



ZONING COMMISSION
District of Columbia

MEMORANDUM

TO: Zoning Commission of the District of Columbia
FROM: Jennifer Steingasser, Deputy Director *JS*
DATE: October 19, 2009
SUBJECT: Public Hearing Report for ZC Case # 09-11 – A Proposed Zoning Text Amendment Permit Retail and Service Uses By Special Exception in Certain SP-2 Districts

CASE NO. 09-11

EXHIBIT NO. 6

2009 OCT 19 PM 4:47

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I. SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends that the Zoning Commission (the "Commission") adopt the following text amendments:

- Chapter 5 (Special Purpose Districts) by adding a new § 518, which would permit retail and service uses by special exception on or below the ground floor of buildings on properties located in Special Purpose Districts-2 (SP-2) south of M Street N.W. and N.E.
- Chapter 21 (Off-Street Parking) by adding text to § 2101.1 to include a parking requirement for retail or service uses in SP-2 Districts south of M Street N.W. and N.E.
- Chapter 31 (Board of Zoning Adjustment Procedures) by adding text to § 3104.1 to include a reference to the special exception for retail or service uses in SP-2 Districts south of M Street N.W. and N.E.

II. BACKGROUND

OP's staff report, dated July 17, 2009, requested setdown of text amendments intended to permit retail and service uses by special exception on or below the ground floor of buildings on properties located in SP-2 Districts south of M Street N.W. and N.E. The Commission discussed the proposal at its regular public meeting on July 27, 2009 and setdown the proposed amendments for a public hearing.

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 uses co-existed, and to encourage the development of peripheral parking facilities. ZC Case No. 78-2 split the SP District into SP-1 and SP-2 with different heights and densities to achieve several goals, such as providing "a transition between commercial and residential areas" and "a mix of uses." 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 the 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. The relief requests avoided 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 very high burden for relief.

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.¹ An applicant for a split-zoned property along 16th Street successfully pursued a special exception and an area variance under § 2514.2 before the BZA 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.² 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 there is demand for more expansive retail and service uses in SP Districts.

III. ANALYSIS

OP recommends text amendments to permit by special exception certain ground floor or below retail and service uses in 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. More vibrant street level activity would provide greater retail options for employees working in the area, residents, and visitors. The proposed changes would also create a rational process to allow these uses in locations where their operation would be of most benefit to neighboring properties.

To accomplish these objectives, the proposed changes 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. The retail or service uses would also be restricted to those allowed as a matter of right in C-1 Districts (Neighborhood Shopping Districts, §§ 701.1 through 701.5) and would only be permitted by special exception. By requiring special exception review, the BZA would examine the proposed C-1 uses for impacts on neighboring properties and the public would have an opportunity to participate and comment. Further, a new parking standard, similar to the existing SP general office parking standard, would require that a minimum number of spaces be provided for new retail or service uses.

At the setdown hearing in July, the Commission raised a concern regarding the visual appearance of possible ground floor retail or service uses in buildings along the west side of 17th Street N.W. opposite the Ellipse and Old Executive Office Building. However, there are several review processes in place that would scrutinize such appearance and design issues. The BZA, which has a permanent sitting member from the National Capital Planning Commission (NCPC), would review any retail or service use proposal for impacts on neighboring properties under general special exception criteria. The proposed text also empowers the BZA to "impose requirements pertaining to screening, signage, or other requirements it deems necessary to protect adjacent or nearby property" as a condition of zoning approval. Additionally, properties along the referenced stretch of 17th Street, and for that matter nearly every impacted SP-2 property, would also be subject to either historic preservation review, Commission of Fine Arts review, or both (see Exhibit 5). As a result, the visual impact of any proposed retail and service uses would likely undergo multiple review processes.

¹ In the Matter of American Institute of Architects and American Architectural Foundation, 08-27. Final Action taken June 22, 2009.

² CCH Capital Hotel Partners LLC, Application No. 17920 (2009).

IV. PROPOSED TEXT

OP recommends that the Zoning Commission adopt the following amendments to the Zoning Regulations.

