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April 14, 2014

D.C. Board of Zoning Adjustment
Office of Zoning
441 4th Street NW, Suite 210
Washington, DC 20001

Re: Appeal No. 18735 & 18737: Appeal re: 2121 M Street NW ("Property")
Opposition of Owner/Intervenor to Appellant's Motion to Waive Section 3112.10 and Submit a Late Filing

Dear Members of the Board:

Intervenor hereby opposes Appellant's motion to waive the fourteen-day filing deadline and requests that the Board strike Appellant's supplemental written submission from the record or, in the alternative, provide Intervenor and DCRA with sufficient time to prepare and submit a written response after the public hearing.

Opposition to the Motion and Late Filing

Section 3112.10 unambiguously requires the Appellant to file any (and all) additional statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans or other materials that the appellant may wish to offer into evidence at the hearing at least fourteen days prior to the hearing. Section 3100.6 authorizes the Board to waive this requirement for good cause, provided that such waiver will not prejudice the rights of any other party.

Here, Appellant's late filing, submitted nearly two weeks after the originally-scheduled hearing date and delivered to DCRA and Intervenor well after the close of business on Friday with one business day remaining prior to the rescheduled public hearing, is patently unfair to DCRA and Intervenor. Although Appellant generally restates its existing arguments and offers little new evidence, the pleading should either be stricken from the record or both DCRA and Intervenor should be given an opportunity to prepare a written response after the public hearing on April 15.

Appellant already, of course, submitted a lengthy pre-hearing statement on March 18, 2014. Appellant claims that their second, supplemental filing was necessitated by "new arguments and documents" that were not part of the public record, not part of the permit application and approval process, or not available to the Appellant. This claim is patently false. With the exception of five demonstrative exhibits, all of the material submitted as evidence by Intervenor was either an available public record or a public document in DCRA's records that Appellant, represented by sophisticated zoning counsel and a former Zoning Administrator, should have known how to acquire.

In addition, even if the documents are new to Appellant, that alone does not create "good cause" to permit the late filing. In an appeal, the burden of proof is on the appellant. Therefore, it was incumbent on Appellant to research and evaluate the validity of their potential claims and whether evidence or counterarguments existed to disprove their assertions. This is particularly true here, where all the "new" evidence really shows is that DCRA conducted a full and thorough evaluation of the compliance of the Project with the Zoning Regulations.

Furthermore, Appellant's claim that the late filing was driven by new factual information is misleading. The bulk of Appellant's late filing is devoted to rebutting DCRA and Intervenor's legal arguments defending the issuance of the Permit. Again, Appellant, represented by sophisticated counsel and a former Zoning Administrator, should have been able to anticipate and address these arguments in its initial filing.

Finally, Appellant was afforded ample time to review DCRA and Intervenor's pre-hearing filings. Although the Regulations do not establish a minimum filing date for the District or property owners in appeals, DCRA and Intervenor each prepared and submitted their filings a week in advance of the hearing, out of fairness to the Appellants and to allow time for all parties to appropriately prepare for the hearing. Appellant's untimely supplemental filing stands in stark contrast to this.

In conclusion, the Appellant should not be allowed to file an appeal and then, when the opposing parties file a detailed and comprehensive rebuttal of their allegations, cry foul at evidence that counters their erroneous assumptions. The Appellants have attempted to use a two-week delay (necessitated only because the Board did not have a quorum) to provide themselves – and only themselves – with an opportunity to insert additional written materials into the record. This filing is nearly two weeks after the originally-scheduled hearing date and clearly adversely impacts the rights of DCRA and Intervenor, and the Board should either strike the late filing or allow the other parties an opportunity to fully review and respond in writing after the close of the hearing.

The Merits of the Late Filing

With regard to the merits of their late filing, Appellants offer little new evidence or argument, and generally restate the same incorrect statements of fact and law. Each issue is addressed below.

1. Building Connection

Appellants argue that the separate ownership of Tax Lot 880 (Intervenor's Property) from the balance of Record Lot 190 renders it a separate building. They attempt to rewrite decades of established precedent on the issue of building connections (established case law that Appellants' counsel and expert witness have repeatedly upheld in other contexts), with a claim that the Regulations require a "meaningful homogenous communication" (whatever that means). This cannot be the case, because zoning governs use, not ownership.

