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September 28, 2004

VIA HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Case No. 17221
1819 Belmont Road, N.W.

Dear Members of the Board:

On behalf of Montrose, LLC, Applicant in the above-referenced case, we are filing herewith an original and twenty copies of its pre-hearing statement in support of its application. We look forward to making our presentation at the hearing in this matter scheduled for October 12, 2004.

Very truly yours,

Carolyn Brown

Carolyn Brown

Enclosures

cc: Advisory Neighborhood Commission 1C (w/encl)
Travis Parker, Office of Planning (w/encl)
Gail Montplaisir, Montrose, LLC (w/encl)
Norman Smith, Norman Smith Architects (w/encl)

BZA
Case No. 17221
Exhibit No. 30

Board of Zoning Adjustment
District of Columbia
CASE NO. 17221
EXHIBIT NO. 30A1

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF MONTROSE, LLC	)	
PURSUANT TO 11 DCMR § 3104.1 FOR A SPECIAL	)	
EXCEPTION FROM THE ROOF STRUCTURE	)	BZA CASE NO. 17221
SET-BACK PROVISIONS UNDER §§ 411.11 AND	)	ANC 1C
400.7(b), FOR AN EXISTING FIVE-STORY	)	
RESIDENTIAL CONDOMINIUM IN THE R-5-D	)	HEARING: OCTOBER 12, 2004
DISTRICT AT 1819 BELMONT RD., NW	)	
(SQUARE 2551, LOT 45)	)	

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

Montrose, LLC, (the "Applicant" or "Montrose") submits this statement and attached exhibits in support of its application for special exception relief from the penthouse setback requirements of section 400.7(b) of the Zoning Regulations for the existing condominium building located at 1819 Belmont Road, N.W., at Lot 45 in Square 2551 (the "Subject Property"). That section provides that "if housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be ... set back from all exterior walls a distance at least equal to its height above the roof upon which it is located...." The property is located in the R-5-D District.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment ("BZA" or "Board") has jurisdiction to grant the special exception relief pursuant to D.C. Code Ann. § 6-641.07(d) (2001 ed.) and sections 411.1 and 3104.1 of the Zoning Regulations.

III.
BACKGROUND

A. Procedural History

By Building Permit No. B449218, the D.C. Department of Consumer and Regulatory Affairs authorized construction of additional floors and a penthouse to a rowhouse located on the Subject Property. In approving the permit, the Zoning Administrator determined that the penthouse did not need to be set back a distance equal to its height at the east and west walls because those walls were party walls, and not exterior walls within the meaning the Zoning Regulations. The Applicant proceeded with construction accordingly.

In BZA Appeal No. 17109, the Kalorama Citizens Association ("KCA") appealed the issuance of the building permit on the grounds that, among other things, the building did not meet the setback requirements of section 400.7(b). By oral vote taken June 22, 2004, the Board granted the appeal on this basis. The Board's decision is not effective because a final written order has not been issued.[1]

B. The Property

Located in the R-5-D District, the Subject Property is improved with a five-story condominium building, the renovation of which was recently completed. The penthouse in question is already constructed pursuant to validly issued building permits. The height of the penthouse is 11 feet, $7^{1/2}$ inches, above the top of the roof. At the front and rear walls of the building, the penthouse is set back a distance greater than its height. However, along the west wall of the building the penthouse is set back approximately six feet. There is no set back along the east wall. Consequently, assuming that the Board's oral vote of June 22, 2004, is followed by a written order confirming that the east and west side walls are exterior walls under the Zoning Regulations, the

[1] By filing this special exception application, Montrose does not concede any of the legal conclusions reached by the Board in its June 22 vote and reserves all legal rights to contest that decision upon issuance of a final written order.

Applicant seeks special exception relief from the requirements of section 700.4(b), as permitted under section 411, to allow a penthouse that is set back less than 11 feet, $7^{1/2}$ inches.

IV.
THE APPLICANT MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF UNDER SECTIONS 400.7 AND 411.11 OF THE ZONING REGULATIONS

A. Standard of Review

As set forth above, special exception approval is required pursuant to section 411.11 from the penthouse structure setback requirements of section 400.7(b) of the Zoning Regulations. As the Board is aware, a special exception use is a use predeemed compatible with other uses permitted in that particular zoning classification provided that the specific regulatory requirements are met. In reviewing applications for a special exception, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements set forth in the appropriate section. If the Applicant meets its burden, the Board must ordinarily grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695 (1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (1973). Through the exhibits, testimony and other evidence before the Board, the Applicant will establish that it complies with all applicable provisions under the Zoning Regulations.

In the instant case, special exception approval is required because the proposed penthouse structure does not meet the normal setback requirements of the Zoning Regulations. While the penthouse structure is 11 feet, 7.5 inches in height, and meets the 1:1 setback requirement on the south and north (Belmont Street and rear alley, respectively) sides of the building, it does not meet the setback requirement on the east and west sides. The penthouse is set back only six feet along the west party wall and is not set back at all along the east party wall.

B. Roof Structure Requirements Under Section 400.7

Section 400.7of the Zoning Regulations provides that, if housing for mechanical equipment or a stairway or elevator penthouse is provided on a building's roof, it must be erected or enlarged in compliance with the provisions of section 400.76, as follows:

(a) It shall meet the requirements of section 411.

(b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and

(c) It shall not exceed more than 18 feet 6 inches in height above the roof on which it is located, nor shall mechanical equipment extend above the permitted 18 feet 6 inch height of the housing.

The penthouse structure for the proposed building measures 11 feet 7.5 inches in height and thus complies with section 400.7(c). Because the roof structure is not set back from the east and west walls a sufficient distance, the Board has determined that it does not comply with the provisions of section 400.7(b) (by reference to section 411.2), and thus requires special exception approval by the Board pursuant to §411.11.

C. Compliance with Special Exception Standards of Section 411

Section 411 establishes numerous criteria for penthouse structures in all districts. Section 411.11 provides the Board authority to approve as a special exception for the location, design, and other aspects of penthouse structures, including setbacks. In order to obtain such special exception approval, an applicant must demonstrate that: (1) compliance with the penthouse structure regulations is impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable and (2) 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 are not adversely affected. As set forth below, the roof structure at 1819 Belmont Road meets these criteria.

1. Compliance with the roof structure regulations is impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable.

The placement of the penthouse structure is the direct result of the narrow width of the building lot, which measures only 16.67 feet. The height of the existing penthouse as approved by the District is 11.63 feet, and its width is 10.67 feet. Based on these dimensions, it is impossible for the Applicant to comply with the setback requirements. In order to satisfy the requirements, the penthouse would need to be set back 11.63 feet on each side, or a total of 23.2 feet, whereas the lot is only 16.67 feet wide. Alternatively, the Applicant would be forced to demolish the existing roof structure and construct a new one in the center of the roof with a height and width of no more than 5.5 feet.

Such demolition and reconstruction of the roof structure, however, would be unduly restrictive, prohibitively costly and unreasonable for the Applicant. The stairway to the roof is necessary to provide access for repairs and maintenance. It also provides access to the roof deck at the front of the building, if that deck is permitted to remain. As the Applicant will demonstrate further at the public hearing, a reconfigured roof structure could not be readily be accommodated within the existing column grid for the building without negatively impacting the functionality of the structure. Given the narrow lot size and the minimum width required for a U-shaped stairway, a central stair core that could meet the setback requirement would not provide adequate access or headroom clearance under the D.C. Construction Codes and would severely compromise the usable space on the floors below.

The fact that the Applicant proceeded with construction under validly issued permits does not constitute "self-inflicted harm" that would preclude the requested relief. Here, the controversy was created by conflicting interpretations of the Zoning Regulations by DCRA and the Board, not by the Applicant. Even if the Applicant's actions could be misconstrued as contributing to the

current dilemma, the "self-inflicted harm" test is only applicable in use variances cases. The appropriate standard of review in this instance is the criteria listed in section 411.11. As demonstrated herein, the Applicant meets this standard.

2. The intent and purpose of Chapter 400 and the Zoning Regulations are not materially impaired and the light and air of adjacent buildings are not adversely affected.

With the exception of the setback, the penthouse structure is fully compliant with the Zoning Regulations and harmonizes with the main structure in architectural character, material, and color. Likewise, the existing configuration of the roof structure has virtually no effect on the light and air to adjacent buildings.

As shown on the solar studies attached as Exhibit D, there is no effect on the existing shade and shadows cast on the abutting properties by the roof structure. The solar studies illustrate the shade and shadows cast by the building with and without the roof structure during the summer and winter solstice at 8:00 a.m. and 4:00 p.m. A comparison of these diagrams shows no difference in the lighting at the adjacent properties. Any shadow cast by the roof structure will be in areas that are already shaded by existing structures. Similarly the small size of the penthouse will have no effect on the air of adjacent properties. Because the buildings to the east and west of the Subject property are row structures, they do not have any window openings or air vents in the side elevations and thus the quality or amount of air of these properties is unaffected.

The Applicant's roof level plan is in harmony with that of neighboring structures and is in keeping with the purpose and intent of the Zoning Regulations. For the above stated reasons, special exception relief from the penthouse structure setback requirement of section 400.7(b) is appropriate in the instant case, pursuant to section 411.11.

VII.
THE APPLICANT COMPLIES WITH THE SETBACK PROVISIONS OF THE 1910 HEIGHT ACT

The Applicant's building also complies with the setback provision of the Height of Buildings Act of 1910 (the "1910 Height Act" or "Height Act"), which requires penthouses to be set back from exterior walls a distance equal to their height. The Height Act provides that:

> Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this subchapter when and as the same may be approved by the Mayor of the District of Columbia; ... provided, that penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof....[2]

D.C. Code Ann. § 601.05(h) (2001 ed.).

The term "exterior walls" under the 1910 Height Act has historically been interpreted to mean exterior walls fronting on streets. A 1958 report of the Zoning Advisory Council on proposed text amendments to the Zoning Regulations to allow elevator or stairway penthouses to be constructed above the maximum height under the Zoning Regulations discusses this interpretation:

> The [1910 Height] Act provided that when above the limit of height, a penthouse etc., shall be set back from the exterior walls of the building on which it is located a distance equal to its height above the adjacent roof. Under the regulations recently repealed, the application of this provision ***was construed by the Zoning Commission to mean exterior walls from the street sides only, an interpretation considered in harmony with the Act and not in violation thereof.***

Report of the Zoning Advisory Council on Proposed Amendments to the Zoning Regulations, July 15, 1958, at 1, a copy of which is attached hereto as Exhibit F.

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[2] Although a penthouse over a stairway is not included among the items that may exceed the maximum permitted height, an Opinion of the Office of Attorney General states that the 1910 Height Act has been interpreted since its passage to include penthouses over stairways leading to the roof of a building. *See* Opinion of the Office of Attorney General, July 27, 1953, at 2, a copy of which is attached hereto as Exhibit E. Opinions of the Office of Attorney General "concerning the application of the HBA [Height of Buildings Act] are entitled to substantial deference, and should be overturned by this court [U.S. District Court for the District of Columbia] if they are plainly unreasonable or contrary to legislative intent." *Techworld Development Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 121 (D.D.C 1986) (internal citations omitted).

This historical interpretation was reaffirmed in 1993 by the Zoning Administrator. In a memorandum to the Office of Zoning, the Zoning Administrator stated that "[t]he setback requirements of a roof structure under provisions of the [Height of Buildings] Act of 1910 have always been interpreted by the Zoning Division as being required to set back from the property line ***which adjoins a street.***" *See* Memorandum from Zoning Administrator to the Office of Zoning, Zoning Commission Case No. 93-9C, November 24, 1993, at 1, a copy of which is attached as Exhibit G. This view is also supported by the National Capital Planning Commission ("NCPC") in its report on proposed text amendments to the Zoning Regulations on roof structures. There, NCPC stated that "the current [Zoning] Regulations are based on a Corporation Counsel [now the Office of Attorney General] opinion measuring penthouse setbacks from the lot line on the ***frontage facing the*** street" and that "the 1910 Height Act's requirement of penthouse setback from exterior walls is clearly intended to hide or screen penthouses ***from street views.***" *See* Letter from the National Capital Planning Commission to the Zoning Secretariat, NCPC File No. Z.C. 84-10, June 3, 1986, at 1-2, a copy of which is attached hereto as Exhibit H; *see also* Memorandum from the D.C. Office of Planning to the Zoning Commission, Re: Proposed Text Amendments for Roof Structures, February 3, 1984, at 6 (an Office of Attorney General Opinion states that the 1910 Height Act "requires a penthouse setback only from the lot line on the ***frontage facing the street***") (emphasis added).

Based on this long-standing consistent interpretation, the Board has approved many buildings where the roof structure exceeded the height under the 1910 Height Act and did not meet one or more of the side or rear setbacks. See, for example, BZA Order Nos. 11917 (1627 K Street), 12798 (1100 15th Street), 13061 (2301 Washington Circle), 13124 (1811 L Street), 13187 (1801 L Street), 13449 (1819 L Street), 13528 (801 18th Street), 13716 (1023 (15th Street), 13788 (1111 14th Street), 14176 (816 Connecticut Avenue), 15159 (555 11th Street), 15169 (1430K Street), 17186 (777

6th Street), 16681 (Square 456), and 17186 (777 6th Street), all attached as Exhibit I. The Zoning Commission has also approved planned unit developments with roof structures that were not set back one-to-one from all edges of the roof (see, for example, Z.C. Order No. 594 (1111 20th Street, N.W.), November 14, 1988).

There has been no change in the Zoning Regulations or the 1910 Height Act since the approval of these cases that would disturb this long-standing interpretation of the 1910 Height. Thus, the Board has the authority to grant the relief requested.

