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MEMORANDUM**TO:** Zoning Commission of the District of Columbia**FROM:** Jennifer Steingasser, Deputy Director *JS***DATE:** July 17, 2009**SUBJECT:** Zoning Commission Case Number 09-11 – A Proposed Zoning Text Amendment to Permit Retail and Service Uses By Special Exception in SP-2 Districts**I. PETITION**

The Office of Planning (OP) recommends that the Zoning Commission set down the proposed text amendment. The amendment would add a new section 518 as follows:

(New text is shown in **bold and underline**):

CHAPTER 5 SPECIAL PURPOSE DISTRICTS**518 RETAIL AND SERVICE USES (SP-2)**

518.1 Retail and services uses shall be permitted in an SP-2 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

518.2 The property shall be located south of M Street N.W. and N.E.

518.3 The uses shall be located on or below the ground floor(s) of the building.

518.4 The retail or service uses shall be those permitted in §§ 701.1 through 701.5 of this Title; provided that the following use shall not be permitted: drive-through accessory to any use.

518.5 The uses shall be located and designed such that they are not likely to become objectionable to neighboring properties because of noise, traffic or other objectionable conditions.

518.6 The Board of Zoning Adjustment may impose requirements pertaining to screening, signage, or other requirements it deems necessary to protect adjacent or nearby property.

519-529 [RESERVED]

II. RECOMMENDATION

OP recommends that this case be set down for a public hearing.

ZONING COMMISSION
District of Columbia

CASE NO. 09-11

EXHIBIT NO. 1



III. BACKGROUND

The proposed text amendment would allow certain retail and service uses by special exception in Special Purpose Districts -2 (SP-2). The amendment only would apply to properties zoned SP-2 south of M Street N.W. and N.E.

As background, a single SP District was adopted in 1958 to apply to certain ancillary areas to the central business district. The SP District was crafted to be a transition district to preserve areas where residential, commercial, and semi-commercial co-existed and to encourage the development of peripheral parking facilities. A 1978 revision split the SP District into SP-1 and SP-2 with different heights and densities. The 1978 Zoning Commission adopting order (ZC Case No. 78-2, hereinafter the "Order") indicated that the revised SP Districts were designed to achieve seven major goals:

1. Provide a transition between commercial and residential areas.
2. Provide for a mix of uses.
3. Encourage residential uses.
4. Protect adjoining neighborhoods, particularly the residential neighborhoods.
5. Preserve buildings and district of historic or architectural merit.
6. Set a reasonable parking policy.
7. Achieve the District's goals on land use, transportation, housing, environment and historic preservation.

Further, the Order states that "the ideal transition zone would seek to meld the various kinds of uses permitted in the adjoining areas which are compatible with each other."¹ SP Districts were sparingly mapped mostly on the periphery of the central business district in the northwest quadrant of the District. More specifically, the SP Districts are chiefly located in areas such as Foggy Bottom, along Sixteenth Street and Massachusetts Avenue, and Judiciary Square. SP zones comprise less than 1% of District land area.

The Order shed little light, however, on why retail or services uses were discouraged in these transition zones. Since the adoption of the SP District in 1958, nearly all new principle ground floor retail or service uses have been prohibited in these areas. Ticket offices and art galleries are among the few permitted retail uses. Several accessory uses are allowed, such as florist shops, beauty parlors, and cigar or news stands, but are subject to conditions. They must be "incidental" to other permitted uses, not directly accessible from outside the building, and not visible from a sidewalk, among other restrictions. As such, the creation of active ground floor retail or service uses is constrained under current regulations.

The impetus for OP's proposed amendment arises from three recent requests for zoning relief that aimed, in large measure, to secure vibrant ground floor retail uses in SP-2 Districts. What is striking about the relief requests is that they intentionally avoided the most direct avenue for zoning relief for retail or service uses, namely seeking a use variance under § 501 ("Uses as a Matter of Right (SP)") through the Board of Zoning Adjustment (BZA) process. Among other standards, such relief would require a showing of "undue hardship" to the owner, meaning that reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. In general, the undue hardship standard sets a relatively high burden for relief. In the context of establishing new

¹ ZC Case No. 78-2, p. 19.

ground floor retail or service uses in SP Districts, such a showing could prove unobtainable under most scenarios because there are other viable permitted uses such as office uses. OP research has located few use variance BZA cases seeking to establish ground floor retail or service uses in the SP District.

