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February 13, 2001

MARY CAROLYN BROWN
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Internet Address:
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VIA HAND DELIVERY

Ms. Jerrily Kress
Director
District of Columbia Office of Zoning
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

D.C. OFFICE OF ZONING
RECEIVED
2001 FEB 13 PM 4:46

Re: BZA Case No. 16641
JBG/Twelfth & Massachusetts, LLC
Special Exception and Variance Relief

Dear Ms. Kress:

On behalf of JBG/Twelfth & Massachusetts, LLC, we are submitting herewith an original and ten copies of its pre-hearing statement in connection with the above-referenced amended application for special exception and variance relief. Eleven reduced sets of architectural drawings are also attached.

Should you have any questions regarding this matter, please do not hesitate to contact me at (202) 862-5990.

Very truly yours,

Carolyn Brown

Carolyn Brown

cc: ANC 2F
Richard Nettler, Esq.
Stewart Bartley
Chris Todd
George Dove
Whayne S. Quin, Esq.
Steven E. Sher

BZA
Case No. 16641
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16641
EXHIBIT NO.43

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF
JBG/TWELFTH & MASSACHUSETTS, LLC
1210-1216 MASSACHUSETTS AVE., N.W.

BZA APPLICATION NO. 16641
HEARING DATE: FEBRUARY 27, 2001
ANC 2F

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of JBG/Twelfth and Massachusetts, L.L.C. ("JBG"), in support of its amended application to the Board of Zoning Adjustment for the following special exception and variance relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3104.1 and 3103.2: (i) a special exception from the roof structure setback and enclosure requirements of section 411; (ii) a variance from the residential recreation space requirements of section 773.3; (iii) a variance from the area of closed court requirements of section 776.4; (iv) a variance from the court width requirement of section 776.3; and (v) a variance from the building setback requirements for the Downtown Development District along Massachusetts Avenue, N.W., under section 1707.7.[1] The relief is necessary to construct a 145-unit apartment house at premises 1210-1216 Massachusetts Avenue, N.W., Square 283, Lot 50 (the "Subject Property"), located in the DD/C-2-C Zone.

---

[1] In its amended application filed January 3, 2001, JBG also requested a variance from the record lot requirements of section 3202.3 to allow projections onto the adjacent property. As a result of discussions with the adjacent property owner, this relief is no longer required and JBG hereby withdraws its request for variance relief from that section of the Zoning Regulations.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment ("BZA" or "Board") has jurisdiction to grant the special exception and variance relief requested pursuant to D.C. Code § 5-424 and sections 3103 and 3104 of the Zoning Regulations (11 DCMR).

III.
BACKGROUND

A. Description of the Subject Property

The Subject Property consists of Lot 50 in Square 283, the city block bounded by Massachusetts Avenue, N.W., to the north, L Street, N.W., to the south, 12th Street, N.W., to the east and 13th Street, N.W., to the west. Square 283 is almost triangular in shape by virtue of its street boundary configuration. Lot 50 is an irregularly shaped through lot, with street frontage on both Massachusetts Avenue, N.W., to the north and L Street, N.W. to the south (see copy of site plan and building plat attached as Exhibits A and C, respectively). It is presently improved with a surface parking lot. The lot consists of two square shapes set at angles to one another and connected in the middle by a narrow hyphen. The hyphen marks a transition from the lower grade of the property along L Street to the higher grade at Massachusetts Avenue. Currently, the connection serves as a driveway between the upper and lower portions of the existing surface parking lot. Lot 50 consists of approximately 14,477 square feet of land area.

The property is located in the C-2-C District, a community business district designed to provide facilities for shopping and business needs, housing, and mixed uses. 11 DCMR § 720. The site is also overlaid by the Downtown Development

("DD") District, which is designed to promote the development of certain preferred uses, including housing, in areas often dominated by commercial office space. 11 DCMR 1700.3(b). It specifically targets the development of residential uses south of Massachusetts Avenue, N.W. and offers development bonuses to encourage such development. 11 DCMR §§ 1706.1(c) and (d), and 1706.7(b).

B. Description of Surrounding Area

The Subject Property is located in the northern segment of Washington's downtown core, an area characterized by a mixture of commercial, office, retail and residential uses. The abutting property to the west is improved with the Massachusetts House, a 274-unit apartment building constructed in 1969. The ten-story building wraps around the western end of the block, with street frontage on Massachusetts Avenue, 13th Street and L Street.

Immediately to the east of the Subject Property along Massachusetts Avenue is a two-story Victorian rowhouse, currently occupied by the Swiss Inn Hotel. Immediately to the east along L Street is the American Health Care Association, a four-story office building with street frontage on both L and 12th streets.

To the north across Massachusetts Avenue is the Church of the Ascension and St. Agnes, an historic landmark, two small scale rowhouses, and the ten-story Cambridge Apartments. To the south across L Street is a twelve-story modern office building and the Strong-John Thompson School.

C. Project Description

In fulfillment of the plans for Downtown and the housing goals of the DD District, JBG proposes to construct a thirteen-story apartment house with a small

supporting retail/commercial component. The supporting retail/commercial area, comprised of approximately 800 square feet of space, will be located on the grade level at L Street.

The proposed project is designed to conform with the amendments now pending before the Zoning Commission in Case No. 00-30T. Those amendments were the subject of a public hearing on February 12, 2001, and a decision is expected on March 12, 2001. Under these proposed amendment, buildings devoted to residential and retail would not be subject to any maximum FAR limitation. Instead, building density would be controlled by the applicable height and lot occupancy limitations. (See proposed new section 1706.7(d) of the District provisions in Z.C. Case No. 00-30T attached as Exhibit F.) The proposed building will consist of 150,110 square feet of space, with a floor area ratio ("FAR") of approximately 10.36.

The 145-unit building will contain a mixture of efficiencies, one and two-bedroom apartments, and two-bedroom duplexes. A three-level below grade garage will provide the required parking for the building, consisting of thirty-six full size and twenty-four compact spaces, and three handicapped space, for a total of sixty-three regulation spaces. The project will also provide another forty-six "non-regulation" spaces in vaults areas along Massachusetts Avenue and L Street, and in stacked spaces. All together, the project will accommodate 109 cars, more than three times the number required under the Zoning Regulations.

The primary façade of and main entrance to the building are located on Massachusetts Avenue. The service areas to the building for parking and loading

are located at the L Street elevation. All sides of the building, however, are fully designed. Particular attention has been focused on the west elevation of the building facing the Massachusetts House apartments. In negotiations with the owner of Massachusetts House, JBG has redesigned the decorative pattern on the otherwise blank wall of the elevator core. This element now features a bold design of interlocking circles and X's. The overall architectural treatment of the building reflects a Classical tripartite composition of base, shaft and cap. The first floor is articulated in granite and brick, floors two through eleven are faced in brick and a synthetic stucco material known as exterior insulation finish system ("EIFS"), and the top two floors are likewise finished in synthetic stucco. A slightly projecting cornice caps the building. The verticality of the building is emphasized on all sides with projecting bays at the second through twelfth floors. Contrasting materials are used for these projecting bays to provide architectural interest to the building. Decorative grillwork, metal railings and other embellishments further enhance the appearance of the building and emphasize its residential character.