VII.
Witnesses

A. Gail Montplaisir, Representative of Montrose, LLC, Applicant.

B. Norman Smith, Norman Smith Architects, Project Architect

C. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP

VII.
Exhibits

The following exhibits are attached hereto in support of the application for special exception relief:

Exhibit A:	Architectural Drawings and Plat of the Subject Property
Exhibit B:	A portion of the Sanborn Atlas showing Square 2551
Exhibit C:	A portion of the Zoning Map showing Square 2551
Exhibit D:	Solar Studies
Exhibit E:	1953 Office of Attorney General Opinion on the 1910 Height Act
Exhibit F:	1958 Zoning Advisory Committee Report
Exhibit G:	1993 Zoning Administrator Memorandum to the Office of Zoning
Exhibit H:	1986 NCPC Letter to the Zoning Secretariat
Exhibit I:	BZA Orders approving relief from the setback requirements where roof structures exceeded the maximum height of the Height Act
Exhibit J:	Outline of witness testimony:

- Gail Montplaisir, Representative of Montrose, LLC, Applicant.
- Norman Smith, Norman Smith Architects
- Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP

VIII.
Conclusion

For the reasons stated above, the requested relief meets the applicable standards of special exception approval under the Zoning Regulations. The Applicant therefore requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT LLP

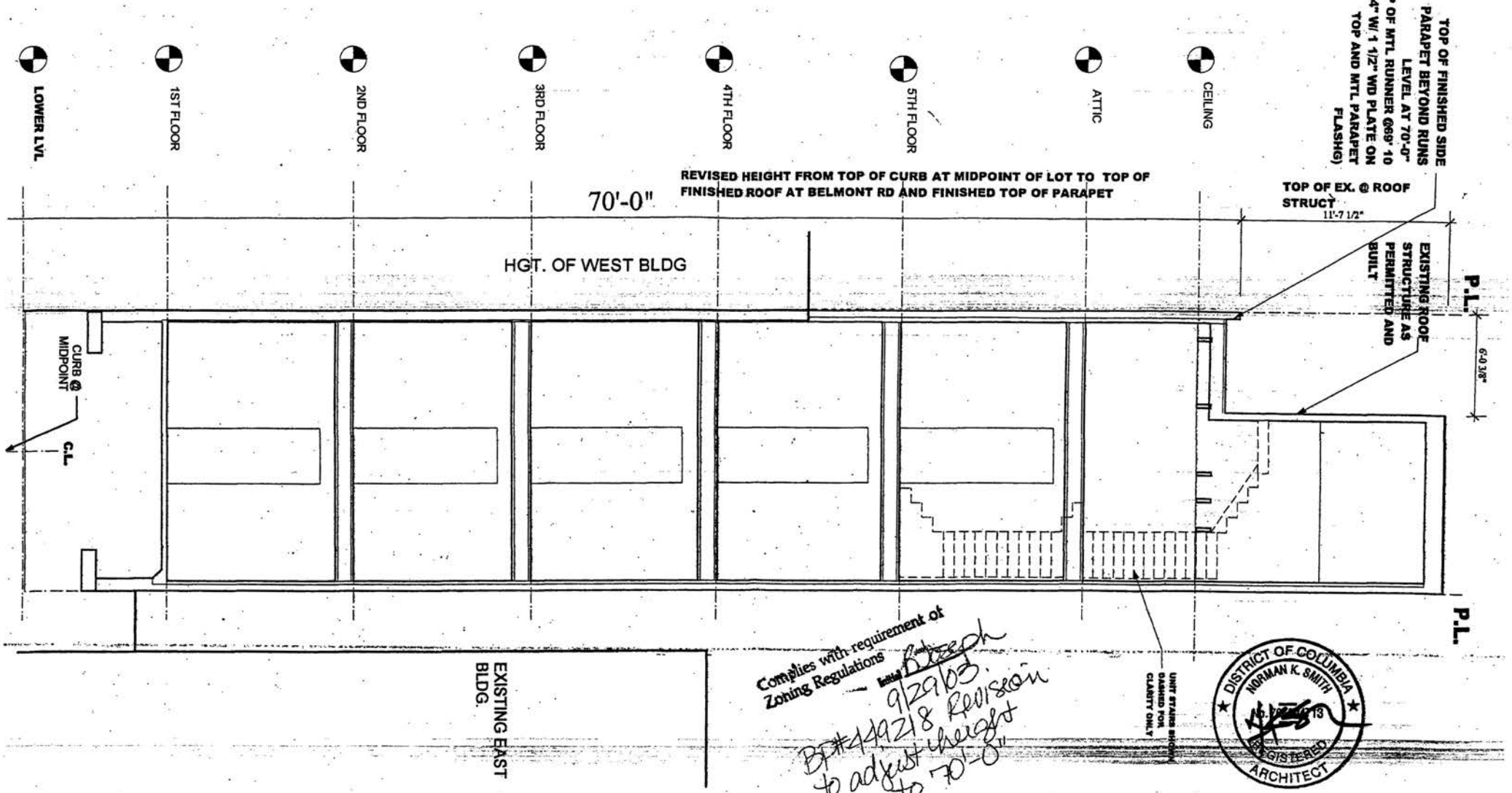
By 

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September 28, 2004

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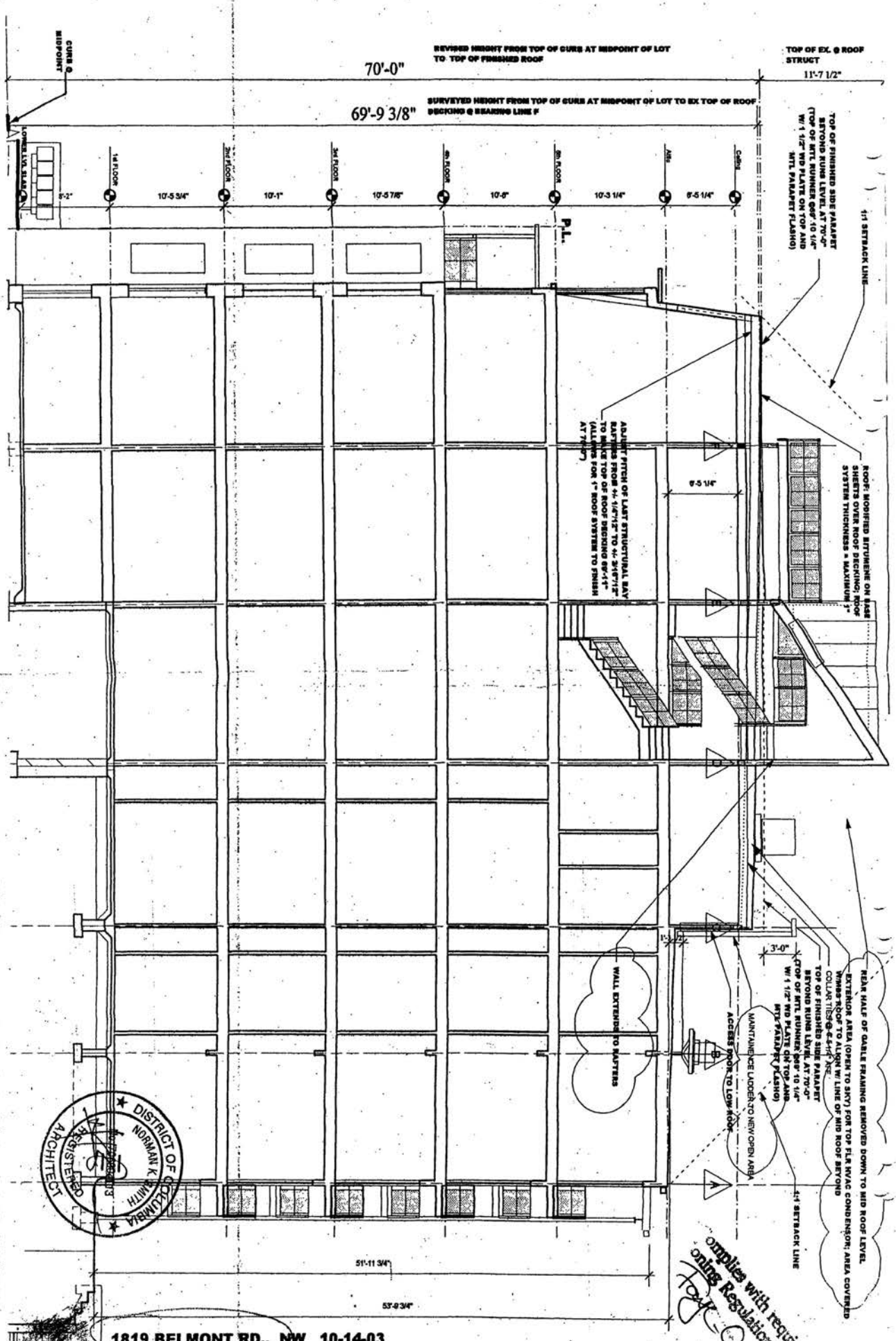
SCHEMATIC BUILDING CROSS SECTION

