5,280 square feet of gross floor area for commercial uses. [The Applicant intends to use the fourth floor as a residential unit.]

The burden of proof for an area variance is well established. The Applicant must demonstrate that the Property is affected by an extraordinary or exceptional condition, that the strict application of the Zoning Regulations will result in practical difficulties to the Applicant and that granting the variance will not cause substantial detriment to the public good

nor impair the intent, purpose or integrity of the zone plan. Palmer v. Board of Zoning Adjustment, 287 A.2nd 535, 541 (D.C. 1972).

The subject Application meets the required tests. First, the Property is affected by several extraordinary or exceptional conditions. Specifically, the lot (Lot 839) is irregularly shaped (See Exhibit "C") and the building is larger in size than adjacent and nearby buildings. (See Exhibit "B") In addition, the subject building is the only building on the south side of the 200 block of Pennsylvania Avenue that contains four floors. All other buildings in this block contain two (2) or three (3) floors. (See Exhibit "B")

Second, the strict application of the Zoning Regulations would cause practical difficulties to the owner. It would be impracticable or impossible to bring natural light or air into a large percentage of the interior space located on this floor. (See plans prepared by Balodemas Architects, Chtd. dated July 27, 2000 attached hereto as Exhibit "D".) In addition, it would be impractical to reconfigure the interior partitioning to convert the use to a use permitted by the FAR limitations.

Third, the requested area variance can be granted without adversely affecting the surrounding community for the following reasons:

1. Many years of commercial uses in the south side of the 200 block of Pennsylvania Avenue, S.E. have had no substantial adverse impacts on surrounding properties. The third floor of 233 Pennsylvania Avenue, S.E. is appropriate for office use, given the commercial nature of the block and specifically because of the truck and bus traffic, loading and unloading on Pennsylvania Avenue, S.E., noise and the heavy volume of pedestrian traffic.

2. The proposed use will not generate any noise, glare or light that shines on adjacent property or any other adverse effects.

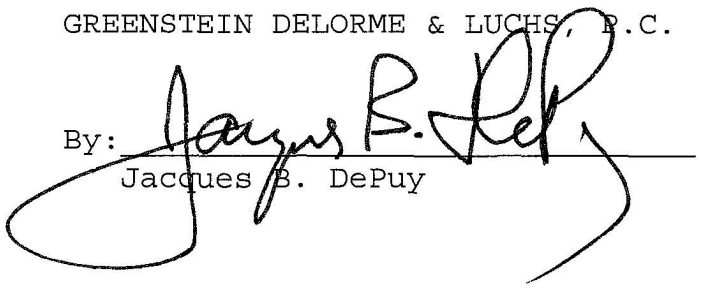
3. The traffic generated by the requested use will have no substantial adverse impact on the surrounding community. It is expected that the majority of employees will take public transportation and it is hoped that some employees will live in, and therefore walk from, the surrounding neighborhood. For visitors who drive to the site, parking is available in nearby commercial parking lots. The Capitol South Metrorail station is located approximately three (3) blocks from the Property and the Eastern Market and Union Station Metrorail stations are located within approximately six (6) blocks of the Property. In addition, there is a metro bus stop at Pennsylvania Avenue, S.E. and 3rd Street, S.E.

In addition, organizations that represent commercial interests on Capital Hill and community organizations that primarily represent the residential areas of Capital Hill have joined forces in an effort to fully utilize the commercially-zoned portions of Capital Hill, particularly including the upper floors of buildings zoned C-2-A, so that pressure to use residentially zoned structures is substantially lessened. This policy objective is the underpinning for the Ward 6 Element of the D.C. Comprehensive Plan which requires that the Zoning Regulations be revised to establish an overlay zone in the commercial corridors on Capital Hill in which the permitted commercial FAR "shall be increased to a maximum of 3.0 FAR (or 2.5 FAR for properties located in the Capital Interest District) as a matter of right...." Approval of the subject application for 233 Pennsylvania Avenue, S.E. will further this objective.