IV.
THE APPLICANT MEETS THE TEST FOR SPECIAL EXCEPTION RELIEF TO ALLOW ADJUSTMENTS TO THE ROOF STRUCTURE REQUIREMENTS UNDER 11 DCMR § 411.

A. Standard for Approving Special Exception Relief

Because of the unusual shape and characteristics of the record building lot, the proposed apartment house cannot comply with the requirements for roof structures under section 411 of the Zoning Regulations. Consequently, JBG is requesting special exception relief to deviate from the strict compliance of these

provisions as permitted under sections 411.11 and 3104.1 of the Zoning Regulations.

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) *quoting Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

B. Standard of Review for Roof Structure Special Exceptions

Under section 411.11, the Board may grant special exception relief from the strict requirements for roof structures where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." The Board may approve deviations from the roof structure requirements provided the intent and purpose of chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." 11 DCMR § 411.11.

As demonstrated below, and through exhibits, testimony and other information to be submitted into evidence before the Board, it is impracticable for JBG to comply fully with the roof structure requirements of section 411 because of

the size, unusual shape, and configuration of the building lot and other conditions relating to the proposed apartment building. Full compliance with the requirements would be unduly restrictive, prohibitively costly and unreasonable. Additionally, the requested relief can be granted without materially impairing the intent and purpose of chapter 400 and the Zoning Regulations, and the light and air of adjacent buildings will not be adversely affected.

C. Relief from Section 411.3 to Place Penthouse and Mechanical Equipment in Multiple Enclosures

Section 411.3 of the Zoning Regulations states that "[a]ll penthouses and mechanical equipment shall be placed in one (1) enclosure...." The purpose and intent of this requirement is to prevent the proliferation of multiple, unsightly roof elements that would detract from the skyline and block the light and air to adjacent buildings.

Because of the unusual shape of the project's building lot, and the operational difficulties and conditions related to the building, JBG proposes to construct three separate roof structure enclosures: two to house mechanical equipment and stairway access to the roof, and a third to enclose the elevator core. The dual street frontage of the site dictates a building configuration that provides a strong presence both on L Street and Massachusetts Avenue, N.W. Given the constraints of the lot's unusual shape, the only way to accomplish this successfully and meet the urban design goals of the DD District is to create two distinct building masses set at angles to one another. These two masses are connected by a narrow public corridor to house the centrally located elevator service to both wings. This configuration, in

turn, requires the construction of three separate roof structures. Each wing is equipped with its own stairway core, roof access and mechanical equipment penthouse, which provide greater fire safety protection to residents than is otherwise required under the building code and which help meet the operational needs of the building.

If the mechanical equipment and elevator core were housed in one enclosure, the resultant roof structure would be more intrusive to the skyline and block a greater amount of light and air than three smaller, separate ones. A single enclosure would extend in an irregular fashion across the entire roof of the building, disrupting the appearance of the two separate building masses, which were specifically designed to respond to their corresponding street frontage. The massive size of the enclosure would dominate the building and overshadow the adjacent rowhouse and office building to the east.

Three separate roof structures, on the other hand, would fulfill the purpose and intent of the roof structure requirements under chapter 400 and the Zoning Regulations, in general, by providing greater light and air and a more successful design. The three roof structures have been sensitively designed to complement the massing and architectural quality of the residential building. Because of the site's dual street frontage, it would not be unusual for two separate buildings to be located along L Street and Massachusetts Avenue; thus, the two separate mechanical enclosures are in keeping with the character of the streetscape. The two roof structures have been embellished with cornices to match the architectural character of the apartment building. The third enclosure for the elevator core is

smaller and located between the two other roof structures, making it far less visible from the street. It also repeats the cornice line detail to provide a cohesive design element for the roof elements.

Because the three separate roof structures will not block the light and air of adjacent property, are not visibly intrusive and have been sensitively incorporated into the design of the building, the requested special exception is in harmony with the purpose and intent of the Zoning Regulations and meets the test for relief under section 411.3.

D. Relief from Section 411.2 to Deviate from Roof Structure Setback Requirements

The proposed configuration of the roof structures will also require relief from the roof structure setback requirements under section 411.2 of the Zoning Regulations. That section requires roof structures to be set back in accordance with the provisions of the zone district in which the project is located. The C-2-C District requires a roof structure to be set back from the building's walls a distance at least equal to the roof structure's height. *See* 11 DCMR § 770.6(b). Because the height of each roof structure on the proposed building equals 17.3 feet, they each must be set back at least 17.3 feet away from the exterior walls. The two proposed mechanical penthouses on the L Street and Massachusetts Avenue wings both meet this requirement. The center elevator enclosure, however, is flush with the exterior walls and thus does not meet the set back requirement.

The unusual shape of the building lot and the programmatic requirements of the building dictate this outcome. As noted above, the triangular shape of Square

283 creates a through lot "bent" in the middle that prevents the construction of a typical rectangular building. The problem is exacerbated by the fact that the narrowest point of the lot is at the center. Further, in order for the building to maintain a presence on both street frontages, a major portion of the required residential recreation space has been located in a central courtyard, and the connection between the two wings narrowed to accommodate this exterior space. The width of the connection averages only twenty-one feet, and is unsuitable for any other use except an elevator core. Yet, because of the mechanical equipment required for elevators, the height of the elevator penthouse must be 17.3 feet, and accordingly, it must also be set back a distance of 17.3 feet. This would only allow an elevator core averaging three feet in width, and thus compliance with the setback requirements is impossible at this narrow juncture.

The proposed elevator penthouse does comply, however, with the spirit and intent of the roof structure provisions and the Zoning Regulations. The purpose of the setback requirement is to ensure adequate light and air to adjacent property and abutting streets. This purpose is still achieved because the elevator penthouse is situated at the center of the site. It is located approximately sixty feet from the L Street elevation of the building and approximately seventy-five feet from the Massachusetts Avenue elevation. It is setback approximately fifty-five feet from the western property line. To the east, the penthouse is flush with the adjacent building lot. It will not, however, block the light and air to any windows on the adjoining four-story office building. Thus, the proposed elevator penthouse is in

harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under section 411.2.

V.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCES FROM REQUIREMENTS FOR A CLOSED COURT AREA, THE WIDTH OF A COURT, RESIDENTIAL RECREATIONAL SPACE AND THE SETBACK FOR BUILDINGS ALONG MASSACHUSETTS AVENUE, N.W.

