16871

BZA Application No. ~~16981~~

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

RECEIVED
D.C. OFFICE OF ZONING
2002 APR 16 PM 4:24

Re: Supplemental Statement of the JBG Companies in Support of Application for Variance from Rear Yard Requirement for an Apartment Building at 1300 N Street, N.W.

I. Nature of Relief Sought

This is an application of the JBG Companies acting through an affiliate, JBG/JER 13th & N, LLC, for variance relief pursuant to Section 3103 of the Zoning Regulations for a new 170 unit apartment building at 1300 N Street, N.W., Lot 30, Square 245 (the "subject property"). The variance being requested is from the rear yard requirement set forth in § 404. The subject property is zoned R-5-E.

II. Jurisdiction of the Board of Zoning Adjustment

The Board of Zoning Adjustment has jurisdiction to grant the relief requested pursuant to Section 3103 of the Zoning Regulations.

III. Description of the Subject Property and Vicinity

The subject property is located at 1300 N Street, N.W. at the southwest corner of the intersection of 13th and N Streets. It has a land area of 23,975 square feet and is vacant. The property is a corner lot with frontage on N Street and 13th Street. The southern property line of the subject property abuts a 15 foot alley which widens into a 30 foot alley. Abutting the alley to the south is a high-rise rental apartment building called the Sutton Plaza Apartments. Abutting the subject property to the west is a 10-story residential condominium building.

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Board of Zoning Adjustment
District of Columbia
CASE NO.16871
EXHIBIT NO.22

The subject property has been excavated and the foundation for the proposed project is under construction.

The Logan Circle neighborhood is predominantly residential but includes other land use patterns as well. (See Exhibit "A", Logan Circle Land Use Map.) The blocks immediately north of Downtown and Massachusetts Avenue are developed predominantly with high-rise apartment buildings. Farther to the north, near Logan Circle itself and proceeding to the north of the Circle, the development pattern is predominantly townhouses, including flats and conversions to apartments. Most of this area is within the Greater 14th Street Historic District. A number of two to four story apartment buildings also are present in scattered locations.

Existing development also includes several hotels, the largest being the Washington Plaza facing Thomas Circle. This hotel is within the same square as 1300 N Street. Two large, well-known churches that are historic landmarks – the National City Christian Church and the Luther Place Memorial Church are located on opposite sides of 14th Street on the north side of Thomas Circle. The 14th Street corridor beginning to the north of these two churches is zoned C-3-A/Arts and utilized for commercial and entertainment uses. The 11th Street corridor is zoned C-2-A and includes a combination of low-density commercial uses and residential buildings.

At the southern edge of the Logan Circle neighborhood, and one-and-one-half blocks south of 1300 N Street, is Massachusetts Avenue, which serves as the identified boundary with Downtown Washington and the designed Central Employment Area. South of Massachusetts Avenue, the development pattern becomes dominated by office, institutional, chancery and retail uses, together with some apartment buildings.

IV. Subject Property Zoning

The subject property is located in R-5-E District. The R-5-E District is a high-density residential zone which provides for a maximum height of 90 feet and a maximum FAR of 6.0 and a maximum lot occupancy of 75%. On the subject property, which is a corner lot, no side yards are required but a rear yard is required. The width of the required rear yard must be equivalent to 3 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. (Section 401.1). The applicant is requesting a variance from this rear yard requirement.

V. Summary Rationale for Variance

The necessity for the variance primarily stems from a series of errors on the part of both the applicant and the District of Columbia with respect to the applicable zoning requirements for the subject property.

Until late 1999, the subject property had been zoned SP-2, which permits courtyards of certain dimensions on corner lots in lieu of a required rear yard. Planning and design of the project was initiated by the Applicant prior to the rezoning, and the concept of providing a courtyard in lieu of a rear yard in the project was adopted at that time.

With the rezoning of the property to R-5-E, the zoning standards for the property were almost identical to the SP-2 zone with the exception of the courtyard in lieu of rear yard option. The project architects proceeded to refine the project design apparently unaware of the rear yard requirement. Prior to and after submission of permit drawings for the project, official reviews and consultations with the City's zoning authorities did

not identify the error. In fact, it appears that the Zoning Review Branch may have been unaware of the rezoning. In any event, the City ultimately approved the proposed project with the courtyard, without identifying the rear yard deficiency.

Permits for the project were issued, and in reliance thereon, JBG commenced construction of the project in December, 2001. A redesign of the project, at this time, to incorporate a rear yard, would result in substantial hardship to JBG, forcing construction to halt, and necessitating a complete redesign of the project, and a delay in its completion.

Further, the granting of the variance will not harm the public good nor impair the intent, purpose of integrity of the zone plan. The project as designed, with the courtyard, is actually more compatible with the adjacent residential buildings than a redesigned building which includes a rear yard, but would necessitate the deletion of the proposed landscaped courtyard. Written support for the project with the courtyard, in lieu of the required rear yard, have been provided by the two abutting property owners (*i.e.*, the Sutton Plaza Apartments and the Crescent Towers Condominium) as well as by ANC 2F and the Logan Circle Community Association.

Finally, the project furthers the key goal of the 1999 zone change to R-5-E -- which was to encourage new residential development. It otherwise conforms to all of the standards of the R-5-E district including height and FAR.

