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June 1, 2004

NORMAN M. GLASGOW, JR.
202-419-2460
Internet Address:
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VIA HAND DELIVERY

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

Re: Application No. 17167 for Variances and Special Exceptions
910 M Street, N.W.
Square 369, Lots 834, 861, 862, 865, 866, 872, 873 and 876

Honorable Members of the Board:

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

Should you have any questions regarding this matter, please do not hesitate to contact me at (202) 419-2460.

Sincerely,

Norman M. Glasgow, Jr.

Enclosures

cc: Donald Deutsch w/ enclo.
Sacha Rosen w/enclo.
Steve Sher w/ enclo.
Kyrus L. Freeman w/ enclo.

BZA
Case No. 17167
Exhibit No. 29

Board of Zoning Adjustment
District of Columbia
CASE NO. 17167
EXHIBIT NO. 29A1

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF THE
WELCH FAMILY LIMITED
PARTNERSHIP SIXTEEN
ON BEHALF OF
FCD-DEVELOPMENT LLC

BZA APPLICATION NO. 17167

HEARING DATE: JUNE 15, 2004
ANC 2C

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of the Welch Family Limited Partnership Sixteen, the owner of property located at 910 M Street, N.W., Lots 834, 861, 862, 865, 866, 872, 873 and 876 in Square 369 (the "Site"), and FCD-Development LLC, the contract purchaser and developer of the Site (collectively referred to herein as the "Applicant") in support of the application to the Board of Zoning Adjustment for the following variance and special exception relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3103.2 and 3104.1: (i) a special exception from the roof structure requirements of Section 411; (ii) a special exception and variance to extend the DD/C-2-C District requirements onto the C-2-A District portion of the split-zoned lot by forty feet pursuant to Section 2514.2; (iii) a variance from the lot occupancy requirements of Section 772.1; (iv) a variance from the rear yard requirements of Section 774.1; (v) a variance from the width of court requirements of Section 776.3; and (vi) a variance

from the building setback requirements of the Downtown Development District of Section 1706.15.

The Site is located in Housing Priority Area A of the Downtown Development District. See 11 DCMR §1706.8(a). The Downtown Development District was created to provide incentives to encourage construction of new housing in the area so that a sizeable residential component is created that will help accomplish the balanced mixture of uses essential to the District's goal of creating a "Living Downtown." See 11 DCMR § 1706.1.

The requested relief is necessary in order to allow the construction of a building containing approximately 212 new units in the housing priority area to help achieve the goal of creating a "Living Downtown." However, there are a number of factors specific to the Site which create significant obstacles to feasibly developing the property for housing. First, the Site is configured in the form of an "L," with the wider or "base" portion of the "L" fronting on M Street and measuring approximately 185 feet, and the narrow or "arm" portion of the "L" running north to south and forming a narrow lot measuring approximately 76 feet across in the rear portion of the Site. Second, a pre-existing 20 foot access easement that cannot be built on is located on the west side of the Site, which restricts the Applicant's ability to expand the proposed apartment house to the west. Third, the two existing 30 foot public alleys and adjacent property owners located at the rear of the Site restrict the Applicant's ability to expand the proposed apartment house to the south. Fourth, Section 1706.15 of the Downtown Development District requirements

provides that buildings fronting on M Street can only have a height of 60 feet to a depth of 40 feet from the lot line on M Street, and a height of 110 feet on the remainder of the Site. This results in the proposed building having a two tier structure. Fifth, Section 1701.3 requires that not less than 75% of each streetwall of new construction to a height of not less than 15 feet must be constructed to, or within 4 feet of, the property line between the subject lot and each abutting street right-of-way. Thus, no less than 138.75 feet of the proposed building's streetwall must be constructed to, or within 4 feet of, the property line on M Street. Sixth, the Site is "split-zoned" DD/C-2-C and DD/C-2-A, which poses a practical difficulty in designing and constructing the proposed building. The western-most portion of the lot is zoned DD/C-2-C, consisting of approximately 25,928 square feet. The remaining 4,011 square feet is zoned DD/C-2-A. Thus, approximately 86.6 percent of the subject property is zoned DD/C-2-C, and the remaining 13.4 percent is zoned DD/C-2-A. As discussed below, each of these factors converge in various ways and necessitate the requested relief.

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 at 910 M Street, N.W., which is on the south side of M Street. See Sanborn Atlas, attached hereto as Exhibit A, and Surveyor's Plat, attached hereto as Exhibit B. The Site has a land area of approximately 29,940 square feet, and the proposed construction will include approximately 239,520 square feet of gross floor area, yielding an FAR of 8.0. The Site consists of Lots 834, 861, 862, 865, 866, 872, 873 and 876 of Square 369, which combine to form an "L" shape. The wider or "base" portion of the "L" fronts on M Street and measures approximately 185 feet, whereas the narrow or "arm" portion of the "L" runs parallel between 10th and 9th Streets and forms a narrow lot measuring approximately 76 feet in the rear portion of the Site. The west side of the Site is encumbered by a 20 foot wide access easement over which no building may be constructed.

To the immediate west of the property is the Mount Vernon Plaza Apartments. A commercial building is currently to the east of the subject property. The Convention Center is located to the east of the subject property, across 9th Street, and the Convention Center hotel is proposed to be constructed to the south of the subject property. Residential dwellings are on the north side of M Street. The Site is currently used as a temporary surface parking lot pending the commencement of construction.

The Site is located within the Shaw Historic District and is currently zoned DD/C-2-C and DD/C-2-A. See Zoning Map, attached hereto as Exhibit C. The western-most portion of the lot is zoned DD/C-2-C, consisting of approximately 25,928 square feet. The remaining 4,011 square feet is zoned DD/C-2-A. The calculations discussed below are based on the requirements of the DD/C-2-C District since the Applicant is also seeking an extension of the zone boundary line pursuant to Section 2514.2.

B. Project Description

The proposed development will be an apartment house consisting of approximately 212 units. See Architectural Plans and Drawings, attached hereto as Exhibit D. Due to the requirements of the Downtown Development District, the proposed building will have a height of sixty (60) feet to a depth of forty (40) feet from the lot line on M Street, and a height of one hundred ten (110) feet on the remainder of the Site. Thus, the building will be designed as two "steps," with the first "step" including the ground floor through the seventh floor, and the second "step" starting at the eighth floor and rising to the roof level. The proposed FAR for this project is 8.0, although Section 1706.7(b) provides that the FAR for residential projects such as this is unlimited. The Applicant proposes to provide 208 parking spaces, although only 55 are required.

C. Governmental Approvals

The Applicant has worked diligently to secure the necessary governmental approvals to proceed with this project. The Applicant presented its plans to the Historic Preservation Review Board ("HPRB") staff for conceptual design review. The staff recommended that the HPRB approve the overall height, mass and design of the proposed project. See Historic Preservation Review Board Staff Report and Recommendation, attached hereto as Exhibit E. The HPRB adopted the staff's report and recommendation at its March 25, 2004 meeting. The Applicant has also received the unanimous support and endorsement of Advisory Neighborhood Commission ("ANC") 2F, the ANC in which the Project is located. See Advisory Neighborhood Commission 2F Letter In Support of Project, attached hereto as Exhibit F. The Logan Circle Community Association also voted to approve the proposed massing and concept of the proposed building. See Logan Circle Community Association Letter In Support of Project, attached hereto as Exhibit G.

IV.
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 various requirements relating to roof structures set forth in Sections 411 and 770.6(b) of the Zoning Regulations. The Project incorporates multiple roof structures and one of the roof structures is not setback from all exterior walls a

distance equal to its height above the roof on which it is located. 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 Roof Structure Setback Requirement

The Applicant requests relief from Section 411.2 of the Zoning Regulations, which requires roof structures to be set back in accordance with the provisions of the zone district in which the Project is located. The C-2-C 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 above the roof on which it is located.

The Applicant proposes to provide a stair/mechanical enclosure with a height of 18'-6" and a larger penthouse/stair/mechanical enclosure with a height of 18'-6." The larger penthouse/stair/mechanical enclosure meets the setback requirements. However, the stair/mechanical enclosure does not meet the setback requirement on three sides because of the narrowness of that portion of the roof resulting from the setback requirement of Section 1706.15. As shown on the Roof Plan included in the Architectural Plans and Drawings, attached hereto as Exhibit D, the width of the roof where the tower is located is only 45 feet. If a roof enclosure with a height of 18'-6" is provided, there is only approximately 9 feet remaining within which to locate a roof enclosure. Moreover, shifting the proposed structure would require shifting the stair tower and result in significant changes to the internal configuration of the building. Any shift of the enclosure would also have to be consistent with the building code's recommendation that stair towers be located at the extreme end of a corridor.

The proposed roof structure does comply, however, with the spirit and intent of the roof structure provisions and the Zoning Regulations. The purpose of the

setback requirement is to ensure adequate light and air to adjacent property and abutting streets. This purpose is achieved despite the requested special exception since relief from the setback requirement will not hinder the light and air of adjacent property owners since the roof structure meets the permitted height requirement.

D. Relief from Roof Structure Enclosure Requirement

Section 411.3 requires that all penthouses and mechanical equipment be placed in one enclosure. However, the Applicant proposes to provide two enclosures: a stair/mechanical enclosure with a height of 18'-6" and a larger penthouse/stair/mechanical enclosure with a height of 18'-6." Each of these structures are necessary features. The Applicant intends to provide residential recreational space on the roof, which triggers the building code requirement that a separate stairwell leading to the bottom floor of the building be located on the roof and that the stairs be located near the end of a corridor. The other penthouse is necessary for elevator overrides and mechanical equipment. Thus, the Applicant has proposed two separate roof structures to comply with the building code, to keep distinct mechanical operations separate, and to break up massing on the roof.

The multiple roof structures will not adversely impact the light and air of adjacent buildings. The placement of the roof enclosures helps to minimizes the visibility of the structures to the greatest extent possible, and the overall mass of the roof structures has been reduced. Therefore, the intent and purposes of the

Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

V.
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 unusual 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). Moreover, both the interpretation of Zoning Regulations and the applicability of conflicting Zoning Regulations upon a particular site can also create an extraordinary or exceptional situation or condition on a site.

As discussed below, the Project and the variances requested for the same meet all three prongs of this test.

B. Variance Relief from Rear Yard Requirement

1. Basis for Relief

The Applicant requests a variance from the rear yard requirements set forth in Section 774.1 of the Zoning Regulations. Section 774.1 provides that structures in the C-2-C Zoning District must provide rear yards with a minimum depth of 15 feet. However, due to the Site's unique characteristics the Applicant seeks relief from this requirement.

2. The Site is Unique and Affected by Several Exceptional Situations or Conditions

These factors were discussed as a whole on pgs. 2 and 3 of this statement and will be referenced below as they specifically affect the relief requested. However, the situation most relevant here is the loss of building footprint along the west frontage due to the 20' access easement. This easement impacts approximately 2,600 square feet of land area, whereas the 15' rear yard provided by the Applicant only impacts approximately 1,140 square feet of land area (15' x 76' lot width). If this non-required side yard created by the easement were relocated to the south as a rear yard, its depth would equate to 33,' which is over twice the required rear yard depth.

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

Compliance with Section 1706.15 requires the Applicant to relocate a portion of the mass of the building further to the south that would normally be located on the street frontage and to efficiently design the proposed apartment house. The

Applicant cannot expand its proposed building to the west because of the pre-existing 20 foot access easement that cannot be built upon. The eastern potion of the site is already narrow and impacted by the court requirements. Thus, south is the only direction the Applicant can utilize to attempt to recapture the FAR lost on the northern and western frontages. However, due to the combination of the restraints imposed upon the Site, strict application of the regulations results in a practical difficulty in an area of the Site which is surrounded by open spaces.

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

The requested variance relief will not be detrimental to the public good and will not substantially impair the intent, purpose or integrity of the zone plan because there will be sufficient open space at the rear of the proposed building, including the proposed open court area and the two 30' alleys. Moreover, as shown on the Shadow Study sheets of the Architectural Plans and Drawings, attached hereto as Exhibit D, the requested relief will create very minor additional shadows.

C. Variance Relief from Lot Occupancy Requirement

1. Basis for Variance

The Applicant requests a variance from the lot occupancy requirements set forth in Section 772.1, which provides that in a C-2-C Zoning District, no building devoted to a residential use shall occupy more than eighty (80) percent of the lot upon which it is located. The Applicant proposes to construct a building that will occupy eighty-five percent of the lot on the lowest floors but far less than eighty

percent on the upper floors. This unusual situation occurs as a result of several of the conditions affecting the Site, including its irregular shape with approximately two and a half times the frontage on M Street than there is on the southern portion of the Site where the greatest bulk would be permitted. Therefore, the Applicant requests a variance from Section 772.1 to increase the lot occupancy for the development.

2. The Site is Unique and Affected by Several Exceptional Situations or Conditions

These factors were discussed as a whole on pgs. 2 and 3 of this statement and will be referenced below as they specifically affect the relief requested.

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

The Site has several exceptional and extraordinary conditions that create a practical difficulty in developing this project within the confines of the lot occupancy requirements set forth in Section 772.1 of the Zoning Regulations, while also complying with the numerous restraints placed on the Site. First, the existence of the 20 foot easement to the west of the Site, the two 30 foot alleys located at the rear of the site, and the "L" shaped configuration of the Site forces the building to be designed with a unique shape both in plan and in section. Second, compliance with the setback requirements of Section 1706.15, which limits buildings constructed on lots fronting M Street to a maximum height of sixty feet to a depth of forty feet from the lot line on M Street, further broadens the overall footprint of the proposed building since the Applicant has to design its building in two "steps" in order to add

density on the upper portion of the proposed building while still complying with the overall height requirements. Although the Applicant requests an additional 5% lot occupancy at grade, the portion of the building above sixty feet will only occupy an area measuring approximately 58% of the lot. Moreover, the average lot occupancy proposed for the project is only 73%. Finally, the requirements of Section 1701.3, which mandates that not less than 75% of each streetwall of new construction to a height of not less than fifteen feet (15 ft.) must be constructed to, or within four feet (4 ft.) of, the property line also makes strict compliance with the lot occupancy provision impractical.

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

The variance from the lot occupancy requirement can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The purpose of the lot occupancy requirements is to ensure that there is sufficient buffer space between adjacent properties. In this instance, there will be ample buffer space between the adjacent properties because of the existence of the 20 foot access easement to the west of the Site and the two 30 foot alleys located at the rear of the Site.

D. Variance Relief from the Court Width Requirement

1. Basis for Relief

In order to provide required light and air there is an "L" shaped court in the rear of the Site. The longest side of the proposed court measured from east to west

is approximately 108 feet, and the longest portion of the proposed court measured from north to south is approximately 45 feet. The narrowest dimension of the proposed court measured from north to south is 15 feet. The proposed court opens onto an existing 30 foot public alley. The dimension of the proposed court where it abuts the public alley is 22.92 feet wide measured from east to west, and the diameter of the largest circle that may be drawn in a horizontal plane within the court is 22.92 feet wide.

Section 776.3 provides that where a court is provided for a building devoted to residential uses, at any elevation in the court, the width of the court must be a minimum of four inches per foot (4 in./ft.) of height, measured from the lowest level of the court to that elevation, provided that in no case can a court measure less that fifteen feet (15 ft.). Thus, the Applicant is required to provide a court measuring 36.67' in width. However, the Applicant proposes to provide a court at its narrowest point measuring 15' in width. Accordingly, the Applicant seeks relief from this requirement.

2. The Site is Unique and Affected by Several Exceptional Situations or Conditions

These factors were discussed as a whole on pgs. 2 and 3 of this statement and will be referenced below as they specifically affect the relief requested.

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

A strict application of Section 776.3 would result in a peculiar and exceptional practical difficulty on the Applicant since the Site suffers from

numerous exceptional conditions based upon its location, including a unique "L" shape which forms a narrow lot along the eastern portion of the subject property, a pre-existing 20 foot access easement that cannot be built upon along the western frontage and hence limits the amount of space the Applicant can utilize, and the Downtown Development District setback requirements that limit the proposed building to a high of 60 feet to a depth of forty feet from the lot line on M Street and hence creates a step-like structure.

The design constraints imposed because of the subject property's unique site coalesce to make strict compliance with Section 776.3 difficult because it would force the Applicant to redesign the interior of the building in an impractical manner. Specifically, as demonstrated on the "Court Width" sheet of the Architectural Plans and Drawings, attached hereto as Exhibit D, complying with the 40 foot setback requirement of Section 1706.15 requires the double loaded corridor for levels one through six to be located in the center of those levels, whereas the single loaded corridor for levels seven through eleven is located adjacent to the rear wall of the building.

