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FOR THE DISTRICT OF COLUMBIA
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**Appeal of Unit Owners' Association of
The Erie Condominium**

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

APPELLANT'S OPPOSITION TO OWNER'S MOTION TO DISMISS APPEAL

I. Introduction

Appellant Unit Owners' Association of The Erie Condominium ("Appellant" or "Erie Condominium") opposes the Owner's Motion to Dismiss Appeal ("Motion"). This appeal was timely filed for the reasons stated in Appellant's pre-hearing statement and herein. The timeliness issue was addressed at length in Appellant's pre-hearing statement and that filing is incorporated by reference.

2337 Champlain Street, LLC ("Owner") erroneously contends that Erie Condominium's appeal is untimely based upon alleged communications and documents that the Owner purportedly provided to the Appellant and the Zoning Administrator. The Owner is misrepresenting past events to this Board in a manner that is quite shocking. The Owner successfully misled the Appellant for years regarding the Owner's true plans for the Residential Building and, now, the Owner is attempting to mislead the Board. Erie Condominium acted in a timely manner after discovering the Owner's deception, mischaracterizations and purposeful omissions. This case also presents exceptional circumstances that justify the timing of this appeal.

As explained herein, the Motion should be DENIED.

II. Statement of Facts

A. The Appellant Reasonably Relied upon BZA Order 18330 and Approved Plans.

In order to evaluate the timeliness of Erie Condominium's appeal and the exceptional circumstances of this case, it is necessary to understand key events that preceded issuance of the challenged building permit. The chronology begins with BZA Case No. 18330 and the specific plans that this Board approved in that 2012 decision. These issues are summarized in detail in Appellant's Pre-Hearing Statement. Most notably, the Board approved plans that expressly provided for a low-rise penthouse structure of **only nine (9) feet**. The height of the penthouse structure was discussed at length during the BZA hearing. While making its case for zoning relief, the zoning applicant emphasized that the lower penthouse would reduce adverse impacts of the Residential Building upon Erie Condominium. The Board referenced the height of the penthouse in BZA Order No. 18330 and the Board's zoning relief was "subject to" the owner's compliance with approved plans that included the low-rise nine (9) foot penthouse structure. Erie Condominium was a party to BZA Case No. 18330 and reasonably expected the Owner to develop the Property in compliance with the requirements of that order.

B. The Appellant Reasonably Relied upon the Zoning Administrator's Determination Letter, dated April 9, 2013, and Approved Plans that Expressly *Reduced* the Elevation of the Penthouse.

After the ruling in BZA Case No. 18330, Erie Condominium sought further changes to the roof level of the Residential Building from the owner of the Property at the time, FCP Champlain, LLC ("FCP"). Pursuant to a settlement agreement, FCP agreed to several material changes in exchange for Erie Condominium's dismissal of its pending case before

the District of Columbia Court of Appeals. In furtherance of that agreement, Holland & Knight procured a determination letter from the Zoning Administrator, dated April 9, 2013. Erie Condominium was aware of these favorable changes and reasonably relied upon them.

In the Motion to Dismiss, the Owner admits that the Zoning Administrator approved changes to the roof level of the Residential Building in a determination letter, dated April 9, 2013, but seriously mischaracterizes the plans that were approved by the Zoning Administrator in that letter. The Owner incorrectly asserts: “By letter dated April 9, 2013, the Zoning Administrator issued a determination letter approving the Prior Owner’s revised plans reflecting the height of the building at 197 feet, 10 inches and the height of the parapet at 199 feet, 6 inches. **No changes were proposed to the height of the penthouse**, which was shown at 207 feet, 10 inches on the approved BZA plans. *See Exhibit A.*” Motion at p. 3 (boldface added).

This characterization of the revised plans is patently inaccurate. The Owner does not provide the BZA with a copy of the plans that the Zoning Administrator actually approved on April 9, 2013, and then misstates the contents of those plans.¹ The Owner’s attorney is already personally familiar with those plans because she submitted them to the Zoning Administrator in 2013 on behalf of FCP. **Those plans show a reduction in the height of the penthouse to 206.83’** and depict a nine-foot penthouse. It is outrageous that Holland & Knight is now representing to this Board that the Zoning Administrator did not approve a reduction in penthouse height on April 9, 2013, when the same attorney at Holland & Knight requested the reliance letter from the Zoning Administrator in 2013 and

¹ Erie Condominium submitted a full set of these plans to the BZA with Appellant’s Pre-Hearing Statement (at Exhibit B).

personally reviewed the plans submitted with that request. The height of the penthouse was explicitly addressed in communications between undersigned counsel for Appellant and Holland & Knight when the reliance letter was submitted to the Zoning Administrator in 2013. In an email, dated March 7, 2013, Ms. Shiker of Holland & Knight wrote: “[The reliance letter] was submitted yesterday **with the correct penthouse height on the proposed plan.**” *See Exhibit A* hereto. The approved plans clearly showed a one-foot reduction in the elevation of the penthouse. *See Appellant’s Pre-Hearing Statement at Exhibit B.*

Thus, the April 9, 2013 reliance letter did, in fact, reduce the approved height of the penthouse structure. This information was conveyed to the Appellant at the time and was reflected in the approved plans that were attached to the Zoning Administrator’s letter online. After the April 9, 2013 determination, Erie Condominium reasonably believed that any future owner would be bound to build in accordance with the approved changes.

C. The Appellant Reasonably Relied upon Express Promises by the Owner in December of 2013.

In December of 2013, the Appellant learned that a new owner, 2337 Champlain Street, LLC, was planning to completely redesign the Residential Building and the Appellant immediately sought to verify that the changes would not affect elevations and heights at the roof level and above.

Between December 16, 2013 and December 23, 2013, the Owner communicated with Erie Condominium in an attempt to procure support for plans to re-design the building. However, the Owner did **not** alert Erie Condominium to any material, *adverse* changes to the roof level. Instead, on December 16, 2013, the Owner provided an alleged “list of the benefits” of the new proposed plan, including an alleged reduction in shadowing

of the Erie building.² At the time, the Owner transmitted selected pages from its plans, dated December 9, 2013,³ but the attached documents did not include any elevations for the roof or penthouse. Attached as **Exhibit B** is a copy of the email from December 16, 2013 and the attachments thereto. It is now evident that the Owner intentionally omitted Sheet A9 (dated December 9, 2013) from that email on December 16, 2013, even though that sheet already existed.

Acting in a diligent and reasonable manner, the Erie Condominium promptly replied to the Owner on December 20, 2013, with a list of questions and information requests in order to understand the proposal. On December 23, 2013, the Owner responded by providing the following answers to Erie's questions:

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.

² The list made express reference to the "current BZA-approved plans for the building" and compared the required setback for the rooftop structures with a revised setback. *See* Exhibit B. Yet, the list did not mention any change from the BZA-approved plans for the height of that rooftop structure.

³ One plan was dated December 16, 2013.

The full text of the email exchange is attached hereto as **Exhibit C**. 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.

Thus, the Owner cannot argue that the Appellant knew or should have known about plans to increase the height of the penthouse structures or to install elevated decking on top of the roof. That information was purposefully withheld from the Appellant at the time. Meanwhile the Owner offered false assurances that it was not increasing the penthouse height.⁴

D. The Zoning Administrator's Determination Letter, dated December 27, 2013, is not Pertinent to the Timeliness Issue.

In the Motion to Dismiss, the Owner claims that it obtained a determination letter, dated December 27, 2013, but this alleged letter does not support the Owner's Motion to Dismiss. Appellant was never provided with a copy of this letter at any time before it was filed with the BZA in January of 2016, and the Appellant has never seen a copy of any referenced plans, dated November 12, 2013. The Owner has not provided the BZA with any plans associated with this letter, and the Zoning Administrator did not reference this letter when he issued a subsequent determination letter on February 10, 2014. The December 27, 2013 letter and referenced plans are not posted on the Zoning Administrator's website. Thus, the alleged existence of this letter does not prove that the

⁴ In the Motion, the Owner has the audacity to mention the Appellant's alleged expression of "general support" for the project on January 2, 2014. At the time, Erie Condominium was reasonably relying upon the Owner's knowingly false characterization of its "refinements."

