WILKES, ARTIS, HEDRICK & LANE
CHARTERED
ATTORNEYS AT LAW
SUITE 1100
1666 K STREET, N. W.
WASHINGTON, D. C. 20006-2897
(202) 457-7800

CABLE ADDRESS: WILAN
FAX: 202-457-7814

PHIL T. FEOLA
(202) 457-7317

ANNAPOLIS, MARYLAND
BETHESDA, MARYLAND
FAIRFAX, VIRGINIA
GREENBELT, MARYLAND

April 29, 1999

Hand Delivery

Armando Lourenco
Administrator
Building and Land Regulation Administration
941 N. Capitol Street, N.E.
Second Floor
Washington, D.C. 20002

Re: 1957 E Street, N.W.
Zoning Commission Order No. 746

Dear Mr. Lourenco:

This letter is to confirm our understanding of your office's interpretation of Zoning Commission Order No. 746 ("Order") for the property at 1957 E Street, N.W. as articulated in a meeting held in your office with Messrs. Ed Nunley and Denzil Noble, myself and Tom Butcavage of KCF/SHG Architects.

As we discussed in the meeting, two issues have arisen during the project's design development, since the promulgation of Zoning Order No. 746. The first involves reducing the commercial gross floor area in the project. The Owner proposes to decrease the gross floor area of the commercial component by combining floors (Floor 1 and 2 into a single first floor and Floors 3 and 4 into a second floor). This combination will reduce the commercial FAR from 5.79 as permitted per the Order to 4.34. This will result in an overall project with a total FAR of 6.62, of which 2.28 will be devoted to residential use. Enclosed as Exhibit A of this letter is the architectural section showing the proposed change. We believe this change is consistent with Condition No. 3 of Zoning Commission Order No. 746, which states "The floor area ratio (FAR) for the PUD project shall not exceed 7.96, of which not more than 5.79 FAR shall be devoted to commercial use and not less than 2.17 FAR shall be devoted to residential use." (Emphasis added).

BZA
Case No. 16701
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.32

Clearly, the change proposed by the Owner does not increase the commercial FAR or the total FAR, nor does it decrease the residential FAR.

The second issue involves the construction of a garage entrance on 20th Street. Originally, the project was designed to be built in two phases with the western portion (residential) being built last. This resulted in an inefficient configuration of the garage. The PUD accommodated this inefficiency by having garage entrances/exits on both 19th and 20th Streets as shown on the approved PUD plans. The Owner now intends to develop the project as a single building without the need for phasing. Thus, it intends to implement the flexibility granted to it by the Zoning Commission in Condition No. 15, which allows it to:

> b. Change the location and design of all interior components including partitions, structural slabs, doorways, hallways . . . so long as the variations do not change the exterior envelope of the building, including the penthouse;
>
> c. Make minor adjustments in the window detailing, including the flexibility to shift the location of entrance doors on the ground floor to accommodate tenant uses; (emphasis added)
>
> f. Change the location and types of parking spaces provided, increase the number of spaces provided, make other modifications to below-grade space to accommodate the needs of the office tenants . . . .

Thus, we believe that the flexibility granted in Zoning Commission Order No. 746 allows the Owner to proceed with plans as shown in Exhibit B, which creates a single, more efficient garage below-grade and eliminates the ingress/egress entrance on 20th Street.

Messrs. Noble and Nunley agreed that these changes are within the intent of Zoning Order No. 746 and the Zoning Regulations. A full copy of Zoning Commission Order No. 746, for your convenience, is attached as Exhibit C.

It would be of great assistance to the Owner, as it develops its construction documents for this project, that you confirm our understanding of Zoning Order No. 746 by signing a copy of this letter below and returning it to us. Please keep a copy for your files. Thank you for your consideration and assistance. Please call if you have any questions or concerns.

Sincerely,

Phil T. Feola

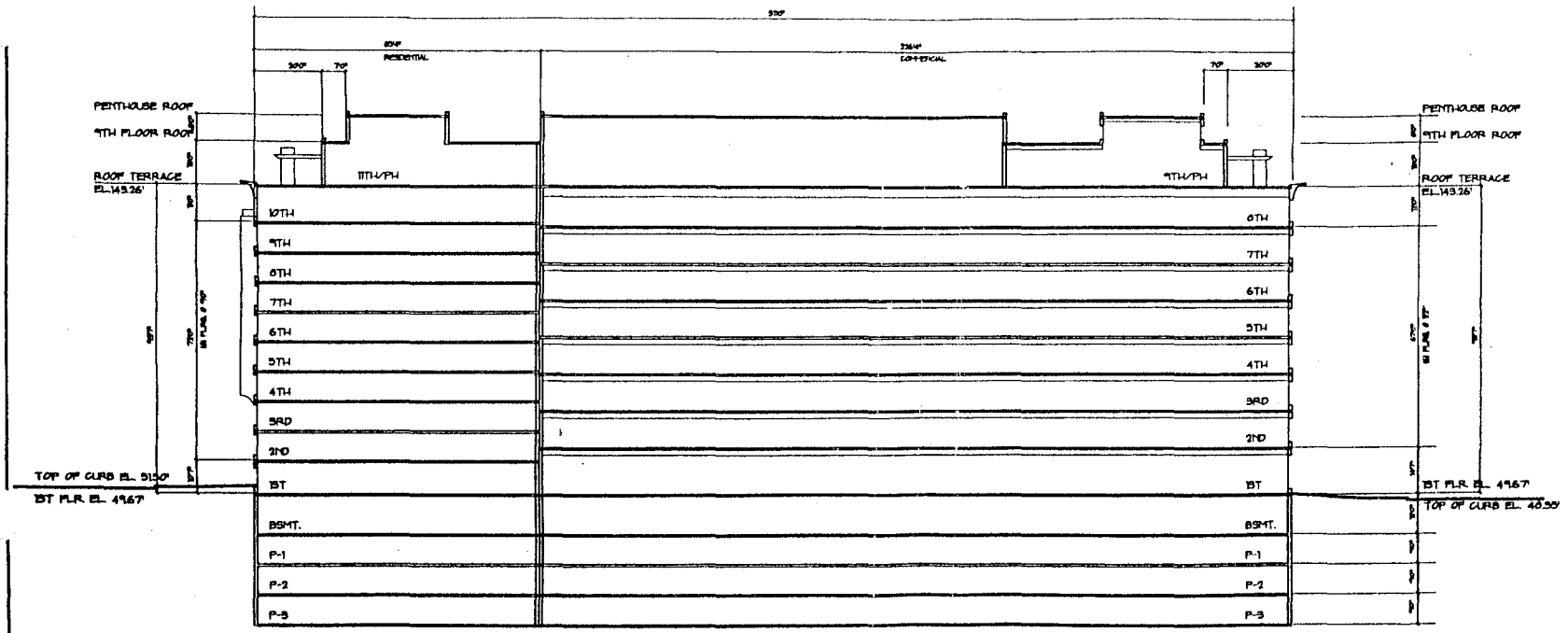
Enclosures
CC: Denzil Noble (w/encl)
Tom Butcavage (w/o encl)

