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May 26, 2015

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

Re: Application No. 18987 – 1124-1126 Florida Avenue NE (Square 4070, Lot 808)
Prehearing Statement of the Applicant

Chairperson Jordan and Honorable Members of the Board:

On behalf of Pierce Investments, LLC, please find enclosed the Prehearing Statement for the above-referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on June 9, 2015.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP

By: Meridith H. Moldenhauer

Enclosures:
Cc: Advisory Neighborhood Commission 5D
c/o Kathy Henderson, Chair (via email)
Single Member District 5D06 Representative, H. Yvonne Buggs (via email)
Office of Planning (via email)

Board of Zoning Adjustment
District of Columbia
CASE NO.18987
EXHIBIT NO.32

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ERIC M. DANIEL (MD, DC)*
JARED POSTELNICK (VA, DC)*
*PENDING

202-503-1482
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Executive Summary

Case No. 18987

Site Description

Address and Square/Lot:

- 1124-1126 Florida Avenue NW (Lot 808, Square 4070),

Zoning: C-2-A

Existing:

- Auto Mechanic Shop

Public Transportation:

- Metro: NOMA-Galludet
- Metrobus and DC Circulator
- Capital Bikeshare:
  - 8th and Florida Avenue (19 docks)
  - Neal Street and Trinidad Avenue (15 docks)
- Car Sharing: Zipcar & Car2Go

Cases:

- *Palmer v. D.C. BZA*
- *Gilmartin v. D.C. BZA*

Project Description

Applicant	Pierce Investments, LLC
Proposal	Mixed-Use Retail/Residential
Relief Sought	Variance: FAR (§771); Height (§770); and Rear Yard (§774)
Variance Standard	**Exceptional Circumstance**: Confluence of Factors (1) Large lot size; (2) Unusual Shape of Property; and (3) Requires extensive environmental remediation. **Strict Application Results in Practical Difficulty**: • Substantial development constraints as a result of the environmental condition of the Property; • Construction of cellar units is impractical and unsafe; and • Extraordinary environmental remediation creates loss of time and sellable square footage. **No Detriment to Public Good**: • Elimination of a nonconforming use-the auto mechanic shop; • Addition of neighborhood servicing retail; and • Environmental remediation of a contaminated property.

Comments of District Agencies and Community:

- Extensive community outreach including several Single Member District meetings.

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF	**BZA APPLICATION NO. 18987**
PIERCE INVESTMENTS, LLC	**HEARING DATE: JUNE 9, 2015**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Pierce Investments, LLC (the "Applicant"), regarding the property located at 1124-1126 Florida Avenue NE, Lot 808 in Square 4070, (the "Property") in support of its application for an area variance from the requirements regarding FAR (§771), height (§770), and rear yard (§774) to allow the Applicant to construct a multifamily dwelling with neighborhood servicing retail in the C-2-A District.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: **Revised Architectural Plans**
Exhibit B: **East Building Elevation**
Exhibit C: **Landscaping Plan**
Exhibit D: **Letter from APEX's Environmental Service Group**
Exhibit E: **Letter from F.S. People's Realty**
Exhibit F: **Letter from UrbanLand Company**

III. UPDATED PLANS

The Applicant has made significant design and structural changes to the plans since filing the initial application. *See*, Revised Architectural Plans at **Exhibit A**. The Applicant had three single member district meetings and multiple discussions with adjacent property owners. Pursuant to those discussions, many changes to the proposed project were made. As detailed in

the revised plans, the front façade was completely modified. Both corners have been setback and the overall footprint of the building was set back. The change softens the corners of the building and aligns the proposed structure with the characteristic look of properties on this block of Florida Avenue. The materials and size of the bay windows have been changed to address comments from the community. The initial application included a more modern design and modern materials; the revised plan has a brick façade and smaller bay windows. Additionally, the Applicant decreased the fenestration on the side of the structure to reduce any impact on the neighboring properties. *See*, East Building Elevation-Previous and Proposed at **Exhibit B**.

To address the concerns of the neighbors impacted by the "dog leg" portion of the Property in the rear, the Applicant has developed a landscaping plan and plans to work with the adjacent property owner to select trees that will act as a buffer between the proposed structure and their properties. *See*, Landscaping Plan at **Exhibit C.** In response to concerns about density, the Applicant reduced the number of units from 52 units to 44 units and added additional parking, increasing the number of parking spaces from 26 to 27. Notably, in response to a specific request from the community, the Applicant redesigned the first floor to include a 1,956 square foot neighborhood servicing retail space. As a result of the numerous changes made to the proposed plan, the amount of relief needed for this project has been reduced. Since the revised project will only have 44 units, the Applicant no longer needs a residential loading variance. Though the residential loading requirement is no longer required, the Applicant will continue to provide a designated loading area to accommodate the residential and limited commercial needs of the Property.

