GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustments

FROM: Andrew Altman

DATE: February 26, 2001

SUBJECT: BZA Application #16641 (The JBG Companies)
12th & Massachusetts Avenue, NW (Square 283, Lot 50)

I. APPLICATION

This report summarizes the Office of Planning's (OP) review of the above application from The JBG Companies (the Applicant) submitted to the Board Zoning Adjustments for hearing on February 27, 2001. The Applicant has submitted an application pursuant to 11 DCMR §3104.1 for variances from the Zoning Regulations §776.4.1, §773.3, §771.2 and of §1701.7 (listed as 1707.7 Applicant's statement) of Chapter 11 of the District of Columbia Municipal Regulations for the property described as Lot 50 of Square 283 (the Property) in northwest DC. The report presents the Office of Planning's findings and recommendations to the Board of Zoning Adjustment.

BZA
Case No. 16641
Exhibit No. 50

II. RECOMMENDATION SUMMARY

The Office of Planning recommends approval with conditions..

III. BACKGROUND

This project was previously submitted to the BZA for public hearing on December 19, 2000. Due to objections from the adjacent property owner of Massachusetts House Apartments, the applicant withdrew and requested a deferral until the February 27 date. Since that time, the applicant has settled the objections of Mr. Schwartz. In addition, the Office of Planning has proposed to the DC Zoning Commission amendments to the Downtown Development District (DD) that permit residential housing projects in the DD added density and recreation space relief. The primary proposed amendment affecting this project not discussed in our previous review of this project is the removal of Floor Area Ratio (FAR) restrictions, enabling housing projects to seek the maximum FAR within the height limit, lot occupancy

Board of Zoning Adjustment
District of Columbia
CASE NO.16641
EXHIBIT NO.50

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and setback requirements and building code requirements for light and air. This is described in greater detail in section VII.B and a copy of OP's report to the Zoning Commission is attached as an appendix.

The project was originally proposed as a 110' tall (128' w/service core), 119,753 square feet (8.3 FAR) building with 116 housing units. The Applicant's design as currently proposed to the BZA achieves a FAR of 10.36 and is discussed further in Section V. The applicant has decided not to request a variance for density at this time, therefore if the Zoning Commission does not pass the density amendment the Applicant will be forced to return to the BZA to receive approval for any density above 8.5 FAR. OP discussed this with both the applicant's counsel and Corporation Counsel, and both parties are aware this might happen and agreed the current application could proceed.

IV. SITE AND AREA DESCRIPTION

Square 283 in northwest DC is trapezoidal in shape, bounded by a short section of 12th Street on the east, Massachusetts Avenue on the north, L Street on the south and 13th Street NW on the West. Lot 50 is an odd shaped lot 14,474 square feet in size located in the center of Square 283 (see Square and Lot Map below). The Lot is formed by two rectangular areas offset from each other with one fronting on Massachusetts Avenue to the north and the other fronting L Street to the south. Lot 50 has an area of approximately 14,474 square feet.

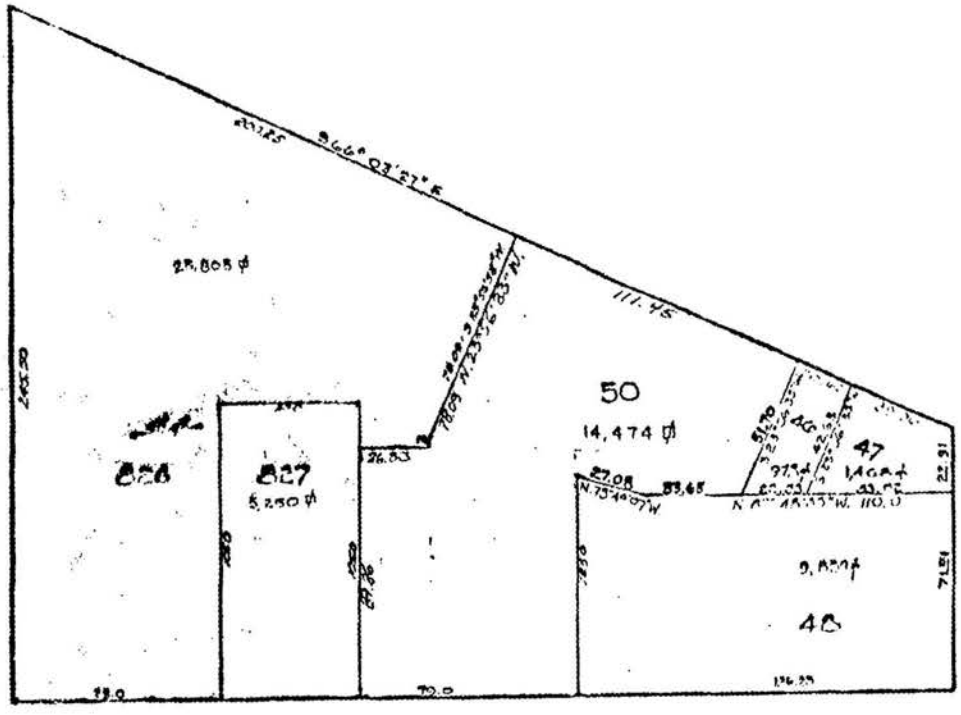


Figure 1.

