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Board of Zoning Adjustment
District of Columbia
CASE NO. 17221
EXHIBIT NO. 38A2

BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal of Kalorama Citizens Association from The Decision of DCRA Issuing Building Permits B455571 & B455876 Notwithstanding Non-Compliance of Plans with FAR, Height, and Setback Requirements with respect to 5-story Apartment in an R-5-D Zone at 1819 Belmont Road, N.W. (Square 251, Lot 45).	) BZA No. 17109

Statement of George H.F. Oberlander, AICP

I am George H.F. Oberlander. I served on the staff of the National Capital Planning Commission (NCPC) from 1965 to 1996. As Associate Executive Director for District of Columbia Affairs, I participated in the consideration within the NCPC of it position regarding issues raised by Zoning Commission Case No. 84-10 with respect to proposed changes in the Zoning Regulations regarding roof structures, and specifically, changes in the regulations regarding setback of rooftop penthouses. (NCPC August 1, 1985 Transcript attached).

The 1958 regulations required setback of penthouses, by a distance equal to their height above the roof, from "*all lot lines of the lot*" in most zoning districts.

The Zoning Commission had originally proposed changing these provisions to require setback to be measured from "*the perimeter of the roof*".

Later, however, the Zoning Commission proposed less restrictive language that would retain the requirement of measurement from "*all lot lines of the lot*".

The Zoning Commission also had before it less restrictive language that setback should be measured from the *lot lines fronting on a street* (reportedly expressed by the Corporation Counsel) or *exterior walls fronting on a street* (expressed by the Office of Planning).

The NCPC was concerned that the Zoning Regulations be consistent with the Height of Buildings Act, which requires setback from the "exterior walls" in cases where the roof structure height exceeds the building height allowed by the Act. Therefore the NCPC opposed the then-current provisions measuring setback from lot lines, because the lot lines might be located some distance away from the exterior walls. It also opposed measuring setback only from lot lines or exterior walls that front on a street, since that would require setback from only some

exterior walls and would therefore, in the NCPC's view, be inconsistent with the Height Act.

In my current review of the NCPC files and Commission consideration of this matter, there were no provisions or discussion for exempting rowhouse party walls from the setback requirements.

The NCPC regarded the Zoning Commission's original proposal to require setback from the perimeter of the roof, which had the effect of requiring setback from all walls of the building, to be in keeping with and to have the same intent and effect as the Height Act's requirement of setback from the exterior walls.

The NCPC communicated its views on the setback issue to the Zoning Commission on August 1, 1985, requesting that the Commission consider reverting to its original proposal requiring penthouse setback to be measured from the perimeter of the roof. Ultimately the Zoning Commission adopted a formulation that the NCPC regarded as having the same effect, namely, the requirement of setback from "*all* exterior walls".

George H.F. Oberlander, AICP

04/19/04
Date

ACKNOWLEDGEMENT

State of Maryland
County of Montgomery

I, Zulienne C Wolfrey, a Notary Public of said county, do hereby certify that George H.F. Oberlander, whose name is signed to the foregoing writing bearing the date of the 19th day of April, 2004, has t his day acknowledged the same before my in my said County.

Given under my hand this 19th day of April 2004.

Zulienne C Wolfrey
Notary Public

Zulienne C. Wolfrey, Notary Public
Montgomery County
State of Maryland

My commission expires May 1, 2007

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OFFICIAL PROCEEDINGS

NATIONAL CAPITAL PLANNING COMMISSION

In the matter of: COMMISSION MEETING

OPEN SESSION

Place: WASHINGTON, D.C.

Date: THURSDAY, AUGUST 1, 1985

OFFICIAL REPORTERS

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SPRINGFIELD, VIRGINIA WASHINGTON, D.C.

NATIONAL CAPITAL PLANNING COMMISSION

COMMISSION MEETING

OPEN SESSION

9:47 o'clock a.m.

Thursday, August 1, 1985

Conference Room

Tenth Floor

1325 G Street, N.W.

Washington, D.C.

PRESENT:

CHAIRMAN GLEN T. URQUHART

VICE CHAIRMAN ROBERT J. NASH

MR. WILLIAM EUGENE BAUMGARTNER

MR. ALFREDO ECHEVERRIA

MR. JACK FINBERG

MS. DIETRA GERALD

MR. STEVEN KLEIMAN

MR. ROBERT MILLER

MS. MARION MORRIS

MR. JOHN G PARSONS

MS. ANN V. TODD

ALSO PRESENT:

FORMER COMMISSION MEMBERS:

MR. ROBERT C. JENKINS

MRS. HELEN M. SCHARF

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Opposed.