Appellant knew about the letter or any plans that were purportedly reviewed by the Zoning Administrator at the time.

The Zoning Determination letter from December 27, 2013 does, however, *support* Erie Condominium's contention that the Owner purposefully withheld material facts from the Appellant about its plans for the roof level of the Residential Building. In the Motion, the Owner admits that it knew as early as November of 2013 that it was making certain "refinements" that increased the height of the penthouse to 208.78 feet.⁵ If the Owner already knew in November that it was increasing the height of the penthouse, then it lied to Erie Condominium when it represented in writing on December 23, 2013 that it was not increasing the penthouse height. See **Exhibit C**.

If the Owner already knew about its plans to increase the height of the penthouse in November and December of 2013, then it also misled Erie Condominium when it transmitted the email and plans to the Appellant on December 16, 2013. That email touted the alleged benefits of the re-designed building and solicited Erie Condominium's support, but failed to disclose the material, adverse changes that were already planned. See **Exhibit B**.

E. The Zoning Administrator's Determination Letter, dated February 10, 2014, did not Expressly Approve any Increase in Penthouse Height or alter Appellant's Reasonable Understanding of the Owner's Plans.

The Owner contends that it obtained another determination letter, dated February 10, 2014, and erroneously implies that the letter approved certain changes to the design relating to the height of the penthouse and elevated decking on the roof. However, on its

⁵ This was a meaningful increase from the promised elevation of 206.83 feet. That lower elevation was approved in the Zoning Administrator's first determination letter, dated April 9, 2013.

face, the letter does not mention or authorize any increase in penthouse height, any addition of elevated decking on the roof, or any planned changes to the use of the rooftop spaces. To the contrary, the Zoning Administrator wrote that the “proposed roof structure and roof decks will be reduced in overall size” and that “[t]he reduction in size minimizes the impact on the views from the adjacent Erie Condominium building to the north.” He found that “[t]he modifications will also reduce the impact on the views from the roof of the adjacent property to the north.” See Appellant’s Pre-Hearing Statement at Exhibit C.

That letter did not put Erie Condominium on notice of adverse changes to the roof level of the Residential Building. At the time, the Owner did not provide Erie Condominium with a copy of the letter. If Erie Condominium had seen the letter, the written findings would not have put Appellant on actual or constructive notice of any adverse changes to the roof level plans. Instead, the letter would have reinforced the promises that had just been provided by the Owner to the Appellant in December of 2013.

With the Motion to Dismiss, the Owner purportedly submits the “presented plans” upon which the Zoning Administrator relied when he issued his determination letter on February 10, 2014. See Motion at p.4; Motion at Exhibit C. The Owner further represents that “[t]he plans submitted to the Zoning Administrator showed a penthouse height at 208.78 feet.” Motion at p. 4 (citing Exhibit C of the Motion). The plans submitted by the Owner with its Motion, however, are materially different from the plans posted on the Zoning Administrator’s official website.⁶ The discrepancies between the two versions of plans involve the pages relating to elevations and the roof level of the Residential Building.

⁶ The Appellant filed an accurate copy of the determination letter and all posted plans with its Pre-Hearing Statement at Exhibit C.

According to the copy of the Zoning Administrator's letter and attached plans available online, the plans did not include Sht. A7, Sht. A8, or Sht. A9.⁷ Yet, the Owner submits those three pages to the BZA with its Motion to Dismiss in an improper attempt to suggest that Erie Condominium knew (or should have known) about those plans at the time. In fact, the Appellant did not know about these plans at the time.⁸

F. The Owner did not Disclose its Real Intentions with Respect to the Roof Level During 2014.

The Owner incorrectly contends that Erie Condominium knew (or should have known) in March of 2014 that the Owner planned to ignore the three prior zoning rulings with respect to the Property (BZA Order No. 18330, the letter determination dated April 9, 2013, and the letter determination dated February 10, 2014) and that the Owner intended to breach its express promises to the Appellant from December of 2013. The Owner, however, did not disclose those intentions at the time and purposefully obfuscated information so as to mislead the Appellant.

In the Motion to Dismiss, the Owner says that on or about March 18, 2014, it increased the height of the penthouse structure again in order to put air handling units on top of the roof structures, and that this change was in response to Appellant's concerns about the air handling units. Motion at p. 5. Preliminarily, this is a complete mischaracterization of the Appellant's communications on the subject. In fact, Erie Condominium was only asking in early 2014 if the air handling units could be moved

⁷ Even if the Zoning Administrator saw these pages at the time, they clearly did not disclose a penthouse with parapet of 213.10 feet. The Owner never procured a subsequent determination letter that approved any such increase.

⁸ Undersigned counsel requested a copy of the plans that the Zoning Administrator relied upon when he issued the February 10, 2014 determination letter. The Zoning Administrator did not respond to that request. His staff stated that all plans are posted online.

“farther away from the Erie” “on the roof on the side of the building near the alley.” The Owner responded on March 10, 2014 by agreeing to “[place] them all on the roof just like the previous design – but at a further distance back from your building.” See Motion at Exhibit E (email exchange).

According to the Owner, it sent plans to Erie Condominium eight or nine days later that put Appellant on notice of adverse changes to the design of the roof level at the Residential Building. The Owner is referring to plans that it purportedly sent on March 19, 2014 (“March Plans”), but those plans were actually dated December 9, 2013. At the time, there was no indication that the attachments were current plans for the project or that this set of plans incorporated the promises and representations that the Owner had made to Erie Condominium *after* December 9, 2013. Those promises included (without limitation) the representation on December 23, 2013, that the Owner was not going to increase the penthouse height. In fact, the transmittal email with the “March Plans” expressly stated that the Owner had “not yet made revisions as discussed, but will do so in the near future.” The Owner further stated: “[O]ne 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 Motion at Exhibit F.

Thus, the Owner sent purportedly old plans that did not reflect all of the intervening promises to Erie Condominium. Appellant had no reason to conclude that the Owner was reneging on its express promises regarding the project because the Owner concurrently reaffirmed its intention to make further revisions.

Now, in 2016, the Owner contends that these “March Plans” somehow put Erie Condominium on notice of the Owner’s real intentions for the project, but the facts and

context require the opposite conclusion. The attachments were still dated December 9, 2013, and the Owner was promising further revisions to reflect Erie Condominium's concerns. The Owner did not candidly disclose that it was abandoning its recent promises to the Appellant about the roof level. The Owner certainly did not disclose that its promises had been untrue when they were made in late December of 2013. To the contrary, the Owner stated that it was still making revisions to satisfy the concerns of neighbors at Erie Condominium who are not architects, zoning experts, or builders. In March of 2014, the Owner hid some incomplete and technical information in back-dated or seemingly outdated plans, but assured the Appellant that further revisions would be made.

The Owner also sent undated "roof views" that measured an increased setback of the penthouse structure from Champlain Street, but omitted any measurements of the old and new penthouse heights, and failed to include any depiction of the elevated decking or railings. The Owner did not provide any roof views that showed the massive presence of a much taller penthouse, the obstructed views created by the re-designed penthouse, or the likely effects of elevated decking. If the Owner knew in March of 2014, as it now contends, that it was increasing the penthouse height and adding a parapet thereon up to a combined elevation of approximately 213.10 feet and a total height of 16.46 feet, then the proposed views should have shown an 80% or more increase in penthouse height from the promised low-rise penthouse of nine feet. They did not. Erie Condominium reasonably relied upon these roof views as an accurate representation of the Owner's proposed plans.

G. The Owner Misled the Appellant Again Between September of 2014 and February of 2015.

Before October of 2015, the Owner never revealed its real plans for the roof level with clarity or candor. The Owner claims that it told the Appellant in September of 2014

and February of 2015 that it was building in accordance with the “March Plans.” Motion at p. 5. According to the Owner, it told Mr. Wiedis of Erie Condominium that “it planned to build the project in accordance with the March Plans” and that the March Plans were “the final plans.” This is not an accurate characterization of the referenced emails but, in any event, this representation was untrue. In September of 2014, the Owner did write as follows: “[w]e are building, basically, the plans we showed you – not the original ‘2-pod’ design.” Motion at Exhibit H. Thus, the Owner was only stating that it had abandoned the original two-bar building with courtyard, and was pursuing the alternative design for the building.

