BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of
Jemal's Mass 12933 L.L.C. and
400 Massachusetts Avenue, LLC

BZA Application No. 17266
Public Hearing: January 11, 2005
ANC 2C

D.C. OFFICE OF ZONING
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STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR §3103.2, for variance relief from the off-street parking requirements (§2101.1) of the Zoning Regulations, when the total number of spaces provided on Lot 51 satisfies the schedule of parking requirements for the proposed mixed use construction but said parking spaces are not devoted to the commercial use on Lot 2463, which mixed use is located in the DD/C-2-C District, at premises address of 400 Massachusetts Avenue, NW (Square 517, Lot 51)(the "Subject Property").

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment has jurisdiction to grant the requested variance relief pursuant to §3103.2 of the Zoning Regulations. Section 3103.2 provides,

> [w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially

Board of Zoning Adjustment
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impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

Before proceeding with the discussion of the merits of this application, the following additional materials are submitted:

Exhibit A:	A portion of the Sanborn Atlas showing the Subject Property outlined in red ink.
Exhibit B:	A portion of the Zoning Map showing Square 517 outlined in red ink, with zoning designation of DD/C-2-C.
Exhibit C:	Plans showing location of ground level retail uses and parking levels within the Project.
Exhibit D:	Outlines of testimony of Representatives of Jemal's Mass 12933 L.L.C., and 400 Massachusetts Avenue, LLC, Applicants.
Exhibit E:	Outline of testimony of Representative of Esocoff and Associates, project architect.
Exhibit F:	Outline of testimony of Representative of CVS, the initial tenant for the commercial condominium unit.
Exhibit G:	Outline of testimony of Representative, O.R. George and Associates, traffic engineering expert.
Exhibit H:	Outline of testimony of Representative of the Mayhood Companies.
Exhibit I:	Outline of testimony of Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP.

IV.
BACKGROUND

A. Site and Vicinity Characteristics

1) The Subject Property:

The Subject Property, Record Lot 51 in Square 517, with premises address of 400 Massachusetts Avenue, NW, comprises approximately 27,150 square feet of total lot area and is

improved with a 13-story apartment house with ground floor space designated for retail uses, and with four levels of below-grade parking. Construction of the apartment house is largely complete.

The Subject Property is essentially triangular in shape, with the eastern property line of Lot 49 forming the western boundary of the site and with the northern and southern lines framed by the street lines of H Street, NW, and Massachusetts Avenue, NW, respectively, which meet at an extremely acute angle at its eastern end along 4th Street, NW. Along the Massachusetts Avenue frontage, the Subject Property excludes Lot 856, with approximately 30.6 feet of street frontage and 2,085 square feet of lot area, and which is improved with the former Old Engine Company No. 6 firehouse, a designated District of Columbia landmark building.

The Subject Property is zoned C-2-C and is located within the Downtown Development District ("DD"), in Housing Priority Area B. The Subject Property is defined as a corner lot for zoning purposes, with frontages on Massachusetts Avenue, 4th and H Streets, NW.

The Subject Property is located less than 1,000 feet from both the Gallery Place/Chinatown and Judiciary Square Metrorail stations. The site is well-served by public transportation, including multiple Metrobus routes passing along H Street, NW, in front of the Subject Property.

2) Vicinity:

In addition to the Subject Property and the Old Engine Company No. 6 firehouse, Square 517 contains the Judiciary House Apartments at 461 H Street, NW, small office buildings along the north side of H Street, NW, at the intersection with 5th Street, NW, and an apartment house at 450 Massachusetts Avenue.

Immediately south across H Street, NW, from Square 517 is the headquarters building for the General Accounting Office, with premises address of 535 G Street, NW. To the east are Federal Reservations No. 75 and No. 76 and a complex of intersections among H Street, Massachusetts Avenue, 3rd and 4th Streets, NW. North of Square 517, across Massachusetts Avenue, are a variety of older, smaller scale commercial buildings. West of Square 517, across 5th Street, NW, are the Corinthian Baptist Church, at 600 I Street, NW, an apartment house at 808 5th Street, NW, and various smaller scale commercial buildings located along the intersection of 5th and H Streets, NW.

The Subject Property is located on the eastern edge of Chinatown, with its vibrant mix of street- level retail, office and residential uses, including the newly-opened Gallery Place development, and on the northern edge of the Judiciary Square area, which is primarily developed for offices. The site is located within the boundaries of Advisory Neighborhood Commission 2C.

B. <u>Zoning History of the Subject Property</u>:

In 2001, the Subject Property was designated as an amenity site to a Planned Unit Development ("PUD") approved by the District of Columbia Zoning Commission for the rehabilitation and redevelopment of the former Woodward & Lothrop Department Store building, located at 1025 F Street, NW. Pursuant to the PUD order (Zoning Commission Order No. 940), the Subject Property and one other amenity site were designated to be developed as substantial residential buildings. To this end, the Zoning Commission required as a condition to the PUD that a covenant be entered into, restricting development on the Subject Property to "not less than 200,000 and as much as 330,000 square feet of residential type of uses with commercial

development to be provided on the ground level and cellar level only, and with no principal office uses permitted." This covenant was recorded on June 7, 2001.

In 2002, through Application No. 16881, the Board of Zoning Adjustment granted variance relief from the lot occupancy requirements and a special exception for roof structures to permit the construction of the mixed use - apartment house/commercial project on the Subject Property (the "Project"). At the time of the BZA hearing and as approved by the Board, the building contained only approximately 12,900 square feet of gross floor area designated for commercial use. The commercial space on the ground floor was subsequently enlarged by 4,400 square feet, reducing the number of residential units by six (which would have required two parking spaces) but increasing the number of parking spaces required for the commercial use by six spaces.

C. The Project

As part of the mixed use development of the site, the Subject Property has been made subject to a master condominium regime which includes two units: namely (1) a residential unit (which, in turn, is subdivided into a residential sub-condominium comprised of 256 dwelling units and approximately 200 parking spaces on the four below-grade levels; and (2) a commercial unit containing approximately 17,308 square feet on the ground level of the Project (condominium lot 2463). Applicant 400 Massachusetts Avenue, LLC, the current owner of the commercial unit of the master condominium has contracted to sell said commercial condominium unit to Applicant Jemal's Mass 12933 L.L.C., and has authorized the filing of the present application to the Board of Zoning Adjustment. The commercial space is intended to be leased to a CVS drug store, one of the uses permitted as a matter-of-right in the space.

V.
DISCUSSION

In the present application, the Applicant seeks variance relief from the parking requirements set forth in §2101.1 of the Zoning Regulations as it relates to the commercial/retail portion of the Project. While more than the total required amount of parking is being provided within the Project (eighty-three spaces required, 200 spaces provided), all but ten of the 200 spaces are required for use by the residential portion of the Project, leaving the commercial unit short of the number of parking spaces required by the parking schedule for commercial/retail uses. Please note that in its original application materials, the Applicant requested a variance to allow no parking to be provided for the retail portion of the Project. As will be demonstrated at the public hearing, no parking spaces are required or needed for the customers or employees of a retail use planned for the Commercial Condominium Unit. Nonetheless, the Applicant has endeavored to allocate to the retail use the maximum number of spaces available consistent with the actual parking demand for the other residential use in the building. The Applicant has determined that it can provide ten of the required nineteen spaces.