Scale: 3/16" = 1 ft

SECTION SHOWING REVISED PARAPET AND BUILDING HEIGHT WITH ROOF STRUCTURE AS PERMITTED AND BUILT

1819 BELMONT RD., NW 09-29-03

NORMAN SMITH ARCHITECTURE 202.462.5886

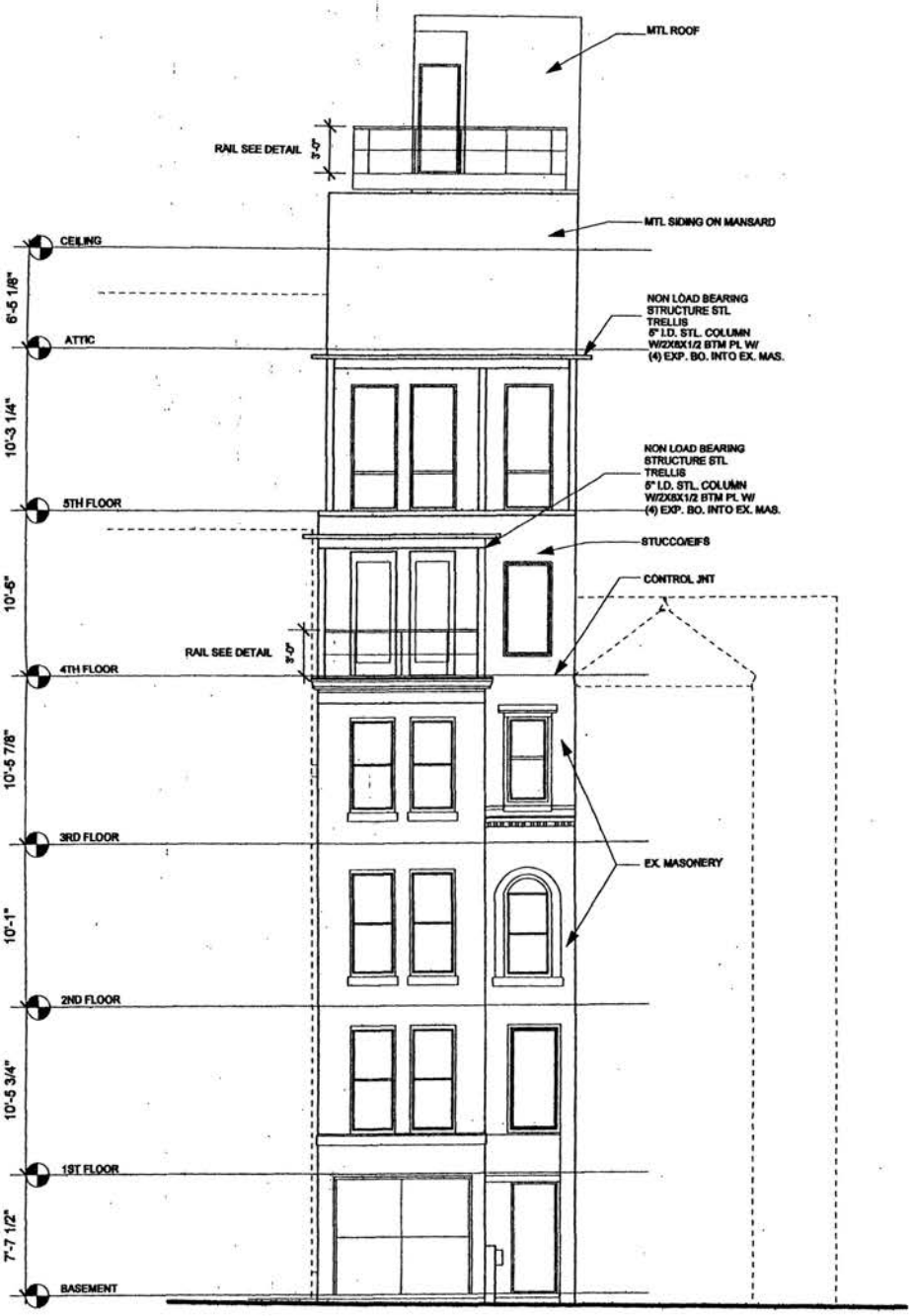


1819 BELMONT RD., NW 10-14-03

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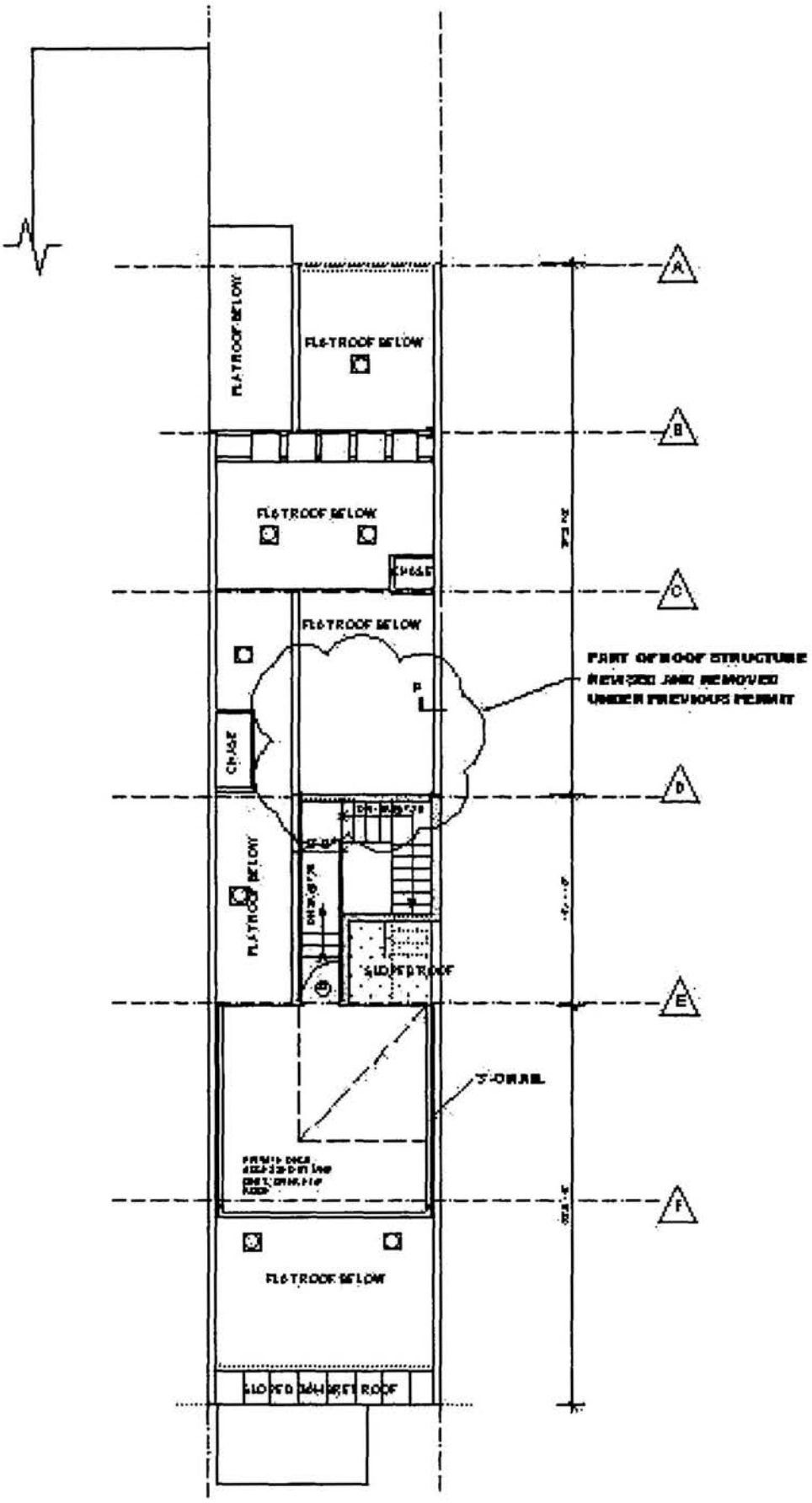
SCHEMATIC BUILDING SECTION

SECTION SHOWING REVISED PARAPET AND BUILDING HEIGHT WITH ROOF STRUCTURE

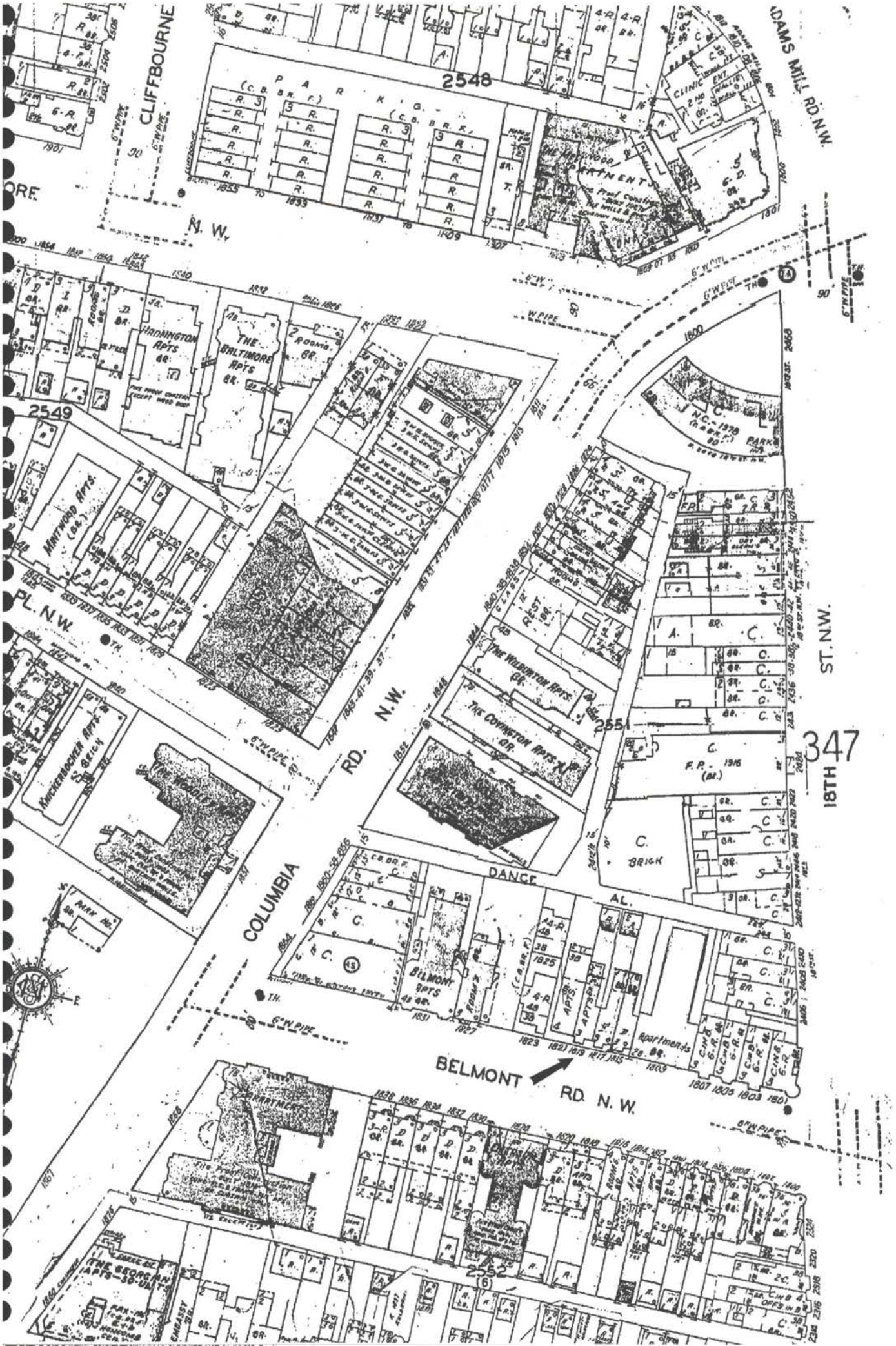


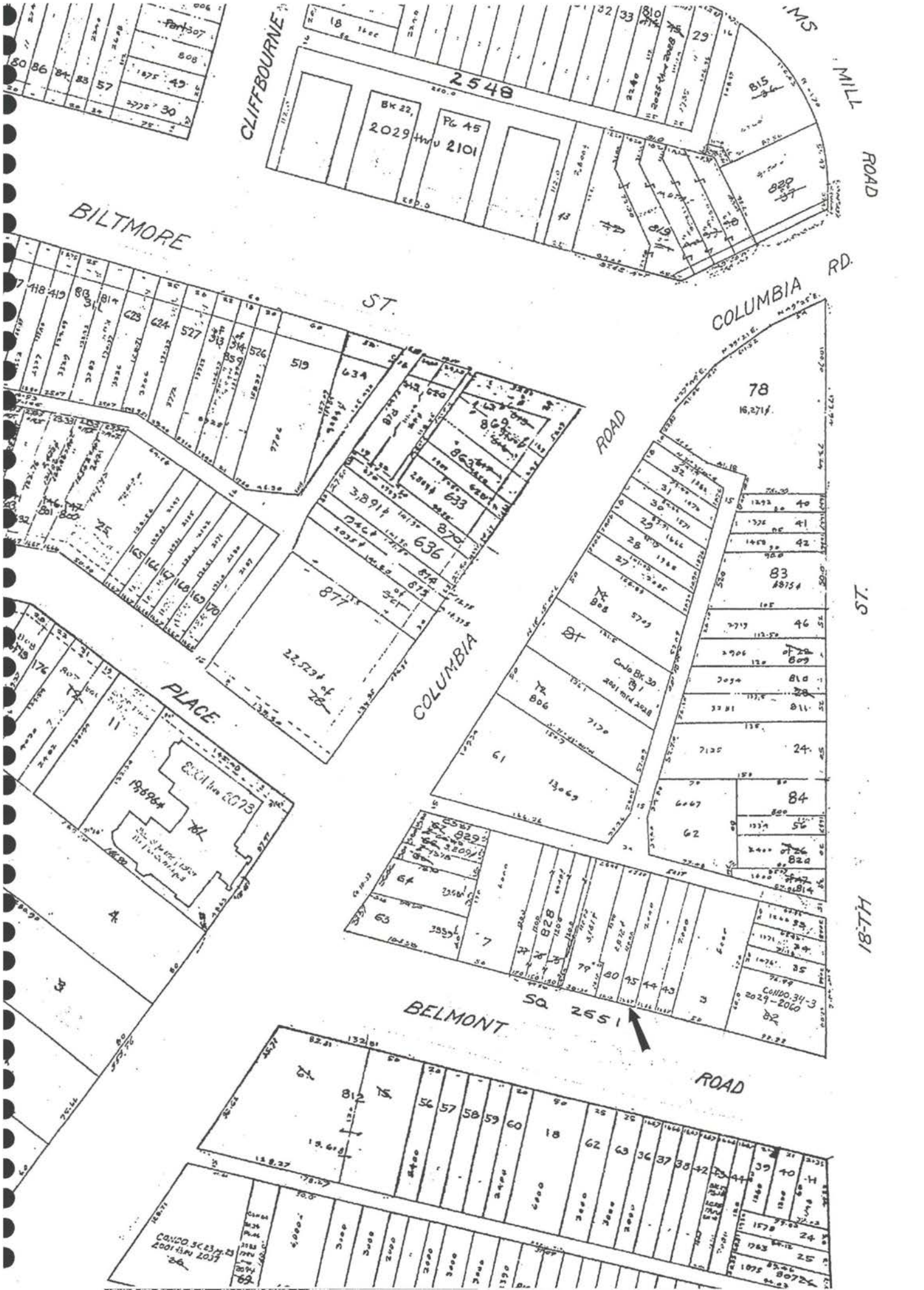
FRONT ELEVATION

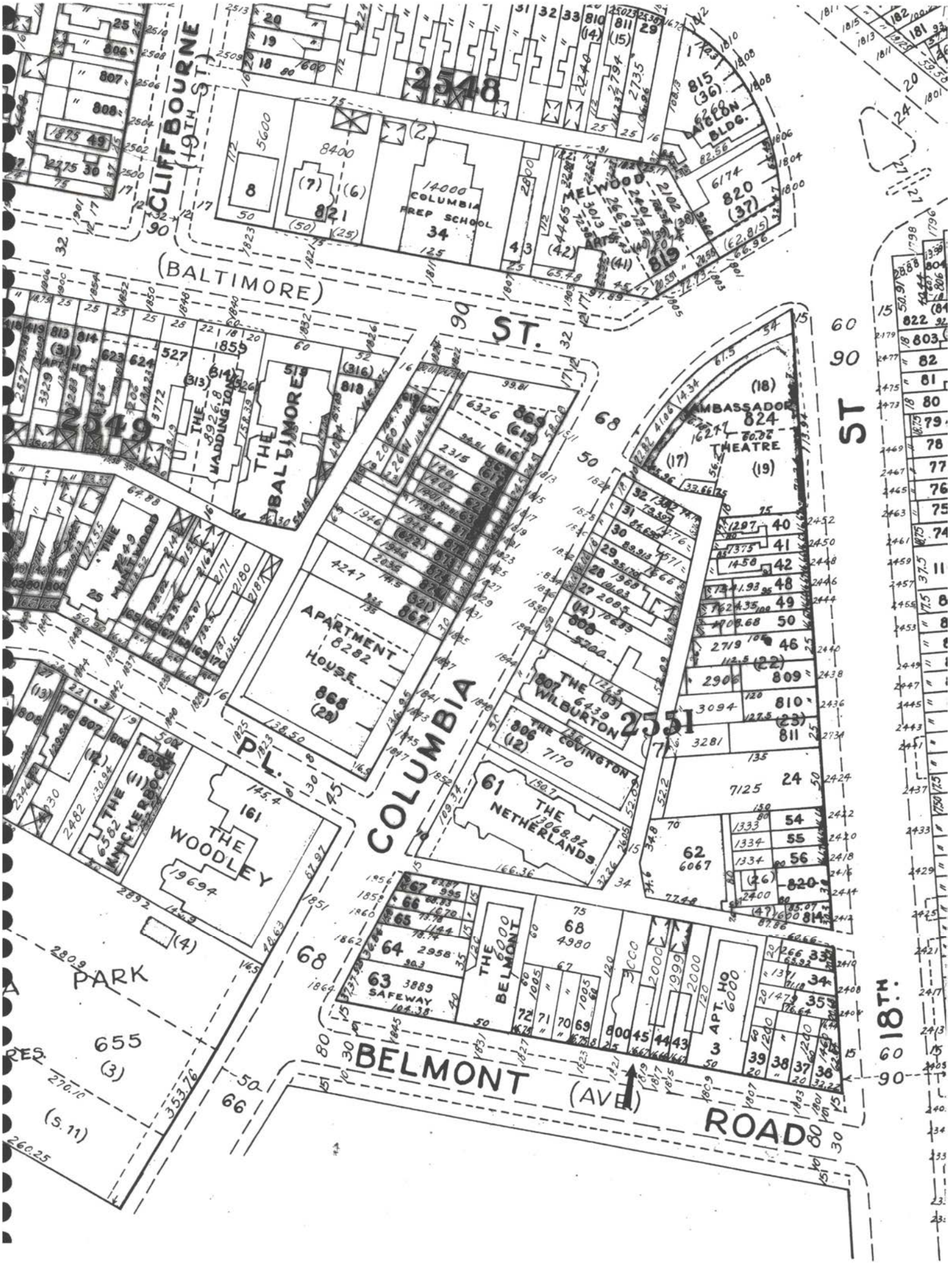
Scale: 1/8" = 1'-0"


