BEFORE THE BOARD OF ZONING ADJUSTMENT
OF
THE DISTRICT OF COLUMBIA

Application of G.K.D. 1412 Chapin Street, LLC

BZA Application No. 16669
Hearing Date: February 20, 2001
ANC: 1B

RECEIVED
D.C. OFFICE OF ZONING
2001 FEB -6 PM 1:49

STATEMENT OF APPLICANT

I.
Nature of Relief Sought

This is an application pursuant to Subsection 3103.2 for a variance under Subsections 400.1, 403.2, 402.4 and 404.1 from the height, lot occupancy, floor area ratio and rear yard requirements to construct a new apartment building in a R-5-B District at premises 1412 Chapin Street, N.W. (Square 2661, Lot 152).

II.
Jurisdiction of the Board

The Board of Zoning Adjustment ("BZA") has jurisdiction to grant the variances requested pursuant to subsection 3103.1 of the Zoning Regulations.

III.
Background

The Applicant is seeking variance relief from the above provisions of the Zoning Regulations in order to build a new 31 unit apartment house with 27 off-street parking spaces. The original apartment building

BZA
Case No. 16669
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16669
EXHIBIT NO.28A1

did not include any off-street parking spaces, and contained approximately the same number of dwelling units. The new apartment house will replace an apartment house which had existed on the site since 1900. The original apartment house was severely damaged during a lightning storm in August of 2000. As a result of that damage, the owners intended to shore up the building and renovate it pursuant to their previous plans, but were advised by District officials that the building must be demolished. Just prior to the collapse of the building, the owners had undertaken extensive work efforts so as to ready to rehabilitate the property and be ready to apply for a building permit. The building was purchased by the applicant with the expectation and understanding that the building would be able to be rehabilitated and put back into residential use. The approval of this application will fill the void in the Chapin Street streetscape with the construction of a new residential building and, most importantly, will introduce new residential neighbors to the Columbia Heights community.

IV.
Description of the Subject Property and Surrounding Land Area

A. Description of the Property

The subject property is located on the south side of Chapin Street, N.W., approximately 145 feet west of the intersection with 14th Street, N.W. The subject property is rectangular in shape, consisting of

approximately 9,000 square feet of land area. However, the site is narrow with the dimensions of the subject lot being approximately 60 feet by 150 feet. The subject property is essentially vacant except for the remnants of "The Berkshire" apartment house. The former apartment building occupied approximately 93 percent of the lot, and, as previously stated, had been slated for renovation by the Applicant and a new design team.

B. Description of the Surrounding Area

The subject property is located in the Columbia Heights neighborhood, in the northwest quadrant of the City. The 14th Street corridor has recently undergone substantial construction for the Green Line section of the Metrorail. There are several three, four, and five story apartment houses along Chapin Street. The Metropolitan Police Boy's Club is located to the northeast of the site at 14th and Chapin Streets. The five-story apartment house at 1424 Chapin Street has been nominated for, and received, historic landmark status. The subject property abuts a 20 feet wide public alley on its east side. Further east across the alley is the newly constructed Nehemiah Shopping Center. The shopping center is located in the C-2-B zoning district. The subject property abuts a 20 feet wide public alley on its south side, beyond which is a four-story apartment house, in the R-5-B District. There are a series of apartment houses and row dwellings located to the west of the subject property, in the R-5-B District.

C. Points in Support of this Application

Exhibit A:	Portion of the Baist and Sanborn Atlases showing the site outlined in red.
Exhibit B:	Portion of the Zoning Map showing the site outlined in red.
Exhibit C:	Surveyor's Plat
Exhibit D:	Architectural Plans
Exhibit E:	Photographs of the Subject Property
Exhibit F:	Outline of Testimony of the Applicant
Exhibit G:	Outline of Testimony of the Project Architect
Exhibit H:	Outline of Testimony of Project Development Manager
Exhibit I:	Outline of Testimony of Project Contractor
Exhibit J:	Outline of Testimony of Land Use Planning Expert
Exhibit K:	BZA Orders in which similar relief has been granted (BZA Orders Nos. 12783, 14529 and 15578)
Exhibit L:	Copy of letter in support from ANC 1B.

V.
Compliance with the Requirements of Subsections 400.1, 402.4, 403.2,and 404.1 of the Zoning Regulations

The Applicant is requesting area variance relief from the height, floor area ratio, percentage of lot occupancy and rear yard provisions of the Zoning Regulations for the R-5-B District in order to reconstruct a similar type of apartment building that formerly existed on the subject property. As will be discussed below, the variance relief being sought is reasonable, as it is supported by the historical height and density of the

property and the exceptional situation and conditions which have brought about the cause for this application.

Subsection 400.1 (Height of Building)

The R-5-B District permits a maximum building height of 50 feet with no limit on the number of stories. The previous apartment building was 59 feet tall. Prior to the sudden and untimely damage to the building, the Applicant was proceeding towards rehabilitation of the building at its original height of 59 feet. The Applicant is requesting permission to reconstruct an apartment building on the site to an identical height of 59 feet. The previous building existed on the site at this height for 100 years. The height variance will also allow the design of a 27 car parking garage in the basement of the building. The availability of secure on-site parking is essential to the successful marketing of the apartment units. The nine (9) foot variance from the building height requirement will not be visually discernable and will not cause any detriment to the public good.

Subsection 402.4 (Floor Area Ratio)

All structures in the R-5-B District are limited to a maximum floor area ratio (FAR) of 1.8. The previous apartment building on the subject property had a FAR of approximately 5.25. The Applicant does not propose to build the new building back to the exact historical FAR of the previous building. The new building is proposed to have an FAR of 4.67, or 11 percent less than that of the original building. If the Applicant

were limited to building a 1.8 FAR building on the site less than one-half of the units would be provided that had previously existed on the site. The FAR variance will allow the Applicant to provide a density comparable to the historical unit density in the new building, as well as make the development financially feasible.

Subsection 403.2 (Percentage of Lot Occupancy)

The maximum percentage of lot occupancy for all structures in the R-5-B District is 60 percent. The subject lot has an area of 9,000 square feet. The maximum lot occupancy allowed on the site would be 5,400 square feet. The previous building on the subject property had a lot occupancy of 93 percent, having a historical foot print of approximately 8,304 square feet. The Applicant is requesting variance relief to be able to occupy 100 percent of the lot. Approval of the lot occupancy variance is essential to the success of the development. By occupying 100 percent of the lot (only a 7 percent increase over the previous building) the project architect is able to accomplish the following design improvements over the former apartment building:

1. Introduction of spacious outdoor residential recreation space through roof and second floor terraces. These on-site recreation spaces will enhance the living experience of all residents. The former building did not have any residential recreation space, and the proposed design also affords more light to the units in adjacent properties.

2. Introduction of secured garage parking spaces on the basement level. Resident access to secure indoor parking is a must given the premium on on-street (curb) parking, the current demands of the market and the potential for auto thefts in the area. The proposed garage will accommodate 27 cars. The previous apartment house did not have any on-site parking.

3. Approval of the lot occupancy variance will allow for the design of larger, more livable apartment units with all of the amenities demanded by today's consumers. The quality of the apartment units is essential to the marketing success of the project.

VI.
The Application Meets the Criteria for Variance Relief Under Subsection 3103.2

To qualify for area variance relief under Subsection 3103.2 of the Zoning Regulations, the Applicant must demonstrate that there is a unique or exceptional situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations. It must also be demonstrated that no substantial detriment to the public good or impairment to the zone plan would result from the granting of the variance relief. As discussed above, the Applicant has successfully demonstrated compliance with the variance test. The exceptional situation and circumstances surrounding the untimely

damage to the original apartment building, and the applicant's efforts to rehabilitate said building prior to its demolition as directed by District of Columbia personnel form a part of the basis for this variance request.

The Subject Property is Affected by Unique or Exceptional Situations or Conditions Making it Practically Difficult for the Applicant to comply with the Strict Interpretation of the Zoning Regulations

The development history of a site has served as a basis for finding a property is unique and affected by an exceptional situation or condition. In this case, prior to 1958, the subject property was zoned RES C & D District with a permitted height of 60 feet. The RES C Area District permitted 75 percent lot occupancy and the RES D Area District, 90 percent lot occupancy, which would have allowed a building similar in height and bulk to the applicant's. Up until November of 1992, the R-5-B Zoning District permitted a height of 60 feet. The R-5-B District now permits a 50 foot height. In addition, the site is deep and narrow and given the need to construct on-site parking, it is practically difficult to develop without variance relief.

The requested variances are necessary in order to rebuild a similarly sized apartment building on the subject property as compared to the size of the previous building on the site. The replication of the size of the building is significant from the perspective of maintaining the historic sky line, urban design and streetscape at this prominent location. As discussed above, the variances make the project desirable from a real estate marketing standpoint. Without the variance relief, the

Applicant would be faced with a practical difficulty in complying with the strict application of the R-5-B District area requirements irrespective of the unique circumstances affecting the site.

The zoning history of the site and other factors affecting the property have been found to constitute uniqueness in variance cases. See *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091 (1990), *De Azcarate v. District of Columbia Board of Zoning Adjustment, 388* A.2d 1233 (1978), and *National Black Child Development Institute, Inc. v. District of Columbia Board of Zoning Adjustment*, 483 A.2d 687 (1984).

The Requested Variance Can Be Granted Without Substantial Detriment to the Public Good and Without Substantially Impairing the Intent, Purpose and Integrity of the Zone Plan

As will be brought out in the Applicant's testimony, there is community support for this application. The application will allow an increase in the City's housing stock by bringing back to life a former apartment building which had sat vacant in the community for too long prior to its destruction.

In addition, the Applicant has appeared before ANC 1B, which took action to support this request for BZA approval.

VII.
Witnesses

1. Applicant
2. Project Architect
3. Project Development Manager

4. Project Contractor

5. Land Use Planning Expert.

VIII.
Conclusion

The Applicant has demonstrated that it meets the burden of proof necessary for approval of this variance application. The variance relief will make possible the upgraded reconstruction of a similarly sized apartment building that had existed on the site for 100 years. The Applicant has demonstrated that there are unique situations and conditions relating to the property which support this application. The new 31 unit apartment house with 27 garage parking spaces will represent another important step in the economic development renaissance under way in the Columbia Heights neighborhood. The Applicant requests that this application be approved.

Respectfully submitted,

Norman M. Glasgow, Jr.

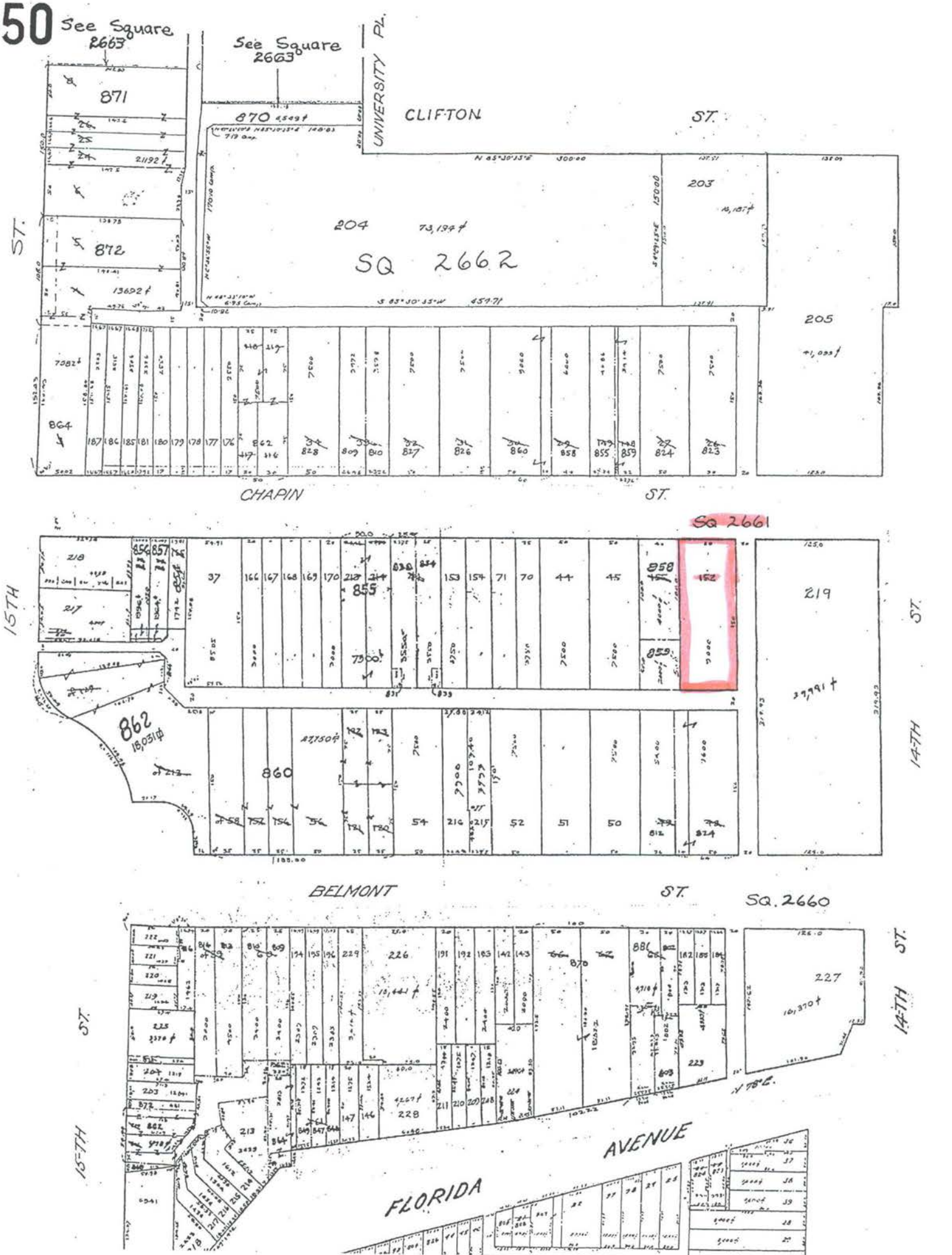
Antonio M. Barros, Jr.