IV. APPLICANT MEETS BURDEN OF PROOF FOR VARIANCE RELIEF

The Board is authorized to grant an area variance where it finds that the Applicant fulfills the three-prong area variance standard. As described in the Initial Submission, supplemented in this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied.

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

The phrase "exceptional situation or condition" in the variance test applies not only to the land, but also to the property's history and the configuration of a building on the land. *See, Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). As described in the initial submission, the Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the large size of the lot; (2) the unusual shape of the lot; and (3) the fact that the prior use of the Property requires substantial environmental remediation.

B. Strict Application of the Zoning Regulations would Result in Practical Difficulty

Strict application of the zoning regulations regarding floor-to-area ratio (§771); height (§770), and rear yard (§774) would result in a practical difficulty to the Applicant.

1. *Floor-to-area ratio (§771)*

Under §771, and pursuant to the Inclusionary Zoning Regulations (IZ), the total FAR permitted at the Property is 3.0 FAR, with up to 1.5 FAR being devoted to nonresidential use.

The proposed structure will have a residential FAR of 3.47 and a commercial FAR of .13, for a total FAR of 3.6. As described in the Initial Application, the need for FAR relief is a direct result of the need to offset the impacts of environmental contamination at the Property. Typically, a multifamily residential building could have residential units in the cellar, which would not count towards FAR. However, due to the exceptional environmental contamination at the Property, having cellar residential units is simply not an option. The severe contamination of the soil and the impact of having underground storage tanks at the Property have created a situation in which the provision of cellar units may be hazardous to potential tenants even if the Property is excavated and remediated. *See*, APEX Companies, LLC Environmental Service Group at **Exhibit D**, concluding that "Even with the completion of remediation activities as outlined in the DDOE approved CAP, potential exposure from residual contamination to the residential use below grade may remain." Thus, while the Applicant will provide the required parking underground, providing cellar units to eliminate the need for an FAR variance is not a viable option. The requested FAR variance permits the Applicant to remediate and develop the Property in a way that is safe for the future residents.

The density of a building typically affects overall usable square footage. However, due to the environmental conditions the Applicant is unable build cellar units which would typically provide for additional square footage at the Property, thus creating a practical difficulty for the Applicant.

When evaluating whether an addition has a substantial impact on a neighboring property, the D.C. Court of Appeals has noted and approved of the Board's use of comparing a matter- of-right project to the proposed project. See, *Draude v, DC Board of Zoning Adjustment,* 527 A.2d 1242, 1253 (DC 1987). In *Draude*, the Court found that the comparison of a proposed project to

a matter-of-right project was a reasonable standard when seeking to determine whether relief was "objectionable" pursuant to 11 DCMR §210.2. See, *Id.* It is apparent that a matter-of-right structure, but for the environmental challenges, could be built with the same density and same number of units, and would most likely have a far greater negative impact on the neighboring properties.

2. *Height (§770)*

Under §770, the maximum height in the C-2-A district is 50 feet, with no limitation on the number of stories. The proposed structure is 53.5 feet. Thus, the Applicant is seeking zoning relief with respect to height for a minor additional 3.5 feet. Once again, the need for the minimal height relief is a direct result of the difficulty associated with excavation and the required environmental remediation at the Property. The option available to most developers seeking to add three feet is simply to excavate and provide cellar units. That option is not viable or advisable at the Property. As stated above, adding residential units partially below grade in a cellar is not an option due to the unique environmental conditions at the Property. Moreover, the requested relief is visually *de minimums* and not visually apparent from the street. The next door neighbor, given her understanding of what can be done as a matter of right, is very supportive of the height relief being requested.

3. *Rear Yard (§774)*

Under §774, the minimum rear yard in the C-2-A District is 15 feet. The rear yard is measured from the center line of the alley to the rear wall below 20 feet and from the rear lot line to the rear wall above 20 feet. The proposed structure is complaint with the rear yard requirement below 20 feet but relief has been requested for the rear yard above 20 feet. As described in the

Initial Application, the need for a rear yard variance for the rear wall above 20 feet is due to the location of the core features and the desire to have a front façade that compliments the other properties along this block of Florida Avenue. The front façade is set back 4 feet from the property line which necessitated rear yard relief on the upper floors. The proposed setbacks are more compatible than the matter of right design with no setback.

