

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Preliminary Statement of Compliance with Burden of Proof

This statement is submitted by Jemal's TP Land LLC, (the "Applicant"), the owner of Lots 26-29, 40, 808, 811, 814, 815, 818-820, 824, 825, 840 and 843 in Square 3357 (the "Property"). The Applicant seeks special exception approval for a new residential development in the R-5-A District with more than one principal building on a single lot. The Applicant also seeks special exception approval for relief of the roof structure requirements, and a variance from the loading requirements.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement and at the public hearing, the Applicant will provide testimony and additional evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Property

The Property consists of that certain 2.3± acre parcel of land located in the center of the block bounded by Maple, Willow, Carroll Streets and Sandy Spring Road, NW, within the boundaries of the Takoma Park Historic District. On the northern end of the Property there are two detached single family dwellings (6924 Willow Street and 6949 Maple Street, respectively) that are deemed contributing houses to the Takoma Park Historic District. There is also a commercial parking lot on the Property that serves the CVS store to the north; the CVS store is not located on the Property. The remainder of the Property is vacant.

The Property was the subject of BZA Application No. 17679, the final order for which was issued on April 23, 2008 (the "2008 Approval"). The 2008 Approval and corresponding approved plans are attached as **Exhibit A** and **B**, respectively. In 2008, the Board approved a

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special exception under Section 353 of the Zoning Regulations for a new residential development in the R-5-A District with more than one principal building on a single lot pursuant to Section 2516; a special exception from roof structure requirements of Section 411 (setback, number of enclosures, walls of unequal height); and a variance from the loading requirements in Section 2201.1 of the Zoning Regulations. The development proposed under this application is nearly identical to the one approved in 2008 as it relates to architectural design, building height, FAR, lot occupancy, parking ratio and roof structures. However, the interior of the building has been modified such that each building now has 55 units instead of 38 as in the 2008 Approval. Additionally, the site plan (Sheet A101 in the plans) has been modified to accommodate additional parking on the southern portion of Property commensurate with the increase in the number of units. There is also an additional point of ingress and egress for the project on Maple Street.

In June 2010, the Board approved BZA Application No. 17679-A, which granted a two-year extension of the 2008 Approval from April 23, 2010, to April 23, 2012. In June of 2012, the Board approved BZA Application No. 17679-B, which granted a second two-year extension of the approval of the project from April 23, 2012, to April 23, 2014. Said BZA approvals are attached as Exhibits C and D, respectively.

II. Description of Development Proposal and Zoning Relief

The Applicant proposes to redevelop the Property with two new multi-family buildings, each containing 55 dwelling units. One building - Maple House - will be constructed on what is shown as Lot A on the plans; the other building - Willow House - will be constructed on what is shown as Lot B on the plans. Each building will have three stories with a maximum height of 40'-0" and each will contain approximately 47,744 square feet of gross floor area. In order to accommodate the proposed development, the two existing single family dwellings on the

northern end of the Property will be relocated to the southern end of the Property, on what is shown as Lot C and Lot D on the plans. The project will provide parking at a ratio of 1 space per dwelling unit, for a total of 112 parking spaces (110 spaces for the apartment units and 2 for the single family dwellings) as required under Section 2101 of the Zoning Regulations.

The following areas of relief must be granted by the Board in order to facilitate the proposed redevelopment of the Property:

A. Special Exception Under Sections 353 and 2516.1 of the Zoning Regulations for New Residential Developments in R-5-A District with More than One Principal Building on Single Record Lot. Pursuant to § 353.1 of the Zoning Regulations, the Applicant's proposed project must be reviewed by the Board as a special exception under § 3104 in accordance with the standards and requirements in § 353. Although the two single family dwellings currently on the Property will be relocated and established on individual record lots, the two new multi-family buildings will be constructed on a single record lot. Each of these multi-family buildings is a principal building located in a Residence Zone, which, without relief, would require its own lot. 11 DCMR § 3202.3.

B. Special Exception from Roof Structure Requirements set forth in Section 411. According to the enclosed roof plan, the project has multiple roof structures of unequal height that do not comply with the roof structure setback requirement. The roof plan on Sheet A106 depicts two penthouses. The one at the northeast corner of the building aligns with the face of the building wall. The second is in the center of the building. It is set back 3'-10" from the west wall of the building; the top of the penthouse is 9'-0" above the roof of the building except for the elevator override, which is 15'-6" above the roof of the building.

C. Number of Loading Facilities. The Applicant seeks a variance from Section 2201.1 of the Zoning Regulations in order to have fewer loading facilities than required.

Specifically, the Applicant proposes to have one 12 x 30 berth only for each multi-family building where the Zoning Regulations require one 55' loading berth and one 20' service/delivery space for each building.

With the exception of the variance for loading, the relief requested by the Applicant was previously granted by the Board in the 2008 Approval.

III. Project Meets Standard for Approving Special Exception for New Residential Development in R-5-A District With More Than One Principal Building on a Single Lot

In granting the 2008 Approval, the Board concluded that the then proposed development complied with the substantive provisions of § 2516. The Board also concluded that the project will not have an adverse effect on the character and future development of the neighborhood (§§ 2516.9 and 3104) and is in harmony with the Zoning Regulations and Zoning Map (§ 3104). As noted on Page 9 of the 2008 Approval, the density and massing of the then proposed development is consistent with the type of development permitted in an R-5-A District, and preserves some open space while also bringing more residential units to the neighborhood. The building height, floor area ratio, and lot occupancy are within those permitted in the R-5-A District. Sufficient open space is being provided around both multiple dwellings, and their fronts are set back 20 feet from the curb to maintain consistency with the established building line of adjacent dwellings.