A. CHAPTER 5, SPECIAL PURPOSE DISTRICTS is amended by adding a new § 518 to read as follows:

518 RETAIL AND SERVICE USES (SP-2)

518.1 The uses identified in § 518.4 shall be permitted in certain properties 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 properties are those located south of M Street N.W. and N.E.

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

518.4 The uses shall be those permitted in §§ 701.1 through 701.5 of this Title.

518.5 The uses shall not include a drive-through.

518.6 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.

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

B. CHAPTER 21, OFF-STREET PARKING REQUIREMENTS, § 2101.1 (Table) is amended by adding the following minimum parking space requirement to those appearing under the use “retail or service establishment except gasoline service station and repair garage.”

<u>USES</u>	<u>NUMBER OF PARKING SPACES REQUIRED</u>
Retail or service establishment except gasoline service station and repair garage	
SP-2 (If property is located south of M Street N.W. and N.E.)	In excess of 2,000 ft.², 1 for each additional 1,800 ft.² of gross floor area

C. Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended by adding the following to the chart appended to § 3104.1. The new schedule is depicted in boldface type:

<u>TYPE OF SPECIAL EXCEPTION</u>	<u>ZONE DISTRICT</u>	<u>SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED</u>
Retail and Service Uses on or below the ground floor of properties located south of M Street N.W. and N.E.	SP-2 District	§§ 518.2 - 518.7

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

"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 establish 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. COMMUNITY COMMENTS

At the date of this report, OP has received a submission from ANC 2A that reflects a vote in support of the proposal.

VII. CONCLUSION

The Office of Planning recommends that the Zoning Commission adopt the proposed text amendments. OP also 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

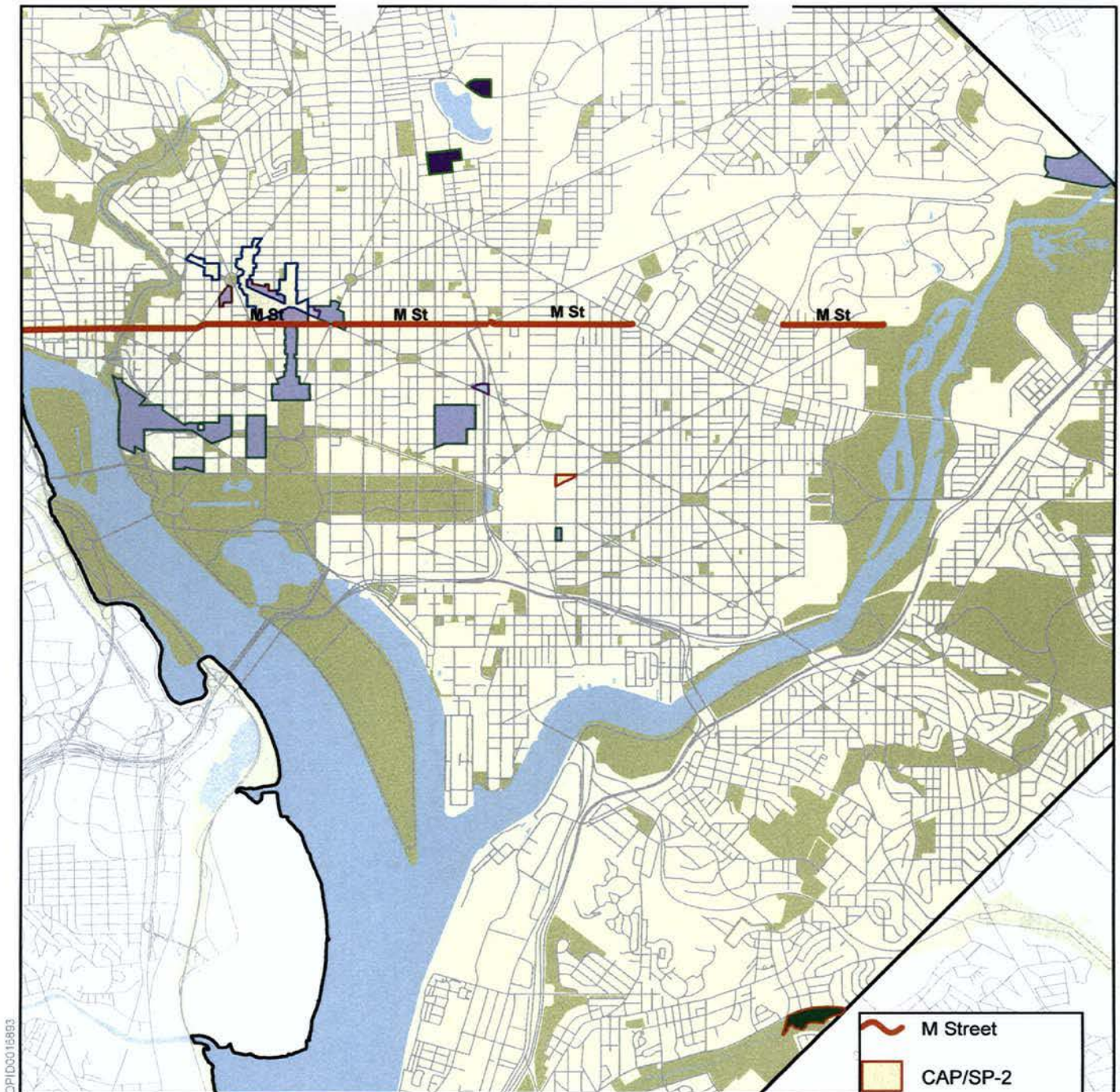
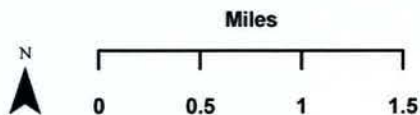


