

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

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MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: *H.S. Ferguson*
Harriet Tregoning, Director

DATE: February 23, 2007

SUBJECT: Final Office of Planning Report on Zoning Commission Case No. 06-32
Proposed Text Amendment to Include Square 766 in Capitol South TDR Receiving Area

I. SUMMARY AND RECOMMENDATION

Applicant: Washington Telecom Associates, LLC (as long-term lessee of Square 766)
Action Requested: Text Amendment to 11 DCMR § 1709.18 to include Square 766 within the Capitol South TDR Receiving Area.
OP Recommendation: Deny Request

ZONING COMMISSION
District of Columbia

CASE NO. 06-32

EXHIBIT NO. 22

II. SITE AND AREA DESCRIPTION



Fig. 1: Location Map

Square 766 in southeast Washington is bounded by: Virginia Avenue on the North; 3rd Street on the East; I Street on the South; and 2nd Street on the West. The shaded rectangle is the Canal Blocks park, which is bounded by I and M Streets on the north and south, and 2nd Street and the private 2nd Street Place on the west and east. The site is occupied by a 5 story building that formerly housed the printing operations of the Evening Star and then the Washington Post newspapers, and by 50 surface parking spaces. The location is in the rapidly redeveloping Near Southeast neighborhood and is convenient both to freeways and to Metrorail.

Developments to the west of the Canal Blocks will rise to 130 feet and will achieve approximately 10.0 FAR. Developments to the east of the Canal Blocks will range from 65 feet to 110 feet high and have FARs ranging from 2.35 to 7.18. The height and FAR differences are due to the former properties facing onto the 160 foot wide New Jersey Avenue and being in the Capitol South Receiving Zone for TDRs, while the latter properties face onto narrower streets, are not in the TDR Receiving Zone, or are limited by the Zoning Commission's order for the Capper-Carrollsbury PUD (Z.C. 03-12 / 03-13). In particular, Square 797, which is immediately east of the applicant's Square 766, will be developed with 40-foot high townhouse-type structures, not with a six story apartment building as the applicant stated on Page 2 of its June 19, 2006 filing with the Commission. Square 798, 799, and the northern half of Square 800 will also be developed with 40 foot high residences. (See Attachment 2 for the adopted Capper-Carroll site plan and heights).

III. AREA ZONING AND HISTORIC DISTRICTS (See Attachment 1)

Square 766 is zoned C-3-C and is not in the TDR receiving zone. Squares to the west are also C-3-C, but are in the TDR receiving zone. The underlying zoning of Squares to the south and east is R-5-B. However the Capper-Carrollsbury PUD-zoning for these Squares is CR immediately to the south, and R-5-B to the east and southeast. Zoning to the north, across the Freeway, is generally R-4 and within the Capitol Hill overlay.

The Capitol Hill historic district is to the north, across the freeway.

IV. BACKGROUND: TDR RECEIVING ZONE ACTION IN 1998

In Case No. 97-14Z, the Zoning Commission took action to expand TDR receiving zones into several areas that were within the Central Employment Area, but that were outside of the traditional downtown. Most of these areas had been re-zoned C-3-C in 1996 as Comprehensive Plan Act revision implementation. In its preliminary report, the Office of Planning recommended that several Squares – including Square 766, and the C-3-C zoned portions of Squares 769 and 800 – be included in the Capitol South TDR receiving zone. At the February 23, 1998 public hearing, OP expressed concern that for Squares 766, 769 and 800, the additional height and bulk permitted in a receiving zone would be incompatible with the scale of adjacent two-story residential buildings on 3rd Street, SE. This concern was echoed by the testimony of the Arnold and Porter law firm team. At the case's decision meeting OP suggested that the Commission omit Square 766 and the C-3-C zoned portions of Squares 769 and 800 from the TDR receiving zone. OP wished to limit the TDR receiving area to the areas west of 2nd Street in order to ensure that 130 foot high buildings could not extend east of the 2nd Street Canal Blocks. The revised OP recommendation provided an approximately 200 foot buffer between matter of right 130 foot buildings and the existing two-story residential uses on the east side of 3rd Street. The Zoning Commission concurred with OP and, on May 18, 1998 voted to expand the TDR receiving zone, but without including Squares 766, 769 or 800.

V. APPLICANT'S TEXT AMENDMENT REQUEST

The applicant asks the Commission to revisit its 1998 decision regarding Square 766, by amending 11 DCMR § 1709 18 to add Square 766 to the Capitol South receiving zone.

The following table compares the development potential for the Square under current zoning with the development potential if the Square were included in the TDR receiving zone.

Zone District	Use Considerations	Lot Occ. (%)	FAR	Ht. (ft.)	Developable SF on 92,400 SF Lot	SF and % More Than C-3-C Matter of Right
C-3-C M-O-R	Medium-high density office, retail, housing, entertainment, and mixes thereof permitted.	100	6.5	90	600,600	0 0
C-3-C PUD	Same as above, with front on Virginia Ave. for height purposes.	100	8.0	130	739,200	138,600 23%
C-3-C M-O-R with IZ	Same as above, but, if 10 or more residential units were constructed, would be entitled to 20% density increase (i.e., 1.3 FAR) provided 50% of bonus were devoted to IZ housing. (IZ reduce-able to 8% of M-O-R density by BZA).	100	7.8	110	720,720	120,120 20%
C-3-C M-O-R or PUD if in TDR Receiving Area	Same as C-3-C MOR or PUD respectively, plus 3.5 FAR over matter of right, up to maximum of 10.0. No IZ requirement under current OP IZ mapping proposal.	100	10.0 MOR and PUD	130	924,000	323,400 53.8%

Table 1. Comparison of Zoning and Development Scenarios for Primarily Residential Development of Square 766: Matter of Right, PUD, With IZ and Within Capitol South TDR Receiving Area.

The applicant's request would permit, by right, a 53.8% larger building with an additional 40' of height, and 3.5 FAR (323,400 SF) of development over the current matter of right height and square footage. If the development were residential and within a TDR receiving zone, none of it would likely be subject to an IZ requirement under the applicant's proposal. If the Square were developed solely for commercial and non-residential uses, the IZ requirements would not be triggered.

VI. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN (See Attachments 3 and 4)

The requested text amendment is not inconsistent with the Generalized Land Use Map. The current and proposed Comprehensive Plan (*Attachment 3 and 4*) show the Square as being suitable for high density commercial, which permits mixed-uses. The maximum FAR allowed on the Square, whether or not it is in the TDR receiving area, comports with the density indicated on the Comprehensive Plan Maps.