VI. Proposed Project Description

The proposed project is a 170 unit apartment building featuring loft-style units with 10-foot ceilings, an extensive use of glass and exposed ductwork. (See Project Rendering, Exhibit "B") The project design is innovative and attractive with an L-

shaped main building along 13th and N Streets, a three-story "carriage house" building containing 8 units along the west side of the property, and a landscaped interior courtyard. This design and massing plan places lower building elements at the interior edges of the site and achieves a superior design than would be typical a standard, rectangular building on the site with a normal rear yard.

The building's current geometry was carefully designed to augment the sense of openness and light currently enjoyed by neighboring properties. There is an existing 15 to 30 foot wide alley abutting the site on its southern side adjacent to the Sutton Plaza Apartments. There is also an existing 23-foot wide setback along 50% of the subject property's western boundary, which serves as a driveway to the garage of the adjacent Crescent Towers building. The current building design makes maximum beneficial use of these existing open spaces by adding to them the volume of its courtyard open space.

The current design provides the neighboring Crescent Tower Condominium and the Sutton Plaza Apartment with a view onto an open, low-rise site interior. This elegant and visually congenial plan would be compromised as well as the street frontages in order to accommodate a rear yard setback along the southern property line. (See photographs of the model with and without the courtyard, Exhibits "C" and "D")

VI. The Requested Rear Yard Variance Meets the Standards for Variance Relief

A. Unique, Extraordinary or Exception Situation Applicable to the Subject Property. The rezoning of the property in 1999 set in motion a series of errors regarding the zoning and zoning standards applicable to the subject property which constitute an exceptional condition with respect to this property.

Planning and design for the project was initiated prior to the zone change when the original SP-2 zoning permitted a courtyard in lieu of a rear yard on corner lots. When the zoning was changed to R-5-E to eliminate offices as a permitted use, the basic standards were unchanged (*i.e.*, height, FAR) and apparently the project architects did not detect that the courtyard in lieu of rear yard option for corner lots is not provided for in the R-5-E zone. This error was compounded by errors on the part of the City zoning authorities who reviewed and approved the design, without the rear yard, seemingly completely unaware of the zone change.

B. Strict Application of the Zoning Regulations Would Result in Exceptional Practical Difficulties to or Exception and Undue Hardship to Property Owner. As noted above, if the requested variance is not granted, the Applicant will have to suspend current construction activity on site, redesign the building, and reapply and await a new building permit for the project before it can remobilize and recommence construction. The delays, the redesign effort and difficulties in remobilizing after an extended delay would impose very substantial additional costs for the project which may be difficult to absorb without some consequence for the overall quality of the project. In addition, the delays would impose a hardship on neighboring residents who would have to deal with protracted construction activity on the site and the inconveniences associated therewith.

C. Requested relief can be granted without substantial detriment to the public good and without substantial impairment of the zone plan. The proposed variance can be granted without any detriment to the public good. In fact, the proposed

courtyard design results in a superior project which is actually more compatible with its surroundings.

A major benefit of the courtyard design is that the other buildings in the square (to the south, southwest and west) will face a more open and low-scale interior of the site, again in comparison to a more standard, rectangular building. The building reinforces and frames the street frontages while stepping down to the southwest in the direction of neighboring buildings, leaving neighbors with relatively more open space and low scale, interesting building elements in their viewshed.

It should also be noted that the courtyard provides virtually the equivalent amount of open space as the normally provided rear yard and in a more useful and attractive format. Finally, there is an existing 15- to 30-foot-wide alley abutting the site to the south, and the neighboring apartment house to the west has its garage driveway open to the sky which provides light and air in between its building and the subject property.

The requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Office of Planning report of April 4, 1997 that initiated the map and text amendments to the Special Purpose zones gave first priority to residential development and conservation:

Protection of the housing supply and residential neighborhood character at the edge of the Central Employment Area by means of zoning map amendments is one principal goal. (OP Report, p. 1)[1]

The map and text amendments are intended to . . . strengthen the mixed use buffer at the periphery of the high density office area [Downtown] by helping to preserve existing apartments and mixed use buildings within the context of a transition of building uses, heights and bulks.

To carry out the first two objectives, several areas developed primarily with apartment buildings in the Logan/Thomas Circle, Dupont Circle and Foggy Bottom neighborhoods are recommended for rezoning from SP-2 to R-5-E. (OP Report, p. 2)

The recommended map amendments from SP-2 to R-5-E were virtually all adopted by the Zoning Commission. The purpose was to restrict new development and potential conversions of existing buildings to residential development, rather than mixed use development including substantial office space as allowed in SP-2. Of the maximum density of 6.0 FAR allowed in SP-2 districts, 3.5 FAR (more than one-half) may be devoted to office uses. The 1300 N Street apartments will be entirely residential and in keeping with current policy.

The Office of Planning also stated that the primary basis of the proposed area rezonings was to implement policies in the *Comprehensive Plan for the National Capitol* (the "Comprehensive Plan").

OP further described the intended public benefits of the residential map amendments as follows:

Several policies in the Comprehensive Plan encourage or require the retention and expansion of residential uses on the periphery of Greater Downtown. The most comprehensive of these is the Neighborhood Ring

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[1] The second objective was to strengthen the viability of office development in areas continuing to be zoned SP by allowing general office use rather than a limited range of office uses.

policy in the Ward Two Plan, which aims to maintain a substantial housing supply and population around the immediate periphery of Downtown and the CEA in designated neighborhoods . . .