The development parameters proposed under this application are nearly identical to those approved for the Property in 2008. For example, the FAR in the 2008 Approval was 1.08 for Lot A, 1.08 for Lot B, and .97 overall. Under this application, the FAR is 1.07 for Lot A, 1.07 for Lot B and .95 overall. In the 2008 Approval, the Lot occupancy was 35.8% for Lot A, 35.8% for Lot B and 34.8% overall. Under this application, the lot occupancy is 35.6% for Lot A, 35.6% for Lot B and 33.4% overall. The building footprint for each building in the current application

is 15,834 s.f., the same as it was in the 2008 Approval. The building height and number of stories also is the same - 40' building height and three stories. Parking for both applications is provided at a ratio of 1:1.

The rear and side yard setbacks under the proposed site plan are less than what was provided in the 2008 Approval. Specifically, the rear yard in the 2008 Approval was 41'-7" for Maple House and 41'-5" for Willow House; the side yards for Maple House were 34' and 82'-7"; they were 34' and 74'-2" for Willow House. Under the current application, the rear yard is 40'-9" for Maple House and 34'-9" for Willow House; and the side yards for Maple House are 17'-5" and 109'-10"; they are 73'-3" and 70'-8" for Willow House. Notwithstanding these changes, the rear and side yards under the current application are significantly greater than what is required under the Zoning Regulations.

IV. Project Meets Standards for Approving Special Exception Relief for Roof Structures

The Board is authorized to grant special exceptions where, in its judgment, the 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 in accordance with the Zoning Regulations and Zoning Maps. 11 DCMR § 3104.1. Further, Section 411.11 of the Zoning Regulations states that where impracticable because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly or unreasonable, the Board shall be empowered to approve, as a special exception, the location, design, number and all other applicable aspects of the roof structures provided that the intent and purpose of the Zoning Regulations shall not be materially impaired by the structure, and the light and air of adjacent building shall not be affected adversely.

The proposed roof structures are identical to what was depicted on the plans for the 2008 Approval, and meet the foregoing standards for special exception relief for roof structures as follows:

A. Multiple Enclosures. The Applicant's design calls for two penthouses -- one at the northeast corner of the building and one at the center of the building. Due to the provision of rooftop recreation space, a separate stairwell leading to the bottom floor of the building and preferably located near the end of a corridor, must lead to the roof. The other penthouse is necessary for the additional stair tower and elevator override, for providing access to the roof, and to break up the massing on the roof. The need to have two penthouses arises from the Building Code's requirement that when residential recreation space is located on the roof of a building, a separate stairwell that leads to the bottom of the building must also be located on the roof. In addition, a single monolithic structure spanning almost the entire roof is contrary to sound design principles and would likely have a greater adverse effect on the light, air and view of the neighbors.

B. Roof Structures Setback. As explained on Page 8 of the 2008 Approval, the Applicant's inability to set back the penthouses on a 1:1 basis from the side walls is a result of its desire to comply with the Building's Code recommendation that the stairwells be placed at the extreme end of a corridor. Further, both roof structures will meet the required setbacks from the street sides of the buildings, thus achieving the goal of largely removing them from view from the street.

C. Walls of Unequal Height. The project incorporates two different enclosing wall heights on the penthouse at the center of the building, which accommodates a stair, vestibule, storage and elevator override. Due to the provision of rooftop recreation space, the Building Code requires that all accessible levels be served by an elevator, which results in an

elevator override. The portion of the enclosure over the elevator override steps up to 15 feet, 6 inches in order to fully enclose the override, while the walls of the stair tower, vestibule and storage portion of the enclosure have a height of only 9 feet. The entire elevator override enclosure could be 15 feet, 6 inches high, but the step down in height reduces the visibility of the roof structures from the surrounding areas.

In its 2008 Approval, the Board concluded that it would be contrary to the intent of the Zoning Regulations to force the Applicant to make the entire structure 15 feet, 6 inches high, resulting in a much larger and more intrusive structure.

V. Area Variance for Loading

The Project requires a variance from the loading requirements. Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

1. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
2. The owner would encounter practical difficulties if the zoning regulations were strictly applied or exceptional and undue hardship; 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 zone plan as embodied in the Zoning Regulations and Map.

See *French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained in the prehearing statement at the public hearing, all three prongs of the area variance test are met in this application.

A. The Property Affected by an Exceptional Situation or Condition. The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990). In this case, the exceptional condition arises from the fact that the existing singlefamily homes on the Property are contributing homes within the Takoma Park Historic District. As such, these dwellings cannot be razed, but instead must be relocated to the southern end of the Property. The relocation of these dwellings on the Property reduces the developable area and impacts the site plan configuration such that the project is unable to comply with both the loading requirements and parking requirements.

