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November 26, 2002

CHRISTINE MOSELEY SHIKER
202-457-7167

Internet Address: cmshiker@hklaw.com

VIA HAND DELIVERY
Members of the Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

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Re: Board of Zoning Adjustment Case No. 16924
1701 Kalorama Road, N.W.
Prehearing Submission

Dear Board Members:

On behalf of the applicant in the above-referenced case, enclosed please find an original and twenty copies of its prehearing submission in support of the above-referenced application for special exception and variance relief.

Should you have any questions regarding this matter, please do not hesitate to contact me at (202) 457-7167.

Sincerely,

Christy Shiker

Christine Moseley Shiker

cc: Maxine Brown Roberts, Office of Planning (Via Hand Delivery; w/enc)
Jennifer Steingasser, Office of Planning (Via Hand Delivery; w/enc)
Ken Laden, DDOT (Via Hand Delivery; w/enc)

BZA
Case No. 16924
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO.16924
EXHIBIT NO.38A1

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF
JEMAL'S WHEEL, L.L.C.
1701 KALORAMA ROAD, N.W.

BZA APPLICATION NO. 16924
HEARING DATE: DEC. 10, 2002
ANC 1C

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Jemal's Wheel, L.L.C., the owner of the property located at 1701 Kalorama Road, N.W. (Square 2566, Lot 90), (the "Applicant") in support of the application to the Board of Zoning Adjustment for the following variance and special exception relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 1403, 3103.2 and 3104.1: (i) variance from the lot occupancy requirement of Section 772; (ii) variance from the residential recreation space *dimensional* requirement of Section 773.7; (iii) variance from the parking drive aisle width requirements under Section 2117; (iv) variance from the loading berth requirements of Section 2201; (v) special exception from the maximum permitted height requirements under Section 1403.1[1]; and (vi) special exception from the roof

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[1] At the October 8, 2002, public hearing at which this case was postponed to December 10, 2002, the Board of Zoning Adjustment raised a question as to whether the relief permitted under the Reed-Cooke Overlay District should be requested in the nature of a special exception under Section 1403.1 or a variance from Section 1402.1. On October 15, 2002, the Applicant filed with the Board a letter in support of its position that a special exception is the appropriate relief, a copy of which is attached hereto as Exhibit E. Since that time, the Board has taken action in Board of Zoning Adjustment Case No. 16931 to approve a special exception pursuant to Section 1403.1 for an increase in the height over that permitted by the Reed-Cooke Overlay District, which further supports the Applicant's position. That case involved a height special exception (among other relief) in the RC/R-5-B District from forty feet to fifty feet. The fifty foot limitation found in Section 1402.3 relates to RC/R-5-B; therefore, the

structure requirements of Section 411. The relief is requested in order to permit the conversion and expansion of an existing warehouse and commercial building to an apartment house with fifty-four units to be located at 1701 Kalorama Road, N.W. (the "Site"), located in the RC/C-2-B District.

Since filing the application, the Applicant has worked with the community and the Office of Planning to modify the proposal in an effort to respond to issues raised by those groups. The original application also included requests for variances from the floor area ratio requirements under Section 771 and from the required amount of residential recreation space under Section 773. The modified application, including a reduction in height from sixty-five feet to fifty-seven feet, presents a project that is reduced in size, and therefore, these variances are no longer needed. Accordingly, the Applicant withdraws those requested variances.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 1403, 3103, and 3104 of the District of Columbia Municipal Regulations ("Zoning Regulations"). 11 DCMR §§ 3103 and 3104.

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increased height was obtained by special exception pursuant to Section 1403.

III.
BACKGROUND

A. Description of the Site

The Site is located at 1701 Kalorama Road, N.W., and consists of Lot 90 in Square 2566. Square 2566 is bounded by Kalorama Road to the south, 17th Street to the east, Euclid Street to the north, and Ontario Road to the west. The Site is currently improved with a three story, vacant commercial/warehouse building. The Site is zoned RC/C-2-B and is located in the Reed-Cooke Overlay District.

B. Description of Surrounding Area

The area in which the Site is located is on the eastern edge of the Adams Morgan area, north of the Dupont Circle area, and on the edge of the Reed-Cooke Overlay District. This area contains a wide variety of uses and includes some mixed use and commercial developments. The property to the east of the Site is the former Citadel Roller Rink building, an industrial/commercial structure, while the remaining portions of the square are primarily devoted to residential uses. Other residential developments in proximity to the Site include the Dorchester, the Envoy, 1661 Crescent Place, Park Tower, and the Morgan School Annex. A mom and pop convenience/liquor is southeast of the Site and a mixture of commercial and residential uses are located to the south and west of the Site.

C. Project Description

The Applicant originally proposed a project for the Site which would have expanded the existing commercial/warehouse facility to a height of sixty-five feet,

including approximately sixty-five units with an FAR of 4.33, or approximately 97,113 square feet of gross floor area. After working with members of the community, the Applicant has reduced the size of the project to the matter-of-right 3.5 FAR, or approximately 78,498 square feet of gross floor area, and increased the number of affordable dwelling units from three to four. The Applicant has also reduced the height from sixty-five feet (six stories) to fifty-seven feet (five stories). The Applicant now proposes to convert and expand the existing warehouse building into a fifty-four unit loft-style apartment house, including four affordable housing units (the "Project"). The substantial majority of the first floor will be maintained as a parking garage to serve the residential units, but will also include two residential units as requested by the community. The parking garage will contain thirty-nine parking spaces, which includes two tandem spaces and two handicap spaces. In addition, the Project also includes five outdoor parking spaces, of which two are tandem spaces for a total of forty-four parking spaces. The parking provided – which is very important to the community – is substantially in excess of the eighteen parking spaces required by the Zoning Regulations. 11 DCMR §2101.1.

IV.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCES

A. Standards for Granting Area Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

(1) the property has unusual or extraordinary conditions affecting its size, shape or topography or other extraordinary or exceptional situation or condition;

(2) these conditions bring about practical difficulties if the zoning regulations were strictly applied; and

(3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, the Project and the variances requested for the same meet all three prongs of this test.

B. Overview of the Site's Exceptional Condition

The Site has several unique conditions which give rise to an exceptional situation. First, the Site is currently improved with an existing vacant three story commercial/warehouse building with no fully below-grade parking levels, requiring a substantial parking area to be included within the FAR calculation. Until 1991, the Site was zoned C-M-2. The building, which was originally constructed in the 1930's with no floor area or lot occupancy restrictions, consists of a footprint covering ninety-six and one-half percent of the Site. In addition, the floor to ceiling heights of fourteen feet and twelve feet for the first and second floor respectively and existing construction of the building – while appropriate for a warehouse/industrial building – are not consistent with a C-2-B/residential building. Second, the Site is an unusual shape, having five sides with public space frontage on three and one-half sides,

including street frontage along the southern and eastern facades and alley frontage along the northern façade as well as a portion of the western façade. Third, the topography of the Site is exceptional. The Site has an elevation difference of approximately seventeen feet from the northern to the southern end. As a result, approximately one-half of the first (ground) floor is classified as cellar space, having a ceiling of less than four feet above the adjacent finished grade. For example, although the street level on the southern portion of the Site is at the first floor, the alley along the northern portion of the Site meets or rises above the second story. Accordingly, the Site is affected by exceptional and extraordinary conditions. As explained below, these factors contribute to all of the variances requested.

C. Variance Relief from Lot Occupancy

1. Basis for Variance

The existing building on the Site creates a practical difficulty in developing and converting the existing building to an apartment house within the confines of the lot occupancy requirements set forth in Section 772 of the Zoning Regulations. The footprint of the existing building covers ninety-six and one-half percent of the Site, or 21,652 square feet. In order to create a complying footprint, the Applicant would be required to remove 3,702 square feet of the existing footprint. Due to the elevation change, the space to be eliminated would be below-grade space on the northern portion of the Site. The elimination of this space would significantly increase costs for the Project, create construction difficulties, and eliminate several parking spaces to the detriment of the community. Furthermore, this space can not provide

additional dwelling units as any space created would be essentially underground with no direct access to the outdoors due to the elevation of the adjoining alley.

2. A Strict Application of the Zoning Regulations Would Impose a Peculiar and Exceptional Practical Difficulty on the Applicant

A strict application of the Zoning Regulations would impose a peculiar and exceptional practical difficulty. As discussed above, the existing building must be significantly altered in order to meet the lot occupancy requirements of Section 772. Due to topography of the Site, the portion of the existing building that would be removed is below-grade space. The removal of this space would have no perceived benefit and would result only in the loss of important parking, further increasing costs of this financially difficult project. The Applicant requests this variance only for the first level of the Project, as the Applicant will comply with the eighty percent lot occupancy requirement above the first floor by eliminating the additional area of the footprint above-grade. Furthermore, the fourth and fifth floors incorporate a sloping mansard roof, resulting in a lot occupancy of less than the permitted eighty percent at the upper levels.

3. Relief Can Be Granted Without Substantial Detriment to the Public and Without Substantially Impairing the Intent, Purpose and Integrity of the Zone Plan as Embodied in the Zoning Regulations and Map

The lot occupancy variance can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. First, the intent of lot occupancy requirement is to provide sufficient light and air to residential units. The first floor, which is the only level which does not comply with the lot occupancy provisions, will house the parking

garage and will contain only two residential units with windows facing 17th Street. The original proposal did not include any residential space on the first floor; however, as the Applicant will testify at the hearing, the community requested that additional residential units be added to the first floor to create a residential presence along 17th Street. Above the first floor, the residential floors will comply with the eighty percent requirement, and the fourth and fifth floors are reduced further.

Second, due to the topography of the Site, the Project will be perceived as having a lot occupancy of eighty percent because the rear portion of the Project is below-grade. As discussed above, the grade on the northern end of the Site meets or rises above the second floor, and a rear yard is provided in the northwest portion of the Site. Third, the Site is located on two street frontages as well as a fifteen foot alley along the northern and a portion of the western property lines, which all create light and air corridors for the Project and adjacent properties. Finally, the Project will not adversely impact the area. The development of the Site will have a significant positive effect on the area and further the goal of the Reed-Cooke Overlay District by the creation of additional residential units.

D. Variance Relief from Dimensional Requirement of Section 773.7

The Applicant's original proposal required variance relief from Section 773.3, which requires that residential development in the C-2-B District provide not less than fifteen percent of the gross floor area of the building devoted to residential use for residential recreation space. Under the current proposal, the Project provides the required residential recreation space. However, due to the location of the penthouse on the roof and compliance with the lot occupancy requirement, the Applicant must

seek variance relief from Section 773.7, which requires that any portion of the roof to be used for residential recreation space have no dimension less than twenty-five feet. Accordingly, the Applicant requests a variance from the residential recreation space requirement of Section 773.3.

The Applicant proposes a roof deck in excess of 7,500 square feet. Although the space on the roof has been maximized, the roof deck is unable to meet the required dimensions of twenty-five feet in several places (as shown on the plans attached hereto as Exhibit D). The required location of the penthouse on the roof and the compliance with the eighty percent lot occupancy requirement above the first floor create pinch points at which the required twenty-five foot dimension is not met. The incorporation of the mansard roof exacerbates the situation. Because there is no other reasonable space in which to locate additional roof deck area and the building must comply with the eighty percent lot occupancy requirement, the strict application of Sections 773.7 results in a peculiar and exceptional practical difficulty for the Applicant. However, variance relief can be granted without substantial detriment either to the public good or the Zoning Regulations. The size of the roof deck is significant, containing over 7,500 square feet. There will be no harm in the distinct locations which fall below the required twenty-five foot dimension because the roof deck has been maximized by its designed and creates meaningful recreation space for the residents of the Project.