Housing in these close-in locations provides residents with excellent walk-to-work or public transit access to the adjacent CEA, thereby helping the city retain population [and] keep these areas safer in the evening hours and provide a component of market support for retail, restaurant and other entertainment uses . . . .

The continuing out-migration of residents is a very serious problem for the District in terms of tax base, efficient use of infrastructure, economic vitality and livability. An apartment building generates a large amount of taxes because the relatively high income tax rate in the city, plus the sales taxes from purchases made by residents – all in addition to the property taxes paid by the building itself. (OP Report, pp. 6-7)

The OP objectives stated above may be summarized as: neighborhood character, retail support, population increase and tax base. The rezoning of the geographic area including 1300 N Street, N.W. therefore represents an implementation of major and recent policy decisions by the District of Columbia government. And, the Applicant's proposed construction of the subject apartment building is directly in furtherance of these policy objectives.

In summary, the requested variance can be granted without detriment to the purpose and integrity of the zone plan, and the proposed apartment house to be built on the subject property will advance the purposes of the recently-adopted R-5-E zone and the Comprehensive Plan.

VII. Strong Legal Precedent for Board Approval

In 2001, in BZA Application No. 16730, the Board approved two variances for another apartment project in Logan Circle the need for which also arose out of errors associated with the 1999 map amendments in that area. (A copy of the Board's order is attached hereto as Exhibit "G") In that case, a building permit for an apartment house

which exceeded the applicable height and FAR standards was issued in error because the zoning authorities were unaware of the 1999 downzoning. The Board approved height (an additional 8 feet) and FAR (an additional 0.5 FAR) variances for the project finding no substantial impairment to the zone plan. This application on behalf of the JBG Companies represents a very minor variance. We seek no additional height or density than permitted under existing zoning, rather merely a reconfiguration of required open space in a manner which provides a greater benefit to abutting owners.

VII. Conclusion

Expedited approval of a rear yard variance for 1300 N Street is requested so that construction can proceed without interruption and the project can be completed in a timely manner consistent with the interests of neighboring property owners and the City.

