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July 8, 2003

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

RECEIVED
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2003 JUL -8 PM 2:56

Re: Board of Zoning Adjustment Case No. 17030
Prehearing Submission

Dear Board Members:

On behalf of the applicant in the above-referenced case, enclosed please find 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

Enclosures

cc: Karen Thomas, Office of Planning (Via Hand Delivery; w/enclosure)

BZA
Case No. 17030
Exhibit No. 20

Board of Zoning Adjustment
District of Columbia
CASE NO. 17030
EXHIBIT NO. 20A1

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF
JBG/JER E STREET, L.L.C.

BZA APPLICATION NO. 17030
HEARING DATE: JULY 22, 2003
ANC 2C

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of JBG/JER E Street, L.L.C. (the "Applicant"), the owner of property located at 913-919 E Street, N.W., including the air rights above the McDonald's at 911 E Street (Square 377, Lots 37, 42, 806, and 7000) (the "Site"), 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 §§ 3103.2 and 3104.1: (i) variance from the dimension requirements for residential recreation space in Section 773.7; and (ii) a special exception from the roof structure requirements of Section 411. The relief is requested in order to permit the construction of a twelve story apartment house with retail/arts-related uses on the ground level.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103, and

3104 of the District of Columbia Municipal Regulations (the "Zoning Regulations"). 11 DCMR §§ 3103 and 3104.

III.
BACKGROUND

A. Description of the Site and Surrounding Area

The Site is located on the north side of E Street, between 9th and 10th Streets, N.W., and consists of Lots 37, 42, 806, and 7000 in Square 377. Square 377 is bounded by F Street to the north, 9th Street to the east, E Street to the south and 10th Street to the west. The Site is currently improved with four, vacant retail buildings ranging from one to three stories and the air rights over the existing McDonald's facility at 911 E Street. The McDonald's facility (Lot 854) which will be part of the project but is not included as part of this application. The Site is zoned DD/C-4.

B. Project Description

The Applicant proposes to construct an apartment house with approximately 160 units with arts-related and retail uses on the ground floor (the "Project"). The Project will have a maximum height of 110 feet, with approximately 177,182 square feet of gross floor area. The Project includes approximately 8,422 square feet of residential recreation space (an amount equal to more than five percent of the area devoted to residential gross floor area), which includes a party room, fitness center, outdoor courtyard and roof deck. The Project provides seventy-eight parking spaces in three below-grade levels. The Project was reviewed and approved by the Mayor's Agent for Historic Preservation in H.P.A. #00-332, -333, -334. A copy of that decision is attached hereto as Exhibit E.

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 is unique because of its size, shape or topography or other extraordinary or exceptional situation or condition;

(2) the owner would encounter 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 variance requested for the Project meets all three prongs of this test.

B. Variance Relief from Dimension Requirement of the Residential Recreation Space Requirements

Section 773.7 of the Zoning Regulations requires that if any portion of a roof structure is to be used for residential recreation space, the roof structure shall have no dimension less than twenty-five feet. The Project includes a roof deck with approximately 5,460 square feet; however, the roof deck has multiple locations in which the minimum dimension is not twenty-five feet. Therefore, a variance is requested.

The roof deck sits in the southern portion of the roof, following the edges of the internal courtyard and the setback historic facades. The size of the roof deck is dictated by the shape of the internal courtyard and historic façades as well as the required placement of the primary roof structure and the two stair enclosures, thus creating an exceptional condition.

A strict application of the Zoning Regulations would impose a peculiar and exceptional practical difficulty based on this exceptional condition. Specifically, because the roof itself is not more than twenty-five feet in various locations as a result of the building's shape, the roof deck cannot achieve the twenty-five foot dimension. Moreover, the placement of the roof structures, including the primary penthouse and boiler, is dictated by the internal layout of the building and therefore creates a situation in which the twenty-five foot dimension requirement cannot be met.

The variance from the dimensional requirement for residential recreation space can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Project incorporates residential recreation space in compliance with the Zoning Regulations, and the roof deck constitutes meaningful recreation space, despite the reduced dimensions. Furthermore, the Project as a whole will have a positive impact on the area, as it involves the historic preservation of three contributing structures which are currently vacant and provides additional residential uses in an area targeted for residential development.

V.
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 setback and one enclosure requirements relating to roof structures set forth in Sections 411 and 770.6(b) of the Zoning Regulations. Thus, the Applicant requests special exception relief to deviate from the strict compliance of those requirements 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 Sections 411.2 and 770.6(b) to Deviate from Roof Structure Setback Requirement

The Applicant requests relief from Sections 411.2 and 770.6(b) 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 DD/C-4 District requires a roof structure to be set back from the building's walls a distance at least equal to the roof structure's height. 11 DCMR §770.6(b).

The proposed roof structures do not comply with this requirement due to the configuration of the building. In order to preserve the historic facades, create a courtyard for the required residential recreation space and create a workable interior layout, the primary penthouse must be located toward the northwest corner of the roof. As a result, the penthouse is flush with the western edge of the building and set back only fifteen feet from the edge of the roof adjacent to the internal courtyard. The primary penthouse is set back a sufficient distance from both the north, east, and south edges of the roof.

The stair enclosures, each with a height of ten feet, also cannot comply with the setback requirements. The western stair is set back four feet from the west edge of the roof while the eastern stair is set back approximately five and one-half feet from the east edge of the roof. These stair enclosures are required in order to provide

two means of ingress and egress from the roof deck while at the same time conforming with the interior layout of the structure, including the central courtyard.

The proposed roof structures do 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. Specifically, the roof structure complies with the setback requirement on all street faces and the provided setbacks ensure adequate light and air to adjacent properties. 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.

D. Relief from Section 411.3 to Deviate from Roof Structure Enclosure Requirement

Section 411.3 requires that all penthouses and mechanical equipment be placed in one enclosure. The Project includes three penthouse enclosures, including the primary penthouse, containing the elevator override equipment, and the two stair enclosures. A single enclosure cannot be provided because it would eliminate the majority of the roof terrace and create a significant mass, which is not in keeping with the intent of Section 411. Furthermore, multiple enclosures are required in order to provide two means of ingress and egress as required by the Building Code for the roof deck.

This special exception relief, however, will not cause any adverse impact. The multiple roof structures and the location of the same will not adversely impact the

light and air of adjacent buildings. Furthermore, the placement of the penthouse enclosures on the roof minimizes the visibility and reduces the overall mass of the roof structures. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings shall not be adversely affected.

VI.
COMMUNITY SUPPORT

The Applicant has worked with the community and obtained support for the Project. Specifically, Advisory Neighborhood Commission ("ANC") 2C, the ANC in which the Project is located, voted to support the Project at its regularly scheduled meeting on June 4, 2003, by a vote of 4 to 0. A copy of the ANC 2C letter is attached hereto as Exhibit F.

VII.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A:	Portion of the Sanborn Atlas 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;
Exhibit E:	Decision and Order from Mayor's Agent for Historic Preservation in H.P.A. #00-332, -333, -334;
Exhibit F:	Letter of Support from Advisory Neighborhood Commission 2C;
Exhibit G:	Revised Zoning Self Certification Form;
Exhibit H:	Outline of Testimony of Representative of JBG/JER E Street, L.L.C.;

Exhibit I: Outline of Testimony of Representative of WDG Architects; and

Exhibit J: Outline of Testimony of Steven E. Sher, Land Planner.

VIII.
WITNESSES

A. Representative of JBG/JER E Street, L.L.C.

B. Representative of WDG Architects.

D. Steven E. Sher, Land Planner.

IX.
CONCLUSION

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

Respectfully submitted,

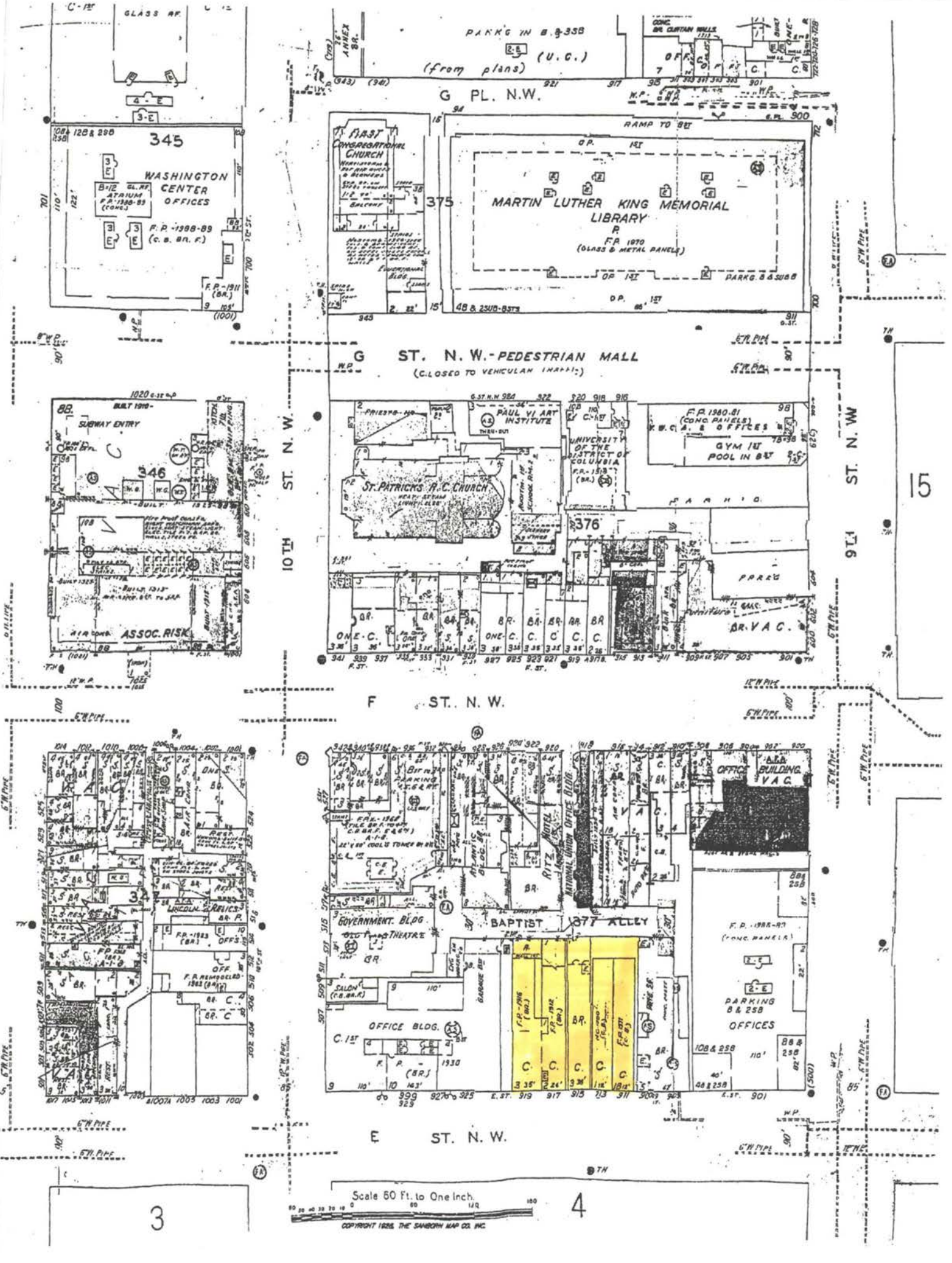
HOLLAND & KNIGHT, LLP

By: _____
Whayne S. Quin, Esq.

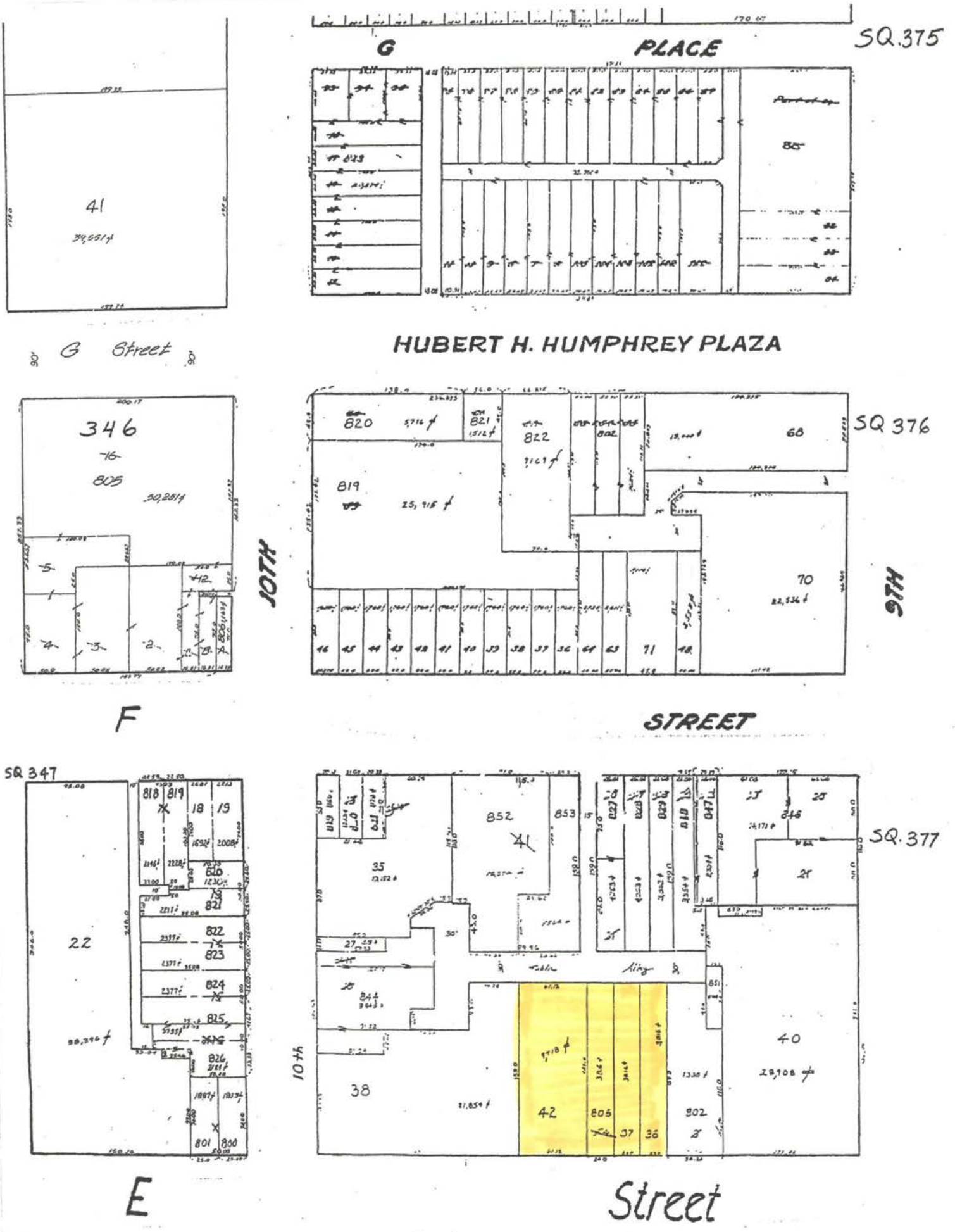
By: _____
Christine Moseley Shiker, Esq.

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

A



COPYRIGHT 1986, THE SANBORN MAP CO. INC.