The written elements of the current Comprehensive Plan do not contain specific references to the land use or economic development of the Square or nearby area, nor to the Transferable Development Rights Receiving Zones. However, Section 1513.16 of the new Comprehensive Plan does refer to the desirability of creating the Canal Blocks Park, and of continuing to “develop and apply zoning incentives to promote residential uses within the near Southeast, such as the Capitol Gateway Overlay District.” It also cautions that “Zoning changes should not diminish *established* provisions for transfer of development rights into the Capitol South area” [emphasis added].

The Capitol South Receiving Zone boundary line in 11DCMR § 1709.18 was set by the Zoning Commission in Case No. 97-14Z. Its boundary is shown with pink links on *Attachment 1*. The applicant has outlined the history of Square’s 766 being recommended by OP for inclusion in the Capitol South Receiving Zone in 1996, and its being omitted from the receiving zone by the Zoning Commission due to height and bulk context considerations. The applicant posits that this exclusion was inappropriate then because the property was one of only three C-3-C zoned Squares or parts of Squares south of the freeway and east of South Capitol Street that were not included within the Capitol South receiving area. It suggests that the exclusion is even more inappropriate now that 130 foot, 10 FAR buildings are being built to the west and south, and the mixed use townhouse / mid-rise / high rise Arthur Capper PUD development is under construction to the east and south. The applicant believes that the context to the east and south has changed enough to vitiate the Zoning Commission’s rationale for excluding the Square in its rulemaking for Case No 97-14Z.

However, OP notes that the intent of the 10 DCMR Comprehensive Plan § 940.2, which describes the objectives for TDR receiving areas, was to help create downtown housing, department store development, and preferred use development by ensuring there were enough TDR receiving zones to capture, and to generate competition for, the value of the downtown-generated TDRs. The purpose was not to ensure that all C-3-C areas outside of downtown were treated uniformly with respect to potential FAR bonuses.

OP further notes that the existing and proposed Comprehensive Plan Generalized Policy Map continue to show a clear distinction between Square 766 and the other Squares that area already within the Capitol South TDR Receiving Zone. The other Squares are within the Central Employment Area (CEA). Square 766 is not. The CEA boundary is shown in bright green in *Attachment 1*.

Attachment 1 shows that between M Street and Virginia Avenue/I-395, the north-south boundary lines of both the Capitol South Receiving Zone (pink) and the CEA (green) area are co-terminus.

VII. RELATIONSHIP TO RECENT ZONING ACTIONS AND OTHER ONGOING PLANS FOR THE AREA, AS WELL AS PROMOTION OF HEALTH AND GENERAL WELFARE

Square 766 was not affected by the Zoning Commission action that established the Capitol Gateway (CG) Overlay, with its retail bonuses and design review requirements, as the Square is not within the CG Overlay area. The Square’s market potential has benefited substantially by the combination of Zoning Commission Case Nos. 03-12/03-13 (the Capper-Carrollsborg PUD) as well as public action in support of the entire baseball stadium area, the Southeast Federal Center, planned South Capitol and First Street SE road improvements by DDOT, and Anacostia Waterfront Corporation planning. The Square will

anchor the northern end of the Canal Blocks Park development that was formalized in the Zoning Commission decision on the U.S. Department of Transportation PUD

The proposed inclusion of the Square in the TDR receiving area would have some impact on the urban design of the Canal Blocks. The Square is currently permitted 90' in height and 6.5 FAR as a matter of right under its C-3-C zoning. As a PUD, subject to community review and Zoning Commission approval, the site would be permitted 130 feet in height and 8.0 FAR. If the Square were included in the TDR receiving area a 130 foot high and 10.0 FAR building could be developed as a matter of right.

The proposed addition of the Square to the TDR receiving area would not further the objectives of the recent Zoning Commission action in Case No. 04-18 (Inclusionary Zoning). The Commission made clear its desire to mandate IZ in, among other areas, those near Metro and along major development corridors – both of which conditions this Square meets. However, the Commission also made clear its intention not to impose IZ on properties where additional density could not be granted as part of the IZ process. If this Square were included within a TDR receiving area, its maximum potential density could be achieved as a matter of right through the purchase of TDRs. The C-3-C zone does not have a residential requirement and it would not be possible for zoning to mandate the inclusion of affordable housing with the residential development of the Square and to grant a bonus density.

VIII. OUTSTANDING ISSUES

Issues At Setdown

In its Preliminary Report, OP stated that there was enough justification for the applicant's request to warrant a public hearing, but noted that, should the case be set down, the applicant would need to address the following concerns:

- 1 How the inclusion of this Square in § 1710.18 would further the objectives of the TDR program;
- 2 How the inclusion of the Square within the receiving area would further all other public objectives,
3. How the heights permitted by the zoning associated with the Capper-Carrollsborg PUDs approved development program differ from what would have been allowed under matter-of-right zoning, and how such changes create a new context for the density increases that would be possible on Square 766 under the applicant's proposal;
- 4 How the height and density that would be permitted as a matter of right by the applicant's proposal would help to transition from the 130 foot, 10 FAR buildings on the west side of the Canal Blocks, to the less-dense buildings on the east of the Canal Blocks and immediately east of Square 766
- 5 How the public good would be better served by essentially removing the site from both the IZ and the community/Commission review process that a PUD entails, since, within a TDR receiving area, a PUD would no longer be required to build 130' high or to achieve a density greater than the matter of right density

OP is not aware of the applicant's having addressed these concerns

Issues Since Setdown

The applicant has discussed other issues with OP since the case was set down, and provided staff with the following new information or arguments that the applicant believes bolsters its application

- A. Future Land Use Map Changes:** The City Council specifically the changed Square 766's future land use designation from the mixed-use medium-density commercial / medium-density residential shown in the Mayor's Draft of the new Comprehensive Plan to a high density commercial designation in the final proposed Plan. In the applicant's view, this change means that the Council intended Square 766 to be treated the same as the Squares to the west that are within the Capitol South TDR Receiving Area, and to be included in that receiving area. The applicant believes it is inequitable to do otherwise.
- B. Desirability of Permitting Up to Approximately 10 FAR:** The applicant says it is entering into a long term lease of the property for public uses, and the lessee will, in order to maintain flexibility for future uses and expansion, need close to the full 10 FAR that is achievable within a C-3-C TDR receiving zone
- C. Request Not Tied to IZ:** The long-term lease means that the applicant would not be in a position to consider any residential uses on this Square for at least two decades, thus vitiating OP's concern about the applicant's using the inclusion in the receiving area as a way of exempting itself from the mandatory IZ requirements.
- D. Upper Story Setbacks Lessen Impact:** The applicant's revised schematics for development on the Square after it is included in the receiving area, show the 1:1 setback above 90 feet that 11DCMR 1709.20 requires, and this lessens potential impact on residential areas to the east and south to an acceptable level