The Applicant has two options to comply with both Sections 776.3 and 1706.15, both of which have impractical results. First, the Applicant could setback each level from floors 6 through 11 to meet the court width requirement at each elevation, but this would create a staggered, tier structure at the rear of the building; create severe mechanical, electrical, plumbing and structural problems; further reduce the size of the roof area and render the required additional means of

egress from the roof because of the rooftop residential space extremely difficult to locate; and ultimately make the entire project unfeasible. The second option is for the Applicant to setback floors 6 through 11 approximately 22 feet each to meet the 36.67' court width requirement at each level, but this would result in floors 6 through 11 only measuring approximately 23 feet which, minus space for the corridor, results in small, unmarketable units and would also render the total project unfeasible.

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

Relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan since the court that will be provided complies with the required width requirement for a significant portion of the proposed building's height. Specifically, the proposed court complies with the width requirements on the lower floors, where air and light tend to be larger concerns for lower units.

E. Variance Relief from the Building Setback Requirement of the Downtown Development District

1. Basis for Relief

Section 1706.15 of the Zoning Regulations provides that buildings constructed on lots within the Downtown Development District fronting on M Street can only be built to a maximum height of sixty feet to a depth of forty feet from the lot line on M Street. The Applicant meets this overall requirement. However, the

Applicant seeks relief to permit the construction of small bay windows on certain units of the building fronting on M Street, which will thus create minor, four foot projections into the setback area. The ANC, HPRB, the Logan Circle Community Association and the community at large have recognized that the Site has a long facade along M Street (185'). Articulation along this wall is desired by the Applicant and the ANC and has been approved by HPRB.

2. The Site is Unique and Affected by Several Exceptional Situations or Conditions

These factors were discussed as a whole on pgs. 2 and 3 of this statement and will be referenced below as they specifically affect the relief requested.

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

This long facade, along with a number of other exceptional factors, impose significant design constraints on the proposed apartment house. The Applicant has worked diligently to design its proposed building within such constraints. In fact, the Applicant is seeking relief due to its substantial compliance with the M Street setback requirements. However, permitting the Applicant to construct the proposed bay windows will not be harmful since they will be very minor projections along M Street; the building's overall façade meets the setback requirements.

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

The general purposes of the Downtown Development District include encouraging residential uses in the overlay and permitting new development that is

sensitive and compatible to the historic preservation review process. 11 DCMR §1700.3. Granting the requested technical relief will help further these goals by permitting the construction of approximately 212 new apartment units in the District. Moreover, the HPRB staff reviewed the proposed design, including the minor projections into the setback area, and concluded that the proposed building's design was not incompatible with the character of the historic district. Indeed, many new residential developments in the Downtown Development District have incorporated similar bay windows in their design, and these windows are typical components of a residential development scheme. Finally, if the proposed building was not subject to the setback requirement of Section 1706.15, the building would come forward to the lot line and the bay windows would be permitted projections onto public space and not require any relief. Accordingly, the requested technical variance from Section 1706.15 can be granted without detriment to the public good and without impairing the intent, purpose or integrity of the zone plan.

VI.
THE DD/C-2-C ZONING LINE SHOULD BE EXTENDED ONTO THE DD/C-2-A PORTION OF THE SPLIT-ZONED LOT BY FORTY FEET

As discussed above and shown on the Zoning Extension page of the Architectural Plans and Drawings, attached hereto as Exhibit D, the Site is currently zoned DD/C-2-C and DD/C-2-A. The zoning boundary line is 100 feet from 9th Street. The boundary line is irregularly shaped.

The western-most portion of the Site is zoned DD/C-2-C, consisting of approximately 25,928 square feet. The remaining 4,011 square feet is zoned DD/C-2-A. Of this 4,011 square feet, all but approximately 500 square feet comes within the 35' special exception. Thus, approximately 98% of the Site would be zoned DD/C-2-C upon the granting of a special exception to extend the zoning line by 35' pursuant to Section 2514.2, but 1.7% of the Site would still be zoned DD/C-2-A unless the requested variance is also approved. Accordingly, the Applicant seeks a variance and special exception pursuant to §2514.2 in order to extend the DD/C-2-C zoning requirements into the existing DD/C-2-A Zoning District by forty feet.

Section 2514.2 of the Zoning Regulations provides that for split-zoned lots, the requirements of the least restrictive portion of such lot may be extended to that portion of the lot in a more restrictive use zone district for up to thirty-five feet. In this case, the Applicant is requesting a forty foot extension to avoid a situation of having a five foot recess on the east side of the building and allow the proposed building to be designed and constructed subject to a consistent set of zoning requirements.

The Applicant proposes to construct an apartment house on the subject property in accordance with the zoning provisions of the DD/C-2-C District, since 86.6 percent of the subject property is located within such zoning district. Extending the DD/C-2-C boundary line will help ensure that the Applicant's proposed building is subject to a consistent set of zoning requirements throughout the entire site, and also make the construction and functioning of the building much

more practical than it otherwise would be if a small portion of the building was subject to more restrictive zoning requirements.

In contrast, not extending the DD/C-2-C boundary line by the requested forty feet, and leaving a mere five feet of the subject property subject to the DD/C-2-A zoning requirements, will be impractical and create severe operating difficulties, structural configuration problems, or require additional zoning relief. For instance, if the zoning line was not extended for 40 feet and the Applicant did not build on the 5 foot recess, this area would be too narrow to be a court or side yard and would require additional zoning relief. Also, if the Applicant constructed the proposed building to a height of 110 feet on the portion of the Site in the DD/C-2-C zone, and constructed the five foot portion of the building in the DD/C-2-A zone to a height of 50 feet, thus would result in the creation of a court that would not meet the court width requirements and hence require additional zoning relief. These are exactly the types of situations Section 2514.2 was created to avoid.

The extension of the DD/C-2-C boundary line will have no adverse effect upon the present character and future development of neighborhood since there are numerous existing and proposed buildings in the area that are already subject to the DD/C-2-C zoning requirements, and neither the light nor air rights of the property owners immediately to the east of the site will be harmed by the extension.

VII.
COMMUNITY SUPPORT

The Applicant has worked with the community and obtained support for the Project. Specifically, the Applicant presented its plans to the HPRB staff for conceptual design review, and the staff recommended approval of the overall height, mass and design of the project. See Historic Preservation Review Board Staff Report and Recommendation, attached hereto as Exhibit E. The HPRB adopted the staff's report and recommendation at its March 25, 2004 meeting. Advisory Neighborhood Commission ("ANC") 2F, the ANC in which the Project is located, also voted unanimously to support the project. See Advisory Neighborhood Commission 2F Letter In Support of Project, attached hereto as Exhibit F. The Logan Circle Community Association also voted to approve the proposed massing and concept of the proposed building. See Logan Circle Community Association Letter In Support of Project, attached hereto as Exhibit G.

VIII.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A:	Portion of the Sanborn Atlas showing the Site highlighted in yellow;
Exhibit B:	Surveyor's Plat of the Subject Property;
Exhibit C:	A portion of the Zoning Map showing the Site highlighted in yellow;
Exhibit D:	Architectural Plans and Drawings;
Exhibit E:	Historic Preservation Review Board Staff Report and Recommendation;

Exhibit F: Advisory Neighborhood Commission 2F Letter In Support of Project;

Exhibit G: Logan Circle Community Association Letter In Support of Project;

Exhibit H: Outline of Testimony of Donald H. Deutsch Jr., Project Developer;

Exhibit I: Outline of Testimony of Phil Esocoff, Project Architect; and

Exhibit J: Outline of Testimony of Lindsley Williams, Consultant.

IX.
WITNESSES

A. Donald H. Deutsch Jr., Project Developer

B. Phil Esocoff, Project Architect

C. Lindsley Williams, Consultant.

X.
CONCLUSION

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

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____
Norman M. Glasgow, Jr.

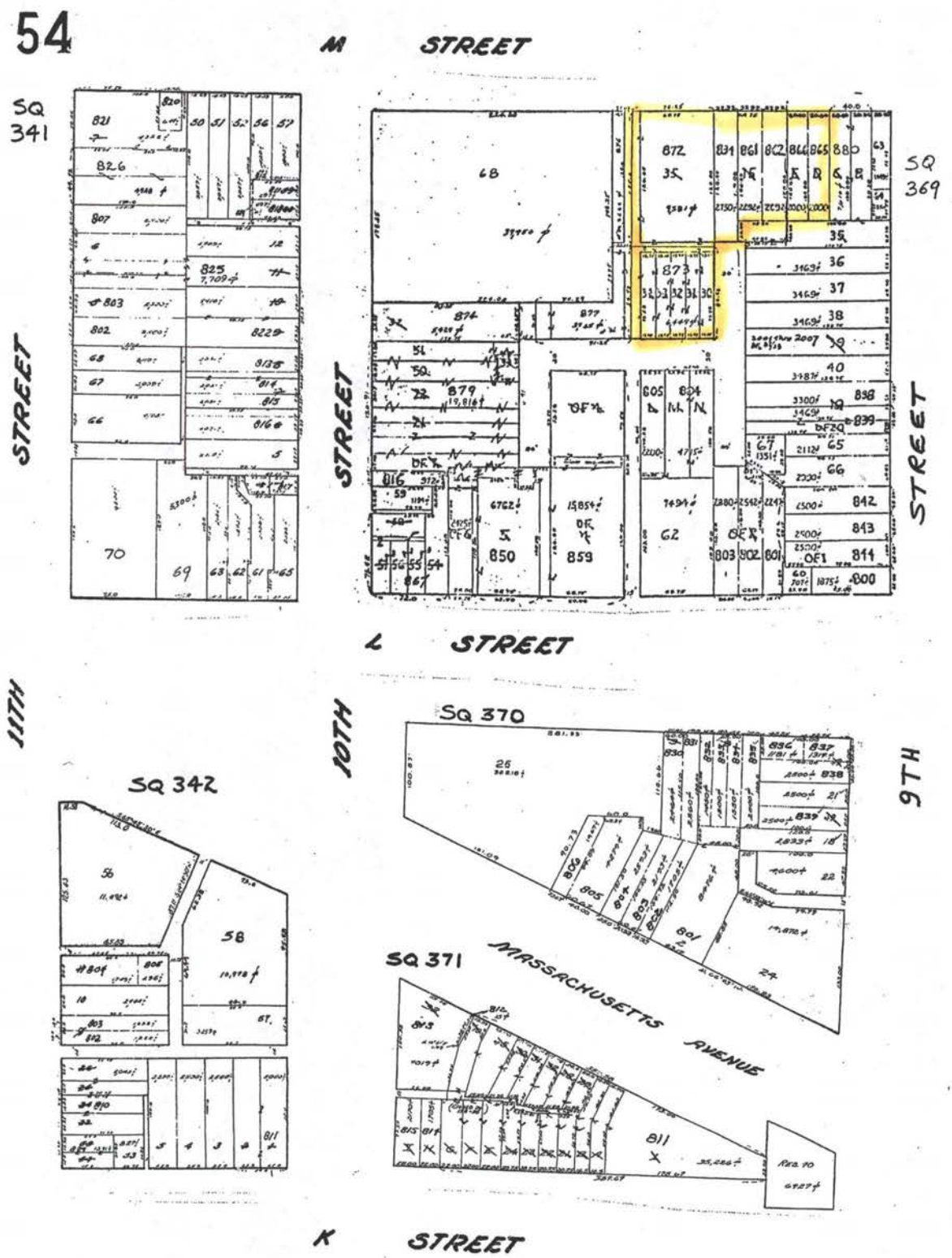
By: _____
Kyrus L. Freeman*

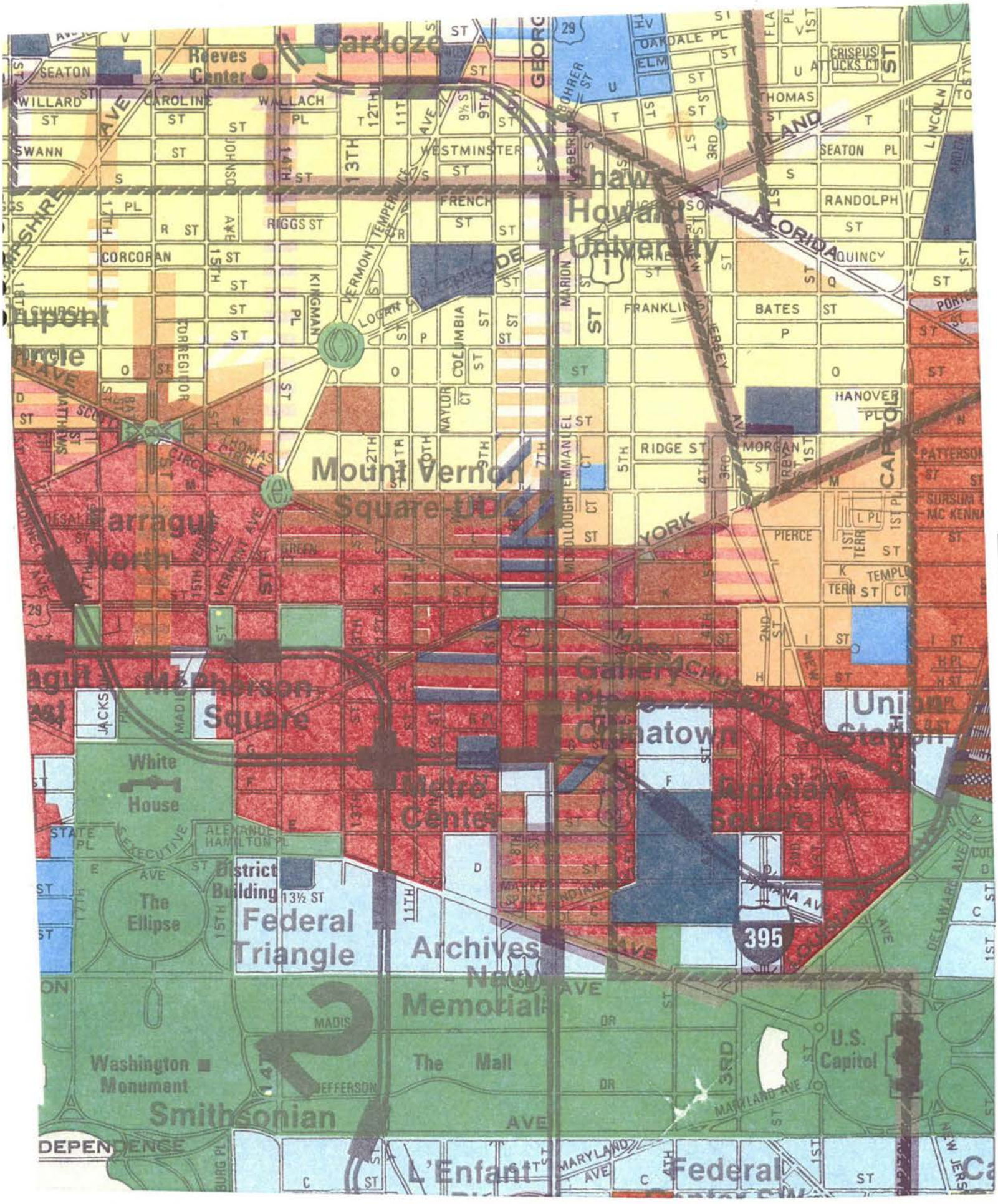
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

*Admitted only in Pennsylvania; supervision by principals of the firm who are members of the D.C. Bar

1967142_v2

A


54
M STREET
SQ 341
SQ 369
STREET
STREET
STREET
L STREET
11TH
10TH
9TH
SQ 342
SQ 370
SQ 371
MASSACHUSETTS AVENUE
K STREET


Cardozo
Reeves Center
Shaw
Howard University
Dupont Circle
Mount Vernon Square
Farragut North
Chinatown
Judiciary Square
Union Station
Gallery Pl
Metro Center
McPherson Square
White House
The Ellipse
District Building
Federal Triangle
Archives
Navy Memorial
The Mall
Washington Monument
Smithsonian
U.S. Capitol
L'Enfant
Federal
395
13½ ST
WILLARD ST
SEATON
CAROLINE
WALLACH PL
SWANN ST
CORCORAN ST
RIGGS ST
FRENCH ST
WESTMINSTER
OAKDALE PL
THOMAS
SEATON PL
RANDOLPH ST
FRANKLIN
BATES ST
HANOVER PL
RIDGE ST
MORGAN
PIERCE
YORK
MASS AVE
CONSTITUTION AVE
INDEPENDENCE AVE
MARYLAND AVE
PENNSYLVANIA AVE
NEW YORK AVE
VERMONT AVE
FLORIDA AVE
WISCONSIN AVE
GEORGIA AVE
13TH ST
14TH ST
12TH ST
11TH ST
9TH ST
7TH ST
5TH ST
3RD ST
2ND ST
1ST ST
CAPITOL ST
LINCOLN
VERMONT TEMPERANCE
LOGAN
COLUMBIA
NAYLOR CT
KINGMAN
MARION
JERSEY
EMMANUEL CT
MOLLOUGHLIN
THOMAS CIRCLE
SCOTT CIRCLE
MASSACHUSETTS AVE
MADISON
JACKSON
EXECUTIVE AVE
ALEXANDER HAMILTON PL
STATE PL
JEFFERSON DR
MADISON DR
INDEPENDENCE AVE
MARYLAND AVE
DELAWARE AVE
CONSTITUTION AVE
1ST TERR
TEMPLE TERR
SURSUM CORDA
MC KENNA
PATTERSON
PORTER

B

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 26, 2004

Plat for Building Permit of SQUARE 369 LOTS 834, 861, 862, 865, 866, 872, 873 & 876

Scale: 1 inch = 40 feet Recorded in A & T Book Page 3732-I (Lots 872, 873, 834); Page 3524-X (Lots 861, 862); Page 2391 (Lots 865); Page 3696 (Lots 876);

Receipt No. 09727

Furnished to: HOLLAND & KNIGHT (FREDA)

Surveyor, D.C.