Rather than seek a use variance, one applicant pursued before the Zoning Commission a Planned Unit Development and related map amendment from SP-2 to C-3-C in the Foggy Bottom area in order to, in part, achieve flexibility for a broader range of ground floor retail uses.² An applicant for a split-zoned property along 16th Street successfully pursued a special exception and an area variance under § 2514.2 to extend less restrictive C-4 zoning regulations into a portion of a site zoned SP-2 in order to accommodate more visible and flexible retail and service uses.³ That case proceeded before the BZA. OP has also recently been approached regarding a possible request to rezone a property currently zoned SP-2 in order to achieve greater flexibility for retail uses. These examples highlight that not only may there be demand for more expansive retail and service uses in SP Districts, but that applicants are now pursuing creative paths to zoning relief to avoid the burden of use variances.

IV. PROPOSAL

OP recommends a text amendment to permit by special exception certain ground floor or below retail or service uses in the SP-2 Districts located south of M Street N.W. and N.E. OP's proposal aims to respect the stated goals of the SP District while also allowing for a wider range of principle retail and service uses. The amendment also creates a rational process to allow these uses in locations where their operation would not be harmful to neighboring properties.

To accomplish these objectives, the proposed text amendment would only apply to SP-2 Districts south of M Street N.W. and N.E. The affected areas include SP-2 Districts in Foggy Bottom, along 16th Street N.W. and Massachusetts Avenue, Judiciary Square, and east of the Capitol. By limiting the geographic range, the text aims to target properties that are essentially in core commercial and mixed-use areas. Additionally, nearly every SP-2 zoned property south of M Street N.W. and N.E. is located in a historic district, an area subject to Commission of Fine Arts Review, or both. As such, the design and appearance of the proposed retail or service uses would be subject to additional reviews.

The retail or service uses would also be restricted to those allowed in §§ 701.1 through 701.5 and would only be permitted by special exception. The identified uses are those permitted as a matter of right in C-1 Districts (Neighborhood Shopping Districts). Drive-through accessory to any use would be prohibited. By requiring special exception review, the BZA would examine the proposed C-1 uses for any objectionable impacts on neighboring properties.

V. COMPREHENSIVE PLAN

The proposal is not inconsistent with the Comprehensive Plan, which provides the following land use policy guidance:

Policy LU-1.1.1: Sustaining a Strong City Center

² In the Matter of American Institute of Architects and American Architectural Foundation, 08-27. Final Action taken June 22, 2009.

³ CCH Capital Hotel Partners LLC, Application No. 17920 (2009).

“Provide for the continued vitality of Central Washington as a thriving business, government retail, financial, hospitality, cultural, and residential center. Promote continued reinvestment in central city buildings, infrastructure, and public spaces; continued preservation and restoration of historic resources; and continued efforts to create safe, attractive, and pedestrian-friendly environments.”

Policy LU-2.3.4: Transitional and Buffer Zone Districts

“Maintain mixed use zone districts which serve as transitional or buffer areas between residential and commercial areas, and which also may contain institutional, nonprofit, embassy/chancery, and office-type uses. Zoning regulations for these areas (which currently include the SP-1 and SP-2 zones) should ensure that development is harmonious with its surroundings, achieves appropriate height and density, and protects neighborhood character.”

Policy ED-2.2.1: Expanding the Retail Sector

“Pursue a retail strategy that will allow the District to fully capitalize on the spending power of residents, workers and visitors, and that will meet the retail needs of underserved areas.”

Policy CW-1.1.1: Promoting Mixed Use Development

“Expand the mix of land uses in Central Washington to attract a broader variety of activities and sustain the area as the hub of the metropolitan area. Central Washington should be strengthened as a dynamic employment center, a high-quality regional retail center, and internationally-renowned cultural center, a world-class visitor and convention destination, a vibrant urban neighborhood, and the focus of the regional transportation network. New office and retail space, hotels, arts and entertainment uses, housing, and open space should be encouraged through strategic incentives so that the area remains attractive, exciting, and economically productive.”