FLAT ROOF BELOW
FLAT ROOF BELOW
FLAT ROOF BELOW
FLAT ROOF BELOW
CHASE
PART OF ROOF STRUCTURE
FLAT ROOF BELOW
SLOPED ROOF
FLAT ROOF BELOW
SLOPED ROOF
A
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C
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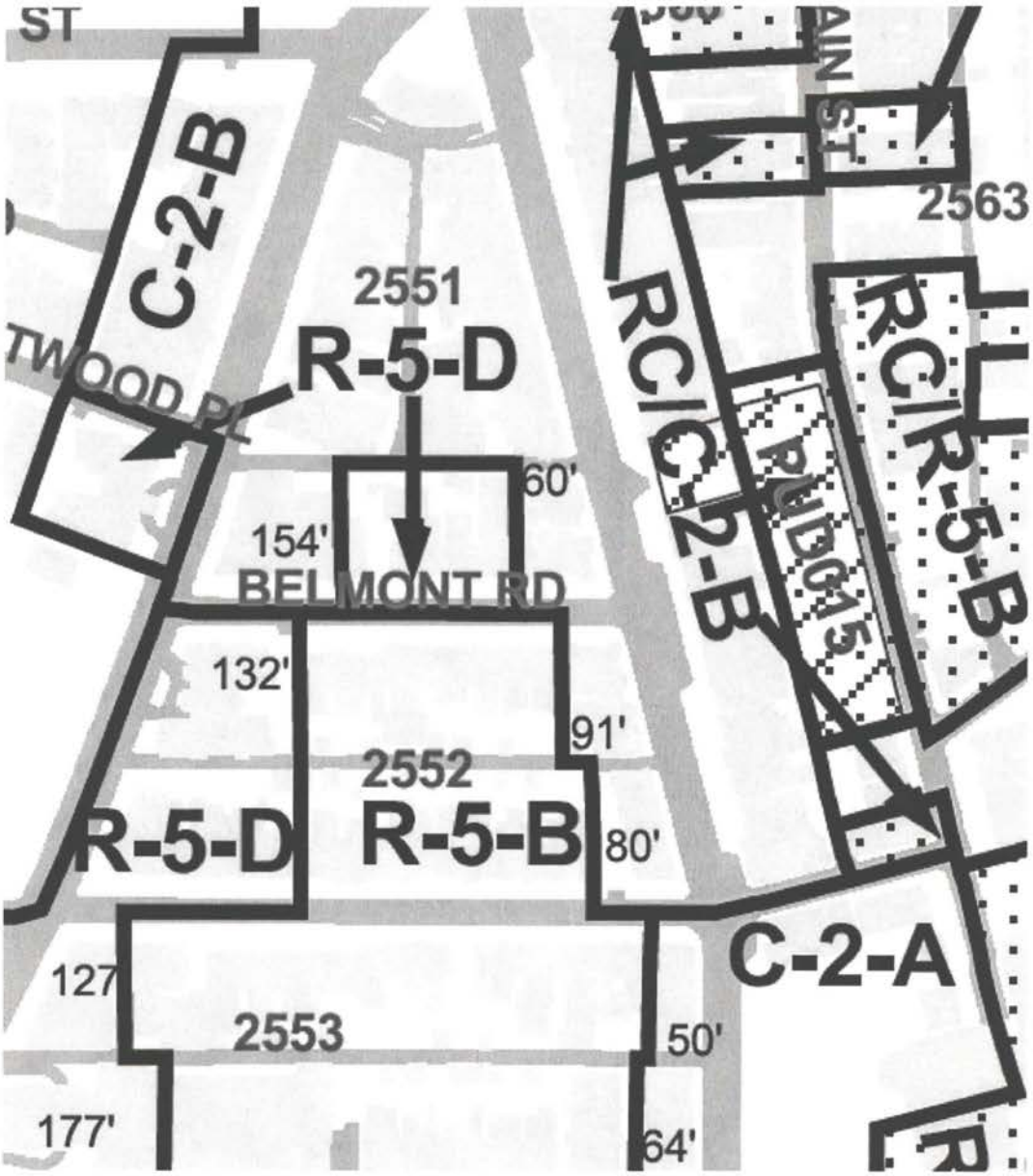
B


CLIFFBOURNE
2548
ADAMS MILL RD. N.W.
2549
MANWOOD APTS.
HARRINGTON APTS
THE BALTIMORE APTS
PARK
PL. N.W.
RD. N.W.
2551
THE WILBURTON APTS.
THE COVINGTON APTS.
18TH ST. N.W.
347
DANCE
COLUMBIA
BELMONT RD. N.W.
2552
THE GEORGIAN APTS.

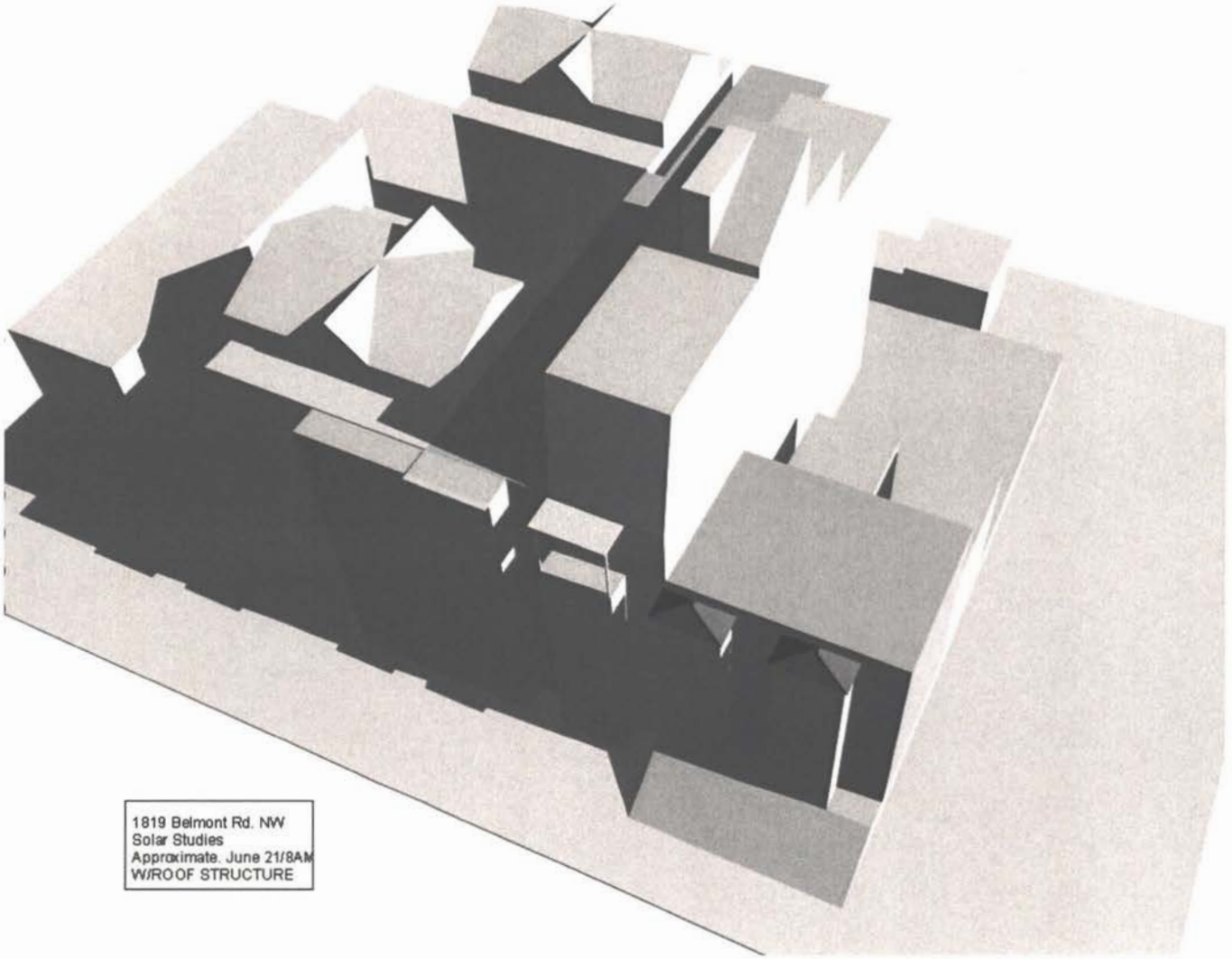

CLIFFBOURNE
2548
Bk 22, Pg 45
2029 thru 2101
MILL ROAD
BILTMORE ST.
COLUMBIA RD.
COLUMBIA ROAD
COLUMBIA ST.
PLACE
BELMONT ROAD
SQ 2651
14TH
Part 307
808
1875
45
30
3775
519
634
7706
526
527
624
623
801
800
25
165
166
167
168
169
170
877
22,523 sf
28
636
870
633
869
863
862
3,891 sf
874
873
872
871
78
16,271 sf
83
8875 sf
84
809
820
814
829
828
7
63
64
61
13,063
7130
806
807
5709
62
6667
7125
24
46
42
41
40
32
31
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29
27
11
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4
3
812
13,618 sf
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18
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CONDO. 34-23
2001-thru 2033
69

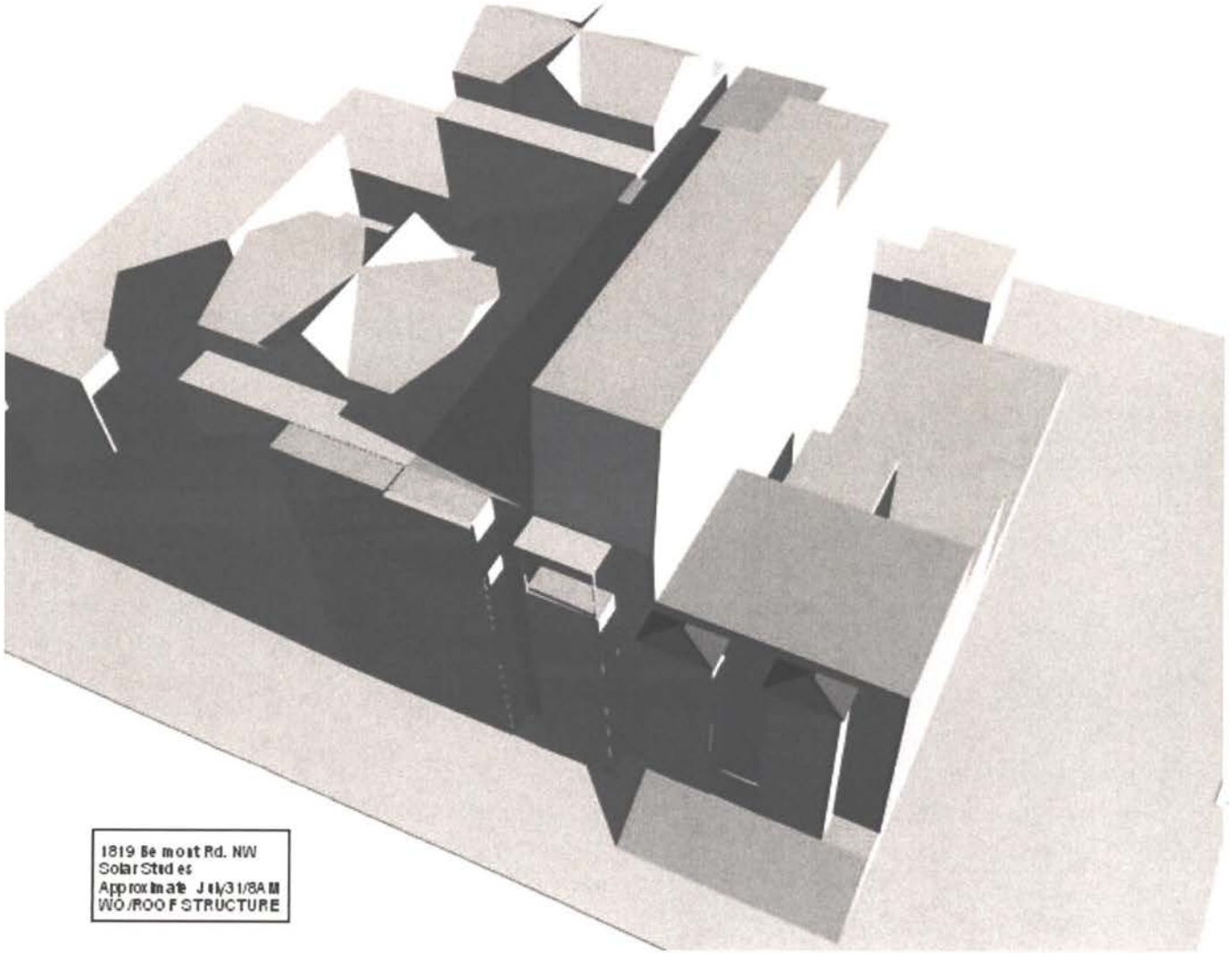

CLIFFBOURNE (19TH ST.)
(BALTIMORE) 90 ST.
COLUMBIA PL.
BELMONT (AV.) ROAD
618TH ST
PARK RES.
2548
2549
2551
THE WOODLEY
19694
THE NETHERLANDS
THE WILBURTON
THE COVINGTON
THE KNICKERBOCKER
THE BALTIMORE
THE MADDINGTON
THE ELMWOOD
APARTMENT HOUSE
AMBASSADOR THEATRE
COLUMBIA PREP SCHOOL
SAFEWAY
THE BELMONT
APT. HO
655
(3)
(S. 11)

