Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- March 23, 1966

Appeal No. 8654 National Presbyterian Corp., appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and carried with Mr. William S. Harps dissenting in part, the following Order was entered by the Board at its meeting on April 27, 1966.

EFFECTIVE DATE OF ORDER -- June 20, 1966

ORDERED:

That the appeal for a variance from the FAR requirements of the R-5-A, R-5-B, and C-1 Districts and from the height and story limitation of the C-1 District to permit the construction of an apartment development in the 4200 block of Massachusetts Avenue, NW., parcel 21/50, near square 1629, be denied.

As a result of an inspection of the property by the Board, and from the record and the evidence adduced at the public hearing, the Board finds the following facts:

(1) The property involved in this appeal is identified as parcel 21/50, comprising approximately 711,000 square feet extending from the 4200 block of Massachusetts Avenue, NW., to New Mexico Avenue.

(2) The existing zoning of the tract is as follows:

a. C-1-Fronting 508.7 feet on New Mexico Avenue containing 120,000 square feet.

b. R-5-B-Fronting 701.44 feet on Massachusetts Avenue to a depth of 200 feet containing 167,500 square feet.

c. R-5-A-Interior of whole site, irregular in shape, containing 423,500 square feet.

(3) The combined FAR permitted under existing zoning if construction is all residential is 1.112 permitting 790,650 gross square feet of residential construction. The FAR for residential construction and commercial construction combined, if the C-1 ground is developed to its maximum, is 1.129.

(4) The appeal is to permit construction of high rise apartments over the entire tract, having an FAR of 2.082 in three separate buildings having 1244 apartment units, 480 surface parking spaces and 1142 underground parking spaces, with 25 surface parking spaces for the commerical area. The gross floor area of the buildings requested would be 1,480,302 square feet of which 5,000 square feet would be commerical.

(5) Appellant seeks a variance to permit the proposed construction "by reason of the exceptional topographical condition, the extraordinary and exceptional soil conditions, and by reason of the split zoning."

(6) The topography of the site is shown on attached Exhibit A. There is a maximum difference in elevation of 95 feet over a distance of 1065 feet. With the exception of the R-5-B ground fronting Massahcusetts Avenue grades within the site are less than 10 percent.

(7) The depth to "solid, buildable ground" at each boring location is shown on attached Exhibit B, the average being 56.34 feet. The minimum is about 20 feet and the maximum about 70 feet.

(8) The Zoning Commission has refused to re-zone the R-5-A and C-1 part of this property to R-5-B which would have created an FAR for the whole site of 1.8.

(9) Appellant has submitted a schedule showing construction costs and return on investment under varying conditions, and a summary of these is shown on attached Exhibit C. Schemes 2 through 4 purport to show construction on the property in accordance with existing zoning and Scheme 5 purports to show construction on the property in accordance with the appeal.

(10) Appellant contends (Transcript pages 174 to 177) that the commerically zoned property cannot under any circumstances be economically developed for its zoned purpose.

(11) Considerable opposition was expressed at the public hearing. In addition, the record includes 66 letters and 93 telegrams, all in opposition. Quantitatively opposition, written and verbal, was to the following detrimental factors" in descending order: (a) Increased traffic and safety hazards, (b) Overcrowding of neighborhood facilities, (c) Excess height as compared with the rest of the neighborhood and blotting out the view of the Washington Cathedral, (d) Adverse effect on property values, (e) Elimination of

trees and foliage, (f) Stores, (g) Change in character of neighborhood, and (h) Incinerator soot. There was one letter in favor.

(12) The Committee of 100 on the Federal City submitted a statement in opposition containing 39 recently taken pictures of structures which has received variances in FAR and 16 pictures of Parcel 21/50 accompanying the statement from the Committee of 100 was a statement in opposition by Nicholas Satterlee, AIA.

(13) The Massachusetts Avenue frontage of the property is opposite the Berkshire and Greenbrier apartment houses and the New Mexico Avenue frontage is directly north of the Towers apartment house. The Berkshire, Greenbrier and Towers apartments all generate considerable curb parking.

(14) Appellant has introduced a report entitled "Traffic Aspects". This report does not take into consideration observed curb parking generated by the Greenbrier, Berkshire, Towers and other apartment houses, nor parking generated by social occasions in these buildings.

(15) At the date of the public hearing National Presbyterian Corporation was the record title owner, having purchased the property from Mr. Carroll Glover. At the same date an intermediary had contracted to purchase the property from the National Presbyterian Corporation at a substantial increase in price above the price paid to Mr. Glover. This contract had been sold to the Wolman interests for another substantial increase above the price which the intermediary had contracted to pay. The record does not indicate the relation of the dates of these transactions to the test borings made on October 25, 1965 and therefore does not indicate whether the various owners and contract purchasers had knowledge of the test borings when they purchased or contracted to purchase. At the public hearing attorney for Appellant stated, in reply to a direct question, that none of the contracts to purchase contains any contingencies.

(16) Appellant introduced a list of apartment structures in the neighborhood on which variances in FAR had been granted, ranging from 1.5 to 1.9.

(17) Testimony and a written statement by a builder employed by the Appellant was to the effect that extra construction costs due to site conditions amounted to $2,325,600 for Scheme 2, the low rise buildings conforming to the permitted FAR of 1.129; amd $1,916,000 for Scheme 4, comprising

3 high rise buildings conforming to the permitted FAR of 1.112 for residential construction.

(18) Appellant submitted as Exhibit 22 a "Study of House Sales in the Vicinity of The Towers Apartment". This study was made to determine the effect, if any, of apartment construction on the market price of residences in the neighborhood. The study area included 233 houses within 2 blocks of the Towers and the time increment studied was between 1954 and the present. The Towers were built in 1959. Of the 233 houses, 68 has been sold during the study period and 29 has been sold twice, once before the Towers were built and once after. The study indicated that the average sale price increase for houses 2 blocks away was 39 percent or 6.4 percent a year, for houses one block away the average increase in price was 46 percent or 9.7 percent a year, and for houses in the area adjoining the Towers the average increase in price was 69 percent or 13.8 percent a year.

OPINION:

In order to grant the variance requested in this case the Board must find that because of the topography of the property and the sub-soil conditions, or either of these, development of the property in accordance with exiting zoning will cause hardship to the owner. We do not consider the split zoning of the tract to be a ground of hardship under the variance statute.

This property is of considerable size and is undulating in topography, and the differences in elevation are not considerable when the distances involved are considered. While a lot of normal size might very well be entitled to a variance if parts of it had a difference in elevation equal to the maximum distance in elevation of this property, this does not mean that the same difference in elevation in this large acreage tract justifies a similar variance. It would indeed be strange or unusual to expect a tract of this size in the area where it is located to be flat or even substantially so. We are of the opinion that there is no such unusual toporgaphy in this large tract as to warrant the granting of a variance.

We also believe that the contention that a variance is warranted because of sub-soil condition is equally without merit. There is nothing in the record to establish a normal depth to a desired sub-soil condition, and we do not believe that the average depth of 56 feet in this case is so unusual or extraordinary that the existing zoning should not be followed.

In addition, we also point out that bulldozing and leveling of this property in the course of construction, if this appeal were granted, would remove all or a substantial part of the alleged difficulties of topography and sub-soil condition.

The present contract purchaser of this property is one of the nation's most experienced real estate developers and it is to be assumed that the price he has contracted to pay makes full allowance for any slight departures of the tract from some norm.

In addition to holding that topography and sub-soil conditions do not warrant the granting of a variance with respect to this property, we also hold that the relief requested could not 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.

With respect, first, to the impact of the proposed development on the "public good", we believe that the high rise apartments proposed would be entirely out of harmony with the adjacent and surrounding developments. In addition, we have observed for many years the curb parking generated by adjacent apartment houses and we believe that the proposed buildings would generate equal curb parking and would further congest the streets of the area.

The Zoning Commission has heretofore refused to re-zone this property for more intensive development. If this appeal were granted, we would, in effect, be re zoning the property in a manner which the Zoning Commission has refused to do. We should only do this under the most compelling reasons which are certainly not present here. To grant this appeal would therefore be directly contrary to the spirit of the second part of the variance statute and would impair the intent, purpose, and integrity of the zone plan as set and adhered to by the Zoning Commission.

Appellant's argument with respect to the C-1 part of the tract is convincing and we hold that this part could not economically be developed in accordance with the C-1 zoning, or without substantial detriment to the public good and impairment of the zone plan. Accordingly, with respect to the part of the tract zoned C-1, a variance from the height and story limitations of the C-1 District is granted to permit the construction of apartment buildings having the height, story, FAR and other limitations of the adjacent R-5 area.

The appeal is denied with respect to the parts of the tract in R-5 zoning districts and is granted with respect to the part in the C-1 district.

BY MR. HARPS, DISSENTING IN PART:

In order to grant the variance requested in this case the Board must find that because of the topography of the property, the sub-soil conditions, and split zoning, or one of these, development of the property in accordance with existing zoning will cause hardship to the owner. Further, the relief requested must be not greater than the extent of the proved additional costs to overcome the hardship.

The contention that a hardship exists because of sub-soil conditions has in my opinion been substantiated, expecially when combined with the undulating topography. For example, if the elevations of buildable soil at the ten boring locations is subtracted from the existing grades as shown on the topographic survey, the levels of buildable soil at the ten boring locations become respectively 239, 275, 314, 308, 309, 311, 326, 320, 296 and 346 feet a maximum differential of 107 feet. The buildable soil along Massachusetts Avenue extending southeast into the panhandle ranges from a level of 308 feet to 239 feet. The buildable soil along the commercial strip fronting New Mexico Avenue ranges from 296 feet to 346 feet. In either location extensive below grade structure would have to be erected to even bring the roofs of the buildings up to the grade of the abutting streets.

Bulldozing and level of this property would in many cases aggravate the problem. For example, if the high point at boring location No. 4 of 378 feet were graded 20 to 25 feet down to the level of Massachusetts Avenue, and the dirt pushed over to boring locations numbered 1 and 2 with existing grades of 309 and 325 feet respectively, it would make even greater the difference between the grade level and the level of buildable soil. Therefore, grading of these sections would require moving the dirt from the site. Further, in case of any kind of construction support on buildable soil would be necessary.

The Cost Study made by the builder indicated that 756 caissons would have to be sunk to an average depth of 34.6 feet for Scheme 2, the low rise building, and 465 caissons would have to be sunk to an average depth of 24 feet for Scheme 4, high rise. Obviously, the greater number of caissons reflect the fact that the low rise buildings would have the greater ground floor area and the lesser depth of the caissons

reflect the fact that the high rise buildings would have usuable structure in the form of garages and below grade apartments at a greater depth than the low rise buildings would. This Board Member is of the opinion that having to sink caissons 34.6 feet to support a 3 story building constitutes an exceptionally unusual condition, and a hardship within the meaning of Section 8207.11 of the Zoning Regulations and further, that the erection of high rise buildings alleviate the extent of the hardship as compared with the erection of low-rise buildings.

Further, I believe that granting the full relief requested would to an undesirable extent impair the intent, purpose and integrity of the zoning plan and might cause substantial detriment to the public good. My point of view is that some relief is warranted but that the relief requested is excessive. As stated in the Findings of Fact, No. 8, the Zoning Commission has refused to rezone the entire tract R-5-A. The Zoning Commission is composed of the three Commissioners of District of Columbia and two others. The three Commissioners of the District of Columbia caused to be promulgated the existing regulations and approved them. In their capacity as members of the Zoning Commission, they constitute the majority and have the power to change the present Regulations or promulgate new ones. Changing the present zoning of Parcel 21/50 to R-5-B constitutes a change in zoning which the Commission refused to do and further refrained from recommending that the Appellant appeal to the Board of Zoning Adjustment on a hardship basis as they have done in many prior cases. It appears to this Board Member that any variance increasing the FAR to 1.8 or more is essentially a change in zoning and is in contravention to the ruling of the Zoning Commission and the Zoning Regulations. Further, it appears logical to this Board Member that any increase in FAR granted by the Board of Zoning Adjustment must stop short of the next less restrictive zoning classification.

In the present instant this principle would infer that the maximum permissible FAR that could under any circumstances be granted would be less than the result of the following calculations;

| | |
|---|---|
| Massachusetts Avenue frontage 167,500 square feet (no change) | 301,500 |
| R-5-A area, 423,500 square feet x 1.8 = | 762,300 |
| C-1 area 120,000 square feet x 1.8 = | 216,000 |
| | 1,279,800 sq.ft. |

or 200,502 square feet less that the request. At 1184 square feet per dwelling unit, 169 dwelling units at least would have to be eliminated from the request. Certainly, if the principles that a change to 1.8 or R-5-B is a change in zoning and that the Commission should grant such an extensive increase is adhered to no applicant can expect the Board of Zoning Adjustment to grant a full increase in FAR to 1.8.

With respect to the "public good , the types of objections as testified to and as expressed by the opponents were listed above in Finding of Fact No. 11. The following discussion treats the objects in the order stated.

1. INCREASED TRAFFIC AND SAFETY HAZARDS.

Unquestionably, any construction on subject site will increase the traffic. Under the least intense development (Scheme No. 1), 576 new housing units will be created plus about 51,000 square feet of commercial space. According to Mr. Sexton's traffic study, made for the Appellant, 2880 trips during an average 24 hour day will be generated. This traffic intensity can be created as a matter of law under existing regulations. Sexton's study indicates that the requested buildings with the increased FAR will generate 6220 trips during a 24 hour period, an increase of 3340 trips. As broken down by Mr. Sexton, the trips generated during rush hour periods will be far less for both intensities of construction. The increased traffic from either development will be in my opinion a nuisance. Certainly the increased traffic from the permitted development to an FAR of 1.129 will have to be tolerated, sooner or later. The additional traffic may not. An increase to the requested development of 1244 units would in my opinion approach the intolerable. An increase based on a lesser FAR in keeping with this opinion might not.

2. OVERCROWDING OF NEIGHBORHOOD FACILITIES.

Depending on the quantity of facilities existing 1244 new families might well overcrowd schools, recreational areas, etc. This is not the fault of the developers. The District Government zoned the entire neighborhood including Westover R-5-A, C-1 and R-5-B in 1958. About 50 acres of undeveloped land now exist in this whole area. Under present zoning at 43.5 families per acre, 2175 new housing units can be created as a matter of right. Prior to May 1958, this entire area was zoned 40A with an effective FAR of 1.20 and essentially the same height restric-

tions as now exist including the right to build to 90 feet with a 90 foot setback from all lot lines. No one, including the residents of the neighborhood nor the Officials of the Government of the District of Columbia could expect that Westover would forever remain under-developed. Further, the present drastic scarcity of land in Washington would indicate development is imminent. As in other neighborhoods, it is the duty of the Government of the District of Columbia to provide necessary community facilities as their need arises. When the density was planned, its future use became inevitable.

3. EXCESS HEIGHT.

The only height exception requested is for the 90 foot height on the C-1 section of the site. The necessity for this exception was adequately proven by the Appellant (see pages 174 to 177 in Transcript). All other heights on all schemes are possible as a matter of right.

4. ADVERSE AFFECT ON PROPERTY VALUES.

The study outlines on Finding of Fact No. 8 indicated that for some inexplicable reason prices for dwellings in the immediate adjacent area of the Towers increased more in price than properties more distant, and at a higher rate. Although the study did not describe changes in physical condition, additions made between the two sales or terms of sale, the conclusion that the Towers has had no adverse effect on market price is inescapable.

5. ELIMINATION OF TREES AND FOLIAGE.

There is no regulation requiring an owner of land in this neighborhood to preserve any trees. As a matter of law, he can bulldoze all the trees. Whether this is desirable or not is not for Board of Zoning Adjustment to decide. Further, Scheme No. 5, the requested scheme has a lesser ground floor area by many thousands of square feet than Schemes No. 1 or 2, both low rise. They would consequently require more bulldozing and removal of trees than Scheme No. 5.

6. STORES.

Under Schemes No. 1 and 2, low rise, the commercial would include 51,000 square feet, approximately. Under Scheme No. 5, the commercial would entail only 5,000 square feet. Apparently the developer has been mindful of the

adverse effect of a large commercial conglomeration on the New Mexico Avenue frontage facing the fine detached homes and has voluntarily alleviated it.

7. CHANGE IN CHARACTER OF NEIGHBORHOOD.

The Massachusetts Avenue frontage is zoned R-5-B. It faces the Berkshire and Greenbrier Apartments, both of which have FAR's in excess of 2.08. Whether these buildings were erected prior to May 1958 or after is immaterial. They exist, have future economic lives extending many years into the future, and are the major structures influencing the character and trend of development. The proposed structures on the Massachusetts Avenue frontage are certainly compatible with these existing structures. The building nearest New Mexico Avenue is not compatible with the detached dwellings in Wesley Heights but is compatible with the Towers, its nearest neighbor. The Towers certainly have had a significant role in establishing the character of the part of the neighborhood nearest subject site on the South. Further, it is my opinion that the proposed high rise apartment building with only 5,000 square feet of commercial space, all below grade, is more in keeping with the neighborhood than 51,000 square feet of neighborhood shopping center would be.

8. INCINERATOR SOOT AND SMOKE.

This is a nuisance wherever it occurs. As long as incinerators are used, soot in varying degrees will be emitted into the air until chemical or physical devices are utilized to dissolve it. Improvement of this situation <u>must</u> eventually occur. Enlightened citizenry should bring all possible pressure to bear on municipal and federal authorities to solve this problem. The increase in FAR requested will unquestionably increase the quantity of refuse to be disposed of. I do not believe that the aggravations of a world-wide problem should be considered unique to the requested development to the extent that they should prevent its development.

I therefore believe that the appellant has proved a hardship within the meaning of the statute; that granting reasonable relief in the form of increased FAR limited by something less than the 1.8 FAR permitted by the R-5-B zoning is warranted; that such limited relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone

plan. I believe this part of the request should be denied without prejudice to a new filing in accordance with this opinion. A suggested "reasonable relief" is as follows:

> Reasonable relief not presuming upon the prerogative of the Zoning Commission would in my opinion seldom be more than 75% of the difference between the FAR of the existing zoning and the FAR of the next less restrictive zoning classification. In subject case this would amount to an FAR of 1.58 for the C-1 and R-5-A parts of the whole site, which when combined with the permitted FAR of 1.8 for the R-5-B part would give a combined FAR of 1.63, or 1,159,440 square feet of gross floor area.

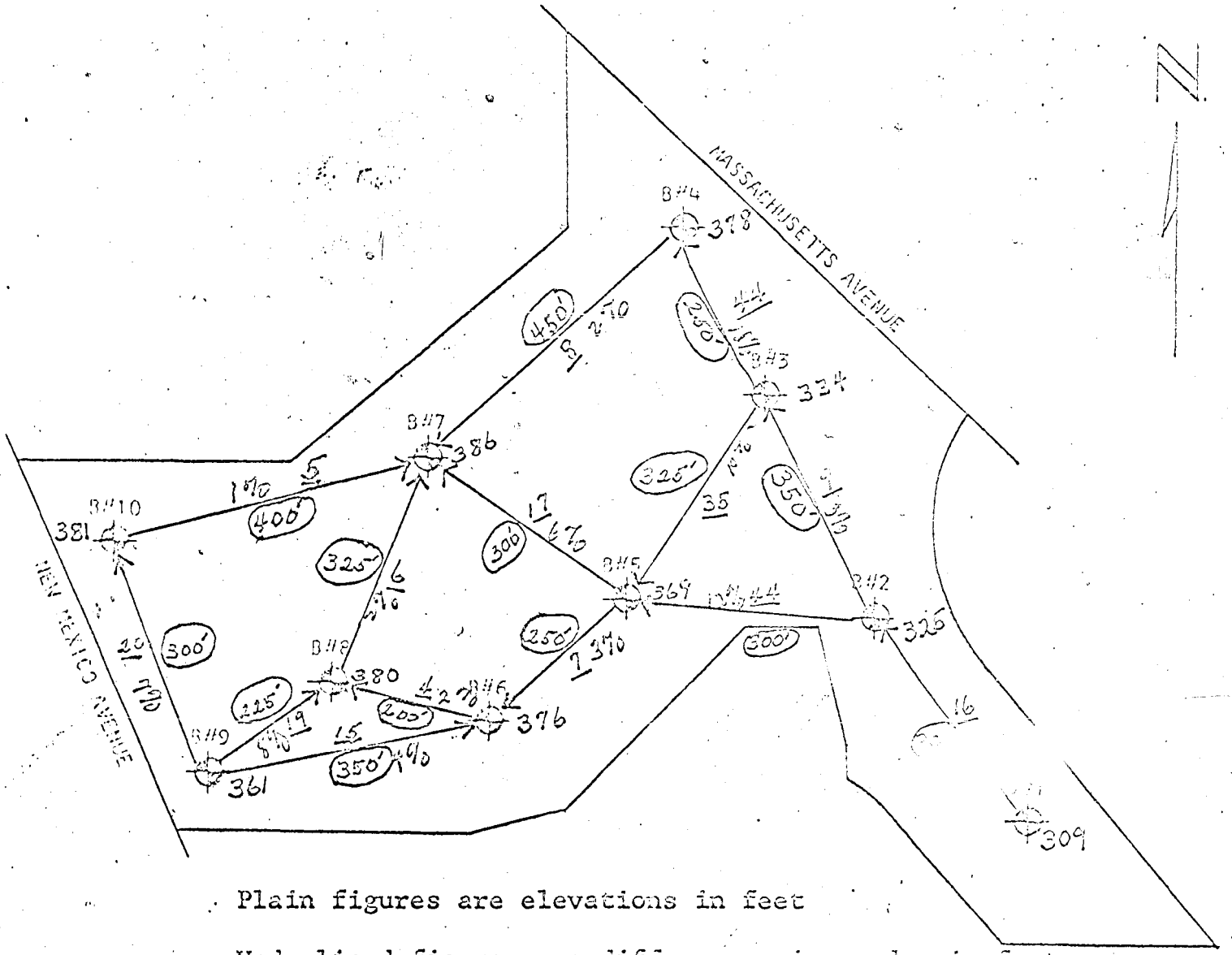
Further, I concur with the majority opinion with respect to the C-1 part of the site.

BY D.S.A. DATE 10/25/65 SUBJECT TEST BORING LOCATIONS SHEET NO. 1 OF 5

CHKD. BY SGG DATE 10/25/65 APARTMENTS JOB NO. 1130

4300 MASSACHUSETTS AVENUE, N.W. SCALE: 1" = 200'

WASHINGTON, D.C.

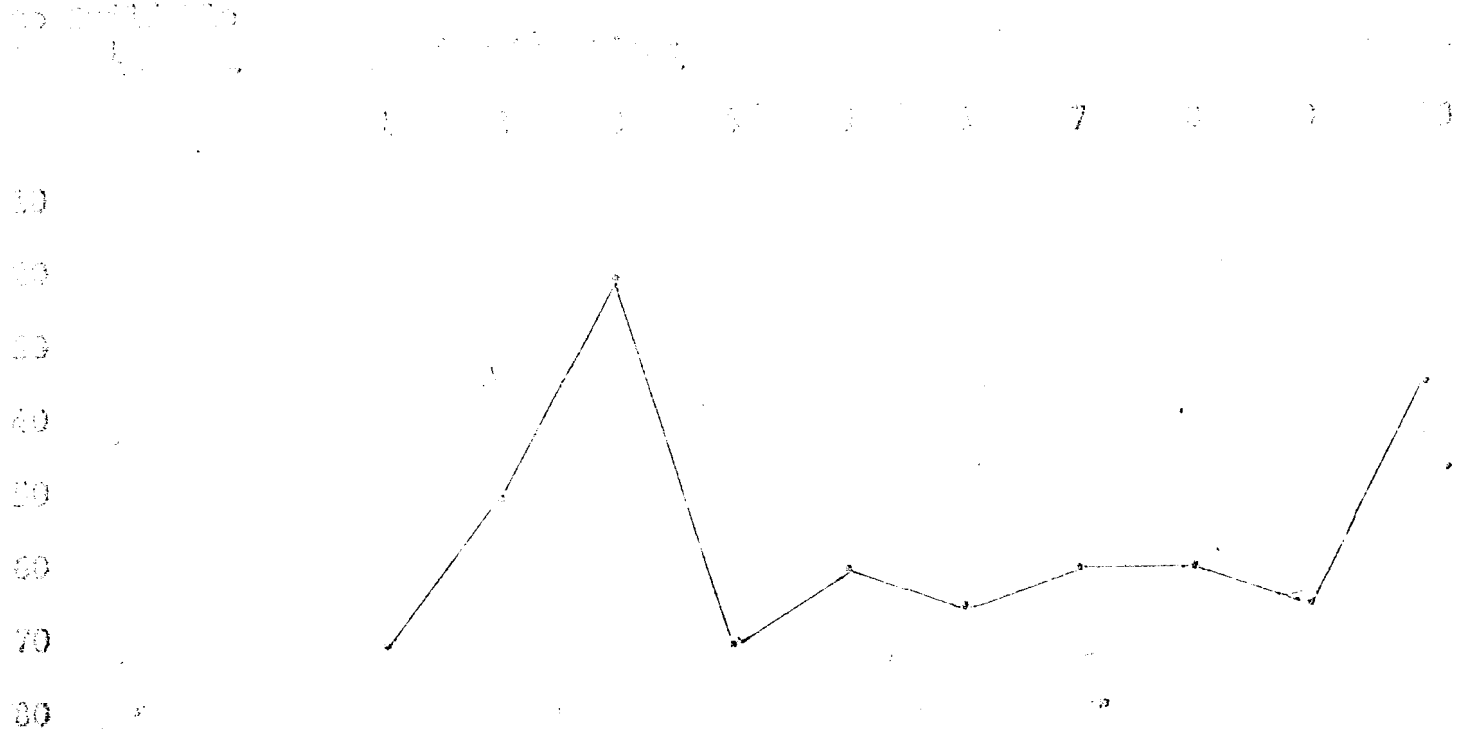



Plain figures are elevations in feet

Underlined figures are differences in grade, in feet

Arrows show direction of rise in grade

Circled figures are distances in feet




Average: 56.34 feet

Exhibit C

| Type of Bldg. | No. Bldgs. | FAR | No. of Units | Constr. Cost | 1st Mortgage | 1st Mortgage Debt Service | 2nd Mortgage | Residual Equity Income | Investment in Project | % Return on Equity |
|---|---|---|---|---|---|---|---|---|---|---|
| Scheme 1 | | | | | | | | | | |
| Low Rise Flat Lot (Existing) | 5R 1C | 1.129* | 576 | 11,180,000 | 8,607,500 | 680,600 | - | 250,400 | 2,580,800 | 9.7% |
| Scheme 2 | | | | | | | | | | |
| Low Rise Fit Site (Existing) | 5R 1C | 1.129* | 577 | 13,597,000 | 8,580,000 | 686,000 | 93,790 | 156,210 | 4,079,100 | 3.8% |
| Scheme 3 | | | | | | | | | | |
| High Rise Flat Lot (Existing) | 3R | 1.112 | 669 | 13,359,000 ~~10,138,000~~ | 10,432,235 | 834,578 | - | 303,394 | 2,927,565 | 10.3% |
| Scheme 4 | | | | | | | | | | |
| High Rise Fit Site (Existing) | 3R | 1.112 | 667 | 15,591,000 ~~12,173,000~~ | 10,367,500 | 829,400 | 54,632 | 248,068 | 4,677,351 | 5.0% |
| Scheme 5 | | | | | | | | | | |
| High Rise 4200 Mass (Variance) | 3R | 2.0821 | 1244 | 30,275,000 ~~23,789,000~~ | 21,692,000 | 1,735,360 | - | 632,040 | 8,581,000 | 7.0% |

*C-1 @ 1.0