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September 6, 2001

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Hand Delivery

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

Re: BZA Application No. 16757, Jemal's Lofts, LLC

Dear Members of the Board:

Enclosed please find an original and 10 copies of the Applicant's Statement in Support of the above-referenced application, scheduled for public hearing on September 20, 2001.

Please do not hesitate to contact us should you have any questions or require further information.

Very truly yours,

HOLLAND & KNIGHT LLP

Dennis R. Hughes

Enclosures

WAS1 #919995 v2

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2001 SEP -6 PM 3:25

BZA
Case No. 16757
Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO.16757
EXHIBIT NO.22A1

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of
Jemal's Lofts LLC

BZA Application No. 16757
Public Hearing: September 20, 2001
ANC 2C

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STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR §3103.2, for variances from the floor area ratio requirement (§1707.4), residential recreation space requirements (§773) and ground floor preferred use requirements (§1703.3), and pursuant to §3104.1, for special exception from the roof structure provisions under §411.11, to permit construction of an apartment house with ground floor retail in a DD/C-4 zoning district at premises 910-916 F Street, NW. The property subject to this application, Lots 828, 829, 847 and 848 in Square 377 ("Subject Property"), is located within the DD/C-4 Zone and the Downtown Historic District.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment has jurisdiction to grant the requested variance relief pursuant to §§ 3103.2 and 3104 of the Zoning Regulations.

III.
BACKGROUND OF THE CASE

A. Site and Vicinity Characteristics

The subject property is located on the south side of F Street, NW, mid-block between 9th and 10th Streets, NW. Comprised of Lots 847, 848, 829, and 828 in Square 377, the property measures approximately 88 feet along F Street, NW and 159 feet deep. The property is bounded to the east by the nine-story Riggs Bank Building, a designated historic landmark and to the west by the seven-story National Union Life Insurance Building, also a designated historic landmark. The property is bounded to the south by a public alley running through the interior of Square 377. The property possesses a steep grade change, with a slope of approximately 13-14 feet from north to south. Also, a public sewer line runs diagonally across a substantial portion of the subject property.

Lots 847, 848, and 829 (910, 912, 914 F Street, NW, respectively) each are improved with a late-19th century row building. These three buildings have been utilized for commercial purposes for most of their existence and are deemed "contributing" buildings to the Downtown Historic District. The Historic Preservation Review Board ("HPRB") has determined that 916 F Street, NW, is not a "contributing" building to the Downtown Historic District and has approved its demolition as consistent with the purposes of the preservation law.

B. **Project Description**

The site is intended to be developed as a 14-story, approximately 75-unit apartment house with ground floor and below grade retail and arts uses. The project also contains below-grade parking for 20 automobiles. The three historic buildings at 910, 912 and 914 F Street, NW, will be preserved and incorporated into the project. The non-contributing building at 916 F Street, NW, will be demolished and replaced with a new 11-story infill tower including the entrance to the residential units at ground level. The Applicant received a vote of support from the HPRB for the massing model of the proposed project presented by the Applicant at the HPRB's June 28, 2001 public meeting. The approved massing model will be available for review at the BZA public hearing. The architectural drawings provided at Exhibit G accurately reflect the massing of the model. The Applicant continues to work with the HPRB and Historic Preservation Staff on issues regarding the architectural detail of the new construction.

The proposed building complies with all applicable height and permitted use provisions set forth in the Zoning Regulations for the DD/C-4 Zone. The building will measure no more than 120 feet in height, in keeping with the height regulations for the C-4 Zone and the Downtown Development overlay as well as the Act of 1910. The total gross floor area for the project is 107,339 square feet, of which 95,990 square feet are devoted to residential uses.

As proposed and explained herein, this project is wholly consistent with the goals of the city and will be a substantial contribution to the District of Columbia, and especially to the Downtown area.

C. **Zoning Commission Requirements for Development of Subject Property.**

The proposed project is an integral component of a Planned Unit Development ("PUD") approved by the Zoning Commission for the rehabilitation of the former Woodward & Lothrop Building in Square 346 ("Woodies Building"). (Zoning Case No. 00-33C, Order No. 940 effective May 11, 2001.)(Exhibit I). Under the terms of the PUD, the Subject Property is one of two residential amenities sites (the other being in Square 517) required to be devoted to a minimum amount of residential use to off-set the permission granted to allow the Woodies Building to be developed as a combination of retail and general office uses.

Established as an amenity to the PUD, the Subject Property is required by the Zoning Commission to be developed as housing and will also contain ground level retail uses. The Commission mandated that the minimum residential square footage to be provided on the Subject Property be no less than 88,000 square feet and that building permits for the residential development on the Subject Property must be applied for within one (1) year of the effective date of the PUD Order, that is, by May 11, 2002.

D. **Prior BZA Approval for Subject Property.**

In June, 2000, the Board considered and approved an application for variance relief from the FAR requirement of §1707.4 to permit construction of a 12-story hotel. The Applicant in that application (BZA No. 16581), 912 F Street Associates, LP, has

since conveyed the Subject Property to the Applicant. A copy of the Board's prior approval is attached as Exhibit J.

E. **Impact of Pending Zoning Changes**

Two revisions to the Zoning Regulations, preliminarily approved by the Zoning Commission and now pending for final approval, impact the Subject Property as a result of its location within the DD. The revisions, as set forth in Zoning Commission Case No. 01-06TA, involve the removal of the 6.0 FAR on-site limitation for the Subject Property and inclusion of the Subject Property in Housing Priority Area C. (Exhibit L). As discussed in more detail below, these two changes will allow the Subject Property to be developed to a maximum matter of right density of 10.0 FAR for residential and mixed uses in the DD/C-4 Zone, pursuant to §1706.6 and 10.5 FAR pursuant to §1706.7. When this amendment to the Zoning Regulations becomes final, no variance from §1707.4 will be required.

IV.
EXHIBITS IN SUPPORT OF THE APPLICATION

Before proceeding with the discussion of the merits of this application, the following additional materials are submitted:

Exhibit A: A portion of the Baist Map showing the Subject Property outlined in red ink.

Exhibit B: A portion of the Sanborn Atlas showing the Subject Property outlined in red ink.

Exhibit C: A portion of the Zoning Map showing the Subject Square outlined in red ink.

Exhibit D:	Outline of testimony of the Representative of Jemal's Lofts LLC, Applicant.
Exhibit E:	Outline of testimony of Shalom Baranes Associates, Architects for the project.
Exhibit F:	Outline of testimony of Steven E. Sher, Land Planner.
Exhibit G:	Architectural drawings.
Exhibit H:	Historic Preservation Review Board Materials.
Exhibit I:	Zoning Commission Order No. 940.
Exhibit J:	Board of Zoning Adjustment Order No. 16581.
Exhibit K:	Board of Zoning Adjustment Order No. 16681.
Exhibit L:	Zoning Commission Case No. 01-06TA, Notice of Proposed Rulemaking.
Exhibit M:	Declarations of Covenants and Restrictions upon Properties in Squares 346, 377 and 517 pursuant to Zoning Commission Order No. 940.

V.
THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM § 1707.4 OF THE ZONING REGULATIONS

Section 1707 of the Zoning Regulations applies to historic landmarks and to specified properties within the Downtown Historic District and Pennsylvania Avenue National Historic Site. Subsection 1707.4 provides that the permitted on-site FAR for any permitted use shall be 6.0 for the lots and squares listed therein. Lots 847, 848, 829 and 828 in Square 377 are included in the list of properties subject to the FAR limitation of §1707.4. For residential and mixed uses in the DD/C-4 District in

Housing Priority Area C, matter of right density is permitted to a maximum 10.0 FAR, pursuant to §1706.6 and 10.5 pursuant to §1706.7.

As set forth below, the application meets the three-part test for area variance relief from §1707.4 of the Regulations.