B. Strict Application Would Result in an Exceptional and Undue Hardship to the Property Owner. The Applicant would encounter practical difficulties if required to comply with the loading requirements. In order meet the loading requirements, the Applicant would need to eliminate parking spaces, which would then create a need for a parking variance. The current site plan, particularly as it relates to the number of units and configuration, is the most viable because the development program reflects the current market conditions. Further, with the exception of the additional required parking, the configuration was previously accepted by the Office of Planning, ANC 4B and the Board after significant input from the various stakeholders in connection with the 2008 Approval.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan. There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the Zone Plan if

the Board grants the requested loading variance. The proposed loading is sufficient to manage the proposed residential use for the Property. Practically speaking, residential projects like the one proposed under the Application are rarely serviced by 55' trucks. Meanwhile, making sure the project meets the required 1:1 parking ratio will mitigate traffic impacts on surrounding residences.

Application of Jemal's TP Land LLC
Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815
818, 819, 820, 824, 825, 840 and 843

STATEMENT OF EXISTING AND INTENDED USES

The northern end of the Property is currently improved with two single family dwellings and a commercial parking lot; however, the majority of the Property is vacant. The Applicant proposes to relocate the two single-family dwellings to the southern end of the Property and on the remainder of the Property construct two new multi-family buildings, each containing 55 dwelling units. Each building will have three stories and a maximum height of 40'-0" and a gross floor area of approximately 47,744 square feet. Parking on the Property will be provided at a ratio of one space per dwelling unit.

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



Application No. 17679 of Jemal's TP Land LLC, pursuant to 11 DCMR § 3104 1, for special exceptions under sections 353 and 2516, and under section 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N.W and 6916-6926 Willow Street, N W (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843)

HEARING DATE: November 13, 2007
DECISION DATES: January 8, 2008 and February 5, 2008

DECISION AND ORDER

On June 11, 2007, Jemal's TP Land LLC (the "Applicant"), the owner of the property that is the subject of this application (the "subject property"), filed an application with the Board of Zoning Adjustment (the "Board") pursuant to 11 DCMR § 3104 1 for special exception relief pursuant to Sections 353, 411, and 2516 of the Zoning Regulations to allow the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District on the subject property The Board held a public hearing on the application on November 13, 2007 After the hearing, the record was closed, except to allow submission of a revised landscape plan from the Applicant and proposed orders from the Applicant and the party in opposition

The Board received the requested post-hearing submissions and, at its public meeting on January 8, 2008, voted 3-0-2 to approve the application.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2

Notice of Application and Notice of Public Hearing By memoranda dated June 13, 2007, the Office of Zoning sent notice of the filing of the application to the D C Office of Planning ("OP"), the D.C Departments of Transportation and Housing and Community Development, the Deputy Mayor for Education, Advisory Neighborhood Commission ("ANC") 4B, the ANC within which the subject property is located, the Single Member District member for 4B07, and the Council Member for Ward 4.. Pursuant to 11 DCMR § 3113 1, notice of the hearing was

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published in the *D C Register* and sent to the Applicant, all individuals and entities owning property within 200 feet of the subject property, ANC 4B, and OP. The Applicant posted placards at the subject property providing notice of the public hearing and submitted an affidavit to the Board to this effect (Exhibit 40)

Request for Party Status The Board received an opposition Party Status request from Mr Jack Werner, who resides at 6908 Willow Street, N W (Exhibit 26) Mr Werner indicated that he and a number of other neighbors would be affected by the application for the following reasons a) potential flooding, b) traffic and street parking, c) an absentee landlord, d) crowding of existing homes and noise, and e) loss of green space. The Board found that Mr Werner, who lives within 200 feet of the project, would be more significantly affected by the proposed development than those in the general public and therefore granted his request for party status However, during the course of his testimony, Mr. Werner agreed that the Applicant met all of the legal requirements for the requested zoning relief, and that most of his concerns would be dealt with during the permitting process (T p 194, 196)

Other Persons in Opposition/Support The Board heard testimony in support of, and in opposition to, the application Two individuals testified in support of the application, and two individuals testified in opposition to the application

The Applicant's Case The Applicant presented testimony from Paul Millstein of Douglas Development Corporation, an expert in urban development and historic renovation, George Myers of GTM Architects, an expert in urban residential architecture; Steven E. Sher of Holland & Knight LLP, an expert in zoning and land use planning, and Huy Tran of Kimley-Horn and Associates, Inc., an expert in civil engineering and stormwater management design The Applicant also submitted a memorandum prepared by O.R. George & Associates, Inc., experts in traffic engineering and transportation planning (Exhibit 39)

Office of Planning (OP) Report OP submitted a report on November 5, 2007, marked as Exhibit 29 of the record, indicating that OP supported the proposed redevelopment of the subject property and recommending that the Board approve the requested special exceptions. Pursuant to the requirements of Section 353, OP opined that the site plan, arrangement of buildings and structures, as well as the provision of parking, recreation, landscaping, and grading, as they relate to the future residents of the project and the surrounding area, would have a positive impact on the immediate neighborhood OP also analyzed the requirements of Section 2516 and indicated that the Applicant met its burden of proof with respect to each required element for approval of special exception relief to permit the construction of two or more principal buildings or structures on a single subdivided lot. With respect to the requested roof structure relief, OP recommended that the requested relief relating to setbacks (§ 411 2), more than one enclosure (§ 411 3), and enclosures of unequal heights (§ 441.5) should be granted since the proposed roof structures comply with the intent of the Zoning Regulations, would not hinder the light and air of adjacent property owners, and their location and design minimized their massing and visibility

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District Department of Housing and Community Development ("DHCD") Report

DHCD submitted a report, dated November 5, 2007 and marked as Exhibit 30 of the record, indicating that DHCD reviewed the application and supported the requested special exceptions

District Department of Transportation ("DDOT") Report

DDOT submitted a report, dated November 7, 2007 and marked as Exhibit 41 of the record. DDOT supported the application and indicated that the development will not have an adverse traffic impact on the neighborhood

ANC 4B Report

ANC 4B was automatically a party to this application. The ANC filed a letter and resolution, dated November 5, 2007 and marked as Exhibit 31 of the record, indicating that, at its regularly scheduled, properly-noticed meeting on October 25, 2007, with a quorum present, it voted 6-2 in support of the application.