CONFIRMED:

Armando Lourenco
Zoning Administrator

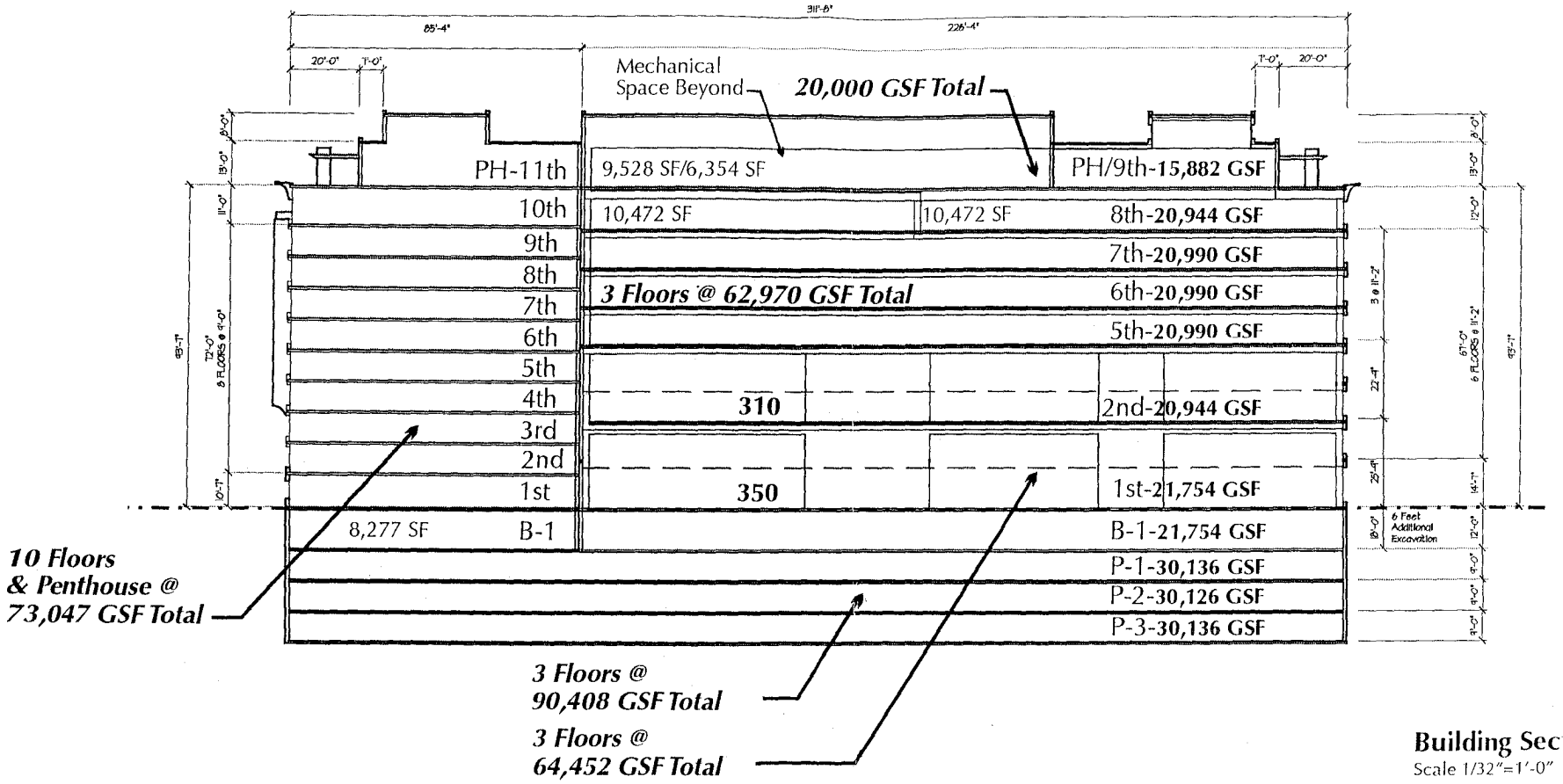
Date: 5/14/99

Exhibit A



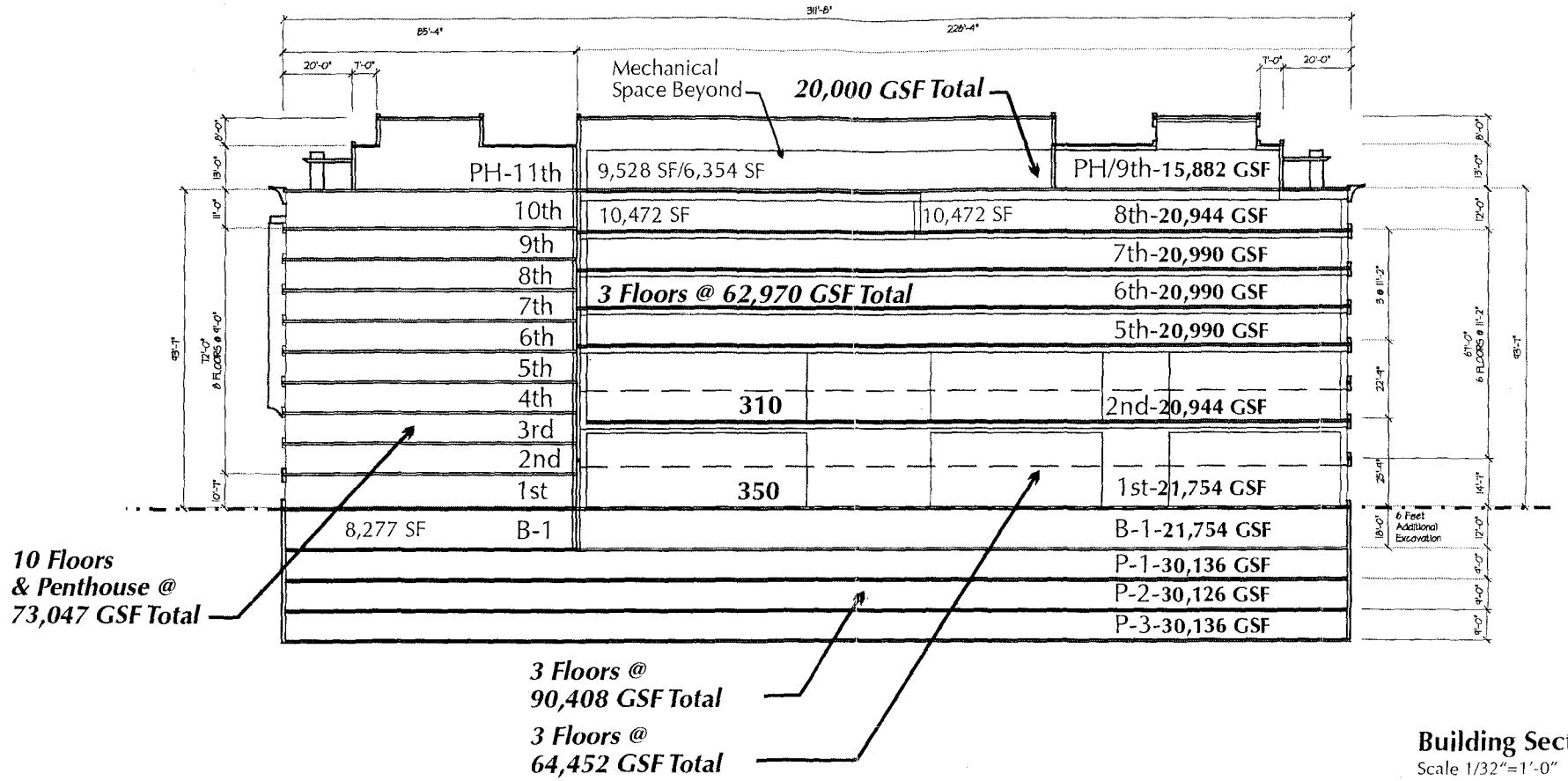
SECTION A-A