Sincerely,

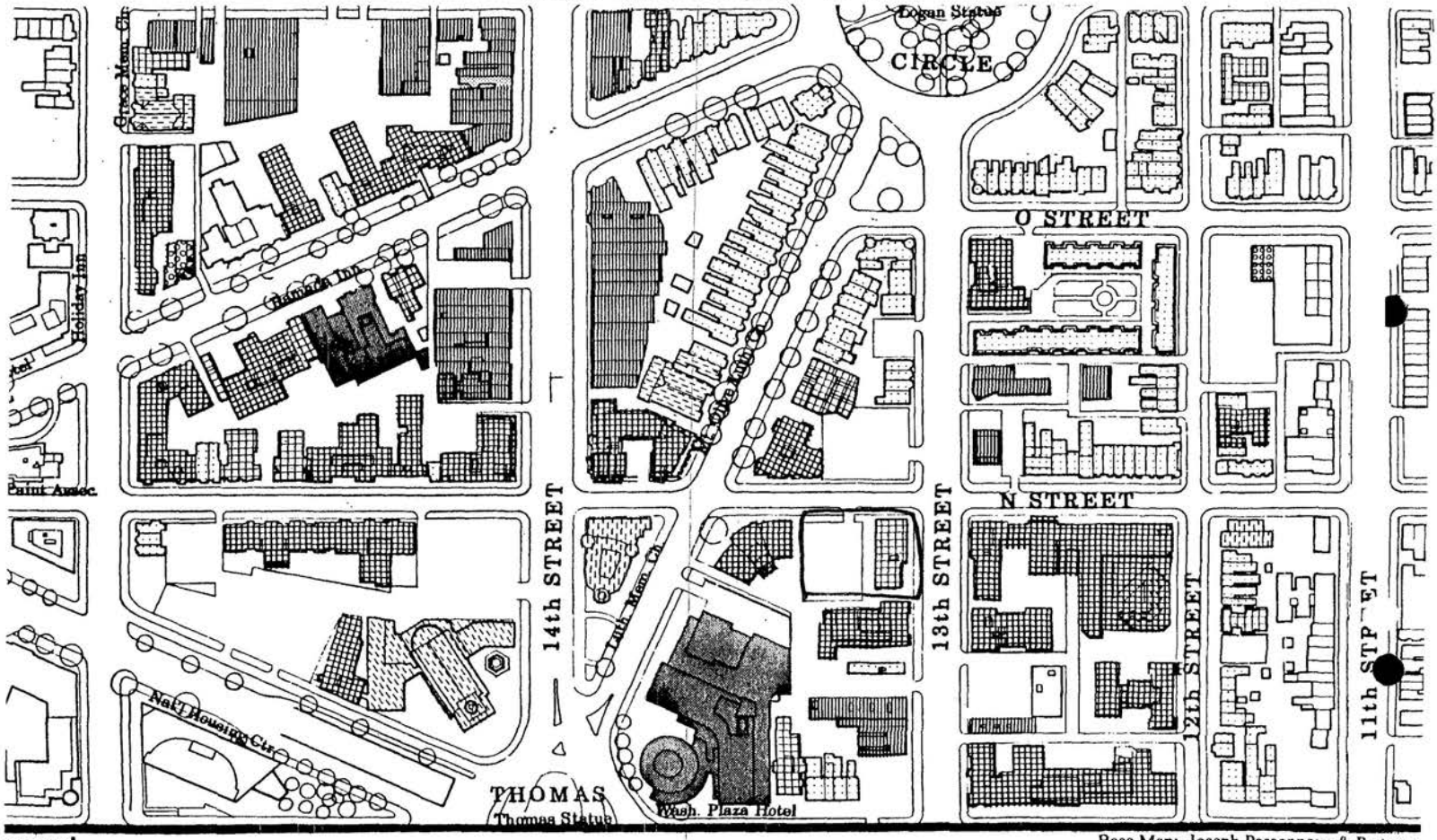
ARNOLD & PORTER

Cynthia A. Giordano

cc: John Fondersmith, Office of Planning

EXISTING LAND USE

EXHIBIT "A"

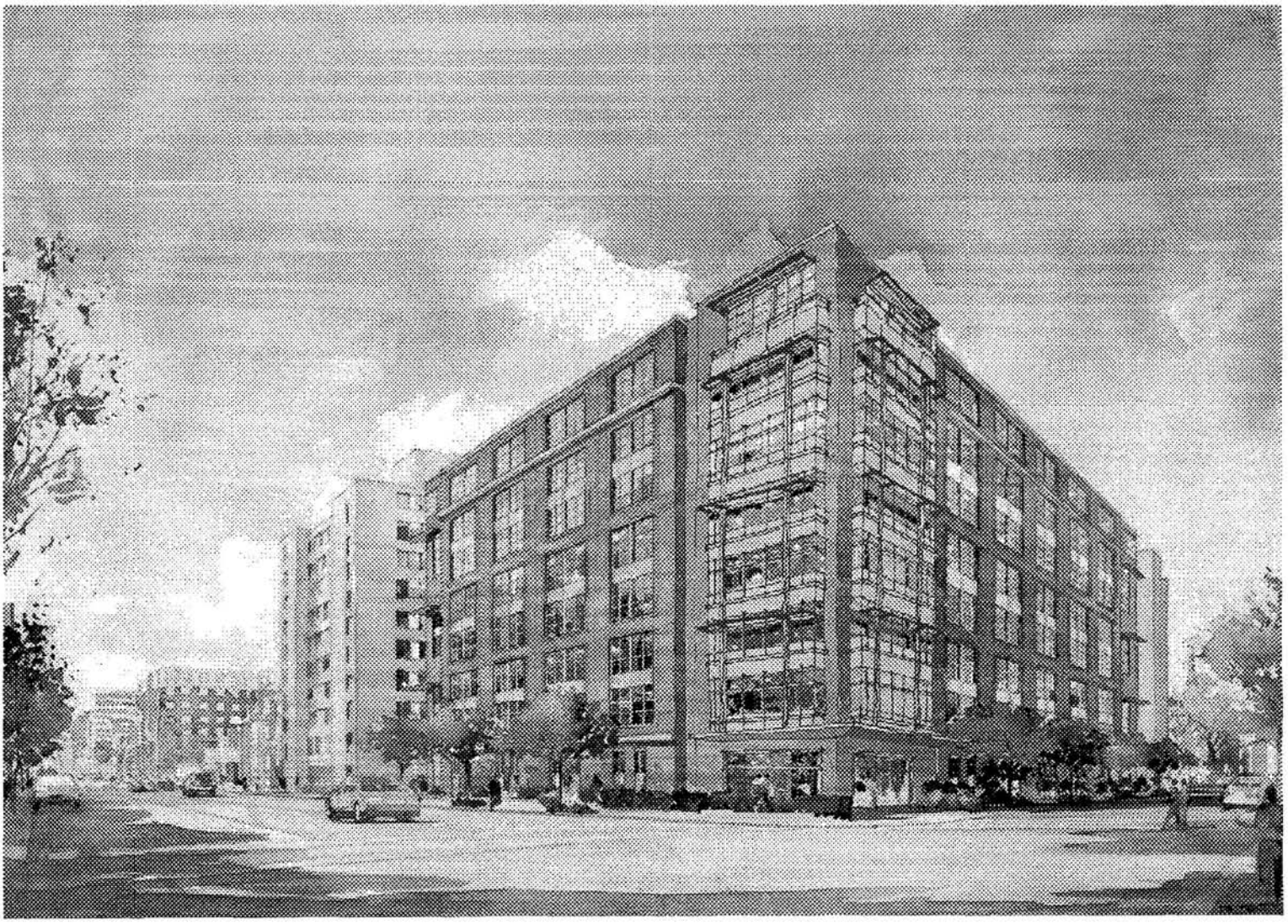


Base Map: Joseph Passonneau & Partners

Legend

- Row House
- Apartment (2/4 Stories)
- Apartment (6+ Stories)
- Commercial (1/3 Stories)
- Church/Place of Worship
- Private Institution
- Post Office
- Hotel
- Subject Property

EXHIBIT "B"