For the foregoing reasons, and on the basis of the evidence submitted with the application, it is respectfully submitted that the subject Application satisfies the legal requirements applicable to the requested relief and that it therefore be granted.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: 
Jacques B. DePuy

145390

EXHIBITS

1. Excerpt from Zoning Map (Exhibit "A")

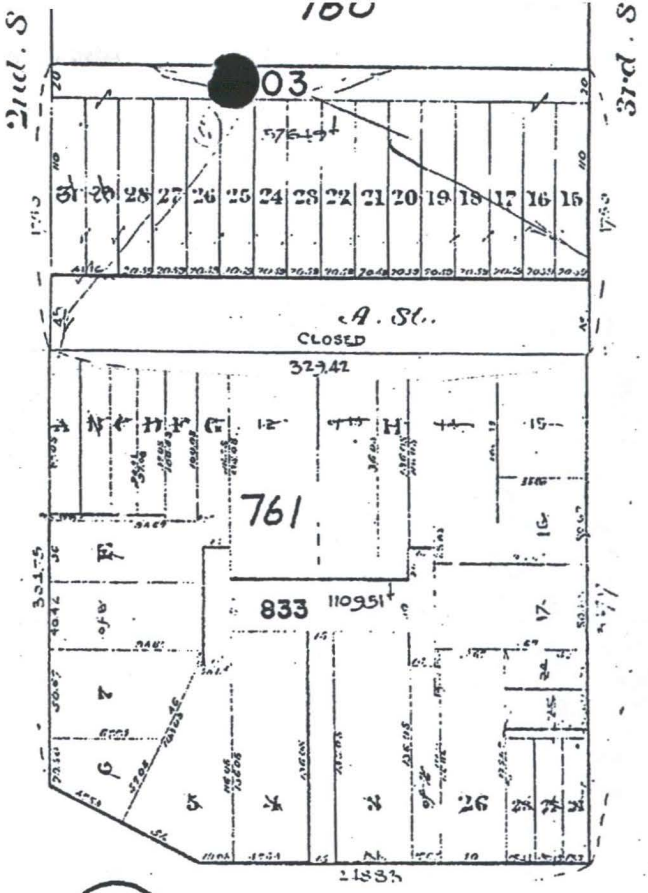
2. Photographic Elevation of buildings located in the south side of the 200 block of Pennsylvania Avenue, S.E. (Exhibit "B")