To the west of Lot 50 on Lots 828 & 827 is the Massachusetts House, a 10-story apartment building built in 1969. To the south and east on Lot 40 are the offices of the American Health Care Association built in 1988. To the east along Massachusetts Avenue are two historic townhouses built in 1920 and 1938.

The area is characterized by the wide set backs of L'Enfant's Plan and primary uses include high-density residential, association offices and institutions such as the Church of the Ascension and St. Agnes across Massachusetts Avenue to the north.

V. PROJECT DESCRIPTION

The Applicant's resubmission is a 128' tall (145' w/ service cores), 150,110 square feet (10.36 FAR) infill apartment building constructed on a site that has long been a parking lot. The project's design sets back at 118' rather than the 110' set back required for Massachusetts Avenue. The main entrance will be on the north side of the site fronting on Massachusetts Avenue. The building programs 145 residential units. Located on the south side, fronting L Street will be roughly 800 sf of retail (note: 200 sf smaller than previous submission), the garage entrance to 64 underground parking spaces, plus another 46 vault spaces and the building's loading bays.

There will be two closed courts, one on the east side of the building facing the rear of the American Health Care Association Office Building. It will only be 22.8 feet wide and 682 square feet in area, or much smaller than the open courtyard of 1,050' sf that was initially proposed by the Applicant. The second closed courtyard on the western side, which faces the courtyard of the Massachusetts House Apartments, has remained roughly the same at 36' in width and 1,960 sf in size. The location of the eastern court is such that it preserves the view of the mural of Fredrick Douglas located on the adjacent building.

Due to the shape of the site, the building, for all practical purposes, will be two-towers joined by an elevator core located at the center of the structure. Two stairwell and mechanical cores serve the northern and southern halves of the building. The elevator core and the two service cores will result in 3 rooftop structures.

Recreation space is being provided by the two courtyards, an exercise room, and a party room. The site also benefits from the open space created by Massachusetts Avenue's wide set backs.

VI. 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 notable 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 developments;

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; and

It is therefore clear that the Comprehensive Plan supports in concept facilitating the development of housing in this location.

VII. ZONING

Zoning divides Square 283, the western half of the square (Massachusetts House) is DD/R-5-E, while the eastern half is DD/C-2-C. DD/R-5-E allows a density of 5.0 and heights of 90 feet, while C-2-C is comparable with density of 6.0 and heights of 90 feet. The square is also part of Housing Priority Area B of the Downtown Development District zoning overlay. The DD overlay designation is designed to encourage housing in downtown. Most significantly it permits buildings to reach the maximum height of the Height Act. On Massachusetts Avenue this is 130', however a 1:1 setback is required above 110'. This is not only due to the many historic buildings along Massachusetts Avenue, but the importance of the street as part of L'Enfants plan. The setback is therefore in place to maintain the scale and massing along the street.

The table below outlines DD requirements and incentives and compares them with the C-2-C and C-4 designations. To the southwest of Square 283 is the C-4 zoning classification beginning on Squares 284 and 248.

	Base C-2-C	DD/C-2-C	Requirements	Base C-4
Height	90 feet	110' on 90' streets 130' on 110' streets		130' on 110' streets
FAR	6.0 Residential 2.0 Other	8.0 + 0.5 w/ Residential	4.5 Residential (minimum) 0.5 Retail (NA to housing)	8.5
Special Incentives		Generation of TDR	Use 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		

Table 1.

A. Zoning History

The Zoning Commission undertook a major rezoning of a portion of Downtown, including Square 283 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).

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). While a large part of this failure may have been due to the extended down cycle in the office market the District faced in the first half of the 1990's, the resurgence in housing interest downtown has coincided with a booming office market. Still, 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:

- Gallery Place - a mixed-use development partially subsidized by the use of TIF financing.
- Square 457 - resulting from a Government Services Administration RFP, which wrote down the cost of land.
- Avalon Bay - received extra density and relief from recreation space and retail requirements.
- JBG E Street - Project has applied to be included in the Housing Priority C to receive DD incentives, but no additional incentives, like the rest of the category.
- 5th & Massachusetts Apartment (Sq. 517) - received extra density and relief from recreation space.

B. Current Rezoning Efforts

In an effort to fulfill the goals for housing in the downtown, the District has undertaken two separate but related efforts to complete the development of the Downtown Development District. First was the Mayor's Downtown Housing Task Force, which looked at the problems facing the development of housing downtown. Second, was the Downtown Action Agenda, 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 DD.

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. In addition, the Office of Planning has submitted other changes as a result of meetings with developers and stakeholders. The recommendations most relevant to this case are as follows:

- Allow greater density in the DD for housing. 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. It is important to point out that this does raise a concern of whether this intensity is appropriate for the surrounding area. Questions such as traffic impact and unit quality have yet to be fully reviewed.
- Reduce the recreation space requirement of housing developments in the DD to the nearest functionally equivalent base zone. For instance, Table 1 demonstrates that a DD/C-2-C housing project is very similar in density to a housing project in the C-4 zone outside of the DD Overlay, yet the Zoning Regulations currently require the DD/C-2-C building to have recreation space at 15% compared to C-4's 5%. After lot coverage, air and light, and other requirements, 15% of a project in the DD/C-2-C will result in more than one complete floor of recreation space. This greatly reduces the number of possible units and threatens the fiscal feasibility of downtown housing projects.