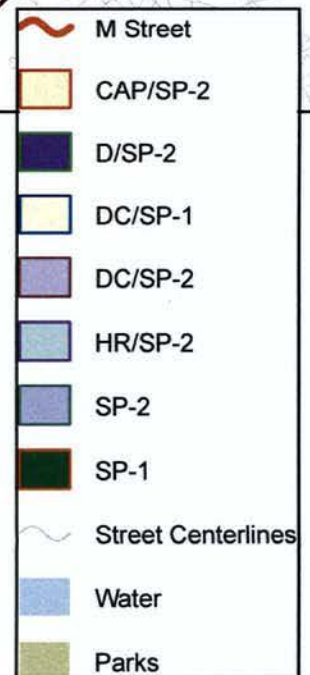
Exhibit 1: Special Purpose Districts



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District of Columbia
Adrian M. Fenty, Mayor

Office of Planning ~ February 18, 2009

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.



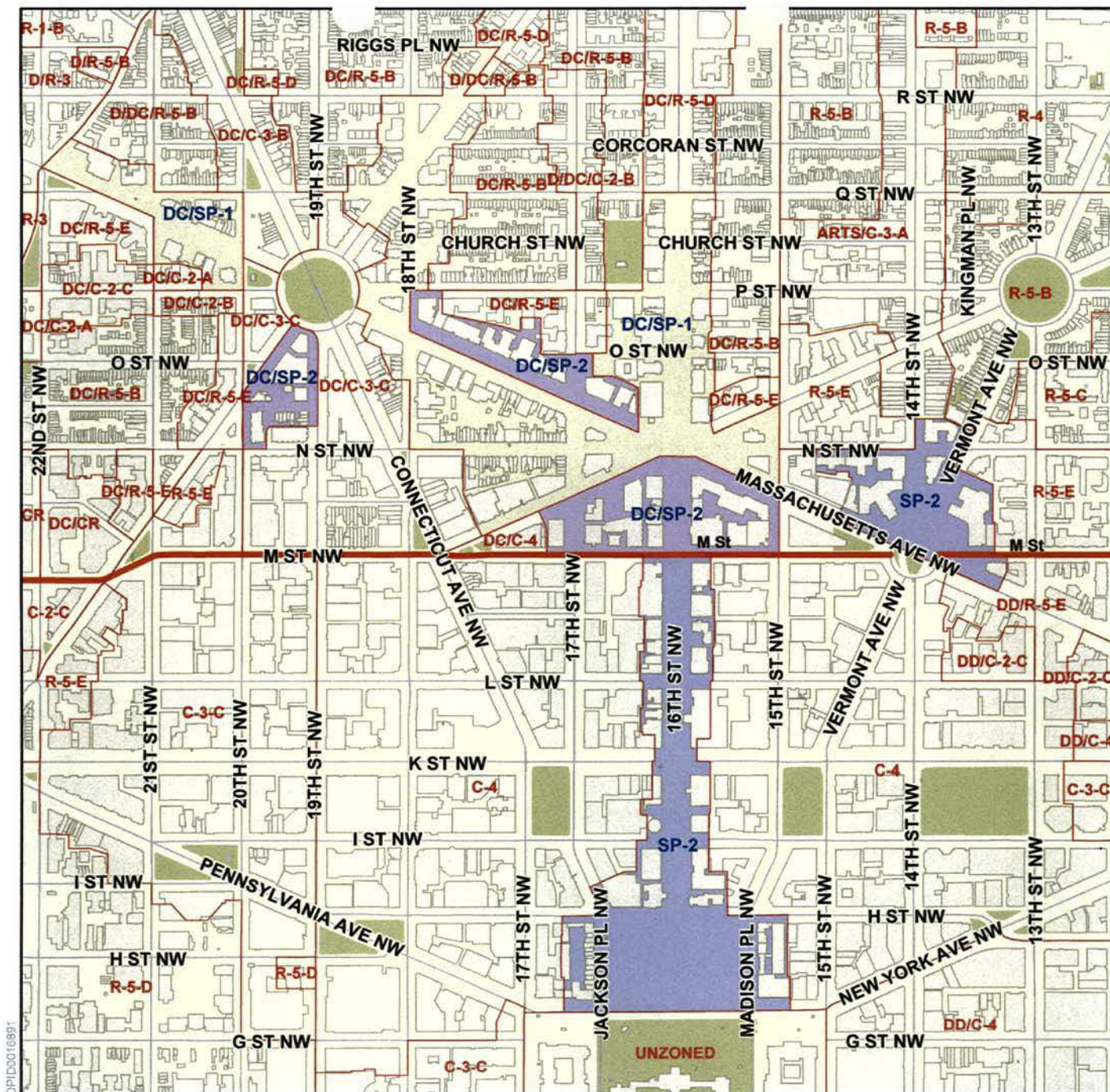
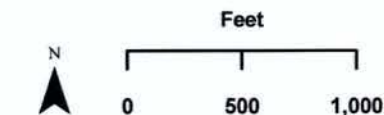


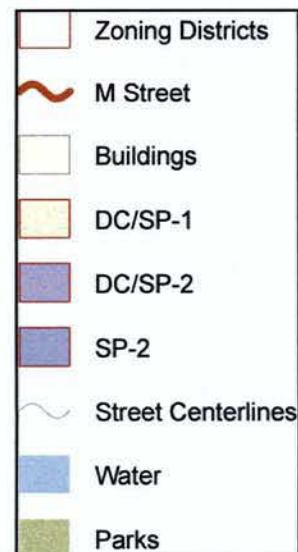
Exhibit 2: SP Districts: 16th Street and Dupont Circle Area