Though the rear yard on the upper floors is not being met, the Applicant is providing the same amount of square footage at the rear of the Property as would ordinarily be provided by satisfying the rear yard requirement. A portion of the rear yard, the "dog leg" shape of the Property, is not buildable. When the space within the "dog leg" is included in the rear yard provided, the total square footage is equal to that of a compliant rear yard. Additionally, the properties on the other side of the alley have very long lots with substantial open rear yards. Therefore, the granting of the requested rear yard relief is unlikely to have any impact on the light and air available to surrounding properties.

C. No Substantial Detriment to Public Good or Inconsistency with Zone Plan

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. The proposed project eliminates a nonconforming use, an automotive repair shop, and replaces it with a conforming use, residential units and neighborhood servicing retail space. Furthermore, the proposed project redevelops a site that is very challenging to develop due to the environmental contamination found in the soil. The owner has actively tried to sell the property for over two years but was unsuccessful due to the environmental condition of the Property and expense associated with remediation. *See*, Letter from the Property Owner's Listing Agent at **Exhibit E** and the Applicant's Broker at **Exhibit F**. Furthermore, the extended period of time the Property

was on the market is illustrative of the practical difficulty created by the confluence of factors impacting the Property. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

V. COMMUNITY OUTREACH

Following the submission of the Initial Application, the Applicant has done considerable community outreach. As stated above, the Applicant presented before the Single Member District three times and as a result of the feedback received from the neighbors modified the original plans in a number of significant ways. These changes demonstrate the Applicant's desire to create a project that will fit in and enhance the local community. Moreover, the feedback received from the community ultimately helped the Applicant design a project that is superior to a project that could be built as a matter-of-right. We are scheduled to appear before the ANC on the evening of June 9th. With the Board's full summer schedule, we desire to present on our June 9th Hearing date and delay the decision until the ANC has been able to supplement the record for their resolution following their meeting.

VI. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Habte Sequar, on behalf of the Applicant
2. Jeff Goins, Architect

VII. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for area variance relief. We look forward to presenting our case to the Board on June 9, 2015.

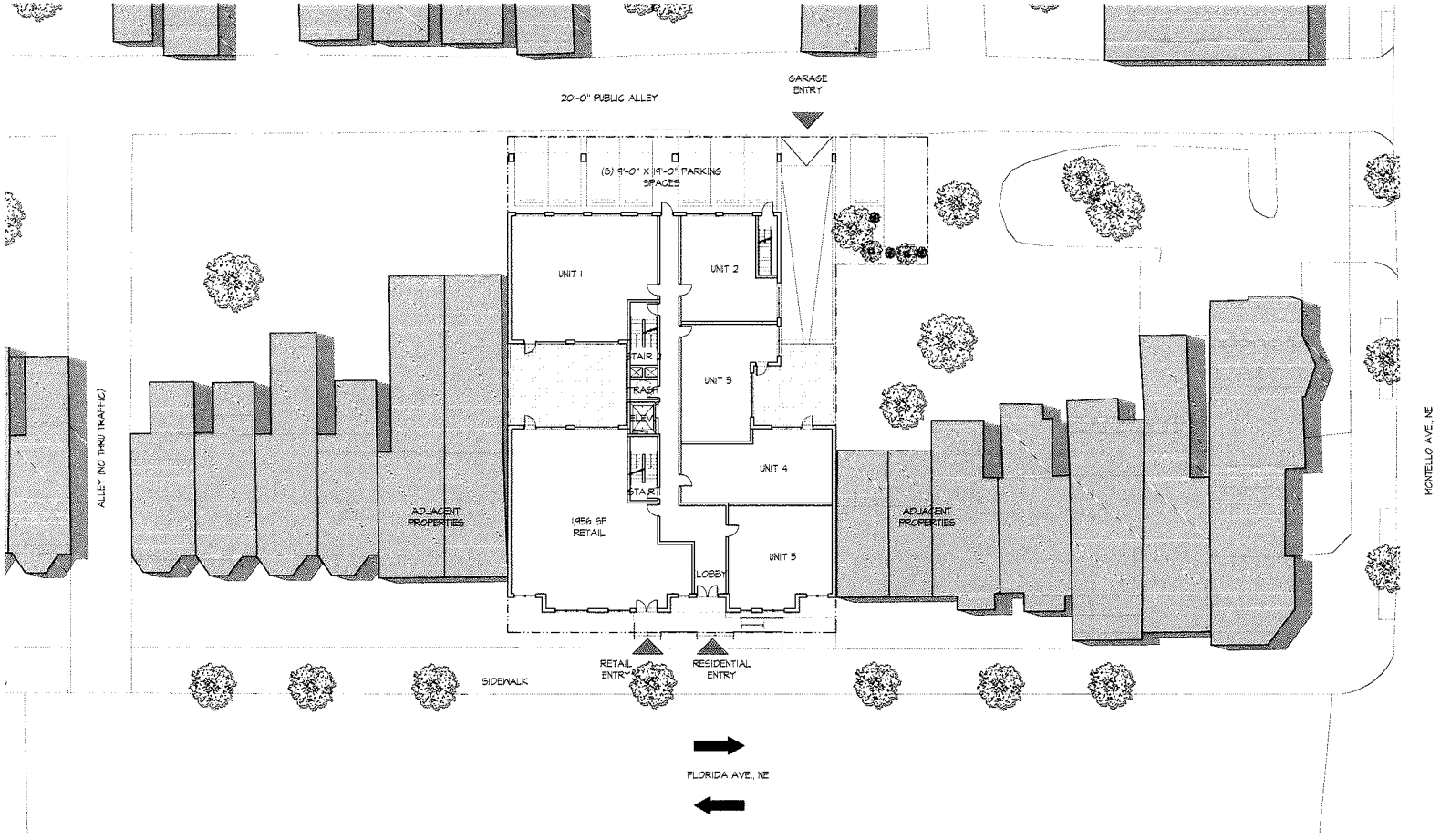
Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP

Meridith H. Moldenhauer
Y. Ajoke Agboola
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000

Exhibit A

Revised Architectural Plans



1 FIRST FLOOR
SCALE: 1/30" = 1'-0"

1124-1126 FLORIDA AVE NE

FIRST FLOOR PLAN | A 1-1

BZA SUBMISSION | 4/30/2015

1124-1126 Florida Ave NE
Washington, DC 20002
Square: 4070 Lot No: 0808 Zone: C-2-A

PGN ARCHITECTS
PGN Architects, PLLC
210 7th Street SE - Suite 201
Washington, DC 20003
(P) 202-822-5995 (F) 202-822-0908

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1 TYPICAL FLOOR PLAN (FLOORS 2-4)
SCALE: 1/30" = 1'-0"

1124-1126 FLORIDA AVE NE

TYPICAL FLOOR PLAN (FLOORS 2-4) | A 1-2

BZA SUBMISSION | 4/30/2015

1124-1126 Florida Ave NE
Washington, DC 20002
Square: 4070 Lot No: 0808 Zone: C-2-A

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210 7th Street SE - Suite 201
Washington, DC 20003
(P) 202-822-5995 (F) 202-822-0908

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1 FIFTH FLOOR PLAN
SCALE: 1/30" = 1'-0"

1124-1126 FLORIDA AVE NE

FIFTH FLOOR PLAN | A 1-2A

BZA SUBMISSION | 4/30/2015

1124-1126 Florida Ave NE
Washington, DC 20002
Square: 4070 Lot No: 0808 Zone: C-2-A