E. Variance from Parking Drive Aisle

Section 2117.5 of the Zoning Regulations requires that parking drive aisles in the parking garage have a clear width of not less than twenty feet. The existing

ground floor level on this Site houses the parking garage and two residential units but contains one drive aisle that is eighteen feet, nine inches in width between three sets of columns, which does not comply with this requirement. Accordingly, the Applicant requests a variance from Section 2117.5.

The Site's existing structure results in the reduction of the drive aisle width for this small portion of the garage, affecting thirteen of the forty-nine spaces. Specifically, the columns of the existing structure in the eastern portion of the first level have a clearance of only eighteen feet, nine inches between them. As a result, although the parking spaces have at least twenty feet clearance, the three sets of columns prevent compliance with this requirement. The building was originally built as a warehouse and is an exceptionally solid and heavy structure. Thus, the columns cannot be feasibly relocated without possibly compromising the structural integrity of the existing building, the drive aisle width cannot be increased. The only option for compliance would be to eliminate the parking spaces on one side of the drive aisle, which would not further the goal of maximizing parking on the Site. As stated above, the resulting decrease in the drive aisle width occurs in only three distinct locations -- at the site of the existing columns.

Relief can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. As stated above, the reduced-width drive aisle exists at three distinct sets of existing columns. All other portions of the garage comply. Furthermore, the cars accessing spaces in this portion of the garage will have more than sufficient maneuverability for both ingress and egress to the

spaces. Specifically, due to the location of the existing columns, fewer spaces have been incorporated, and thus, additional space exists between the parking spaces, allowing for more maneuverability in the spaces than would be found in a complying garage. Therefore, the requested relief will have no adverse impact.

F. Variance from the Loading Berth Requirements

Section 2201 of the Zoning Regulations requires that an apartment house with more than fifty dwelling units provide one fifty-five foot loading berth, one loading platform at two hundred square feet, and one twenty foot deep service/delivery space. The Project includes the service/delivery space; however, as a result of discussions with the community, as the Applicant will testify to at the hearing, the Project now proposes not to provide the required loading berth and platform. Accordingly, the Applicant requests a variance from Section 2201.

As described above, the Project is comprised of an existing building with a two story addition. Although the Project could incorporate a loading berth along the Site's western edge, the community has requested that this loading berth be eliminated in an effort to avoid heavy truck traffic in the alley and permit additional parking to alleviate parking burdens in the neighborhood. The Applicant will testify as to its numerous discussions with the community regarding this issue.

In addition, as the traffic consultant will testify, the alley system cannot reasonably accommodate a fifty-five foot tractor trailer nor is one needed for this type of building. The Board recently approved a development of the Color Tone building in Application No. 16815, and the location of a larger berth in the alley is not consistent with that use.

Relief, however, can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. First, the community has indicated strong support for this design modification in order to provide additional parking on-site and in order to avoid conflicts in a heavily trafficked alley when there will be little or no need for such a berth. Second, the height of the parking garage on the existing first floor permits large trucks to access the building through the garage. Third, the Applicant plans to request the designation of a loading zone along 17th Street, from the entrance of the Project to the corner, which could handle any additional loading that may be necessary. Finally, due to the size of the Project, there will be a relatively low population of residents with fewer large trucks used for moving. The service/delivery space and the 17th Street designated loading area will be more than sufficient to handle the loading needs for the Project, as is further discussed in the Traffic Impact Analysis attached hereto as Exhibit F. Thus, the requested relief will not have an adverse impact on the public or the zone plan.

V.
THE APPLICANT MEETS THE TEST FOR SPECIAL EXCEPTION RELIEF FROM HEIGHT UNDER 11 DCMR § 1403.1.

The Reed-Cooke Overlay District permits the Board to grant a special exception from the requirements set forth in Chapter 14 subject to the criteria set forth in Section 1403.1(a) through 1403.1(g). Although the C-2-B District permits a maximum height of sixty-five feet, the Overlay District restricts the maximum height to forty feet. Due to the existing structure, which contains no space for below-grade parking and the resulting loss of the significant majority of the first floor, the Project

must contain a certain critical mass of units in order for the Project to be economically viable. In order to reach this critical mass, the Applicant requests a special exception as permitted in Section 1403 to permit a height of fifty-seven five feet, which is less than that permitted in the underlying zone district, and which allows the development to use all of the permitted density on the Site.

The original proposal requested special exception relief for a height of sixty-five feet. As a result of conversations with the Office of Planning and the community, the Applicant has removed one story from the building to reduce the height. As is discussed in detail in the report submitted by Bolan Smart Associates, attached hereto as Exhibit G, the Project is only marginally viable at this reduced height. To further reduce the height of the Project results in a project that cannot be built and a loss to the community of an important conversion of a warehouse to residential use.

A. The Use, Building, or Feature at the Size, Intensity, and Location Proposed Will Substantially Advance the Stated Purposes of the Reed-Cooke Overlay District.

Section 1400.2 of the Zoning Regulations states that the purposes of the Overlay District include the protection of current housing in the area and the provision for the development of new housing as well as the maintenance of heights and densities at appropriate levels. The requested increase in height furthers both of these goals. First, the Project provides housing (including four affordable units) in an ideal location, near new and existing residential uses. Significantly, the conversion of the existing warehouse building will bring the use of the building into conformity with that of the overlay and will aesthetically improve the surrounding area. Second, due to the topography of the Site, the height of the Project is compatible with the

surrounding area and is in fact less than nearby apartment buildings, including the Envoy, the Dorchester, and 1661 Crescent Place as well as the Morgan School Annex. Similarly, the Project achieves a lower height visually than the adjacent Citadel Roller rink and has a lower elevation than the matter-of-right height of fifty feet on the property to the north along 17th Street. Attached hereto as part of Exhibit D is a photograph depicting the height of the Project along with the adjacent and nearby structures.

The density of the project is 3.5 FAR, which is that permitted as a matter—of-right. Although greater than that permitted, the proposed height is appropriate in its context and when compared to the surrounding area. Because the Site is on the edge of the Reed-Cooke Overlay District, it is necessary to compare the Project with those developments on all sides, regardless of whether or not those properties are constrained by the height limitations of the Reed-Cooke Overlay District. The Zoning Regulations do not state what information the Board should use in determining appropriate height. Even if the Board narrowly interprets the Regulations to suggest that the "maintenance of heights and densities at appropriate levels" includes *only* those adjacent and nearby properties within the boundaries of the Reed-Cooke Overlay District (and ignores all adjacent context for the building), the Board will still find that the Project maintains an appropriate height. As is evidenced in the elevations submitted herewith as part of Exhibit D, the Site sits in the bottom of a "bowl" in a topographically diverse area. Specifically, the adjacent property to the north which is also within the Reed-Cooke Overlay District has a higher roof elevation when compared to the Project, despite the fact that it has one less floor, as a

result of the grade changes north of the Project. Because the Project sits at a low point of this area – and especially when considering the adjacent and nearby structures with greater heights than the Project – the height of the Project is appropriate and does not intrude upon the skyline.

B. Vehicular Access and Egress Shall Be Designed and Located so as to Minimize Conflict with Pedestrian Ways, to Function Efficiently, and to Create No Dangerous or Otherwise Objectionable Traffic Condition.

As indicated in the Traffic Impact Analysis prepared by O.R. George and Associates and attached hereto as Exhibit F, the access for the garage and service/delivery space from Kalorama Road and the elimination of the access to the parking garage from the alley will help to minimize conflicts with pedestrian traffic and will create no dangerous or otherwise objectionable traffic condition.

C. Adequate Off-Street Parking Shall be Provided for Employees, Trucks, and Other Service Vehicles.

Due to the residential nature of this Project, there will be few, if any, service-type vehicles accessing the Site. As discussed above and in the Traffic Impact Analysis, the loading needs for the Project are minimal due to the size of the units and the Project as a whole.

D. If Located Within a C-2-B Zone, the Use Shall Not Be Within Twenty-Five Feet of a Residence District, Unless Separated by a Street or Alley.

Although the Project incorporates only residential uses, the Project is not located within twenty-five feet of a residence district that is not separated by a street or alley.

E. Noise Associated with the Operation of a Proposed Use Will Not Adversely Affect Adjacent or Nearby Residences.

The Project incorporates only residential uses and, therefore, there will be no noise associated with the operation of the residential use which would adversely affect adjacent or nearby residences.

F. No Outdoor Storage of Materials, nor Outdoor Processing, Fabricating, or Repair Shall Be Permitted.

The Project does not propose any outdoor of materials nor outdoor processing, fabricating or repair.

G. The Use, Building, or Feature at the Size, Intensity, and Location Proposed Will Not Adversely Affect Adjacent and Nearby Property or Be Detrimental to the Health, Safety, Convenience, or General Welfare of Persons Living, Working or Visiting in the Area.

The Project provides an important conversion of a vacant warehouse to a well-designed, residential building in a growing residential area. This Project will not adversely affect adjacent or nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working or visiting the area. The Project animates the street façade with the incorporation of first floor residential units and the architectural design blends well with the mixed-use nature of the neighborhood. The Project serves only to benefit the area, while furthering the stated goals for this area as discussed above. In contrast, the existing warehouse and industrial uses permitted as a matter-of-right for the existing building may adversely affect the area.

H. Affordable Housing

Section 1403.1 of the Zoning Regulations does not require the inclusion of affordable housing units in connection with a request for special exception relief.

Accordingly, the Applicant is not required to provide any affordable housing units. In its work with the community, however, the Applicant learned that affordable housing is very important to this community. Therefore, the Applicant has agreed to provide affordable housing units in the Project. In its original proposal, the Applicant proposed sixty-five total units, including three affordable units. In the current proposal, the Applicant proposes a total of fifty-four units, with four units being affordable (approximately 5,000 square feet).

Assuming that affordable housing was required for this Project, the Applicant is providing more affordable housing than would normally occur with a building constructed over forty feet on a site without the impediments of the existing structure and adverse topography. For example, if a project was constructed on a vacant, level site of the same size, it could achieve four-stories within the permitted forty foot height, having an FAR of 3.2. In order to use the remaining 0.3 FAR permitted under the Zoning Regulations, the project would need to exceed the forty foot height limitation, requiring a 0.15 FAR equivalency of affordable housing under Section 1402.1[2]. In the Applicant's case, the proposed affordable housing units total approximately 0.2 FAR (unit plus pro-rated core factor), which is more than that required in the example based on the same sized site without the exceptional conditions. Therefore, the community receives a comparable amount of affordable housing while also benefiting from the conversion of an important, yet difficult, site from warehouse/commercial uses to residential use.

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[2] The Applicant does not request a special exception under Section 1402.1. However, Section 1402.1 is the only provision in the Reed-Cooke Overlay District that has a affordable housing requirement and is therefore use for example purposes.

I. Variance from Section 1402.1

As discussed above and in Exhibit E, the Applicant contends that a special exception is the appropriate relief needed to permit a height of fifty-seven feet for the Project. In the event that the Board concludes that a variance from Section 1402.1 is necessary, the variance standard is satisfied as well. As discussed above, the exceptional condition of the existing building and its warehouse-type construction create a practical difficulty requiring an increase in height from fifty feet. Specifically, the proposed height above fifty feet to fifty-seven feet arises from the floor to ceiling heights of fourteen feet on the first floor and twelve feet on the second floor plus approximately eleven feet on the third floor. Assuming a desired floor to ceiling height of ten feet, the first three floors contribute seven feet to the height over fifty feet. If there were no existing building to constrain the Site, the Applicant could readily obtain 3.5 FAR (that permitted as a matter of right) within a fifty foot height. In fact, as the architect will testify at the hearing, on a clean site with no adverse topography, the Applicant could fit 3.2 FAR within *forty feet* of height. Thus, the constraints of the existing building and the topography of the Site necessitate the requested relief.

