

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
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APPELLANT'S PRE-HEARING STATEMENT

I. Introduction

Appellant Unit Owners' Association of The Erie Condominium ("Appellant" or "Erie Condominium") submits this Pre-Hearing Statement in support of the above-referenced appeal. This appeal relates to a property at 2337-2345 Champlain St, NW, Washington, D.C. 20009 (Lot 887, Square 2563) ("Property")¹ and decisions by the Zoning Administrator of the Department of Consumer and Regulatory Affairs ("Zoning Administrator"), including a decision to issue Building Permit No. B1410680, to construct a new 40-unit residential building with underground parking in the RC/R-5-B District at the Property ("Residential Building").

This case presents several important issues for determination by the Board of Zoning Adjustment ("BZA" or "Board"), including the authority of the Zoning Administrator to disregard the plans and sworn representations that formed the express factual basis for prior BZA relief. The BZA, not the Zoning Administrator, has statutory authority to decide special exception and variance requests, and those decisions are binding.² Yet, the Zoning Administrator has simply ignored the express findings and written decision of the BZA in

¹ The Property is now designated on the Records of the Assessor for the District of Columbia for assessments and taxation purposes as Lot 0112 in Square 2563. The Property encompasses more than one street address, specifically 2337 Champlain Street, NW through 2345 Champlain Street, NW.

² D.C. Code 6-641.07(g)(2) (2015).

BZA Case No. 18330 by approving a building permit that departs materially from the facts that formed the BZA's basis for special zoning relief for the Property.

In 2012, the owner of the Property, FCP Champlain, LLC ("FCP"), applied for a special exception and variance. At the time, the application specified the proposed height of the penthouse structure and the elevation of the roof on the Residential Building. This information was included in the plans that the BZA reviewed when granting zoning relief, discussed at length during hearing testimony before the BZA, and expressly referenced in BZA Order 18330 (**Exhibit A** hereto). The Board granted the application "subject to" the plans that were submitted in that case. *Id.*

Thereafter, FCP agreed to *reduce* the height of the roof and of the penthouse structure. These revisions were approved by the Zoning Administrator in a determination letter, dated April 9, 2013. (**Exhibit B** hereto).

In 2014, the Zoning Administrator approved other changes to the plans, but did not mention any increase in the height of the penthouse structure. See Zoning Administrator's determination letter, dated February 10, 2014 (**Exhibit C** hereto).

Despite the foregoing, the current owner of the Property, 2337 Champlain Street, LLC ("Owner"), procured a building permit in 2015 for a much taller roof structure and elevated decking on the roof level. The Zoning Administrator erred by approving that permit. He had no grounds or authority for approving such material departures from the plans that were previously approved by the BZA and the Zoning Administrator.

The Owner is not building in accordance with the plans that were submitted to the BZA in case number 18330. Instead, the Owner is disregarding the many oral and written representations that were made to the BZA, the Zoning Administrator and the Appellant

about the roof level and penthouse height of the Residential Building. According to the Owner, the sworn testimony before the BZA [in Case No. 18330] regarding the height of the penthouse structure is “**irrelevant**.”³ Evidently, the current Owner maintains that it does not need to abide by the terms of BZA Order 18330, the plans that were approved by the Board in 2012, or prior factual representations to the BZA, the Zoning Administrator and the Appellant. In order to preserve the integrity of BZA’s role and to protect the interests of the public and the Appellant, the BZA must reject this contention. The BZA, interested parties and the public rely upon the representations of applicants, developers and their attorneys during contested BZA proceedings. The Board makes decisions based upon such representations and, in turn, the parties and public rely upon the BZA’s findings and orders. If the BZA concludes that those representations are illusory, meaningless and “irrelevant”, then the BZA will profoundly and irreparably undermine its own hearing procedures and statutory role. If the Board accepts the contentions of the Owner, then the BZA’s hearings and factual findings will have little, if any, legal significance.

This case also includes a very troubling and long chronology of misrepresentations by FCP, the Owner and their attorneys to the BZA, the Zoning Administrator, the Appellant and, most recently, the D.C. Superior Court. In 2012, the BZA approved FCP’s request for a special exception to authorize a taller building based upon plans and detailed representations regarding the design of the building. At the same time, FCP obtained a zoning variance based upon alleged practical difficulties relating to the location of the

³ The Owner made this statement in written submissions to the Superior Court for the District of Columbia in *Unit Owners’ Association of The Erie Condominium et al v. 2337 Champlain Street, LLC, et al*, Case No. 2015 CA 009273 R(RP). *See, e.g.* Opposition to Plaintiffs’ Motion for Temporary Restraining Order at p. 5, n. 3 (**Exhibit D**).

garage entrance. FCP and Holland & Knight claimed that practical difficulties justified a garage entrance at the northern most point of the building (thereby supporting a variance). The Appellant argued in 2012 that the alleged “practical difficulty” was just a ruse to procure zoning relief.

Erie Condominium appealed to the District of Columbia Court of Appeals believing that it could demonstrate that FCP had misled the BZA regarding the alleged “practical difficulty” and that the taller Residential Building would adversely impact Erie Condominium in violation of the special exception standards. Rather than defending the action in court, FCP promised to lower the height of the roof and make other revisions to the Residential Building in order to reduce adverse impacts upon Erie Condominium. The Appellant agreed to settle this matter in reliance upon FCP’s concessions and revised design.

FCP sold the Property to the Owner in November of 2013. Immediately, the Owner came forward with a new design that astonishingly overcame the alleged practical difficulties and relocated the garage to the south end of the Building (thereby eliminating the purported justification for the variance). To avoid any objections from Erie Condominium, the Owner communicated with members of Erie Condominium’s Board and promised *in writing* that its new design for the building would not result in any increase in the height of the penthouse structure or roof. In written and oral statements to Erie Condominium, the Owner emphasized the alleged benefits of the reconfigured Residential Building while withholding information about the many disadvantages of the new design. In furtherance of this scheme, the Owner provided Erie Condominium with misleading and

incomplete drawings, and suggested that it was still revising plans to further address the Condominium's concerns.

Without fully informing Erie Condominium, the Owner procured a building permit with construction plans that are inconsistent with BZA Order 18330, two determination letters of the Zoning Administrator, promises made by FCP to the Erie Condominium, and specific representations by the Owner to Erie Condominium about the new design. Now, despite clear and successful attempts to mislead the Appellant, the Owner is trying to capitalize on its own misconduct. This case presents extraordinary circumstances that justify the timing of this appeal and the relief sought by Appellant from the BZA. Erie Condominium respectfully requests an order granting this appeal.

II. The History of the Project

A. The BZA Application in 2012

As mentioned above, the Property was the subject of a contested BZA proceeding in 2012 which resulted in BZA Order 18330. With the assistance of Holland & Knight, FCP asked for a variance from the floor area ratio ("FAR") requirements under § 402, and a special exception to allow an increase in building height pursuant to § 1403.

Erie Condominium participated as a party in that proceeding and shared serious concerns about the proposed height of the new Residential Building, including the overall elevation of the building and the applicant's plans for the rooftop structure. At the time, FCP submitted detailed information about the elevation of the roof and the height of the penthouse structure.

In plans, written briefs and oral testimony before the BZA, FCP represented that the penthouse structure would not exceed ***nine feet in height***. The plans for the project included the following:

1. Site Plan & Zoning Criteria, dated March 16, 2012 (page A0.1), which identified a penthouse height of 9'0".
2. Rendered Building Sections, dated March 16, 2012 (pages A3.2, A3.3), showing a roof elevation of 198'-10" and a penthouse roof elevation of 207'-10".
3. West Elevation (Champlain St.), dated March 16, 2012 (page A4.1), showing a roof elevation of 198'-10" and a penthouse roof elevation of 207'-10".
4. Roof Floor Plan, dated March 16, 2012 (Page A5.6), showing top of roof at 207'10".

See Exhibit E (Selected Pages from Plans Submitted to BZA in Case 18330 as Exhibit 30).

During hearing testimony before the BZA on April 3, 2012, FCP repeatedly emphasized that the penthouses were only 9 feet in height. The lawyer for FCP (Christine Shiker of Holland & Knight), stated that the "size of the roof structure" had been reduced "to the maximum extent possible" after meeting with Erie Condominium. **Exhibit F** (Transcript of Public Hearing before BZA, April 3, 2012) at pp. 54-55; *see also* p. 142 (applicant is "maintaining the penthouse as low as possible"). Architect Jeffrey Goins testified for FCP by stating that "the meat of the case" was the height and the penthouse. *Id.* at pp. 62-63. He emphasized the nine-foot height of the penthouse. *See, e.g., id.* at p. 66 ("as Christy [Shiker] mentioned, [the penthouse] stands 9 feet tall.") FCP submitted testimony from Steven Sher, an employee of Holland & Knight who was designated as an expert. Mr. Sher testified under oath as follows: "**The penthouses are only 9 feet tall above the level of the roof.**" *Id.* at p. 83 (emphasis added). Mr. Sher explained that the penthouse height was a promised concession, by stating: "[The penthouses] could be 18.6 as a matter-of-

right, but they are only 9 feet tall.” *Id.* All of this testimony was offered in FCP’s direct case before the BZA.

FCP also testified regarding the relative elevations of persons standing on the adjacent roofs of the Residential Building and Erie Condominium. Mr. Sher represented that users on the roof of the Residential Building would stand 2 feet 10 inches above people on top of Erie Condominium. *Id.* at pp. 88-89. He also stated that there would not be any finished interior spaces on the roof of the Residential Building, except for areas containing the mechanical equipment. The roof would be used solely for mechanical equipment and access to the roof. *Id.* at pp. 94-95.

Erie Condominium opposed the application and offered evidence of likely adverse effects of the proposed Residential Building. The owners of units in Erie Condominium emphasized that every extra inch in height mattered with respect construction at the Property. *Id.* at p. 127 (Testimony of Richard N. Wiedis).

At the conclusion of the hearing, staff for the Office of Planning testified that the applicant would not be able to change its plans in a manner that adversely affected Erie Condominium, because “[w]hatever plan is submitted to the Board is submitted to permitting and that’s the plan that is approved.” Exhibit F at pp. 117-118.

B. BZA Findings and Conclusions

The Board granted FCP’s request for zoning relief in Case No. 18330. With respect to the variance for increased FAR, the BZA accepted FCP’s sworn representations that there were practical difficulties with the construction of a garage entrance near the low point of the lot due to the slope and shape of the site. The BZA found that compliance with the

Zoning Regulations would be “unnecessarily burdensome” because FCP needed to build the garage entrance at the high point of the lot on the northeast corner.

The Board also granted the request for a special exception with respect to the increased height of the building. This analysis included express findings that the roof of the subject building would only be two feet, 10 inches above the roof of the Erie Condominium (BZA Order at ¶¶ 8 and 20)⁴ and that FCP had lowered the penthouse to only eight feet above the parapet (BZA Order at ¶ 31)⁵.

The BZA noted that the lowered height of the penthouse would “reduce any potential impact on the views from the Erie’s roof deck.” The Board specifically found that the Residential Building “will not impact views from the Erie to the Washington Monument.” *Id.*⁶

The Board rejected Erie Condominium’s concerns about adverse impacts based in part upon FCP’s promises to lower the penthouse well below the height permitted as a matter of right. *Id.* at p. 12.⁷ The Board clearly relied upon FCP’s plans and testimony regarding the penthouse structure when evaluating the potential adverse impacts upon Erie Condominium.

C. The Ordering Clause in BZA Order 18330

BZA Order 18330 included the following language in its ordering clause:

It is therefore ORDERED that the application is hereby GRANTED, **SUBJECT to the approved plans, as shown on Exhibit 30, and** the following conditions...

⁴ FCP included these findings in its proposed findings of fact and conclusions of law. See Case No. 18330 at Exhibit 57.

⁵ FCP proposed this finding in its draft order at paragraph 41. See Case No. 18330 at Exhibit 57.

⁶ Similar findings were proposed by FCP in its proposed order. See Case No. 18330 at Exhibit 57.

⁷ This language was proposed by FCP in its draft order. See Case No. 18330 at Exhibit 57.

(Exhibit A, p. 16) (emphasis added).⁸ The order set forth two express conditions relating to the roof of the building. *Id.*

Thereafter, the BZA Order further stated:

Pursuant to 11 DCMR § 3125, approval of an application shall include approval of the plans submitted with the application for construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure. **An applicant shall carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board** as the same may be amended and/or modified from time to time by the Board of Zoning Adjustment.

(Exhibit A p. 17) (emphasis added).

D. Erie Condominium's Appeal and Settlement

Erie Condominium filed a timely petition for review of BZA Order 18330 with the District of Columbia Court of Appeals. In part, Erie Condominium planned to dispute the variance that was expressly predicated upon the location of the garage entrance. Erie Condominium contended in 2012 that the site did not present any practical difficulties that justified the variance. This contention was later validated when the current Owner relocated the garage entrance to the same location that was purportedly too difficult to use.

Erie Condominium reached a settlement of its appeal of BZA Order 18330 whereby FCP agreed in part to make favorable revisions to the plans, including (but not limited to) a reduction in the height of the Residential Building. The agreement contemplated that FCP would request a zoning reliance letter from the Zoning Administrator so that FCP could effectuate the promised changes to the Residential Building.

⁸ The referenced plans expressly included the following specifications: (1) a penthouse structure of nine feet; and (2) a rooftop at the Residential Building that was 2 feet 10 inches above Erie Condominium's roof surface. See above.

E. The Zoning Administrator's Determination Letter, Dated April 9, 2013

FCP requested a zoning determination letter from the Zoning Administrator in order to make the promised changes to the roof level of the Residential Building. The proposed changes were depicted in plans that, in part, showed the following:

1. A reduction in the elevation of the roof to 197.82';
2. A reduction in the elevation of the penthouse roof to **206.83'**; and
3. A reduction in the difference between the usable roof surfaces at the Property and Erie Condominium to 1 foot 10 inches.

Upon receipt of these plans, the Zoning Administrator issued a favorable determination letter, dated April 9, 2013, to Christine Shiker at Holland & Knight (Exhibit B hereto). In his letter, he noted that BZA Order No. 18330 approved a "roof structure having a height of 9 feet..." Then, he referenced the proposed modifications in the submitted Elevations and Sections, and found that the modifications *reduced* the extent of special exception relief approved by the BZA, and *reduced* the impact of the Residential Building.

F. The Zoning Administrator's Determination Letter, Dated February 10, 2014

The current Owner of the Property apparently procured a second zoning determination letter, dated February 10, 2014. That letter was also directed to Ms. Shiker at Holland & Knight. It referenced discussions on November 14, 2013 with the Owner, email correspondence in January of 2014, and plans, dated December 9, 2013. The referenced plans are attached to the letter and were posted online by the Zoning Administrator. **Exhibit C** hereto.

In the letter, the Zoning Administrator listed proposed changes to the Residential Building, but none of those changes involved an increase in the height of the roof structure or elevated decking on the roof. To the contrary, the Zoning Administrator wrote that the re-designed building would be the same height and that “the proposed roof structure and roof decks will be reduced in overall size.” The Zoning Administrator concluded that this “reduction in size minimizes the impact on the views from the adjacent Erie Condominium building to the north.” He found that the “modifications will also reduce the impact on the views from the roof of the adjacent property to the north.” He attached the plans upon which he relied, which did not show an increase in the height of the penthouse.

G. The Building Permit

Unbeknownst to Erie Condominium, the Owner decided to make dramatic changes to the roof level of the Residential Building that deviated materially from the plans submitted to the BZA in Case No. 18330, and to the Zoning Administrator in 2013 and 2014. These changes were not self-evident from the building permit itself, which simply authorized a forty-unit condominium building. **Exhibit G.** The changes to the roof level did not become evident during the early phases of construction because they did not affect the lower levels of the building. In or about October of 2015, the Owner began construction on the roof level of the Residential Building and Erie Condominium immediately directed inquiries to the Owner about the observed conditions. Erie Condominium filed an appeal in this case a few days after it learned about the increase in height of the roof structure and the Owner’s plans to build elevated decking on the roof. At the commencement of this appeal, the roof structure was not yet under roof.

III. The Board Has Jurisdiction Over this Matter and This Appeal is Timely

The BZA has jurisdiction over this appeal. 11 DCMR § 3100.2.

This appeal was filed in a timely manner. Erie Condominium reasonably relied upon the terms of BZA Order 18330, the plans that were submitted with that order, and the Zoning Administrator's letter, dated April 9, 2013. It had every reason to expect that construction of the Residential Building would comply with the many representations of FCP and the Owner about the Residential Building, and the binding decisions and determinations of the BZA and the Zoning Administrator. Board members of Erie Condominium attended the BZA hearing in 2012, reviewed the plans and order in the BZA case, and reviewed the Zoning Administrator's letter, dated April 9, 2013. Although the Owner did not provide Erie Condominium with a copy of the Zoning Administrator's second determination letter, Appellant later reviewed an online version of that letter (with attachments). The online version did not disclose the objectionable changes to the roof level.

While the Owner of the Property was communicating with the Zoning Administrator regarding the second letter, the Owner contacted Erie Condominium to procure support for plans to re-design the building. These contacts in December of 2013 did **not** alert Erie Condominium to the material, *adverse* changes to the roof level. Instead, the Owner provided an alleged "list of the benefits" of the new proposed plan, including an alleged reduction in shadowing of the Erie building. At the time, the Owner transmitted selected pages from its plans, dated December 9, 2013, but the documents did **not** include any elevations for the roof or penthouse.

Erie Condominium immediately responded on December 20, 2013, with a list of questions and requests in order to understand the proposal. The Owner responded to the questions on December 23, 2013, by providing the following:

Q. Are you changing the proposed height of the penthouse structures?

A. No.

Q. Are you changing the agreed-upon roof elevation of the building?

A. No.

Q. [I]t would be helpful to see elevation drawings showing the roof top from different angles... I've attached the drawings from the old plan as examples.

A. The view would be better than the example attached from that viewpoint – since we are set back at least 8' from that drawing. We could put those views together once we get farther into the design.

Q. Have you done any shadow studies for the revised building?

A. No. The shadowing of the Erie Building would be lessened by our design – as the front and rear setbacks are basically the same – but yet our building is removed by the new sideyard.

The full text of the email exchange is attached hereto as **Exhibit H**. Thus, Erie Condominium undertook a reasonable inquiry regarding the new design and was told that the revised design would be favorable to Erie Condominium. The Owner made express and unequivocal representations about the penthouse structures and promised not to increase their height. Notably, this email exchange occurred within the same general timeframe that the Owner was communicating with the Zoning Administrator regarding the second determination letter. That letter references (and attaches) plans dated December 9, 2013. It does not mention any increase in the height of the penthouse structure.

Meanwhile, the Owner repeatedly acknowledged the settlement agreement relating to the Property and expressed an intention to develop the Property in accordance with the terms of that agreement.

Erie Condominium had no further duty to investigate. It was already familiar with BZA Order 18330, the plans upon which the BZA relied, the 2013 determination letter and the aforementioned information from the Owner about the revised design. Unfortunately, the Owner decided to disregard its obligations pursuant to BZA Order 18330 and its promises to Erie Condominium without disclosing that decision in a frank or complete manner. The Owner did not flag material changes to the penthouse structure and roof decking during subsequent communications with Erie Condominium.

The Owner occasionally sent information to Erie Condominium, but the information was incomplete, tentative, back-dated and/or misleading. For example, the Owner sent some information to Erie Condominium in March of 2014, but the Owner concurrently represented that further revisions to the design were underway. In its transmittal e-mail, the Owner wrote: "We have not yet made the revisions discussed, but will do so in the near future. One of the major things we are working thru right now is having a more specific design for the mechanical units and their location – as well as the green roof areas, etc." **See Exhibit I.** Thus, the Owner represented that its plans were still being revised, and then attached old plans that were dated, December 9, 2013. At the same time, the Owner transmitted undated roof views, but those views did not depict any material change to the height of the penthouse structure or the likely adverse effects of elevated decking on the roof of the Residential Building. The Owner certainly did not state at the time that it had changed its mind with respect to the height of the penthouse structure and was reneging

upon the Owner's express promises and representations from December 23, 2013. The Owner did not explain to Erie Condominium that the relocation of air conditioning units might increase the promised height of the penthouse.

When construction began at the site in 2015, Erie Condominium had every reason to believe that it was already familiar with the material specifications of the Residential Building. It had directed many questions to the Owner and received written responses. The Owner had acknowledged the prior settlement agreement and its intention to abide by the terms of that agreement. The Owner was obligated by law to comply with BZA Order 18330, and with the plans submitted to the Board in that case. The Zoning Administrator's two letters did not raise any concerns.

It now appears that the Owner has engaged for years in improper and misleading conduct regarding its plans for the Residential Building and the information that it shared with (and withheld from) others regarding those plans. Based upon recent court filings, the Owner evidently generated multiple versions of the same plans, but it did not re-date the newer versions of the drawings or mark any revisions. It apparently back-dated plans and sent different versions of the same drawings (with the identical dates) to different recipients. When it transmitted multi-page plans to certain recipients, it omitted particular pages so that those recipients did not receive complete information. The Owner's irregular, misleading and longstanding misconduct impaired efforts by Erie Condominium and others to understand the Owner's actual plans for the project. Unfortunately, Erie Condominium was not aware of this misconduct at the time.

In a pending civil lawsuit for injunctive and other remedies, the Owner has continued to engage in the same misconduct by tampering with and altering multi-page

documents from 2014 in an apparent attempt to mislead a District of Columbia Superior Court Judge regarding the actual composition of such documents at the time. The Owner falsely attested to the accuracy of exhibits in a sworn affidavit that Holland & Knight filed with the Court. Yet again, the Owner was manufacturing exhibits by inserting pages that were not included in the original documents.

Construction began on the roof level of the Residential Building in October of 2015. The President of Erie Condominium was surprised by the construction on that level and immediately contacted the Owner. The Owner first tried to provide incomplete information by omitting requested information about the penthouse height, but then disclosed the relevant information between October 19, 2015 and October 22, 2015. Erie Condominium filed this appeal within a few days thereafter. At the time of this appeal, the roof structure was not yet under roof. Attached are photos from October 22, October 29, 2015 and October 30, 2015, which show that the roof structure was not yet under roof. **Exhibit J** (photos from October of 2015). Erie Condominium notified the Owner of the appeal, but the Owner continued to build at its own risk.⁹

Thus, this appeal is timely. Until October of 2015, Erie Condominium had no reason for alarm because the Owner had already provided unequivocal written assurances that it was not increasing the height of the penthouse structure or the elevation of the roof. Erie Condominium did not know, and should not have known, that DCRA and the Zoning Administrator had approved plans that were inconsistent with the express promises of the

⁹ In early November, 2015, Erie Condominium also asked the Zoning Administrator to evaluate claims that construction of the Residential Building is inconsistent with BZA Order 18330. The office said that it was going to evaluate the claims and might issue a stop work order if warranted. After approximately four weeks of inaction, the Zoning Administrator's staff stated that there was a "policy" against taking any enforcement action while there was a pending BZA appeal.

Owner, the findings, testimony and plans in BZA Case 18330, and with the Zoning Administrator's two prior letters. 11 DCMR § 3221.2(a) recognizes that the deadline for a timely appeal is based upon the information that an appellant knew or should have known.

