BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of: Washington Convention Center Authority and The Government of the District of Columbia	BZA Application 17145 Public Hearing: April 13, 2004
Squares 344, 373, and 374, U.S. Reservation and closed portions of 10th & I Streets, N.W.	ANC 2F

STATEMENT OF THE APPLICANT

I.
Nature of Relief Sought

This application was filed by the Washington Convention Center Authority and the Government of the District of Columbia (the "Applicant") pursuant to § 3103.2 of Title 11 of the District of Columbia Municipal Regulations (the "Zoning Regulations" or "Regulations") for zoning relief under Section 1702.7(c) to allow all-day and tour bus parking on a lot in the DD/C-4 District, until construction commences on the replacement mixed-use development on the site of the former Washington Convention Center.

II.
Jurisdiction of the Board

The Board of Zoning Adjustment has jurisdiction to grant the requested relief pursuant to § 3104.1 of the Zoning Regulations.

BZA
Case No. 17145
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO. 17145
EXHIBIT NO. 24

III.
Description of Subject Property and Surrounding Area

1. Description of Subject Property

The subject property consists of Lots 344, 373, and 374, and closed portions of 10th and I Streets, N.W. (known as Lot 848 in Square 374 for Assessment and Taxation purposes) (the "Property" or "Subject Property") in the DD/C-4 District. The Property consists of approximately 443,888 square feet (10.19 acres). The Property is improved with the former Washington Convention Center, slated for imminent demolition. The demolition is both a safety and economic necessity. Inasmuch as the planning process for the re-use of this massive site is expected to take several years, it is desirable to construct a surface parking lot that can be used for both parking and as a venue for special events.

2. Description of Surrounding Uses/Area

The Area surrounding the site can be described as containing a mixture of Governmental, hotel and office uses.

a. East

The Renaissance Hotel (999 9th Street, N.W.) is located adjacent to the Subject Project on the east, it is part of the larger Techworld project. An office building at 801 9th Street, N.W., is located east of the Property along H Street. The office building is privately owned and is occupied by the United States Mint.

b. South

The office building due south of the Property at 9th and H Streets, N.W. is Occupied by the United States Secret Service. The Secret Service has purchased the Webster School, a former District of Columbia Public School, at 10th and H Streets, N.W. The Grand Hyatt Hotel (1000 H Street, N.W.) is south of the Subject Property between 10th and 11th Streets, N.W.

c. West

The privately owned office building due west of the Subject Property is the redevelopment of the former Greyhound bus terminal (1100 New York Avenue, N.W.)

d. North

New development dominates the area north of the Property. A new office building is under construction at 901 New York Avenue, N.W. A development site between New York Avenue and K Street along 10th Street is slated to be an all suites hotel.

e. Northeast

The new City Museum is northeast of the Subject Property within Mount Vernon Square.

IV.

Description of Planned Development of Subject Property and Required Relief

The Property will be leased from the District of Columbia for the purposes of demolishing the existing structure and operating the parking facility. The parking operation will allow the District to offset the cost of the demolition of the former Convention Center and create a vibrant interim use for the site pending its redevelopment. The planning process is expected to take several years and will explore a mix of uses to include housing, retail shops, cultural and civic uses, as well as a public park.

As indicated herein, in the interim period before construction on the building commences, the Applicant seeks to use the property as an all-day commuter and tour bus parking lot. The plan for the parking lot proposes to include a maximum of 1,200 spaces and includes landscaping along the street frontages. We project that on a weekday basis, about 900 spaces will be used for automobiles, and a portion of the remainder of the spaces will be available for tour buses. The anticipated hours of operation of the lot are from 6:00 AM to 1:30 AM, Sunday through Thursday, and 7:00 AM to 3:30 AM, on Friday and Saturday.

V.
Exhibits in Support of the Application

The following additional materials are submitted in support of the Application and will be referenced herein this Statement.

Exhibit A: Plat of the Site.

Exhibit B: Framework Plans for the Site – Options A-C.

Exhibit C: Utilities and Grading Concept Plan.

Exhibit D: Photographs of the Subject Property.