VIII. ANALYSIS

Analysis of the Applicant's current submission starts with reviewing their first application. In our report dated September 24, 2000, OP analyzed the Applicant's previous submission requesting a special exception from Section 411 (Rooftop Structures), and variance relief from Subsections 773.4 (Recreation Space), and 776.4 (Closed Court). Most of what follows is very similar analysis to the previous report. However, it was assumed at that time that the applicant had filed for sufficient relief from the BZA to overcome the practical difficulties inherent in the unique shape of the property. Therefore, weighing very heavily in OP's analysis is that the additional requests are necessary only because the applicant wishes to

maximize the proposed density bonus. The additional requests therefore become an issue of value of the property and not practical difficulty to build on the site.

Another factor in OP's analysis is the fact that OP had determined that density restrictions could be removed in the DD because light & air requirements such as courtyards, and bulk requirements such as height, yard setbacks, lot occupancy, etc. are still in effect. However, without FAR restrictions, the remaining regulations controlling the residential development must play a commensurately more important role in ensuring quality development. Therefore requests for relief from their requirements should be carefully scrutinized.

The Applicant has redesigned the project to take full advantage of the removal of density restrictions. The zoning amendments would permit the Applicant to add two floors on the southern half of the project and a half a floor on the northern half that would not require substantially different variances from initial application. However, in order to maximize the benefit of no density restrictions, the applicant has made two significant design changes that necessitate even further variance requests.

The first design change uses what was the open court to the east and has resulted in closing that court to the east, which as proposed is much smaller than required by the regulations. This change enabled the Applicant to push the corner 2-bedroom unit into what was the courtyard and fit another 1-bedroom unit on the Massachusetts frontage (see figure 7 & 8).

The second design change requiring additional variances is the addition of floors along Massachusetts Avenue. The applicant has proposed setting back at 118' instead of the required 110'. The setback is also being used as private and public outdoor deck space.

A (1). Special Exceptions Requested

The applicant has requested a special exception from the setback and enclosure requirements of Section 411 Rooftop Structures. In accordance with §3104.1, special exceptions are granted when they *"will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps,..."* The relevant subsections are cited below:

411.3 *All penthouse and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character.*

Sub-Section 411.4 below does permit more than one roof enclosure, but specifies when separate elevator cores are required.

411.4 *When roof levels vary by one (1) or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level.*

The power of the Board of Zoning Adjustment to grant special exceptions on rooftop structures is located in Sub-section 411.11, cited below.

411.11 *Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve the location, design, number, and all other aspects of such structure regulated under §§411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing, construction used if not in accordance with §§411.3 and 411.5; Provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.*

As referenced Section 411.11 also governs Sub-section 770.6, which states the following:

770.6 *If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:*

a. It shall meet the requirements of §411;

b. It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located;

A. (2) Special Exception Analysis

Sub-section 411.11 gives the BZA the authority to determine the "location, design, number and all other aspect..." of rooftop structures. It does so with language covering 1) lot characteristics, 2) prohibitive cost, and 3) intent and purpose of the chapter. This language is comparable to the tests for variances.

The Office of Planning confirms the applicant's statement that the general purpose and intent of Section 411 was to prevent unsightly roof elements that would detract from the city's skyline and to protect light and air. Due to the location of the cores at the center of the Square, there are very few pedestrian views that would be affected by a lack of set backs and multiple structures (see Picture 6.). The project's impact on the city's skyline would therefore be mostly be limited to neighboring buildings at similar heights.

However, Sub-section 411.11 specifically mentions light and air and should therefore be considered more carefully than the city's skyline. OP concurs with the applicant's statement that the western court and the location at the site's center almost eliminates any negative affects on light and air caused by the lack of setback. The occupants along the western face of the American Health Care Association (see Pictures 2 & 4) would be most affected by the height of the project at that point. This is somewhat mitigated by the fact the windows directly on the alley are on the 4th floor and other windows are located in a setback in building visible in the pictures and from the aerial orthograph (Picture 6.). In addition, the American Health Care Association is a commercial use in a commercial district. Locating window at the property line is a risk taken by developer.

With regards to the requirements of 411.3, the Zoning Regulations make specific allowances for multiple rooftop structures when needed by separate elevator cores (411.4 cited above). While the applicant needs the special exception for stair and services cores, the existence of 411.4 suggests that granting a special exception for multiple rooftop structures needed for the stair and service cores would be within the "general purpose and intent of the Zoning Regulations and Map."