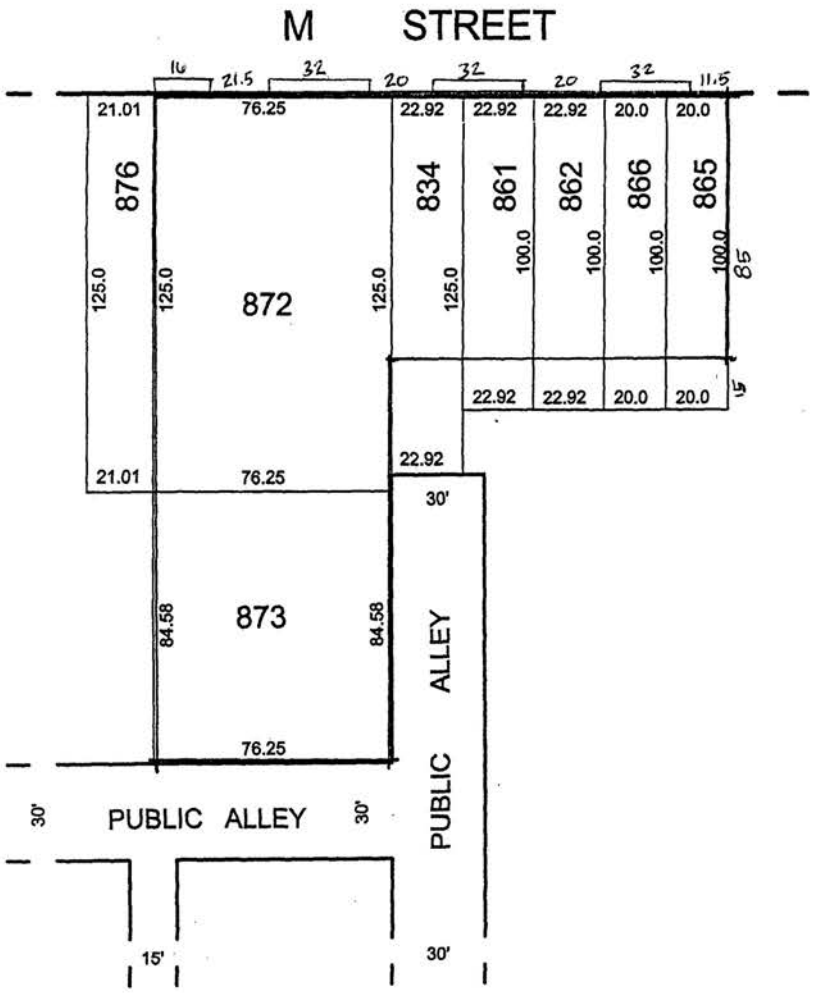
By: L.E.S.

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.)

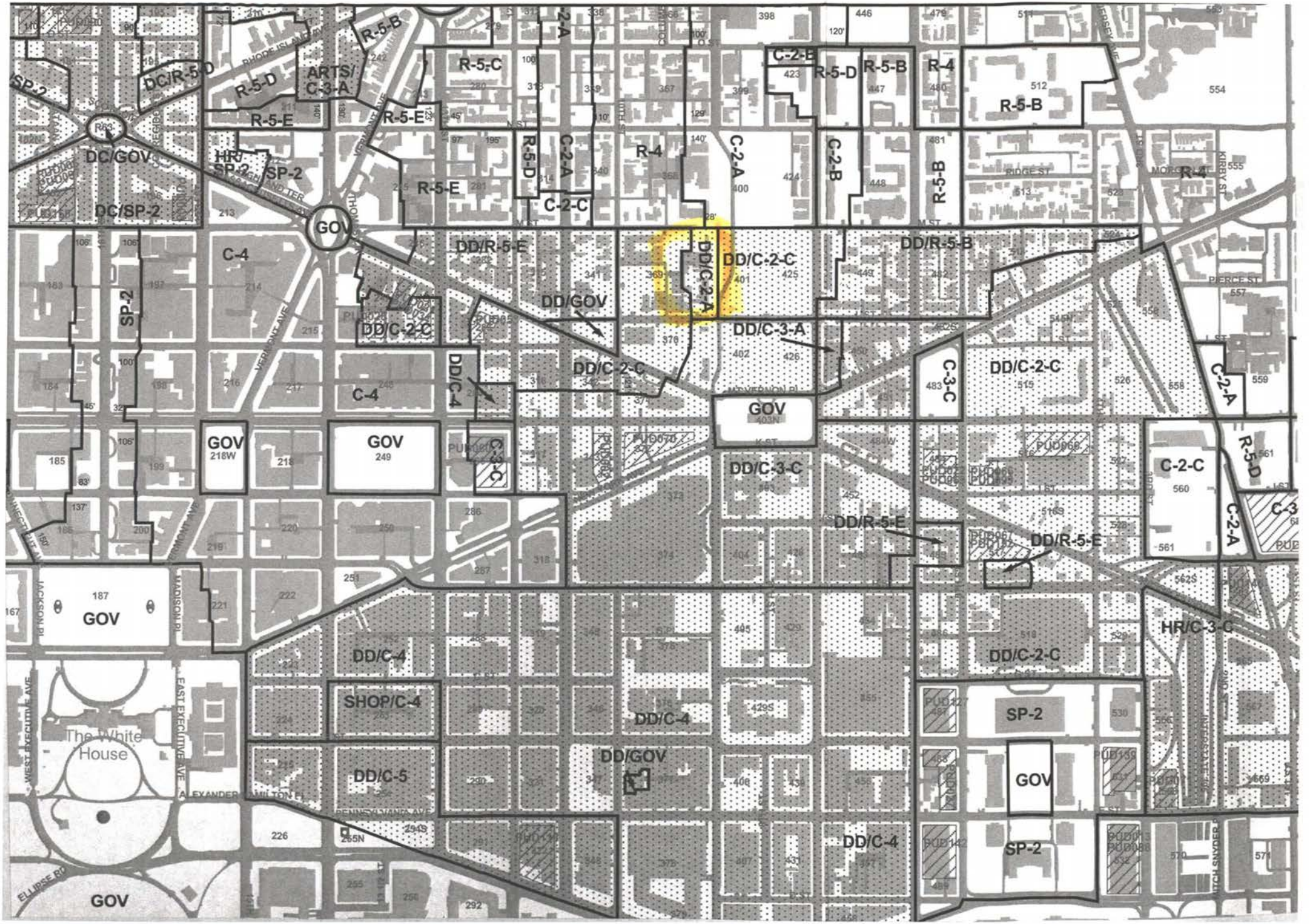
Date: _____

_____
(Signature of owner or his authorized agent)

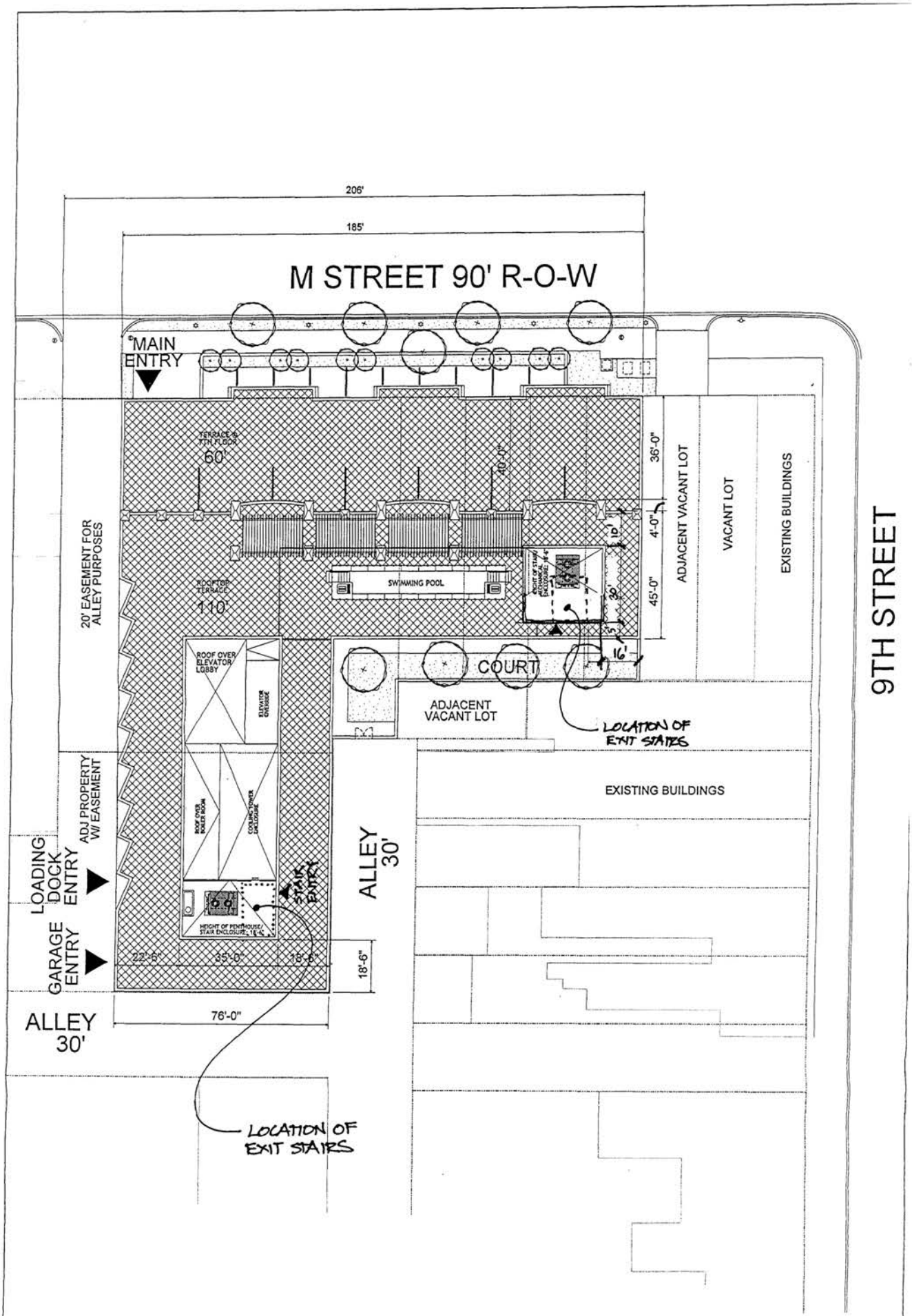
NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



C


DC/R-5-D
R-5-D
ARTS/ C-3-A
R-5-B
R-5-C
C-2-A
C-2-B
R-5-D
R-5-B
R-4
R-5-B
SP-2
DC/GOV
R-5-E
R-5-E
R-5-E
HR/ SP-2
SP-2
R-5-D
C-2-A
R-4
C-2-A
C-2-B
R-5-B
R-4
DC/SP-2
GOV
C-2-C
DD/R-5-E
DD/C-2-A
DD/C-2-C
DD/R-5-B
C-4
SP-2
DD/GOV
DD/C-2-C
DD/C-3-A
DD/C-4
DD/C-2-C
C-3-C
DD/C-2-C
C-2-A
C-4
GOV
GOV
GOV
218W
249
DD/C-3-C
C-2-C
560
R-5-D
C-2-A
DD/R-5-E
DD/R-5-E
GOV
187
HR/C-3-C
DD/C-4
DD/C-2-C
SHOP/C-4
DD/C-4
SP-2
The White House
DD/GOV
DD/C-5
GOV
DD/C-4
SP-2
GOV