(No response.)

The EDR is carried unanimously. Mr. Parsons voting just arrived.

ITEM NO. 6 - Z.C. 84-10 - AMENDMENTS TO THE ZONING REGULATIONS OF THE DISTRICT OF COLUMBIA RELATING TO PENTHOUSES

MR. BOZARTH: Mr. Chairman.

CHAIRMAN URQUHART: Sir.

MR. BOZARTH: Dick Westbrook is ill today so George Oberlander will sub for him this morning.

CHAIRMAN URQUHART: I thought that Dick had put on a different suit and changed his hairdo.

MR. OBERLANDER: He has a little more hair than I do.

(Laughter.)

CHAIRMAN URQUHART: Just redistribute it.

MR. OBERLANDER: Good morning, Members of the Commission.

The next item is comments to the D.C. Zoning Commission on a proposed action dealing with penthouse setbacks at the upper level of buildings. The Zoning Commission at its

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June 10th meeting was considering 9 amendments to the Zoning Regulations pertaining to rooftop penthouses. There are 8 items which we have no particular concerns or problems with. There is one that deals with the measuring of how you interpret the requirements for the setbacks and, if you look on page 2 of the EDR, the current setback requirement is a one-to-one ratio from the lot line, as compared to an alternative which would be a one-to-one ratio from the perimeter of the roofline.

The recommendation that the staff is making is that, although the finding is that there are no federal interests that would be adversely affected, we do request that the Zoning Commission consider adopting the proposed text of the advertised public notice of this case requiring penthouse setbacks to be measured from the exterior walls in keeping with the Height of Buildings Act of 1910.

I'll be glad to try to answer other questions that you might have on this matter.

(The Report to the Zoning Commission for the District of Columbia re NCPC File No. Z.C. 84-10 ends as follows:)

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CHAIRMAN URQUHART: Questions?

MS. MORRIS: Mr. Chairman, I have a question.

CHAIRMAN URQUHART: Marion.

MS. MORRIS: Does this proposed rule also relate to the location of rooftop structures such as antennas?

MR. OBERLANDER: No, they split the case into two and this only deals with the rooftop penthouses.

MS. MORRIS: Okay. So this is solely concerned then with covering up mechanical towers, air conditioning, and similar rooftop things related to the workings of the buildings?

MR. OBERLANDER: Appurtenances, yes. That's right.

CHAIRMAN URQUHART: Is the distinction in measurement from the building wall, external building wall, as opposed to the lot line?

MR. OBERLANDER: That's correct.

CHAIRMAN URQUHART: How prevalent is that issue? What raised this change?

MR. OBERLANDER: It's a matter of how the rooftop appears to the observer from the street. If the measurement

CHAIRMAN URQUHART: No, no. I understand that George I just wondered if there was a whole gro[illegible] of abuses

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or problems or issues or is this an anticipatory action to avoid a problem?

MR. OBERLANDER: There are several buildings that have been built recently that extend the roofline straight up for the penthouse and the provisions in the 1910 Height of Buildings Act are that they be measured from the roofline rather than from the lot line.

CHAIRMAN URQUHART: The setback, the one-to-one set-back be measured from the edge of the exterior building --

MR. OBERLANDER: That's right.

CHAIRMAN URQUHART: -- at the roofline?

MR. OBERLANDER: Right.

CHAIRMAN URQUHART: Okay.

Any other questions?

MR. ECHEVERRIA: Let me clarify that. I don't think that the provisions of the Height Act indicates it has to be from the perimeter of the building rather than the building line. I think that the intent was to basically avoid those buildings in which they have a setback from the property line on which they carried that facade all the way up to the top of the penthouse which adds 18.6 feet to the roofline [illegible]

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on the rest of the building.

The question that you raise, Mr. Chairman, is how prevalent is that and there are a few cases in the District in which that has been experienced. However it is not a very prevalent case, because, as you well know, the bulk that we have is trying to utilize as much as possible by the development initiatives that are taking place and, therefore, the recess of the facade has not too commonly appeared on the buildings.