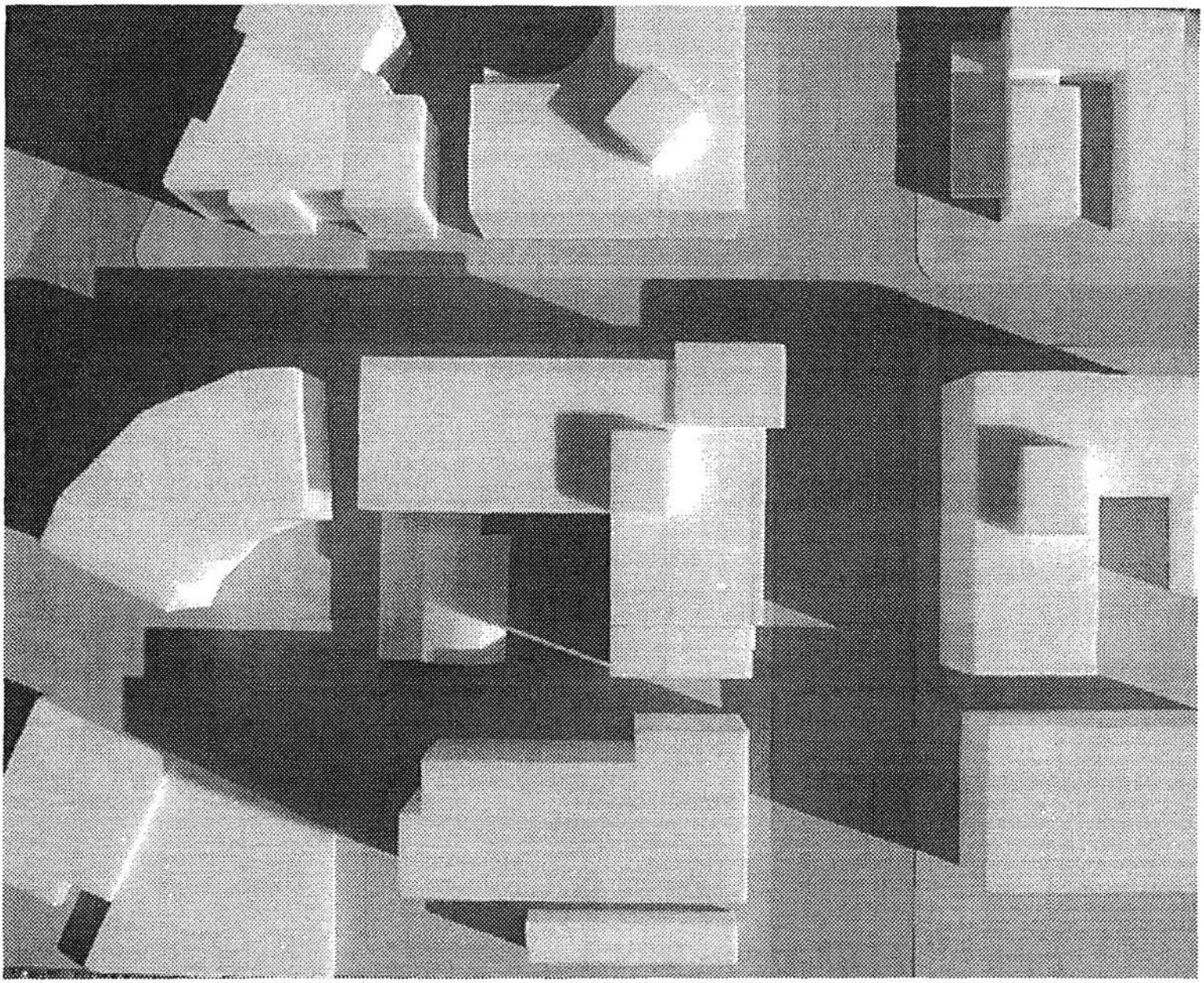


Exhibit C "L" Shaped 8 story tower with 3 story "carriage house"