In response, OP has told the applicant the following:

- A. Future Land Use Map Changes:** The map changes made by the Council show policy directions. Square 766 is contemplated for a future high-density office use and could, therefore, retain the C-3-C zoning it now has, which is compatible with high density office usage, not inconsistent with the Comprehensive Plan, and is the same as applies to the Squares on the west side of the Canal Blocks parks. The Council's future land use map for the Comprehensive Plan deals with uses, not with specifics such as TDR receiving zone boundaries. OP is unaware of a policy statement in the Plan text that suggests or requires that Square 766 be in a TDR receiving area. OP further noted that all of the Squares to which the applicant referred remain zoned C-3-C zoning. High density residential uses are permitted by the C-3-C zone, and to view the area as having the potential for a high-density mixed use residential/commercial building would not inconsistent with the Comprehensive Plan.
- B. Desirability of Permitting Up to Approximately 10 FAR:** If the applicant provided written documentation from the potential lessee that an FAR greater than the 8.0 achievable through a PUD is essential to accommodate the proposed public use, then OP would take into account such other public objectives when evaluating the applicant's request.¹

¹ In conversations with OP, the potential lessee indicated that it does not need any more height or square footage than would be permitted with a PUD, and is working to achieve its program within the matter of right envelope.

C. Request Not Tied to IZ Even if the applicant's plans do not include any residential use on the site that would trigger IZ requirements, it did not seem appropriate to increase the site's development potential by more than 50% while simultaneously exempting the site from the affordable housing requirements of the IZ program. OP is looking at development in the long-term and would not wish to exclude this Square from IZ requirements should the Square eventually be re-developed residentially.

D. Upper Story Setbacks Lessen Impact In its preliminary report, OP noted that the scale of new development east of the buildings facing onto the Canal Blocks will not be significantly different in the new Arthur-Capper PUD development than what existed in 1998. It will still be rowhouses and apartments less than 50' high. More importantly, the new developments on Square 797, immediately east of Square 766, will also be two to four story townhouses. OP questioned whether a potentially 130 foot high building enabled by inclusion in the TDR receiving zone would provide any transition between the 130 foot high building to the west and the less than 50 foot high Arthur Capper development to the east, or the 65 foot building to the south east. Since setdown, the applicant has provided OP with very informative massing studies for various site development options at 90, 110 and 130 feet. OP has included the illustrations (*labeled ASK 18, Options 1, 2, 3 and 4*) showing a 130 foot high building, stepped back on the south and east sides, as the building faces the Canal Blocks Park and the Arthur Capper townhouses. The setback is in a 1:1 above the 90-foot level. In OP's opinion, even with the setbacks, the simulations provide graphic demonstration of how such a development would introduce the bulk of the downtown-type buildings west of 2nd Street into the residential scale of the east side of the Canal Blocks and east of 3rd Street².

IX. OFFICE OF PLANNING RECOMMENDATION

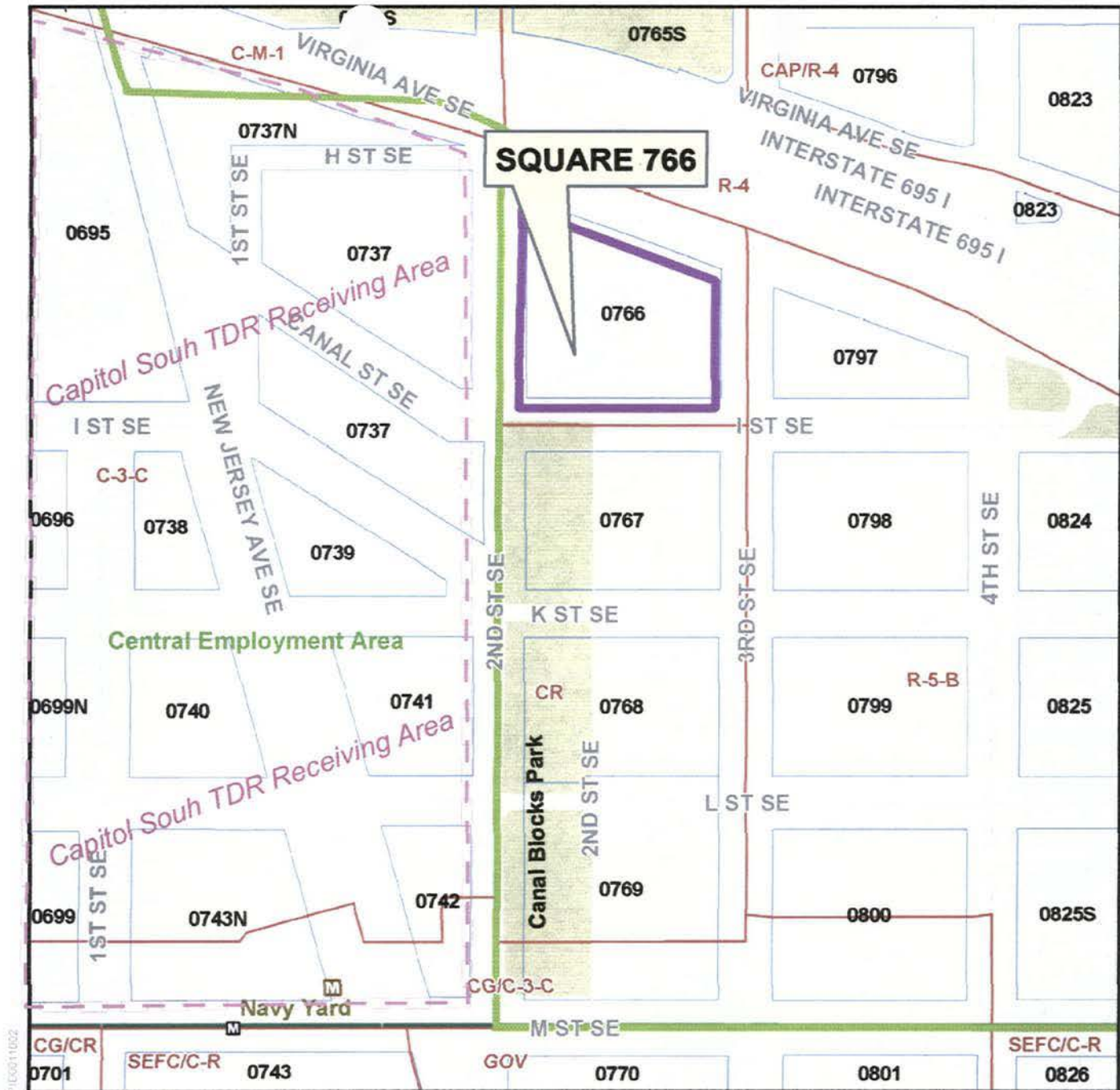
The Office of Planning (OP) recommends that the Zoning Commission deny this application. It is not inconsistent with the Comprehensive Plan for Square 766 to remain outside the Capitol South Receiving Zone, while the Squares to the west are included in the Zone; the latter Squares are in the expanded CEA and Square 766 is not. Further, the height and bulk that would be permitted by inclusion of the Square in the receiving zone would not provide a transition between the high-density CEA-type uses west of the Canal Blocks, and the moderate and medium density residential uses east of the Canal Blocks that were approved by the Zoning Commission in PUD Order No. 03-12 / 03-13.