#222840 V3

A


CHAPIN
(COLLEGE ST.)
ST.
CLIFTON
BELMONT
(STAUGHTON)
FLORIDA
14TH
2661
2662
2660
2868
CLIFTON TERRACE WEST
CLIFTON TERRACE CENTRE
SAFEWAY STORE
THE VICTORIA
THE BERKSHIRE
MERIDIAN MANOR APT
BYRON HALL APT
VAN CORTLANDT
CRESTHILL APTS
CHEVROLET AGENCY
BAIST'S REAL ESTATE ATLAS
SURVEYS OF

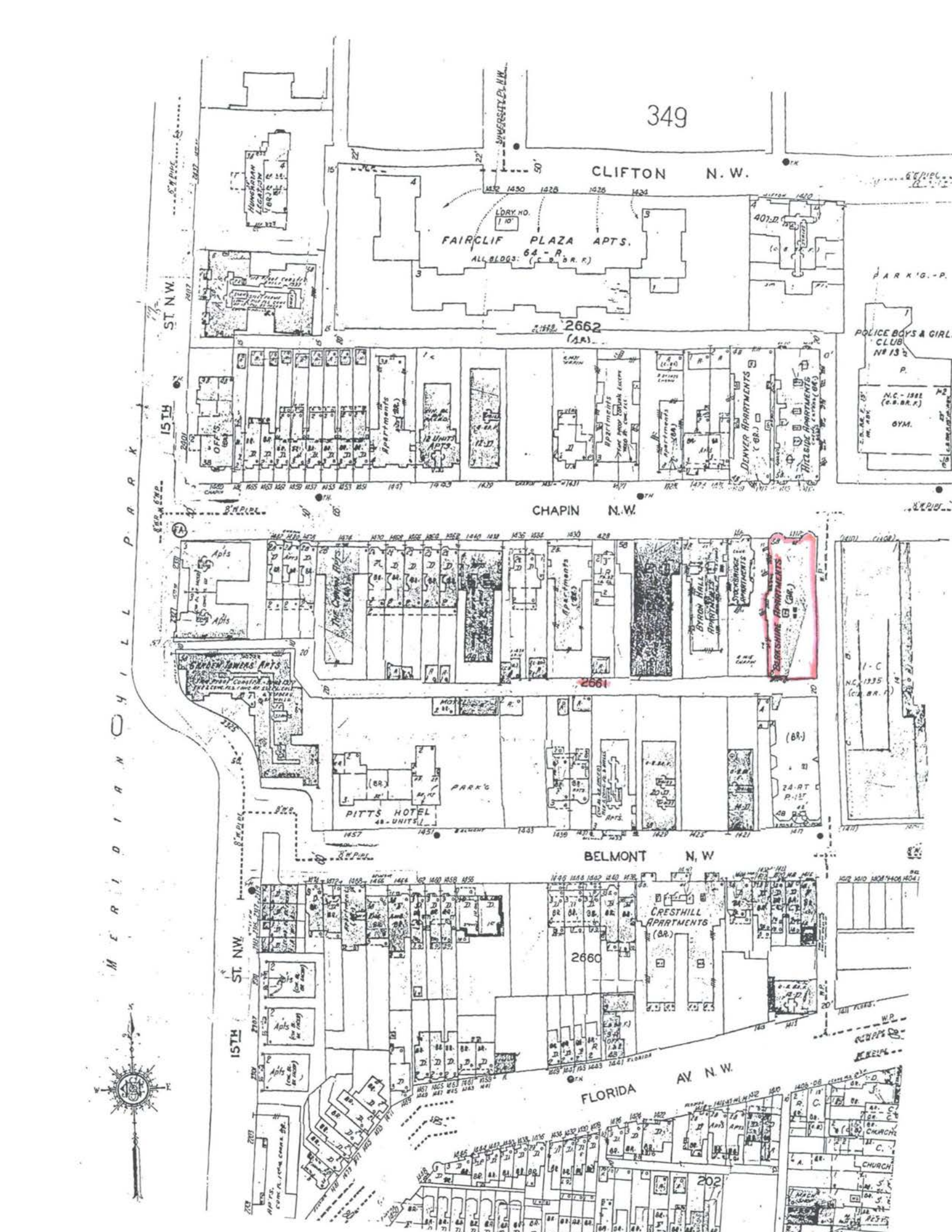
Exhibit A


350
See Square 2663
See Square 2663
UNIVERSITY PL.
CLIFTON ST.
871
870
872
204
73,194 ±
SQ 2662
203
205
ST.
CHAPIN ST.
SQ 2661
15TH ST.
14TH ST.
219
862
860
855
BELMONT ST.
SQ. 2660
227
228
AVENUE
FLORIDA




Map 6
Zoning Map of the District of Columbia
This map does not reflect Planned Unit Developments (PUD), Transfer of Development Rights (TDR) Receiving Zones, or Campus Plans. To verify official zoning on any property, contact the Office of Zoning at the address or number listed below.
Effective as of: Unofficial Release
Amendments Through: September, 2000
Date Printed: November 13, 2000
400 0 400 800 Feet
FED Major Federal Tracts
Areas of Overlay Districts
Overlay Description
ARTS Uptown Arts
CAP Capitol Interest
CBUT Chain Bridge University/Terrace
CP Cleveland Park
D Diplomatic
DC Dupont Circle
DD Downtown Development
FB Foggy Bottom
FT Fort Totten
Overlay Description
HR Hotel Residential
LO Langdon
MW Neighborhood Commercial-Mass/Wisconsin
NO Naval Observatory
RC Reed Cooke
SSH Sixteenth Street Heights
TSP Tree and Slope Protection
WH Tree and Slope Protection-Wesley Heights
WP Neighborhood Commercial-Woodley Park
Prepared By The District of Columbia Office of Zoning 441 4th Street, NW Suite 210 South Washington, DC 20001 202-727-6311 http://dcoz.dcgov.org

Exhibit B


349
CLIFTON N.W.
FAIRCLIF PLAZA APTS.
ALL BLDGS: 64 - R
2662
POLICE BOYS & GIRLS CLUB No 13
GYM.
CHAPIN N.W.
15TH ST. N.W.
MERIDIAN HILL PARK
DENVER APARTMENTS
HILLSIDE APARTMENTS
BERKSHIRE APARTMENTS
BYRON HALL APARTMENTS
STOCKBRIDGE APARTMENTS
GARDEN TOWERS APTS.
2661
PITTS HOTEL
48 UNITS
PARK'G
BELMONT N.W.
CRESTHILL APARTMENTS
2660
FLORIDA AV. N.W.
202
CHURCH



DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., 9-14, 2000

Plat for Building Permit of SQUARE 2661 LOT 15

Scale: 1 inch = 20 feet Recorded in Book 20.14 Page 117

Receipt No. 446

Furnished to: WILKES ARTIS

Surveyor, D.C.

By: DH VMA

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: 11-07-00

(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.