APPROVED PUD SECTION

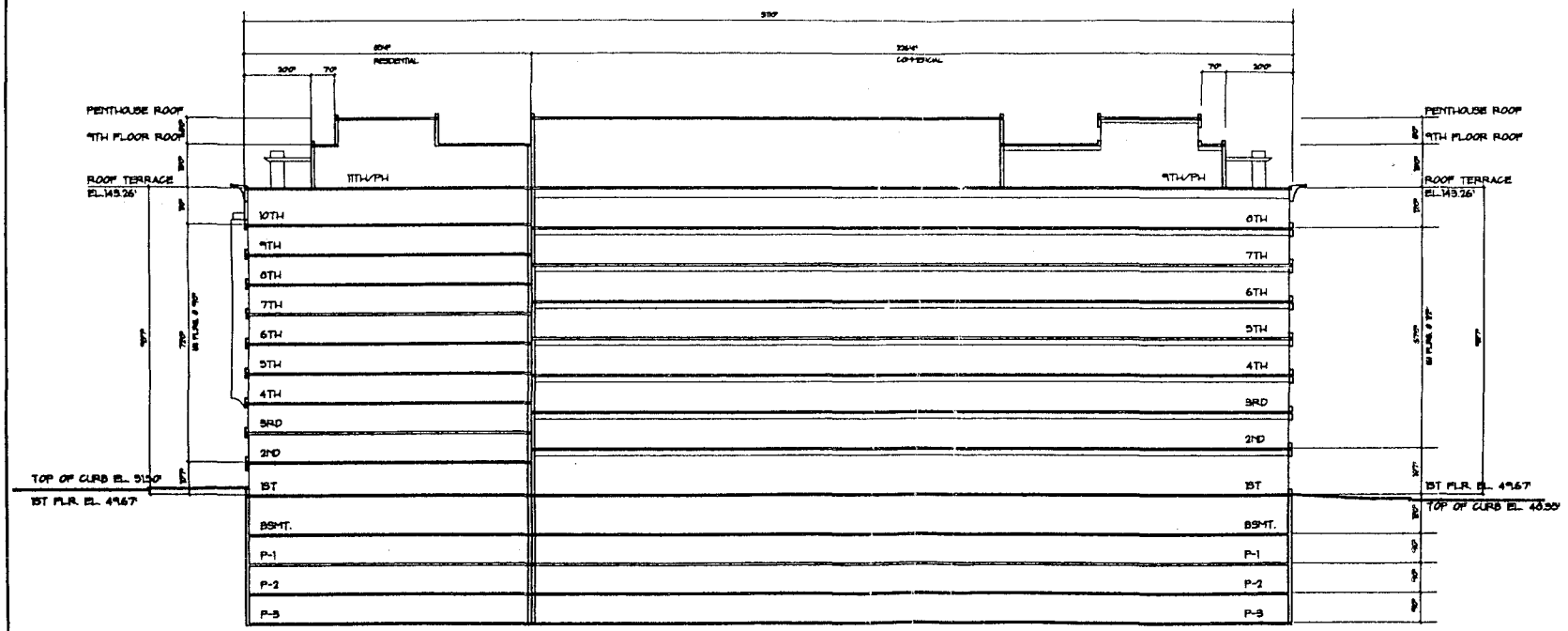


Building Section
Scale 1/32"=1'-0"

Exhibit B

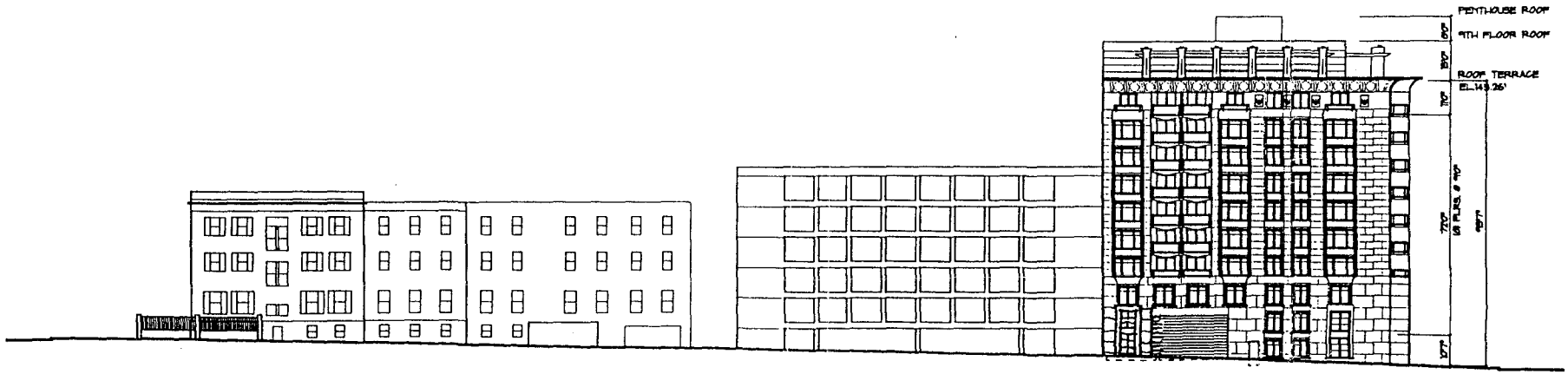


Building Section