VI.
THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM THE ZONING REGULATIONS

As set forth herein and through the testimony to be provided at the public hearing, the Application meets the burden of proof for variance relief from the parking requirements of §2101 of the Zoning Regulations.

The burden of proof for variance relief is well established. The Applicant must demonstrate that the Subject Property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty

to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535, 541 (1972). As set forth below, the Application meets this three-part test for area variance relief as established in §3103.2.

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

As the Board has previously held, the Subject Property is impacted by an exceptional site configuration and street frontage. The Subject Property is an exceptionally large pie-shaped property with prominent frontages along both I Street, NW, and Massachusetts Avenue, NW. In addition, the Subject Property surrounds on three sides the former Old Engine Company No. 6 firehouse, which fronts on Massachusetts Avenue. These site constraints have dictated the design of the residential project, including the need to excavate to a sufficient depth to provide four levels of below-grade parking.

As mentioned above, and as the Board has previously held, the Subject Property is also exceptional as a result of its zoning history. The Subject Property was designated as an amenity site for the Woodward and Lothrop Building PUD. Thus, despite its commercial zoning, the Subject Property is restricted by covenant to provide a minimum of 200,000 square feet of residential use on-site, with retail use (not general office) on the ground and cellar levels. Under the parking schedule, retail use in the C-2-C District demands more parking be provided (after the first 3,000 sf, 1 space per 750 sf of retail) than for general office use (after the first 2,000 sf, 1 space per 1,800 square feet of office). Thus, as here, where the Commercial Condominium Unit occupies 17,308 square feet, retail use of that space (as required by the PUD Covenant, if commercial) demands nineteen spaces be provided. Were office use permitted for the space,

only nine spaces would need to be provided. Likewise, the Applicant determined in the course of project development that ground level residential use was not the highest and best use of space, nor the most desirable for residential use. This explains why the Project that the Applicant ultimately has constructed contains approximately 4,400 square feet more ground level retail space (in lieu, not in addition) to ground level residential space presented to the Board in Application No. 16881. This post-hearing conversion, while having absolutely no impact on the relief granted by the Board, increased the parking requirement for the commercial portion of the Project by six parking spaces (4,342 sf divided by 750 sf).

The current improvements have been constructed in compliance with the PUD order and the restrictive covenant. Further, the chosen master condominium regime is a direct result of the mixture of residential and commercial contemplated for the site by the PUD. The requirement of the PUD Order to provide ground level retail uses, rather than general office uses, has directly and uniquely impacted the Site, resulting in a greater parking requirement. Likewise, the Applicant's market-based decision to convert planned ground level residential uses to ground level retail in an effort to maximize the fiscal efficiency of a Project (which, in turn is driven by the exceptional configuration of the site), all lend to the exceptional nature of the Subject Property.

B. <u>The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty</u>

In order to obtain an area variance, an owner must prove peculiar and exceptional practical difficulties caused by compliance with the applicable regulation. Furthermore, these difficulties must be related to a property's exceptional circumstances and not to general conditions in the neighborhood. The Board has previously held, that, as a result of exceptional conditions affecting the Subject Property, the strict interpretation of the Zoning Regulations will

result in a practical difficulty upon the Applicant. The Applicant will be faced with an additional practical difficulty if the Board requires the Project to reserve parking spaces for the retail use of the Project, when the Applicant demonstrates at the hearing that such parking spaces are not needed for the pedestrian-oriented nature of the retail use, while at the same time precluding use of said parking spaces by the residential portion of the Project, which, as the Applicant will demonstrate at the hearing, needs those spaces to remain competitive in an aggressive downtown residential market.

As the Board may recall from Application No. 16881, significant practical difficulty was encountered in developing the residential and retail project on the Subject Property consistent with the requirements of the PUD order. The resulting residential/retail project confronted inefficiencies created by the site configuration, resulting in significantly increased costs to the project (including construction of four levels of below-grade parking). If the Subject Property were a rectangular site of 27,000 square feet without the constraints discussed herein, in four levels of parking the site could easily have accommodated the minimum number of spaces required by the market for the residential use and the minimum number of spaces required by the Regulations for the commercial use. The specific features of the Subject Property create a practical difficulty by reducing the number of spaces which might otherwise have been provided to only 200 spaces, a reduction of more than 100 spaces below what could be provided on four levels.

The landmark firehouse serves as a prime example. Owing to its location (mid-block and surrounded on three sides by the Subject Property), the Project's parking level footprint was required to be significantly reduced. At the same time, market indicators suggested the necessity of providing as close as possible to a 1:1 ratio of parking spaces to dwelling units in order to remain competitive in the rapidly developing downtown residential market. Thus, four levels of

below-grade parking were excavated and constructed at great expense to the project. A fifth level of parking was also studied but the resulting soil studies indicated that it would not be feasible or prudent to construct.

As with the earlier application, the Applicant here is confronted with a practical difficulty in complying with the Regulations as a direct result of the exceptional conditions impacting the Subject Property. The Project has been constructed in compliance with the PUD order, the restrictive covenant and the BZA order, including the parking schedule set forth in the Zoning Regulations. The parking provided well exceeds the number of spaces required based upon the mixed uses proposed for the building. Nonetheless, given the extremely competitive nature of the current downtown residential market, the parking spaces created in the Project all are needed to be provided to residents of the building in order to approximate as closely as possible the 1:1 ratio benchmark of parking to residential units. The units in the residential condominium for which a parking space was available have sold at a much faster pace than those where parking was not available. The increase in the number of parking spaces that can be made available for the residential units by the requested variance to reduce the nonresidential parking is an important marginal change to improve the viability of selling and occupying the remaining number of residential units.

These spaces are required to be allocated at the expense of the ground level retail/service uses in the building. The exceptional lot configuration noted above results in a practical difficulty, in that no more parking can feasibly be provided on the site. As demonstrated in Application No. 16881, the construction of a fifth level of below-grade parking on this oddly-configured and situated site would be prohibitively costly and impractical from an engineering perspective. Were it not, the developer would have pursued such a course during original

planning for the Project in order to provide the optimal amount of parking to support the residential portion of the Project.

For all these reasons, a strict interpretation of the Zoning Regulations would cause a practical difficulty to the Applicant deserving of relief from the Board.

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

The Application can be approved by the Board with no substantial detriment to the public good and with no impairment to the intent, purpose and integrity of the Zone Plan, as set forth below.