SQ. 375
G PLACE
41
39,551 ft
90' G Street 90'
HUBERT H. HUMPHREY PLAZA
SQ 376
346
16
805
30,281 ft
10TH
9TH
F STREET
SQ 347
SQ. 377
22
38
42
805
10th
E Street



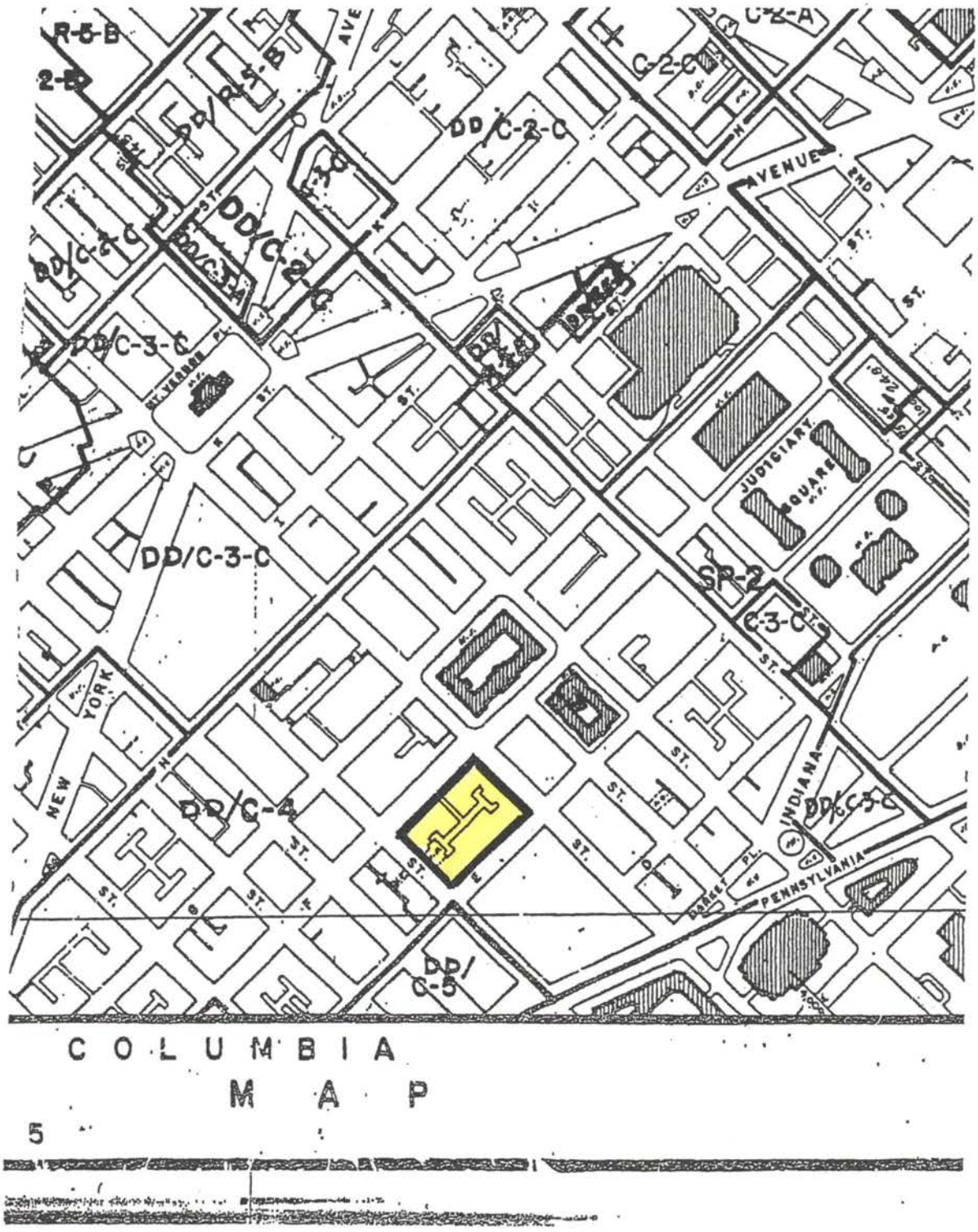

R-5-B
DD/C-2-C
DD/C-3-C
DD/C-4
SP-2
C-3-C
DD/C-5
JUDICIARY SQUARE
NEW YORK AVENUE
INDIANA
PENNSYLVANIA
COLUMBIA
M A P
5

Exhibit C

C

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., March 20, 2003

Plat for Building Permit of SQUARE 377 LOTS 37, 42, 806

Scale: 1 inch = 30 feet Recorded on Microfilm

Receipt No. 03522

Furnished to: HOLLAND & KNIGHT

Surveyor, D.C.

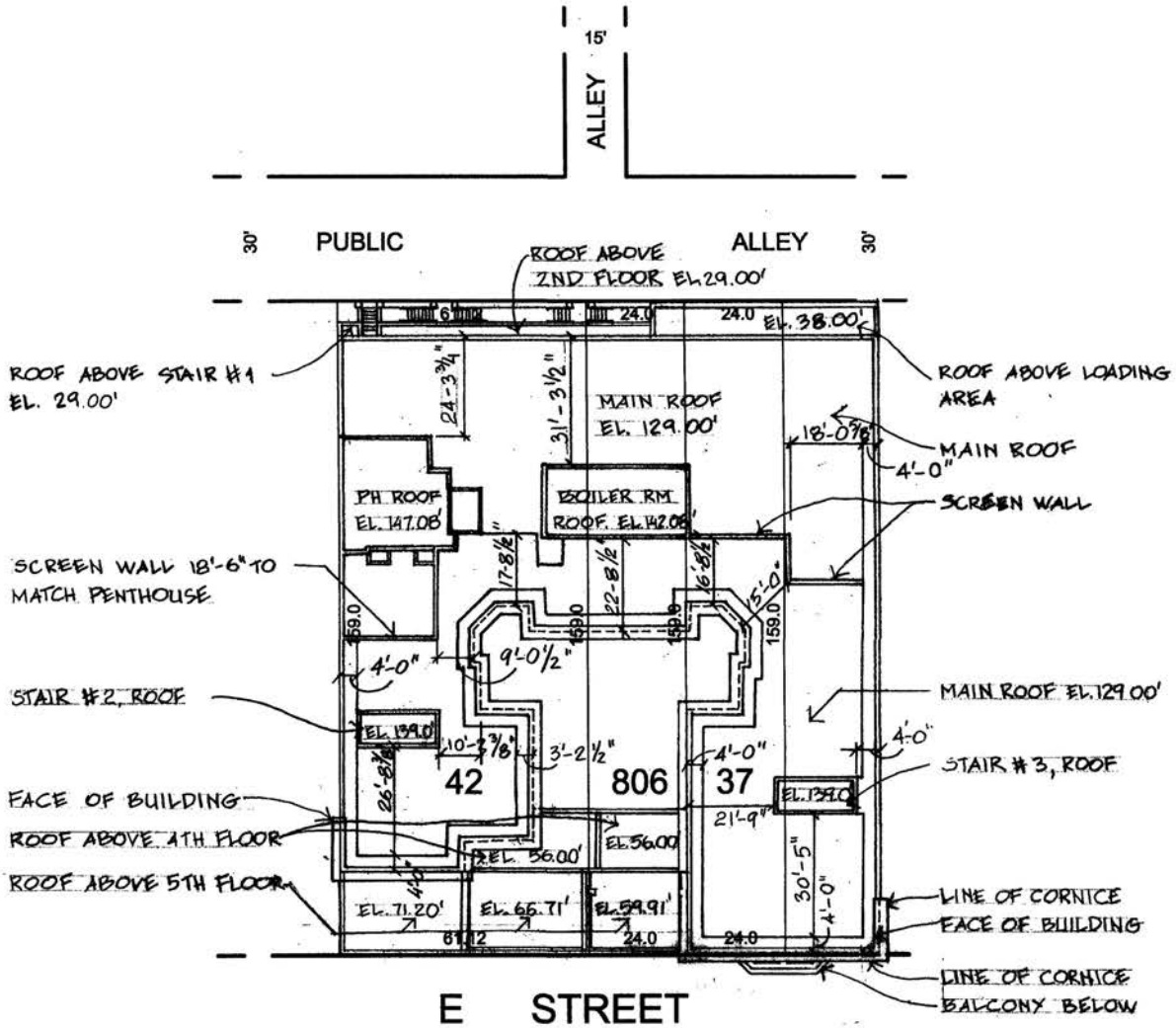
By: L.E.S.

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: 4/29/03

(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.



SO-03522(2003)



915 E STREET

E Street
Washington DC

Project Data

Requirements

Lots 31, 42, 806, 804 + 16000- Square 377
Site Area: 7035 sf
Zone: DD/C-4
Allowable FAR: No limitation for residential uses

Max. Building Height: 90'-0"
Measuring Point: 15'5"
Parking (1 space per 4 apartment units) + 40 spaces
Allowable Lot Coverage: 100%
No. of Fully Accessible Units: 5th (24 units)

Loading
1 at 12'-0"W X 30'-0"L Loading Birth
1 at 10'-0"W X 30'-0"L Service Birth
1 200 SF LOADING PLATFORM

Recreation Space
.25 x 16,207.5 sf = 4,051 sf
(5th of Gross Floor Area dedicated to residential use. No less than 50% of the local recreation space shall be outdoors)

PARKING REQUIREMENTS

PARKING SPACES	WIDTH	DEPTH	CLEAR HEIGHT	REMARKS
STANDARD SPACES	7'-0"	18'-0"	8'-6"	-
COMPACT SPACES	8'-0"	16'-0"	8'-6"	-
STANDARD ACCESSIBLE SPACES	8'-0"	18'-0"	7'-3"	5'-0" CLEAR SIDE AISLE
LIFT ASSISTED ACCESSIBLE SPACES	8'-0"	18'-0"	11'-0"	5'-0" CLEAR SIDE AISLE
VAN SPACES	11'-0"	18'-0"	7'-3"	-
DRIVE AISLES TO ACCESS 90° PARKING SPACES	22'-0"	-	NOTE 1	TO ACCESS FULL SPACES
	22'-0"	-	NOTE 1	TO ACCESS COMPACT SPACES

NOTE:
1. A 8'-0" MIN. CLEAR HEIGHT IS REQUIRED FOR ACCESS AISLES SERVING 9'-0" MIN. CLEAR HEIGHT PARKING SPACES. A 7'-3" MIN. CLEAR HEIGHT IS REQUIRED FOR ACCESS AISLES SERVING 7'-3" MIN. CLEAR HEIGHT PARKING SPACES.

GENERAL REQUIREMENTS
1. TOTAL ALLOWABLE COMPACT PARKING SPACES (40% OF TOTAL SPACES PROVIDED) = 40 + 50 = 9
2. TOTAL REQUIRED VAN PARKING SPACES (1% OF TOTAL SPACES PROVIDED) = 40 + 50 = 4
3. a. TOTAL REQUIRED PARKING SPACES FOR RESIDENTIAL USE (1 PER 4 RESIDENTIAL UNITS) = 160/4 = 40
   TOTAL PARKING SPACES PROVIDED FOR GENERAL USE (TOTAL SPACES - RESID. SPACES) = 50 - 40 = 10
4. TOTAL REQUIRED ACCESSIBLE PARKING SPACES FOR RESIDENTIAL USE (1% OF TOTAL SPACES PROVIDED) = 2 + 40 = 6 SPACES
   TOTAL REQUIRED ACCESSIBLE PARKING SPACES FOR GENERAL USE (1 FOR 51 TO 150 FOR 64 ADDT'L 15) = 2 SPACES
   TOTAL REQUIRED ACCESSIBLE PARKING SPACES (6 RESIDENTIAL + 2 GENERAL) = 8 SPACES
5. TOTAL REQ'D LIFT-ASSISTED ACCESSIBLE SPACES FOR RESIDENTIAL USE (1 PER 3 REQ. ACCESSIBLE SPACES PROVIDED) = 6 SPACES
   TOTAL REQ'D LIFT-ASSISTED ACCESSIBLE SPACES FOR GENERAL USE (1 PER 3 GEN. ACCESSIBLE SPACES PROVIDED) = 1 SPACES
   TOTAL REQ'D LIFT ASSISTED ACCESSIBLE PARKING SPACES (1 RESIDENTIAL + 1 GENERAL) = 2 SPACES

Provided

Unit Type	Standard	Accessible	Total
Studios	4		24
1 Bedroom	15		86
1 Bedroom / Den	9		75
2 Bedroom	7		11
2 Bedroom / Den	-		9
3 Bedroom	-		1
Total Units	24		167

Total Roof Area of Building = 8,365 SF
Roof area covered by Roof Structure = 1,261 SF
Penthouse Floor Area = 1632 SF
Height of Bldg. = 90'-0"
Lot Coverage = 100%
Fire Suppression = Fully sprinklered

Loading
1 at 12'-0"W X 30'-0"L Loading Birth
1 at 10'-0"W X 20'-0"L Service Birth
No Platform is necessary pursuant to Section 2201.5

Recreation Space
Provided = 8442 sf

PARKING TABULATION						
LEVEL	COMPACT	STANDARD	VAN	ACCESSIBLE STANDARD	ACCESSIBLE LIFT-ASSIST	TOTAL
B3	15	11	0	2	0	32
B2	0	14	0	3	0	29
B1	6	4	4	1	2	11
SUB TOTAL	-	-	-	6	2	
TOTAL	21	29	4	8		72

NOTE:
1. TOTAL PROVIDED COMPACT PARKING SPACES = 21

FLOOR LEVELS	GROSS FLOOR AREA (SF)	FAR ALLOWABLE DEDUCTIONS (SF)	FAR GROSS FLOOR AREA (SF) (GROSS MINUS DEDUCTIONS)
1ST FLOOR	11,626	3,192	8,434
2ND FLOOR	14,336	5,484	8,852
3RD FLOOR	11,869	995	10,875
4TH FLOOR	16,475	1,278	15,197
5TH FLOOR	16,681	78	16,516
TYP. FLRS (6-8) X 3	51,909 = 17,303	971	15,364 X 3 = 46,094
12TH FLOOR	9,388	971	8,516
TOTAL	131,656	12,416	111,282

Area of Arts Related Space at 11th Floor = 8,434 SF

Apt. #	Type	HC Adapt Unit	Living sf	1st Flr	2nd Flr	3rd Flr	4th Flr	5th Flr	6th Flr	7th Flr	8th Flr	9th Flr	10th Flr	11th Flr	12th Flr	Total	Total Living sf	% of Type
A1	S	3	561		2	2	2	2	2	2	2	2	2	2	20	10,940	12.50%
A1b (Artist Live-Work Space)	S		633	1											1	633	0.63%
A1C (Artist Live-Work Space)	S	1	605	1											1	605	0.63%
A1D (Artist Live-Work Space)	S		633	1											1	633	0.63%
A1E (Artist Live-Work Space)	S		634	1											1	634	0.63%
Total Studio		4	3,073	4	0	2	2	2	2	2	2	2	2	2	24	13,446	
				2236	0	1094	1094	1094	1094	1094	1094	1094	1094	1094			
B1	1 BR		721		1	2	2	2	2	2	2	2	2	2	21	15,161	13.13%
B1b	1BR		740		1	1	1	1	1	1	1	1	1	1	11	8,140	6.88%
B2	1 BR	4	744			1	1	1	1	1	1	1	1	1	10	7,440	6.25%
B2b	1BR	1	709			1	1	1	1	1	1	1	1	1	10	7,090	6.25%
B3	1BR		709			1	1	1	1	1	1	1	1	1	10	7,090	6.25%
B4	1 BR		819				1	1	1	1	1	1	1	1	9	7,371	5.63%
B4a	1BR		836			1									1	836	0.63%
B4b	1BR		958				1								1	958	0.63%
B4c	1BR		819		1										1	819	0.63%
B5 (9/7 & 9/9 @ 3rd FL)	1 BR		923		2										2	1,846	1.25%
B6	1 BR		729			1	1	1	1	1	1	1	1		8	5,824	5.00%
B6a	1 BR		702			1									1	702	0.63%
B6c	1 BR		688											1	1	688	0.63%
Total 1 Bedroom		13	10,197	0	2	11	8	9	8	8	8	8	8	8	93	65,144	
				0	1442	8669	6013	6951	6013	6013	6013	6013	6013	5973			
B7b/Den	1 BR/D		836			1	1	1	1	1	1	1	1	1	10	8,389	6.25%
B8/Den	1 BR/D	3	851			1	1	1	1	1	1	1	1		7	5,957	4.38%
B9d/Den	1 BR/D		811											1	1	811	0.63%
B7/Den	1 BR/D		941			1	1	1	1	1	1	1	1	1	10	9,410	6.25%
B8/Den	1BR/D		942		1										1	943	0.63%
Total 1 Bedroom/Den		3	4,381	0	1	2	2	3	3	3	3	3	3	3	29	25,501	
				0	941	1779	1779	2630	2630	2630	2630	2630	2630	2590			
C2	2 BR	3	1,178			1	1	1	1	1	1	1	1	1	10	11,780	6.25%
C3	2 BR		1,113											1	1	1,113	0.63%
Total 2 Bedroom		3	2,291	0	0	1	1	1	1	1	1	1	1	2	11	12,893	
				0	0	1178	1178	2591	1178	1178	1178	1178	1178	1178			
C1/Den (915 @ 3rd FL)	2 BR/D		1,422			1									1	1,422	0.63%
C3/Den	2BR/D		1,451							1	1	1	1	1	5	16,431	4.38%
C4/Den (915 @ 4th FL)	2BR/D		1,729				1								1	1,729	0.63%
Total 2 Bedroom/Den			4,602	0	0	1	1	0	0	0	0	0	0	0	7	13,602	
				0	0	1422	1729	0	1495	1495	1495	1495	1495	1495			
D1	3 BR		1852				1								1	1,852	0.63%
Total 3 Bedroom			1852	0	0	0	1	0	0	0	0	0	0	0	1	1,852	0.63%
				0	0	0	1852	0	0	0	0	0	0	0			

Symbols

COLUMN NUMBER
GRID LINE
DETAIL MARK
KEYED NOTE
DOOR TYPE
PARTITION TYPE
ELEVATION MARK
REVISION MARK
INTERIOR ELEVATION MARK
SECTION MARK
FINISH ELEVATION

