## *EXHIBIT D. DETAILED STATEMENT EXPLAINING HOW THE APPLICATION MEETS THE TESTS IDENTIFIED IN THE ZONING REGULATIONS FOR THE SPECIAL EXCEPTION RELIEF BEING SOUGHT.*

The Applicant requests BZA approval of two Special Exceptions – one for the enlargement of a gasoline service station, and the other for use of the gasoline service station enlargement as a fast food restaurant. The Zoning Regulations, at 11 DCMR §3104.1, require the Applicant to show that the Special Exceptions requested "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 in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title. . . .".

The Zoning Regulations further require the Applicant to meet this test for "any extension or enlargement" of any previous matter-of-right use now requiring Special Exception review (*i.e.*, gasoline service stations, *inter alia*) (§3104.2), and require the BZA to "apply the standards and criteria of the Zoning Regulations to the entire use, rather than to just the proposed extension or enlargement" (§3104.2).

### I. THE SPECIAL EXCEPTIONS REQUESTED WILL BE IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ZONING REGULATIONS AND ZONING MAPS.

The Zoning Regulations (§720.1 *et seq.)* designate C-2 Zone Districts as "community business center districts". The C-2-A District is "designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core" and "shall be located in low and medium density residential areas with access to main highways. . . ."

The Applicant's property is encompassed by the C-2-A Zone District mapped along the Rhode Island Avenue NE corridor from 30th Street on the west to the District's Eastern Avenue boundary with Maryland on the east. [***See*** Map Attachment to this Exhibit.]

In Application No. 16439, decided April 7, 1999, the BZA determined that a gasoline service station at this location was "in harmony with" C-2-A Zoning Regulations and Zoning Maps. To enlarge the service station in order to provide additional retail shopping uses adjacent to a main highway further promotes the objectives of the C-2-A Zone District regulations and mapping.

The proposed food-service franchise falls within the "restaurant, fast food" definition of the Zoning Regulations (§199.1) largely because the franchisee will provide customer self-service queuing space and most likely will primarily serve food and beverages in disposable containers with disposable tableware. The Applicant intends to lease the space for a Subway, Blimpie, or similar franchise serving sandwiches, salads, breakfast items, juices and other beverages, and desserts. The establishment will provide carry-out food service and will also include tables and chairs accommodating customers who wish to enjoy their meals on the premises.



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Thus, the proposed fast food restaurant would expand the retail services available to service station patrons and also to neighborhood residents, in harmony with the "community business center" nature of C-2 and specifically C-2-A Zone Districts "in low and medium density residential areas with access to main highways. . . ."

In the immediate vicinity, the only existing food-service establishment is a Chinese carry-out – with limited hours and no eat-in capacity – at 3131 Rhode Island Avenue N.E. The Applicant's proposed fast food restaurant would provide service station patrons with a convenient opportunity to purchase a quick breakfast or lunch or sandwich-and-salad meals to take home for the family dinner while stopping to buy gas. This would serve as an additional incentive for Maryland commuters to stop at the Applicant's establishments to buy gas and food on the way home – rather than crossing into Maryland and stopping and buying in Maryland and paying taxes on the purchases to Maryland rather than the District.

For neighborhood residents, the Applicant's proposed fast food restaurant would provide new choice and opportunity to meet and enjoy a restaurant meal together – and to pick up prepared food to take home.

For these reasons, we believe the Special Exceptions requested are fully in harmony with the Zoning Regulations and Zone Map for this area.

## II. THE SPECIAL EXCEPTIONS REQUESTED "WILL NOT TEND TO AFFECT ADVERSELY, THE USE OF NEIGHBORING PROPERTY".

In this and other business enterprises, Mr. Mamo has been attentive to the concerns of nearby residential neighborhoods. As a District resident himself, he is keenly aware of the importance of protecting residential neighborhoods from inappropriate commercial encroachments.

