Zoning Commission Case No. 96-3/89-1
Buzzard Point Overlay District

Statement of Laszlo N. Tauber, M.D.
November 21, 1996

Tauber Realty Company is the owner of two office buildings in the Buzzard Point area, as shown on the map attached as Exhibit 1:

- 2100 2nd Street, S.W. (Square 613, Lot 10), located on the south side of V Street between 1st and 2nd Streets, was built in 1973 and has been leased to the General Services Administration since it was built. The building is currently leased to GSA, predominantly occupied by the headquarters of the Coast Guard. The building was built under the existing M District classification and is eight stories with an FAR of approximately 6.0.
- 1900 Half Street, S.W. (Square 666, Lot 15), located on the east side of Half Street south of T Street, was built in 1975 and has also been leased to GSA since it was built. The building is currently leased to GSA, predominantly occupied by the Washington Field Office of the Federal Bureau of Investigation. This building was also built under the M District and is an eight story, 6.0 FAR building.

These two buildings are the only existing office buildings in the area proposed to be mapped with the Buzzard Point (BP) overlay district. In its *Buzzard Point/Near Southeast Vision 2020 Background Report*, dated

ZONING COMMISSION
District of Columbia
CASE NO.96-3
EXHIBIT NO.50

October 20, 1992, the Office of Planning identified these two sites as "likely to remain" in their current use and as "key buildings" in the urban design context (see the maps attached as Exhibit 2 from the *Vision 2020* report). Both buildings exceed the height and density proposed under the BP/W-2 District, which would partially apply to both sites (see the proposed zoning map attached as Exhibit 3).

At our request, the Zoning Commission has advertised an alternative provision for the text of the proposed BP overlay which would protect the rights of my existing buildings. Proposed §1605.2 would provide that:

> An office building that is in existence with a valid Certificate of Occupancy and which is built to more than eighty percent (80%) of the height or floor area ratio of the zoning in effect prior to the inclusion of the site in the BP overlay shall be considered a conforming structure. Such a building may be renovated, altered, maintained and continued.

I support adoption of this provision. Experience over the years has demonstrated that a nonconforming status is not advantageous to a property owner. There are many difficulties associated with financing, insurance and renovations, even for a nonconforming structure devoted to a conforming use. A future lender is likely to insist on a higher loan-to-value ratio, thereby reducing my ability to put money into the buildings to keep them competitive with new development which may occur. Given the substantial investment in place (hence, the proposed applicability of the provision to buildings built to eighty percent of the previous height or

density), the status of these buildings, their continuation over time and the need to be able to modernize and update the buildings to reflect changing building regulations and changing tenancies, you should not penalize me by making these buildings nonconforming.

In considering this provision, the Commission should be mindful of the following:

- When I built these two buildings, in the mid-1970s, many government agencies were considering leaving the city for the suburbs. Land was cheaper, rents would be lower, parking would be more plentiful and easier to provide and, even then, the need to be Downtown in the heart of the city was becoming less important. I was encouraged by District and Federal officials to build these buildings as an alternative to suburban sprawl. We have rented the buildings to GSA since their completion, and there is still a considerable useful life left in both buildings. I should not be penalized now because the zoning is being changed, especially in light of my next two points.
- Both buildings are consistent with the medium-high density commercial component of the mixed use classification which the Generalized Land Use Map of the Comprehensive Plan applies to this area. The Commission has recognized in other cases (for example, Capitol South and Union Station/North Capitol Street) that the

C-3-C District, allowing a ninety foot height and 6.5 FAR, is not inconsistent with medium-high density commercial. I know that there are other components to the mix, and I generally support the thrust of the proposed BP overlay to achieve those goals. However, since commercial use, including office, is a recognized component of the mix, my buildings are not inconsistent with the Comprehensive Plan and should be acknowledged and protected.

- The proposed zoning text contains a specific provision to make existing industrial uses conforming and to allow their expansion up to the limits of the proposed zoning. The proposed §1605.1 recognizes the "production and technical employment" component of the Comprehensive Plan mix. I see no reason why my buildings should be treated with less consideration than existing industrial uses, which are also part of the mix found to be appropriate for this area. If anything, the continued viability and improvement of my buildings will be more beneficial to the long-term conversion of the area to mixed use than the continued expansion of industrial uses.
- I was encouraged by the proposed action of the Zoning Commission in the Southwest Urban Renewal Project Area C rezoning to include language to protect buildings constructed in accordance with the Urban Renewal Plan. I view my situation as similar. My buildings were encouraged to be constructed for use by the Federal

Government in an area where little else positive had occurred for many years.