Appellant wrote the Owner again on November 18, 2014, and asked for a copy the the approved plans. See **Exhibit D** hereto. The Owner did not comply with that request and the Appellant asked again on February 17, 2015. *Id.*

On February 18, 2015, the Owner wrote that it would show the Appellant the “plans again” but that they “are the same as the ones we showed you last spring.” *Id.* The Owner did not send the permit set of plans that already existed at the time. See Motion at p. 5 (stating that the building permit plans were dated for permit as of July 18, 2014, and revised as of February 6, 2015, for construction drawings) (“Building Permit Plans”).

Thus, the Appellant repeatedly asked the Owner for “your final and approved plans” (see Exhibit D) after those plans already existed and the Owner did not send them. Instead, the Owner falsely stated that Erie Condominium has already seen such plans.

Unbeknownst to Erie Condominium, the permit set provided much more information that had never been shared with Erie Condominium, including, but not limited to, an elevation of the penthouse parapet of +213.10 feet and measurements showing the

height difference between the roof elevation and penthouse roof. The Owner opted not to share this information with Erie Condominium, despite repeated requests, and falsely stated that the Appellant had seen the final plans already. At the time, the Appellant did not know, and should not have known, that the Owner planned dramatic changes to the roof level that were inconsistent with express promises to the Appellant, the BZA and the Zoning Administrator.

H. The Owner Mischaracterizes Communications with Appellant in May of 2015.

The Appellant did not learn about the Owner's deception in May of 2015. The Owner inaccurately claims that it attended a meeting on May 12, 2015 during which the parties "discussed the planned height of the penthouse." Motion at pp. 5-6. Some occupants of Erie Condominium did meet with the Owner at that time, but the height of the penthouse was not discussed. At the meeting, the Owner did not explain to any of the owners at Erie Condominium that the penthouse would be much taller than approved by the Board in Case No. 18330 and the Zoning Administrator, or that elevated decking would dramatically increase the actual height of users on the Residential Building above the promised 1 foot 10" differential depicted in plans that the Zoning Administrator approved on April 9, 2013. The focus of the meeting was the specific location of the penthouse structure on the roof, not the height of the structure. Appellant reasonably assumed that the heights of the building and penthouse structure were dictated by BZA Order 18330, the settlement agreement and the determination letter on April 9, 2013. Thus, the focus at the time was upon the setbacks and placement of the roof structure on the reconfigured building.

Although Mr. Wiedis, the President of Erie Condominium, asked for a complete set of the final drawings in February of 2015, the Owner never provided him (or anyone else on the Board of Erie Condominium) with any hard copy or emailed copy of those plans before October of 2015. Unlike the many other emailed communications in this case, the Owner has not produced any emails showing that Mr. Wiedis or any Board member received a permitted set of plans from the Owner.

I. The Owner Knew About the Current Dispute *Before* Constructing the Roof Level And Sought to Evade Questions About the Height of the Roof Structures.

Mr. Wiedis directed further inquiries to the Owner in October of 2015, immediately after noticing early construction of the elevator shaft and stair towers. He wrote on October 9, 2015:

I am a bit surprised at the height of the penthouse structure in the middle of the building, as I don't see this depicted in any of the plans that we received before construction began. Would you be so kind as to confirm the overall height of the roof, the height of the roof structures, and the distance of the roof structures from our property line. Could you please also share the plans that were provided to and approved by the BZA.

Exhibit D hereto. At the time of this email, *there was no roof on the building at all*, and the Owner was still constructing the lower residential levels. The Owner did not respond to this request on October 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th or 18th, even though the solicited information was readily available to the Owner. Instead, the Owner built frantically while on notice that Erie Condominium was probably going to figure out the previously undisclosed plans for the roof level. Then, on October 19, 2015, the Owner responded with a very brief email that did not include the requested plans, and omitted all information about the height of the penthouse structures. Instead, the Owner wrote in part: "The setbacks and height we discussed way back when are what is being built.

Nothing has changed.” **Exhibit D** (email dated Oct. 19, 2015). While the Owner contended that he was answering Mr. Wiedis’ “specific questions,” he failed to provide the requested information about “the height of the roof structures.” *Id.* After a follow-up inquiry, the Owner finally disclosed the elevation of the roof structure on October 19th, 2015, but did not share the computed height of that structure.

Mr. Wiedis explained Appellant’s concerns to the Owner in an email on October 22, 2015, but the Owner simply continued to build. Erie Condominium only received a single page of the permit set (A204) from the Owner on October 22, 2015 at 5:04 p.m., despite repeated requests for a full set of the plans. Even on October 22, 2015, the Owner attempted to lull the Appellant into inaction by writing: “We are not much more than the 9’ you mention in the email below, but I am not sure where that number comes from as I do not see it in the BZA order or on any of our previous set of plans.” **Exhibit F**. According to the Owner, 16.45 feet is “not much more” than 9 feet. Of course, the referenced BZA order repeatedly mentioned the lowered height of the penthouse, and the BZA only approved plans for a nine-foot penthouse. *See* BZA Case No. 18330.

The Appellant filed the instant appeal the next day, i.e., October 23, 2016.

J. The Owner Misstates the Date of this Appeal and the Status of Construction in October.

Erie Condominium filed this appeal on October 23, 2015, and the date-stamped copy is docketed as Exhibit 1 in this case. Yet, the Owner erroneously contends that that “instant appeal was filed on October 27, 2015.” Motion at p. 6. Although the Owner was advised of the appeal before October 27th, and knew about Erie Condominium’s concerns before the Owner constructed the roof level, it continued to build at its own risk.

On October 23, 2016, the penthouse walls were not erected. Attached as **Exhibit E** is a photo that was taken on October 22, 2015 at 4:16 p.m.⁹ The Owner continued to build at an accelerated pace after learning of Erie Condominium's concerns in October of 2015, but it did so at its own risk. The Motion misstates the status of construction at the time of the appeal, in part because the Owner uses a later, incorrect date for the appeal. *See* Motion at p. 6. In fact, at the time of the appeal, the penthouse structures were not under roof, the penthouse walls were not erected, and roof trusses were not in place. *See, e.g., Exhibit E.*

III. Appellant Satisfied the Timeframe for Filing This Appeal.

Section 3112.2 of the Zoning Regulations provides that an appeal should normally be filed "within 60 days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier." 11 DCMR § 3112.2 (a).

In this case, Erie Condominium is appealing the Zoning Administrator's approval of the building permit in June of 2015. The permit itself did not include any information about the height of the building, the height of the penthouse structures or other specifics relating to the roof level.

The Appellant had no reason to know that the Zoning Administrator would approve a permit if the plans were inconsistent with prior zoning rulings for the Property. To the contrary, the Zoning Administrator was already very familiar with the Property and had issued at least two zoning determination letters relating to the Property. In his first letter, dated April 9, 2013, the Zoning Administrator expressed familiarity with BZA Order No.

⁹ Appellant's Pre-Hearing Statement includes additional photos from October 29 and October 30th. *See* Appellant's Pre-Hearing Statement at Exhibit J.

18330, and even noted that the BZA had approved a “roof structure having a height of 9 feet.” At that time, he approved a very specific height for the penthouse roof of 206.83’ and a reduction in the height of the roof. On February 10, 2014, he similarly demonstrated concern for the impact of the planned building upon Erie Condominium and seemingly considered the impact of requested changes upon the Appellant before approving them.

Erie Condominium had no direct communications with the Zoning Administrator before October of 2015. He never communicated any intention to disregard the plans that the Board approved in BZA Case No. 18330, or to approve any changes that would materially increase the adverse effects of the building upon Erie Condominium. Based upon the history of this case, Erie Condominium had a reasonable expectation that the Zoning Administrator would deny any application for a building permit if the construction plans were inconsistent with the plans that the BZA approved in Case No. 18330 and the plans that the Zoning Administrator approved in prior determination letters.