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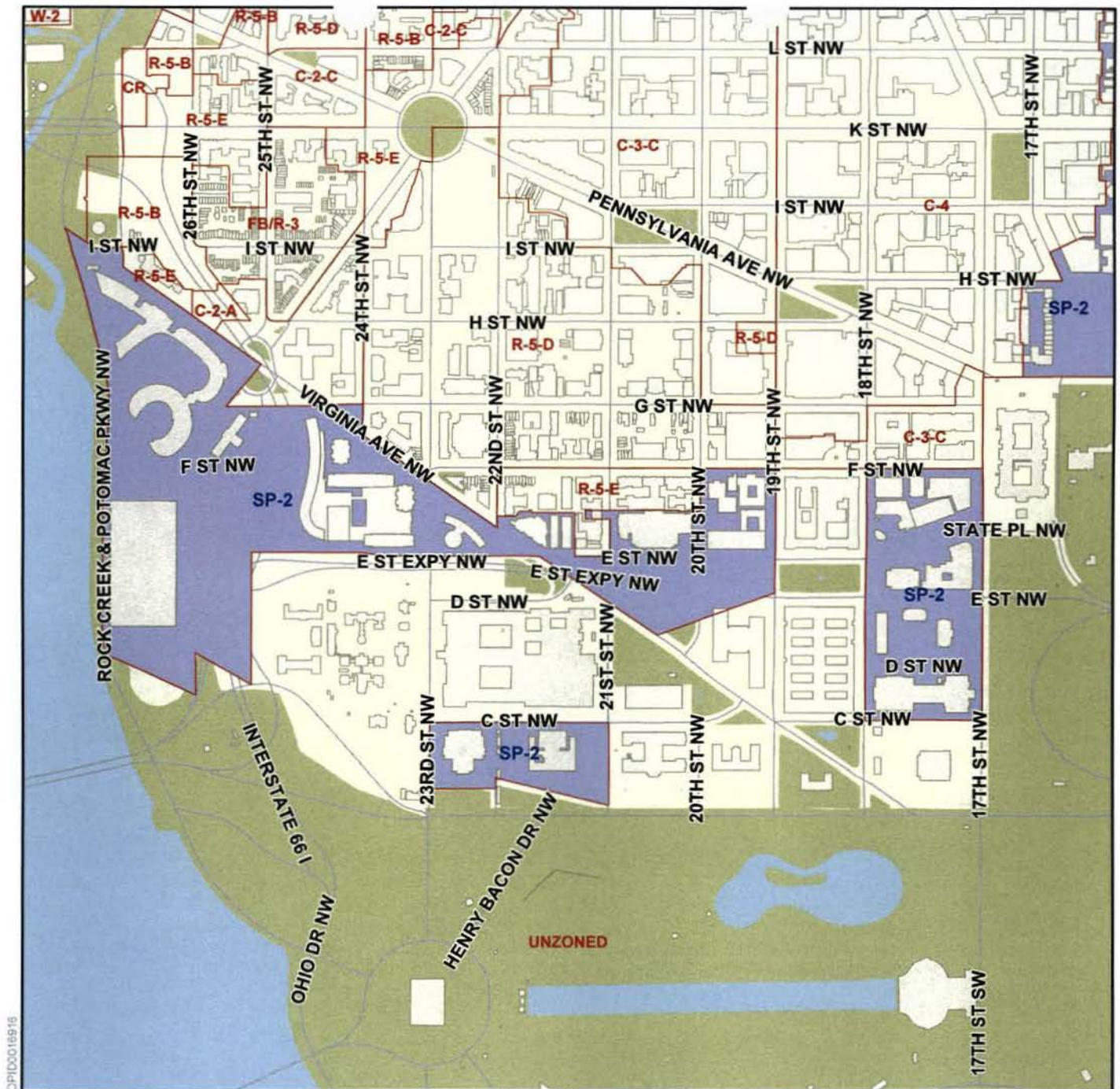
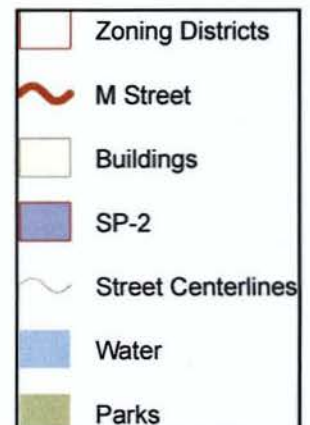


