GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

D.C. BOARD OF ZONING
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**MEMORANDUM**

**TO:** Board of Zoning Adjustment

**FROM:** Andrew Altman
Director

**DATE:** March 6, 2001

**SUBJECT:** BZA Application 16681

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BZA
Case No. 16681
Exhibit No. 22

**APPLICATION**

In this application, Square 456 Associates requested the following zoning relief under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning:

- Approval of a Special Exception under 411.11, pursuant to Section 3104.1, for rooftop structures that do not meet:
  (a) the enclosure provisions under Section 411.3;
  (b) the equal wall height provisions under Section 411.5; and
  (c) the set back provisions under Section 770.6 (b).
- Approval of variances pursuant to Section 3103.2 for:
  (a) Inconsistency with the court area requirements under Section 773; and
  (b) Inconsistency with the recreation space requirements under Section 776.

**SUMMARY RECOMMENDATION**

The Office of Planning recommends conditional approval of:

- a Special Exception for proposed rooftop enclosures that do not meet the equal wall height provisions under Section 411.5 and the set back provisions under Section 770.6 (b); and
- a variance to allow court areas that meet the minimum width of 15 feet.

The approvals are based on architectural plans entitled "675 E Street N.W. Condominiums" by the Smith Group, Architects and Engineers, revision date February 28, 2001. The condition is recordation of covenants for the associated combined-lot development properties prior to the issuance of project building permits.

Board of Zoning Adjustment
District of Columbia
CASE NO.16681
EXHIBIT NO.22

Staff also recommends approval of a variance from the recreation space requirements under Section 776 with the condition that 735 square feet be set aside for recreation space in the basement. However, should the remaining cellar space not be used for preferred uses as defined in §1700 of the Zoning Regulations within six months of the date the Certificate of Occupancy is issued for the dwellings or the date the condominium association takes control of the building (whichever occurs first), then the total recreation space provided in the cellar area would increase to at least 5% of the building area (approximately 2,800 square feet).

**SITE AND AREA DESCRIPTION**

The subject properties are located in the southwest corner of Square 456 at the intersection of E Street, N.W. and Seventh Street, N.W. Corner lot 39 is developed with the four-story Murray building at 501-507 Seventh Street, N.W. (circa 1868) and the two-story Midtown Liquors building constructed in 1957. Both buildings are of masonry and cast iron construction, and are vacant except for first floor art gallery and retail uses. The buildings have a combined floor area of 26,279 square feet on a lot 6,179 square feet in size. Adjacent lot 37 extends east to an existing alley twenty feet wide. This 3,182 square-foot lot is developed with a four-story building and a three-story building, also of masonry construction, with a total floor area of 9,195 square feet. These buildings are also vacant.

Properties are zoned Downtown Development District (DD)/C-4, in the Downtown Historic District and within Housing Priority Area "C". All buildings except Midtown Liquors building (629 E Street, N.W.) are considered to contribute to the character of the Downtown Historic District.

The referenced buildings all share common walls, and are constructed to the side and front property lines (public right-of-way). Surrounding development generally consists of a mixture of multi-story office buildings with first floor retail uses. To the north are also some other vacant structures, including the original Hecht Company buildings (515 & 513 Seventh Street, N.W.), and MCI Center across F Street, N.W. To the west is the National Portrait Gallery (currently under renovation) across Seventh Street N.W. and the Tariff Building which is being renovated as a luxury hotel.

**APPLICANT'S PROPOSAL**

Square 456 Associates, the applicant, proposed to combine these lots and buildings into a mixed use development by:

- Connecting cellar areas for tenant storage, art/retail uses, and to provide access to the American Association of Retired Persons (AARP) parking garage.
- Renovating the first floor level for arts and retail uses;
- Converting the front of the former Midtown Liquors building into the first-floor lobby for the upstairs residences.
- Creating a common elevator core and service area for the three other buildings; and

- Constructing a six-story addition atop the former Murray Building, increasing its height to ten stories.

Overall, the new development would provide 56,304 square feet of residential uses consisting of 33 one- and two-bedroom condominiums (nine on lot 37 and 24 on lot 39) and 5,150 square feet of arts/retail space. An additional 4,576 square feet of arts/retail space is also designated in the cellar level of the Murray Building. In addition to the six floors added to the Murray Building, two additional floors will be added to 625-627 E Street, N.W. (lot 37) behind the existing parapet wall.