An example of this is the building on Connecticut and L, the northwest corner, where the building was recessed and then the whole facade on that recess was extended all the way to the top of the penthouse.

I think that the intent is to see that, on the EDR recommendation, that is that the setback be established along the perimeter or whatever happens to the configuration of that facade, be it on the building line or be it recessed from the building line.

CHAIRMAN URQUHART: That there be a fourth recess for the penthouse?

MR ECHEVERRIA: That's right.

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CHAIRMAN URQUHART: Has the 18.6 been saved?

MR. OBERLANDER: No.

MR. ECHEVERRIA: No.

VICE CHAIRMAN NASH: No.

CHAIRMAN URQUHART: Okay.

VICE CHAIRMAN NASH: I move the EDR.

MS. GERALD: Second.

CHAIRMAN URQUHART: Further questions or discussion?

MS. MORRIS: Yes, Mr. Chairman.

CHAIRMAN URQUHART: Ms. Morris.

MS. MORRIS: Could I clarify one other point? I understand the way this is presented to us on the one-to-one setback from the lot line under the current regulations. The proposed action is not to change that; is that correct?

MR. OBERLANDER: That's correct.

MS. MORRIS: Thank you.

VICE CHAIRMAN NASH: Call for the question.

CHAIRMAN URQUHART: The question has been called. All those in favor.

(A chorus of ayes.)

Opposed

MR. ECHEVERRIA: I abstain.

CHAIRMAN URQUHART: And the Chair is abstaining as well.

(Ms. Todd not yet present.)

It passes unanimously with two abstentions.

~~ITEM NO. 7 - 2505 - NAVAL RESEARCH LABORATORY -~~ McDONALD'S RESTAURANT (BELLEVUE HOUSING AREA)

CHAIRMAN URQUHART: Item No. 7, Naval Research Laboratory, McDonald's Restaurant.

Are we getting samples?

(Laughter.)

MR. LEWIS: The proposal you have before you is the constructions of McDonald's in the Southeast portion of Bellevue Naval Housing adjacent to the Naval Research Laboratory. The proposal, while consistent with the Comprehensive Plan, is inconsistent with the master plan for the Naval Research Lab.

The restaurant provides for eating facilities for the Temporary Naval Lodge and Naval personnel. In 1982 the Temporary Naval Lodge was submitted. The

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CORRECTED

NATIONAL CAPITAL PLANNING COMMISSION
1325 G STREET N.W.
WASHINGTON, D.C. 20576

NCPC File No. Z.C. 84-10

AMENDMENTS TO THE ZONING REGULATIONS OF THE DISTRICT OF COLUMBIA RELATING TO PENTHOUSES

Report to the Zoning Commission for the District of Columbia

August 1, 1985

The Commission, pursuant to Section 5 of the Act of June 20, 1938, as amended by the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, 1981 edition, sec. 5-417), has reviewed the proposed amendments to the Zoning Regulations of the District of Columbia relating to penthouses (Case No. 84-10). The Commission finds that the amendments proposed by the Zoning Commission at its public meeting on June 10, 1985, would neither adversely affect the Federal Establishment or other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital. The Commission requests that the Zoning Commission consider adopting the proposed text of the advertised public notice for this case requiring penthouse setbacks to be measured from exterior walls in keeping with the Height of Buildings Act of 1910.

* * *

BACKGROUND AND STAFF EVALUATION

Description of Proposal

At the Zoning Commission's public meeting of June 10, 1985, a proposed action was taken by the Commission to adopt certain amendments to the Zoning Regulations of the District of Columbia relating to penthouses. This proposed action has been transmitted (letter attached) to the National Capital Planning Commission for review and comment pursuant to D.C. Code, 1981 edition, sec. 5-417, prior to final action on these amendments by the Zoning Commission. A copy of the proposed amendments is attached.

Public hearings were held October 22 and 25, 1984 on proposed changes or additions to the text of the Zoning Regulations concerning penthouses and

antennas. On the basis of testimony received, as well as questions and comments from Zoning Commission members, a proposed action on nine specific items relating to penthouses only was taken. These items, the current regulations, testimony and comments and the proposed action are as follows:

1. Penthouse Setbacks From Roof Perimeter

Current Regulations: A 1:1 setback from the lot line is required for all building penthouses except that in the C-5 zone district setbacks are measured from the perimeter of the roof consistent with the language of the 1910 Height Act.