VI.
Nature of Application

It should be noted that although this application, in accordance with the current wording of the Regulations, was filed as a request for a variance, it should actually be processed as a request for a special exception, with the tests for a variance serving as the approval criteria.[1] Section 1702.7 provides as follows:

> A parking lot, parking garage, or parking spaces at or above grade in a building shall be permitted as follows:
>
> (a) The parking facility shall be permitted as a matter-of-right if it provides only short-term parking and all of the parking spaces are leased to merchants or a park-and-shop organization;
>
> (b) The parking facility shall be permitted as a matter-of-right if it provides parking only for residents; and
>
> (c) The parking facility shall require Board Zoning Adjustment approval pursuant to Section 3107.2 of this title if it provides all-day, commuter parking.

[1] Although the subject application should be processed as a special exception and not a variance, as discussed above, this distinction is without a difference for purposes of notice of the subject application, since the standards the Board must employ in determining whether to grant the special exception application are the same standards the Board employs in approving a variance.

The Applicant in this case seeks to provide all-day commuter and tour bus parking on the Subject Property, and therefore filed this application pursuant to Section 1702.7(c).

As indicated above, that section provides that all-day commuter parking is permitted if approved by the Board of Zoning Adjustment in accordance with the provisions of Section 3107.2, an outdated reference to a provision from a former edition of the Regulations that referenced the authority of the Board to grant variances. This section has been changed to Section 3103.2.

A special exception use is one that is permitted under stated conditions. A variance allows either a use that is ordinarily prohibited or a deviation from the provisions of the Zoning Regulations. *See Rathkopf,* Section 38-01, pages 38-8 and 38-9, The Law of Zoning and Planning (Volume 3, Fourth Edition). Section 1702.7(c) of the Regulations expressly permits the use of a parking lot in the DD/C-4 District, but that permission is conditioned upon approval by the Board of Zoning Adjustment. Therefore, notwithstanding the out-dated code reference to the Board's authority to grant a variance, the subject application would properly be considered as a special exception application, wherein the standards for approval are the criteria the Board normally applies when considering a variance request.

VII.
Applicant is Entitled to Relief Under Section 3103.2 of the Regulations

A. Standards for Granting a Variance

In granting a variance, the Board applies different tests depending on whether the request is for an area variance or a use variance. Whereas the District of Columbia courts have never definitively defined the difference between the two, an area variance has been characterized by the courts as one that "does not alter the character of the zoned district" whereas a use variance seeks a use ordinarily prohibited. *See Downtown Cluster of Congregations v. District of Columbia Board of Zoning Adjustment*, 675 A.2d 484, 491 (D.C. App. 1996), quoting *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972).

As mentioned herein, the subject application is a special exception for which the Board must apply the tests for a variance in accordance with current Section 3103.2 of the Regulations. Under D.C. Code Section 6-641.07 (g) and 11 DCMR 3103.2, the Board is authorized to grant a variance where it finds that:

(1) there exists an extraordinary or exceptional situation or condition of the Property;

(2) the owner would encounter a practical difficulty or undue hardship 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.d 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 subject application meets all three prongs of this test.

1. There Exists an Extraordinary or Exceptional Situation or Condition

The Property exhibits extraordinary conditions, both with and without the existing structure. The existing structure, the old Convention Center, is a single-purpose facility that is outmoded for its intended use. It is important to note that it was replaced by the new Convention Center because it was outmoded; it did not become outmoded with the construction of the new facility. There is no economic use of the old Convention Center pending its redevelopment because it is expensive to maintain and not readily convertible to marketable uses (e.g., offices, retail stores, etc.). Hence the decision to tear the existing structure down as soon as possible.

The property as though vacant is also affected by at least two extraordinary situations. First, as indicated above, the property is surrounded on all sides by office building and hotels. Although the lease of parking spaces to merchants and park-and-shop organizations for short-term parking is permitted as a matter-of-right in the zone, the closest concentration of retail and shopping uses is located

several blocks away along 7th Street and along F Street placing the subject property far outside of a desirable range for merchants or park-and-shop organizations that might seek to lease the parking spaces. In addition, the residential uses in the vicinity of the Property are limited at this time; most new residential projects provide their own parking and do not therefore generate enough of a demand for residential parking on the subject lot.