HT/SLC

Attachments (8)

- Location, Zoning and Existing TDR Receiving Area map
- Adopted Capper-Carrollsbury Site Plan, with Building Heights
- Generalized Land Use Map from Existing Comprehensive Plan
- Generalized Land Use Map from Draft Proposed New Comprehensive Plan
- Massing Studies for TDR Receiving Zone Bulk, with Setbacks Above 90 Feet (4 simulations)

² OP also notes that the graphics show the buildings west of 3rd Street with 18'6" roof structures that uniformly occupy all of the roof area within the 1:1 setback line. This would not be permitted by the Zoning Regulations. Showing the buildings this way, especially those on the east side of the Canal Blocks makes them appear somewhat taller and bulkier than they would likely be. Absent this bulk on these buildings roofs, the proposed massing of the building on Square 766 may appear even more out of scale.



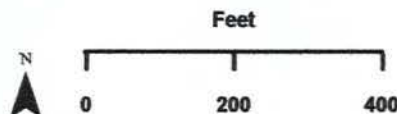
**District of Columbia
ZC 06-32 Text Amendment
to Include Square 766 in
Capitol South TDR Receiving Area
LOCATION, ZONING, EXISTING TDR RECEIVING AREA**

★ ★ ★ Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ August 25, 2006

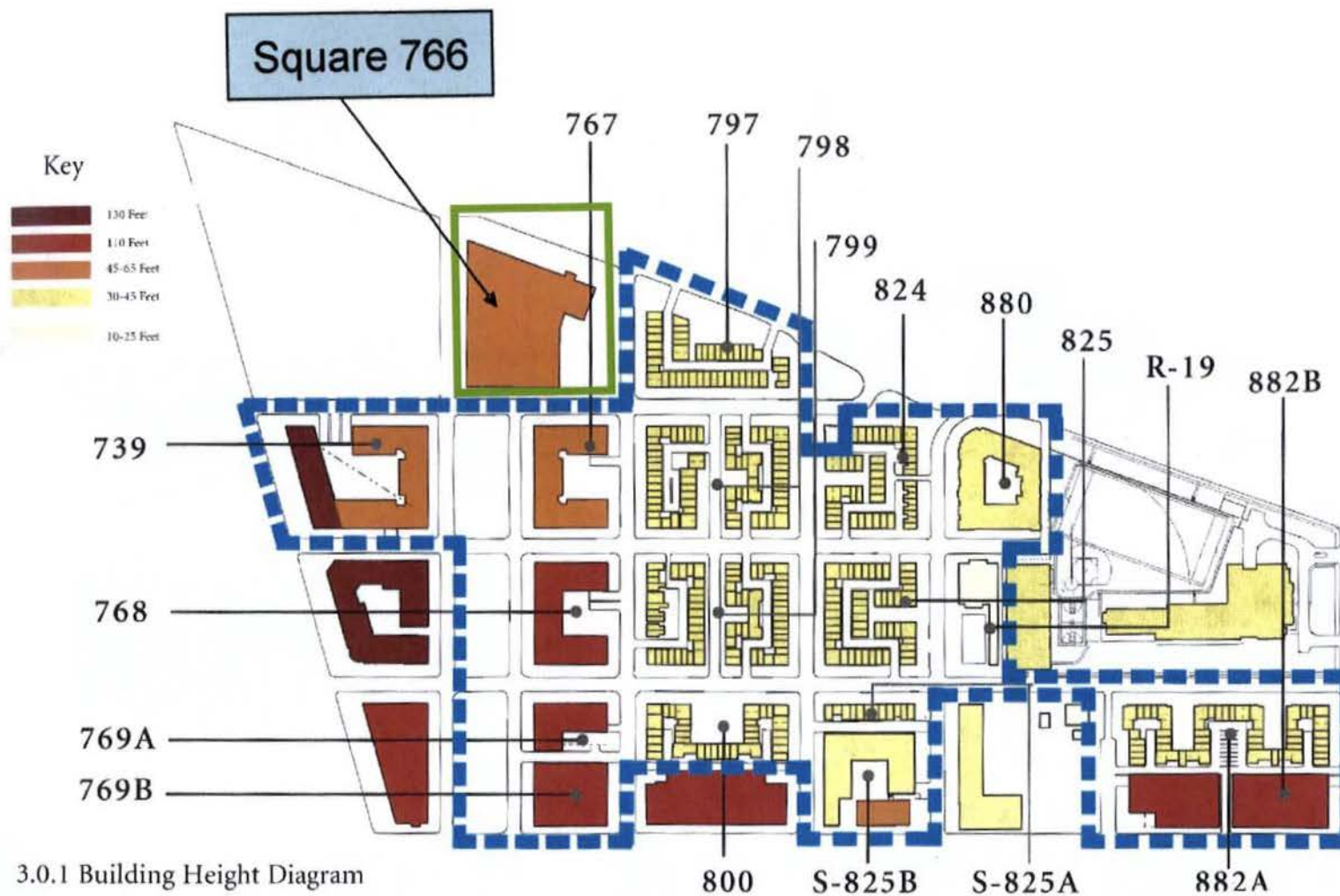
This map was created for planning
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It is neither a survey nor a legal document.
Information provided by other agencies
should be verified with them where appropriate.