Drawing List

Architectural

A1.01	COVER SHEET
A1.02	SITE PLAN
A1.03	PARKING PLANS
A2.01	PARKING LEVEL B3
A2.02	PARKING LEVEL B2
A2.04	PARKING LEVEL B1
A2.05	FIRST FLOOR LEVEL
A2.06	SECOND FLOOR LEVEL
A2.07	THIRD FLOOR LEVEL
A2.08	FOURTH FLOOR LEVEL
A2.09	FIFTH FLOOR LEVEL
A2.10	TYPICAL FLOOR LEVEL
A2.11	TWELFTH FLOOR LEVEL
A2.12	PENTHOUSE LEVEL + ELEVATOR MACHINE ROOM PLAN
A2.13	ROOF PLAN
A3.01	SOUTH ELEVATION
A3.02	EAST COURTYARD SECTIONAL ELEVATION
A3.03	WEST COURTYARD SECTIONAL ELEVATION
A3.04	NORTH + SOUTH COURTYARD SECTIONAL ELEVATION
A3.05	EAST + WEST ELEVATIONS
A3.06	NORTH ELEVATION
A3.07	BUILDING SECTIONS
A3.08	BUILDING SECTION
A3.09	BUILDING SECTION

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tel 301.530.1441
fax 301.530.2864
e-mail

Landscape
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1742 20th St, NW
Washington, DC 20009
tel
e-mail

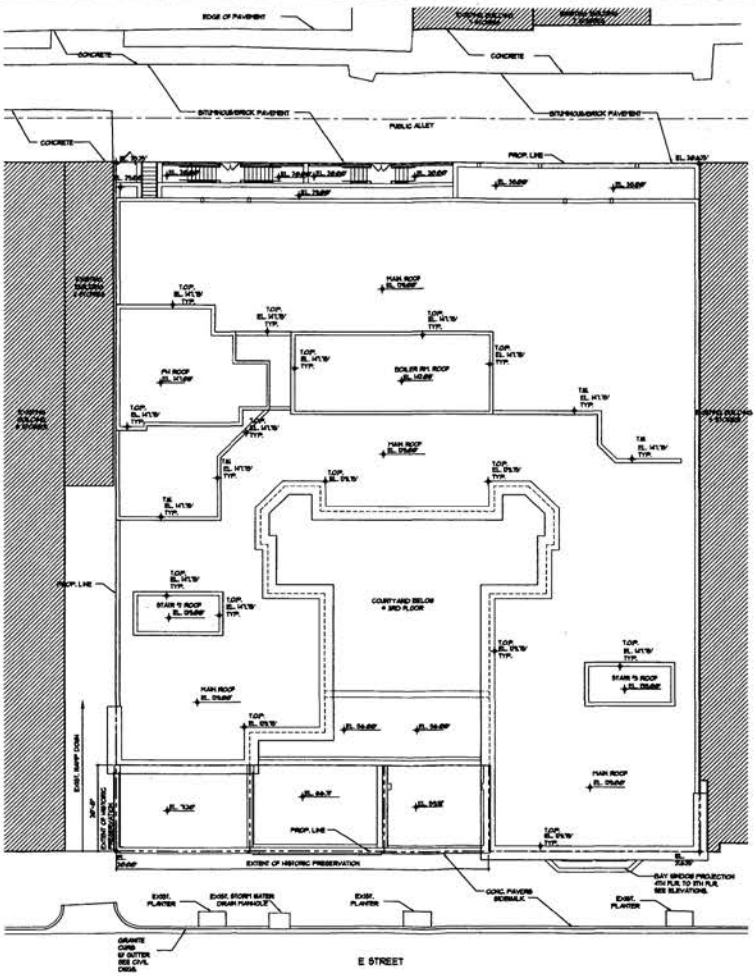
915
E Street
Washington DC

JBG Companies
Washington, DC

Cover Sheet

SCALE: As Noted

A1.01



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Architecture
Planning
Interior Design

Structural Engineers

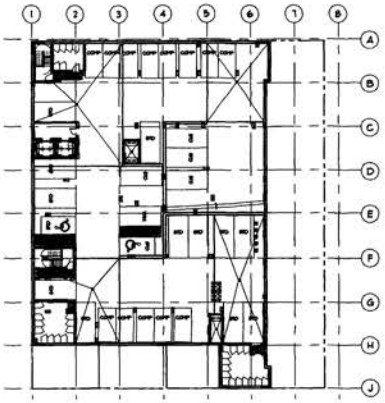
Landscapers

915
E Street

JBG Companies

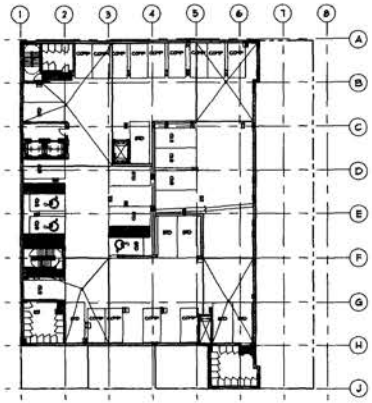
Illustrative Site Plan

A1.02



LEVEL B3
PARKING PLAN

3



LEVEL B2
PARKING PLAN

2

PARKING REQUIREMENTS

PARKING SPACES	WIDTH	DEPTH	CLEAR HEIGHT	REMARKS
STANDARD SPACES	8'-0"	18'-0"	8'-0"	-
COMPACT SPACES	7'-6"	16'-0"	8'-0"	-
STANDARD ACCESSIBLE SPACES	8'-0"	18'-0"	7'-7"	5'-0" CLEAR SIDE AISLE
LIFT EQUIPPED ACCESSIBLE SPACES	8'-0"	18'-0"	9'-6"	5'-0" CLEAR SIDE AISLE
VAN SPACES	11'-0"	18'-0"	7'-7"	-
DRIVE AISLES TO ACCESS 90° PARKING SPACES	24'-0"	-	NOTE 1	TO ACCESS FULL SPACES
	24'-0"	-	NOTE 1	TO ACCESS COMPACT SPACES

NOTE:
1. A 8'-0" MIN. CLEAR HEIGHT IS REQUIRED FOR ACCESS AISLES SERVING 8'-0" MIN. CLEAR HEIGHT PARKING SPACES.
A 7'-7" MIN. CLEAR HEIGHT IS REQUIRED FOR ACCESS AISLES SERVING 7'-7" MIN. CLEAR HEIGHT PARKING SPACES.

GENERAL REQUIREMENTS

1. TOTAL ALLOWABLE COMPACT PARKING SPACES (40% OF TOTAL SPACES PROVIDED) = .40 x 90 = 36
2. TOTAL REQUIRED VAN PARKING SPACES (5% OF TOTAL SPACES PROVIDED) = .05 x 90 = 4
3. TOTAL REQUIRED PARKING SPACES FOR RESIDENTIAL USE (1 PER 4 RESIDENTIAL UNITS = 324/4) = 82
TOTAL PARKING SPACES PROVIDED FOR GENERAL USE (TOTAL SPACES - RESID. SPACES = 79 - 82) = 36
4. TOTAL REQUIRED ACCESSIBLE PARKING SPACES FOR RESIDENTIAL USE (5% OF RESID. SPACES PROVIDED = .05 x 82) = 5 SPACES
TOTAL REQUIRED ACCESSIBLE PARKING SPACES FOR GENERAL USE (1 FOR 1ST 50 + 1 FOR EA ADDT. 25 = 2 SPACES
TOTAL REQUIRED ACCESSIBLE PARKING SPACES IN RESIDENTIAL = 3 (GENERAL) + 5 SPACES
5. TOTAL RESID LIFT-EQUIPPED ACCESSIBLE SPACES FOR RESIDENTIAL USE (1 PER 8 RES. ACCESSIBLE SPACES PROVIDED) = 1 SPACES
TOTAL RESID LIFT-EQUIPPED ACCESSIBLE SPACES FOR GENERAL USE (1 PER 8 GEN. ACCESSIBLE SPACES PROVIDED) = 1 SPACES
TOTAL RESID LIFT EQUIPPED ACCESSIBLE PARKING SPACES IN RESIDENTIAL = 1 (GENERAL) + 2 SPACES

PARKING TABULATION

LEVEL	COMPACT	STANDARD	VAN	ACCESSIBLE STANDARD	ACCESSIBLE LIFT-EQUIP.	TOTAL
B3	9	11	0	1	0	21
B2	9	14	0	3	0	26
B1	6	4	4	1	1	16
B45 TOTAL	-	-	-	5	2	79
TOTAL	24	29	4	9	3	

NOTE:
1. TOTAL PROVIDED COMPACT PARKING SPACES = 37

PARKING REQUIREMENTS AND TABULATION

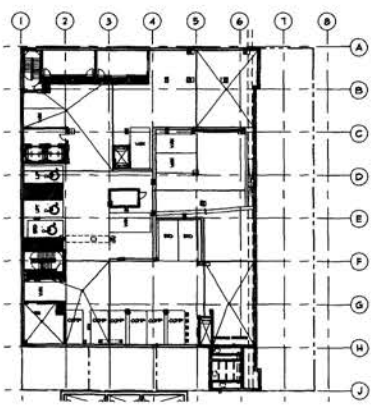
COMPACT PARKING SPACE

STANDARD PARKING SPACE (FULL SIZE SPACE)

ACCESSIBLE PARKING
KEY:
STD = STANDARD ACCESSIBLE SPACE
LIFT = LIFT-EQUIPPED ACCESSIBLE SPACE

VAN PARKING
(MIN. 7'-7" VERTICAL CLEARANCE)

PARKING LEGEND



LEVEL B1
PARKING PLAN

1

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fax 202.588.0149
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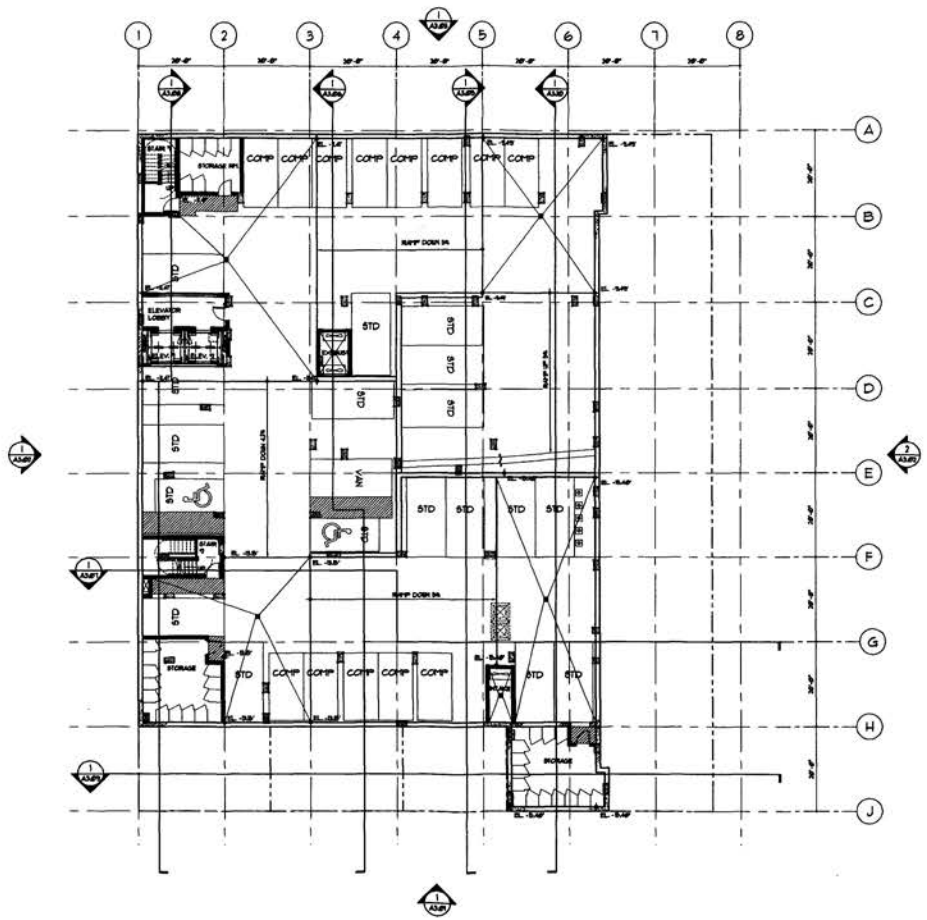
915
E Street

Washington DC

JBG Companies

Parking Plans

A1.06



WDG

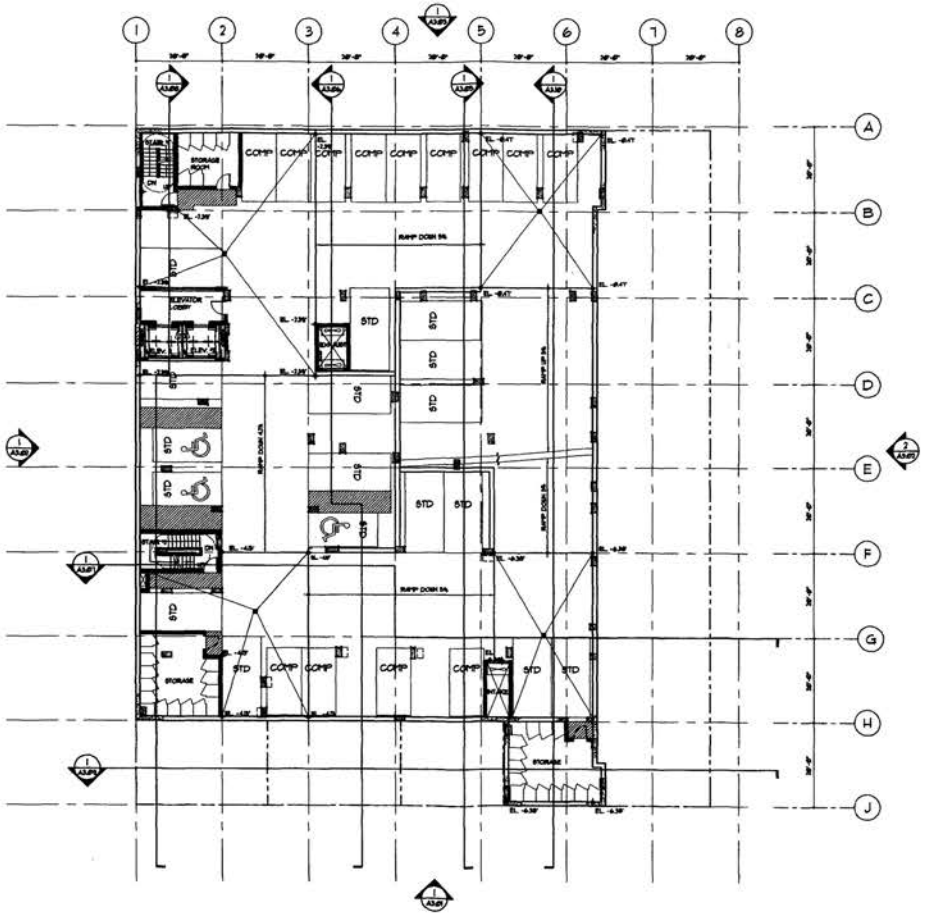
915 E Street

JBG Companies

Parking Level B3

A2.02

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WDG

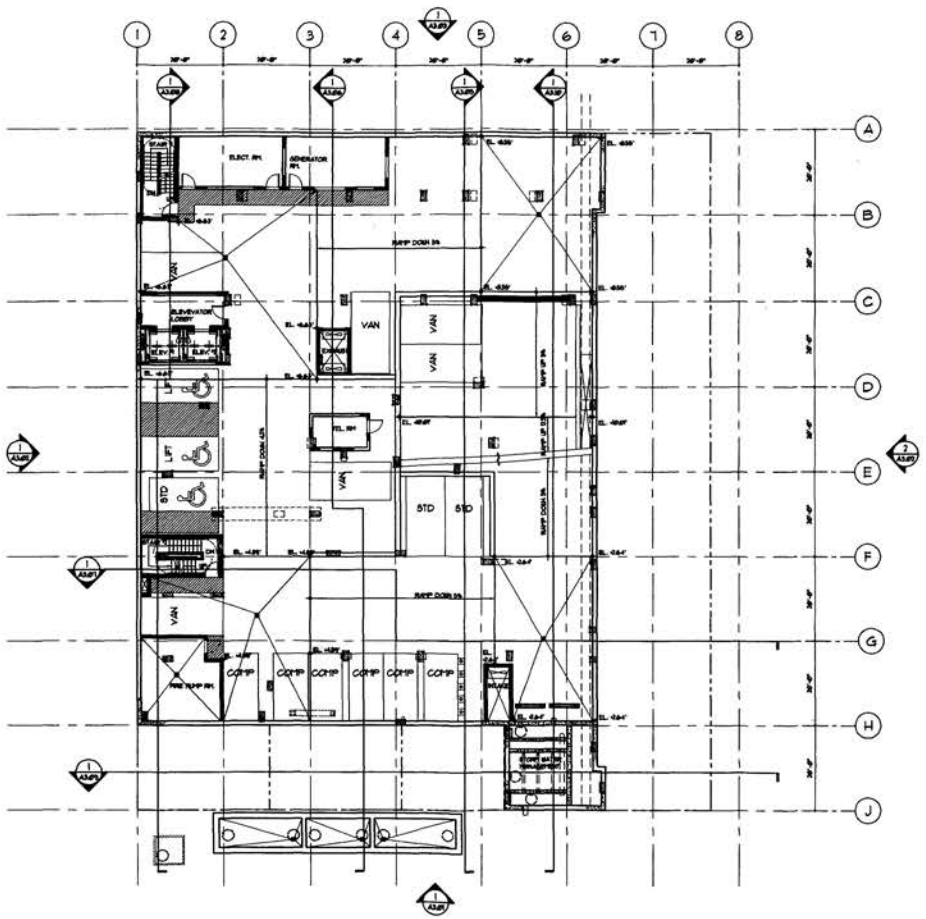
915 E Street

JBG Companies

Parking Level B2

A2.03

09/02/2000 14:27:42 C2003262



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Architecture
Planning
Interior Design