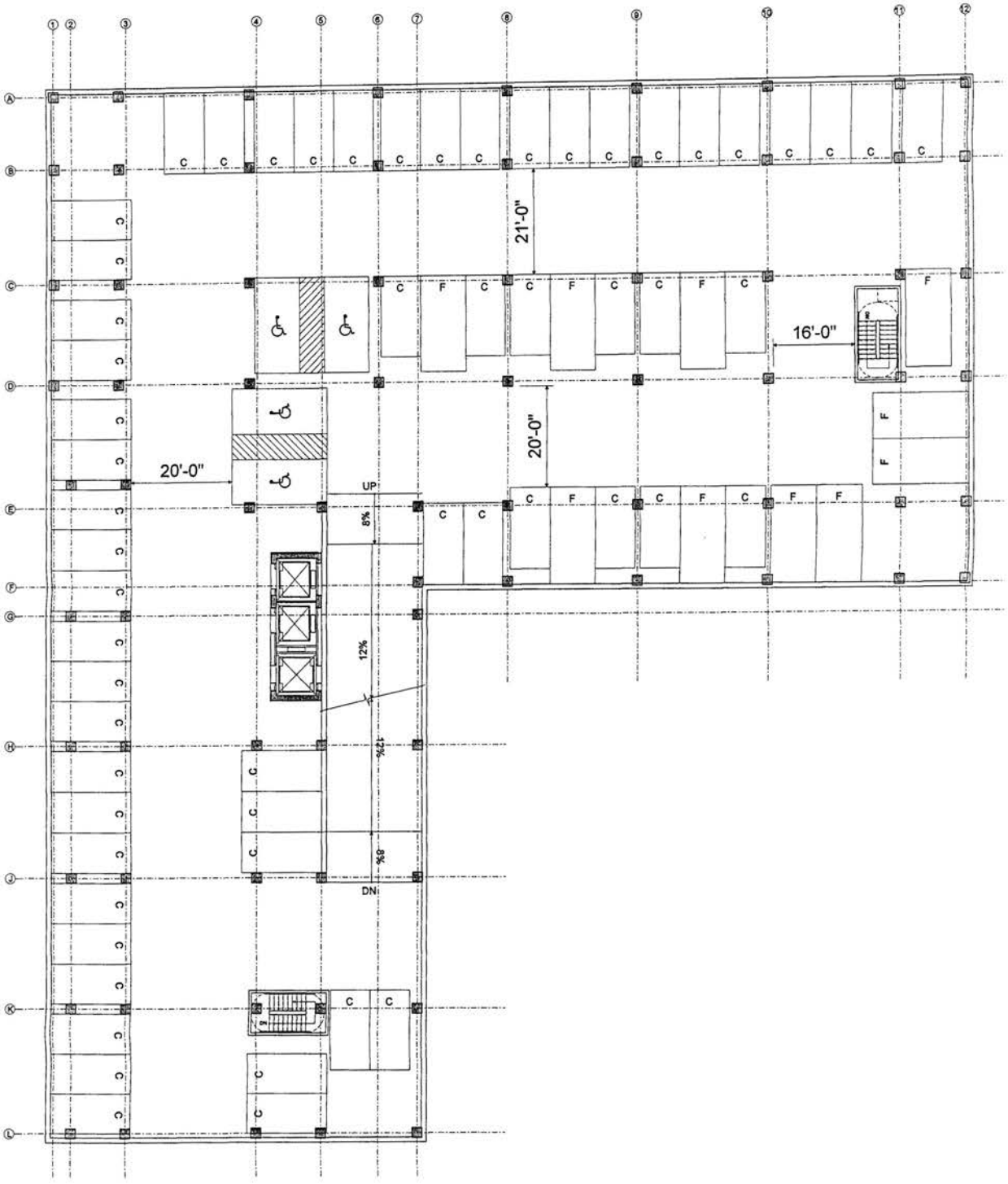
D



910 M Street

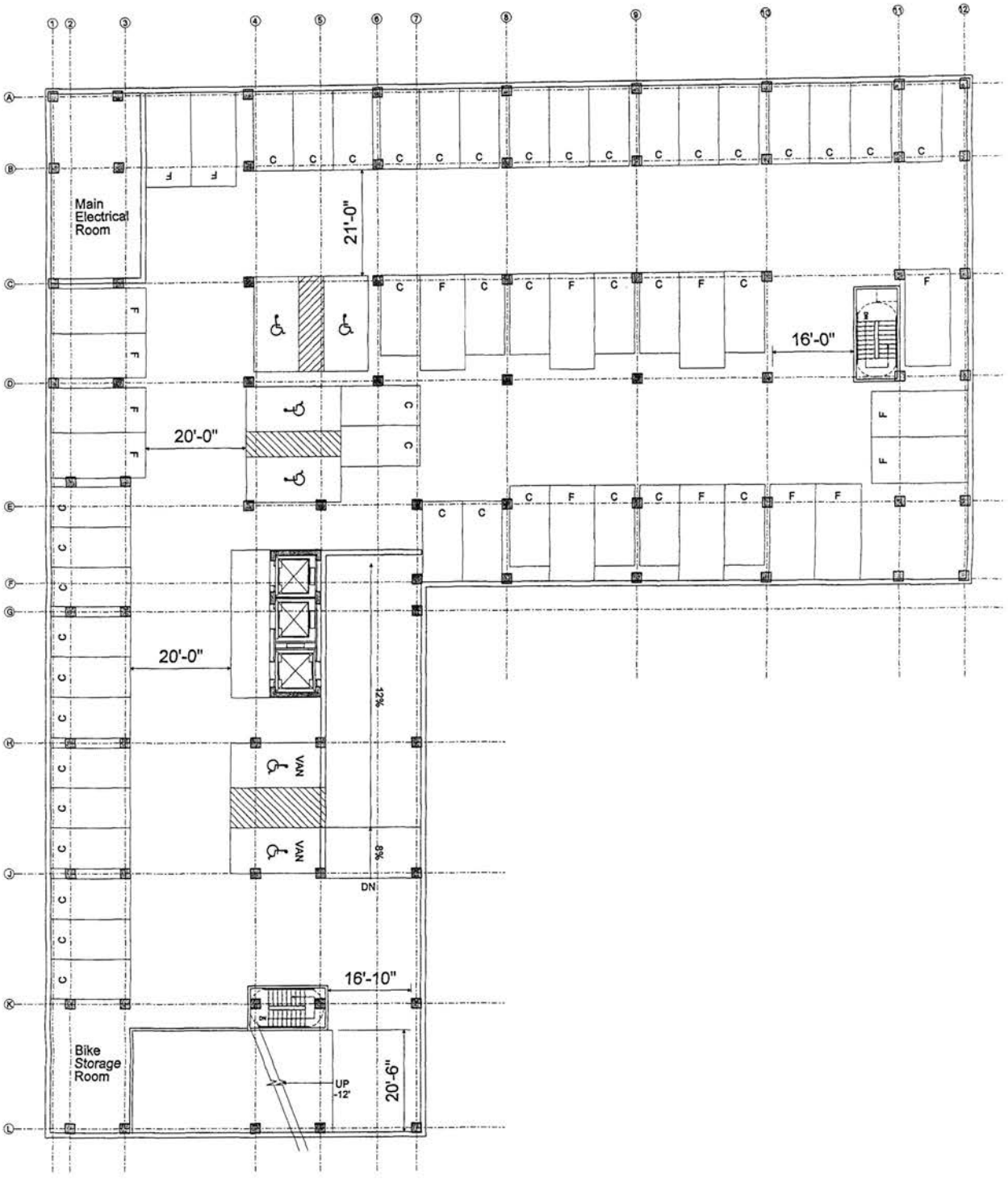
03-12-04	Site Plan	Project No: 23007
	Esocoff and Associates I Architects	Scale 1" = 30'

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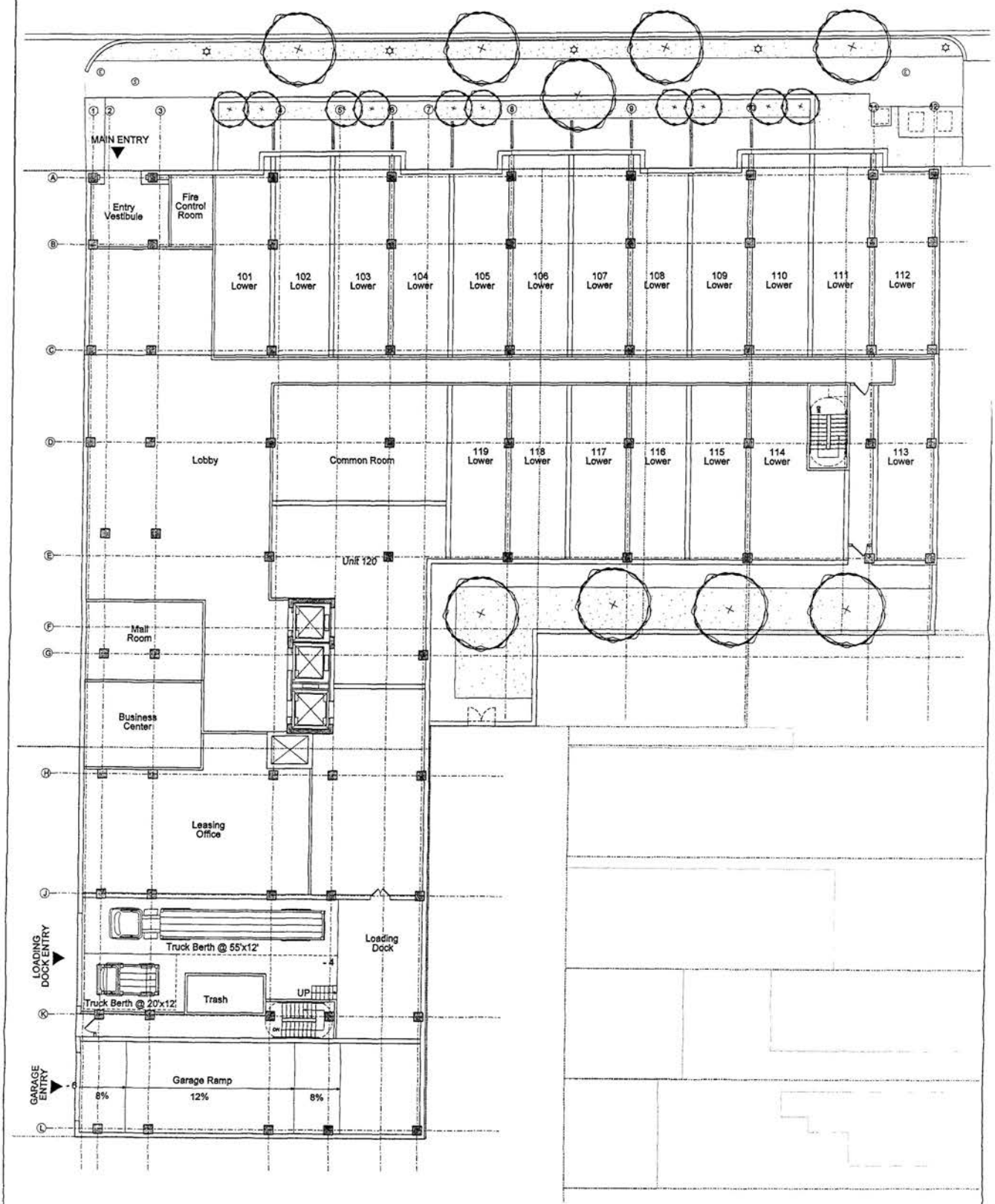
910 M Street

P2 and P3 Floor Plans		Project No: 23007
Esocoff and Associates I Architects	03-12-04	Scale 1' -20'



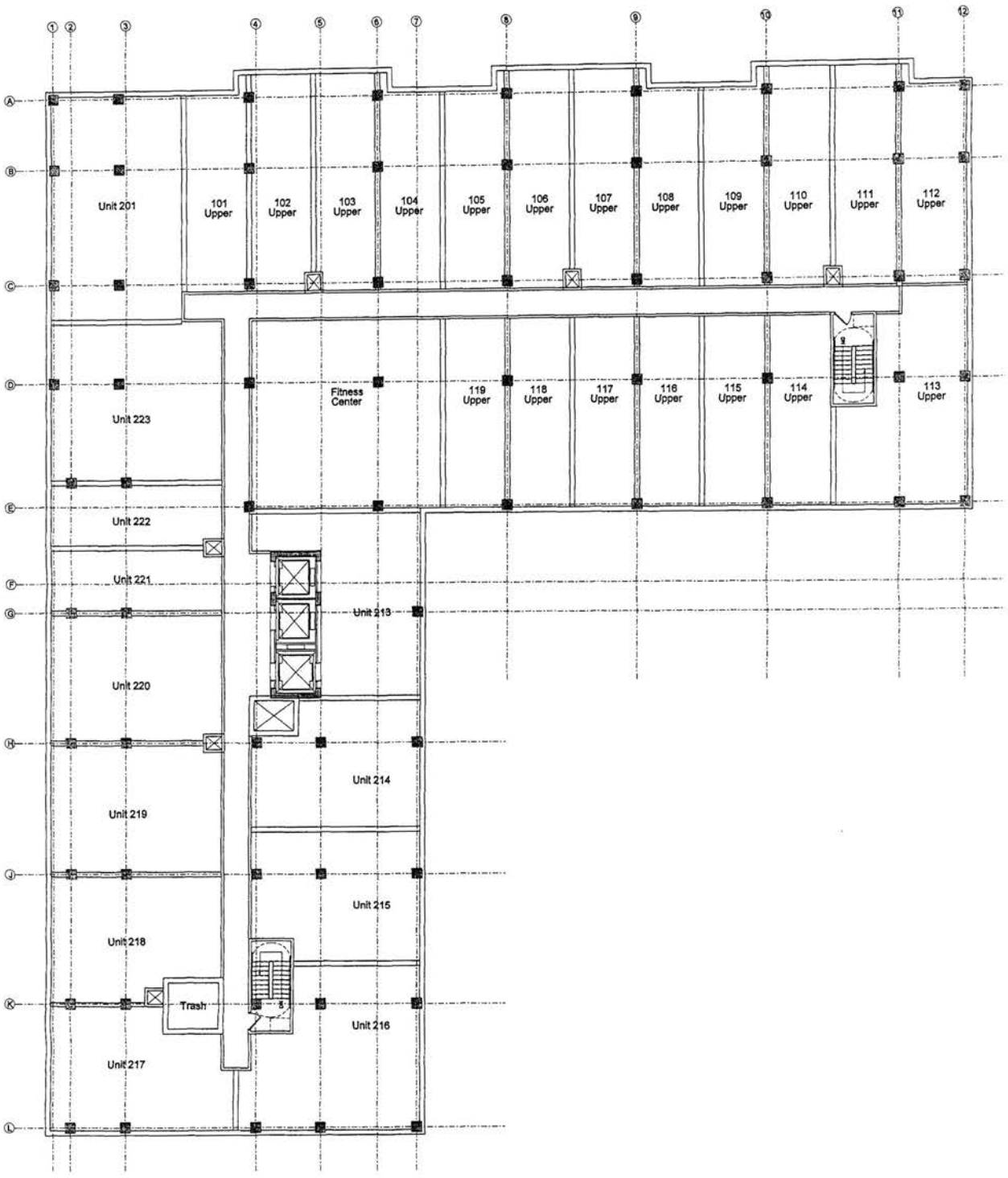
910 M Street

03-12-04	P1 Floor Plan	Project No: 23007
	Esocoff and Associates I Architects	Scale 1' -20'



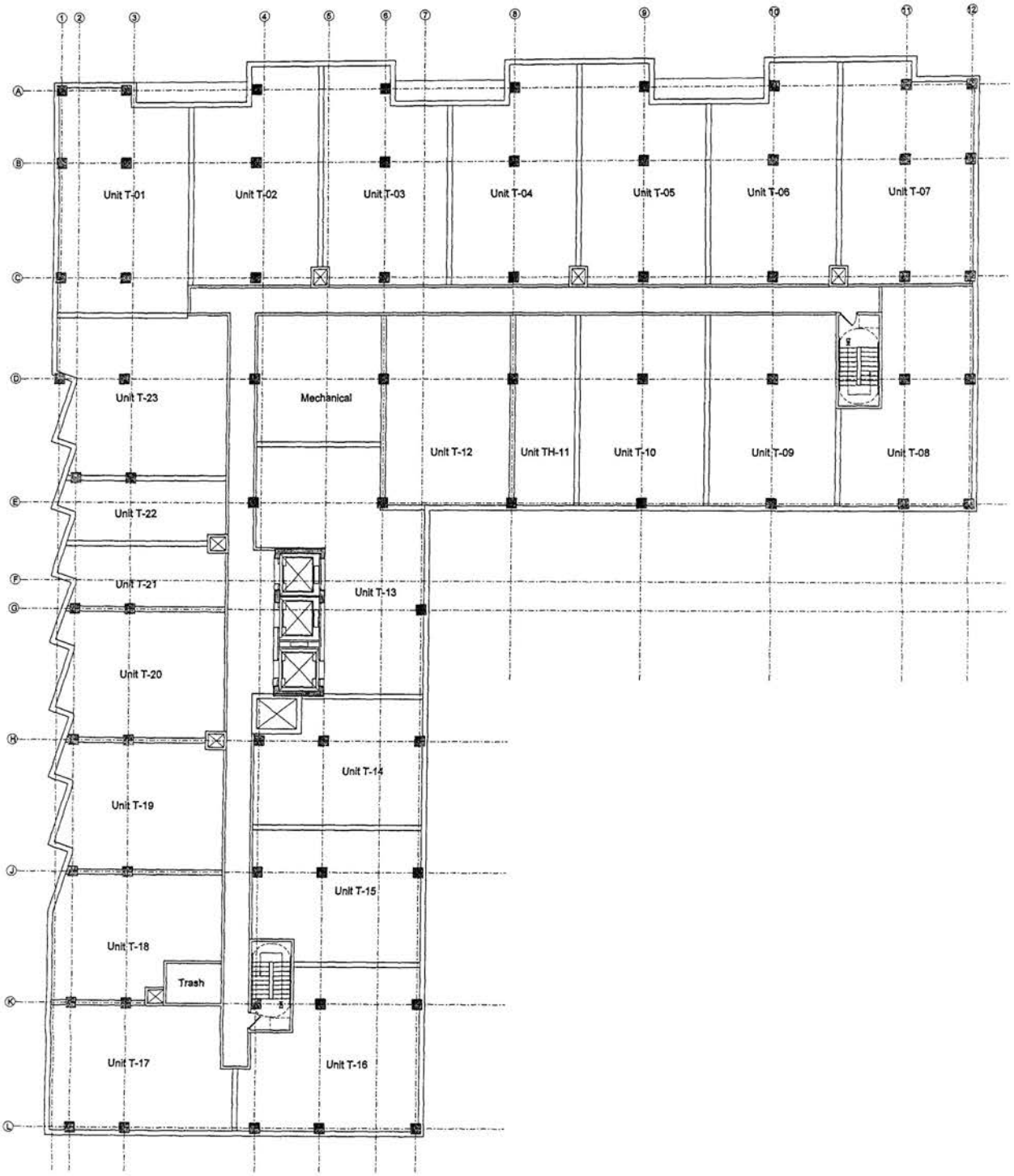
910 M Street

03-12-04	Ground Floor Plan	Project No: 23007
	Esocoff and Associates I Architects	Scale 1' -20'