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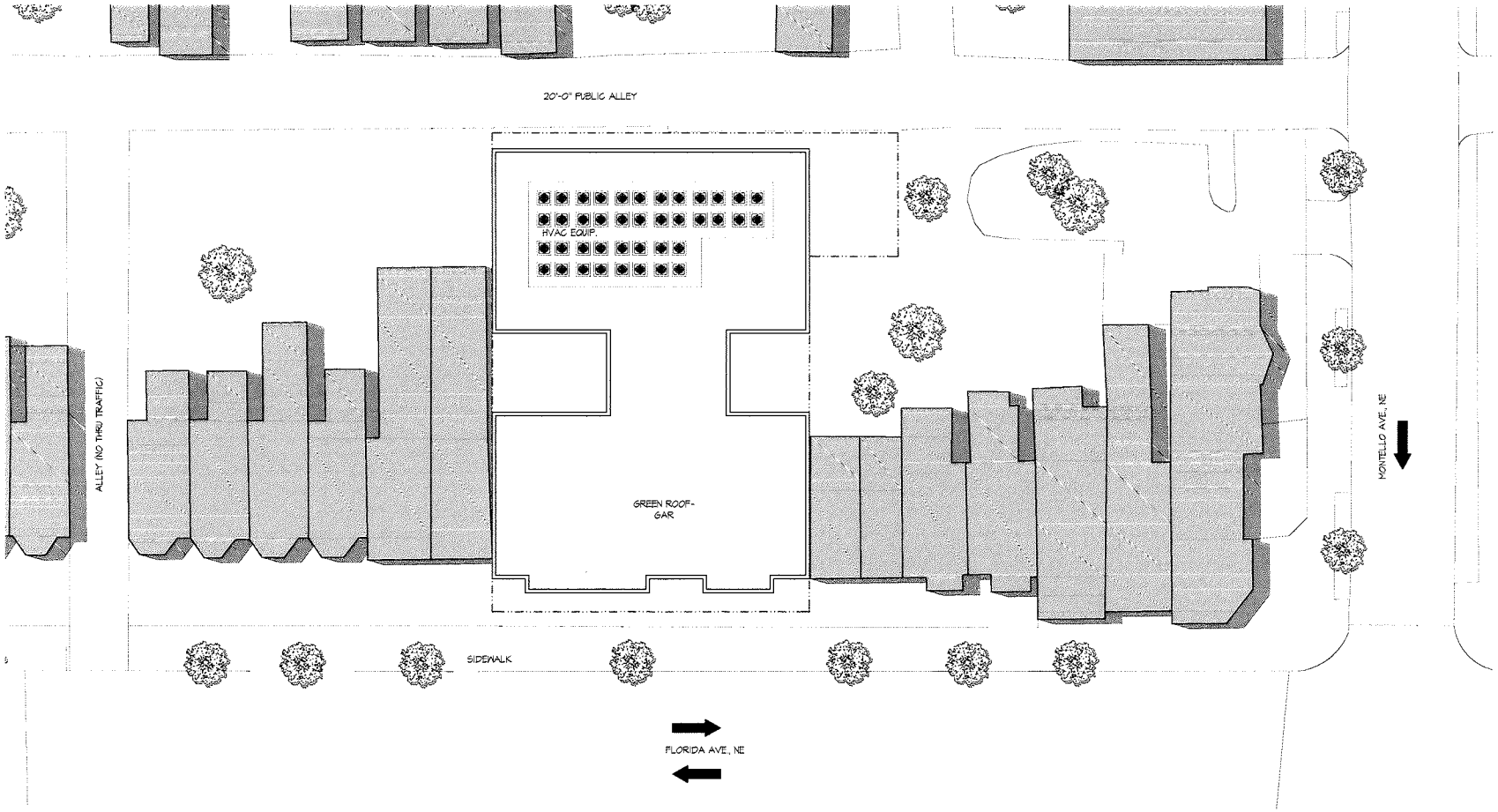

1 ROOF PLAN
SCALE: 1/30" = 1'-0"

1124-1126 FLORIDA AVE NE

1124-1126 Florida Ave NE
Washington, DC 20002
Square: 4070 Lot No: 0808 Zone: C-2-A

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ROOF PLAN | A 1-3

BZA SUBMISSION | 4/30/2015

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1 CELLAR PLAN
SCALE: 1/30" = 1'-0"

1124-1126 FLORIDA AVE NE

1124-1126 Florida Ave NE
Washington, DC 20002
Square: 4070 Lot No: 0808 Zone: C-2-A

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Washington, DC 20003
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CELLAR PLAN | A 1-4
BZA SUBMISSION | 4/30/2015

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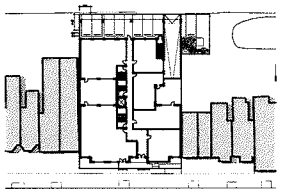
1 SOUTH ELEVATION
SCALE: 1/16" = 1'-0"



KEYPLAN
SCALE:NTS

FLORIDA AVE., NE

1124-1126 FLORIDA AVE NE

RENDERED SOUTH ELEVATION | A 2-1

BZA SUBMISSION | 4/30/2015

1124-1126 Florida Ave NE
Washington, DC 20002
Square: 4070 Lot No: 0808 Zone: C-2-A