RTKL

Logan Circle South – Current Building- AM Sun Study

15 March 02

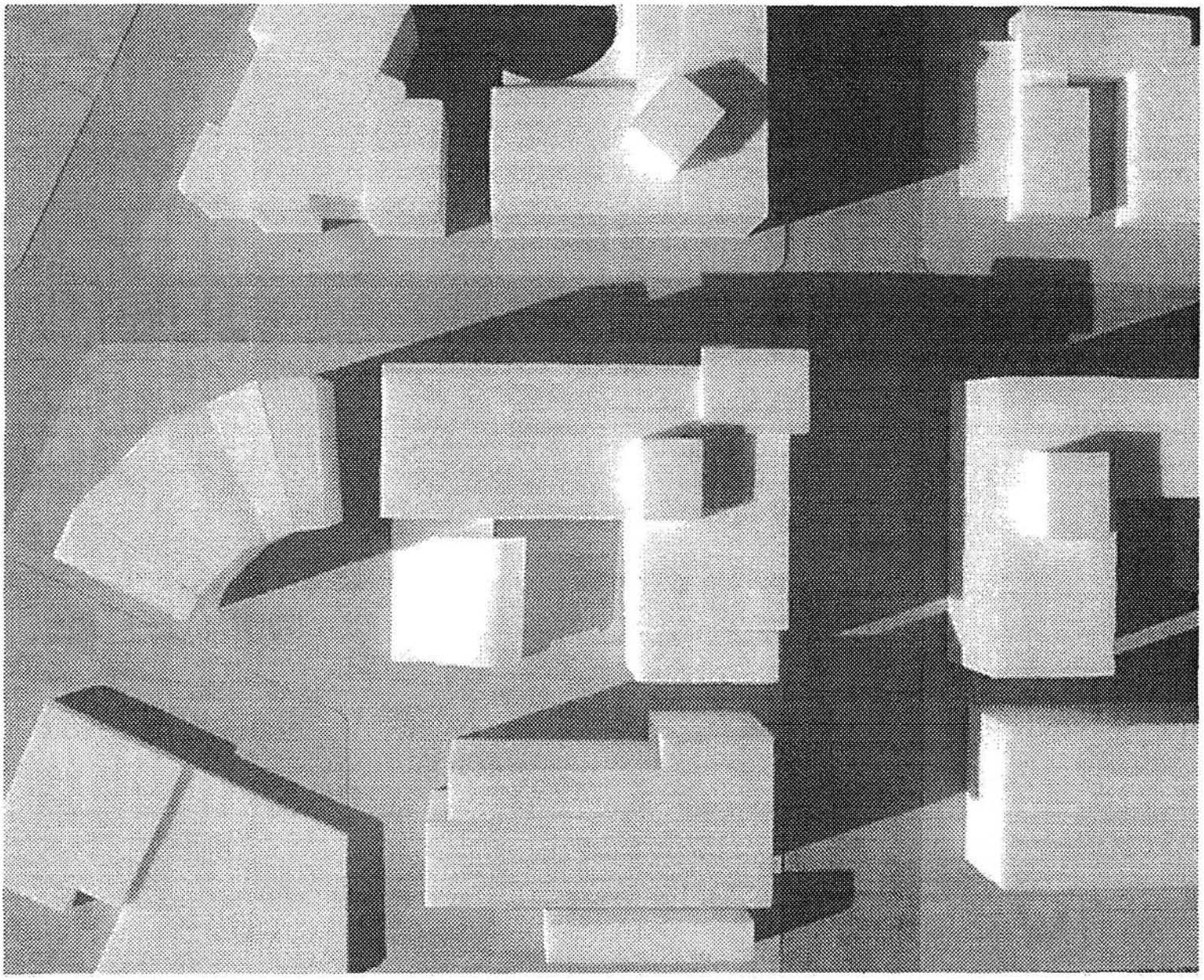


Exhibit D "L" Shaped 8 story tower with 3 story "carriage house"

