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February 3, 2004

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BY HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, DC 20001

Re: BZA Application No. 17115 - Residential Recreation Space Variance
Application of Rainbow Lofts, LLC –
1445 Church Street, N.W.

Dear Members of the Board:

Enclosed please find twenty copies of the pre-hearing statement of Rainbow Lofts, LLC (the "**Applicant**") which describes the Applicant's satisfaction of the variance relief standards from the residential recreation space requirements of 11 DCMR §773. The Applicant notes that this application has received the unanimous support of Advisory Neighborhood Commission ("**ANC**") 2F and that there is no evidence of any opposition to this case.

The Applicant and its representatives look forward to presenting this case at the BZA's February 17, 2004 Public Hearing.

Sincerely,

Paul A. Tummonds, Jr.

Jeffrey C. Utz

Enclosures

cc: Arthur Jackson, OP
Beth DeLucenay
Steve Dickens

Document #: 1377815 v.1

BZA
Case No. 17115
Exhibit No. 24

Board of Zoning Adjustment, DC
District of Columbia
CASE NO. 17115
EXHIBIT NO. 24



BOARD OF ZONING ADJUSTMENT

APPLICATION NO. 17115

PREHEARING STATEMENT OF THE APPLICANT

FEBRUARY 3, 2004

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Rainbow Lofts, LLC

BZA Application No. 17115
Hearing Date: February 17, 2004
ANC 2F

STATEMENT OF THE APPLICANT

This is an application of Rainbow Lofts, LLC ("**Rainbow Lofts**" or "**Applicant**") for a variance from the residential recreational space requirements of §773.3 of the District of Columbia Zoning Regulations. Rainbow Lofts is currently redeveloping the structure (which formerly housed an automobile body and painting shop) located at 1445 Church Street, N.W. (Square 209, Lot 106) (the "**Property**"), as shown on Exhibit A, for residential use. The Property is located in the Uptown Arts-Mixed Use Overlay ("Arts")/C-3-A Zone District (see pertinent portion of the Zoning Map attached as Exhibit B), and the Greater 14th Street Historic District.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve a variance pursuant to §3103.2 from the residential recreational space requirements of §773.3 of the Zoning Regulations. The portion of the Property that will be primarily impacted by this application is a 272 square foot area located adjacent to an alley and the existing parking spaces provided on the Property. With the approval of this application, two additional parking spaces will be provided for residents of the residential development on the Property.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR §3103.2).

III. AREA SURROUNDING THE PROPERTY AND APPROVED DEVELOPMENT ON THE PROPERTY

The Property is located two blocks west of Logan Circle and is bounded by Church Street, NW, to the south, an alley to the north, a parking lot to the west and a residential project currently under construction to the east. The general area surrounding the Property has witnessed an explosion of development activity recently. This development activity includes numerous residential projects along 14th and P Streets, as well as the Whole Foods Market on P Street (one block south of the Property) and the renovation and expansion of the Studio Theater (one block east of the Property).

The structure on the Property was built in 1929 as a mechanics' garage serving the auto showrooms on nearby 14th Street, NW. Its most recent tenant was an automobile body and painting shop known as the Rainbow Paint and Auto Body ("**Rainbow Auto Body**"), which ceased operations in early 2002. In the 1990's, when the Greater 14th Street Historic District was created, the building was deemed to be a "contributing" structure due to its age and association with the auto industry. The Applicant proposed the renovation and adaptive reuse of the Rainbow Auto Body building and the construction of an addition to that building in order to create twenty-one residential units, consisting of one and two bedrooms, on the Property. This proposed development was reviewed and approved by the Historic Preservation Review Board ("**HPRB**") and received approval from the Building and Land Regulation Administration as

being fully compliant with all zoning requirements of the Arts/C-3-A District. A building permit for the project was issued and construction began in July 2003.

IV. IMPACT TO THE PROJECT AS A RESULT OF THE REQUESTED VARIANCE

The proposed variance application does not request any modification to the physical structures approved by HPRB and the Building and Land Regulation Administration. Rather, approval of the variance from the residential space requirement will allow for an improved utilization of the Property. In particular, the approval of the variance application will allow for two additional parking spaces to be provided for residents of the project, while only resulting in the removal of 272 square feet of residential recreation space on the Property. In fact, this area will not likely be used for recreational purposes by residents of the project due to its location adjacent to an alley and seven existing parking spaces. Since the building has been deemed to be a contributing building to the Greater 14th Street Historic District, no parking spaces are required (see 11 DCMR §2100.5), however, the project presently provides seven parking spaces in the rear of the Property adjacent to an alley. If this variance application is granted, nine parking spaces will be provided on the Property. The inclusion of two additional parking spaces in the project has been received with approval from members of the surrounding neighborhood and Advisory Neighborhood Commission ("**ANC**") 2F, as parking spaces are hard to find in this neighborhood.

As shown in the site plan and relevant floor plans of the project attached as Exhibit C, the project will still provide a significant amount of recreation space on the large landscaped roof deck (which includes approximately 2,814 square feet). The large roof deck is much more likely

to be used by residents of the project for recreation purposes than a small area adjacent to an alley and parking spaces because of its superior sunlight, fresh air and views.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR AN AREA VARIANCE UNDER SECTION 3103.2 OF THE ZONING REGULATIONS

Rainbow Lofts is entitled to area variance relief pursuant to 11 DCMR §3103.2, because it can demonstrate: (1) an extraordinary or exceptional situation or condition inherent in the Property; (2) practical difficulty in satisfying the strict application of the residential recreation space requirements of the Zoning Regulations; and (3) no harm to the public good or to the zone plan will occur as a result of the approval of this variance application.