First, Appellants misread the text and intent of Section 3202.3(c). That section is intended to only apply to commercial developments like strip malls. (Exhibit A: Excerpt of Z.C. Order No. 03-05.) And furthermore, even if Section 3202.3(c) is read to apply to larger commercial structures, its text and structure reiterates well-established precedent on building connections under the definition of "Building." Section 3202.3(c) is a narrow exception that allows completely separate commercial occupancies on a single lot of record. The necessary logical corollary to this is that commercial occupancies that are not completely separate are permitted as "one building" on a single lot of record if they otherwise meet the definition of "Building" under Section 199.

Decades of established structures serve as examples of multiple commercial developments located on a single lot of record and connected only through a ground-level building connection such as a locked fire door or service corridor. As one example, the office buildings at 1999 K Street NW and 1920 L Street NW are one such single building. (Counsel for Chadbourne and Parke actually worked on this development.) As another example, the office building at 1875 Pennsylvania Avenue is connected to four other commercial office buildings at 1801 Pennsylvania Avenue, 1899 Pennsylvania Avenue, 818 18th Street, and 1800 I Street. Note that in both examples the separate structures have separate parking and loading facilities that are not interconnected with or accessible from the other properties.

Second, there is no requirement that connected buildings maintain a common "homogenous" purpose. Appellants pull this concept out of thin air. Connected components of a building may be owned by different owners, including those with competing business interests. For example, the commercial office buildings cited above are clearly competitors with each other, yet zoning does not invalidate their single record lot arrangements based on separate ownership. Indeed, there is no requirement that the connected components even consist of the same basic use. As another example, the mixed-use development at Square 54 (cited by Intervenor in its pre-hearing statement) is composed of separate office and residential components that are clearly distinct uses.

Third, Lot 190's own history makes clear why Appellant's ownership theory must fail. In the case of Lot 190, the entire lot was owned by a single landowner for decades. Lot 880 was created within the last decade and then sold to facilitate the development of the remaining portion of the record lot.[1] It cannot be the case that zoning would have allowed the previous owner to develop the Property as proposed, but zoning now prohibits Intervenor from doing so simply because he is a different owner.

The Marriott and Project together clearly meet the established legal test as one building. The two components abut each other at multiple locations and feature multiple shared components located at the ground level that provide meaningful communication between the otherwise-separate portions of the structure. No more is required.

2. Parking

Appellants reiterate their argument that the Marriott's existing parking is not surplus parking and then argue that DCRA misapplied the valet parking requirements.

For the reasons already set forth in Intervenor's pre-hearing statement, the Project clearly satisfied the parking requirement through attendant-assisted parking and met the requirements of those regulations. The valet plan was submitted to the Office of the Zoning Administrator during the processing of the building permit and reviewed and approved by DCRA at that time. Appellants claim that such valet parking requires DDOT review and approval, but this is clearly false. All Section 2115.11 requires is that DDOT determine the 12 hour peak period during which attendant-assisted parking must be provided.[2] (Exhibit B: Section 2115 of the Zoning Regulations.) DDOT has no other review or approval authority of such parking operations.

3. Loading

Appellants offer no new evidence here, and their retreaded arguments fail based on a plain reading of the Zoning Regulations. The original Marriott was constructed under old regulations that permitted between 1-2 loading berths and between 3-6 service and delivery spaces for each 200 rooms. (Exhibit C: Excerpt from Z.C. Order No. 108.) Pursuant to this requirement, the original Marriott was constructed with 354 rooms, and provided the maximum number of permitted berths (2) and service and delivery spaces (6). The regulations were then amended to only require loading for hotels with up to 200 rooms, and eliminate the requirement for additional loading for each additional 200 rooms. (Exhibit D: Excerpt from Z.C. Order No. 314.) Therefore, every successive increase in the size of the existing hotel USE—including the

1 The creation of assessment and taxation lot 880 does not, in any way, affect the validity of Lot 190 or the continued evaluation of zoning compliance based on the record lot. (See BZA Appeal No. 14621.)

2 Since valet operations do not start until the building is occupied, DCRA need not seek this determination from DDOT until the issuance of the certificate of occupancy. In any event, it is not relevant here, because Intervenor intends to operate the garage as attendant-assisted parking on a 24-hour basis.

Project— is exempt from the requirement for additional loading, even when viewed in the aggregate.