Relief can be granted, however, without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. As stated above, the Project provides an important conversion of a warehouse/commercial property to a well-designed residential building in a growing residential area. The height of the Project is consistent with the surrounding buildings (as can be seen in Exhibit D). The

Project furthers the goals of the Reed-Cooke Overlay District and benefits the area as a whole. Therefore, the requested relief will have no adverse impact.

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

A. Standard for Approving Special Exception Relief

Due to the exceptional conditions of the Site, the Project cannot comply with the roof structure requirement that the walls be of equal height set forth in Section 411.5 and the setback requirement set forth in Sections 411.2 and 770.6. Accordingly, the Applicant requests special exception relief to deviate from the strict compliance of Section 411.5, 411.2, and 770.6 of the Zoning Regulations as permitted under Sections 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*, 423 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.*

B. Standard of Review for Roof Structure Special Exceptions

Under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure 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." 11 DCMR §411.11. 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." *Id.*

C. Relief from Section 411.5 to Deviate from Walls of Equal Height Requirement

The Applicant requests relief from Section 411.5 of the Zoning Regulations. That section requires the enclosing walls of a penthouse to be of equal height. The roof plan attached as part of Exhibit D illustrates that Project incorporates two sets of enclosing walls. The primary roof structure has a height of eleven feet. However, in order to enclose the elevator override equipment, the height of the roof structure increases to eighteen feet, six inches above the elevator. The original proposal incorporated two sections in which the roof structure rose to eighteen feet, six inches. However, the Applicant has reworked the mechanical equipment to limit the increased height to only above the elevator equipment. The roof structure is setback more than eighteen feet, six inches in all locations in accordance with Section 770.6(b).

The roof structure must be eighteen feet, six inches in height to enclose the elevator mechanical equipment which is required in order to provide elevator access to the roof deck. From this maximum height, the roof structure steps down eleven feet, which is only that necessary to house the remaining mechanical equipment and which results in a minimized total mass.

The proposed elevator penthouse does comply, however, with the spirit and intent of the roof structure provisions and the Zoning Regulations by ensuring adequate light and air to adjacent property and abutting streets. The step in height reduces, if not eliminates, the visibility of the roof structure from the surrounding areas. Furthermore, this special exception is requested only to minimize the bulk of the roof structure. If necessary, the entire penthouse could be eighteen feet, six inches in height; however, the penthouse would have unnecessary mass and height which would not further the intent of the Zoning Regulations. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.

D. Relief from Sections 411.2 and 770.6(b) to Deviate from Roof Structure Setback Requirement

The Applicant also requests relief from Sections 411.2 and 770.6 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. 11 DCMR §411.2. The C-2-B 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. 11 DCMR §700.6.

The primary height of the roof structure is eleven feet, and the Zoning Regulations require a setback of the same. The roof structure meets this setback requirement for the significant portion of the roof structure, including the portion of the roof structure with has a height of eighteen feet, six inches. However, an existing fire stairwell must be extended to the roof in order to provide two means of ingress and egress for purposes of the roof decks. As a result, the stairwell is flush with the northern façade of the building.

The proposed roof structure does comply, however, 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. This purpose is achieved despite the requested special exception. The existing fire stairwell is only eleven feet in height and is separated by an existing alley from the nearest property. Because the adjacent property could have an almost identical height as the Project, the roof structure will not block the light and air to its windows or residential units. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.2.

VII.
COMMUNITY SUPPORT

The Applicant has worked extensively with the community on the design of this Project beginning in June, 2002. At it regularly scheduled public meeting on November 18, 2002, the Applicant received support from the Advisory Neighborhood Commission 1C.

VIII.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A:	Portions of the Sanborn Atlas and assessment map showing the Site highlighted in yellow;
Exhibit B:	A portion of the Zoning Map showing the Site highlighted in yellow;
Exhibit C:	Surveyor's Plat of the Subject Property;
Exhibit D:	Revised Architectural Plans and Drawings, Including Exhibit Showing Height of Project in Relation to Adjacent and Nearby Structures;
Exhibit E:	Applicant's Letter to the Board of Zoning Adjustment dated October 15, 2002;
Exhibit F;	Report dated November 22, 2002, from O.R. George and Associates;
Exhibit G;	Report dated November, 2002, from Bolan Smart Associates, Inc.;
Exhibit H:	Zoning Tabulation Chart
Exhibit I:	Outline of Testimony of Representative of Jemal's Wheel, L.L.C.;
Exhibit J:	Outline of Testimony of Eric Colbert and Associates, project architect;
Exhibit K:	Outline of Testimony of O.R. George & Associates, Traffic Consultant;
Exhibit L:	Outline of Testimony of Lew Bolan, Bolan Smart Associates, Economic Consultant;
Exhibit M:	Outline of Testimony of Steven E. Sher, Land Planner.

IX.
WITNESSES

A. Representative of Jemal Wheels, L.L.C.

B. Representative of Eric Colbert and Associates, Project Architects.

C. Osborne George, Traffic Consultant.

D. Lew Bolan, Expert in Real Estate Economics.

E. Steven E. Sher, Land Planner.

X.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for area variances and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

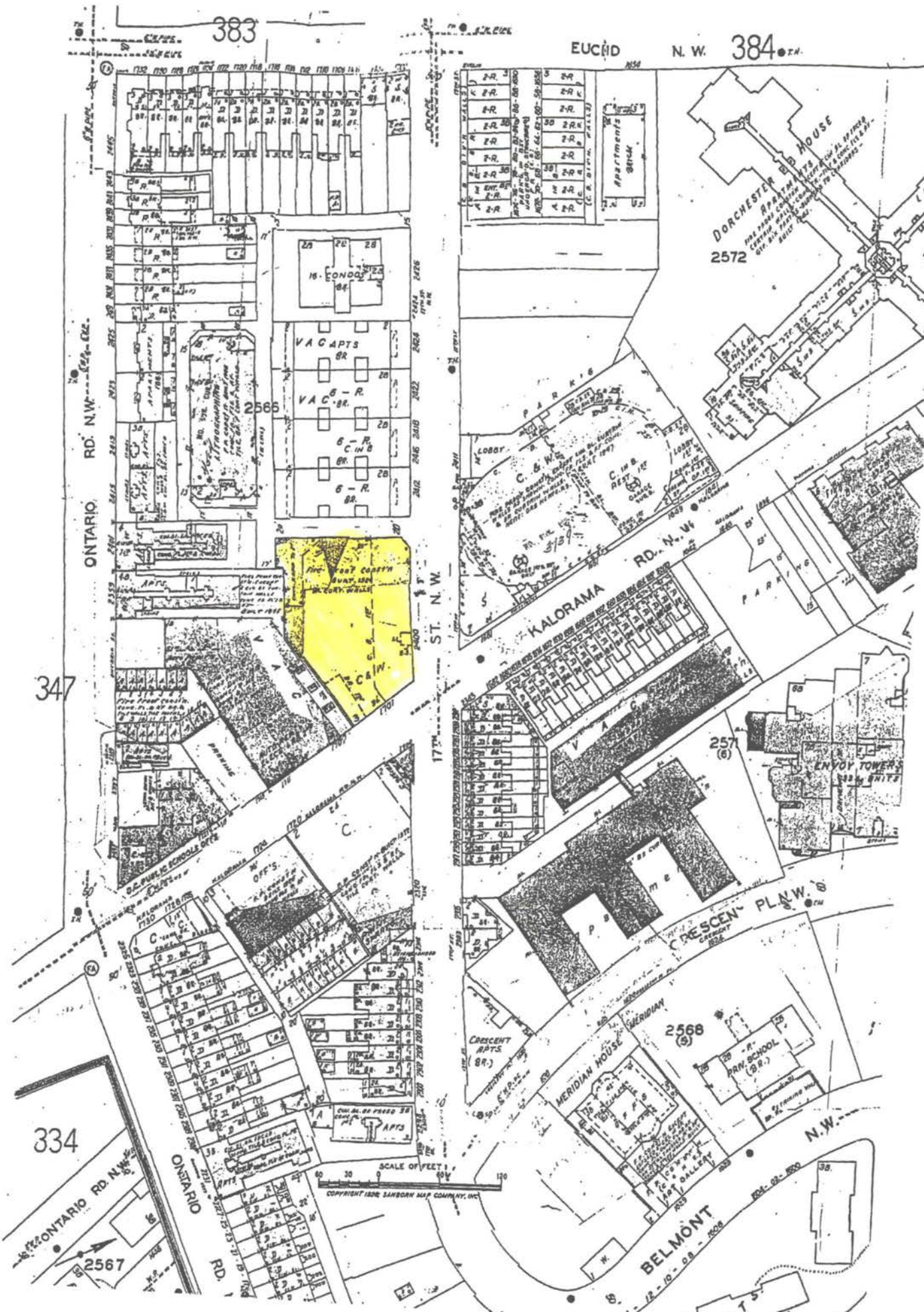
By: _____
Norman M. Glasgow, Jr., Esq.

By: _____
Christine Moseley Shiker, Esq.

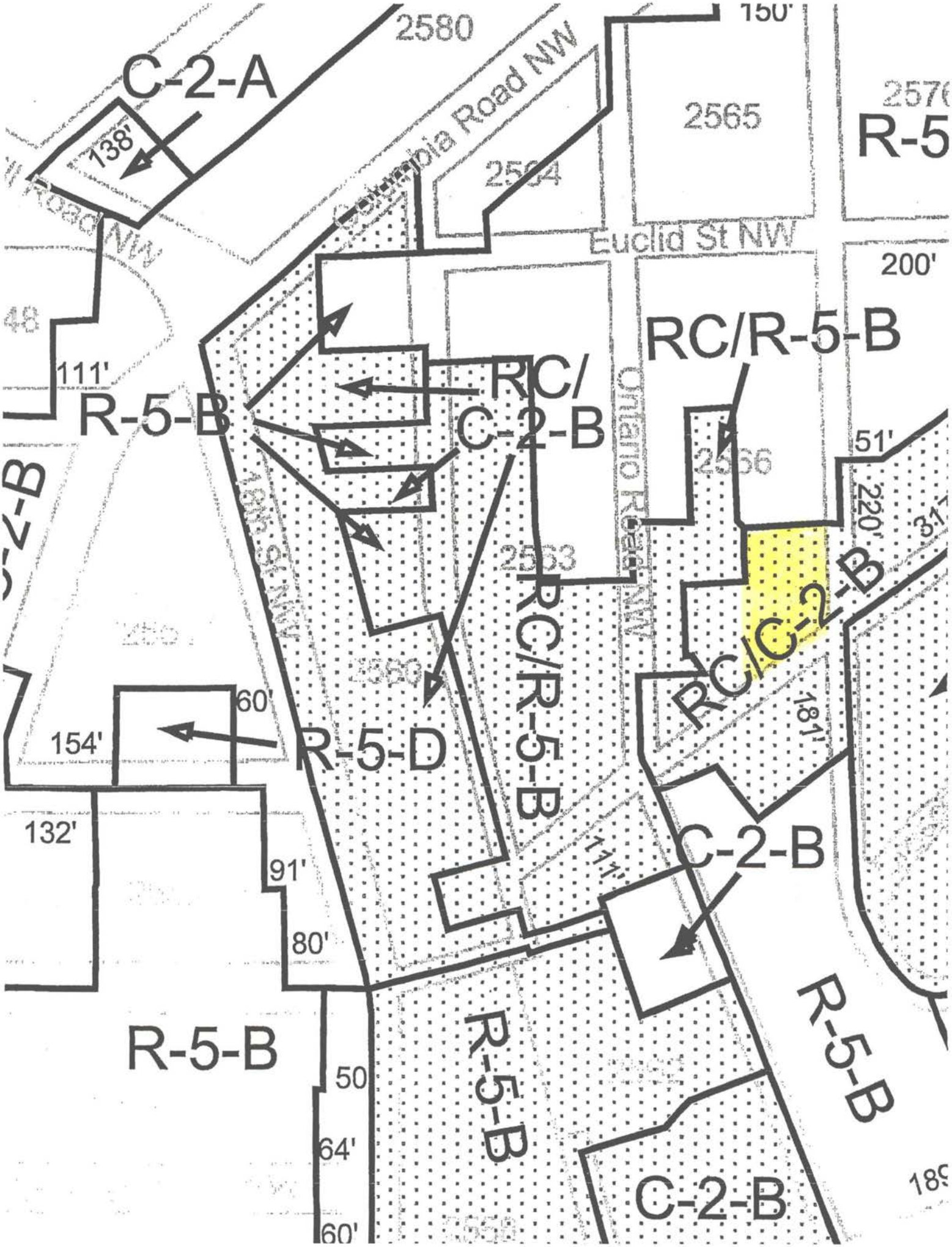
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Suite 100
Washington, D.C. 20006
(202) 955-3000