In this case, Appellant was not required to file an appeal within 60 days of the date that DCRA issued Building Permit No. B1410680. Erie Condominium did not know (and should not have known) about the Zoning Administrator's decision to approve plans that departed materially from BZA Order 18330, prior zoning determination letters, and numerous factual representations of the Owner. *See* 11 DCMR § 3112.2. The roof structures were not yet "under roof" when the appeal was filed. *See* 11 DCMR § 3112.2(b).¹⁰ Erie Condominium filed this appeal within sixty (60) days after learning of the Zoning Administrator's decision. It only learned the relevant information in October of 2015 and filed this appeal immediately.

Moreover, the Board may extend the sixty-day deadline for filing an appeal in the present circumstances. 11 DCMR § 3112.2(d) expressly authorizes an extension of the filing deadline when there are exceptional circumstances outside of the Appellant's control that could not have been reasonably anticipated that substantially impaired the Appellant's ability to file an earlier appeal with the Board, and the extension will not prejudice the parties. Erie Condominium meets those standards.

The time to appeal may be extended if a developer engages in misconduct or lulls a neighbor into inaction. For example, the BZA permitted an appeal by Geraldine Rebach and

¹⁰ When the Zoning Commission adopted the "under roof" provision in the Zoning Regulations, it provided the following explanation: "Because an appellant may not have notice or knowledge of a decision until construction is underway, the amendment provides that no appeal may be filed later than ten (10) days after construction is 'under roof.'" 50 D.C. Reg. 1202 (2003).

Jeffrey Schonberger in BZA Order 17414. In that case, the appellants challenged a neighbor's building permit to construct a two-story garage. The appellants did not file their appeal within sixty days of the permit's issuance because the developer represented that he would not build the second story of the garage. Later, the appellants saw construction of the second story and appealed. The Board found unforeseeable exceptional circumstances that were outside of the appellants' control, including the actions of the developer, and permitted the appeal to proceed.

Moreover, Erie Condominium could not file a good faith appeal in this case until it had some reason to believe that the Zoning Regulations were violated. *See, e.g.*, BZA Order. 17109 (Kalorama Citizens Association) (finding that there were exceptional circumstances because the appellant could not discern the zoning problem until framing of the structure and because the appellant's efforts to understand the project were thwarted).

The Owner cannot claim prejudice in this case from any extension of the appeal deadline. The Owner knew about Erie Condominium's concerns regarding the roof level and nonetheless provided inaccurate and incomplete information to the Appellant. At the time of the appeal, the roof structures were not yet under roof. The Owner proceeded to build at its own risk. The Owner admitted this fact in a recent court filing wherein Holland & Knight wrote: "Defendants are building at their own risk, in light of the pending zoning appeal. *See Draude v. District of Columbia Bd. Of Zoning Adjustment*, 582 A.2d 949, 951 n.1 (D.C. 1990)"; *see also* BZA Order 17532-B (AppleTree Institute for Education Innovation, Inc.) ("a landowner who proceeds to erect a building while the issuance of a building permit is on appeal does so at his own risk." (citation omitted)). In *Sisson v. D.C. Bd. Zoning Adjust.*, 805 A.2d 964 (D.C. 2002), the District of Columbia Court of Appeals affirmed the

BZA's application of the "exceptional circumstances" exception. In part, the Court noted a "problematic permit history" that included the developer's incomplete and misleading information.

Thus, this appeal was timely filed.

IV. **The Zoning Administrator Erred When He Approved the Building Permit**

The Zoning Administrator erred when he approved issuance of Building Permit No. B1410680. The construction plans included a roof structure of 12.44 feet and a parapet thereon that increased the total height with parapet to **16.46 feet**. **See Exhibit K; see also** Exhibit D (Owner's submission in court wherein it admits the height of the penthouse). Without consideration of the parapet on the roof structure, this constitutes a fifty percent (50%) increase in height of the promised nine-foot penthouse. If the parapet is considered, the penthouse is eighty-two percent (82%) taller than promised. Obviously, this was a material issue in BZA Case No. 18330. It was repeatedly mentioned by the zoning applicant as a basis for procuring a favorable ruling from the Board. The tall penthouse structure creates adverse effects upon the Erie Condominium, including shadows, diminished light and air, and a significant visual intrusion. *See, e.g., Exhibit L* (shadow photographs); Exhibit J (photos); and Exhibit M (photos).

The approved construction plans also include decking that elevates the occupied rooftop surface on the Residential Building by 2.11 feet above the purported elevation of the roof itself. **Exhibit K**. This change has the practical effect of increasing the *de facto* elevation of the roof surface and thereby increases the height differential between users on the two adjacent rooftops. Now, the decking on the Residential Building is at least 2.58 feet above the height of Erie Condominium's terraces, not the 1 foot 10 inches that was

promised and then approved by the Zoning Administrator on April 9, 2013 (Exhibit B).

This change will materially affect the privacy of Erie Condominium users who will be lower than the adjacent occupants of the Residential Building. Moreover, the elevated decking on the Residential Building will, in turn, increase the height of all railings, furniture, plantings and screens on top of the Residential Building. These obstructions will diminish the use and enjoyment of Erie Condominium's rooftop terraces and the views therefrom. The BZA expressly found that the Residential Building would not obstruct views of the Washington Monument. This is now untrue. **See Exhibit M** (photos of railing and decking).

The Owner made additional changes to the plans that are inconsistent with the plans and testimony in BZA Case 18330, and may be inconsistent with the Zoning Regulations. These changes include, but are not limited to, the following:

- The roof of the Residential Property now includes finished interior "cabanas" that are being sold separately from condominium units.¹¹
- Evidently, the lot occupancy exceeds sixty percent (60%).¹²
- The Owner moved the garage entrance so that it is in location that allegedly was too difficult and burdensome to utilize in 2012.
- The elevator goes to the roof level and there is no private stairway access within condominium units.

¹¹ 11 DCMR § 411.1 limits the uses of roof structures. The roof on the Residential Building does not provide communal recreation space and does not include a swimming pool. Instead, the rooftop is limited, pursuant to BZA Order 18330 to usage by particular dwelling units in the building. *See Exhibit A*. Thus, the "cabanas" may violate the Zoning Regulations if the Owner has planned uses that exceed the permissible uses in the Zoning Regulations. The Owner is marketing the cabanas as finished interior spaces. Moreover, the Owner did not include any of the roof structure as part of the FAR computation. These issues should be evaluated in this appeal for compliance with applicable regulations.

¹² In BZA Case No. 18330, the plans provided for sixty percent (60%) lot occupancy. This is the maximum lot occupancy permitted for this R-5-B zone in the Reed-Cooke Overlay. 11 DCMR § 403.2. This issue was the subject of testimony at the hearing on April 3, 2012. FCP did not procure special zoning relief to exceed that maximum lot occupancy, but DCRA apparently issued a Building Permit that authorizes a greater lot occupancy. *See Exhibit N* (PIVS report for Permit B1410680).

All of these issues were explored during the BZA hearing and, once again, the Owner ignored its approved plans and sworn testimony.

FCP wanted to build a taller building and it convinced the BZA that the proposed building would not adversely impact the Erie Condominium because of the low-rise penthouse structure and the limited differential in elevation between the two adjacent rooftops. According to the zoning applicant in 2012, these issues were the “meat of the case.” Obviously, these matters were not minor issues if they were raised repeatedly by the applicant in its own presentation to the Board.

Although the current Owner hired the same zoning attorney as FCP, the Owner simply ignored all of the requirements associated with the Property’s zoning relief. Holland & Knight was present at every BZA hearing in Case No. 18330, filed every plan with the BZA, offered an employee of the law firm to provide “expert” testimony, and obtained two zoning letters for the Property. Yet, that same law firm now contends that the record in the BZA case is completely “irrelevant” to the construction set of plans.¹³ This argument simply ignores the ordering clause in BZA Order 18330, which makes approval subject to the plans in BZA’s case file **and** the express conditions in the Order.

This is not a case where the approved plans before the BZA were completely silent on issues that arose, for the first time, in the construction set of plans. Here, the zoning applicant in Case No. 18330 included the height of the penthouse structure and calculated the height differential between the two rooftop surfaces. It used both of those facts to its advantage in the BZA case. Thus, the Zoning Administrator and the Owner cannot credibly

¹³ According to filings in D.C. Superior Court, the Owner and Holland & Knight contend that the BZA Order did not restrict the height of the penthouse structure “in any way.” Exhibit D at p. 5, n.3.

argue that the plans in Case No. 18330 were imprecise or that the construction set of drawings simply include a greater level of detail.¹⁴ In fact, the Zoning Administrator simply disregarded the plans approved by the BZA and erroneously approved the building permit.

Issuance of the Building Permit violated several provisions of the Zoning Regulations. The Regulations (and BZA Order 18330) provide the following:

Approval of an application shall include approval of the plans submitted with the application for the construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure, unless the Board orders otherwise.

11 DCMR § 3125.7. However, the Zoning Administrator approved plans for the Residential Building that were inconsistent with the plans that the BZA approved.

The Regulations further provide:

An applicant shall be required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise.

11 DCMR § 3125.8. The Zoning Administrator did not, in fact, require the applicant to comply with the plans approved by the Board.

Moreover, Section 3205 of the Zoning Regulations provides that all BZA conditions “shall” be treated as conditions to the issuance of a building permit for the subject property.

The Regulations provide:

If a building permit or certificate of occupancy has been issued under the authority of a decision of the Board to approve a special exception or variance, then for purposes of §§ 3205.4 and 3205.5, each condition to the approval of the special exception or variance shall be treated as a condition to the issuance of the building permit or certificate of occupancy.

¹⁴ In the court case, the Owner and Holland & Knight have contended (without citation) that there is a long-standing practice by the Zoning Administrator to make minor changes to BZA-approved plans and that “[a]s a practical matter, the version of plans submitted to and approved by the BZA generally do not have the level of detail in them to be used as the final construction set of drawings.” Exhibit D at p. 11. Of course, the plans in BZA Case 18330 included most of the relevant “details” and those specifications were simply changed in the construction set.

11 DCMR § 3205.3. The Zoning Regulations define the term “shall” to mean “mandatory and not discretionary.” 11 DCMR § 199.2.

The Building Permit in this case is also inconsistent with the special exception and variance provisions in the Zoning Regulations because the Residential Building does not meet the requirements for such relief at this time. The Board’s approval in Case No. 18330 was not predicated upon the current plans for the building. As built, the Residential Building would not satisfy the requirements for a variance or special exception. *See* 11 DCMR § 402, § 3103.2, §3104.1, and § 1402. *See also* discussion of lot occupancy requirements and limitations upon the uses of penthouse structures.

Under these circumstances, the Zoning Administrator erred when he approved the building permit for the Property. Without limitation, the Zoning Administrator should not have approved any penthouse structure that exceeds an elevation of 206.83 feet (including parapet), or elevated decking on the roof.

V. Exhibits in Support of Appeal

The Appellant submits the following exhibits with this Pre-Hearing Statement.

- Exhibit A – BZA Order 18330
- Exhibit B – Zoning Administrator’s Determination Letter, dated April 9, 2013 (with all exhibits except BZA Order 18330)
- Exhibit C – Zoning Administrator’s Determination Letter, dated Feb. 10, 2014 (with all exhibits posted online by Zoning Administrator)
- Exhibit D - Opposition to Plaintiffs’ Motion for Temporary Restraining Order, (pages 1, 5, 11 and 19)
- Exhibit E - Plans Submitted in BZA Case 18330 (selected pages from Exhibit 30H, specifically cover sheet, A0.1, A3.2, A3.3, A4.1 and A5.6)
- Exhibit F - Transcript of BZA Case 18330, dated April 3, 2012 (pages 1, 3-4,

54-55, 62-63, 66, 83, 88-89, 94-95, 117-118, 127, 141-143)

- Exhibit G - Building Permit No. B1410680
- Exhibit H - Email to Erie Condominium, dated Dec. 23, 2013, with attachment
- Exhibit I - Email to Erie Condominium, dated March 19, 2014 (without attachments)
- Exhibit J - Photos of Residential Building from Oct. 22, 2015, Oct. 29, 2015 and Oct. 30, 2015
- Exhibit K - Construction Plans for Residential Building (selected pages)
- Exhibit L - Photos of Shadowing from Residential Building Upon Erie Condominium
- Exhibit M - Photos of Elevating Decking and Railing on Residential Building
- Exhibit N - PIVS Report for Permit No. B1410680
- Exhibit O - Outline of Witness Testimony

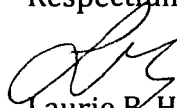
VII. Witnesses for Appellant

Appellant currently anticipates the following witnesses.

1. Introduction by Counsel (Laurie B. Horvitz, Esq.)
2. Richard N. Wiedis

An outline of Mr. Wiedis' testimony is attached hereto as **Exhibit O**.

Respectfully submitted,



Laurie B. Horvitz, Esq.

On behalf of the Unit Owners' Association of The Erie Condominium

PROOF OF SERVICE

I hereby certify that on January 22, 2016, a copy of the foregoing "Appellant's Prehearing Statement" was served on the following parties to BZA Case No. 19174:

Mathew LeGrant (Via US Mail)
Zoning Administrator
DC Consumer and Regulatory Affairs
1100 4th Street, SW
Washington, DC 20024

Christy Moseley Shiker, Esq. (Via US Mail)
Holland & Knight LLP
800 17th Street, NW, Suite 1100
Washington, D.C. 20006

Maximilian L.S. Tondro (Via US Mail)
Assistant General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, SW 5th Floor
Washington, DC 20024


Laurie B. Horvitz

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

LIST OF EXHIBITS IN SUPPORT OF APPEAL

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

★ ★ ★

██████████

██████████

Application No. 18330 of FCP Champlain, LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the floor area ratio requirements under § 402, and a special exception to allow an increase in building height under §1403, to permit the development of a residential building in the RC/R-5-B District at premises 2337 Champlain Street, N.W. (Square 2563, Lot 887).

HEARING DATE: April 3, 2012

DECISION DATES: May 15, 2012, May 22, 2012, and July 10, 2012

DECISION AND ORDER

FCP Champlain, LLC ("Applicant") submitted this self-certified application on November 18, 2011, for property located at 2337 Champlain Street, N.W. (Square 2563, Lot 887) (the "Site"). The Applicant requested special exception relief to increase the maximum permitted height from 40 feet to 48 feet, nine inches in the Reed-Cooke ("RC") Overlay District pursuant to §1403 of the Zoning Regulations and for a variance from §402.4 of the Zoning Regulations to increase the permitted floor area ratio ("FAR") by 0.25 FAR (or 3,463 square feet of gross floor area).

The Board of Zoning Adjustment ("BZA" or "Board") convened a hearing on the application on April 3, 2012. Proposed Findings of Fact and Conclusions of Law were submitted on April 17, 2012 (Exhibits 49 and 50), and rebuttal to those documents was submitted on April 24, 2012. (Exhibits 51 and 52.)

The Board was scheduled to deliberate on the application at its regularly scheduled public meeting on May 15, 2012. On that date, the Applicant submitted a request for a postponement of consideration of the decision. The Board scheduled a special public meeting for May 22, 2012, and deliberated on the application at that meeting. The Board voted 5-0-0 to grant the application. Following that vote, the Chairman of the Board requested the Applicant to submit a proposed order for the Board's consideration. On July 10, 2012, the Board denied a request of the party in opposition to strike the proposed order submitted. A full explanation of the Board's rulings is set forth below.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated November 22, 2011, the

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 1C, the ANC within which the subject property is located, Single Member District 1C 07, and the Councilmember for Ward 1. A public hearing was scheduled for April 3, 2012. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing on the application in the *D.C. Register*, and on January 13, 2012, sent such notice to the Applicant, ANC 1C, and all owners of property within 200 feet of the Site.

Request for Party Status. In addition to the Applicant, ANC 1C is automatically a party in this proceeding. The Erie Condominium Association ("Association"), comprised of the owners of units in the building located at 2351 Champlain Street, N.W., immediately north of and abutting the Site, requested party status in opposition to the application. The Association was represented by Richard Weidis, the president of the Association and the owner of a unit in the Erie Condominium Building ("Erie"), and appeared at the hearing through legal counsel, Laurie Horvitz. Mr. Weidis also requested party status in opposition to the application in his individual capacity. At the hearing, the Board asked Ms. Horvitz to identify any separate interests between the Association and Mr. Weidis, given that the requests for party status were the same in most major respects. Ms. Horvitz acknowledged the overlapping interests and conceded that the interests were aligned. Ms. Horvitz further stated that it was intended that Mr. Weidis would appear and make a presentation during the Association's presentation, as he was identified as a witness. Accordingly, the Board granted party status to the Association and denied the individual party status request of Mr. Weidis.

Applicant's Case. Christine Shiker of Holland & Knight, LLP represented the Applicant. The Applicant presented three witnesses in support of the application: Charlie Kehler, representing the Applicant; Jeff Goins, PGN Architects; and Steven E. Sher, Director of Zoning and Land Use Services at Holland & Knight, LLP. The Board qualified Mr. Goins as an expert in architecture and Mr. Sher as an expert in planning and zoning.

Government Reports. OP filed a report with the Board on March 27, 2012, recommending approval of the application. The OP report set forth each of the provisions of 11 DCMR §§ 1403 and 3104.1 and opined that each requirement of the variance standard had been met. The report also opined that the application met the standards of §§1403.1 and 3103.2. (See Exhibit 35.) DDOT also filed a report with the Board on March 12, 2012, indicating that it had no objection to the requested relief and stating that it "sees no potential adverse impacts on the transportation network as a result of the special exception." (See Exhibit 26.) At the hearing, the Board requested that DDOT clarify its position on vehicle access to the Site. In response, DDOT submitted a supplemental report dated April 17, 2012, reaffirming its position that vehicle access to the Site is required to be from the north-south public alley. (Exhibit 48.)

ANC Report. ANC 1C submitted a report to the Board dated March 13, 2012, recommending approval of the application. (See Exhibit 32.)

Party in Opposition. The Association, which was the only party in opposition, objected to the proposed apartment building with respect to its alleged adverse effect on the light and air to the Erie, including the light and air to the lower level patios, and diminished enjoyment of the Association's roof decks because of perceived impact on the views from the roof decks and issues of privacy. The Association also alleged that the proposed apartment house would have an adverse impact on the Erie's property values and would set an unacceptable precedent for special exception approval in the neighborhood.

Persons in Support or Opposition. The Board received a letter from King's Creek LLC, the owner of the property immediately to the south of the Site (the "Brass Knob,") in support of the project. (See Exhibit 31.) The Board also received several additional letters in support of the project from nearby neighbors. (See, e.g., Exhibits 36, 37 and 38.)

FINDINGS OF FACT

The Site and the Surrounding Neighborhood

1. The Site is located at Lot 887 in Square 2563. The Site is located on the east side of Champlain Street in the central portion of the square and abuts a north-south alley to the east that has a width ranging from 11 to 13 feet as it abuts the Site, but generally is approximately 15 feet through its entirety. The Site is currently used as a parking lot.
2. The Site is very deep, having a depth of approximately 130 feet. The Site is also irregular in shape because the Site's property line shifts to the south, creating an extended piece along the alley, and because the Site includes a slight bend at its center along Champlain Street. In addition, the Site's topography has a significant slope, generally rising from southwest to northeast. This slope creates a high point at the northeast corner (near the alley) and a low point at the southwest corner (at Champlain Street) and has a difference of more than nine feet.
3. The Site is located in the Reed-Cooke/Adams Morgan area, which contains a wide variety of uses, including residential, retail, commercial, and industrial. Champlain Street has seen much redevelopment for residential use over the last 20 years. Many of these projects have been approved with additional height and density, including the property directly to the south of the Site at 2329 and 2335 Champlain Street, approved for residential development with a maximum height of 50 feet and a maximum FAR of 2.64 (BZA Case No. 18167/17431-B); the property further to the south of the Site at 2301 Champlain Street, approved for residential development with a maximum height of 50 feet and an FAR of 2.75 (BZA Case No. 16931); and the property across Champlain Street to the southwest at 2328 Champlain Street, approved as a planned unit development ("PUD") with a maximum height of 55 feet and FAR of 3.63. (Z.C. Order No. 832).

4. The Site is zoned R-5-B and is located within the Reed-Cooke (RC) Overlay District.
5. The R-5 Districts are designed to permit flexibility for all types of urban residential developments along with those institutional and semi-public buildings that are compatible with adjoining residential uses. The R-5-B District permits developments of a moderate height and density, permitting a maximum height of 50 feet and a maximum FAR of 2.16 FAR including the 20% bonus provided by Chapter 26 for Inclusionary Zoning developments.
6. The primary purpose of the RC Overlay District is designed to protect existing housing and provide for new housing development. (11 DCMR § 1400.2(a)(1).) Although the R-5-B District permits a maximum height of 50 feet, the RC Overlay District restricts the maximum height to 40 feet. The RC Overlay District, however, provides for a special exception from its requirements in order to fulfill the stated objectives of the RC Overlay and in compliance with the standards set forth in §§1403.1(a) through 1403.1(g) of the Zoning Regulations. Although such special exception relief would include increases to height, the Board had previously ruled that such relief cannot exceed the 50 foot height limit applicable to the underlying zone. Application No. 16869 of King's Creek, LLC (2002).

The Applicant's Project

7. The proposed project will replace the existing surface parking lot with a new residential building ("Subject Building"). The Subject Building is positioned mid-block, bounded by Champlain Street on the west, a public alley on the east and existing buildings on the north and south sides. The Subject Building abuts a blank wall of the Erie to the north and a proposed and approved blank wall of the Brass Knob to the south.
8. When the Applicant first submitted the application, the Subject Building had a maximum height of 50 feet to the top of the parapet. Based on discussions with the Association and its representatives, the Applicant lowered the maximum height of the Subject Building to 48 feet, nine inches to the top of its parapet. At the north property line, the top of the parapet of the Subject Building is only five inches above the top of the parapet of the Erie and the roof of the Subject Building is only two feet, 10 inches above the roof of the Erie. This difference is computed by comparing the elevation of the top of the parapet of the Erie, which is 199 feet, six inches, to the elevation of the top of the parapet of the Subject Building, which is 199 feet, 11 inches, and by comparing the elevation of the roof of the Erie, which is 196 feet, to the elevation of the roof of the Subject Building, which is 198 feet, 10 inches. (Champlain Street Elevation Plan in the record at Exhibit 44.)
9. The Subject Building has a maximum FAR of 2.41 and includes 40 units.
10. The layout of the Subject Building has been broken into two bars separated by a private courtyard, with the bar adjacent to Champlain Street having a double-loaded corridor and the

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bar adjacent to the alley having a single-loaded corridor. The separate bars are connected by a bridge on each level. The courtyard design allows for maximum light and air for the proposed 40 units.

11. The Subject Building has been designed to maintain the continuity of a street wall along Champlain Street. The Subject Building is set back off the property line allowing for a pedestrian-friendly experience but also aligning with the Erie building to the north and similarly with the Brass Knob to the south.
12. The architects explored various options for constructing an apartment building on the Site. The studies included construction of a U-shaped building and a T-shaped building at the matter-of-right height of 40 feet. Given the party walls on both the north and south property lines, both of these configurations resulted in units with poor light and air except for the very front units. In addition, these configurations resulted in substandard heights for the units that would be far below market average. This condition results from the required parking and the transverse sloping site.
13. The Subject Building includes a minimum of 20 parking spaces, with at least 11 parking spaces being provided in the partially below-grade parking structure and nine spaces in the rear yard. All parking spaces are accessed from the alley to the east of the Site.