A. Standards for Granting Area Variances

Under D.C. Code §5-424(g)(3) and 11 DCMR 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

> (1) the property is unique because, *inter alia*, of its size, shape or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995), *quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). *See, also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The proposed apartment house meets all three prongs of this test. First, the property is unique by virtue of its irregular shape and topography. Second, the owner will encounter substantial practical difficulties if the Zoning Regulations are strictly enforced because it would lead to a highly undesirable configuration and location of residential recreation space on the site, as well as awkward and inefficient apartment layouts on the upper two floors, thereby compromising the

goals of residential development south of Massachusetts Avenue as contemplated in the Comprehensive Plan and the objectives of the DD District. Finally, the proposed variance relief will generate significant positive public good without substantially impairing the intent or purpose of the zoning laws.

B. Variance from the Closed Court Width and Area Requirements

Section 776.3 of the Zoning Regulations requires that the width of a court must equal the product of four inches for each foot of vertical height of the court elevation. The height of both the eastern and western court elevations is 126.16 feet, thus requiring a court width of forty-two feet.[2] However, only 22.8 feet are provided at the eastern court and only 36.0 feet at the western court. Accordingly, a variance from section 776.3 is requested.

The Applicant also requests a variance from the area requirements for a closed court. Section 776.4 of the Zoning Regulations states that any closed court of a building devoted to residential uses must have a land area consisting of twice the square of the width of the court (as calculated under the formula in section 776.3), but a minimum of 350 square feet. Based on this formula, the east and west courtyards must consist of at least 3,528 square feet of land area.[3] The total amount of land area provided in the western court, however, consists of only 1,959 square feet, and the eastern court contains only 682 square feet. Thus, the Applicant seeks a variance from the closed court area requirements. The area and width variances will allow JBG to provide the most suitable and appropriate

[2] 126.16 ft. x 4 in. = 504.6 inches = 42 ft. wide
[3] 2 x 42 ft. wide^2 = 2 x 1,754 s.f. = 3,528 s.f.

configuration for a residential building on this irregularly shaped site without compromising the purpose and intent of the Zoning Regulations.

C. Variance from the Residential Recreational Space Requirements

Section 773.3 of the Zoning Regulations requires that residential development in the C-2-C Zone provide not less than fifteen percent of the gross floor area of the building to recreation space. Based on the 149,310 square feet of residential gross floor area proposed for the apartment building, the project must include approximately 22,396 square feet of residential recreation space. The total amount of recreation space proposed, however, is only 6,581 square feet. Consequently, a variance from the area requirements of section 773.3 is also requested.

D. Variance from the Setback Requirements for Buildings Along Massachusetts Avenue Under the DD Provisions

Section 1701.7 of the Zoning Regulations allows a building fronting on Massachusetts Avenue, N.W., within the DD District to achieve the maximum permitted height under the Height Act of 1910, provided that any height above the 110 feet level is set back from the Massachusetts Avenue property line a forty-five degree angle. Because this portion of Massachusetts Avenue is 160 feet wide, the 1910 Height Act allow a building height of 130 feet. The proposed height of the project is 127 feet, 10 inches. Because of the programmatic constraints of the building, however, the setback does not begin until the 118-foot level, instead of the required 110-foot level. Accordingly, JBG is requesting a variance from section 1701.7.

E. Exceptional and Unique Conditions Affecting the Property

The requested variance relief is supported by the practical difficulty inherent in the exceptional and unique configuration of Lot 50. As noted above, the triangular shape of Square 283 causes this through lot to "bend" at an angle in order to provide street frontage on both the diagonal layout of Massachusetts Avenue and horizontal direction of L Street. The amount of property fronting on each street is significantly different: the lot is 111.46 feet wide along Massachusetts Avenue but only seventy-nine feet wide on L Street. The shape of the lot is further distorted as it narrows in the center to approximately fifty-four feet wide. There is also a significant difference in the elevation of the site. The grade rises 4.5 feet from Massachusetts Avenue to just inside the property line and then drops approximately ten feet to the rear of the property at L Street. The size of the lot is also relatively small, consisting of approximately 14,477 square feet of land area.

F. Strict Application of the Regulations Would Result in a Practical Difficulty.

These unique and exceptional conditions inherent to the property severely restrict the possible layout of the apartment house. In order for the building to maintain a presence on both street frontages, and maximize light and air to dwelling units, courts have been provided on the center portion of the lot and the connection between the two wings narrowed to the greatest extend possible to accommodate the exterior space. The typical layout of a double-loaded corridor for an apartment building has a wall-to-wall depth of approximately sixty-five feet. If

JBG were required to comply with the strict application of the regulations, it would be necessary to either eliminate the court altogether, by expanding the building footprint and creating substantial building depth without windows, or to enlarge the courts and create shallow units with marginal layouts.

At fifteen percent of the floor area devoted to residential use, the amount of recreation space required would be the equivalent of 1.55 FAR. That amount of space cannot be accommodated on the open areas of the lot or on the roof, thereby requiring a substantial amount of interior floor area to be devoted to recreation space. This would reduce the number of units, contrary to the intent of the Regulations to increase the amount of housing Downtown, and would make development of the site more difficult by affecting the critical mass necessary to support the costs of development.

Similarly, the programmatic requirements for the apartment units on the upper two floors would be compromised significantly if the Applicant were required to comply strictly with the DD setback requirements for Massachusetts Ave., N.W. These upper units would need to be completely reconfigured to comply with building, plumbing, mechanical, electrical, and fire safety codes. Moreover, the size of the units would be reduced and reoriented from two-bedrooms to one-bedroom units, creating awkward and inefficient layouts. This directly contravenes the housing objections of DD, which seeks to encourage a full rang of housing unit sizes not just one-bedrooms. In addition, a two-story setback reduces the amount of area available for rooftop recreation space.

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

The proposed variances will trigger significant public good without substantially impairing the intent or purpose of the zoning laws. By allowing a reduction in the width and required area of a closed court, the project can maintain the outdoor residential recreation space in an area most suitable to the site, separate from the service areas of the building. The location of the western courtyard opens onto the required court area of the adjacent apartment house, which allows ample light and air to reach this portion of the project site. The eastern court faces lower height buildings, so that substantial light and air is available over the roofs of those buildings. Consequently, the purpose and intent of the width and area requirements for closed courts will not be compromised under the current proposal.

A reduction in the amount of space devoted to residential recreation areas can also be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. The Subject Property is fortuitously situated along a portion of Massachusetts Avenue that boasts a wide parking area between the sidewalk and building line. It will be maintained as a landscaped berm and act as a forecourt to the proposed apartment building. A nearby public "pocket park" formed by the intersection of Massachusetts Avenue with L Street between 11th and 12th Streets also provides passive recreational space to the residents of the building.

Additionally, the goal of the DD District is the creation of a lively downtown with active pedestrian use. The downtown area has many recreational and entertainment activities unassociated with residential buildings that are available to residents and that may, in fact, be underutilized. A reduction in the recreational component of the building will thus not cause a concomitant reduction in recreational opportunities for building residents.