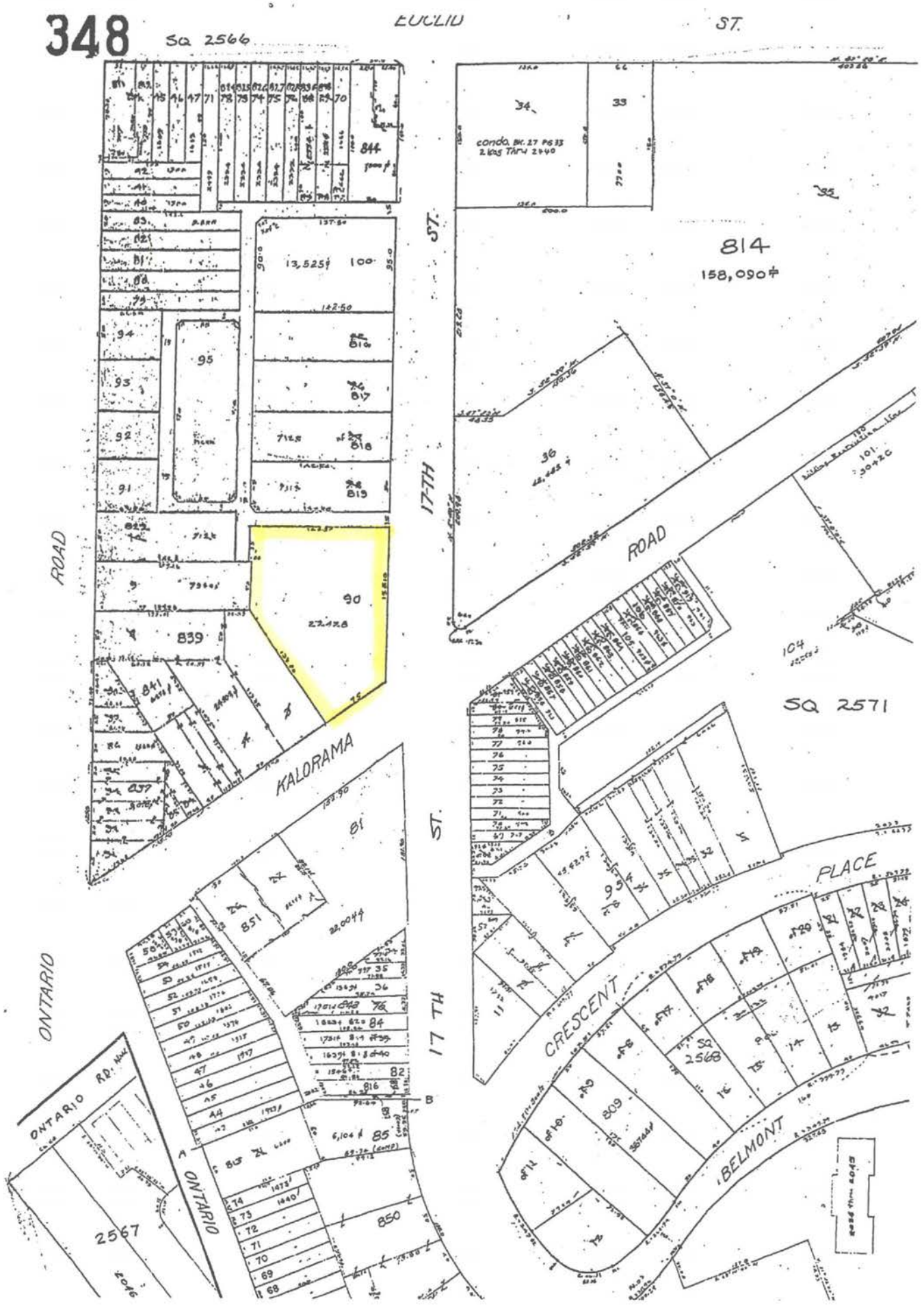
WAS1 #1118012 v4

A


383
EUCLID
N. W.
384
DORCHESTER HOUSE
APARTMENTS
2572
APARTMENTS
GARAGE
16 CONDOS
VAC APTS
8R.
VAC 6-R.
8R.
6-R.
C IN B.
8R.
6-R.
8R.
2566
ONTARIO
RD. N.W.
PARKS
LOBBY
C. & W.
C IN B.
REST 1ST
CLASSIC
RES.
KALORAMA
RD. N.W.
PARKING
347
17TH
ST. N.W.
VAC
C IN B.
APTS.
BREWING
KALORAMA
1730
1728
1726
1724
1722
1720
KALORAMA PL. N.W.
D.C. PUBLIC SCHOOLS OFF'S
OFF'S.
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APTS
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(6)
ENVOY TOWERS
303 UNITS
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CRESCENT
1624
CRESCENT
APTS.
(8R.)
2568
(9)
MERIDIAN
MERIDIAN HOUSE
PRN. SCHOOL
(8R.)
334
ONTARIO RD. N.W.
ONTARIO
RD.
2567
SCALE OF FEET
60 30 0 60 120
COPYRIGHT 1926 SANBORN MAP COMPANY, INC.
N.W.
BELMONT
1924-25-1500
1924-25-1500




C-2-A
138'
2580
Columbia Road NW
2565
R-5
Euclid St NW
200'
RC/R-5-B
RC/
C-2-B
111'
R-5-B
Ontario Road NW
51'
2566
220'
2563
RC/R-5-B
RC/C-2-B
181'
60'
154'
R-5-D
132'
91'
80'
111'
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R-5-B
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C-2-B


348
Sq 2566
EUCLID
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condo. Bk. 27 Pg 33
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ROAD
ROAD
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839
841
837
KALORAMA
81
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22,004
17 TH
ST.
ONTARIO
ONTARIO RD.
ONTARIO
2567
850
6,104
85
82
84
36
35
Sq 2571
PLACE
CRESCENT
Sq 2568
809
BELMONT



DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., 5-20, 2002

Plat for Building Permit of SQ-2566 LOT 90

Scale: 1 Inch = 30 feet Recorded in Book 71 Page 8

Receipt No. 87169

Furnished to: HOLLAND & KNIGHT

Surveyor, D.C.

By: DA

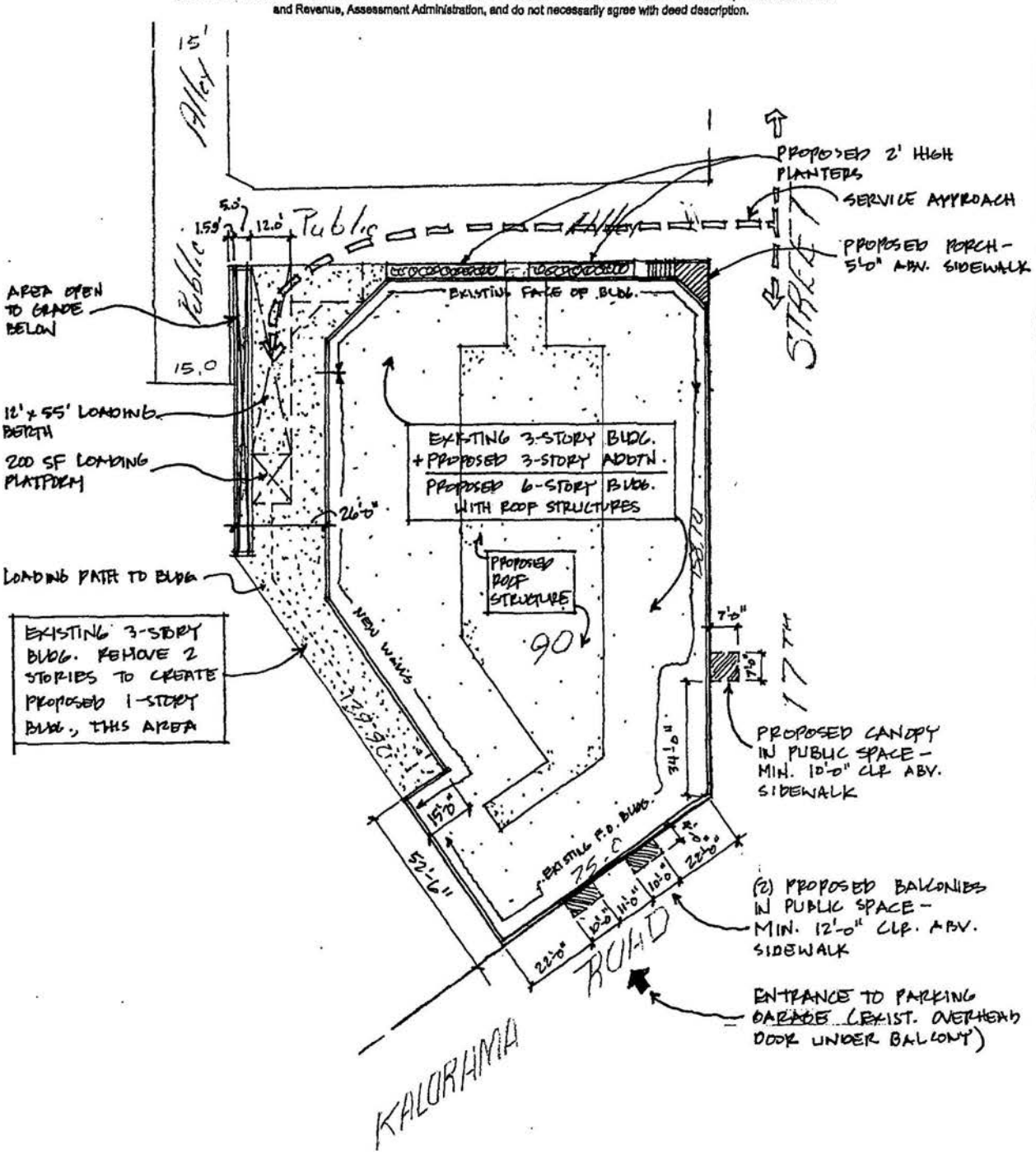
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 6-14-02