The Owner incorrectly contends that Erie Condominium knew about the “specific changes to the penthouse” for more than 19 months before filing the appeal. This is simply untrue. The Owner promised in writing not to increase the height of the penthouse. It never notified the Appellant that it was reneging upon that unequivocal promise. The Owner sent some plans to the Appellant, but the Owner purposefully omitted key pages in December of 2013. When it sent a few extra pages in March of 2014, those pages appeared to be outdated and the Owner concurrently promised to make further revisions. At the same time, the Owner sent misleading “roof views” that did not reveal the adverse effects of any planned changes. Due to the Owner’s longstanding duplicity, Appellant did not have actual or constructive knowledge of the Owner’s real intentions until construction began at

the roof level of the Residential Building in October of 2015. Erie Condominium appealed within *one day* after learning that the Zoning Administrator erred by approving the building permit. The roof structures were not yet “under roof” when the appeal was filed. *See* 11 DCMR § 3112.2(b).¹⁰

Thus, Erie Condominium filed this appeal within sixty (60) days after learning of the Zoning Administrator’s decision. Appellant investigated as soon as it saw the very first evidence of unanticipated construction. Before then, it had every reason to believe that construction would comport with earlier zoning rulings and with express promises from owners of the Property. It only learned the relevant information in October of 2015 and filed this appeal immediately.

IV. The Board Has Grounds for Extending the 60-Day Deadline.

Alternatively, the Board may extend the normal sixty-day deadline for filing an appeal in the present circumstances. 11 DCMR § 3112.2(d) expressly authorizes an extension of the normal 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. This appeal 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 Jeffrey Schonberger in BZA Order 17414. In that case, the appellants challenged a

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).

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 arising from any modest extension of the appeal deadline. The Owner knew about Erie Condominium's concerns regarding the roof level from December of 2013 and, nonetheless, provided inaccurate and incomplete information to the Appellant. The Owner refused repeated requests for a construction set of plans in order to prevent earlier scrutiny of its final plans, which contained different information than previously provided. The Owner knew that the Appellant was investigating the matter *before* building the roof level of the building and tried to delay that inquiry with dilatory and evasive responses. For years, the Owner misrepresented its plans for the roof level so as to induce inaction by Erie Condominium. When the Appellant contacted the Owner about the new construction on the roof level of the Residential Building, the Owner did not respond promptly and seemed to accelerate construction. The Owner cannot establish prejudice when it caused the delay by means of its own

misconduct. The Owner has played games for years and any delay is solely a consequence of the Owner's misconduct.

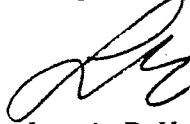
At the time of the appeal, the roof structures were not yet under roof. Although the permit was issued in June, the Owner obviously began construction on the lower levels first and worked up towards the roof level. It had not constructed the roof of the building when Erie Condominium made inquiries in October. At the time of the appeal, there were no walls or roof on the rooftop "cabanas.". Photos show that the Owner had just begun construction of the challenged rooftop structures. Erie Condominium did not engage in any "dilatory behavior" by "lying in wait," as alleged by the Owner. Motion at p. 15. Instead, Erie Condominium simply did not know that it had been deceived and it acted with great promptness when it discovered the Owner's deception.

After the appeal in October, the Owner proceeded to build on the roof level 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.

V. Conclusion

For the reasons stated in Appellant's Pre-Hearing Statement and in this Opposition, the Motion to Dismiss should be denied.

Respectfully submitted,



Laurie B. Horvitz, Esq.

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

PROOF OF SERVICE

I hereby certify that on February 1, 2016, a copy of the foregoing "Appellant's Opposition to Owner's Motion to Dismiss Appeal" was served on the following parties to BZA Case No. 19174:

Mathew LeGrant
Zoning Administrator
DC Consumer and Regulatory Affairs
1100 4th Street, SW
Washington, DC 20024

(Via US Mail)

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

(Via US Mail)

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

(Via US Mail)



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

- Exhibit A - Email from Christine Shiker to Laurie Horvitz, dated March 7, 2013
- Exhibit B - Email from Brian Papke to Richard Wiedis, dated December 16, 2013,
with all attachments
- Exhibit C - Email from Brian Papke to Richard Wiedis, dated December 23, 2013,
with attachments
- Exhibit D - Email from Christian Cronin to Richard Wiedis, dated October 21, 2015,
and prior emails from same email chain
- Exhibit E - Photo of 2337 Champlain Street, NW, taken October 22, 2015
- Exhibit F - Email from Christian Cronin to Richard Wiedis, dated October 22, 2015
(excluding attachment)

A

EXHIBIT A
Appeal No. 19174

Laurie Horvitz

From: Christine.Shiker@hklaw.com
Sent: Thursday, March 07, 2013 1:31 PM
To: Laurie Horvitz
Subject: Re: FCP Champlain

Laurie - it was submitted yesterday with the correct penthouse height on the proposed plan. I am traveling today but will send you the transmittal with attachments when I am at a computer. Christy

On Mar 7, 2013, at 7:30 AM, "Laurie Horvitz"
<laurie@horvitzlegal.com<mailto:laurie@horvitzlegal.com>> wrote:

Did you submit the reliance letter? If so, please send me a copy. If not, please let me know why there has been a delay. We will need to report to the Court later this month. Let's try to wrap this up!

Regards,

Laurie Horvitz, Esq.
Law Office of Laurie B. Horvitz, LLC
4520 East West Highway, Suite 700
Bethesda, Maryland 20814
(301) 961-6429

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(I) AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE, OR
(II) PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED MATTER HEREIN.****

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B

EXHIBIT B

Appeal No. 19174

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

From: Brian Papke <brian@capcityre.com>
To: wiedzis <wiedzis@aol.com>
Sent: Mon, Dec 16, 2013 12:39 pm
Subject: 2337 Champlain follow-up

Good morning.

As per our conversation last week regarding the potential building re-design – I wanted to send you some electronic versions of the paper copies I left you with. I also included an alternate rooftop design – which pulls back the rooftop structures an additional 18” from the first version I showed you.

I wanted to also make a brief list of the benefits that I think your building would see based on this new proposed plan:

- Incorporates an open side yard – which will allow more light and air for the neighboring properties, as well as be less invasive during construction (no underpinning/etc).
- Has an increased setback for the rooftop structures from the Erie building – from 20'-0” in the current design, to 28'-0” in the proposed.
- Has an increased setback for the rooftop structures from the west property line (Champlain street side) – showing two alternates – one at 25'-6” from the front of the building, and one at 27'-0”. The current BZA-approved plans for the building show only an 18'-0” setback at that location.
- Less property line and party-wall type work on the project – less invasive – no underpinning/etc.
- Parking entry ramp flips to the south side vs. alongside the adjoining north property line abutting the Erie. In its place will be landscaping.
- There will be less shadowing of the Erie building with our construction – including the rear patios.
- Less potential noise transmission issues between our building and the Erie – no adjoining walls.
- The construction process will be shorter due to a less complicated, floating, building.