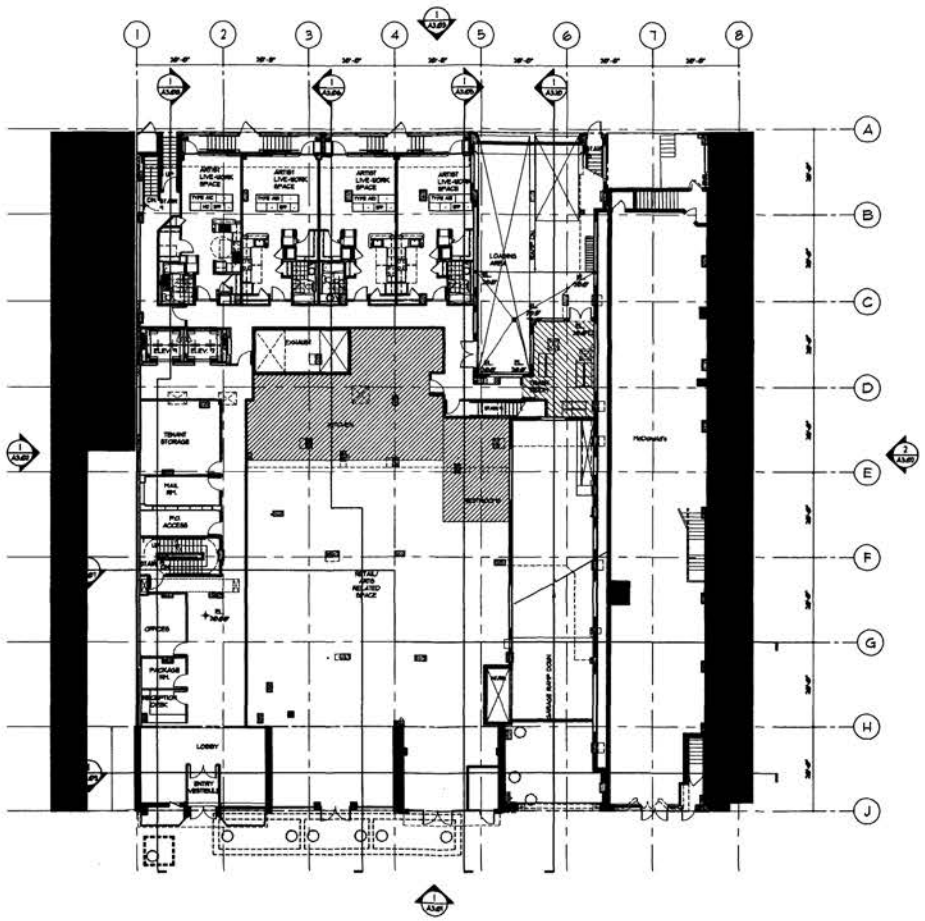
915 E Street

JBG Companies

Parking Level B1

A2.04

09/07/2007 15:15:31 DGN:915



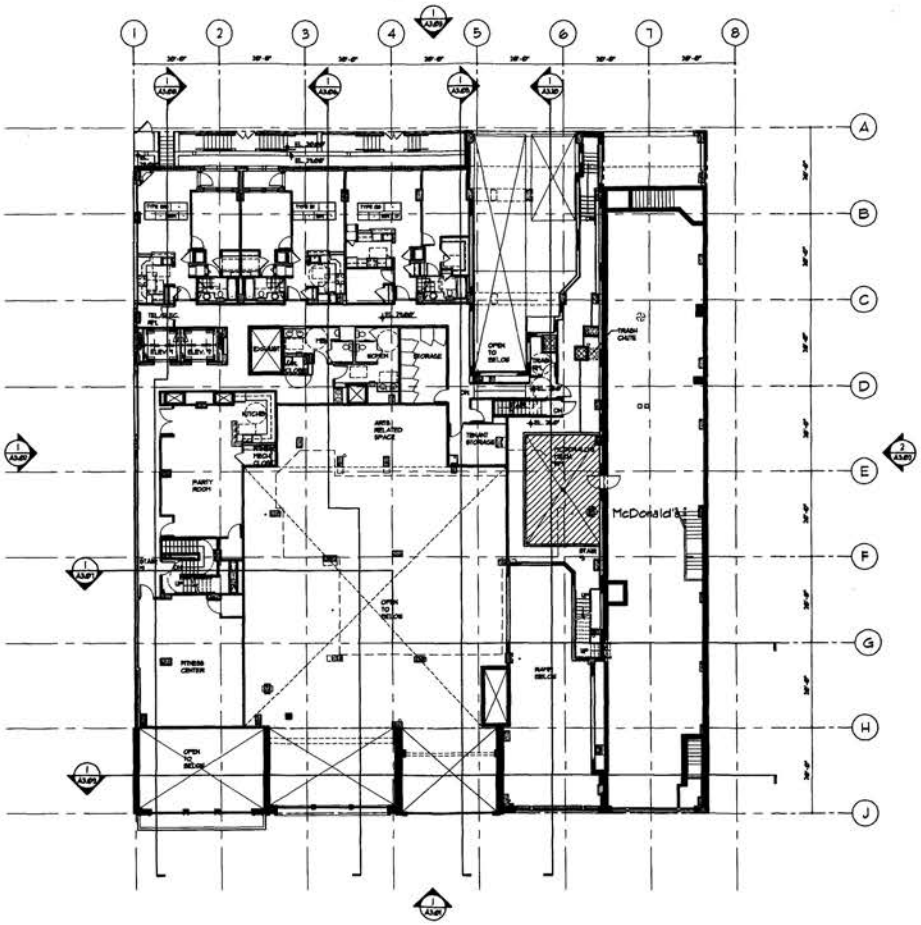
WDG

915 E Street

JBG Companies

First Floor Level

A2.05



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Architecture
Planning
Interior Design

Structural Engineers

Landscape

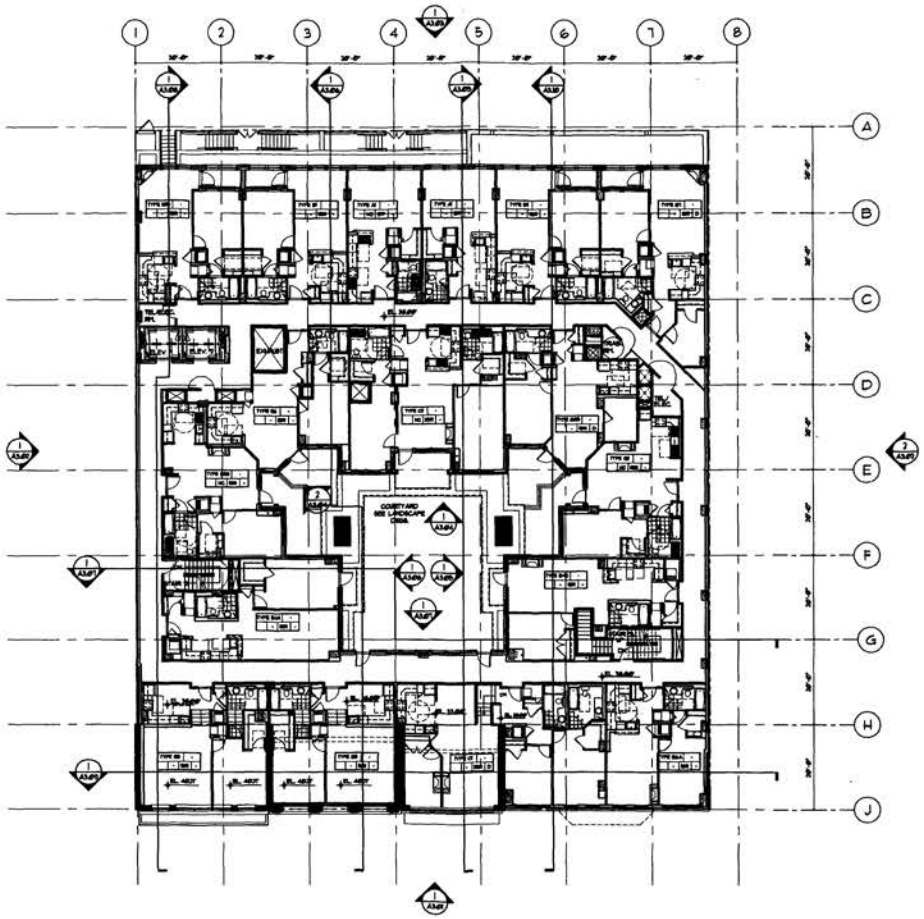
915
E Street

JBG Companies

2nd Floor Level

A2.06

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WDG

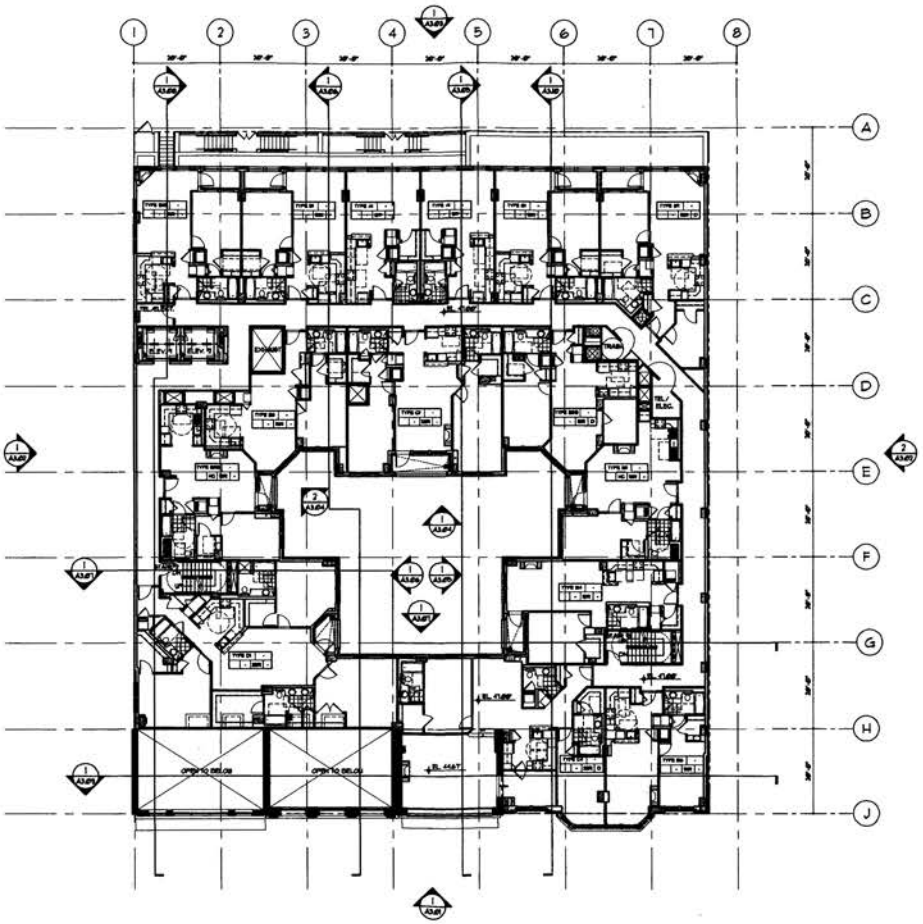
915
E Street

JBG Companies

3rd Floor Level

A2.07

WS 09/02/2005 14:07:12 Q2677562



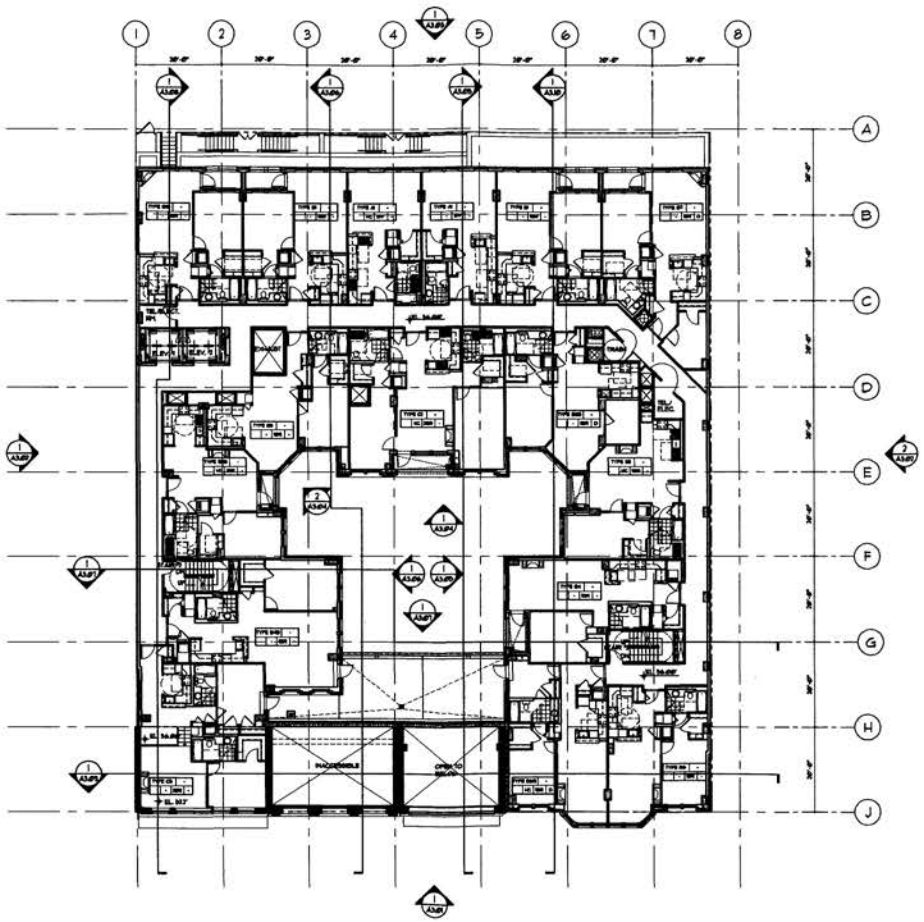
WDG

915
E Street

JBG Companies

4th Floor Level

A2.08



WDG

915
E Street

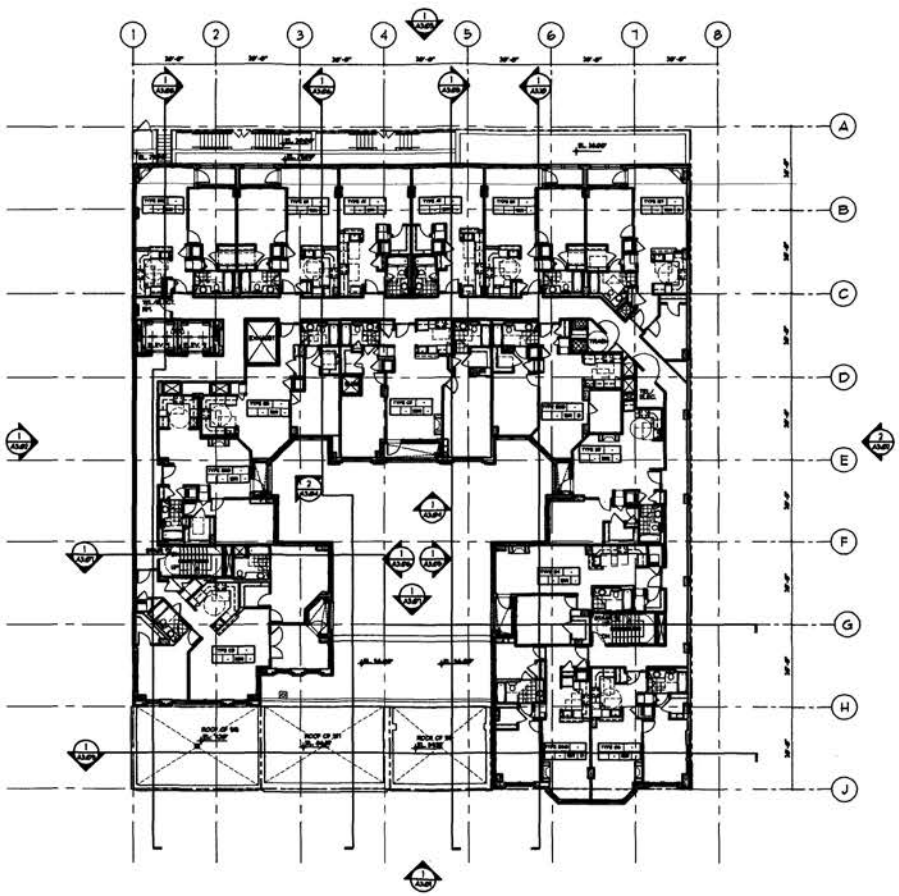
JBG Companies

5th Floor Level

A2.09

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09/02/2000 15:05:25 -02107762