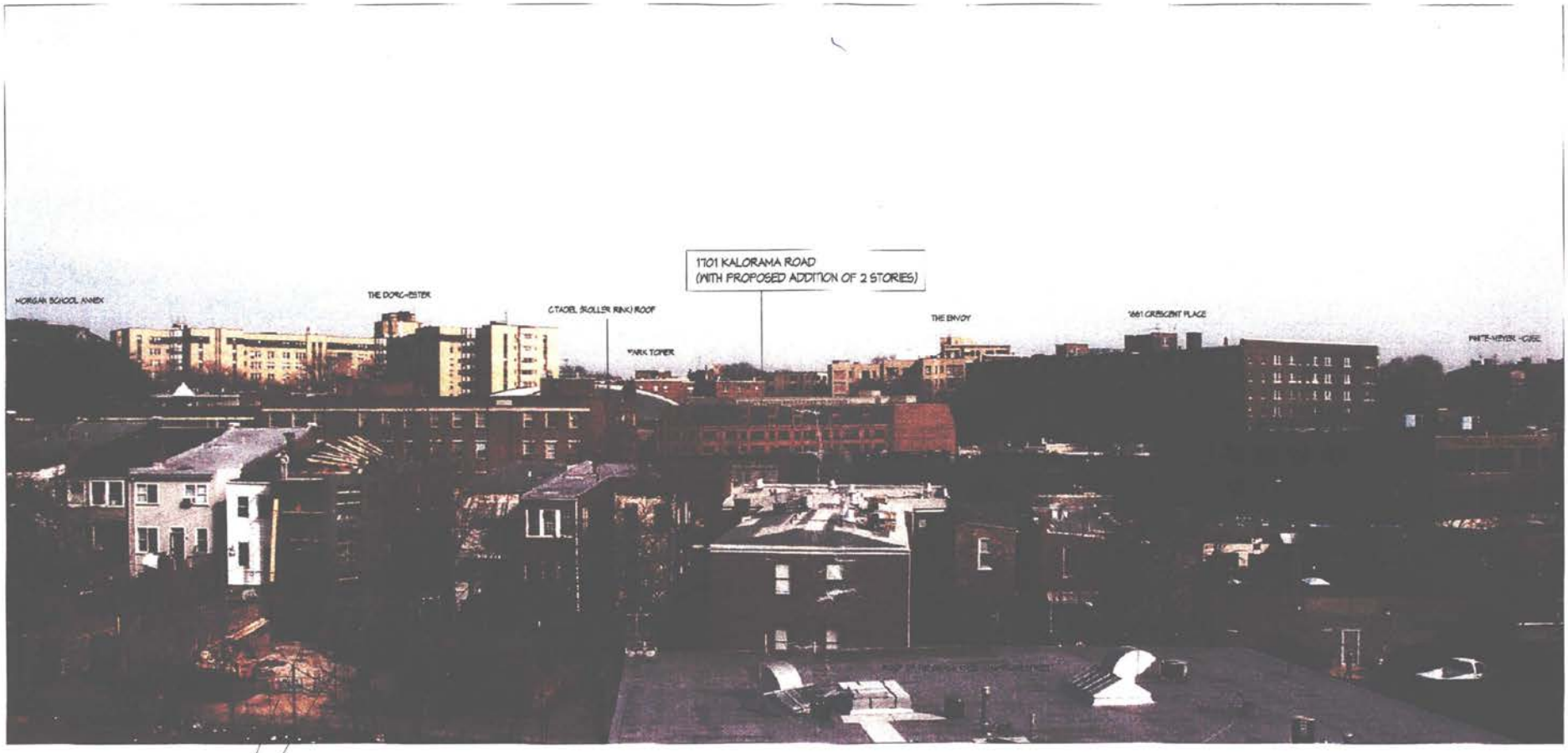
Steve Dibeary, AIA / Eric Colbert & Assoc. Architects

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



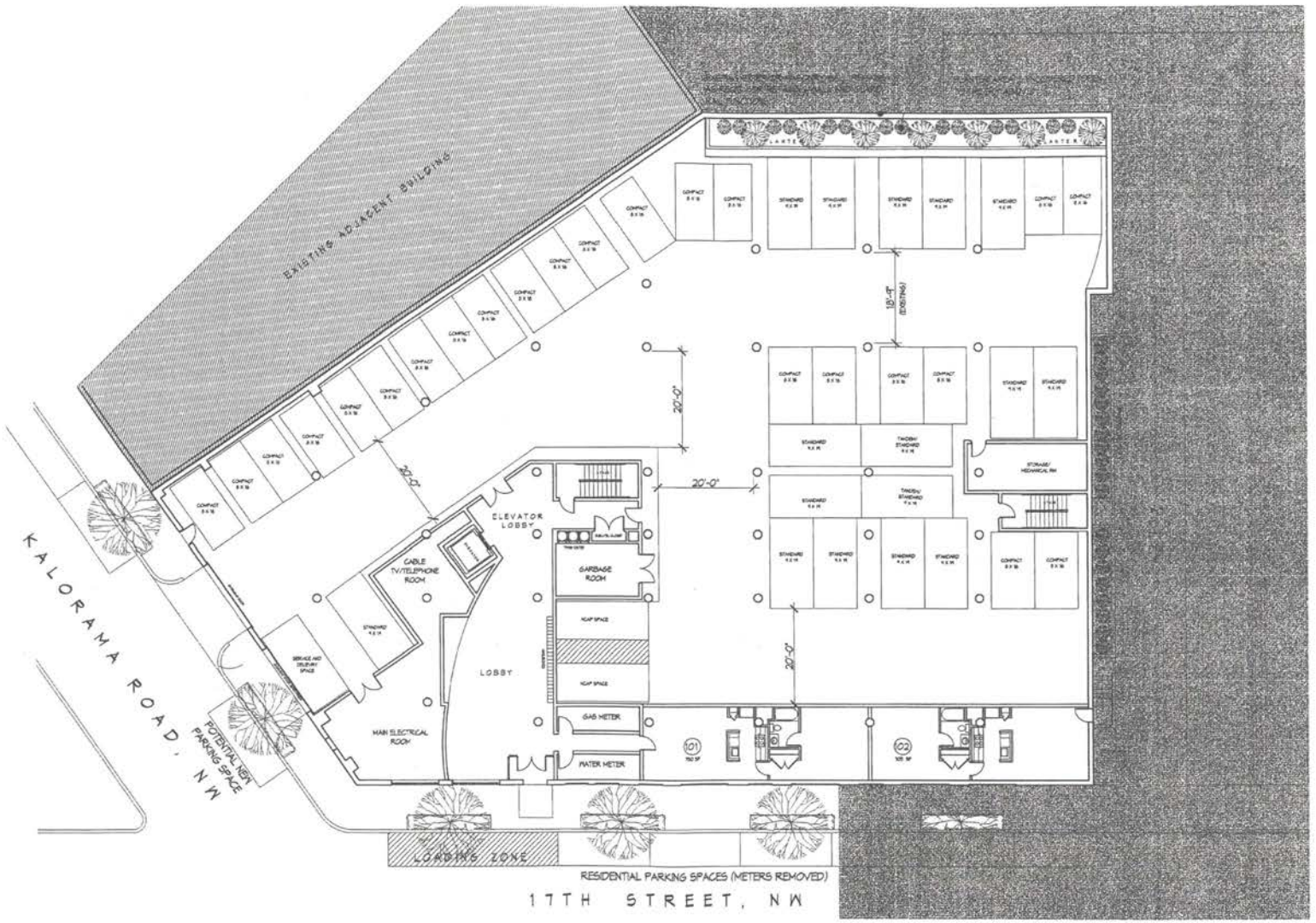




ARCHITECT: ERIC COLBERT & ASSOCIATES

CLIENT: DOUGLAS DEVELOPMENT

PROJECT: 1701 KALORAMA ROAD, NW



1 / A-1 1ST FLOOR PLAN (PARKING LEVEL)
SCALE: 1" = 10'

1ST FLOOR PLAN

N

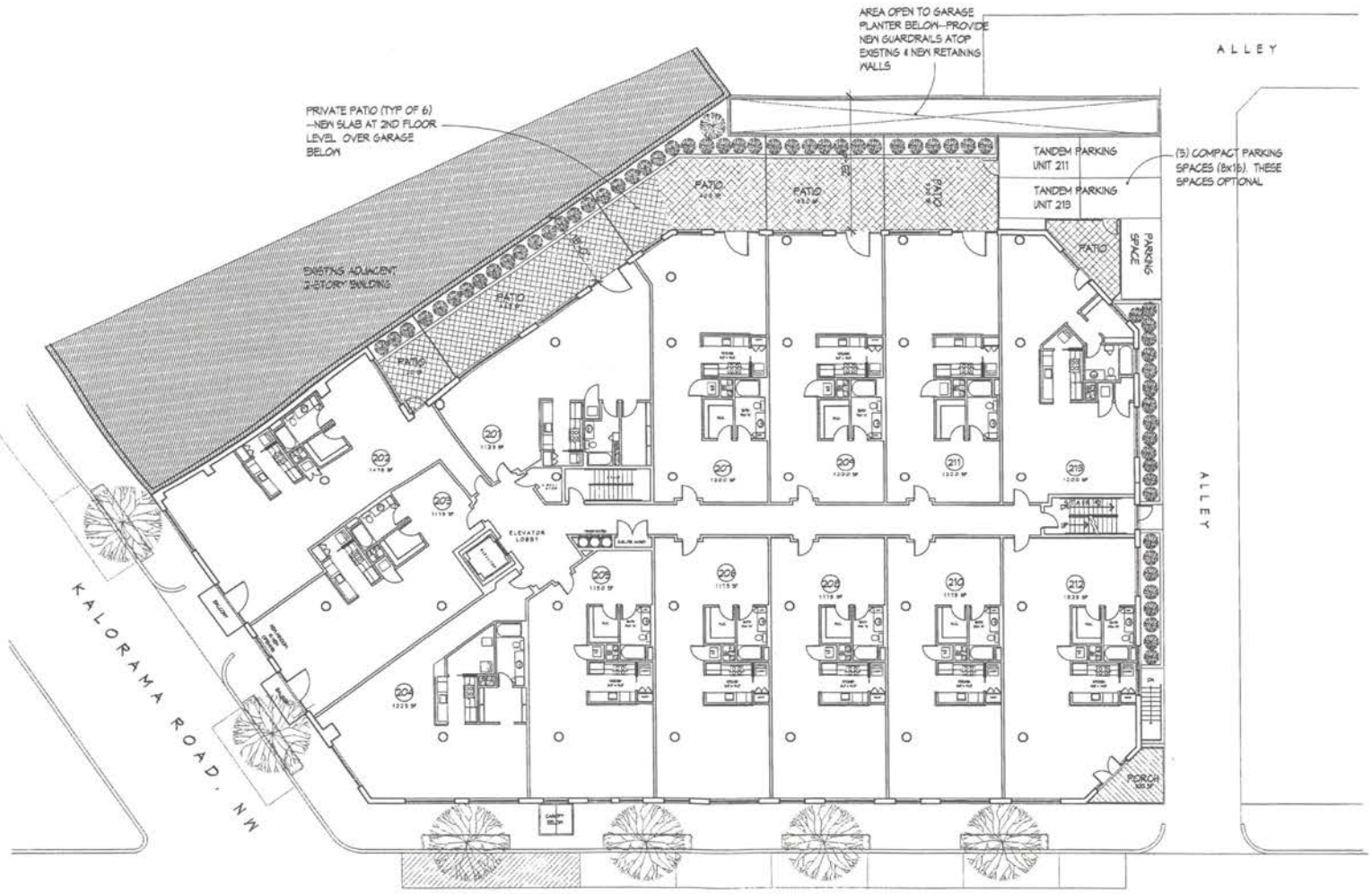
ARCHITECT: ERIC COLBERT & ASSOCIATES
717 5TH STREET, N.W. WASHINGTON, D.C. 20001

CLIENT: DOUGLAS DEVELOPMENT
702 H STREET, NW SUITE 400 WASHINGTON, DC 20001

PROJECT: 1701 KALORAMA ROAD, NW
WASHINGTON, D.C.

8.13.02
11.14.02
11.22.02

A-1



1 / A-2 2ND FLOOR PLAN
SCALE: 1" = 10'

2ND FLOOR PLAN

N

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WASHINGTON, D.C.