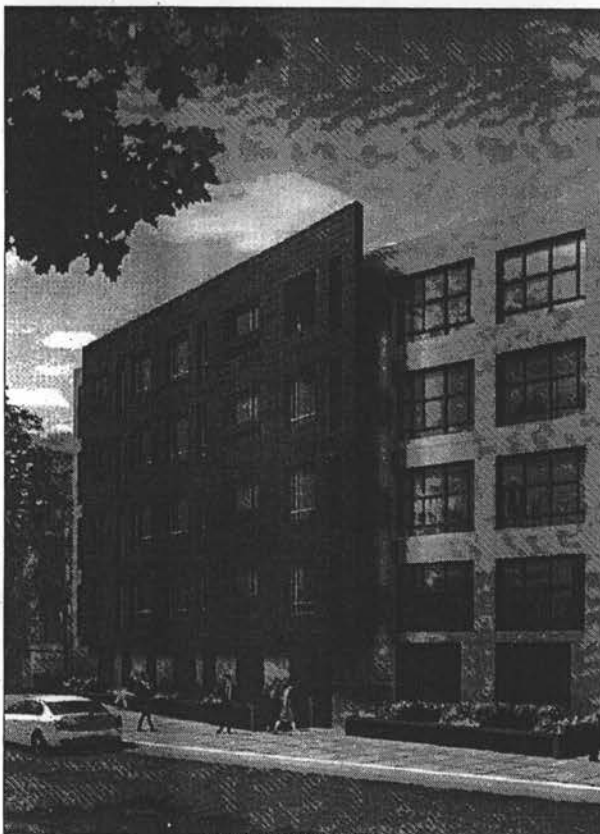
As I mentioned in our meeting, we have met with the zoning administrator to see if this new proposed building is in keeping with the previous BZA-approved design in terms of the variances requested. The that end, he recognized that the building was substantially different than the original, and as such, 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



SIMILAR RENDERING

THE MORGAN

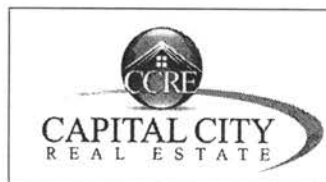
2337 CHAMPLAIN ST., NW
WASHINGTON, DC 20009

MODIFICATION TO BUILDING PLANS

DATED: 12.9.2013

DRAFT COPY

NOT FOR DISTRIBUTION



210 7th Street SE - Suite 201
Washington, DC 20003
202.822.5995 (P); 202.822.0908 (F)

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 (AS-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 = 492 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 = 33,376 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 208 - 577 S.F. 1-BED @ 80% AMI
-IZ UNIT S.F. PROVIDED = 2,744 S.F.

SHT. A2

22'-0" "GREEN GIANT"
ARBORVITAE, OR SIMILAR, TYP. 11'-0" 11'-0"

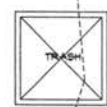
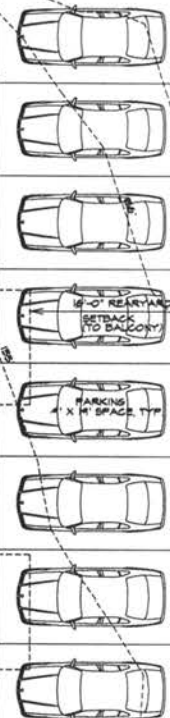
AREAVELL

11'-0" REAR YARD
SETBACK

8804 S.F. BUILDING FOOTPRINT

BUILDING PERIMETER = 349'-0"

22'-0" W. CLS. MORE THAN 4'-0" ABOVE GRADE (+ WALKOUTS)
= 442 S.F. ALLOCATED TO BUILDING PARK AT FIRST/CELLAR LVL.
911'-0" W. CLS. LESS THAN 4'-0" ABOVE GRADE
= 0 S.F. ALLOCATED TO BUILDING PARK AT FIRST/CELLAR LVL.



EXISTING
ALLEY

SIDEWALK

7'-0"

21'-0"

REMOVE EXISTING
CURB CUT
(NEAR SIDEWALK)

CHAMPLAIN ST.