With regard to the 3101-3103 Rhode Island Avenue N.E. property, Mr. Mamo has established and maintained cooperative working relationships with the members of Advisory Neighborhood Commission 5A, which represents the area. During the original BZA application proceedings, Mr. Mamo entered into a Voluntary Agreement ("Agreement") with the Commissioner who then represented the applicable Single Member District, Ms. Karen Lancaster. The Agreement represented Mr. Mamo's commitment to prevent adverse neighborhood impact and provide the community amenities and outreach efforts requested by then-Commissioner Lancaster, acting on behalf of the full ANC. The terms remain in place, apply also to the proposed service station enlargement and its use as a fast food restaurant, and provide the factual basis for our assertion that the Special Exceptions requested will have no adverse impact on the neighborhood.

The BZA incorporated the Agreement and 11 of its specific terms in its Order approving the application. These terms, quoted from the Order, and Mr. Mamo's compliance actions are as follows:

**A.** "(S)uitable space shall be made available within the gasoline service station and food store establishment for use by the Metropolitan Police Department as a satellite police station."*

**COMPLIANCE: Mr. Mamo has notified the MPD 5th District that work space with a desk and telephone will be available for police use and appropriate MPD signage when the facility opens for business.**

**B.** "The gasoline service station shall be protected by an electronic surveillance system composed of from 12 to 16 television cameras mounted at strategic locations to assure full and continuous monitoring of the interior and exterior premises."

**C.** "Exterior premises shall be fully lighted at a sufficient foot candle level to assure proper operation of the electronic surveillance system. Six lights shall be mounted on the exterior surfaces of the building, and additional lights shall be mounted on seven poles, each approximately 13 feet in height, along the perimeter of the property."

**D.** "The electronic surveillance system and lighting shall be in place and operational at the time the establishment opens for business, and shall be maintained in good working order throughout the life of the establishment."

**COMPLIANCE: As of the date of this application, electrical work is in progress to fulfill these obligations.**

**E.** "The existing trees and shrubbery at the rear of the property shall be trimmed or removed in order to enhance the security of the premises. . . ."

**COMPLIANCE: This will be done by the time the service station opens for business.**

**F.** "Employees shall be well-trained to observe potential criminal conduct on the premises and in the vicinity and to call immediately for police assistance."

**G.** "The owner/operator of the establishment shall give first preference in hiring for the approximately 10 positions at the proposed establishment to applicants residing within SMD 5A-11, and the next preference to other residents of the District of Columbia."

**COMPLIANCE: Mr. Mamo is incorporating these requirements in his agreements with the service station and food mini-mart lessees/operators, and will apply the same requirements to the lessees/operators selected for the**

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* The term "satellite police station" was a generic reference, both in the Applicant/ANC Agreement and in the BZA Order. The more accurate term, currently used by MPD for such facilities, is MPD "work station".

**two additional retail spaces. At least 10 additional positions will be created by the proposed retail operations.**

**H.** "The establishment shall comply with all environmental-protection requirements of the Federal and District of Columbia Governments. . . ."

**COMPLIANCE: The establishment is in compliance.**

**I.** "The exterior premises shall be cleaned daily, and trash shall be hauled away for proper disposal."

**COMPLIANCE: Daily cleaning and trash-removal will begin when the facility opens for business. During the construction process, Mr. Mamo has ensured that building contractors disposed of construction waste promptly and properly.**

**J.** "The owner/operator of the establishment shall provide financial contributions in support of from four to six community activities recommended by the ANC commissioner for ANC 5A-11 on an annual basis for the life of the establishment, and shall meet with the 5A-11 Commissioner and ANC 5A as a whole, whenever necessary, to address community concerns and respond to community needs."

**COMPLIANCE: Mr. Mamo regularly supports community activities.**

The detailed terms of Mr. Mamo's Agreement with the ANC, as emphasized and doubly enforced by the BZA's incorporation of the terms in its 1999 Order, and as applied to the proposed service station enlargement and its use as a fast food restaurant, guarantee that the establishments collectively will have no adverse impact on the neighborhood. Moreover, Mr. Mamo's commitment to maintain an ongoing and cooperative relationship with the ANC provides the means to address and remedy any neighborhood concerns that may arise in the future.