- Other jurisdictions protect existing development in a manner consistent with the alternative language advertised in this case. See the excerpts from the Montgomery County [Maryland] Code, Chapter 59, Zoning Ordinance, attached as Exhibit 4.
- These two office buildings remain stabilizing influences in the area and are two of the best maintained properties in the area. In addition, in the last twelve years, I have paid to the District more than $11 million in real estate taxes, including a current tax bill of almost $1 million per year.

I would therefore urge you to adopt the proposed §1605.2.

Attachments

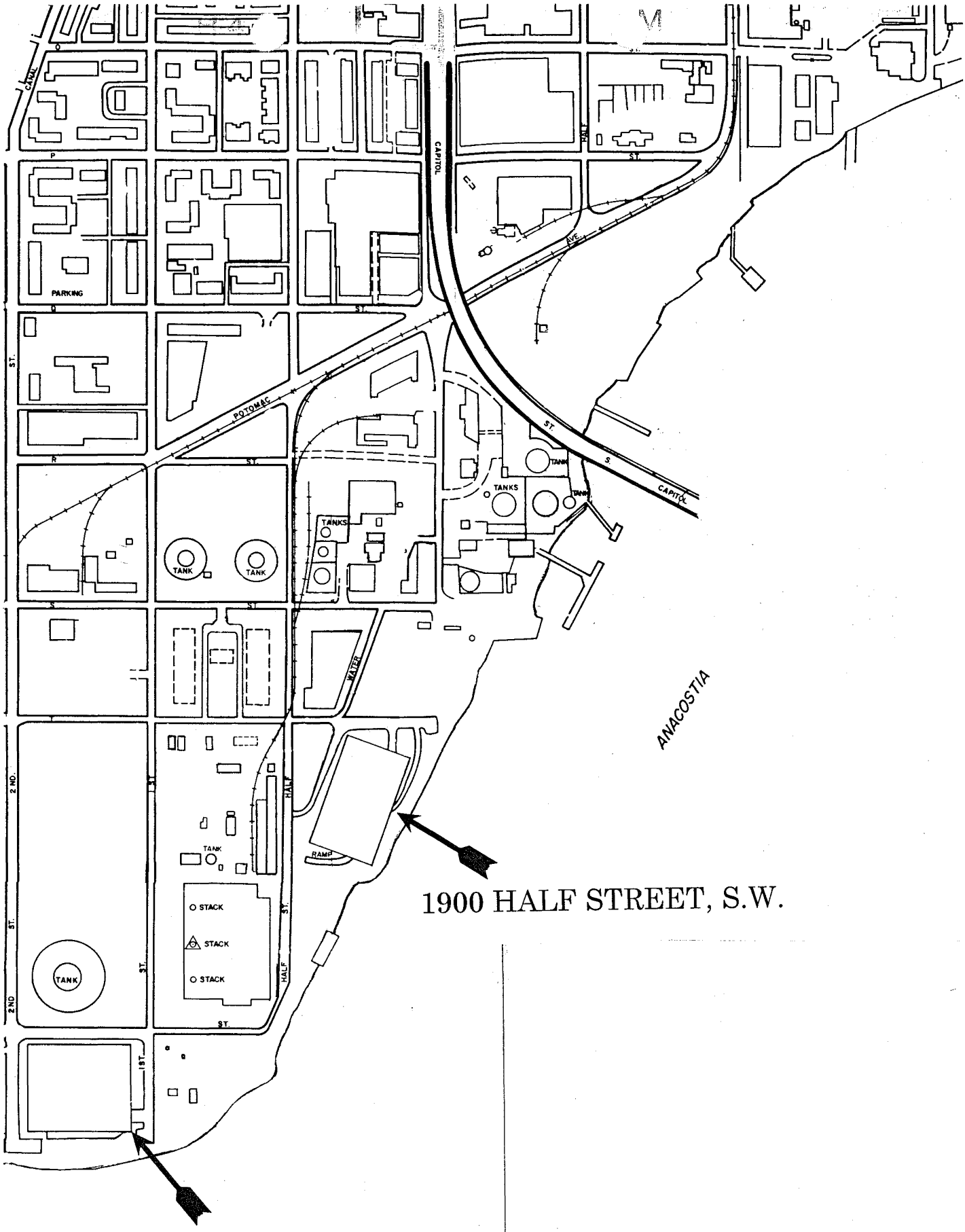

CANAL
CAPITOL
PARKING
POTOMAC
TANK
TANKS
WATER
ANACOSTIA
RAMP
STACK
STACK
STACK
1900 HALF STREET, S.W.
2100 2ND STREET, S.W.