1. The Property is Affected by an Exceptional Situation or Condition.

The existing conditions and physical constraints of the project site are exceptional among properties in the C-4 Zone, including those properties listed in §1707.4. The Subject Property has a comparatively small site area of 13,332 square feet. It is a very narrow and unusually proportioned property, measuring approximately 88 feet wide and 159 feet deep, resulting in a ratio of depth-to-width of approximately two-to-one. Furthermore, it is an interior site, with public frontages only along F Street to the north and onto the public alley to the south. Thus, for any development that might occur on the site, there would be no opportunity to achieve light or air circulation through windows except along the narrow street and alley frontages. The resulting high ratio of interior/core space to perimeter space would necessarily render the subject property unusually inefficient for high-rise development of almost any nature. Similarly, the existence of a public sewer line running diagonally across the subject site seriously restricts development options for the site, especially with regard to lower level parking arrangement and access. Furthermore, as a result of the steep fall in grade affecting the site from north to south, significant portions of the Applicant's "lower level" retail and

parking level must be included in its FAR calculation. Such a significant change in grade is very unusual in the C-4 District, let alone for such a small site.

In addition, the project site is improved with three contributing buildings to the Downtown Historic District. The Applicant's apartment house project involves even greater preservation of the three historic buildings than did the hotel application that the BZA approved in Order No. 16581. According to Historic Preservation Office staff, "[i]n terms of preservation scope, the present scheme represents a major improvement, since it would preserve the complete historic structures, including the back buildings. The developer deserves substantial credit for this approach."(HPRB May 24, 2001 Agenda). The preservation of these historic buildings definitely creates an exceptional condition upon the Subject Property. Such an effort involves significant costs, both financial and physical. Physical costs incurred by the Applicant for a preservation project of this high level include the necessity to set back the bulk of new construction from the historic buildings, thereby significantly diminishing the Applicant's most efficient use of the property.

In addition, the zoning history of the site, established through recent Zoning Commission actions, creates an exceptional situation or condition as follows:

(1) Zoning Commission approval of Subject Property as amenities site to provide housing related to PUD approval for rehabilitation of Woodies Building;

(2) Zoning Commission preliminary action to remove Subject Property from list of properties subject to 6.0 FAR limitation pursuant to §1707.4;

(3) Zoning Commission preliminary action adding the Subject Property to Housing Priority Area C; and

(4) Zoning Commission action lifting the FAR limitations for residential development in the DD housing overlay areas.

All of these actions contribute to the uniqueness of the Subject Property.

Finally, in granting variance relief to a prior applicant for development of the Subject Property, the Board has thereby determined that the Subject Property is affected by an exceptional situation or condition sufficient to merit such variance relief.

2. The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty.

The strict application of §1707.4 would render infeasible the Applicant's sensitive development plans for the Subject Property and frustrate the directive of the Zoning Commission to provide a minimum of 88,000 square feet of residential development on the Subject Property. In order: (a) to support the high level of historic preservation demanded by the HPRB; (b) to address such design constraints as an exceptionally small mid-block lot wedged between seven and nine-story historic buildings which impact light and air circulation for the Subject Property, historic buildings occupying a substantial percentage of the building lot, a public sewer line running diagonally across the property and a significant grade change from north to south; and (c) to provide an economically feasible unit layout for apartment house use and retail use, the Applicant is faced with significant practical difficulty in complying with the 6.0 FAR limitation of §1707.4. Essentially, these various exceptional conditions of the Subject Property, and the Applicant's attempts to include them as

part of its preservation program, necessarily result in an inefficient generation of floor area attributable to FAR.

[a] Historic Preservation Difficulties:

As stated above, the Applicant intends to undertake an exhaustive, and costly, preservation project of the subject property. Whereas many redevelopment projects downtown involve a mixture of historic façade retention and new construction, the Applicant's proposal goes much farther, ensuring the restoration of three historic buildings in the Downtown Historic District. At the same time, the project will include demolition and replacement of a non-contributing structure within the historic district. This demolition is supported by the Historic Preservation Element of the Comprehensive Plan. Beyond the added costs of restoring the architectural fabric of the three historic buildings, the Applicant is also faced with the difficult task of supporting/underpinning the structures while below-grade parking space is constructed.

More significant than the financial costs of such a sensitive undertaking are the physical costs, or difficulties, of establishing a viable mixture of preserved fabric and new construction on this unique site. The adaptive reuse of the preserved buildings will count toward approximately 10,800 square feet of gross floor area for purposes of FAR calculations. Likewise, as the new construction on the site will be limited to: (a) the small footprint directly behind the historic buildings back to the alley; and (b) the 916 F Street building lot once the non-contributing building is

demolished, the Applicant is even further constrained in its development options, especially for residential and retail development.

[b] Other Site Difficulties:

Even were the Subject Property not improved with the three historic buildings, the site possesses a variety of circumstances that complicate development of the site in conformity with the limitation of §1707.4. First and foremost, it is an interior site. Immediately to the east of the site is the nine-story Riggs Bank Building, recently rehabilitated into a Courtyard by Marriott Hotel. Immediately to the west is the seven-story National Union Insurance Company Building, undergoing rehabilitation as trade association headquarters. Any infill development on the site will provide very little in the way of perimeter space for its occupants. Thus, the development of marketable floor area is constrained by the ability to provide sufficient light and air. This issue is further complicated by the shape of the Subject Property. Resulting from the Applicant's efforts to preserve the three historic buildings, new construction on the site will be limited to the area behind the three structures and in place of the non-contributing building at 916 F Street, NW. The result is significant gross floor area lost to a floor plate/design that is less efficient than would be the case in a more typical property.

The steep fall in grade from F Street to the public alley also creates an inefficient situation for the generation of FAR. This results in FAR being charged for parking use, which is essentially unheard of in a downtown development. Were there no slope in grade on the property, as is the case for the vast majority of development

sites downtown, the entirety of the parking level, along with a substantial portion of the retail space being provided on this lowest level, would remain below-grade and thus not count toward FAR. As it stands, however, the parking level for the Applicant's project generates approximately 6,850 square feet of gross floor area toward FAR that normally would not occur.

[c] Apartment House Program Requirements

The market for newly-constructed apartment houses, and particularly for those with significant historic preservation issues, dictate a need for the approximately 75 apartments that the Applicant proposes for the Subject Property, including a total of six apartments to be provided in the upper levels of the three rehabilitated historic buildings. Without relief from the FAR requirement of §1707.4, the Applicant would lose the equivalent of 26 apartment units. This loss of space would render the apartment house program financially unworkable.

Finally, the Zoning Commission set a threshold of 88,000 square feet of residential development that must occur on the Subject Property as part of the PUD approved for the Woodies Building.(Exhibit I). Even were the Applicant able to utilize the entire 13,332 square foot lot area for its residential development, it could develop no more than 79,800 square feet of residential use under the 6.0 FAR restriction of §1707.4. The ground level preferred use requirement of §1703.3 further reduces the amount of residential use the project can yield.

In sum, the exceptional conditions confronting the Applicant at the Subject Property combine to create a significant practical difficulty for the Applicant's

proposed apartment house program, both physical and economic. Without relief from the 6.0 FAR requirement, the Applicant simply cannot utilize the space available on the Subject Property, provide an economically feasible apartment unit layout, undertake the very extensive preservation project that has been recommended by the HPRB, and satisfy the terms set by the Zoning Commission in the PUD Order for the Woodies Building.

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

[a] The Applicant Has Proposed a Model Preservation Project for Downtown.

The Applicant's redevelopment proposal for the Subject Property has been lauded by the HPRB as innovative downtown preservation, one that is even more extensive than its predecessor, which earned similar accolades. Furthermore, the proposal accomplishes much of the historic preservation policies set forth in the Comprehensive Plan and transcribed in §1707 of the Zoning Regulations. It preserves the unique character and fabric of three contributing buildings in the Downtown Historic District. The Applicant's proposal involves restoration and sensitive adaptive reuse of contributing historic buildings, incorporating them into compatible new construction. Furthermore, it eliminates any threat of additional bulk on these critical frontages to the F Street streetscape.

The Zoning Commission has recognized that additional bulk on this site is appropriate in its preliminary decision making in Zoning Commission Case No. 01-06TA. In addition, the bulk of new construction is set back a significant distance

from F Street, NW, and the construction has been designed with specific and sensitive regard to the historic buildings in front of it as well as those surrounding it in all directions.