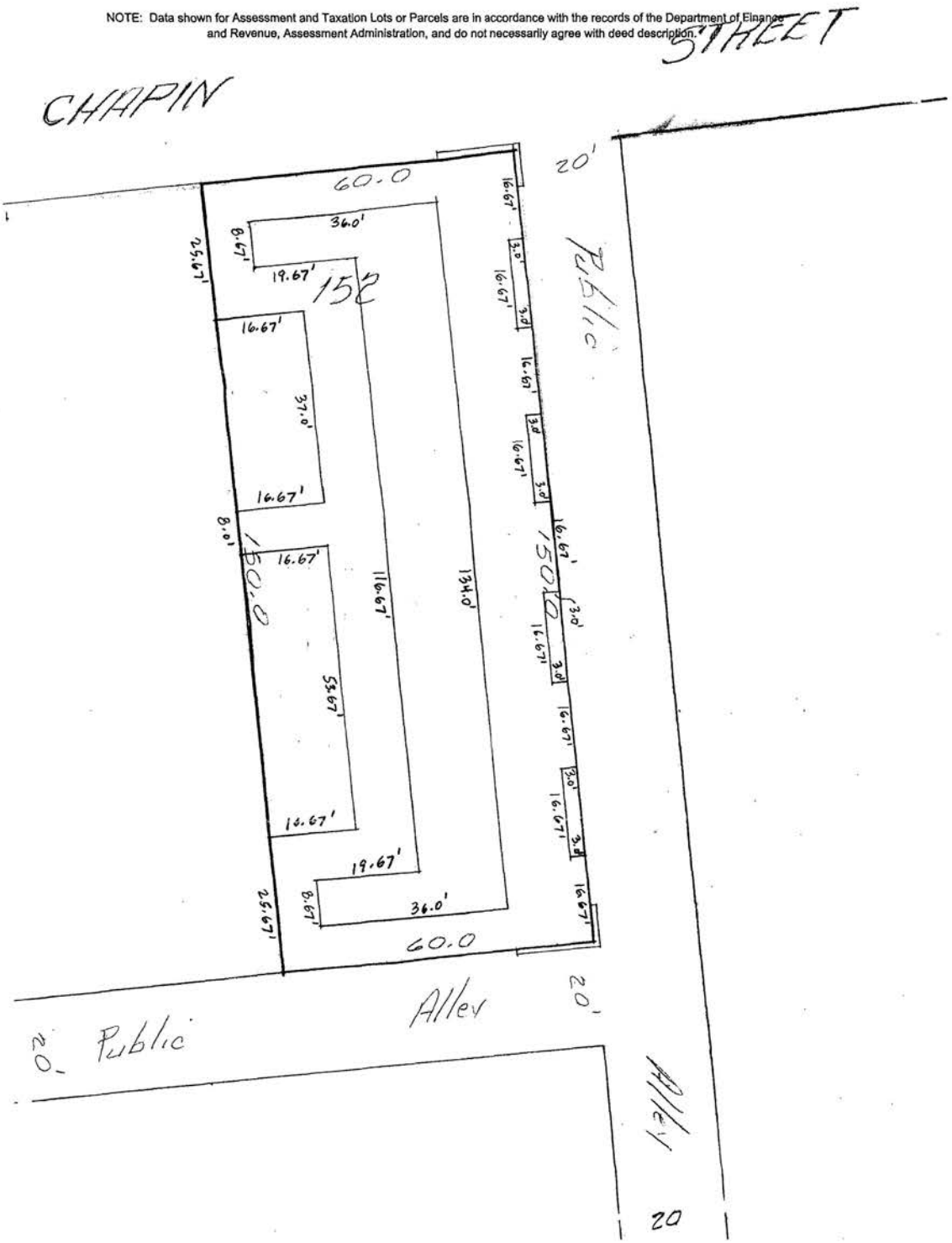
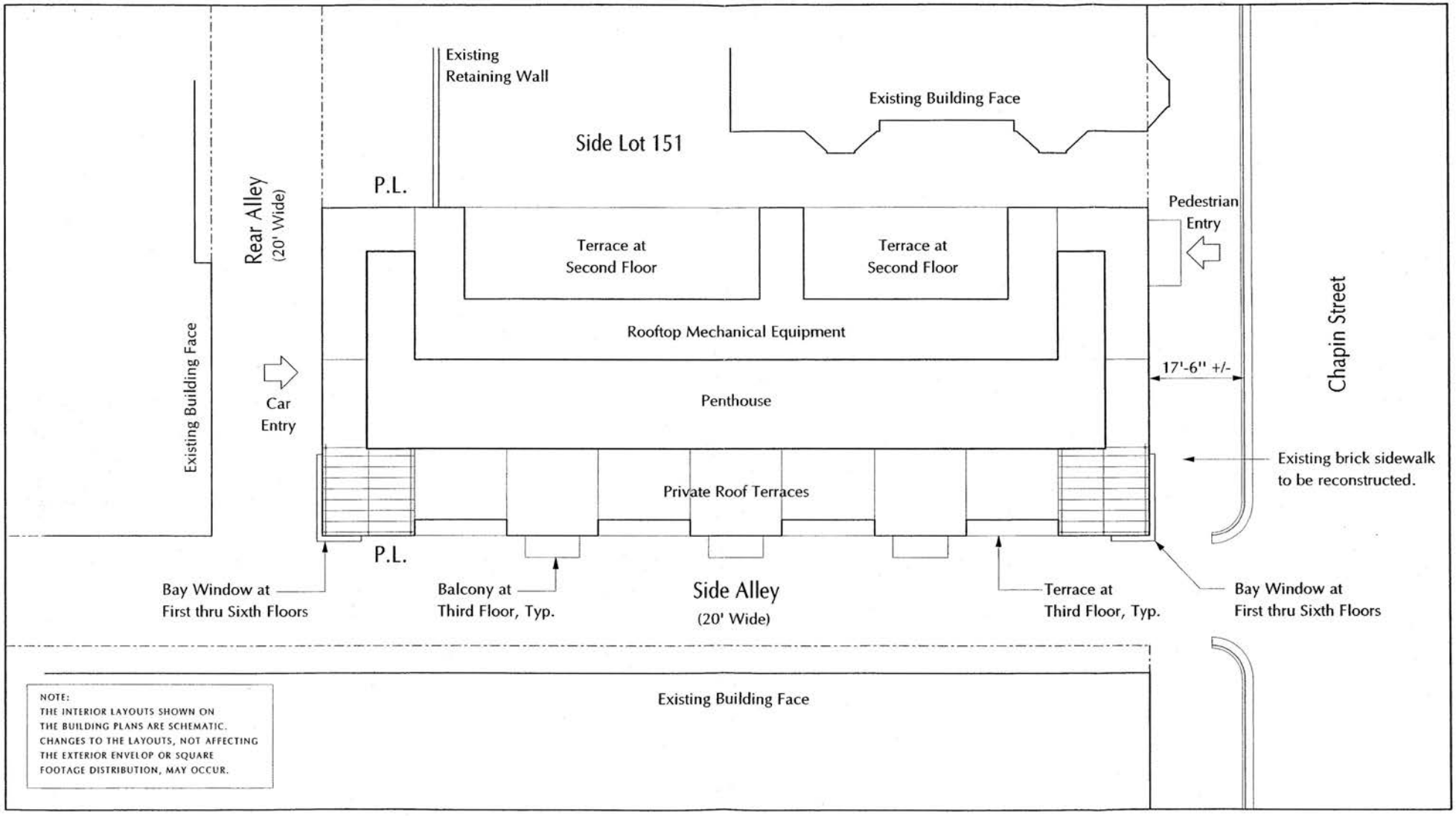


Exhibit C





Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

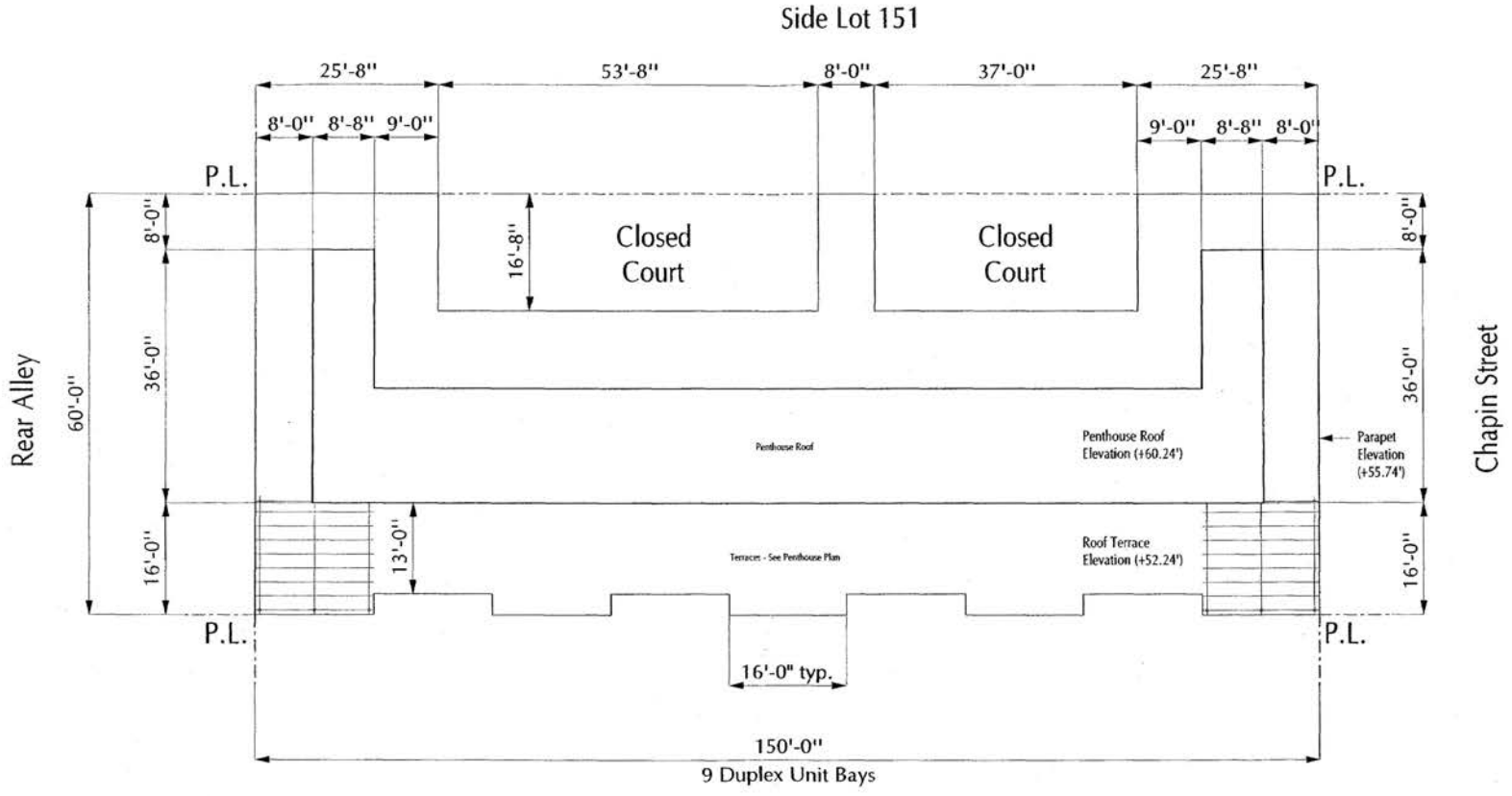
Architectrual Site Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000

Exhibit D



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

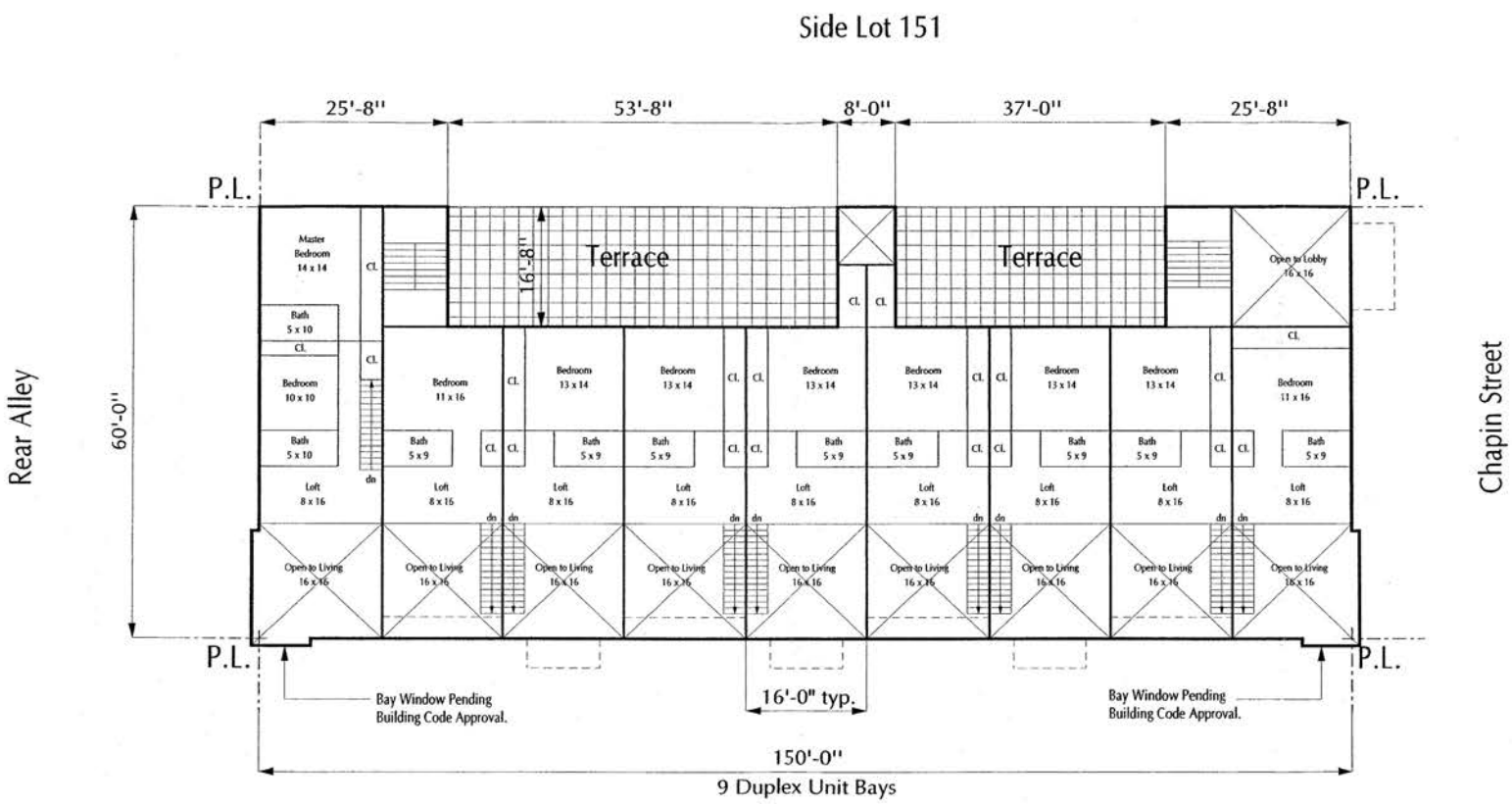
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Roof Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