- Street Centerlines
- Property Squares
- Metro Station Entrances
- Street Centerlines
- Zoning Districts
- TDR Receiving Areas
- Metro Stations (Regional)
- Central Employment Areas (CEA)

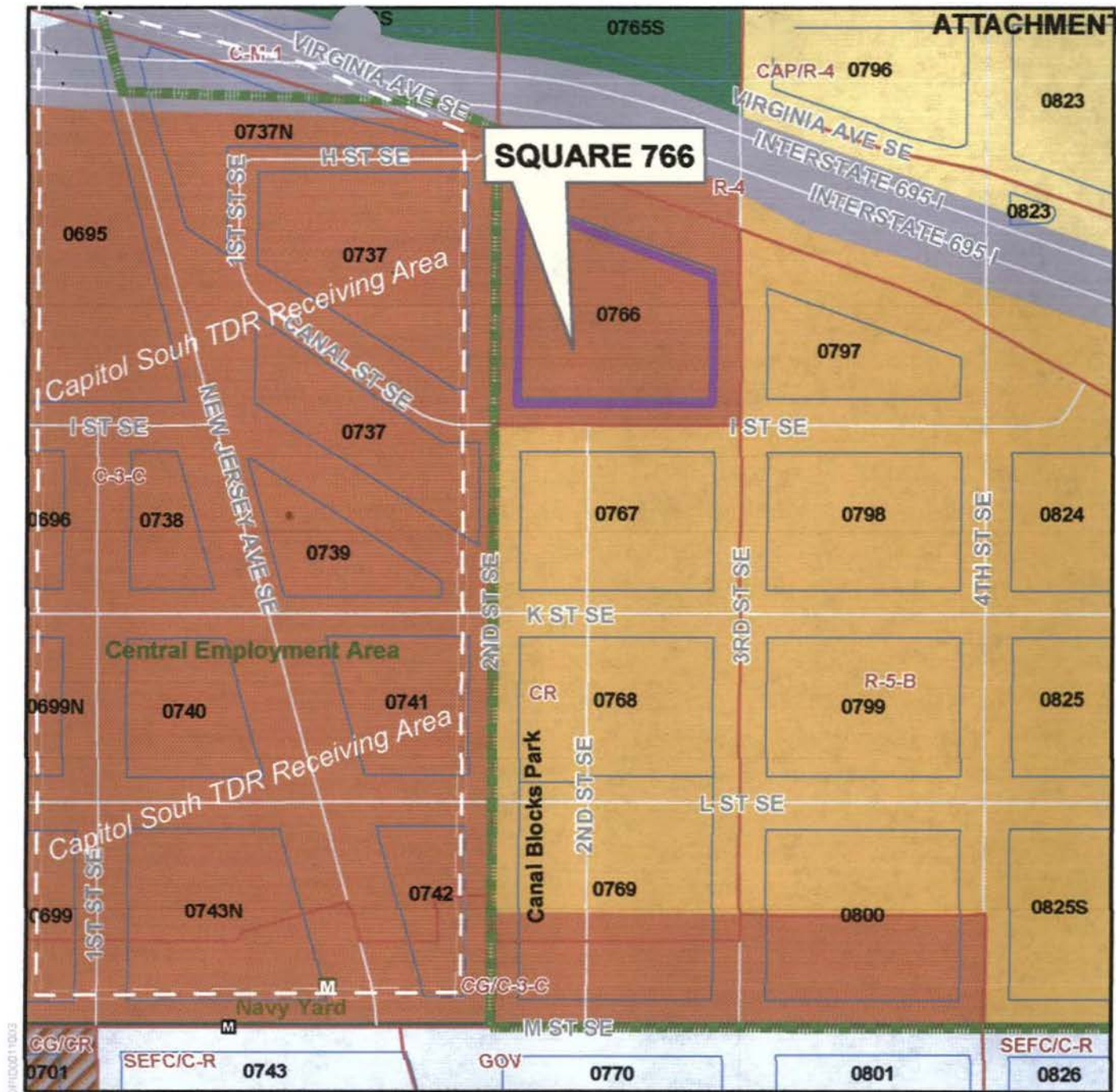


ATTACHMENT 1

Attachment 2 Copper - Carolsburg Site Plan and Heights



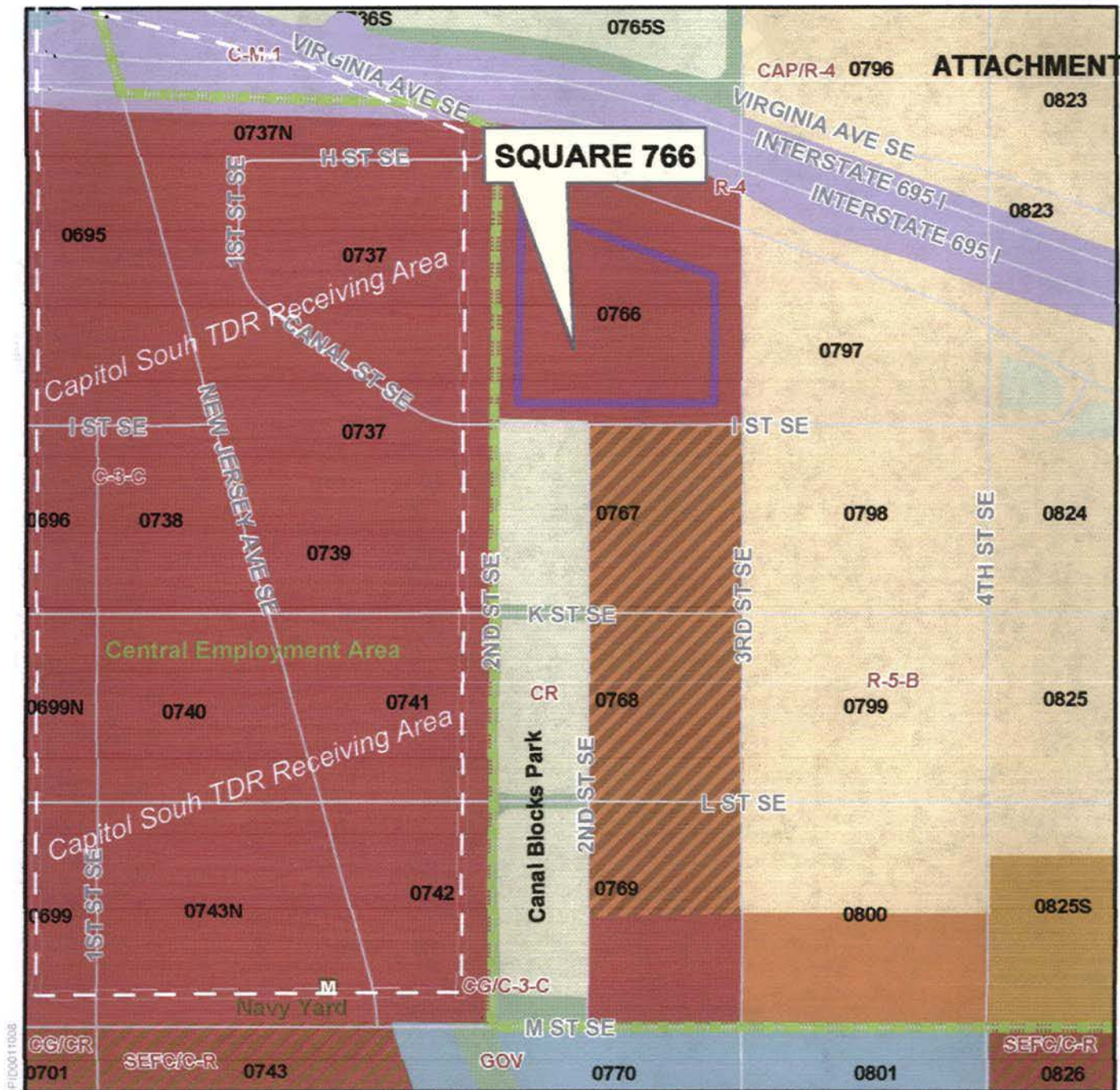
3.0.1 Building Height Diagram



**District of Columbia ZC 06-32 Text Amendment to
Include Square 766 in Capitol South TDR Receiving Zone**

**GENERALIZED LAND USE MAP
(current until effective date of new Comprehensive Plan)**





District of Columbia ZC 06-32 Text Amendment to Include Square 766 in Capitol South TDR Receiving Zone PENDING GENERALIZED LAND USE MAP ADOPTED BY COUNCIL