EXHIBIT 1

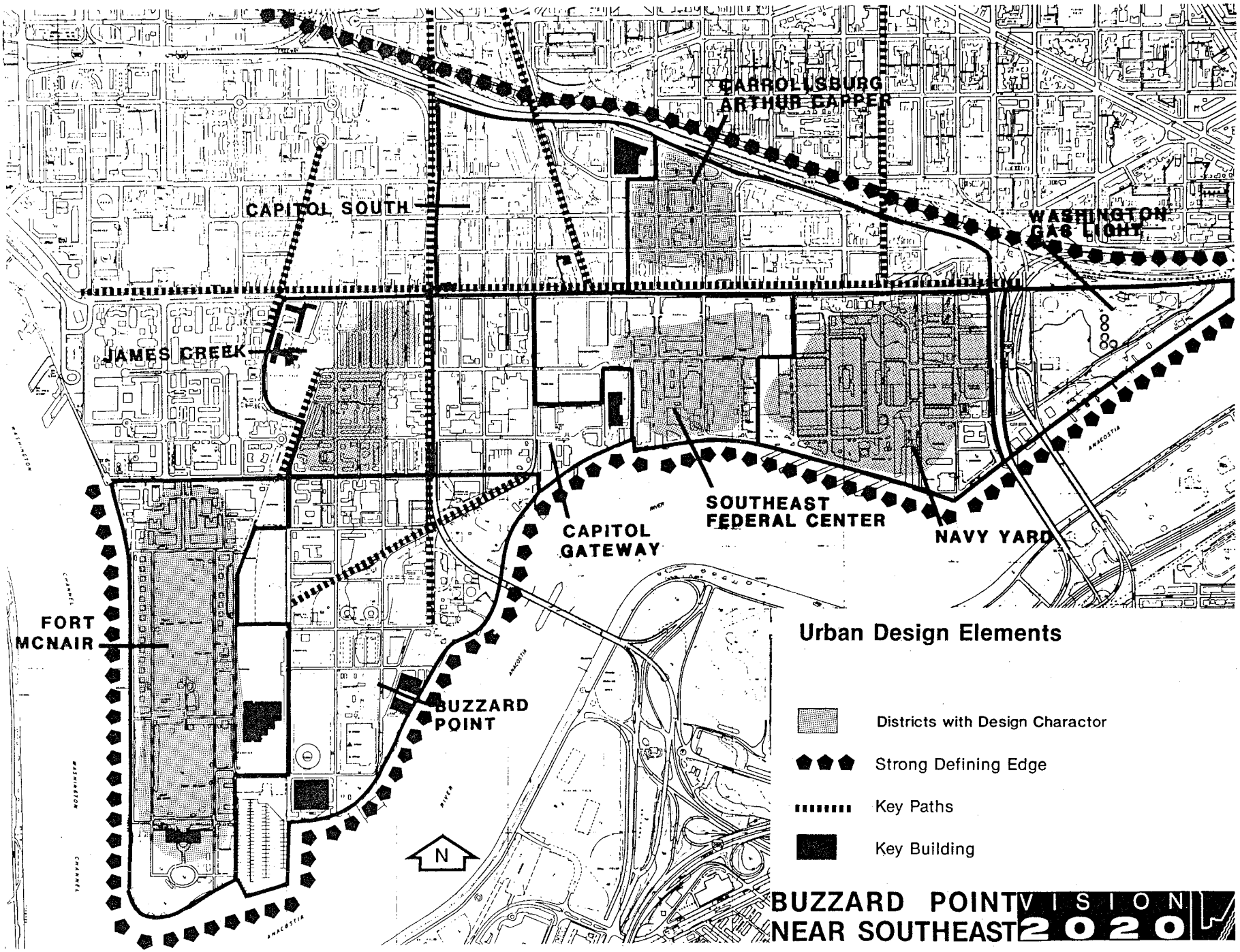