Testimony and Comments: Testimony was given supporting the concept of incorporating the penthouse as an extension of the building facade as opposed to the existing regulations intent of hiding the Penthouse. However, the Commissioners felt the evidence supported maintaining the existing regulations.

Proposed Action: None.

2. Penthouse Controls Below Heights Limit

Current Regulations: The existing controls on penthouse heights do not apply below the zone district height limits.

Testimony and Comments: The advertised change to control height, location and design, no matter what the building height, received no opposition testimony nor negative comments from the Zoning Commissioners.

Proposed Action: Control penthouse structures at all building heights.

3. Increase Penthouse Setback from Street in C-3-C and C-4 Districts

Current Regulations: The penthouse is required to be set back 1:1 from the lot line on all sides.

Testimony and Comments: Testimony generally opposed the advertised change to a 2:1 setback from the roof perimeter facing a single street and no rear setback. The additional front setback may produce adverse visual impacts when viewed over lower historic structures from the rear.

Proposed Action: None.

4. Multiple Penthouse Permitted in Certain Situations

Current Regulations: All buildings whether of multi-core or of multiple roof levels are required to have only a single penthouse enclosure.

Testimony and Comments: The advertising change would permit multiple penthouses. Testimony received supported the change and comments by Zoning Commissioners indicated that anytime there is a need for more than one elevator case, then multiple penthouses should be permitted.

Proposed Action: Allow more than one enclosure for penthouses and mechanical equipment under certain conditions by adding the following:

> When roof levels vary by one (1) floor or more when separate elevator cores are required, there may be one (1) enclosure for each elevator core and at each roof level.

5. Increase Penthouse Height for Access to Rooftop Use

Current Regulations: An area variance from BZA following proof of a "practical difficulty" is required to permit an elevator override to exceed 18 feet 6 inches in height and enable access to the roof.

Testimony and Comments: The advertised change would make it easier to gain approval of an increase in the penthouse height by considering the request as a special exception. Testimony was generally supportive of this approach. However, comments from Zoning Commissioners indicated that the benefits of direct elevator access for rooftop uses would be offset by the height increase.

Proposed Action: None.

6. Increase Parapet Wall Height to Improve Roofscape Appearance

Current Regulations: Parapet walls can exceed the height limit of a given district only in the CR (Mixed Use) district and W (Waterfront) zone districts by five feet. In no case can they exceed 1910 Height Act limits.

Testimony and Comments: Testimony generally supported some change to permit parapet walls to exceed the zone district height limits by from four to six feet (a 20 percent increase was advertised). This increase could be used to partially hide the penthouse and possibly improve the roofscape.

Proposed Action: "In those districts in which the height of buildings is permitted to be ninety feet (90') or greater, the height of buildings shall be measured to the highest point of the roof excluding parapets not exceeding three feet in height." This sentence would be added to the definition of "Building, height of" and the existing five foot height now permitted for parapet walls in the W and CR districts would be deleted.

7. General Height of Penthouse

Current Regulations: The maximum height of the penthouse above the roof is established at 18 feet 6 inches.

Testimony and Comments: Testimony received indicated that in some circumstances coding towers and related equipment protrude above the limit. A penthouse height of 20 feet would take care of this problem and would also allow the full use of high speed elevators. The Commission indicated its desire to keep the existing limit and not allow equipment to exceed that limit.

Proposed Action: Add the following sentence to all references to penthouse height limit for each zone district.

Equipment housed in such roof structure shall not protrude above the permitted 18'-6" height.

8. Penthouse Floor Area Ratio (FAR) Credit of .37

Current Regulations: There is an FAR credit of .37 which was established in 1960 to offset the additional cost and time delay resulting from the BZA approval process.

Testimony and Comments: The Commission expressed concern that the credit would encourage larger than necessary penthouses but testimony did not support this concern. Large penthouses such as the one on 1300 New York Avenue, NW., is sized primarily for design reasons.

Proposed Action: None.

9. Penthouse Color and Shape

Current Regulations: The penthouse is required to harmonize with the main structure in architectual character, material and color. Walls must rise vertically but roofs can be sloping.

Testimony and Comments: It was suggested in testimony that the regulations be changed to ensure that "harmonize" not be interpreted to include "contrast"; also, to clarify that sloping roof/walls are permitted. The Commissioners felt the term "harmonize with", currently used, provided the flexibility to permit variation in materials and color encouraging a high level of design.