The Office of Planning ("OP") has recognized the inherent difficulties in meeting the residential recreational objectives in the DD District south of Massachusetts Avenue because of the small and irregular shape of building lots that provide little opportunity for outdoor space on the ground floor. In response to these difficulties, OP has recommended that the residential recreation space requirements be reduced from fifteen to five percent in the DD/C-2-C Zone when the bonus density permitted under 1706.7 is devoted solely to residential use. Text amendments are now before the Zoning Commission and a hearing has been scheduled for February 12, 2001. A copy of the proposed regulations are attached as Exhibit F. If the amendments are adopted, the project would only require modest deviations from the recreation space requirements.

The building has been designed to recognize the 110 foot height at which a setback normally would have occurred. The materials and detailing of the façade change at the 110 foot height, emphasizing the difference above and below that level. The amount of the building which extends beyond the forty-five degree angle represents a small portion of the mass of the building, which will not create a significant visual impact from the street. The setback at the top floor allows for the

creation of a roof deck for the entire building, as well as private terraces for the penthouse units on either side.

VI.
ADVISORY NEIGHBORHOOD COMMISSION SUPPORT

On October 24, 2000, JBG and its representatives met with Advisory Neighborhood Commission ("ANC") 2F to review the project as originally conceived. At its December 2, 2000, meeting, the ANC voted unanimously to support the project. The revised scheme developed in response to issues raised by the owner of the abutting Massachusetts House was presented to the Community Development Committee on January 23, 2001, and to the full ANC on February 7, 2001. The commission again voted unanimously to support the project and the related special exception and variance relief. A copy of its first letter in support is attached as Exhibit G. The second support letter is expected to be filed with the BZA seven days in advance of the hearing or by February 20, 2001.

VII.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A:	Portions of the Sanborn Atlas showing the subject property highlighted in yellow;
Exhibit B:	A portion of the Zoning Map showing the subject property highlighted in yellow;
Exhibit C:	Surveyor's Plat of the Subject Property;
Exhibit D:	Architectural Drawings;
Exhibit E:	Photographs of the Subject Property;
Exhibit F:	Zoning Commission Notice of Filing, Case No. 00-30T, Proposed Text Amendments to the Downtown Development District Zoning Regulations recommended by the Mayor's Downtown

Housing Task Force and the Downtown Action Plan, October 26, 2000;

Exhibit G: Letter of Support from Advisory Neighborhood Commission 2F;

Exhibit H: Outline of Testimony of Representative of the Applicant JBG/Twelfth and Massachusetts, L.L.C.; and

Exhibit I: Outline of Testimony of Weihe Design Group, project architects.

VIII.
WITNESSES

A. Representative of JBG/Twelfth and Massachusetts, L.L.C.

B. Weihe Design Group, project architects.

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for a special exception and area variances under the Zoning Regulations. JBG notes the pending amendments to the DD District provisions that would reduce the amount of required residential recreation space and eliminate the maximum allowable FAR restriction for buildings that provide a combination of residential and retail uses. JBG requests that the Board allow the applicant to proceed with a project that conforms to those amendments, such that the gross floor area of the building is increased within the height and lot occupancy limitations otherwise applicable and for which extra FAR is achieved without requiring relief from the Board.

Accordingly, JBG respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____
Whayne S. Quin, Esq.

By: _____
Steven E. Sher, Director of
Land Use and Zoning Services

By: _____
Mary Carolyn Brown, Esq.