B. (1) Variances Requested

The applicant has requested a variance from the recreation space requirements found in 773.3., the Closed Court requirements found in 776.3. & 776.4. and the 110' 1:1 setback on Massachusetts found in 1701.7 In accordance with Section 3103.2, the Board of Zoning Adjustments may grant variances when:

1. The Property exhibits unique characteristics of size, shape, topographical conditions or other extraordinary or exceptional situation...
2. Strict enforcement would result in exceptional practical difficulties or undue hardship; and
3. Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

773.3 *An area equal to not less than the following percentage of the gross floor area devoted to residential use shall be provided as residential recreation space:*

DISTRICT	PERCENTAGE OF GROSS FLOOR AREA
C-1, C-2-A	20%
C-2-B, C-2-C, C-3-A	15%
C-3-B, C-3-C	10%
C-4, C-5 (PAD)	5%

776.4 *In the case of a closed court for a building, or portion of a building, devoted to residential uses, the minimum area shall be at least twice the square of the width*

of court based upon the height of court, but not less than three hundred fifty square feet (350 ft^2).

B. (2) Variance Analysis

Recreation Space:
As noted by the applicant and section VII.B., of this report, the Office of Planning has set down for a public hearing of the Zoning Commission, amendments resulting from suggestions from the Mayor's Task Force on Downtown Housing and the Downtown Action Agenda. This case is a prime example of why amendments to the recreation requirements have been proposed. If the 15% standard were applied to this project, it would result in 22,397 square feet (17,963 square feet under the initial submission) or roughly 1.54 FAR.

The applicant is proposing 6,581 sf of recreation space or only 4.4% gross floor area of residential space. This is not conforming to the 5% proposed by the amendments. The full 5% would mean 7,465 square feet. At roughly 1,030 of gross square feet per unit, the difference between the 5% and 15% would be would mean the loss of 14 leasable units. The outdoor courts provide 40% of the recreation space. In terms of outdoor recreation space, this falls just short of the 50% requirement of 773.8; however the site, as mentioned, benefits from the wide setbacks of L'Enfant's plan for Massachusetts Avenue. Given the unique lot configuration, the permitted extra density of the DD, the opportunity for urban recreation activities, and the open space set back of Massachusetts Avenue, 4.4% reserved for recreation space is appropriate.

Closed Court:
The project as originally designed proposed a closed court of 1,960.5 square feet, which was 55% of the required minimum of 3,528 square feet. The court was of sufficient width to meet the zoning requirements for a building height of 110', but at the new height, the width of 36' is 86% of the required 42'. Due to the irregular angle of the western property boundary, the project is unable to meet the requirements for width and area. It is defined as a closed court due to the fact that the building is on one side and the property boundary on the other. The central concern is the provision of light and air to the court. Currently, the closed court opens to the court of the adjacent property. Therefore light and air would only be impacted should the adjacent property be redeveloped. However, the Massachusetts House apartment building is in the R-5-E zone, which has stricter lot coverage requirements (75%). This makes it unlikely that any redevelopment of the Massachusetts House could harm the light and air of the applicant's project. However, Massachusetts House has requested an amendment to the proposed downtown housing changes to permit residentially zoned DD properties the same incentives, so they are clearly contemplating some expansion.

The eastern court shares somewhat similar conditions. The Applicant's new design adds density on the eastern court has resulted a court width of 22.8' or only 55% of the 42' and the area is 682 sf or only 19% of the required 3,528 square feet. Importantly the American

Health Care Association Building at 4 stories is well below the maximum density of the DD/C-2-C (80% lot occupancy and heights up to 110' (L Street is 90' wide). Built in 1988 it is unlikely to be redeveloped in the near future. By right development of that site would result in the applicant's units opening on a courtyard with reduced light and air. The District's goal is additional housing units, granting this variance creates an additional 11 units on the property.

Massachusetts Set Back:
The Applicant has proposed the building setback at 118' feet rather than the required 110' setback along the Massachusetts Avenue side. As stated, the setback requirement comes from the recognition that Massachusetts Avenue is a L'Enfant Street and has a unique character and massing. The Applicant has claimed it is a practical difficulty because of "programmatic requirements" (p.15) and that systems would have to be "completely reconfigured. OP concludes that the applicant has not made its case that the lack of a setback at 110' would be a serious practical difficulty, outweighing the public interest in maintaining a uniform set back along the avenue. In addition, OP believes it would impair the intent and purpose of the Zoning Regulations.

C. Other Issues

The Office of Planning feels it is necessary to point out that the Applicant has designed windows located along the northern section of the western wall of the building, which abuts the property line. Should the adjacent property be redeveloped such that the project affects the Applicant's building, the Applicant is responsible to make changes to their building to maintain building compliance with code. As expressed in the District of Columbia Register, Vol. 46 - No. 47, dated Friday, November 19, 1999, page 9477, Subsection 705.3.3, such openings "shall not be counted towards natural light, natural ventilation, or smoke control requirements." The regulations go on to state in 705.3.3.7 that a covenant shall be required to "ensure responsibility for the maintenance of those conditions will be conveyed to any future owner of the building." A copy of the register is found in Appendix B.

IX. COMMUNITY COMMENTS

Community review of the project falls under the jurisdiction of Advisory Neighborhood Commission 2F. After meeting with the ANC, the applicant modified their proposal. Initially the design entailed vehicular entrance to the site from Massachusetts Avenue. In response to community input, in addition to the Office of Planning's, the applicant relocated vehicular access to the site to the L Street side. As seen in Picture 4, L Street is already used for vehicular access by the American Health Care Association building.