Furthermore, contrary to Appellant's assertions, there is no provision of the Zoning Regulations that requires a property owner to go back and retrofit existing loading to comply with the current regulatory requirements. Indeed, the Statement of Reasons cited by Appellant specifically states, with respect to parking and loading requirements for hotels, "The Zoning Regulations cannot be made to apply retroactively." (Exhibit D: Excerpt from Z.C. Order No. 314 (Statement of Reasons).)

Again, notwithstanding the fact that no additional loading was required for the Project, additional loading was provided off of a private alley, which is clearly the most appropriate location for such activity and, for the reasons set forth in the Intervenor's pre-hearing statement, does not violate the Zoning Regulations.

4. Roof Structure

Appellants argue that a wall that is completely internal to the structure and not visible from any public street, alley, yard or open court is somehow an "exterior" wall. Appellants also raise a new argument here, for the first time, that the Project's roof structure is somehow required to be connected to the roof structure of the existing Marriott.

For the reasons set forth in Intervenor's pre-hearing statement, the west wall of the Project is clearly an "interior" wall under the Zoning Regulations. Furthermore, Section 411.4 clearly permits separate roof structures when separate elevator cores are required. Here, separate elevators are required for the different components of the building, and therefore separate roof structures are allowed. Again, this is the case for many "single record lot" developments throughout the city.

Finally, Appellants have unclean hands on the subject of roof structures and are in no position to challenge compliance with these regulations. Attached as Exhibit E is a photograph of their roof structure, which clearly shows extensive mechanical equipment on top of the existing penthouse that is visible from public space.

5. Public Space

Appellants reiterate their same arguments and, furthermore, fail to present any new evidence that supports their case.

First, Appellants repeatedly mischaracterize the public space at ground level requirement as an "open space" requirement in both their original and supplemental pre-hearing filings. Section 633 is a public space, not open space, requirement, and clearly permits such public space to be within covered and enclosed space, so long as such space as a clearance of 10 feet or one story.

Second, and for the reasons already set forth in the Intervenor's pre-hearing statement, the District has repeatedly issued permits and certificates of occupancy for improvements to Lot 190, which are prima facie evidence of compliance with all provisions of the Zoning Regulations, including the public space at ground level requirement. The District would be estopped now, decades later, from prohibiting development of the Property, which was fully occupied with structure during earlier development of Lot 190 and could never have been used to meet the public space requirement for the lot. In any event, the hotel lobby clearly satisfies all of the requirements of the public space at ground level requirements, and Lot 190 therefore continues to comply with the Regulations.

Conclusion

We look forward to defending the issuance of the Permit on April 15, 2014.

Sincerely,

David Avitabile

cc: ANC 2A
Pat Brown, Greenstein, Delorme & Luchs
Cynthia Giordano, Saul Ewing
John Postulka, DCRA

I, David Avitabile, hereby certify that a copy of this document and attachments was served by electronic mail on the above cc:s on April 14, 2014

David Avitabile

Exhibit A: Excerpt of Z.C. Order No. 03-05

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-05C
Case No. 03-05C
Consolidated Planned Unit Development and
Zoning Map Amendment for the Department of Transportation ("DOT") Headquarters in the Southeast Federal Center

January 12, 2004

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on September 25, 2003, to consider applications from JBG/SEFC Venture, L.L.C. ("Applicant"), on behalf of the General Services Administration ("GSA"), for consolidated review and one-step approval of a Planned Unit Development and a Zoning Map Amendment (collectively, the "Applications"). The Zoning Commission considered the Applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). A further public hearing to consider limited issues was held on November 24, 2003. The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Applications.

PRELIMINARY MATTERS

As a preliminary matter, the Zoning Commission must determine whether the project constitutes one or two buildings.[1] The project visually presents itself as two buildings that share no above

[1] The Applicant requested that the Zoning Commission release the legal advice memorandum provided by the Office of the Corporation Counsel ("OCC") on this issue. The Commission refused this request, believing that it was inappropriate to share the written legal advice it receives. Apparently, the Applicant believes that memoranda of this kind have a status independent of the Commission's resolution of this issue, as it is set forth in this Order. This is simply not the case. The Zoning Commission relies upon the Land Use and Public Works Section of OCC for legal advice. In furnishing such advice, the attorneys of that Section act as members of the Commission's staff. As with any other advice provided by staff, the Commission is free to accept or reject the advice given. The written legal advice received is not a formal Opinion by the Corporation Counsel and therefore has no official status. The Zoning Administrator receives legal advice through the General Counsel of the Department of Consumer and Regulatory Affairs. Neither the Zoning Administrator nor DCRA's General Counsel must adhere to the legal interpretations of the Land Use and Public Works Section. Rather, it is the legal interpretations included the written orders of this Commission that establish zoning precedent. Thus, apart from general concerns about maintaining attorney-client confidentiality, the release of such written memoranda would serve no purpose and could create confusion to the extent that there may be differences between the analysis in an OCC memorandum and the analysis of the same issue in a Zoning Commission Order.