RTKL

15 March 02

Logan Circle South – Current Building- PM Sun Study

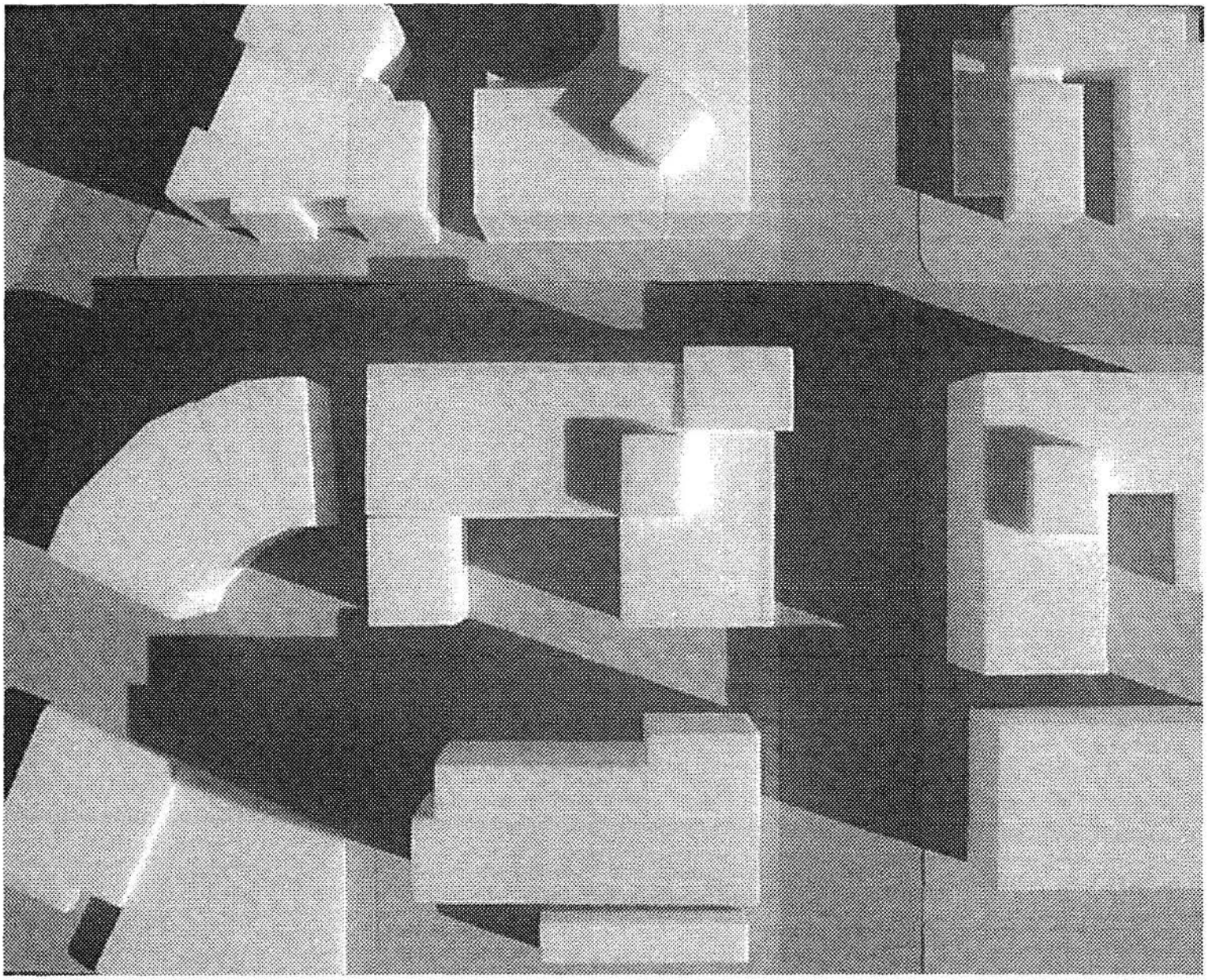


Exhibit E "U" Shaped 8 story tower with 22' rear yard set back along alley

RTKL

15 March 02

Logan Circle South - Building with Rear Yard Setback - AM Sun Study

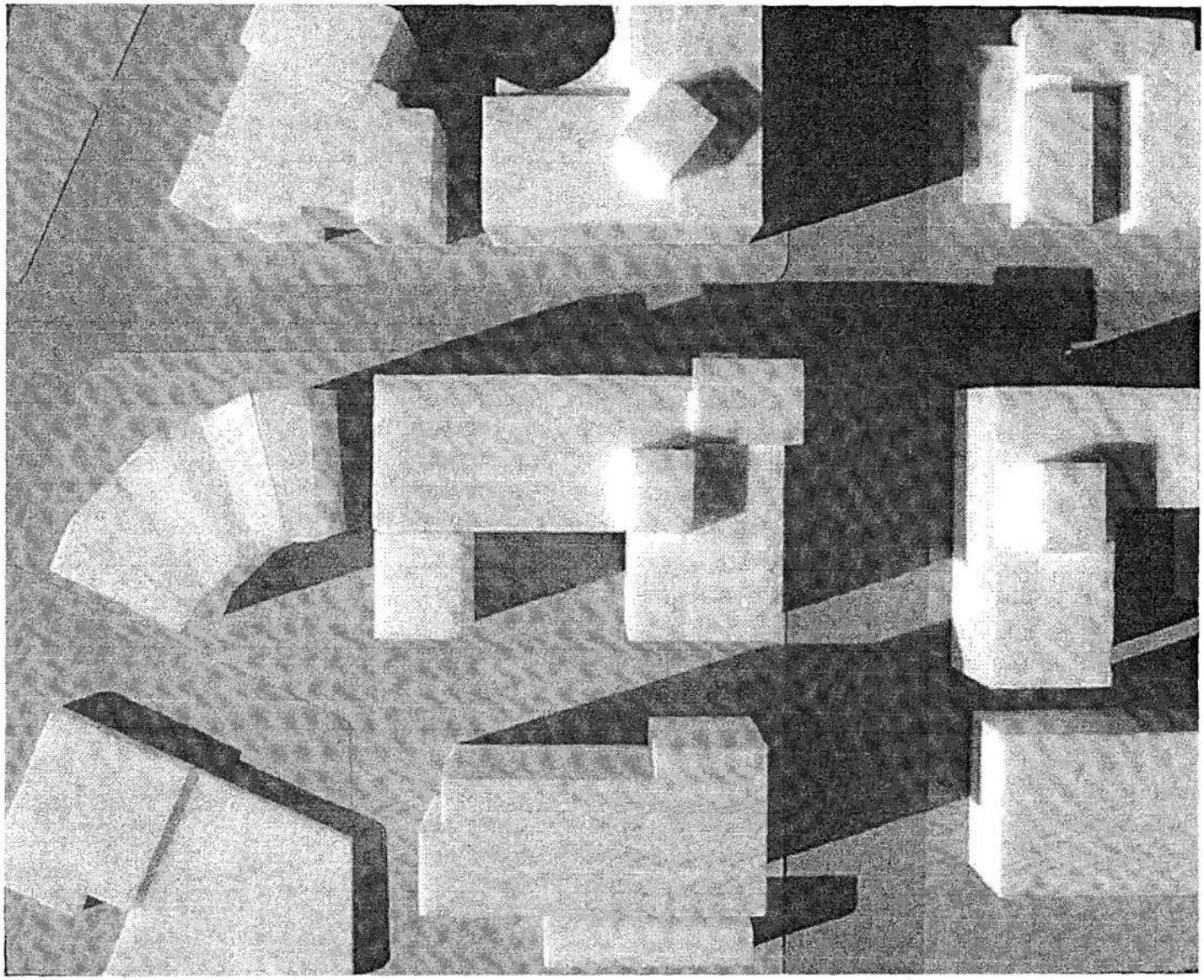


Exhibit F "U" Shaped 8 story tower with 22' rear yard set back along alley

RTKL

Logan Circle South – Building with Rear Yard Setback – PM Sun Study

15 March 02

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16730 of Bundy Development Corporation, pursuant to 11 DCMR § 3103.2 for variances from the floor area ratio requirements under section 402, and the height limitations under section 400, to allow the construction of an apartment house in the R-5-C District at premises 1320 13th Street, N.W. (Square 243, Lot 26).

HEARING DATE: **June 19, 2001**
DECISION DATE: **July 10 and 31, 2001 (Bench Decision)**

SUMMARY ORDER

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2 (Exhibit No. 6).