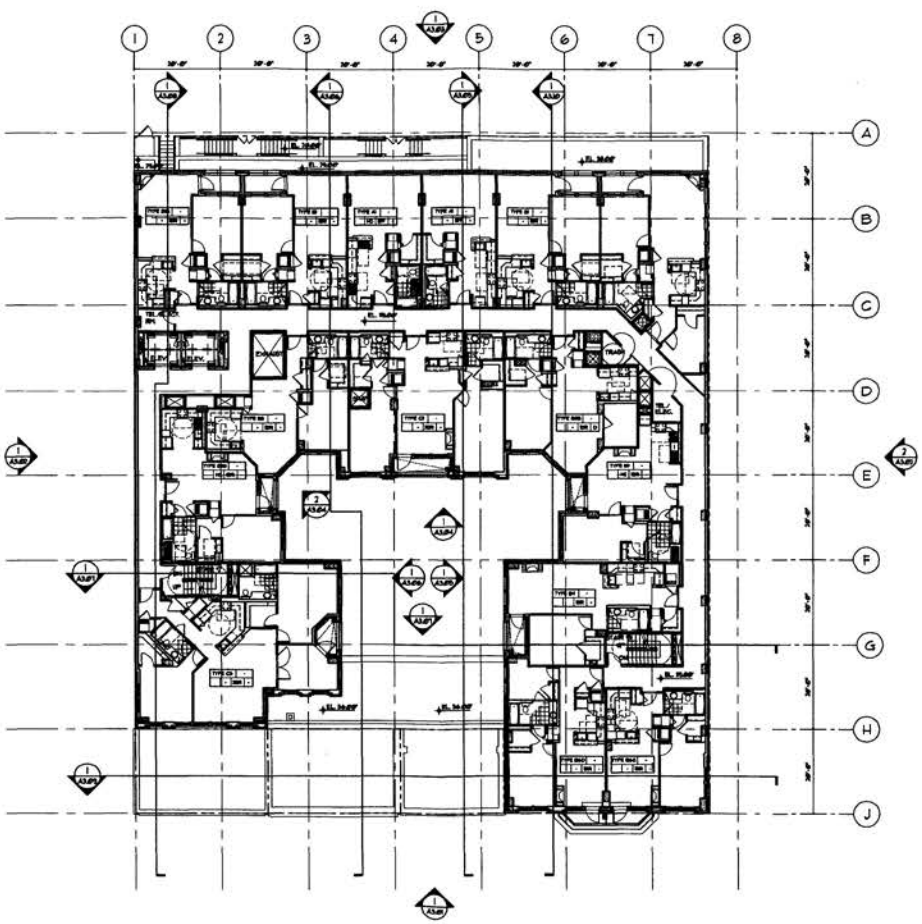
WDG

915
E Street

JBG Companies

Typical Floor Level

A2.10



WDG

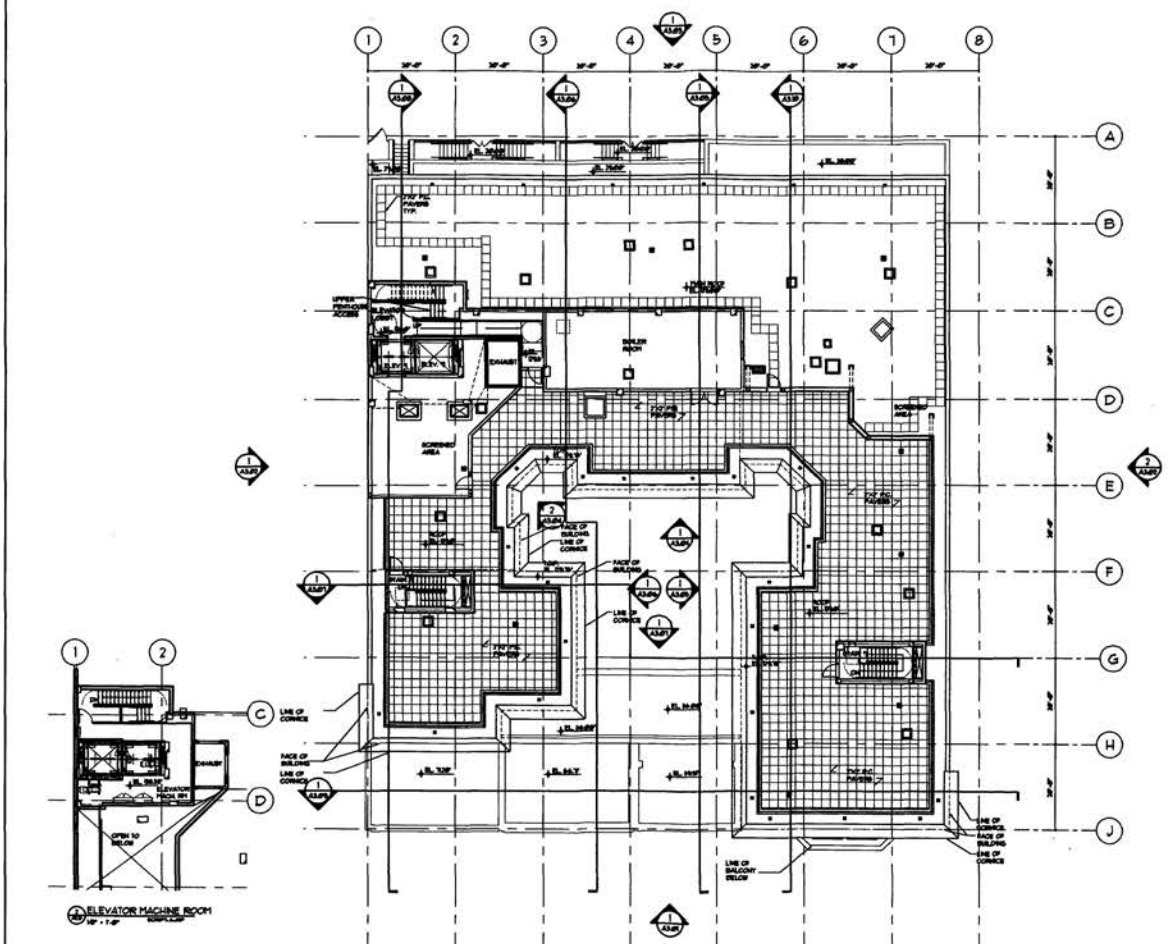
915 E Street

JBG Companies

12th Floor Level

A2.11

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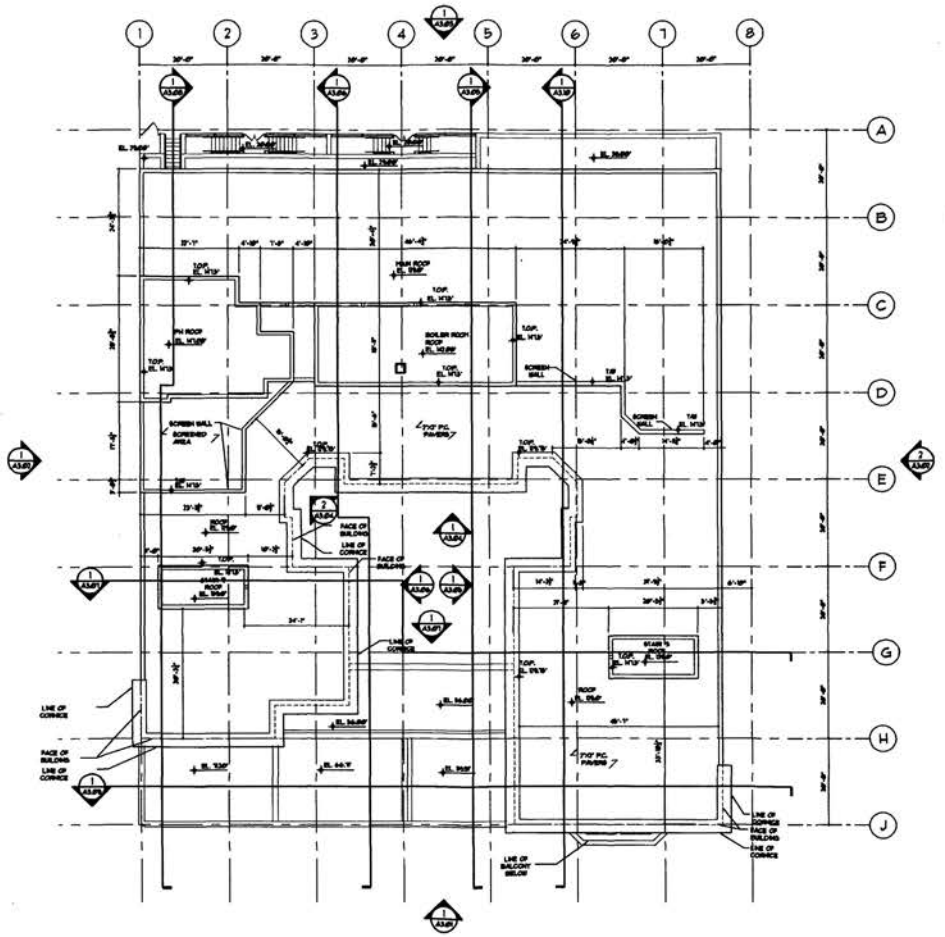
WDG