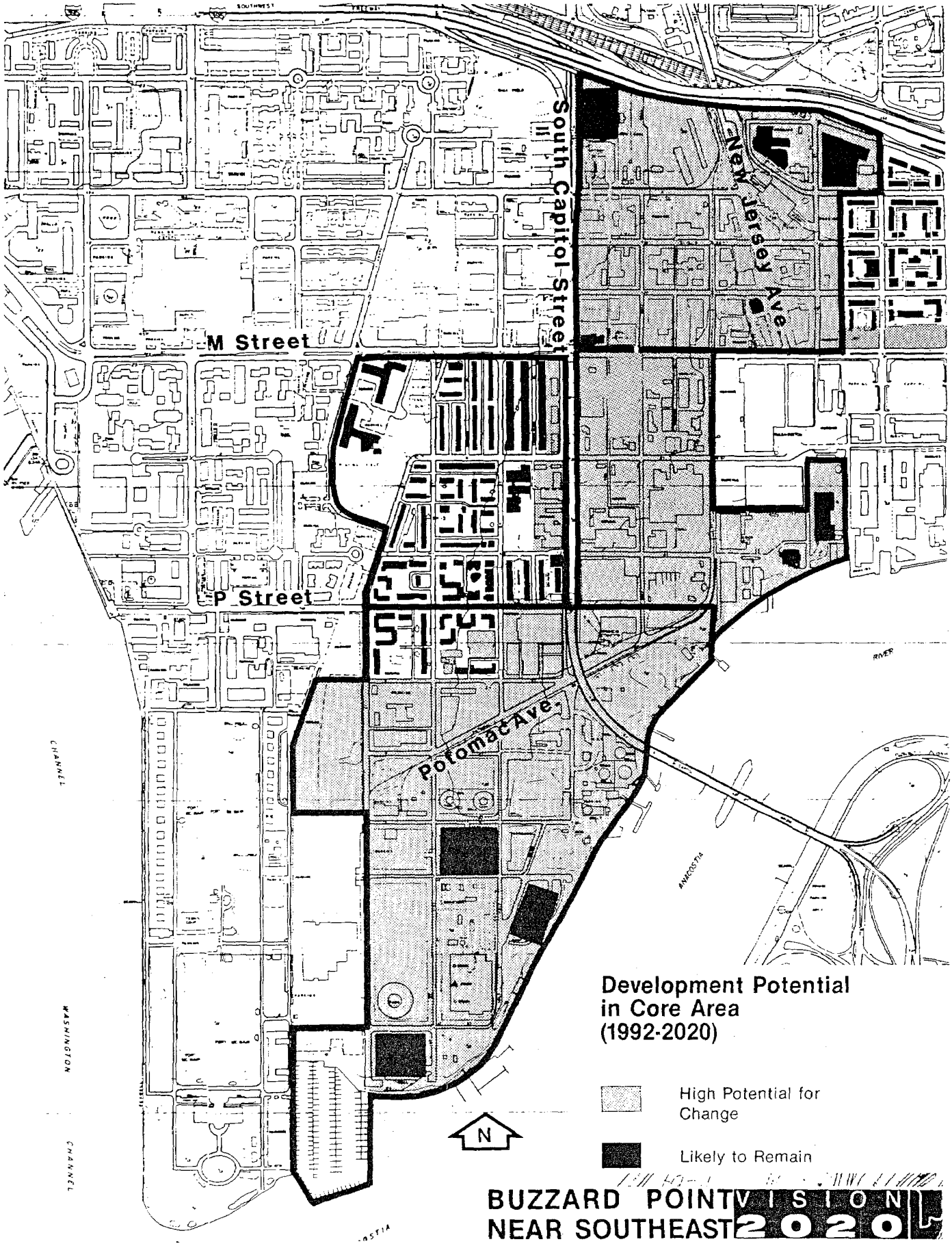
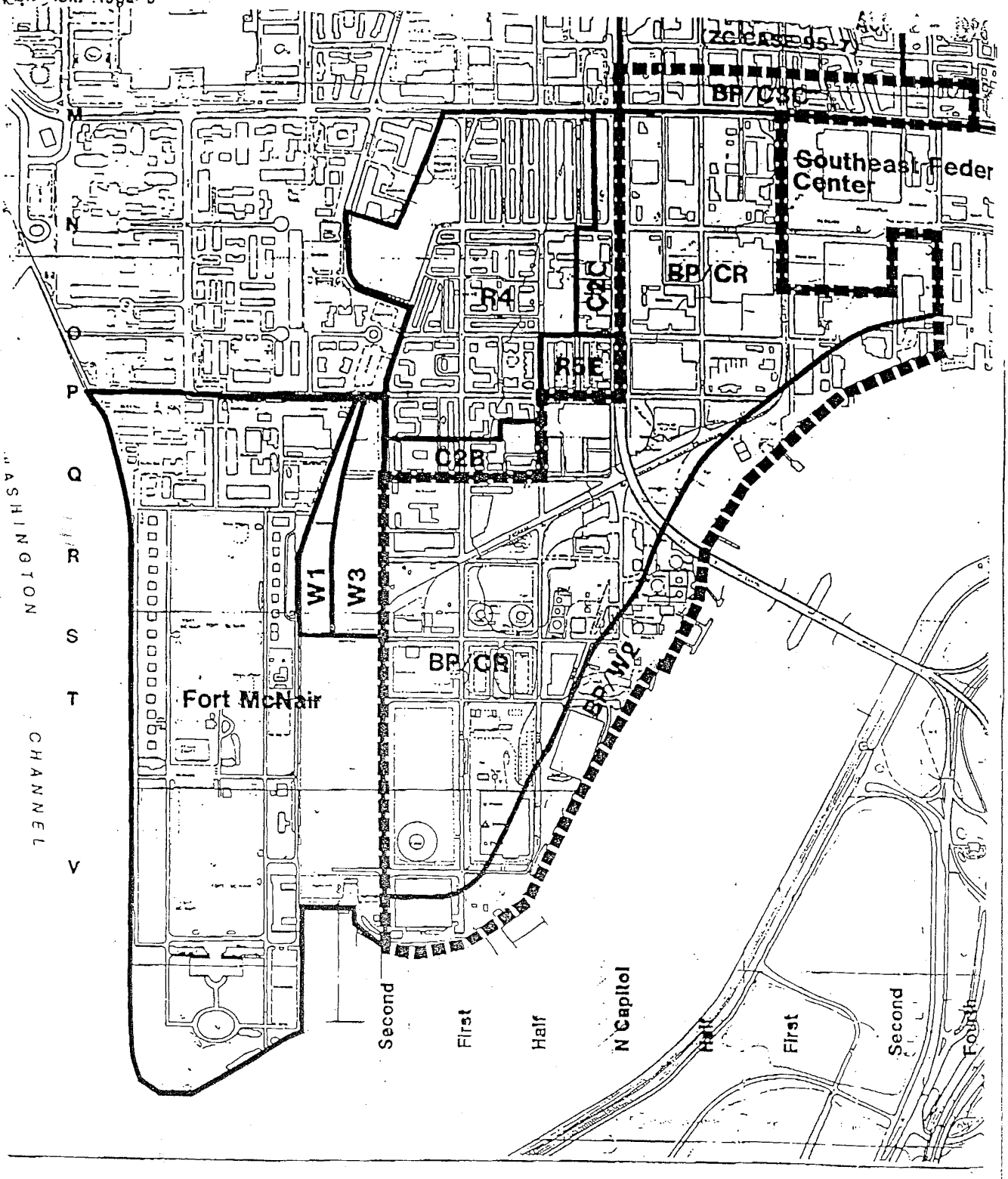