The exterior facades along the principal streets would remain intact, but the interiors would be completed reconstructed. The proposed common elevator core would be centrally located, requiring complete reconstruction of the rear of 629 E Street, N.W., and infill construction behind 629 E Street, N.W. Building plans include open courts on the second floor behind the elevator core (a terrace between two condominium units), on the third floor in front of the core, on the fifth floor, on the roof of lot 37 buildings, and on the roof of the building located at 627 E Street, N.W. Note that only the terrace is accessible from inside the buildings.

The roof height of the Murray building after the addition is completed would be approximately 110 feet. A metal "architectural treatment" would run along the edge of the roofline and would rise an additional eight feet to 118 feet. The top of the penthouse would be 18'-6" above the roof, approximately 128' above ground, and the tops the elevator shafts and other metal panels would rise 16' and 26'-6" above the roofline, to approximate heights of 126' and 136', respectively.

The applicant originally requested relief from the Zoning Regulations for multiple roof enclosures, for roof structures that would not be the same height and for the penthouse being too close to the property line. The open courts and amount of recreation space provided (none) also would not meet the requirements of the DD/C-4 zoning district.

Since the original submittal, the applicant has brought all the rooftop elements into one enclosure, eliminating the need for relief from Section 411.3.

In their statement of justification, the applicant indicated that granting the requested relief would "not in any way adversely affect any adjoining or nearby properties or detrimentally affect the Zoning Regulations and the Map." It also stated that the relief would result "in a better, more efficient residential project in furtherance of the Downtown Development District objectives."

**EXISTING ZONING AND RELIEF REQUESTED**

In January 2001, a subdivision application was submitted to the District of Columbia Office of the Surveyor to combine subject lot 37 with subject lot 39. As a result, the balance of this report will treat the two lots as one property.

The proposed development would include a combination of first floor arts and retail, with upper floor residential uses. The property is zoned DD/C-4. Sections 1710 and 1711 include a list of allowed and "preferred" retail, arts and arts-related uses. The development of downtown residential uses is one of the goals of the DD, therefore the proposed use is a conforming use.

The property and development are also subject to the following requirements:

| Standard | DD/C-4 Requirement | Existing | Building Addition | Required Relief |
|---|---|---|---|---|
| Lot Area (total) | --- | 9,361 s.f. | Same | N/A |
| Lot Width (total) | --- | 120 feet | Same | N/A |
| Floor Area | --- | 35,474 s.f. | 61,454 s.f. (56,304 s.f. res./ 5,150 s.f. arts/retail) | N/A |
| Floor Area Ratio | 8.29 | 3.78 | 6.56 | N/A |
| Lot Occupancy (max.) | 100% (w/residential use) | --% | 100% | N/A |
| Side Yard | 0 feet | 0 feet | Same | N/A |
| Court | 4 inch/foot height (15 feet min.) | N/A | 39 x 15 feet (64 feet req.) | Variance |
| Height | 110 feet | 56 ft. (max. at roofline) | 110 ft. (condo. roof) | N/A |
| Residential recreation space | 5% (res.) (2,815 s.f.) | 0% | 0% | Variance |
| Loading Berths | 1/30-100,000 s.f. | UNK | 1 | N/A |
| Front Yard | 0 feet | 0 feet | Same | N/A |
| Rear Yard | 0 feet | 0 feet | Same | N/A |

Section 1706.6 states that: "In the DD/C-4 zone the following residential and mixed use provisions shall apply:

(a) The maximum FAR shall be 10.0 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided by this subsection; ..."

Section 1707.4 (under Historic Preservation provisions) limits: "The permitted on-site floor area ratio (FAR) for any permitted use shall be 6.0 on each of the lots and square listed below; *Provided that in a multi-lot development or combined lot development within a single square, the permitted 6.0 FAR may be aggregated with the permitted FARs of other lots that are part of the development, including any lots not subject to the 6.0 FAR maximum, so as to achieve a composite FAR for the entire development. ...*

(w) Square 456, lots 34, *37*, 857 (now 39) and 858 (including 513-517 & 525-527 7th Street, N.W.)"

Normally the allowable FAR on the subject property would be 6.0 under Section 1704.4 (w). However, the applicant plans to make the subject property part of a combined-lot development involving other lots on Square 456.

In 1998, the BZA approved Summary Order 16387 for special exception and variance to, among other things, allow commercial development to proceed on lot 869 (on the subject square) prior to the associated issuance of a certificate of occupancy (CO) for affordable housing units. In lieu of securing the affordable housing CO first, the applicant established an escrow account to fund construction low- and moderate-income housing at a remote location and agreed to provide at least 56,240 square feet of housing on the subject property.