915 E Street

JBG Companies

Penthouse and Elevator Machine Room Plans

A2.12



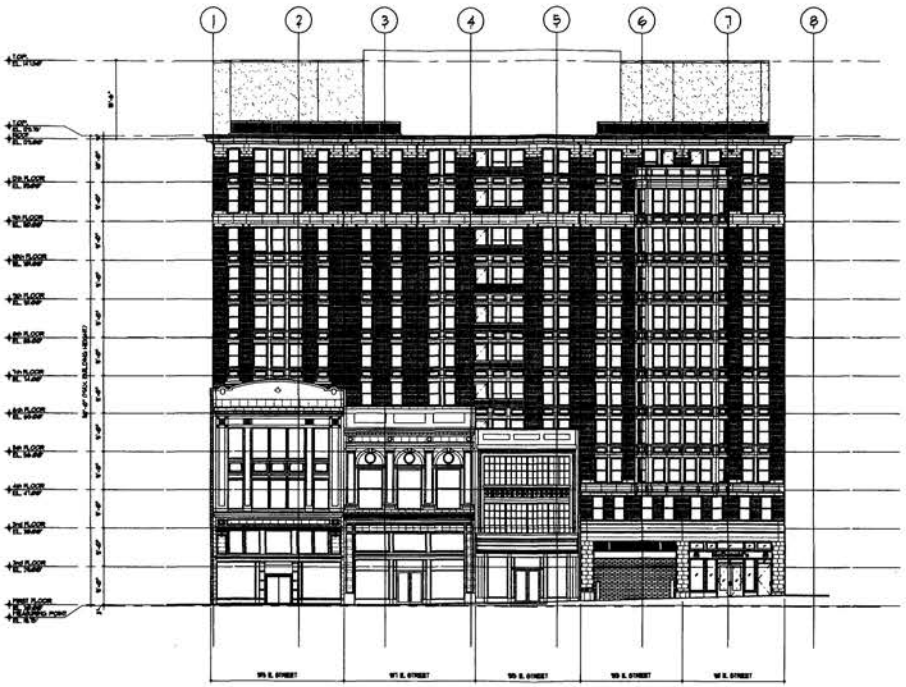
WDG

915 E Street

JBG Companies

Roof Plan

A2.13



SOUTH ELEVATION

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

WDG

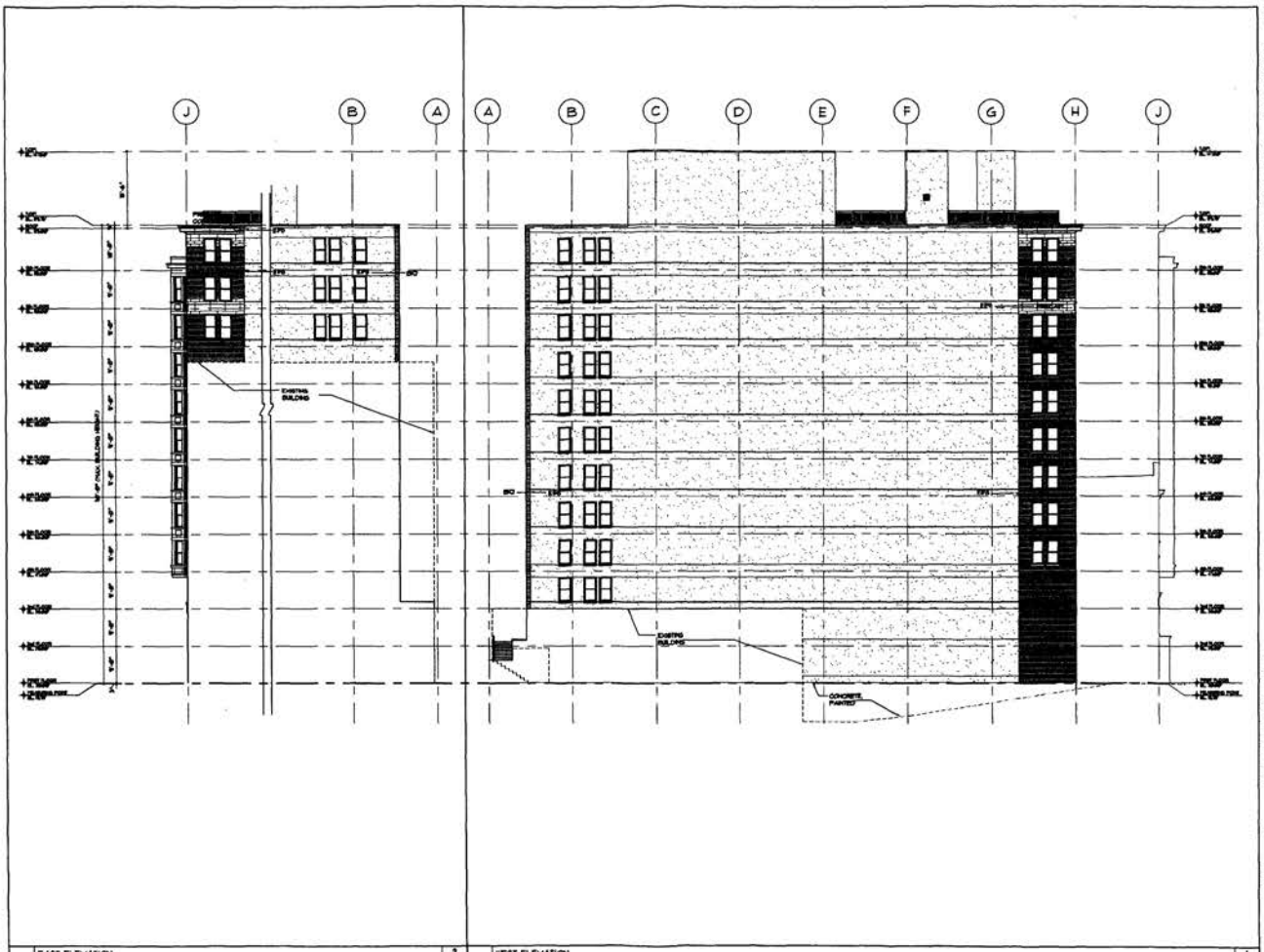
915
E Street

JBG Companies

South Elevation

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

A3.01



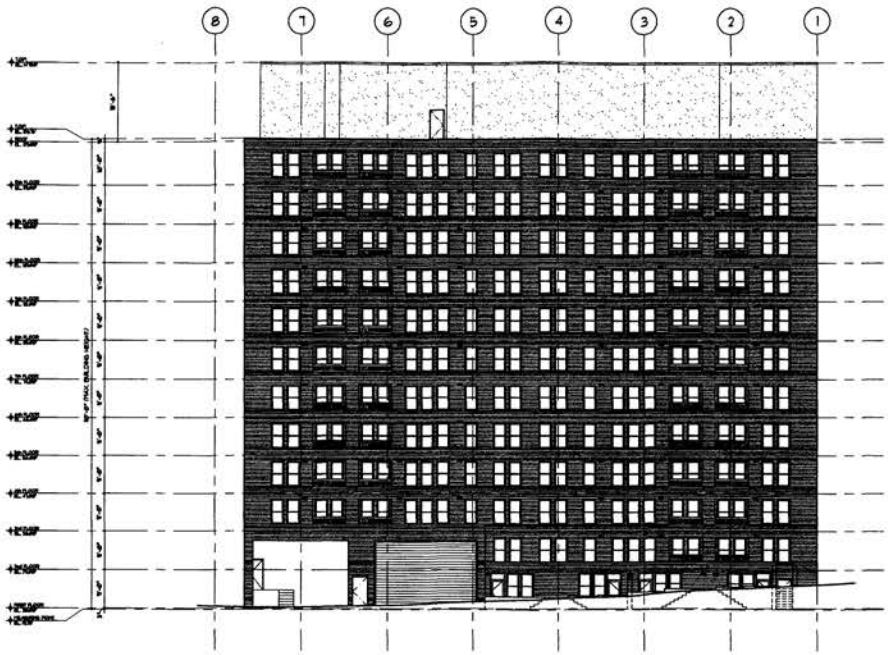
WDG

915 E Street

JBG Companies

East & West Elevations

A3.02



NORTH ELEVATION

WDG

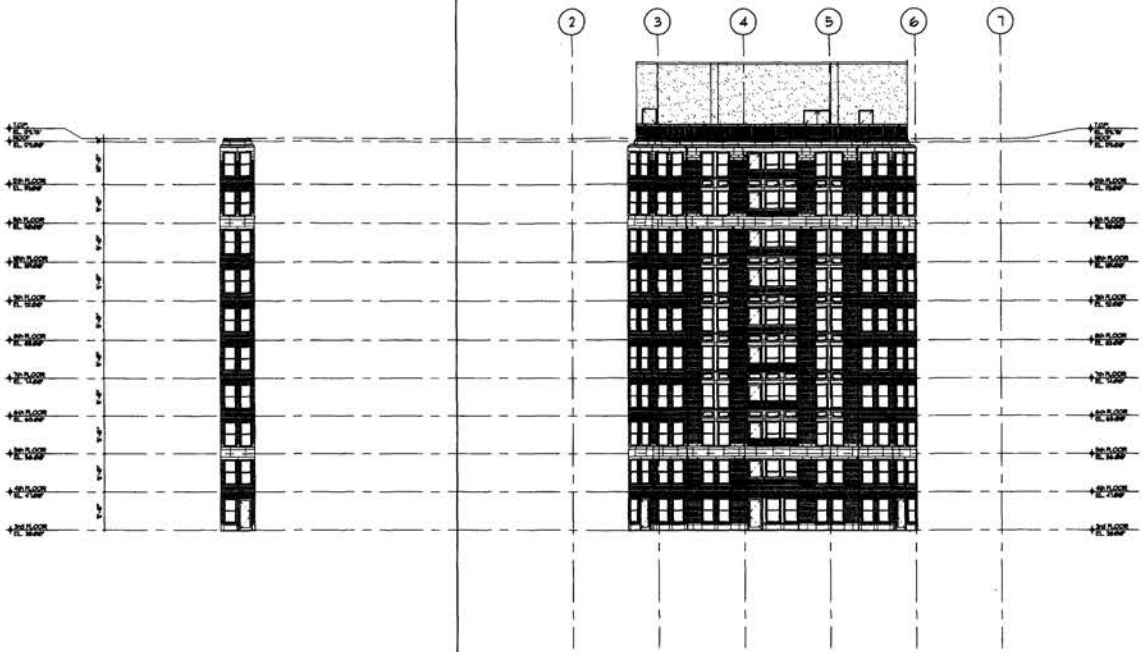
915
E Street

JBG Companies

North Elevation

A3.03

V96 09/02/2000 14:16:24 03C3EL62



SOUTH COURTYARD ELEVATION
ANGLED BALL

2

SOUTH COURTYARD ELEVATION

1

WDG

915
E Street

JBG Companies

South Courtyard
Elevation

A3.04



WEST COURTYARD SECTIONAL ELEVATION

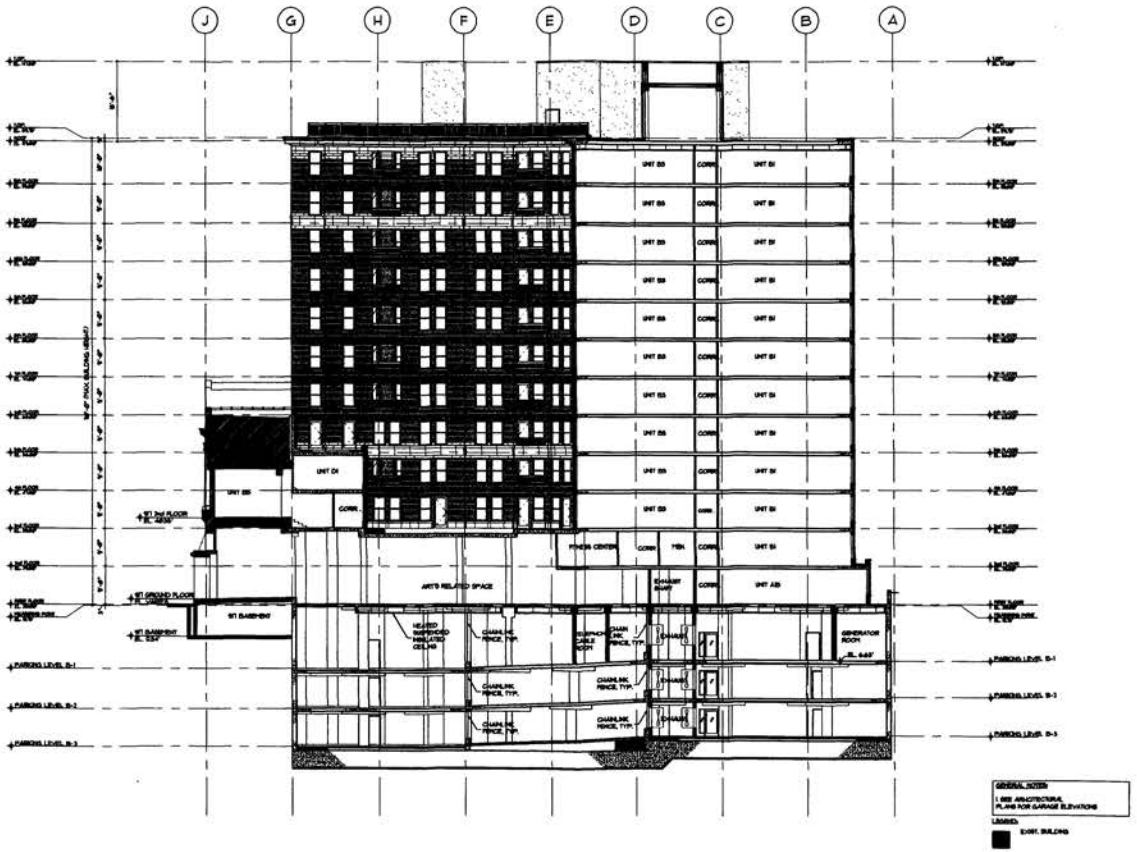
WDG

915 E Street

JBG Companies

West Courtyard Sectional Elevation

A3.05



EAST COURTYARD SECTIONAL ELEVATION

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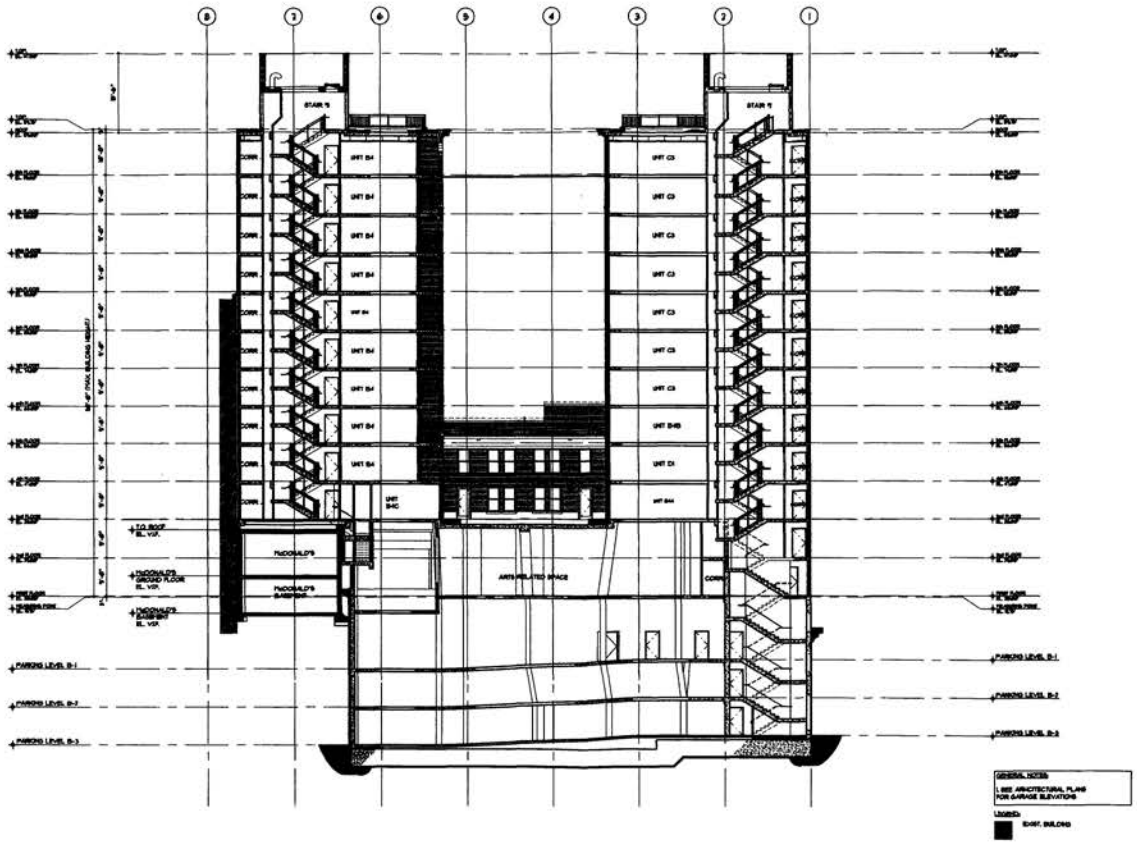
915 E Street

JBG Companies

East Courtyard Sectional Elevation

A3.06

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NORTH COURTYARD SECTIONAL ELEVATION

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WDG Architecture, PLLC

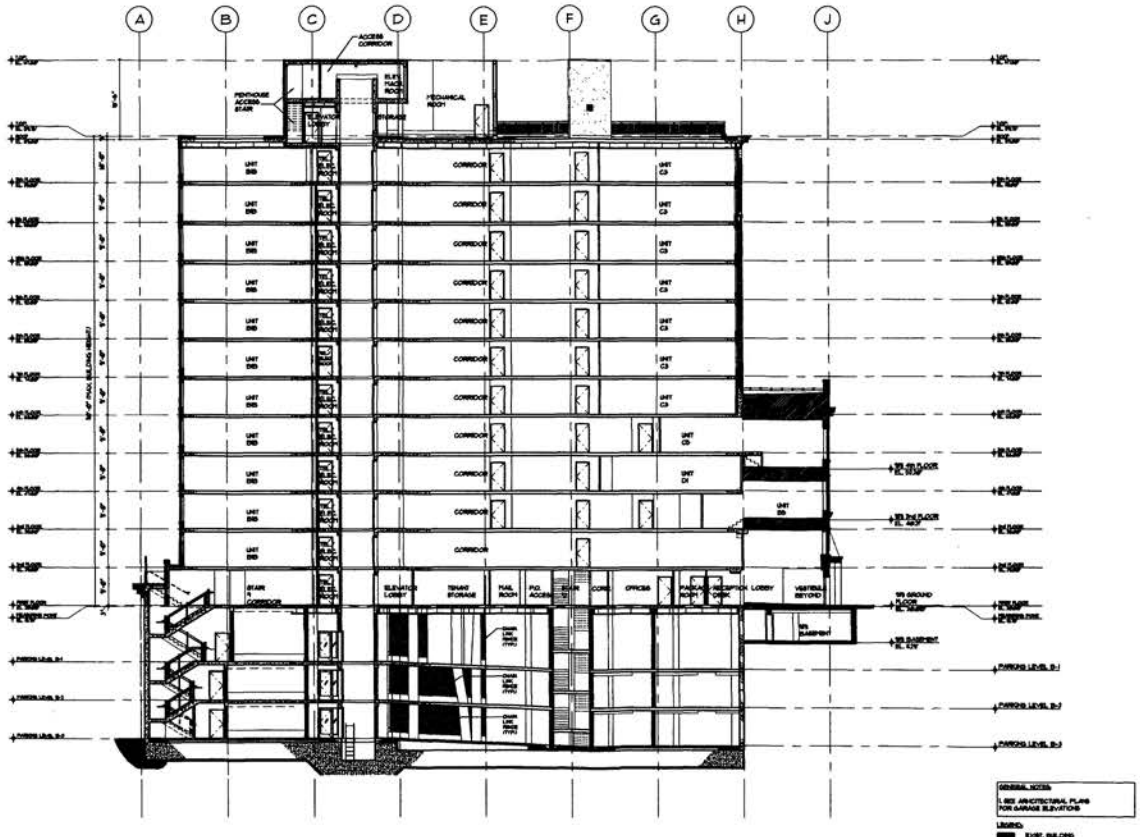
915 E Street

JBG Companies

North Courtyard Sectional Elevation

A3.07

vpa 09/02/2000 16:13:48 03078662



BUILDING SECTION

1

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f # 202.338.0148
e-mail landscape@theplantstudio.com

915
E Street

Washington DC

JBG Companies

888 Wisconsin Ave, NW
Suite 700
Washington DC 20007

Per Permit 05-15-00
Bid Set 05-15-00

Building Section

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

A3.08

WDG 09/02/2000 16:32:39 03088&2



BUILDING SECTION

1

WDG

915 E Street

JBG Companies

Building Section

A3.09

W46 09/02/2000 16:30:33 03098662



6-C-C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 North Capitol Street, N.E., Suite #9100
P.O. Box 37140
Washington, D.C. 20002

IN RE:

JBG REAL ESTATE ASSOCIATES XXIII, INC.,

915 E Street, N.W.	:	**H.P.A. # 00-332, -333, -334**
917 E Street, N.W.	:	**(for partial demolition and**
919 E Street, N.W.	:	**subdivision)**

DECISION AND ORDER

Background

This case came before Administrative Law Judge Rohulamin Quander (the ALJ), the designated Mayor's Agent for Historic Preservation, on June 26, 2000, upon the request for an administrative hearing filed by JBG Real Estate Associates XXIII, Inc. (the Applicant or JBG) for a permit to demolish three (3) contributing buildings located at 915, 917 and 919 E Street, N.W., (E Street), except for the first 20 feet of each building (including facades) that front on E Street. The applications (the Applications) also include a request to subdivide the relevant three (3) lots, along with either one (1) or two (2) additional lot(s) into one (1) larger lot of record. The legal description for 915 E Street is Lot 806, Square 377, and for 917 – 919 E Street is Lot 42, Square 377. Peter Szegedy-Maszak, of the Law Offices of Arnold and Porter represented the Applicant. The record closed on July 18, 2000, upon receipt of the Applicant's Proposed Final Decision and Order.

In addition to the three (3) historic lots that are the subject of these Applications, the Applicant has also contracted to purchase 913 E Street, and is in negotiations to purchase 911 E Street. The Applicant has submitted re-development and subdivision plans for both the smaller site (913, 915, 917 and 919 E Street, or the Base Site) and the larger site (the Base Site plus 911 E Street, or the Expanded Site). Because the Applicant demonstrated in its Applications and hearing that the only difference between the Applicant's proposed project on the Base Site and the Expanded Site is the respective size of the identical use and amenity package, the Mayor's Agent's decision and final order herein will apply to the Applicant's proposed project on either site, and the

respective estimates of gross floor area to be devoted to the residential, retail and artist studio uses on each site respectively.

The stated objective of JBG is to preserve and restore the first twenty (20) feet of each historic building's fabric, including facades, and incorporate these elements into a mixed-use project (the Project) on the Base Site (and, by definition, the Expanded Site), containing approximately 130 residential units (condominiums and/or rental apartments, (totaling approximately 140,000 square feet of gross floor area), approximately 80 underground parking spaces, approximately 7,000 square feet of gross floor area of ground-floor retail space, at least four (4) artist's studios comprising approximately 2,500 square feet of gross floor area on the ground floor at the rear of the Project, including also preservation and maintenance of the historic alley behind the Project (referred to herein as Booth's Alley) for, primarily, preservation and heritage tourism purposes. JBG requests that the Mayor's Agent construe and deem its Project as a project of "special merit" within the meaning of the Historic Landmark and Historic District Protection Act of 1978, as amended, D.C. Law 2-144, D.C. Code, Sec. 5-1001 *et seq.* (1999) (the Act).

On April 27, 2000, the Historic Preservation Review Board (the HPRB or the Board) at a public meeting in regular session, specifically considered JBG's Applications within the context of Secs. 5-1004 and 5-1006 of the Act, respectively entitled "Demolitions" and "Subdivisions." Based upon its consideration of the evidence presented to it, including the Staff Report and Recommendation, the Board determined that the Applicant's partial demolition and subdivision proposals for 915, 917 and 919 E Street, located in the Pennsylvania Avenue National Historic Site, would not be consistent with the purposes of the Act.