Proposed Action: None.

Federal Interest Evaluation

The current District of Columbia Zoning Regulations require a 1:1 setback from all lot lines except in the C-5 zone district where the setback is measured from the perimeter of the roof. The Height Act of 1910 provides that "penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective height above the adjacent roof." The notice for the public hearing on this case included a proposal to have penthouses set back from the perimeter of the roof in keeping with the C-5 District and the Height Act.

The proposed change in the text of the regulations was as follows:

> Require that the setback of housing for mechanical equipment, a stairway or elevator penthouse be measured from the perimeter of the roof rather than the lot line by replacing "all lot lines of the lot" with "the perimeter of the roof" in existing Paragraphs 3201.26, 4201.22, 5201.24 and 6201.22 and in existing Sub-sections 4403.3 and 4503.5.

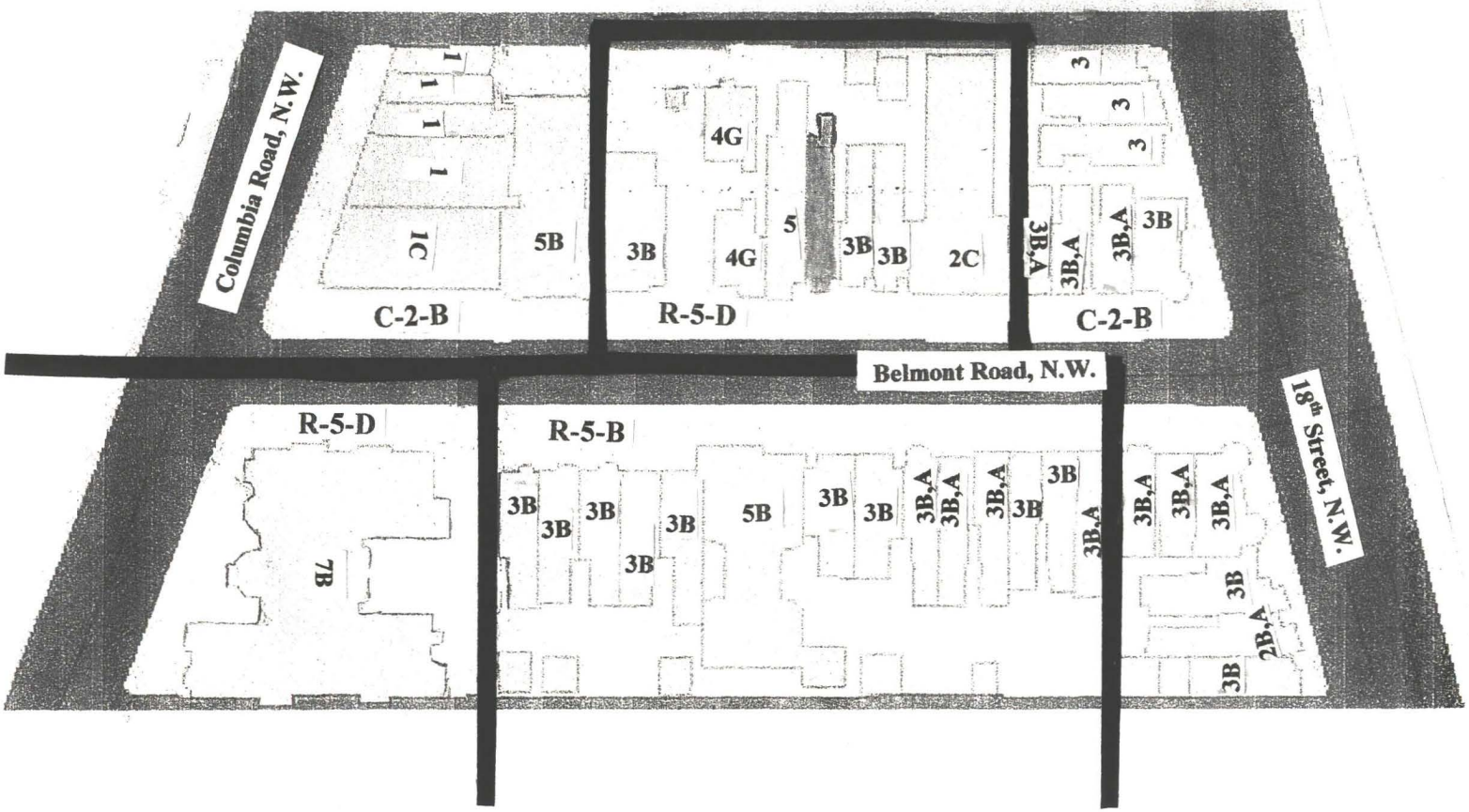
Both the Federal and District Preservation and Historic Features elements of the Comprehensive Plan for the National Capital contain a policy which states that "(t)he Federal and District governments should cooperatively continue to protect the historic horizontal character of the National Capital by limiting building heights in accordance with an act to regulate the height of buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Code, sec. 5-401 et seq.)." Setbacks measured from the exterior walls should be included in the regulations in keeping with the Heights Act, the intent of the Act to hide penthouses and other rooftop structures as much as possible and the above policy to protect this city's horizontal character.