Component FARs can be averaged in combined-lot development. The result of averaging the referenced properties (6.0 FAR for lots 37, 39 & 858 and 10.0 FAR for lot 869) is an approximate FAR of 8.29. This would be the allowable FAR on the subject properties as part of this multi-lot development. Note that other development properties would also share this FAR limitation. Also note that the associated combined-lot covenants have not been recorded.

There appears to be a loading berth east of the elevator core, at the end of a ramp out to the alley. This ramp is behind a roll-up door. The project architect indicated that large vehicles such as loading vans would park in the alley, and trash from the compactor would be brought out to the alley for pick-up. The architect was advised that a loading berth appears to be required under the Zoning Regulations. If none is provided, an additional variance may be required.

Based on the table above, it was determined that the proposed development would not meet the residential recreation space requirement and would have courts of insufficient size.

Section 770.3 states that: "A spire, tower, dome, pinnacles or minarets (a tall, slender tower on a mosque, having one or more projecting balconies from which members are summoned to prayer) serving as architectural embellishments, penthouses over elevator shaft, ventilation shaft, antennas, chimneys, smokestacks or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes." However, Sections 411.3 and 4115 require that:

- all penthouses and mechanical equipment shall be placed in one enclosure, and are compatible with the main structure; and
- that "enclosing walls" above the roof level (architectural elements, glass "turret" and penthouse) be of equal height.

Although under the revised site plan all penthouse and elevator equipment are placed in one structure, and are generally compatible with the rest of the building (eliminated the need for a relief from the requirements of Section 411.3), the wall heights vary above the roofline.

It should be noted that the applicant has entered into a settlement agreement and covenant, with the Pennsylvania Condominium Association, The Committee of 100 on the Federal City, and others, that required at least eight residential units on lot 37 and 45 residential units on lot 39. The actual number of units was subject to change, but the minimum floor area of residential uses in both buildings was 51,500 square feet. In addition, at least 0.5 FAR (approximately 2,800 square feet) of retail and/or arts uses was required on the development site. The applicant is in the process of amending this covenant.

The applicant has also entered into an agreement with the DC Preservation League to essentially leave intact the exterior walls of the buildings on lot 37.

**ANALYSIS**

The applicant's proposal requires BZA approval of variances from the residential recreation space requirement and courts, and special exception relief for the uneven walls above the roofline.

Section 3103.2 grants the BZA the power to grant variances from regulations set forth under the Zoning Act "[w]here by reason of exceptional narrowness, shallowness or shape of a piece of property at the time of the original adoption of the regulations, or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §§5-413 to 5-432 (1981) would result in peculiar and extraordinary practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided the relief can be granted without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map."

In requests involving "area" variance from the Zoning Regulations such as those for residential recreation space and building height requirements, the standards for approval are uniqueness and "practical difficulty."

Section 3104.1 grants the Board of Zoning Appeals (BZA) the authority "to grant special exceptions where in the judgment of the Board, those special exceptions 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 requested special exception for the roof structure is also subject to the following requirements under Section 411.11 that states:

"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 materials 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."

**Compliance with Section 3103.2:**
The proposed development meets the uniqueness standard because this proposal involves the adaptive reuse of three largely vacant buildings formerly used primarily for office use, into a mixed-use development that is primarily residential.

The lots are rather small and there are limited options for locating the elevator core so that it serves all three buildings and provides a presentable lobby area. All the courts would be less than the required width (the terrace would have to be 64' wide) but they all would meet the minimum 15' depth.

This is one phase of a larger development involving the entire square. Consistent with zoning regulations, the applicant must provide at least 56,280 square feet of residential uses on the subject property.

This density of residential development also raises a concern about the lack of residential recreation space. This appears to be the only residential lot in this development, and therefore the only opportunity to provide this needed amenity on the entire square. The current proposal would provide 5,150 square feet of first floor "preferred" arts and retail uses, exceeding the requirements of Summary Order No. 16387 and the referenced agreements. Approximately 4,576 square feet of additional floor area in the cellar is also designated for art/retail uses.

The Office of Planning has supported a reduction in the recreation space requirements for other DD mixed-use zones to 5%, which is the standard in C-4. We have in the past supported small reductions. The applicant has a practical difficulty in this case, which impairs its ability to meet the 5% standard. Most other projects in the DD utilize roof decks to meet their recreation space requirements, but the configuration of the roof structures in this case makes that extremely difficult. In addition, the configuration of the historic buildings makes it difficult to fit recreation space on the ground level.