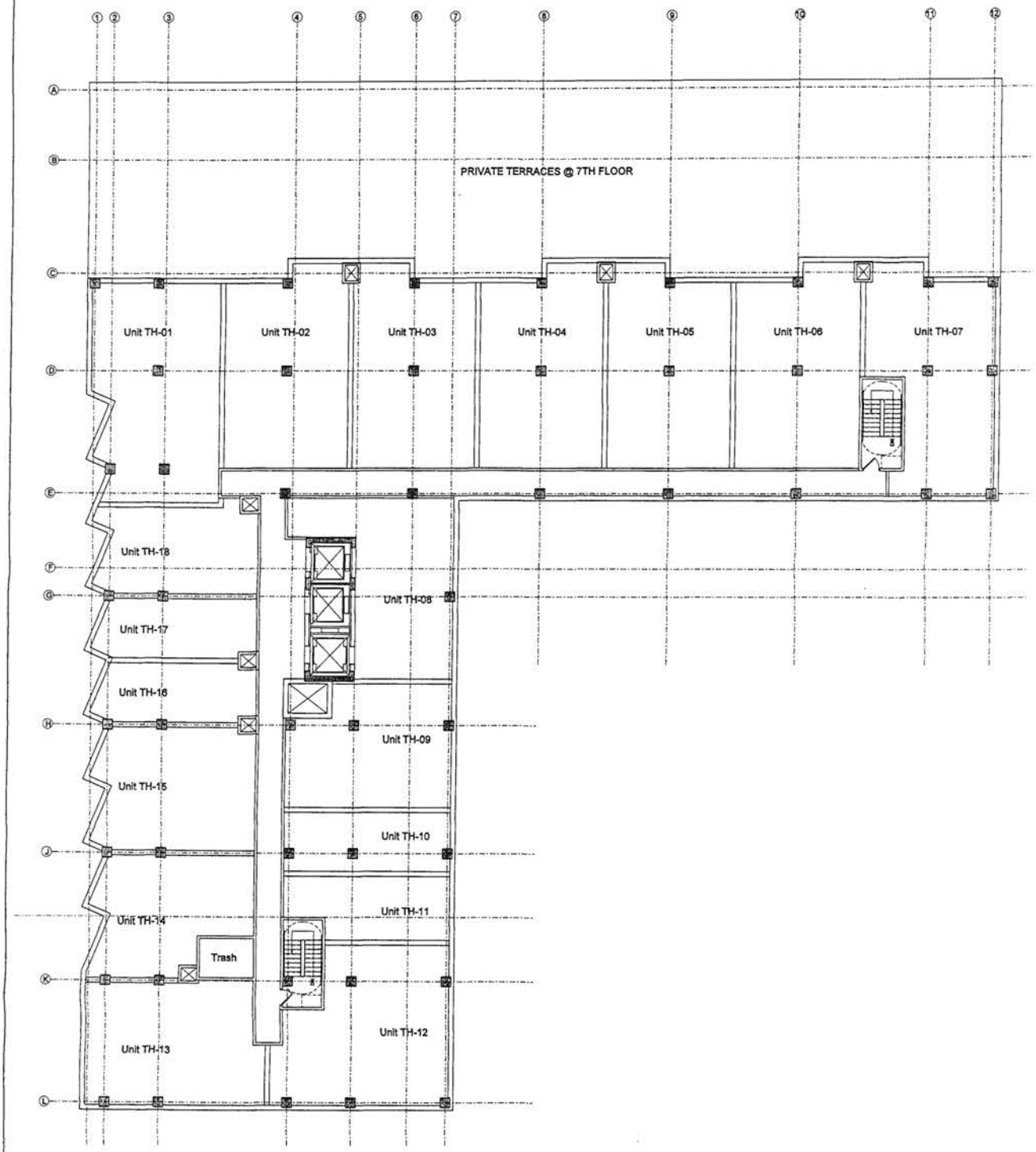
910 M Street

	Second Floor Plan	Project No: 23007
03-12-04	Esocoff and Associates I Architects	Scale 1' -20'



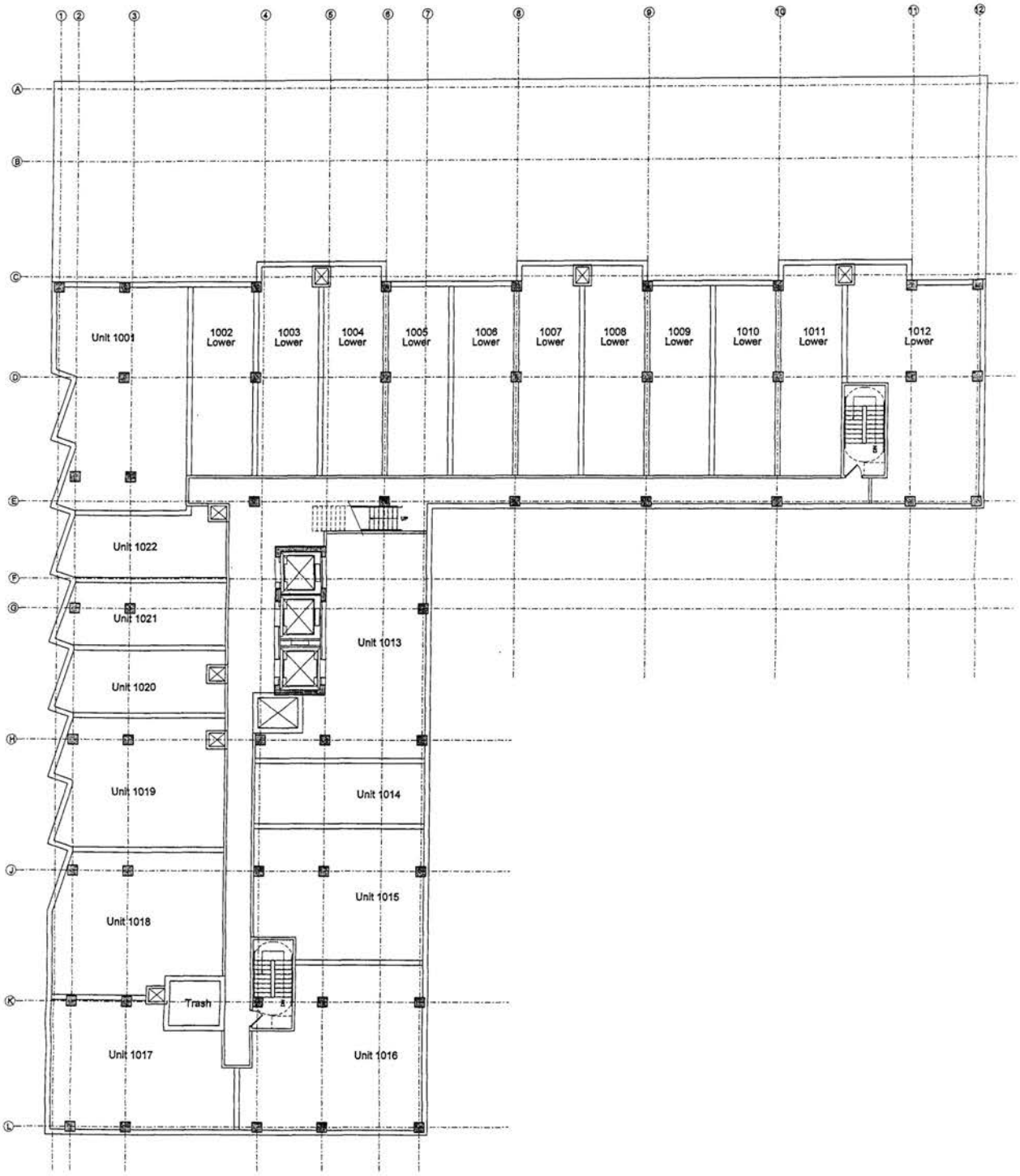
910 M Street

03-12-04	3rd - 6th Floor Plans	Project No: 23007
	Esocoff and Associates I Architects	Scale 1' -20'



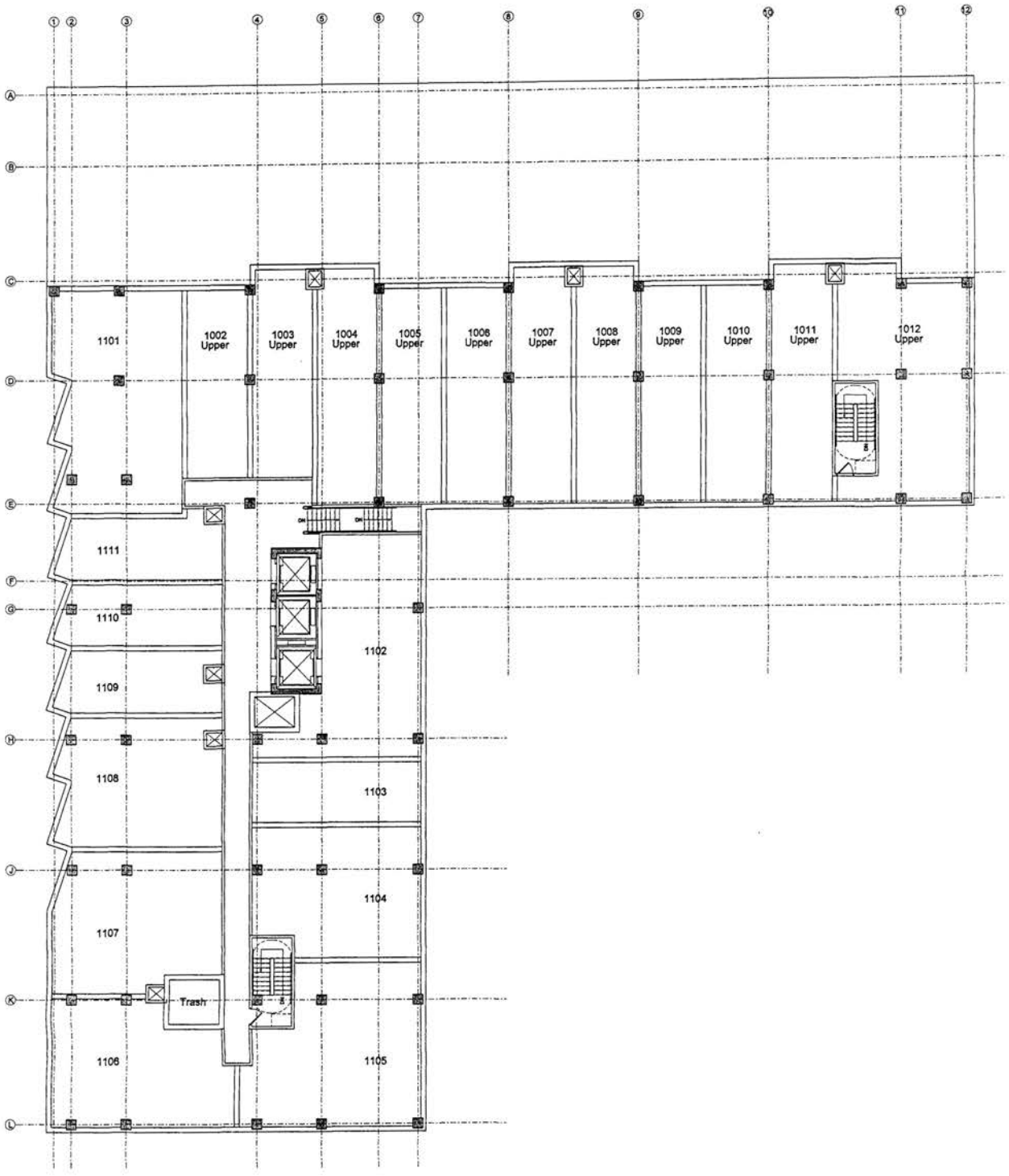
910 M Street

03-12-04	7th - 9th Floor Plans	Project No: 23007
	Esocoff and Associates I Architects	Scale 1' -20'



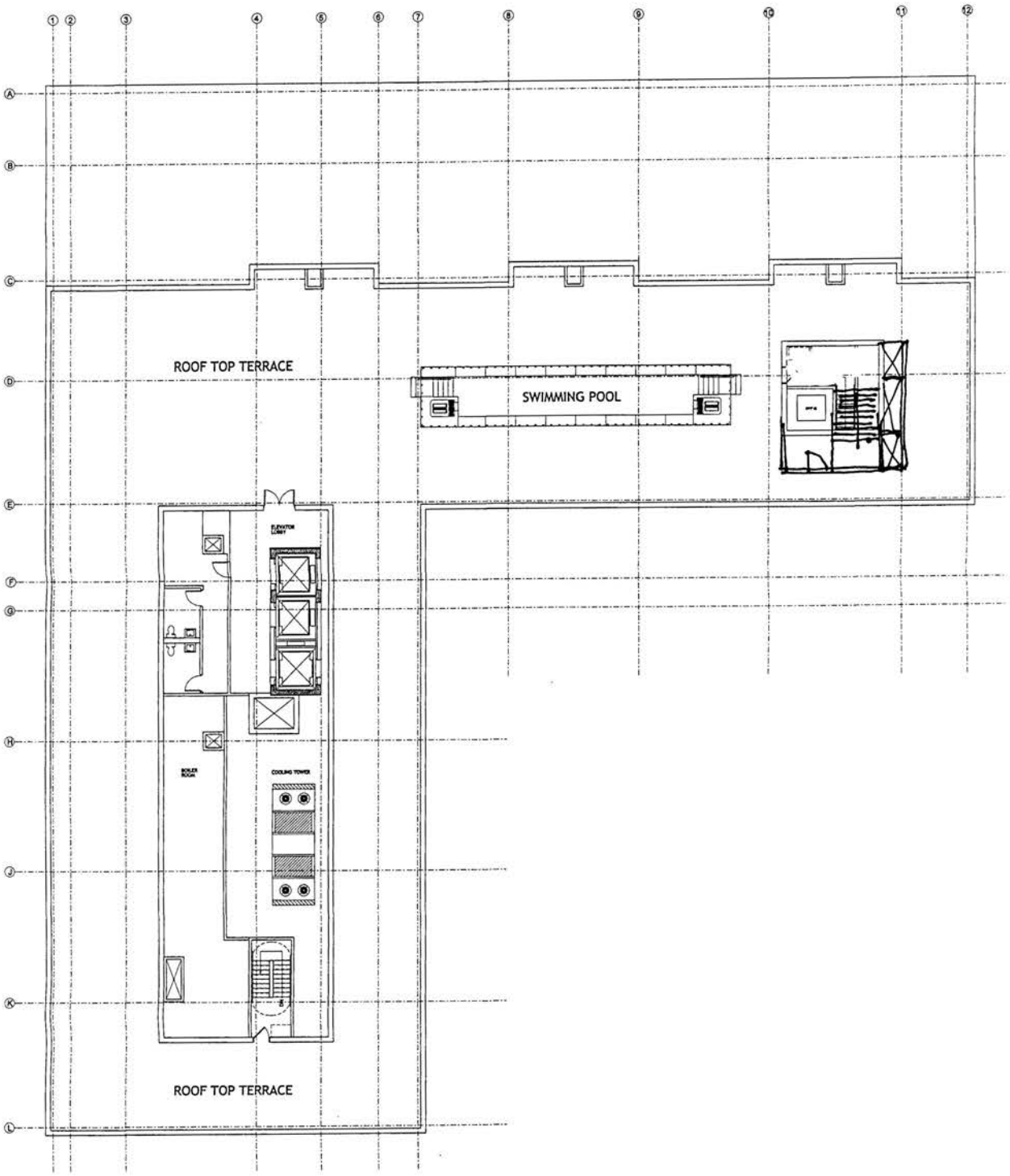
910 M Street

	Tenth Floor	Project No: 23007
03-12-04	Esocoff and Associates I Architects	Scale 1' -20'



910 M Street

03-12-04	Eleventh Floor	Project No: 23007
	Esocoff and Associates I Architects	Scale 1' -20'