Finally on this point, the Applicant notes that the project site is surrounded both to its east and west, respectively, by the Riggs Bank Building at 900 F Street, NW, and the National Union Insurance Company Building at 918 F Street, NW, historically significant, contributing buildings that are both of greater scale than the three historic buildings that comprise part of the Applicant's project. The new construction aspect of the Applicant's proposal is quite sympathetic to these neighboring buildings, neither mimicking nor overwhelming them.

[b] The Applicant's Apartment House Project Provides a More Suitable Context for the Historic District than Would a Matter-of-Right Office Project.

Although the Applicant's apartment house project generates a higher FAR than would an office project of the same footprint, the apartment house project proposed would actually require an equal, if not smaller, building envelope than would a matter-of-right 6.0 FAR office building. Residential development operates under a different construction scale than does office space development. Whereas the floor-to-ceiling height in an office project ranges from 10'6" to 11' per floor, residential development requires only approximately and 8'8" height per floor. Therefore, an apartment house can achieve 14 floors, and comparably more square footage, in the same volume occupied by an 11-story office building. The Applicant thus contends that in the present case, where the Applicant has demonstrated a keen and sensitive

attention to historic preservation, FAR is not necessarily the most appropriate indicator of bulk.

[c] No Substantial Detriment to the Public Good

Finally, the Applicant wishes to note for the Board that relief requested, to allow the construction of an 8.05 FAR apartment house with ground level and lower level preferred uses on a property whose zoning currently restricts development to 6.0 FAR for purposes of historic preservation, is appropriate when, as here: (1) the Applicant has demonstrated significant attention to historic preservation and meaningful adaptive reuse; (2) the actual building envelope might increase were the Applicant to propose a matter-of-right office development; (3) the Zoning Commission has expressly determined that 88,000 square feet of residential use must be placed on the Subject Property.

Furthermore, Case No. 01-06TA, preliminarily approved by the Zoning Commission in July, 2001, will remove the 6.0 FAR limitation upon the Subject Property and include the Property in Housing Priority Area C, which will result in the Subject Property being developable to a maximum matter of right density of 10.0 FAR as a residential and mixed use project, and 10.5 FAR with transferable development rights, as set forth in §1706.7. This action by the Zoning Commission gives clear support for the Applicant's position that approval of the requested variance from §1707.4 in the present case will not impact negatively upon the zone plan.

For all the above reasons, variance relief can be granted without

substantial detriment to the public good and without substantial impairment to the intent, purpose and integrity of the zone plan.

VI.
THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM §773 OF THE ZONING REGULATIONS

Section 773 of the Zoning Regulations requires in commercial zoning districts that buildings (or portions thereof) devoted to residential use, other than single family dwellings, shall provide recreation space that is "safe, secure, and suitably equipped or landscaped for the active or passive recreation of the residents." Notably, the residential recreation space may be located at ground level, on or above the residential plane, on rooftops, or within a building or structure.(§773.4). No less than 50 percent of the total residential recreation space provides shall be outdoors.(§773.8).

Subsection 773.3 establishes a schedule for the amount of residential recreation space required to be provided, based upon zoning classification. According to that schedule, five percent of the gross floor area devoted to residential use in the C-4 Zone must be devoted to residential recreation space. For the subject property, where approximately 95,990 square feet is being devoted to residential use, the Applicant would be required by §773.3 to provide 4,962 square feet of residential recreation space, 2,482 square feet of which must be located outdoors under §773.8. Because the Applicant proposes to provide 1,200 square feet of

residential recreation space, none of which is located outdoors, the Applicant requests a variance from the provisions of §773.

As set forth below, the application meets the three-part test for area variance relief from §773 of the Regulations.

1. The Property is Affected by an Exceptional Situation or Condition.

The exceptional conditions affecting the Subject Property, including its small, mid-block site, its improvement with three historic buildings, and its zoning history, have been established above.

2. The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty.

As set forth above, in its effort to maximize residential development of the Subject Property, the Applicant is severely constrained by the exceptional conditions of the Subject Property. Owing to the numerous inefficiencies to development created by these exceptional conditions, as well as the ground level preferred use requirements for properties within the DD, discussed below, the Applicant is unable to meet the five percent residential requirement of §773.3. For the same reasons, the Applicant is unable to meet the 50 percent outdoors requirement of §773.8. The Applicant can provide only 1.2 percent residential recreation space, none of which is outdoors. The approximately 1,200 square feet of residential recreation space would be provided through the residential lobby and a recreation room on the third floor of the building.

The Applicant is faced with competing priorities in developing its residential proposal. It must maximize the amount of residential square footage on the site in order to meet the requirements of the PUD Order, but it must also provide a spatial arrangement for the residential units that is liveable, appealing and ultimately marketable. The Applicant is greatly constrained in each of these endeavors by the underlying preservation considerations of the three historic buildings on the site, and indeed the larger Downtown Historic District. The importance of the historic preservation considerations is best evidenced by the Applicant's continuing coordination with the HPRB and staff, which has resulted not only in the restoration of all three historic buildings but also the reduction in the massing of the proposed new construction to synthesize with the lower scale historic buildings on site, the historic landmark buildings on either side of the Subject Property, and the historic F Street, NW, streetscape. The Applicant is further constrained by the requirement to provide retail uses on the ground level of the new development.

As a result, the Applicant cannot meet the five percent residential recreation space requirement. In those locations where the Applicant has not maximized the available square footage for residential use, it has installed retail uses or resident parking. There is simply not any room left over for residential recreation space. The Applicant, even though it has requested an FAR variance above, cannot simply add further density to that requested in order to install recreation uses because of historic preservation concerns and the very tight financial numbers required to make the project marketable.

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

Variance relief from the residential recreation space requirement of §773 can be granted in the present case without substantial detriment to the public good or impairment to the zone plan.

[a] Public Good:

While the objectives of §773 are laudable, namely to provide active or passive recreation to residents of buildings located in commercial zoning districts, where competition for valuable developable space is greatest and non-profitable spaces are scarce, the Subject Property is located in the very heart of the District and its urban core. The cultural, entertainment, recreational, retail and service activities and opportunities that are present downtown are unsurpassed anywhere else in the District and the metropolitan area. Notably, in support of the recent reduction in the percentage of residential recreation space required in the DD/C-2-C and the DD/C-3-C Districts (Zoning Commission Order No. 943), the District of Columbia Office of Planning, in recommending the reductions, noted the importance to downtown vibrancy and security that downtown residential uses provide and the interesting negative impact that on-site private residential recreation space exerts over the District's unceasing efforts to revitalize the downtown core.

[b] Zone Plan:

Variance relief may be granted from the provisions of §773 in the present case without detriment to the zone plan for the District. To this end, the Board has granted similar relief in BZA Application No. 16681 for a residential project at 7th and E Streets, N.W. (Exhibit K).

VII.
THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM §1703.3 OF THE ZONING REGULATIONS

The Zoning Regulations require, at §1703.3, that 100 percent of the ground floor leasable space for new or altered buildings within the Downtown Shopping District ("SHOP") be devoted to preferred retail and service uses and/or arts and art-related uses, as enumerated in §§ 1710 and 1711, respectively. The Subject Property is located within SHOP. In addition, §1703.3(a) requires that the gross floor area devoted to these preferred uses be no less than 0.5 FAR on the ground floor. For the Subject Property, 0.5 FAR would equal 6,666 square feet. In order to maximize the preservation of the historic buildings, to provide a suitable lobby for residential access, and to accommodate the number of residential units to meet the Zoning Commission's 88,000 square feet minimum threshold as well as to make the residential project marketable, the Applicant can only provide 70 percent of its ground floor leasable space to preferred retail and arts uses. This amount totals .64 FAR and 8,532 square feet of preferred retail and arts uses on the ground floor. The

remainder of ground floor leasable space is devoted to preferred residential use. Thus, the Applicant requests variance relief from §1703.3.

Importantly, §1703.3(d) specifically requires that the 50 percent of the floor area required to be devoted to preferred uses at the Subject Property must be devoted to §1711 preferred arts and arts-related uses because Square 377 is located within the Downtown Arts District. The Applicant will satisfy this requirement.