CARROLLSBURG
ARTHUR CAPPER
CAPITOL SOUTH
WASHINGTON GAS LIGHT
JAMES CREEK
SOUTHEAST FEDERAL CENTER
CAPITOL GATEWAY
NAVY YARD
FORT MCNAIR
BUZZARD POINT
N
Urban Design Elements
Districts with Design Charactor
Strong Defining Edge
Key Paths
Key Building
BUZZARD POINT
NEAR SOUTHEAST
VISION 2020

EXHIBIT 2


South Capitol Street
New Jersey Ave.
M Street
P Street
Potomac Ave.
SOUTHWEST
FREEWAY
RIVER
CHANNEL
WASHINGTON
CHANNEL
ANACOSTIA
N
Development Potential
in Core Area
(1992-2020)
High Potential for
Change
Likely to Remain
BUZZARD POINT VISION
NEAR SOUTHEAST 2020

District of Columbia Register




BUZZARD POINT/CAPITOL GATEWAY AREA
PROPOSED ZONING
DRAFT
Office of Planning, 9/95

Boundary – Proposed Buzzard Point/Capitol Gateway (BP) Overlay Zone

EXHIBIT 3

# ZONING ORDINANCE

# MONTGOMERY COUNTY,

# MARYLAND

REPUBLICATION
Updated through
November 30, 1993
(Ordinance 12-51)

Chapter 59
VOLUME 4
MONTGOMERY COUNTY CODE, 1994

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(b) The exception is a property in a parking lot district, as defined in chapter 60 of this Code, that has been designated on an approved and adopted master or sector plan as one that may utilize public parking facilities to satisfy the requirements of article 59-E.