ground connection. The Applicant contends that, notwithstanding this appearance, there is but one building. To reach this conclusion, the Applicant relies on § 3202.3 of the Zoning Regulations, which states in part that:

> [A] building permit shall not be issued for the proposed erection, construction, or conversion of any principal *structure* …unless the land for the proposed erection, construction, or conversion has been divided so that each *structure* will be on a separate lot of record …. . . Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) *structure*.

Emphasis added.

This provision does nothing more than require, subject to certain exceptions, that a record lot may include no more than a single structure. The provision also provides a narrow circumstance where occupancies, separated in their entirety, may be nevertheless be considered a single structure. It does not, however, provide that those single structures are also single buildings. That issue is resolved with the definition of "building" which provides that a building is:

> *[A] structure* having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one building.

11 DCMR § 199.1 (emphasis added). Thus, a single structure can include more than one building. But, if the portions of that single structure have no above ground "communication", the structure cannot be a single building. Thus, even if under § 3202.3 this project were considered a single structure, it could not be considered a single building.

However, the Commission does not believe that this project can even be viewed as constituting a single structure to the extent permitted under § 3202.3.

First, the DOT project is not a "combination of commercial occupancies." It is a single commercial occupancy -- that of the USDOT. Second, reading § 3202.3 as permitting two structures separated from the ground up to be considered one building would be inconsistent with the plain language of § 2517 of the Zoning Regulations. Section 2517 permits two or more principal buildings, as a matter-of-right, to occupy a single lot of record on any property that is not in, or within twenty-five (25) feet of, a residence district. Each building, however, must conform to the applicable requirements for height, bulk, and open space. If § 3202.3 were read to allow multiple non-conforming structures on a single lot of record simply by virtue of their common ownership, § 2517 would be rendered virtually meaningless.

Finally, a review of the history of § 3202.3 shows that its current language was adopted in 1964, and was changed from earlier language in order to permit strip malls to locate on single lots of record. Arguably, the earlier language would have prevented this. It stated: "any combination of commercial structures having division walls from the ground up or from the lowest floor up operated as a single establishment, shall be on a separate and distinct lot of record." (*See,* § 8103.3 of the original 1958 zoning regulations.) A strip mall is a combination of individual commercial occupancies, *i.e.*, stores, each separated by a common division wall. Under the earlier text, each of these commercial occupancies would have been considered a separate building, because they were not "operated as a single establishment." The earlier text would therefore have required each store in a strip mall to have been located on its own separate and distinct lot of record. To avoid this anomalous result, the last sentence of § 3202.3 was changed to read as it does today. It seems apparent that the last sentence of § 3202.3 was intended to facilitate the construction and operation of strip malls, not to subvert the lot control provisions of the Zoning Regulations.

For all of these reasons, the Zoning Commission finds that the PUD project consists of two structures that are two separate and distinct buildings for purposes of the Zoning Regulations.

FINDINGS OF FACT

The Applications, Parties and Hearing

1. On January 23, 2003, JBG/SEFC Venture, L.L.C., the contract purchaser of the property, on behalf of the General Services Administration, the owner of the property, (collectively the "Applicant") filed Applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment. The subject property is located within the Southeast Federal Center on the south side of M Street, S.E., bounded by the proposed extensions of New Jersey Avenue, S.E., and Fourth Street, S.E., on the west and the east respectively, and the proposed dedication of Tingey Street, S.E., to the south. (the "Site").[2] The Site consists of a portion of U.S. Reservation 17-E, a portion of Lot 800 in Square 770, and a portion of Lot 800 in Square 801. Currently, the Site is owned by the United States Government.