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

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land", and that "property generally includes the permanent structures existing on the land." *Id.* At 293-294.

As noted above, the Property is located in the Greater 14th Street Historic District and includes the Rainbow Auto Body building which has been deemed to be a contributing building to the historic district. Incorporating the existing historic building (which previously housed an industrial use) into the proposed residential development created a set of physical constraints within which Rainbow Lofts had to operate as part of the renovation and adaptive reuse of the historic building. These physical constraints resulted in an exceptional and extraordinary condition inherent in the Property. Therefore, the Applicant satisfies the first prong of the area variance test.

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

The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof of the practical difficulty element of the area variance test. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d at 1170 (D.C. 1990). The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* At 1171. Importantly, the Court of Appeals provided a list of factors that the BZA may consider in determining whether the practical difficulty standard has been satisfied. The Court noted the following factors: "the severity of the variance(s) requested"; "the weight of the burden of strict compliance"; and "the effect the proposed variance(s) would have on the overall zone plan." *Id.* In addition to the factors listed above, the Court in *Gilmartin* stated that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration." *Id.* At 1171. It is important to note that an applicant is only required to show that it would be unnecessarily burdensome to satisfy the strict requirements of the Zoning Regulations. An applicant is not required to show that it is impossible to satisfy the strict application of the Zoning Regulations.

As previously stated, the roof of the building will contain a landscaped deck that provides approximately 2,814 square feet of recreational space for residents of the project (see roof plan attached as Exhibit C). During the HPRB public review of this project, the Historic Preservation Division ("HPD") staff and members of the community raised concerns about the location of the elevator core, stairs, and heat pump enclosures on the roof. All these parties requested that the

roof structure and heat pump enclosures be pushed to the interior of the roof, away from the edges of the building. The Applicant designed the roof structure, heat pump enclosures, and the recreation area to accommodate the concerns of the HPD staff and community members, as well as provide a large open and inviting recreation area for residents of the project. Therefore, while all of the recreation space provided on the roof does not fully satisfy the requirements of the Zoning Regulations (which requires any residential recreation space on a roof shall be at least 25 feet in width or length), the square footage of recreation space on the roof (along with the lobby area of the building) is equal to 11.8% of the gross floor area of the residential uses included in the project.

Even if the recreation space on the roof satisfied the strict requirements of the Zoning Regulations for residential recreation space, additional area on the Property would have to be utilized for residential recreation space to meet the 15% requirement. Locating additional residential recreation space on the Property in order to achieve the required 15% would be inconvenient to the Applicant and is not likely to be used by residents of the project. Such residential recreation space would have to be located in the rear of the Property adjacent to an alley and parking spaces, an area not conducive to recreational uses. In addition, the use of the 272 square foot area of the Property that is presently designated as residential recreation space in the rear of the Property (adjacent to an alley and the project's seven parking spaces) as two parking spaces, rather than residential recreation space, will actually enhance the lives of the residents of the project and the surrounding community. Granting this variance will provide two additional parking spaces for residents of the project and will alleviate some of the parking pressures on the surrounding neighborhood.

Based on the factors listed by the Court in *Gilmartin*, the Applicant has satisfied the practical difficulty standard of the area variance test. Also, as required by the Court in

Gilmartin, the practical difficulty is unique to the Property since it is created by the historic nature of the building and in direct response to concerns raised by the HPD staff and members of the community.

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

Granting the residential recreational space variance request will not cause harm to the public good or to the zoning plan because the proposed project will still provide a significant recreation area on the roof of the project. The rooftop and lobby recreation space helps achieve the goal of the residential recreation space requirement of the Zoning Regulations in providing inviting and attractive recreation space for the residents of the project. In addition, the creation of two new parking spaces will take two more cars off the neighboring streets and will help increase the availability of on-street parking in the neighborhood. As further evidence that granting the requested area variance relief will not cause harm to the public good or the zone plan, the Applicant notes that Advisory Neighborhood Commission 2F unanimously approved this application.

VI. ANC 2F SUPPORT

On December 17, 2003, representatives of the Applicant made a presentation to ANC 2F's Community Development Committee regarding this application. ANC 2F's Community Development Committee voted (unanimously) to support the application. On January 7, 2004, ANC 2F adopted a unanimous resolution in support of this application. A copy of the ANC's resolution in support of the application is attached as Exhibit D. The Applicant is not aware of any opposition to this case and notes that the record does not include any opposition to the case.

VII. LIST OF WITNESSES EXPECTED TO TESTIFY

The following witnesses are expected to testify at the public hearing on behalf of the Applicant:

1) Beth DeLucenay; Representative of Rainbow Lofts.

2) Steven Dickens; Project Architect, Eric Colbert & Associates.

VIII. EXHIBITS IN SUPPORT OF APPLICATION

Exhibit A: Portions of the Sanborn plat showing the Property outlined in red.

Exhibit B: Portion of the Zoning Map showing the Property outlined in red.

Exhibit C: Site plan, relevant floor plans, and elevation of the residential project on the Property.

Exhibit D: ANC 2F Resolution, dated January 21, 2004, in unanimous support of the application.