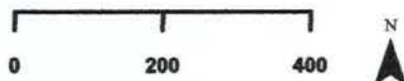


Government of the
District of Columbia
Adrian Fenty, Mayor

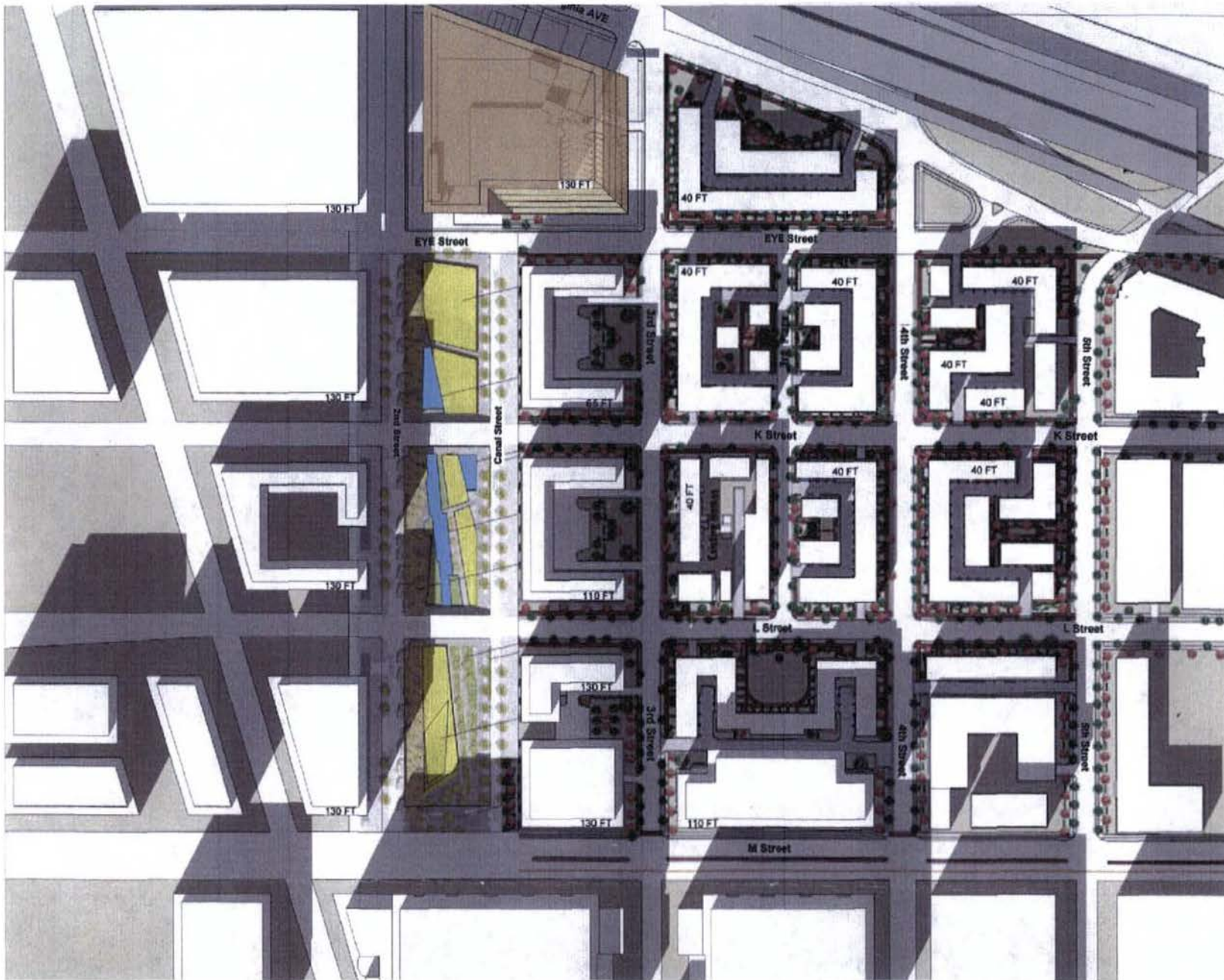
Office of Planning - February 9, 2006

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

Feet



- Central Employment Areas (CEA)
- Parks
- TDR Receiving Areas
- Residential-Low Density
- Residential-Moderate Density
- Residential-Medium Density
- Residential-High Density
- Commercial-Low Density
- Commercial-Moderate Density
- Commercial-Medium Density
- Commercial-High Density
- Institutional
- Federal
- Local Public Facilities
- Parks, Recreation, and Open Space
- Production and Technical Employment
- Water
- Mixed Use
- No Data