2. The Zoning Commission held a public hearing on September 25, 2003. The case was originally scheduled for public hearing on September 18, 2003; however, due to inclement weather, the hearing was postponed. The Zoning Commission was not able to publicly announce the postponement of the public hearing in accordance with § 3005.9 of the Zoning Regulations. Accordingly, the Zoning Commission waived the requirements of that section at the public hearing on September 25, 2003. All other notice was found to be in accordance with the Zoning Regulations.

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[2]Unless otherwise indicated, all references in this Order to Third Street, Fourth Street, Tingey Street, M Street, or New Jersey Avenue signify Third Street, S.E., Fourth Street, S.E., Tingey Street, S.E., M Street, S.E., and New Jersey Avenue, S.E.

Exhibit B: Section 2115

2115 SIZE OF PARKING SPACES

2115.1 Except as otherwise provided in this section, a required automobile parking space shall be a minimum of nine feet (9 ft.) in width and nineteen feet (19 ft.) in length, exclusive of access drives, aisles, ramps, columns, office or work areas and shall be striped according to the requirements of § 2117.3. Parking shall also be in compliance with the requirements of the District of Columbia Architectural Barriers Act of 1980, effective July 1, 1980 (D.C. Law 3-76; 12 DCMR art. 15).

2115.2 Any accessory parking area or accessory garage containing twenty-five (25) or more required parking spaces may designate up to forty percent (40%) of the parking spaces for compact cars.

2115.3 A compact car parking space shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives, aisles, ramps, columns, and office and work areas and shall be striped according to the requirements of § 2117.3.

2115.4 Parking spaces shall be visibly marked as "compact car" or "small car" parking spaces and shall be placed in groups of at least five (5) contiguous spaces with access from the same aisle.

2115.5 Except as provided in §§ 2115.6 and 2115.7, all parking spaces shall have a minimum vertical clearance of six feet, six inches (6 ft., 6 in.).

2115.6 Where one hundred (100) or more parking spaces are provided, whether the spaces are required or not and whether the spaces are a principal use or an accessory use, at least five percent (5%) of the parking spaces shall have a minimum vertical clearance of seven feet, two inches (7 ft., 2 in.).

2115.7 All entrances, exits, access aisles, ramps, and driveways providing access to parking spaces shall also have the minimum vertical clearances as prescribed in §§ 2115.5 and 2115.6, respectively.

2115.8 All parking spaces requiring the seven foot, two inch (7 ft., 2 in.), vertical clearance shall be clearly marked for "Van Parking Only."

2115.9 In a commercial building or structure located in a C-3-C, C-4, C-5 (PAD), SP, W, or CR District, where at least seventy-five (75) parking spaces are required according to the schedule of parking requirements under § 2101.1 and where parking spaces are provided within a parking garage, parking may be provided as set forth in §§ 2115.10 through 2115.18.

2115.10 A minimum of two hundred eighty-five square feet (285 $ft.^2$) of parking area shall be provided for each required parking space.

2115.11 Parking space dimensional, size, design, and striping requirements stipulated under §§ 2115.1 through 2115.4, 2117.3, 2117.5, and 2117.6 may be waived; provided, that the parking is managed during a specified twelve (12) hour peak period to be determined by the D.C. Department of Transportation by employed attendants who park the vehicles using the parking facility.

2115.12 A permanent sign shall be posted at each entrance in full view of the public that states: "Attendant assisted parking is required by the District of Columbia Zoning Regulations." The sign shall also state the hours during which attendant parking is required. The sign shall have a white background, with black lettering that is no less than two inches (2 in.) in height.

2115.13 All parking areas and spaces provided under § 2115.9 shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicle without moving any other vehicle onto public space.

2115.14 Where aisles are provided, the aisles shall meet the design requirements stipulated in §§ 2117.5 and 2117.6.

2115.15 All other requirements for parking, including but not limited to minimum height clearances and landscaping requirements, shall remain applicable.

2115.16 In the event parking by attendants as required in § 2115.11 is discontinued, parking shall then be provided as otherwise required in these regulations. The applicant for a parking facility under this subsection shall submit a parking plan on a medium acceptable to the Zoning Administrator that demonstrates how parking shall be provided in the event the attendant parking is discontinued.

2115.17 No individual area shall be considered a part of the required parking area where the minimum lesser dimension is less than seven feet (7 ft.) or where the minimum greater dimension is less than fourteen feet (14 ft.) in rectangular area, exclusive of column obstructions.