The Board received a request for party status from Edward R. Reed and Robert A. Lawrence (Exhibit No. 30). Messrs. Reed and Lawrence indicated that after meeting with the applicant's representative, their concerns were addressed. The request was withdrawn. (Exhibit No. 49).

The applicant indicated that zoning relief is needed because, unbeknown to her, the D.C. Zoning Commission rezoned the property from R-5-D to R-5-C. The applicant stated that because the rezoning was unknown, the project was fully designed based on the R-5-D zoning requirements; approvals were received from the D.C. Historic Preservation Review Board; complete plans and drawings were prepared by an architect and consulting engineers; and an application for a building permit was submitted to the Department of Consumer and Regulatory Affairs, and the application fee paid.

The site is located in the Logan Circle neighborhood of Ward 2, in the Logan Circle Historic District. The 5,435 square foot site is irregularly shaped. Immediately to the north and south of the site are three-story town houses; a 90-foot apartment building is under construction at the southern end of the block; and across the street, the height of the Iowa Apartment Building is between 80 and 90 feet.

The applicant proposed to construct a five-story, plus cellar, building that would consist of 19 condominium apartment units. The building was designed to the R-5-D standards, a floor area ratio (FAR) of 3.5, and a height of 75 feet. The applicant reduced the height of the building from 75 feet to a maximum of 68 feet, at the public hearing. The building is to contain 19,201[1]

[1] **The Office of Zoning requested that the applicant identify the size of the building. On August 24, 2001, the applicant provided the information by telephone.**

square feet. Six below-grade parking spaces are proposed. The project's revised building plans are located at Exhibit No. 58.

The following chart summarizes the pertinent zoning data:

Zoning Classification	Allowed R-5-D	Allowed R-5-C	Provided	Variance From R-5-C Requirements
Height	90'	60'	68'	8'
Floor Area Ratio	3.5	3.0	3.5	.5
Gross Floor Area	19,022 sq. ft.	16,305 sq. ft.	19,201 sq. ft.	2,896 sq. ft.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register and by mail to the applicant, Advisory Neighborhood Commission (ANC) 2F, and to owners of all property within 200 feet of the property that is the subject of this application.

The subject property is located within the jurisdiction of ANC 2F. ANC 2F, which is automatically a party to this application, submitted written statements on the application. In the ANC's last submission to the Board, dated July 13, 2001, the ANC supported the applicant's revised plans to construct the residential building to a height of 68 feet; although it continued to support the R-5-C zoning of the site (Exhibit No. 64).

By correspondence dated June 13, 2001, the Office of Planning (OP) recommended that the application be denied (Exhibit No. 44). OP's rationale for recommending denial of the application was:

- The Zoning Commission rezoned the area in the general vicinity of the site after extensive effort, which began in 1997. The property was originally zoned R-5-D, but as a result of the rezoning, Case No. 97-7, the site was rezoned to R-5-C. If the application were to be approved, it would impair the intent and purpose of the rezoning.

- The zoning certification the applicant received from the Office of Zoning was correct. The zoning of the site did not change, technically, until almost four months after the applicant closed on the property.

- The cost that the applicant incurred prior to learning that the site is zoned R-5-C does not create a practical difficulty.

- If the building were to be constructed at the height prescribed by the R-5-D zoning requirements, it would be inconsistent with the surrounding properties and thus defeat the purpose of the Zoning Commission down-zoning the properties in the neighborhood.

- The purpose of the rezoning was to provide a gradual stepping down in height and density from Downtown to the Logan Circle area.

By correspondence dated February 22, 2001, the D.C. Historic Preservation Review Board (HPRB) indicated that it found the project's revised conceptual design consistent with the purposes of the preservation law (Exhibit No. 7).

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR §§ 3103.2, 402 and 400. No residents of the community appeared at the public hearing in opposition to this application.

The Board determined that:

- The zoning certification that the applicant received was technically correct; however, misleading and/or incorrect information was given to the applicant.
- The record contained overwhelming neighborhood support for the project.
- Advisory Neighborhood Commission 2F supported the application and was given the "Great Weight" to which the commission is entitled.
- The applicant reduced the height of the building from 75 feet to 68 feet to make it more compatible with the R-5-C zoning of the site.
- The site is located in the Logan Circle Historic District and therefore the applicant must comply with the design requirements of the Historic Preservation Review Board.
- The site is irregularly shaped and does pose some development constraints.
- The subject Square 243 contains R-5-B, R-5-C, and R-5-E zoning. The project is not inconsistent with the residential character of the neighborhood.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, under 11 DCMR §§ 3103.2, 402 and 400, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED** with the following **CONDITION:**

The building shall have a height of 68 feet. (The Board allows for minor flexibility of design so that the project can reasonably accommodate the architectural embellishments and complement the fenestration and cornice lines of the buildings to the south; thus where appropriate, the building shall not exceed 75 feet.)

Pursuant to 11 DCMR § 3101.6, the Board waived the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 3-1-1 (Geoffrey H. Griffis, Anthony J. Hood, and Sheila Cross Reid to approve; Anne Mohnkern Renshaw opposed to the motion; David Levy not hearing the case, not voting.)

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

Each concurring Board member approved the issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: SEP 1 0 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

BAB/8.24.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16730

As Director of the Office of Zoning, I hereby certify and attest that on SEP 10 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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JERRILY R. KRESS, FAIA
Director