The Zoning Relief Requested

Special Exception under §1403.1

14. Section 1403.1 permits a special exception to increase the permitted height in the RC/R-5-B District to 50 feet, subject to the criteria set forth in §§1403.1(a) through 1403.1(g).
15. In order to fulfill the stated objectives of the RC Overlay and to create a building that is appropriate for the neighborhood, the Applicant requests a special exception to permit a maximum height of 48 feet, nine inches as permitted in §1403 of the Zoning Regulations.
16. As demonstrated in Findings of Fact Nos. 17 through 29, the Applicant has satisfied the applicable criteria in §§1403.1(a) through 1403.1(g) for granting special exception relief from this Overlay requirement.
17. The requested increase in height furthers the goals of the RC Overlay District, including the protection of current housing in the area, the development of new housing in the area, the maintenance of heights and densities at appropriate levels, and protection of adjacent and nearby residents from damaging traffic, parking, environmental, social and aesthetic impacts. (11 DCMR § 1400.2.)

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18. The Subject Building provides new housing at an ideal location, near new and existing residential uses.
19. The removal of the parking lot and the increase in the number of residential units in the neighborhood will further improve the surrounding area.
20. The height of the Subject Building will be compatible with the surrounding area, being appropriate to the Erie building immediately adjacent on the north and the approved Brass Knob development immediately adjacent on the south, as well as the overall area. As noted above, the Applicant has lowered the height of the parapet of the Subject Building to be substantially the same as the height of the parapet to the Erie. With this reduction in height, the top of the parapet of the Subject Building will be only five inches above the top of the parapet of the Erie and the top of the roof of the Subject Building will be only two feet, 10 inches above the top of the roof of the Erie. The roof of the Subject Building is within 11 inches of the roof of the proposed Brass Knob to the south.
21. The plans, renderings, and animation presented to the Board clearly indicate that the Subject Building is an appropriate structure designed to fit the context of the street and complete the urban, residential development along the east side of Champlain Street. (Exhibits 40, 44.)
22. The existing curb cut on Champlain Street which provides access to the existing parking facility will be removed, and the Subject Building will provide all access from the existing north-south alley abutting the east boundary of the Site. The location of this access is consistent with DDOT's policies for access and is supported by both DDOT and OP.
23. The setback of the Subject Building will provide a wider pedestrian way in front of the building. This setback, along with the removal of a driveway from Champlain Street and the access to all parking spaces from the rear of the building, will minimize conflicts with pedestrian traffic, will create no dangerous or otherwise objectionable traffic condition, and will result in an enhanced and superior streetscape.
24. The Subject Building includes a minimum of 20 parking spaces in compliance with the Zoning Regulations. According to the DDOT report in the record at Exhibit 26, the proposed parking is an acceptable ratio.
25. Given the size of the proposed Subject Building, no loading facilities are required by the Zoning Regulations. All loading can be accommodated from the street.
26. Because the Site is not located within a C-2-B Zone District, the criteria in § 1403.1(d) are not applicable.

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27. Because the Subject Building incorporates only residential uses, there will be no unexpected or unusual noise associated with the project that would adversely affect adjacent or nearby residences.
28. The operation of the Subject Building will not involve any outdoor storage of materials nor outdoor processing, fabricating, or repair. Garbage from the units will be accommodated in a storage area on the first floor.
29. This Subject Building will not adversely affect adjacent or nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting the area. The Subject Building provides an important development of new residential units, is well-designed to match the scale and use of adjacent and nearby developments, and allows light and air to the adjacent buildings. The Subject Building replaces an existing surface parking lot that accommodates more than 50 cars each night during the weekend. Thus, the Subject Building will serve to eliminate that additional traffic and replace it with a new building designed to match the scale and use of adjacent and nearby developments.
30. The Subject Building will not adversely impact on the light and air to the Erie, including its lower level patios. The Applicant presented detailed shadow studies indicating that the Subject Building with the requested height and density would have no effect on the windows or roof decks of the Erie when compared to a building that could be constructed on the Site as a matter of right. Similarly, the detailed shadow studies also indicated that the Subject Building with the requested height and density would have no effect on the lower level patios of the Erie when compared to a building that could be constructed on the Site as a matter of right.
31. The Subject Building will not adversely impact the views from the Erie's roof decks. The Applicant presented detailed views evidencing the limited impact on views from the Erie's roof decks. The Erie includes four private roof decks, and the testimony focused on the impacts to the two roof decks on the southern portion of the Erie. The Association provided photographs of the views to the west showing sunsets and to the south showing views to the Washington Monument. The Subject Building will have no impact on the views to the west because it is located to the south of the Erie. The Applicant provided evidence that the increased building height has no adverse impact on the views from the roof deck to the south because the parapet of the Subject Building is only five inches above the parapet of the Erie. Furthermore, the Applicant has lowered the penthouse to only eight feet above the parapet and set it back at least 18 feet from the north property line to reduce any impact on the views from the roof deck. The Applicant provided view depictions to the south indicating that the Subject Building will not impact views from the Erie to the Washington Monument. (View from East Side of Terrace Looking South and View from West Side of Terrace Looking South in Exhibit 44.)

32. Nor will the Subject Building adversely affect the privacy of the occupants of adjacent properties. The Applicant agreed to limit access to the roof of the Subject Building to the occupants of the seven individual units on the top floor of the front bar of the building; the plans do not provide common access to the roof for the overall building. In addition, the Applicant presented a plan illustrating that the closest active roof deck space would be a minimum of 20 feet from the north property line. (Site Plan in the record at Exhibit 44.) Given that roof decks on abutting buildings are a common, urban feature, this additional setback limits any potential adverse impact on the Erie with respect to privacy within the roof deck space on the Erie.

Variance from §402.4

33. Section 402.4 of the Zoning Regulations limits development on the Site to 1.8 FAR. The Applicant requests a variance from § 402.4 to develop the Subject Building with 2.41 FAR.
34. As demonstrated in Findings of Fact Nos. 35 through 42, the Applicant has satisfied the burden of proof for granting a variance from § 402.4.

Exceptional and Extraordinary Conditions

35. The Site has a depth of approximately 130 feet, which is very deep for residential development given the light and air required for the units and the need for certain dimensions to create either a single- or double-loaded corridor.
36. The Site is irregular in shape. While the Site is more or less rectangular in shape, the southern property line jogs more than 10 feet further to the south as it goes east. This shift creates an extended piece of the lot along the alley and makes access to the partially below-grade space from this point practically difficult. In addition, the Site slightly bends at its center along Champlain Street, which creates a pinched dimension at the rear of the building.
37. The topography of the Site has a significant slope, generally rising from southwest to northeast. This slope creates a high point at the northeast corner (near the alley) and a low point at the southwest corner (at Champlain Street) and has a difference of more than nine feet. At the same time, the Site slopes along both the alley and Champlain Street façades. Along the alley façade, the elevation changes by almost 2.5 feet, while the elevation changes almost 4.75 feet along Champlain Street.

Practical Difficulties

38. To maintain a pedestrian-friendly streetscape in keeping with the goals of the RC Overlay and to provide access in accordance with the policies of DDOT, the Applicant is providing access to the parking facility from the alley. This point of access creates a practical difficulty for the Subject Building to comply with the FAR requirements. Specifically, a garage entry

would normally be located at the low point of the lot allowing for ease of entry and construction and reducing the slope necessary to access a below-grade level. However, OP's and DDOT's indications that those agencies would not support allowing access from Champlain Street at the front of the building, combined with the unique topography and irregular shape of the lot, results in the garage entry located at the highest point of the Site (i.e., at the northeast corner of the Site). In order to provide access and comply with code requirements, the overall structure of the Subject Building therefore must be raised approximately five feet because there is insufficient travel distance for the ramp to be able to get under the building at grade and for the garage to be entirely accommodated below-grade. This results in the ceiling of the underground parking level being in part more than four feet above the adjacent finished grade. A portion of the lowest level is therefore considered a basement; which must be counted within FAR. The raised structure also results in a raised first level for development at the rear of the Site that otherwise would not be counted as FAR.

39. Neither the parking area nor the portion of the first level of development at the rear of the building would be included in FAR if access could be taken from the street similar to the building to the north or from the southeast corner of the development from the alley (i.e., the low end of the Site), similar to the approved development to the south. Accordingly, the Subject Building includes 3,182 square feet of gross floor area within the project that would not otherwise be included if the Applicant was not required to lift the building to provide access. This square footage along with the lobby space is equal to the total FAR variance requested of 3,463 square feet of gross floor area. No additional residential units are added as a result of the requested variance.

No Harm to Public Good or Zone Plan

40. The project will maximize residential uses of the Site, as encouraged by the RC Overlay District, and will improve the aesthetics of this area by replacing a parking lot with a residential building.
41. As to harm to the public good, the Board reaffirms its determinations made in findings of fact numbers 27 through 32 above.
42. The design of the Subject Building results in an improved streetscape. The Applicant has placed three residential units at the street wall at grade along Champlain Street and has located the parking away from the street, which is in keeping with accepted urban design principals and the goals of the RC Overlay District. In addition, given the narrow public space and the goals for an activated and walkable community, the entire Subject Building has been set back from the property line to create a wider, more appropriate pedestrian walkway.

CONCLUSIONS OF LAW

Preliminary Issue

As noted, the Board deliberated upon this case on May 22, 2012 and thereafter voted to grant the application. Following the vote, the Chair requested the Applicant:

To propose an order for the Board in light of the findings that were made by the Board today and present it to the Office of Zoning to be considered by the Board and modified, if necessary.

(Transcript of Special Public Meeting of May 22, 2012, p. 17.)

The Applicant submitted such an order on June 5, 2012. The draft order was then transmitted to the Office of the Attorney General ("OAG"), which made several changes to the text in order ensure its legal sufficiency. OAG then presented its revised draft to the Board and the Office of Zoning. The Board made no revisions to the OAG revised draft. Finally, the Office of Zoning made technical corrections to the draft order and issued this Order in its current form.

By letter dated June 11, 2012, the Association stated its objection to the Applicant's June 5th filing and requested that the Board strike it. The Association made three arguments in support of its request:

1. The proposed order failed to include all of the findings made during the Board's deliberations;
2. The order included findings not made during those deliberations, particularly in the proposed finding of fact 44; and
3. The Chair violated § 3121.7 by not permitting the Association to reply.

As to the first two points, the Association offers a far too literal reading of the Chair's request. Ordinarily when a Board decision is adverse to a party, OAG drafts a proposed order for the Board's consideration. It is the Board's expectation that the draft order will address all elements needed to grant zoning relief. This may involve augmenting findings made by the Board during its deliberations and omitting Board findings that were unnecessary to reach its ultimate decision. In this case the Chair was simply asking the Applicant to perform this task instead of OAG in order to expedite the issuance of the order and to allow OAG to focus on its other order writing assignments. As noted, the proposed order was just the starting point of the process. OAG and the Board reviewed the draft and necessary revisions were made, including the elimination of proposed finding of fact 44. There is no need to strike what amounted to a suggestion.

For this same reason, no reply by the Association was needed. The Chair's request for a proposed order came after the Board's vote to approve the application. The proposed order was therefore not submitted to persuade the Board to take any action, but only to set forth the factual and legal bases of the action taken. The only conceivable purpose for a reply to the proposed order would be to convince the Board to reconsider its decision. However, the reconsideration process begins after this Order is issued. (See 11 DCMR § 3126.) The Association's reliance on § 3121.6 is misplaced. That subsection states that the Board must permit responses to exhibits, information, or briefs submitted after the close of the hearing. The provision does not pertain to submission of proposed findings of facts, which is governed by §§ 3121.3 and 3121.4, and for which no response are permitted. In any event, § 3121 governs procedures leading up to the Board's vote and therefore has no bearing upon a post-decision filing of an order requested by the Board. For all of these reasons the Association's request to strike the Applicant's proposed order is denied.

Special Exception

Pursuant to §3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Section 1403 of the Zoning Regulations provides specifically for special exceptions from the provision of the RC Overlay, including height. Special exceptions must also meet the specific conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of §3104, the Applicant also has to meet the requirements of §1403.1.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). Thus, contrary to the assertions of the Association, the Applicant is not required to provide evidence that it is not able to construct to a matter-of-right height so long as the Applicant provides evidence of compliance with each standard of the special exception. Furthermore, the Applicant is not required to provide evidence of a practical difficulty to justify the relief because that is not the appropriate standard for the special exception requested.

For purposes of the special exception from the maximum permitted height, the Applicant must prove that it has complied with the requirements of §§1403.1 and 3104.1 of the Zoning Regulations. Based on the evidence and testimony and Findings of Fact above, the Board concludes that the Applicant has complied with each of the criteria listed in §§1403.1(a) through 1403.1(g). Specifically, the Subject Building at the proposed height will substantially advance

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the stated purposes of the RC Overlay District because the project results in the creation of new residential units in a development that maintains heights and densities at appropriate levels. The vehicular access and egress from the alley on the east side of the Site is designed and located so as to minimize conflicts with pedestrian ways, to function efficiently and to create no dangerous or otherwise objectionable traffic condition. The Subject Building provides adequate off-street parking and loading. The Site is not zoned C-2-B; thus, § 1403.1(d) is not applicable. As a residential building, the Subject Building will not have unexpected or unusual noise so it will not adversely affect adjacent or nearby residences. The operation of the Subject Building will not involve any outdoor storage of materials nor outdoor processing, fabricating or repair and thus complies with § 1403.1(f).

The Subject Building at the proposed height will not adversely affect adjacent and nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area. The Board is satisfied by the Applicant's testimony, the support from OP, the support from ANC 1C, and the support from other nearby property owners that the Subject Building will have no adverse impact on the community.

While the Association raised concerns about the potential adverse effects of the additional height on the Erie, those concerns have been adequately addressed by the conditions below and the adjustments that the Applicant has made to the project since submitting the application. Specifically, the top of the parapet on the north wall of the Subject Building will be only five inches above the top of the Erie's parapet. The Applicant's shadow studies clearly demonstrate that there will be no adverse impact on the windows, roof decks, or lower level patios when compared to a matter-of-right building, and the Association presented no evidence to the contrary. The Subject Building is an appropriate structure designed to fit the context of the street and complete the urban, residential development along the east side of Champlain Street.

While the Association claims that there will be an adverse impact on the views from the roof deck, it is well-settled in the District of Columbia that a property owner is not entitled to a view across another person's property without an express easement. See *Hefazi v. Stiglitz*, 862 A.2d 901 (D.C. 2004). This Board and the Zoning Commission have consistently found that a property owner has no right to a view across another person's property. See, e.g., BZA Order No. 13518, BZA Order No. 13305, Z.C. Order No. 11-03. Despite the fact that the Association has no right to a view across the Site and that the Association has no express easement for a view across the Site, the Applicant has made significant efforts to maintain the views from the Erie. First, the Applicant has provided evidence that the increase height will not noticeably diminish the views from the Erie because the top of the Subject Building's parapet is only five inches above the top of the Erie's parapet. Second, the Applicant has lowered its penthouse well below the height permitted as a matter of right, which is 18 feet, six inches. Third, the Applicant has incorporated a 2:1 set back (at least 18 feet) of its penthouse from the wall of the Erie to reduce any potential impact on the views from the Erie's roof deck, even though the Subject Building sits on a lot line and no setback is required for the penthouse from its north property line.

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Furthermore, the Applicant agreed to limit access to the roof deck to the occupants of only the seven residential units on the top floor of the front bar of the building and to ensure that the closest active roof deck space would be a minimum of 20 feet from the north property line. These agreements are incorporated as conditions to the approval granted herein and limit any potential adverse impact on the Erie with respect to privacy within the roof deck on the Erie.

The Association provided no reliable or convincing evidence to establish that the replacement of the parking lot with the Subject Building will have an adverse economic impact on the Erie or any other building within the neighborhood. In addition, the BZA is required to evaluate each project on its own merits to determine compliance with the applicable standards of the Zoning Regulations. Thus, the Association's concern regarding a dangerous precedent of approving the special exception is without merit.

Based on the findings of fact and the reasons discussed herein, the Board concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

Variance Relief

Standard of Review

The Applicant seeks an area variance from the maximum FAR restrictions under § 402.4 to allow the construction of the Subject Building on the Site. Under § 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3) (2001 ed.)), the Board is authorized to grant an area variance where it finds that three conditions exist: (1) the property is unique because, inter alia, of its size, shape or topography; (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 zoning plan. *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). See, also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter "practical difficulties" in the development of the property if the variance is not granted. See *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that "area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." See *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

As discussed below, the Board concludes that the Applicant has met its burden of proof for an area variance from the maximum FAR requirements of § 402.4 of the Zoning Regulations.

Exceptional and Extraordinary Conditions

The Board concludes that the Site is affected by a confluence of several exceptional and extraordinary conditions. First, the Site is very deep for an apartment house. The depth of approximately 130 feet creates significant challenges for creating residential units given the light and air required for the units and the need for certain dimensions to create either a single- or double-loaded corridor. Second, the Site is irregular in shape. Specifically, the shift in the southern property line results in complexities relating to access to the partially below-grade space, and the slight bend at the Site's center along Champlain Street creates a pinched dimension at the rear of the building. Third, the topography of the Site creates a further challenge and constraint. Specifically, the significant change in slope creates a high point at the northeast corner (near the alley) and a low point at the southwest corner (at Champlain Street) and has a difference of more than nine feet. As well, the Site slopes along both the alley and Champlain Street facades. Along the alley façade, the elevation changes by almost 2.5 feet, while the elevation changes almost 4.75 feet along Champlain Street.

Practical Difficulties

The confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the maximum FAR requirement set forth in § 402.4 of the Zoning Regulations. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1979) (uniqueness may stem from a confluence of factors).

Because the Applicant provides access to the Subject Building from the alley to the east of the Site, practical difficulties are created impacting compliance with the Zoning Regulations. Specifically, a garage entry would normally be located at the low point of the lot allowing for ease of entry and construction and reducing the slope necessary to access a below grade-level. However, OP's and DDOT's indications that those agencies would not support allowing access from Champlain Street at the front of the building, combined with the topography and irregular shape of the lot, results in the garage entry located at the highest point of the Site (i.e., at the northeast corner of the Site). In order to provide access and comply with code requirements, the overall structure of the Subject Building must be raised approximately five feet because there is insufficient travel distance for the ramp to be able to get under the building at grade and for the garage to be entirely accommodated below-grade due to the topography of the Site. This results in the ceiling of the underground parking level being in part more than four feet above the adjacent finished grade. As a result, this portion of the lowest level is considered a basement (11 DCMR § 199.1, definition of "Basement") and therefore counts towards the building's FAR.¹

¹ "Floor area ratio" is defined at 11 DCMR § 199.1 as "a figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of all buildings on a lot by the area of that lot." The term "gross floor area" is defined at 11 DCMR § 199.1 to include basements. Subsection

The raised structure also results in a raised first level for development at the rear of the Site that otherwise would not be counted as FAR.

Neither the parking area nor the portion of the first level of development at the rear of the building would be included in FAR if access could be taken from the street similar to the Erie to the north or from the southeast corner of the development from the alley (i.e., the low end of the Site), similar to the Brass Knob to the south. The confluence of all these factors results in a slight increase of 0.25 FAR (or 3,463 square feet), with such FAR not providing any additional residential units than that which could have been provided within the permitted FAR if the practical difficulties associated with the Site and access did not exist.

No Harm to Public Good or Zone Plan

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. The Board has already explained in its discussion of the special exception why the Subject Building will not tend to adversely affect the use of neighboring properties. The Board specifically concluded that there would be no adverse impact on the light, air, or privacy of Erie residents and found no merit in the Association's claims of adverse impact on the residents' views or property values or its argument that the grant of this application would create a dangerous precedent. The Board's reaffirms these decisions with respect to this prong of the variance test.

In addition, the Board finds that the project will maximize residential uses of the Site, as encouraged by the RC Overlay District. The development of this project will improve the aesthetics of this area by replacing a parking lot with a residential building and improving the streetscape. The Applicant has placed three residential units at the street wall at grade along Champlain Street and located the parking away from the street, which is in keeping with accepted urban design principals and the goals of the RC Overlay District.

Similarly, the Subject Building has been set back from the property line up to five feet in some locations to widen the narrow public space and create a wider, more appropriate pedestrian walkway which furthers the goals for an activated and walkable community. The Subject Building is an appropriate structure designed to fit the context of the street and complete the urban, residential development along the east side of Champlain Street. Finally, The Subject Building incorporates only residential uses, which are appropriate for the R-5-B District and strongly encouraged by the RC Overlay. Accordingly, the integrity of the zone plan would not be impaired by the granting of the variance.

Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give

199.1 defines a "basement" as the "portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade."

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"great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 1C recommended approval of the requested relief. The Board accords the ANC recommendation the great weight to which it is entitled and concurs in its recommendation.

The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Code § 6-623.04) to give great weight to OP recommendations. The Board also concurs with OP's detailed analysis and recommendation that the zoning relief should be granted.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for an area variance under § 402.4, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can 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. The Board also concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 1403.1, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit 30, and the following conditions:

1. Access to the roof deck shall be limited to the occupants of the seven residential units on the top floor of the front bar of the Subject Building, as identified on the plans presented to the Board in the record at Exhibit 44.
2. The roof deck space for the Subject Building shall be set back at least 20 feet from the north property line and shall be demarcated by an open metal railing.

Vote taken on May 22, 2012:

VOTE: 5-0-0 (Lloyd J. Jordan, Marcie I. Cohen, Nicole C. Sorg, Rashida Y.V. MacMurray, and Jeffrey L. Hinkle to approve the application.)

Vote taken on July 10, 2012:

BY CONSENSUS: (Nicole C. Sorg, Rashida Y.V. MacMurray, and Jeffrey L. Hinkle to Dismiss the Motion to Strike and Adopt to issue the

BZA APPLICATION NO. 18330

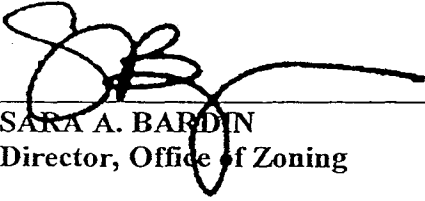
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appropriate order; Lloyd J. Jordan and Marcie I. Cohen by
absentee ballot to dismiss the motion to strike)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 26, 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN

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WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 18330

As Director of the Office of Zoning, I hereby certify and attest that on July 26, 2012, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail or delivered by electronic mail in the case of those ANC's and SMD's that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Christine Shiker, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Laurie Horvitz, Esq.
Law Offices of Laurie B. Horvitz
4520 East West Highway, Suite 700
Bethesda, MD 20814

Single Member District Commissioner 1C-07
Advisory Neighborhood Commission 1C
2370 Champlain Street, N.W., #23
Washington, D.C. 20009

The Erie Condominium Association
c/o Richard Weidis, President
2351 Champlain Street, N.W., Apt. P1
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 1C
PO Box 21009
Washington, D.C. 20009

Melinda Bolling, Esq.
General Counsel
Office of General Counsel
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1100 4th Street, S.W., 5th Floor
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Jim Graham, Councilmember
Ward One
1350 Pennsylvania Avenue, N.W., Suite 105
Washington, D.C. 20004

ATTESTED BY:

A handwritten signature in black ink, appearing to read 'SARA A. BARDIN', is written over a horizontal line.

SARA A. BARDIN
Director, Office of Zoning

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT B

Korean (한국어)

EXHIBIT B**2337 Champlain St NW to Shiker 4-9-13**

Tuesday, April 9, 2013

Determination Letter

2337 Champlain St NW to Shiker 4-9-13

2337 Champlain St NW to Shiker 4-9-13; proposed modifications are within scope of BZA-approved plans.

The Zoning Administrator issues determination letters resulting from requests by property owners, developers, architects, and land use attorneys inquiring about the applicable zoning regulations applicable to specific development proposals. These letters offer guidance to requesting parties as to whether a proposed project, such as a new building, an addition to an existing building, or a use change, conform to the District's Zoning regulations as set forth in DCMR Title 11.