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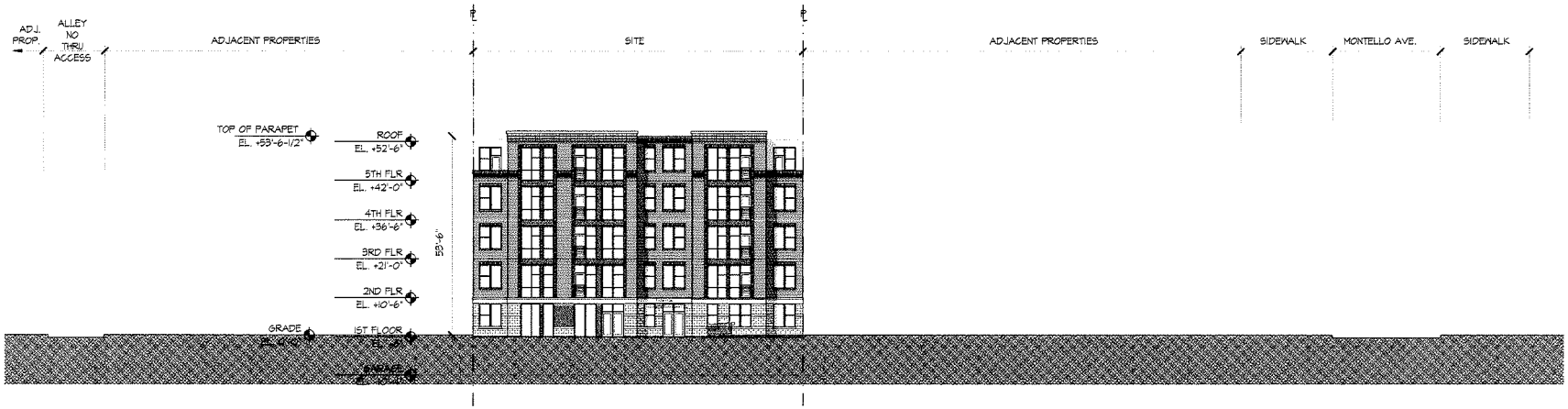
4/30/2015 --- 4:53:12 PM

n:\14-006_1124-126 florida ave ne\drawings\sheets\zc\14-006_zcs a2-1 south rend elevation.dwg



1 SOUTH BUILDING ELEVATION
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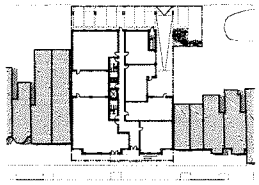

KEYPLAN
SCALE NTS

FLORIDA AVE., NE

1124-1126 FLORIDA AVE NE

SOUTH BUILDING ELEVATION | A 2.2

BZA SUBMISSION | 4/30/2015

1124-1126 Florida Ave NE
Washington, DC 20002
Square: 4070 Lot No: 0808 Zone: C-2-A

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Washington, DC 20003
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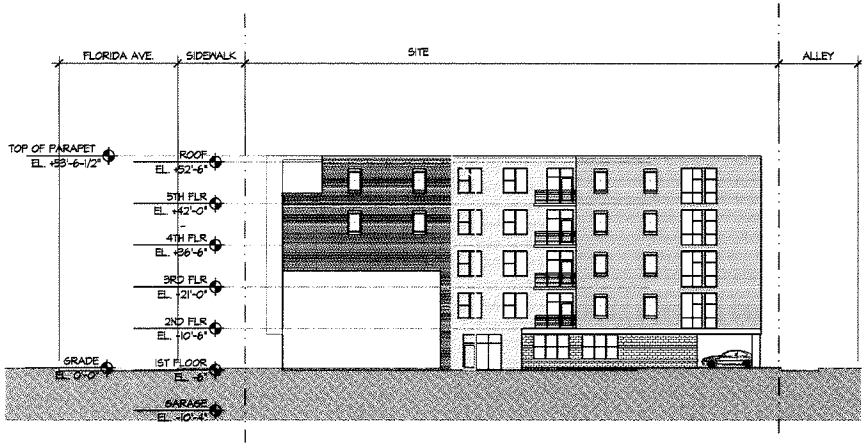
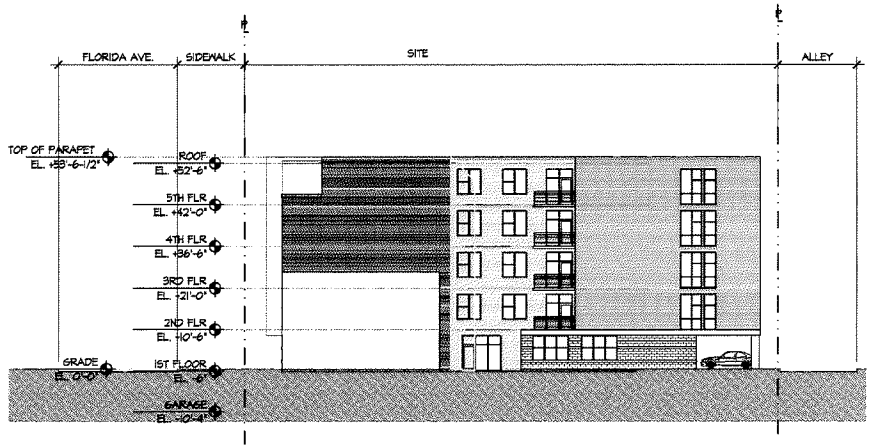
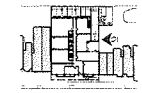
Exhibit B
East Building Elevation







