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August 31, 2004

By Hand Delivery

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: BZA Application No. 17202 – Application of First Washington Equities, LLC – 1017 4th Street, NW

Dear Chairman Griffis and Members of the Board:

First Washington Equities, LLC (the "Applicant") hereby submits its pre-hearing statement for the above-mentioned application. The Applicant looks forward to the public hearing on September 14, 2004 in this case.

Respectfully,

Paul A. Tummonds, Jr.

cc: Mark Dixon, ANC 6C
Stephen Cochran, OP
Andrew Loewinger
Michael Finn

Document #: 1428046 v.1

BZA
Case No. 17202
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO. 17202
EXHIBIT NO. 25

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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Application of First Washington Equities, LLC for Variance Relief

BZA Application No. 17202
Public Hearing: September 14, 2004
ANC 6C

STATEMENT OF THE APPLICANT

This is an application of First Washington Equities, LLC ("**Applicant**") to establish an all-day commuter parking lot at 1017 4th Street, N.W., Lot 808 in Square 526 (the "**Property**"). The Property consists of 2,552 square feet and has been vacant for the last twenty-five years. The Property is located in the Downtown Development ("DD")/C-2-C Zone District. The Applicant wishes to establish an all-day commuter parking lot on the Property in order to alleviate some of the parking constraints that currently exist in the surrounding area, and to provide more activity on the Property to prevent improper activities from occurring on the Property and in the surrounding area.

I. NATURE OF RELIEF SOUGHT

Parking lots that provide short-term parking spaces that are leased to merchants or a park-and-shop organization, and a parking facility for residents are permitted as a matter-of-right in the DD/C-2-C District. The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or "**Board**") approve a variance from §1702.7(c) of the Zoning Regulations to allow all-day commuter parking on the Property. The Applicant's satisfaction of the standards for granting variance relief are discussed in detail in Section IV of this statement.

II. JURISDICTION OF THE BOARD AND RECENT BOARD APPROVALS OF SIMILAR VARIANCE RELIEF

The Board has jurisdiction to grant the requested variance relief pursuant to §8 of the Zoning Act, D.C. Code, 2001 Ed. § 6-641.07(g)(3). The Board recently granted variance relief from §1702.7 in BZA Case No. 16625 and 16625-A (dated December 14, 2000 and September 12, 2002) to the May Department Store Company for the property that includes its department store at 719 13th Street, N.W. In addition, earlier this summer, the Board granted variance relief from §1702.7 in BZA Case No. 17145 (dated June 21, 2004) to the Washington Convention Center Authority to use the former Convention Center site for all-day commuter parking.

III. BACKGROUND

A. Description of the Property and the Surrounding Area

The Property is located in the middle of the block that is bound by 4th Street, L Street, 3rd Street and K Street, N.W. The Property consists of only 2,552 square feet, is not paved or improved, and does not have alley access. It is also important to note that 4th Street, N.W. is a one-way southbound street. The general area surrounding the Property consists of large vacant and underutilized properties and a few developed properties. A significant amount of loitering and prostitution occurs in the area surrounding the Property. Copies of a plat depicting the Property, the pertinent portion of the Zoning Map, and pictures of the Property are attached as Exhibits A, B and C.

The Museum Square Apartment building is located at the northwest corner of 4th and K Streets, a deli is located at the northeast corner of 4th and K Streets, and an auto repair shop is located to the east of the deli on K Street. The District of Columbia owns the large parcel to the

south of the Property and uses that property as a parking and storage lot. To the north of the Property is a small group of two-story residential structures. Further to the northwest of the Property is a car repair shop at the intersection of 4th and L Streets. It does not appear that any of the properties in this Square are owner-occupied.

B. Description of the Proposed Use of the Property

The Applicant proposes to establish a small parking lot of only eight parking spaces on the Property. The parking spaces will be made available to staff and employees of Loewinger & Brand, PLLC, a law firm located at 471 H Street, N.W., and to other people who work or live in the neighborhood. The parking lot will be managed by a parking lot operator that has yet to be determined. A representative of the Applicant will testify at the public hearing as to the proposed operation of the parking lot, in accordance with Section 3107.1 of the Zoning Regulations.