Other issues voiced by the community included protection of the Fredrick Douglas mural visible in Picture 3 and the overall height of the project. Members of the community were

concerned about the massing of the project at 130', however they are also eager to see the site redeveloped.

X. OFFICE OF PLANNING RECOMMENDATIONS

In our previous report on this project, the Office of Planning believed the applicant's project met the tests for both special exceptions and variances, and therefore recommended to the BZA that the project be approved. OP reached this conclusion based on the following pieces of evidence.

1. Lot 50 of Square 283 is certainly a unique shape.
2. Strict interpretation of the code would appear to cause a substantial reduction of leaseable square footage and threaten the economic feasibility of project. The long vacant status of the property provides some evidence of this.
3. Due to the surrounding conditions and current design of the project the relief can be granted without substantial detriment to the public good or the integrity of the Zoning Regulations.

The Office of Planning also believed that certain conditions should be placed on the project.

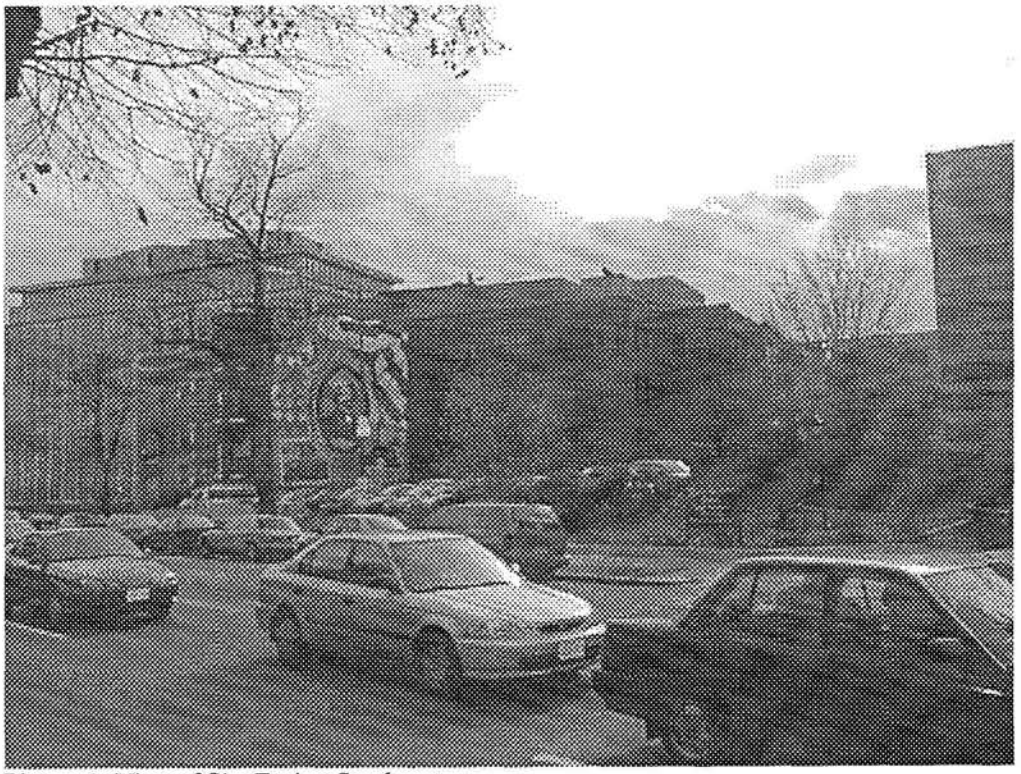
1. Should the Zoning Commission approve the increase in density permitted for residential projects in the DD, the Office of Planning:
    a. Strongly encourages a portion be dedicated to additional ground floor retail to be provided along Massachusetts Avenue.
    b. Requires a minimum of 4% of the project's total square footage be provided for recreation space.
2. Units with windows affected by Vol. 46 - No. 47, dated Friday, November 19, 1999, page 9477, Subsection 705.3.3 shall not be marketed as 2-bedroom units, but leased or sold as 1-bedroom with dens. This will be reflected in the lease and sale documents, or a convenant should be executed with the relevant neighboring property.

To a great extent OP believes these conditions are still appropriate to the redesign of the building.

However, the OP believes that the additional variance request for the 110' setback does not meet the practical difficulty test. Therefore, OP recommends against variances for the 110' setback.