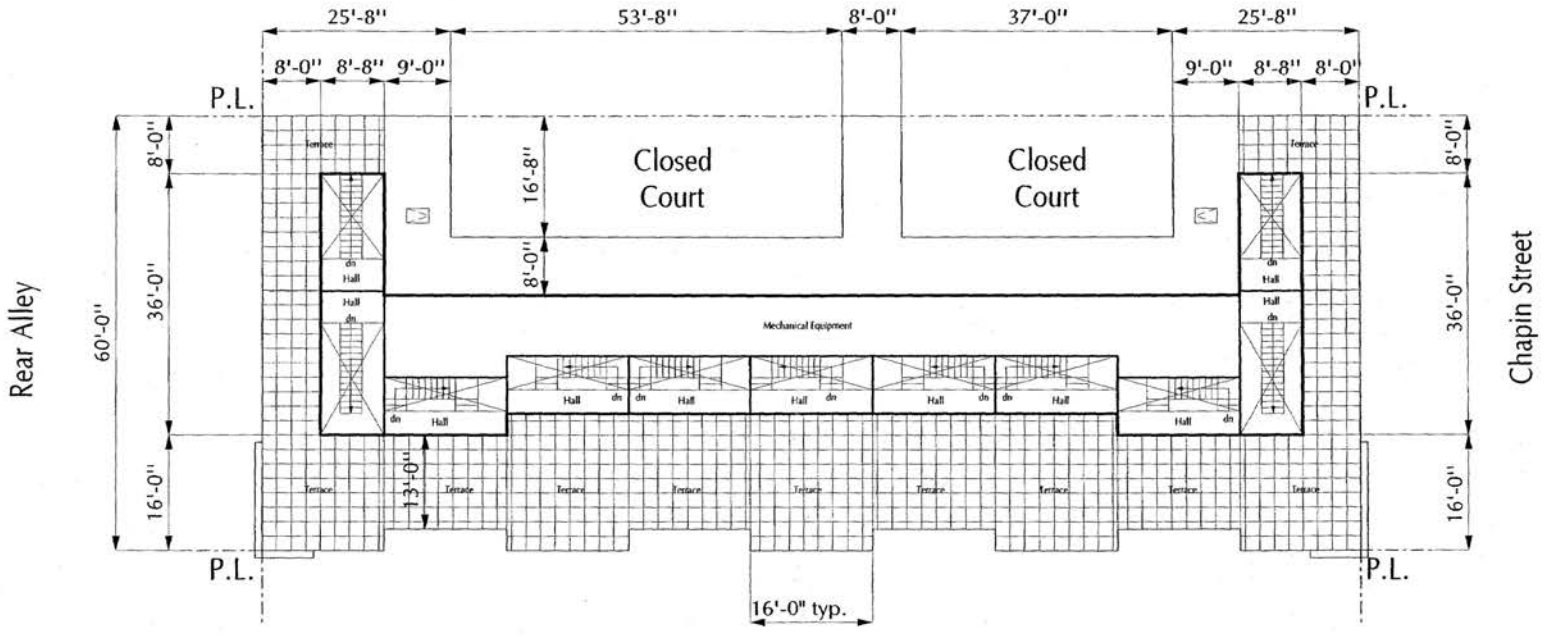
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Second Floor Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

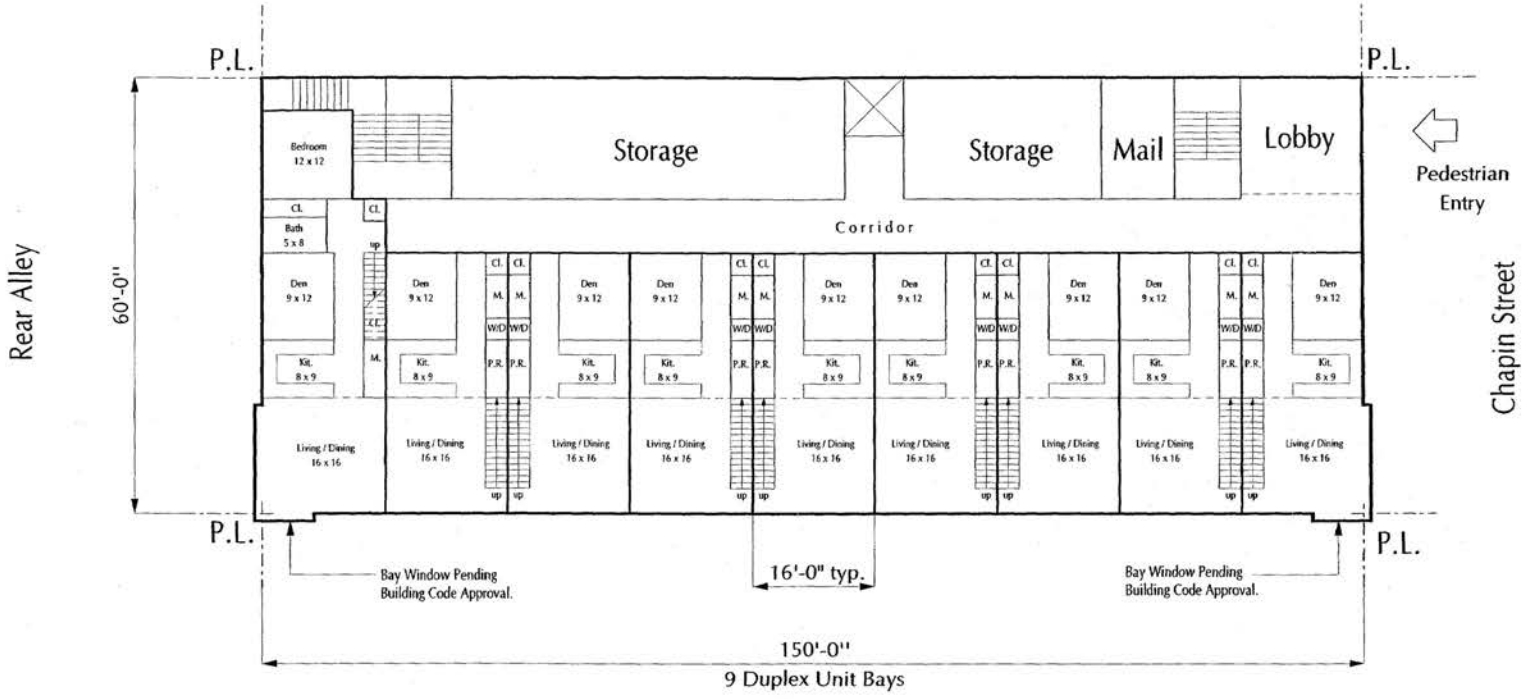
Penthouse Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000

Side Lot 151



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

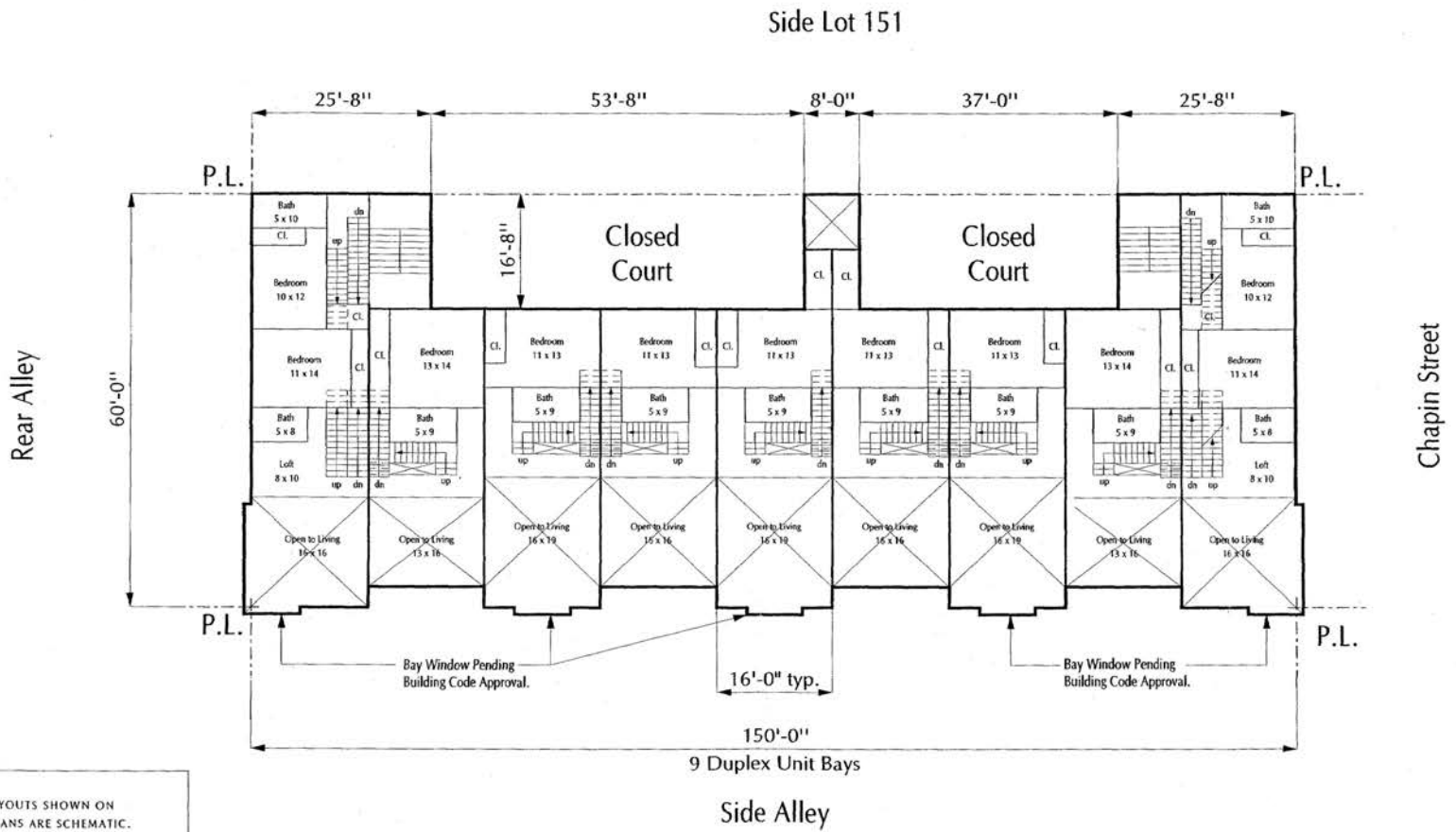
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

First Floor Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

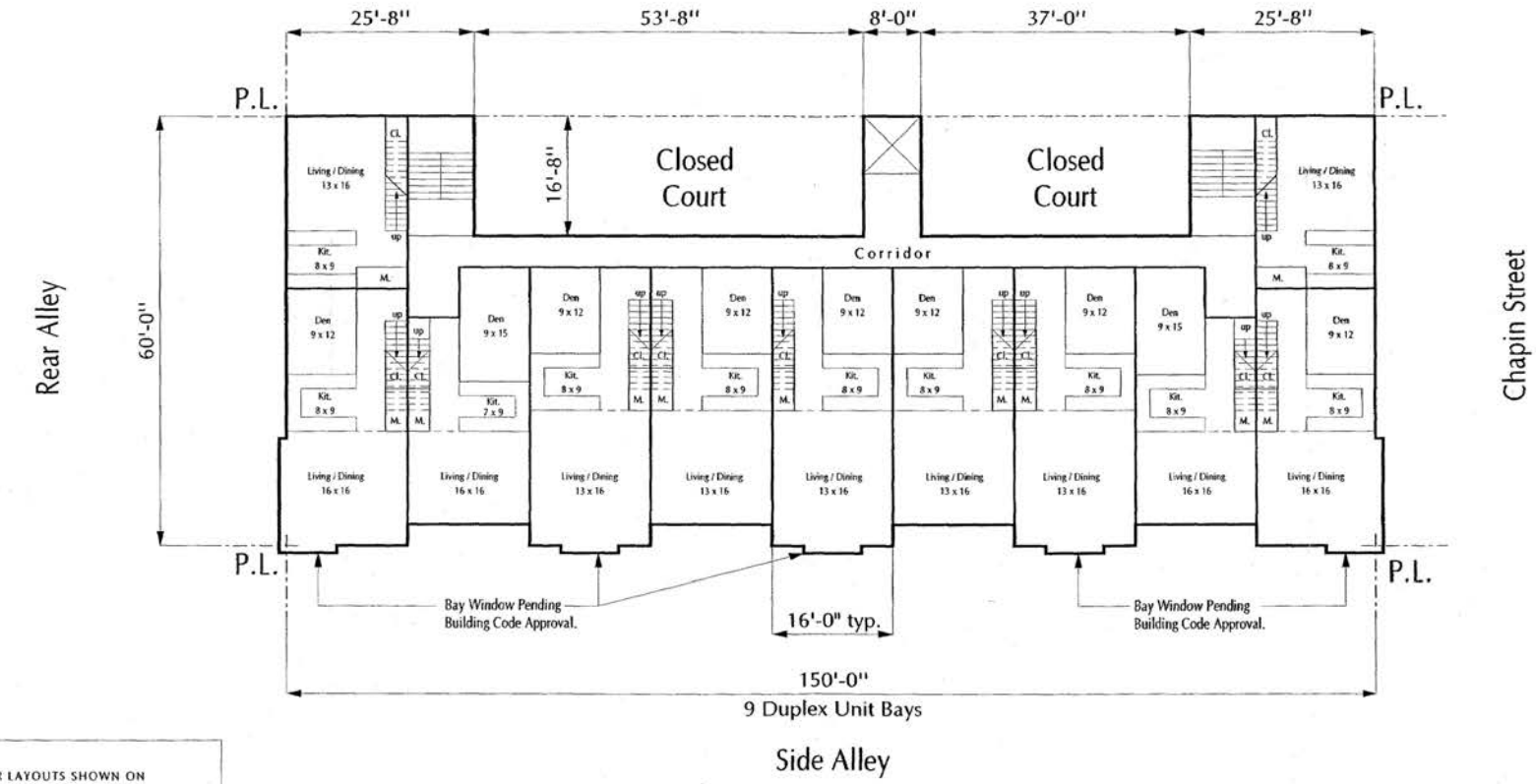
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Sixth Floor Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