1. Public Good:

Ground level retail uses are contemplated by Applicant Jemal's Mass 12933 L.L.C.. While the DD/C-2-C zoning for the Subject Property would otherwise permit general office use, the PUD Order and the restrictive covenant require that only those commercial uses other than principal office uses be permitted. Such permitted retail and service uses, for example a pharmacy, other retail or restaurant, are largely intended for, and overwhelmingly patronized by, clients and customers arriving by foot, including residents of the Project. Like the residential uses they support, these sorts of ground level retail and service uses are integral to the vitality necessary for a "living downtown" but off-street parking is not integral to the operations of such retail and service uses. In any event, the Subject Property is located in close proximity to the Gallery Place/Chinatown Metrorail Station, and is serviced by numerous Metrobus routes. In addition, there are an abundance of short-term public parking spaces available in very close proximity to the site. The Applicant is prepared to provide ten parking spaces for the commercial use, even though it is the Applicant's view that those spaces will not be needed or used.

2. Zone Plan:

The grant of variance relief in the present case will likewise not impair the District's zone plan. As before, the Project as a whole complies with the parking schedule set forth in §2101.1 of the Zoning Regulations. Pursuant to that schedule, eighty-three spaces are required based upon the number of residential units (256) and the commercial gross floor area (17,308 sf) constructed on the site. Approximately 200 spaces have been provided on the four parking levels. Nonetheless, as a result of the market realities impacting downtown residential properties, all but ten spaces must be devoted to the residential portion of the Project. The present application only regards ownership and allocation of the 200 parking spaces, as established per the condominium regime. Absolutely no reduction in total parking spaces provided in the building is proposed or contemplated.

Section 2108 of the Zoning Regulations provides a mechanism by which the Board may grant up to a twenty-five percent reduction from the parking schedule through the special exception process of §3104.1 of the Zoning Regulations. A twenty-five percent reduction in the present case would result in the Applicant being required to provide fifteen spaces, whereas the Applicant can feasibly provided no more than ten spaces. In any event, the Board may grant such a reduction through special exception to most any commercial project. In the present case, the Applicant is requesting only slightly greater relief from the Board in terms of the number of spaces. Yet, the Applicant is making this request as a direct result of the unique conditions and situations of the site and the Project, including the size and shape of the lot and the mixed use nature of the building where one use (residential) needs the parking and the other use (retail) does not. Given the small nature of the relief requested, approval of this application by the Board is in keeping with Board's decisions and furthers the integrity of the Zone Plan.

For all the above reasons, variance relief from §2101.1 of the Regulations can be granted without detriment to the public good or without substantial impairment to the Zone Plan.

VII.
WITNESSES

A. Representative of Jemal's Mass 12933 L.L.C., Applicant.

B. Representative of 400 Massachusetts Avenue, LLC, Applicant.

C. Representative of Esocoff and Associates, the project architect.

D. Representative of CVS, the initial tenant for the commercial condominium unit.

E. Representative of the Mayhood Companies.

F. Representative of O.R. George and Associates, Traffic Expert.

G. 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 the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicant therefore requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

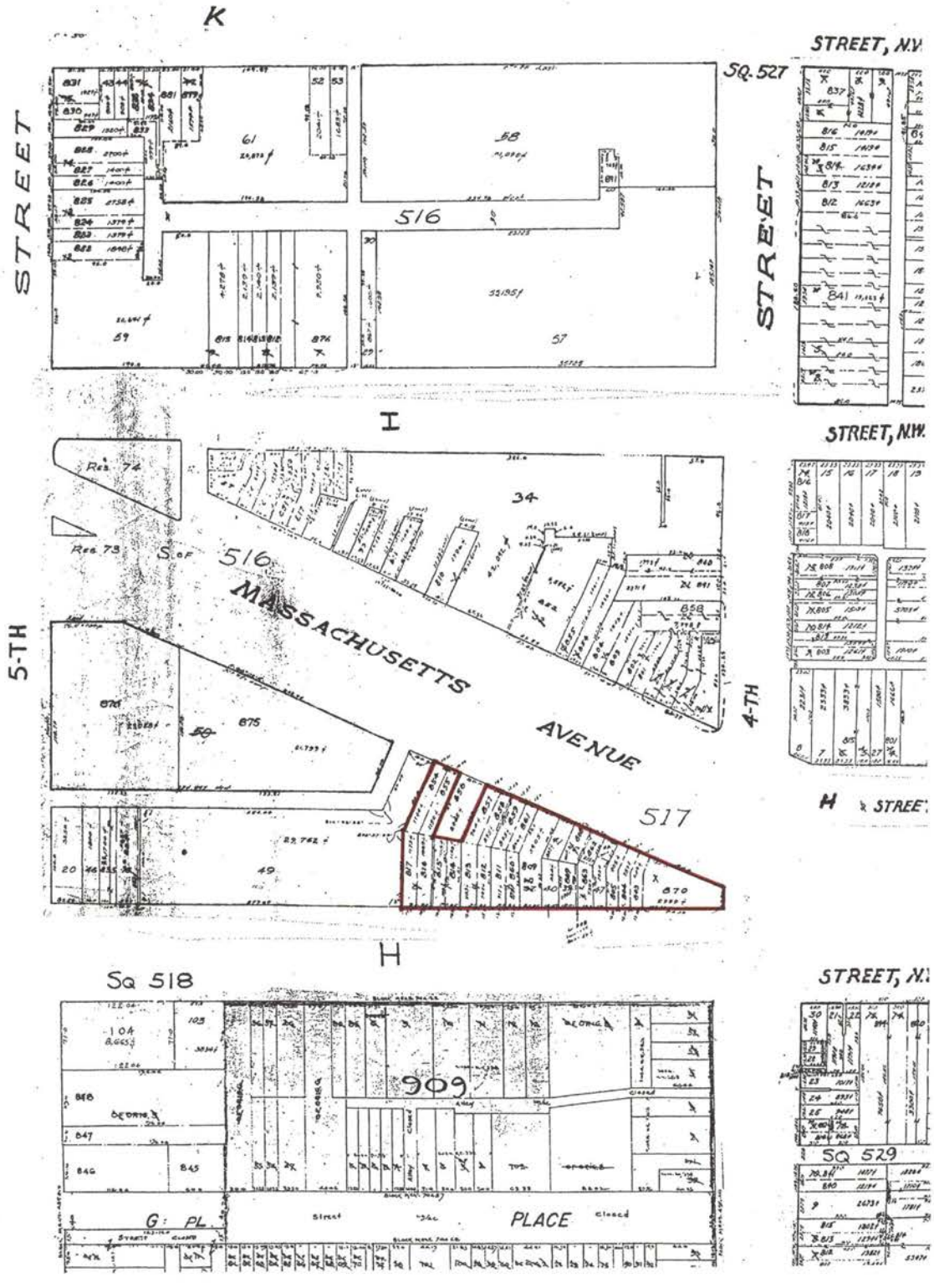
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Norman M. Glasgow, Jr.