Exhibit E: Outline of Testimony of Beth DeLucenay; Representative of the Applicant.

Exhibit F: Outline of Testimony of Steven Dickens; Project Architect, Eric Colbert & Associates.

IX. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested variance relief in this case.

Respectfully submitted,
SHAW PITTMAN

By: _____
Paul A. Tummonds, Jr.

By: _____
Jeffrey C. Utz

February 3, 2004

Document #: 1376289 v.1

A

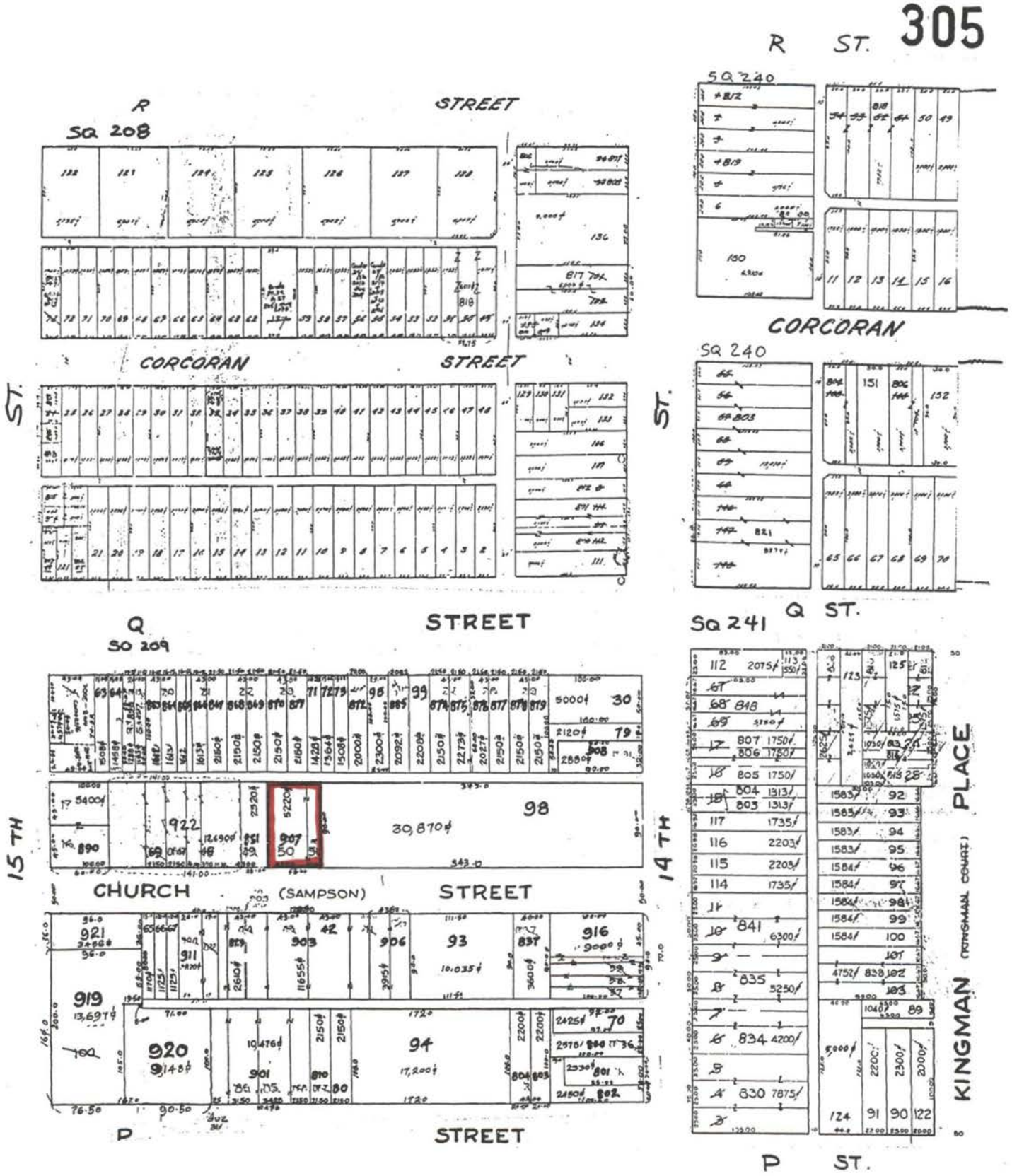
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WASHINGTON, D.C. VOL. 3