Attachment(s):

Attachment	Size
Det_Let_re_2337_Champlain_St.,_NW_to_Shiker_4-9-13.pdf - 54.3 KB (pdf)	54.27 KB
Champlain_Reliance_Letter_-_Approved_and_Proposed_Plans.pdf - 1.6 MB (pdf)	1.62 MB
BZA_Order_18330.pdf - 2.3 MB (pdf)	2.35 MB

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



April 9, 2013

Christy Moseley Shiker
Holland & Knight LLP
800 17th Street, N.W. - Suite 1100
Washington, DC 20006

Re: 2337 Champlain Street, N.W. Lot 887, Square 2563

Dear Ms. Shiker:

This is to confirm the substance of our discussions on January 23, 2013, regarding the proposed development of the property located as 2337 Champlain Street, NW (Lot 887 in Square 2563) (the "Site"). You requested that I review whether certain revisions could be made to the project previously approved by the Board of Zoning Adjustment ("BZA").

Background

The Site is zoned R-5-B and is located within the Reed Cooke ("RC") Overlay District. The Site has been used as a surface parking lot and is currently vacant. In November, 2011, FCP Champlain, LLC ("Owner") submitted an application to the Board of Zoning Adjustment (the "Board" or "BZA") to permit the development of a residential building (the "Residential Building") with the following areas of zoning relief: (1) a special exception under § 1404 to allow an increase in height from 40 feet to 48 feet in the RC Overlay; and (2) a variance from §402 to allow an increase of 0.25 FAR above the allowable FAR of 1.8.

The Erie Condominium Association ("Association"), comprised of the owners of units in the building located at 2351 Champlain Street, N.W. (the "Erie"), immediately north of and abutting the Site, participated as a party in opposition to the application. The Association primarily objected to the Residential Building with respect to its alleged adverse effect on the light and air to the Erie, including the light and air to the lower level patios, and diminished enjoyment of the Association's roof decks because of perceived impact on the views from the roof decks and issues of privacy.

On May 22, 2012, the Board voted to approve the application. The Board issued Order No. 18330 dated July 26, 2012, a copy of which is attached. The Association and Richard Weidis, a unit owner in the Erie, appealed the case to the Court of Appeals following issuance of the Order.

Approved Residential Building and Proposed Modification

BZA Order No. 18330 approved the Residential Building to have a maximum zoning height of 48 feet. Based on the approved plans, a copy of which is attached, the Residential Building's roof height was approved at 198 feet, 10 inches and the parapet was approved at 199 feet, 11 inches. A roof structure having a height of 9 feet and meeting the set back requirements was also approved.

In an effort to address the Association's and Mr. Weidis's concerns, your client has agreed to reduce the height of the Residential Building by at least 12 inches from the height approved in BZA Case No. 18330. Accordingly, the roof elevation of the Residential Building will be reduced to a maximum of 197 feet, 10 inches. In addition, your client proposes reducing the parapet from the approved elevation of 199 feet, 11 inches, to a height equal to the existing parapet of the Erie, which is 199 feet, 6 inches.

You have provided to me elevations and sections showing the almost imperceptible impact of these two changes to the overall elevation of the Residential Building. In Finding No. 20, the Board found that the height of the Residential Building will be compatible with the surrounding area, being appropriate to the Erie building immediately adjacent on the north and the approved Brass Knob development immediately adjacent on the south, as well as the overall area. The Board noted that the lowered height from the original submission (i.e., from 50 to 48 feet) supported that finding. Accordingly, this further reduction to 47 feet in height will continue to be compatible and have less impact on the Erie.

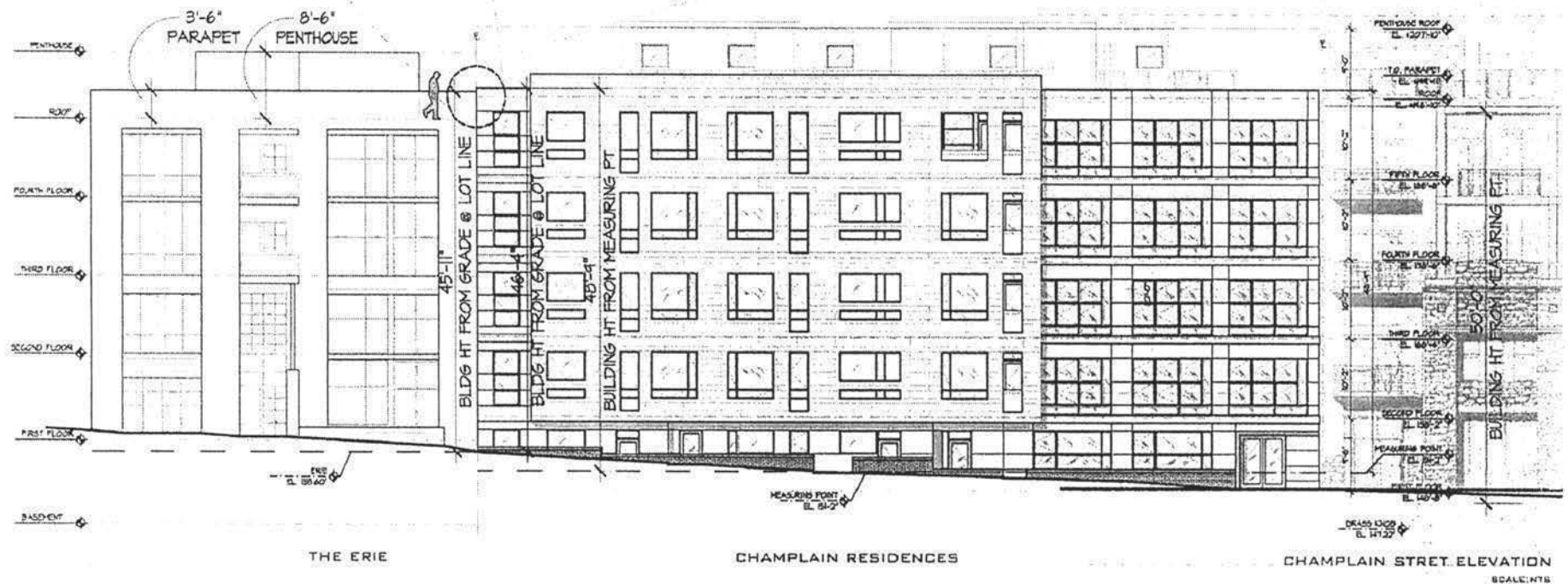
Based on my consideration of the foregoing, I believe that the proposed modifications are within the scope of the plans approved by the BZA. The proposed modifications reduce the extent of the special exception relief approved by the BZA and do not create any other area of nonconformity. Furthermore, the impact of the Residential Building is even less with the slightly reduced height. Therefore, upon proper presentation of plans, I will approve a building permit application for this proposed development with the modifications described above and as shown on the plans that you presented to me as being in compliance with BZA Order No. 18330.

Please let me know if you have any further questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments: Board of Zoning Adjustment Order No. 18330
Approved and Proposed Elevations and Sections

File: Det Let re 2337 Champlain St NW to Shiker 4-9-13



1 WEST ELEVATION (CHAMPLAIN STREET)
A2.1 SCALE: 3/32" = 1'-0"

CHAMPLAIN RESIDENCES

CHAMPLAIN ST, NW
WASHINGTON, DC 20009



PGN ARCHITECTS, PLLC
210 7th Street, SE • Suite 201
Washington, DC 20003
ph. 202-822-5445 fax 202-822-0408



FEDERAL CAPITAL PARTNERS
1000 POTOMAC STREET NW
SUITE 120
WASHINGTON, DC 20007
ph. 202-333-6030 fax 202-333-6048



ALTUS REALTY PARTNERS, LLC
4825 Old Dominion Drive
Suite 201
Arlington, Virginia 22207
ph. (703) 243-4141

CHAMPLAIN RESIDENCES

APPROVED BZA WEST ELEVATION

DATE MARCH 16, 2012

A4.1

EXISTING BUILDING

2337-2349 CHAMPLAIN ST NW

EX.

PENTHOUSE ROOF
EL. +206.88

TOP OF PARAPET
EL. +114.50

ROOF
EL. +117.82

FIFTH FLOOR
EL. +181.61

FOURTH FLOOR
EL. +171.53

THIRD FLOOR
EL. +161.36

SECOND FLOOR
EL. +151.24

MEASURING POINT
EL. +151.16

FIRST FLOOR
EL. +147.24

1 WEST ELEVATION (CHAMPLAIN STREET)
A2.1 SCALE: 3/32" = 1'-0"

CHAMPLAIN RESIDENCES

CHAMPLAIN ST. NW
WASHINGTON, DC 20004



PGN ARCHITECTS, PLLC
210 7th Street, SE - Suite 201
Washington, DC 20003
ph. 202-822-5415 fax 202-822-0926



FEDERAL CAPITAL PARTNERS
1000 POTOMAC STREET NW
SUITE 120
Washington, DC 20001
ph. 202-333-6030 fax 202-333-6046



ALTUS REALTY PARTNERS, LLC
4825 Old Dominion Drive
Suite 201
Arlington, Virginia 22201
ph. (703) 243-4141

CHAMPLAIN RESIDENCES

PROPOSED WEST ELEVATION

DATE: FEBRUARY 14, 2013

A4.1

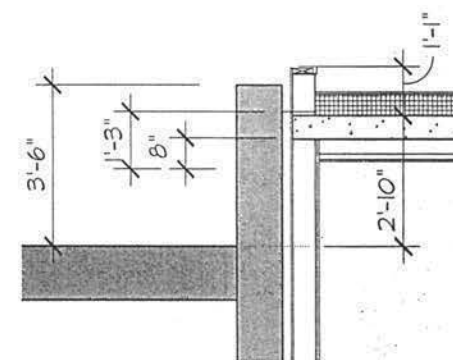
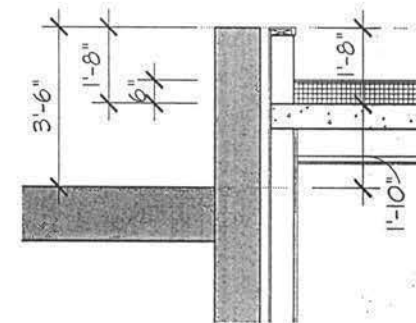
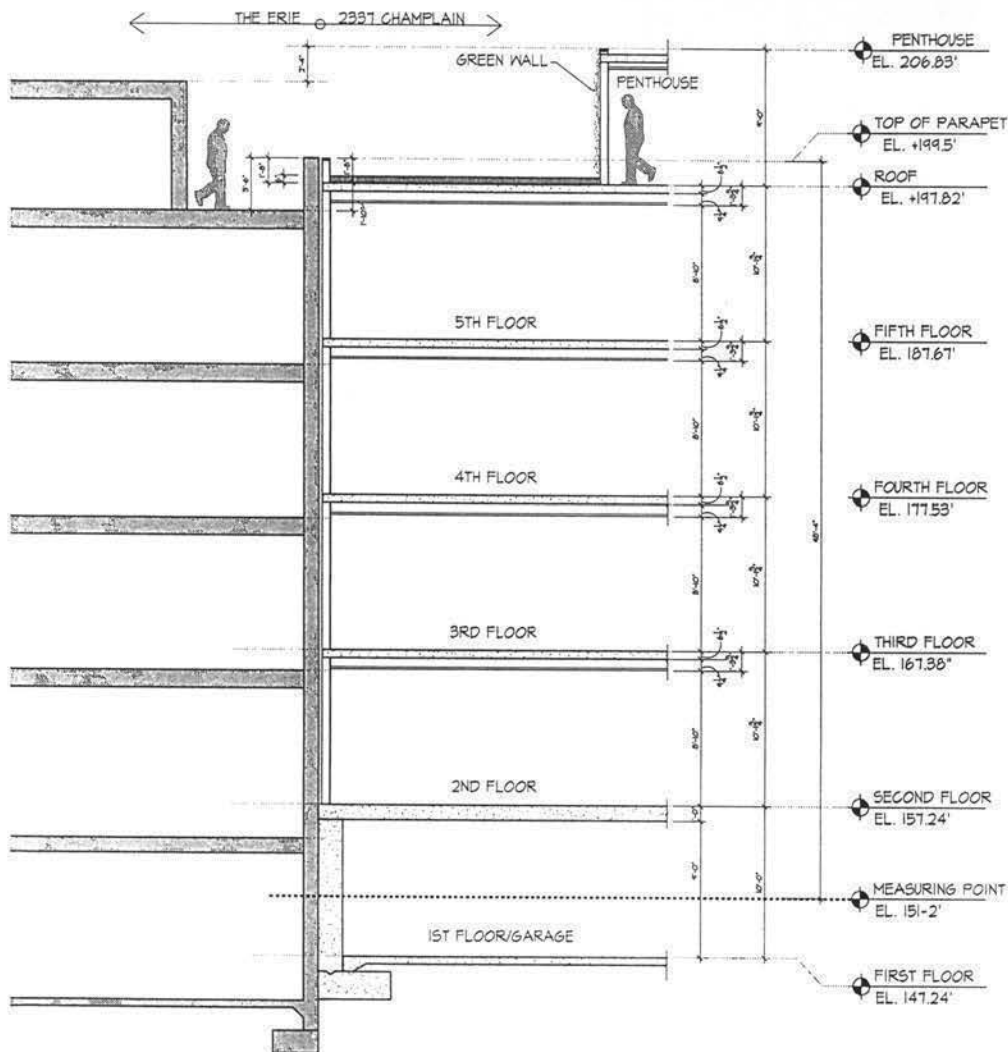


EXHIBIT D -BZA APPROVED

ALTUS REALTY PARTNERS, LLC
4625 Old Dominion Drive
Suite 201
Arlington, Virginia 22207
ph. (703) 243-4141

EXHIBIT D



ENLARGED PARAPET DETAIL

EXHIBIT D - PROPOSED CHANGE

CHAMPLAIN RESIDENCES

CHAMPLAIN ST, NW
WASHINGTON, DC 20004



PSN ARCHITECTS, PLLC
210 7th Street, SE - Suite 201
Washington, DC 20003
ph 202-822-5A45 fax 202-822-0R06



FEDERAL CAPITAL PARTNERS
1000 POTOMAC STREET NW
SUITE 120
WASHINGTON, DC 20007
ph 202-393-6080 fax 202-393-6048



ALTUS REALTY PARTNERS, LLC
4625 Old Dominion Drive
Suite 201
Arlington, Virginia 22201
ph (703) 243-4141

EXHIBIT D

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT C

Korean (한국어)

EXHIBIT C Listen SHARE   **2337 Champlain Street NW to Shiker 2-10-14**

Monday, February 10, 2014

Determination Letter

2337 Champlain Street NW to Shiker 2-10-14

The Zoning Administrator issues determination letters resulting from requests by property owners, developers, architects, and land use attorneys inquiring about the applicable zoning regulations applicable to specific development proposals. These letters offer guidance to requesting parties as to whether a proposed project, such as a new building, an addition to an existing building, or a use change, conform to the District's Zoning regulations as set forth in DCMR Title 11.

Attachment(s):

Attachment	Size
 Letter: Det Let re 2337 Champlain Street NW to Shiker 2-10-14 - 1.2 MB (pdf)	1.24 MB
 A1 - Champlain - Cover Sheet - 12-9-13 - 332.7 KB (pdf)	332.69 KB
 A2 - Champlain - Site Plan - 12-9-13 - 467.7 KB (pdf)	467.68 KB
 A3 - Champlain - 1st Floor - 12-9-13 - 395.0 KB (pdf)	395 KB
 A4 - Champlain - 2nd Floor - 12-9-13 - 493.3 KB (pdf)	493.26 KB
 A5 - Champlain - 3rd Floor - 12-9-13 - 426.5 KB (pdf)	426.52 KB
 A6 - Champlain - 4th Floor - 12-9-13 - 419.4 KB (pdf)	419.36 KB

Resources

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



February 10, 2014

Christy Moseley Shiker
Holland & Knight LLP
800 17th Street, N.W., Suite 1100
Washington, DC 20006

Re: 2337 Champlain Street, NW Lot 887, Square 2563

Dear Ms. Shiker:

This letter is to confirm the substance of my discussions with Brian Papke on November 14, 2013, and the follow up email correspondence with you in January 2014, regarding the proposed building design revisions for the project located at 2337 Champlain Street, NW (Lot 887 in Square 2563) (the "Site"). The project will be known as "The Morgan". You and Mr. Papke requested that I review whether certain revisions could be made to the project previously approved by the Board of Zoning Adjustment ("BZA"), as shown on the plans attached to this letter and dated December 9, 2013.

The site is zoned R-5-B and is located in the Reed Cooke ("RC") Overlay District. The Site has been used as a surface parking lot and is currently vacant. In November, 2011, FCP Champlain, LLC ("Owner") submitted an application to the Board of Zoning Adjustment ("BZA") to permit the development of a residential building ("Residential Building") with the following areas of zoning relief: (1) a special exception under section 1404 to allow an increase in height from 40 feet to 48 feet in the RC Overlay; and (2) a variance from section 402 to allow an increase of .25 FAR above the allowable FAR of 1.8.

On May 22, 2012, the Board voted to approve the application, copy of which is attached. On May 22, 2012, the Board voted to approve the application. The Board issued Order No. 18330 dated July 26, 2012 ("Order No. 18330"), a copy of which is attached.

On April 9, 2013, my office published a determination letter regarding a change in the overall building height. Order No. 18330 approved the Residential Building to have a maximum zoning height of 48 feet. Based on the approved plans, the Residential Building's roof height was approved at 198 feet, 10 inches and the parapet was approved at 199 feet, 11 inches, with a roof structure extending above the roof. The applicant requested that the roof elevation be reduced by 12 inches, to a maximum of 197 feet, 10 inches and that the height of the parapet be reduced from the approved elevation of 199 feet, 11 inches, to an elevation of 199 feet, 6 inches. In that letter, I agreed that the proposed modification was within the scope of the Order No.

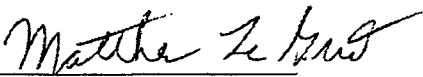
February 10, 2014

Page 3

Based on my review of the attached revised plans, I believe that the proposed modifications are within the scope of the plans approved by the BZA in Order No. 18330. Overall, the proposed plan modifications will have an imperceptible impact on the architectural design and façade of the project. The modifications will also reduce the impact on the views from the roof of the adjacent property to the north. In addition, the proposed modifications will reduce or maintain the extent of special exception and variance relief approved in Order No. 18330 and will not create any new areas of nonconformity.

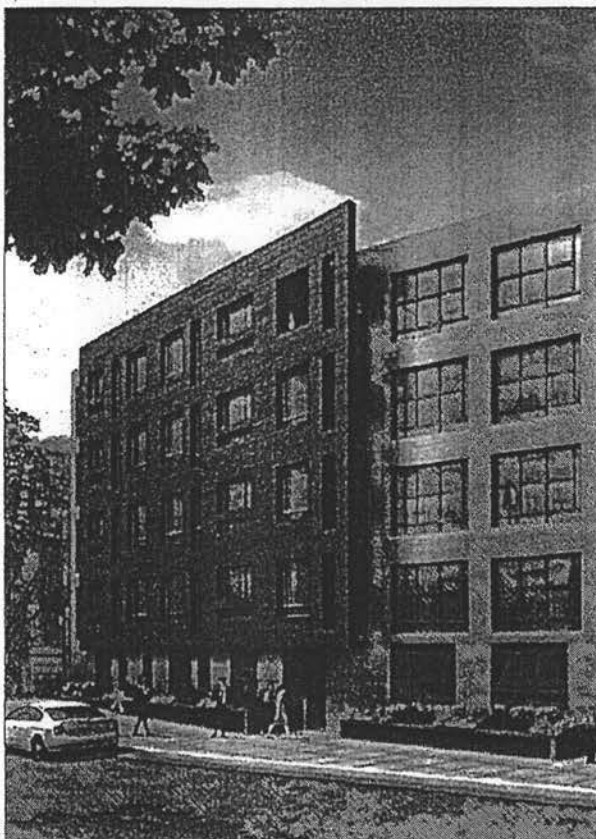
Accordingly, upon proper presentation of plans for a building permit, I will approve drawings that are consistent with the plan modifications and drawings as noted above as being in compliance with Order No. 18830.

Please let me know if you have further questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments: Revised Plans Dated December 9, 2013
Board of Zoning Adjustment Order No. 18330
April 9, 2012, Zoning Administrator Determination Letter

File: Det Let re 2337 Champlain Street NW to Shiker 2-10-14



SIMILAR RENDERING

THE MORGAN

2337 CHAMPLAIN ST., NW
WASHINGTON, DC 20009

MODIFICATION TO BUILDING PLANS

DATED: 12.9.2013



PROPERTY INFORMATION / CODES

BUILDING TABULATIONS

LOT SIZE = 13,853 S.F. (DC RECORD)
ZONING = RC/R-5-B
REED-COOKE OVERLAY
PREVIOUS BZA ORDER NO. 18330

-SHOWING (40) RESIDENTIAL UNITS
(IZ ZONING OVERLAY APPLIES)

MAXIMUM F.A.R. (FLOOR AREA RATIO) = 2.16 (W/IZ)
= 13,853 S.F. X 2.16 = 29,992 (A5-RIGHT)
-PER BZA ORDER NO. 18330 - .25 F.A.R. INCREASE (3,463 S.F.)
2.41 F.A.R. MAXIMUM = 33,385 S.F.

BUILDING G.F.A. / LEVEL PROVIDED:
FIRST = 486 S.F. (CLG. GREATER THAN 4'-0" TO GRADE) (SEE SITE PLAN)
SECOND = 8,221 S.F.
THIRD = 8,221 S.F.
FOURTH = 8,221 S.F.
FIFTH = 8,221 S.F.
ROOF = 0 S.F. (ACCESS TO RECREATION SPACE)
-TOTAL BUILDING G.F.A. PROVIDED = 33,370 S.F.