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Dennis R. Hughes

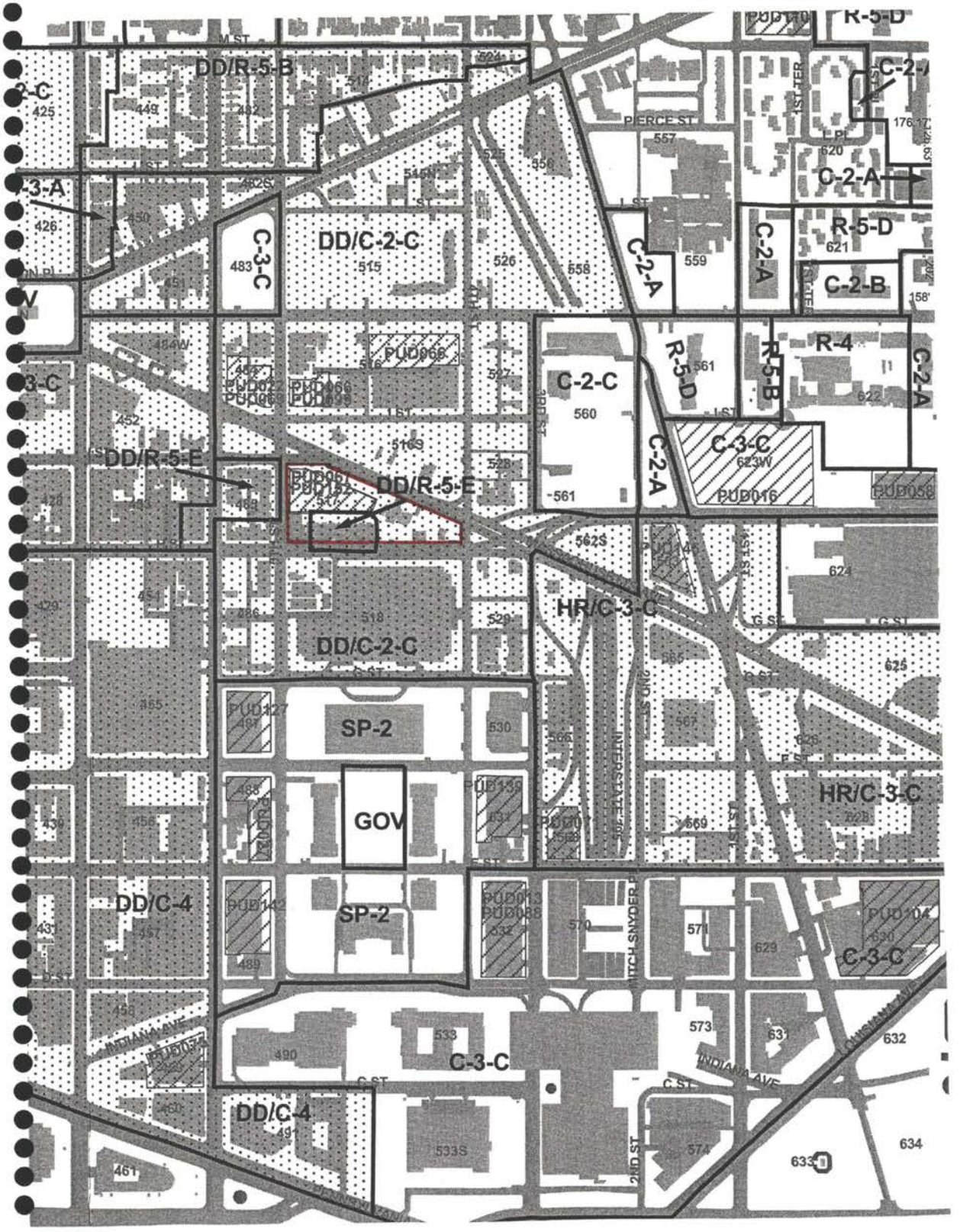
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December, 2004