2115.18 For the purpose of § 2115.9, a commercial building or structure shall include any building or structure where eighty percent (80%) or more of the gross floor area is devoted to a use other than a dwelling, flat, multiple dwelling, rooming or boarding house, community-based residential facility, or hospital.

SOURCE: Final Rulemaking published at 31 DCR 6585, 6600 (December 28, 1984); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8501-02 (October 20, 2000); and Final Rulemaking published at 49 DCR 2742, 2747 (March 22, 2002).

Exhibit C: Excerpt from Z.C. Order No. 108

automobile parking spaces permitted under Sub-section 4505.1. Such bicycle facilities shall have convenient access from building and street or other bicycle right-of-way, be secure, and shall be located within a building or structure, either on the ground floor, first basement or first cellar level.

4505.4 - All buildings and structures shall be provided with off-street loading berths and off-street service/delivery parking spaces as specified in the following schedule:

USE	NUMBER OF LOADING BERTHS		NUMBER OF SERVICE SPACES	
	Minimum	Maximum	Minimum	Maximum
Multiple dwelling with more than 50 units	1	2	3	6
Hotel - for each 200 rooms	1	2	3	6
Hospital	1	2	3	6
Offices				
5,000 to 20,000 square feet of gross floor area -	0	1	1	2
20,000 to 50,000 square feet of gross floor area -	1	2	3	6
50,000 to 100,000 square feet of gross floor area -	1	2	3	6
For each additional 100,000 square feet of gross floor area -	1	2	3	6

EXHIBIT D - Excerpts from Z.C. Order No. 314
Excerpt from Text Amendment

C-1, C-2, C-3-A	One for each two sleeping rooms or suites, plus one for each 150 square feet of floor area in the largest function room.
C-4, C-5(PAD)	No requirements
M, C-M	One for each sleeping room or suite plus one for each 150 square feet of floor area in the largest function room.

C. Add "or inn" after "hotel" and amend the requirements for "Hotel or Inn" in the W Districts in the table in Sub-section 4405.1 to read as follows:

Hotel or Inn	1/2 sleeping rooms or suites plus one space for each 150 square feet of floor area in the largest function room.

D. Add "or inn" after "hotel" and amend the requirements for "Hotel or Inn" in CR Districts in the table in Sub-section 4505.1 to read as follows:

Hotel or Inn	1/4 sleeping rooms or suites plus one space for each 300 square feet of floor area in the largest function room.	1/2 sleeping rooms or suites plus one space for each 300 square feet of floor area in the largest function room.

10. Amend the loading requirements for hotels and inns:

A. Amend the table in Sub-section 7302.1 regarding "Hotel to read as follows:

"Hotel

All Districts....For guest room areas:

With 30 to 200 sleeping rooms or suites	1
With more than 200 sleeping rooms or suites	2

All Districts.....For Function Rooms:

With a total of 10,000 to 50,000 square feet of floor area	1

Excerpt from Statement of Reasons

6. Reduce Neighborhood Impacts from Parking and Loading Activities. One of the major complaints of persons residing in the neighborhood of hotels is the impact of vehicles parked in the neighborhood because such vehicles could not be accommodated in the parking and loading facilities of the hotel itself. The Zoning Regulations cannot be made to apply retroactively. However, the Commission believes that all new or expanded hotels must provide adequate parking and loading facilities to accommodate the basic demands generated by the hotel.

The Commission further wishes to note that it believes the Zoning Regulations should be amended further to provide greater incentive for hotel development in the downtown area, particularly in the area surrounding the new Convention Center. Such a proposal was not included in the notice for the hearing held in January, 1980, and the Commission must give appropriate notice as required by law. The Commission has therefore requested the Office of Planning and Development to prepare a proposal for a new hotel incentive district. The Commission intends to go forward to advertise and consider such a proposal in the near future.

SPECIFIC REGULATIONS ADOPTED

In order to acheive the basic goals outlined above, the Commission has adopted specific regulations for hotels, as follows:

1. Definitions of hotel. The previous definition of a hotel was amended in several respects. The Commission further explained its use of the term "transient guests" to mean persons who rent the rooms or suites in a hotel on a daily basis. The Commission deleted the phrase "communicating with" describing the relationship of the required dining room with the lobby, and replaced it with the term "internally accessible from". Both of these changes were intended to clarify how the definition of hotel should be applied by the Zoning Administrator. In addition, the Commission determined that any facility previously defined as a "motel" would now be considered as a "hotel". The Commission determined to retain the definition of "motel" for reference purposes only, since new motels as a separate category are no longer permitted. The Commission also defined five sub-categories of areas within a hotel, including "guest room areas","function rooms", "exhibit space", "commercial adjuncts"and "service areas." These sub-categories were basically defined to enable the Commission to allocate the various areas of a hotel for the purpose of calculating and apportioning the gross floor area against the FAR limits.