The Applicant is also in the extraordinary situation of being unable to begin construction on the redevelopment of the old Convention Center site for several years due to the general length of the planning and approval process. The subject property is also exceptional in the sense that, due to the location of subject property, the planned construction will undergo review by several federal agencies, especially the National Park Service. Depending on the final design of the new construction, zoning relief may also be necessary. The Applicant obviously could not put the property to any use other than as surface parking lot within the interim period of time pending completion of all necessary reviews and construction planning.

2. The Owner Would Encounter a Practical Difficulty if the Zoning Regulations Were Strictly Applied

As the Court of Appeals held in *Association for Preservation of the 1700 Block of N Street, N.W. and Vicinity v. District of Columbia Board of Zoning Adjustment,* 384 A.2d 674 (D.C.App. 1978), an applicant seeking an area variance

must prove that "compliance with the area restriction would be unnecessarily burdensome... " *See Association, 684 A.2d at 678, quoting A.L.W., Inc. v. District of Columbia Board of Zoning Adjustment*, D.C. App., 338 A.2d 428, 431 (1975). In this case, where the property is located several blocks away from any of merchants to which it could rent the spaces in its lot, it is extremely unlikely that the Applicant would be able to use the lot exclusively for the permitted short-term retail parking use. Strict compliance with the regulations would be unnecessarily burdensome to the Applicant because the Applicant would not be able to make reasonable use of the property in the interim period between demolition of the old Convention Center and eventual redevelopment of the site.

(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.

The requested variance would not cause any detriment to the public good nor would it impair the intent purpose and integrity of the zone plan. First, the parking lot will only exist on the property until such time as the construction of the redevelopment of the site begins in a few years. Second, allowing all-day commuter parking in addition to tour bus parking on the lot would not have an appreciable impact on traffic patterns and circulation. Finally, allowing all-day commuter parking will temporarily help meet the demand for such parking from

visitors and employees in the surrounding office buildings, hotels, and the new Convention Center, which has no visitor parking.

VIII.
Community and Agency Support

The Applicant is not aware of any opposition to the project. The Commission of Fine Arts, NCPC, and the National Park Service likewise have no opposition to the proposed interim parking lot.

IX.
List of Witness

1. Representative of the Deputy Mayor for Planning and Economic Development.

2. Representative of the Washington convention Center Authority.

X.

Conclusion

For the foregoing reason, the Applicant requests the Board's approval of this application.