(c) All properties in a parking lot district that are not designated as prescribed in paragraph (b) above would be required to provide their parking on site and therefore may apply for an exemption to the parking district tax, pursuant to chapter 60.

**59-C-4.308. Special regulations.**

(a) Where an otherwise lawful structure or development exists or has received site plan approval in the C-T zone on April 1, 1986, this structure or development is not a nonconforming use and may be continued, if it remains an otherwise lawful use. If damaged, the structure may be rebuilt, repaired and/or reconstructed, subject to the following provisions:

(1) The maximum building coverage, building height, and gross floor area of the original building must not be increased; and

(2) The original number of on-site parking spaces must not be changed except as provided by article 59-E, title "Off-Street Parking and Loading."

(b) Development in accord with a schematic development plan and covenants recorded prior to April 1, 1986, pursuant to the provisions of section 59-H-2.5, title "Contents of Optional Method of Application—Local Map Amendments," is lawful, even though development in accord with that plan would not comply with the standards prescribed by sections 59-C-4.303, 59-C-4.304 and 59-C-4.307 above. Such development is not a nonconforming use and is subject to the provisions regarding an existing structure set forth in paragraph (a) above.

**59-C-4.309. Development procedure.**

(a) **Subdivision.** Subdivision or resubdivision of lots must be consistent with the recommendations of the relevant approved and adopted master or sector plan.

(b) **Site Plan.** The procedure for site plan approval is as set forth in division 59-D-3. Site plan approval is required for re-use of a building existing at the time the C-T zone is granted as well as for remodeling, rebuilding or new construction.

(Legislative History: Ord. No. 9-8, § 1; Ord. No. 9-80, § 2; Ord. No. 10-53, § 13; Ord. No. 10-70, § 3; Ord. No. 12-1, § 1.)

**Editor's note**—Formerly, section 59-C-4.1.

## Sec. 59-C-4.31. O-M zone—Purpose and development standards.

**59-C-4.310. Purpose.**

It is the purpose of the O-M zone to provide locations for moderate-intensity office buildings in areas outside of central business districts. It is intended that the O-M zone be located in areas where high-intensity uses are not appropriate, but where moderate in-

(b) From any other lot line:

(1) If:

—the wall of the building being constructed facing that lot line contains windows, or

—the adjoining lot is zoned or recommended on a master plan for uses other than commercial or industrial,

then the building shall be set back from that lot line a distance equal to not less than one-fourth of its height.

(2) No setback from a one-family residential zone shall be less than required in that zone.

(3) In all other cases, no setback is required.

**59-C-4.324. Special regulations—Amendment of 1978.**

(a) **Existing Structure.** Where an otherwise lawful structure exists in the C-O zone on October 31, 1978, and the otherwise lawful lot on which such structure is located is diminished in area by reason of taking under eminent domain, purchase or other governmental action, so that such structure could not then be built under the terms of this chapter because of insufficient net lot or other requirements of this chapter dealing with dimensions of the structure or its location on the lot, such structure shall not be regarded as a nonconforming use and may be continued, if it remains an otherwise lawful use; and, if damaged, it may be rebuilt, repaired and/or reconstructed so long as it is not increased, extended or enlarged beyond the dimensions which existed on the above date.

(b) **Future Construction.** On land zoned in the C-O classification on October 31, 1978 construction may be carried out in accordance with the provisions of the C-O zone as they existed prior to that date, if construction has been undertaken over and beyond the excavation and foundation work prior to October 31, 1979.

(Legislative History: Ord. No. 8-88, §§ 1—5; Ord. No. 9-79, § 1; Ord. No. 9-80, § 2; Ord. No. 10-53, § 13.)

**Editor's note**—Formerly, section 59-C-4.3.

**Sec. 59-C-4.33. C-P zone—Purpose and development standards.**

**59-C-4.330. Purpose.**

The purpose of the C-P zone is to provide for low-density, park-like development of office uses suitable for locations in proximity to similar commercial/industrial development or to low- and medium-density residential uses, in areas where it would implement the land use recommendations of approved and adopted master or sector plans, or in areas where such uses are appropriate.

### 59-C-4.355. Nuisances.

Any use which is found by the board to be a public nuisance, by reason of the emission of dust, fumes, gas, smoke, odor, noise, vibration or other disturbance, is and shall be expressly prohibited in the C-2 zone. No such finding shall be made by the board except after a hearing upon reasonable notice, and any person, the commission or the district council may file a petition with the board for such a hearing.