FINDINGS OF FACT

Background

1. The subject property consists of Lots 26-29, 40, 808, 811, 814, 815, 818-820, 824, 825, 840 and 843 in Square 3357
2. The subject property is located in the center of the block bounded by Maple, Willow and Carroll Streets and Sandy Spring Road, N W. The subject property has approximately 420 feet of frontage on Maple Street and approximately 407 feet of frontage on Willow Street
3. The subject property has a land area of approximately 101,879 square feet
4. The northern end of the property is currently improved with 3 detached single family dwellings and a commercial parking lot which serves a building to the north, which is not located on the property. The remainder of the property is vacant
5. The subject property is zoned R-5-A and is also located within the Takoma Park Historic District

The Applicant's Proposed Project

6. The Applicant seeks to develop the subject property with two new multiple-dwelling buildings, each containing 38 dwelling units. Each building will be three stories with a maximum height of 40'-0" as measured from the finished grade level at the middle of the front of each building to the ceiling of the top story. Each building contains approximately 41,631 square feet of gross floor area.

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- 7 The three existing single family dwellings currently on the property will be renovated and relocated to new lots at the south end of the site. Each of these dwellings will be provided with off-street parking.
- 8 Seventy-six surface parking spaces will be provided within the development
- 9 Vehicular access from both Maple and Willow Streets will be provided at the northern end of the site via a 25-foot wide drive aisle, which will not encroach into any of the required yards
- 10 The project also includes a bicycle storage area with 20 stalls
11. Each proposed multi-family building includes a zoning-compliant loading dock and zone, as well as a trash room
12. Each proposed multi-family dwelling will provide rooftop recreation space.
13. The southern portion of the lot is shielded from the neighbors' view by screening and closely-planted evergreens.
- 14 The project includes a combined total of approximately 25,611 square feet of green space around the multi-family buildings
- 15 The design of the new multi-family buildings incorporates details from traditional Washington, D C apartment buildings from the early part of the 20th century. A belt course and decorated cornice line are included to visually reduce the mass of the buildings
- 16 Both buildings are parallel to the street which they front (*i e*, Maple Street, N W and Willow Street, N W) and are set back about 20 feet from the curb. This setback is consistent with the established building line of the adjacent houses on Maple and Willow Streets.

Special Exception Under Section 353 for New Residential Development in R-5-A District

- 17 Pursuant to § 353.1 of the Zoning Regulations, in R-5-A Districts, the Applicant's proposed project must be reviewed by the Board as a special exception under § 3104 in accordance with the standards and requirements in § 353
18. These requirements either pertain to agency referrals to be made by the Board or submissions to be made by the Applicant, all of which have been complied with

Special Exception from Roof Structure Requirements of Section 411

- 19 The Board may grant special exception relief from the strict requirements for a roof

structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and where such compliance would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR §411.11 Also, deviations from the roof structure requirements may not materially impair the intent and purpose of the Zoning Regulations and may not adversely affect the light and air of adjacent buildings Id.

20. The Applicant is seeking roof structure relief because the project incorporates multiple roof structures (§411.3), the roof structures will not be set back from all exterior walls a distance equal to their height above the roof (§411.2), and one of the roof structures will have walls of varying height (§411.5)
21. The Applicant proposes to provide a stair tower enclosure near the front façade of each building with a height of 9 feet, and a larger stair/vestibule/storage/elevator override enclosure in the center of the roof that measures 9 feet, but steps up to 15 feet, 6 inches at the portion enclosing the elevator override. The larger enclosure meets the setback requirements on all sides, except the interior parking lot side. Likewise, the stair tower enclosure near the front façade of each building meets the setback requirements on the street side, but not on the loading dock side since, on that side, it is located at the roof edge.

Relief from Set Back Requirement

22. The Applicant requests relief from § 411.2 of the Zoning Regulations, which requires that roof structures be set back in accordance with the provisions of the zone district in which the Project is located. The R-5-A District requires a roof structure to be set back from the building's walls a distance at least equal to the roof structure's height above the roof on which it is located.
23. A separate stair tower enclosure must be provided because the Building Code mandates that when residential recreation space is located on the roof of a building, a separate stairwell that leads to the bottom of the building must also be located on the roof. The Building Code also recommends that stair towers be located at the extreme end of a corridor. Thus, the placement of this tower and its resulting setback noncompliance is based on the building code and the internal configuration of the building.
24. Both roof structures are properly set back from the street-facing facades of the multiple-dwelling buildings.

Relief from Roof Structure Enclosure Requirement

25. Section 411.3 requires that all penthouses and mechanical equipment be placed in one rooftop enclosure. The Applicant's design calls for two penthouses.