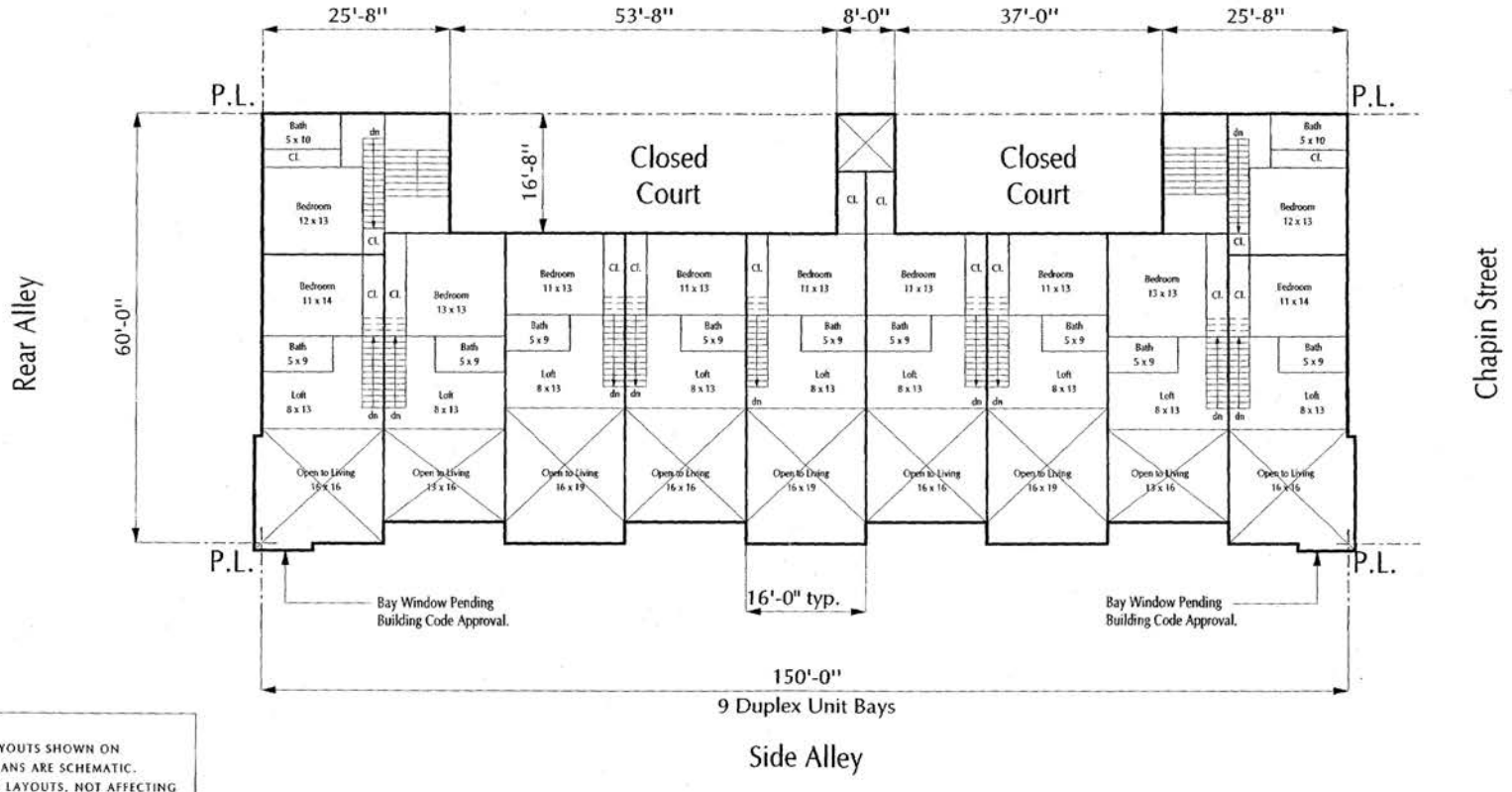
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Fifth Floor Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

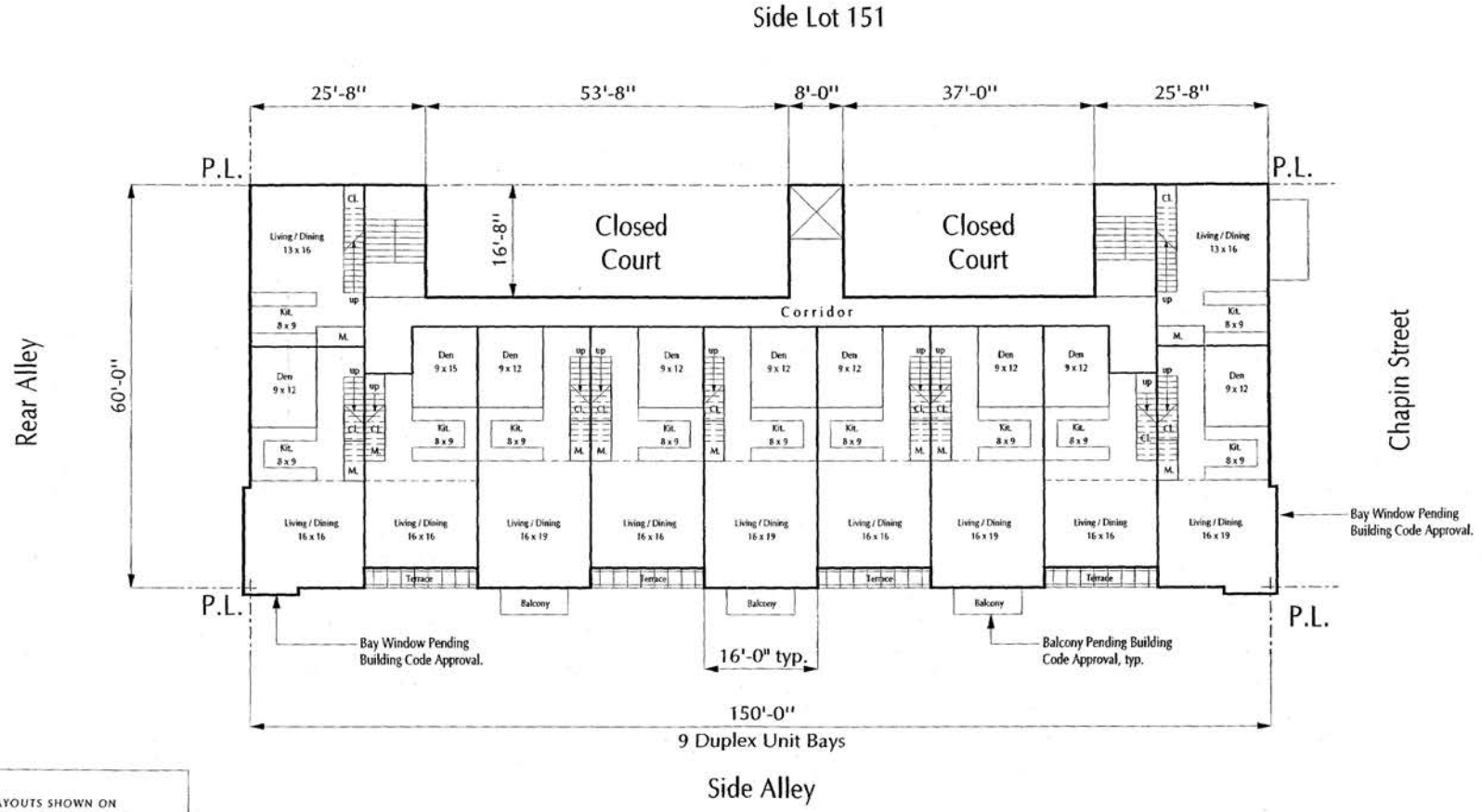
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Fourth Floor Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

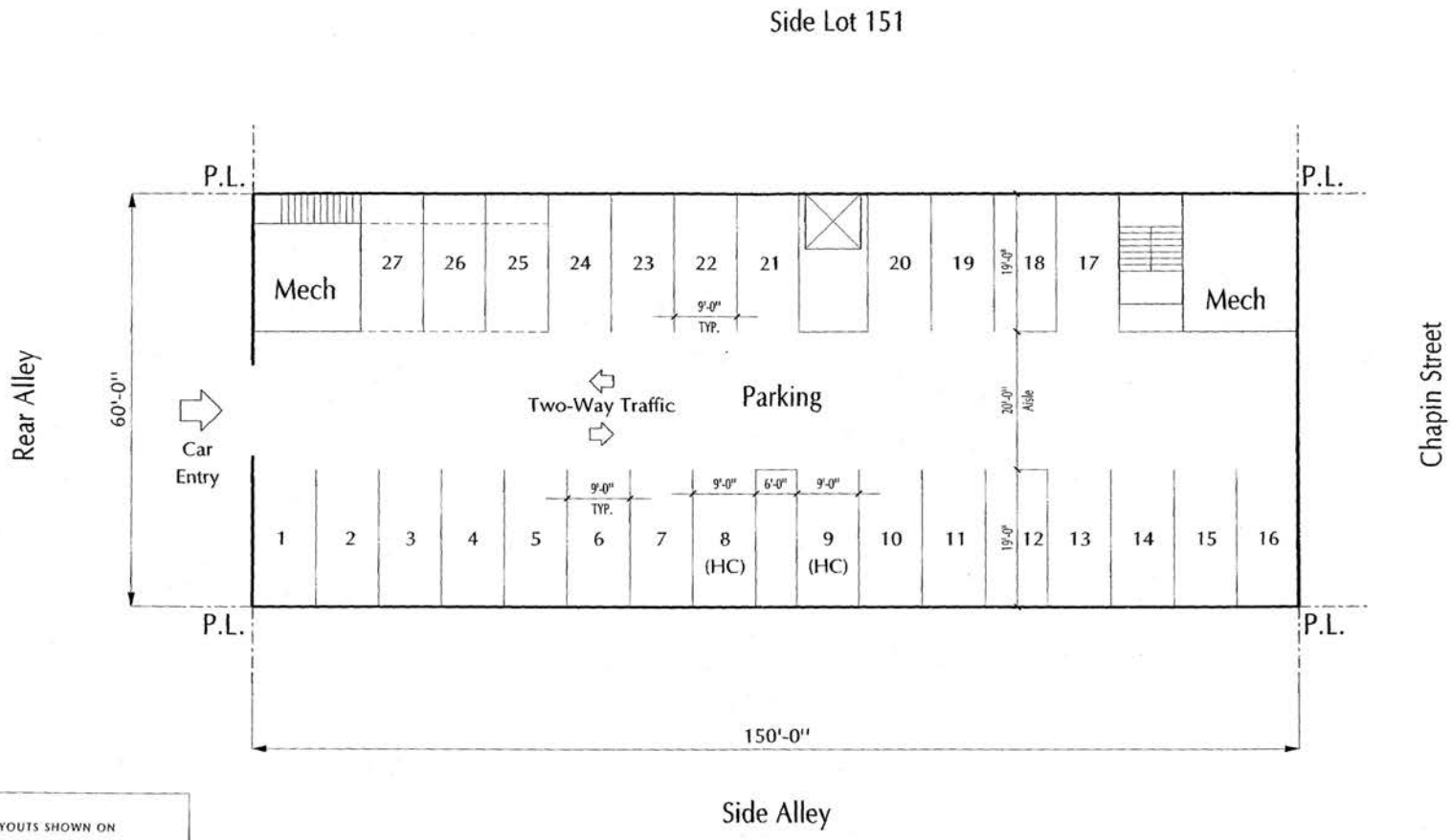
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Third Floor Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