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

February 13, 2001

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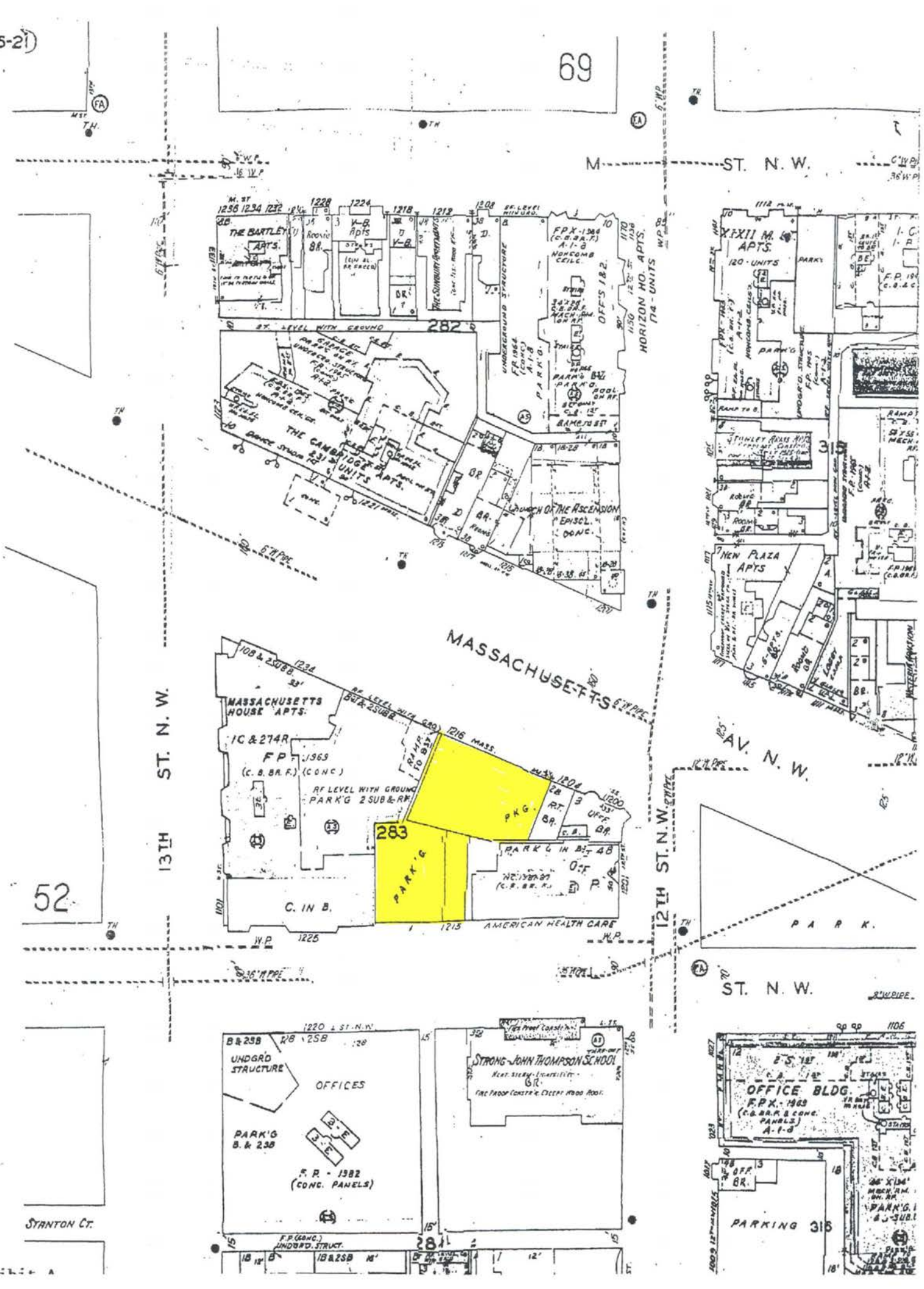
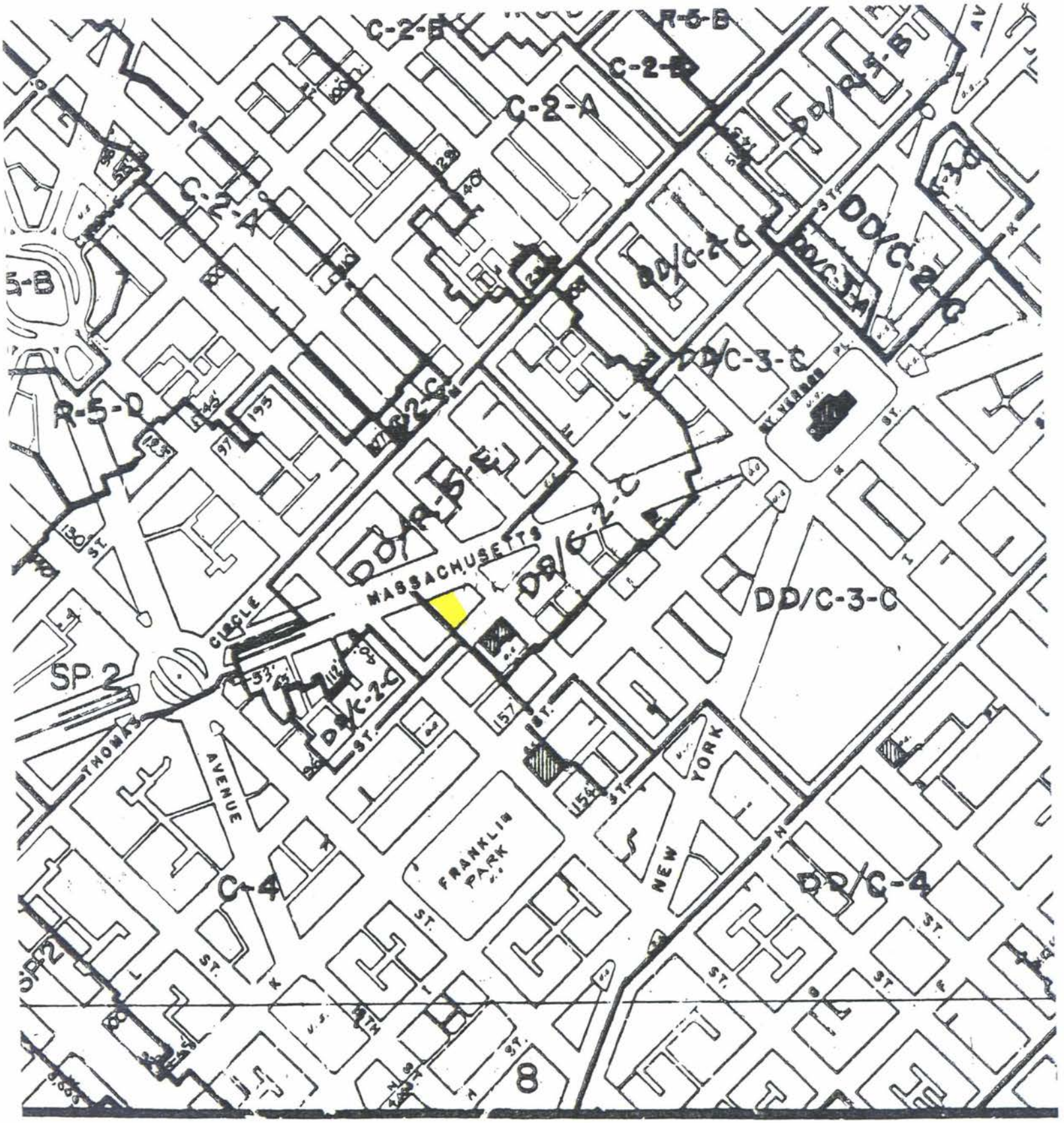


Exhibit A





DISTRICT OF COLUMBIA

ZONING MAP

SECTION 5

EXHIBIT B



DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C. AUG. 15 2000

Plat for Building Permit of SQUARE 285, LOT 50

Scale: 1 inch = 30 feet Recorded in Book 181 Page 28

Receipt No. 000023

Furnished to WILKES ARTIS

Surveyor, D.C.

By: W. H. GRAHAM JR

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans 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 and 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: .....