In addition, OP notes that this site is located in an important arts/retail area, with a corner building. OP feels that the applicant's use of the ground floor and part of the basement for arts and retail would make a valuable contribution to the achievement of Comprehensive Plan goals in those areas. We also feel that this location, so close to other recreation amenities, restaurants, galleries, etc. provides many opportunities for recreation and socializing in the neighborhood, reducing the importance of the recreation space in the building.

Therefore, OP staff determined that that applicant meets the standard of practical difficulty with regard to the second-floor courtyard, and the residential recreation space.

**Compliance with Section 411.11**
The applicant indicated that architectural feature along the perimeter of the roof is provided to give finality to the façade design. The penthouse location is limited by the area required for the mechanical equipment inside. The heating and ventilation equipment and cooling tower would occupy virtually all the space. Elevator "overruns" and hoists require that the elevator core extend above the tenth floor to the roof. Additional panels have been provided between the elevator core and penthouse to create the appearance of a single enclosure.

Section 770.6 (b) requires that the roof structures be setback one foot for each foot of height. Setting the perimeter architectural element back would defeat the purpose of providing it. The mechanical penthouse can meet the set back requirements along the east and west (7th Street, N.W.) frontages, but not the north and south (E Street, N.W.) frontages. During its review of this project, the HPRB endorsed varying the height of the roof enclosure as an important architectural feature.

Based on this information, this proposal would not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

**Compliance with Section 3104.1:**
Based on review results under Section 411.11, it appears that this proposal 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.

**COMPREHENSIVE PLAN**
The Comprehensive Plan Generalized Land Use Map designates the surrounding area to the north, south and east for mixed use. The color bars used in the map symbol denote a mix of high-density residential with apartment buildings as predominant uses (low-, moderate- and medium-density housing may also be included), and high-density commercial uses with a mix of employment, retail, office, cultural and entertainment centers. Property to the west (the National Portrait Gallery) is designated as federal land use.

Major Themes of the Comprehensive Plan include:

"...
(b) Increasing the quantity and quality of employment opportunities in the District;
(c) Developing a living downtown;
(d) Preserving and promoting cultural and natural amenities;
...
(g) Preserving the historic character of the District; ..."

In addition, Section 104.1, "Developing a Living Downtown", explains that "The Mayor's Downtown Committee worked for over a year to develop policies to strengthen (the District's) Downtown as the region's retail and cultural center, *to re-establish a residential community in the heart of the District*, to increase the number of hotels for business and tourists alike, *to*

*increase the number of jobs* for District residents, and to promote easy access to downtown from outlying parts of the region."

Section 903 includes the following policies in support of the residential goal:

"(a) Undertake a variety of public and private programs to achieve a major increase in residential units in Downtown;

...

(d) Encourage residential use as part of mixed use projects *south of Massachusetts Avenue, N.W."*

Section 906 includes the following policies in support of the Downtown arts, cultural, and entertainment land use objective:

"(a) Ensure that arts and entertainment use become significant components of the land use mix in Downtown;
(b) Encourage the retention and enhancement of arts and cultural facilities and activities in Downtown; ..."

Section 911 includes the following historic preservation objectives for Downtown:

"(a) Preserve individual historic buildings and districts;

...

(c) Require that renovation of historic buildings and new construction affecting historic districts be sensitive to the character of those buildings and districts; ..."

Ward 2 actions is support of Housing objectives under Subsection 1305.1 include:

"(a) The District government shall encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land-use policies and objectives.

...

(e) The District government shall establish, as a matter of major government priority, the production of housing, including low- and moderate-income households in Ward 2, particularly downtown by doing the following:

...

(2) Encouraging the inclusion of housing units in appropriate locations in all commercial areas with particular incentives for the central city ad designated mix-use areas and Metrorail stops; ..."

Ward 2 objectives for preservation and historic features include under Section 1319.1:

"(a) To designate buildings and areas in Ward 2 meriting historic landmark or historic district protection;
(b) To preserve and reuse historic landmarks and buildings in historic areas in Ward 2; ..."

**COMMUNITY COMMENTS**
The applicant will present this proposal to Advisory Neighborhood Commission (ANC) 2C on March 7, 2001.