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- 26 Due to the provision of rooftop recreation space, a separate stairwell leading to the bottom floor of the building, and preferably located near the end of a corridor, must lead to the roof See, Finding of Fact No 23 The other penthouse is necessary for the additional stair tower and elevator override, for providing access to the roof, and to break up massing on the roof

Relief from Walls of Equal Height Requirement

27. The Applicant requests relief from section 411 5 of the Zoning Regulations, which requires the enclosing walls of a penthouse to be of equal height The project incorporates two different enclosing wall heights on the stair/vestibule/storage/elevator override roof structure
- 28 Due to the provision of rooftop recreation space, the building code requires that all accessible levels be served by an elevator, which results in an elevator override
- 29 The portion of the enclosure over the elevator override steps up to 15 feet, 6 inches in order to fully enclose the override, while the walls of the stair tower, vestibule and storage portion of the enclosure have a height of only 9 feet Therefore, approximately 88% of the roof structure has a height of 9 feet, and the remaining 12% has a height of 15 feet, 6 inches
- 30 The entire elevator override enclosure could be 15 feet, 6 inches high, but the step down in height reduces the visibility of the roof structure from the surrounding areas

Special Exception for Theoretical Building Sites (§2516)

31. Although the three single-family dwellings currently on the property will be re-located and established on individual lots, the two multifamily buildings proposed will be constructed on a single lot
- 32 Each of these multifamily buildings is a principal building located in a Residence Zone, which, without relief, would require its own lot 11 DCMR § 3202 3
- 33 Pursuant to §§ 2516.1 and 3104 of the Zoning Regulations, the Board has the authority to grant relief to permit the construction of two or more principal buildings or structures on a single subdivided lot
- 34 All submission and referral requirements mandated by § 2516 have been met See, 11 DCMR §§ 2516.3 and 2516.10.
35. The property is located in an R-5-A District and, other than the relief approved herein, meets all the applicable zoning requirements of that District See, 11 DCMR 2516 2 and 2516.4

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- 36 The height of the two proposed multifamily buildings is being measured from the finished grade at the middle of the front of each building *See*, 11 DCMR 2516 7.
37. All applicable requirements with respect to ingress and egress have been complied with, as illustrated by the plans in the record, particularly Exhibit No 27, Attachment C, Architectural Plans, at Sheet A101 *See*, 11 DCMR § 2516 6

CONCLUSIONS OF LAW

Pursuant to section 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in the judgment of the Board, 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 in accordance with the Zoning Regulations and Zoning Maps Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them In this case, along with the general requirements of §§ 3104 and 353, the Applicant also had to meet the requirements of § 411 11 for the requested roof structure special exceptions, and those of § 2516 for the project as a whole

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, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (*quoting Stewart v District of Columbia Board of Zoning Adjustment*, 305 A 2d 516, 518 (D C. 1973)) If the applicant meets its burden, the Board must ordinarily grant the application. *Id*

Roof Structure Relief

Pursuant to § 411.11 the Applicant is asking the Board to "approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411 6 " A penthouse, such as the two at issue in this application, is among the two types of structures regulated by those three subsections The subsections regulate the "number" of penthouses, by permitting only one, § 411 3, and the design of penthouses, by requiring "enclosing walls from roof level shall be of equal height," § 413 5 The Applicant is seeking special exception approval of two penthouses, one of which will have uneven walls. Also, because the penthouses will not meet the 1:1 setback requirement of § 400 7, which applies to the structures by virtue of § 411.2, the Applicant seeks a special exception from this "location" requirement

Subsection 411 11 authorizes special exceptions from these location, design, and number restrictions where meeting the restriction is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable."

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The need to have two penthouses arises from the Building Code's requirement that when residential recreation space is located on the roof of a building, a separate stairwell that leads to the bottom of the building must also be located on the roof. In addition, a single monolithic structure spanning almost the entire roof is contrary to sound design principles and would likely have a greater adverse effect on the light, air, and view of the neighbors. The Applicant's inability to set back these penthouses on a 1:1 basis from the side walls is a result of its desire to comply with the Building Code's recommendation that this stairwell be placed at the extreme end of a corridor. Further, both roof structures will meet the required setbacks from the street sides of the buildings, thus achieving the goal of largely removing them from view from the street.

The last roof structure special exception, for walls of unequal height on one of the structures, also arises out of an attempt to create a more sound and pleasing design. Approximately 12% of the larger of the two roof structures will be 15 feet, 6 inches high to enclose the elevator override, but the other approximately 88% will be stepped down to a height of 9 feet because it does not enclose the taller elevator override. The Board concludes that it would be contrary to the intent of the Zoning Regulations to force the Applicant to make the entire structure 15 feet, 6 inches high, resulting in a much larger and more intrusive structure.

Special Exception for New Residential Development in an R-5-A District with More than One Principal Building on a Single Lot

The Applicant also requests special exceptions pursuant to §§ 353 and 2516. Section 353 applies to all new residential development in R-5-A Districts, except one-family detached and semi-detached dwellings, and sets forth both the referral requirements for this Board and the types of plans to be submitted to the Board by the Applicant. It does not, however, set forth any specific criteria to be met by the application. Those criteria are to be found, generally, in § 3104.

In addition, the Applicant is seeking to construct the two new buildings on a single record lot pursuant to § 2516, which includes specific criteria that must be, and in this case, have, been met.