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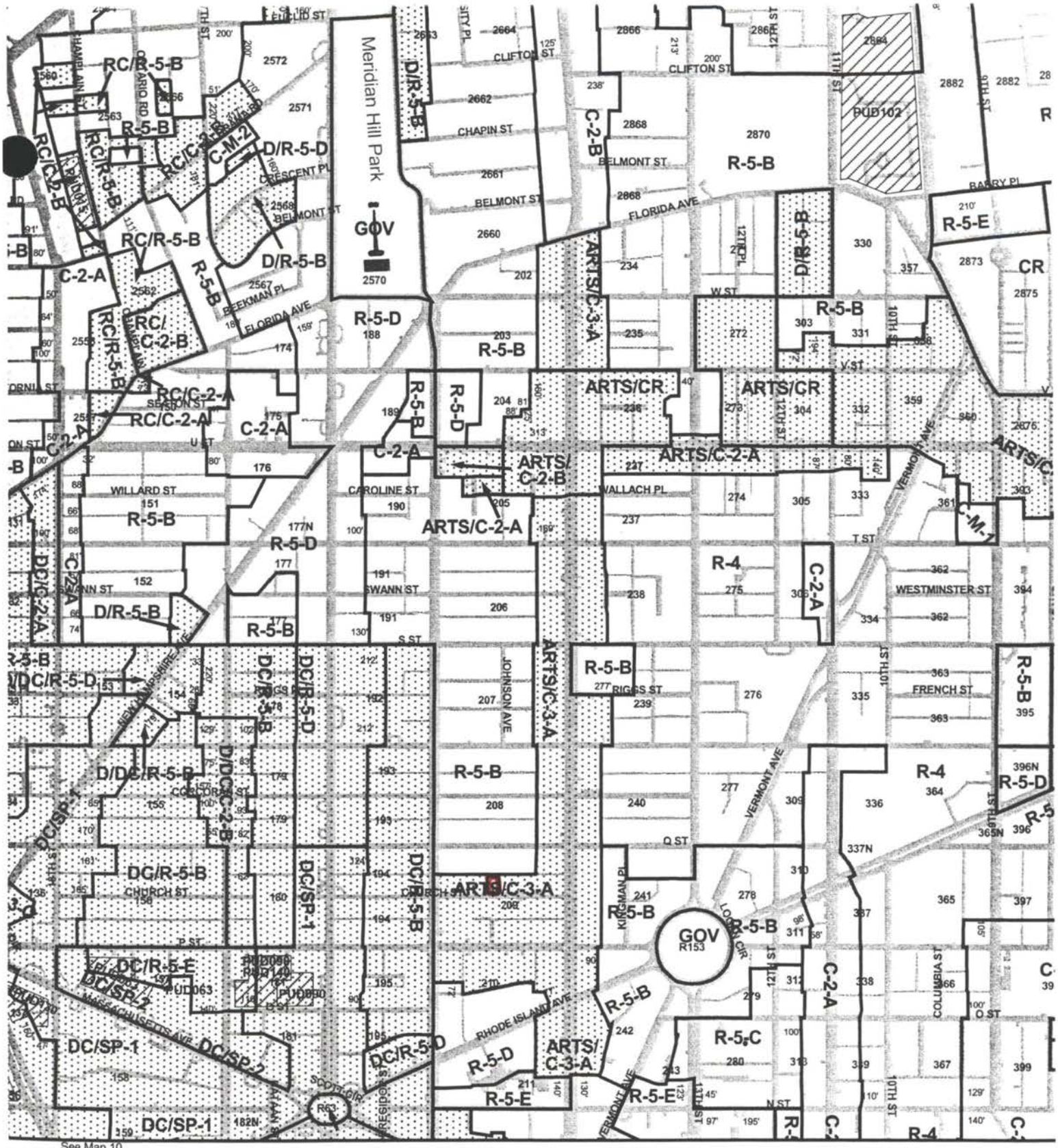
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305
R ST.
R STREET
SQ 208
SQ 240
CORCORAN
CORCORAN STREET
ST.
ST.
Q STREET
SO 209
Sq 241
Q ST.
15 TH
14 TH
CHURCH (SAMPSON) STREET
P STREET
P ST.
KINGMAN (KINGMAN COURT) PLACE
30,870
98
922
907
919
13,697
920
9,148
901
10,476
94
17,200
93
10,035
916
9000
841
6300
835
5250
834
4200
830
7875

B



See Map 10

npus Plans. Dimensions shown on this map are measured from property lines not shown. Buildings and streets are extracted from the 1999 ortho photography.
:e of Zoning at the address or number listed below.

-00 0 400 800 Feet

Major Federal Tracts
Streets
UDs
Areas of Overlay Districts
Water
Buildings

Overlay	Description
ARTS	Uptown Arts
CAP	Capitol Interest
CBUT	Chain Bridge UniversityTerrace
CP	Cleveland Park
D	Diplomatic
DC	Dupont Circle
DD	Downtown Development
FB	Foggy Bottom
FT	Fort Totten

Overlay	Description
HR	Hotel Residential
LO	Langdon
MW	Neighborhood Commercial.-Macomb
NO	Naval Observatory
RC	Reed Cooke
SSH	Sixteenth Street Heights
TSP	Tree and Slope Protection
WH	Tree and Slope Protection-Wesley He
WP	NeighborhoodCommercial-Woodley I