The Zoning Commission should consider adopting text language in keeping with the 1910 Act and he proposed text change advertised for this case.

The Zoning Commission's resolution on the eight other items which were the subject of the public hearing on this case, and previously described, do not appear to be inconsistent with policy of the Comprehensive Plan nor would they adversely affect the Federal Establishment or other Federal interests in the National Capital.

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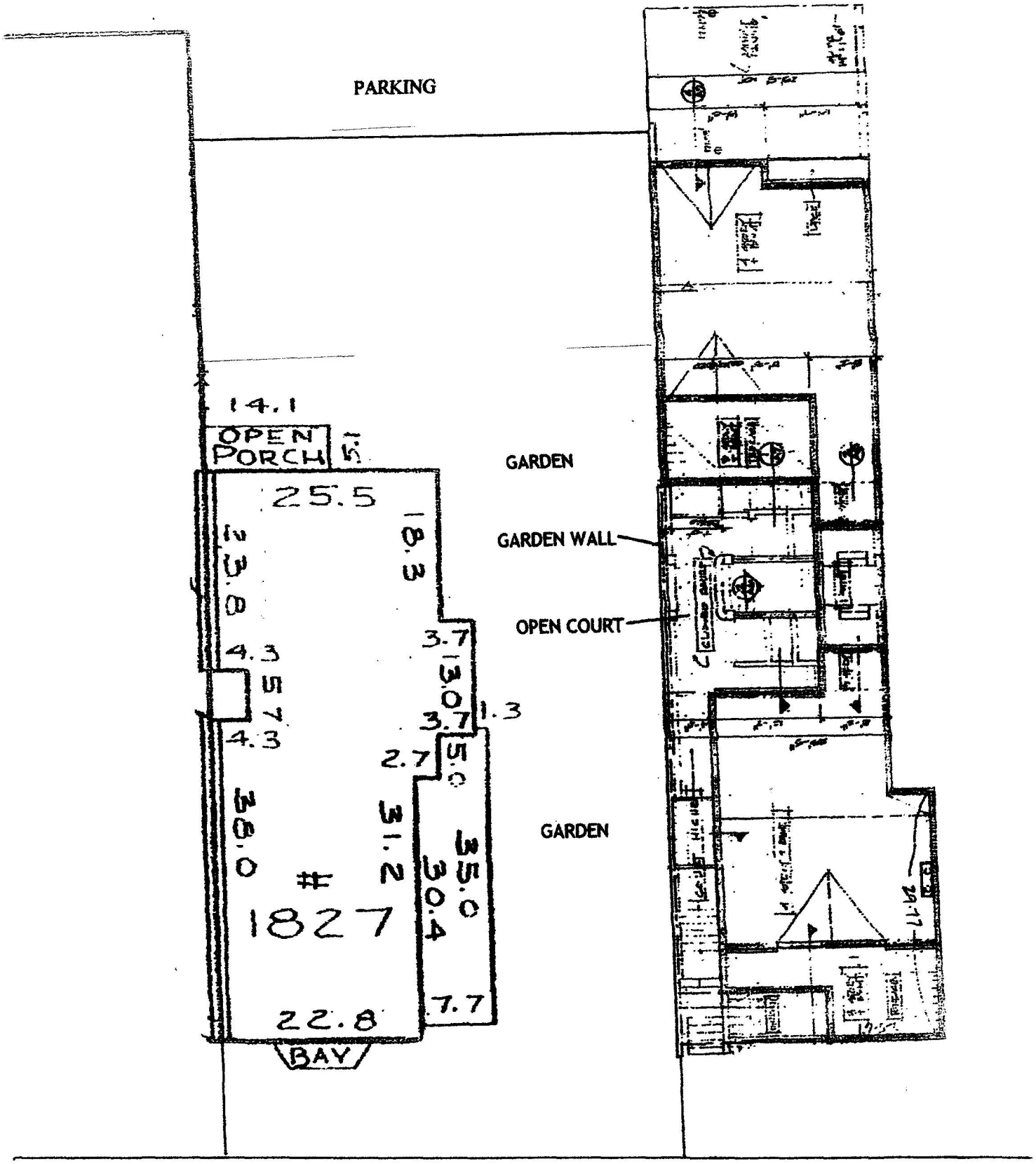
BELMONT ROAD ZONING AND BUILDINGS