PARKING

1 PER 2 RESIDENTIAL UNITS REQUIRED
-(20) SPACES PROVIDED FOR (40) RESIDENTIAL UNITS

LOT OCCUPANCY

60% MAXIMUM = 8,311 S.F.
-8,309 S.F. PROVIDED

BUILDING HEIGHT:

PROVIDED = 47'-0" (PER BZA ORDER AND MODIFICATION DATED 4.9.13)

SETBACKS:

NO SIDE YARD SETBACK REQUIRED
(MIN. 3" WIDTH / FOOT OF HEIGHT OF BUILDING)
-11'-9" PROVIDED

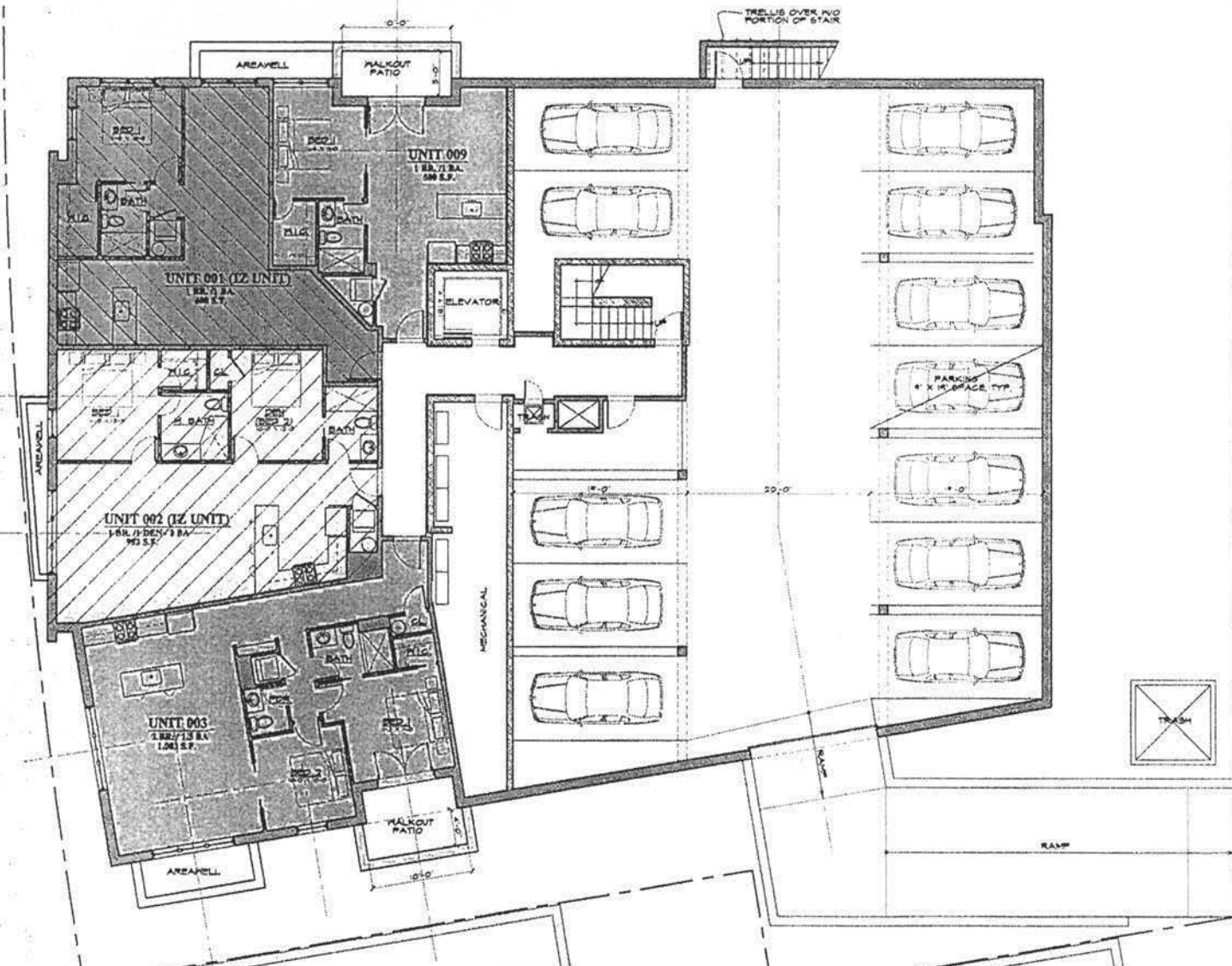
REAR YARD SETBACK REQUIRED (4" / FT. OF HT.) = 15'-8"
-16'-0" PROVIDED (TO BALCONY)

IZ UNITS:

8% OF BUILDING G.S.F. = .8 X 32,884 S.F. = 2,631 S.F. REQUIRED
-UNIT 001 - 608 S.F. 1-BED @ 50% AMI
-UNIT 002 - 982 S.F. 2-BED @ 80% AMI
-UNIT 108 - 577 S.F. 1-BED @ 50% AMI
-UNIT 108 - 577 S.F. 1-BED @ 80% AMI
-IZ UNIT S.F. PROVIDED = 2,744 S.F.

EXISTING
ALLEY





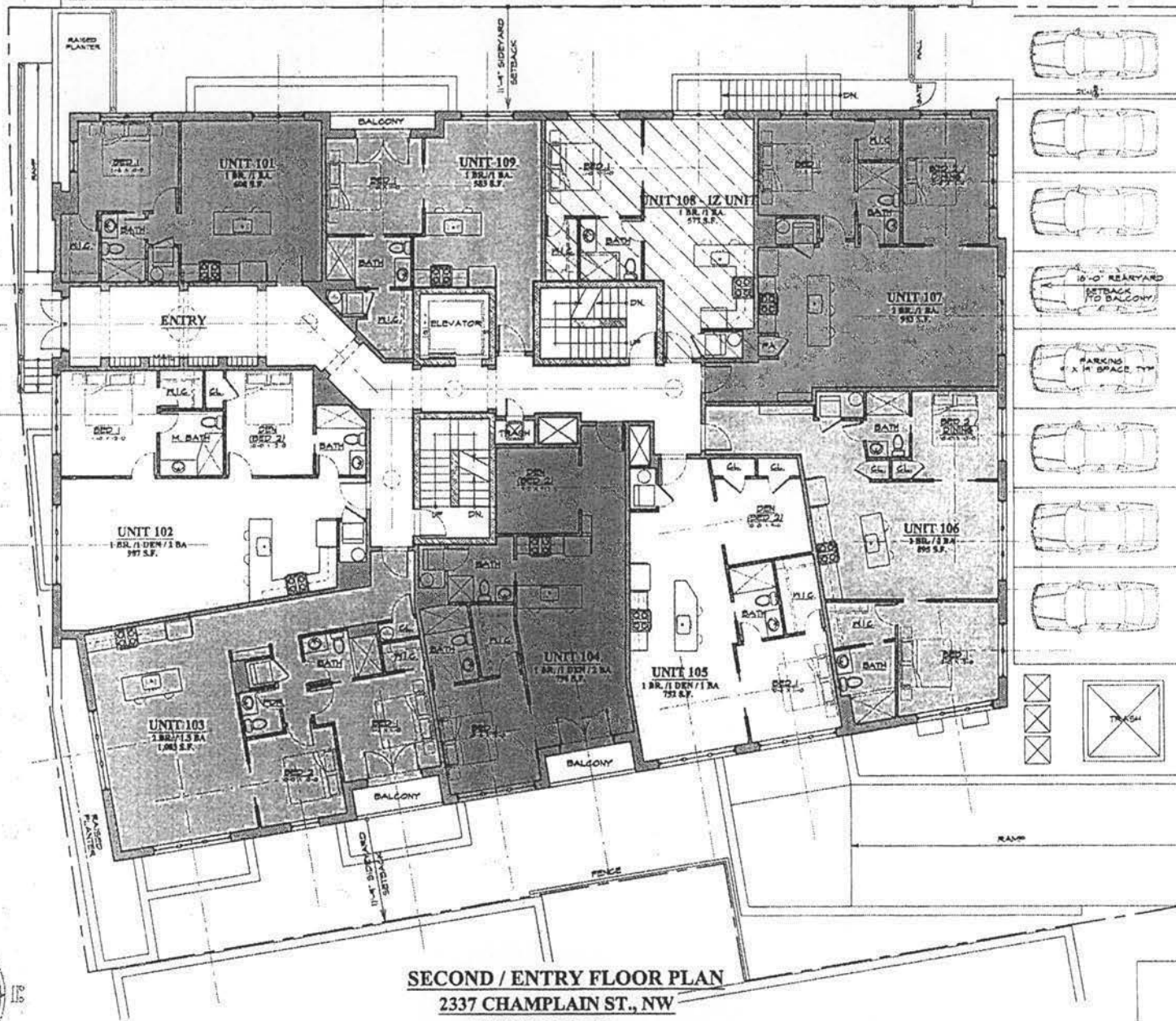
CELLAR/FIRST FLOOR PLAN

2337 CHAMPLAIN ST., NW

REVISED BUILDING
12.9.2013



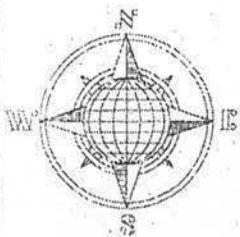
CAPITAL CITY
REAL ESTATE



SECOND / ENTRY FLOOR PLAN

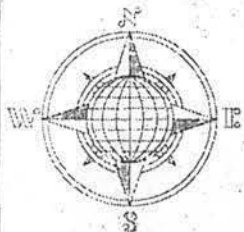
2337 CHAMPLAIN ST., NW

REVISED BUILDING
12.9.2013





THIRD FLOOR PLAN
2337 CHAMPLAIN ST., NW
 REVISED BUILDING
 12.9.2013



FOURTH FLOOR PLAN
2337 CHAMPLAIN ST., NW
 REVISED BUILDING
 12.9.2013



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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT D

EXHIBIT D

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**Unit Owners' Association of The
Erie Condominium, et al**

Plaintiffs,

V.

2337 Champlain Street, LLC, et al

Defendants.

ACTION INVOLVING

REAL PROPERTY

Civil Action No. 2015 CA 009273 R (RP)

Judge: Michael O'Keefe

Calendar: Civil 2, Calendar 2

**Next Event: Hearing on Motion for
TRO 12/18/15 at 10:30 a.m.**

OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

Defendants 2337 Champlain Street, LLC and Capital City Real Estate, LLC by counsel,
and pursuant to Rules 52 and 65 of the Superior Court Rules of Civil Procedure, respectfully
submit this Memorandum of Law in response to Plaintiffs' Motion for a Temporary Restraining
Order ("TRO Motion").

Plaintiffs Unit Owners' Association of The Erie Condominium, Richard N. Wiedis, David H. Stephens, Mark S. McKenzie, Lee H. Smith, Saul M. Levin ("Plaintiffs") have filed a Complaint against 2337 Champlain Street, LLC, Capital City Real Estate, LLC, and FCP Champlain, LLC for injunctive relief, breach of contract, promissory estoppel, and fraud/misrepresentation. They have also filed a Motion for a Temporary Restraining Order ("TRO Motion") seeking to enjoin two of the Defendants--2337 Champlain Street, LLC and Capital City Real Estate, LLC--from continuing construction, improvements, and/or occupancy of the roof structures and roof surfaces

sent by email to Plaintiff Richard Wiedis on March 19, 2014. *See* Declaration of Christian Cronin at ¶ 12.

The construction at the Property complies with all applicable Zoning Regulations, as modified by BZA Order 18330 and the Adjacent Property Owner Agreement, as set forth in the chart below:

Feature	Height Permitted			
	BZA Order	Settlement Agreement and ZA 2013 Determination Letter	ZA 2014 Reliance Letter	Building Permit Plans
Elevation of Roof	198 ft, 10 in.	197 ft., 10 in.	197.9 ft.	196.47 ft.
Elevation of Parapet	199 ft., 11 in.	199 ft., 6 in.	199.5 ft.	198.14 ft.

See Declaration of Christian Cronin at ¶ 14.

The height of the roof structure at the Property was not addressed by the BZA Order, the Settlement Agreement, or otherwise by the Zoning Administrator. As a matter of right, the roof structure could be up to 18.6 feet above the roof, or up to 225.07 feet in this case. *See* 11 DCMR § 411.³ As reflected on the plans attached as Exhibit 5 to the Cronin Declaration, the roof structure at the Project is 208.91 feet and the roof structure parapet is 212.93 feet. This is consistent with the Zoning Regulations.

At every turn, Plaintiffs had knowledge of Defendants' proposals. In fact, the most recent revision to the plans for the roof structure were made to accommodate Plaintiffs' concerns.

³ Plaintiffs' citations to discussions before the BZA regarding the height of this structure are irrelevant. Neither the BZA Order or the Settlement Agreement restricted the height of this structure in any way.

and under a validly issued permit—without having completed the administrative appeal process and without naming an indispensable party—the Zoning Administrator that issued the permit.⁴

The Court should not indulge this request.

2. Plaintiffs’ Substantive Position Is Inconsistent With The Long-Standing Interpretation of the Zoning Administrator and the BZA.

As set forth above, Defendants are building under a lawfully issued permit. Plaintiffs do not dispute this. Instead, they contend that Defendants are acting unlawfully because they are not building in accordance with the exact plans that the BZA approved in 2012.

This position is inconsistent with the Zoning Administrator’s interpretation of the Zoning Regulations and the long-standing practice of the Zoning Administrator and the Board of Zoning Adjustment.⁵ As a practical matter, the version of plans submitted to and approved by the BZA generally do not have the level of detail in them to be used as the final construction set of drawings. Therefore, minor changes to BZA-approved plans are routinely approved by the Zoning Administrator in later submissions, so long as they do not materially alter the proposed project.

This is a practical necessity, and the Zoning Administrator and BZA’s position is entitled to deference. *Mallof v. District of Columbia Board of Elections and Ethics*, 1 A.3d 383, 391-93 (D.C. 2010) (“we must defer to the Board’s interpretation of the regulation it has promulgated unless its interpretation is ‘plainly wrong or inconsistent with the governing statute’”) (citations omitted); *see also* *Sisson v. District of Columbia Bd. of Zoning Adjustment*, 805 A.2d 964, 968

⁴ *See Am. Univ. In Dubai v. D.C. Educ. Licensure Comm’n*, 930 A.2d 200, 208 (D.C. 2007) (“[i]f a party is indispensable, the action must be dismissed unless the party is joined.” A party is indispensable when “he has an interest in the proceeding ... and a final decree cannot be made in the party’s absence without having an injurious effect on that interest; when the court cannot do complete and final justice without affecting the party’s interest; or when the final determination of the controversy in the party’s absence will be inconsistent with equity and good conscience.”).

⁵ The Zoning Administrator is “responsible for administratively interpreting and enforcing the Zoning regulations.” Reorganization Order No. 55. The BZA has the final administrative responsibility for the interpretation of zoning regulations. *See Keefe Co. v. District of Columbia Bd. of Zoning Adjustment*, 409 A.2d 624, 625-26 (D.C. 1979).

CONCLUSION

For the reasons set forth above, Defendants respectfully requests that the Court DENY Plaintiffs' Emergency Motion for a Temporary Restraining Order.

Respectfully submitted,

/s/ Philip T. Evans

Philip T. Evans (D.C. Bar # 441735)

Christine N. Walz (D.C. Bar # 996643)

Holland & Knight LLP

800 17th Street, N.W., Suite 1100

Washington, D.C. 20006-6801

202-955-3000

202-955-5564 (fax)

philip.evans@hklaw.com

christine.walz@hklaw.com

*Counsel for Defendants 2337 Champlain Street,
LLC and Capital City Real Estate, LLC*

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT E

RECEIVED
D.C. OFFICE OF ZONING
2012 MAR 20 AM 10:42



CHAMPLAIN RESIDENCES WASHINGTON, DC 20009

LIST OF DRAWINGS

A-0.0	COVER SHEET
A-0.1	SITE PLAN AND ZONING CRITERIA
A-0.2	RENDERED SITE PLAN
A-0.3	AERIAL VIEW
A-0.4	SITE CONTEXT
A-0.5	ZONING BOUNDARY PLAN
A-1.1	RENDERED STREET ELEVATION (CHAMPLAIN ST)
A-2.1	STREET VIEW
A-2.2	STREET VIEW
A-2.3	NIGHT VIEW
A-2.4	COURTYARD VIEW
A-2.5	COURTYARD VIEW
A-3.1	BUILDING SECTION IN SITE CONTEXT
A-3.2	RENDERED BUILDING SECTION @ RAMP
A-3.3	RENDERED BUILDING SECTION @ STAIRS
A-3.4	RENDERED BUILDING SECTION @ UTILITY ROOMS
A-4.1	WEST ELEVATION (CHAMPLAIN ST)
A-4.2	EAST ELEVATION (ALLEY)
A-5.1	FIRST FLOOR PLAN (CELLAR)
A-5.2	SECOND FLOOR PLAN
A-5.3	THIRD FLOOR PLAN
A-5.4	FOURTH FLOOR PLAN
A-5.5	FIFTH FLOOR PLAN
A-5.6	ROOF PLAN

CHAMPLAIN RESIDENCES

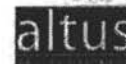
CHAMPLAIN ST, NW
WASHINGTON, DC 20009



POK ARCHITECTS, PLLC
207 7th Street, SE - Suite 201
Washington, DC 20003
ph 202-622-9998 fax 202-622-0708



FEDERAL CAPITAL PARTNERS
1000 POTOMAC STREET NW
SUITE 1200
Washington, DC 20027
ph 202-398-6080 fax 202-398-6016



ALTUS REALTY PARTNERS, LLC
4825 Old Dominion Drive
Suite 201
Arlington, Virginia 22207
ph 703/545-4444

CHAMPLAIN RESIDENCES

COVER SHEET

A0.0

Board of Zoning Adjustment

MARCH 16, 2012
District of Columbia

CASE NO. 18330

EXHIBIT NO. 30H

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EXHIBIT E



1 SITE PLAN
SCALE: 1/8" = 1'-0"

ZONING CRITERIA

2337 Champlain Street, NW March 16, 2012

SPECIFICATIONS	REQUIRED / ALLOWED	PROVIDED
Zoning District	RC/R-5-B	
Lot Area	13,853	
Lot Occupancy	60%	60% (8,310 SF)
Total Permitted FAR	2.16 (29,922)	2.41 (33,386 SF)
FAR - Matter of Right	1.1	
FAR Bonus - 20 % for IZ (Inclusionary Zoning)	0.36	
Height	40'-0"	48'-9"
Front Yard	N/A	N/A
Side Yard Setback	None required, if provided, 3'/ft per bldg height of court, but not less than 8ft.	none
Rear Yard Setback	15'-0"	19'-5"
Penthouse Height	18'-6"	9'-0"
Parking	1 space per 2 units	20 spaces
One-way driveway width	min. 12'-0"	N/A
Two-way driveway width	14'-0"	14'-8"
Parking space size		
Regular size	9'-0" x 19'-0"	19
Van size	11'-0" x 19'-0"	1
Compact size	8'-0" x 16'-0"	none
Loading	N/A	N/A

* Open Courtyard: 3in, per foot of height of court, but not less than 6ft.
* Closed Courtyard: 4in, per foot of height of court, but not less than 15ft.

COURTYARD / YARD	AREA SF - PROVIDED	
Courtyard 1 (Closed courtyard) (42'-2" x 4")/12-14'-0" min. & not less than 992 SF area	1590 sf	27'-7 1/2"
Courtyard 2 (Open courtyard; includes the area below the south building) Rear yard w/rear parking. Not less than 15'-0"	1235 sf	25'-2"
	NA	19'-10"

CHAMPLAIN RESIDENCES

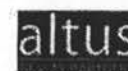
CHAMPLAIN ST. NW
WASHINGTON, DC 20004



FHA ARCHITECTS, PLLC
201 M Street, SE - Suite 201
Washington, DC 20003
ph. 202-822-8448 fax 202-822-0408



FEDERAL CAPITAL PARTNERS
1000 POTOMAC STREET NW
SUITE 600
WASHINGTON, DC 20007
ph. 202-383-4030 fax 202-383-4048

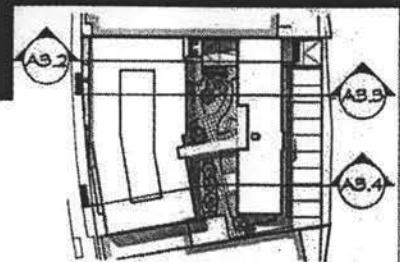


ALTUS REALTY PARTNERS, LLC
4628 Old Dominion Drive
Suite 301
Falls Church, Virginia 22071
ph. (703) 246-4444

CHAMPLAIN RESIDENCES
SITE PLAN & ZONING CRITERIA

MARCH 16, 2012

A0.1



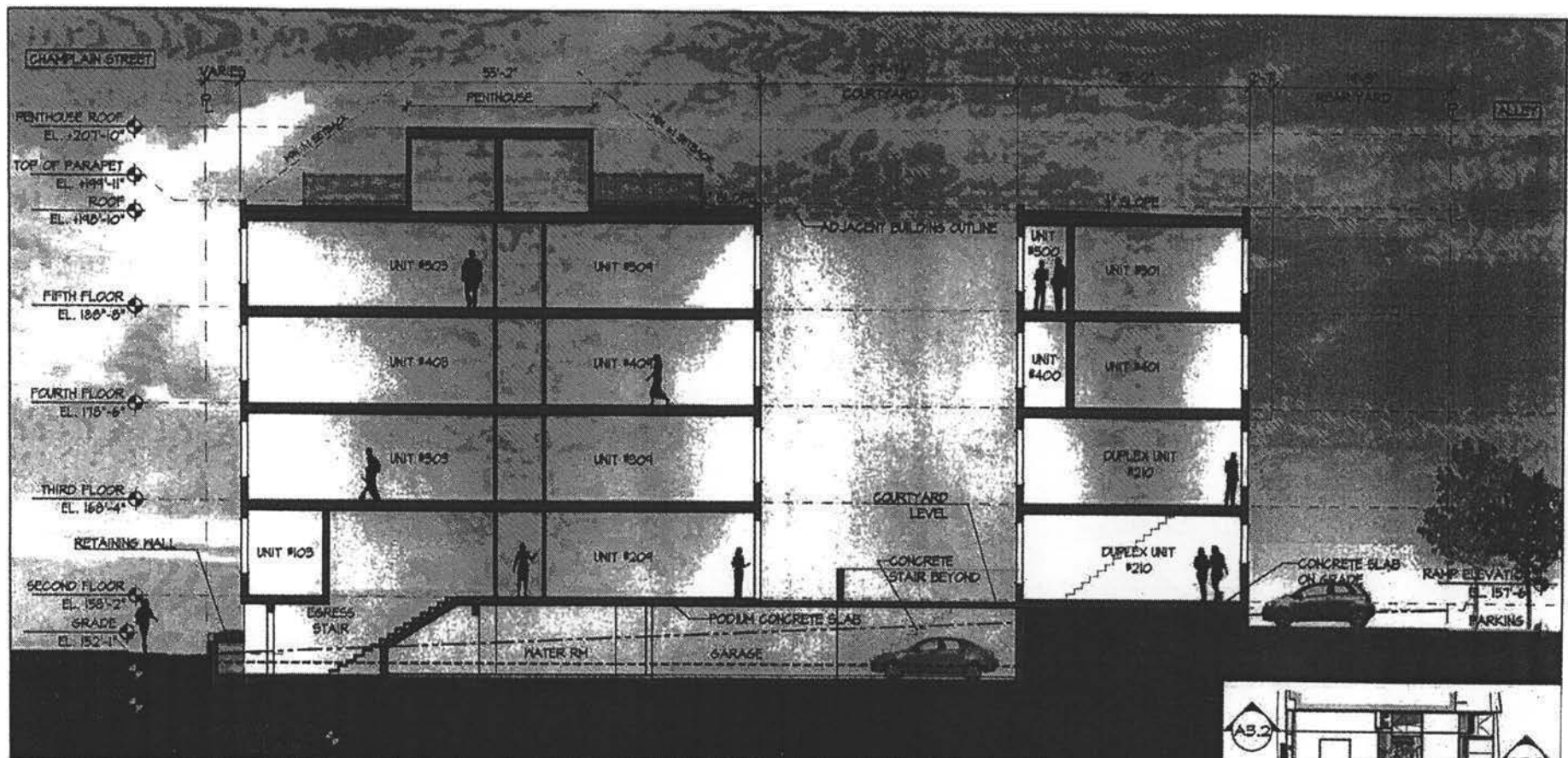
CHAMPLAIN RESIDENCES
RENDERED BUILDING SECTION

A3.2

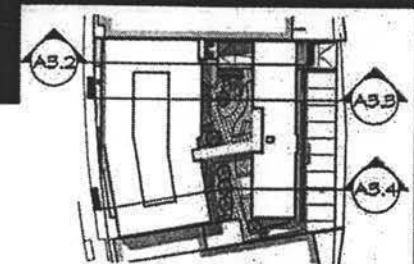
MARCH 18, 2012

ALTUS REALTY PARTNERS, LLC
4625 Old Dominion Drive
Suite 301
Arlington, Virginia 22207
ph. (703) 343-4444

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A3.3 BUILDING SECTION @ STAIRS
RAMP SLAB SIDE-UP



CHAMPLAIN RESIDENCES

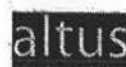
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WASHINGTON, DC 20004



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CHAMPLAIN RESIDENCES
RENDERED BUILDING SECTION

A3.3

MARCH 16, 2012

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT F

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

APRIL 3, 2012

+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room 220 South at 441 4th Street,
N.W., Washington, D.C. 20001, pursuant to
notice at 9:30 a.m., Lloyd J. Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN	Chairperson
JEFFREY HINKLE	Board Member (NCPC)
RASHIDA Y.V. MACMURRAY	Board Member

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
--------------	-----------

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1 MS. SHIKER: Absolutely.