Respectfully submitted,

Claude E. Bailey
General Counsel
Washington Convention Center Authority

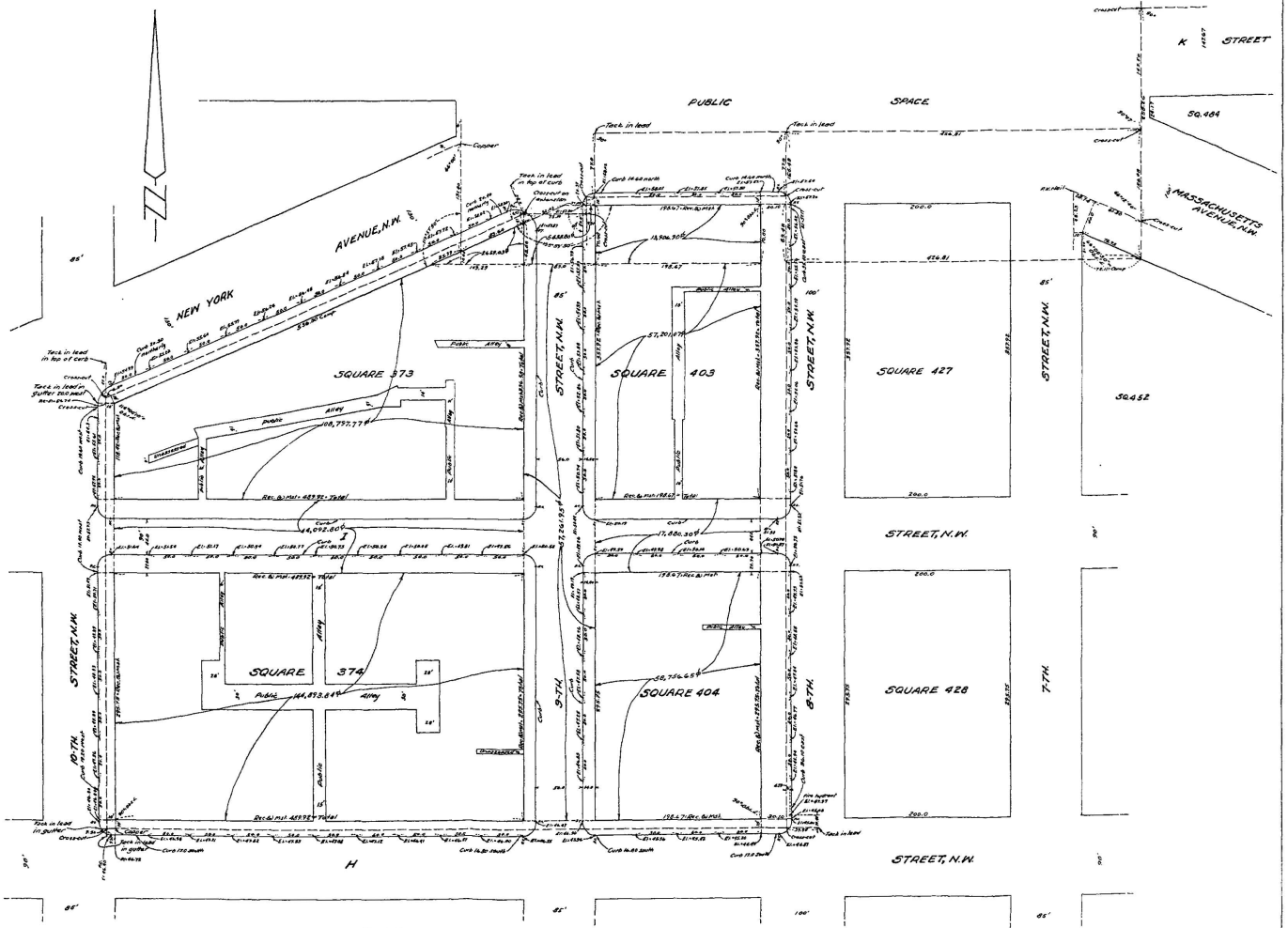
Carol J. Mitten
Director
Office of Property Management

EXHIBIT A

Plat of the Site

PLAT OF SURVEY

OF SQUARES 373, 374, 403, 404, PART OF 9-TH. STREET, N.W. AND PART OF I STREET, N.W. TO MARK IN OUTLINE FOR THE PROPOSED EISENHOWER CIVIC CENTER. SHOW ACTUAL ANGLES AND MEASUREMENTS. ESTABLISH ELEVATIONS PER SKETCH & INSTRUCTIONS.



SURVEYOR'S OFFICE, D.C.
Made for: Eisenhower Civic Center Project
Drawn by: A.N.M.
Record & computations by: Robert E. Gardner
Survey made by: R. E. G. & A. N. M.
Recorded in Survey Book 13A Page 32
Scale: 1 inch = 60 feet. M&R No. 3886.