The project will comply with the substantive provisions of Title 11 (§ 2516.9) and as required by § 2516.6, there are two means of ingress and egress to the site, both 25-feet wide and not included in any required yard. See, Findings of Fact Nos. 10 and 42, and Exhibit cited in latter.

Contrary to the claims of the opposition, the Board concludes that the project will not have an adverse effect on the present character and future development of the neighborhood (§§ 2516.9 and 3104) and is in harmony with the Zoning Regulations and Zoning Maps (§ 3104). The primary concerns raised by the party in opposition to the application were increased density and the massing of the buildings on the site, leading to a loss of open space, storm water management

BZA APPLICATION NO. 17679

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and drainage, increased traffic and parking problems, inadequate landscaping, inadequate community input, and the effect of an absentee landlord and a transient population¹

As the site is now a large swath of undeveloped land except for the three single-family dwellings to be relocated by the Applicant, any development would result in some loss of open space. The density and massing of the proposed development, however, are consistent with the type of development permitted in an R-5-A District, and preserve some open space while also bringing more residential units to the neighborhood. The building height, floor area ratio, and lot occupancy are within those permitted in this R-5-A District. Sufficient open space is being provided around both multiple dwellings, and their fronts are set back 20 feet from the curb to maintain consistency with the established building line of adjacent dwellings.

Landscaping and storm water management issues have been sufficiently addressed by the Applicant as shown in the record. The Applicant revised its landscape plan after the hearing in consultation with community members, resulting in improved buffering between the project and existing residences. See, Exhibit No 42. OP, whose task it is to assess water supply issues, pursuant to § 2516 10, opined that existing water and sewer lines have sufficient capacity to handle the demand generated by the project. Further storm water management issues will be addressed at the building permit stage, and are not within the Board's purview.

Nor does the Board conclude that the traffic and parking needs generated by the project will result in adverse impact on the neighborhood. The project will provide adequate parking on-site and, according to the DDOT Report, there is also on-street parking available in the neighborhood. DDOT also notes that existing traffic volume on the adjacent streets is low, and the Board concludes that any traffic increase arising out of the development of the project will readily be absorbed.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1-309 10(d) and 6-623.04 (2001). Great weight means acknowledgment of the issues and concerns of those two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning and ANC 4B both recommended approval of the application. The Board agrees that the Applicant has carried its burden of proof in meeting the requirements for special exception relief and accords the recommendations of OP and ANC 4B the deference to which they are entitled.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application pursuant to 11 DCMR § 3104.1, for special exceptions under sections 353 and 2516, and under section 411, regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926

¹The latter concerns, an absentee landlord and a transient population, are not zoning issues, and therefore, not within the Board's jurisdiction.

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Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

Accordingly, it is therefore **ORDERED** that the application be **GRANTED** in accordance with the architectural plans and elevations prepared by GTM Architects included with Exhibit 27 of the record in this case, as modified by the landscape plan submitted on December 27, 2007 and marked as Exhibit No. 42 of the record.

VOTE: **3-0-2** (Ruthanne G. Miller, Michael G. Turnbull, and Mary Oates Walker to approve; Shane L. Dettman abstaining; Marc D. Loud not participating or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY:


JERRI R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 23 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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 PURPOSES OF SECURING A BUILDING PERMIT.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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PAGE NO. 11

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

LM

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



BZA APPLICATION NO. 17679

As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 23, 2008**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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Holland & Knight LLP
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Washington, D.C 20006

Paul Millstem
Douglas Development Corporation
702 H Street N W., Suite 400
Washington, D.C. 20001

Mr. Jack F Werner
6908 Willow Street, N W
Washington, D C 20012

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N W , #314
Washington, D.C. 20012

Single Member District Commissioner 4B07
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N W , #314
Washington, D.C 20012

Matthew LeGrant, Zoning Administrator

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

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PAGE NO. 2

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Building and Land Regulation Administration
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Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR

B



TAKOMA PARK

SQUARE 3357, WASHINGTON, D.C.
 BZA SUBMISSION NOVEMBER 13, 2007
 OWNER / DEVELOPER:
 DOUGLAS DEVELOPMENT CORPORATION

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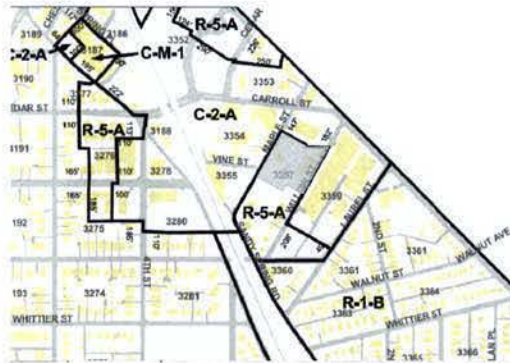
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ZONING TABULATIONS

LOT DATA
SQUARE: 3357
LOTS: LOT 808, 811 & 818
LOTS: 26, 27, 28, 29, 40, 814, 815, 819, 820, 824, 825, 840, & 843
ZONE: R-5-A