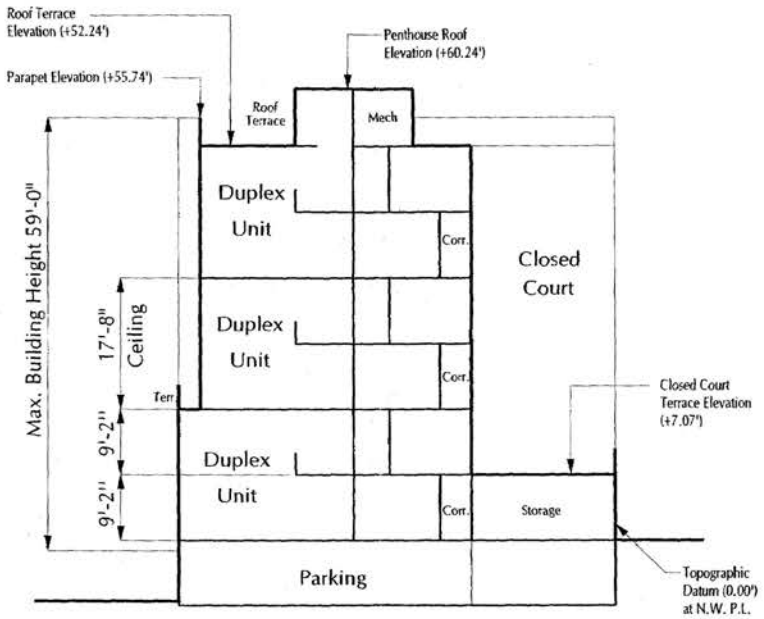
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Basement Floor Plan

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

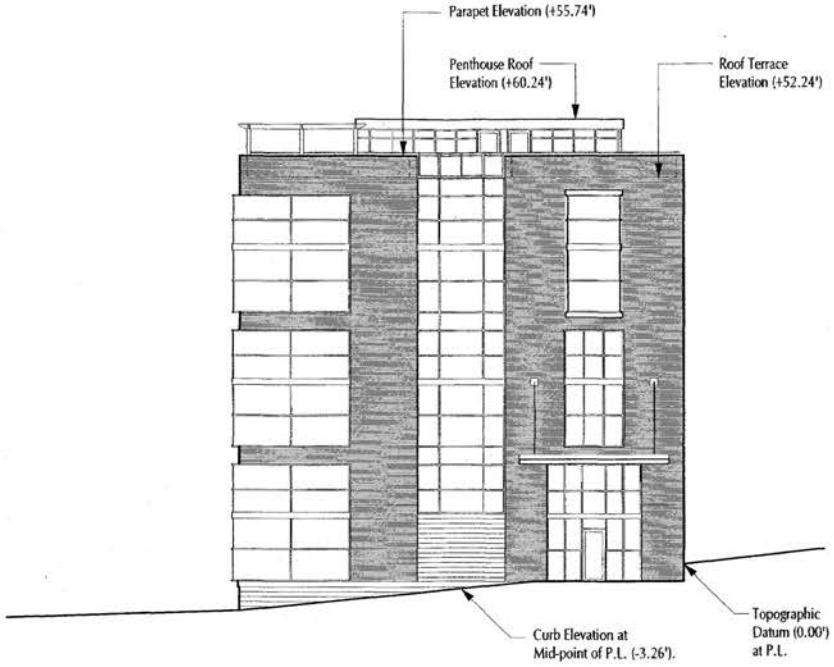
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Cross Section

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

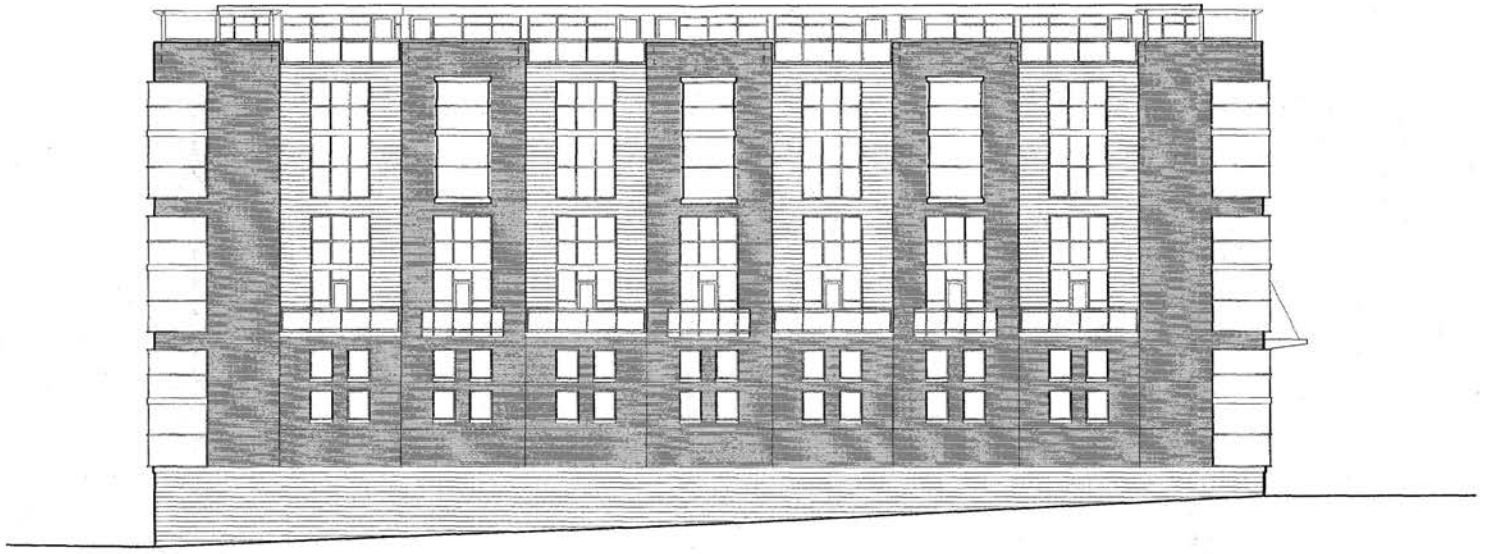
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Chapin Street (North) Elevation

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

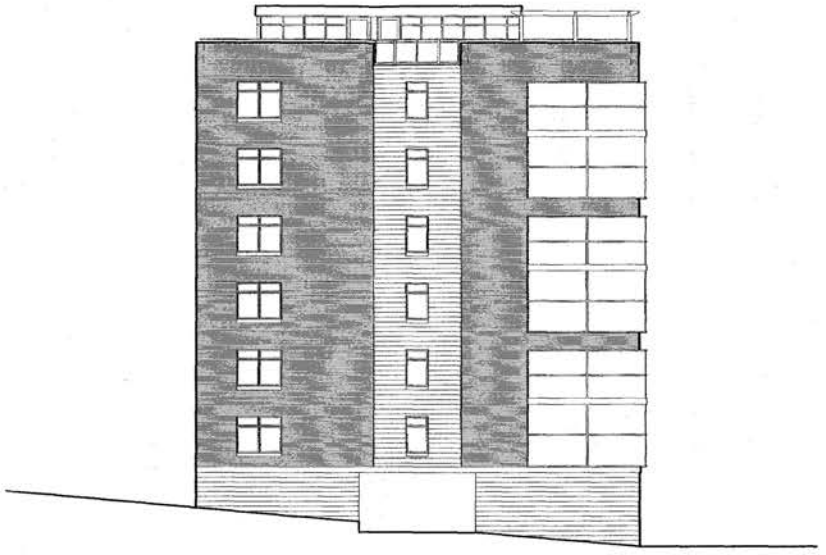
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Side Alley (East) Elevation

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

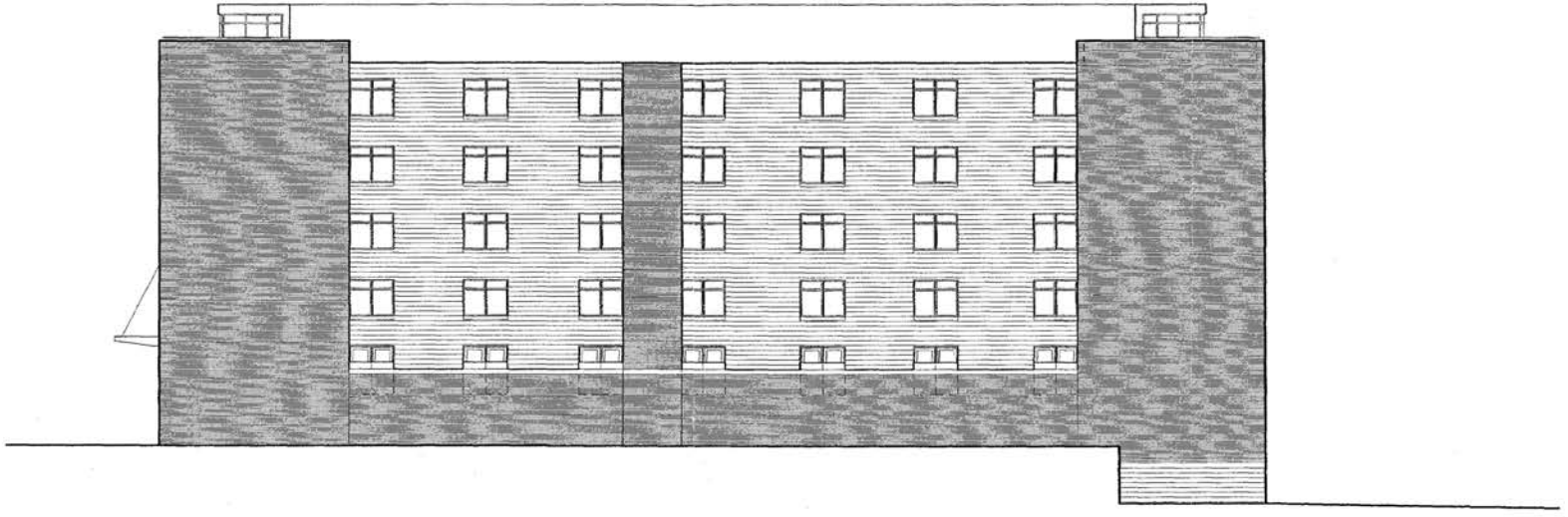
Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Rear Alley (South) Elevation

0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



NOTE:
THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOP OR SQUARE FOOTAGE DISTRIBUTION, MAY OCCUR.