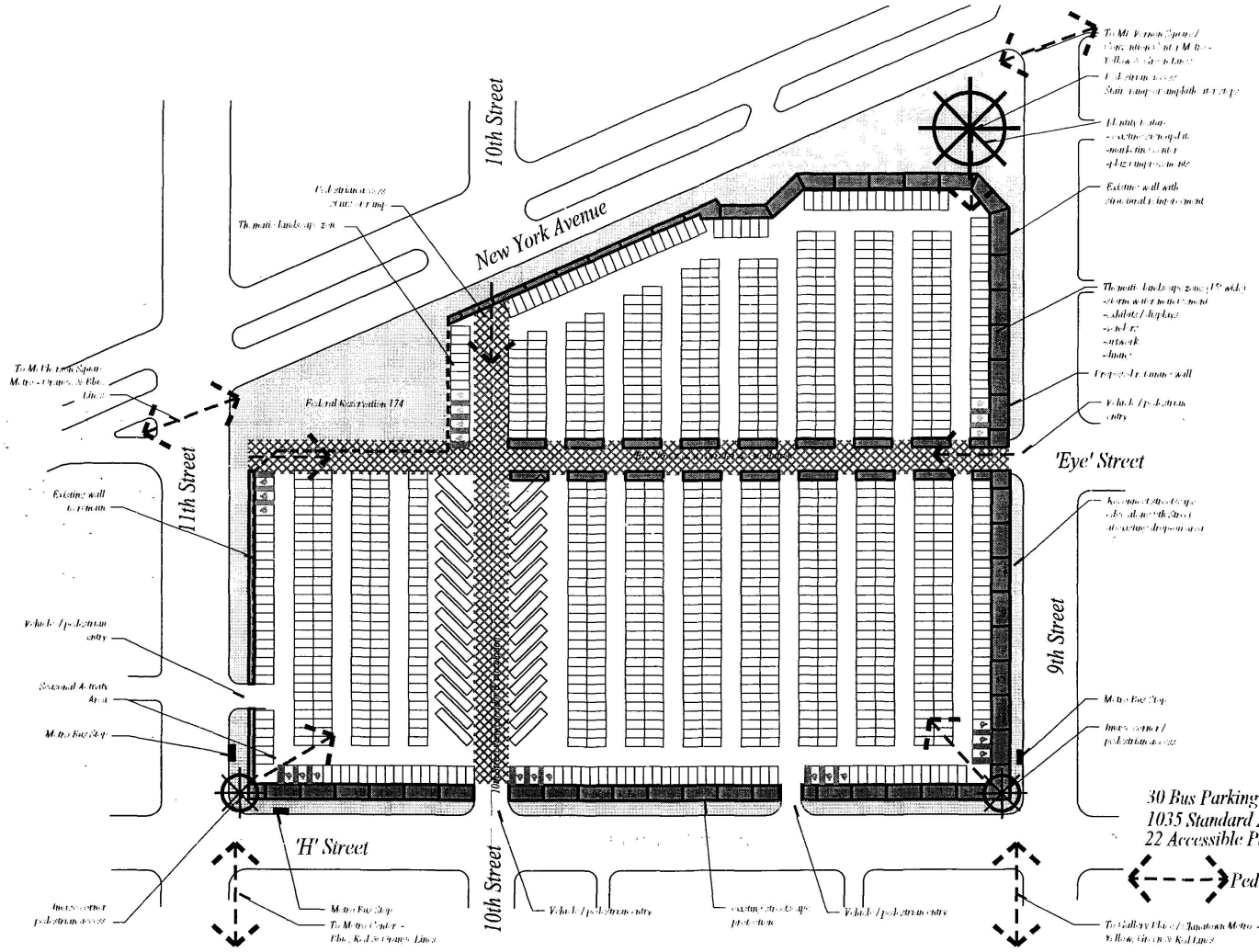
Benchmark:
Top southwest corner of first granite step at the south entrance to the Dubbs Library located at Mount Vernon Square. Elevation = 59.01 feet per D.C. Dept. of Highways & Traffic.

Notes:
1) Elevations shown hereon taken on top of curbs.
2) This plat prepared together with all information hereon for use only in the design and construction of the proposed Eisenhower Civic Center.

Surveyor's Office, D.C.
Washington, May 29-31, 1958
I certify that the plat of survey shown hereon is correct.
W. R. Quesenberry
Surveyor, D.C.