## III. THE SPECIAL EXCEPTIONS REQUESTED COMPLY WITH THE "SPECIAL CONDITIONS" SET FORTH IN THE ZONING REGULATIONS FOR (1) ENLARGEMENTS OF GASOLINE SERVICE STATIONS, AND (2) FAST FOOD RESTAURANTS.

### *A. Conditions for Enlargements of Gasoline Service Stations in C-2-A Zone Districts.*

The Zoning Regulations provide that a C-2-A service station enlargement must meet the conditions that are identified and listed below, together with the Applicant's affirmations of compliance.

**1.** **§726.1:** "Shall not be located within twenty-five feet (25 ft.) of a Residence District unless separated from the Residence District by a street or alley;

The 3101-3101 Rhode Island Avenue NE site is bounded on the southeast by a public alley, which separates the site from the nearest Residence District. This is an R-1-B Zone District of single-family detached dwellings fronting on Newton Street and with rear yards abutting the alley. A retaining wall at the rear of the site creates additional separation from the Newton Street residences. ***See*** Exhibit E, Site Photographs.

**2.** Shall not, by its operation and use, "create dangerous or other objectionable traffic conditions";

The service station site has three curb-cut access points from Rhode Island Avenue, thus assuring ample means for entering and exiting the flow of traffic safely and smoothly. The District Department of Transportation estimates an average weekday traffic volume of 30,000 vehicles at that point on Rhode Island Avenue, quite low compared to other commercial corridors such as New York Avenue where the average weekday volume at a similar distance from the Maryland line is 132,000 vehicles.*

As an additional traffic-safety measure, Mr. Mamo's Agreement with the ANC includes a provision in which he pledged "to take appropriate measures to prevent motor vehicles from exiting the promises onto Newton Street N.E." and to "close the exit from the property that is furtherest from Rhode Island Avenue and leads into Newton Street."

**3.** And shall arrange required parking spaces to be accessible at all times and provide "sufficient access and maneuvering space to permit the parking and removal of any vehicles without moving any other vehicle onto public space".

As shown on the Certified Plat and Plans and Elevations (***See*** Exhibits B and G), the parking spaces are laid out in a way that permits easy assess without causing any vehicles to be moved onto public space.

**4.** **§2302.1 *et seq.:*** Shall not have any portion of the structure or premises located within 25 feet of a Residence District unless separated from the Residence District by a street or alley;

The Applicant complies, as stated under Item 1 above.

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* Source: D-DOT, *2001 Traffic Volumes* map.

**5.** Shall not have a street-access vehicular entrance or exit at a point closer than 25 feet to any Residence District unless separated from the Residence District by a street or alley;

The street-access vehicular access points to the Applicant's property are from Rhode Island Avenue, well over 25 feet from any Residence District. As stated under Item 2 above, Mr. Mamo has agreed to close the curb-cut access point at the rear of the property leading onto Newton Street.

**6.** And shall not have an entrance or exit driveway "closer than forty feet (40 ft.) to a street intersection as measured from the intersection of the curb lines extended."

The curb-cut access points into the site from Rhode Island Avenue are located approximately 80 feet from the Rhode Island Avenue intersection with Newton Street on the west, and approximately 300 feet from the intersection with Eastern Avenue on the east.

***B. Special Exception for a Fast Food Restaurant.***

Section 733 of the Zoning Regulations provides that a Special Exception for a fast food restaurant in a C-2-A zone district may be granted if the application complies with nine stated conditions, plus any additional measures the BZA may impose "pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent of nearby property."

1. **§733.2:** "No part of the lot of which the use is located shall be within twenty-five feet (25 ft.) of a Residence District unless separated therefrom by a street or alley."

   The Applicant complies, as stated under Section A, Item 1, above.

2. **§733.3:** "If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of the lot."

   Applicant's building, with completion of the proposed enlargement, will extend the full width of the northeast-southwest portion of the lot line abutting the alley. ***See*** Exhibit B, Certified Plat and Exhibit E, Site Photographs.