Chapin Street Lofts
1412 Chapin Street, NW
Washington, DC

Side Lot (West) Elevation

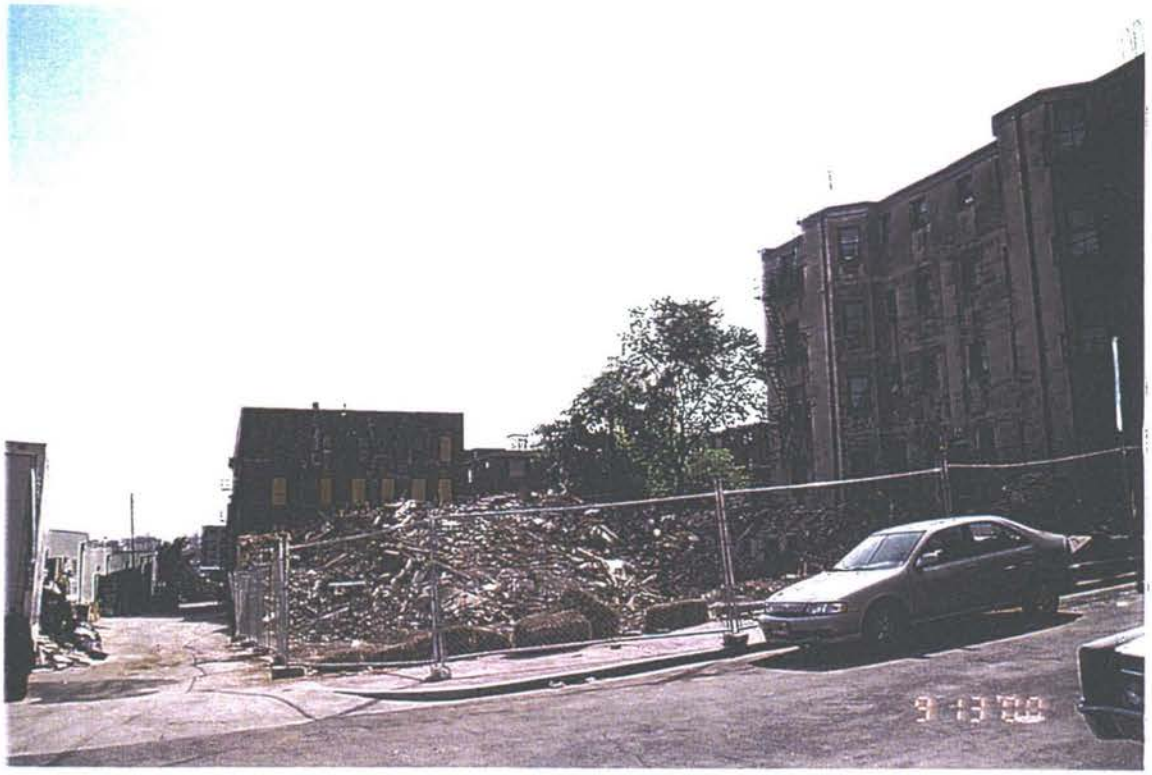
0 4 8 16

November 6, 2000

Cunningham + Quill Architects, PLLC
Copyright 2000



1412 CHAPIN STREET, N.W.
PHOTOGRAPHS OF THE SUBJECT PROPERTY
AND SURROUNDING LAND AREA



1. View looking south at the fence enclosed subject property. Chapin Street, N.W. is in the foreground. The alley to the left (east) of the photo has a right of way width of 20 feet.



2. Expanded view of the preceding photo.



3. View of the apartment house development located directly north of the subject property on the opposite side of Chapin Street, N.W.



4. View looking west at the Nehemiah Shopping Center located on the southeast corner of 14th and Chapin Streets, N.W. The subject property is located behind the shopping center. Chapin Street is to the right (north) of the photo and 14th Street is in the foreground.



5. View of the apartment houses located directly west of the subject property. The fenced subject property is to the left (east) of the photo.



6. View of the Metropolitan Boys and Girls Club located on the northwest corner of 14th & Chapin Streets, N.W.



7. View of the apartment development located on the east side of 14th Street, N.W. at its intersection with Chapin Street, N.W.

F

OUTLINE OF TESTIMONY
OF
NIGEL GRAGG
REPRESENTATIVE OF CHAPIN STREET, LLC

I. Introduction

II. History of Occurrence of Events During Ownership

III. Brief Overview of the Original Project

IV. Brief Overview of the Proposed Project

V. Zoning Relief is Necessary to Proceed with Project

VI. Conclusion

Exhibit F



OUTLINE OF TESTIMONY
OF
LEE QUILL
CUNNINGHAM & QUILL, PLLC

I. Introduction and Professional Qualifications

II. Overview of site, surrounding Area and Land Use

III. Project Design

A. Description of Original Building Characteristics

B. Design Considerations and Review of Plans for Proposed Building

1. Shape and Location of Property
2. Building Height
3. Residential Recreation Space
4. Secured Garage Parking
5. Floor Plans

C. Significance of Design for Maintaining Historic Skyline, Urban Design and Streetscape

Exhibit G



OUTLINE OF TESTIMONY
OF
DEVELOPMENT MANAGER

I. Introduction and Professional Qualifications

II. Nature of Project

III. Overview of Residential Market

- A. Site and Floor Plan Layout
- B. Consumer Demand for On-Site Parking

IV. Project is Not Feasible Without Relief

V. Conclusion



OUTLINE OF TESTIMONY
OF
***BUILDING* CONTRACTOR**

I. Introduction

II. Brief Overview of the Original Project

III. Order from D.C. Government to Remove Structure

IV. Brief Overview of the Proposed Project

V. Conclusion

Exhibit I



OUTLINE OF TESTIMONY
OF
STEVEN E. SHER,
DIRECTOR OF ZONING SERVICES,
HOLLAND & KNIGHT, LLP
LAND USE PLANNING EXPERT

I. Site Location and Description

II. Description of Surrounding Area

III. Existing Zoning – R-5-B

- A. Uses
- B. Height
- C. Density
- D. Rear Yard
- E. Side Yard
- F. Parking

IV. Proposed Development

V. Relief Required – variance from the height, lot occupancy, FAR and rear yard requirements

VI. Standards for a Variance (§3101.2)

VII. Compliance with the Variance Standards

- A. Exceptional or extraordinary situation or condition
- B. Practical difficulty
- C. No detriment to the public good

VIII. Conclusion

Exhibit J



GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14529, of GLM Properties, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 4104.44 to establish SP office uses on the subject site and Sub-section 3308.2 to erect a roof structure which does not meet the set back requirements, and for variances from the floor area ratio requirements (Sub-section 4301.1) and the service berth requirements (Sub-section 7302.1) for a proposed construction of an office building in a SP-2 District at premises 1301 M Street, N.W., (Square 245, Lot 28).

HEARING DATE: January 14, 1987
DECISION DATE: January 14, 1987 (Bench Decision)

DISPOSITION: The Board GRANTED the application by a vote of 5-0 (William F. McIntosh, Paula L. Jewell, Charles R. Norris, Patricia N. Mathews and Carrie L. Thornhill to grant).

FINAL DATE OF ORDER: April 3, 1987

ORDER

The Board granted the application by its Order dated April 3, 1987, subject to the condition that construction be in accordance with the plans marked as Exhibit No. 9 of the record. By letter dated October 2, 1987, counsel for the applicant filed a timely request for Board approval of a modification of the approved plans. The proposed modification will result in an increase of the ceiling height of the top floor of the proposed building of 7.25 inches, the lowering of the first floor windows, and a reduction in the height of the penthouse.

The overall height of the building will be 74.75 feet, well within the ninety foot height limit for the SP-2 District. The penthouse structure will be in compliance with Section 411 of the Zoning Regulations.

Upon consideration of the proposed modified plans and its final order, the Board concludes that the proposed modification of plans is minor in nature and does not substantially alter the size, shape or configuration of the project as initially approved. The applicant requires no additional zoning relief from the Board. The material facts

relied upon by the Board in approving the application are still relevant. There was no opposition to the application. It is therefore ORDERED that the proposed modification of plans is APPROVED subject to the condition that the construction shall be in accordance with the plans marked as Exhibit No. 35A of the record. In all other respects the *Order of the Board*, dated April 3, 1987, shall remain in full force and effect.

DECISION DATE: November 4, 1987

VOTE: 4-0 (Charles R. Norris, Carrie L. Thornhill, Paula L. Jewell and William F. McIntosh to approve; Patricia N. Mathews not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: DEC 4 1987

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

order14529/DEE5

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15578 of 1839 13th Street Limited Partnership, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 215 to allow accessory parking spaces elsewhere than on the same lot on which the principal use is located, and a variance from the 900 square feet per apartment requirement (Sub-section 401.2) to allow the conversion of a structure to an apartment house in an R-4 District at premises 1839 - 13th Street, N.W., (Square 275, Lots 10, 814, 825, and 828).

HEARING DATE: October 9, 1991
DECISION DATE: October 9, 1991 (Bench Decision)

FINDINGS OF FACT:

1. The Notice of Public Hearing which advertised this case listed a variance from the use provisions (pursuant to Sub-section 330.5) of the R-4 District as being sought by the applicant. The Board has determined that relief from the above section is not required in this case. The basis for amending the relief required is a review of Section 330.5 of the Regulations which permits as a matter-of-right the conversion of a pre-May 12, 1958 building to an apartment house. The Whitelaw was previously used for apartment house purposes as verified by Certificate of Occupancy No. B-9541, dated January 17, 1958 which granted the use of all floors of the Whitelaw for apartment use.

2. The subject property involves two sites. The site of the proposed Whitelaw apartments (the principal site) is located on the southeast corner of the intersection of 13th and T Streets, N.W., in the R-4 zone. The site of the proposed accessory parking spaces is located in the interior of Square 274, south of the principal site, in the R-4 zone.

3. The principal site consists of approximately 11,700 square feet of lot area, and is rectangular in shape, except for a dog-legged projection at the site's southeast corner. The accessory parking lot site is rectangular in shape, and vacant, except for a masonry garage building on the south end of the property.

4. The principal site is developed with an existing 4 - story brick structure formerly occupied as a 40 plus unit apartment/hotel named the Whitelaw, constructed in 1918, and is currently being considered for landmark status as an historic structure.

5. The Whitelaw is presently vacant, boarded, and in a state

of disrepair. The building suffered major fire damage in 1981.

6. The area surrounding the subject site is predominately developed with single-family row dwellings, interspersed with apartment buildings, schools and churches. There is a small corner grocery store located across 13th Street from the principal site.

7. The applicant proposes to renovate the existing building on the principal site into 35 moderate income apartment units. There are planned to be 5 one bedroom units, 18 two bedroom units, and 12 three bedroom units in the project. Nine of the units will be designed as handicapped accessible. The proposed accessory parking lot will provide 16 parking spaces for the future tenants of the project.

8. The applicant is seeking variance relief from Sub-section 401.3 and Sub-section 3107.2 of the Zoning Regulations from the 900 square feet per apartment requirement which allows the conversion of a structure to a multiple dwelling in the R-4 District.

9. The applicant has testified that the variance relief is necessary to permit reasonable use of the property as the size of the existing structure, and lot causes a practical difficulty to the applicant in strictly adhering to the provision of Sub-section 401.3.

10. Combined, the lots on which the Whitelaw is located totals 11,700 square feet of land area. The size of the subject site is larger than the majority of the other lots in the subject square which are developed primarily with row dwellings. This factor combined with the size of the existing structure makes its use as a single family row dwelling or flat impractical.

11. The applicant's architectural witness testified that the Whitelaw contains approximately 40,400 square foot of gross building area. The strict application of the Zoning Regulations would only permit its conversion to 13 units, each containing over 3,000 square feet of gross floor area; producing units of an unreasonable and uneconomic size.

12. The longstanding residential use of the site, the size of the site, and size of the existing structure in relationship to neighboring lots, and the existence of a potentially historic building on the site are all unique situations and conditions affecting the property.

13. The applicant's architectural witness testified that approval of the variance will make possible the preservation of a building which has contributed to the City's rich architectural and social legacy. Adding 35 affordable apartment units to the City's housing role will not result in substantial detriment to the public

good, and will not substantially impair the intent, purpose or integrity of the Zoning Regulations.

14. Section 215 of the Zoning Regulations permits accessory automobile parking spaces in the R-4 District to be located elsewhere than on the same lot or part of a lot on which the main use is permitted, except for a one single-family dwelling provided that certain criteria are met.

15. In the subject case the applicant requests permission to locate accessory parking spaces to serve the new residents of the Whitelaw apartments on Lot 825, in the same square as the principal site.

16. The applicant's architectural witness described that the accessory lot historically was used by the Whitelaw for parking. The rectangular shaped parking lot consists of approximately 6,344 square feet of land area, and will be asphalt paved and striped to accommodate 16 automobiles. The parking lot will provide 4 spaces over the 12 spaces required by the Zoning Regulations.

17. The applicant proposes to locate accessory parking spaces in accordance with the special exception provisions of Sub-section 215.

18. The proposed accessory parking spaces will be located in an open area, and will not extend above the level of the adjacent finished grade. The proposed parking lot will be at the same level as the alleys which abut it on all sides.

19. The accessory parking spaces are located on Lot 825 approximately one hundred (100) feet south of the lot in which the Whitelaw (main use) is located.

20. The accessory parking lot is separated from the site of the Whitelaw by the alley system which bisects the interior of Square 275.

21. The applicant intends to fully comply with all applicable provisions of Chapter 23.

22. The principal building and use (Whitelaw Apartments) have occupied the site since its construction in 1918. As the applicant's architect has attested, there are significant structural conditions, which precludes the economical placement of the required parking spaces in the building. The site's inability to accommodate on-site spaces is further encumbered by the Whitelaws lot occupancy, and the restrictions governing changes to its facade given its likely historic status.