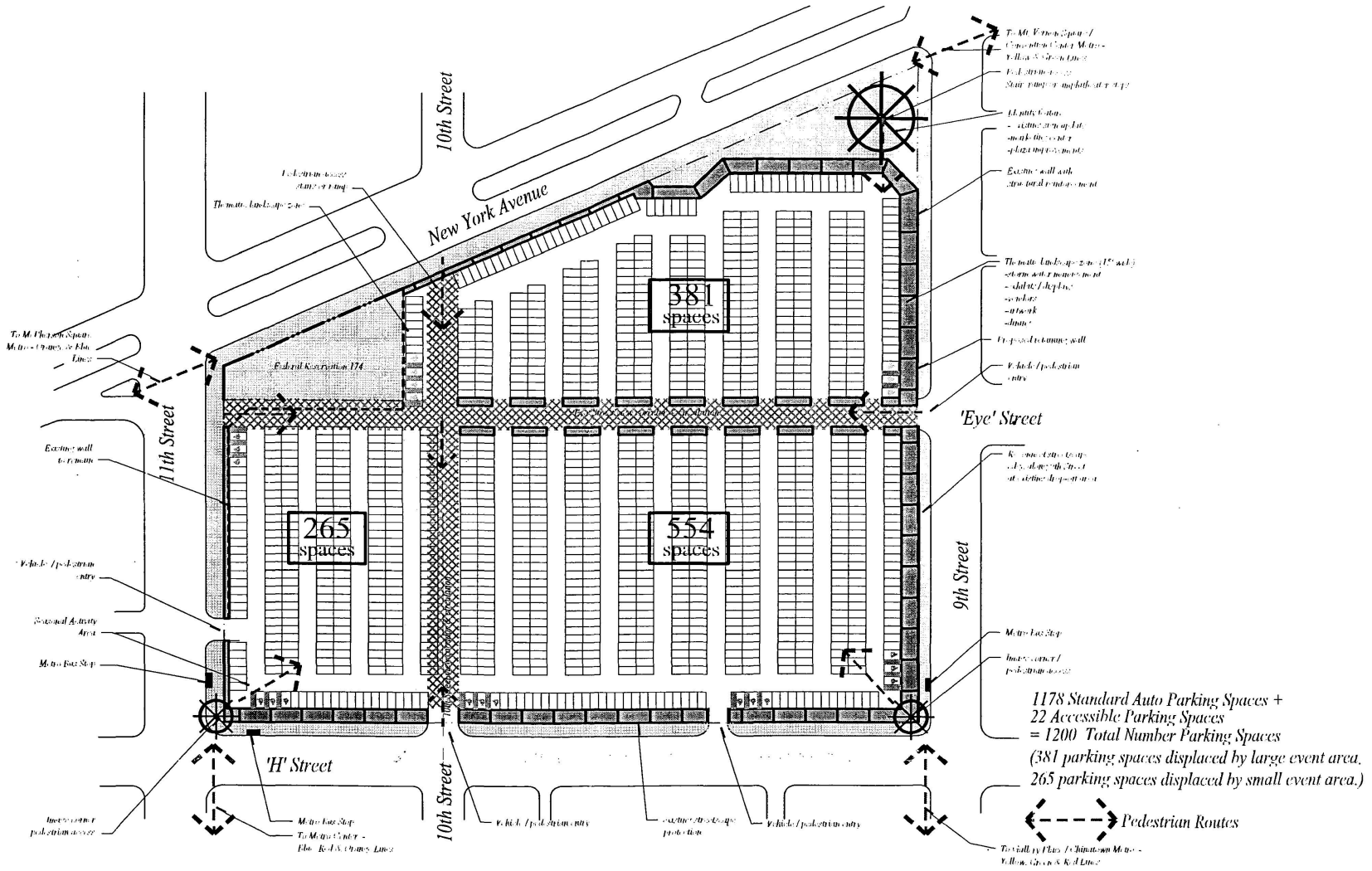
EXHIBIT B

Framework Plans

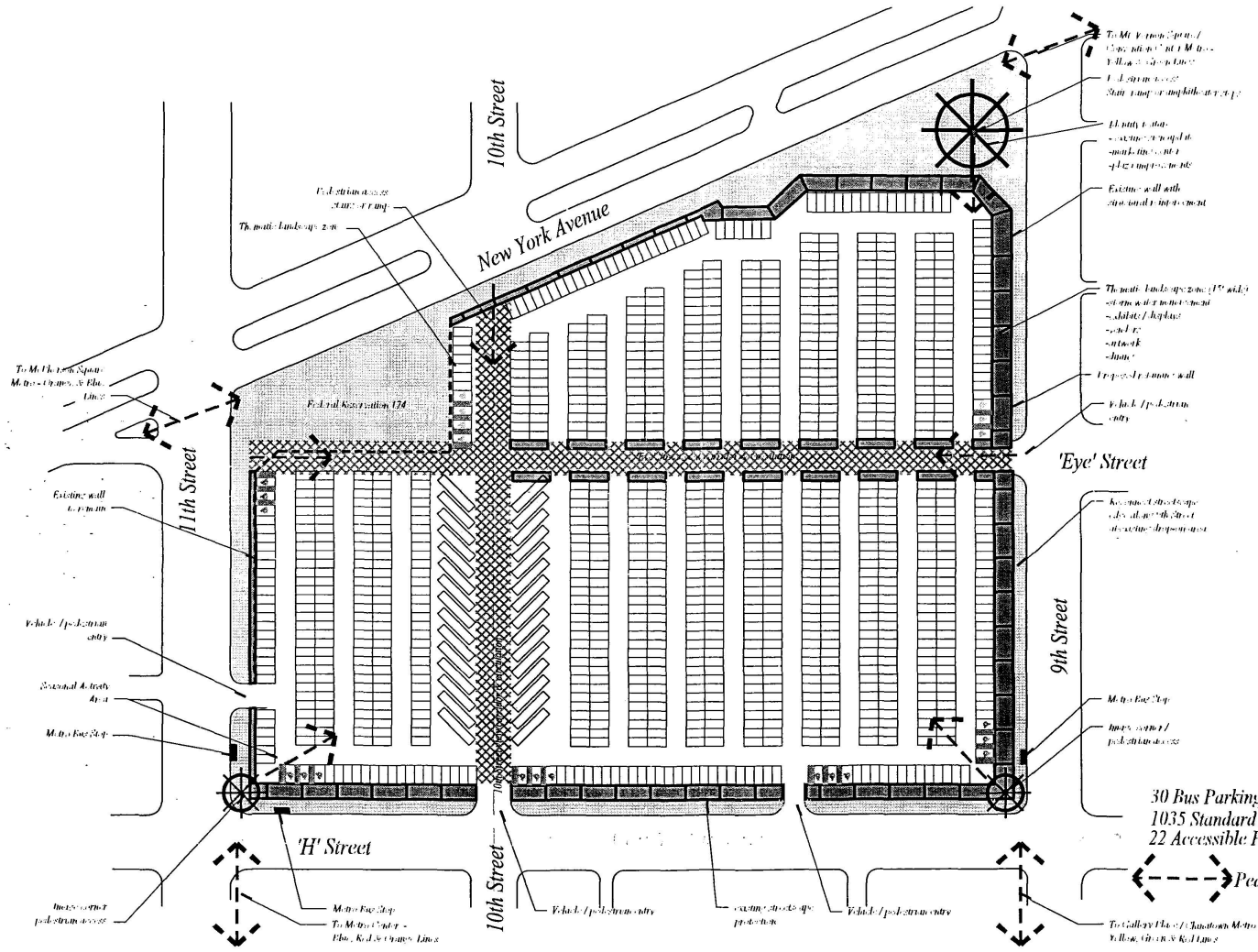


FRAMEWORK PLAN 'B'-WITH DESIGNATED BUS PARKING

0' 25' 50' 100'