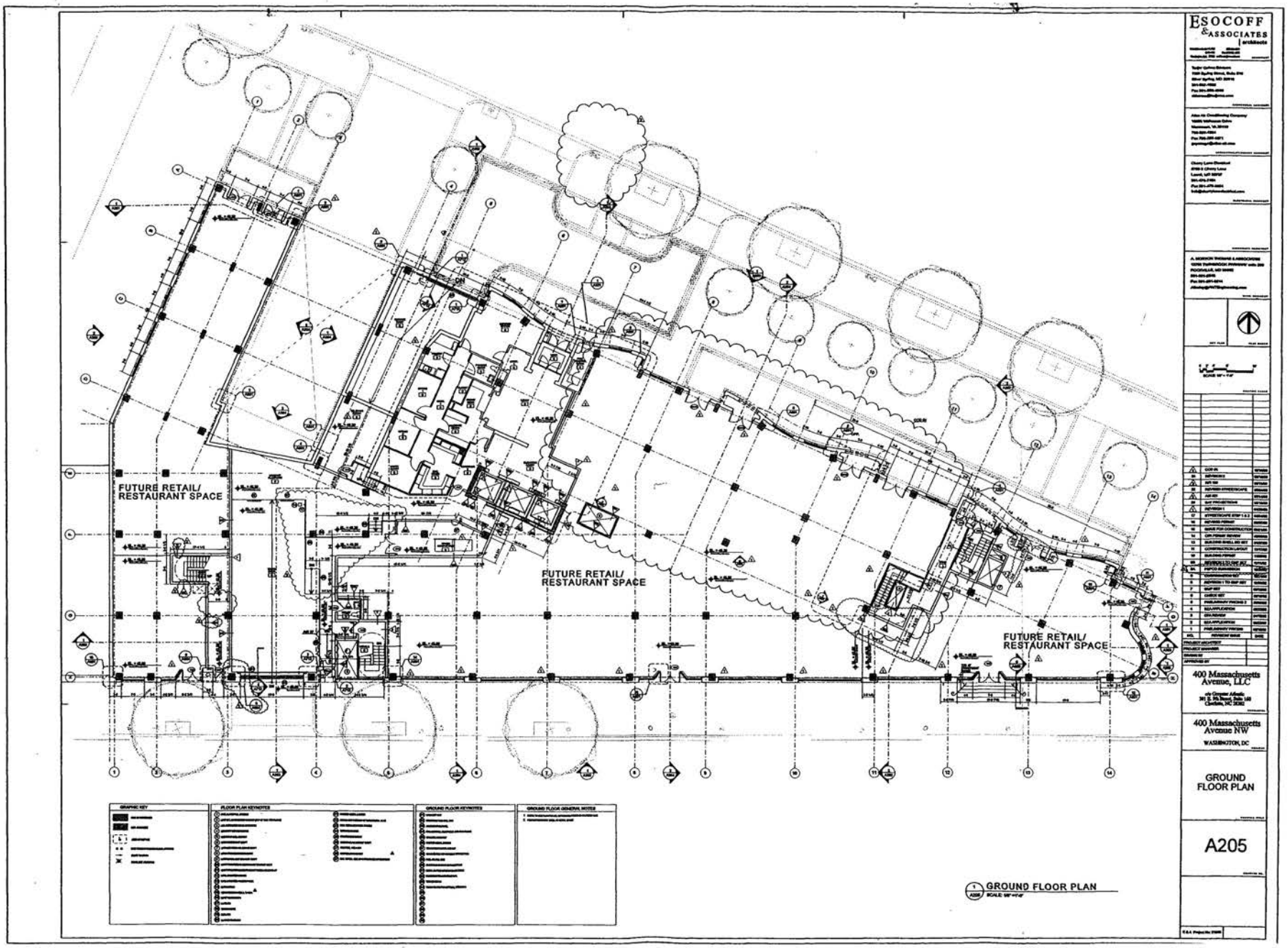
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R-5-D
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C-3-C
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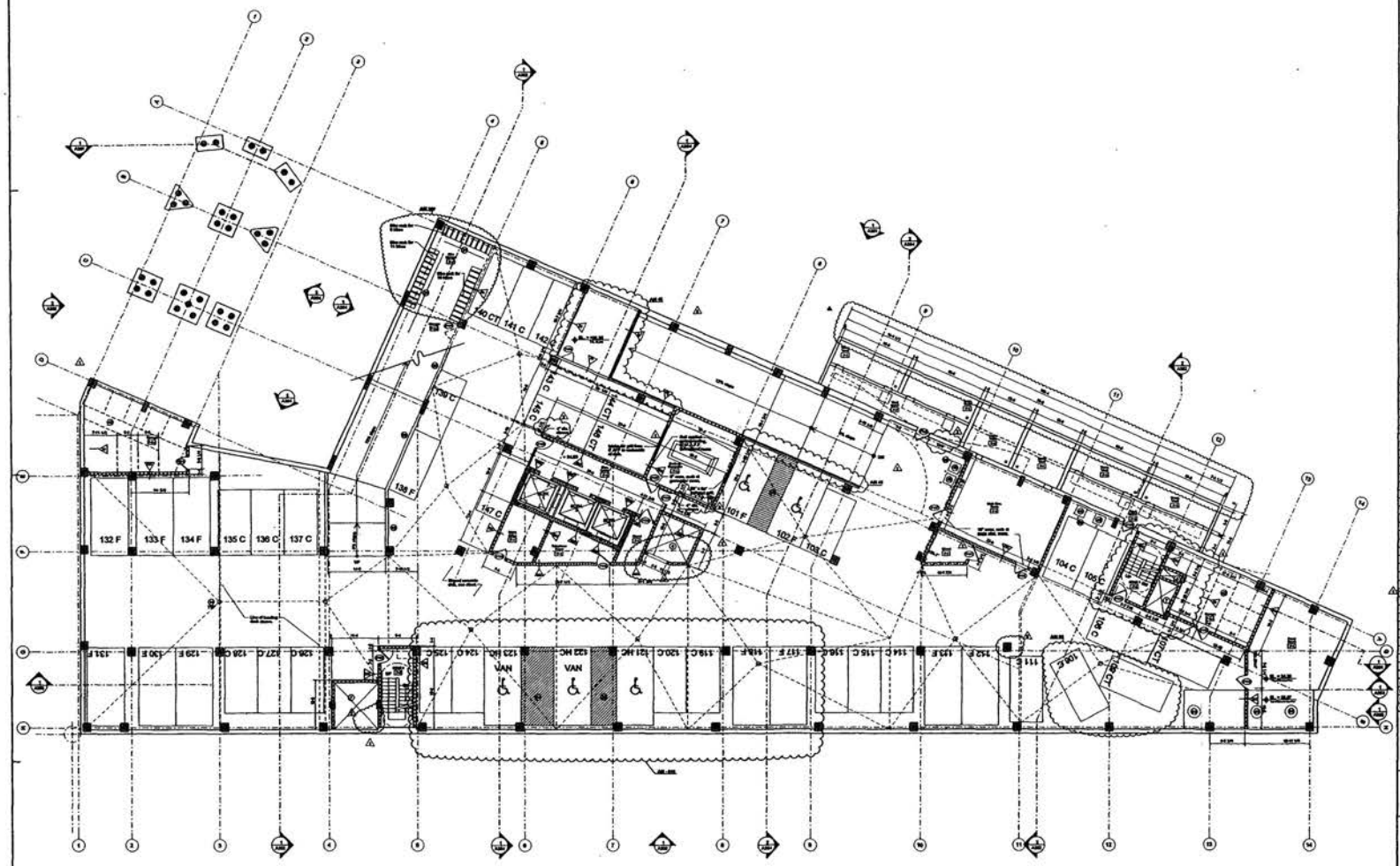
ESOCOFF & ASSOCIATES | Architects

400 Massachusetts Avenue, LLC

400 Massachusetts Avenue NW
WASHINGTON, DC

GROUND FLOOR PLAN

A205



P-1 FLOOR PLAN
SCALE: 1/8" =1'-0"

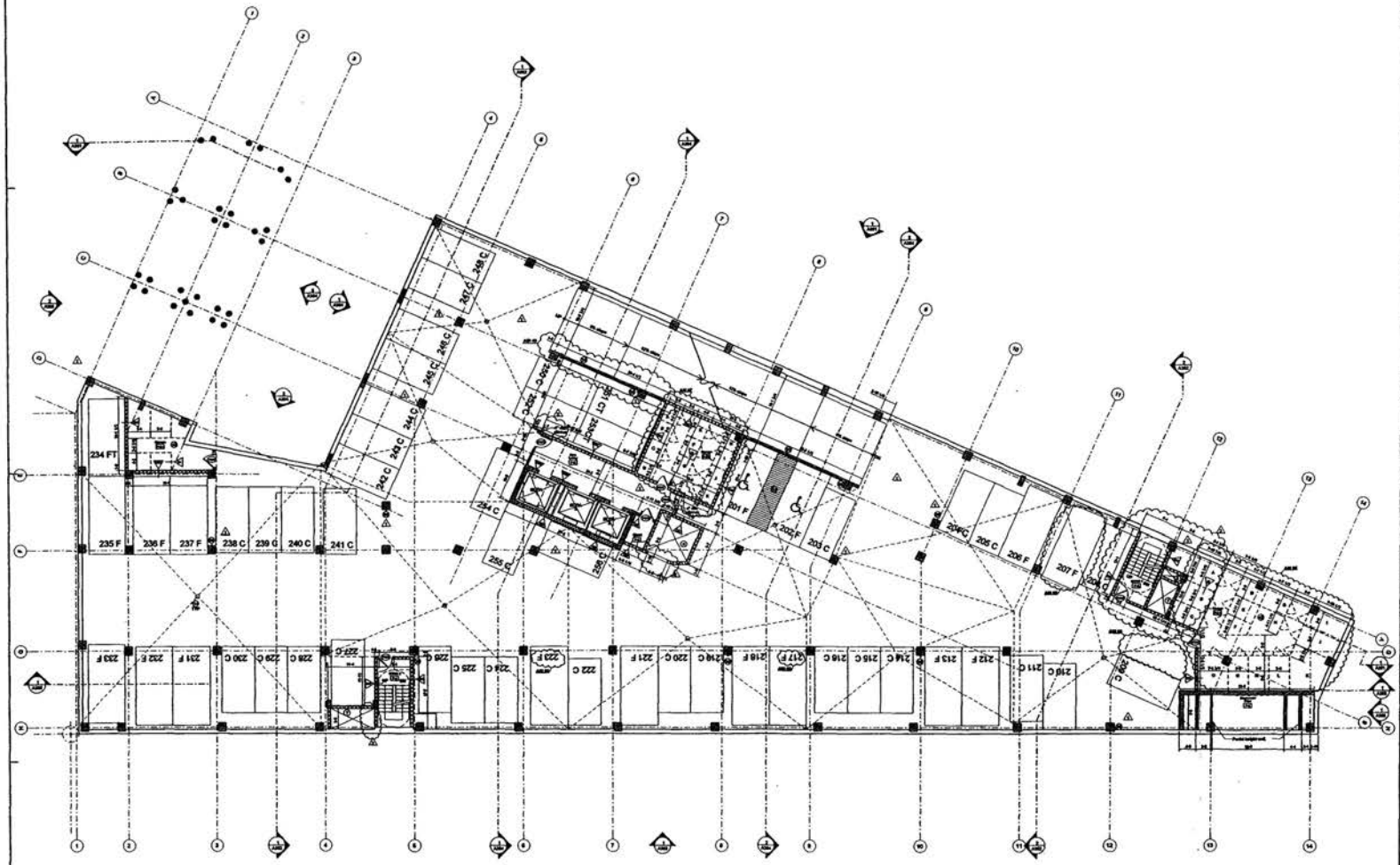
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Architects