**AGENCY COMMENTS**
The Mayor's Agent approved the basic outlines of this project as part of a larger development master plan involving the original Hecht's buildings in September 1996. An approval recommendation on the proposed subdivision from the Historic Preservation Review Board (HPRB) has been referred to the agent for final action.

This proposal was subject to review by the HPRB. On June 22, 2000, the HPRB considered and approved the modified architectural plan (refer to Exhibit 3).

**RECOMMENDATION**
The Office of Planning is concerned that the combined-lot covenant has not been recorded. This is the essential element needed to establish the combined-lot relationship between the referenced properties and to authorize development on the subject property in excess of the by-right 6.0 FAR. This document should be recorded and in force prior to building permits being issued for this development.

Based on this consideration and the above analysis, OP recommends conditional approval of:

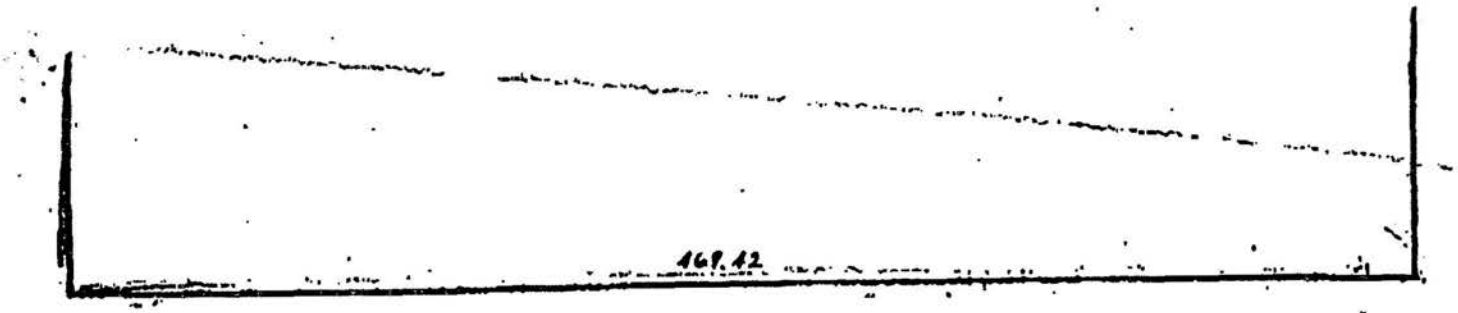
- a Special Exception for the proposed rooftop enclosures structures that do not meet the equal wall height provisions under Section 411.5 and the set back provisions under Section 770.6 (b); and
- a variance to allow court areas that meet the minimum width of 15 feet.
- a variance to permit the applicant to provide only 735 square feet of recreation space, in the basement of the Murray Building.

The condition is the recordation of covenants for the associated combined-lot development properties to establish that the allowable density on the subject property, in excess of the by-right 6.0 FAR, prior to the issuance of building permits. The condition regarding the recreation space is that should the applicant fail to lease the rest of the basement for preferred uses as defined in the 11 DCMR, a portion will be converted to recreation space (other than that used for residents' storage needs) to meet the 5% requirement under the Zoning Regulations.