Sections 5-1004(c) and (f) of the Act provide that no demolition permit shall be issued unless either the HPRB determines that a building "does not contribute to [its] historic district," or unless the Mayor [or his/her agent] finds that the issuance of the demolition permit is "necessary in the public interest, or that a failure to do so will result in unreasonable economic hardship to the owner." Sections 5-1006(c) and (e) of the Act provide that no subdivision permit for lots in a historic district shall be issued unless either the HPRB determines that a subdivision is "consistent with the purposes of the Act," or unless the Mayor [or his/her agent] finds that the issuance of the subdivision permit is "necessary in the public interest, or that a failure to do so will result in unreasonable economic hardship to the owner." The Board denied JBG's request for permits for partial demolition and subdivision because it determined that the buildings at 915, 917 and 919 E Street still constituted contributing buildings in the Pennsylvania Avenue National Historic Site, and that issuance of either the demolition or subdivision permits would not be "consistent with the purposes of the Act." The Board referred the Application to the Mayor's Agent for a final decision.

The Applicant then filed a timely request for a public hearing before the Mayor's Agent, pursuant to D.C. Code Secs. 5-1002(10) - (11), 5-1004(e) and 5-

1006(e). The Applicant submitted a comprehensive pre-hearing statement and evidence at its hearing before the Mayor's Agent in support of its Applications. There was no oral or written testimony in opposition to the Application submitted at the hearing or otherwise entered into the record before the hearing, although the District of Columbia Preservation League (the DCPL) submitted two (2) correspondences after the hearing that the Mayor's Agent construes as opposition to the Project.

The Mayor's Agent carefully considered DCPL's letter of opposition, dated July 10, 2000, and also the follow-up letter of August 14, 2000, from Andrea C. Ferster, Esquire, DCPL's legal counsel, which the Mayor's Agent considered as a formal Motion to Reopen the Applicant's case. The Mayor's Agent denied the Motion to Reopen, and set forth the reasons in his Order, issued on August 25, 2000.

For the reasons set forth herein, these Applications are **GRANTED.**

ISSUE

The issue to be decided is whether the Applicant has sustained its burden of proof in establishing that the issuance of partial demolition permits for, and the subdivision into one (1) lot of, 915, 917 and 919 E Street, N.W., are necessary in the public interest to construct a project of special merit.

FINDINGS OF FACT

The Mayor's Agent, having received all of the evidence presented in this matter, and having reviewed same, now makes the following Findings of Fact:

A. History of the Case

1. This matter is before the Mayor's Agent pursuant to Secs. 5-1002(10)-(11), 5-1004(e) and 5-1006(e) of the Act. Prior to this Mayor's Agent's hearing, the requested conceptual design review of the Project was accepted by the Board. The Applications for the partial demolition and subdivision permits for the three (3) contributing buildings were forwarded to the Mayor's Agent for action.

2. The Applicant is JBG Real Estate Associates XXIII, Inc. (the Applicant or JBG), the contract purchaser of the three (3) contributing buildings located at 915, 917 and 919 E Street in the Pennsylvania Avenue National Historic Site. Their collective width is 85 feet and their total length is 159 feet, with party walls at each side and only the street facades and Booth's Alley elevations providing light and air. In addition to the three (3) historic properties that are the subject of these Applications, the Applicant has also contracted to purchase 913 E Street, and is in negotiations to purchase 911 E Street. The Applicant has submitted redevelopment and subdivision plans for both the

smaller site (913, 915, 917 and 919 E Street, or the Base Site) and the larger site (the Base Site plus 911 E Street, or the Expanded Site.)

3. The buildings at 911 and 913 E Street are currently occupied by a McDonald's and Wendy's fast food restaurant, respectively. The three (3) contributing buildings are occupied by Penn Camera Exchange at 915 E Street, and the Ritz nightclub at 917-919 E Street.

4. All subject properties are located in the Downtown Development (DD) District zone under the District of Columbia Zoning Regulations. *See* Title 11 DCMR, Chapter 17 (1999). It is currently zoned DD/C-4. The C-4 zoning in this location allows the Project a maximum height of 110 feet, a maximum floor area ratio (FAR) of 8.5, lot occupancy of 100 percent, and parking space requirements for apartments of one (1) space per four (4) dwelling units. *See* 11 DCMR, Sec. 751.2, 770.1, 771.2, 772.1 and 2101.1. Under the DD District section of the Zoning Regulations, the DD District overlay zone grants a waiver from the otherwise applicable retail and arts-related use requirements for residential buildings as an obvious incentive for downtown residential development. *See* 11 DCMR, Sec. 1701.6. The evidence shows that JBG's Project complies fully with all Zoning Regulations, and thus may be built as a matter of right. *See* 11 DCMR, Sec. 751.2. Since the Base Site has a total land area of approximately 17,350 square feet and the Expanded Site a total land area of 21,166 square feet, the Base Site with an FAR of 8.5 contains gross floor area of about 147,475 square feet of gross floor area and the Expanded Site with an FAR of 8.5 has gross floor area of about 179,911 square feet.

5. There are no parties in opposition to the Applications, no witnesses who testified at the hearing in opposition to the Applications, nor was there any other opposition filed before the hearing. After the hearing, by correspondence dated July 10, 2000, the DCPL, although not using the term "opposition" to describe its position, expressed certain "concerns" that it had about the Project – namely: 1) the Project will impair sunlight from most of the windows and cornices on the east facade of the adjacent historic Pepco building, and will loom over the remaining facades of the three (3) historic buildings which it seeks to partially demolish; 2) certain alleged benefits of the Project, such as increases in Downtown housing, tax revenues and parking, are not sufficiently "special" to qualify as special merit (citing *The Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs,* 655 A.2d 865, D.C. 1995); and 3) JBG did not sufficiently show that the partial demolition of the three (3) contributing buildings is "necessary" for the construction of the Project. The DCPL noted that it would clearly support the Project if : 1) a thorough investigation and detailed Historic Structures Report and archaeological study were provided of Booth's Alley; 2) massing, materials and architectural treatment of Booth's Alley were sympathetic to context as may be recommended in a Historic Structures Report, and consistent with the Secretary of the Interior's Standards of Preservation and Rehabilitation; 3) Project massing were to retain at least 30 feet of the existing structures; and 4) architectural design adjustments were made to reinforce the three (3) contributing buildings' individual identity.

The Mayor's Agent characterizes the DCPL correspondence as "opposition" to the Project, but also notes that DCPL offered no factual or other evidence to support its assertions.

6 In an Order issued on August 25, 2000, the Mayor's Agent denied DCPL's August 14, 2000, belated Motion to Reopen the case record, for the purpose of according DCPL party status in these proceedings. DCPL attacked the Applicant on several basis, including contesting: 1) whether the Applicant intentionally failed to disclose certain key information to DCPL, HPRB, Mayor's Agent, and the general public, which precluded an earlier awareness as to the Applicant's true intentions, as they affected the *Comprehensive Plan for the District of Columbia* (the *Comprehensive Plan)*, 10 DCMR 100, *et seq.*, and the laws, regulations, and polices and procedures adopted relevant to establishing "special merit" in historic preservation cases, and had it earlier realized what the Applicant's true intentions were, it would have sought party status much sooner; 2) whether this project was truly one of "special merit", as that term is defined under the Act, especially since certain key aspects of meeting that claim were not adequately explained or developed on the record either at the D.C. Office of Planning or the HPRB; 3) that the failure to specifically state in plain language that 50 of the proposed residential units would be used to fulfill a housing requirement transferred from a proposed development on Square 405, immediately south of the National Portrait Gallery, through a combined lot arrangement, asserting further that it is highly questionable whether a project that transfers a housing requirement from a site targeted as a housing priority area to a site that is *not* within a housing priority area, does in fact provide any high priority benefits to the District of Columbia; and 4) the Applicant's proposal is a subversion of the *Comprehensive Plan*, diluting its policies and objectives.

7. The Applicant's witnesses who testified in favor of the Applications were: 1) Ben Jacobs, a managing partner of JBG; 2) Emily Eig, President of EHT Traceries, Inc, and a well-known expert in historic preservation; 3) Stewart Bartley, Managing Director, JBG Residential, and the Project Manager; 4) George Dove, a principal of the Weihe Design Group and Project architect; 5) Nathan Gross, AICP, a noted local zoning and land use expert and Head of Zoning Services at the law firm of Arnold & Porter; 6) Terry Lynch, the Executive Director of the Downtown Cluster of Congregations; 7) Darlow G. Botha, an officer with Downtown Housing Now; and 8) Paul Thorpe, a resident of and businessman in ANC 2C.

8. Also testifying in support of the Applications were Ellen McCarthy, Deputy Director of Development Review and Coordination of the District of Columbia Office of Planning, and Doris Brooks, the single member district Commissioner from Advisory Neighborhood Commission (ANC) 2C, representing the area where the buildings are located. Ms. McCarthy also placed into evidence a written statement in support of the Applications from the Office of Planning. Ms. Brooks entered into evidence the formal and final ANC 2C resolution in support of the Application, dated May 10, 2000.

9. Six (6) letters of support were also provided for the record by, respectively: 1) Councilmember Jack Evans from Ward 2, in which the historic buildings are located; 2) Councilmember Charlene Drew Jarvis from Ward 4, Chairperson of the Economic Development Committee of the City Council of the District of Columbia; 3) Helen Durham, President of the Mount Vernon Business Alliance and a businessperson in ANC 2C; 4) Rodney S. Rue, President, Kangurue Sportswear, a local businessperson; 5) Bernard Miller, President, Miller Copying Service, a local businessperson; and 6) Paul B. Thorpe, a supportive citizen. Both City Councilmembers cited the critical importance of JBG's Project in creating a "Living Downtown" by providing much-needed residential, retail and arts amenities to a targeted economic development corridor.

B. The Project

10. The Applicant has submitted redevelopment and subdivision plans for both the Base Site and the Expanded Site. The stated objective of JBG is to preserve and restore the first twenty (20) feet of each historic building's fabric, including facades, and to incorporate these elements into a mixed use project. The Project on the Base Site will consist of approximately 130 residential units (condominiums and/or rental apartments), totaling approximately 140,000 square feet of gross floor area, approximately 80 underground parking spaces, approximately 7,000 square feet of gross floor area of ground-floor retail space, and approximately 2,500 square feet for four (4) artist's studios on the ground floor at the rear of the Project. Alternatively, if the Project is constructed on the Expanded Site, it will contain approximately 160 residential units (condominiums and/or rental apartments) totaling approximately 170,000 square feet of gross floor area), 102 underground parking spaces, 10,800 square feet of gross floor area ground-floor retail space, and 3,200 square feet of gross floor area for five (5) artist studios on the ground floor at the rear of the Project. The Project for both the Base Site and Expanded Site also includes the preservation, maintenance and promotion of Booth's Alley for, primarily, preservation tourism purposes.

11. The architectural massing of the Project is designed to respond to its mid-block location by incorporating an interior courtyard open to E Street on the south. The 110 foot-tall U-shaped residential tower will incorporate the restored historic facades of the three (3) contributing buildings, and the first 20 feet of the buildings' fabric. The proposed design and massing of the Project is intended to be well integrated with the current style and rhythm of the existing structures. The exterior materials used in the Project building will be brick, masonry, glass and cast stone. The exterior color of the Project will be lighter than the current color of the three (3) contributing buildings, and the exterior of each contributing building will be thoroughly cleaned and restored to comply with the Secretary of the Interior's Standards for Preservation and Rehabilitation. Stylistic features of the front facades and other parts of the Project will be relatively simple, and will be designed to be compatible with much of the surrounding structural context in the Pennsylvania Avenue National Historic Site.

12. Based upon the testimony of Stewart Bartley, Managing Director, JBG Residential, and the Project Manager, the Mayor's Agent makes the following findings of fact:

a) In November 1999, JBG negotiated a contract to purchase the three (3) historic properties. Initially, the seller had planned to construct an office development on the lots. JBG's obligation to purchase the three (3) properties, plus an adjacent fourth property, all comprising the Base Site, is contingent upon JBG's receipt of all necessary land use approvals, including the approvals required under the Act. JBG is also in active and positive negotiations to purchase 911 E Street (McDonald's fast food restaurant) in order to construct the Project on the Expanded Site. Construction of the Project on the Expanded Site is JBG's clear preference.

b) JBG's overall Project goal is to maximize the preservation of the three (3) contributing buildings while allowing the provision of an economically viable mixed-use project. The Project's residential goal is to provide a sufficient number of market-rate housing units that are cost and quality-competitive with the few existing East End residential properties, including the Lansburgh and the Lexington. The Project's retail goal is to provide sufficient space for at least three (3) retail establishments on the ground floor and fronting E Street that can service both the Project occupants and the general public. Its arts goal is to provide at least four (4) artist studios fronting on Booth's Alley to enhance not only the Arts District but also the preservation tourism efforts for Booth's Alley. Finally, the preservation goal is to retain as much of the three (3) contributing buildings' historic fabric, including facades, as possible, to preserve according to the Secretary's Standards the most critical historic design elements visible to the public on E Street, and to assist in the preservation and maintenance of Booth's Alley.

c) Since the beginning of the year, JBG's planning and community consultation process for the Project involved considerable interaction with and input from a variety of stakeholders including HPRB staff, the HPRB, the DCPL, ANC 2C, the D.C. Office of Planning, Downtown Housing Now, and the Downtown Cluster of Congregations. JBG's planning and design process also included JBG's study and evaluation of a variety of architectural and programmatic alternatives for the historic and other properties. JBG submitted to the Mayor's Agent a summary of fifteen (15) different design studies, ranging from complete demolition to complete preservation of the three (3) contributing buildings.

d) Based upon the design studies, JBG weighed various preservation options, including a complete preservation, a 10-foot setback, a 20-foot

setback, and a 30-foot setback, each of which option had its own advantage(s) or drawback(s), and after several interactions and working with the HPRB staff, JBG made a material modification to its preferred design – namely, an increase in the proposed setback of the western tier from 10 feet to 20 feet, and settled on this setback for this Project. JBG presented evidence at the hearing that this added preservation cost totaled between $540,000 and $940,000 in lost value due to diminished rent potential in the premium tier units from loss of view sheds. Studies of all other design schemes that would meet the dual preservation and economic goals of the Project resulted in either unreasonable increases in the amount of requisite demolition of the three (3) contributing buildings or unreasonable program reductions in an amount that would render the Project economically unfeasible.

e) JBG is not seeking any public financing or subsidies for the Project, and will only utilize private financing. The Project is financially feasible, based upon testimony by JBG's witnesses and proprietary information regarding JBG's financial capacity requested by, and delivered by JBG *under seal* to, the Mayor's Agent. In addition to JBG's marketing data for the Project, based on comparable data from JBG's management of two other high-rise residential properties in the West End of the Downtown, JBG submitted a third party market study to the Mayor's Agent as further evidence of the Project's market feasibility. Based upon certain standard market assumptions and evidence submitted by JBG, the Project is reasonably estimated to increase real estate tax revenue to the District of Columbia by $175,000 - $204,000 annually and income tax revenue by $535,000 - $673,000 annually.

C. Historical Background of the Three Contributing Buildings

13. The three (3) contributing buildings are located within the Pennsylvania Avenue National Historic Site. This unique "National Historic Site" is protected today as a result of Congressional designation in 1965, which honors the Presidential inaugural route and its immediate environs between the Capitol and the White House. The Pennsylvania Avenue National Historic Site is recognized for its role as a symbol of "the majesty and power of the American Republic and the triumphs and tragedies of the American people."

14. The building at 915 E Street was built in 1924, and served as an auction house between 1935 and 1943, and later as the location of Commercial Office Furniture Co. for almost 15 years until the early 1960's. It is a three-story warehouse-type commercial building with a facade of brick, terra cotta and multi-lighted steel windows. The building at 917 E Street was built in 1912, and was originally commissioned and used as a salesroom until 1930 by the Washington Tobacco Company. The site was also occupied by the Denis Furniture Company during the 1960's and incorporated into 919 E Street in 1989 as part of the Ritz nightclub. It is a two story commercial building with a Classical Revival façade in textured brick and terra cotta. The building at 919 E Street, was built in 1916, to

serve as a stationery and printing factory for the Stockett Fiske Company. This company occupied the building until the early 1950's. It was also used for a15-year period until 1975 by another stationery company, M.S. Ginn & Co. The Ritz nightclub began operations in it in 1989. It is a three story commercial building with a Classical Revival façade in textured brick and terra cotta. Currently, the building at 915 E Street houses a Penn Camera Exchange store on the ground level, and 917-919 E Street houses the Ritz nightclub. The upper floors of 915 E Street are vacant and used for storage. The upper floors of 917-919 E Street are devoted either to nightclub use or storage.

15. The three (3) contributing buildings are rectilinear in shape, and reflect the classical stylistic treatment common to commercial buildings of that time. Each is long and rectangular in plan, three stories high, features masonry construction with a brick façade, and has a flat, slag roof. These commercial buildings replaced earlier buildings, which had been used as a laundry, shop, and dwelling prior to their demolition. The three (3) contributing buildings share similar design elements, height, massing, and open, unarticulated interior space, but were built to accommodate different functions.