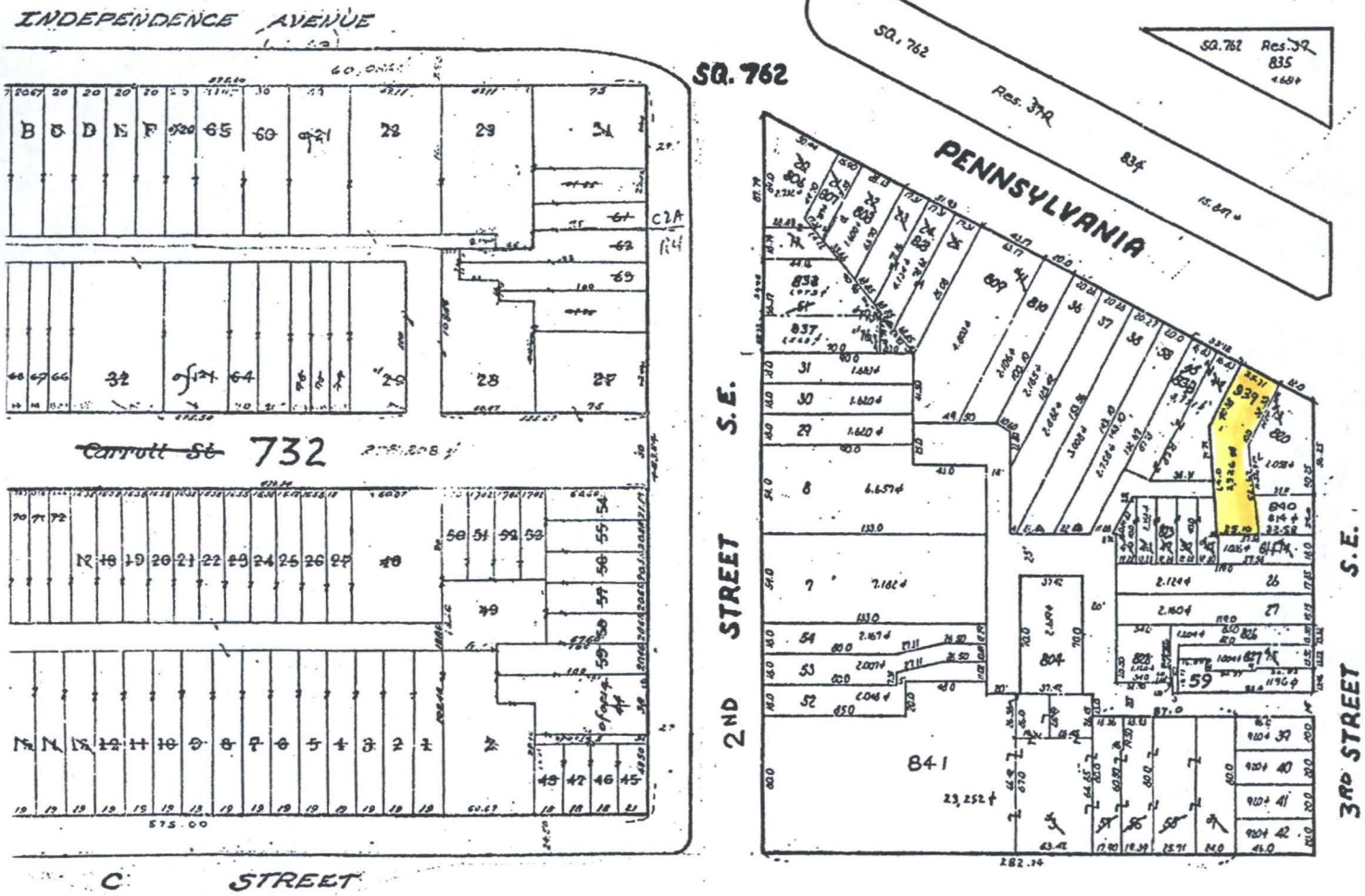
3. Sanborn Atlas (Exhibit "C")

4. Plans prepared by Balodemas Architects, Chtd. dated July 27, 2000 (Exhibit "D")

5
R-5-D
R-4
CAP/R-4
CAP/C-2-A
C-2-A
CAP/R-4
R-4
C-2-A
CAP/C-2-A
CAP/C-M-1
C-M-1
CAP/R-4
R-3-B
11TH
10TH
9TH
7TH
CONSTITUTION
AVENUE
LINCOLN PARK
KENTUCKY
MASSACHUSETTS
CAPITOL
EAST
INDEPENDENCE
CAROLINA
PENNSYLVANIA
SEWARD
NORTH
SOUTH
MARION PARK
FOLGER PARK
NEW JERSEY
VIRGINIA
PARK
GARFIELD
CAPITOL POWER PLANT
WALTER
LINCOLN PLAYGROUND
NCHA
3RD
2ND
1ST
D ST.
E CAPITOL ST.
SE CAPITOL ST.
50'

730


2nd. St.
3rd. St.
180
03
31 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15
A. St.
CLOSED
323.42
761
833
110951
21833


INDEPENDENCE AVENUE
SQ. 762
SQ. 762 Res. 39
835
SQ. 762
Res. 39
834
PENNSYLVANIA
Carroll St
732
2ND STREET S.E.
3RD STREET S.E.
841
23,252
C STREET
C ST

10/09/00



235 California Sunsations
233
231
229 Congressional Hunger Center
227
225 RPM Hair Salon
223
221
219 National Review
217
215 Public Citizen
213
211
209 Executive Office Suites & Conference Facility
207 Aristotle Power Tools For Politicians
205
203
201

3rd FLOOR COMMERCIAL TENANTS

BALODEMAS ARCHITECTS CHARTERED
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202-363-4820 Fax 4821
BalArch@aol.com

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