400 Massachusetts Avenue, LLC

400 Massachusetts Avenue NW
WASHINGTON, DC

P-1
FLOOR PLAN

A204



P-2 FLOOR PLAN

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

ESOCOFF & ASSOCIATES architects

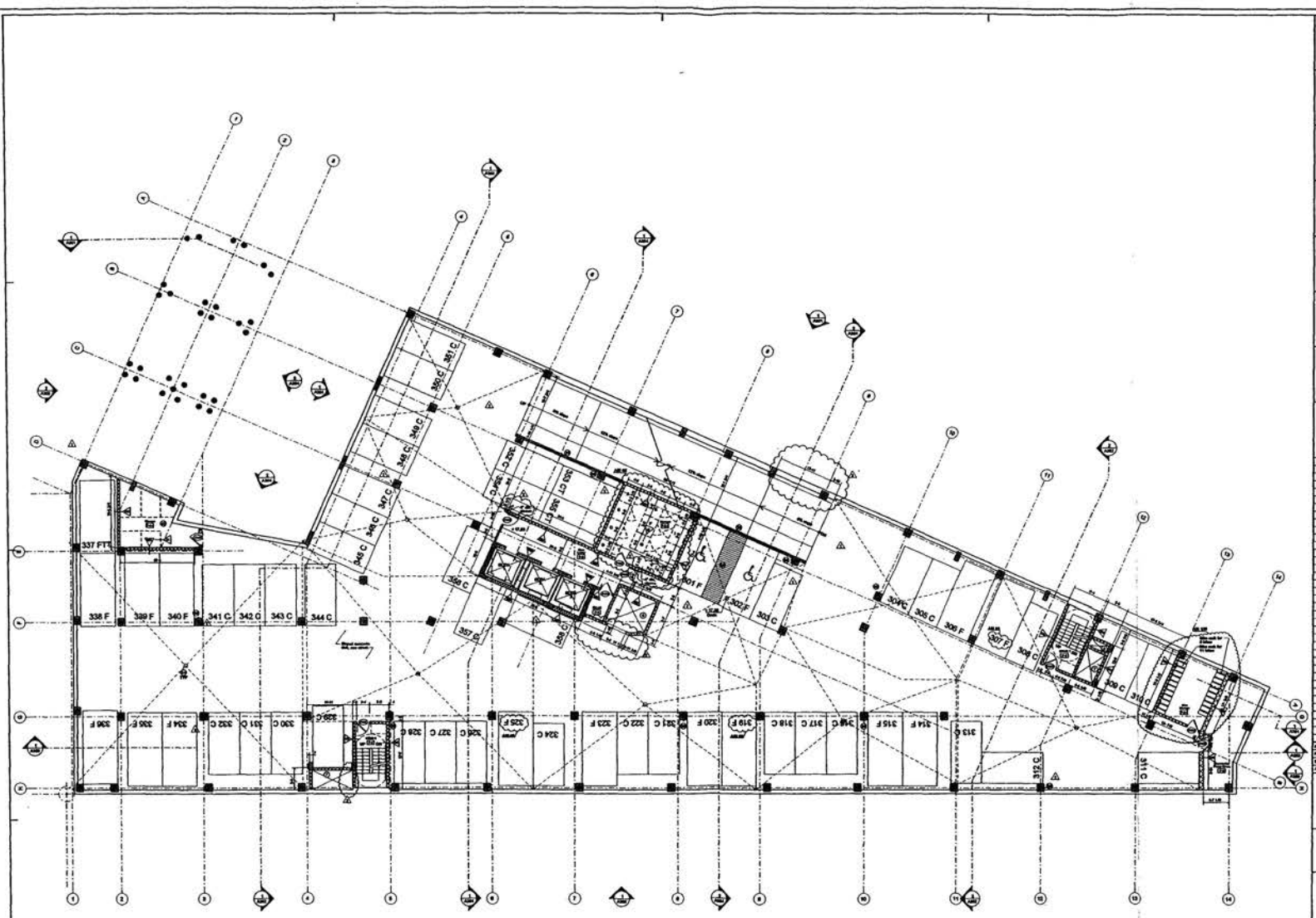
400 Massachusetts Avenue, LLC

400 Massachusetts Avenue NW

WASHINGTON, DC

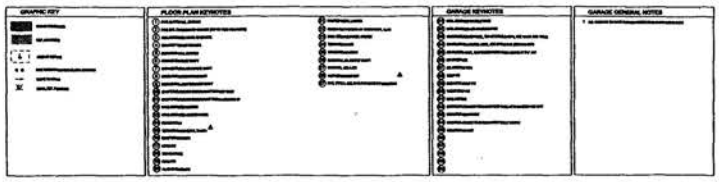
P-2 FLOOR PLAN

A203



P-3 FLOOR PLAN

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



ESOCOFF & ASSOCIATES

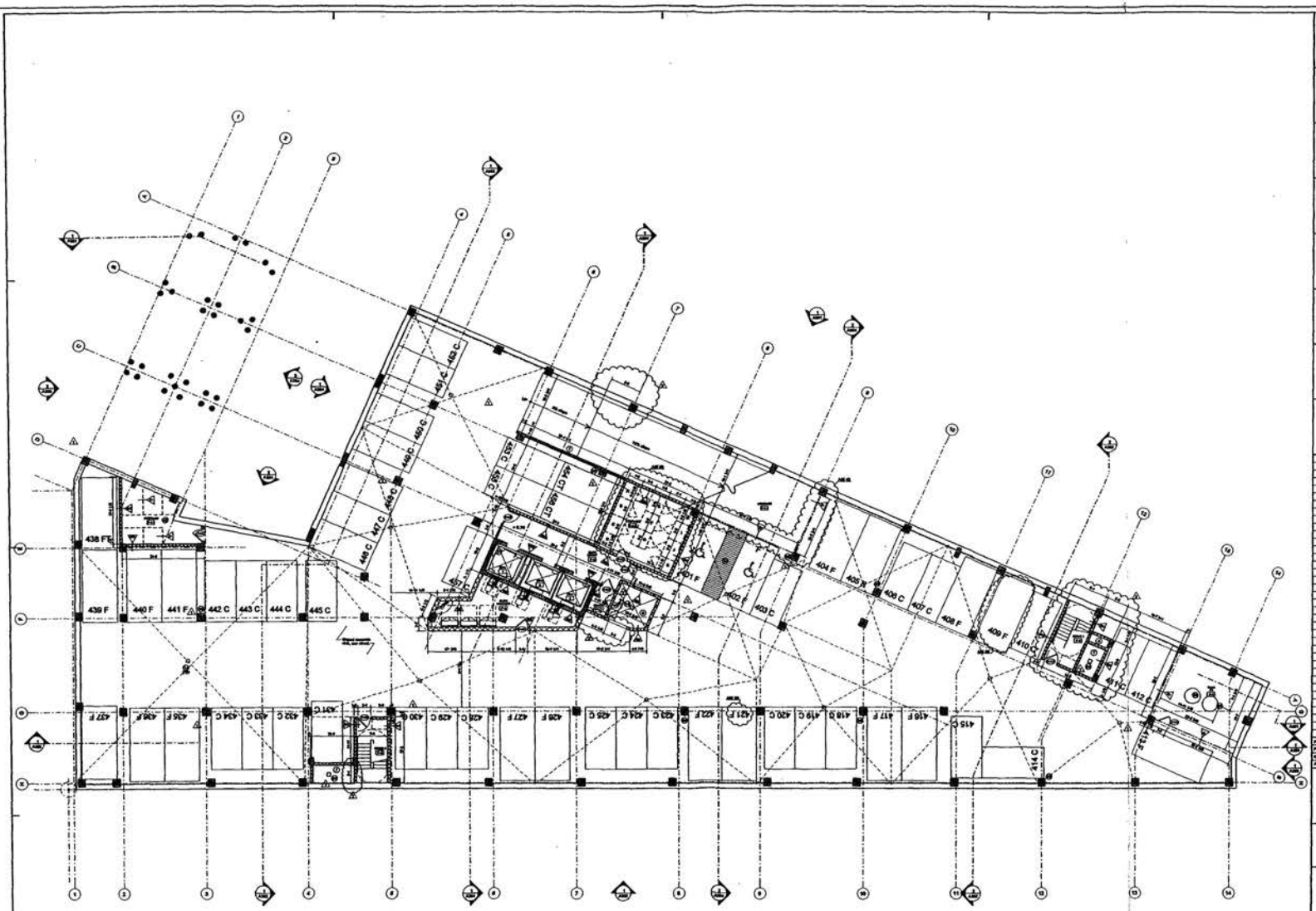
400 Massachusetts Avenue, LLC

400 Massachusetts Avenue NW

WASHINGTON, DC

P-3 FLOOR PLAN

A202



GRAPHIC KEY

FLOOR PLAN KEYNOTES

GARAGE KEYNOTES

GARAGE GENERAL NOTES

1 A201 P-4 FLOOR PLAN
SCALE: 1/8"=1'-0"

ESOCOFF & ASSOCIATES architects

400 Massachusetts Avenue, LLC

400 Massachusetts Avenue NW
WASHINGTON, DC

P-4
FLOOR PLAN

A201

D

OUTLINE OF TESTIMONY
REPRESENTATIVE OF APPLICANT
JEMAL'S MASS 12933, L.L.C. AND 400 MASSACHUSETTS AVENUE, LLC

I. **INTRODUCTION**

II. **GENERAL BACKGROUND RE: CONDOMINIUM DIVISION OF PROPERTY AND OWNERSHIP**

III. **NEED FOR PARKING FOR RESIDENTIAL PORTION**

IV. **NO NEED FOR PARKING FOR COMMERCIAL/RETAIL PORTION**

V. **VARIANCE RELIEF IS NEEDED FROM PARKING REQUIREMENTS**

VI. **CONCLUSION**

E

OUTLINE OF TESTIMONY
REPRESENTATIVE OF ESOCOFF AND ASSOCIATES
PROJECT ARCHITECT

I. **INTRODUCTION**