Exhibit 3: SP Districts: Foggy Bottom Area

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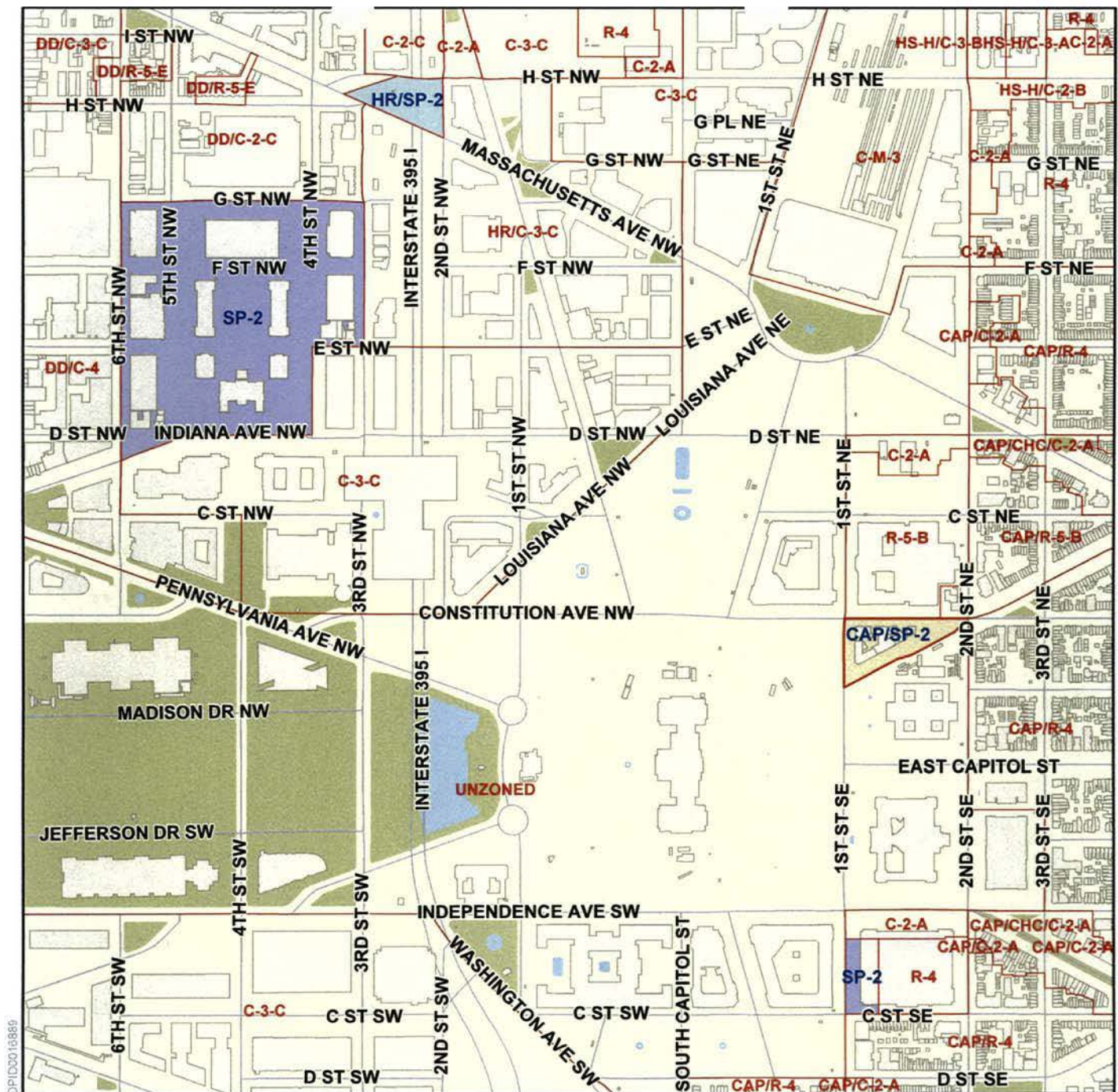