As set forth below, the application meets the three-part test for area variance relief from §1703.3 of the Regulations.

1. The Property is Affected by an Exceptional Situation or Condition.

As established above, the Subject Property is affected with numerous exceptional conditions that render the Subject Property deserving of variance relief.

2. The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty.

A strict application of the provisions governing ground floor retail space in the SHOP would result in a practical difficulty for the Applicant's project. Despite the fact that the Applicant has attempted to balance the various development pressures for the site; namely, (a) total preservation of historic buildings, (b) providing lobby access for the residents of the building, (c) attempting to provide marketable residential units, by maximizing light and air, on alley frontage, and (d) confronting an unusually-shaped alley that complicates the building's floor plate, the Applicant simply cannot devote the entire leasable floor plate to §§ 1710 and 1711 uses.

The Applicant has no practical alternative to the arrangement it provides. The Applicant is devoting the entire footprints of the three historic buildings, as well as a substantial portion of the replacement construction for 916 F Street, NW, to preferred §§1710 and 1711 uses, along with a sizeable area behind the historic buildings. The Applicant has likewise minimized the size of the residential lobby as much as feasible, in turn lessening the amount of residential recreation space it would otherwise provide there. The corridor design is likewise necessary in order to accommodate elevator and stair access for the project's creative stacking approach for the multi-story residential units.

The only other significant presence on the ground floor is the amount of residential space provided at the rear of the ground floor. These units are absolutely necessary to the marketability of the residential project, especially owing to the physical and financial limitations placed upon the project by historic preservation considerations. Nor would the space proposed to be occupied by these units make for any sort of visible or viable retail or arts space as they would have neither a presence of any sort on F Street, NW, nor any natural exposure to light or air.

Finally, under §1703.3(c), this ground floor preferred use requirement does not apply to a building devoted entirely to apartment house use. The Applicant should not then be penalized for attempting to comply with the SHOP provisions and the Comprehensive Plan in seeking to further the revitalization of F Street, NW, and the downtown core. In essence, without the relief requested, the Applicant is worse off trying to provide some significant amount of preferred retail and arts uses than not providing any such uses at all in the building.

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

The Applicant proposes to construct the proposed building on the Subject Property in such a manner as to comply with the spirit of the DD pertaining to the provision of retail FAR without substantial detriment to the public good or impairment to the zone plan. To that end, the Applicant will provide more than the 0.5 FAR requirement for ground floor preferred uses established in §1703.3(a), by providing 0.64 FAR. Likewise, the application satisfies the 50 percent ground floor gross floor area preferred use requirement in effect for the DD (§1702.1). The Applicant proposes 70 percent of ground floor gross floor area to be devoted to preferred uses. Furthermore, the Applicant notes that it is providing retail/preferred use space directly below the ground floor/retail space required to be provided by §1703.3. The Applicant proposes even to extend these retail uses into the existing vault spaces located adjacent to the Subject Property and that comprise a portion of the historic buildings.

The Applicant's proposal is in keeping with the spirit of SHOP, and consequently, the Comprehensive Plan for the District of Columbia (10 DCMR) in that it provides "continuous retail, service and entertainment uses on the ground level of buildings, with ample display windows and frequent store entrances,"(11 DCMR §1703.1(b)(2)).

For all these reasons, the application for variance relief from §1703.3 can be granted without detriment to the public good or impairment to the zone plan.

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

1. Standard for Approving Special Exception Relief

Because of the unusual shape and characteristics of the Subject Property, the proposed apartment house cannot comply with the requirements for roof structures under §411 of the Zoning Regulations. Consequently, the Applicant is requesting special exception relief to deviate from the strict compliance of these provisions as permitted under §§ 411.11 and 3104.1 of the Zoning Regulations.

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) *quoting Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

2. Standard of Review for Roof Structure Special Exceptions

Under §411.11, the Board may grant special exception relief from the strict requirements for roof structures where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building

or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." The Board may approve deviations from the roof structure requirements provided the intent and purpose of chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." 11 DCMR § 411.11.

As demonstrated below, and through exhibits, testimony and other information to be submitted into evidence before the Board, it is impracticable for the Applicant to comply fully with the roof structure requirements of §411 because of the size and configuration of the Subject Property, the impact of the total preservation effort for the three historic buildings and the design consequences for new construction on the site, and other conditions relating to the proposed apartment house use. Full compliance with the requirements would be unduly restrictive, prohibitively costly and unreasonable. Additionally, the requested relief can be granted without materially impairing the intent and purpose of chapter 400 and the Zoning Regulations, and the light and air of adjacent buildings will not be adversely affected.

3. Relief from §411.2 to Deviate from Roof Structure Setback Requirements.

The proposed configuration of the roof structure requires relief from the roof structure setback requirements under §411.2 of the Zoning Regulations. That section requires roof structures to be set back in accordance with the provisions of the zone district in which the project is located. The C-4 District requires a roof

structure to be set back from the building's walls a distance at least equal to the roof structure's height.(§ 770.6(b)). Because the height of the roof structure on the proposed building measures 12 feet, the structure must be set back at least 12 feet away from the exterior walls.

The proposed penthouse structure exceeds the 12 foot setback requirement on all but the west frontage, where the setback is 5 feet from the building edge. The unusual circumstances of the building lot and the programmatic requirements of the building dictate this outcome. The penthouse structure houses necessary mechanical equipment, including elevator machinery, and two forms of emergency stair egress. These functions dictate the height of the penthouse structure as well as its location. The elevator banks and equipment, as well as the stair access, all are located within the building as a direct result of the Applicant's efforts to provide the necessary access to individual residential units while also synthesizing the new construction, predominantly at the rear of the site, with the preservation of the historic buildings. The form of the penthouse enclosure is a direct result of the design decisions made to accommodate the building's program of uses.

The impact of the encroachment of the roof structure is minimal. The most public side of the structure, facing F Street, NW, to the north, is set back 16 feet from the edge of the residential tower, which, in turn, is set back approximately 66 feet from F Street, NW. The second most public face, toward the alley, is set back a minimum of 18 feet along the saw edge building line. With regard to the west side of the penthouse structure, which sets back only five feet, the impact is mitigated by the seven-story height of the adjacent National Union Life Insurance Building,

making the structure all but invisible from a western vantage, either from F Street, NW, or the Square 377 alley.

The proposed elevator penthouse does comply with the spirit and intent of the roof structure provisions and the Zoning Regulations. The purpose of the setback requirement is to ensure adequate light and air to adjacent property and abutting streets. Thus, the proposed elevator penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under §411.2.

IX.
WITNESSES

A. Representative of Jemal's Lofts LLC, Applicant.

B. Representative of Shalom Baranes Associates, Architects.

C. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight, LLP.

X.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicant therefore requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By _____
Norman M. Glasgow, Jr.