2 CHAIRPERSON JORDAN: We have all
3 read your prehearing statement and we have all
4 reviewed the file, so we are pretty much up on
5 that.

6 MS. SHIKER: Okay. Wonderful. So
7 what I'll do is I'll give a brief introduction
8 and then I will turn it over to our witnesses
9 to present some specific information with
10 respect to the questions that you have.

11 You know, as you have seen in the
12 record, we are very pleased we built a
13 coalition of support with the Office of
14 Planning, with District Department of
15 Transportation, the ANC, but we, of course,
16 know that the Erie Condominium is opposed to
17 the project and has concerns over light, air
18 and views.

19 We have met with them. We have
20 met at least on two occasions and we have
21 presented to the ANC on four occasions. And
22 since originally submitting the application,

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1 we have made changes trying to address these
2 concerns, specifically our original request
3 was for a building that had a maximum height
4 of 50 feet. We have reduced that to the
5 maximum height of the parapet being 40 feet 9
6 inches.

7 We have also reduced the size of
8 the roof structure to the maximum extent
9 possible and set it back as far away as we can
10 from the Erie Condominium. Mr. Goins will, in
11 just a moment, describe in detail how those
12 absolute height elevations match up.

13 I know there are some questions in
14 the record about how tall the Erie building
15 is, how tall our building is and how they
16 match up and Mr. Goins is going to talk about
17 that in detail.

18 We also believe that by setting
19 back the penthouse, we really have created a
20 superior condition to some of those conditions
21 that could have been as a matter-of-right.
22 And we have also, as Mr. Goins will talk

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1 reasons, we had to get that to work. So that
2 is not included in that calculation.

3 And you can also kind of start to
4 see the sections that we have set the
5 penthouse back 18 feet off Champlain Street
6 and also 18 feet off our property line as
7 well.

8 Here is kind of just some
9 perspectives to kind of give you a sense of
10 the courtyard and kind of what we are trying
11 to create with the project. I think Christy
12 mentioned we were trying to create a superior
13 project and I think a lot of the other
14 schemes, it just wasn't possible to achieve a
15 lot of the air and light and some of the other
16 ideas.

17 Here is kind of a bird'seye view
18 looking into the courtyard. I think the
19 courtyard goes from 25 feet to 27 feet in
20 width.

21 Now, to get to, I think, probably
22 the meat of the case here is the height and

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1 the penthouse. I think we really tried to
2 blend in this project contextually along
3 Champlain Street and so you can kind of see
4 this is a streetscape elevation here.

5 The adjacent property to us, which
6 is the approved Brass Knob, is at a height of
7 50 feet and 2.64 FAR. This is the PN Hoffman
8 building, which is a PUD, at 2.75 and 50 feet.

9 And we are right here and we are at 48.9 feet
10 in measuring.

11 Now, our measuring point is
12 measured -- well, I'll do that on the next
13 slide.

14 And here is the Erie, which is
15 adjacent to us as well. I think you can kind
16 of get a sense of the penthouses there, too.
17 We really tried to blend in with and be
18 contextual with the block.

19 CHAIRPERSON JORDAN: What's the
20 height difference between Erie and this
21 building?

22 MR. GOINS: I'll show you in the

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1 perspectives to kind of show you the view from
2 there. And one is from the front as if you
3 were standing on the Erie and one is at the
4 rear standing on the Erie.

5 This is the first perspective.
6 I'm showing you the 18 foot setback to our
7 penthouse here, which, as Christy mentioned,
8 stands 9 feet tall. This is standing on the
9 Erie with their -- and this is the 5 inch
10 condition, the parapet difference.

11 Now, the original idea of the
12 design, there is a plane. I think you kind of
13 saw it in the original perspective and there
14 is another perspective that will show a kind
15 of quick animation and I'll show as well.

16 This is kind of an architectural
17 embellishment. We really wanted it to be like
18 two planes intersecting at that point. That
19 was kind of our main idea for the design. So
20 there is an architectural embellishment here
21 of 1 foot 4 for that plane where it does
22 exceed our parapet height.

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1 Four units on the back and three
2 units on the front. Each one has an internal
3 stair leading up into the penthouse and then
4 out onto the roof terrace.

5 The penthouses are only 9 feet
6 tall above the level of the roof. They could
7 be 18.6 as a matter-of-right, but they are
8 only 9 feet tall. They are set back 18 feet
9 from the edge of the roof, so they are set
10 back 2:1, rather than 1:1 which is sort of the
11 normal rule of thumb for the setback of roof
12 structures.

13 As we said before, the individual
14 roof terraces are on the east and west sides
15 of the penthouse, so they are at least 20 feet
16 removed from the north wall of our building
17 overlooking the Erie to the north. And only
18 the two units at the upper most end of that
19 would have any access to those, so you are
20 talking about a couple of people who if they
21 are up on the roof and not reading their book
22 or looking at the sun or looking at the

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1 parapet walls, correct?

2 MR. GOINS: Yes.

3 MS. HORVITZ: And the roof of the
4 two buildings are not at the same level,
5 correct?

6 MR. GOINS: Yep, yes.

7 MS. HORVITZ: I thought I heard
8 testimony that the parapet wall for the Erie
9 is, approximately, 3.5 feet tall. Is that
10 correct?

11 MR. GOINS: That is correct.

12 MS. HORVITZ: And the parapet wall
13 for the FCP project is about 5 or 6 inches.
14 Is that correct?

15 MR. GOINS: Yes, that's correct.

16 MS. HORVITZ: So the roof line
17 difference is not, in fact, 5 or 6 inches, is
18 it?

19 MR. GOINS: No.

20 MS. HORVITZ: The difference in
21 the roofs where people are actually standing
22 is how many feet?

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1 MR. SHER: It's 2 feet 10 inches.

2 MS. HORVITZ: Well, let's break
3 that down. I saw that in your presentation,
4 Mr. Sher, although you didn't testify to it.

5 You have a 3.5 foot parapet wall,
6 right? And then on top of that you have a 5
7 inch parapet wall. I mean, isn't it closer to
8 a 4 foot difference between the two roofs?

9 MR. SHER: I don't believe it is,
10 no.

11 MR. GOINS: No, it's not.

12 MS. HORVITZ: Well, how tall is
13 the FCP building at the roof?

14 MR. SHER: To the top of the roof,
15 the plan on Sheet A4.1 shows the roof to be,
16 of our building, at elevation 198.10.

17 MS. HORVITZ: At the north corner
18 or at the general measuring point?

19 MR. SHER: I think the elevation
20 is pretty much the same all the way across the
21 roof, right?

22 MR. GOINS: Yes.

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1 MS. HORVITZ: So do you know
2 whether the penthouse structures that are
3 being proposed in this application exceed a
4 third?

5 MR. SHER: I don't know. Mr.
6 Goins may know.

7 MR. GOINS: No. No, I don't know.

8 MS. HORVITZ: You don't know?

9 MR. GOINS: No.

10 MS. HORVITZ: And what are the
11 anticipated uses of the penthouse structures?

12 MR. GOINS: It's for the access
13 for the seven units below.

14 MS. HORVITZ: And --

15 MR. GOINS: And the mechanical
16 equipment, yes.

17 MS. HORVITZ: Okay.

18 MR. GOINS: It will be restricted
19 to the mechanical equipment and access to the
20 roof.

21 MS. HORVITZ: So there won't be
22 any finished interior space on the roof?

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1 MR. GOINS: Well, the mechanical
2 rooms will be finished, but, no otherwise.

3 MS. HORVITZ: No showers,
4 bathrooms?

5 MR. GOINS: No.

6 MS. HORVITZ: Okay. I believe
7 there was a reference in the presentation to
8 the fact that the applicant contends that the
9 Erie is not in the RC Overlay District. Why
10 was that significant to the applicant to point
11 out without conceding the point?

12 MR. SHER: A, it's a matter of
13 fact. And B, it indicates that the Erie
14 building could have been built to the same
15 height or a slightly higher height than what
16 we -- than this is proposed for. It isn't,
17 but it could have been.

18 MS. HORVITZ: And does that change
19 the zoning analysis? Are you saying that the
20 Erie is less entitled to zoning protection
21 because it could have been taller?

22 MR. SHER: No, I never said that

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1 they will be different.

2 MS. HORVITZ: And did the Office
3 of Planning appreciate that when it wrote its
4 report?

5 MS. THOMAS: Yes, we did.

6 MS. HORVITZ: The Office of
7 Planning report also stated that "The proposed
8 height of the building should not
9 substantially affect the neighboring
10 property," and I'm quoting from the report at
11 paragraph-- at page 4.

12 Is that the legal standard
13 substantial adverse effect?

14 MS. THOMAS: We use that term
15 because everything, as Mr. Sher rightfully
16 pointed out, would have some type of impact.
17 You would see a difference, but would it
18 adversely -- how adverse that impact would be?
19 It would be on a comparative standard. So
20 substantially or not, we use that term.

21 MS. HORVITZ: Could the applicant
22 at the building phase of this project build a

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1 larger parapet wall that blocked views as of-
2 right?

3 MS. THOMAS: I don't believe so,
4 no. Whatever plan is submitted has to be
5 submitted to the permitting. Whatever plan is
6 submitted to the Board is submitted to
7 permitting and that's the plan that is
8 approved.

9 MS. HORVITZ: And the applicant
10 isn't proposing to provide any additional
11 affordable housing over the IZ requirements,
12 are they?

13 MS. THOMAS: Not as to our
14 understanding, no.

15 MS. HORVITZ: And in the Reed-
16 Cooke Overlay, isn't there a standard by which
17 additional height can be procured by a
18 developer from 40 to 50 feet if additional
19 affordable housing is provided over and above
20 the IZ requirements?

21 MS. THOMAS: No.

22 MS. HORVITZ: That's all I have.

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1 cause adverse effects on the Erie.

2 That is going to decrease our
3 property values and hurt our investments. And
4 that will decrease the values of the square
5 footage in the building and will affect not
6 only the penthouse rooftop owners, but
7 everybody in the building. And we feel that
8 as residents who made initial investment in
9 this property, that we would ask that the
10 Board preserve our investment, since we were
11 there first, and ask that the applicant stay
12 within matter-of-right.

13 So if you look further into some
14 of the exhibits, you can see -- if you go to
15 Exhibit D, the Washington Monument. You can
16 see how having a rooftop structure that is
17 even 5 inches higher on top of the parapet
18 wall, if you look at Exhibit E, if there is
19 people and objects and furniture and fences
20 and trees on top of that roof, which is 4 or 5
21 feet higher, that's going to substantially
22 affect our views.

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1 going to ask you a few questions on rebuttal.

2 Exhibit A that was submitted by
3 the Erie Condominium, will this view west be
4 impacted in any way by our building?

5 MR. GOINS: No.

6 MS. SHIKER: On Exhibit G, there
7 is a tall something blocking the view. Can
8 you, please, confirm again what is the
9 difference between the parapet heights?

10 MR. GOINS: 5 inches.

11 MS. SHIKER: What is the
12 difference between the roof heights?

13 MR. GOINS: 2 foot 10.

14 MS. SHIKER: In terms of the
15 elevations of the properties where they abut
16 each other at the property line, can you again
17 tell us how you confirmed the exact
18 elevations, not zoning heights, but elevations
19 of the two projects?

20 MR. GOINS: Yes. Initially, we
21 counted brick. The second time we went out,
22 we shot a laser. Then we were able to get the

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1 structural drawings, so we actually have the
2 structural drawings from the structural
3 engineer that designed the property that also
4 confirmed the elevations and last but not
5 least, the condo plat, which has the elevation
6 height on it.

7 So we are certain that those
8 heights are correct.

9 MS. SHIKER: And we have copies of
10 those for the Board, if they would like to see
11 those. All right.

12 At this time, I would like to
13 thank you for the opportunity to present our
14 case today. Based on the testimony you have
15 heard and the full record before you, we
16 believe we have fully demonstrated that we
17 have met the burden of proof for the special
18 exception for height under the Reed-Cooke
19 Overlay and for a variance from the FAR
20 requirements.

21 The evidence establishes that
22 there will be no more adverse impact on the

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1 adjacent property to the north.

2 The case law is clear that an
3 adjacent property owner is not entitled to a
4 view across property. That was originally
5 established in the Hevazi v. Stiglitz case and
6 this Board has reaffirmed that finding time
7 and time again.

8 And I have copies of orders where
9 the Board specifically finds there is no right
10 to a view across the property. However, the
11 applicant has very sensitively designed this
12 project to preserve those views to the maximum
13 extent possible. I think you have seen that
14 through the view documents that we have given
15 to you.

16 And by maintaining the penthouse
17 as low as possible and as far away from that
18 Erie's roof as possible, we have also agreed
19 to limit the active rooftop space to more than
20 20 feet away from the Erie, which will provide
21 them privacy as they use the rooftop deck.

22 And we have also found no evidence

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT G



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel: (202) 442 - 4589

Fax (202) 442 - 4862

**B****BUILDING PERMIT**THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED

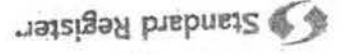
Issue Date: 06/17/2015

Expiration Date: 06/17/2016

PERMIT NO. B1410680

Address of Project: 2345 CHAMPLAIN ST NW		Zone:	Ward: 1	Square: 2563	Suffix:	Lot: 0887
Description Of Work: New 40 unit residential building with underground garage parking.						
Permission is Hereby Granted To: 2337 Champlain Street LLC C/O Capitol City Real E		Owner Address: 1515 14TH STREET NW WASH DC 20005		PERMIT FEE: \$11,705.17		
Permit Type: New Building	Existing Use: Other (Specify)		Proposed Use: Multifamily (> 2 units)		Plans:	
Agent Name: Phillip Pittenger-dunham Capitol Permits	Agent Address: 490 M Street SW W103 Wash Dc 20024	Existing Dwell Units:	Proposed Dwell Units: 40	No. of Stories: 4	Floor(s) Involved: All	
Conditions/ Restrictions: A NEW 40 UNIT APARTMENT BUILDING INCLUDING 4 AFFORDABLE UNITS NOS. 003 (80 % AMI), 009 (50% AMI), 108 (50% AMI), AND 201 (80 % AMI), FOR A TOTAL OF 2,951 SQ-FT. PRIOR TO ISSUANCE OF THE FINAL C OF O THE WALL CHECK SHALL BE APPROVED AND A ZONING INSPECTION SHALL VERIFY THE REQUIRED AUTOMOBILE PARKING AND AFFORDABLE UNITS. A ZONING INSPECTION SHALL VERIFY THE 12 UNITS AND THE 20 FT. REQ. SETBACK FROM THE NORTH PROPERTY LINE PER BZA ORDER NO. 18330.						
This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit. Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2006' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov, Lead and Healthy Housing.						
Interim Director: Melinda Bolling		Permit Clerk Wendy Watkins				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

SECURE DOCUMENT



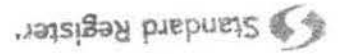
SECURE DOCUMENT

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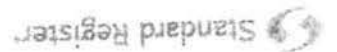
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SECURE DOCUMENT

SECURE DOCUMENT



SECURE DOCUMENT

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT H

EXHIBIT H

Sent from my iPhone

Begin forwarded message:

From: Brian Papke <brian@capcityre.com>
Date: December 23, 2013 at 2:53:17 PM EST
To: Rich Wiedis <wiedis@aol.com>
Subject: RE: 2337 Champlain follow-up

Hi Rich,

Thanks for your questions. See my attached responses – and let me know if you need any further clarification.

Also please advise if you have any comments regarding the draft letter I'd sent over late last week. We have a meeting scheduled with the zoning administrator in the first full week of January to go over the changes – and need to have a letter in hand at that point as requested by him.

Thanks.

Brian Papke

From: Rich Wiedis [<mailto:wiedis@aol.com>]
Sent: Friday, December 20, 2013 12:31 PM
To: Brian Papke
Subject: Re: 2337 Champlain follow-up

Hi Brain,

Please find attached our list of questions. One of the questions relates to rooftop view drawings. I've attached examples from the old building.

-----Original Message-----

From: Brian Papke <brian@capcityre.com>
To: Rich Wiedis <wiedis@aol.com>
Sent: Thu, Dec 19, 2013 8:45 am
Subject: RE: 2337 Champlain follow-up

Great Rich, thank you.

As I mentioned in our meeting, we have met with the zoning administrator to see if this new proposed building is in keeping with the previous BZA-approved design in terms of the variances requested. The that end, he recognized that the building was substantially different than the original, and as such, has asked us to meet with you (the Erie Condominium Association) to get your input on the building since you were the only ones who what issue with the previous design.

We are moving forward with the current building plans – but also as mentioned – we would prefer to building this building. It is more in keeping with our design philosophy, and is much more efficient than the current plans. In order to do so, we need to move quickly to determine if this is a possibility. To do this, we need to provide the Zoning Administrator with some information – and importantly an opinion from the Erie Association in favor of the project.

Please let me know first opportunity where you and your building stands. If you are in favor of the re-design, let me know as soon as possible. I would suggest that my team draft a letter that would have the terms outlined in there that we think the Zoning Administrator would need to see – and see if you agree to that. Let me know if you also think that is the logical way to do the letter.

Thanks again, and look forward to hearing from you.

Brian D. Papke
brian@capcityre.com
C: 616.648.0518

QUESTIONS REGARDING REVISED PLANS FOR 2337 CHAMPLAIN

1. What is the proposed distance between Erie's property line and the northern wall of the revised building at 2337 Champlain? Showing 11'-9". That is the required sideyard setback as for this building height in this zoning district.
2. With respect to the strip of land between the two buildings, how will that strip be used? Will there be any structures? Fences? Patios? Usable recreational space for owners? The sideyard strip will be common building ownership – mostly full of landscaping for viewing. There will be some portions of it as areaways to bring additional light into the cellar units, as well as a stair for emergency egress from the parking level.
3. Will there be windows on the northern wall of the Champlain building? Will any balconies that protrude over the landscaped area? There will be windows on the northern wall. These will be the primary windows to multiple units in the building. There will be no projections into the 11'-9" sideyard.
4. Are you changing the proposed height of the penthouses structures? No.
5. Will there be doors on the penthouse structures that face the Erie? I am showing one set of doors on the current set of plans.
6. Will you limit usage of the roof to the occupants of the 7 top units or will there be common areas? Yes. Limiting the access to the 7 top units was my assumption based on the previous agreement and the BZA ruling.
7. Will you include the green screen on the northern side of the penthouse structures, as previously promised? Yes, we would incorporate that detail into the plans as previously agreed.
8. Are you changing the agreed-upon roof elevation of the building? No.
9. What is the roof elevation of the new building? Matches the previous design and approved plans – showing 197.9' to the main roof elevation.
10. Will there be a wall, parapet or railing at the very northern edge of the roof? Small parapet proposed – would match the front parapet height of 199.5'.
11. Is the height of that wall, parapet or rail the same as the height of the proposed parapet in the settlement agreement? Yes.
12. In this regard, it would be helpful to see elevation drawings showing the roof top from different angles.. I've attached the drawings from the old plan as examples. The view would be better than the example attached from that viewpoint – since we are set back at least 8' from that drawing. We could put those views together once we get farther into the design.
13. Where exactly will occupants be able to use the roof? Has that changed from prior plans? The square-hatched areas on sheet A8 of the revised building drawings (dated 12.9.13) show deck area on the west, south, and east areas of the penthouse. There is a small amount shown wrapping around the north side.
14. Is there greater square footage of usable roof under the new plans? The size should be the same. Same building footprint s.f. as the previous design.
15. Do you plan to have additional railing around the usable roof terrace areas? The terraces/decks will be surrounded by a 42" metal guardrail.
16. Will that railing meet the requirements of the settlement agreement? Yes.
17. Are you changing the FAR? No. We have designed to keep within the existing BZA-approved FAR of 2.41.
18. Are you now providing for parking closer to the northern property line? A parking space is provided within about a foot of the northern property line – at grade. This is in lieu of the previously-designed access ramp.
19. Have you done any shadow studies for the revised building? No. The shadowing of the Erie building would be lessened by our design – as the front and rear setbacks are basically the same – but yet our building is removed by the new sideyard.
20. What do the x's represent on your roof top drawing. Showing approximate locations of some A/C condenser units.
21. If these are mechanical boxes, how do these compare with the mechanical boxes on the old design? Nothing shown on the BZA-approved concept drawings - but our units will be approximately 6' further away from the northern property line at a minimum from the current building design plans.

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT I

EXHIBIT I

From: Brian Papke <brian@capcityre.com>
Date: March 19, 2014 at 4:13:03 PM EDT
To: Wiedis <wiedis@aol.com>
Cc: Christian Cronin <christian@capcityre.com>
Subject: RE: 2337 Champlain

Rich,

Sure.

See attached. We have not yet made the revisions as discussed, but will do so in the near future. One of the major things we are working thru right now is having a more specific design for the mechanical units and their location – as well as the green roof areas, etc.

Brian

From: Wiedis [<mailto:wiedis@aol.com>]
Sent: Wednesday, March 19, 2014 12:42 PM
To: Brian Papke
Subject: Re: 2337 Champlain

Brian thanks for meeting with us last night. Do you have electronic copies of the documents that you provided? If so could you send me a soft copy. Thank you.

Sent from my iPhone

On Mar 10, 2014, at 11:36 AM, Brian Papke <brian@capcityre.com> wrote:

Rich,

Thanks Rich.

I am preparing materials for our March 18th meeting at 7:45. I hope to have a rendering showing at least blocks that would represent where the rooftop mechanical units would go. In short, we'd be using residential-scale units – and placing them all on the roof just like the previous design – but at a further distance back from your building.

Brian Papke

From: Rich Wiedis [<mailto:wiedis@aol.com>]
Sent: Thursday, March 06, 2014 5:35 PM
To: Brian Papke
Subject: Re: 2337 Champlain

Hi Brian,

We are confirmed for Tuesday March 18. I had another request from some of our Association members for roof top renderings and information about the location utility boxes for the new building. I am still under the assumption that under either design utility boxes would need to be placed on the roof on the side of the building near the alley. That said this is likely to be a key concern. Please feel free to call me before the meeting to discuss.

-----Original Message-----

From: Brian Papke <brian@capcityre.com>
To: Wiedis <wiedis@aol.com>
Sent: Tue, Feb 18, 2014 5:01 pm
Subject: RE: 2337 Champlain

Ok, no problem.