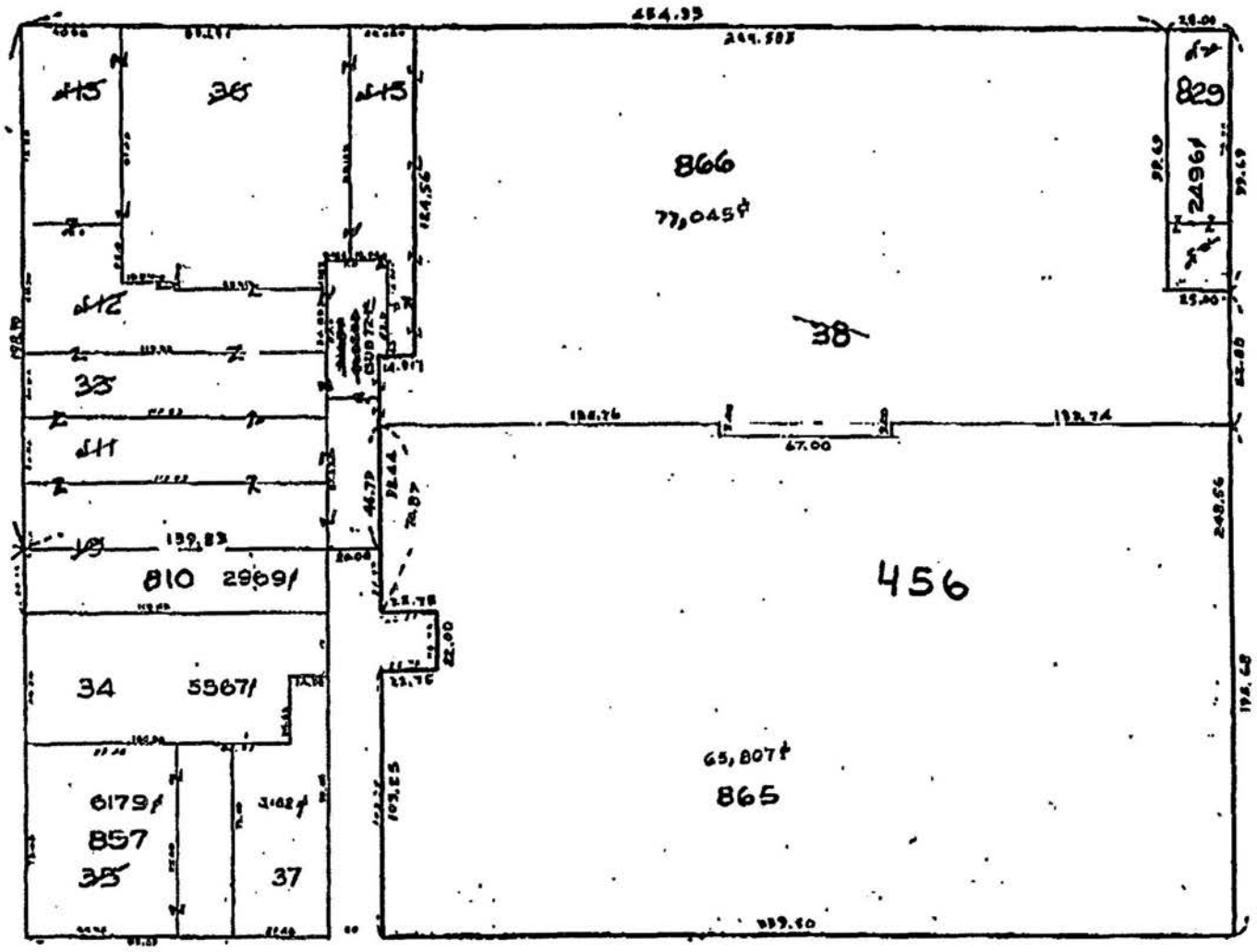
Attachments

| | |
|---|---|
| Exhibit 1 | Plat |
| Exhibit 2 | Covenant between Square 456 Associates and The Pennsylvania Condominium Associates, The Committee of 100 on the Federal City, etc. |
| Exhibit 3 | Historic Preservation Review Board Staff Report and Recommendations for the meeting on June 22, 2000 |

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**COVENANT**

THIS COVENANT made this 14th day of MARCH, 1997, by and between SQUARE 456 ASSOCIATES, a District of Columbia limited partnership, (hereinafter "Grantor"), and the RESIDENCES OF MARKET SQUARE EAST and RESIDENCES OF MARKET SQUARE WEST CONDOMINIUM ASSOCIATIONS, THE PENNSYLVANIA CONDOMINIUM ASSOCIATION and THE COMMITTEE OF 100 ON THE FEDERAL CITY (hereinafter collectively referred to as "Grantees") sets forth the following conditions, treatments, and actions on behalf of these parties with respect to certain property in Square 456 in Washington, D.C., as defined herein.

W I T N E S S E T H :

WHEREAS, Grantor and Grantees entered into a Settlement Agreement on October 5, 1995 (Exhibit A) which Settlement Agreement is the basis for this Covenant; and

WHEREAS, the Grantor is the owner of certain tracts of land, together with certain buildings and improvements, in Square 456 known as Lots 37, 857, 868, and 869 (hereinafter referred to as the "property") and depicted and described in the attached Exhibit B; and

WHEREAS, parties to this Covenant desire to define the nature of the residential development at 625-627 E Street, N.W., on Lot 37 in Square 456 and to ensure that such residential development is consistent with that which was approved by the Mayor's Agent for D.C. Law 2-144 as part of the Grantor's project for the property.