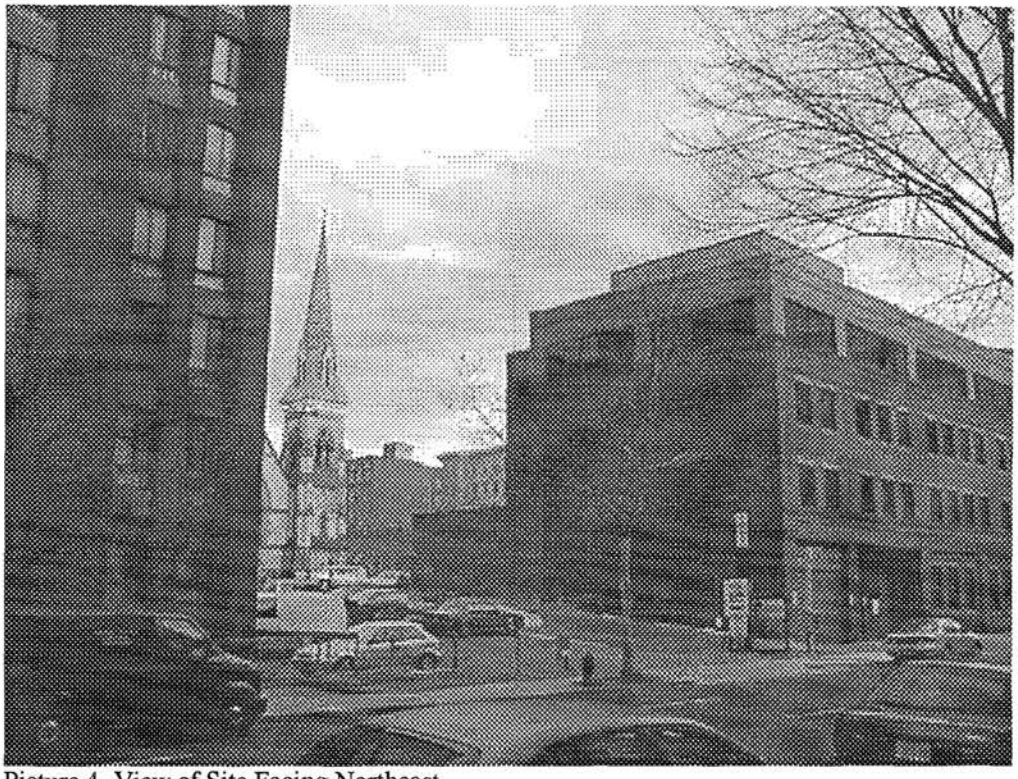
Picture 1. View of Site Facing Southwest