II. **DISCUSSION OF EXCEPTIONAL SITE CONFIGURATION**

III. **DISCUSSION OF OTHER SITE CONSTRAINTS LIMITING NUMBER OF PARKING SPACES PROVIDED**

IV. **COMPARISON OF SUBJECT PROPERTY TO EQUIVALENT SIZED SITE WITHOUT CONSTRAINTS**

V. **CONCLUSION**

F

OUTLINE OF TESTIMONY
REPRESENTATIVE OF CVS
INITIAL RETAIL TENANT

I. **INTRODUCTION**

II. **OVERVIEW OF PROPOSED USE FOR SITE – PHARMACY**

III. **EXPERIENCE IN URBAN LOCATIONS, IN DC AND ELSEWHERE RE: PARKING VS. PEDESTRIAN TRAFFIC**

IV. **NUMBER OF PARKING SPACES PROPOSED MORE THAN ADEQUATE**

V. **CONCLUSION**

G

OUTLINE OF TESTIMONY
REPRESENTATIVE OF O.R. GEORGE AND ASSOCIATES
TRAFFIC ENGINEERING EXPERT

I. INTRODUCTION

II. USE PROPOSED FOR SITE DOES NOT REQUIRE PARKING

III. NUMBER OF SPACES TO BE PROVIDED (10) IS MORE THAN ADEQUATE FOR PROPOSED USE

IV. OTHER COMPARABLE RETAIL USES WOULD REQUIRE NO MORE THAN 10 PARKING SPACES

V. CONCLUSION

H

OUTLINE OF TESTIMONY
REPRESENTATIVE OF THE MAYHOOD COMPANIES
RESIDENTIAL MARKETING EXPERT

I. INTRODUCTION

II. OVERVIEW OF SALES PATTERN IN SUBJECT BUILDING

III. FASTER SALES FOR UNITS OFFERING PARKING

IV. INCREASE IN SALES, THOUGH MARGINAL, IMPORTANT TO REMAINING SALES

V. CONCLUSION

I

Holland+Knight

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Outline of Testimony
before the Board of Zoning Adjustment

BZA Application No. 17266
400 Massachusetts Avenue, N.W.