3. **§733.4:** "Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a Residence District."

The Applicant will construct and place refuse dumpsters in accordance with these requirements. In addition, Paragraph 5 of the Applicant's Agreement with the ANC, which will apply to the fast food restaurant as well as the service station, states:

"Mr. Mamo maintains a full-time clean-up crew to clean the exterior premises of each of his gas station establishments on a daily basis, and haul away the daily trash accumulation for proper disposal. The clean-up crew will service the proposed Rhode Island Avenue establishment. Trash that accumulates in the intervals between each daily visit by the clean-up crew will be deposited by the on-site staff in trash bins located in an unobtrusive, enclosed location on the premises, away from public view. The on-site staff will be held to high standards in maintaining the cleanliness of the interior of the establishment. Particular attention will be given to assure prompt removal of any trash and debris on and around the premises, including in the alley to the rear of the property, that is attributable to the operations of the gasoline service station and food store."

4. **§733.5:** "The use shall not include a drive-through."

   There will be no drive-through access to the fast food restaurant.

5. **§733.6:** "There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone district boundary line for a Residence District."

   The two customer entrances in the proposed addition are located in the front of the building facing Rhode Island Avenue NE. ***See*** Exhibit E, Site Photographs, and Exhibit G, Plans and Elevations.

6. **§733.7:** "The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions."

   The space proposed for location of the fast food restaurant faces the Rhode Island Avenue commercial corridor, and is well-shielded from Newton Street residences by a public alley and a high concrete retaining wall. Because Mr. Mamo has agreed to close off the curb cut which formerly provided vehicular access from the property onto Newton Street, the Newton Street neighbors are further protected from any adverse traffic impacts from the fast food restaurant operation. The property lighting is designed to illuminate the site itself and the sidewalk on the Rhode Island Avenue side, and will not be beamed toward the Newton Street residences. Through the Agreement with the ANC, Mr. Mamo has committed to maintain regular contact with the ANC to address any neighborhood concerns that may arise.

7. **§733.8:** "The use shall provide sufficient off-street parking, but not less than that required by §2101.1, to accommodate the needs of patrons and employees."

8. **§733.9:** "The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions."

9. **§733.10:** "There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways to the site."

   As discussed above (Subsection A, Paragraphs 2 and 3), the Applicant is providing a total of 18 on-premises parking spaces, designed in a manner that assures safe and easy access.