C

BZA SUBMITTAL SET

1445 Church Street, NW

Requested Variance

29 JANUARY 2004

PROJECT: 1445 CHURCH STREET, NW

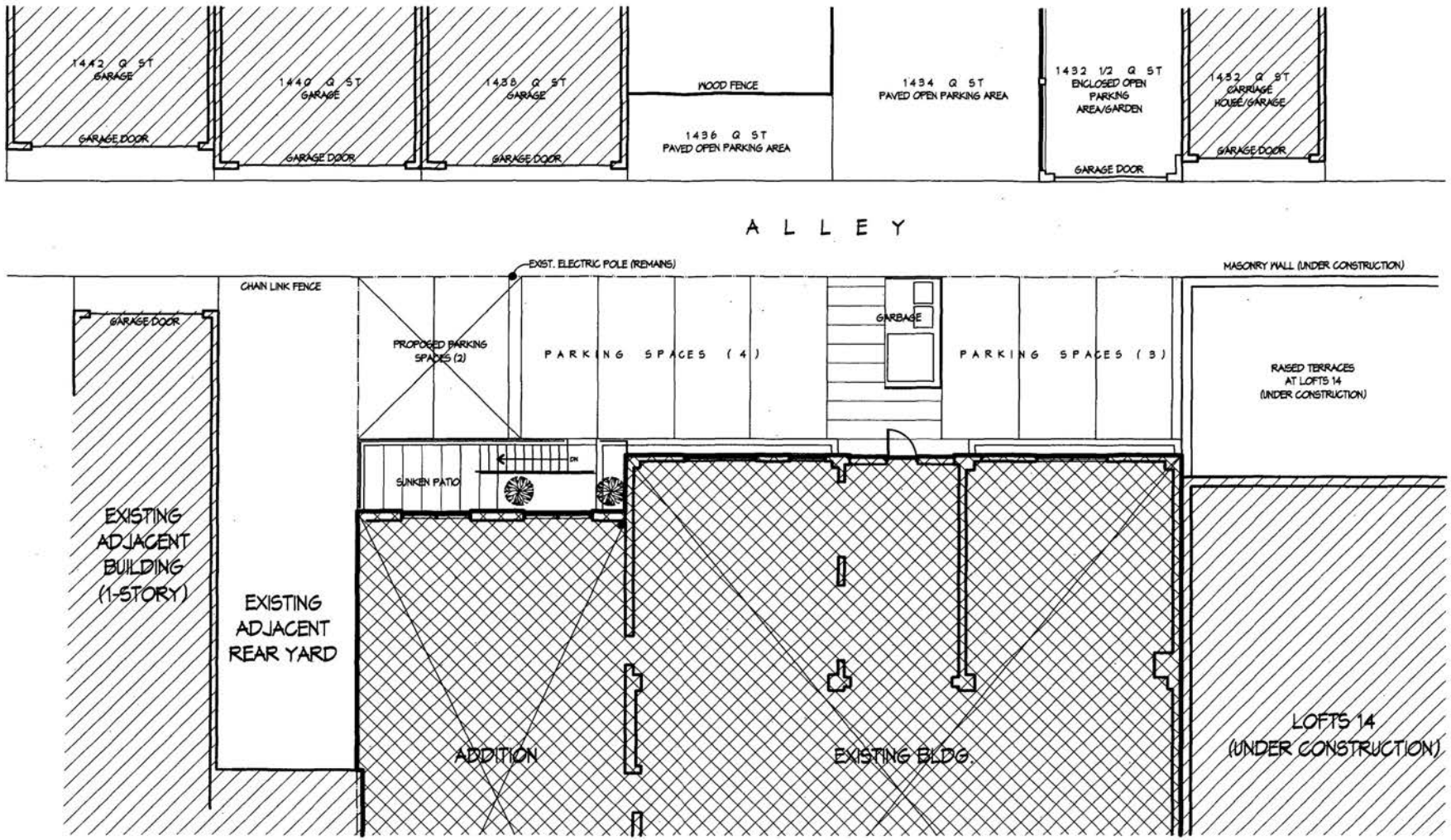
WASHINGTON, D.C.

CLIENT: WALNUT STREET DEVELOPMENT

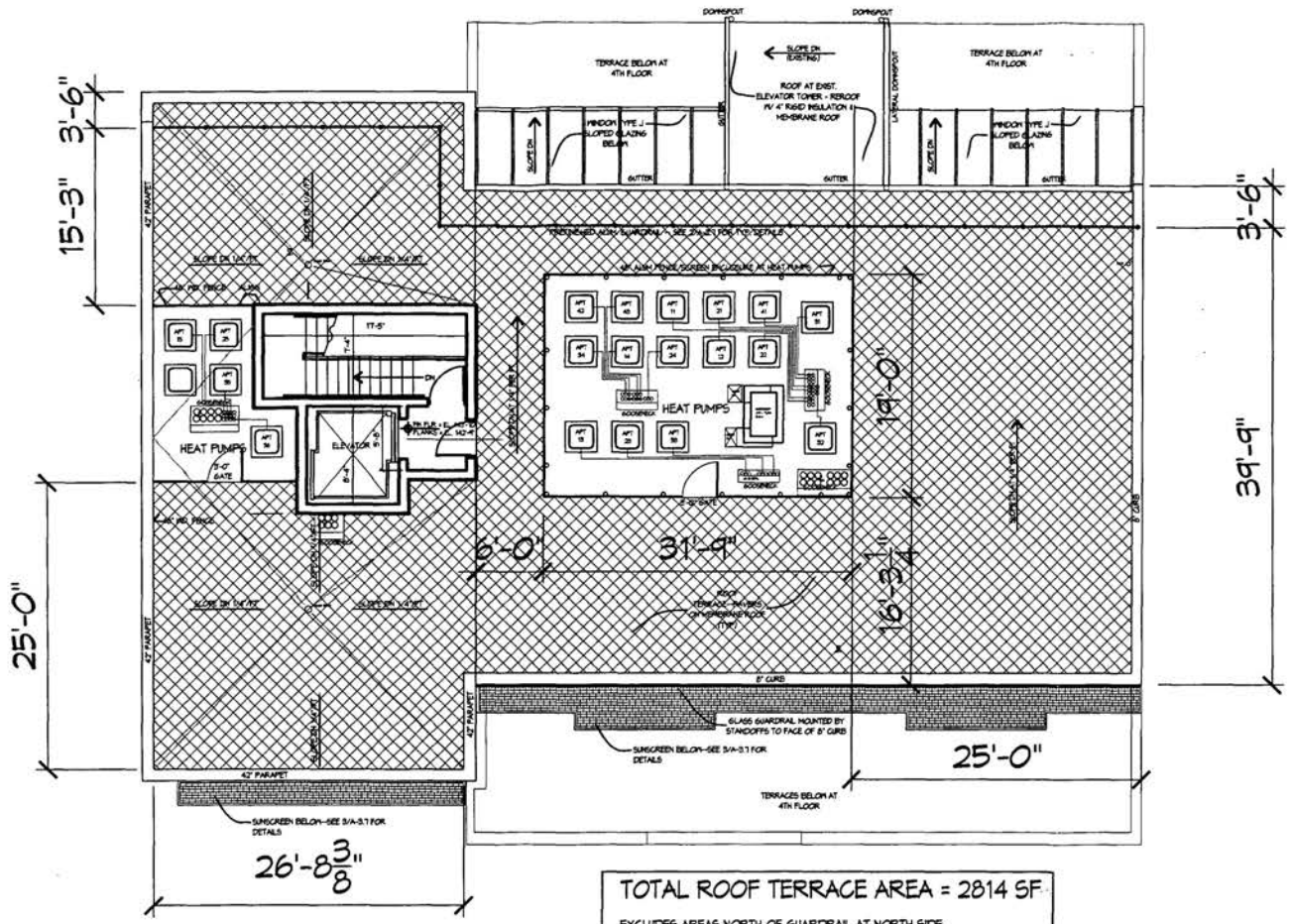
3935 UNIVERSITY DRIVE FAIRFAX, V A 22030