_____
Dennis R. Hughes

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

September, 2001

WAS1 #1009884 v1

A

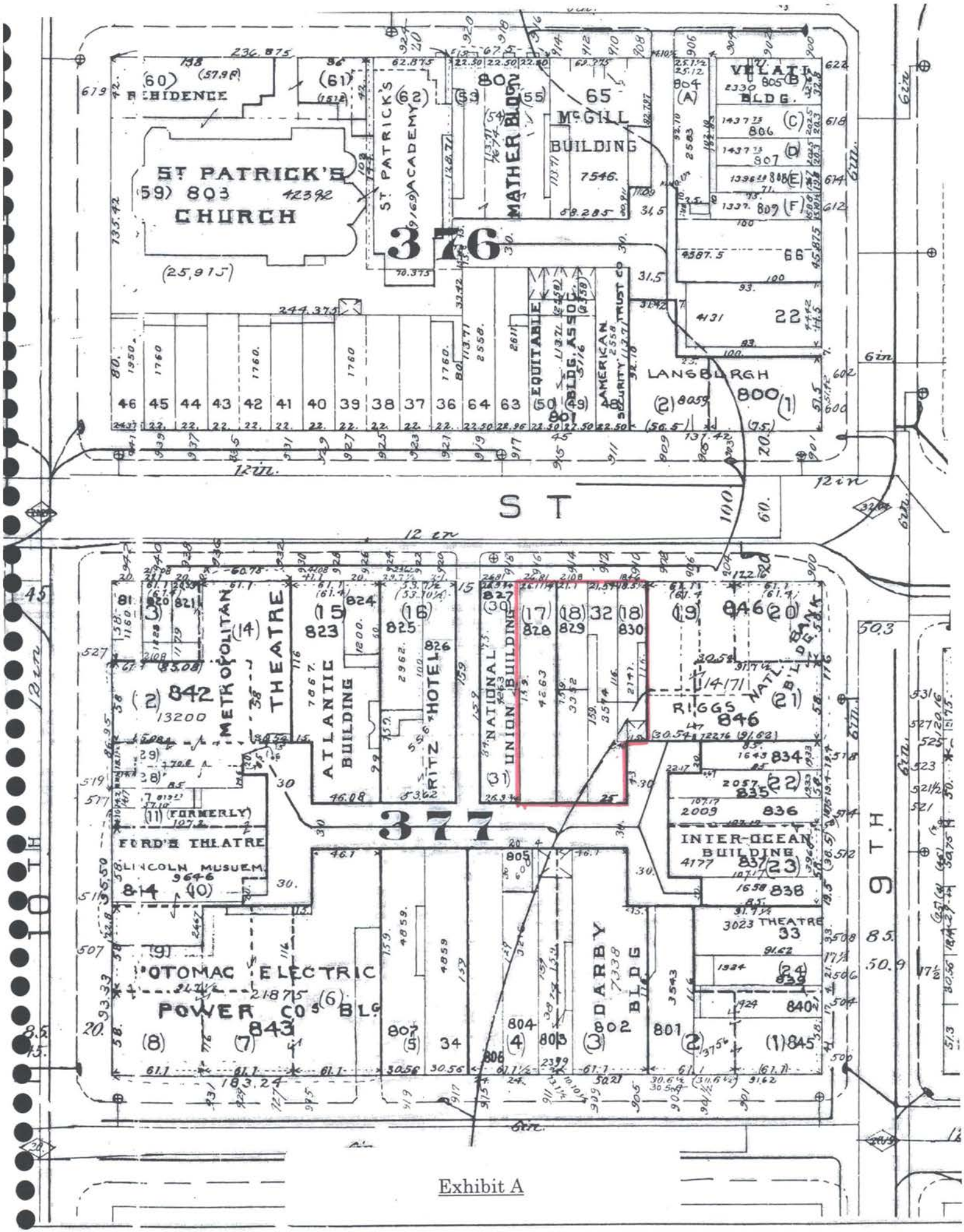

ST PATRICK'S CHURCH
ST. PATRICK'S ACADEMY
MATHER BLDG.
McGILL BUILDING
VELATI BLDG.
EQUITABLE BLDG. ASSOC.
AMERICAN SECURITY TRUST CO
LANGBURGH
376
377
S T
12th.
10TH
9TH
METROPOLITAN THEATRE
ATLANTIC BUILDING
RITZ HOTEL
NATIONAL UNION BUILDING
NATL. BANK BLDG.
RIGGS
INTER-OCEAN BUILDING
FORD'S THEATRE
LINCOLN MUSEUM
POTOMAC ELECTRIC POWER CO'S BLG
DARBY BLDG