AREAVELL

PARKING
METER

SIDEWALK

AREAVELL

AREAVELL

FENCE

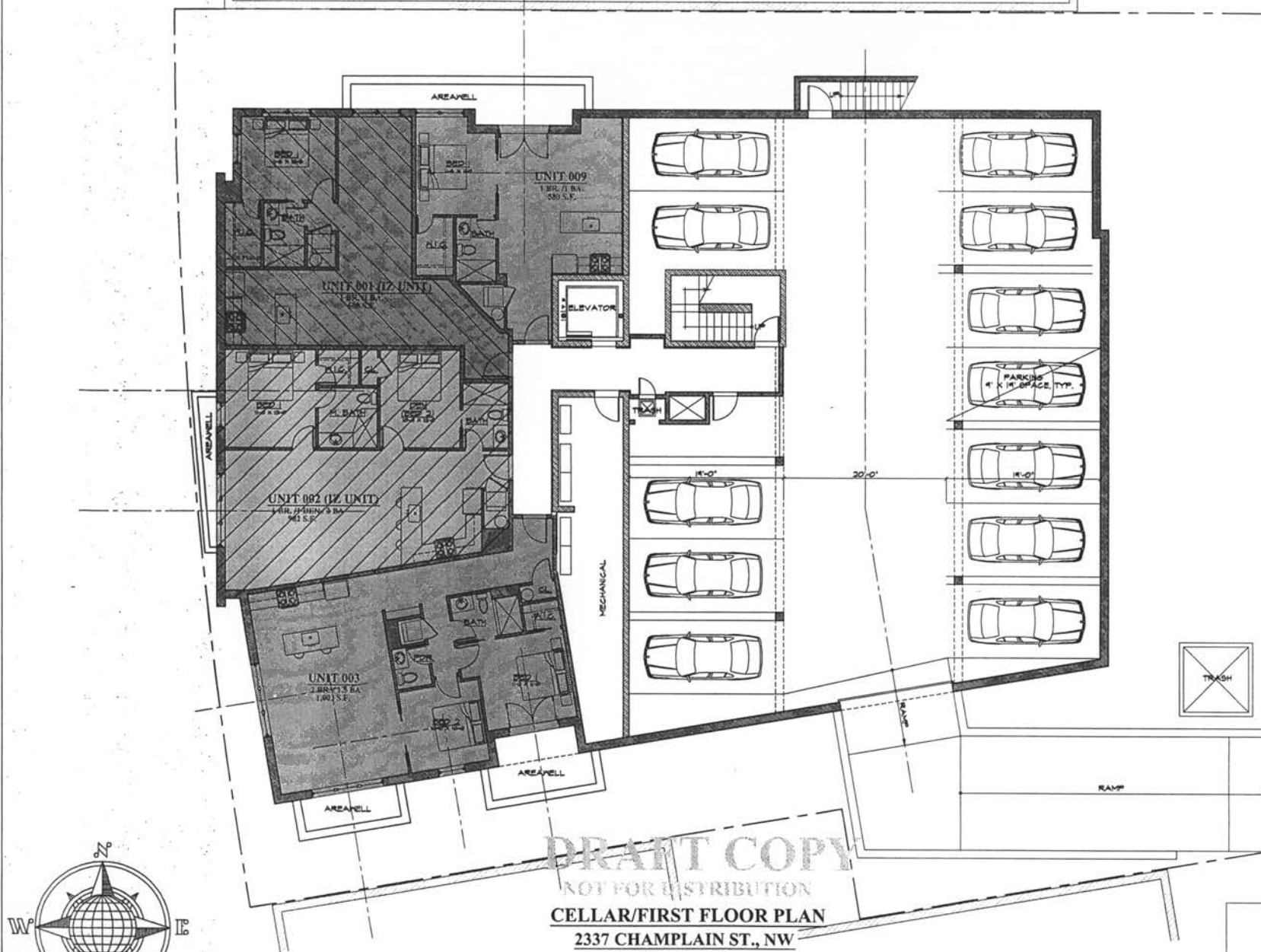
RAMP



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SITE PLAN
2337 CHAMPLAIN ST., NW
REVISED BUILDING
12.9.2013





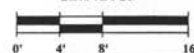
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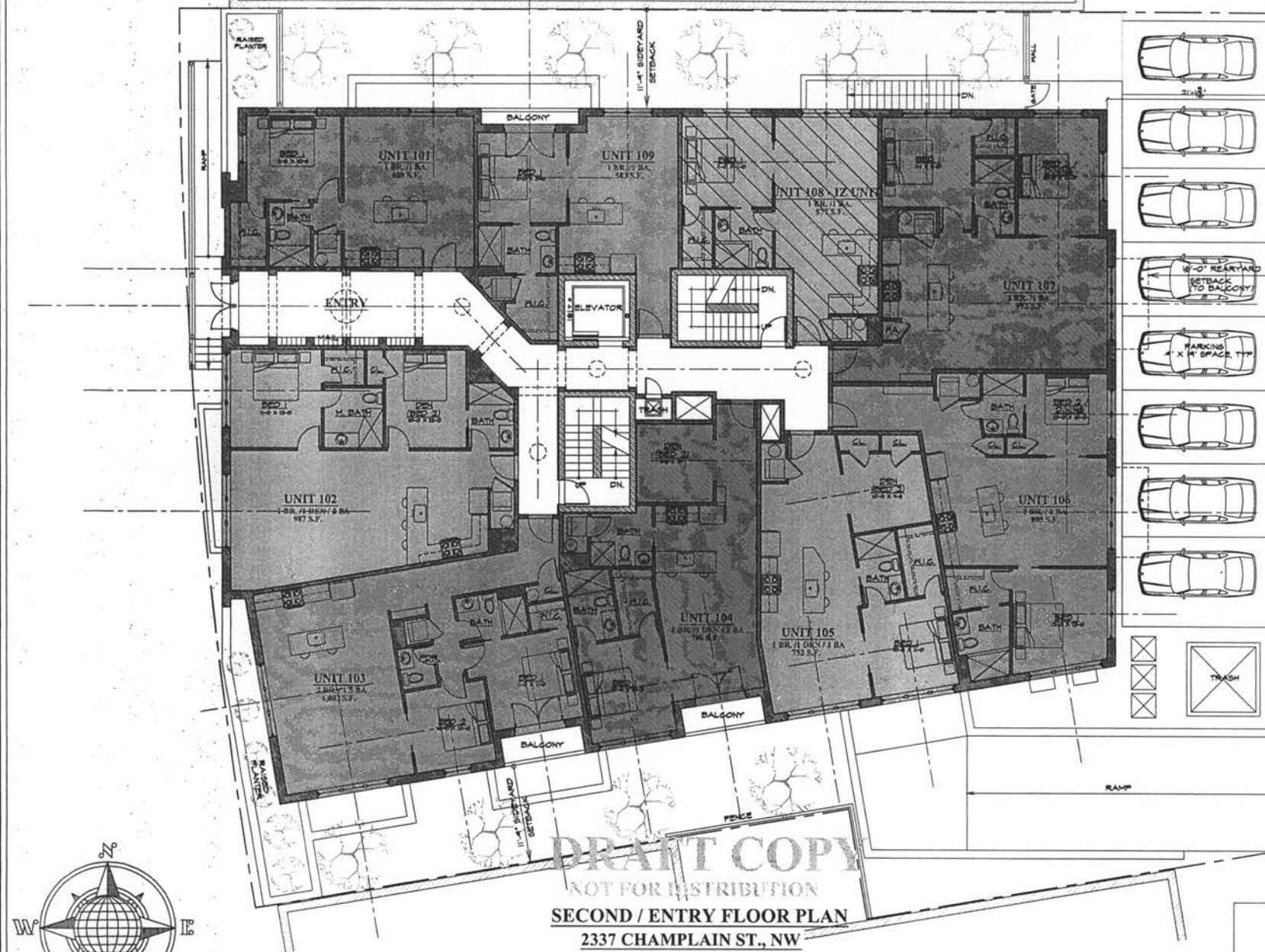
CELLAR/FIRST FLOOR PLAN