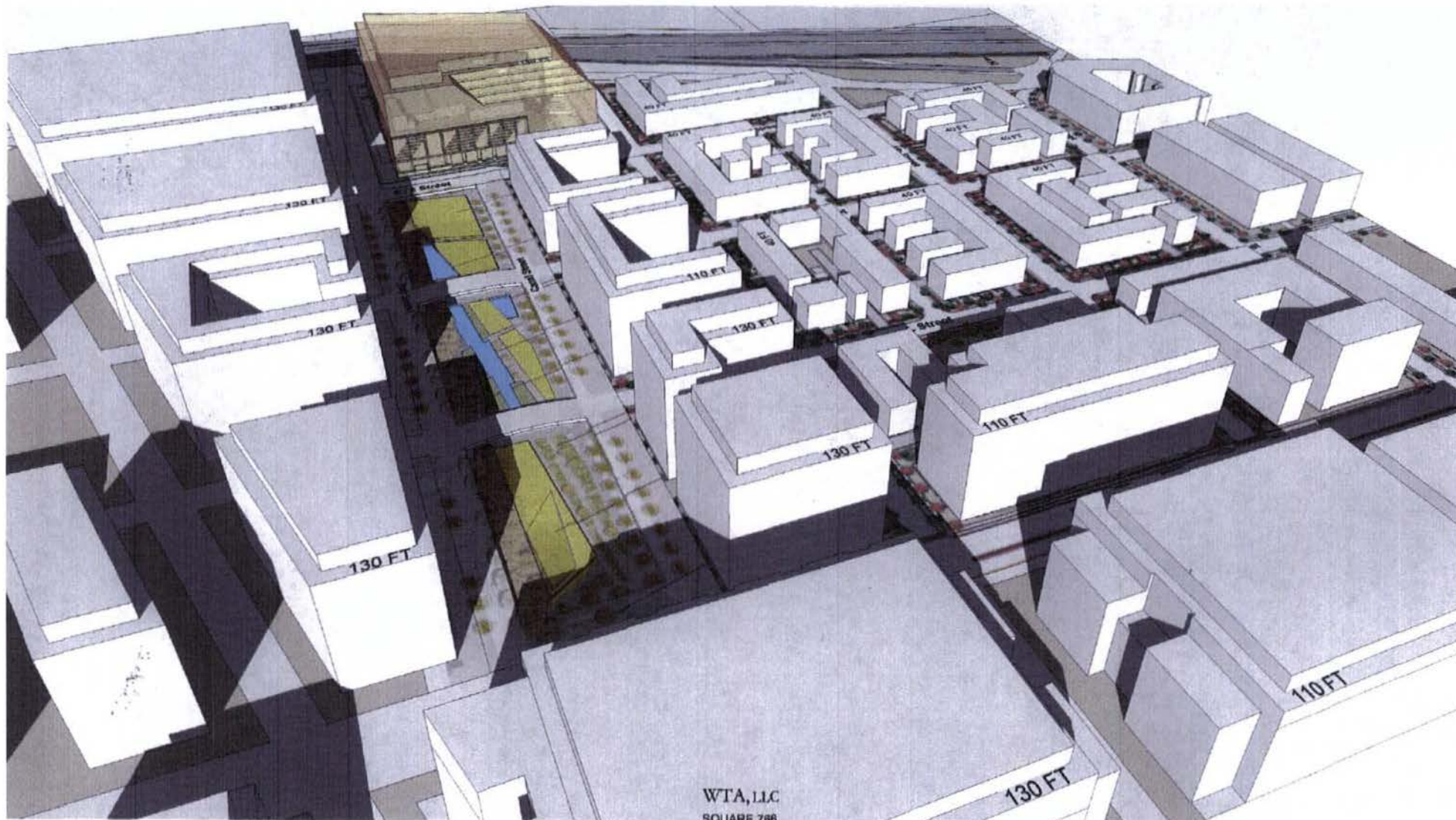


WTA, LLC
 SQUARE 766
 225 Virginia AVE SE, Washington DC

Clark
 MANCINI DUFFY
 ARCHITECTURE+DESIGN

Attachment 5

ASK 18 Massing Study 3, With TDRs to 130' with setbacks per 1709.20, Maximum achievable FAR 9.6
 OPTION/1