910 M Street

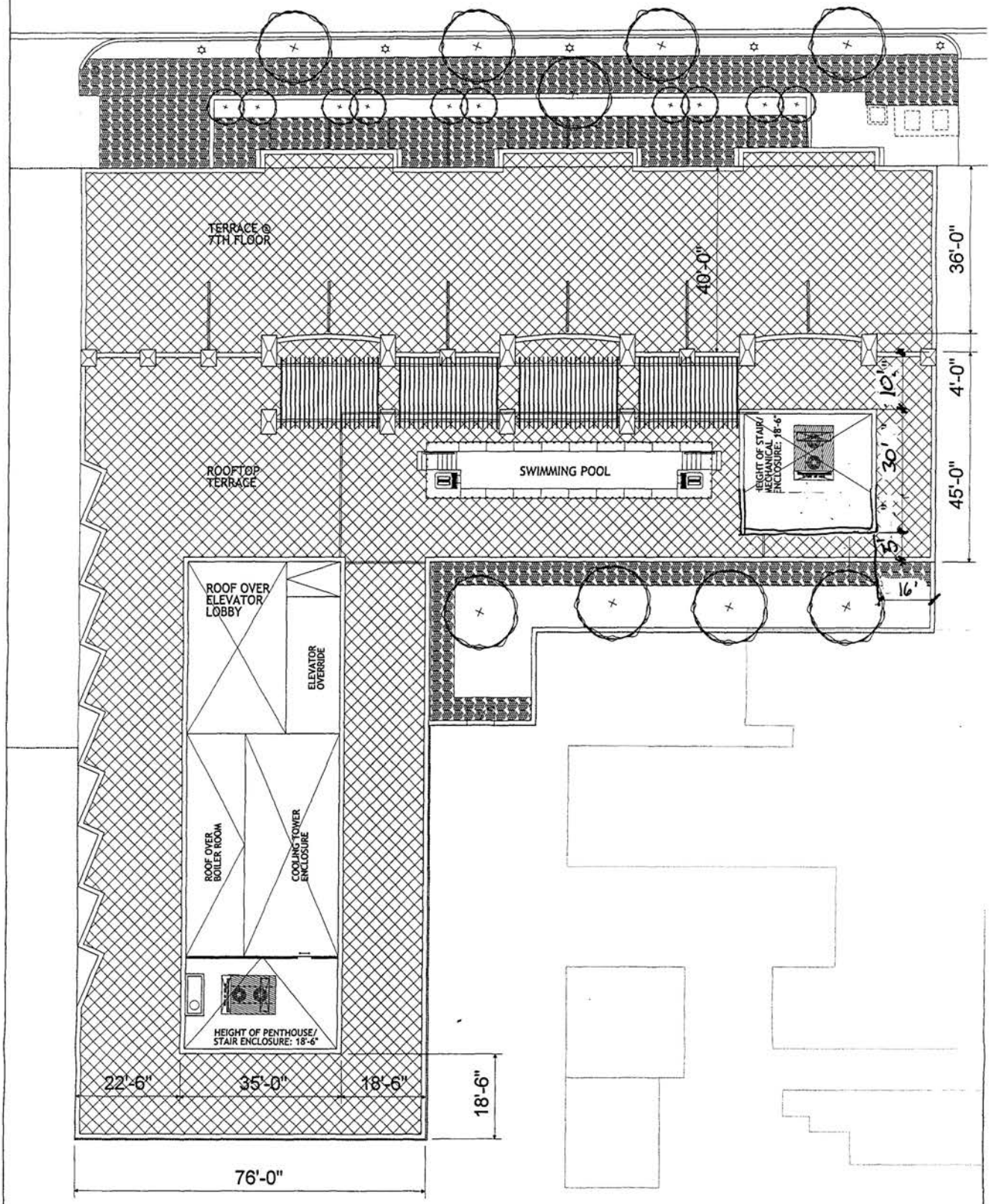
03-12-04

Roof Deck Plan

Esocoff and Associates I Architects

Project No: 23007

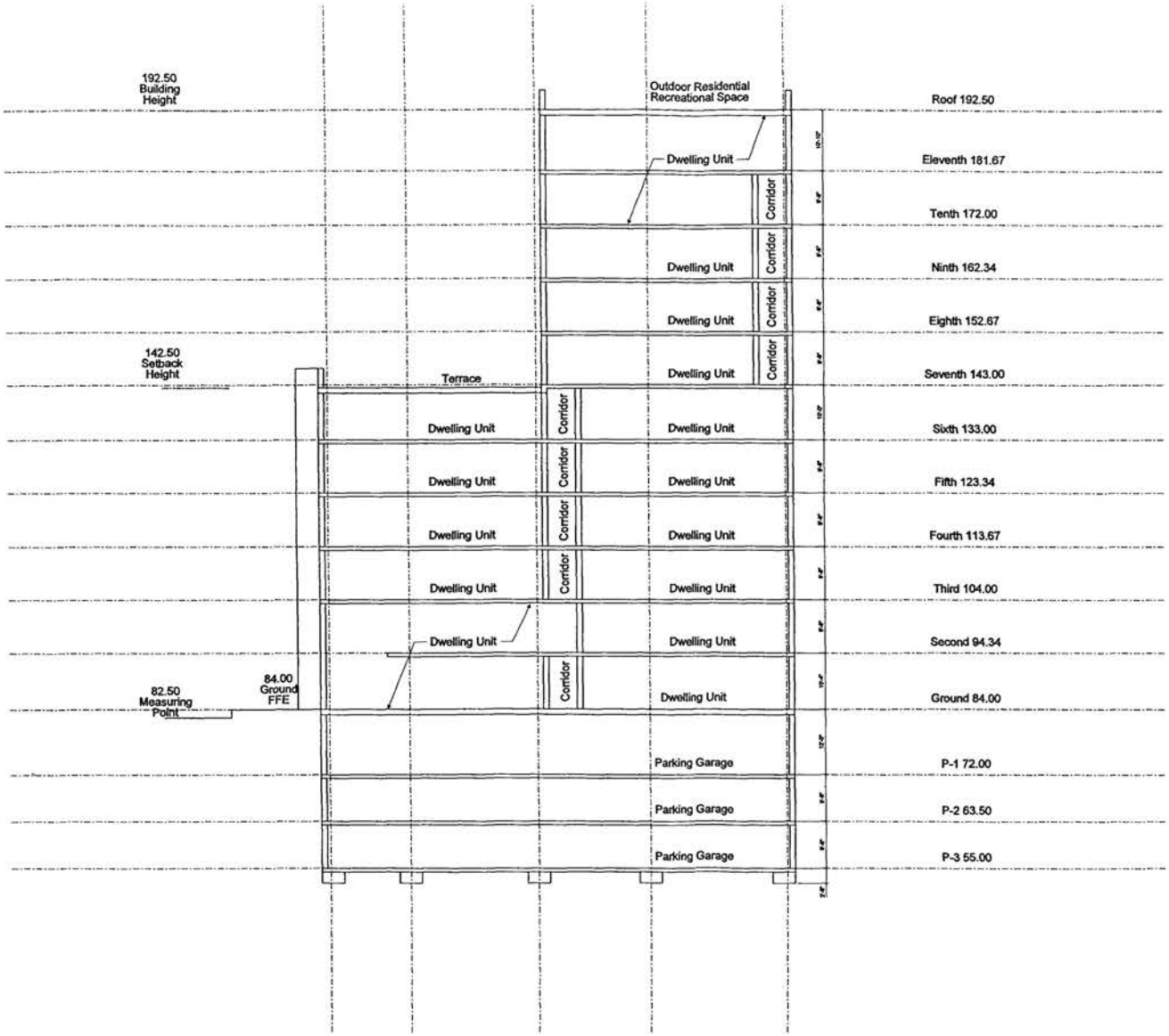
Scale 1' -20'



910 M Street

03-12-04	Roof Plan	Project No: 23007
	Esocoff and Associates I Architects	Scale 1' -20'

...\Drawings\Plans\roof plan.dgn 03/12/04 11:49:31 AM



910 M Street

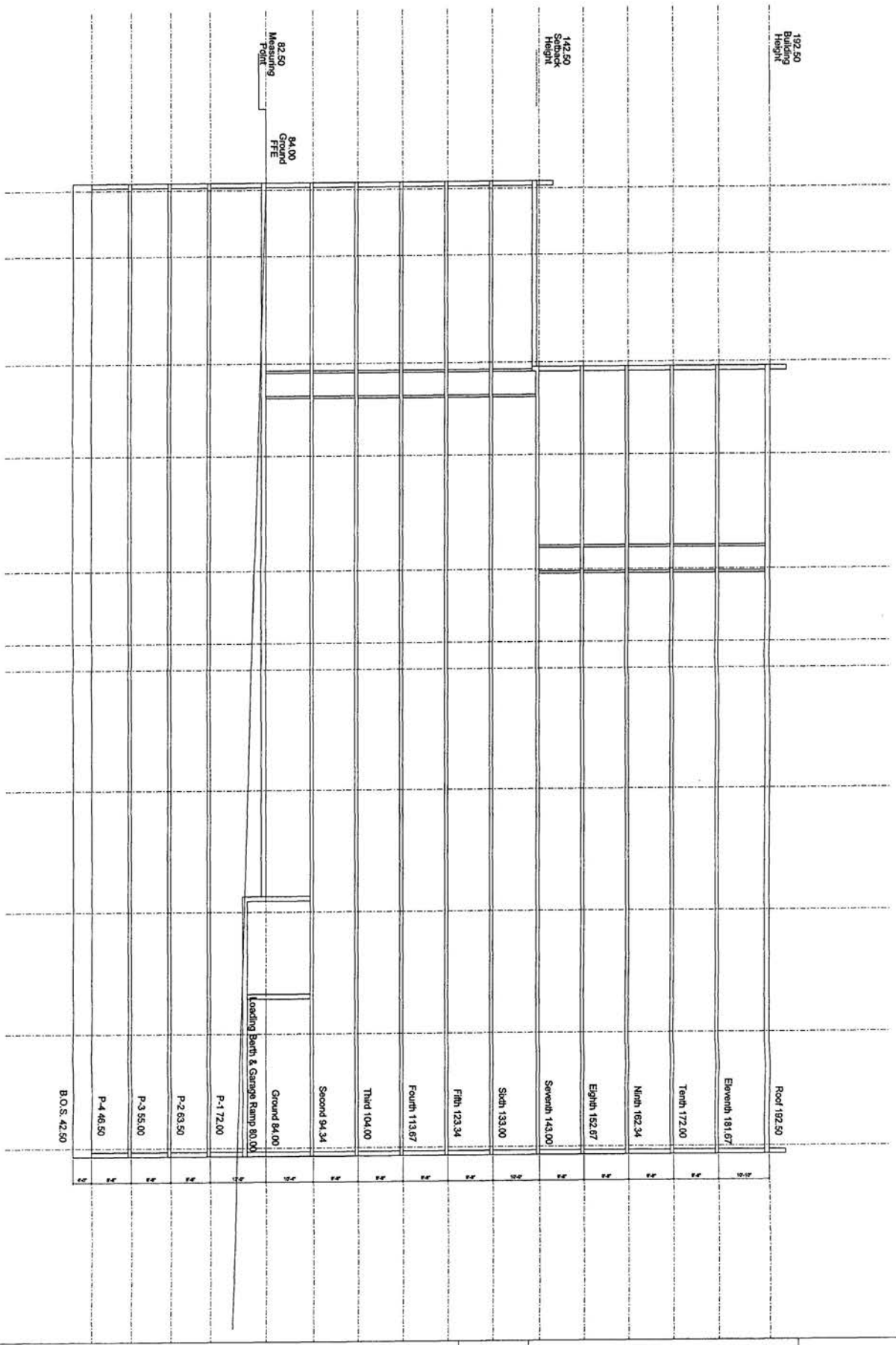
Cross Section

Esocoff and Associates I Architects

Project No: 23007

Scale 1" -20'

03-12-04



910 M Street

	Longitudinal Section	Project No: 23007
03-12-04	Esocoff and Associates I Architects	Scale 1' -20'



Project No: 23007

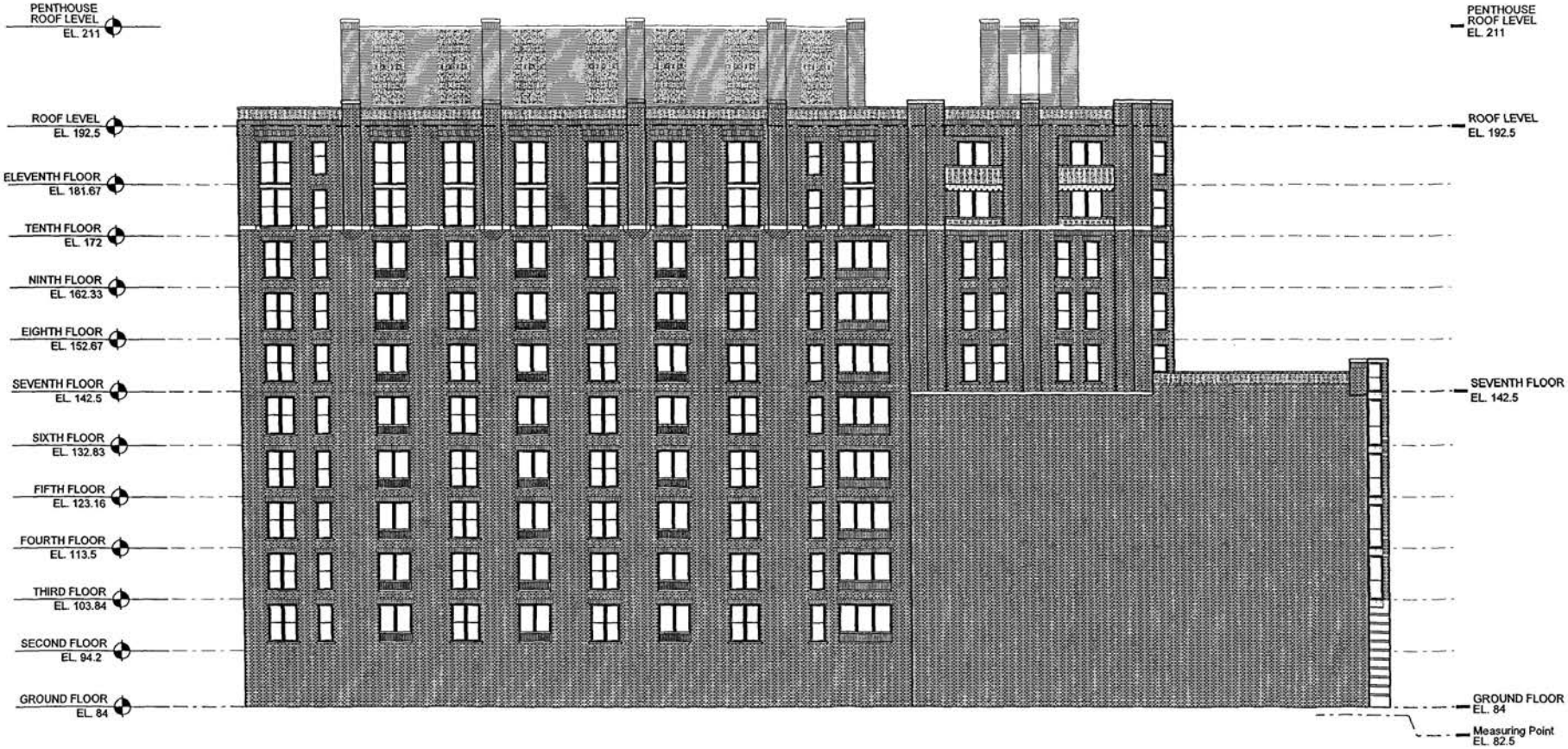
Scale 1" - 20'

North Elevation

Esocoff and Associates I Architects

03-12-04

910 M Street



Project No: 23007

Scale 1' -20'

East Elevation

Esocoff and Associates | Architects

03-12-04

910 M Street

910 M Street

South Elevation

Esocoff and Associates | Architects

Project No: 23007

Scale 1' -20'

03-12-04

910 M Street

West Elevation

Esocoff and Associates | Architects

Project No: 23007

Scale 1' -20'

03-12-04

Court Width

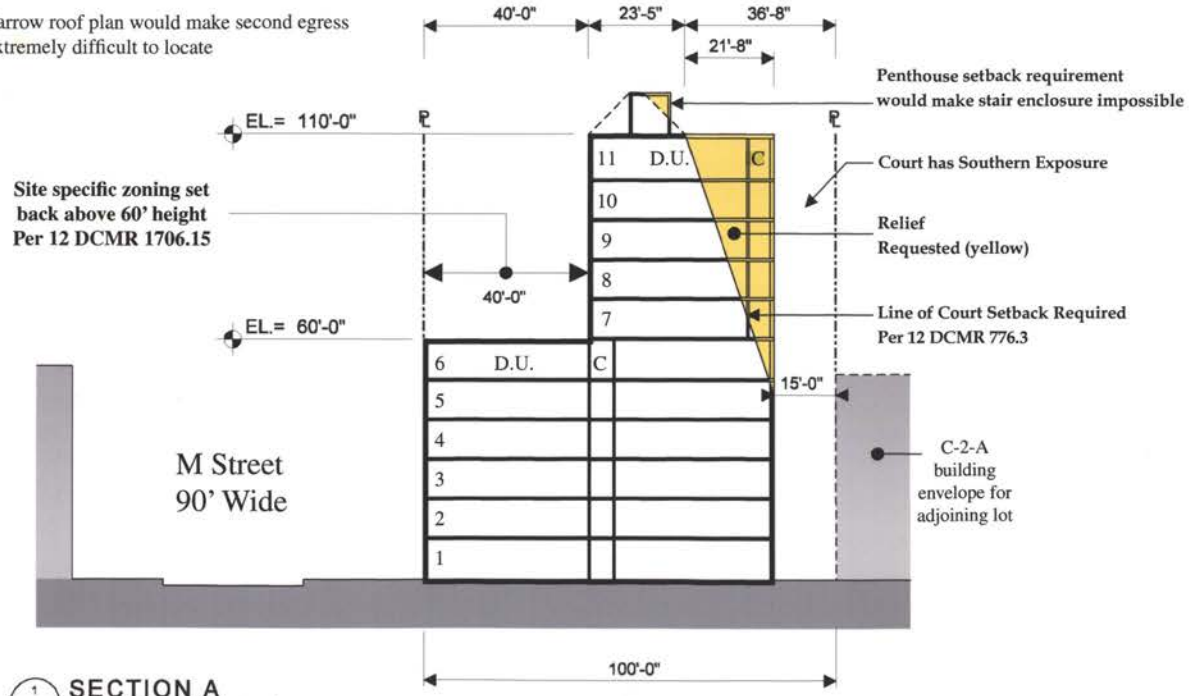
Notes

1) 40' Setback requires shifting corridor @ 7th Floor resulting in inefficient single loaded corridor.