Scale 1/32"=1'-0"



SECTION A-A

APPROVED PUD VERSION.

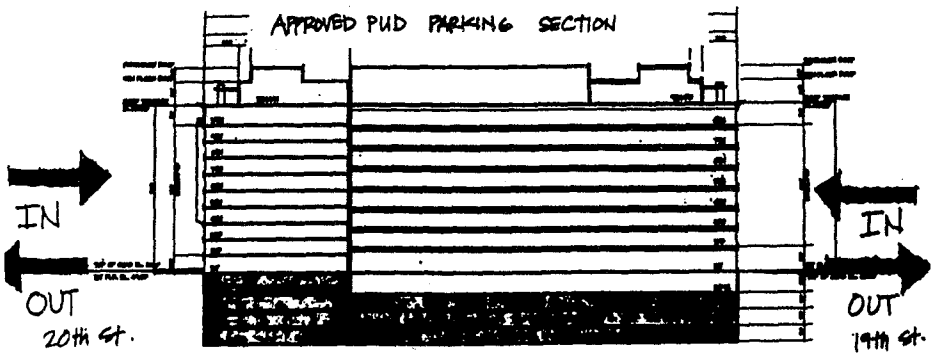


20TH STREET ELEVATION

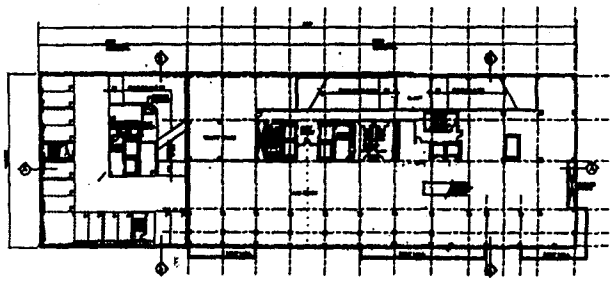
EXTERIOR MATERIALS:

- GRANITE WATER TABLE
- GRANITE OR LIMESTONE CLADDING
- METAL WINDOW WALL SYSTEM
- CLEAR LOW E VISION GLASS
- STONE AND PATTERN GLASS SPANDRELS
- FACE BRICK AT INTERIOR COURT
- FACE BRICK AT NORTH ELEVATION

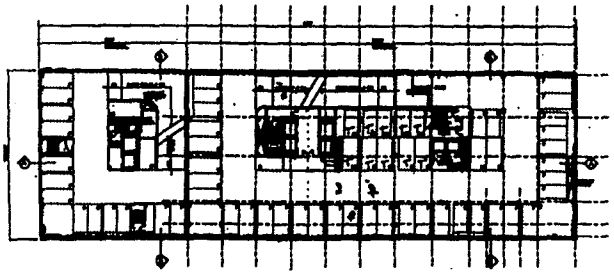
APPROVED PUD ELEVATION



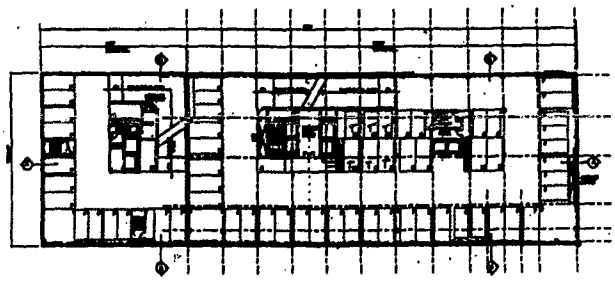
APPROVED PUD PARKING	
TOTAL # OF SPACES	200
S.F. PER SPACES	500 S.F.
TOTAL S.F.	99,501 S.F.



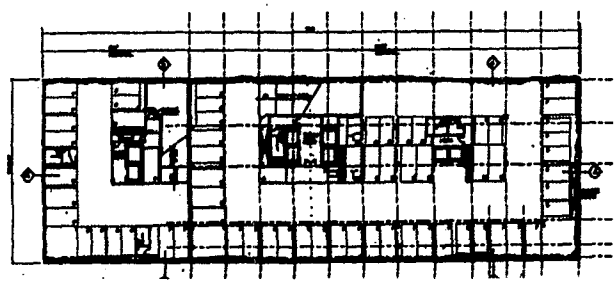
CELLAR



P-1

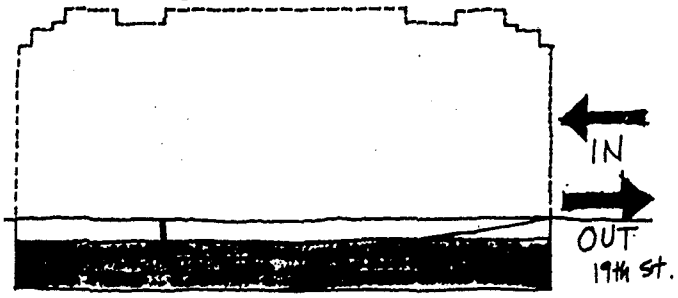


P-2

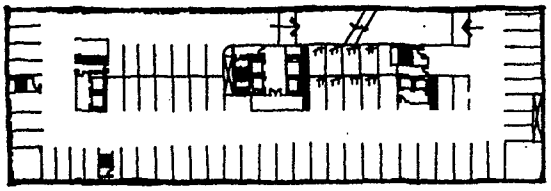


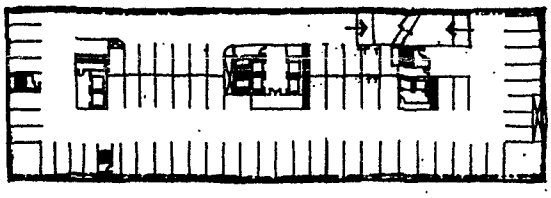
P-3

Parking Section-- PROPOSED.



PROPOSED PARKING:	
TOTAL # OF SPACES	203
S.F. PER SPACES	445 S.F.
TOTAL S.F.	90,301 S.F.





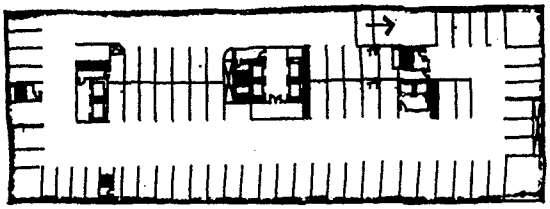


Exhibit C

Mendelson AGC

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 746
Case No. 93-5F/91-18P
(Final PUD & Map Amendment @ 19th & E Sts., N.W. - AGC)
November 15, 1993

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on July 26, 1993, to consider an application from the Associated General Contractors of America (AGC). The application requested second-stage (final) approval of a Planned Unit Development (PUD) and related Map Amendment, pursuant to the provisions of Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR Subsection 3022.

FINDINGS OF FACT:

1. The application which was filed on March 3, 1993, requested a second-stage (final) approval of a planned unit development (PUD) and a related change of zoning from SP-2 to C-3-C for Square 122, Lot 835.