Policy CW-1.1.3: Incentives for Non-Office Uses

“Because market forces tend to favor office development over other land uses in Central Washington, take action to attract the other desired land uses within the area. For example, the District’s zoning regulations should include incentives for mixed use development, including housing, ground floor retail, educational uses, and arts facilities, in locations consistent with the Comprehensive Plan.”

Policy CW-1.1.13: Creating Active Street Life and Public Spaces

“Promote active street life throughout Central Washington through the design of buildings, streets, and public spaces. This should include: ... (e) Encouraging active ground floor uses, and discouraging wide building entrances, large internal lobbies, and street-facing garage entrances and loading areas....”

Policy CW-2.6.6: Lower 16th Street

“Protect and enhance the special character of Lower 16th Street NW between H Street and Scott Circle. The street’s historic, ceremonial role as the approach to the White House and Lafayette Park should be recognized and conserved. Future development shall be compatible with the street’s established architectural character and scale. Uses and activities

that are appropriate to maintain the street's appearance and historic significance, particularly its open space and greenery, should be encouraged."

Policy NNW-2.2.1: Maintaining Dupont Circle's Residential Character

"Maintain the Dupont Circle neighborhood as a primarily residential area and discourage the expansion of commercial uses into currently residential areas. For the purposes of this policy, Dupont Circle shall be defined as the area generally bounded by Rock Creek Park on the west, 15th Street NW on the east, Massachusetts Avenue (east of Connecticut Avenue NW) and N Street (west of Connecticut Avenue) on the south, and Florida Avenue and U Street on the north."

VI. CONCLUSION

The Office of Planning recommends that the Zoning Commission set down the proposed text amendment and OP finds the amendment is not inconsistent with the 2006 Comprehensive Plan.

JS/pg
Paul Goldstein, Case Manager

Attachments: Exhibit 1: Special Purpose Districts
Exhibit 2: SP Districts: 16th Street and Dupont Circle Area
Exhibit 3: SP Districts: Foggy Bottom Area
Exhibit 4: SP Districts: Judiciary Square and Capitol Hill Area
Exhibit 5: Relevant Historic Districts and CFA Designations