8.12.02
11.14.02
11.22.02

A-2



1 / A-4 3RD FLOOR PLAN
SCALE: 1/8" = 1'-0"

3RD FLOOR PLAN N

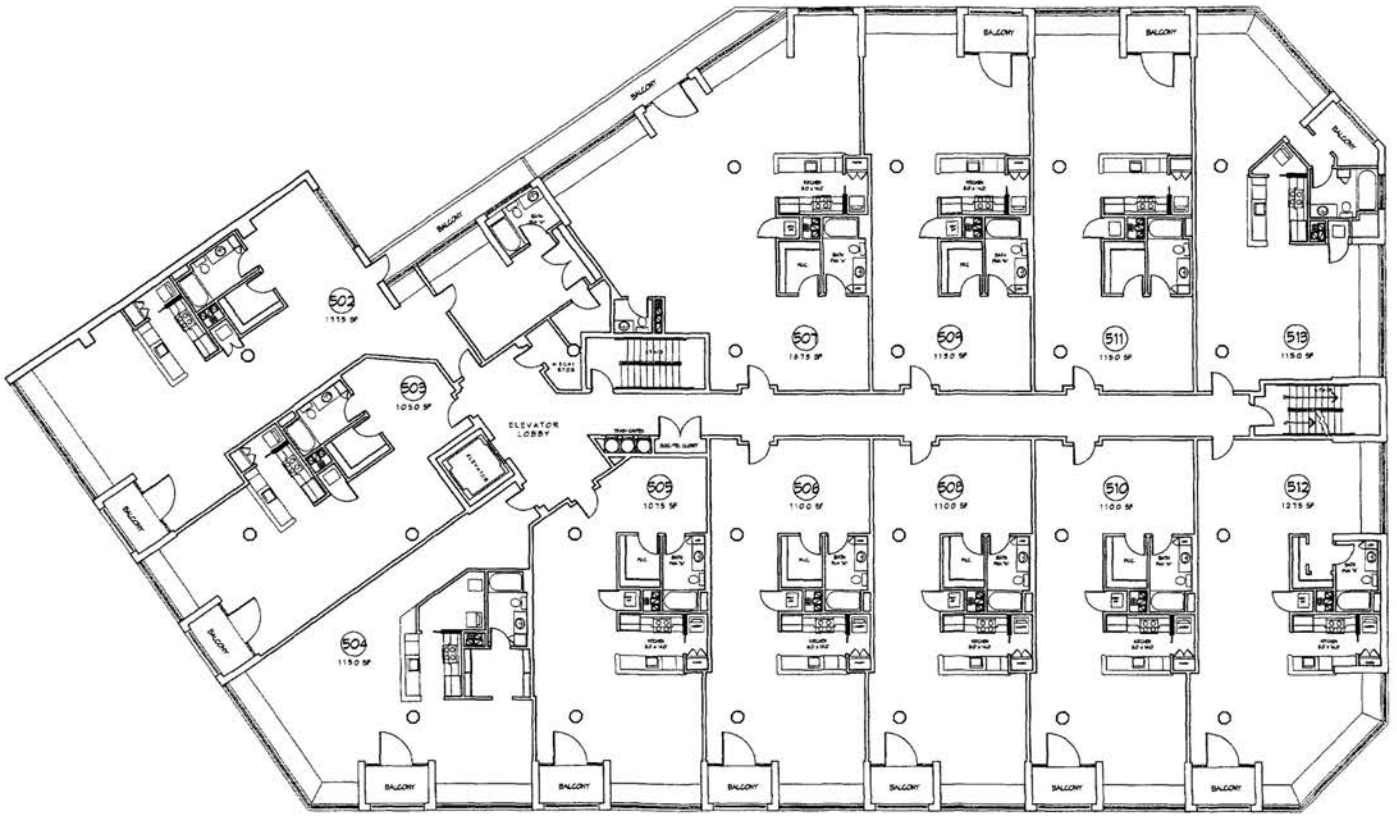
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WASHINGTON, D.C.

8.19.02
11.14.02
11.22.02

A-4



1 / A-5 4TH FLOOR PLAN
SCALE: 1/8" = 1'-0"

4TH FLOOR PLAN

N

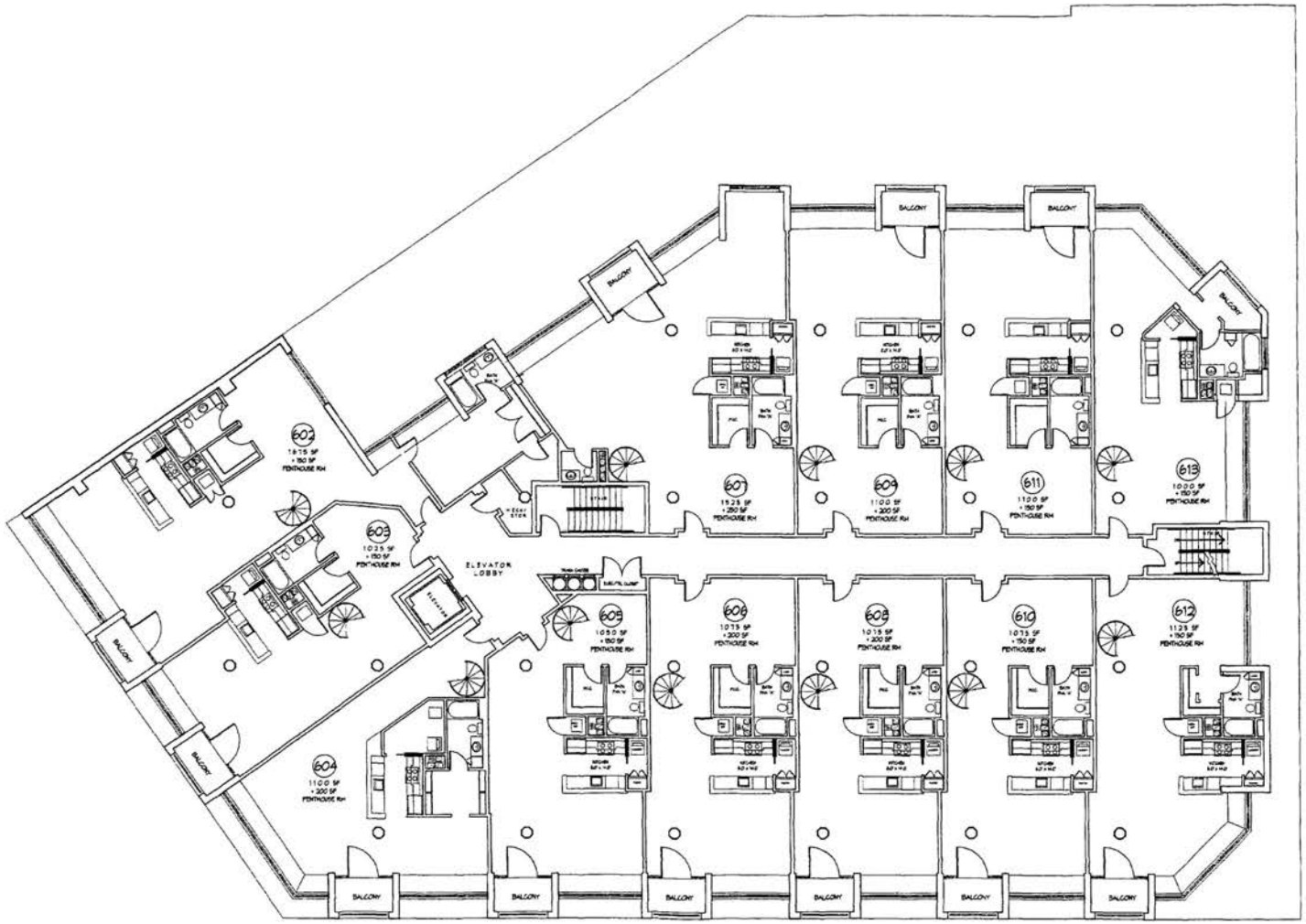
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CLIENT: DOUGLAS DEVELOPMENT
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PROJECT: 1701 KALORAMA ROAD, NW
WASHINGTON, D.C.

6.12.02
10.14.02
11.25.02

A-5



1 / A-6 5TH FLOOR PLAN
SCALE: 1/8" = 1'-0"

5TH FLOOR PLAN N

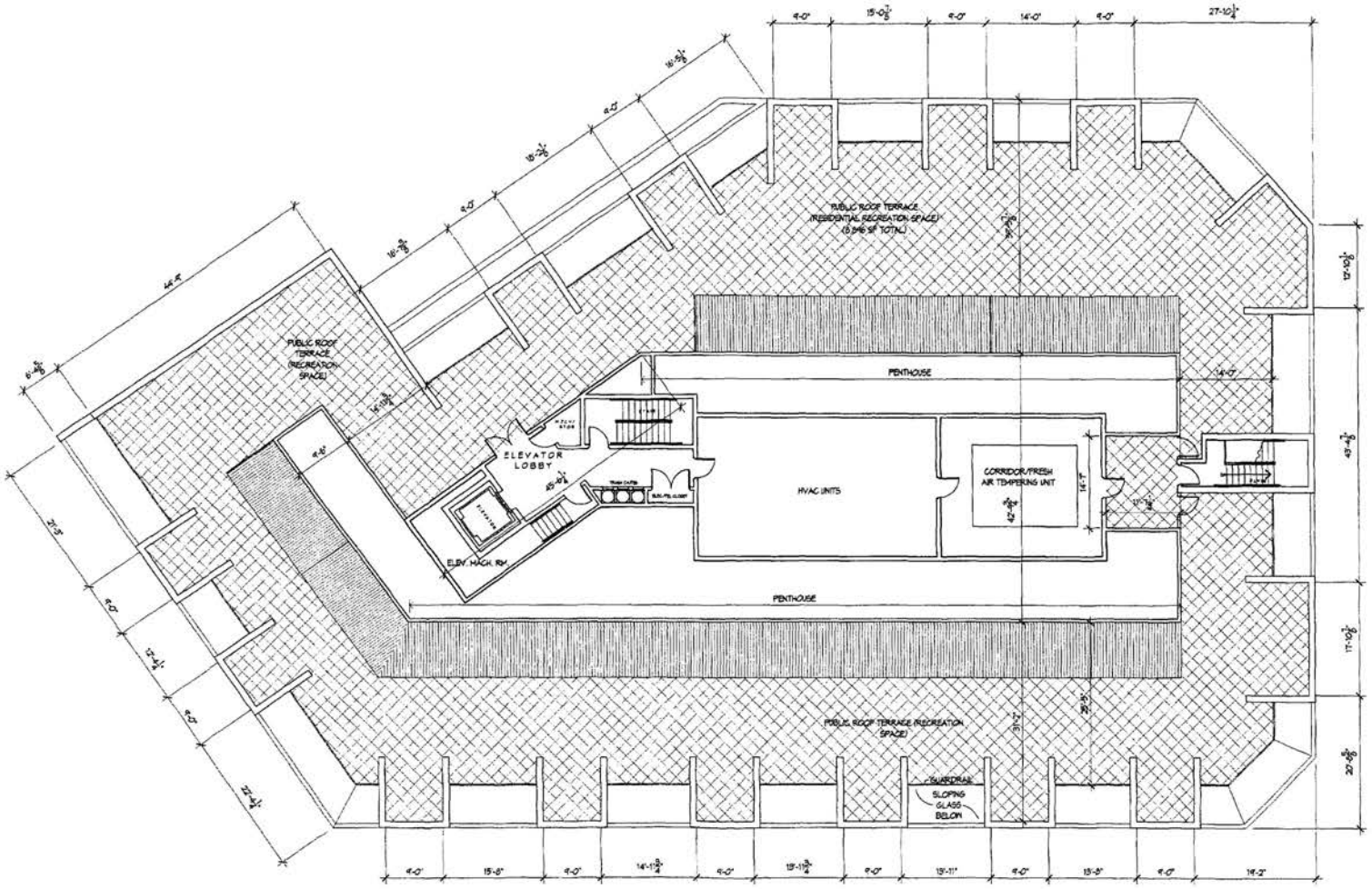
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WASHINGTON, D.C.