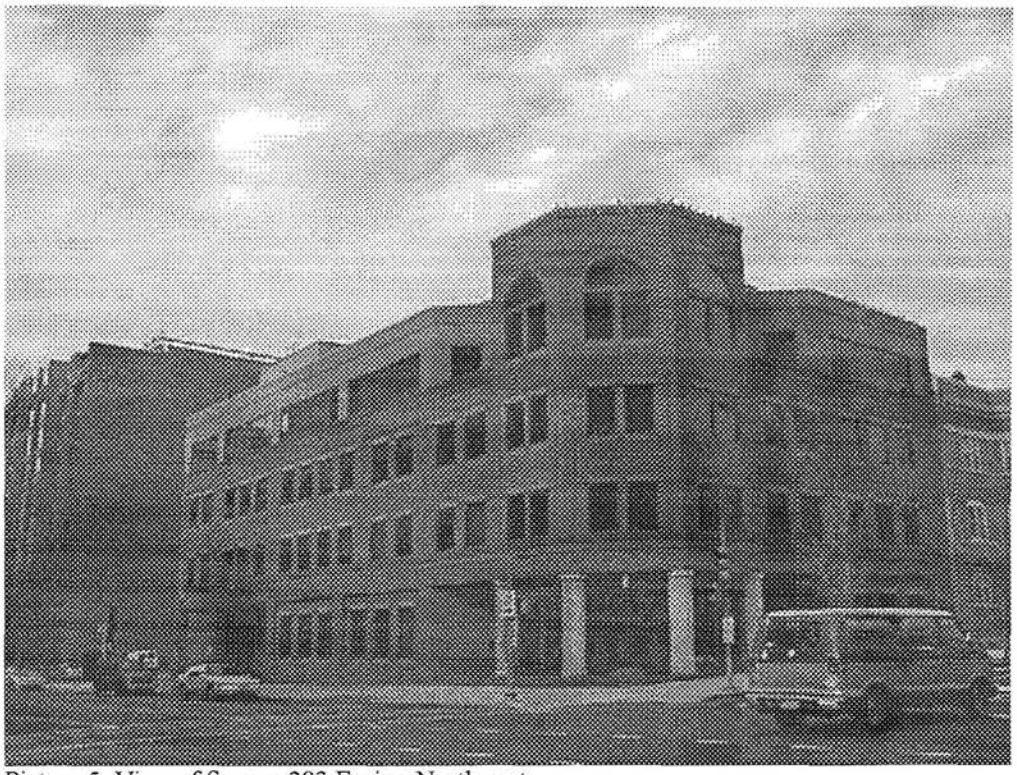


Picture 2. View of Site Facing Southeast

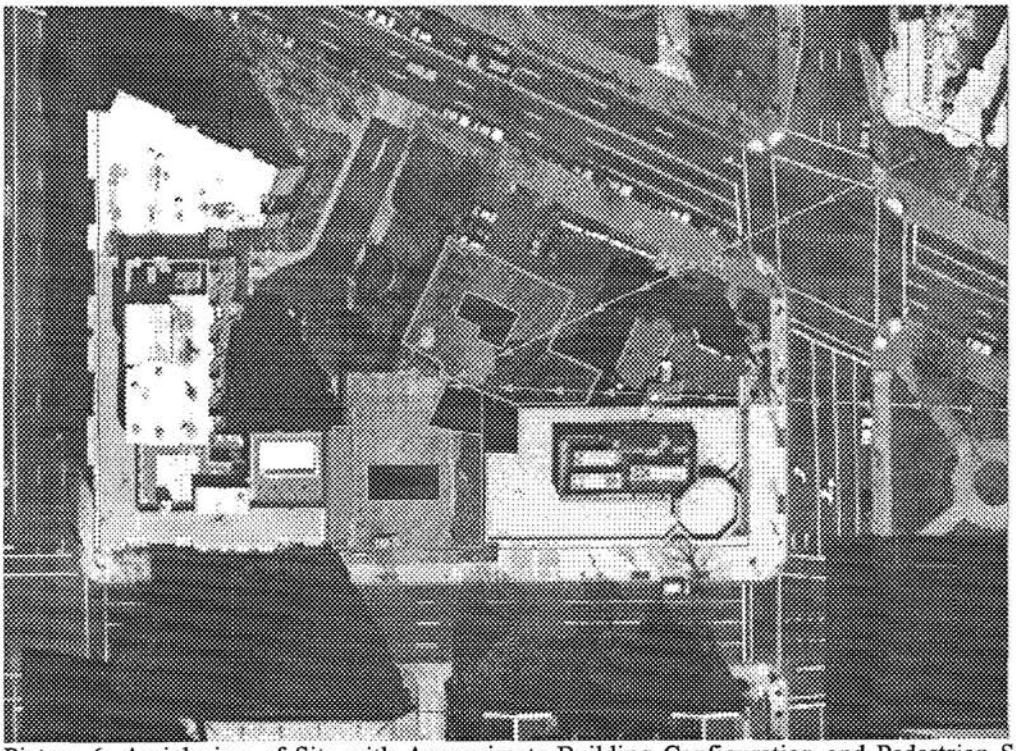


Picture 3. View of Fredrick Douglas Mural


Picture 4. View of Site Facing Northeast



Picture 5. View of Square 283 Facing Northwest



Picture 6. Aerial view of Site with Approximate Building Configuration and Pedestrian Sight Lines of Roof Top Structures.