As shown in the plan for the parking spaces, attached as Exhibit D, the layout of the spaces and the landscaping of the lot have been designed to mitigate any adverse impacts on neighboring properties. In response to concerns raised by members of the community and Advisory Neighborhood Commission ("ANC") 6C, the Applicant has added a fence around the property and appropriate lighting, to provide security and prohibit loitering and prostitution in and around the Property.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM SECTION 1702.7(c) PURSUANT TO 3103.2 OF THE ZONING REGULATIONS

The Applicant is entitled to variance relief pursuant to §3103.2 of the Zoning Regulations because it can demonstrate that: (1) there is an extraordinary or exceptional situation or condition inherent in the Property; (2) a practical difficulty and an undue hardship arises in satisfying the

strict application 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.

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" *Id.* at 293-294. The Court has repeatedly rejected the idea that the exceptional situation or condition of the property and the undue hardship justifying a use variance must arise from the physical aspects of the land, and has permitted the BZA to weigh more fully the equities in an individual case. *See National Black Child Development Institute*, 483 A.2d 687, 690; *DeAzcarte v. D.C. Board of Zoning Adjustment*, 388 A. 2d 1233, 1237 (D.C. 1978); *Monaco v. D.C. Board of Zoning Adjustment,* 407 A.2d 1091, 1097 (D.C. 1979).

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

The Property is a small parcel, consisting of 2,552 square feet, that is a little over 27 feet wide and does not have alley access. The only vehicular access to the Property is via 4th Street. The Property is located in a Square that includes numerous large properties that are owned by development companies and the District of Columbia. As mentioned above, the majority of the properties in the surrounding area are either vacant or being used for parking and storage. No significant retail or shopping is located near the Property. As a result of the confluence of these factors, the Property is subject to an extraordinary or exceptional condition or situation.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty and Undue Hardship to the Applicant

The Property is located in an area of the District that anticipates mixed-use development, the Wax Museum site is located one block away from the Property. Presently there is no market for new retail, office, or residential uses on this Property. The Applicant envisions the proposed

parking lot use as an interim use, until the market forces allow for a more appropriate permanent use of the Property.

It is not realistic to envision that a single family home will be constructed on the Property, nor is it likely that a new free-standing row dwelling will be economically feasible to develop on the Property. In addition, introduction of a residential use will require the creation of parking spaces that must be accessed from 4th Street. The loss of any area of the Property for access to a required parking space in the rear of the Property will cause further impediments to residential development on the Property. Therefore, requiring residential use on this Property will result in an undue hardship on the Applicant.

In regards to the ability to create retail or office use on the Property, it should be noted that the C-2-C District allows a maximum non-residential FAR of only 2.0. Therefore, a new retail or office building on the Property could only achieve a maximum gross floor area of 5,104 square feet. However, since the Property does not have alley access, the required parking for any new building on the Property would need to be accessed from 4th Street. Such access requirement would severely reduce the available footprint for a new retail or office building. For these reasons, requiring the Property to be developed with a non-residential building creates an undue hardship on the Applicant.

As previously noted, the DD/C-2-C District does allow parking lots as a matter-of-right if they are used for short term parking and all of the spaces are leased to merchants or a park-and-shop organization. There is no significant retail or shopping opportunities near the Property, therefore the Applicant faces a practical difficulty in satisfying this requirement. The DD/C-2-C District also allows parking spaces or lots at or above grade if the parking spaces are to be used

for residents. The small size of the Property makes this provision inapplicable and poses a practical difficulty for the Applicant.

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

The proposed parking lot will satisfy all of the pertinent requirements of Section 2115 (Size of Parking Spaces), and Section 2117 (Access, Maintenance and Operation). Pursuant to Section 2115.11, the use of a parking lot operator for a daily twelve hour peak period allows for the waiver of the parking space and parking aisle dimensional, size, design, and striping requirements. Most importantly, the proposed layout of the parking lot allows for: (i) an appropriate amount of landscaping to buffer the visual impact of the parking lot[1]; (ii) fencing to provide a secure environment; and (iii) lighting to provide adequate security for the patrons of the parking lot, yet not create any adverse impacts on neighboring properties. Therefore, granting the requested variance relief will not cause harm to the public good or to the zoning plan because the proposed project has been carefully designed to mitigate any adverse impacts on the neighboring properties. Moreover, the Applicant believes that permitting an interim use of the Property that will result in more people using the Property and walking along 4th Street will discourage the loitering and illegal activity that currently exists in the area surrounding the Property.

IV. LIST OF WITNESSES EXPECTED TO TESTIFY

The following witness is expected to testify at the public hearing on behalf of the Applicant:

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[1] Note that while Section 2117.11 requires that 5% of the total area of the parking lot be devoted to landscaping, this requirement only applies to parking lots with more than 10 parking spaces. Regardless, the proposed landscaping on the Property covers approximately 12.25 % of the Property.