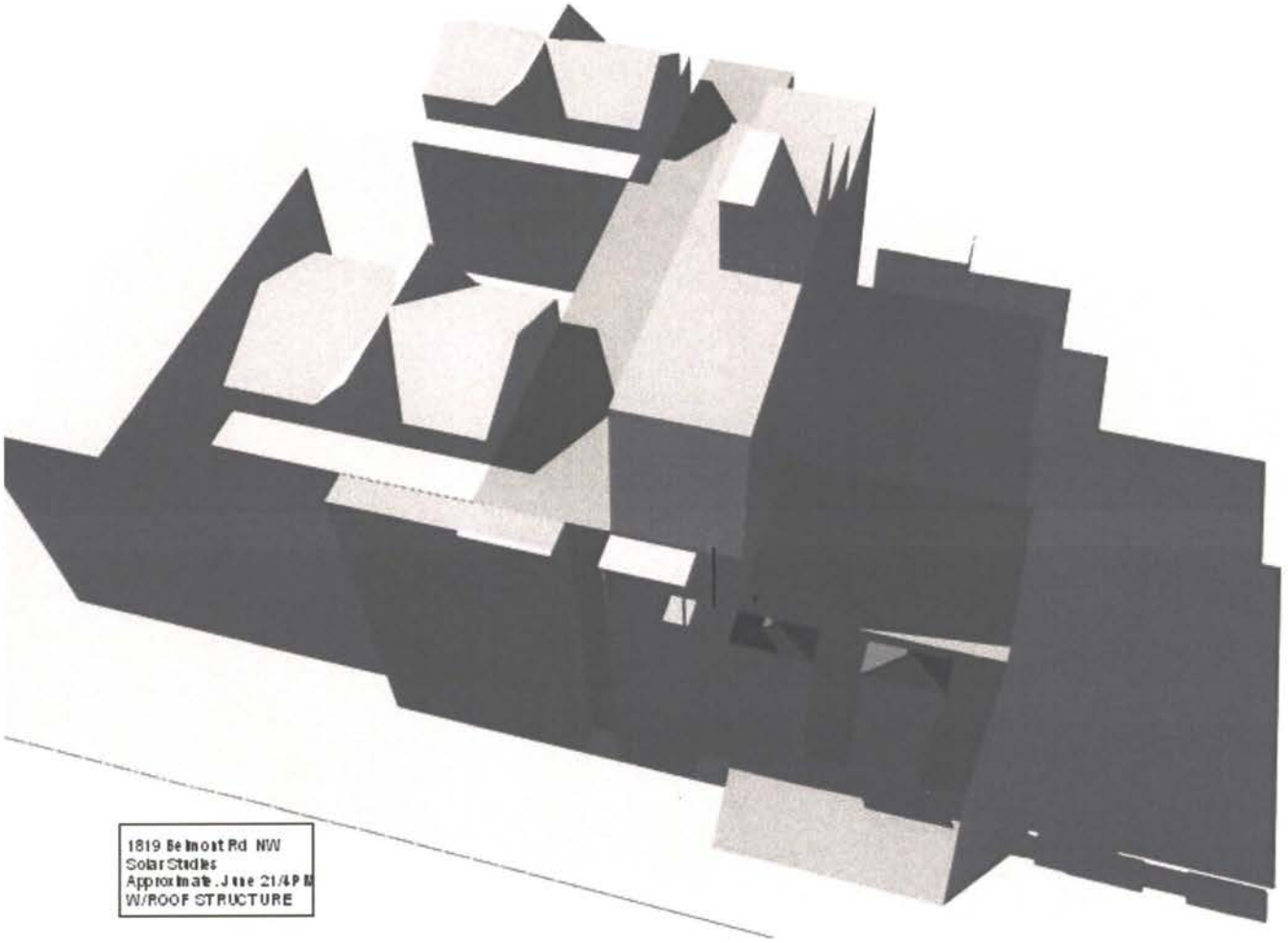
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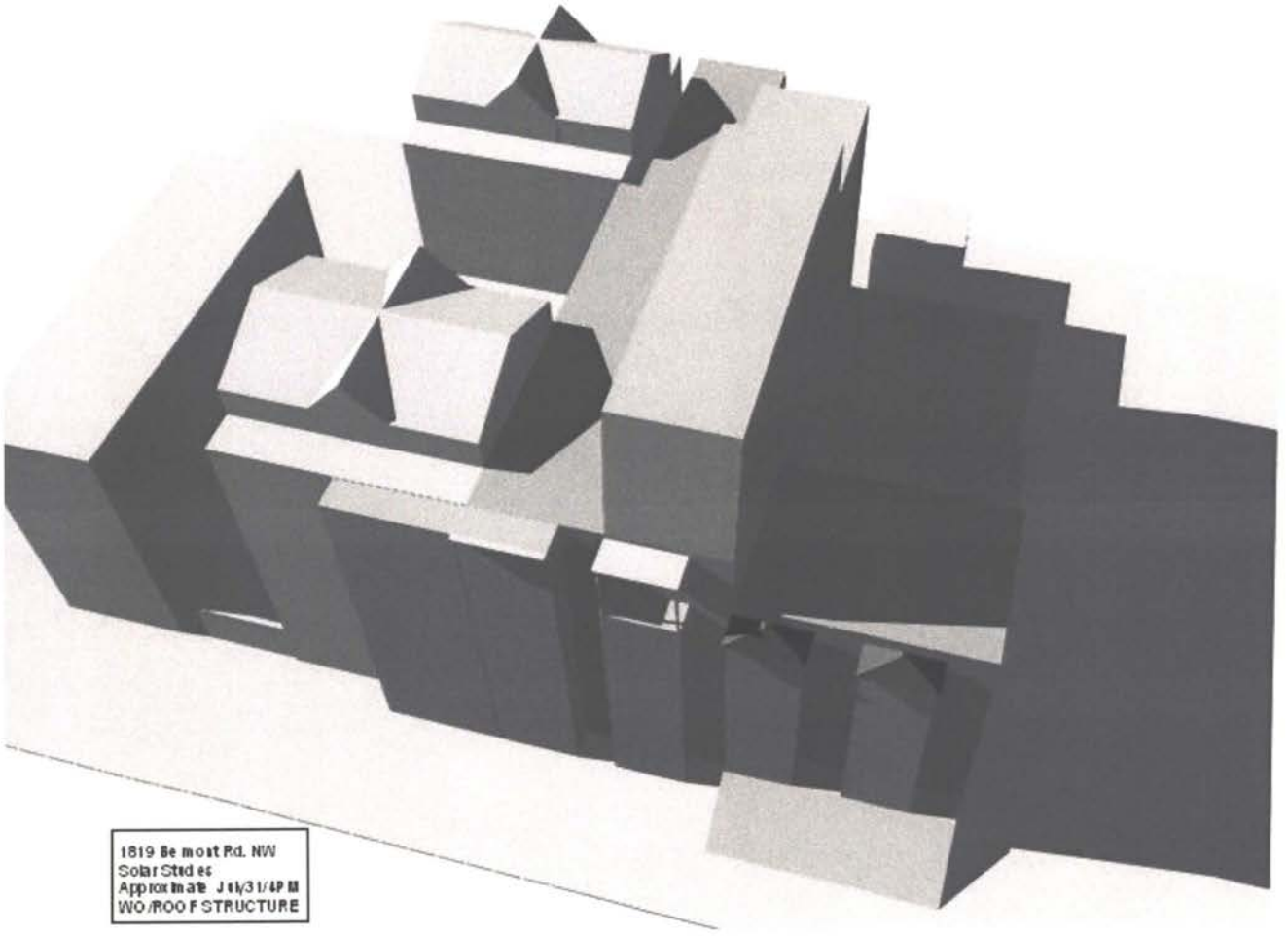

ST
C-2-B
2551
R-5-D
TWOOD PL
60'
154'
BELMONT RD
132'
91'
2552
R-5-D
R-5-B
80'
127'
2553
50'
177'
64'
RC/C-2-B
RC/R-5-B
PUBLIC
2563
C-2-A

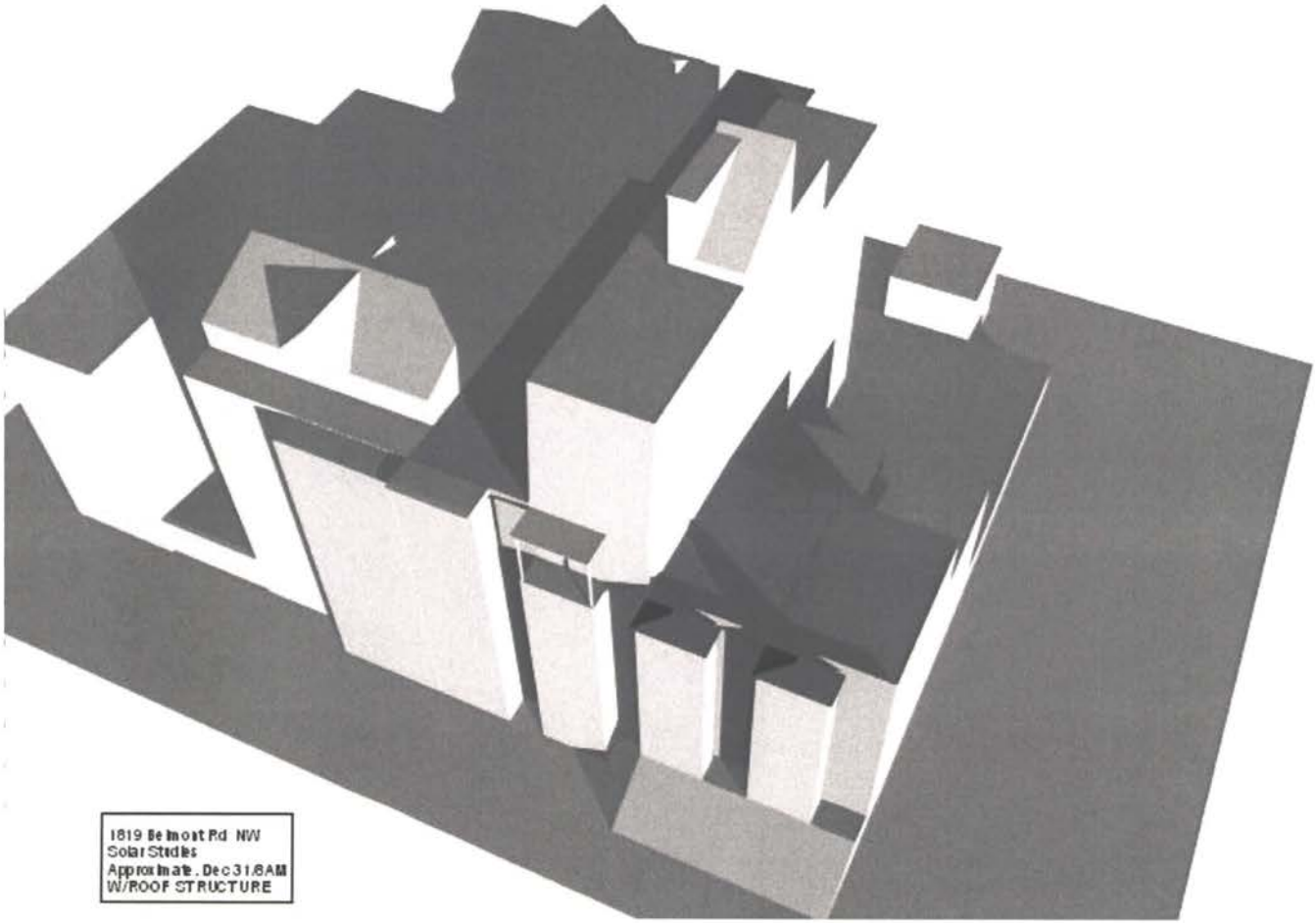
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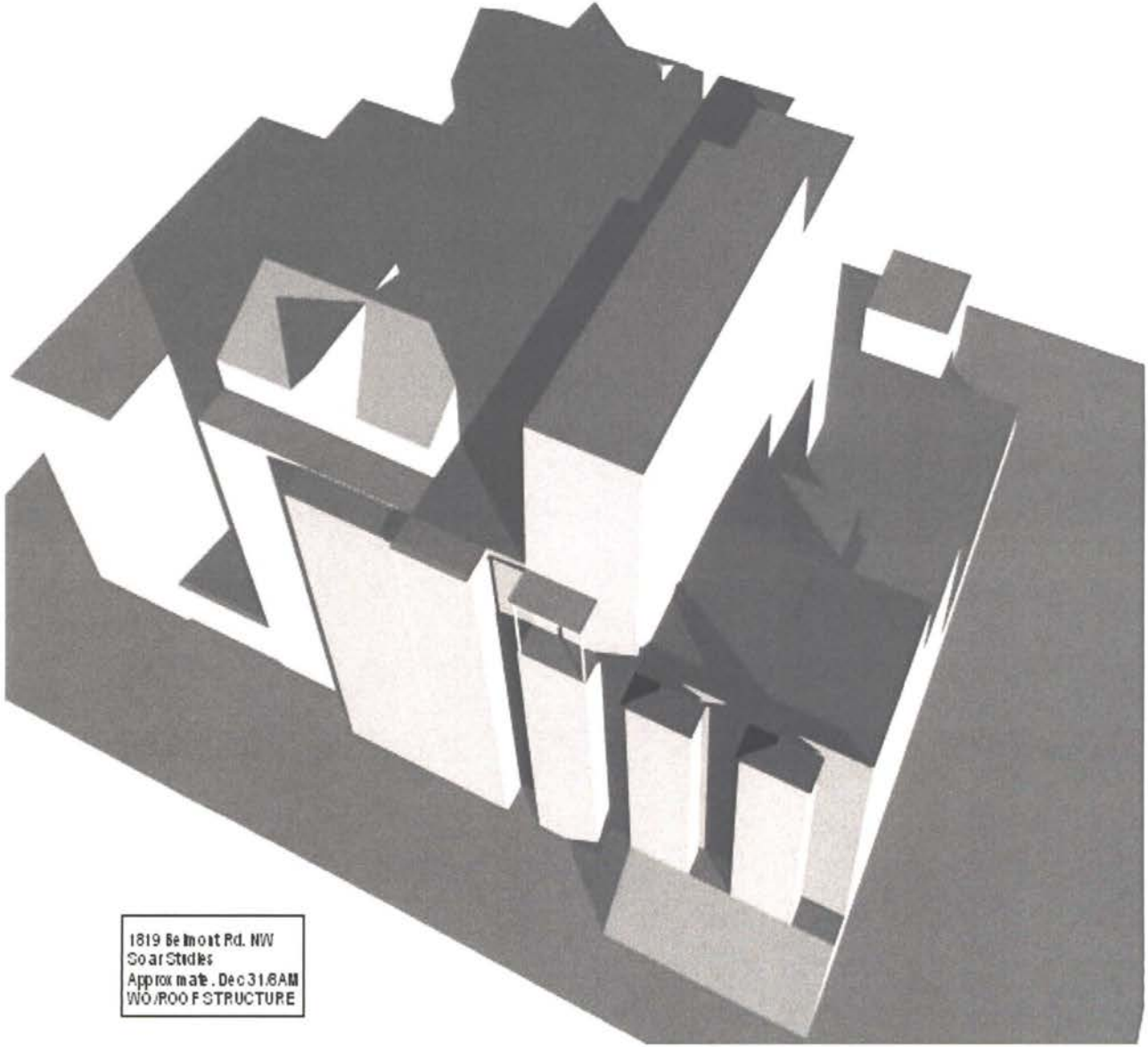