23. The site of the proposed accessory parking spaces has a

history of parking lot use. The subject site (Lot 825) is presently vacant, except for a few abandoned cars. The applicant's architect described that the parking lot as proposed will be a vast improvement over the vacant and overgrown lot which exist presently. The parking lot will be asphalt paved and stripped in accordance with Chapter 23 of the Zoning Regulations. The lot will be well lighted for the security of both the new residents of the Whitelaw and the surrounding properties. The lot will be landscaped in accordance with the site plan and maintained.

24. The proposed accessory parking lot is surrounded on all sides by public alleys, which affords excellent vehicular access without impacting on abutting properties.

25. The parking spaces will be pulled away from the 8 foot wide alley to afford a 14 foot driveway width, and more distance from the rear yards of the properties to the west. There is more than adequate room to maneuver cars in and out of the parking lot, without infringing on abutting private property. Access to the accessory spaces can be had from three entrances off of 12th Street, and two entrances off of 13th Street. The 30 foot wide core alley which abuts the parking lot affords the site adequate light and openness, adding to the security of its users.

26. The use of Lot 825 will not become objectionable due to noise or traffic. The users of the lot will be new residents of the community coming and going from work, church, and other typical daily routines. The 16 space accessory parking lot will act to lessen the demand for street curb parking spaces in the area. Additionally, the Whitelaw is located one block south of the recently opened U Street/Cardoza Metrorail station. The close proximity to the Metro, Downtown employment centers and conveniences, and major Metro bus routes along 14th Street will reduce tenant reliance on automobile use.

27. Before taking formal action on an application for use as an accessory parking lot, the Board shall have submitted the application to the D.C. Department of Public Works for review and report.

28. The D.C. Department of Public Works, by memorandum dated September 26, 1991, noted its review of the application, and stated that it has no objection to the application's request.

29. The D.C. Fire Department by memorandum dated September 25, 1991, stated that it has evaluated the request as listed in the application to determine its impact affecting emergency operations, and has no objection to the application.

30. The Board waived its' rules to allow the late filing of the report of Advisory Neighborhood Commission (ANC) 1B. ANC-1B by

letter dated October 9, 1991, states "that the subject property has been in a continuing deteriorating condition for several years. The improvement of this property in a manner that brings additional needed affordable housing to this area is not a violation with the housing aspects of an R-4 District. Moreover, this is a historically important building in the community and the commitment to co-sponsor with ANC 1B the designation of this building as a D.C. historic landmark further mitigates in favor of granting this application." The ANC requested the Board to grant the requested relief.

31. The Board waived its' rules to allow the late filing of the report of Advisory Neighborhood Commission (ANC) 2C. ANC-2C by letter dated October 9, 1991 states that it has reviewed the special exception and variance relief sought, and believes that the case should be granted. The ANC noted it is supportive of the restoration of the historic Whitelaw for 35 moderate income apartment units, and the plan to provide 16 accessory parking spaces.

32. The Cardoza-Shaw Neighborhood Association by letter dated October 8, 1991 supported the granting of the application to rehabilitate and preserve the Whitelaw.

33. The 1400 Block of S Street Block Council by letter dated October 8, 1991 states that it is in full support of the applicant's development project. The Council expressed approval of the preservation of the Whitelaw's architectural features.

34. The D.C. Office of Planning (OP), by memorandum dated October 1, 1991, and as testified at the public hearing, expressed support for the special exception and variance relief sought in the application. The OP found that the applicant was faced with a practical difficulty in complying with the strict interpretation of the Zoning Regulations. The OP found that exceptional and unique situations and conditions exists due to the size of the existing building and lot which makes compliance with the 900 square feet per unit requirements unreasonable, and uneconomical. The OP further found the applicant to have complied with all of the special exception provisions of Sub-section 215 and 3108.1 of the Zoning Regulations to allow accessory parking spaces. The Board concurs with the findings of the OP.

35. The Anthony Bowen Block Council by letter dated October 9, 1991, went on record as in support of the variance and special exception to allow the renovation of the Whitelaw into 35 residential units. The Council notes that "the resoration of the Whitelaw Hotel is key to the continued revitalization of our neighborhood."

36. Frank Smith, Jr., Councilmember and Chairman of the

Committee on Housing in a letter dated August 8, 1991, stated the Committee's support for the project.

37. A resident of 1815 - 13th Street, N.W. appeared to state concerns about the proposed accessory parking lot. The resident presented hereself as a neighborhood property owner separated from the proposed accessory parking lot by the 8 foot wide public alley. She indicated that she was not opposed to the conversion of the Whitelaw to apartments or the project in general; but had concerns relative to the number of spaces provided and the design of the accessory parking lot. Concerns were expressed about noise, pollution and lights. The Board notes that the applicant expressed a willingness to work with the property owners in the square to mitigate any adverse condition from the parking lot.

38. The Board in addressing the concerns has considered her testimony in the context of the Zoning Regulations as it applies to the relief sought in this application, and finds that the plan for the accessory lot as presented by the applicant represents the best possible plan for mitigating any impacts on the surrounding properties, and is in the best interest of the public good. Under the proposed plan, the eight foot wide public alley separating the proposed lot and the residential properties along 13th Street, would in effect be widened to allow a greater area for vehicle manuvering and access for both the users of the lot and the residents. The Board also finds that it is reasonable to conclude that emergency vehicle access to the rear of the residential properties would be improved. The location of the parking spaces farthest away on the lot from the residential properties is of greater advantage in reducing any potential impacts. Reducing the number of parking spaces to create screening or a buffer area would undermine the real need in providing the off-street parking and would render the proposed parking plan unworkable. Any buffer area or screening must be considered for all of the frontage along the 8 foot alley and would eliminate the eight parking spaces proposed to be accessible from the west. Such a reduction would not meet the required number of parking spaces under the Zoning Regulations.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a special exception and variance to operate an accessory parking lot and convert an existing building into a multiple dwelling respectively in the R-4 District. The granting of such special exception relief requires a showing through substantial evidence that the proposed use satisfies the criteria set forth in 11 DCMR 215 and 3108.1. The granting of the variance requires a showing of practical difficulty as spelled out in Sub-section 401.3 and Sub-section 3107.2 of the Zoning Regulations.

The Board concludes that the applicant has met the requisite burden of proof. The applicant meets the burden of proof required for variance approval under Sub-section 3107.2 and 401.3 of the Zoning Regulations and for special exception approval under Sub-section 3108.1 and Section 215 of the Zoning Regulations. The applicant has demonstrated that the relief necessary to facilitate the renovation of the Whitelaw for 35 moderate income apartment units will be in harmony with the general purpose and intent of the Zoning Regulations and Maps, and will not adversely affect the use of the neighboring properties. The applicant has proven that there are exceptional conditions and situations relating to the likely historic landmark designation of the property which creates practical difficulty and makes it practically difficult to comply strictly with the lot area provisions of Section 401.3. The Board further concludes that the applicant compies with all of the special exception provisions to allow accessory parking spaces in the R-4 District.

The Board further concludes that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map. Accordingly, it is hereby **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Construction shall be in accordance with the plans marked as Exhibit No. 25-F of the record.

2. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

3. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

4. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

5. All parts of the lot shall be kept free of refuse or debris and be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

6. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

7. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the

parking lot.

VOTE: 3-0 (Paula L. Jewell, Sheri M. Pruitt and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Reginald C. Lyons for
MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: NOV 4 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

A/15578Order/RCL/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15578

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 4 199? a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard Nero, Jr.
Wilkes Artis Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

James M. Dickerson
c/o MANNA, Inc.
P.O. Box 26049
Washington, D.C. 20001

S.M. Shefferman, General Partner
1839 - 13th Street Limited Partnership
1111 Spring Street
Silver Spring, Maryland 20910

Virginia Khan
1815 - 13th Street, N.W.
Washington, D.C. 20009

Stanley Mayes, Chairperson
Advisory Neighborhood Commission 1-B
519 Florida Avenue, N.W.
Washington, D.C. 20001

Clifford W. Waddy, Chairperson
Advisory Neighborhood Commission 2-C
1200 S Street, N.W., #201
Washington, D.C. 20009

Reginald C. Lyons for
MADELIENE H. ROBINSON
Acting Director

DATE: NOV 4 199?

15578Att/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15578 of 1839 13th Street Limited Partnership, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 215 to allow accessory parking spaces elsewhere than on the same lot on which the principal use is located, and a variance from the 900 square feet per apartment requirement (Sub-section 401.2) to allow the conversion of a structure to an apartment house in an R-4 District at premises 1839 13th Street, N.W., (Square 275, Lots 10, 814, 825, and 828).

HEARING DATE: **October 9, 1991**
DECISION DATE: **October 9, 1991** **(Bench Decision)**

DISPOSITION: The Board **GRANTED** the application by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

FINAL DATE OF ORDER: November 4, 1991

RECONSIDERATION ORDER

The Board granted the application by its order dated November 4, 1991, subject to seven conditions. By letter dated November 18, 1991, Virginia Khan, a party in opposition to the application, requested an extension of the ten-day period to file a motion for reconsideration of the Board's decision on the application. The basis for the request was that Ms. Khan did not receive a copy of the Board's final order until November 13, 1991. The Board granted the extension of time until November 29, 1991.

By letter dated November 25, 1991, Ms. Khan filed a motion for reconsideration of the Board's decision in the subject application. The bases for the requested reconsideration are generally summarized as follows:

a. Most, if not all, of the residents within 200' of the site were not notified as required by law and the Zoning Regulations.

b. The recommendation of the Advisory Neighborhood Commission (ANC) for approval was incorrect both in substance and procedure.

c. The density of the proposed project and parking arrangements proposed will adversely impact the area and worsen the existing traffic problems in the alley.

d. The community believes there are significant conflicts of interest between parties and proponents.

e. Several local community organizations were not contacted because it was known they would be opposed. Letters from several such organizations were attached to the motion.

By letter dated December 23, 1991, Ms. Khan requested the Board to grant a motion to stay the effect of the Board's order pending a final resolution of the case.

By letter dated December 2, 1991, counsel for the applicant opposed the motion for reconsideration. Counsel for the applicant questioned Ms. Khan's status as a party to the case because the Board did not formally admit her as a party at the public hearing and Ms. Khan did not specifically request party status or exercise the rights of a party, such as cross-examination. The Board notes that it does not generally formally determine a person's party status unless specifically requested or unless there is some doubt as to the specific right or interest of an individual or organization seeking to participate in a case. The Board is satisfied that Ms. Khan, who lives within a 200' radius of the site, participated in the hearing process, and expressed specific issues and concerns has satisfied the criteria necessary to establish party status in the instant case.

With respect to the specific bases cited by the opposition in support of the motion, counsel argued as follows:

a. All of the notice required under the Zoning Act, Zoning Regulations and Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment (BZA) was given. The applicant obtained the property owner's list from the D.c. Department of Finance and Revenue, Tax Assessor's Office in accordance with the instructions on the application form.

b. The validity of the reports submitted by Advisory Neighborhood Commission 1B and Advisory Neighborhood Commission 2C are supported by the evidence of record.

c. Ms. Khan did not raise any issues related to opposition to the density of the project or the parking lot at the public hearing, but only that she disagreed with the layout of the parking lot as proposed.

d. The assertion of "conflicts of interest between parties and proponent" is a general assertion, unsupported by facts or references.

e. The correspondence from the community organizations solicited by Ms. Khan and submitted as attachments to her motion were not served on the applicant and other parties to the case.

Upon consideration of the motion, responses thereto, the record in the case, and its final order, the Board concludes that it made no error in deciding the application. The Board concludes that the motion does not state any specific erroneous findings made by the Board relevant to its final decision but attempts to reargue the opposition's case. The Board further concludes that no new evidence has been proffered which could not reasonably have been raised at the public hearing. The Board concludes that the issues and concerns expressed by the opposition were considered by the Board during the public hearing process and addressed in its final order. The Board's decision and the conditions imposed were based on consideration of all the evidence presented by both the applicant and the opposition. The fact that the Board and the opposition came to different conclusions does not make the judgment of the Board arbitrary, capricious or unlawful. Accordingly, the motion for reconsiderations is hereby **DENIED**. The motion for stay of the Board's Order is therefore moot. The order of the Board dated November 4, 1991 shall remain in full force and effect.

DECISION DATES: December 4, 1991 and January 8, 1992

VOTE: 3-0 (Sheri M. Pruitt, Paula L. Jewell and Carrie L. Thornhill to deny; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Robinson Sr.
MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: JAN 30 1992

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15578Order/SS/bhs