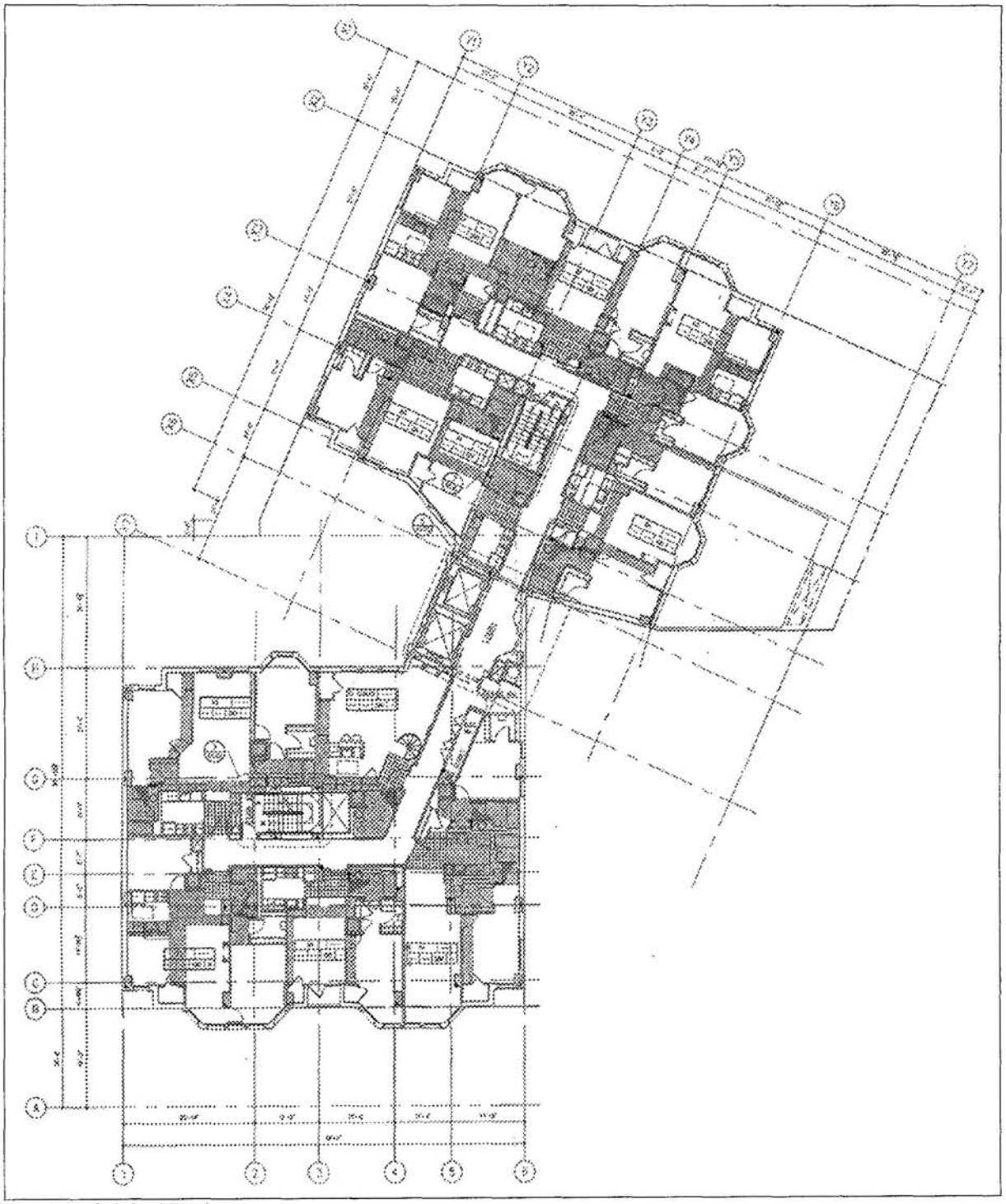


Figure 7. Original Design

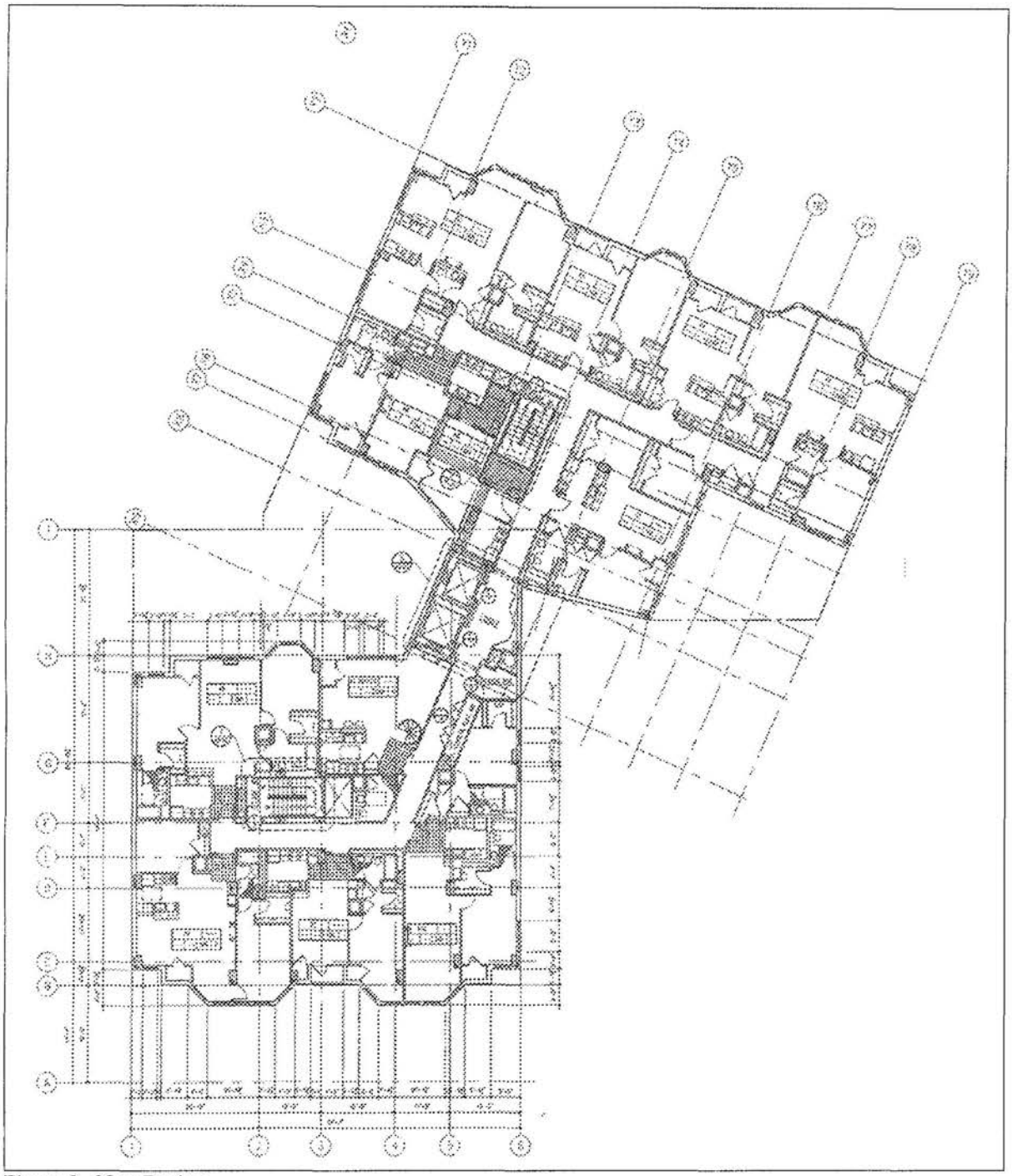


Figure 8. New Design