.....
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

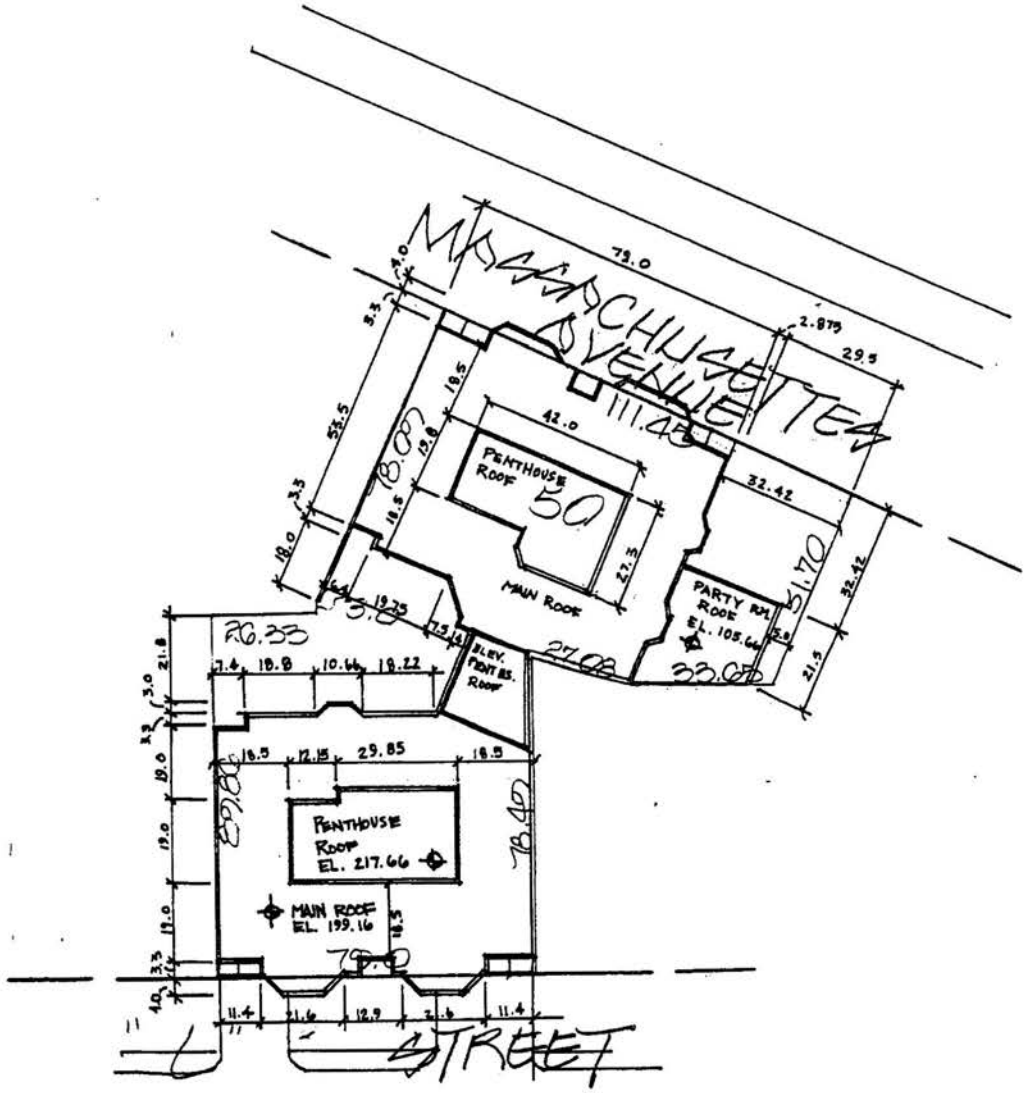


EXHIBIT C



ARCHITECTURAL DRAWINGS

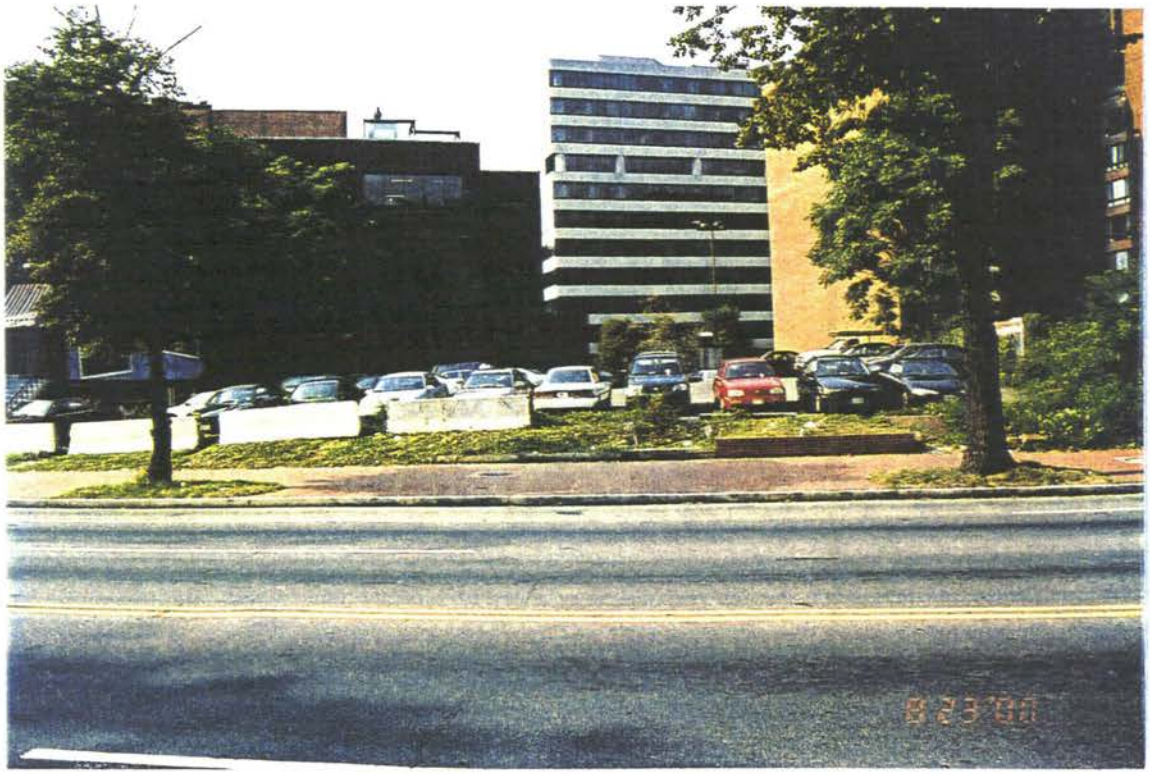
Are

Submitted Under Separate Cover

Exhibit D



PHOTOGRAPHS OF THE SUBJECT SITE

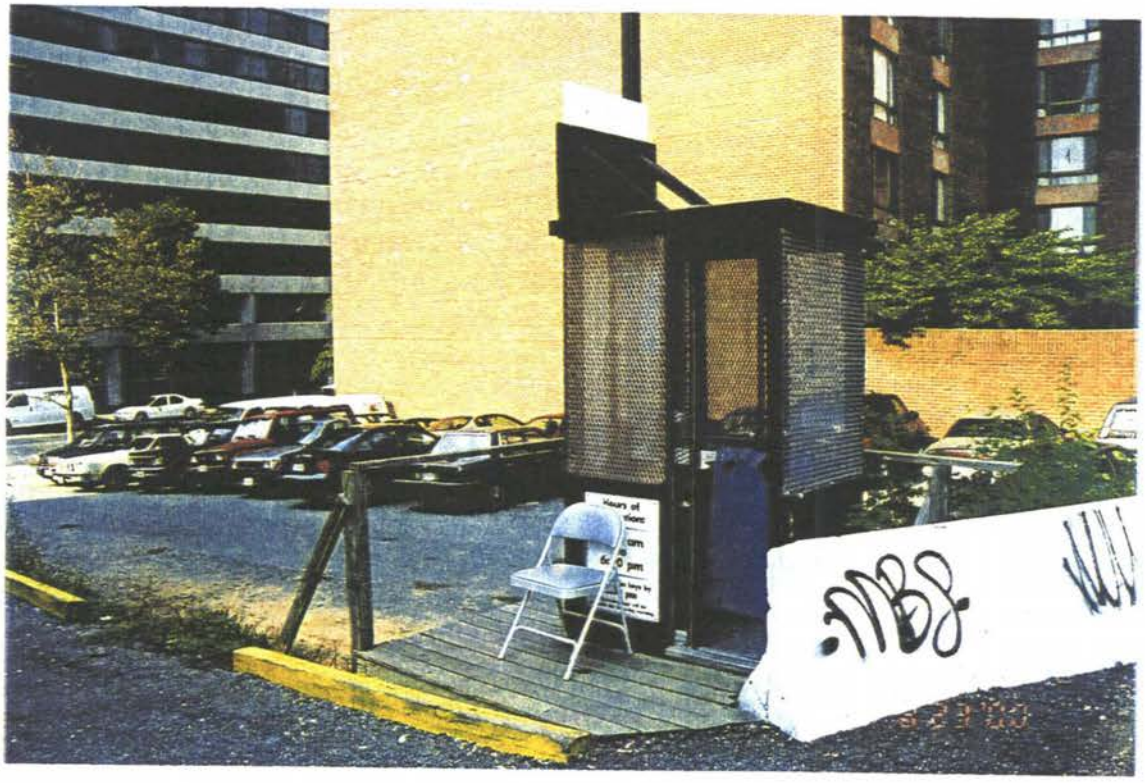


View from Massachusetts Avenue, N.W.
looking south across existing parking lot to buildings on L Street