WHEREAS, Grantor entered into an Agreement with the D.C. Preservation League dated April 1, 1988, and which was Amended January 27, 1994; and

WHEREAS, Grantor purchased premises 625-627 E Street, N.W., Lot 37 in Square 456, pursuant to a Contract of Purchase and Sale dated May 4, 1995, ("Purchase Contract"), as amended; and

WHEREAS, Grantor will use the property pursuant to the terms of the above-referenced Purchase Contract, which provides for certain commercial uses pursuant to leases in effect at the time of the purchase completion. After expiration of those leases, Grantors will use the property for residential and residentially-related purposes only; and

WHEREAS, Grantor filed Conceptual Design Review plans for an addition to 625-627 E Street, N.W., on Lot 37, Square 456, which was approved by the Mayor's Agent as a part of the overall special merit project involving the property, and Grantor will renovate the existing structure into no less than eight residential units; and

WHEREAS, the residential units to be located at 625-627 E Street, N.W., on Lot 37 will be in addition to the approximately 45 (forty-five) residential units to be located on the Murray Building, which building and site are located at 501-505 7th Street, N.W., on Lot 857, Square 456; and

WHEREAS, Grantor's special merit case was presented before the Mayor's Agent on December 4, 1995, and was supported by Grantees, and was approved from the bench at the conclusion of

the hearing and by written Order of the Mayor's Agent dated September 11, 1996; and

WHEREAS, Grantees and Grantor dismissed with prejudice certain litigation (Committee of 100 on the Federal City, et al. vs. Department of Consumer and Regulatory Affairs, DCCA Appeal No. 94-AA-1370) through the filing of a Stipulation of Dismissal pursuant to D.C. App. R. 42(b) and the District of Columbia Court of Appeals granted such motion October 30, 1996; and

WHEREAS, Grantees and Grantor filed a Consent Motion to Vacate Decision and Order as Moot with the Mayor's Agent requesting that the prior Mayor's Agent Order permitting partial demolition of certain buildings on the property on the basis of "consistent with the purposes" of D.C. Law 2-144 be vacated and the Mayor's Agent granted said consent motion on December 5, 1996; and

WHEREAS, the Grantees wish to ensure that the residential components of the Grantor's approved special merit project be constructed in accordance with the Conceptual Design Review plans presented as part of the approved special merit project.

NOW, THEREFORE, in reliance of the mutual benefits and promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. The residential development to take place at 625-627 E Street, N.W., on Lot 37 will commence within three years of the issuance of the certificate of occupancy for the commercial portion of the Grantor's approved special merit project.



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2. Notwithstanding any other provision to the contrary, depending on market conditions, Grantor reserves the right to combine units or reconfigure the layout of either or both of the residential apartment buildings mentioned above so long as the net square footage devoted to residential use is not decreased. The Murray Building structure at 501-505 7th Street, N.W., Lot 857, as approved in the Mayor's Agent Order, will contain approximately 43,000 square feet of floor area devoted to residential uses and uses accessory to residential use. The 625-627 E Street, N.W., on Lot 37, is able to accommodate approximately 8,500 square feet of floor area devoted to residential uses and uses accessory to residential use.

3. Grantees will not object, either on their own behalf or in concert with others, to any other approvals or permits necessary to construct any aspect of the Grantor's approved special merit project on Square 456 provided that such plan for development complies in all respects with the Zoning Regulations, except for roof structure setbacks or court sizes in the interior of the square, and that it is consistent with the Mayor's Agent's Order dated September 11, 1996.

4. Grantor reserves the right to modify the overall plan approved by the Mayor's Agent for retail and/or arts uses which Grantees agree not to object to either on their own behalf or in concert with others so long as the overall provision of residential uses in the project is not affected and provided that the arts uses are not reduced below the .50 FAR as required in



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Section 1704 and including the flexibility in computing the requirement as provided in the Zoning Regulations.

5. Grantees agree not to take, support, engage in or be a part of any action, of any nature whatsoever, including, but not limited to, hearings, forums, or any other proceeding which would increase either the on-site or offsite preferred use requirements as set forth in Chapter 17 of the Zoning Regulations affecting Grantor's property in Square 456. In the event that any member of the Grantees testifies in a manner inconsistent with this Covenant, including Exhibit A, a representative of the Grantee organization shall be available to testify that the Grantee organization does not support the position testified to.

6. Subject to the foregoing, the terms and provisions of this Covenant shall run with the land, and are not deemed to be personal to the Grantor or Grantees and shall be binding upon the Grantor and Grantees and their respective successors, successors-in-interest, and assigns; all parties claiming by, through, or under any of them shall be taken to hold, agree, and covenant with the Grantor and Grantees and their respective successors, successors-in-interest, and assigns to conform to and observe said restrictions, covenants, agreements, and conditions.