THREE (3) EXISTING 2 STORY SINGLE FAMILY RESIDENCES
 THIRTEEN (13) EXISTING VACANT LOTS



	REQUIRED/ALLOWED	MULTI-FAMILY BUILDINGS		RELOCATED EXISTING SINGLE FAMILY HOMES (UNDER SEPARATE "CONCEPT" REVIEW 08-24-09)			TOTAL OF ALL LOTS
		MAPLE HOUSE (lot A)	WILLOW HOUSE (lot B)	6926 WILLOW (lot C)	6949 MAPLE (lot D)	6924 WILLOW (lot E)	
NUMBER OF UNITS		38	38	1	1	1	79
GROSS FLOOR AREA		47,744SF	47,744SF	1,592SF	1,107SF	1,136SF	99,323SF
LOT AREA	4,000 SF MIN	44,208SF	44,208SF	4,040SF	4,672SF	4,751SF	101,879SF
F.A.R.	0.90 MAX (1.08 MAX w/ INCLUSIONARY ZONING)	1.08	1.08	0.39	0.24	0.24	0.97
LOT WIDTH	At least 40% of required min width (50') and not less than 14 feet	323'-0"	347'-6"	50'-6"	50'-6"	51'-2"	
BUILDING FOOTPRINT		15,834SF	15,834SF	1,155SF	1,447SF	1,155SF	35,425SF
LOT OCCUPANCY	40%	35.8%	35.8%	28.6%	31.0%	24.3%	34.8%
BUILDING HEIGHT (MEASURING HEIGHT FROM 0'-0" (+269.00))	40' MAX	40' MAX	40' MAX	+/- 25'-0"	+/- 22'-0"	+/- 20'-0"	
NUMBER OF STORIES	3 MAX	3	3	2	1	1	
REAR YARD SETBACK	20'-0" MIN	41'-7"	41'-5"	31'-2"	27'-1"	20'-0"	
SIDE YARD SETBACKS	3" per foot of height of building, but not less than 8 feet	34'-0" / 82'-7" (10'-0" MIN)	34'-0" / 74'-2" (10'-0" MIN)	8'-0" / 8'-2" (8'-0" MIN)	8'-10" / 11'-6" (8'-0" MIN)	8'-1" / 8'-6" (8'-0" MIN)	
PARKING	1 per 1 dwelling unit	1 per 1 dwelling unit = 38 Spaces	1 per 1 dwelling unit = 38 Spaces	1 per 1 dwelling unit	1 per 1 dwelling unit	1 per 1 dwelling unit	79 Spaces
LOADING	None required since less than 50 dwelling units per building	Loading dock and zone provided Loading Dock Size = 12' x 30'	Loading dock and zone provided Loading Dock Size = 12' x 30'	N/A	N/A	N/A	

ALL PLANS ARE SUBJECT TO CHANGE PENDING FINAL APPROVAL BY HPRB



TAKOMA PARK - SQUARE 3357 - ZONING PLAN AND TABULATION

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TAKOMA PARK - SQUARE 3357 - AERIAL SITE PHOTO

G T M ARCHITECTS

BZA SUBMITTAL - 05-22-07

PROJECT NO: 06.0069

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7735 OLD GEORGETOWN ROAD, SUITE 700, BETHESDA, MD 20814 - TEL: (240) 333-2000 - FAX: (240) 333-2001