KEYPLAN FLORIDA AVE, NE

1124- 1126 Florida Ave, NE

April 9, 2015

1124 - 1126 Florida Ave, NE
Washington D.C. 20002
Sq: 4070 Lot: 0808 Zone: C-2-A

PGN ARCHITECTS

PGN Architects PLLC.
210 7th St. S.E. - Suite 201
Washington DC 20003
PH: 202-822-5995
FAX: 202-822-0908

Exhibit C
Landscaping Plan

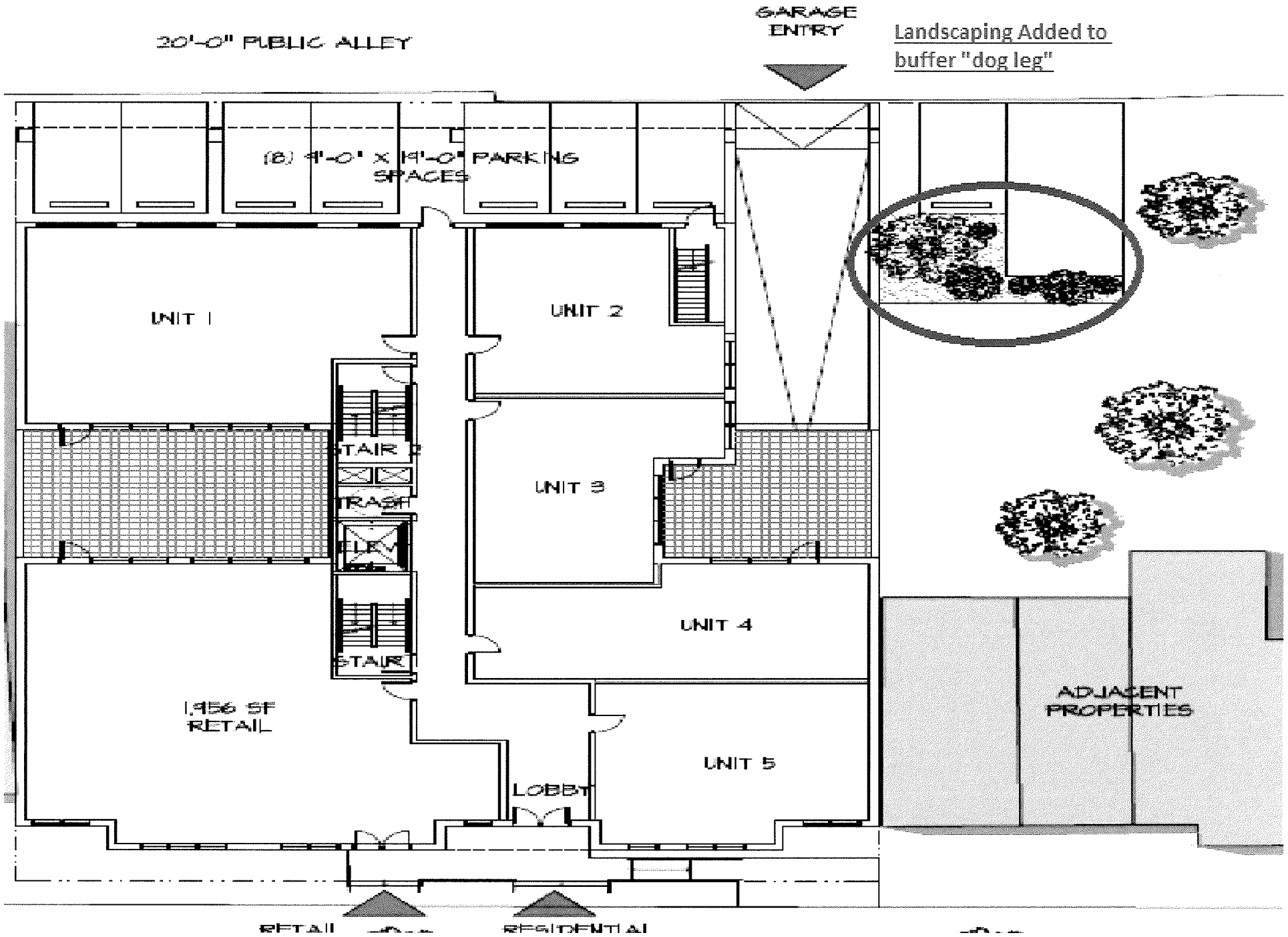

20'-0" PUBLIC ALLEY
GARAGE ENTRY
Landscaping Added to buffer "dog leg"
(8) 9'-0" x 19'-0" PARKING SPACES
UNIT 1
UNIT 2
UNIT 3
UNIT 4
UNIT 5
STAIR 2
TRASH
ELEV
STAIR 1
1,956 SF RETAIL
LOBBY
ADJACENT PROPERTIES
RETAIL
RESIDENTIAL