1) Andrew Loewinger, Representative of the Applicant.

V. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: Portion 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: Photographs of the Property and surrounding area.

Exhibit D: Plans for the proposed parking lot.

Exhibit E: Outline of Testimony of Andrew Loewinger, Representative of First Washington Equities, LLC.

VI. CONCLUSION

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

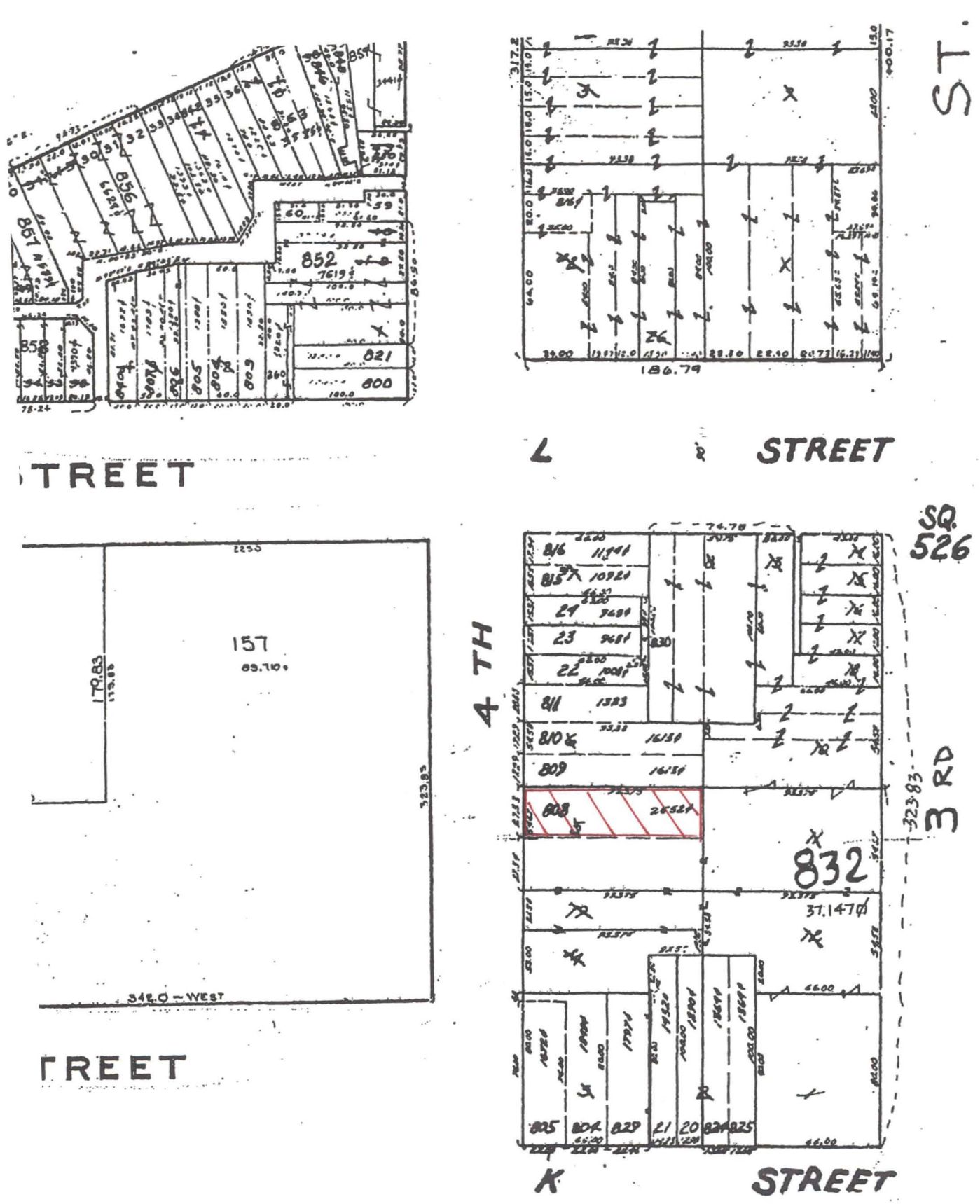
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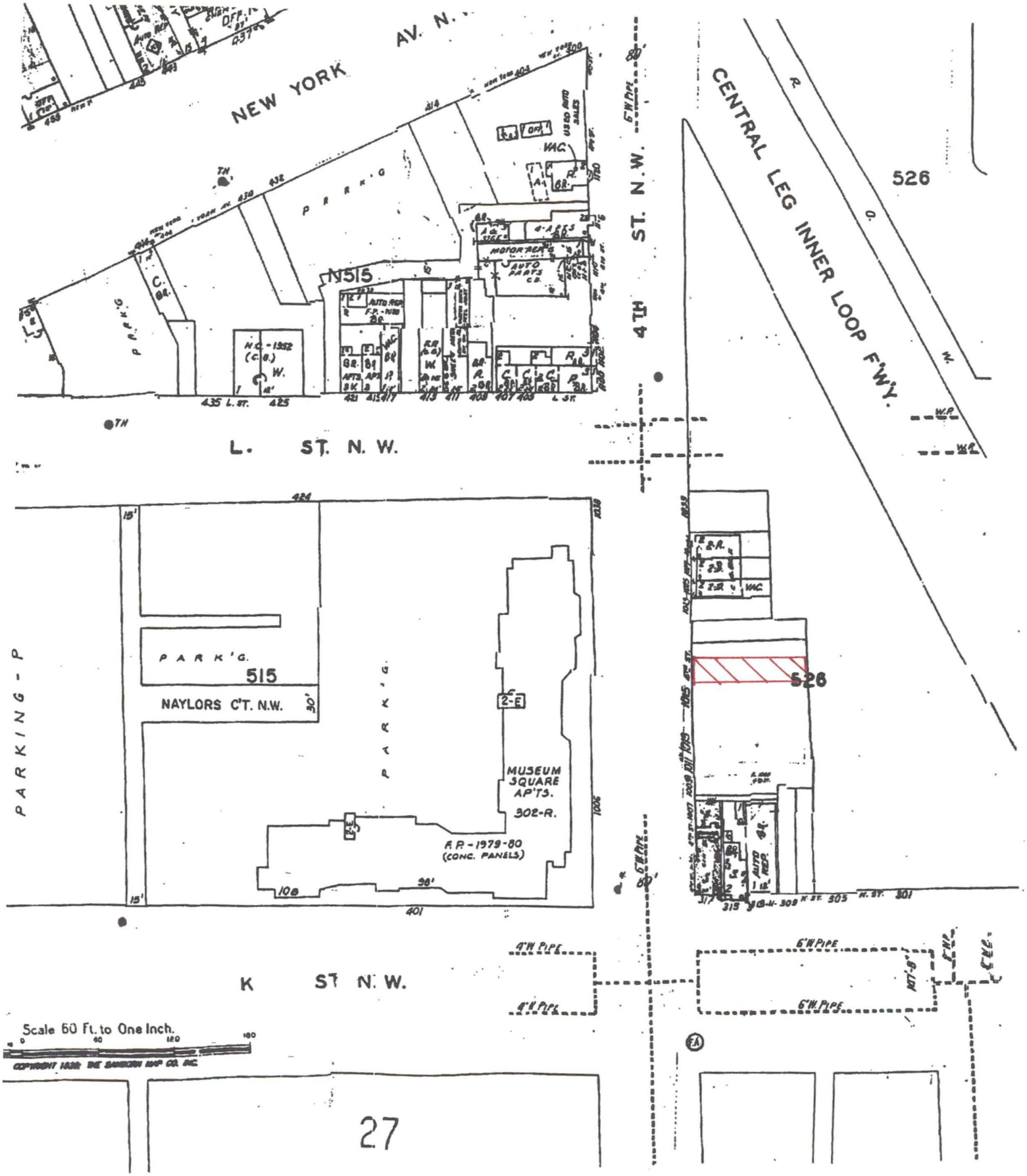
Shaw Pittman LLP