Legend:
Heights noted in stories plus possible basement, attic, cellar or garage. A=Attic with small windows; B=Basement; C=Cellar, G=Garage.

1819 Belmont Road is grayed for emphasis:
The owners assert the building consists of a basement plus 5 stories and what is claimed to be an attic plus a roof structure. To laymen, it looks like an 8 story building. The building replaced a 3-story plus basement rowhouse matching its two neighboring houses to the east.

8


PARKING
14.1
OPEN PORCH
5.1
25.5
18.3
GARDEN
GARDEN WALL
OPEN COURT
3.7
13.0
3.7
1.3
4.3
5.5
4.3
2.7
5.0
GARDEN
39.0
31.2
35.0
30.4
#
1827
22.8
7.7
BAY
29.17
1831 BELMONT
1827 BELMONT
1823 BELMONT
BELMONT ROAD, NW



1827 BELMONT GARDEN AND PORCH,
VIEWED FROM 1823 BELMONT COURT



1823 BELMONT COURT, VIEWED
FROM 1827 BELMONT PORCH

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SUN EMERGING FROM BEHIND
ROOF STRUCTURE, VIEWED
FROM ROOF DECK LEVEL,
1827 BELMONT



SUN EMERGING FROM BEHIND
ROOF STRUCTURE, VIEWED FROM
GARDEN, 1827 BELMONT



SUN EMERGING FROM BEHIND
ROOF STRUCTURE, VIEWED FROM
REAR DECK, 1823 BELMONT



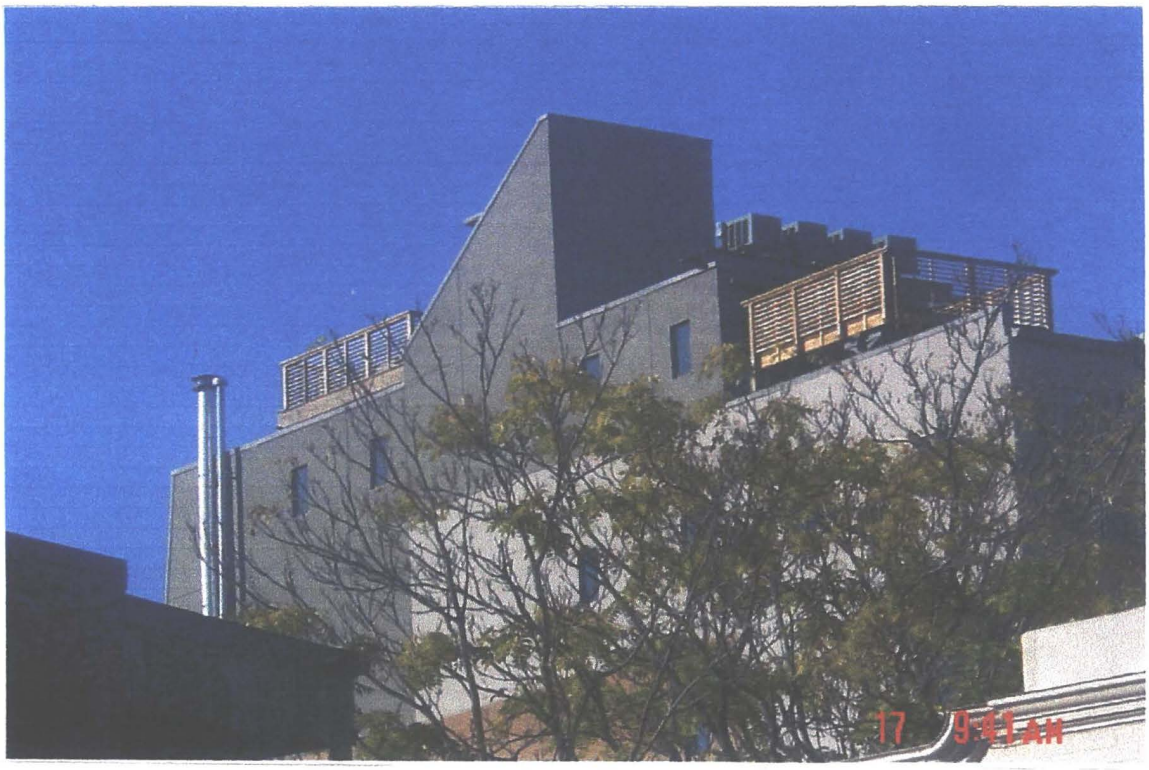
SHADOW CAST BY ROOF
STRUCTURE ON APARTMENT
WINDOWS IN EAST WALL
OF 1831 BELMONT



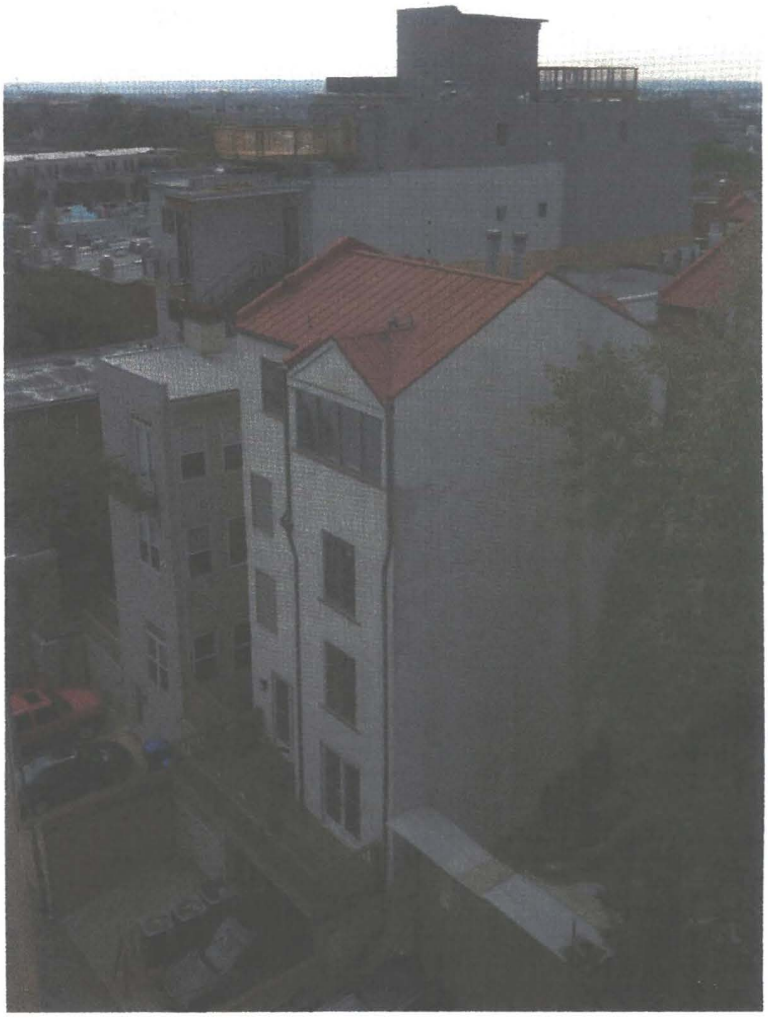
ROOF STRUCTURE VIEWED
FROM SIDEWALK, 1800 BLOCK
OF BELMONT ROAD, NW



ROOF STRUCTURE VIEWED
FROM 1824 BELMONT ROAD, NW



ROOF STRUCTURE VIEWED
FROM 2400 BLOCK OF 18TH
STREET, NW



ROOF STRUCTURE VIEWED
FROM 1852 COLUMBIA ROAD, NW



ROOF STRUCTURE VIEWED FROM 1800
BLOCK OF KALORAMA ROAD, NW