7. This Covenant shall be recorded in the Land Records of the District of Columbia by the Grantor within five (5) working days of the execution of this Covenant by all parties.

8. The undersigned parties represent and warrant that they have authority to enter into this Covenant and bind the respective entities they represent to the terms hereof.

9. The terms and provisions of this Covenant shall be construed in accordance with the laws of the District of Columbia.

10. This document may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

RESIDENCES OF MARKET SQUARE
WEST CONDOMINIUM ASSOCIATION

By: _____

President

DISTRICT OF COLUMBIA, ss:

I, Dorothy Halewski, a notary public in and for the District of Columbia, do hereby certify that Larry R. Ponsford, President of Residences of Market Square West Condominium Association, personally appeared before me in said District, and the said Larry R. Ponsford, being personally well known to me, acknowledged the above Settlement Agreement to be the act and deed of Residences of Market Square West Condominium Association and delivered the same as such.

GIVEN under my hand and seal this 7th day of May, 1997.

Dorothy Halewski
Notary Public, D.C.

My commission expires: 6-30-01.



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**HISTORIC PRESERVATION REVIEW BOARD**
**STAFF REPORT AND RECOMMENDATION**

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| Landmark/District: | **Downtown Historic District** | (x) Agenda |
| Address: | **501-07 7th Street, NW; 625-27 E Street, NW** | ( ) Consent Calendar |
| Meeting Date: | **February 22, 2001** | (x) Subdivision |
| H.P.A. Number: | **00-174, 00-175** | (x) Alteration |
| Date Received: | **1/25/01** | (x) New Construction |
| Staff Reviewer: | **David Maloney** | (x) Conceptual Design |

CarrAmerica and SmithGroup architects return for additional conceptual review of plans for the residential component of the Hecht's Department Store project. Though planned in conjunction with the Hecht's project and linked through approvals by the Mayor's Agent, the residential component is located on a separate site at the corner of 7th and E Street, and involves buildings not historically related to Hecht's.

**Approval by the Mayor's Agent**
The Mayor's Agent approved the basic outlines of the Hecht's project, including its residential component, in her order of September 1996. The order provides for the construction of a residential apartment building incorporating the restored façade of the May (or Murray) Building at the corner of 7th and E Streets, as well as the rehabilitation of two smaller buildings on E Street for additional apartments.

The four-story May Building dates from the 1870s, and is distinguished by a cast iron façade that was classicized in the early 20th century. The two E Street buildings, formerly occupied by the Insect Club, include a four-story rowhouse with an unusual but eroded brownstone façade in Renaissance Revival style, circa 1860, and a smaller adjacent building with a modest classical revival façade from the 1930s. Between the May and Insect Club buildings is a non-contributing structure that will be demolished.

**Proposed Modifications to the Approved Concept**
CarrAmerica is now proceeding with the project approved in basic outline in 1996, and has identified various revisions and refinements that have been found appropriate in carrying forward the concept designs. These include:

- Creating a common elevator core to serve all three buildings;
- Adding a one-story lobby on the site of the non-contributing building, in place of the courtyard formerly proposed;
- Removing one floor of the addition above the May Building, adding instead one mezzanine floor;
- Reworking all the apartment layouts; and
- Creating a single lot of record.

The most visible change in the design is the addition of the new lobby wing and elevator core, which would be designed in a contemporary style with facades of metal, clear glass, and translucent glass. The lobby façade would meet the street wall, but the elevator core would be set back nearly forty feet from the street. There would also be various changes to the secondary facades and mechanical penthouse. In other respects, the plans remain the same, including restoration of the historic facades and the addition above the May Building facade.

**Evaluation and Recommendation**

The proposed changes represent significant improvements to the project design. Not only do the changes ensure a much better residential layout, but they also reduce the degree of alteration to the Insect Club buildings and enhance the continuity of the historic street wall. The designs are executed with considerable flair in a style that adds to the architectural variety that characterizes the historic downtown. The historic facades still continue to dominate the composition because the lobby façade is small and the elevator tower is recessed.

Additional refinements to the secondary elevations continue to be made. On the May Building, the staff recommends that the party wall façades be treated in a more neutral fashion, with simpler window patterns more consistent with the vertical proportions of the street facades.

The staff recommends that the Board approve the revised concept plans, and delegate final approval to the staff, with the understanding that developed façade designs should return to the Board if appropriate.