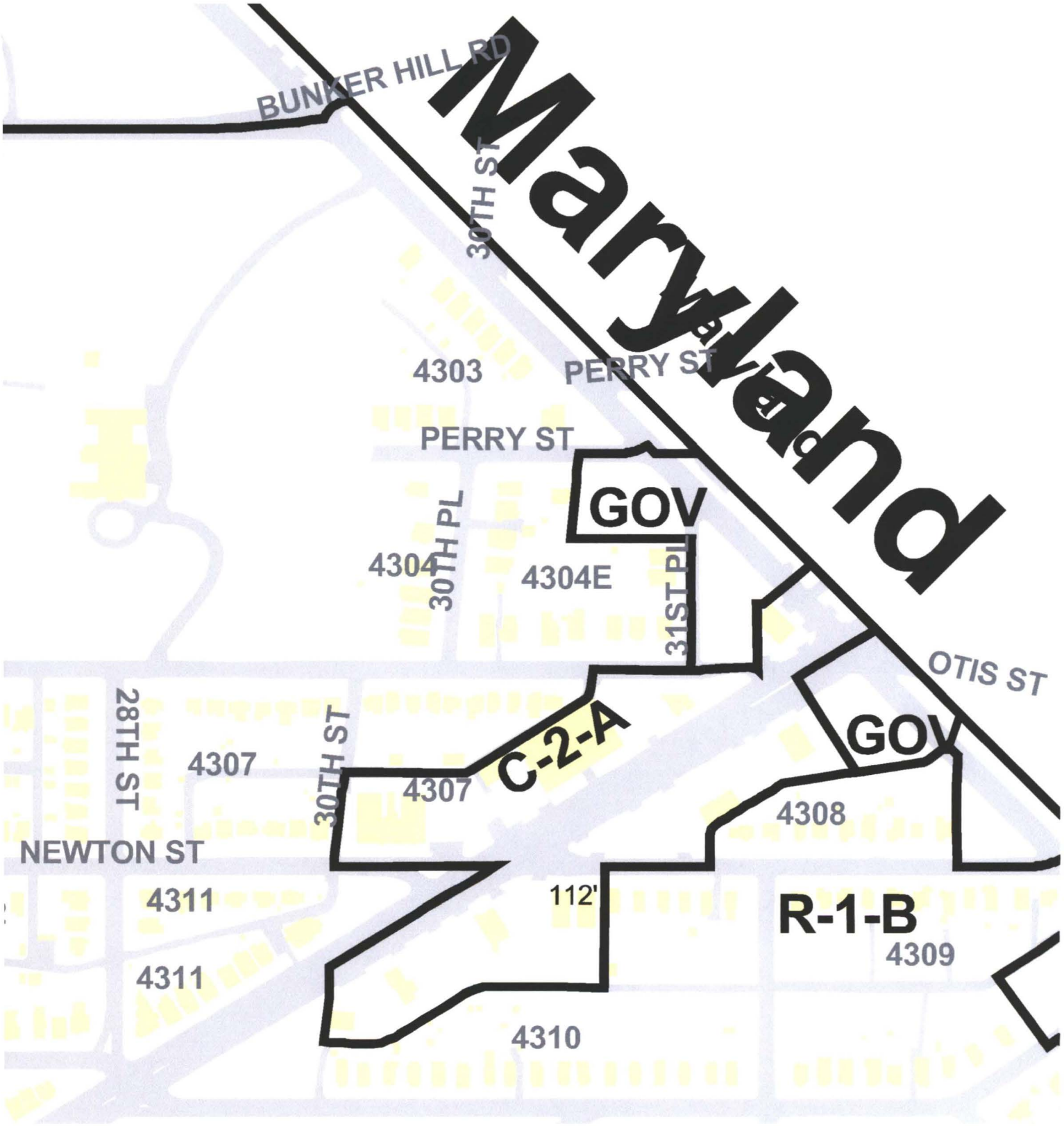
   Section 2101.1 of the Zoning Regulations requires fast food restaurants in C-2-A Zone Districts (in buildings with no side yard provided or required, as in the case here) to provide one parking space for each 300 sf of gross floor area and cellar floor area in excess of 3,000 sf in excess of 3,000 sf. The Applicant's proposed service station enlargement for fast food restaurant use is a maximum of 2,325 sf, if the entire enlargement space is leased for fast food restaurant use. Thus, no additional parking spaces are required under the fast food restaurant provisions of §2101.1.

   The same section requires gasoline service stations to provide one parking space for each 300 sf of gross floor area, "excluding any pump island canopy. . ." The Applicant's service station structure has a gross floor area of 1,798 sf, With the proposed service station enlargement of 2,320 sf, the total gross floor area comes to 4,118 sf. At one parking space per 300 sf, the total number of required parking spaces is 13.7, rounded up to 14.

   The Applicant is providing 18 on-premises parking spaces, 28% more than the regulations require.

   Regarding delivery and trash-collection access, the proposed fast food restaurant facility is located on the east end of the site, so that restaurant delivery trucks and trash-pickup vehicles do not interact with customers driving into the service station fuel pumps.

Having demonstrated Applicant's compliance with each of the requirements set forth in the Zoning Regulations for approval of the Special Exceptions requested, we respectfully request prompt and favorable BZA action on this application.


BUNKER HILL RD
30TH ST
Maryland
4303
PERRY ST
PERRY ST
GOV
30TH PL
4304
4304E
31ST PL
OTIS ST
28TH ST
30TH ST
C-2-A
GOV
4307
4307
4308
NEWTON ST
4311
112'
R-1-B
4309
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