8.13.02
11.14.02
11.22.02

A-6



1 / A-7 ROOF PLAN/PENTHOUSE STRUCTURES PLAN

SCALE: 1/8" = 1'-0"

N

ARCHITECT: ERIC COLBERT & ASSOCIATES	CLIENT: DOUGLAS DEVELOPMENT	PROJECT: 1701 KALORAMA ROAD, NW	8.13.02 11.14.02 11.22.02	A-7
717 5TH STREET, N.W. WASHINGTON, D.C. 20001	702 H STREET, NW SUITE 400 WASHINGTON, DC 20001	WASHINGTON, D.C.		



1 / A-8 KALORAMA ROAD (SOUTH-SOUTHEAST) ELEVATION
SCALE: 1/8" = 1'-0"

ELEVATION

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PROJECT: 1701 KALORAMA ROAD, NW
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A-8



1 / A-9 17th STREET (EAST) ELEVATION
SCALE: 1/8" = 1'-0"

ELEVATION

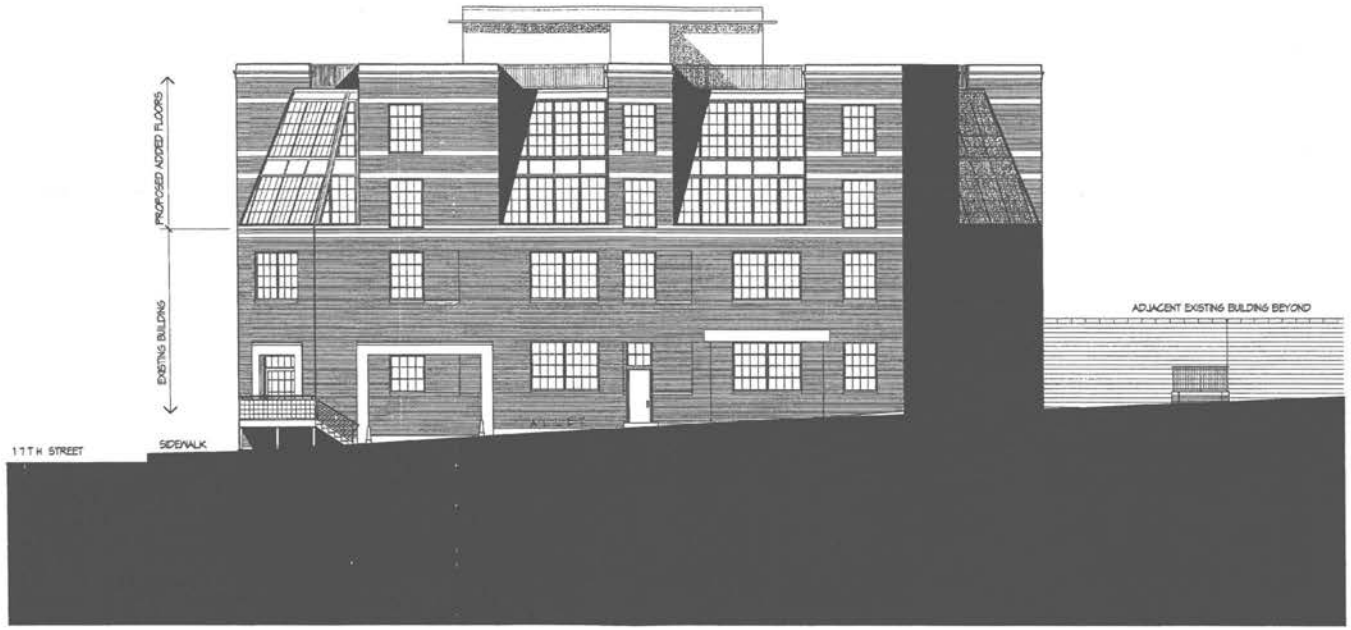
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CLIENT: DOUGLAS DEVELOPMENT
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PROJECT: 1701 KALORAMA ROAD, NW
WASHINGTON, D.C.

8.12.02
11.14.02
11.20.02

A-9



1 / A-10 ALLEY (NORTH) ELEVATION
SCALE: 1/8" = 1'-0"

ELEVATION

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A-10



1/A-11 WEST (ALLEY/PROPERTY LINE) ELEVATION
SCALE: 1/8" = 1'-0"

ELEVATION

ARCHITECT: ERIC COLBERT & ASSOCIATES
717 5TH STREET, N.W. WASHINGTON, D.C. 20001

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WASHINGTON, D.C.

A-11



1 / A-12 SOUTHWEST (ALLEY/PROPERTY LINE) ELEVATION
SCALE: 1/8" = 1'-0"

ELEVATION

ARCHITECT: ERIC COLBERT & ASSOCIATES
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PROJECT: 1701 KALORAMA ROAD, NW
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A-12



Law Offices
HOLLAND & KNIGHT LLP

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Tokyo

*Representative Office

October 15, 2002

NORMAN M. GLASGOW, JR.
202-419-2460

Internet Address: nglasgow@hklaw.com

VIA HAND DELIVERY
Members of the Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

RECEIVED
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2002 OCT 15 AM 9:53

Re: Board of Zoning Adjustment Case No. 16924
Jemal's Wheel/1701 Kalorama Road, N.W.

Dear Board Members:

This letter is submitted on behalf of the applicant in the above-referenced case as requested by the Board of Zoning Adjustment (the "Board") at its October 8, 2002, public hearing. At that hearing, the Board postponed this case to December 10, 2002. The Board, however, raised a question as to whether relief from the height permitted under the Reed-Cooke Overlay should be requested in the nature of a special exception or a variance. The applicant submits this letter in support of the position that a special exception is the appropriate relief to be requested.

The property at issue is zoned RC/C-2-B and is located in the Reed-Cooke Overlay District. The applicant proposes to construct an apartment house with a height of sixty-five feet. The underlying zone district permits a maximum height of sixty-five feet. 11 DCMR § 770.1. The Overlay, however, reduces the permitted height to a maximum of forty feet in all underlying zones. See 11 DCMR § 1402.1. The same Overlay requirement also provides that, in the RC/C-2-B District, the Board may approve a maximum of fifty feet with appropriate set-backs from the street, plus roof structures, subject to determination by the Board that the project will provide a certain amount of low or moderate income household units. 11 DCMR § 1402.1.

Alternatively, Section 1403.1 of the Zoning Regulations provides as follows: "An exception from the requirements of **this chapter** shall be permitted only if granted by the Board of Zoning Adjustment as a special exception after a public hearing and subject to the following criteria. . ." 11 DCMR § 1403.1 (emphasis added). Chapter 14 is entitled "Reed-Cooke Overlay District." The plain language[1] of the Regulations provides for special exception relief when an applicant seeks an exemption from the requirements of Chapter 14. There is no stated limitation as to what that relief may be, only that it be from a "requirement of this chapter." In the present case, the applicant requests an exemption from the height provision set forth in Section 1402, which is a "requirement of this chapter."

Accordingly, the applicant has requested a special exception under Section 1403 from the height requirements set forth in the Overlay District. No variance is necessary. First, the proposed height is that permitted by the underlying zone district (C-2-B). Second, the applicant is not proceeding under the exception provision set forth in Section 1402.1 and, therefore, is not required to seek a variance from that provision to request a height in excess of fifty feet. When more than one method of relief is possible, an applicant has the right to choose under which to proceed. In this case, the applicant has chosen to proceed with a special exception as permitted under Section 1403.

In Board of Zoning Adjustment Case No. 16914, the Board recently addressed a similar issue. In that case, the applicant requested a variance from the maximum permitted height of roof structure under the Uptown Arts-Mixed Use Overlay District. Both the Office of Planning, the Board and the applicant agreed that the relief requested should be a special exception under Section 1906, a provision which is almost identical to Section 1403. The present case is no different.

Furthermore, there are numerous examples of the Board permitting the applicant to chose the relief under which it wishes to proceed. For instance, with respect to an addition to a one-family dwelling, an applicant may choose to proceed with a special exception under Section 223 or with a variance from the individual section of Chapter 4 with which the addition does not comply.

---

[1] When construing the Regulations, the rules of statutory construction dictate that one look to the plain language of the statute. When the language is unambiguous and does not produce an absurd result, the Board should not look past its plain meaning. *See Citizens Association of Georgetown v. D.C. Board of Zoning Adjustment*, 642 A.2d 125, 128 (D.C.App. 1994).

Similarly, the Zoning Regulations provide several means by which to obtain approval for location of parking spaces on a site. An applicant may seek a special exception under Section 213 for a parking lot, a special exception under Section 214 for accessory parking spaces or a special exception under Section 2116.5 for location of parking spaces. In these cases, the Board allows the applicant to proceed in a manner most appropriate and best-suited for its case.

Likewise, in this case, nothing in Section 1402 requires the applicant to request a variance from that section and nothing in Section 1403 precludes the applicant from requesting a special exception under that section. Thus, the applicant has the right to choose under which section it proceeds.

Finally, in the recent order for Board of Zoning Adjustment Case No. 16869 and effective September 23, 2002, the Board stated at page 3: "An applicant may apply for a special exception to exceed the requirements of the Reed-Cooke overlay only up to the matter of right limits." A copy of that order is attached hereto as Exhibit A. In the present case, the applicant is doing exactly that: requesting a special exception to exceed the height permitted under the Overlay up to the maximum height permitted as a matter of right, which is sixty-five feet in the C-2-B District.

We therefore believe that the Board should appropriately consider this application as a request for special exception relief. Should you have any questions or need additional information, please do not hesitate to let us know.

Sincerely,

Norman M. Glasgow, Jr.

Christine Moseley Shiker

cc: Maxine Brown Roberts, Office of Planning (Via Hand Delivery)
Alan Bergstein, Office of Corporation Counsel (Via Hand Delivery)

bcc: Norman Jemal, Douglas Development (Via Facsimile)
Paul Millstein, Douglas Development (Via Facsimile)
Steven E. Sher, Director of Zoning and Land Use Services

WAS1 #1126509 v2

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 16869 of King's Creek, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 402, a variance from the lot occupancy requirements under section 403, a variance from the non-conforming structure provisions under subsection 2001.3, and a variance to exceed the height requirements under section 400 to construct an addition to an existing building for a mixed use (residential and retail) development in an R-5-B District at premises 2329 Champlain Street, N.W. (Square 2563, Lot 103).

Hearing Date: April 30, 2002
Decision Dates: June 4, 2002, August 6, 2002

DECISION AND ORDER

Kings Creek, LLC, the owner of Lot 803 in Square 2563, filed a self-certified application with the Board of Zoning Adjustment on March 5, 2001, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 402, a variance from the lot occupancy requirements under section 403, a variance from the non-conforming structure provisions under subsection 2001.3, and a special exception pursuant to section 1403.1, to construct an addition to an existing building for a mixed use (residential and retail) development at premises 2329 Champlain Street, N.W. (Square 2563, Lot 103). On June 4, 2002, after a public hearing, the Board granted the application by a vote of 4-1. For the reasons stated below, the Board determined that a height variance, and not a special exception, was required. Therefore, on August 6, 2002, at its regularly scheduled public meeting, the Commission voted 4-0 to reopen the record and to reconsider its decision to grant the height relief requested. At that meeting, the Board granted the application for a height variance by a vote of 4-0-1, with one member not present, not voting.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 7, 2001, the Office of Zoning advised the Zoning Administrator; D.C. Office of Planning; Advisory Neighborhood Commission (ANC) 1C, the ANC for the area within which the property that is the subject of the application is located; the ANC Commissioner for the affected single-member district; and the Ward 1 Councilmember, of the application.

The Board scheduled a public hearing on the application for April 30, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on March 12, 2002, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 1C notice of the hearing.

The applicant submitted an affidavit of posting, indicating that 3 zoning posters were posted on the site, on March 12, 2002.

Applicant's Case. Representing the applicant at the hearing was the law firm of Griffin, Farmer & Murphy, LLP. At the hearing for this case, the applicant presented testimony from expert witnesses and exhibits depicting the details of the proposed project.