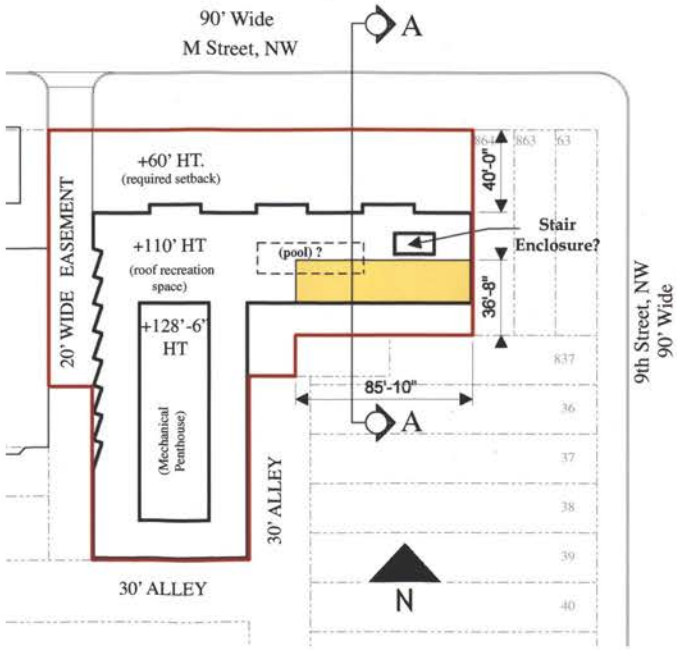
2) Court width per code would require six unique floors with even lower efficiency of net to gross area. Many awkward and unmarketable unit would result.

3) Multiple offsets of MEP and Structural systems would be very difficult to construct.

4) Narrow roof plan would make second egress extremely difficult to locate

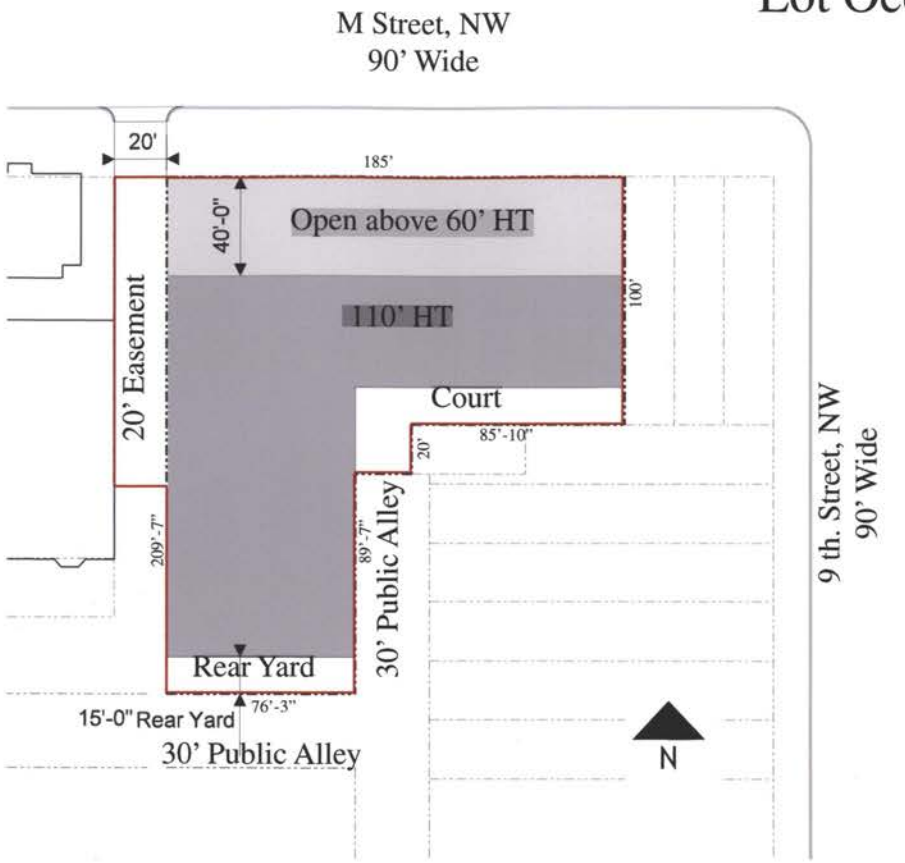


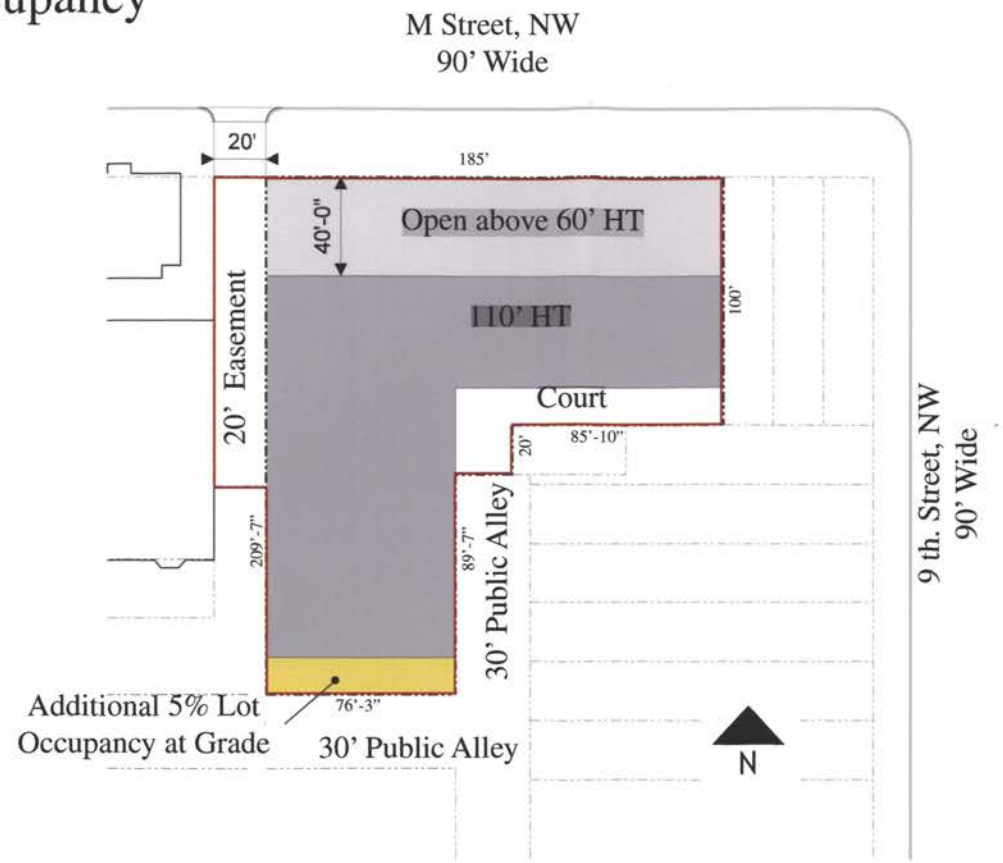
1/A1 SECTION A
SCALE: 1"-30'



2/A1 ROOF PLAN
SCALE: 1"-60'

Lot Occupancy





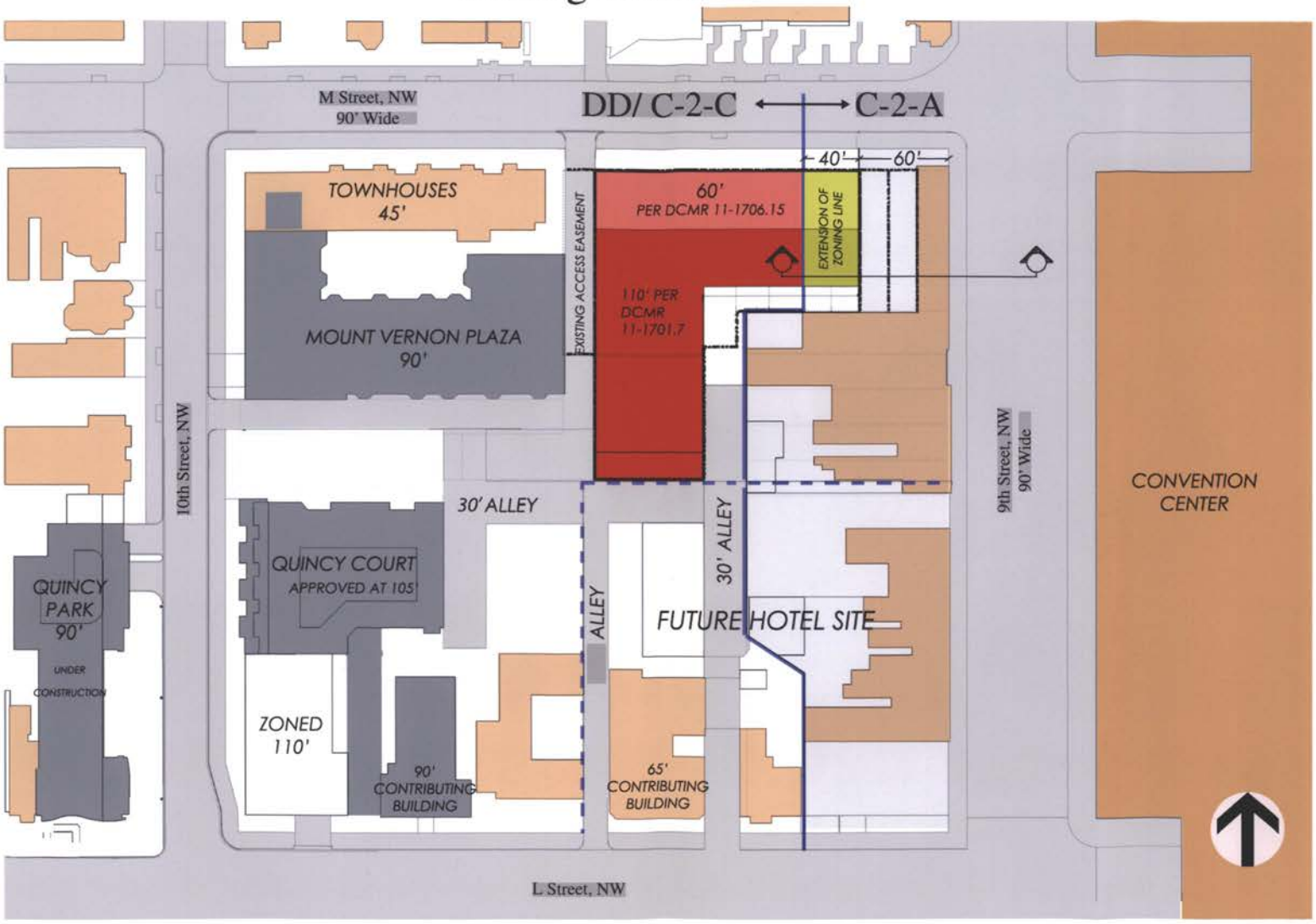
Average Lot Occupancy Permitted 68%

Max Permitted Lot Occupancy at Grade	80%
Effective Lot Occupancy Permitted Above 60'	53%

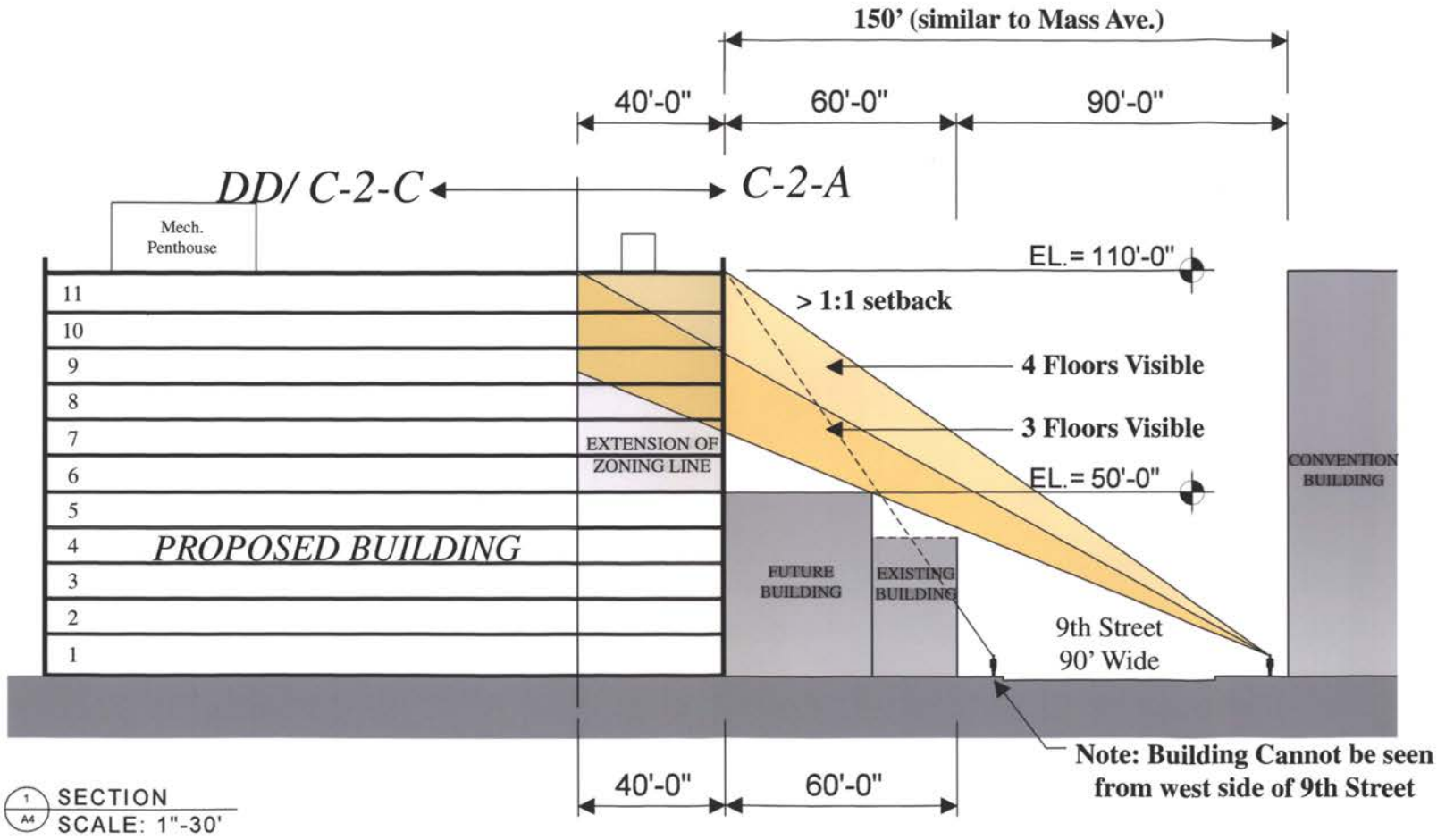
Average Lot Occupancy Proposed 73%

Proposed Lot Occupancy at Grade	85%
Proposed Lot Occupancy Above 60'	58%

Zoning Extension

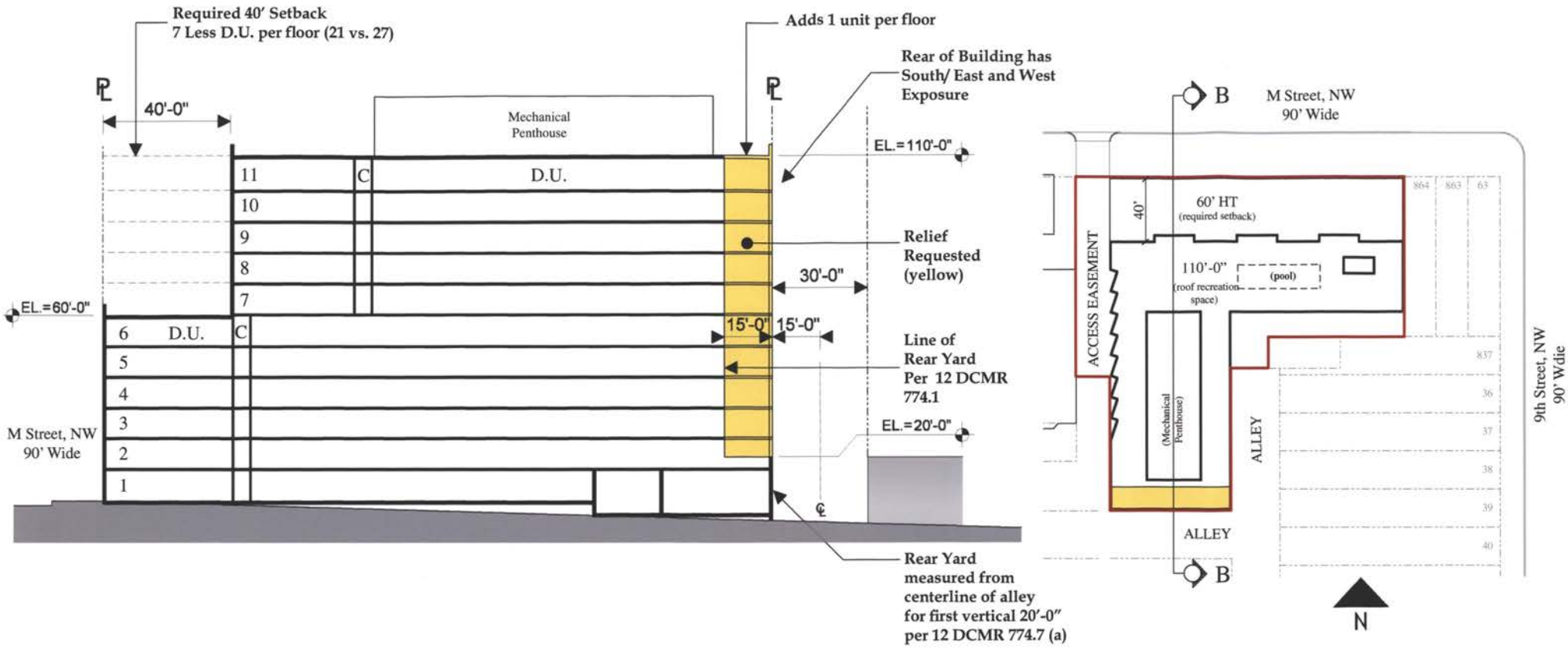


Zoning Extension



1/A4 SECTION
SCALE: 1"-30'