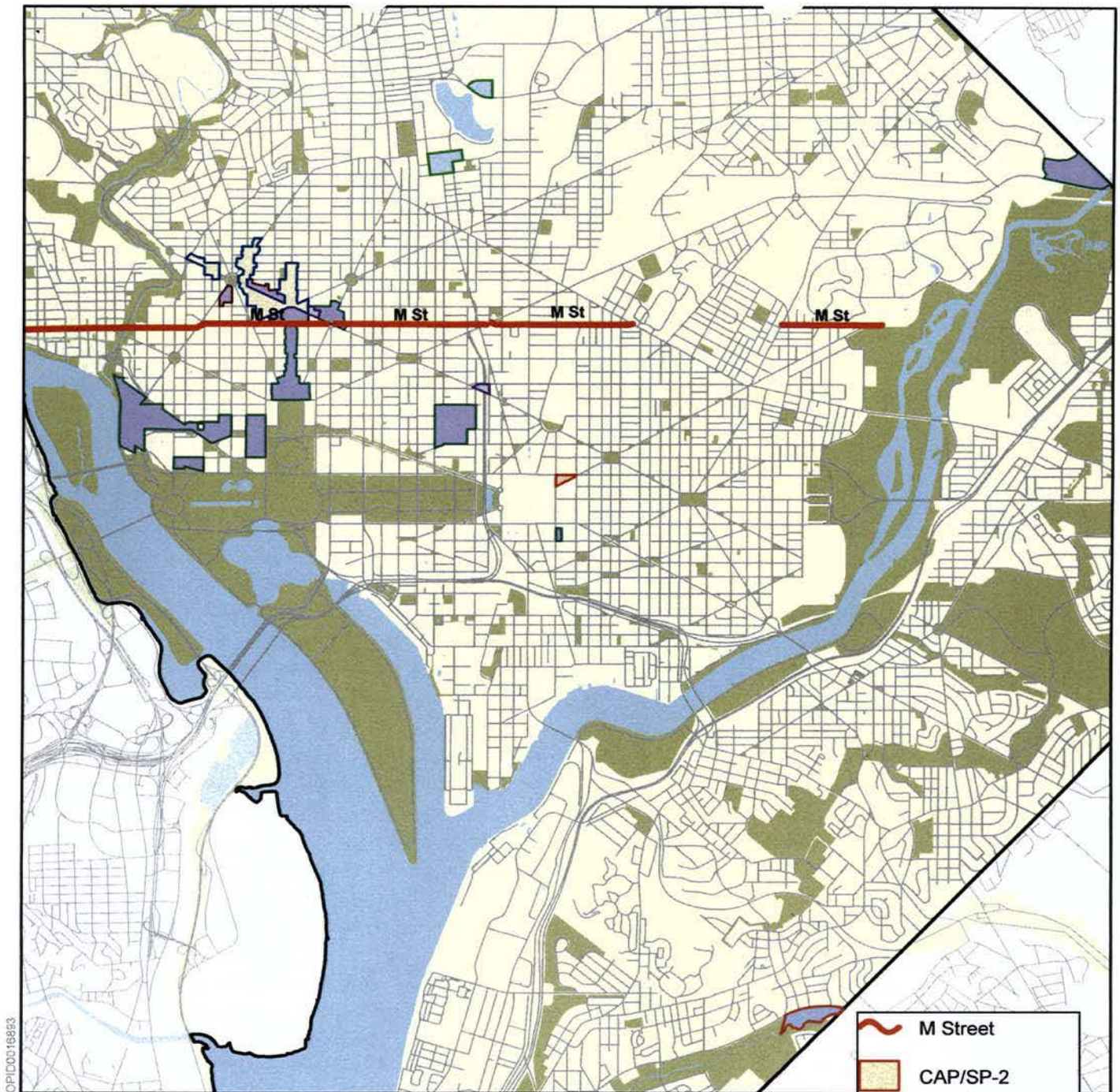
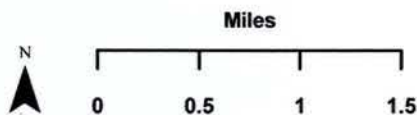


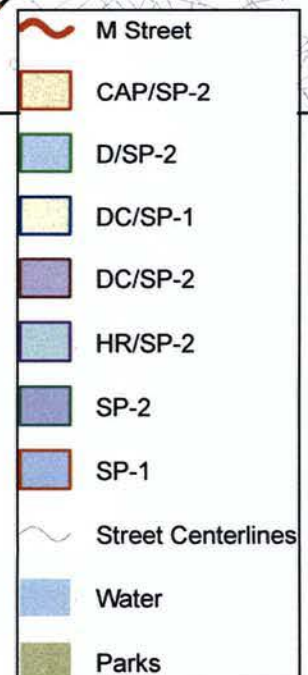
Exhibit 1: Special Purpose Districts



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Adrian M. Fenty, Mayor

Office of Planning ~ February 18, 2009

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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.