### 59-C-4.356. Special regulations—Amendment of 1976.

(a) **Existing Structure.** Where an otherwise lawful structure exists in the C-2 zone on March 23, 1976, and the otherwise lawful lot on which such structure is located is diminished in area by reason of taking under eminent domain, purchase or other governmental action, so that such structure could not then be built under the terms of this chapter because of insufficient net lot or other requirements of this ordinance dealing with dimensions of the structure or its location on the lot, such structure shall not be regarded as a nonconforming use and may be continued, if it remains an otherwise lawful use; and, if damaged, it may be rebuilt, repaired and/or reconstructed so long as it is not increased, extended or enlarged beyond the dimensions which existed on the above date.

(b) **Future Construction.** On land zoned in the C-2 classification on March 23, 1976, construction may be carried out in accordance with the provisions of the C-2 zone as they existed prior to that date, if construction has been undertaken over and beyond the excavation and foundation work prior to March 23, 1977.

(Legislative History: Ord. No. 9-80, § 2; Ord. No. 10-53, § 13; Ord. No. 11-9, § 1.)

**Editor's note**—Formerly, section 59-C-4.6.

## Sec. 59-C-4.36. C-3 zone—Purpose and development standards.

### 59-C-4.360. Purpose.

It is the intent of this zone to provide a method for the orderly grouping and spacing of commercial development on properties which abut or front on, and have access to, heavily travelled major highways with a planned or existing pavement of at least 6 lanes, or on properties which are recommended for such zoning on approved and adopted master plans or which are adjacent to properties previously or concurrently zoned C-3. This zone is intended to provide sites for commercial activities that may require large land areas and do not depend upon adjoining uses for reasons of comparison shopping and pedestrian trade; and sites for commercial facilities which are related to the traveller and highway user. At the same time, it is the intent that the frequency, design and location of points of direct access to the highway be controlled by restricting development to service road access, thereby minimizing interference with through traffic movements. The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses, and, in itself, shall not be sufficient to require the granting of any application.

located within the setback from a street specified in subsection (a) if approved by the Planning Board at the time of Division 59-D-3 site plan review. On-site advertising signs must be in accordance with the sign regulations contained in Article 59-F and cannot exceed a height of 26 feet. Such on-site advertising signs are prohibited from being located in the setback areas as specified in subsection (a) above.

(e) **Exemption for Buildings Constructed Prior to August 22, 1988.** Any building constructed prior to August 22, 1988, that does not satisfy the provisions of subsections (a), (b), and (d) above will be regarded as a conforming use, provided that such building satisfies all other lawful requirements. Any future alterations or expansions of such buildings or signs may be done only if the work does not increase the lack of conformity with either subsection (a), (b), or (d); however, in considering site plans for alterations or expansions subject to subsection (a) (2), the Planning Board may waive the setbacks required to not less than that required in the adjoining residential zone in cases where the adjoining residentially zoned land is developed with a structure used entirely or in part for a non-residential purpose and upon a finding that the proposed development is compatible with, and will not be detrimental to, the use and enjoyment of the adjoining residential property.

(Legislative History: Ord. No. 9-80, § 2; Ord. No. 11-31, § 2; Ord. No. 12-7, § 1; Ord. No. 12-42, § 3.)

**Editor's note**—Formerly, section 59-C-4.7.

## Sec. 59-C-4.37. C-4 zone—Purpose and development standards.

### 59-C-4.371. Purpose.

It is the intent of this zone to provide locations for low-density commercial uses of a nature which are compatible with locations on arterial or major roads outside of central business districts and regional shopping centers and where low-intensity development is necessary to preclude an adverse impact on public facilities in the area.

### 59-C-4.372. Building height.

No building shall exceed the following height limits:

—Stories—2.

—Feet—30.

### 59-C-4.373. Floor area.

The total floor area of buildings, including cellar space not used for storage, shall not exceed 0.25 FAR.

### 59-C-4.374. Coverage limitations.

—Buildings shall occupy not more than 25 percent of the lot.

—Green area shall be provided for not less than 10 percent of the lot.

the first 3 floors) to the area of the lot covered by buildings (excluding structures of 3 stories or less).

(3) **Setbacks.** Any building shall be set back from any lot line that adjoins a lot in a residential zone, which has not been recommended for a commercial or industrial zone on a local zoning plan duly adopted by the commission, a distance equal to one-half the height of the building.

(4) **Development procedure.** The procedure for site plan approval shall be as set forth in division 59-D-3.

**Editor's note**—Ordinance No. 8-63, § 1 also amended paragraph (4) hereof, but upon reconsideration by the county such amendment was deemed superfluous.

**59-C-5.42. Special regulations—I-1 and I-2 zones.**

**59-C-5.421. Nonconforming uses, amendment of 1971.** Any use which is not permitted in these zones but was lawfully existing prior to the amendments of March 16, 1971, shall not be regarded as a nonconforming use; but additions or structural alterations thereto shall not exceed 10 percent of the gross floor area existing on that date and be in conformance with the setback, height and green area regulations as now required in section 59-C-5.3.

**59-C-5.422. Effective date.** Where land is zoned in the I-1 or I-2 classification on March 16, 1971, the effective date of adoption of this section, the provisions of this section shall not be in effect if construction in accordance with the provisions of this zone prior to adoption of this section shall be undertaken over and beyond the excavation and foundation work within a period of one year from March 16, 1971. If such construction shall not be undertaken within such period, the provisions of this section shall be in effect. Where such construction is undertaken, the resulting use shall not be regarded as a nonconforming use, in accordance with the provisions of section 59-C-5.421.

**59-C-5.43. Special regulations—I-3 zone.**

**59-C-5.430. Purpose.** The purpose of the I-3 zone is to provide a medium-density, industrial zone for park-like development of high-technology industries, research and development facilities, corporate and business offices, and uses that have similar locational, site development, and use requirements. The I-3 zone is intended to be at locations within the county that can be served by transit. In order to ensure high quality industrial/employment development, the following objectives of the zone must be met:

(a) To provide a suitable operating environment for the range of uses allowed in the zone.

(b) To maximize the attractiveness of and to enhance the visual appearance of the zone through:

(1) Preservation of significant natural features.

(2) Provision of green space throughout a project as well as in required yard and setback areas.

(e) Within a lot, the distance between any 2 buildings shall be not less than whichever of the following is applicable:

—Twice the setback required above for any building from a residential building, or

—Twice the setback required above between nonresidential buildings.

**59-C-6.237. Parking facilities.** Repealed by Ordinance No. 8-89, § 2.

**59-C-6.24. Existing buildings and building permits.**

(a) Any building or structure for which a building permit was issued and any use which was instituted, after December 31, 1958, shall not be regarded as a nonconforming use and may be structurally altered, repaired or enlarged in conformance with the requirements of the CBD zone in which it is located, so long as it remains an otherwise lawful use as previously allowed.

(b) Any building, structure or use which becomes nonconforming as a result of the reclassification of land from a non-central business district zone to any central business district zone except the CBD-0.5 Zone will not be subject to the provisions of sections 59-G-4.12, 59-G-4.13, 59-G-4.14 and 59-G-4.15 for a period of 7 years thereafter unless specifically regulated elsewhere in this Ordinance.

(c) Construction pursuant to a building permit validly issued and subsisting at the time of reclassification of the property to which it applies to any central business district zone shall be permitted, provided all necessary excavation and piers and/or footings of one or more buildings covered by the permit are completed not more than 6 months subsequent to such reclassification. Buildings and structures so constructed shall be considered nonconforming but shall not be subject to the provisions of sections 59-G 4.12, 59-G-4.13, 59-G-4.14 and 59-G-4.15 for a period of 7 years from the time of such reclassification.

(d) In the CBD-0.5 Zone, any building or structure for which a valid building permit was issued prior to April 27, 1993, will not be regarded as nonconforming. Structural alterations, repairs or replacement of such buildings or structures may proceed under the standards of the zone in effect for the property immediately prior to reclassification to the CBD-0.5 Zone. However, such alterations, renovations or replacement are only permitted under the standard method process and cannot increase the gross floor area existing or approved as of April 27, 1993 to more than the maximum available in the CBD-0.5 Zone or by 1,500 sq. ft., whichever is greater; no expansion beyond the standards of the CBD-0.5 Zone is permitted for those properties that adjoin land in a one-family residential zone; expansion of any structure will be subject to the requirements of the Adequate Public Facilities Ordinance.

Any use, except those specifically regulated elsewhere in this Ordinance, which becomes nonconforming as a result of reclassification of land to the CBD-0.5 Zone will not be subject to the provisions of sections 59-G-4.13 and 59-G-4.14 for a period of 7 years following reclassification.