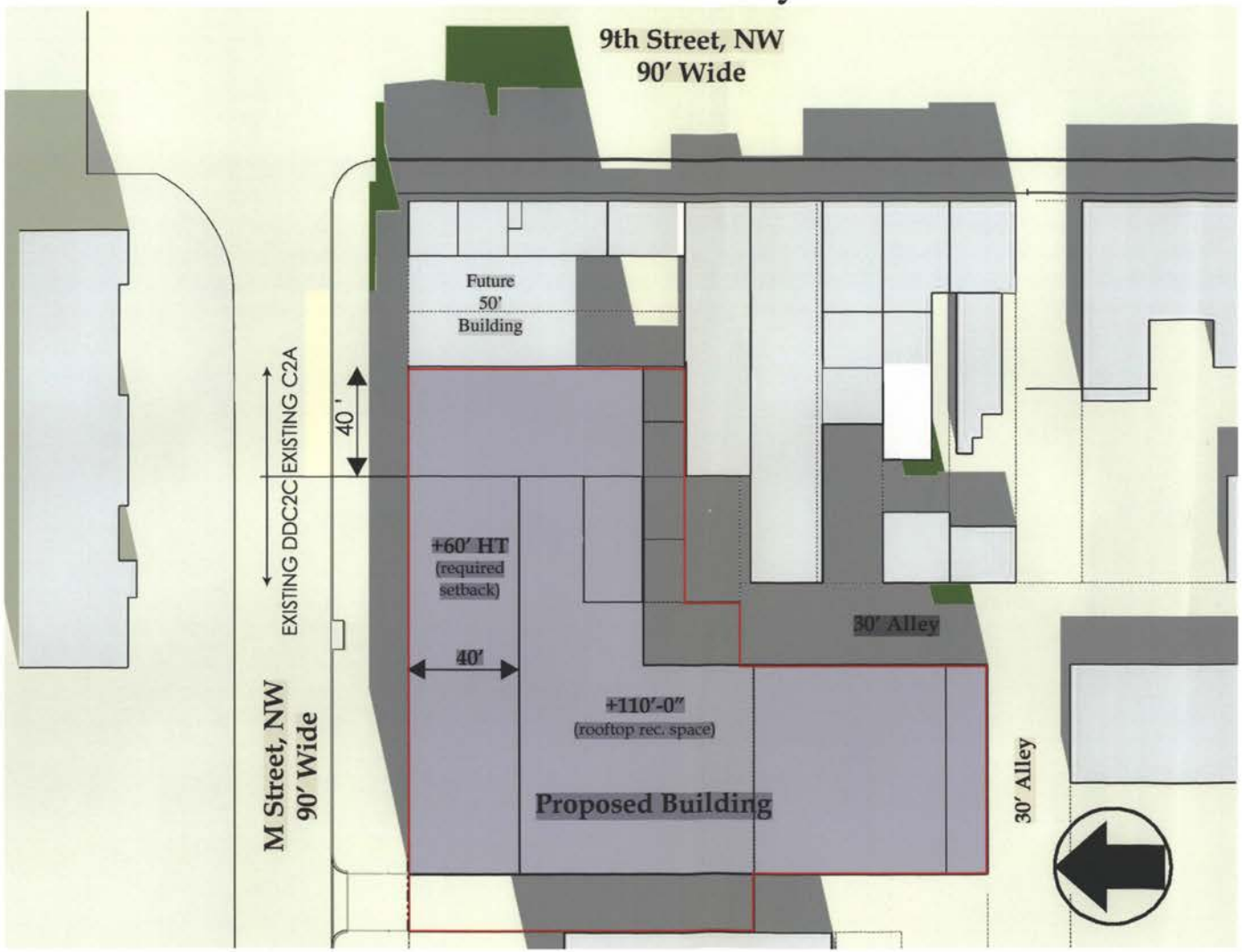
Rear Yard Setback



1/A5 SECTION B
SCALE: 1"-30'

2/A5 ROOF PLAN
SCALE: 1"-60'

Shadow Study



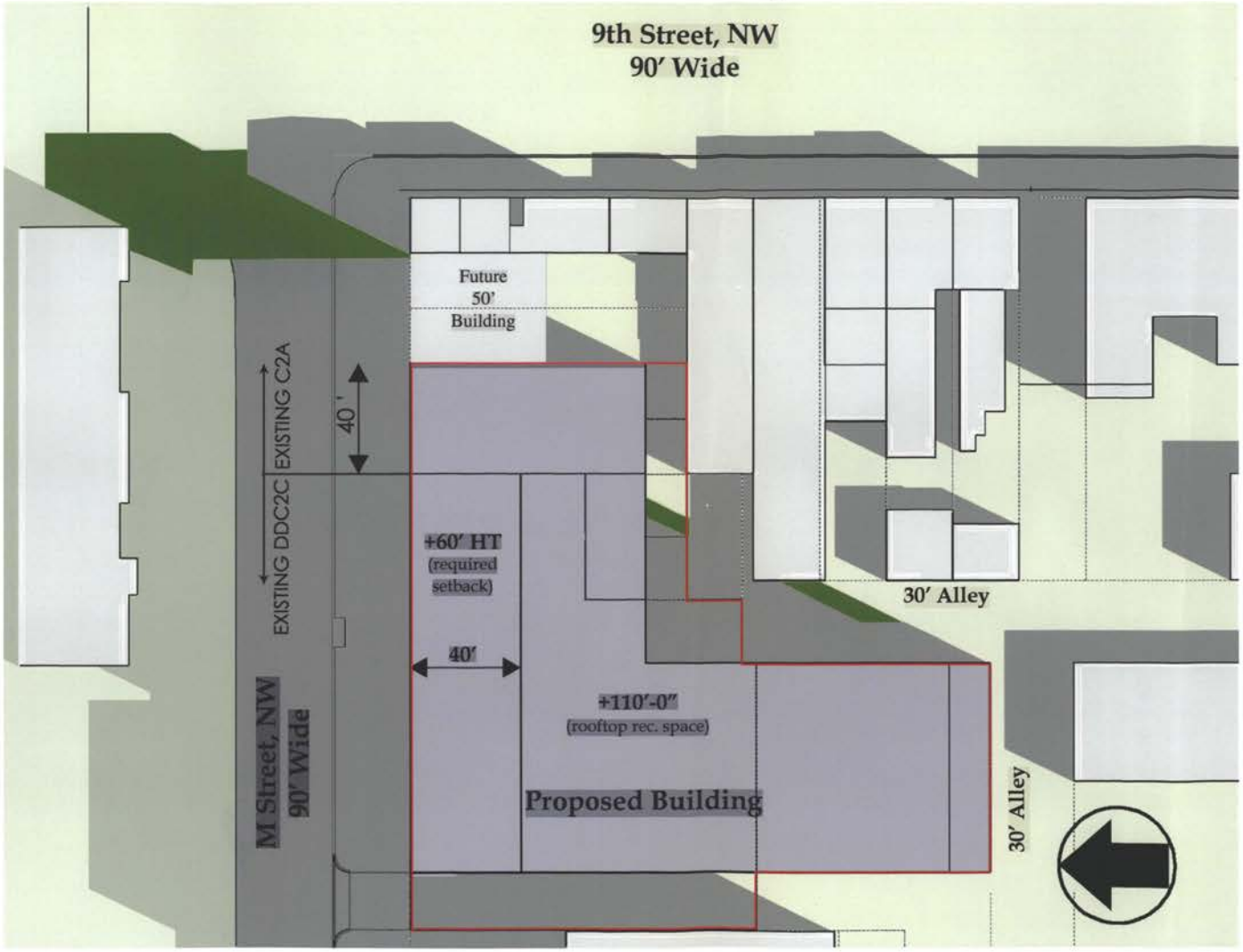
Green Indicates minor additional shadows due to reflief request for:

-zoning extension
-court width
-site occupancy/rear yard

May 4th 3:30 pm

(halfway between spring equinox and longest day)

Shadow Study



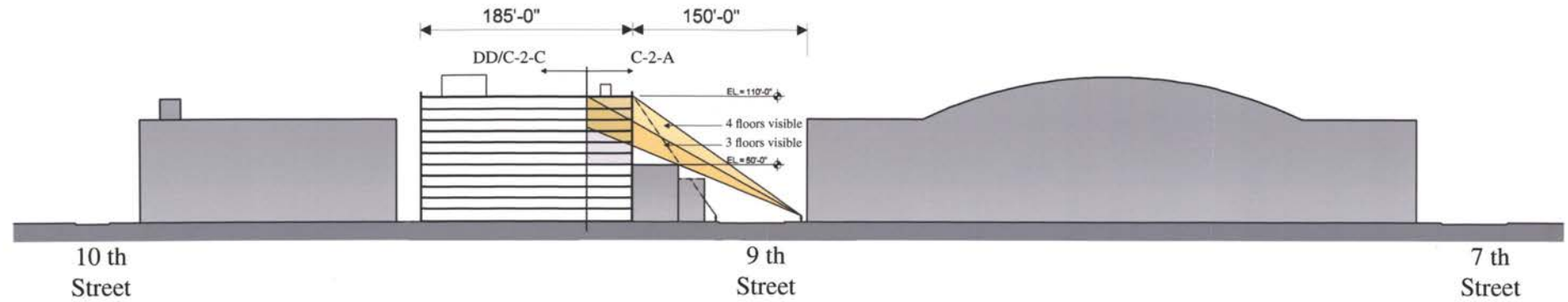
Green Indicates minor additional shadows due to reflief request for:

-zoning extension
-court width
-site occupancy/rear yard

November 8th 3:30 pm

(halfway between fall equinox and shortest day)

Zoning Extension



1/A4 SECTION
SCALE: 1"-90'

Zoning Data
910 M Street NW
Washington, DC

Required Parking					
Parking Spaces	Required	Provided			
		P1	P2	P3	Total
Full	23	15	10	10	35
Compact	22	42	58	58	158
Van (non-HC)	1	1	0	0	1
HC Accessible	7	4	4	4	12
HC Van/ Accessible	2	2	0	0	2
Total	55	64	72	72	208

Zoning Data
910 M Street NW
Washington, DC

Required Residential Recreational Space			
Total Residential GFA 240,000 SF			
Required		*Provided*	
Required Residential Recreational Space	5% x 240,000 = 12,000 SF	Provided Residential Recreational Space (Ground and Second Floors, Rooftop)	16,500 SF
Required Outdoor Residential Recreational Space	50% x 12,000 SF = 6,000 SF	Provided Outdoor Residential Recreational Space (Rooftop)	12,000 SF

E

HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION

Property Address:	**910 M Street, NW**	X	Agenda
Landmark/District:	**Shaw Historic District**		Consent Calendar
		X	Concept Review
Meeting Date:	**March 25, 2004**		Alteration
H.P.A. Number:	**04-187**	X	New Construction
Staff Reviewer:	**Steve Callcott**		Demolition
			Subdivision

The applicant, architect Philip Esocoff for Faison Associates, seeks conceptual design review for construction of an apartment building on a vacant mid-block parcel on M between 9th and 10th in the Shaw Historic District. The site is occupied by a surface parking lot, flanked by a row of non-contributing 1980s townhouses and a non-contributing 90' high apartment building to the west, and a 40'wide vacant lot and a row of largely contributing buildings on 7th Street to the east. Across the street is one of the more architecturally distinguished terraces of houses in the district -- an exuberant row of Second Empire buildings constructed in 1873 that includes the National Historic Landmark Blanche K. Bruce house at 909 M Street (Bruce was the first African-American to serve a full term in the US Senate and later became the Registrar of the US Treasury and the DC Recorder of Deeds).

The site is located in the Downtown Development (DD) overlay district, one provision of which establishes a height limit on the project site of 60 feet for the first 40 feet fronting M Street. This provision was put into effect prior to the designation of the historic district to protect the scale of the rowhouses to the north. While the non-historic townhouses and apartment building to the immediate west of the project site were built prior to the enactment of the DD, there were constructed according to the general principles of this provision in the overlay. In exchange for this setback, the remainder of the site is zoned for a height of 110 feet, which as part of a housing priority area, allows added density and height in order to encourage the creation of housing.

The design calls for a series of projecting pavilions on the 60' high street-fronting portion of the building, with a tall two-story rusticated base and a crenellated top; the language and geometry of the pavilions – their elongated two-story windows, battered bases and flaring tops – are partially inspired by the work of Scottish architect Charles Rennie Mackintosh, who was active at the same general time that this neighborhood was being developed. Between the pavilions would be continuous metal balconies, providing a contrasting horizontal emphasis to the vertically oriented pavilions. The taller rear portion of the building would echo the rhythms of the pavilions with its own projections and balconies recessed within the body of the building. The conceptual elevation drawings suggest a rich palette of color and materials, including brick, precast, and decorative metal work, as the architect has used in many of his other buildings.

Included as an appendix to the submission are a series of perspective views that give a better sense as to how the building would be seen in the round than is provided from the elevation drawings. While still being developed, the perspectives illustrate that the massing and elevations of the taller portion of the building will be sculpted and designed more than is indicated in the elevations, and that the intension is to provide a fully-designed and articulated building on all sides (the perspective image showing the building from the south mistakenly does not show this and will be corrected by the time of the Board meeting). The perspectives show how the new building will be seen from the north and south in relation with the commercial strip of historic buildings along 9th Street, as well as from the east and west in relationship with the more residential character of M Street.

The perspectives make a compelling case that the building will be respectful and compatible with the varied contexts of historic apartment buildings, rowhouses and commercial buildings in the immediate area. The façade organization of the M Street elevation, broken down into a repeating rhythm of projecting bays and articulated with a rich palette of materials, echo similar qualities in the adjacent rowhouses. While the Board has asked that other new construction projects on this block top out at no more than 100 feet (with a set back of the top floor), the proposed building's 110' height is achieved only on the inner portions of the block, set back 40' from the street, rather than out at the street wall where it could potentially be seen as looming over nearby historic buildings. In the staff's opinion, this substantial set back is sufficient to ensure that the new construction is not incompatible with the character of the surrounding smaller scaled buildings.

The staff recommends that the Review Board approve the overall height, mass and design direction of the project as not incompatible with the character of the historic district, and direct the applicant to continue working on development of the design in preparation for a more detailed presentation to the Board when appropriate.