ARCHITECT: ERIC COLBERT & ASSOCIATES

717 5TH STREET, N.W. WASHINGTON, D.C. 20001



1 Site Plan @ Alley
SCALE: 3/32" = 1'-0"



TOTAL ROOF TERRACE AREA = 2814 SF

EXCLUDES AREAS NORTH OF GUARDRAIL AT NORTH SIDE.
INCLUDES AREAS OF 8" CURB; EXCLUDES AREAS OF 42" PARAPETS.

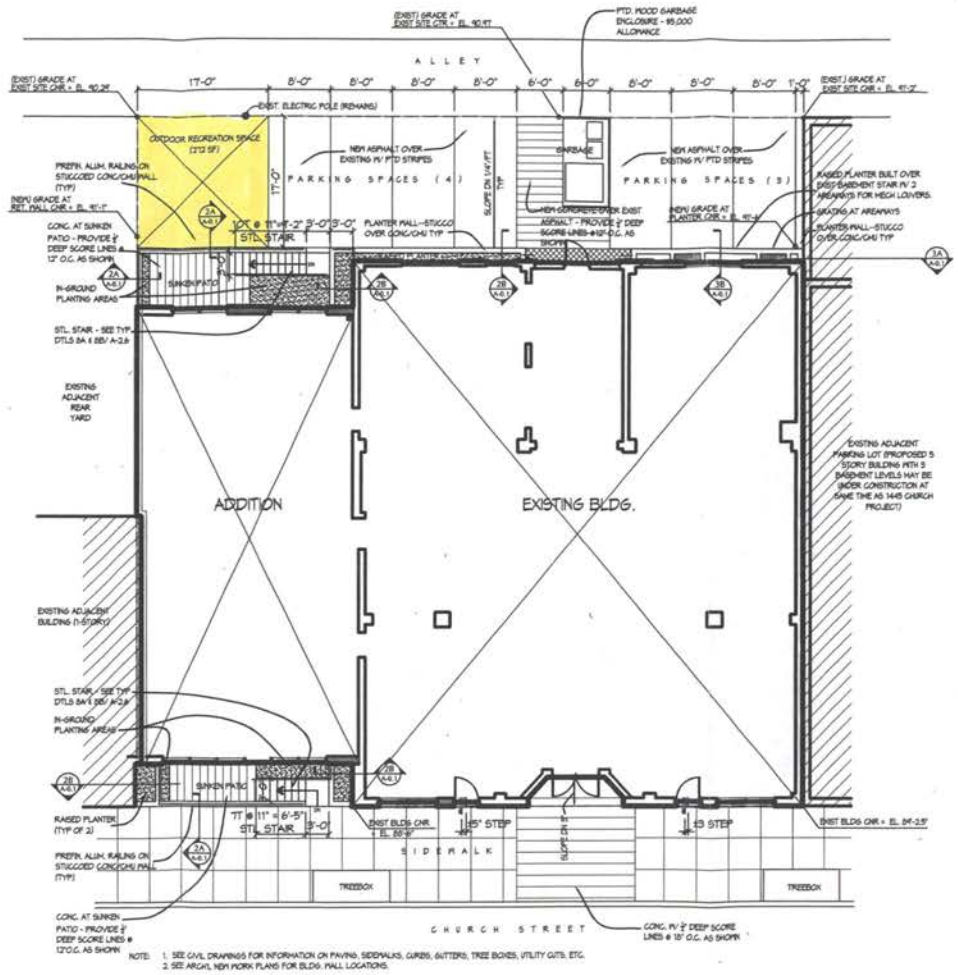
1 Roof Plan
SCALE: 3/32" = 1'-0"