Exhibit D
Letter from APEX'S Environmental Service Group

APEX

May 26, 2015

To: Habte Sequar

Re: 1124-1126 Florida Avenue NE
Apex Job No: 13505-001

Dear Mr. Sequar,

I am Pradumna P. Neupane, a Program Manager in the Environmental Services Group with Apex Companies, LLC. I have over 14 years of experience providing professional and field services to assess, prevent, and cure environmental issues related to water, ground, facilities, and air quality. I am very familiar with 1124-1126 Florida Avenue, NW (the "Property") having prepared the Corrective Action Plan at the Property.

The environmental conditions at the property will substantially impact development of the Property. Measures required to meet regulatory requirements included close coordination with DDOE; development of a Corrective Action Plan and/or Hazardous Materials Management Plan; incorporation of appropriate engineering controls, such as a vapor barrier, into the building design to prevent petroleum vapors from migrating into the building; health and safety measures by environmental professionals during construction; and obtaining all required DDOE and other regulatory agency permits and approvals prior to construction.

Apex has prepared a Corrective Action Plan (CAP), on behalf of the Applicant, outlining the measures the Applicant must take to resolve the environmental hazards to develop on the contaminated site. The CAP was approved by DDOE on January 20, 2015. Remediation strategies include excavation and off-site disposal of non-hazardous petroleum contaminated soil, dewatering/treatment of impacted groundwater during the site redevelopment, and installation of engineering control to mitigate vapors. In addition, five underground storage tanks that were closed in place and remaining on site will be removed concurrently with the redevelopment. Moreover, the Property will require interim monitoring include monthly gauging of onsite wells, removal of free product (if present), and quarterly groundwater sampling to assess existing conditions and prevent further environmental degradation of the site and/or surrounding properties pending site redevelopment. A Health and Safety Plan (HASP) will also be prepared to address risks to construction workers associated with implementation of the planned correcting actions.

Even with the completion of remediation activities as outlined in the DDOE approved CAP, potential exposure from residual contamination to the residential use below grade may remain. The levels of residual impacted soil and groundwater that may remain at the property can only be evaluated at the completion of redevelopment construction activities. Although appropriate engineering controls can address potential risks posed by residual contamination, it is not advisable to put residential below grade at this time.

Sincerely,
Apex Companies, LLC

Pradumna P. Neupane
Program Manager
Environmental Services Group

Exhibit E
Letter from F.S. People's Realty

F. S. People's Realty

10209 Sorrel Avenue

Potomac, MD 20854

May 26, 2015

Lloyd Jordan, Chairman

Board of Zoning Adjustment

441 4th St NW
Suite 210S
Washington, D.C. 20001

1124-1126 FLORIDA AVENUE, NE

Chairman Jordan and Honorable Members of the Board:

I am the seller for Srours Florida Avenue, LLC, the seller of the property located at 1124-1126 Florida Avenue, NE (Square 4070, Lot 808)(the "Property"). The seller put the Property on the market in 2013, and has had challenges selling it due to buyers' concerns about remediation of environmental issues at the Property. It was on and off the market several times, with interested buyers backing out once the environmental remediation required at the Property became apparent.

Sincerely,

Barbara Pantos

F.S. People's Realty

Exhibit F
Letter from
UrbanLand Company

UrbanLand
COMPANY
Real Estate Brokerage

May 26, 2015

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th St NW
Suite 210S
Washington, D.C. 20001

1124-1126 FLORIDA AVENUE, NE

Chairman Jordan and Honorable Members of the Board:

In working with Srours Florida Avenue, LLC, the seller of the property located at 1124-1126 Florida Avenue, NE (Square 4070, Lot 808)(the "Property"), in conjunction with the acquisition of the property by K Two, LLC, I observed that the seller was challenged in selling the Property due to concerns about the extent of the necessary remediation of environmental issues at the Property. The Property was on and off the market several times since 2013, with interested buyers backing out or letting their contracts expire once the extent and complexity of the environmental remediation required at the Property became apparent.

Sincerely,

Gerard V. DiRuggiero
Broker and Managing Member

913 Florida Ave, NW
Washington, DC 20001
202-299-9223 (o) * 202-299-9225 (f)
www.urbanlandcompany.com