Exhibit A



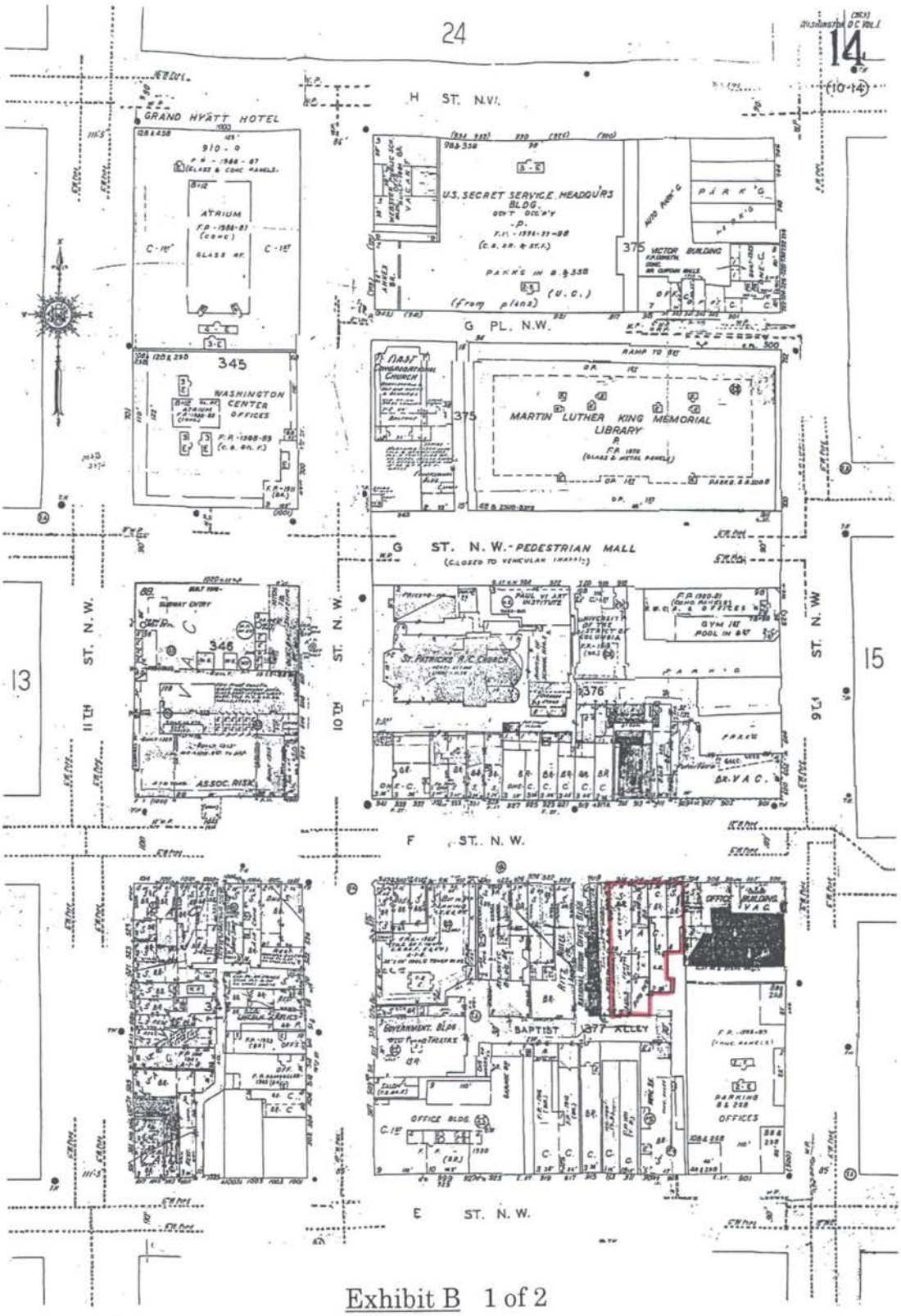


Exhibit B 1 of 2

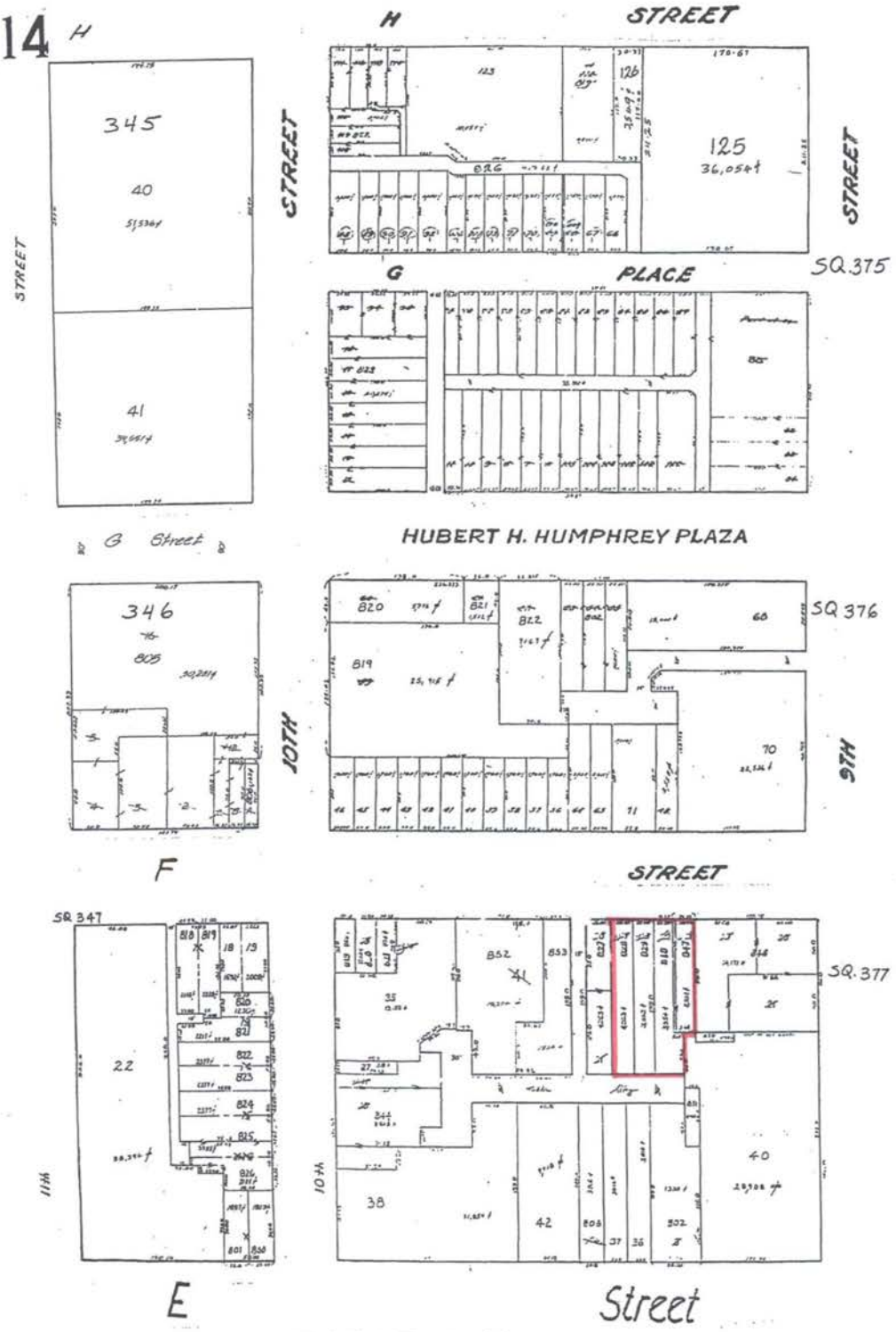


Exhibit B 2 of 2



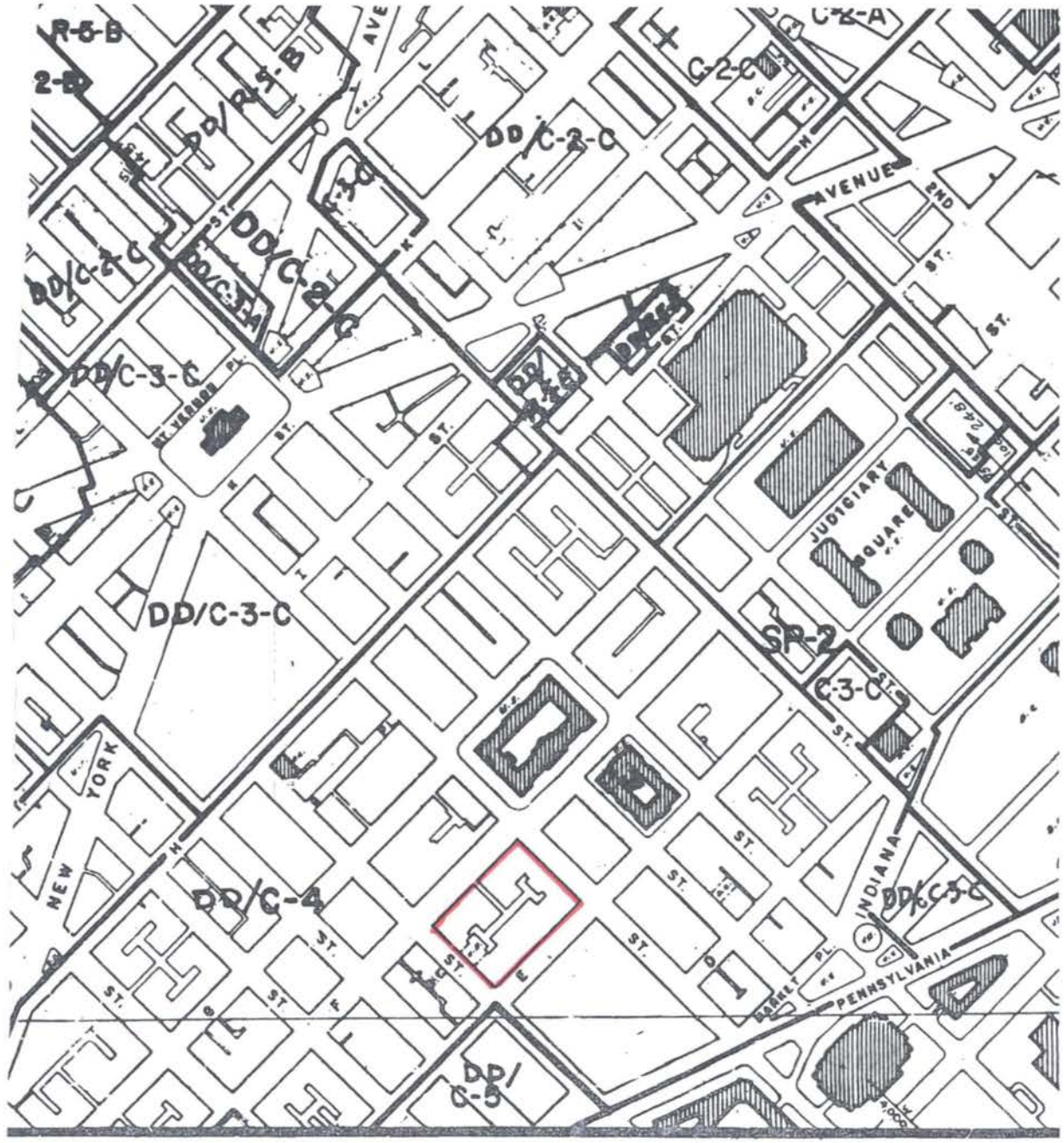

R-5-B
2-B
DD/R-5-B
DD/C-3-C
C-2-C
C-2-A
AVENUE
2ND
ST.
DD/C-2-C
DD/C-2-A
DD/C-3-C
MT. VERNON PL.
DD/C-3-C
JUDICIARY SQUARE
SP-2
C-3-C
YORK
NEW
DD/C-4
INDIANA
DD/C-3-C
PENNSYLVANIA
BARRET PL.
DD/C-5
COLUMBIA
MAP
5

Exhibit C



OUTLINE OF TESTIMONY
REPRESENTATIVE OF JEMAL'S LOFTS, LLC

I. INTRODUCTION

II. Owner's Development History

- A. Downtown
- B. District of Columbia and Metropolitan Area
- C. Historic Preservation Experience

III. DESCRIPTION OF SITE AND VICINITY

IV. DESCRIPTION OF PROJECT

- A. Residential with Ground Floor Retail and Arts Uses
- B. Preservation of Three Historic Buildings
- C. Designated Amenity Site for PUD Allowing Redevelopment of Woodies Building