By: Paul A. Tummonds, Jr.

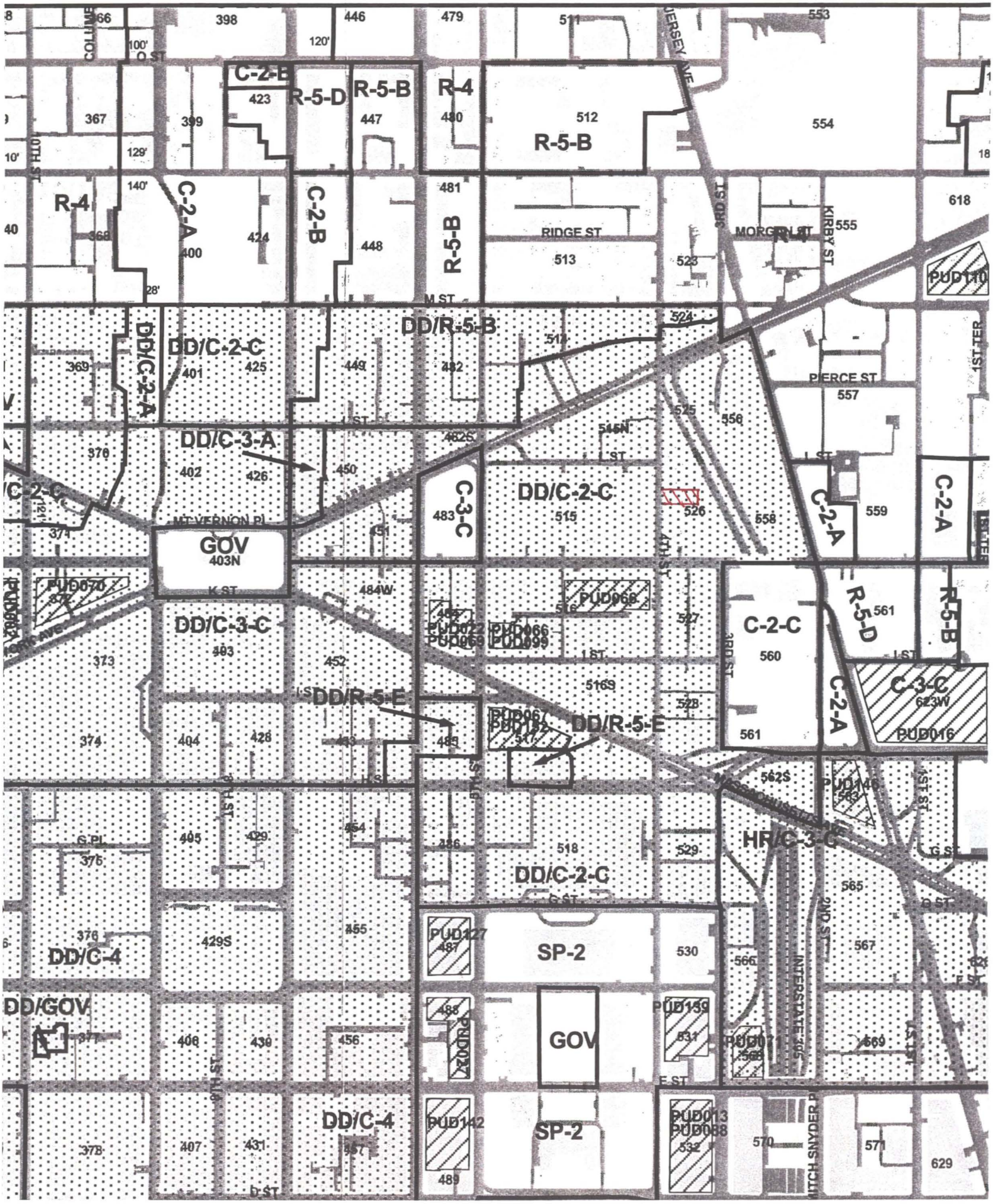
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4TH ST. N.W.
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K ST N. W.
PARKING - P
NAYLORS C'T. N.W.
MUSEUM SQUARE APTS.
302-R.
A.P. - 1979-80
(CONC. PANELS)
PARK'G.
Scale 60 Ft. to One Inch.
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B


C-2-B
R-5-D
R-5-B
R-4
C-2-A
DD/R-5-B
DD/C-2-C
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DD/C-3-A
C-3-C
GOV
DD/C-3-C
DD/R-5-E
C-2-C
R-5-D
C-3-C
PUD016
HR/C-3-C
DD/C-2-C
DD/C-4
DD/GOV
SP-2
PUD127
PUD139
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PUD088
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FRONTAGE ALONG 4TH STREET