ARCHITECT: ERIC COLBERT & ASSOCIATES
717 8TH STREET, N.W. WASHINGTON, D.C. 20001

CLIENT: WALNUT STREET DEVELOPMENT

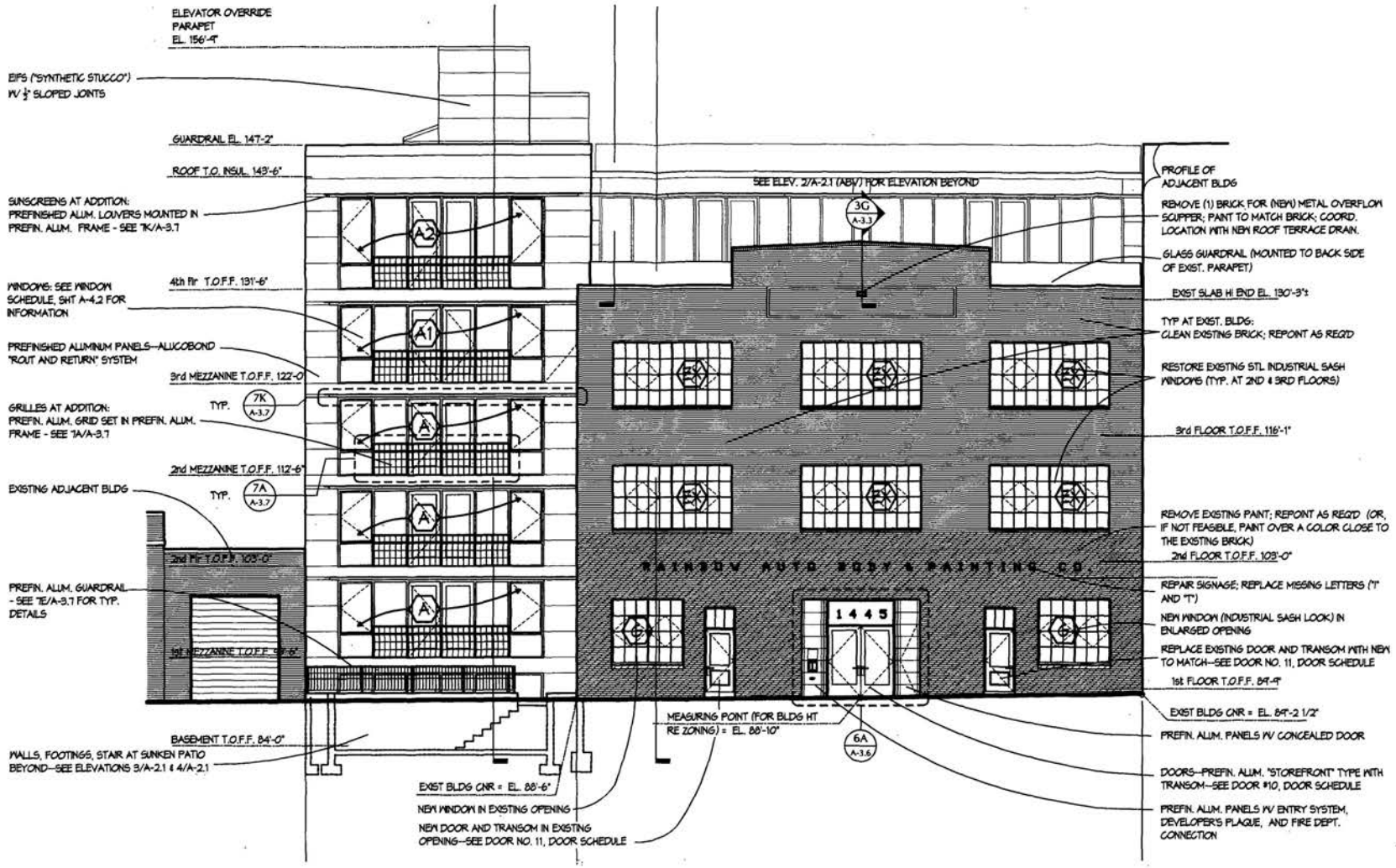
PROJECT: 1445 Church Street, NW
WASHINGTON, D.C.