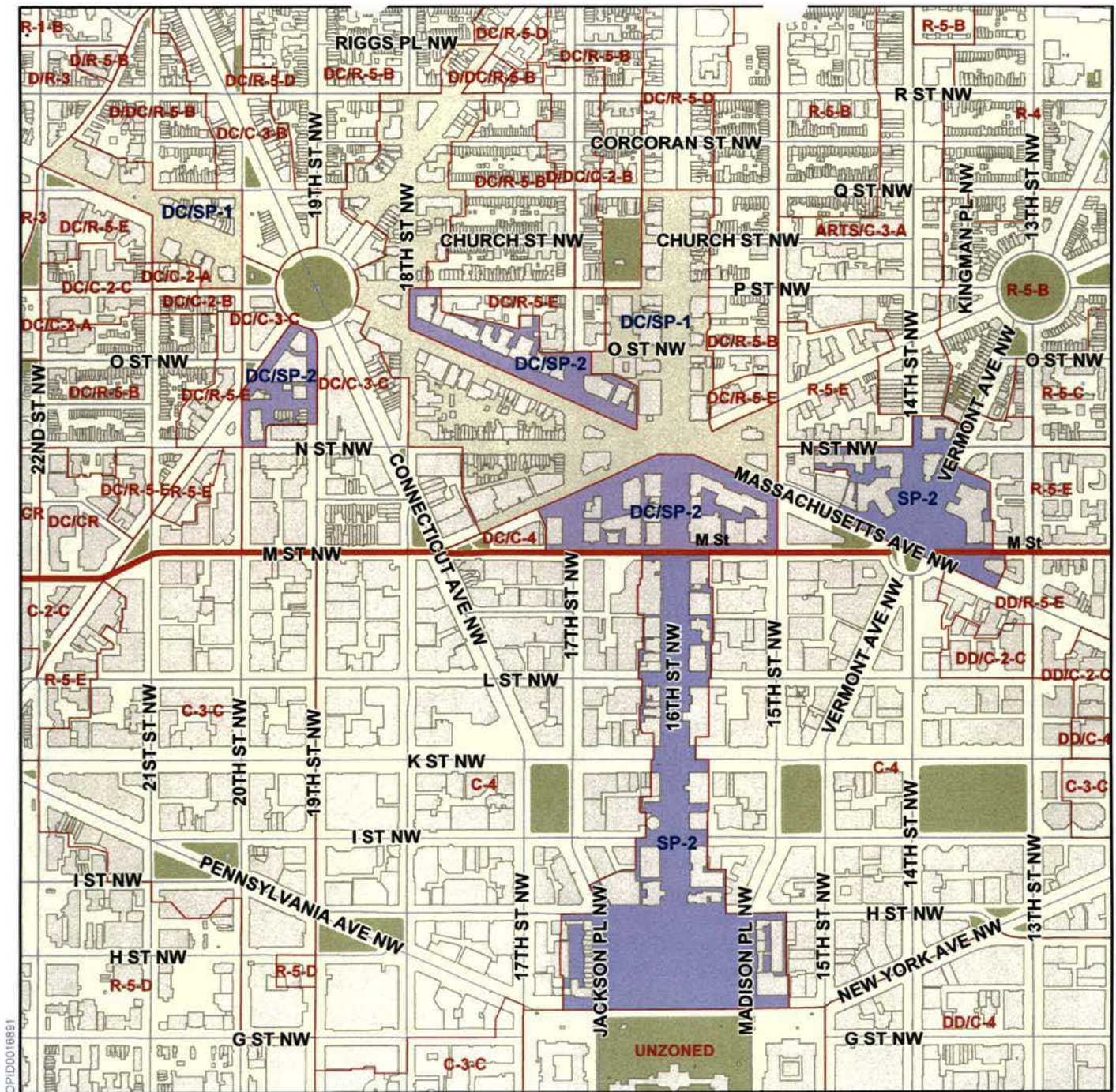
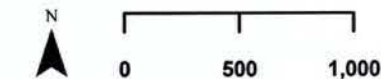


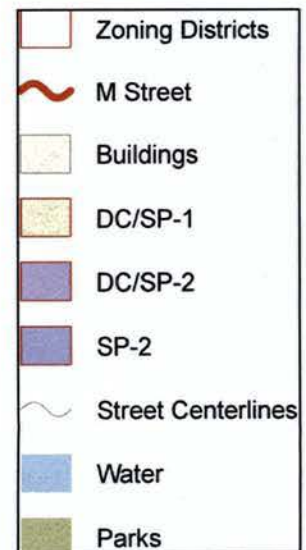
Exhibit 2: SP Districts: 16th Street and Dupont Circle Area