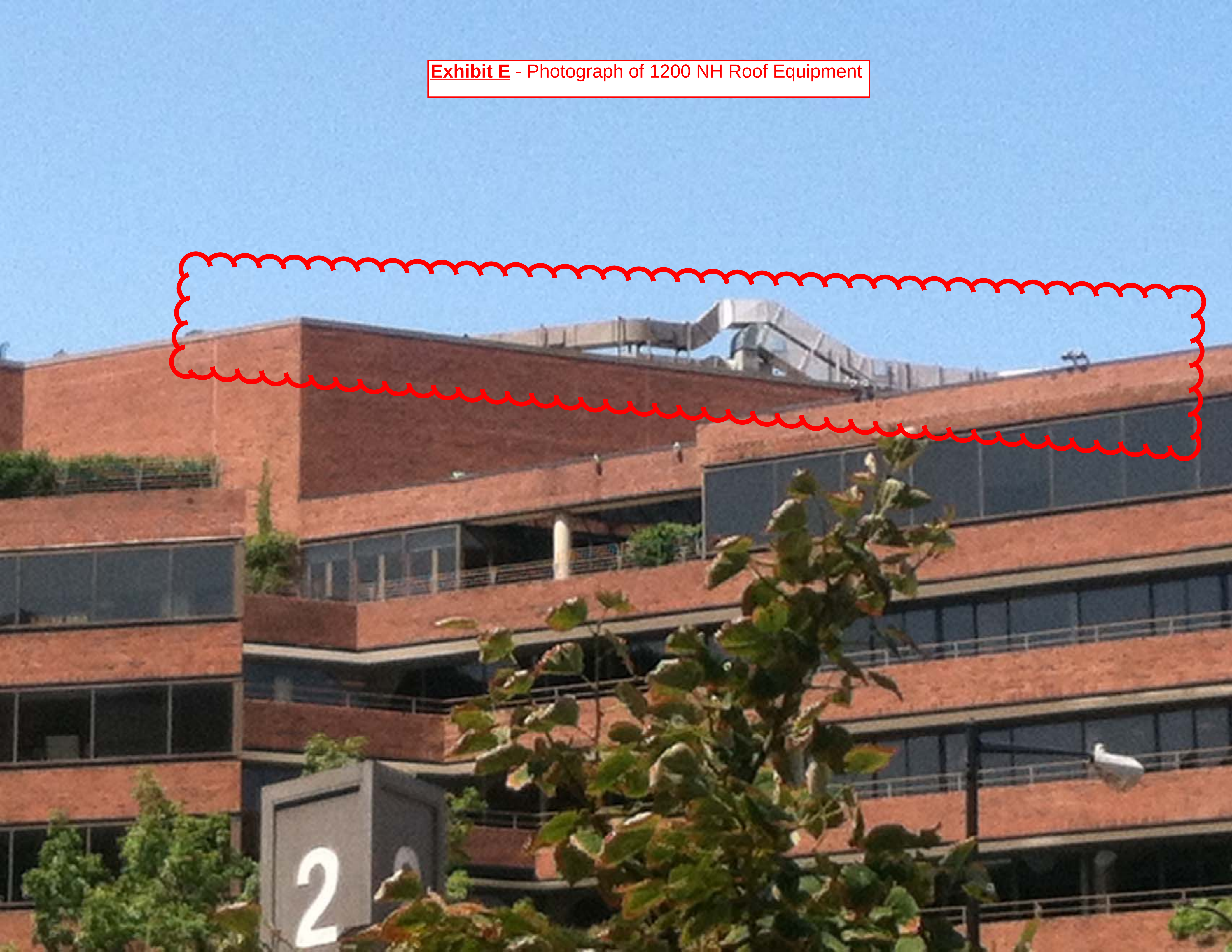

Exhibit E - Photograph of 1200 NH Roof Equipment