FRAMEWORK PLAN 'A' - SITE OPTIMIZED

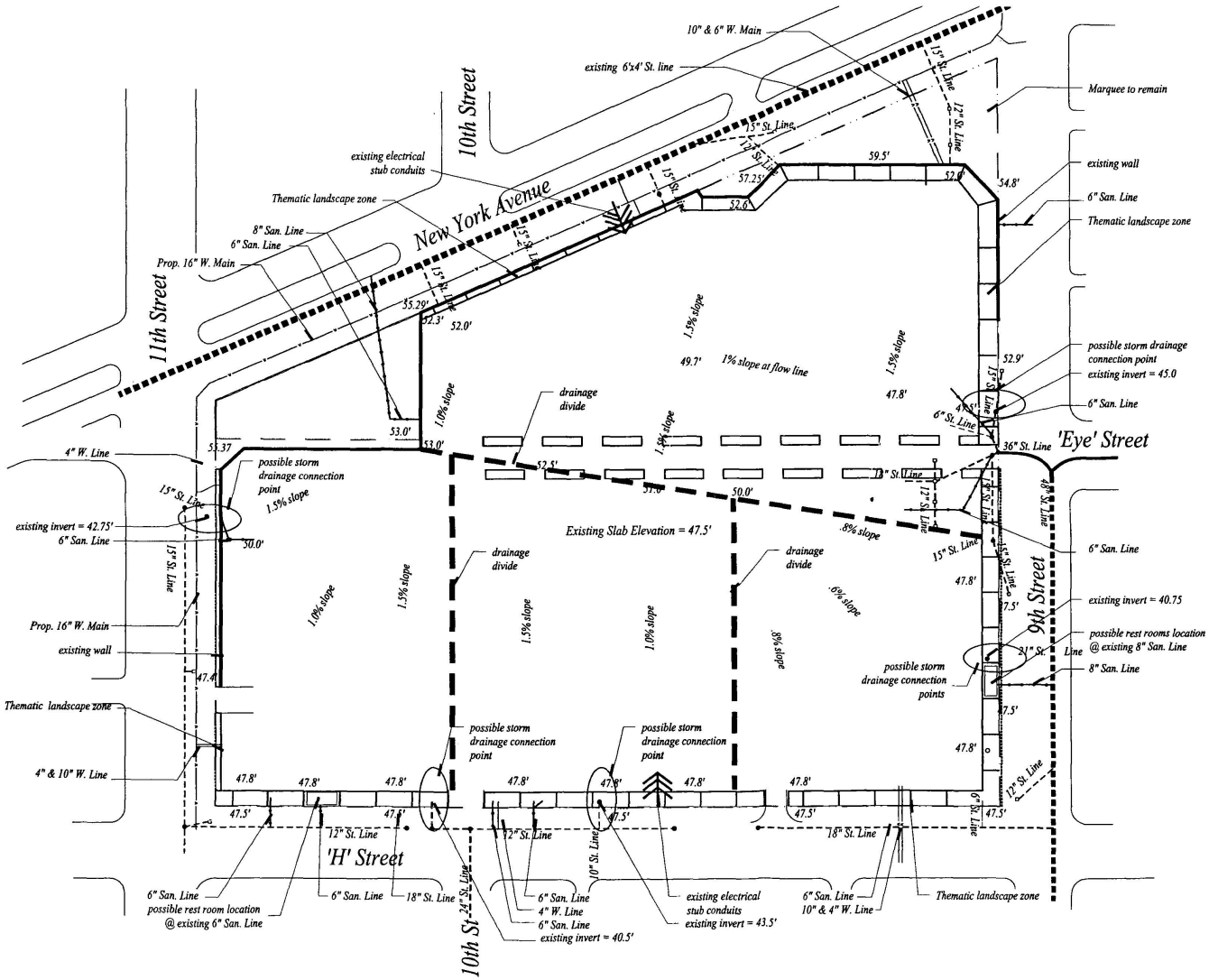


FRAMEWORK PLAN 'B'-WITH DESIGNATED BUS PARKING

0' 25' 50' 100'

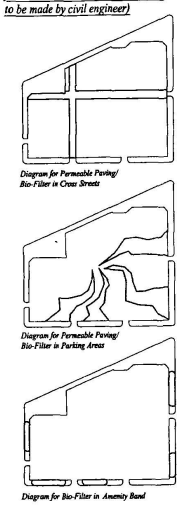
EXHIBIT C

Utilities and Grading Concept Plan



Capture run-off and manage quality to D.C. Standards
Use bio-rentention at:
-edges of parking lot in 'rain gardens' or
-sand filter/detention in the parking lot covered by permeable paving or
-a combination of both
Style can be architectural or abstract
Preferred connection points for filtered water at or near existing storm system.

Bio-Retention Area - Pattern Suggestions (Concepts only ; to be refined based on final stormwater design calculations to be made by civil engineer)



Notes:
-Primary existing storm (St.) lines are storm and sanitary (San) combined.
-Grading concept for cost estimate purpose only. Flow direction can be changed depending on final water catchment design.

0' 25' 50' 100'

UTILITIES & GRADING CONCEPT

District of Columbia Office of Planning
Rhodeside & Harwell, Incorporated

Former Convention Center Site Interim Use Feasibility Study

NOT FOR CONSTRUCTION

JANUARY 2004

EXHIBIT D

Photographs of the Property

Washington Convention Center