2. By Z.C. Order No. 720, in Case No. 91-18P, dated July 13, 1992, the Zoning Commission granted first-stage (Preliminary) approval of a PUD and the related change of zoning from SP-2 to C-3-C for the PUD site. The Proposed PUD will have a gross floor area of 239,986 square feet, and floor area ratio (FAR) of 7.96, of which 174,563 square feet and a 5.79 FAR would be devoted to commercial uses and 65,423 square feet and 2.17 FAR devoted to residential uses. The building will have a height of 107 feet, a lot occupancy of 100 percent and provide below grade parking for about 200 cars.

3. The applicant, the AGC, proposes to construct a larger and more modern office facility, which can accommodate its headquarters' present and future needs and have sufficient rental space to enable the AGC remain in the District of Columbia. AGC also proposes to develop a 47-56 unit apartment component as part of the project.

4. The PUD site is zoned SP-2 and is located at 1957 E Street, N.W. It is on the north side of E Street between 19th and 20th Streets. The site is 30,159 square feet in area and rectangular in shape, with approximately 311 feet of linear frontage on E Street, N.W. and approximately 97 feet of linear frontage on both 19th and 20th Streets, N.W.

5. The western portion, approximately one-third of the PUD site is presently developed with a four-story building used as the AGC headquarters. The remainder of the site is used as a surface parking lot.

6. The PUD site is contiguous to Mitchell Hall, a nine-story George Washington University dormitory, to the northeast and a five-story public parking garage to the northwest in Square 122.

7. The area surrounding the subject site contains a wide variety of land uses. Major office development is located to the south, east and west. Immediately east, across 19th Street, N.W., is the General Services Administration ("GSA") office building which is 107 feet in height and occupies the entire square. The American Red Cross local headquarters building is situated west of the site across 20th Street, N.W. and is approximately 66 feet in height. To the south across E Street and a three-block-long Federal park, are the federal Office of Personnel Management and Department of Interior office buildings.

8. The SP-2 zone district permits matter of right, medium/high-density development, including all kinds of residential uses, with limited offices for non-profit organizations, trade associations and professionals permitted as a special exception requiring approval of the Board of Zoning Adjustment; a maximum height of 90 feet; a maximum floor area ratio ("FAR") of 6.0 for residential and 3.5 for other permitted uses; and a maximum lot occupancy of 80 percent for residential uses, 200 percent for other permitted uses.

9. The C-3-C zone district permits matter of right major business and employment centers of medium/high-density development, including office, retail, housing and mixed-uses; a maximum height of 90 feet; a maximum FAR of 6.5; and a maximum lot occupancy of 100 percent.

10. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this second-stage (final) PUD application. The Commission may also impose development conditions, guidelines and standards that may exceed or be less than the matter of right standards identified above for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

11. The District of Columbia Generalized Land Use Element of the Comprehensive Plan for the National Capital includes the PUD site in the high-density, commercial land use category.

12. AGC proposes to construct the project in two phases on land which it owns in fee simple. The proposed mixed-use development includes approximately 174,563 square feet of commercial office space (5.79 FAR) and approximately 65,423 gross square feet of residential space (2.17 FAR). The proposed roof elevation of the 8th floor of the office component is 94 feet, measured from E Street and is aligned with the cornice of the GSA building. There is a 20-foot setback along the three street frontages and then the top floor rises to 107 feet in height. The total density of the project is 7.96 FAR. The building will occupy 100 percent of the lot and there will be 200 parking spaces in a parking garage below grade.

13. Loading and parking access to the office portion of the development will be from 19th Street, N.W. loading and parking access to the residential portion of the development will be from 20th Street, N.W. There will be two 12' x 30' and one 10' x 20' loading berths for the office portion of the building. There will be one 12' x 30' and one 10' x 20' loading berths for the residential portion of the building.

14. AGC, through its representative at the public hearing, indicated that it continues to remain in the District of Columbia where it has been located since 1918 and is anxious to achieve second-stage approval of the project so it can move forward with the development. Approval of the subject application would allow the retention of a major, national association; provide approximately 323 new, permanent jobs in the District of Columbia; and create approximately 437 construction jobs over a two-year period; and result in an increase of approximately $2.54 million annually in tax revenues to the District of Columbia. The application indicates that the proposed PUD results in the efficient and economical utilization of the site; provides attractive urban design and new residential housing units; and adequately assures the protection of the public health, safety, welfare and convenience. The project is consistent with the existing physical character and land use patterns in the area; will not adversely impact the various District services; and will result in a positive financial impact to the District of Columbia.

15. AGC's architect and urban planner, indicated at the public hearing that the second-stage application meets all of the standards set forth in the Zoning Commission's first-stage

Order (Zoning Commission Order No. 720). The architect/urban planner testified that the office component's eighth floor roof line will be at 94 feet in order to match the cornice line on the adjacent GSA building's facade. The building will have a maximum height of 107 feet, matching the 107-foot height of the GSA building. He indicated that the proposed project was in complete conformance with the high-density, commercial land use designation of the site on the Comprehensive Plan Generalized Land Use Map. He testified that the proposed uses are consistent with the surrounding land uses and the goals and objectives of the Comprehensive Plan and that the project will not have any adverse land use impact on the surrounding area.

16. The architect/urban planner testified that the setbacks have been increased to 20 feet along the street frontage perimeter of the building, above the 94-foot height elevation and that the penthouse has been lowered into the top floor so that only 8 feet of the mechanical penthouse is exposed to exterior view. He indicated that the height of the project has been carefully examined and redesigned so as to minimize any potential impact on the surrounding properties.