Exhibit 4: SP Districts: Judiciary Square and Capitol Hill Area


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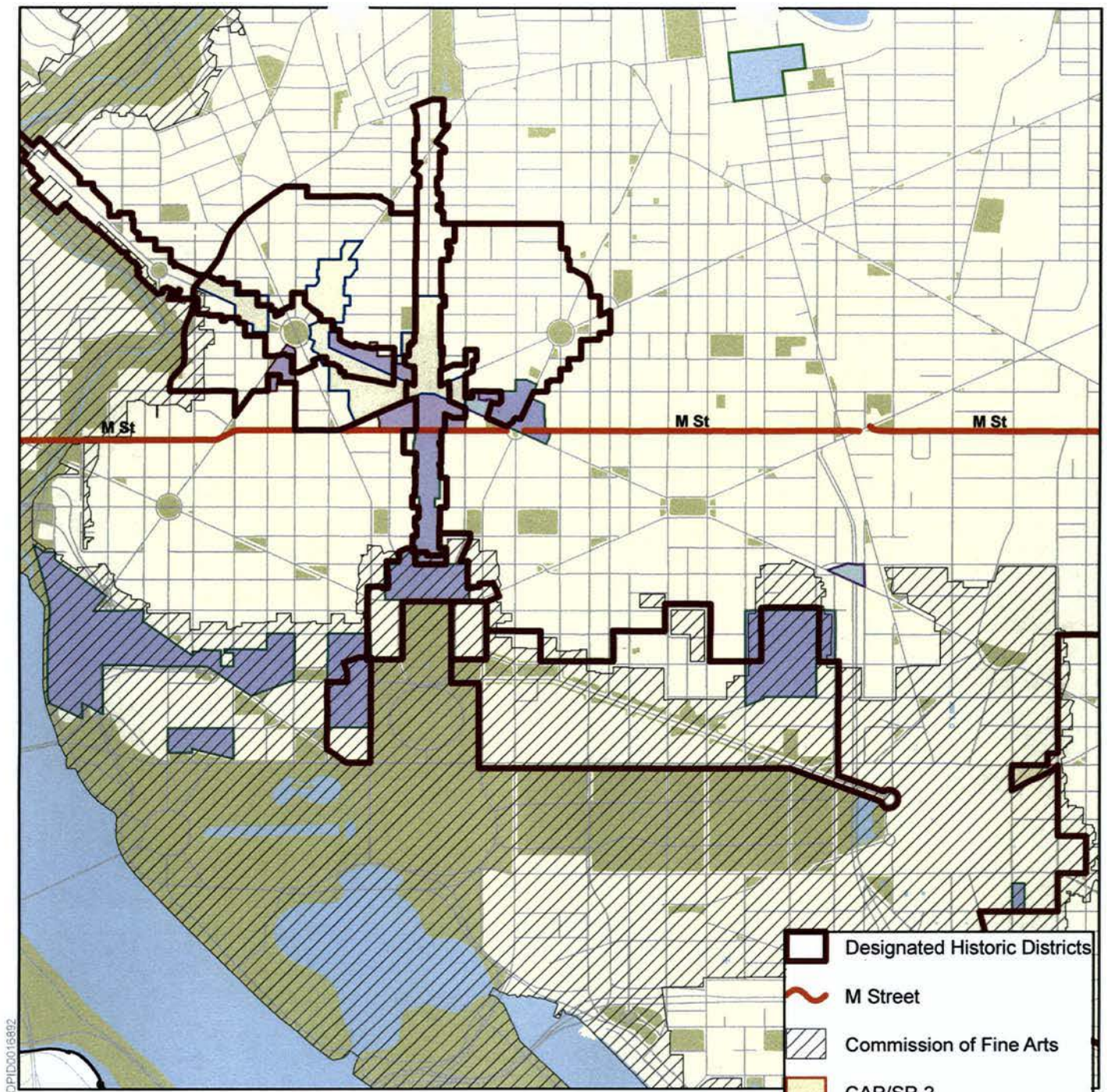
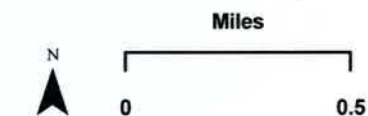


Exhibit 5: Relevant Historic Districts and CFA Designations



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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