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

January 11, 2005

I. Site location and description (see aerial photograph, attached)

A. Location

1. Eastern end of the square bounded by 4th, 5th, H and I Streets and Massachusetts Avenue, N.W.

2. Project site consists of lot 51 in Square 517

3. Site located three blocks southeast of Mt. Vernon Square

B. Size

1. Total site area is approximately 27,150 square feet

2. Frontage of approximately 335 feet on H Street, 17.5 feet on 4th Street and 330 feet on Massachusetts Avenue, interrupted by the thirty foot width of the former Fire House at 438 Massachusetts Avenue

C. Existing site condition – largely completed high-rise apartment house with space for ground floor retail and service uses

II. Description of surrounding area

A. Mt. Vernon Square East area

B. Area contains broad mix of uses and building types

C. New residential buildings completed, under construction or proposed

D. New convention center north of Mount Vernon Square

E. Remainder of Square 517

1. Two and three story buildings used for offices at the northwest corner of 5th and H Street

2. Judiciary House apartments at 461 H Street (90 foot high rise housing for the elderly)

3. Two story vacant former D.C. Fire House (historic landmark on the D.C. Inventory)

4. High-rise apartment house at 450 Massachusetts Avenue

F. Uses to the south in Squares 518 and 486, (bounded by 4th, 6th, G and H Streets)

1. General Accounting Office

2. St. Mary's Church

3. Commercial 90 foot building at 450 H Street

4. Red Roof Inn hotel at the corner of 5th and H Streets

5. Other miscellaneous buildings, some vacant, some commercial

6. High-rise apartment building at 770 5th Street and 715 6th Street (between G and H Streets)

7. Parking lots

G. Uses to the east in Squares 528 and 529 (bounded by 3rd, 4th G and I Streets)

1. High-rise apartment house at 300 Massachusetts Avenue

2. Parking lots

3. Best Western Hotel at 724 3rd Street

4. Second Baptist Church at 816 3rd Street

5. Further to the east is the Center Leg Freeway (depressed roadway between 2nd and 3rd Streets)

H. Uses to the North in Squares 516 and S-516 (bounded by Massachusetts Avenue and 4th, 5th and K Streets)

1. House of Ruth at the corner of Massachusetts Avenue and I Street

2. Parking lots

3. Vacant lots and buildings

4. Used car lot at the corner of Massachusetts Avenue and 4th Street

5. Chester Arthur Building (90 foot office building leased to the General Services Administration)

I. Uses to the west in Squares 484 and 485, (bounded by 5th, 6th, I and K Streets)

1. High-rise apartment house at the northwest corner of the intersection of 5th Street and Massachusetts Avenue

2. High-rise hotel at the northeast corner of the intersection of 6th Street and Massachusetts Avenue

3. 2 and 3 story buildings devoted to miscellaneous commercial uses

4. Parking lots

5. Corinthian Baptist Church at the corner of 5th and I Streets

III. Existing zoning: C-2-C

A. Uses (§§720 – 734)

1. Commercial use permitted as a matter-of-right, including retail, service and office use

2. Hotel

3. Residential use permitted as a carry-over from the Special Purpose and Residential Districts

B. Height - maximum of 90 feet (§770.1)

C. Density - maximum of 6.0 FAR, with nonresidential uses limited to 2.0 FAR (§771.2)

D. Lot occupancy – 80% permitted (§772.1)

E. Residential recreation space - minimum area equal to 15% of the gross floor area devoted to residential use (§773.3)

F. Rear yard – 15 feet (§774.11)

G. Side yard - not required (§775.5)

H. Parking (§2101.1)

1. For apartment house use, minimum of 1 space for each 4 units

2. For retail use, minimum of one space for each 750 square feet of gross floor area in excess of 3,000 square feet

I. Downtown Development (DD) Overlay District

1. Applies to new buildings and alterations or additions to existing buildings involving more than 100 percent of assessed value of building in any twelve month period

2. Height is maximum permitted under the Act of 1910 (130 feet for subject site), with a setback required above 110 feet facing Massachusetts Avenue

3. Housing Priority Area B

a. No maximum FAR for residential uses

b. Minimum of 4.5 FAR required to be devoted to residential use (3.5 FAR available for commercial)

c. Residential recreation space requirement reduced to 5%

IV. Development

A. Use – apartment house of 256 units

B. Ground floor – gross floor area of approximately 17,38 square feet to be devoted to retail and service uses

C. A total of 200 parking spaces on four levels

V. Relief required – variance from the parking requirement for retail and service uses

A. Minimum number of spaces required: 19

B. Proposed number of spaces to be provided: 10

C. Variance of 9 spaces

VI. Standards for a variance (§3103.2)

A. Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,

B. the strict application of any regulation adopted under D.C. Code §§5-413 to 4-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship;

C. Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

VII. Compliance with the variance standards

A. Exceptional or extraordinary situation or condition

1. Triangular shaped lot, deep at the wider end and shallow at the narrow end

2. Landmark former Fire House is not part of site, creating a "missing tooth" along Massachusetts Avenue and potentially isolating the portion of the site which lies west of the Fire House

B. Practical difficulty

1. Substantial costs imposed by having to underpin the former Fire House and the Judiciary House apartment building

2. Shape of site causes requirement to add fourth underground parking level to meet market demand, also adding costs

3. Need to assign greatest number of parking spaces to the residential units, which demand the spaces, and not to the retail which does not need the spaces

C. No detriment to the public good

1. Total number of spaces provided exceeds the minimum zoning requirement

2. Patrons and employees of retail and service uses are not likely to drive or require use of parking spaces

VIII. Consistency with the Comprehensive Plan

A. Land Use element and maps - property included in mixed-use high density commercial/high density residential category

B. Downtown element

1. Major policies

a. Emphasizes significant residential community

b. Mount Vernon Square subarea should be a primary location for residential development

c. Massachusetts Avenue between 2nd and 7th Streets should have a mixed use character (residential/ commercial)

2. Residential land use

a. "Undertake a variety of public and private programs to achieve a major increase in residential units"

b. "Encourage residential in-fill as well as compatible major new residential development"

c. "Facilitate mixed-use development along Massachusetts Avenue, N.W., that emphasizes the residential component of that mix, primarily in high-rise apartment buildings"

d. "Encourage residential use as part of mixed-use projects south of Massachusetts Avenue, N.W."

e. "Encourage residential use as part of mixed use projects extending south through Chinatown and Gallery Place to connect with the proposed residential area on Pennsylvania Avenue, N.W."

3. Mount Vernon Square:

"Develop the primary residential neighborhood of Downtown at Mount Vernon Square with a mix of other uses including offices, hotels, and neighborhood retail" (§932.1(a))

C. Ward Two Plan (10 DCMR Chapter 13)

1. Housing

a. "Stimulate production of new and rehabilitated housing to meet all levels of nee d and demand and to provide incentives for the types of housing needed at desired locations" (§1304.1(a))

b. "Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land-use policies" (§1305.1(a))

c. "Recommend suitable regulatory, zoning, tax and financing incentives under appropriate controls to meet housing production goals" (§1305.1(c))

2. Land Use

a. Objectives for residential land use:

"Develop new housing in Downtown in the area extending north of Pennsylvania Avenue through Gallery Place, Chinatown, and portions of Judiciary Square" (§1327.1(c)(2)

b. Development Opportunity Areas:

"Develop a major new residential mixed-use community, including hotels, in the Mount Vernon Square area" (§1339.1(b))

IX. Conclusions

A. Subject property is affected by exceptional conditions, because of the shape of the site and the presence of historic landmark out-parcel

B. Strict application of the Regulations would result in parking spaces provided for the use which functionally does not need them at the expense of the use which does

C. The variance can be granted without substantial detriment to any surrounding properties

D. The application should be granted

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