1819 Belmont Rd. NW
Solar Studies
Approximate. June 21/8AM
W/ROOF STRUCTURE

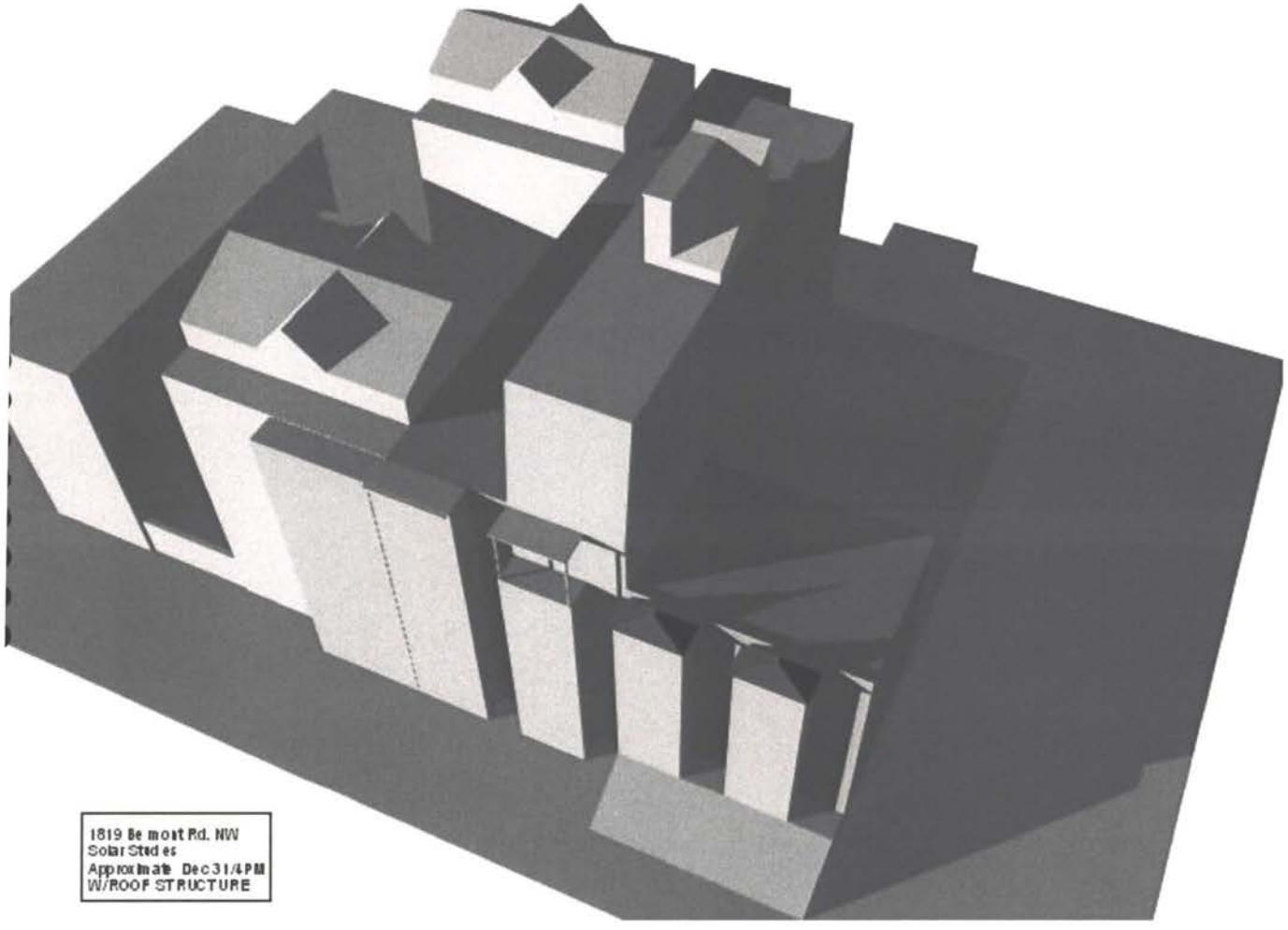

1819 Belmont Rd. NW
Solar Studies
Approximate July 31 8AM
W/O ROOF STRUCTURE


1819 Belmont Rd NW
Solar Studies
Approximate June 21/4 P M
W/ROOF STRUCTURE


1819 Belmont Rd. NW
Solar Studies
Approximate July 31/4PM
W/O ROOF STRUCTURE


1819 Belmont Rd NW
Solar Studies
Approximate . Dec 31/8AM
W/ROOF STRUCTURE


1819 Belmont Rd. NW
Soar Studies
Approximate. Dec 31/8AM
W/O ROOF STRUCTURE


1819 Belmont Rd. NW
Solar Studies
Approximate Dec 31/4PM
W/ROOF STRUCTURE


1819 Belmont Rd NW
Solar Studies
Approximate . Dec 31/4PM
W/O ROOF STRUCTURE

E

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O
P
Y

GF.5-112

Jul.27, 1953

TO: THE COMMISSIONERS

IN RE: Whether penthouses may be constructed above the height limits established by the Act of Congress approved June 1, 1910, regulating the height of buildings, for purposes other than to cover elevator shafts; and whether the presence of an operating engineer in such penthouses constitutes "human occupancy" within the meaning of such Act.

There have been referred to this office for an opinion certain questions which have been raised by the Chief Engineer of the Department of Inspection, relating to the permissible use of penthouses constructed above the height limits established by section 5 of the Act of Congress approved June 1, 1910 (36 Stat. 452, as amended; sec. 5-405, D. C. Code, 1951 ed.). These questions may be expressed briefly as follows:

1. May the Act of June 1, 1910, permitting the construction of "penthouses over elevator shafts" to a greater height than any limit set by the Act, be construed to permit the construction of penthouses for the purpose of housing air-conditioning equipment, heating equipment, and perhaps other kinds of equipment which ordinarily might be located within a building?

2. Does the phrase "human occupancy" as used in the Act of June 1, 1910, in connection with the construction or use of penthouses, preclude the presence of an operating engineer in penthouses containing air-conditioning or heating equipment, including boilers?

The answers to the foregoing questions depend upon an interpretation of the last paragraph of Section 5 of the Act of June 1, 1910, the pertinent part of which reads as follows:

"Spires, towers, domes, minarets, pinnacles, pent houses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a

greater height than any limit prescribed in the Act when and as the same may be approved by the Commissioners of the District of Columbia: Provided, however, That such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed: And provided, That pent houses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof: * * * *."

In connection with the first of the above questions, however, it is also necessary, in construing the statute, to consider any long-standing administrative interpretations of the statute with respect to the construction of penthouses for other uses than "over elevator shafts", inasmuch as the "long-continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration * * * * * constitutes an invaluable aid in determining the meaning of a doubtful statute." Sutherland, Statutory Construction, sec. 5103. It might be said that the phrase "penthouses over elevator shafts" is plain and unambiguous, permitting the construction of penthouses only over elevator shafts, and that therefore there is not need for administrative construction of this phrase. But it may hardly be said that Congress, by the use of this phrase, intended, for example, to prohibit the construction of penthouses over stairways leading to the roof of a building, as is commonly the practice in the construction of buildings, and as was the practice at the time the Act of June 1, 1910 was enacted, according to persons in the Department of Inspection having knowledge of the construction practices at that time.

It would appear, therefore, that the phrase "penthouses over elevator shafts", rather than being plain and unambiguous, has required interpretation by the officials of the District of Columbia charged with the administration of the statute containing the phrase. The Director of Inspection over the years has interpreted the statute as permitting the construction over the height limit of penthouses to provide shelter for air-conditioning equipment such as water towers, evaporative condensers, and air-conditioning fans. The question now arises, however, in the light of changed construction practices, whether the Director's interpretation of the statute may extend to permitting the construction of penthouses to shelter heating equipment including boilers. Much of the air-conditioning and heating equipment in use today requires the services of operating engineers, and the presence of operating engineers in penthouses constructed above the permissible height limit also involves an interpretation of the meaning of the phrase "human occupancy", as used in the Act of June 1, 1910.

In connection with the consideration of both of the questions discussed in this opinion, it is of interest to consider the intent of the

Congress in enacting the Act of June 1, 1910. Strangely enough, although it is commonly believed that the purpose of the Act was to preserve the skyline of the city and to prevent the overshadowing of the Capitol by excessively tall buildings, it would not appear that the Congress, at the time it was considering the bill that later became the Act of June 1, 1910, had such a purpose in mind. Rather, according to a statement by one of the sponsors of the bill during debate in the House of Representatives, the principal concern of the Congress involved the lack of fireproofing on the "upper or mansard stories" of buildings then constructed, and the sponsor stated "this act is for the purpose of requiring that buildings of a certain height shall be of fireproof material throughout." Congressional Record, Vol. 45, p. 4535.

Another consideration of the Congress during its debate on what later became the Act of June 1, 1910, would appear to relate to matters of light and ventilation, as the following exchange during the debate would indicate:

> "MR. CAMPBELL (a sponsor of the bill) The buildings on Pennsylvania avenue would be limited to the height provided for in this bill (160 feet).
>
> "MR. SIMS. Now, why should they be permitted to be, say 30 feet higher on Pennsylvania avenue than any other business street or otherwise in the city?
>
> "MR. CAMPBELL. It is the widest street in the city.
>
> "MR. SIMS. Is not New York avenue fully as wide?
>
> "MR. CAMPBELL. No; Pennsylvania Avenue is the wider.
>
> "MR. SIMS. Is it the object and purpose of regulating the height of buildings in the District of Columbia that the height of buildings should be regulated on each street in reference to the width of that particular street?
>
> "MR. CAMPBELL. We are far below the limit of height that could be provided for on Pennsylvania Avenue when we provide for 160 feet." (Cong. Record, Vol. 45, p. 6799; parenthetical notations added)

Accordingly, it would seem that the last paragraph of section 5 of the Act of June 1, 1910, should be construed in the light of the intent of the Congress in enacting the Act; i.e., in terms of fireproofing and of light and ventilation.

On this basis, therefore, it would appear that the 61st Congress, insofar as penthouses were involved, was not concerned so much with the

use to which such penthouses would be put as with the fireproofing of such penthouses, and it would seem there was no objection on the part of Congress to the construction of fireproof penthouses above the height limit, just so such penthouses were (1) set back from the exterior walls, apparently for reasons of light and ventilation, and (2) were not constructed or used for human occupancy.

The term "human occupancy" moreover, perhaps should be construed in the light of the intent of the Congress in enacting the Act. The Congress, in specifically recognizing the necessity for elevator machinery above the height limit, obviously did not intend that no elevator machinery repairman could enter the penthouse over such machinery for the purpose of repairing it. Yet in one sense this is "human occupancy" of such a penthouse.

The term "occupancy" means, to quote Webster's New International Dictionary, 2nd Edition, the "act of taking or holding possession". An "occupant", to quote the same authority, is "one who occupies or takes possession; one who has the actual use or possession of a thing"; "occupy" means "to take or enter upon possession of; to hold possession of, to hold or keep for use; to use"; while "occupation" means "actual possession or control". I am of the view, therefore, that the prohibition of "human occupancy", in the last paragraph of section 5 of the Act of June 1, 1910 was intended by the Congress to prevent the use of enclosed space above the height limit for residential, office or business purposes, either by the owner of a building or by any tenant holding under him, but was not intended to preclude the use of such space in connection with the maintenance of such building and the operation of its utilities. I am of the view, therefore, that the last paragraph of section 5 of the Act of June 1, 1910, does not prohibit the presence of building maintenance personnel in fireproof structures constructed above the permissible height limit.

In summation, I caused a study to be made of the Act approved June 1, 1910, and the legislative history of such Act, with particular reference to the last paragraph of section 5 of such Act, as a result of which I have concluded that the phrase in such paragraph, "penthouses over elevator shafts", may be construed to include penthouses over stairways leading to the roof and penthouses over other utilities necessary in connection with the operation of a building, but not to include penthouses to be used for residential, office or business purposes. Further, I have concluded that the term "human occupancy" as it is used in such paragraph should be construed to preclude the construction or use of penthouses for residential, office or business purposes, but not to preclude the presence in such penthouses of building maintenance personnel charged with the operation and maintenance of the building's utilities.

The memorandum of the Chief Engineer of the Department of Inspection also refers to paragraph numbered 1 of Section XIII of the Zoning Regulations of the District of Columbia, as amended, which reads as follows:

"1. The provisions of the Act of June 1, 1910, as to spires, towers, domes pinnacles (sic), penthouses over elevator shafts, ventilation shafts, chimneys, smoke stacks, and fire-sprinkler tanks shall continue in full force and effect, except that on buildings hereafter erected the Commissioners of the District of Columbia shall not approve the construction of fire-sprinkler tanks, water towers, or housing for air conditioning to a height in excess of 130 feet measured from the level of the curb opposite the middle of the front of the building. Fire sprinkler tanks, water towers, or housing for air conditioning equipment may be erected or enlarged on buildings existing prior to December 1, 1944 as provided under Section XXIII of these regulations. (As amended Dec. 1, 1944 and Feb. 25, 1948.)"