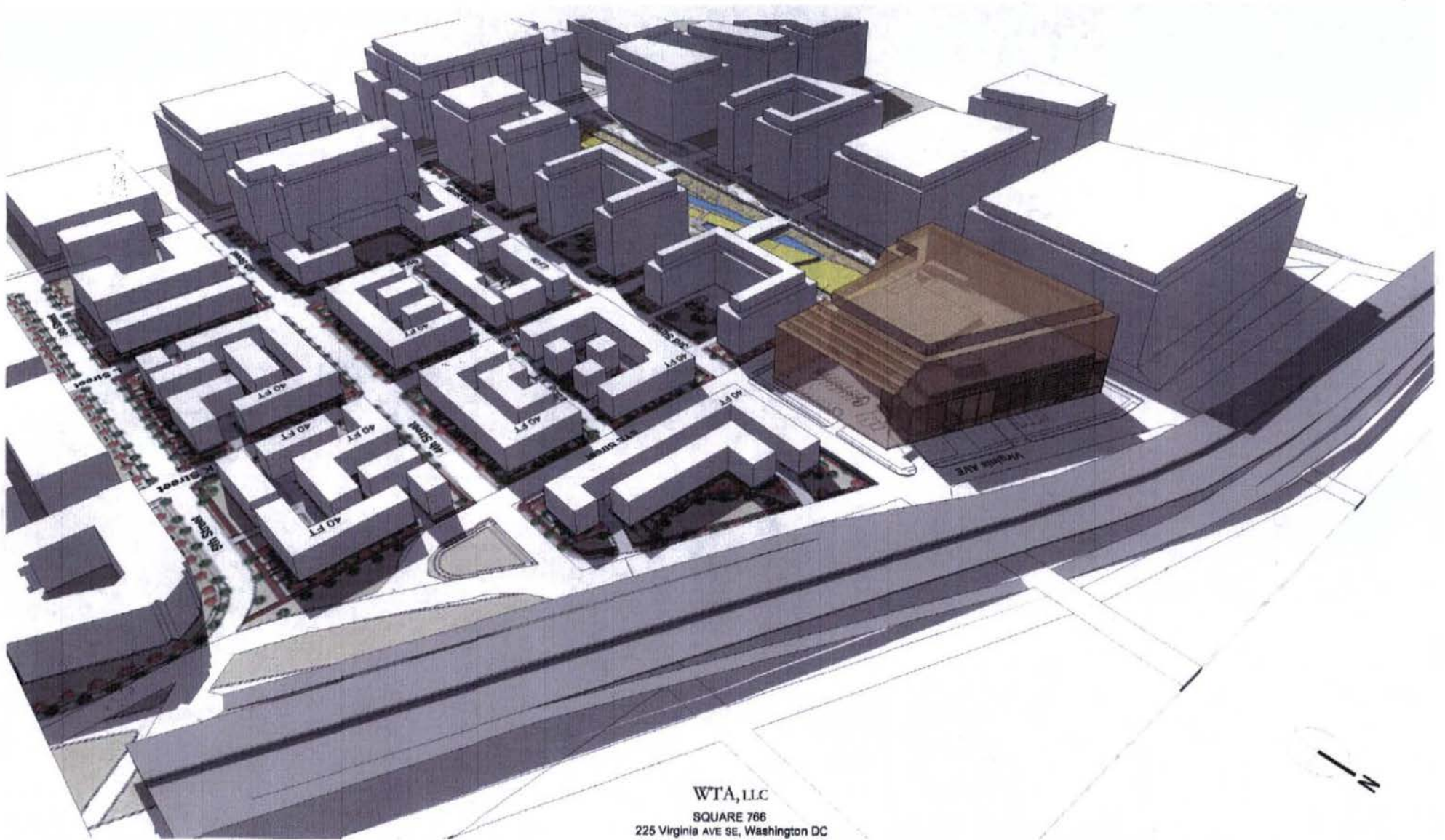


WTA, LLC
SQUARE 766
225 Virginia AVE SE, Washington DC

Clark
MANCINI DUFFY
ARCHITECTURAL DESIGN

ASK 18 Massing Study 3, With TDRs to 130' with setbacks per 1709.20, Maximum achievable FAR 9.6
OPTION 2

Attachment 6

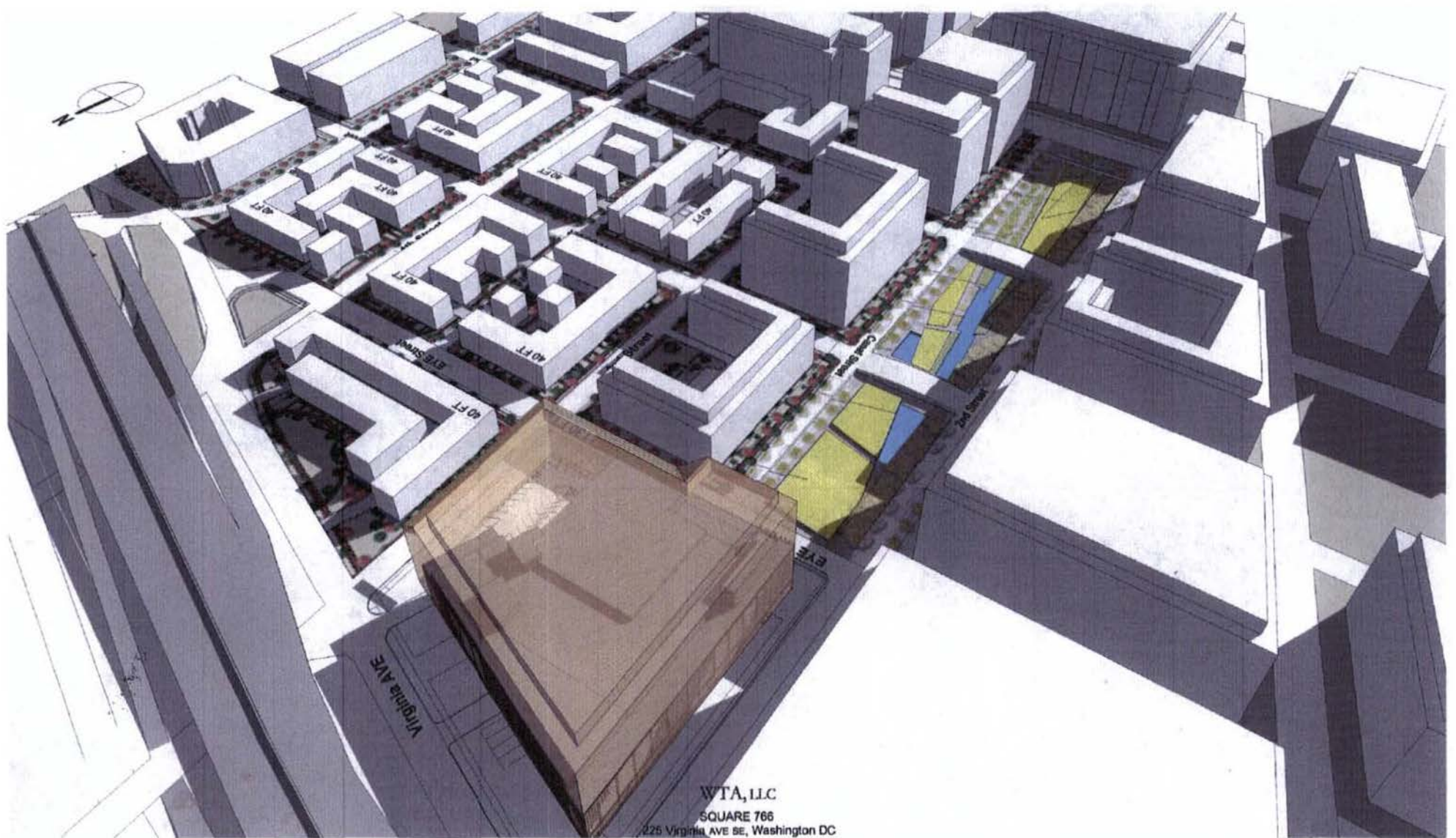


WTA, LLC
SQUARE 766
225 Virginia AVE SE, Washington DC

Clark
MANCINI DUFFY
ARCHITECTURAL DESIGN

ASK 18 Massing Study 3, With TDRs to 130' with setbacks per 1709.20, Maximum achievable FAR 9.6
OPTION 3

Attachment 7



WTA, LLC
 SQUARE 766
 225 Virginia Ave SE, Washington DC

Clark
 MANCINI DUFFY
 ARCHITECTURE DESIGN

ASK 16 Massing Study 3, With TDRs to 130' with setbacks per 1709.20, Maximum achievable FAR 9.6
 OPTION 4

Attachment 8