2337 CHAMPLAIN ST., NW

REVISED BUILDING
12.9.2013



SHT. A4





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





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FOURTH FLOOR PLAN

2337 CHAMPLAIN ST., NW

REVISED BUILDING

12.9.2013



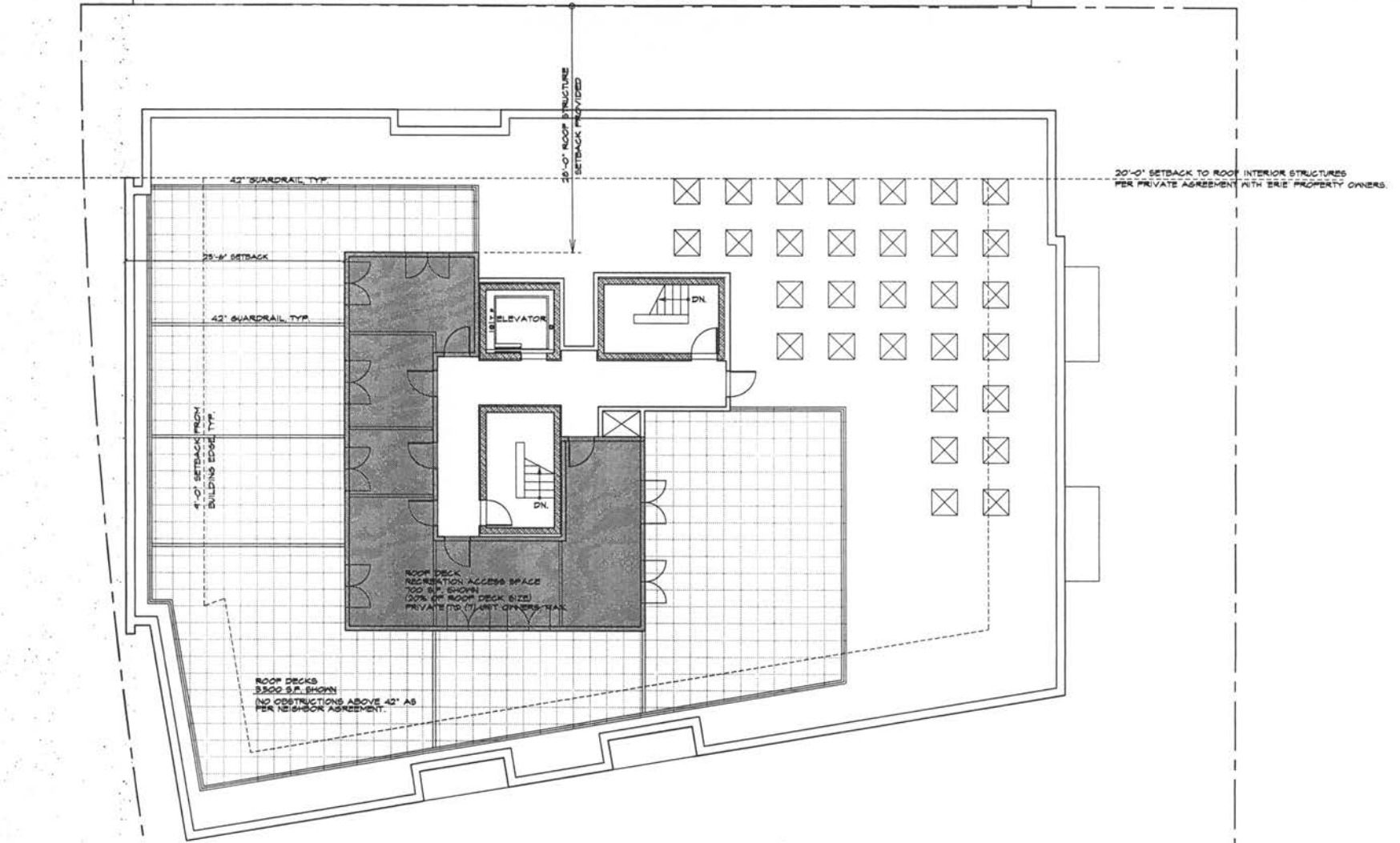


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FIFTH FLOOR PLAN
2337 CHAMPLAIN ST., NW
REVISED BUILDING
12.9.2013



SHT. A8



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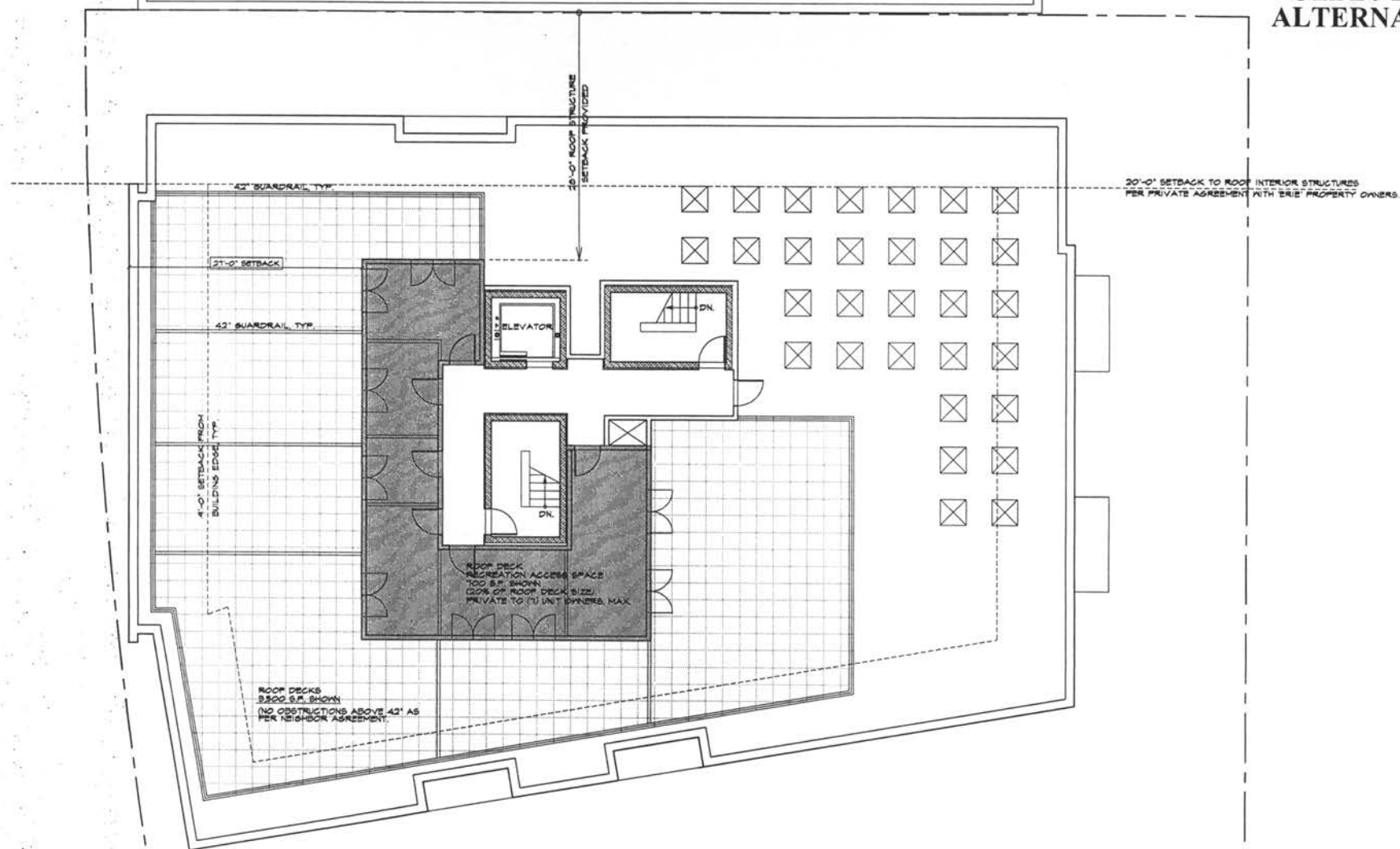
ROOF PLAN

2337 CHAMPLAIN ST., NW

REVISED BUILDING
12.9.2013



SHT. A8 ALTERNATE



DRAFT COPY

NOT FOR DISTRIBUTION

ROOF PLAN

2337 CHAMPLAIN ST., NW

REVISED BUILDING
12.16.2013



C

EXHIBIT C
Appeal No. 19174

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.

Let me know when you have the list of questions.

As far as a draft letter – see attached. I drafted it from your viewpoint to me. This would be for the Zoning Administrator's reference as evidence that he could use to support the application of the previous BZA variances granted to our new proposed design. Please take a look, and let me know if you have any comments.

Thanks again,

Brian

From: Rich Wiedis [<mailto:wiedis@aol.com>]
Sent: Wednesday, December 18, 2013 1:19 PM
To: Brian Papke
Subject: Re: 2337 Champlain follow-up

Hi Brian,

Thanks for providing these designs. I've sent these to our counsel for review. In discussing the design with her we may have a few follow-up questions about details that are not provided in the plans. We also want to make sure that the new plans are consistent with our agreement with the prior developer. She is drafting that list and I will send it to you when I receive it. This should be in the next day or two at most. Overall, I think the new designs look promising -- but we want to get our questions answered and I need to run the plans by our Association, which I am now doing.

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

From: Brian Papke <brian@capcityre.com>
To: wiedis <wiedis@aol.com>
Sent: Mon, Dec 16, 2013 12:39 pm
Subject: 2337 Champlain follow-up

Good morning.

As per our conversation last week regarding the potential building re-design – I wanted to send you some electronic versions of the paper copies I left you with. I also included an alternate rooftop design – which pulls back the rooftop structures an additional 18" from the first version I showed you.

I wanted to also make a brief list of the benefits that I think your building would see based on this new proposed plan:

- Incorporates an open side yard – which will allow more light and air for the neighboring properties, as well as be less invasive during construction (no underpinning/etc).
- Has an increased setback for the rooftop structures from the Erie building – from 20'-0" in the current design, to 28'-0" in the proposed.
- Has an increased setback for the rooftop structures from the west property line (Champlain street side) – showing two alternates – one at 25'-6" from the front of the building, and one at 27'-0". The current BZA-approved plans for the building show only an 18'-0" setback at that location.
- Less property line and party-wall type work on the project – less invasive – no underpinning/etc.
- Parking entry ramp flips to the south side vs. alongside the adjoining north property line abutting the Erie. In its place will be landscaping.
- There will be less shadowing of the Erie building with our construction – including the rear patios.
- Less potential noise transmission issues between our building and the Erie – no adjoining walls.
- The construction process will be shorter due to a less complicated, floating, building.

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 areawells 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.

D

EXHIBIT D
Appeal No. 19174

Sent from my iPhone

Begin forwarded message:

From: Christian Cronin <christian@capcityre.com>
Date: October 21, 2015 at 6:53:19 PM EDT
To: Richard Wiedis <wiedis@aol.com>
Cc: David and Mark <dhsmsm@me.com>
Subject: Re: Champlain at.

Rich, there have been no changes to what has been presented to the association. Please let me know what numbers are confusing and I will try to clarify.

Thanks

Sent from my iPhone

On Oct 21, 2015, at 5:19 PM, Richard Wiedis <wiedis@aol.com> wrote:

Hi Christian,

I am somewhat confused and concerned. Can you please double check your numbers because they do not seem to correspond with earlier information that you provided to our Association about the overall height of the roof structures. Have there been any changes that we were not informed about?

Best regards,

Rich

On Oct 19, 2015, at 4:12 PM, Christian Cronin
<christian@capcityre.com> wrote:

Sure, the penthouse roof structure will be at 209.08 and the parapet will be 213.10.

From: Richard Wiedis [<mailto:wiedis@aol.com>]
Sent: Monday, October 19, 2015 3:11 PM
To: Christian Cronin

Cc: David and Mark
Subject: Re: Champlain at.

Hi Christian,

Thanks for this information. In my email below, I had also asked for the height of the roof structures. Could you please provide that information as well. Thanks.

On Oct 19, 2015, at 1:36 PM, Christian Cronin
<christian@capcityre.com> wrote:

Hi Rich,

The setbacks and height we discussed way back when are what is being built. Nothing has changed. What you are seeing is the elevator shaft/ Mechanical penthouse structure that will not be built out or up any further.

Answers to your specific questions below:

- 1) Height of the roof is 196'47"
- 2) Height to top of roof parapet is 198'14" (equal to or less than Erie parapet)
- 3) Mechanical PH structure set back from champlain is 25'6" and set back from the north property line (Erie) is 28'

If you are interested in sitting down to discuss, please let me know.

Thanks,
Christian

From: Rich Wiedis [<mailto:wiedis@aol.com>]
Sent: Friday, October 09, 2015 4:32 PM
To: Christian Cronin
Cc: dhsmsm@me.com
Subject: Re: Champlain at.