V. VARIANCE AND SPECIAL EXCEPTION RELIEF IS NEEDED

VI. CONCLUSION



OUTLINE OF TESTIMONY
REPRESENTATIVE OF SHALOM BARANES ASSOCIATES
ARCHITECTS

I. INTRODUCTION AND PROFESSIONAL QUALIFICATIONS

II. SITE AND LOCATION DESCRIPTION

- A. **Overview of Site, Vicinity and Land Use/Zoning**
- B. **Site Planning – size, interior lot location, grade change, rear lot line, public sewer**
- C. **Historic Preservation**

III. PROJECT DESIGN

- A. **Design Considerations**
  1. **Shape and Location of Property**
  2. **Preservation of Historic Buildings**
  3. **Grade Change**
  4. **Light and Air for Residential Use**
- B. **Review of Mass and Height of Building**
- C. **Floor Plans**

IV. CONCLUSION

F

OUTLINE OF TESTIMONY
STEVEN E. SHER
DIRECTOR OF LAND USE SERVICES
HOLLAND & KNIGHT LLP

I. SITE LOCATION AND DESCRIPTION

II. DESCRIPTION OF SURROUNDING AREA

III. DESIGNATION OF PROPERTY AS AMENITY TO PUD APPROVAL FOR SQUARE 346 DEVELOPMENT (WOODIES BUILDING) AND RECORDATION OF COVENANT RESTRICTING DEVELOPMENT

IV. EXISTING ZONING: DD/C-4

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

V. RECENT AND PENDING ZONING CHANGES

- A. Inclusion of Subject Property in Housing Priority Area C
- B. Removal of 6.0 FAR DD Historic Preservation Limitation
- C. Removal of FAR limitation for Residential Development in DD Housing Overlay Areas

VI. PROPOSED DEVELOPMENT

VII. RELIEF REQUIRED - VARIANCE AND SPECIAL EXCEPTION

- A. Variance from §1707.4 – Floor Area Ratio
- B. Variance from §773 – Residential Recreation Space
- C. Variance from §1703.3 – Ground Floor Preferred Use
- D. Special Exception – Roof Structure

VIII. COMPLIANCE WITH STANDARDS FOR VARIANCE RELIEF AND SPECIAL EXCEPTION

IX. CONCLUSION



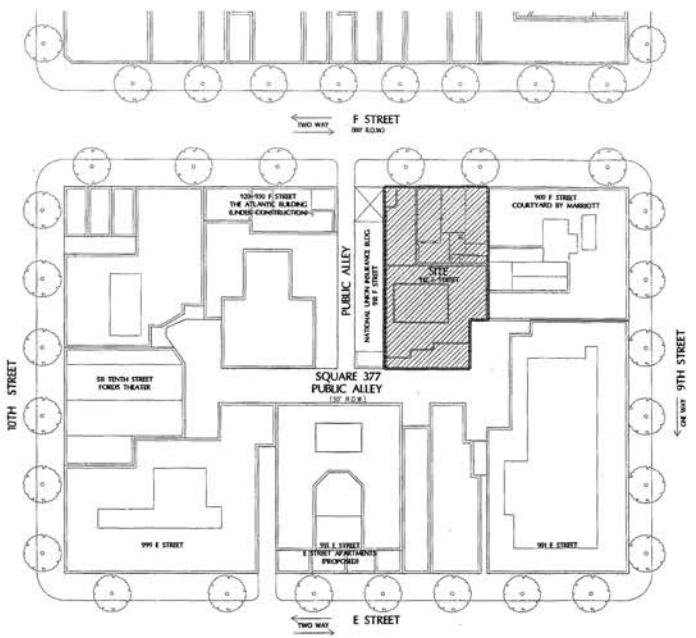
910 – 916 F STREET N.W.
WASHINGTON, DC

SEPT. 4, 2001
BZA Submittal

Developer:
Douglas Development Corp.

Architect:
Shalom Baranes Associates

Architectural Historian:
EHT Traceries Inc.



SITE PLAN

ZONING INFORMATION

ZONE: D/C-4, SHOPPING DISTRICT OVERLAY, DOWNTOWN HISTORIC DISTRICT
SQUARE: 377 (LOTS 828, 829, 847, 849)
TOTAL SITE AREA: 13,332 sf

ZONING REGULATION	ALLOWED / REQUIRED	PROVIDED
HEIGHT	120'	120'
FAR 1707.4 HISTORIC PRESERVATION OVERLAY	6.0	**8.05**** (7.20) RESIDENTIAL (.85) COMMERCIAL
LOT OCCUPANCY % RESIDENTIAL USE COMMERCIAL USE	 100 % 100 %	 40%-92% 92 %
REAR YARD	NONE REQD. (1707.6)	5'-2"
SIDE YARD	NONE REQUIRED	NONE PROVIDED
COURT 1* - CLOSED AREA WIDTH	 350 SF 15'-0"	 1,100 SF 17'-2"
COURT 2* - OPEN WIDTH	 28'-0"	 61'-1"
COURT 3* - OPEN WIDTH	 42'-0"	 52'-0"
COURT NICHE* WIDTH	 3'	 4'
1702.1-DD DEVELOPMENT DISTRICT - 50% OF GROUND FLOOR GSF SHALL BE PREFERRED USES PER 1710, 1711.	50%	60%
1703.3 100% GROUND FLOOR LEASABLE SHALL BE PER 1710, 1711.	100%	**70% ** **
RESIDENTIAL RECREATION SPACE (5% GROSS RESIDENTIAL) OUTDOOR RESIDENTIAL RECREATION SPACE - 50%	4,962 SF 2,482 SF	***1,200 SF ** (2)*** ***0 SF ******
PENTHOUSE SETBACK	12'-0"	5'-0" (1)
PARKING RESIDENTIAL RETAIL	 NONE REQD. (2100.5) NONE REQD. (2100.5)	 20 SPACES 0 SPACES
LOADING RESIDENTIAL RETAIL	 NONE REQD. (2200.5) NONE REQD. (2200.5)	 NONE PROVIDED NONE PROVIDED

NOTES:
* SEE FLOOR PLANS FOR COURT LOCATIONS.
** ITEMS IN "PROVIDED" COLUMN WHICH ARE IN BOLD ITALIC TEXT REQUIRE A VARIANCE.
1. REQUIRES SPECIAL EXCEPTION PER PARAGRAPH 411.11.
2. THE RESIDENTIAL RECREATION SPACE CONSISTS OF 400 SF IN LOBBY AND 800 SF IN THE 3RD FLOOR RECREATION ROOM.

FAR CALCULATIONS

FLOOR	TOTAL GSF	TOTAL FAR
LEVEL -1	13,700	6,850
LEVEL +1 (GROUND) LEVEL +2	12,200 3,400	12,230 3,400
LEVEL +3 LEVEL +4	8,000 8,060	8,000 8,060
LEVEL +5 LEVEL +6	7,870 6,320	7,870 6,320
LEVEL +7 LEVEL +8	7,870 6,320	7,870 6,320
LEVEL +9 LEVEL +10	7,870 6,320	7,870 6,320
LEVEL +11 LEVEL +12	7,780 6,120	7,780 6,120
LEVEL +13 LEVEL +14	6,260 5,100	6,260 5,100
TOTAL	114,189	107,339
MECH. PENTHOUSE	1,700	1,700

DRAWING INDEX

A00 COVER SHEET
A01 DRAWING INDEX, ZONING INFORMATION, SITE PLAN
A02 FLOOR PLANS
A03 FLOOR PLANS
A04 FLOOR PLANS
A05 BUILDING ELEVATIONS
A06 BUILDING SECTION

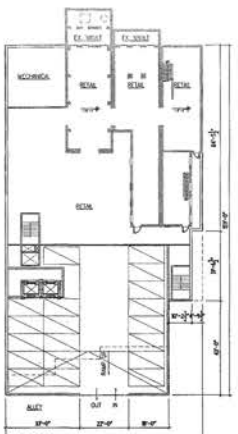
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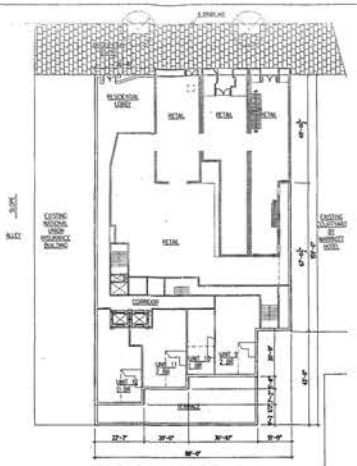
SHALOM BARANES ASSOCIATES | A-01