FRONTAGE ALONG 4TH STREET



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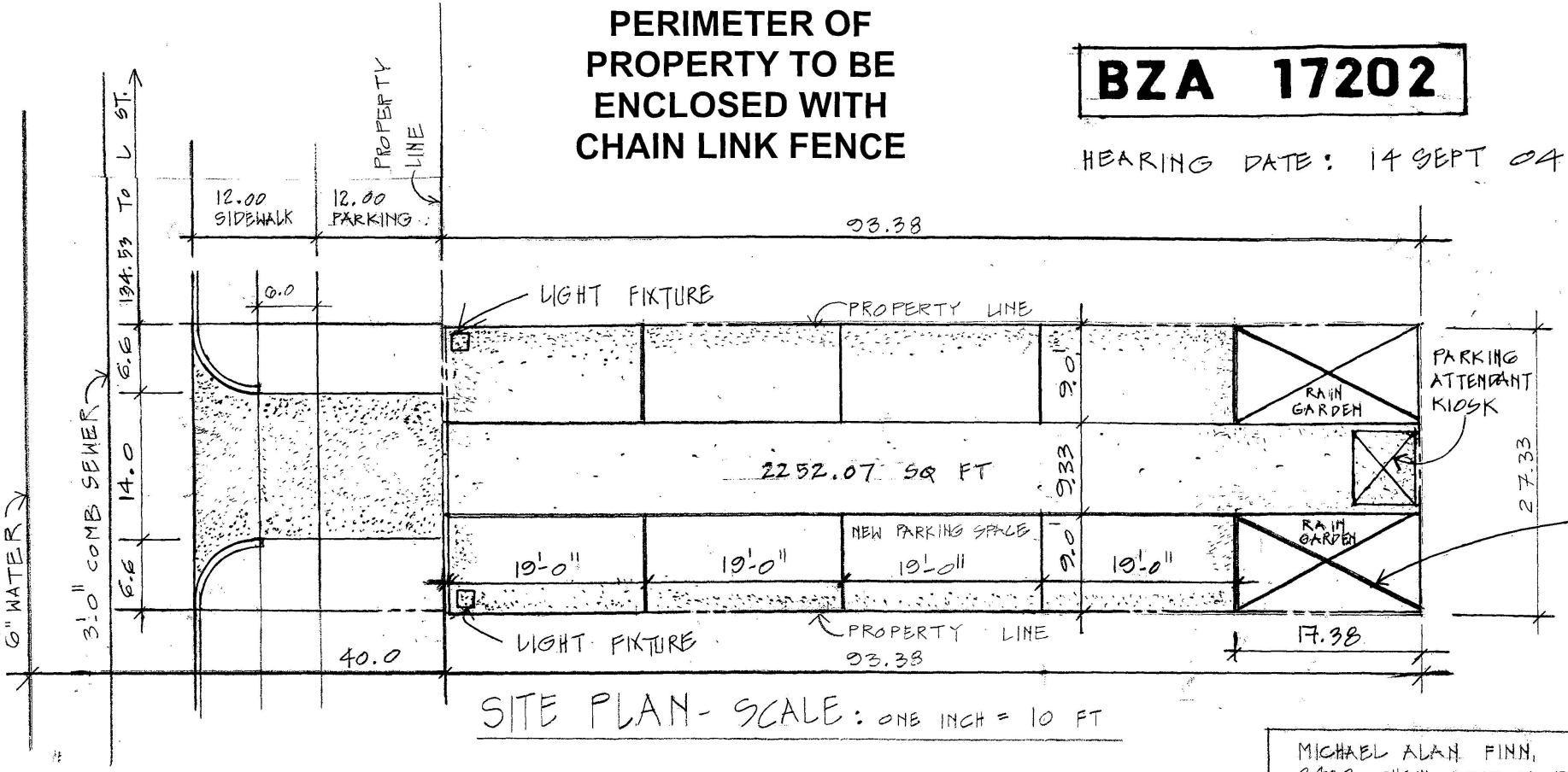
FRONTAGE ALONG 4TH STREET

D

PERIMETER OF PROPERTY TO BE ENCLOSED WITH CHAIN LINK FENCE

BZA 17202

HEARING DATE: 14 SEPT 04



SITE PLAN - SCALE: ONE INCH = 10 FT

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MICHAEL ALAN FINN, ARCHITECT
2402 CHAIN BRIDGE ROAD NW
WASHINGTON, D.C. 20016
TEL: (202) 966-5706 FAX: (202) 363-8

017 4TH ST NW • LOT 808 • SQUARE 526

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OUTLINE OF TESTIMONY OF ANDREW LOEWINGER REPRESENTATIVE OF FIRST WASHINGTON EQUITIES, LLC

I. Introduction

A. Andrew Loewinger, Representative of First Washington Equities, LLC - Owner of the property located at 1017 4th Street, N.W.

II. Property, Surrounding Area and Proposed Parking Lot Operation

A. Discussion of existing condition of the property and the surrounding area

B. Proposed use of the property for a parking lot

C. Satisfaction of variance relief standards

III. Conclusion

Document #: 1427160 v.1