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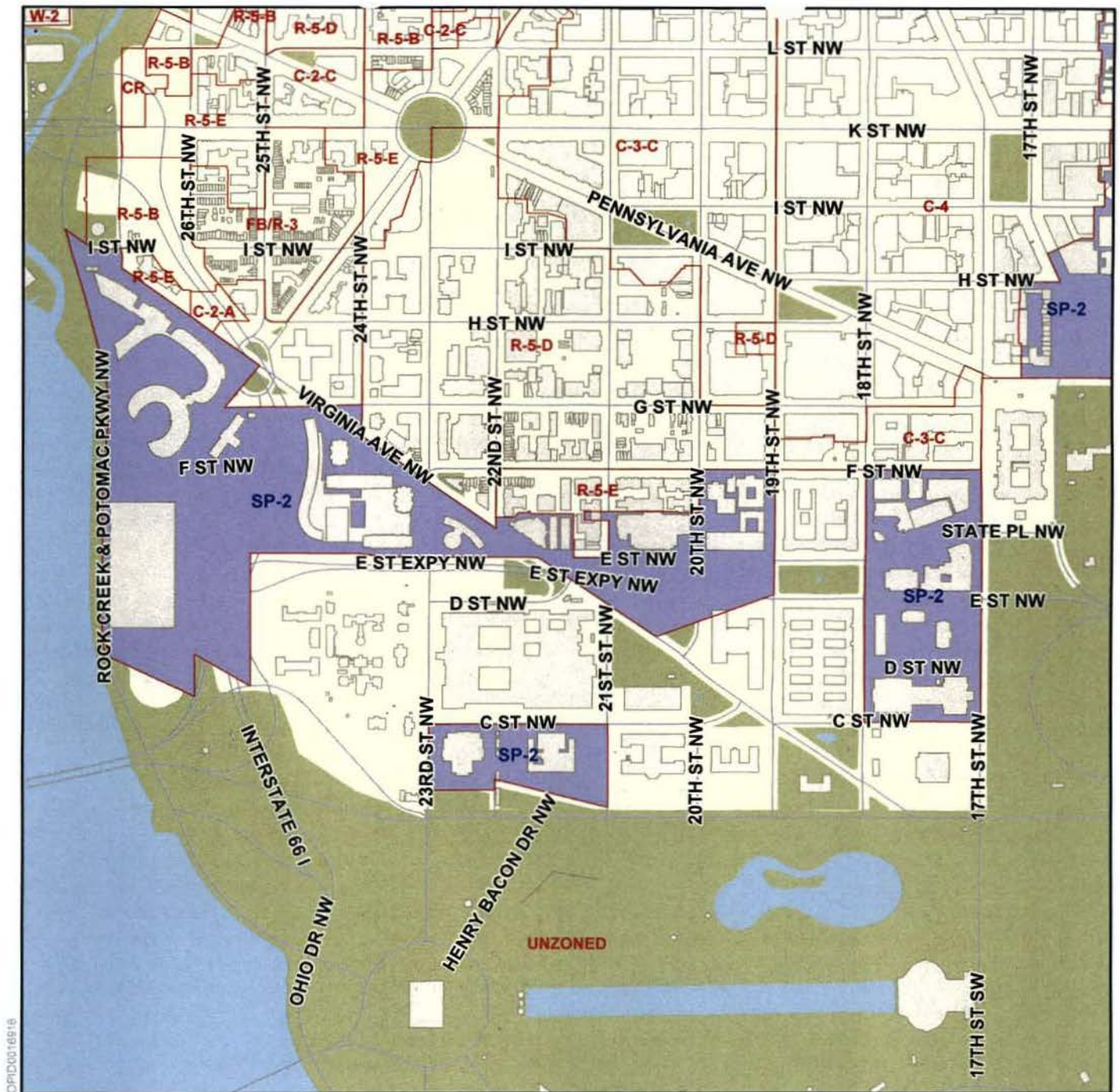
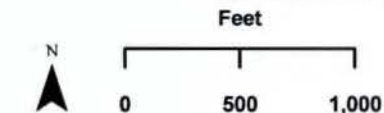


Exhibit 3: SP Districts: Foggy Bottom Area



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	Zoning Districts
	M Street
	Buildings
	SP-2
	Street Centerlines
	Water
	Parks