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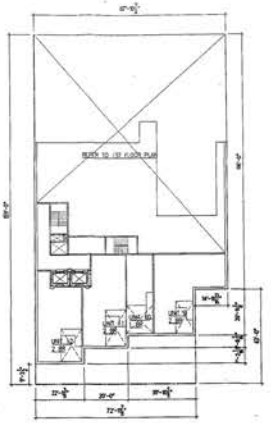
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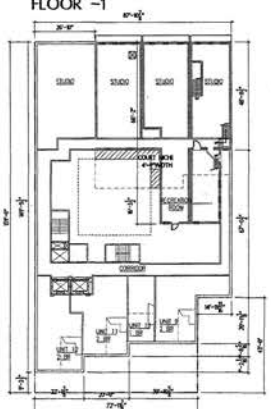
FLOOR –1



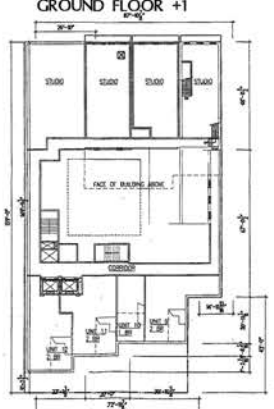
GROUND FLOOR +1



FLOOR +2



FLOOR +3



FLOOR +4

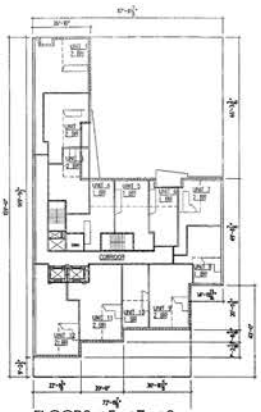
NOTE:
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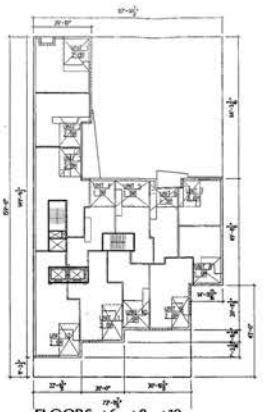
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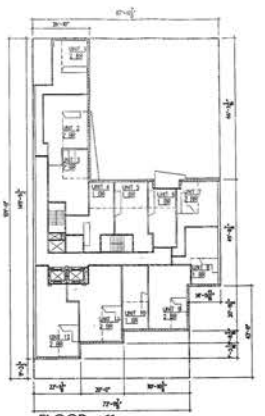
FLOOR PLANS
SHALOM BARANES ASSOCIATES | A–02
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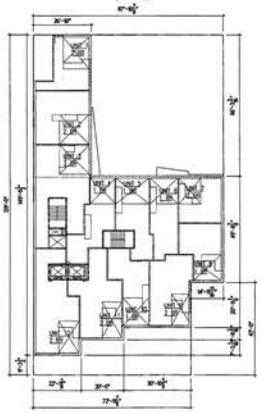
FLOORS +5, +7, +9



FLOORS +6, +8, +10



FLOOR +11



FLOOR +12



FLOOR +13

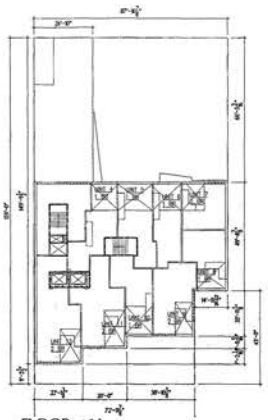
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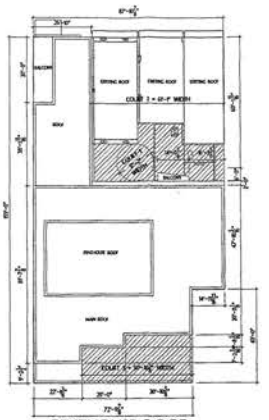
FLOOR PLANS
SHALOM BARANES ASSOCIATES | A-03
BZA SUBMISSION, SEPT. 4, 2001 | 1"=16'



FLOOR +14



PENTHOUSE FLOOR



PENTHOUSE ROOF

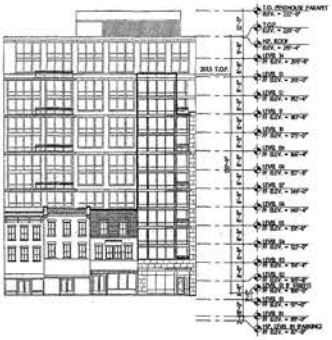
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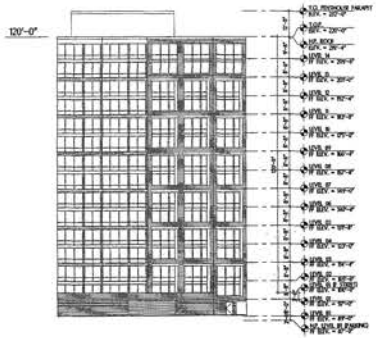
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WASHINGTON, DC

DOUGLAS DEVELOPMENT CORPORATION

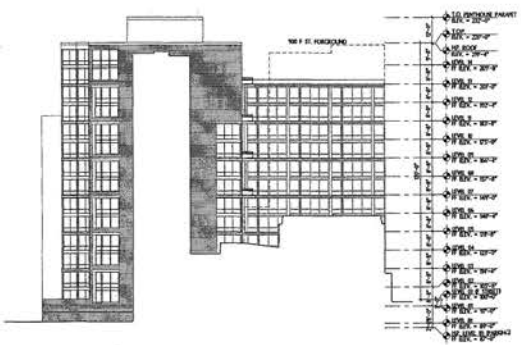
FLOOR PLANS
SHALOM BARANES ASSOCIATES | A-04
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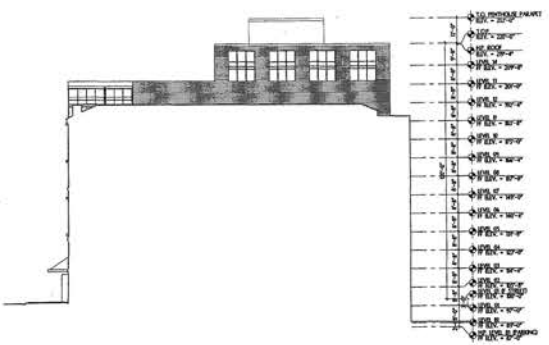
F STREET - NORTH ELEVATION



ALLEY - SOUTH ELEVATION



EAST ELEVATION



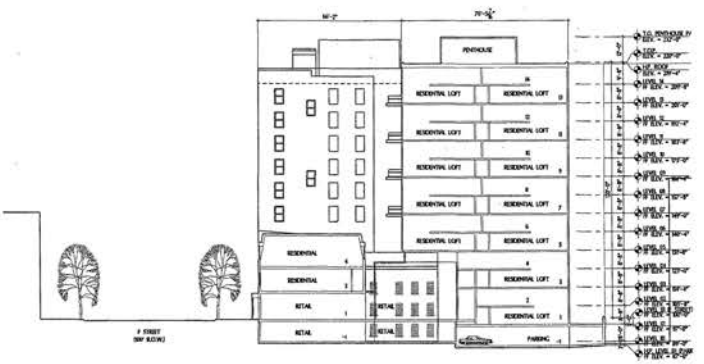
WEST ELEVATION

NOTE:
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DOUGLAS DEVELOPMENT CORPORATION

ELEVATIONS
SHALOM BARANES ASSOCIATES | A-05
BZA SUBMISSION, SEPT. 4, 2001 | 1"=16'



NOTE:
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DOUGLAS DEVELOPMENT CORPORATION

BUILDING SECTION
SHALOM BARANES ASSOCIATES | A–06
BZA SUBMISSION, SEPT. 4, 2001 | 1"=16'