View looking south/southeast across existing parking lot
(Victorian rowhouse occupied by the Swiss Inn to the left in photo;
the American Health Care Alliance Building in center background)

PHOTOGRAPHS OF THE SUBJECT SITE



View from upper center portion of site looking
southwest to lower parking area along L Street
(Massachusetts House Apartments in background of photo)



View from L Street looking north across site depicting narrow
connection between upper and lower portion of parking lot

Exhibit E-2

F

ZONING COMMISSION NOTICE OF FILING
Case No. 00-30T
(Downtown Development District Zoning Changes Set Down Report)
October 26, 2000

THIS CASE IS OF INTEREST TO ALL ADVISORY NEIGHBORHOOD COMMISSIONS

On October 10, 2000, the Office of Zoning received from the Office of Planning a set down report recommending amendments to the text of the District of Columbia Municipal Regulation (DCMR), Title 11, Zoning.

The set down report summarizes the Office of Planning's review of changes to the Downtown Development District Zoning Regulations recommended by the Mayor's Downtown Housing Task Force and the Downtown Action Plan.

The proposed language to amend the Zoning Regulations is as follows:

[Note: new language is indicated by bold print and underlining and deleted language is indicated by strike-through]

1706.4 In the DD/C-2-C zone the following residential and mixed use provisions shall apply:

(a) The maximum FAR shall be 8.0 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;

(b) Each lot shall provide on-site or account for off-site in a combined development no less than 4.5 FAR of residential use:

(c) On a lot that is south of Massachusetts Avenue, up to 1.8 FAR this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section;

(d) On a lot that is north of Massachusetts Avenue, up to 1.35 FAR of this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and

(e) If such affordable housing is provided off-site, commercial or nonresidential FAR may be substituted on-site or in a combined lot development by the same amount of gross floor area as the affordable housing up to the

maximum limit of 1.8 FAR south of Massachusetts Avenue or 1.35 FAR north of Massachusetts Avenue.

(f) **The area of residential recreation space required by §773 may be reduced to 5% of the gross floor area devoted to residential use provided the bonus granted by this provision is used for residential uses.**

1706.5 In the DD/C-3-C zone the following residential and mixed use provisions shall apply:

(a) The maximum FAR shall be 9.5 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;

(b) Each lot shall provide on-site or account for off-site in a combined lot development no less than 3.5 FAR of residential use;

(c) On a lot that is south of Massachusetts Avenue, up to 1.4 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section;

(d) On a lot that is north of Massachusetts Avenue, up to 1.05 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and

(e) If such affordable housing is provided off-site pursuant to paragraph (c) or (d) of this subsection, commercial or nonresidential FAR may be substituted on-site, or in a combined lot development, by the same amount of gross floor area as the affordable housing, up to the maximum limit of 1.4 FAR south of Massachusetts Avenue or 1.05 north of Massachusetts Avenue.

(f) **The area of residential recreation space required by §773 may be reduced to 5% of the gross floor area devoted to residential use provided the bonus granted by this provision is used for residential uses.**

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:

(a) The increase in gross floor area may be achieved by receiving transferable development rights as provided in § 1709, which floor area may be devoted to any permitted use on the receiving site;

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

(c) The increase may be earned by constructing or assisting affordable housing as defined in this chapter and as further governed by the provisions of this section, or by earning retail bonus density as provided in paragraph 1706.16.

(d) **Notwithstanding Sections 1706.4, 1706.5, or 1706.6, no maximum FAR shall be applicable to any building that is devoted solely to residential**

uses or to a combinations of residential uses and retail, service, arts and entertainment uses listed in Sections 1710.1 and 1711.1; Provided, that any such building shall comply with the maximum permitted building height requirements of Sections 1701.7 and 1703.15 and the yard and lot occupancy requirements of the applicable zone. This subsection shall be specifically inapplicable to any building that contains any uses specified in Section 1712.1.

(e) The increase in gross floor area provided by subsection 1706.7(d) may not be used to accept the transfer of residential use through a combined lot development.

1706.13 If a development project includes both required residential uses and nonresidential uses, ~~whether~~ on the same lot ~~or in a combined lot development~~, no Certificate of Occupancy shall be issued for the nonresidential space until a Certificate of Occupancy has been issued for the residential space: Provided, that, the following requirements are met:

(a) A mixed residential-commercial project for which the Pennsylvania Avenue Development Corporation and a private developer have executed a contract requiring commencement of construction of the residential portion of the project by a date certain, may comply with the timing requirements of §1708.1(f) instead of the timing requirements of this subsection; and

(b) At least seventy-five percent (75%) of the commercial development that triggers the residential use requirement shall comply with the timing requirements of this subsection.

1708 COMBINED LOT DEVELOPMENT

1708.1 Two or more lots may be combined for the purpose of achieving the required FAR equivalent for preferred uses or to transfer bonus density from one lot to one or more other lots; Provided, that the following occurs:

(a) The lots may be located in the same square or in different squares;

(b) A combined lot development shall be eligible for the density and area allowances permitted in §§1703, 1704, 1705 and 1706;

(c) When combined lot development involves only linkage, i.e., the allocation of gross floor area required by this chapter to be devoted to preferred uses (hereinafter "linkage project"), such combined lot developments shall be limited to lots located within the same subarea as defined in §§1703, 1704, 1705, and 1706, except as provided in §1708.1(d);

(d) Notwithstanding the requirements of paragraph (c) of this subsection and of §1706.9 of this chapter, a historic property that is identified and governed by §1707.4 of this chapter, is eligible to serve as the location of required residential uses within a combined lot development, even if the historic properties are located outside the Housing Priority Area as established in §1706.2.

(e) In a linkage project, the required floor area to be devoted to preferred uses may be transferred from the sending lot to a receiving lot, on which the required space for preferred uses shall be incorporated into the building

design and occupied: Provided, that any applicable ground level uses required on any affected lot shall not be transferred, but shall be provided on each sending lot and receiving lot;

(f) In a linkage project, the certificate of occupancy for the development sending FAR for preferred uses to another development may be revoked, if no building permit for the receiving site has been issued to the developer within three (3) years after the issuance of the certificate of occupancy for the sending site, or if no certificate of occupancy for the receiving site has been issued within five (5) years after the issuance of the certificate of occupancy for the sending site;

(g) If a development project includes both required residential uses and nonresidential uses in a combined lot development, no building permit for the development of the nonresidential uses shall be issued until the following requirements are met:

(i) A declaration of covenants running with the land in form satisfactory to the Zoning Administrator shall be recorded against the property of the receiving lot that requires the receiving lot to be developed only in accordance with the preferred use requirements of this chapter;

(ii) The declaration of covenants shall name as a beneficiary the District of Columbia and at least one nonprofit housing advocate organization that is satisfactory to the Zoning Administrator and the Director of the Office of Planning. The declaration of covenants shall require that the instrument shall not be amended or terminated without the consent of the beneficiaries and on substantial change in circumstances. The covenant shall require the declarant to pay such fees as are reasonably necessary to pay the expenses of the beneficiaries.