This regulation of the Zoning Commission, as has been pointed out in the memorandum of the Chief Engineer of the Department of Inspection, would appear to have a double effect. First, it imposes a limitation on the Act of June 1, 1910, since it prohibits the construction of fire-sprinkler tanks and water towers above 130 feet, although the June 1, 1910, Act specifically permits fire-sprinkler tanks above the 130-foot height limit, and may be construed to permit water towers above that limit. But more important, the regulation would appear to delimit the Act of June 1, 1910, by impliedly authorizing the construction of housing for air conditioning equipment above any height limit established by the June 1, 1910, Act, with the exception of the 130-foot height limit. It would appear, therefore, that the Zoning Commission, like the Director of Inspections, has construed the phrase "penthouses over elevator shafts" to permit the construction of housing for air-conditioning equipment above all height limits except the 130-foot height limit.

The Zoning Regulations of the District of Columbia, as amended, have been promulgated by the Zoning Commission of the District of Columbia under the authority contained in the Act approved June 20, 1938 (52 Stat. 797, as amended; Title 5, sections 413 through 428, D. C. Code, 1951 ed.) Among other things, such Act empowers the Zoning Commission to regulate the height of buildings, except the permissible height of any building shall not exceed the maximum height of buildings authorized by the Act of June 1, 1910, supra. Further, section 12 of the Act of June 20, 1938 (Section 5-424, D. C. Code, 1951 ed.) provides:

"Sec. 12. Wherever the regulations made under the authority of this Act require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute or municipal regulations, the regulations made under authority of this Act shall govern. * * *" (Underscoring supplied)

Accordingly, I am of the opinion that although the Act of June 1, 1910, may be construed to permit the construction, above the maximum height limits established by such Act, of penthouses sheltering building utilities, providing such penthouses meet the other requirements of such Act, nevertheless paragraph 1 of Section XIII of the Zoning Regulations of the District of Columbia has the effect of prohibiting the construction of such penthouses above the 130 foot height limit, although impliedly permitting the construction of penthouses for air conditioning equipment above the lower height limits established by the June 1, 1910, Act.

The Chief Engineer of the Department of Inspection concludes his memorandum of June 16, 1953, with the following paragraphs:

> "It is apparent that a situation difficult both for this office and for the architects, owners, and mechanical engineers will continue to exist until both the Act of 1910 and the Zoning Regulations are clarified and a consistent and equitable policy established for both.
>
> "It seems to me that the intent and limitation of the Act of 1910 should be established by Commissioners directive, and that thereafter the Zoning Regulations be clarified in order to be consistent with such directive.
>
> "It is recommended that such directive clearly establish what equipment may be in a 'penthouse' above the height limit as established by the Act of 1910, that there be a limiting size to such pent-house based on a percentage of roof area, and that the Zoning Commission establish regulations consistent therewith, also for such pent-houses as exceed the zoning height limits but are not above the limits established by the Act of June 1, 1910."

Inasmuch as in my view, the Act of June 1, 1910, may be construed to permit the construction, above the various height limits established by such Act, of penthouses to house utilities necessary in the operation of buildings, and to permit the presence in such penthouses of personnel required to operate such utilities, the only action required of the Commissioners with respect to establishing "the intent and limitation of the Act of 1910" would be to direct their Secretary to forward a copy of this opinion to the Director of Inspection for his information and guidance.

But as has been pointed out earlier, the construction of the Act of June 1, 1910, is not all that is required to furnish the "clarification" recommended by the Chief Engineer. Since the Zoning regulations prohibit the construction of fire-sprinkler tanks, water towers, or housing, for air-conditioning equipment above 130 feet, such regulations effectively establish, for all buildings, an extreme height of 130 feet, not including spires, domes, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, and smokestacks.

RECOMMENDATIONS:

1. That although the Act of June 1, 1910, regulating the height of buildings, may be construed to permit the construction, above the various height limits established by such Act, of penthouses to shelter building utilities of all kinds, and to permit the presence in such penthouses of building maintenance personnel, paragraph 1 of section XIII of the Zoning Regulations prohibits the construction above a height of 130 feet of fire-sprinkler tanks, water towers, and penthouses for air conditioning equipment.

2. That should the Commissioners desire to authorize the Director of Inspection to approve plans for the construction, above the maximum height limits established by the Act of June 1, 1910, of penthouses to shelter building utilities, it would appear necessary that there first be a change in the Zoning Regulations of the District of Columbia, which are controlling.

3. That the Commissioners forward a copy of this opinion to (1) the Director of Inspection, D. C., and (2) the D. C. Building Code Advisory Committee, for appropriate recommendation relating to the desirability of amending the Zoning Regulations of the District of Columbia so as to clarify the present uncertainty regarding the construction, above certain height limits, of penthouses to shelter building utilities.

/s/ VERNON E. WEST,
Corporation Counsel, D. C.

RFK:bs
7/24/53

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ENGINEER DEPARTMENT
DEPARTMENT OF INSPECTION
WASHINGTON 4, D. C.

ADDRESS REPLY TO
DIRECTOR OF INSPECTION

May 13, 1953.

To Whom It May Concern:

Re: Housing for air conditioning equipment above 130 foot level.

Prior to December 1, 1944, fire-sprinkler tanks, water towers and air conditioning equipment were permitted above height limits of buildings as established by the Zoning Regulations and the Act of June 1, 1910, whichever was the more restrictive.

On November 15, 1944, a public hearing was held by the Zoning Commission to consider amendments regarding the location of air conditioning equipment above the 130 foot height limit. The Commission evidently felt that air conditioning equipment was unsightly, and where fans were used they created a noise nuisance. The upshot was that the following amendment in part was promulgated: "* * * * the Commissioners of the District of Columbia shall not approve the construction of fire-sprinkler tanks, water towers, or housing for air conditioning equipment to a height in excess of 130 feet measured from the level of the curb opposite the middle of the front of the building. * * *"

The erection of ventilating shafts permitted by the Act of June 1, 1910 was not included in the above mentioned prohibitions. However, I am of the opinion that the installation of fans is not permitted.

The American Society of Heating and Ventilating Engineers defines "Air Conditioning: The simultaneous control of all, or at least the first three, of those factors affecting both the physical and chemical conditions of the atmosphere within any structure. These factors include temperature, humidity, motion, distribution, dust, bacteria, odors and toxic gases, most of which affect in greater or lesser degree human health or comfort." and "Ventilation: The process of supplying or removing air, by nature or mechanical means, to or from any space."

For purposes of administration, air conditioning and forced ventilation should be considered as synonymous.

Robert N. Davis
ROBERT H. DAVIS,
Director of Inspection, D. C.

F

July 15, 1958

REPORT OF THE ZONING ADVISORY COUNCIL
ON PROPOSED AMENDMENTS TO THE ZONING
REGULATIONS

JULY 16, 1958, HEARING

"3201.26 An elevator or stairway penthouse may be erected to a height in excess of that authorized in the district in which located, provided such penthouse is set back from all lot lines of the structure upon which located a distance equal to its height above the roof of the structure."

"4201.22 An elevator or stairway penthouse may be erected to a height in excess of that authorized in the SP District provided such penthouse is set back from all lot lines of the building or other structure upon which located a distance equal to its height above the roof of the building or structure."

"5201.23 An elevator or stairway penthouse may be erected to a height in excess of that authorized in the district in which located, provided such penthouse is set back from all lot lines of the building or other structure upon which located a distance equal to its height above the roof of the building or structure."

"6201.22 An elevator or stairway penthouse may be erected to a height in excess of that authorized in the district in which located, provided such penthouse is set back from all lot lines of the building or other structure upon which located a distance equal to its height above the roof of the building or structure."

These proposed amendments relate to the location of elevator and stairway penthouses. Set back provisions of such appurtenances are contained in the Act of June 1, 1910, (36 Stat. 452), regulating the height of buildings in the District of Columbia. The Act provides that when above the limit of height, a penthouse, etc., shall be set back from the exterior walls of the building on which it is located a distance equal to its height above the adjacent roof. Under the regulations recently repealed, the application of this provision was construed by the Zoning Commission to mean exterior walls from the street sides only, an interpretation considered in harmony with the Act and not in violation thereof. While regulations promulgated by the Commission are subject to minimum standards provided by the Act of June 1, 1910, ample authority exists to incorporate more restrictive provisions into the regulations which has been done in numerous instances with respect to other provisions of the Act.

The principal difficulty encountered in applying the provision of the new regulations is that the required set back of penthouses from all outside walls of the building does not in many instances serve any useful purpose since a set back from yards or courts required or provided is unnecessary to protect light and air for adjoining properties. It is for this reason that modification of these paragraphs in some form appears fully justified.

There are several ways in which these paragraphs could be amended, each of which merits consideration. In addition to the method advertised for this hearing, the Commission might either apply the set back to only those sides of a building abutting public streets, or to only those sides of a building abutting public streets or alleys; or to only those sides of a building abutting public streets, alleys, or a lower height district. There appears to be more support from builders and architects for one of the latter methods than there is for adoption of the proposal now before the Commission. However, the Council is of the opinion that the method proposed here will more closely follow the intent of the 1910 Act and assure adequate light and air for adjoining properties under all conceivable circumstances, whereas adoption of one of the other methods might in some instances adversely affect adjoining structures. The amendment as proposed does not provide a remedy for every conceivable situation since there will be a few buildings on narrow lots which will be unable to provide the set back and must therefore be erected (with penthouse) within the total height envelope, such penthouse area counting as a part of the floor area ratio. Since these cases will be limited and since there is ample opportunity to conform because of the decreased bulk of buildings now required, it is believed that no material hardship will result.

For the reasons outlined, approval of the amendments as advertised is recommended.

(S) R. O. CLOUSER
(S) ~~T. B. HUNTER~~ H. H. ASHTON (ALTERNATE)
(S) WILLIAM F. McINTOSH

G

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

November 24, 1993

MEMORANDUM

TO : Madeliene H. Robinson
Acting Director
Office of Zoning

FROM : Joseph F. Bottner, Jr.
Zoning Administrator

SUBJECT : Zoning Commission Case No. 93-9C (PUD and Map Amendment at 21st & H Streets, N.W. - GWU/WETA)

First, my apology for being tardy in responding to your memorandum dated November 15, 1993, relating to the above referenced subject. I do request to Zoning Commission to waive its rules and practice to allow this reply to become a part of the record.

I have reviewed the document you enclosed with your memorandum. My purpose in the review was to provide comments with respect to the Height of Building Act of 1910.

It is my view that the building in the area of "Studio A" is in conflict with the "height of building" as regulated by the Act of 1910. The Act of 1910 allows the height to be "measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof."

When the question on the height, as well as mechanical equipment was first presented, I was under the impression that it was identical to the property at 110 First Street, N.E. However, upon retrieving the files for 110 First Street, N.E., I realized it is not identical.

The setback requirements of a roof structure under provisions of the Act of 1910 have always been interpreted by the Zoning Division as being required to set back from the property line which adjoins a street. The setback of

a roof structure under the Zoning Regulations now requires roof structures to set back from the exterior walls. Consequently, it is my opinion that the Zoning Commission, under a Planned Unit Review, does have authority to waive the setback of a roof structure from a property line which does not adjoin a street.

cc: Peter Maszak

H

NATIONAL CAPITAL PLANNING COMMISSION

COMMISSION MEMBERS

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Chairman, Committee on the District of Columbia, U.S. House of Representatives
Honorable Ronald V. Dellums

Mayor, District of Columbia
Honorable Marion S. Barry, Jr.

Chairman, Council of the District of Columbia
Honorable David A. Clarke

EXECUTIVE DIRECTOR
Reginald W. Griffith

In Reply Refer To:
NCPC File No. Z.C. 84-10

June 3, 1986

Mr. Cecil B. Tucker
Zoning Secrearíat
District Building, Room 11
1350 Pennsylvania Avenue, NW.
Washington, D. C. 20004

Dear Mr. Tucker:

In your letter of May 13, 1986, you requested that the Commission provide the Zoning Commission with rationale as to why the proposed amendment to the Zoning Regulations relating to penthouse setback requirement is "not in keeping with the 1910 Height Act."

The setback requirement for penthouse structures is addressed in Section 5 of the Act to Regulate Height of Buildings in the District of Columbia (Act of June 1, 1910, 36 Stat. 452, D.C. Code, sec. 5-401 et seq.) and reads as follows:

> "And provided, That penthouses, ventilation shafts, and tanks shall be set back from exterior walls distances equal to their respective height along the adjacent roof." (Emphasis added)

This provision of the 1910 Height Act is similar to the proposed change included in the October 22, 1984 Public Notice on Z.C. 84-10 requiring that penthouse setbacks be measured "from the perimeter of the roof rather than the lot line..."

It is our understanding that the current Regulations are based on a Corporation Counsel opinion measuring penthouse setbacks from the lot line on the frontage facing the street. For example, the present measuring point (except in the C-5 district) for penthouses has been the existing lot lines. The setback requirement for penthouses in C-5 zone districts mandate a setback twice the height of the penthouse from the perimeter of the roof fronting on a street (this provision is similar but more restrictive than the 1910 Act).

ZONING COMMISSION
CASE NO. 84-10
EXHIBIT NO. 114

We believe that the 1910 Height Act's requirement of penthouse setback from exterior walls is clearly intended to hide or screen penthouses from street views. Penthouse setbacks from lot lines do not provide this screening effect (unless the building line, perimeter of roof, and lot line are in the same vertical plane).

In its August 1, 1985 report (Case No. 84-10), the Planning Commission requested that the Zoning Commission consider adopting the October 22, 1984 advertised provision requiring penthouse setbacks to be measured from "the perimeter of the roof." The Commission believes that provision to be in keeping with the Height of Building Act which uses the term "exterior walls."

We hope this elaboration on the Commission's recommendations regarding setbacks for penthouse structures clarifies our report.

Sincerely,

Reginald W. Griffith

Reginald W. Griffith
Executive Director

I

Before the Board of Zoning Adjustment, D. C.