Public Agency Reports and Memoranda. The Office of Planning ("OP") submitted a report dated April 23, 2002, that expressed concerns about the height of the applicant's project but supported the project in all other respects. On April 26, 2002, OP submitted a supplemental report stating its support of the height for the proposed project. OP based its support on the design features of the project, including the setbacks, and the fact that setbacks, and the corresponding height increase, is necessary to mitigate the adverse effect on air and light for the surrounding properties that building on that lot would otherwise have.

ANC Report. In its report received May 2, 2002, ANC 1C indicates that on April 16, 2002, at a scheduled and duly-noticed public hearing with a quorum present, ANC 1C unanimously supported the application. The ANC stated that the project was a welcome addition to the neighborhood. The ANC further noted the Applicant's efforts to solicit neighborhood comment on the project. The ANC supported the effort to provide additional light, air and outdoor space in the neighborhood.

Request for party status. There were no requests for party status

Persons in Support of the Application. Councilmember Jim Graham, in a letter dated March 8, 2002, urged this Board to approve this application, noting that the application met the expressed goals of the Reed-Cooke Overlay. The Councilmember also stated that the project would enhance the ambiance and reduce heat effects in his recommendation for approval. He noted that the Applicant had incorporated his suggestion for setbacks to avoid the creation of a "canyon" effect on Champlain Street.

Persons in Opposition to the Application. There were no persons in opposition to the application.

Darnell Bradford El, Chairman of the Reed-Cooke Neighborhood Association testified hat he did not have a position on the application but that he was concerned with the "process". He requested that the matter be continued to allow further review by community residents. Under cross examination, Mr. Bradford El stated that he had not attended any of the previously held meetings between the community and the Applicant. In response, this Board left the record open for the Reed-Cooke Neighborhood Association to provide comments. However no additional comments were received.

Closing of the Record. The record closed at the conclusion of the public hearing on April 30, 2002, but was left open for the Applicant to provide a memorandum on whether the height relief requested was a special exception or a variance under the Zoning Regulations. This memorandum was submitted and received in timely manner.

Decision Meetings. At its decision meetings on June 4, the Board voted 4-1-0 to grant the application.

After June 4th decision, the Board determined that a variance, and not a special exception, was required for approval of the project's height. The applicant stated that the subject property was within the Reed-Cooke overlay, and therefore the applicant was applying for a special exception under § 1403.1 to exceed the height requirements. However, the subject property is not in the Reed-Cooke overlay by virtue of § 1400.1, which provides that portions of the listed squares "that are zoned non-residentially as of January 1, 1989" are included in the overlay. While the applicant's square, 2563, is included in the list provided for in the regulation, the square was zoned residentially on the January 1, 1989, date. Therefore, the applicant's square is not included in the overlay.

In addition, even if the applicant's property was within the overlay, a special exception for the height requested is not provided for in the regulations. The applicant requesting a special exception to exceed the 40-foot height requirement of the Reed-Cooke overlay for a 69-foot high structure, well in excess of the 50-foot matter of right height in an R-5-B district. An applicant may apply for a special exception to exceed the requirements of the Reed-Cooke overlay only up to the matter of right limits. To allow otherwise would allow the overlay to create a less stringent height requirement by offering a special exception where a variance was otherwise required, which was plainly not the Zoning Commission's intent when it established the overlay. See 11 DCMR § 1400.4 (when there is a conflict between the overlay and the underlying zone, the more restrictive requirements apply).

At its August 6, 2002, regularly scheduled public meeting, the Board granted the application for a height variance by a vote of 4-0-1.

Findings of Fact

1. The subject property is located in the R-5-B District on the east side of Champlain Street, N.W., north of its intersection with Kalorama Road, N.W.

2. The subject property is a 9,652 square feet lot occupied with a two-story building with a footprint of 9,395 square feet. Lot occupancy is 97.3 percent. The height of the existing structure is 31.5 feet. The total existing building area is 18,401 square feet.

3. The subject site is improved with a stone, steel, concrete and brick structure that was erected as an automobile garage in 1924. The site is currently used as retail, office and storage space, but is vacant on the second floor.

4. The existing building is in need of rehabilitation, as represented by the applicant at the public hearing.

5. The subject site was originally zoned CM. The site was re-zoned by the Zoning Commission to R-5-B in 1987.

6. The R-5-B Zoning District permits developments of moderate height and density. The nearby Reed-Cooke Overlay District is designed to protect existing housing, provide for new residential development, and encourage small-scale business development that does not adversely affect the residential uses.

7. The surrounding area has a wide variety of buildings including auto repair shops, electroplating facilities, open parking lots, two story single family residential buildings and apartment houses, some of which are between five and seven stories. Directly to the west of the subject site is a mixed use development, known as the Lofts of Adams Morgan that contains 57 residential units, 4,000 square feet of retail space and has a height of 56 feet.

8. The Applicant proposes a mixed-use development on the subject site. The existing building on the site will be retained in its entirety and four additional levels with 13 residential apartments will be constructed. The existing retail use on the first floor will be retained while the second floor will be renovated for parking and residential use. The improvements will add 19,539 square feet for a total of 37,940 for the entire structure.

9. The applicant will provide 13 parking spaces for the residential units.

10. The Applicant has agreed, in consultation with representatives of neighborhood interests and ANC 1C, to provide at least one "affordable" residential unit in the project.

11. The Applicant testified that the existing structure, while not a designated landmark, was a unique architectural style that had substantial significance in the neighborhood. It further stated that one of its main goals was to ensure the continued presence of the Brass Knob, an existing tenant, because of its long time and much-desired presence in the neighborhood.

12. As explained by the applicant's architect, the proposed structure represents an attempt to meet the challenges of the site and maximize the residential character of the immediate neighborhood, while minimizing its impact on the surrounding neighborhood.

13. The structure was designed with a series of setbacks that minimized the visual impact of the addition from the street while providing the maximum amount of light and air for both the residential units and the abutting street. The height of the proposed structure compatible with the height of the development immediately across the street to the west.

14. The Applicant will provide additional outdoor space for each unit in a manner that adds to the neighborhood aesthetic.

15. The architectural design of the units and overall project is innovative and of significant merit.

16. The Office of Planning noted the requests for relief would not cause any "substantial detriment to the public good" and would not substantially impair the intent, purpose or integrity of the zone plan embodied in the Zoning Regulations or Map "because the proposal fulfilled the intent of increasing residential use and the height was mitigated by the setbacks that allowed light to the street and the units themselves." In its testimony, the Office of Planning noted that the Applicant had met with community representatives and organizations and received their approval and agreed with their various proposals.

Variance from §§ 403 and 2001.3

17. Section 403.2 allows a maximum lot occupancy of 60% for developments in the R-5-B district.

18. The existing building has a lot occupancy of 97.2% and is therefore nonconforming as to lot occupancy.

19. The addition will increase the lot occupancy, due to a proposed overhang included in the structure, to 99%.

20. Section 2100.3(a),(b) & (c) together provide that an addition to a nonconforming structure may be made, provided the structure is conforming as to lot occupancy, the addition conforms to structure requirements, and the addition does not increase the nonconforming aspect of the structure.

21. The addition, to a nonconforming structure, will not conform to lot occupancy requirements, other structure requirements, will increase an existing nonconformity, and create a new nonconformity, and therefore a variance from §§ 403 and 2100.3(a), (b) & (c) is required.

Variance from §§ 402 and 2001.3(c)

22. The maximum allowable FAR in a R-5-B district is 1.8, pursuant to § 402.

23. The existing building has a FAR of 1.9 and is therefore nonconforming with respect to FAR.

24. The applicant proposed an additional 2.0 FAR, for a total of 3.9 FAR.

25. Section 2100.3(c) provides that the "addition or enlargement itself shall not increase or extend any existing, nonconforming aspect of the structure. . .".

26. The addition will increase the FAR of the overall structure and therefore variances from §§ 402 and 2100.3(c) are required.

Variance from § 400.1 height requirements

27. The height limit for buildings in an R-5-B is 50 feet (11 DCMR § 400.1)

27. The proposed structure will be 69.6 feet in height and therefore a variance from § 400.1 is required.

Conclusions of Law

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(3) (2001)), to grant variances from the strict application of the Zoning Regulations. The applicant is seeking variances from §§ 400.1, 402, 403, and 2100.3 for an increase in FAR, lot occupancy, height, and to construct an addition to a nonconforming structure. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

The Board is authorized to grant variances where "by reason of exceptional narrowness, shallowness, or shape of a specific property. . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or conditions" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property. . ." D.C. Code § 6-641.07(g)(3), 11 DCMR § 3103.2. Where an applicant seeks an area variance, as here, the above standard of "practical difficulties" applies, with the "undue hardship" standard applying only to use variances. Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (D.C. App. 1972).

Additionally, variance relief can be granted only "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". Id.

In reviewing a proposed variance, the Board is required under D.C. Official Code § 6-623.04 to give "great weight" to OP recommendations. The Board is also required under D.C. Official Code § 1-309.10(d) to give "great weight" to the affected ANC's recommendations. Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10(d)(3)(a) (2001)), the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

The applicant's property is exceptional in two respects, both of which give rise to practical difficulties. First, as noted by the ANC 1C and the Office of Planning, the site is currently occupied by a historic structure. The applicant and community stress the importance of preserving this structure because of its aesthetic appeal and because it adds to the architectural variety of the area. However, the structure is underutilized, being vacant on its second floor. Any addition to the structure, because of its existing nonconformity as to lot occupancy, would require a variance from § 2100.3 of the Zoning Regulations. Any reconstruction on the site as a matter of right would therefore require demolition of the existing structure in whole or in part. Demolition of the structure

would be a loss to the community at large because of the structure's value to that community.

The site it is also unique because it is surrounded by structures that have created a canyon effect. This canyon effect has served to deprive the street and the subject property of light and air and therefore creates a practical difficulty. To overcome this difficulty, the applicant proposes to extend the building upwards, taking advantage of the slope of the site, to provide more light and air to the units. Also, in order to avoid contributing to this canyon effect, the applicant is adding significant setbacks to the third and fourth, fifth, and sixth stories. The setbacks increase in size with the vertical rise of the building. Strict application of the zoning regulations would therefore result in an adverse impact to this neighborhood. Therefore, granting to permit the applicant to exceed allowable FAR and height limits is appropriate.

The Board therefore finds that these circumstances constitute an "exceptional situation", and that, as a result of these circumstances, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties upon the owner of the property.

As noted by ANC 1C and the Office of Planning, the applicant's proposed project will not be detrimental to the public good. One parking space is provided for each new housing unit created by this project, minimizing any impact on parking in the area that might arise from the increased density. Also, the proposed project will utilize the existing rear entrance to the building as its primary means of parking access. Thus, there will be no interference with pedestrian traffic. The height and density of the proposed project is, due to topography and existing structures, compatible with the heights and densities of other buildings and developments in the immediate area. Moreover, the applicant's proposal, due to high quality and innovative design, will serve to benefit the greater public, while adding much needed housing stock to the District.

The variances will not be detrimental to the zone plan where the underlying R-5 zone is intended to "permit a flexibility of design", 11 DCMR § 350.1, and contains numerous multi-unit apartment buildings.

For the reasons stated above, the Board concludes the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED.**

Public Meeting of June 4, 2002

VOTE: 4-1-0 (Geoffrey H. Griffis, Curtis Etherly, Anne M. Renshaw, David M. Levy, to approve variances from §§ 402, 403, and 2001.3, Peter G. May to oppose).

Public Meeting of August 6, 2002
VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis Etherly, Anne M. Renshaw, David A Zaidain, to approve a variance from § 400.1, Peter G. May, not present not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: SEP 2 3 2002

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.

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 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). 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. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT. THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITY, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE

ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16869

As Director of the Office of Zoning, I hereby certify and attest that on SEP 2 3 2002 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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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning