

SULLIVAN & BARROS, LLP

Real Estate | Zoning | Litigation | Business Law

Martin P. Sullivan, Partner
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June 25, 2013

By Hand Delivery

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2013 JUN 25 PM 2:11

Re: **Pre-Hearing Statement; BZA Application No. 18582; 2140 Wisconsin Avenue, NW;
Square 1300, Lot 320**

Dear Chairman Jordan and Members of the Board,

Enclosed please find an original and ten (10) copies of the Applicant's pre-hearing statement for Application No. 18582.

Sincerely,


Martin P. Sullivan

enclosures

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18582

EXHIBIT NO. 25

Board of Zoning Adjustment
District of Columbia

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

**PRE-HEARING STATEMENT
OF AE TOWER LLC AND RE OPAL LLC**

**BZA APPLICATION NO. 18582
HEARING DATE: JULY 9, 2013
ANC 3B**

**RECEIVED
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**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of AE Tower LLC and RE Opal LLC (the “Applicant”), the owners of the property located at 2140 Wisconsin Avenue, N.W., also known as Lot 320 in Square 1300 (the “Property” or “Site”), in support of Application No. 18582 (the “Application”) pursuant to 11 DCMR § 3103.2 for area variance relief from the parking requirements of 11 DCMR § 2101.1.

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the requested variance relief pursuant to Section 3103.2 of the Zoning Regulations

**III.
EXHIBITS IN SUPPORT OF THE APPLICATION**

Exhibit A: Revised Architectural Plans, Renderings, and Photos.

**IV.
BACKGROUND**

A. Description of the Site and Surrounding Area

The Property is located at 2140 Wisconsin Avenue, NW (Square 1300, Lot 320). The Property is unimproved and has been vacant for several years. The Property has a land area of 2,413 square feet; with a lot width of 20.5 feet for most of the length of the lot, then tapering to a minimum width of 17.37 feet at the rear property line. The Property is about 120 feet in length.

The Property abuts an existing commercial condominium consisting of two office buildings (collectively, the “Office Building”) to the north, and a parking lot owned by unit owners in the Office Building (the “Parking Lot”) to the west. The Office Building is on the corner of Wisconsin and W Place, N.W. To the south are several mixed-use buildings of varying heights. Across Wisconsin Avenue to the east is a building which serves as an Embassy for the Republic of China.

There is no alley or street access to the rear of the Property. The Parking Lot is on the same lot as the Office Buildings and is owned by those unit owners. The Parking Lot is located in the R-3 zone district and operates for the benefit of the Office Buildings pursuant to BZA Order No. 13934 (1983). That Order provides a permanent condition that the Parking Lot shall be available for public use during the hours the office facility is not in operation. According to signage on the Parking Lot, the Parking Lot is restricted to the exclusive use of the Office Buildings from 7 a.m. until 6 p.m., Monday through Friday. At this time, the Applicant does not have recorded legal access across the Parking Lot to the rear of its Property, although it is in the process of trying to secure written, recorded access rights. None of the spaces in the Parking Lot are available for use by the Applicant.

B. Project Description

The Subject Property is zoned NO/C-2-A. The maximum allowable floor area ratio (“FAR”) is 2.5 for residential uses, and the maximum permitted height under the Naval Observatory (NO) Overlay is forty (40) feet. The maximum permitted lot occupancy for a residential building is sixty percent (60%). The Applicant is proposing to construct a four-story 6-unit residential condominium building with sixty percent (60%) lot occupancy, 2.4 FAR, forty (40) feet in height, and two actual parking spaces, but no “legal” parking spaces. A 6-unit

apartment house in the C-2-A zone requires three (3) parking spaces. The Applicant's proposal will leave room for two parking spaces at the rear of the Property, but as noted above, the Applicant does not have legal, recorded right of access to these two spaces. For these reasons, the Applicant is requesting area variance relief from the parking requirements of 11 DCMR § 2101.1.

V.

**THE APPLICANT MEETS THE BURDEN
OF PROOF FOR VARIANCE RELIEF**

A. Standard for Granting Area Variance

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the Zoning Regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A. 2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A. 2d 05, 408 (D.C. 1980); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A. 2d 939 (D.C. 1987).

As discussed below, all three prongs of the area variance test are met in this Application.

B. The Property is Unique Because of its Size, Shape, or Topography and is and is Affected by An Exceptional Situation or Condition.

The exceptional situation or condition standard applies to the land as well as permanent structures existing on the land. See *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d 291, 293-294 (D.C. 1974). The exceptional situation or condition of the property results from a confluence of factors. See *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A. 2d 1164, 1168 (D.C.1990).

The Subject Property is a long, narrow lot, which has been vacant for several years. The vacant lot is surrounded primarily by commercial and diplomatic uses, and by the commercial Parking Lot owned by the Office Buildings' unit owners. There is no alley or street access to the rear of the Property. While the proposal will include space for two parking spaces at the rear of the Property, the Applicant does not have a written and recorded right of access across the Parking Lot to those spaces.

In addition, the Property slopes in grade from front to back, making an underground garage even more difficult, and the Property narrows in the rear, which makes setting the building back - while still providing potential parking spaces in the rear - impossible.

C. The Owner Would Encounter Practical Difficulties if the Zoning Regulations Were Strictly Applied.

Due to the exceptional conditions discussed above, the strict application of the Zoning Regulations would result in practical difficulty to the Applicant. The lack of alley access to the rear of the Property, the unlikelihood of getting a curb cut approved on Wisconsin Avenue, and the extreme difficulty with using such a curb cut for required parking or for an underground parking garage, essentially makes it impossible to provide any legal parking on the Property.

The Applicant believes that a curb cut in this location of Wisconsin Avenue, to access the front of the Property, would be highly disfavored by DDOT and by the community, and would have little chance of being granted. The property two doors to the south has such a curb cut and parking pad in front of its building. The Property is much too narrow to allow the construction, or the operation, of an underground parking garage, accessed either from the rear or the front of the Property. Even if a curb cut were permitted here, because of the narrow lot, it could only provide access to one or two parking spaces, from which a car would have to back out onto Wisconsin Avenue to exit.

D. The Variance Would Not Cause Substantial Detriment to the Public Good and Would Not Substantially Impair the Intent, Purpose and Integrity of the Zone Plan as Embodied in the Zoning Regulations and Map.

The requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The proposed project would convert a long-vacant “eyesore” property to a vibrant residential use. The design will greatly improve the appearance and character of this block. The Property is on Wisconsin Avenue, and its residents will have the value of the Metro bus lines in this location. Also, the Parking Lot provides parking in the evenings and on weekends for residential use. The Applicant believes that the sum of the extraordinary conditions surrounding this Property make for a very unique situation; and since parking variance relief has been granted in the past for similar unique situations, granting relief in this case will not be a substantial detriment to the Zone Plan.

At a meeting of ANC 3B on June 13, 2013, the ANC voted in favor of a resolution to recommend approval of the Application.

VI.

WITNESSES

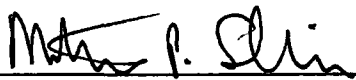
- A. Zak Elyasi, Owner's Representative.
- B. Rich Markus, Rich Markus Architects; Project Architect.

VII.

CONCLUSION

For the reasons stated above, the requested area variance relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicant therefore requests that the Board grant the application.

Respectfully Submitted,



Martin P. Sullivan, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2013, a copy of this Pre-Hearing Statement was delivered to the following, via first class mail or e-mail:

Advisory Neighborhood Commission 3B
P.O. Box 32312
Washington, DC 20007



Martin P. Sullivan

2140 Wisconsin Avenue, NW WASHINGTON, DC, 20007

BZA SET

13 JUNE 2013

Square 1300 Lot 320

RICH MARKUS ARCHITECTS

2601 P STREET SECOND FLOOR
WASHINGTON D.C. 20007
202.333.2733

TENANT OWNER :

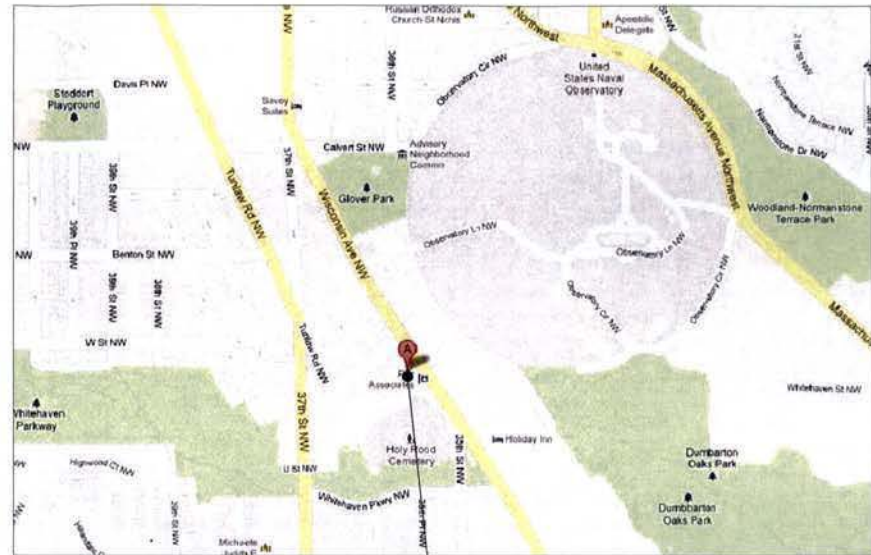
ZAK ELYASI
2140 WISCONSIN AVENUE, NW
WASHINGTON, DC, 20007
1.571.285.6834

ZONE = C-2-A

LOT SIZE = 2,413 sf

ARCHITECTURAL DRAWINGS

A000	COVER SHEET
A001	EXTERIOR PHOTOS
A002	EXTERIOR PHOTOS
A003	PROPOSED 3D PERSPECTIVES IN EXISTING SITE CONTEXT
A004	PROPOSED 3D PERSPECTIVES IN EXISTING SITE CONTEXT
A005	PROPOSED 3D PERSPECTIVES IN EXISTING SITE CONTEXT
A006	PROPOSED 3D BUILDING PERSPECTIVES
A007	PROPOSED 3D BUILDING PERSPECTIVES
A008	ZONING ANALYSIS
A100	SITE PLANS
A101	PROPOSED CELLAR PLAN
A102	PROPOSED 1ST & 2ND FLOOR PLANS
A103	PROPOSED 3RD & 4TH FLOOR PLANS
A104	PROPOSED ROOF PLAN
A201	PROPOSED ELEVATIONS
A202	PROPOSED ELEVATIONS
A203	PROPOSED ELEVATIONS
A301	BUILDING SECTION



VICINITY MAP

SITE

2140 Wisconsin Avenue, NW



ZONING MAP

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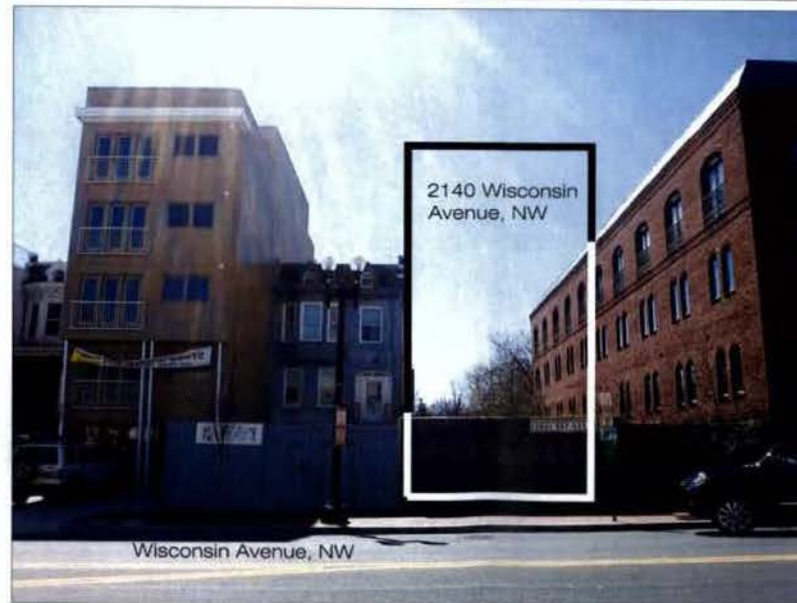
COVER PAGE



AS SHOWN

13 June 2013

A000



EXISTING VIEWS OF CONTEXT
WITH APPROXIMATE NEW
BUILDING PROFILE IN THE
PROPOSED LOCATION

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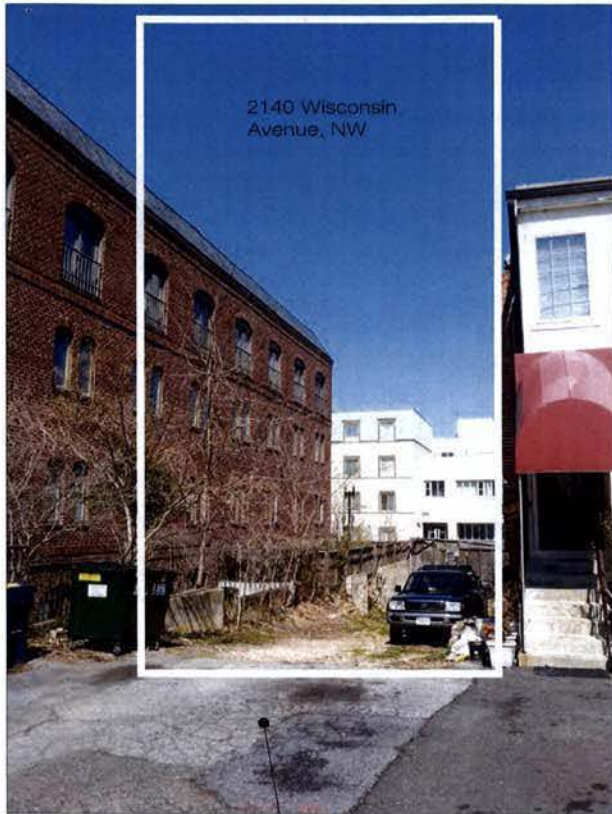
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Washington D.C. 20007

EXTERIOR
PHOTOS

AS SHOWN

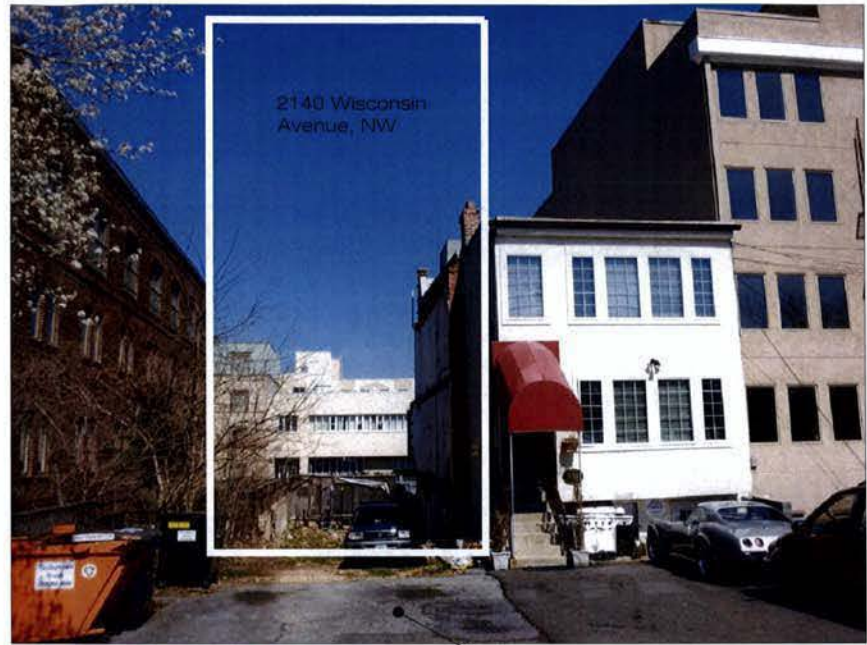
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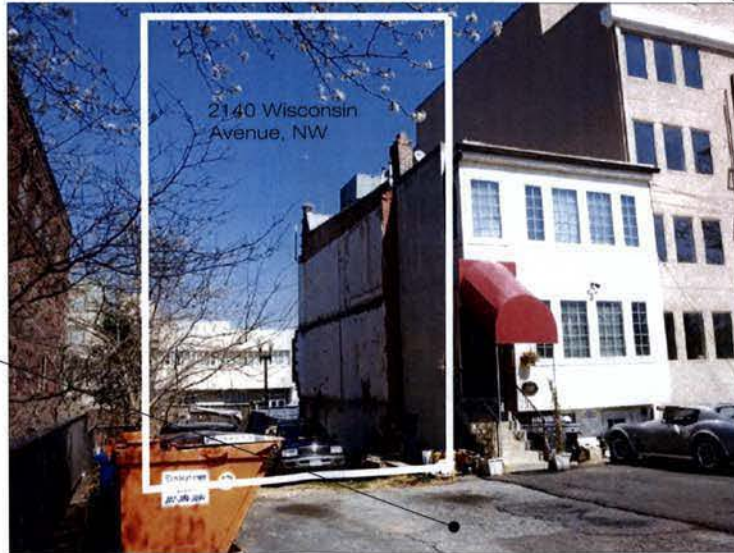
2140 Wisconsin Avenue, NW

BACK ALLEY WITH PARKING



2140 Wisconsin Avenue, NW

BACK ALLEY WITH PARKING



2140 Wisconsin Avenue, NW

EXISTING VIEWS OF CONTEXT WITH APPROXIMATE NEW BUILDING PROFILE IN THE PROPOSED LOCATION

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EXTERIOR
PHOTOS

AS SHOWN

13 June 2013

A002

DATE: 12/15/13



BIRD'S EYE VIEW_2



BIRD'S EYE VIEW_1



ORTHOGRAPHIC VIEW
OF SITE

A003
DRAWING NUMBER

13 June 2013
DATE

AS SHOWN
SCALE

REVISIONS
NO. DESCRIPTION

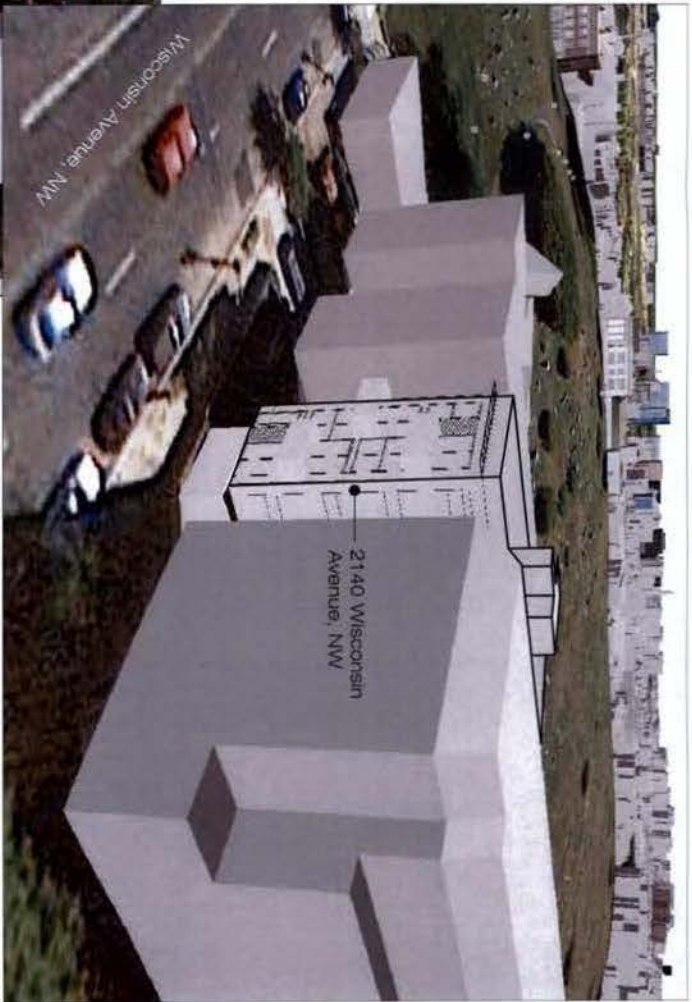
3D PERSPECTIVES
IN EXISTING
CONTEXT

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Washington D.C. 20007

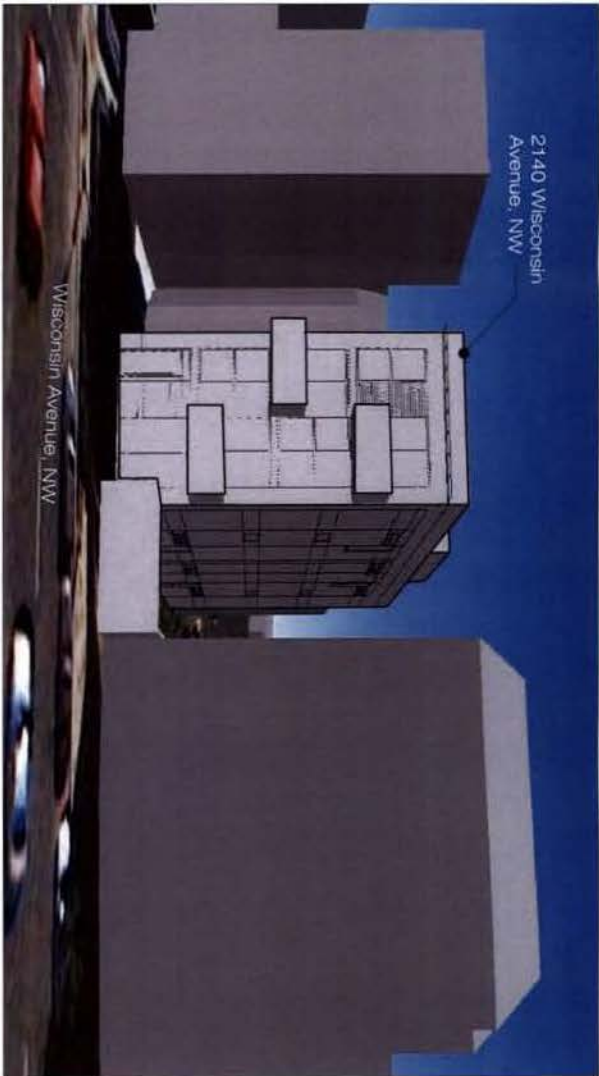
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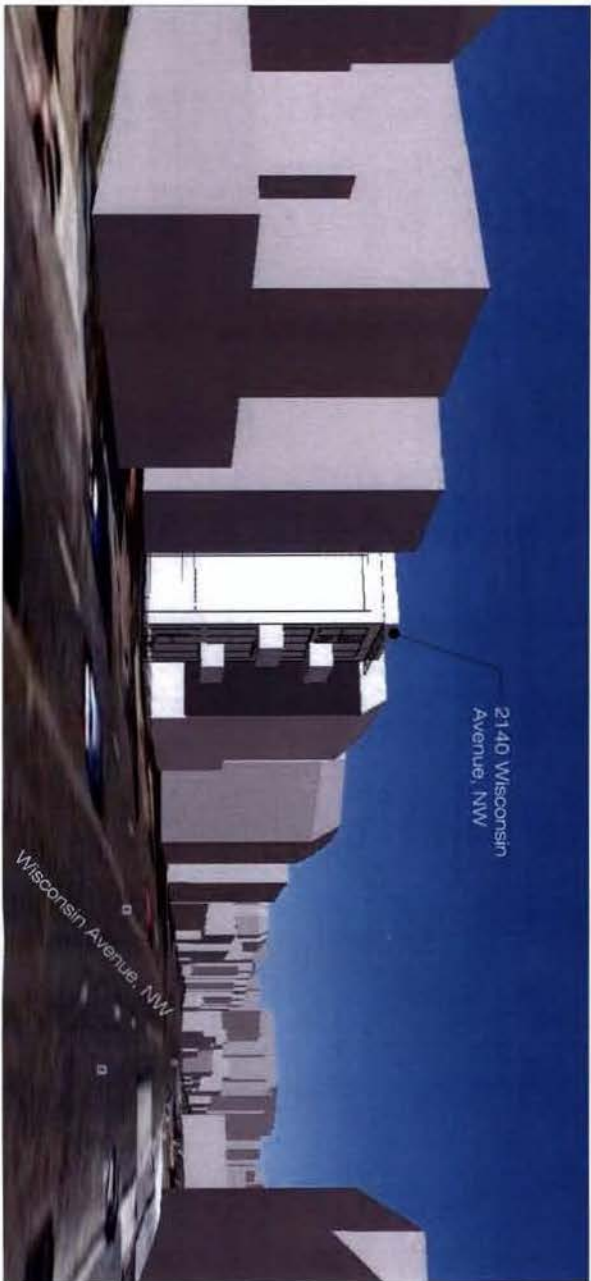
BIRDS EYE VIEW _1



BIRDS EYE VIEW _2



STREET VIEW_2



STREET VIEW_1

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3D PERSPECTIVES
IN EXISTING
CONTEXT

REVISION

AS SHOWN

13 June 2013

A005

DRAWING NUMBER



BIRDS EYE VIEW



FRONT VIEW



SITE PLAN VIEW

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3D PERSPECTIVES
(in color)

REVISIONS

AS SHOWN

13 June 2013

A006



STREET VIEW



REAR VIEW



BIRD'S EYE VIEW

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3D PERSPECTIVES
(in color)

REVISIONS

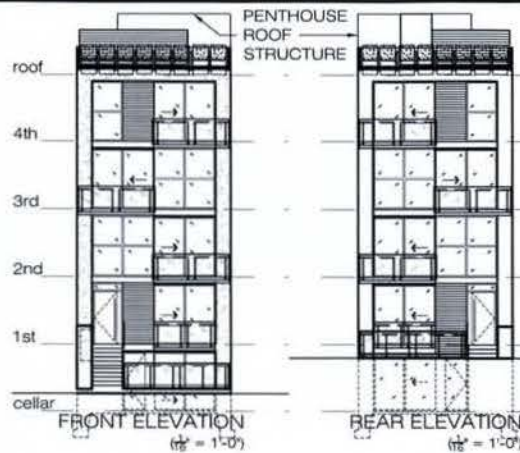
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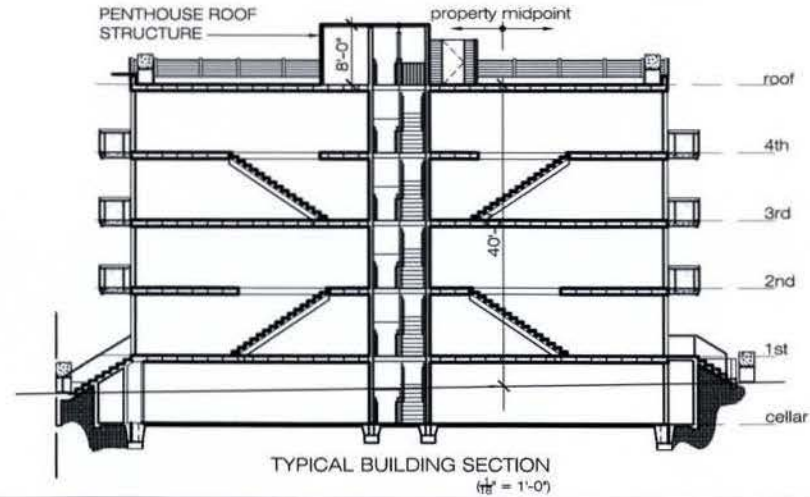
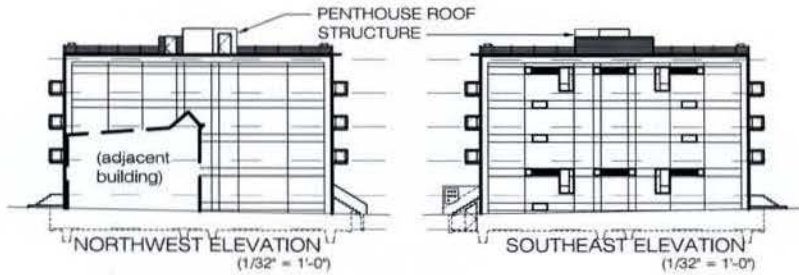
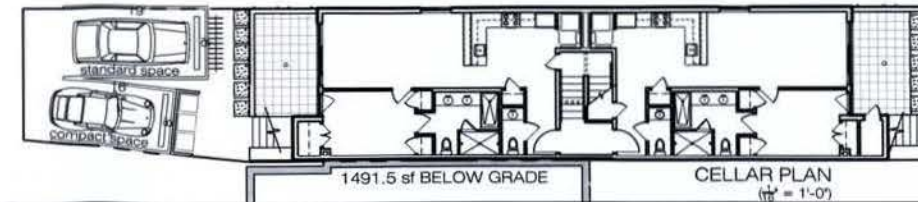
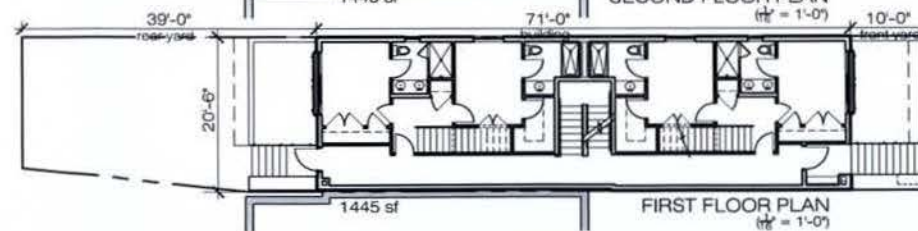
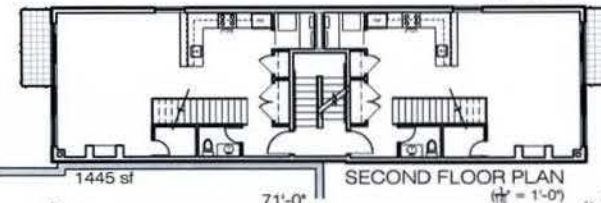
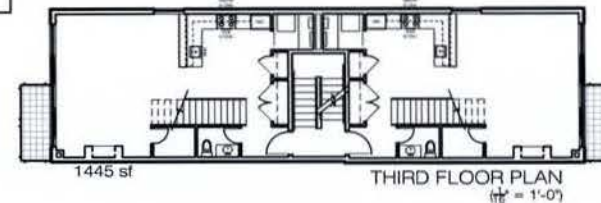
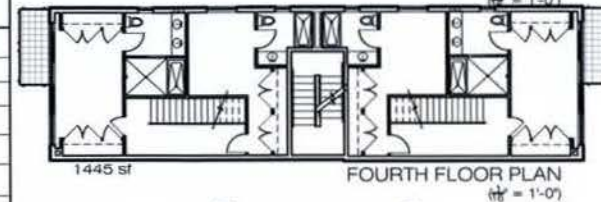
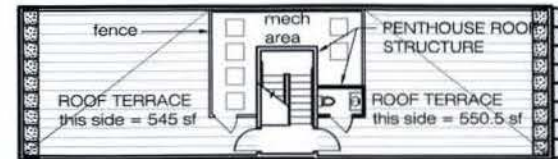
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A007

DRAWING NUMBER



ZONING CODE ANALYSIS		2140 WISCONSIN AVENUE, NW WASHINGTON, DC 20007
(NEW BUILDING)		
ZONING DISTRICT: C-2-A	TOTAL LOT AREA 2413 SF	
USE GROUP RESIDENTIAL MULTI-FAMILY	TOTAL LOT WIDTH 20'-6"±	
LOT 320		
SQUARE REQUIREMENT	300	
ALLOWABLE / REQUIRED		PROPOSED
LOT OCCUPANCY	60% (1448 SF)	60% (1445 SF)
HEIGHT	40 FT / 4 STORIES	40 FT / 4 STORIES + CELLAR
F.A.R.	2.50 max. (6033 sf)	2.40 shown @ (5780 sf)
SIDEYARD	NO REQUIREMENT	NONE PROVIDED
REAR YARD	15 FT MIN	39'-0"
FRONT YARD	NO REQUIREMENT	10'-0"
PARKING	3	2



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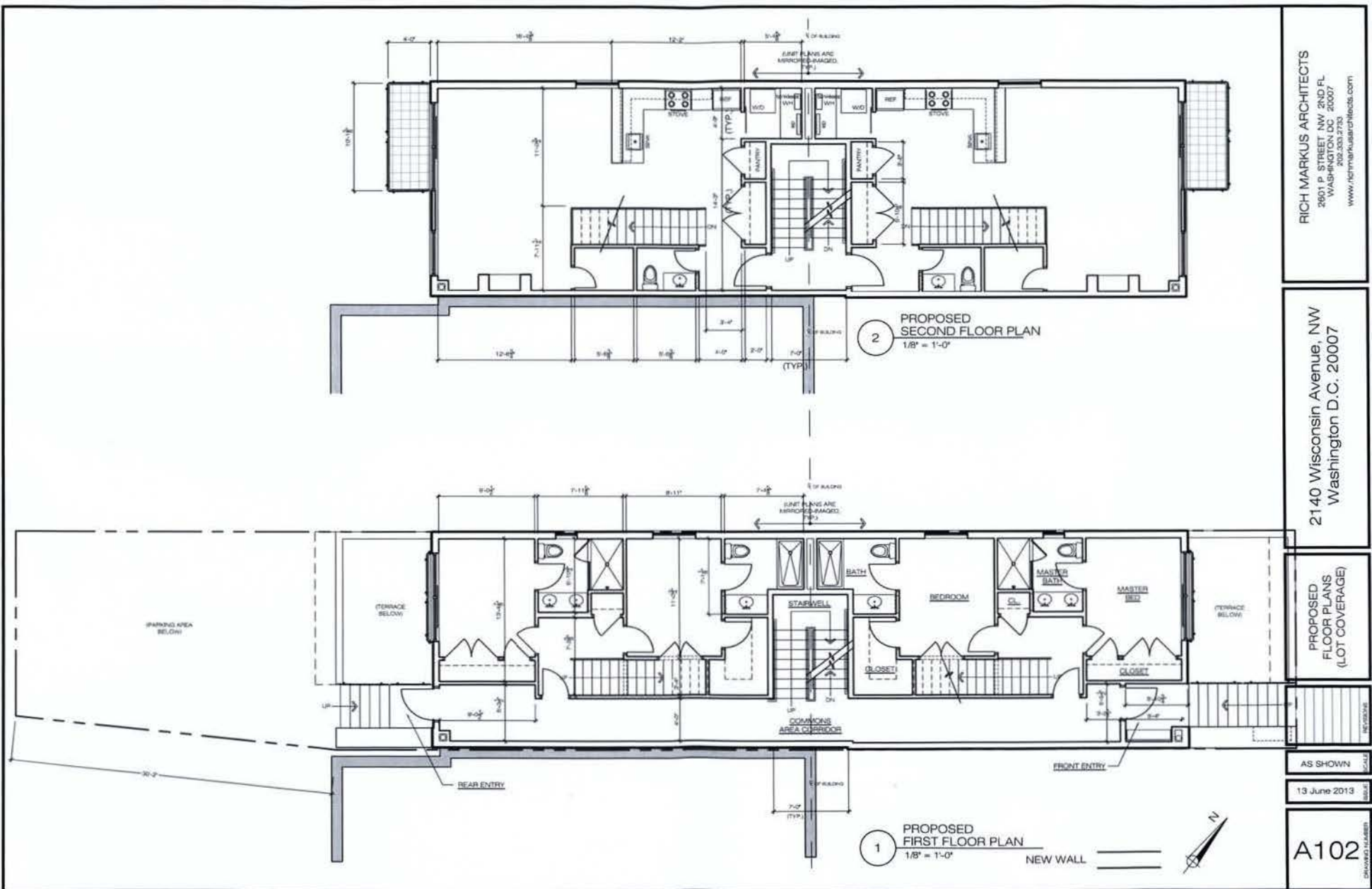
ZONING
INFORMATION

REVISED

AS SHOWN
13 June 2013

A008

DATE/ISSUE



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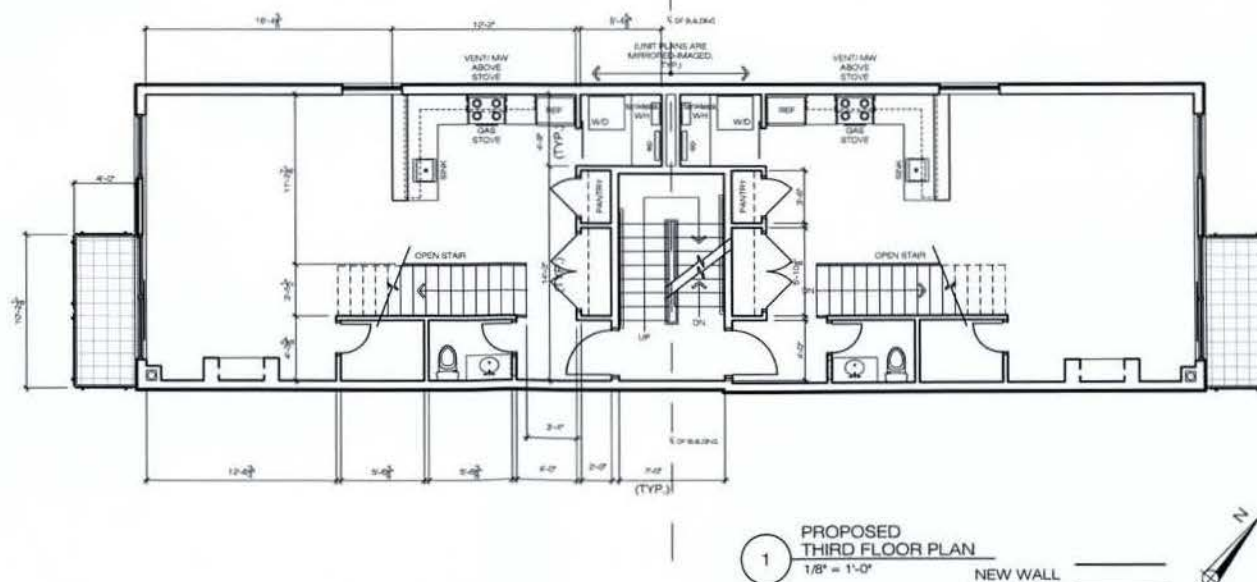
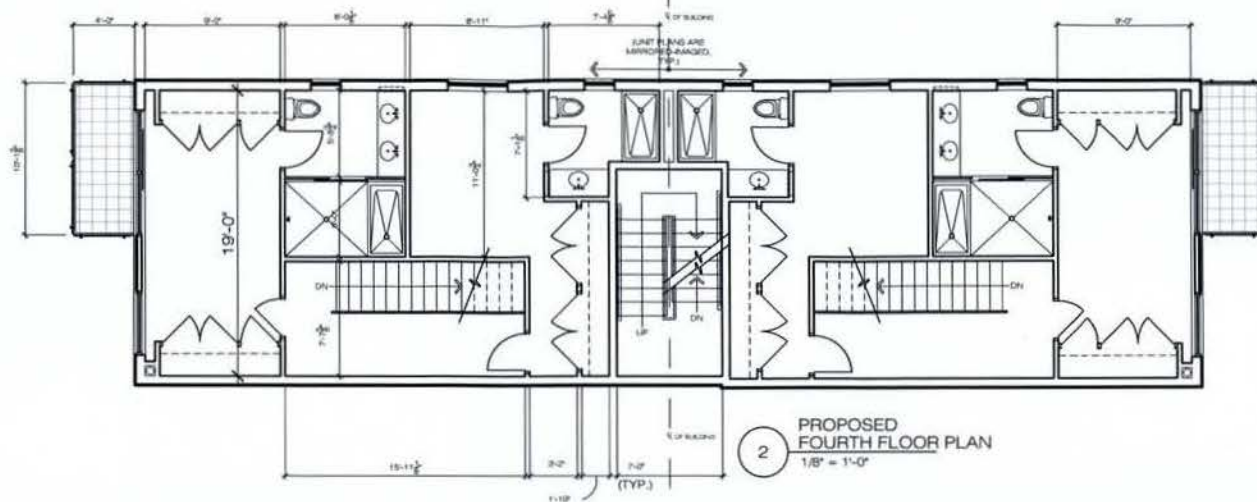
2140 Wisconsin Avenue, NW
Washington D.C. 20007

PROPOSED
FLOOR PLANS
(LOT COVERAGE)

AS SHOWN

13 June 2013

A102



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PROPOSED
FLOOR PLANS
(LOT COVERAGE)

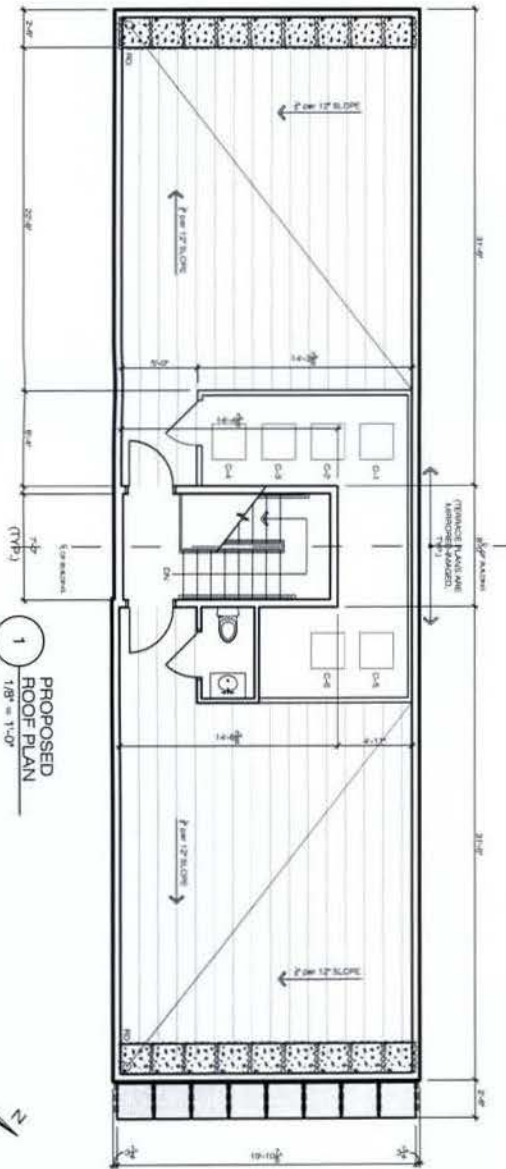
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AS SHOWN

13 June 2013

A103

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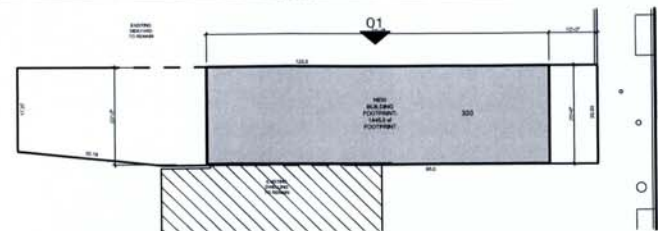


NEW WALL





KEY PLAN



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PROPOSED
ELEVATIONS

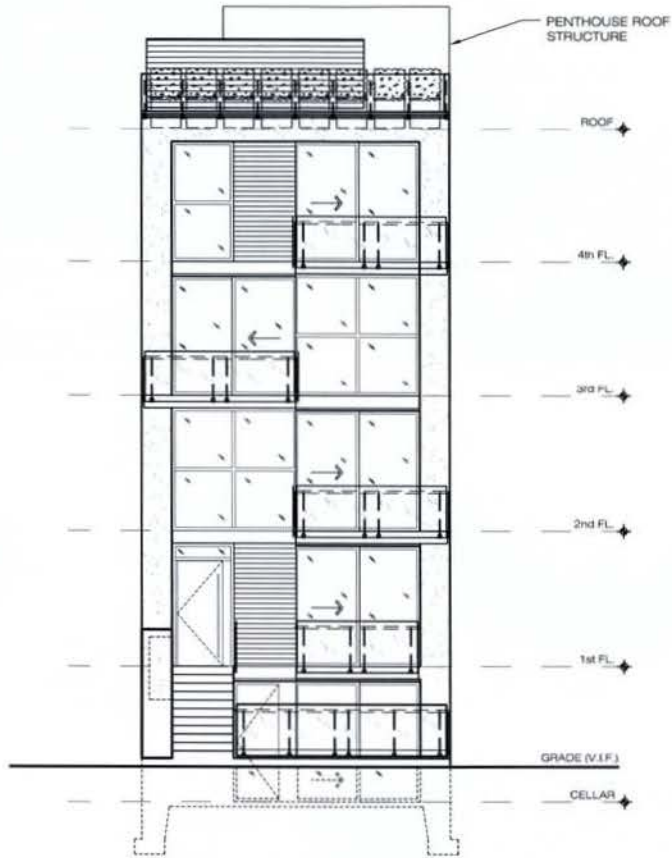
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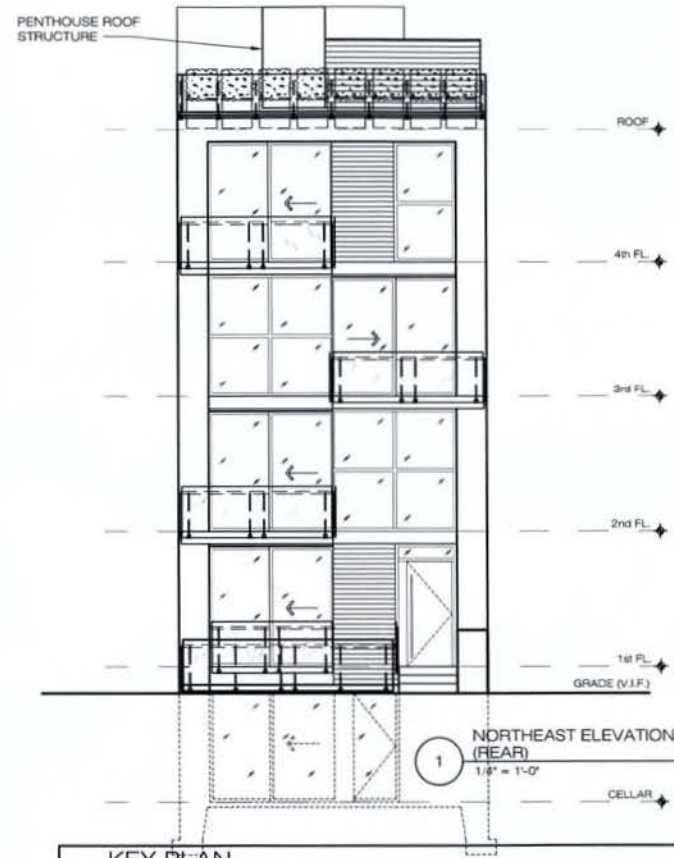
13 June 2013

A201

DATE: 13 June 2013

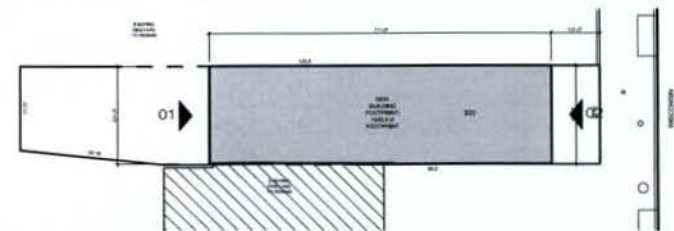


2
SOUTHWEST ELEVATION
(FRONT)
1/8" = 1'-0"



1
NORTHEAST ELEVATION
(REAR)
1/8" = 1'-0"

KEY PLAN



3
KEY PLAN
NTS

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Washington D.C. 20007

PROPOSED
ELEVATIONS

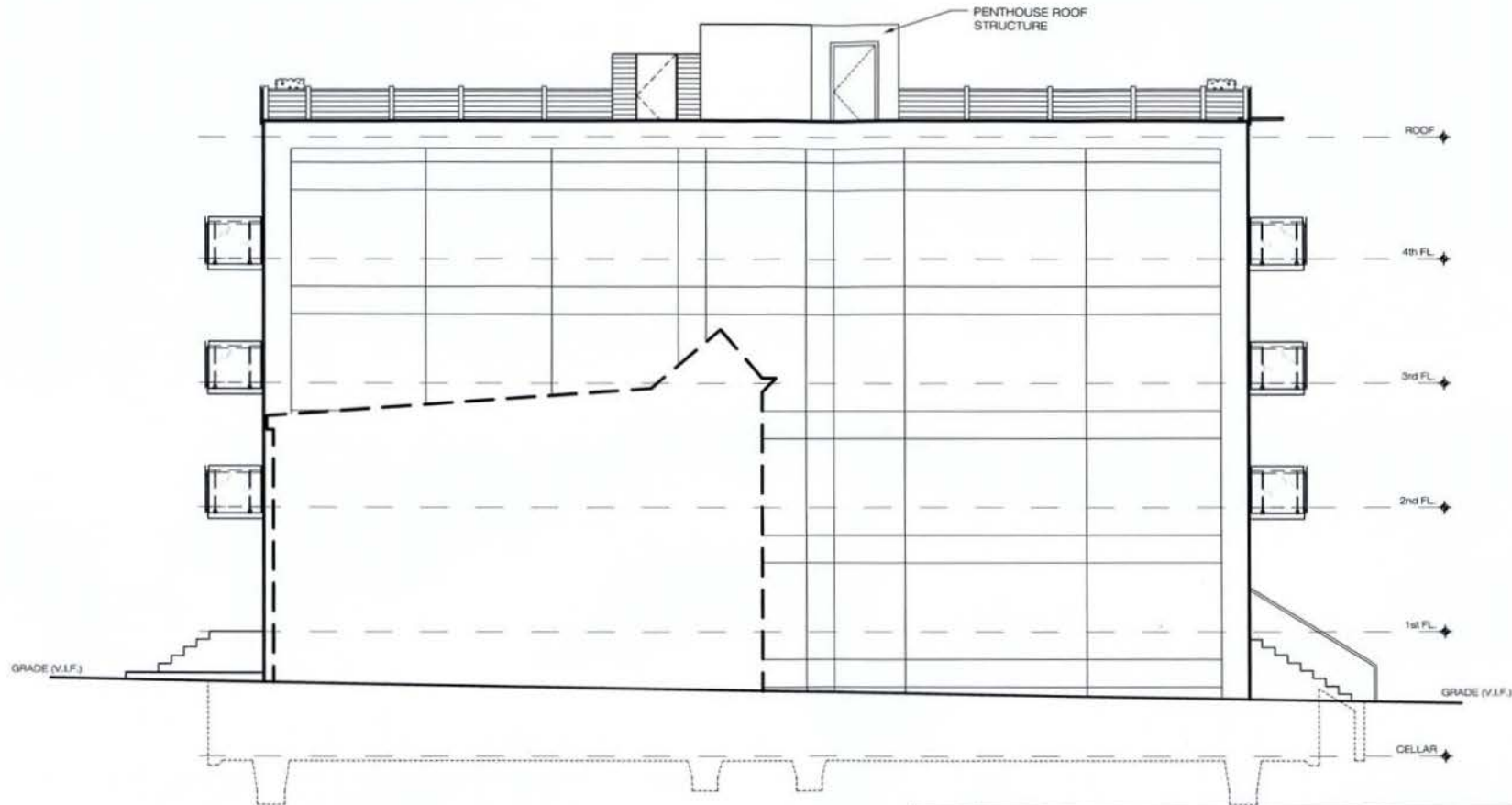
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13 June 2013

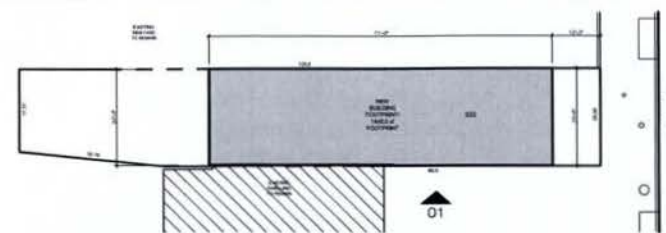
A202

DRAWING NUMBER



1 PROPOSED
NORTHWEST ELEVATION
1/8" = 1'-0"

KEY PLAN



2 KEY PLAN
NTS

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Washington D.C. 20007

PROPOSED
ELEVATIONS

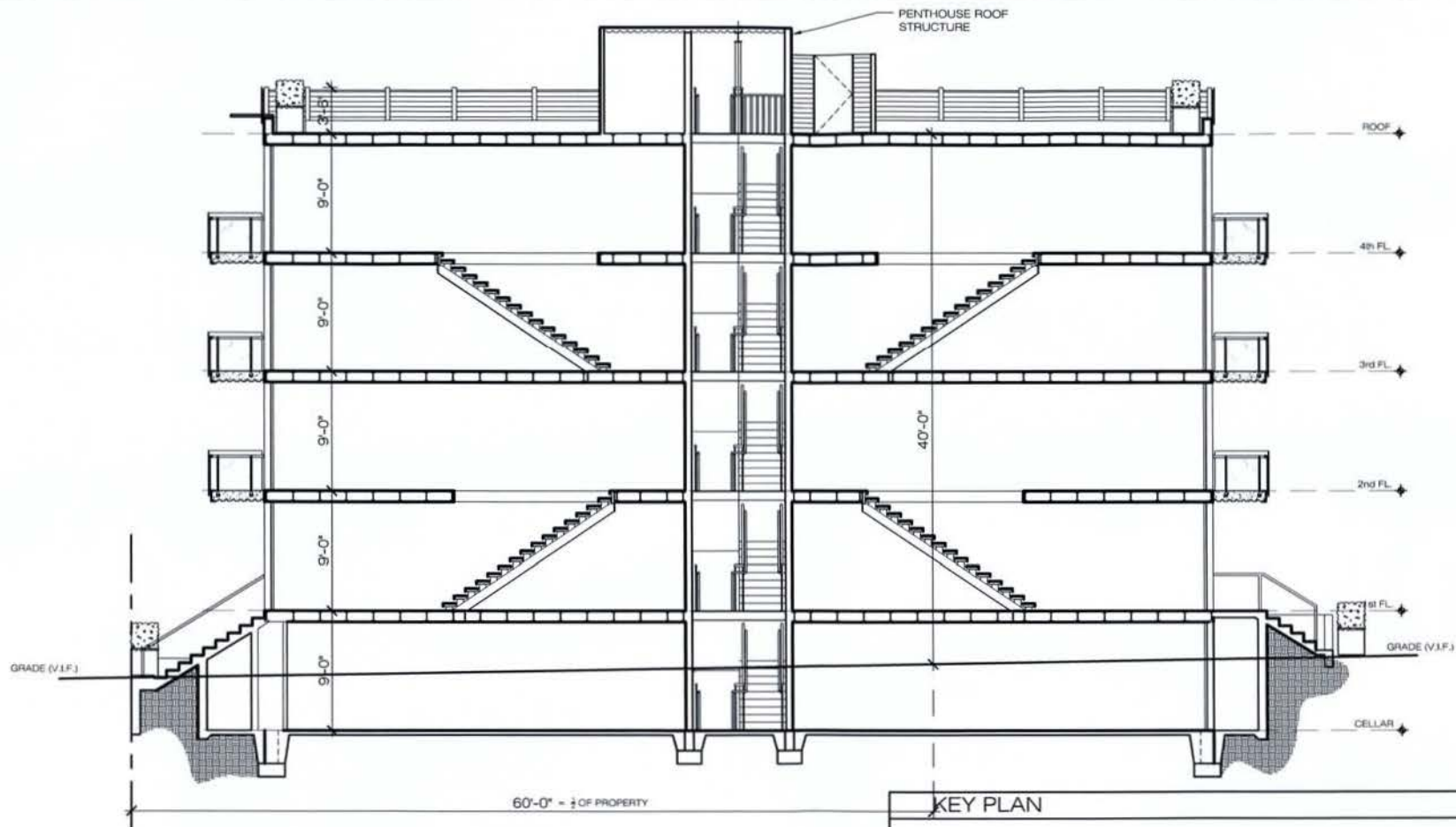


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13 June 2013

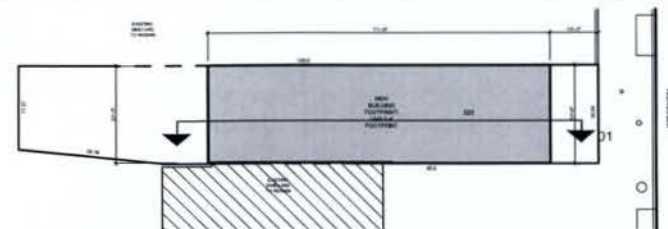
A203

DRAWING NUMBER



1
TYPICAL
BUILDING SECTION
1/8" = 1'-0"

KEY PLAN



2
KEY PLAN
NTS

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BUILDING
SECTION

AS SHOWN

13 June 2013

A301