17. The architect/urban planner described the consultation process with the community and indicated that the community had significant input into the design detail and the landscaping plans. Through the testimony of the architect/urban planner, AGC requested certain flexibility in the following development features:

    a. Vary the number of residential units to allow for larger or smaller units, in response to market conditions, so long as there are no less than 47 residential units in the project with no reduction in the gross square footage devoted to residential use;

    b. Change the location and design of all interior components including partitions, structural slabs, doorways, hallways, columns, stairways, location of elevators and electrical/mechanical rooms, so long as the variations do not change the exterior envelope of the building including the penthouse;

    c. Make minor adjustments in the window detailing, including the flexibility to shift the location of entrance doors on the ground floor to accommodate tenant uses;

d. Make minor design changes in response to requirements and final approval of the Commission of Fine Arts;

e. Provide not more than 5,000 square feet of ancillary, retail-related space on the ground floor of the property;

f. Vary the type of planting materials based on the availability at the time completion so long as the plant sizes and species are comparable to those shown on the landscaping plan;

g. Change the location and types of parking spaces provided, increase the number of spaces provided and make other modifications to below-grade space to accommodate the needs of office tenants, residential tenants and handicapped persons, including the potential elimination of a level of commercial parking without reduction of the total number of required spaces.

18. AGC requested that the project be permitted to be developed in two-phases with the office component being developed in the first phase. AGC proposes to apply for a building permit for the residential component within one year of the issuance of the Certificate of Occupancy for the office component and that, upon receipt of the building permit, AGC must achieve a Certificate of Occupancy for the residential component within two and one-half years.

19. AGC's transportation consultant, testified that the traffic generated by the project can be accommodated on the existing street network and that all intersections would operate at acceptable levels of service. He indicated that he had studied the two additional intersections, as requested by the Department of Public Works and the Commission pursuant to the first-stage approval of the project, and found that neither of these intersections would be adversely affected by the proposed project. He concluded that the project would not create any adverse transportation impact on the District or the neighborhood, that the project satisfied a number of goals and policies of the District of Columbia and is consistent with the transportation element of the Comprehensive Plan.

20. The District of Columbia Office of Planning (OP), by report dated July 15, 1993 and by testimony at the public hearing, indicated that the applicant has met the conditions for the final approval of the second-stage PUD application, as specified by the Zoning Commission Order No. 720. The OP

also indicated that the applicant has made substantial effort to reduce the proposed project's height and perceived bulk and has designed a structure that would he appropriate for the area in which it would be located.

21. The OP added, that the project would be an asset to the surrounding neighborhood and to the city as a whole. Accordingly, the OP recommended approval of the second-stage PUD and the related map amendment, subject to the following conditions regarding the development of the residential component of the project.

    a. The project may be developed in two phases with the office component being developed in the first-phase;

    b. Within one year of issuance of the certificate of occupancy for the office component, the AGC must apply for a building permit for the residential component; and

    c. Upon receipt of a building permit, the AGC must receive a certificate of occupancy for the residential component within two and one-half years.

22. The OP's report also contained the applicant's proposals that the enforcement of the above conditions be handled by the appropriate civil infractions official of the District government. That, any violations of the final PUD order be prosecuted in accordance with Section 2407.5 of the Zoning Regulations and Section 1229.1(c) of the civil infractions law, which specified that failure to comply with a Zoning Commission order will result in substantial fines.

23. Advisory Neighborhood Commission ("ANC") 2A, by letter dated July 26, 1993 and by testimony at the public hearing, supported the application. ANC 2A expressed satisfaction that AGC has made bona fide efforts to work with the community and to accommodate the community's concerns within its project.

24. There were no other persons or parties in support of or in opposition to the proposal either entered into the record or appearing at the public hearing.

25. At the conclusion of the hearing, the Commission finds that the proposed PUD is consistent with the requirements set forth in 11 DCMR Section 2400.

26. The Commission finds that the proposed PUD will provide essential housing in the Downtown area and will act as a model for mixed-use development in this transition area between the high-density Central Employment Area and the residential Foggy Bottom neighborhood.

27. The Commission finds that the PUD project and map amendment from SP-2 to C-3-C are in conformance with the Land Use Element of the Comprehensive Plan which designates the site for high-density, commercial uses.

28. The Commission further finds that the proposed urban design approach of the project is consistent with the urban design element of the Comprehensive Plan and the tenets of the L'Enfant and McMillan Plans.

29. The Commission finds that the on-site parking spaces and loading facilities will adequately serve the commercial and residential components of the project. The Commission concurs with AGC's transportation expert that the proposed project will not have an adverse impact on the traffic network in the area.

30. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act.

31. NCPC, by letter dated November 4, 1993, indicated that the proposed action of the Zoning Commission to approve the PUD and related map amendment with conditions would not adversely affect the Federal interest in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Planned United Development process is appropriate means for controlling development of the site in a manner consistent with the best interests of the District of Columbia.

2. The development of this PUD carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned residential, commercial and mixed-use developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

3. The development of the project is compatible with District-wide and neighborhood goals, plans and programs and is sensitive to environmental protection and energy conservation.

4. The approval of this application is not inconsistent with the Comprehensive Plan for the National Capital because it will produce needed housing, be a catalyst for redevelopment in a transition area, strengthen the distinguishing physical characteristics of the area, and increase employment opportunities.

5. The approval of the application is consistent with the purposes of the Zoning Act and the Zoning Map of the District of Columbia, which includes stabilizing land values and improving mixed-use areas.