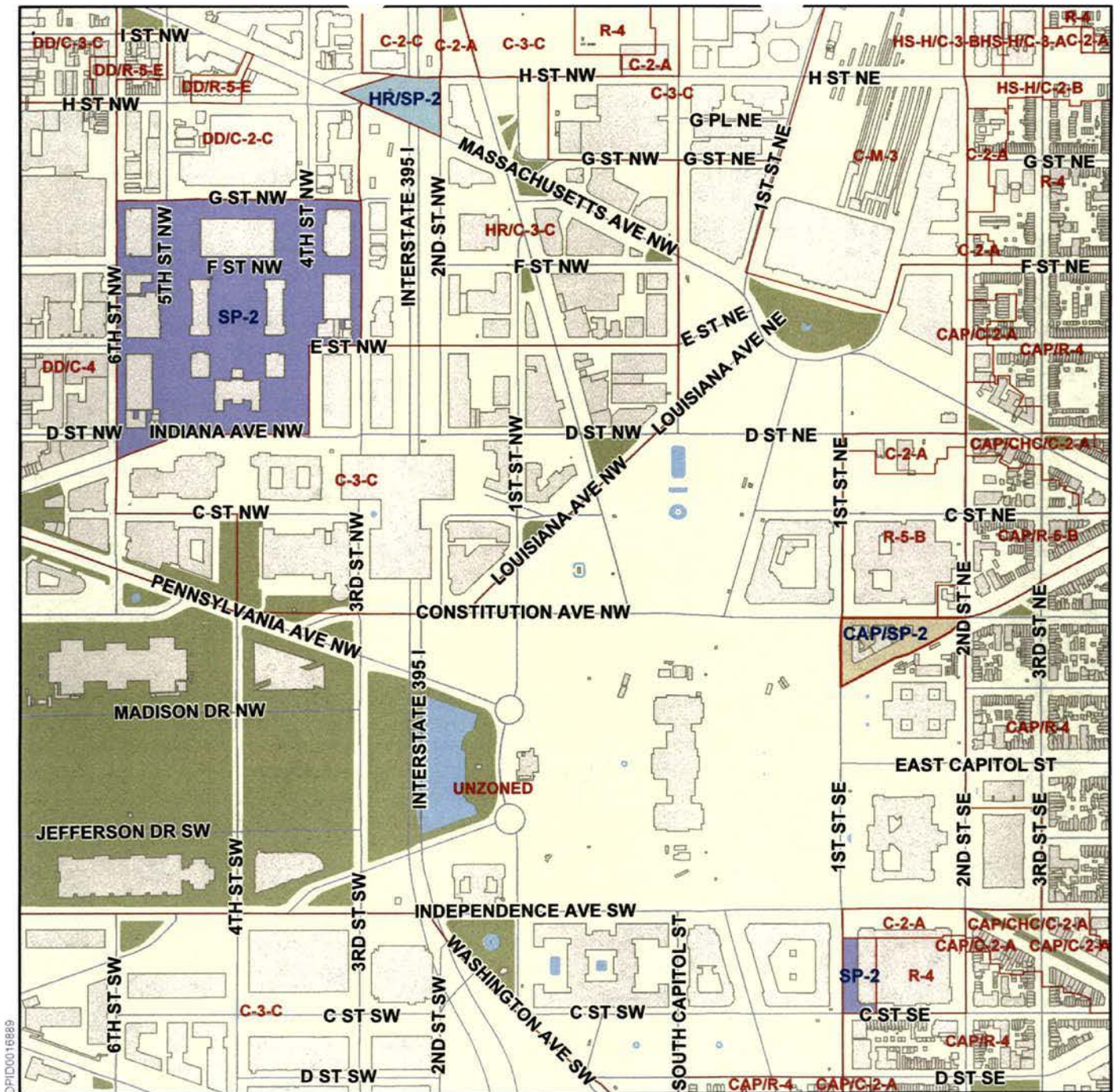
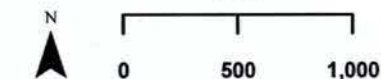


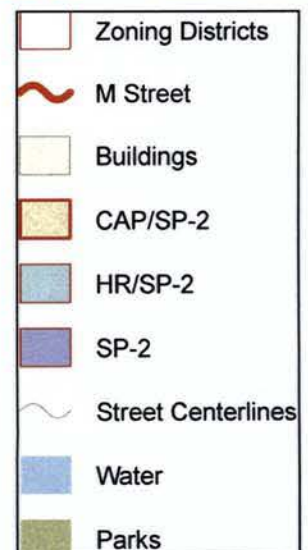
Exhibit 4: SP Districts: Judiciary Square and Capitol Hill Area