D. Special Merit of the Project

16. Under D.C. Code, Sec. 5-1004(e), 5-1006(e) & 5-1007, "[n]o permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest . . ." Under D.C. Code, Sec. 5-1002(10), "necessary in the public interest" may mean "necessary to allow the construction of a project of special merit." Under D.C. Code, Sec. 5-1002(11), a project of "special merit" is defined as "a plan . . . having significant benefits to the District or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services."

17. The Applicant seeks approval of its Applications on the basis that the proposed demolition and subdivision are necessary in the public interest in order to construct a project of "special merit." The Applicant contends that the Project will provide significant benefits to the District of Columbia or to the community by virtue of its specific features of land planning and its social and other benefits having a high priority for community services.[1] Specifically, JBG asserts that its Project is essential for the District not only to realize the fundamental economic development goal of a "Living Downtown," but also to

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[1] By correspondence dated June 2, 2000, counsel for JBG requested that the Mayor's Agent not consider "consistency with the purposes of the Act" as a separate legal ground of "special merit" for the Project. At the hearing, counsel for JBG also requested that the Mayor's Agent not consider the term "adaptive reuse" as a characterization of the Project supporting "special merit" in the Mayor's Agent's consideration of the evidence in this matter. Having given them due consideration, the Mayor's Agent grants counsel's requests.

provide other substantial amenities to the historic, arts and commercial district in which the Project is located.

(i) Historic Preservation

18. Based upon the testimony of Emily Eig, who was qualified as an expert in historic preservation and architectural history, the Mayor's Agent makes the following findings of fact:

a) The three (3) contributing buildings do not share the significance of many resources within the Pennsylvania Avenue Historic Site since:

(i) They are not located on the grand boulevard of Pennsylvania Avenue, the "truly National thoroughfare," and, therefore, have not been part of the great federal processions of our past.

(ii) They do not hold the great importance to the Nation's history that can be associated specifically with many of the other contributing resources in the Pennsylvania Avenue Historic Site, such as hotels, boarding houses, restaurants, theaters, markets, shops, and hostelries that were the site of "daily activities reflecting and shaping National life."

(iii) The three (3) contributing buildings contribute only as architectural background to the National experience, having been constructed in the early decades of the 20th century in this important ceremonial historic district of the District of Columbia.

b) The Project is substantially compatible in its 20-foot setback, massing, scale and height with the Pennsylvania Avenue National Historic Site for several reasons:

(i) The Project retains those portions of the three (3) contributing buildings that can be seen from the street and which hold the most distinguished historic and architectural treatment.

(ii) JBG ultimately selected the 20-foot setback as an optimum dimension after consultations with HPRB staff because it maximized preservation of the three (3) historic properties, minimized visibility of the new construction from public space, and allowed the required square footage and massing necessary for the Project goals to be reasonably met.

(iii) The new construction would not be visible to a pedestrian in close proximity to the Project.

(iv) The new construction is massed in such a way as to minimize its bulk and setback from the restored historic elements of the Project, and is articulated to distinguish it from the retained fabric.

(v) The height of the Project is in concert with its surroundings in all directions.

c) As part of the Project, JBG will assist in a variety of ways to preserve, maintain, enliven and protect Booth's Alley.

(i) Although built in the twentieth century, the three (3) contributing buildings back onto Booth's (originally Baptist's) Alley. Beyond Pennsylvania Avenue and the associated Federal buildings, Booth's Alley ranks with Ford's Theatre and Petersen House as three (3) of the most important resources within the Pennsylvania Avenue National Historic Site. Booth's Alley is known to have been the escape route used on April 14, 1865, by John Wilkes Booth following his assassination of President Abraham Lincoln. Booth's Alley is immediately adjacent to Ford's Theatre, 511 10th Street, Northwest.

(ii) Since the 1980s, the Office of Planning (OP) has envisioned a Downtown filled with people - a "Living Downtown." Coupled with the important relationship of Downtown with its historic past, this concept included the idea that Booth's Alley could become a destination for residents and tourists alike interested in national and local history, especially for the Civil War period.

(iii) Despite efforts by the OP, no preservation improvements have been made to Booth's Alley for the past 10 years. Recently, new commercial development activity has taken place on or near Booth's Alley, spurring the need for the preservation, maintenance and enlivenment of Booth's Alley as a publicly accessible space.

(iv) In June 2000, the Heritage Tourism Coalition, Inc. (the HTC) launched its effort to introduce heritage tourism to Downtown. With funding from the Downtown Business Improvement District (the Downtown BID) and Federal Highway funds, the HTC is preparing history trails throughout the Downtown area, each marked by permanent signage highlighting important sites and events. Because

the Downtown's history is tied to the Civil War, the HTC is planning a Civil War trail for Downtown, including the placement of a sign at the F Street entrance to Booth's Alley, publicly recognizing its historicity for the first time.

(v) In cooperation with the HTC, JBG will permit the HTC to place signage on the back wall of the Project to describe the historical importance of Booth's Alley and provide interpretation of Booth's flight, and any additional signage assisting the HTC in its heritage tourism efforts for Booth's Alley. JBG will work with the Downtown BID to encourage and support tourism related to the Alley, and with the Surratt Society regarding their quarterly tours of the entire escape route of John Wilkes Booth. Moreover, with the HTC and the Downtown BID, JBG will coordinate a program to light and maintain Booth's Alley as a clean and safe environment. JBG will investigate and use, if available, District of Columbia Historic Alley Program assistance for the restoration of Booth's Alley with cobblestone or other historically appropriate paving, based on historic research. Finally, JBG will notify and work with other developers and owners with a stake in Booth's Alley and the Downtown to devise and implement strategies for its enlivenment, preservation and protection.

(vi) JBG's Project will directly benefit the preservation and use of Booth's Alley in other ways. The artist studios will be accessed from and oriented towards Booth's Alley, including show windows onto the Alley. The artists' activities and studios would thus be visible and accessible to visitors to Booth's Alley. JBG's Project will also attract cultural/museum/heritage tourism businesses to available retail space in the Project, thereby complementing the preservation uses of Booth's Alley. JBG will also serve as a catalyst for adjacent stakeholders to promote the preservation, maintenance and use of Booth's Alley and to encourage the use of the Project's retail space as an attractive means to enter Booth's Alley.

19. Based upon the testimony of George Dove, the Project architect, the Mayor's Agent makes the following findings of fact:

a) The Applicant's intention throughout the Project design phase was to preserve and restore as much of the three (3) original structures and their context as architecturally feasible, while still meeting its mixed use goals in an economically and otherwise reasonable manner.

b) Design studies for the Project included multiple evaluations of a variety of preservation scenarios, from full historic building preservation to complete demolition or retention of as little as 10 feet of the facades and fabric.

c) Since the Project is primarily residential in nature, the design of typically successful high-rise residential facilities is based on parameters of dimensional considerations, including window to corridor depths of approximately 29 to 32 feet, adequate floor to floor height, and maximization of perimeter length in order to accommodate desirable frontage for bedrooms and living spaces requiring the provision of adequate light, air and views.

d) Design studies showed that full retention of the three (3) contributing buildings and adapting them for residential uses proved unreasonable because their narrow total width of 85 feet and length of 159 feet would permit only 12 units (keeping retail and arts uses on the first floor), and would result in over 60 % of the second and third floors remaining unusable.[2]

e) The Applicant investigated 15 design options involving the preservation of varied amounts of the historic buildings' facades and fabric that would also permit the construction of a reasonably functional and economical mixed-use layout, including "I", "L", and "U" shaped configurations with varying setbacks behind the contributing buildings' facades from 10 to 30 feet.

f) Evidence provided by JBG demonstrated that JBG's original proposal to the HPRB sought a 10-foot setback, which it later increased to 20 feet at the request of HPRB staff. The 20-foot setback required the addition of residential units along Booth's Alley at a mezzanine level to make the Project economically viable. A 30-foot setback to the western wing of the Project was found to require the elimination of at least 3,500 square feet of buildable space (or 7 – 8 residential units) that could not be reasonably relocated in other areas of the building, and would render the Project economically unviable.

g) JBG's evidence demonstrated that the Project's massing, its "U" shape, its 20-foot setback from the historic facades – all as presented to the HPRB in Applicant's conceptual design review -

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[2] JBG made no separate and distinct claims of "special merit" on the basis of off-street parking, since off-street parking is mandated under the Zoning Regulations, *see, e.g., Committee of 100*, 571 A.2d at 201. The Mayor's Agent notes that JBG's evidence also demonstrated that neither of the design options involving complete retention of the three (3) historic buildings allowed for off-street parking space as required under the zoning regulations, whereas the Project on either the Base site or the Expanded Site provides more off-street parking than required under the Zoning Regulations.

optimize the achievement of the Project's mixed use objectives while maintaining and restoring critical architectural elements of the three (3) contributing buildings, and maximizing the effective setback of the Project to give greater perceived space behind the restored buildings.

h) The evidence, including model and computer-generated designs and perspectives, demonstrates that the Project massing is compatible with adjacent office structures and that the 20-foot setback provides a massing configuration that will reduce the visibility of the portion of the Project located behind the contributing buildings from most view sheds along E Street. Moreover, because of its massing and setback and its surrounding building context, the Project is not designed to loom over neighboring properties or impair light and air to the occupants of the Project.

i) JBG will work closely with the DCPL and the HPRB to assure that final Project design and detailing not only enhances the HPRB-accepted 20-foot setback and massing plan for the Project, but also is responsive to the alignment, articulation and fit of the three (3) contributing buildings within the Pennsylvania Avenue National Historic Site.

(ii) Specific Features of Land Planning

20. Based upon the testimony of Nathan Gross, AICP, who was qualified as an expert in District of Columbia zoning and land use planning policies and practice, the Mayor's Agent makes the following findings of fact:

a) A special and unique feature of land planning related to the Project is that each of the proposed uses in the Project has a high priority in the city's land use policies aimed at achieving a "Living Downtown." Yet none of the three (3) uses is required under the existing zoning classification. Under the DD/C-4 zoning classification, JBG is entitled to build an office building of equal height and bulk to the Project as a matter of right. *See* 11 DCMR, Sec. 751.2. Based on Downtown development statistics, office development has historically provided the most profitable use of real property, in light of the scarcity and high cost of Downtown real property and the relatively high rate of economic returns from office development. However, unlike office development, which predominates in Downtown, each of the Project's uses – residential, ground floor retail and artist studios – constitutes a high policy priority for downtown development in the E Street corridor under the District's Downtown, Housing, Land Use, and Preservation/Historic Features Elements of the *Comprehensive Plan*, D.C. Code, Secs. 1-245 – 1-250 (1996) (1999 Supp.), 10 DCMR Chapters 1 – 19 (1999) (the *Comprehensive Plan*), and the Zoning Regulations of the District of Columbia, 11 DCMR, Sec. 1701.1 *et seq.* (1999).

b) The Project is also a unique land-planning feature because of its solely private funding of a Project that is focused on a preferred use that arguably has the highest priority in District planning policies for Downtown – residential development. *See* 10 DCMR, Sec. 1337.1(a)(1) (emphasis supplied). Instead of relying upon government, JBG, a private developer, is intervening to help resolve the residential housing shortage. As a testament to its special uniqueness as a land-planning feature, JBG's Project will be the first privately financed and unsubsidized residential project constructed in Downtown since the Downtown Plan was adopted in 1984-85.

c) The Project will enlarge and enhance the Pennsylvania Quarter Neighborhood, and will be within one (1) to four (4) blocks of five (5) apartment buildings built with assistance from the Pennsylvania Avenue Development Corporation (PADC), thereby effectively extending the slowly emerging Pennsylvania Quarter neighborhood and helping create a "critical mass" of housing as called for in *The Comprehensive Plan*. *See* 10 DCMR, Secs. 1303.10 - .11.

d) The ground floor retail uses along E Street will help maintain retail continuity along the 900 block of E Street, which is especially important because of the complete absence of retail uses across the street in the FBI building. The artist studios that will face Booth's Alley will help bring pedestrians to the site, and animate it for other active uses. The Downtown Plan supports vehicular access to the Project from E Street (rather than F and G Streets). *See* 11 DCMR, Sec. 1701.4.[3]

e) Based on information from land use studies, Downtown residents typically provide concentrations of retail, entertainment and cultural uses within the predominantly office and hotel environment, and support a "Living Downtown" for all of these desirable business and cultural uses, as well as increased pedestrian activity and improved public safety, especially at night. Also, a high percentage of Downtown residents will either walk or use public transit for their daily activities, thereby relieving further congestion of Downtown streets and thoroughfares.

21. Based upon the oral testimony and written statement of Ellen McCarthy, Deputy Director, Development Review and Coordination of the District of Columbia Office of Planning (the OP), the Mayor's Agent makes the following findings of fact:

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[3] Because of its historicity and narrowness, Booth's Alley – with vehicular access only from F Street – is unable to provide reasonable vehicular access to the Project as well as to new development projects on F Street.

a) The OP recommends that the Mayor's Agent find the Project to have "special merit" under the Act. The OP finds that the Project is in harmony with land use planning objectives for Downtown and the community, that it demonstrates superior design, and that it provides at least three (3) major benefits to Downtown land planning. The three (3) benefits of the Project upon which the OP bases its recommendation are:

   (i) The construction of a large amount of housing in an area that does not require housing under the Zoning Regulations.

   (ii) The provision of artist studios, at rents below those which could otherwise be charged for retail space, in an area of the Downtown which the *Comprehensive Plan* designates for arts use.

   (iii) Leadership among other property owners in providing special treatment for Booth's Alley to commemorate its historical significance and to improve the prospects that Booth's Alley may develop as a secondary location for retail.

b) The Project will assist the District of Columbia in meeting the *Comprehensive Plan* target of 5,400 housing units south of Massachusetts Avenue. A consultant has recently studied Downtown housing and found that, even with the required housing under the DD District, only 3,400 of the 5,400 projected units will likely be achievable, making the Project even more important to the Downtown.

c) The Project will bolster the critical mass of the housing in the Pennsylvania Quarter neighborhood, an established goal of the *Comprehensive Plan*. Moreover, a recent study by the OP of Downtown housing policy concluded that the goal of clustering housing in the area of the Project was both well established and sound.

d) Artist studio space has been decreasing in the Downtown Arts District. Therefore, even though the number of the proposed artist studios in the Project is modest, they are particularly valuable. Moreover, because artists have been displaced from neighboring Downtown properties recently, the provision of artist studio space in the Project preserves a working artist presence that was an important part of the neighborhood for at least 20 years.

e) JBG's commitment to the preservation and maintenance of Booth's Alley and to work cooperatively with the HTC and other stakeholders for preservation of Booth's Alley will bolster heritage tourism in the Downtown. The Project's mixed-uses will also assist in attracting at least some of the 20 million annual visitors off the Mall and into the

Downtown to contribute to the economic growth and development of the Downtown and the community generally.

22. Based upon JBG's Pre-Hearing Statement and witness testimony at the hearing, the Mayor's Agent makes the following additional findings of fact:

a) JBG's Project implements the following general provisions of District, Downtown, Housing, Land Use, and Preservation/Historic Features Elements of the *Comprehensive Plan*, Title 10, DCMR Chapters 1 – 19:

(i) *General:* Secs. 101.1(c), 104.1 (Developing A Living Downtown); Secs. 205.1, 205.2(f) (Economic Development in Downtown); Secs. 713.2(d), (j) & (m) (Design of, and Promotion of Mixed-Use Development in, Commercial Activity Corridors); Secs. 801.1, 805.16 (Preservation and Compatibility of New Construction with Historic Districts); Secs. 900.2, 900.3, (Major Downtown Policies); Sec. 901.1 (General Downtown Land Use Objective); Sec. 902.2(f) (Develop Downtown Retail Frontages Related to Residential Communities); Sec. 903.1 (Downtown Residential Land Use Objective); Sec. 906.1 (Downtown Arts, Cultural and Entertainment Land Use Objective); Sec. 911.1(c) & (g) (Require New Construction in Historic Districts to be sensitive to the Character of the Districts and Recognize the Importance of Historic Preservation as A Viable Economic Development Strategy); Secs. 919.1, 919.2(e) (Attain Full Economic Benefit from Downtown Development by Attracting New Residents and Jobs to Downtown to Increase Tax Base and Economic Development of Downtown); Sec. 929.1 (Mixed-Use Goals for Pennsylvania Avenue West to Encourage Pedestrian Movement from Mall to Retail Core); Sec. 930.1 (Mixed-Use Goals for Pennsylvania Quarter Area with Special Emphasis on Achieving a Major Residential Community); and Sec. 1132.1 (Objective of Downtown Arts District is to Develop Concentration of Public and Private Spaces and Activities for the Arts and Artists That Provide Local Arts Activities)

(ii) *Ward 2 (Major Policies)*: Sec. 1335.1 (Develop New Arts Facilities in Ward 2); Sec. 1355.2(a)(1) & (c) (Maintain Residential Neighborhoods and Revitalize/Develop A Living Downtown); Sec. 1326.1(a) & (b) (Create, Conserve and Enhance Residential Neighborhoods in Ward 2)