Brian

From: Wiedis [<mailto:wiedis@aol.com>]
Sent: Tuesday, February 18, 2014 5:00 PM
To: Brian Papke
Subject: Re: 2337 Champlain

Going to need to be 7:45. We have some people who are not home by 7.

Sent from my iPhone

On Feb 18, 2014, at 4:58 PM, Brian Papke <brian@capcityre.com> wrote:

Ok Rich, thanks.

I will plan on around 7pm on the 18th at your building.

Brian

From: Rich Wiedis [<mailto:wiedis@aol.com>]
Sent: Tuesday, February 18, 2014 2:55 PM
To: Brian Papke
Subject: Re: 2337 Champlain

Tuesday, March 18 works.

-----Original Message-----

From: Brian Papke <brian@capcityre.com>
To: Wiedis <wiedis@aol.com>
Sent: Tue, Feb 18, 2014 9:03 am
Subject: RE: 2337 Champlain

Rich,

Can you check with the association on two different dates to meet?
My first preference is Tuesday the 18th of March.
The second is Wednesday night, the 5th of March if we want to try and meet earlier.

Thanks, and let me know when will work for this.

Brian

From: Wiedis [<mailto:wiedis@aol.com>]
Sent: Wednesday, February 12, 2014 1:07 PM
To: Brian Papke
Subject: Re: 2337 Champlain

That should work. Let me check and I will get back to you to confirm.

Sent from my iPhone

On Feb 12, 2014, at 12:31 PM, Brian Papke <brian@capcityre.com> wrote:

Rich,

Can you and the condo association meet Monday night, February 24th?

Thanks, and let me know.

Brian

From: Wiedis [<mailto:wiedis@aol.com>]
Sent: Tuesday, January 28, 2014 3:24 PM
To: Brian Papke
Subject: Re: 2337 Champlain

Hi Brian,

Any suggestions on a date that works for you. My first available is February 5. But the following week is ok as well.

Sent from my iPad

On Jan 21, 2014, at 9:59 AM, Brian Papke <brian@capcityre.com> wrote:

Hi Rich.

Ok, I will cancel the meeting for the 27th. Not sure on that next week – I am working on my next travel dates, but I will get back to you as soon as I know.

Thanks

Brian

From: Wiedis [<mailto:wiedis@aol.com>]
Sent: Friday, January 17, 2014 9:47 AM
To: Brian Papke
Subject: Re: 2337 Champlain

Hello Brian,
In looking at my schedule I realized that I am going to be out of town the week of the 27th. Are you available on Monday, February 3 at 7:45 PM?

Sent from my iPhone

On Jan 15, 2014, at 1:08 PM, Brian Papke <brian@capcityre.com> wrote:

Ok Rich.
I will plan on 7:30 on
Monday at your place
unless I hear from
you.
We can harden-up
the details if
necessary next week.
I'll plan on bringing
some
drawings/updates and
diagrams as
requested.

Brian

From: Rich Wiedis
[<mailto:wiedis@aol.com>]
Sent: Wednesday,
January 15, 2014 11:29
AM
To: Brian Papke
Subject: Re: 2337
Champlain

Thanks. A Monday night
will be fine. The unit
owners in one of the
roof top units are
concerned about the
location of the utility
boxes. They believe
(and I think incorrectly)
that the boxes on the

new design are more intrusive than where the boxes on the old design were located. (As I noted, the boxes were not shown on the renderings that were presented at the BZA hearing). In any case, any adjustment that would move the boxes farther away from the Erie would be helpful to getting our Association's approval.

-----Original Message-----

-

From: Brian Papke
<brian@capcityre.com>
To: Rich Wiedis
<wiedis@aol.com>
Sent: Wed, Jan 15, 2014 9:16 am
Subject: RE: 2337 Champlain

Rich,

Thanks for taking the initiative to meet with the association.

I can start working on the new view renderings based on our new concept. Hopefully the architect still has those files and can put them together relatively quickly.

I will get together with the architect, and put together a drawing showing where the rooftop equipment was previously proposed. I believe I've seen drawings showing it scattered all over the front and rear building – using that 20' setback from your property as a guideline. By the way, boxes shown on the plans are proposed to be

individual unit A/C condenser/compress or units. They are typically about 3'-4' tall – and kick on and off as the A/C goes off/on.

As far as us meeting with the association, we'd be happy to do that. I am scheduled to be in town on the 27th and 28th of January. Please let me know if that Monday night might work for that.

Thanks again.

Brian

From: Rich Wiedis
[\[mailto:wiedis@aol.com\]](mailto:wiedis@aol.com)
Sent: Tuesday, January 14, 2014 12:14 PM
To: Brian Papke
Subject: 2337 Champlain

Hello Brian,

As I mentioned in my message to you yesterday, I met with our Association last night about the new proposed design. The Association members would still like to see view renderings such as the ones in the attached exhibit (pages 8 & 9), which has southern view perspectives from both my unit and the southern unit on the alley.

Also, a questions arose with respect to the location of the utility boxes. Your plans for the new design show utility boxes on the roof near the alley. None of the plans in the

attached exhibits from the old design show utility boxes. My recollection was that the old design did include utility boxes on the roof of both buildings (although they are not shown in the exhibits). Can you please let us know where the utility boxes would have been in the old design? This issue was a concern of one of the unit owners.

Finally, all thought it would be most efficient for you to come attend an Association meeting so you could answer members' questions directly. Please let me know if you are available to meet with us and I will arrange it.

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

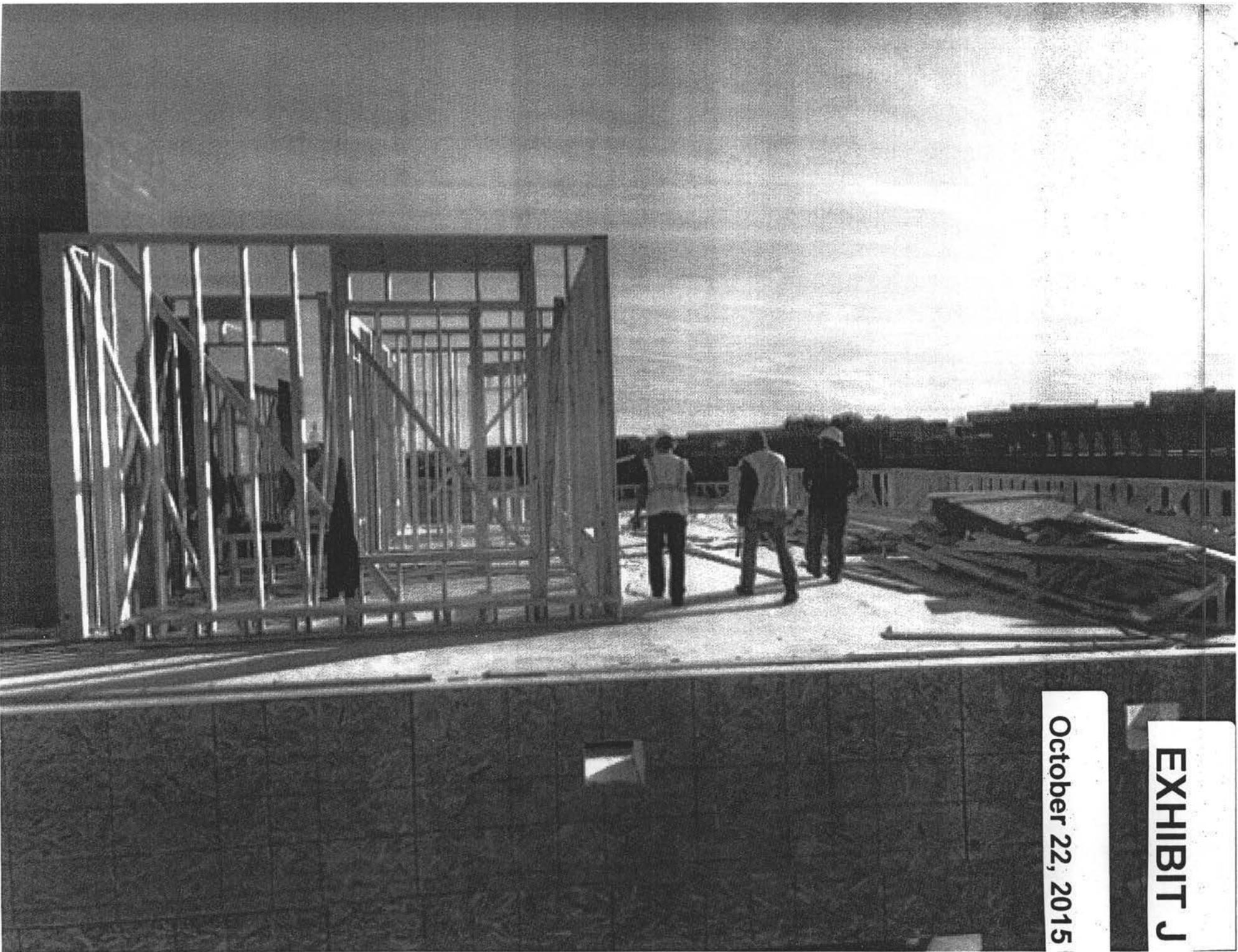
**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT J

EXHIBIT J

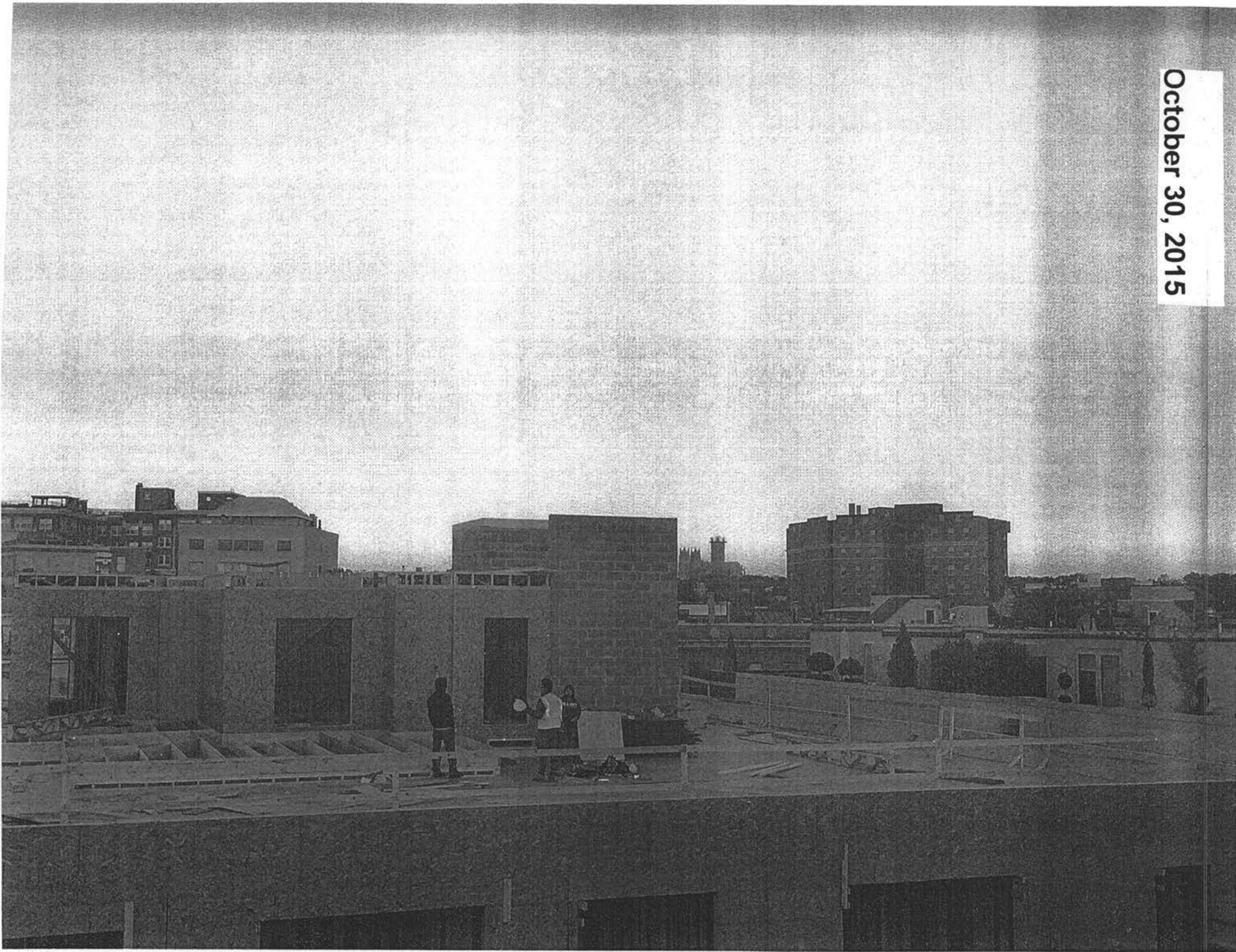
October 22, 2015



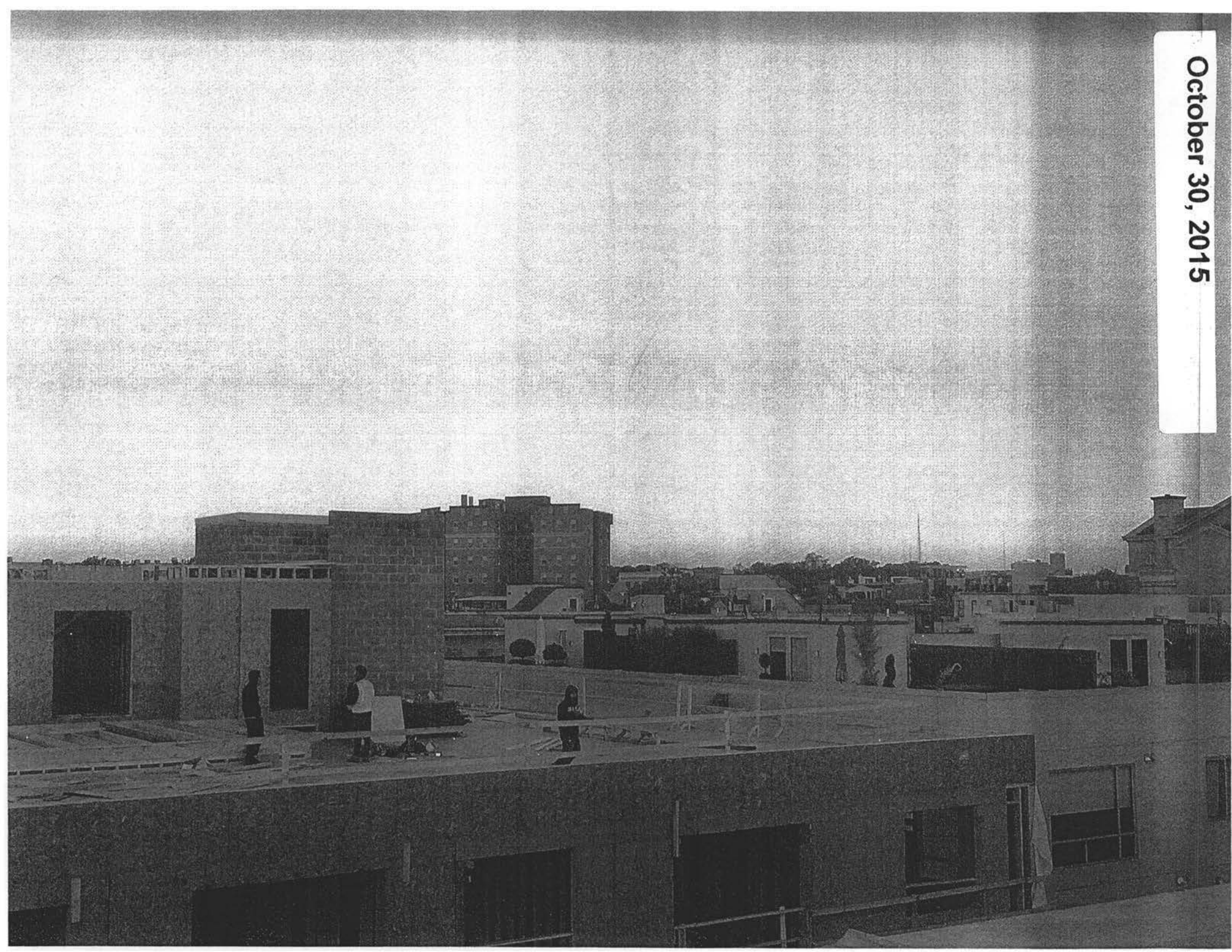
October 29, 2015



October 30, 2015



October 30, 2015



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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT K

Slightly Enlarged

EXHIBIT K



210 7th Street SE - Suite 201
Washington, DC 20003
202.822.5965 (P); 202.822.0908 (F)

ALISON BREMER & ASSOCIATES, LLC
1228 Federal Parkway
Baltimore, MD 21202
301-941-6145

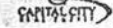
STRUCTURA
111 Rockville Pike, Suite 250
Rockville, MD 20850
301-487-4751

OCAL ACCOUNTS
7300 Leesburg Pike, Suite 701
Falls Church, VA 22043
703-418-0243

CORPORATE

THE MORGAN

2345 Channing Street, NW
Washington, DC 20009
Square Mile 2003 Lot 100-0887 Zone: RC/R-6-B



CAP CITY REAL ESTATE
1616 WOODBURN BLVD, NW
WASHINGTON, DC 20004
P.O. BOX 307 8008

VA

SCALE: AS NOTED
DRAWN BY: PGN
CHECKED BY: SP, JO
PROJECT NO: 15-00005

ISSUE	DATE
FOUNDER REVIEW TO CHASS PERMITS	1/10/14
CHASS DEVELOPER REVIEW	1/10/14
THIRD PARTY REVIEW	1/10/14
THIRD PARTY REVIEW RESPONSE	1/10/14
PERMIT SET	1/10/14
BID SET	1/10/14
TOWN COUNCIL SET	1/10/14

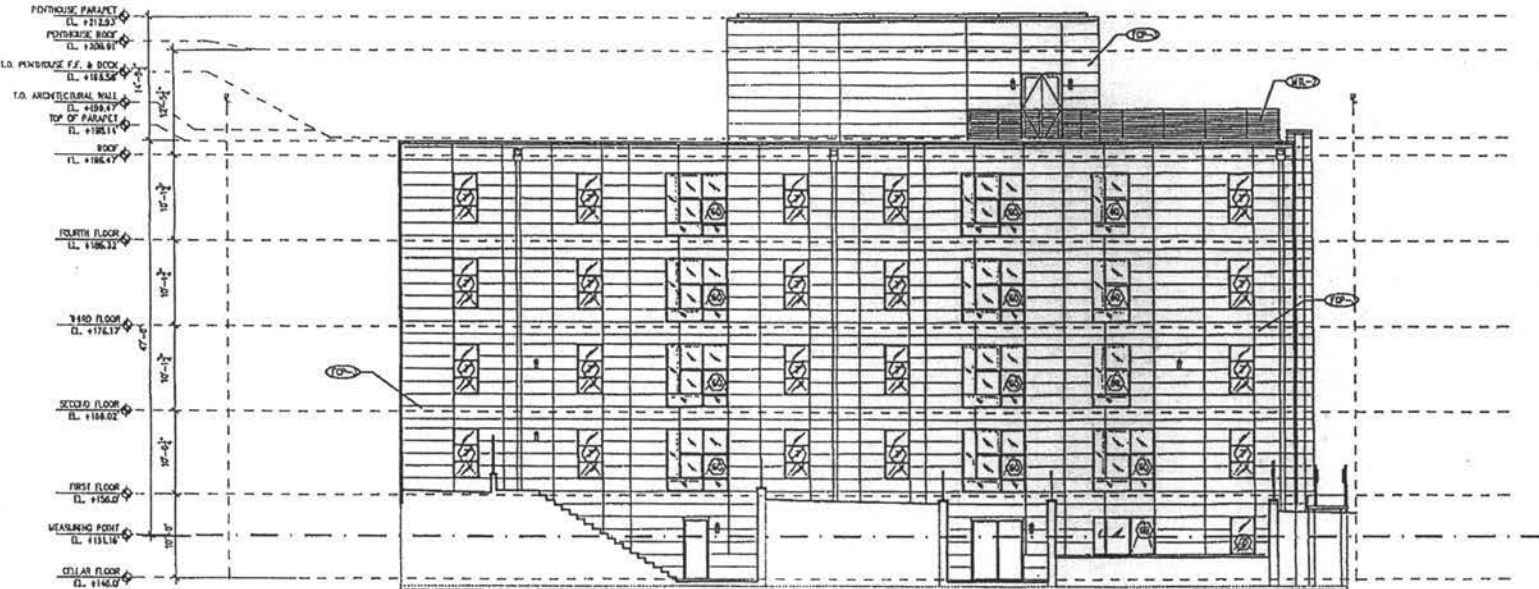
REVISION:

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NORTH EXTERIOR ELEVATION

A 204

15-00005 The Morgan/Architect/Sheet/15-00005_001.dwg



01 NORTH EXTERIOR ELEVATION
SCALE: 1/8" = 1'-0"

EXTERIOR BUILDING MATERIALS LEGEND

MARK	DESCRIPTION	MANUFACTURER	SIZE	FINISH	ADDITIONAL NOTES	MARK	DESCRIPTION	MANUFACTURER	SIZE	FINISH	ADDITIONAL NOTES
FCP-1	EXTERIOR TRIM CEMENT PANEL	KOCHUA	18" X 8'-0"	BENJAMIN MOORE WARM BROWN 1203	ILLUMINATION SERIES	GU-1	CHASS MEMBER	CORDOVA STONE	4" TALL X 8" LONG X 1/2" DEPTH OF MEMBER, CHASS CHANGING TOP ROW	HIGHLIGHT OUTRIGING	CREDIT TO BE DARK- ARCHITECT TO APPROVE
FCP-2	NOT USED										
FCP-3	EXTERIOR TRIM CEMENT PANEL	DIAPANELS	1'-8" X 8'-0"	GREY ED421		GS-2	GALV. STL. PLATE FASTENED TO WALL W/ FITTING FOR TENSILE CABLES FOR SUSPENDED LIGHTING	REF LANDSCAPE DWGS	REF LANDSCAPE DWGS	REF LANDSCAPE DWGS	ARCHITECT TO APPROVE OF SHOPS
FCP-4	NOT USED					GLS-1	GLASS BASE MOUNTED GUARDRAIL	TRU	42" MIN HEIGHT AJF,	REF SPECS	ARCHITECT TO APPROVE SHOPS
FCP-5	NOT USED					GLS-2	GLASS FASCIA MOUNTED GUARDRAIL	TRU	42" MIN HEIGHT AJF,	REF SPECS	ARCHITECT TO APPROVE SHOPS
MTL-1	BREAK METAL	N/A			TO MATCH WINDOW FRAMES						
MTL-2	METAL RAILING	TRU	REF. DETAIL 06/A323	REF DETAIL 06/A325	ARCHITECT TO APPROVE OF SHOPS						

A — C — D — E



A horizontal number line with tick marks at 1, 2, and 3.