Hi Christian,

Hope all is well. Looks like the new building is proceeding along nicely. I am a bit surprised at the height of the penthouse structure in the middle of the building, as I don't see this depicted in any of the plans that we received before construction began. Would you be so kind as to confirm the overall height of the roof, the height of the roof structures, and the distance of the roof structures from our property line. Could you please also share the plans that were provided to and approved by the BZA.

Best regards,

Rich Wiedis

On Feb 18, 2015, at 8:44 AM, Christian Cronin <christian@capcityre.com> wrote:

Hi Rich,

Happy to meet with you all and share the plans again. As mentioned by Brian in the email below, the plans are the same as the ones we showed you last spring. As far as the street work, Creative Pipe was supposed to be out there last week to fix the patching. Unfortunately, their original public space permit had expired and they were/are working with DDOT on getting that permit renewed. My hope is they will be allowed to proceed very soon. Please let me know some times that work for the association.

Thanks,
Christian

From: Rich Wiedis
[<mailto:wiedis@aol.com>]
Sent: Tuesday, February 17, 2015 5:41 PM
To: Christian Cronin
Cc: charles.hurpy@gmail.com; saullevina@aol.com; xmai.hua@gmail.com; dhsmsm@me.com; lhs462@gmail.com; ortizr@georgetown.edu; davidwrowland@hotmail.com; artman@box-a.nih.gov; benjamin.wallace@me.com; cbarahona@DCCOUNCIL.US
Subject: Fwd: Champlain at.

Hello Christian,

My name is Richard Wiedis and I am the President of the Erie Condominium Association. I sent the below email to Brian Papke back in November 2014 attempting to get some information on the development project next door to our building on Champlain Street. Unfortunately, I never received a response from Brian. In any case, since you have already begun construction, our Association would still appreciate the opportunity to

meet with you and review your final and approved plans. Also, as you know, we have been trying to get some resolution to the incomplete paving work on Champlain Street in front of the Erie and your construction site. When we meet, perhaps you can give us an update about the plan to address this issue. Please let me know when you may be available to meet with us. We would be happy to host you at the Erie. Thanks and best regards,

Rich Wiedis
President Erie Condominium
Association

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

From: Rich Wiedis <wiedis@aol.com>
To: brian <brian@capcityre.com>
Sent: Tue, Nov 18, 2014 10:37 am
Subject: Re: Champlain at.

Hi Brian,

Can you confirm that your group has received approved plans to begin your project. If so can you please provide us with a copy of the approved plans. Thanks. Rich.

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

From: Brian Papke
<brian@capcityre.com>
To: Wiedis <wiedis@aol.com>
Sent: Tue, Sep 30, 2014 1:05 pm
Subject: RE: Champlain at.

Rich,

Eichberg is working on the water main replacement right now. That should be complete in the next 2-3 weeks.

After that, as soon as we can thereafter, we'll begin our building construction. That process will be about 12 months from start.

We are building, basically, the plans we showed you - not the original '2-pod' design.

Brian

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

From: Wiedis

[mailto:wiedis@aol.com]

Sent: Saturday, September 27,
2014 9:07 PM

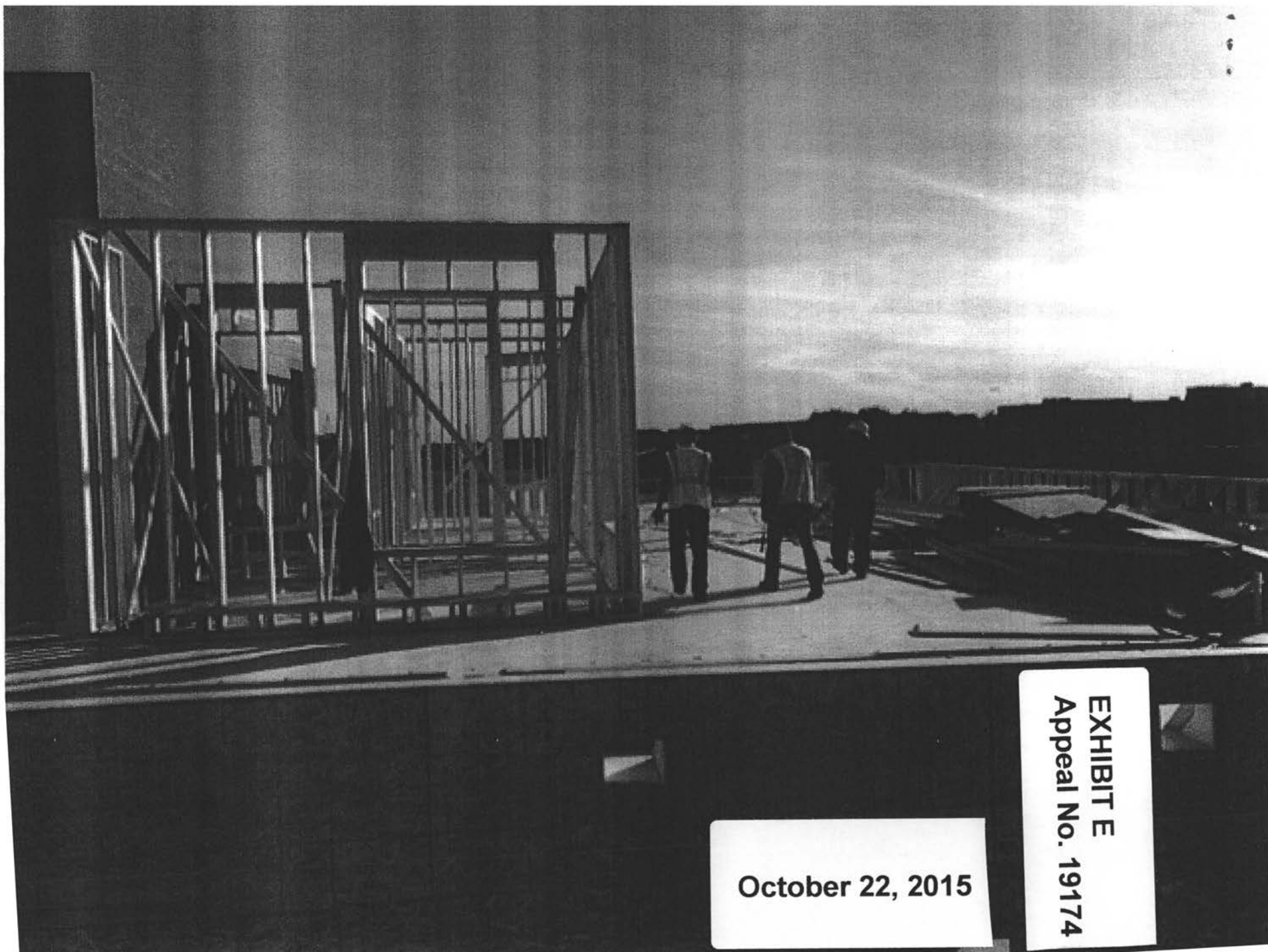
To: Brian Papke

Subject: Champlain at.

Brian, so we've noticed some activity on your lot. Can you please give me an update as to what is going on and under which plan you are constructing. Thank you. Rich.

Sent from my iPhone

E



October 22, 2015

EXHIBIT E
Appeal No. 19174

F

EXHIBIT F
Appeal No. 19174

From: Christian Cronin <christian@capcityre.com>
Subject: RE: Champlain St.
Date: October 22, 2015 at 5:04:20 PM EDT
To: Richard Wiedis <wiedis@aol.com>
Cc: David and Mark <dhsmsm@me.com>

Rich,

I have attached the approved elevation from your vantage point showing the following heights:

Roof Height: 196.47 (max per agreement was 197'10")

Roof Parapet: 198.14 (max per agreement was 199.6, = to or less than the Erie)

PH Roof: 208.91 (No language on max, but we are well below the max allowed by zoning)

PH Parapet: 212.93

The rooftop structure houses the mechanical units and the elevator over run which is required to be a certain height. We are not much more than the 9' you mention in the email below, but I am not sure where that number comes from as I do not see it in the BZA order or on any of our previous set of plans. Can you send me the document that has that?

Thanks,
Christian

Thanks,
Christian