(iii) The owner of the sending site shall deliver to the Zoning Administrator a certification prepared by a generally recognized title company that all monetary consideration paid or to be paid to the owner of the receiving site has been placed in an escrow account and will be available to the owner of the receiving site only upon (i) the issuance of a building permit for the construction of a building containing the preferred uses and (ii) 50% completion of the residential project (as certified to the Zoning Administrator by the architect for the residential property.

(iv) At a minimum the escrow should equal the combined lot transfer price, where the combined lot transfer price is calculated in the by the following formula:

CLTP = E*(RTDC / FAR)*TFAR + FMP.

1. **CLTP = Combined Lot Transfer Price**
2. **E = minimum 5% equity equivalent**

3. **RTDC = Average Total Development Cost of Residential Construction in Development District (reevaluated every 3 years) per FAR = Floor Area Ratio**
4. **TFAR = SF amount of preferred use transferred to receiving site.**
5. **FMP = premium defined by the fair market value of the transfer.**

(v) If a certificate of occupancy for residential project has not been issued within 5 years of the date of occupancy for the sending site, the escrow and any accrued interest shall be released to the DC Housing Production Trust Fund; at the request of the owner of the receiving site a 3-year extension may be granted if the Zoning Administrator determines that the receiver has acted in good faith and best effort.

(h) When combined lot development involves a transfer of bonus density to another lot or lots, by itself or in addition to a linkage project, such density transfer may occur to any lot or lots within the DD District or in a receiving zone as provided in §1709 of this chapter, except as excluded by other provisions of this chapter and title;

(i) The maximum permitted floor area for all uses, the minimum required floor area for preferred uses, and bonus density, if applicable, shall each be calculated as if the combined lots were one lot, and the total project shall conform with the maximum and minimum floor area requirements;

(j) A building that has been constructed or that is under construction as of January 18, 1991 is not eligible to utilize the combined lot development provisions, nor to earn bonus density or transferable development rights pursuant to §1709;

(k) No transfer of required gross floor area for preferred uses shall be effective under this section unless an instrument, approved by the Corporation Counsel to be legally sufficient to effect such a transfer and approved in content by the Director, Office of Planning and the Zoning Administrator, has been entered into among all of the parties concerned, including the District of Columbia:

(l) A certified copy of the instrument of transfer shall be filed with the Zoning Administrator, Department of Consumer and Regulatory Affairs, prior to approval by said Department of any building permit application affected by such transfer;

(m) The document shall be recorded in the office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this arrangement for transfer of required floor area or bonus area; and

(n) The notice of restrictions and transfer shall run with the title and deed to each affected lot.

For additional information, please contact, the Secretary to the Zoning Commission at (202) 727-6311.



ANC 2F ADVISORY NEIGHBORHOOD COMMISSION 2F
GOVERNMENT OF THE DISTRICT OF COLUMBIA
P.O. Box 9348, Mid-City Station, Washington, DC 20005
Telephone: (202) 667-0052 Fax: (202) 667-0053

Commissioners:
2F01 David Stephens, *Vice Chair*
2F02 Jim Brandon
2F03 Barbara Asare-Bediako, *Treasurer*
2F04 Helen M. Kramer, *Secretary*
2F05 Leslie Miles, *Chair*
2F06 Rodney Foxworth

December 2, 2000

Board of Zoning Adjustment
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: 1210-1216 Massachusetts Avenue, NW, The JBG Companies, Applicant
BZA Case No. 16641

Dear Chairperson and Members of the Board:

At its regularly scheduled and publicly advertised meeting on November 1, 2000, at which a quorum of five out of six commissioners was present, ANC 2F voted 5-0 to support this application for a special exception from the roof structure setback requirements of Section 411 and variances from the residential recreation space requirement of 15 percent of gross floor area provided for in Section 773.3 and the area of closed court requirements of Section 776.4 of 11 DCMR.

This matter was considered in detail at the October 24, 2000, meeting of the ANC's Community Development Committee (CDC), at which JGC Companies presented detailed elevations of the proposed apartment building development and explained the nature of the relief sought from the zoning regulations. The CDC welcomed the proposed residential development replacing a long-vacant lot, and recognized the difficulties posed by the odd shape of the lot. The proposed design was well received by members of the community, and the general opinion was that the minor departures from the zoning requirements would not have an adverse effect on neighboring buildings and residents.

We therefore urge the Board to grant the relief sought in this case.

Sincerely,

Leslie Miles
Chair

EXHIBIT G



OUTLINE OF TESTIMONY
JBG/TWELFTH & MASSACHUSETTS, LLC

I. Introduction

A. Description of JBG/Twelfth & Massachusetts, LLC

B. History and Experience of JBG in Development of Washington

II. Background and Description of Project

A. The Constricted Housing Market

B. Fulfillment of Comprehensive Plan Housing Objectives

C. Fulfillment of Downtown Development District Goals

III. Special Exception and Variance Relief

A. Relief Necessary to Provide High Quality Residential Development

B. Brief Description of Relief Requested

1. Special Exception Relief

a. Number of Roof Structures
b. Roof Structure Setback Requirements

2. Variance Relief

a. Recreational Space Requirements
b. Closed Court Area and Width Requirements
c. Massachusetts Avenue Setback Requirements

3. Architects to Provide Detailed Description

III. Meetings with Community and Government Officials

A. Support from Advisory Neighborhood Commission 2F

B. Consultation with the Office of Planning

C. Negotiations with Abutting Property Owners

IV. Conclusion

WAS1 #893153 v2

Exhibit H



OUTLINE OF TESTIMONY
WEIHE DESIGN GROUP, PROJECT ARCHITECTS

I. Introduction

A. Description of Weihe Design Group

B. History and Experience in Washington

II. Description of Project

A. General Description

1. Description of Area
2. Description of Building Design
3. Compatibility with Surrounding Area
4. Number and Type of Units
5. Amount of Parking Spaces

B. Unusual and Exceptional Conditions Affecting Site

1. Irregular Shape of Building Lot
2. Topography and Changes in Grade
3. Small Size of Lot
4. Variation in Street Frontage

III. Special Exception Relief Requested

A. Increase in Number of Roof Structures
B. Deviation from Roof Structure Setback Requirements
C. Standard for Special Exception Relief Met

IV. Variance Relief Requested

A. Deviation from the Required Residential Recreation Space
B. Deviation from the Closed Court Area and Width Requirements
C. Deviation from the Massachusetts Avenue Setback Requirements
D. Standard for Variance Relief Met

V. Conclusions

EXHIBIT I