Application No. 11917, of the John Akridge Company, pursuant to Sections 8207.2 and 8207.1 of the Zoning Regulations, for a special exception for approval of a roof structure for a proposed office building in the C-4 Zone, as provided by Section 5306.1 of the Regulations, and as amended for a variance from the set back requirements for roof structure of Section 5201.23 as provided by Section 8207.11 of the Regulations, at the premises 1627 K Street, N. W. known as Lot 805, Square 184.

HEARING DATE: July 16, 1975
DECISION DATE: August 6, 1975

FINDINGS OF FACT:

1. Applicant requests approval of the roof structure for a proposed office building and a variance from the set-back requirements for the penthouse which exceeds the 130 foot height limit.

2. Applicant amended the application at public hearing with leave of the Board to include the variance from Section 5201.23 of the Zoning Regulations because the subject lot has the narrow width of 45 feet 10 inches.

3. The proposed office building will be approximately the same height as the adjacent structure to the east and the proposed roof structure has a F.A.R. of 0.25 out of a maximum permitted F.A.R. of 0.37.

4. There will be no set back of the roof structure on the east side party line and a variance of 16 feet is required.

5. The staff report of the Zoning Services Division of the Municipal Planning Office recommended approval of both the proposed roof structure and the variance from the set back requirements stating the following criteria:

a) The proposed roof structure meets all the architectural controls of Sections 3308.1 and 5306.1 of the Regulations. The pre-cast off-white concrete roof structure will match the material and color or the street facade and it harmonizes with the main structure in architectural character, material and color.

b) The penthouse does not exceed one-third(1/3) of the roof structure.

c) There will be no obstruction to the light and ventilation of adjacent properties and the penthouse complies with the October of 1910.

6. The 1,416 square foot area of the roof structure is well within the maximum permitted area of 2,491 square feet and contains mechanical equipment, stair and elevator.

7. There is no opposition of record to the application.

CONCLUSIONS OF LAW:

Based upon the above findings of fact and the evidence of record the Board is of the opinion that Applicant's proposed roof structure meets all the criteria of Sections 3308.1 and 5306.1 of the Regulations and shall be approved. Applicant also has an exceptionally narrow piece of property and the strict application of Section 5201.23 of the Regulations would result in a practical difficulty. The Board concludes that the approval of a variance from Section 5201.23 of the Regulations will result in no substantial detriment to the public good and will not substantially impair the intent of the Zoning Regulations.

ORDER: It is hereby ordered that the above application be GRANTED.

VOTE: 4-0 (Lilla Burt Cummings, Esq. not voting after not having heard the case).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: James E. Miller
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: September 9, 1975

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

WILKES & ARTIS

RECEIVED
JAN 31 1979

Application No. 12798 of the Washington Post Company, pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Sub-section 3308.2 regarding the setback of the roof structure and Paragraph 7614.12 allowing an arcade to exceed twenty-five feet in depth and to exceed twenty-five per cent gross floor area of the floor which is adjacent to the arcade to permit the construction of an office building in a C-4 District at the premises 1100 - 15th Street, N.W., (Square 197, Lot 81).

HEARING DATE: November 15, 1978
DECISION DATE: December 6, 1978

FINDINGS OF FACT:

1. At the public hearing, the applicant amended the application to delete the requested relief relating to the arcade, because the Zoning Regulations had been amended to no longer require approval of what the applicant proposed. The only remaining relief relates to the roof structure.

2. The subject site is located at 1100 15th Street, N.W. at the northwest corner of the intersection of 15th and L Streets, N.W., in the C-4 District. The site is presently occupied by the Lee House Hotel.

3. The applicant proposes to construct a twelve story office building on the site. The site is approximately 15,380 square feet in area.

4. The proposed building will have a gross floor area of approximately 151,055 square feet.

5. The property is owned by the Washington Post Company whose offices abut this site to the north and west. The developer of the proposed building is the Prudential

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13124 of 1100 Eighteenth Street Associates, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 3308.2 to allow construction of a roof structure which does not meet the normal setback requirements of Paragraph 5201.24 for a proposed office, retail and parking garage building in a C-4 District at the premises 1811 L Street, N.W., (Square 140, Lot 873).

HEARING DATE: January 17, 1980 and March 12, 1980
DECISION DATE: April 2, 1980

FINDINGS OF FACT:

1. The subject application was scheduled for the Public Hearing of January 16, 1980. At the Public Hearing the Dupont Circle Citizens Association and an adjacent property owner raised objection to the hearing of the application on the procedural grounds that the application was not advertised in the name of the owner but a lessee and that since the proposed roof structure would be placed on the property line the owner of the abutting lot who plans to construct a similar structure as the subject one should have submitted a waiver as to the possible harm he might incur if the proposed roof structure were permitted. The Chair ruled that since the applicant held a ninety year lease and that in all respects he was in fact the true owner of the proposed improvement the applicant lessee was the proper party to process the application. As to the second objection the chair ruled that it was premature since the evidence had not yet been presented. In addition, since an application no. 13187 had been filed on the abutting property the Board determined that both applications should be heard simultaneously.

2. The subject property is located on the north side of L Street between 18th and 19th Streets, N.W., and is known as 1811 L Street, N.W. It is in a C-4 District.

3. The subject lot 873 is approximately 5,320 square feet in area. It is an interior lot with a street frontage on L Street of fifty feet. The subject property is intended to be developed with an adjacent companion building known as 1801 L Street, N.W. The companion building on lot 872 is the subject of BZA application no. 13187. Both applications were heard by the Board at the same time. Both lots are improved with a six story parking garage which is to be demolished.

Insurance Company of Amercia, with a prime tenant of the site expected to be the Washington Post.

6. The proposed building will occupy 100 per cent of the lot. The area in the vicinity of this site is generally characterized by office buildings of a similar nature to the one proposed. Many of these buildings have retail uses on the ground floor. There are also a number of large hotels in the vicinity including the Capitol Hilton which is located on 16th Street between K and L Streets, N.W.

7. The roof structure of the proposed office building will have a gross floor area of approximately 4,910 square feet which is 780 square feet less than the maximum allowable of 5,690 square feet. In addition the roof structure will be 18' 6" in height above the roof upon which it is located, faced in precast concrete panels and will meet all of the requirements of section 3308 of the Zoning Regulations with the exception of the setback requirements.

8. The east and south facades of the roof structure are setback 55.8 feet from the property lines on those sides. The north and west facades of the roof structure are placed on the rear property lines. The Board is requested to approve a waiver of 18.5', the height of the roof structure for the two facades of the roof structure which are built to the property lines.

9. The roof structures of the two adjacent buildings are also built to the property lines of this site.

10. The elevator core of the proposed building will be placed at the rear of the building, in order to allow for a connection between the proposed building and the existing adjacent building on 15th Street.

11. The site is a relatively small corner lot for a high-rise office building. The space located in the rear corner of the site has no exterior windows and is not desirable as office space. It is thus the most logical and reasonable location for the building service core.

12. The rear location of the service core is also desirable in terms of being able to provide the connection between the subject building and the adjacent building owned by the Washington Post.

13. By report dated November 9, 1978 and by testimony at the hearing, the Municipal Planning Office recommended the approval of the application. The Municipal Planning Office reported that the granting of this special execption will not result in any adverse affect on nearby or adjoining properties nor will it impair the sprit, intent or integrity of the zoning regulations. The Board so finds.

14. Advisory Neighborhood Commission 2B was notified as to the application but no recommendation was received.

15. There was no opposition to the case.

CONCLUSIONS OF LAW AND OPINIONS:

The Board concludes that the only relief required in this case is a special exception regarding the location of the roof structure. The Board concludes that the roof structure of the proposed building is placed a distance of approximately 55.8 feet from the street facades of the building, and is built directly above the rear walls. This arrangement will result in better operating conditions of the building, and will facilitate a reasonable connection to the adjoining building owned by the same owner. The Board concludes that the applicant has demonstrated compliance with the requirement of Sub-section 3308.2 and is therefore entitled to the granting of the special exception. The Board further concludes that the above sought relief can be granted will be in harmony with the general purpose and intent of the zoning regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Chloethiel Woodard Smith, Charles R. Norris, Walter B. Lewis, Leonard L. McCants to grant; William F. McIntosh not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 30 JAN 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13124 of 1100 Eighteenth Street Associates, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 3308.2 to allow construction of a roof structure which does not meet the normal setback requirements of Paragraph 5201.24 for a proposed office, retail and parking garage building in a C-4 District at the premises 1811 L Street, N.W., (Square 140, Lot 873).

HEARING DATE: January 17, 1980 and March 12, 1980
DECISION DATE: April 2, 1980

FINDINGS OF FACT:

1. The subject application was scheduled for the Public Hearing of January 16, 1980. At the Public Hearing the Dupont Circle Citizens Association and an adjacent property owner raised objection to the hearing of the application on the procedural grounds that the application was not advertised in the name of the owner but a lessee and that since the proposed roof structure would be placed on the property line the owner of the abutting lot who plans to construct a similar structure as the subject one should have submitted a waiver as to the possible harm he might incur if the proposed roof structure were permitted. The Chair ruled that since the applicant held a ninety year lease and that in all respects he was in fact the true owner of the proposed improvement the applicant lessee was the proper party to process the application. As to the second objection the chair ruled that it was premature since the evidence had not yet been presented. In addition, since an application no. 13187 had been filed on the abutting property the Board determined that both applications should be heard simultaneously.

2. The subject property is located on the north side of L Street between 18th and 19th Streets, N.W., and is known as 1811 L Street, N.W. It is in a C-4 District.

3. The subject lot 873 is approximately 5,320 square feet in area. It is an interior lot with a street frontage on L Street of fifty feet. The subject property is intended to be developed with an adjacent companion building known as 1801 L Street, N.W. The companion building on lot 872 is the subject of BZA application no. 13187. Both applications were heard by the Board at the same time. Both lots are improved with a six story parking garage which is to be demolished.

4. In both applications it is proposed to construct a ten story office, retail and parking garage building.

5. Adjacent to the site on the west is a two story structure which houses two restaurants. This structure is adjoined by a ten story hotel. North of the subject property along 18th Street, are a group of smaller structures which house a number of retail shops, restaurants, and service establishments. Most of these are housed in converted row structures. There are also a number of restaurants to the rear of the site and other establishments which are housed in one and two story structures. This section of the city has undergone significant development in the past ten to fifteen years. Ten and tweleve story commercial buildings have in large part replaced the row structures, parking lots and auto dealerships which formerly populated the area. Nineteenth Street, at this location, forms the western boundard of the C-4 district. West of 19th Street C-3-B zoning is in place.

6. Lots 872 and 873 are held in different ownership but each is under a longterm lease by the applicant.

7. The applicant requests a special exception to allow construction of a roof structure which does not meet the strict setback requirements of paragraph 5201.24. Under that paragraph the roof structure is required to be setback 18.5 feet from the lot line. The applicant proposes to construct the roof structure against the east property line.

8. In all other respects the roof structure strictly complies to all other C-4 Zoning Regulations. The penthouse is enclosed in a single enclosure and contains a stairway, mechanical equipment including cooling tower, water pumps, fans and water heater, and elevator override. The material of roof structure blends harmoniously with the facade of the main building.

9. The subject lot is fifty feet wide. If the applicant complied with the setback requirements of the Zoning Regulations it would leave the applicant thirteen feet of space in which to locate all the equipment. The necessary width of the penthouse structure is thirty-one feet.

10. Due to the narrow width of the building the placement of the elevator core in any place other than against a property line would render useless the floor area on either side, impairing the functional arrangement of the space within the building and creating operating difficulties.

11. The subject property and its relationship to the surrounding property makes it a practical requirement to join the elevator cores of the two buildings. If the two were to be required strictly to meet the regulations, the functional space would be impaired for both buildings.

12. As an interior lot, the subject property will not have a roof structure on a property line abutting a street or alley. The roof structure will be an interior penthouse not visible except from elevated or distant viewpoints. When built with the adjoining penthouse, the penthouse will be less visible and more compact than having separate structures on the roof of each of the buildings. The effect created will be a single roof structure which straddles the two proposed office buildings.

13. The Office of Planning and Development by report dated February 13, 1980 considered the subject application and application No. 13187 simultaneously. The OPD recommended that both applications be approved. The Office of Planning and Development noted that in these cases because of the nature of the ownership of this site and the long term lease agreements, one building will be constructed on each lot. Bother buildings will however, appear as one from the exterior. The roof structures will be architecturally coordinated and also appear as one from the exterior. The combined structure will be centered over the two buildings overlapping both lots. The need for the relief from the roof structure setback requirements arises from the fact that technically these are two buildings, which should have separate roof structures and each enclosing wall should be setback from all property lines. It was OPD's opinion that combining the roof structure into one enclosure is consistent with the intent and purpose of Section 3308 of the Zoning Regulations which encourages roof structures to be in one enclosure. The Board so finds.

14. The Dupont Circle Citizens Association objected to the application on the grounds that it would object to any penthouse being on a property line and that the builder had not given serious consideration to any energy utilization program. The Board finds that it is sufficient for the applicant to address itself to the requirements of the sections of the Zoning Regulations under which it seeks relief. The energy utilization program is not a proper issue before this Board in this application.

15. Advisory Neighborhood Commission 2B made no recommendation on the application.

16. There was a letter on file from a neighboring property owner in support of the application.

17. The applicant submitted a letter to the record evidencing that the American Arbitration Association had determined that the subject long-term lessee had a right to process the application before the BZA under the terms and conditions of its ground lease.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a special exception which requires that the applicant meet the requirements of Sub-section 3308.2. The Board concludes that the applicant has substantially complied with Sub-section 3308.2. Due to the narrow width of the lot and its relationship to surrounding properties the Board concludes that full compliance with the setback requirements would be unduly restrictive and unreasonable. The Board further concludes that the relief can be granted as in harmony with the intent and purpose of the Zoning Regulations and will not affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0(William F. McIntosh, Charles R. Norris and Connie Fortune to grant, Theodore F. Mariani to grant by proxy, Leonard L. McCants not voting not having heard the case)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 18 JUN 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.