6. The application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community or the District. The project will enhance and promote the revitalization of the area.

7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

9. The Zoning Commission has accorded ANC 2A the "great weight" consideration to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law, the Zoning Commission for District of Columbia hereby orders approval of the second-stage PUD and an amendment to the Zoning Map from SP-2 to C-3-C, for Square 122, Lot 835 subject to the following guidelines, conditions and standards:

1. The planned unit development (PUD) shall be developed in accordance with the plans prepared by the architectural firm of Florance, Eichbaum, Esocoff and King, and marked Exhibit No. 5B of the record and as modified by the following guidelines, conditions and standards.

2. The PUD site shall be developed with mixed-use buildings, including residential and commercial uses with below-grade parking.

3. The floor area ratio (FAR) for the PUD project shall not exceed 7.96, of which not more than 5.79 FAR shall be devoted to commercial use and not less than 2.17 FAR shall be devoted to residential use.

4. The height of the PUD project shall not exceed one hundred and seven feet (107'), exclusive of the penthouses as shown on Exhibit No. 5B. That portion of the building which exceeds a height of ninety-four (94) feet shall be setback from the 19th, 20th and E Streets property lines at least 20 feet.

5. The mechanical penthouses shall be developed as shown on Exhibit No. 5B and shall not exceed eight feet in height above the parapet of the roof of the office component.

6. The PUD project shall be developed with 47 to 56 residential units.

7. There shall be a minimum of 200 on-site parking spaces with at least one parking space designated for each residential unit. Additional parking spaces may be permitted in public vaults.

8. Loading areas, driveways and walkways shall be located on the site as shown on Exhibit No. 5B of the record.

9. Landscaping shall be provided as shown on the landscape plan marked as Exhibit No. 5B of the record.

10. Antennas shall be permitted on the roof of the building subject to the applicable Zoning Regulations.

11. The entire PUD project may be developed in two phases; that is, the residential component being one phase and the office component being the other phase.

12. If the PUD project is developed in one phase or if the residential component is developed in the first phase, the requirements as contained in Condition Nos. 13 and 14 of this order, shall not apply.

13. If the office component is developed in the first phase, the applicant must apply for a building permit for the residential component within one year of the issuance of the certificate of occupancy for the office component. Upon receipt of the building permit for the residential component, the applicant must receive a certificate of occupancy for the residential component within 2 1/2 years of receipt of the building permit for the residential component.

14. The applicant shall promptly file with the Office of Zoning (OZ) a copy of the certificate of occupancy for the office component, a copy of the building permit application for the residential component, and a copy of the certificate of occupancy for the residential component. Each of the aforementioned copies shall include a cover letter that clearly indicates the date on which the certificates of occupancy were issued by the Department of Consumer and Regulatory Affairs (DCRA) as well as the date on which the building permit application for the residential component was made with DCRA.

15. The applicant shall have the flexibility on the final detailing of the proposed project to:

    a. Vary the number of residential units to allow for larger or smaller units, in response to market conditions, so long as there are not less than 47, nor more than 56, residential units at the site with no reduction in the gross square footage devoted to residential use;

    b. Change the location and design of all interior components including partitions, structural slabs, doorways, hallways, columns, stairways, location of elevators and electrical/mechanical rooms, so long as the variations do not change the exterior envelope of the building including the penthouse;

    c. Make minor adjustments in the window detailing, including the flexibility to shift the location of entrance doors on the ground floor to accommodate tenant uses;

    d. Make minor design changes in response to requirements and final approval of the Commission of Fine Arts;

    e. Provide not more than 5,000 square feet of ancillary, retail space on the ground floor of the project; and

    f. Change the location and types of parking spaces provided, increase the number of spaces provided and make other modifications to below-grade space to accommodate the needs of office tenants, residential tenants and handicapped persons, including the potential elimination of a level of commercial parking without reduction of the total number of required spaces.

16. No self-illuminated signs shall be permitted. Other illuminated signs lit indirectly from ground-mounted or building-affixed lighting shall be permitted. Any signs affixed to the

building must be at the first or second floor level, not larger than twenty-four inches (24") in height and subject to review and approval by the Commission of Fine Arts. Inscriptions in the stone or precast concrete materials of the facades may occur elsewhere and are subject to review and approval by the Commission of Fine Arts.

17. No building permit shall be issued for the PUD project until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, satisfactory to the Office of Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). The covenant shall bind the owner and all succesors in title to construct on and use the property in accordance with the order and amendments thereto of the Zoning Commission.

18. The change of zoning from SP-2 to C-3-C for the PUD site shall be effective upon recordation of the PUD covenant as required by 11 DCMR 2407.

19. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.

20. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of the order. Within such time, the applicant must file for a building permit as specified in 11 DCMR 2407.1 and 2406.8. Construction shall start within three years of the effective date of the order.

21. Pursuant to D.C. Code Section 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 the order would be conditioned upon full compliance with those provisions. Nothing in the order shall be understood to require the Zoning Division of DCRA to approve permits if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the public meeting on September 13, 1993: 5-0 (John G. Parsons, Jerrily R. Kress, William L. Ensign, William B. Johnson and Maybelle Taylor Bennett - to approve with conditions).

This order was adopted by the Zoning Commission at the public meeting on November 15, 1993 by a vote of 5-0: (Jerrily R. Kress, John G. Parsons, William L. Ensign, Maybelle Taylor Bennett and William B. Johnson, to adopt as corrected).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on _____.

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

MADELIENE H. ROBINSON
Director
Office of Zoning

zco746/VCE/LJP