1.29.04



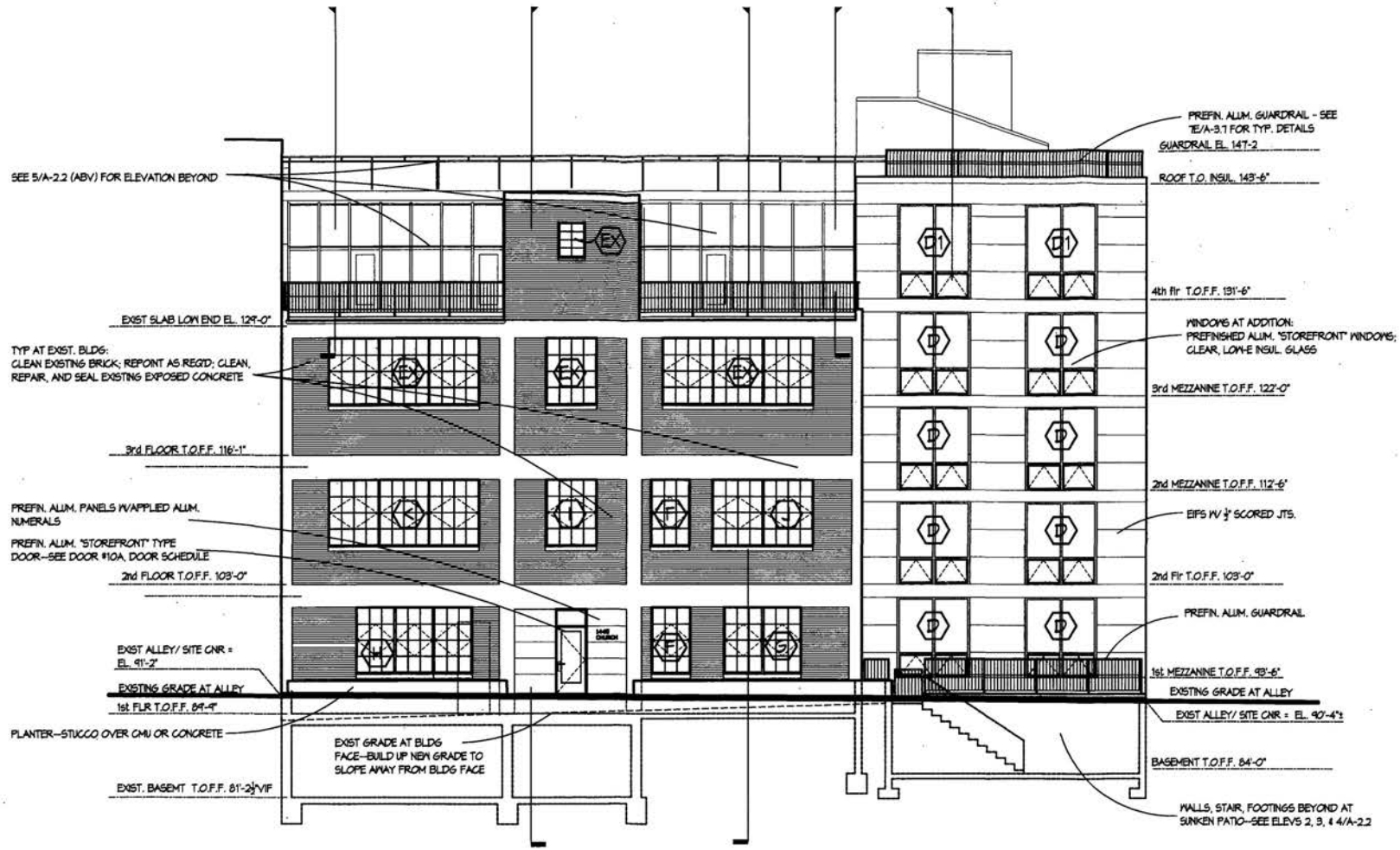
1 Site Plan

SCALE: 1/16" = 1'-0"



1 Church Street Elevation

SCALE: 3/32" = 1'-0"



1 **Alley Elevation**
SCALE: 3/32" = 1'-0"

D

ADVISORY NEIGHBORHOOD COMMISSION 2F
Government of the District of Columbia
P.O. Box 9348, Washington, D.C. 20005
Telephone: (202) 667-0052 Fax: (202) 667-0053 www.anc2f.org

Commissioners
2F01 Cary Silverman, *Chair*
2F02 Jim Brandon
2F03 Miriam Trimble
2F04 Helen M. Kramer, *Vice Chair*
2F05 Tom Funk, *Secretary*
2F06 Bob Hinterlong, *Treasurer*

January 21, 2004

Mr. Geoffrey Griffis, Chairman
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210 South
Washington, DC 20001

Re: BZA Application No. 17115 - 1445 Church Street, N.W.

Dear Chairman Griffis and Members of the Commission:

At its publicly advertised meeting on January 7, 2004, a quorum being present, ANC 2F unanimously approved, by a vote of 6 – 0, the recommendation of ANC 2F's Community Development Committee to support the above-mentioned BZA application. The applicant in this case (Rainbow Lofts, LLC) seeks a variance from the residential recreation space requirements of the Zoning Regulations, as enumerated in 11 DCMR §733.3, in order to develop a 21 unit residential project on the property, part of which was previously an automotive body shop.

ANC 2F believes that granting the proposed variance application is appropriate given the renovation of the historic building on the site, the inclusion of residential recreation space on the roof of the new residential building, and the fact that the area which was formerly included as grade level residential recreation space is unsuitable for such use because of its location on an alley and will now be available for two additional parking spaces, which are in great demand.

ANC 2F requests that its support of this project be given the "great weight" to which it is legally entitled.

Sincerely,

Helen M. Kramer
Vice-Chair

E

OUTLINE OF TESTIMONY OF
BETH DELUCENAY; RAINBOW LOFTS

I. Introduction

A) Beth DeLucenay, Rainbow Lofts

II. Nature of Relief Sought - BZA Application No. 17115

III. Discussion of the standards for variance relief.

1) Exceptional Situation/Condition – Historic Property

2) Practical Difficulty – unnecessarily burdensome & unique to this particular property; severity

3) No impact on the zoning plan

IV. ANC 2F Support

V. Conclusion

Document #: 1376737 v.2

F

OUTLINE OF TESTIMONY OF
STEVEN DICKENS; ERIC COLBERT & ASSOCIATES

I. Introduction

A) Steven Dickens, Eric Colbert & Associates

II. Description of Surrounding Neighborhood

III. Description of Subject Site

IV. Details and Status of Project

V. Conclusion

Document #: 1377289 v.1