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

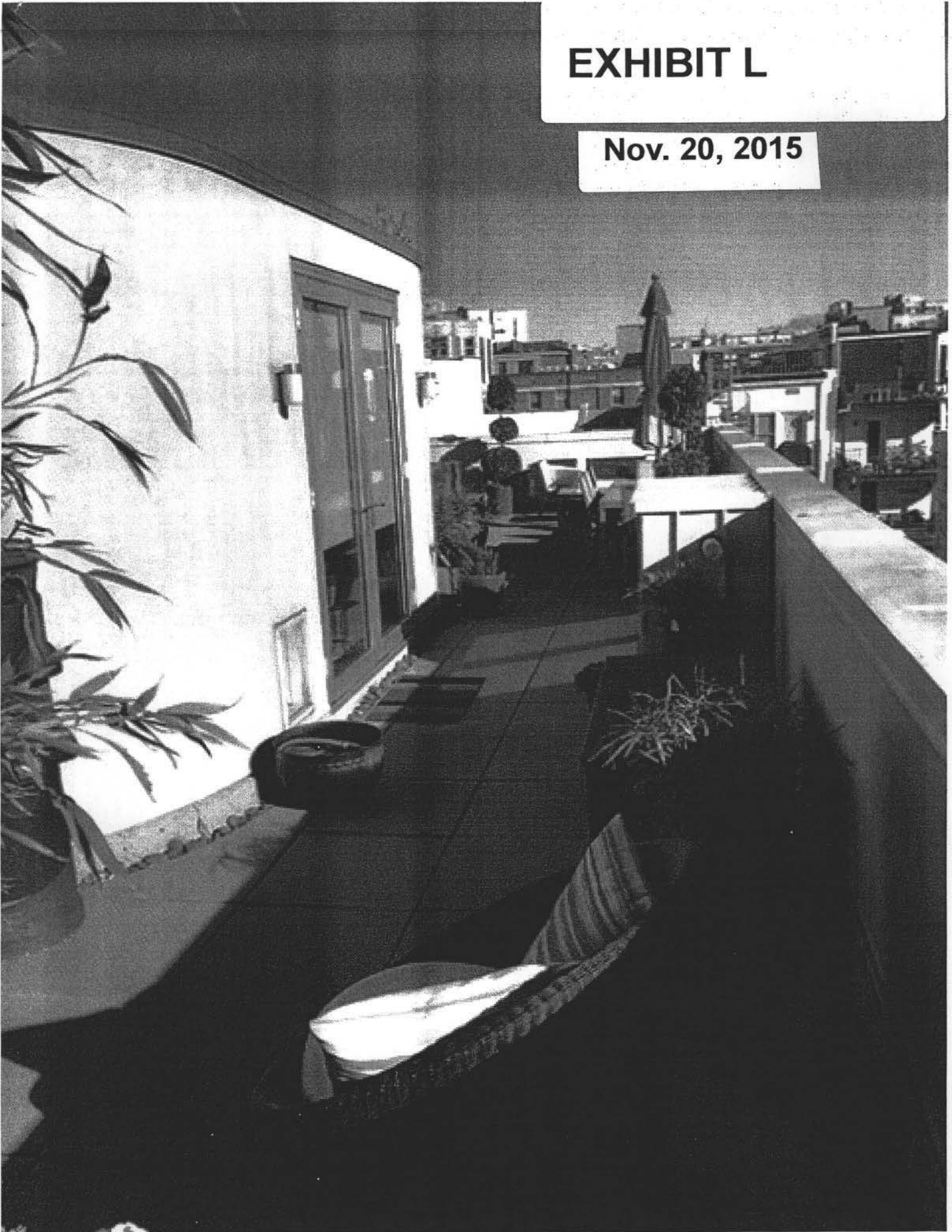
**Appeal of Unit Owners' Association of
The Erie Condominium**

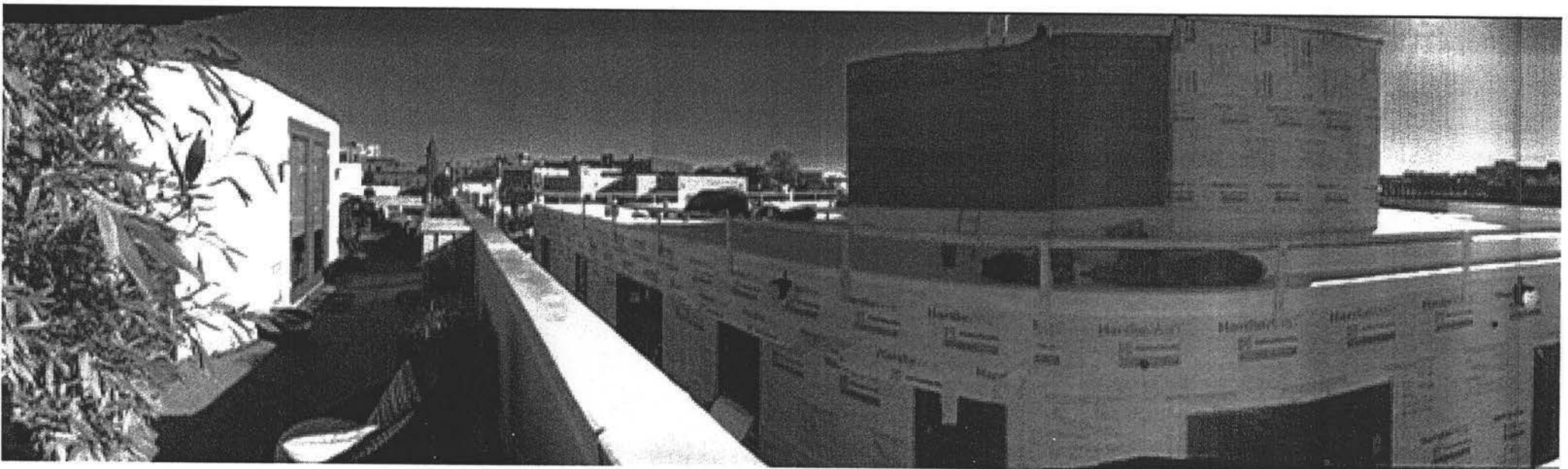
**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT L

EXHIBIT L

Nov. 20, 2015





Nov. 20, 2015

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

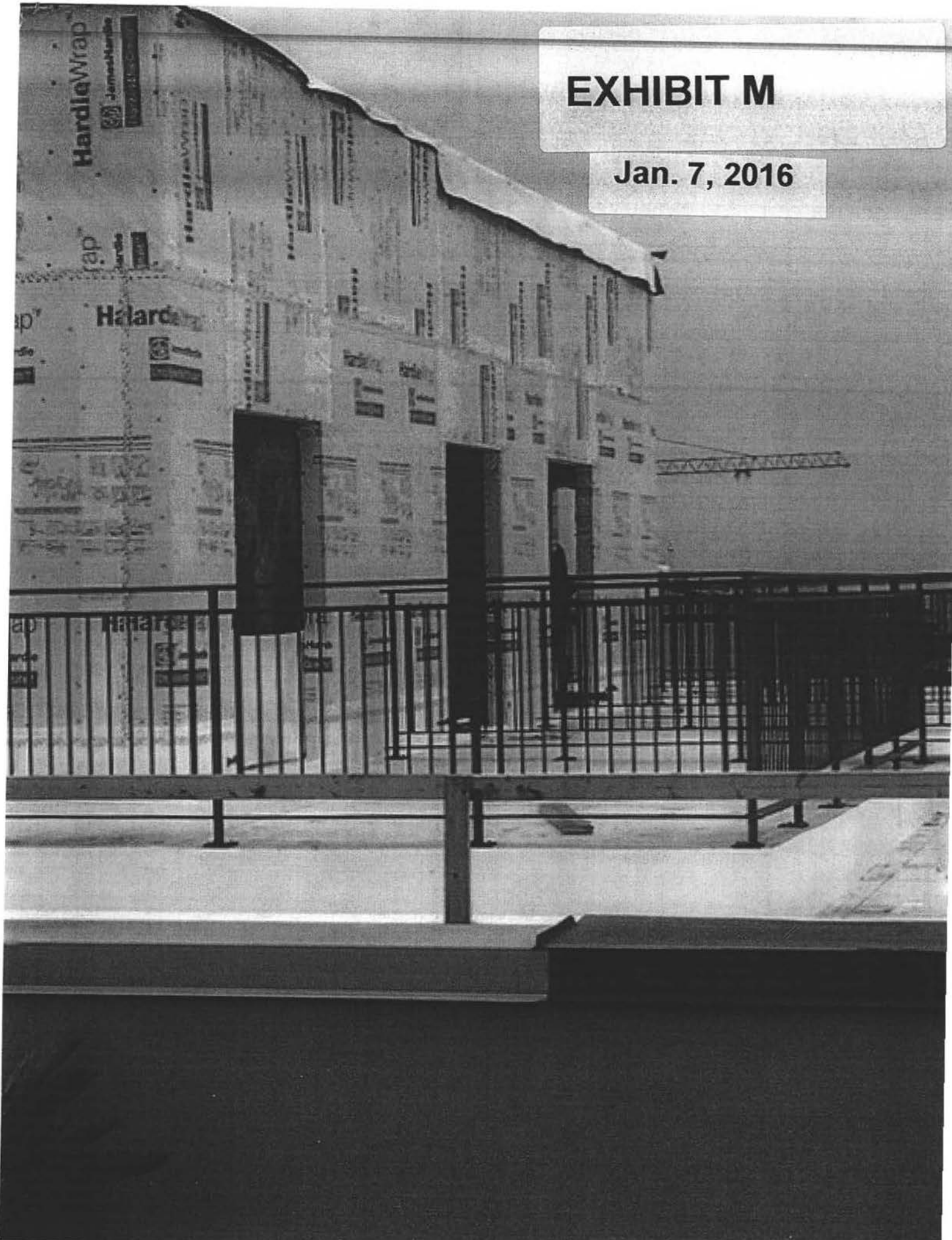
**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT M

EXHIBIT M

Jan. 7, 2016



Jan. 7, 2016



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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT N



EXHIBIT N

Residents | Business | Government | Visitors | Education | Jobs | Online Services | Mayor

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Track Status of Building Permit Application

To review the status of an application, enter the Application ID or Property Address below and click find to continue.

Please note that the application status is refreshed every night at 3.00 AM so the status you see below reflects the updates from the day before.

Search By:

Application ID

Property Address

Enter the ApplicationID to review Application Status:

ApplicationID*:

B1410680

Find

Application Status:

Please see the table below for review statuses. The table is not shown if the reviews have not been identified. A blank Status date means that the initial review has not been completed.

ApplicationID	Date Filed	Full Address	Agent Name	Phone Number	
B1410680	08/07/2014	2345 CHAMPLAIN ST NW	PHILLIP PITTING CAPITOL PERMITS	202-387-6669	
Discipline	Review Status	Status Date	Review Comment	Reviewer Name	Reviewer Email
Mechanical Review	Mechanical Review N/A	08/14/2014	already approved by tpr - kta	Tesfaye Habte	tesfaye.habte@dc.gov
Plumbing Review	Plumbing Review N/A	08/14/2014	already approved by tpr - kta	Tesfaye Habte	tesfaye.habte@dc.gov
Electrical Review	Electrical Review N/A	08/15/2014	tpr approved	Michel Mba	Michel.mba@dc.gov
Fire Review	Fire Review - HFC	08/29/2014	1. please update fire resistance rating requirements for exit enclosure on sheet a001 to be minimum 2-hour rating in accordance with section 1022.2, dc 2013 building code. update partition type detail on a700 to list the required fire resistance rating. 2. type va construction (combustible materials) above the podium. delete the 5 grilling appliances located on roof. open flame appliances/devices are to fully comply with section 308.1.4, dcmr12h-2013. update all required sheets. 3. elevator: 3.1. locate machine room on plans. provide design details to satisfy section 3006, dc 2013 building code. 3.2. update detail on a405 to include hoist way venting details in accordance with section 3004. 3.3. demonstrate on plans that elevator cab size meets section 3002.4.	Silroy Brown	silroy.brown@dc.gov
Zoning Review	Zoning Review - HFC	09/04/2014	1. the proposed development has exceeded 60 percent allowable lot occupancy and will require bza relief. 2. please revise the plat to show the following features: a) show the curb, sidewalk and curb-cut. b) clearly call out the building height measuring point, (bhmp) on the plats. c) clearly call out and dimension all required zoning setbacks, (rear yard side yard), and show the proposed roof plan including all roof structures fully dimensioned including their setbacks from the buildings edge upon the roof. 3. provide a complete east elevation from grade to the highest point of the building fully dimensioned. 4. please provide the 2nd sheet of the cizc application. a) provide verification that the 250 dollar application fee has been paid. b) provide a complete copy of the i.z. covenant. c) provide a written response for the items in section e of the cizc application demonstrating the applications compliance with i.z. standards 1 through 9 in the second set of questions. 5. please clarify if you are still invoking bza order no. 18330 as the design standard: d) please verify compliance with items 1 and 2 on page 16. e) specifically, show the 20 ft setback required in item 2 and call it out clearly on the plat. 6. provide a complete copy of the zoning determination letter	David Vollin	david.vollin@dc.gov

			including all support documents dated 2-10-14. 7. additional comments may follow.		
Elevator Review	Elevator Review - HFC	09/08/2014	please address elevator related comments under fire review comments dated the 8th of aug 2014. thank you.	Silroy Brown	silroy.brown@dc.gov
Elevator Review	Elevator Review - HFC	09/08/2014	please address elevator related comments under fire review dated 29th aug 2014.	Silroy Brown	silroy.brown@dc.gov
Structural Review	Structural Review Approved	09/09/2014		Sitra Ibrahim	sitra.ibrahim@dc.gov
DDOE Review	DDOE Review Approved	10/16/2014	2337 champlain street nw #3879	Nykia Barnes	Nykia.Barnes@dc.gov
DDOE SE-SW Review	DDOE SE-SW Review Approved	10/16/2014	by abdi m. #3878	Nykia Barnes	Nykia.Barnes@dc.gov
DDOT Review	DDOT Review Under Review	10/28/2014	ddot is working on finalizing the required permits for this project...once finalized this project will be approved.	Steven Davis	steven.davis2@dc.gov
EISF Review	EISF Review Approved	11/19/2014	eisf completed 6/25/12.	Toni Taylor	Toni.Taylor@dc.gov
Green Review	Green Review - HFC	11/28/2014	green code review: • please provide and affidavit of design contract starting date per ibc chapter 1, section 123. • please indicate whether the building is district financed, or instrumentally district financed. energy code review: • drawing a001 no solar heat gain coefficient has been identified per table 502.3 • page a001 is claiming to use r-10 insulation in steel stud cavity walls for some existing mass walls. because of the thermal bridging of the steel, this wall assembly is not as good as r-5.7 continuous insulation and therefore not code compliant per table 502. • per ceiling type c4, please indicate the minimum r-value of the rigid insulation at the roof deck. • drawing a301 and part of a302 incorrectly identifies the garage ceiling assembly as c1 when the cross section is over unconditioned garage with a conditioned first floor above. therefore, the project team should be using ceiling type c2 as per a700a. • drawing a702 and drawing a001 indicate the window glazing should have a u-value of not less than 0.35, however, the center of glass u-value and the whole window u-value are two separate thermal characteristics. the code speaks to the whole window or fenestration area including the framing. • drawing e000 indicates several light fixtures with 1 watt of power. please update. also please provide a lighting power density calculation for the common areas (excluding apartments) per 505.5. • per 502.4.3 please provide evidence of how the building will be air-sealed. • per 502.4.7 please indicate how the recessed luminaires will meet the air-sealing requirements on the top floor of the building, since the recessed lighting is penetrating the thermal envelope. • per 502.4.4 and 503.4.4 please provide evidence of how the exhaust openings will meet the requirements. • per 503.2.1 and 503.2.2 please provide inputs and outputs to equipment system sizing calculations. • please be advised for future projects that the use of electric heaters between the garage ceiling and the concrete slab above will not be allowed under the new 2013 energy code, as the thermal insulation must be attached to the underside of the floor above. • please be advised that starting december 1, all new applications and entries using the 2013 energy code are being requested to provide an energy verification sheet found here: http://dcra.dc.gov/page/green-building-documents-publications any application submitted after march 28th, 2015 must use the 2013 code suite. this building if it had been submitted after march 28, 2015 would have been required to follow the new energy code and also meet the green construction code. • per 503.2.7 please indicate where in the drawings the notation of duct sealing is located. • per 504.4 please indicate whether the hot water heaters have integral heat traps, or if secondary heat traps will be added to the piping system.	David Kaiser	david.kaiser@dc.gov
Zoning Review	Zoning Review - HFC	03/03/2015	1. the proposed development has exceeded 60 percent allowable lot occupancy and will require bza relief. 2. please revise the plat to show the following features: a) show the curb, sidewalk and curb-cut. b) clearly call out the	David Vollin	david.vollin@dc.gov

			building height measuring point, (bhmp) on the plats. c) clearly call out and dimension all required zoning setbacks, (rear yard side yard), and show the proposed roof plan including all roof structures fully dimensioned including their setbacks from the buildings edge upon the roof. 3. provide a complete east elevation from grade to the highest point of the building fully dimensioned. 4. please provide the 2nd sheet of the cizc application. a) provide verification that the 250 dollar application fee has been paid. b) provide a complete copy of the i.z. covenant. c) provide a written response for the items in section e of the cizc application demonstrating the applications compliance with i.z. standards 1 through 9 in the second set of questions. 5. please clarify if you are still invoking bza order no. 18330 as the design standard: d) please verify compliance with items 1 and 2 on page 16. e) specifically, show the 20 ft setback required in item 2 and call it out clearly on the plat. 6. provide a complete copy of the zoning determination letter including all support documents dated 2-10-14. 7. additional comments may follow.		
Fire Review	Fire Review - HFC	03/03/2015	1. please update fire resistance rating requirements for exit enclosure on sheet a001 to be minimum 2-hour rating in accordance with section 1022.2, dc 2013 building code. update partition type detail on a700 to list the required fire resistance rating. 2. type va construction (combustible materials) above the podium. delete the 5 grilling appliances located on roof. open flame appliances/devices are to fully comply with section 308.1.4, dcmr12h-2013. update all required sheets. 3. elevator: 3.1. locate machine room on plans. provide design details to satisfy section 3006, dc 2013 building code. 3.2. update detail on a405 to include hoist way venting details in accordance with section 3004. 3.3. demonstrate on plans that elevator cab size meets section 3002.4.	Silroy Brown	silroy.brown@dc.gov
Elevator Review	Elevator Review - HFC	03/03/2015	please address elevator related comments under fire review comments dated the 8th of aug 2014. thank you.	Silroy Brown	silroy.brown@dc.gov
DDOT Review	DDOT Review - HFC	03/03/2015	ddot is working on finalizing the required permits for this project...once finalized this project will be approved.	Steven Davis	steven.davis2@dc.gov
Zoning Review	Zoning Review - HFC	03/04/2015	the revised comments were composed in a meeting with phil dunham on 3-4-15 1. response 3-4-15: allowable due to bonus density. 2. response 3-4-15: please revise the plat to show the following features: b) clearly call out the building height measuring point at the curb in the middle opposite the front showing the (bhmp) on the plats. c) clearly call out and dimension the required 20 ft. setback for bza order no. 18330 3. response 3-4-15: the west elevation will be re-labeled. 4. original comment: please provide the 2nd sheet of the cizc application. a) provide verification that the 250 dollar application fee has been paid. b) provide a complete copy of the i.z. covenant. c) provide a written response for the items in section e of the cizc application demonstrating the applications compliance with i.z. standards 1 through 9 in the second set of questions. 4. response 3-4-15: provide verification that the \$250 iz dollar application fee has been paid. provide a written response for the items in section e of the cizc application items 1-9. provide the total unit breakdown for iz units specifically in section b unit 009 is it a 1br, 2br or studio. and revise section b of the cizc application accordingly to show the type of unit it is. 5. original comment: show the 20 ft setback required in item 2 and call it out clearly on the plat. 5. response 3-4-16 show the 20ft. setback on the plats. 7. additional comments may follow.	David Vollin	david.vollin@dc.gov
Zoning Review	Zoning Review - HFC	03/20/2015	2345 champlain street n.w. b1410680 meeting with mr. dunham on 3-20-15 1. the iz unit mix did not pass the proportion test. please revise the iz units and the application to provide the mix of units that will satisfy the proportional requirements. a) please revise the proportions in section "b" of the cizc application. b) please revise the unit identification numbers in	David Vollin	david.vollin@dc.gov

			section "c" of the cizc application. c) please revise the location identification of the iz units on the plans. d) please revise the floor location of the required iz units. there is an over-concentration issue of the iz units allocated to the cellar. since there are only 4 units in the cellar, no more than 1 can be allocated to iz in this circumstance. please place other units on first and second floors. 2. please make the following revisions to the plat: a) please correct the bhmp (building height measuring point) location to the middle, opposite front at the curb and call it out. b) please show the 3. additional comments may follow.		
Fire Review	Fire Review Approved	05/12/2015	new 5 story r-2 bldg.	Silroy Brown	silroy.brown@dc.gov
Elevator Review	Elevator Review Approved	05/13/2015	issue addressed	Silroy Brown	silroy.brown@dc.gov
DDOT Review	DDOT Review Approved	06/06/2015	reviewed in may 2015:-	Steven Davis	steven.davis2@dc.gov
WASA Review	WASA Review Approved	06/06/2015	reviewed in may 2015:-		
WASA Review	WASA Review Approved	06/06/2015	reviewed in may 2015:- approved in previous cycle of review by john boryschuk 5/6/15.		
Green Review	Green Review - HFC	06/06/2015	reviewed in may 2015:- the project team did not provide a copy of the design contract and affidavit of design contract signature date as requested. dcra green building division will suspend review of the project until the project team is able to provide this documentation. all review comments hinge on this documentation being provided.	David Kaiser	david.kaiser@dc.gov
Green Review	Green Review - HFC	06/06/2015	reviewed in may 2015:- the hvac load sizing calculations need to use ashrae 183 procedures and using the 99% and 1% design temperatures of 17 degrees for winter and 91 degrees fahrenheit for summer. please adjust accordingly. please provide a print out from trane trace that indicates the window shading coefficient or solar heat gain coefficient used in the calculations. please update the drawing m301 as indicated in the project teams responses, but include a motorized damper and not a gravity damper per iecc 2066 section 502.4.4.	David Kaiser	david.kaiser@dc.gov
Zoning Review	Zoning Review Approved - WC	06/15/2015	a new 40 unit apartment building including 4 affordable units nos. 003 (80 % ami), 009 (50% ami), 108 (50% ami), and 201 (80 % ami), for a total of 2,951 sq-ft. prior to issuance of the final c of o the wall check shall be approved and a zoning inspection shall verify the required automobile parking and affordable units. a zoning inspection shall verify the iz units and the 20 ft. req. setback from the north property line per bza order no. 18330.	David Vollin	david.vollin@dc.gov
Green Review	Green Review Approved	06/17/2015		David Epley	David.Epley@dc.gov
ProjectDox QA	Project Dox QA Approved	06/17/2015		Herbert Williams	Herbert.Williams@dc.gov
Issue Permit	Permit Issued	06/17/2015			
Wall Check Verification	Wall Check Approved	08/24/2015		David Vollin	david.vollin@dc.gov

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

**Appeal of Unit Owners' Association of
The Erie Condominium**

**Appeal No. 19174
Hearing: Feb. 9, 2016
ANC 1C**

EXHIBIT O

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of Unit Owners' Association of
The Erie Condominium

Appeal No. 19174

OUTLINE OF TESTIMONY BY RICHARD N. WIEDIS

1. Introduction of Self and Erie Condominium
2. Brief History of the Dispute
 - A. Case No. 18330
 - B. Revisions to Plans and 2013 Determination Letter
 - C. Developments in 2014
3. The Zoning Administrator Erred By Approving the Building Permit
4. Closing and Relief Sought