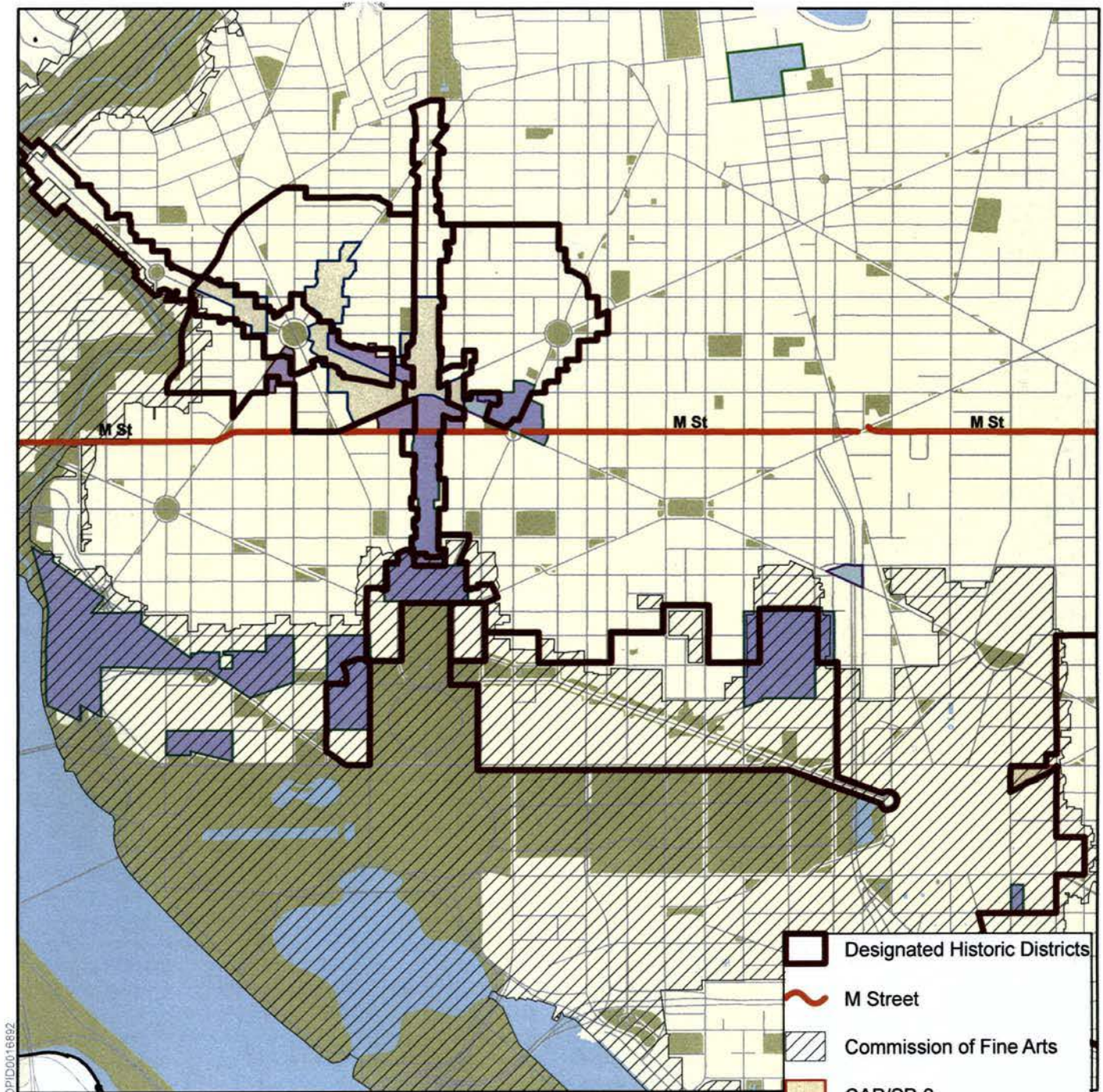


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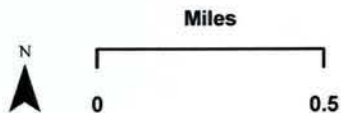
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**Exhibit 5: Relevant Historic Districts and
CFA Designations**



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- Designated Historic Districts
- M Street
- Commission of Fine Arts
- CAP/SP-2
- D/SP-2
- DC/SP-1
- DC/SP-2
- HR/SP-2
- SP-2
- SP-1
- Street Centerlines
- Water
- Parks