G101



① EXISTING SITE ALONG WILLOW STREET



② INTERSECTION OF WILLOW STREET AND CARROLL AVENUE



③ MAPLE STREET LOOKING NORTH



④ HOUSE AT 6926 WILLOW STREET TO BE RELOCATED



⑤ HOUSE AT 6924 WILLOW STREET TO BE RELOCATED



⑥ HOUSE AT 6949 MAPLE STREET TO BE RELOCATED



⑦ WILLOW STREET LOOKING NORTH



⑧ WILLOW STREET LOOKING SOUTH



TAKOMA PARK - SQUARE 3357 - SITE PHOTOS

BZA SUBMITTAL - 05-22-07

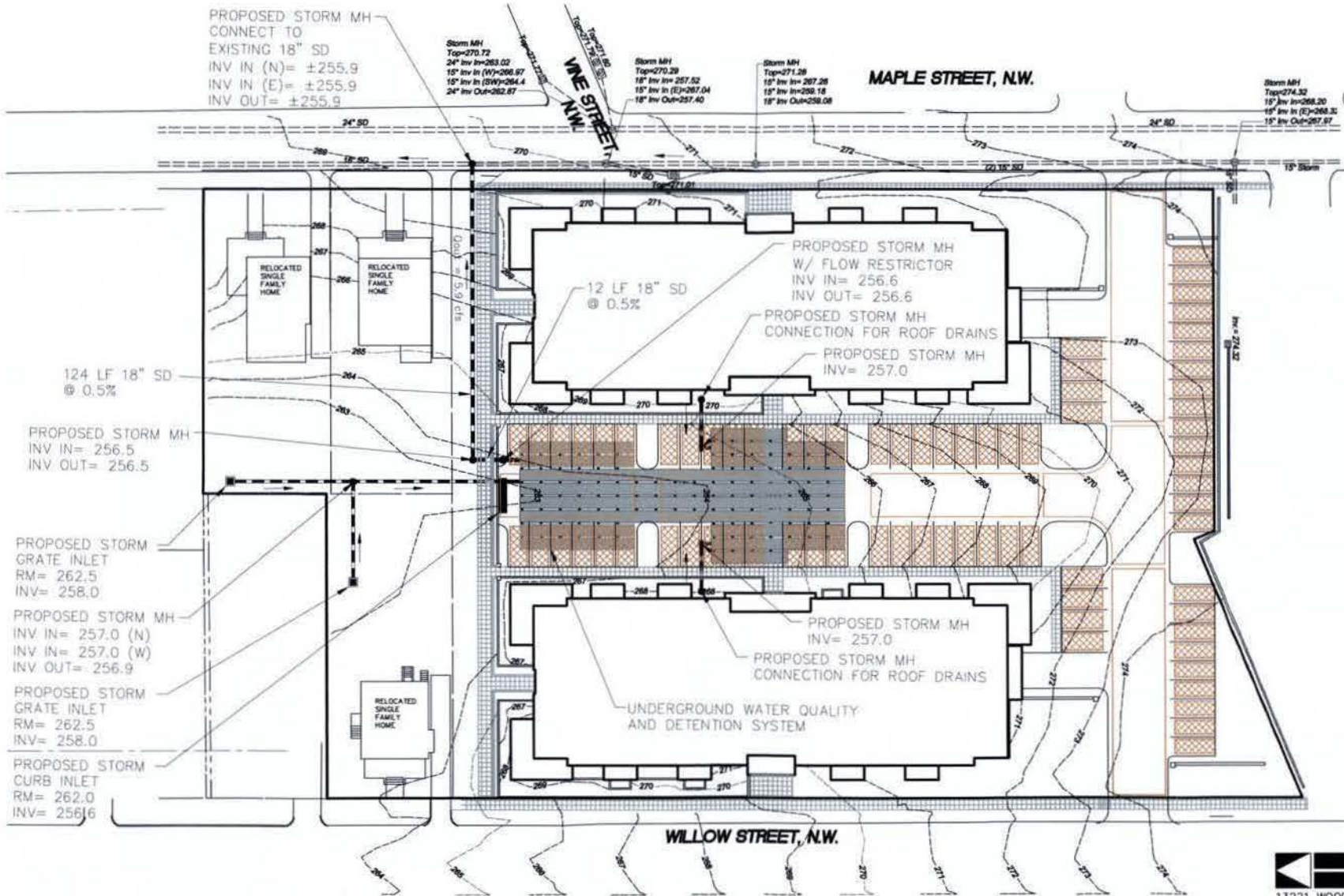
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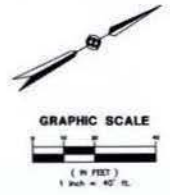
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G102

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- LEGEND**
- EXISTING STORM PPE
 - - - - PROPOSED STORM PPE
 - ⊙ EXISTING STORM MANHOLE
 - PROPOSED STORM MANHOLE
 - PROPOSED STORM GRATE INLET
 - ▬ PROPOSED STORM CURB INLET



TAKOMA PARK - SQUARE 3357 DRAINAGE PLAN

Kimley-Horn and Associates, Inc.
 13221 WOODLAND PARK ROAD, SUITE 400
 HERNDON, VA 20171
 TEL: 703.674.1300 FAX: 703.674.1350

STORMWATER QUANTITY CONTROL

NRCS TR-55 Hydrology Method

Where: V_s = Storage Volume
 q_p = Peak Outflow Discharge
 V_r = Runoff Volume
 q = Peak Inflow Discharge

Pre-Development Run-Off 2-Year Storm
 $Q_{2,y} = 4.2$ cfs

Post-Development Run-Off 2-Year Storm
 $Q_{2,y} = 6.9$ cfs

15-Year Storm
 $Q_{15,y} = 6.8$ cfs

15-Year Storm
 $Q_{15,y} = 8.8$ cfs

Determine q_p/q 2-Year Storm
 $q_p/q = 0.60$

15-Year Storm
 $q_p/q = 0.60$

Determine V_s/V_r (from Figure 6-1 TR-55)
 $V_s/V_r = 0.24$

Post-Development Curve Number

$A_1 = 0.54$ acres
 $CN_1 = 98$ (Roads and Parking Lot Pavement)

$A_2 = 1.01$ acres
 $CN_2 = 90$ (Medium Density Apartment House, assuming type C soils)

$A_3 = 0.10$ acres
 $CN_3 = 90$ (1/8 Acre Single Family Homes, assuming type C soils)

$A_4 = 0.21$ acres
 $CN_4 = 79$ (Open Space, assuming fair condition and type C soils)

$A_5 = 0.51$ acres
 $CN_5 = 85$ (Open Pavement)

Weighted Curve Number $CN = 90$

Determine Rainfall P

(From Table A.2 DOH Storm Water Management Guidebook)

Rainfall, P_{2-hr} (24-hour) = 2.17 in
 Rainfall, P_{15-hr} (24-hour) = 6.79 in

Determine Runoff Q
 $Q = (P-0.25)^2 / (P+0.65)$

Where: Q = Runoff (in)
 P = Rainfall (in)
 S = Potential Maximum Retention after Runoff Begins (in)

$S = (1000CN) - 10$

$S = 1.14$

Runoff $Q_{2,y} = 1.22$ in
 Runoff $Q_{15,y} = 5.59$ in

Determine Runoff Volume V_r
 $V_r = 63.33Q(A_u)$

Where: V_r = Runoff Volume (acre-ft)
 Q = Runoff (in)
 A_u = Drainage Area (sq mi)
 63.33 = Conversion factor from (in-sq mi) to (acre-ft)

$V_{r(2,y)} = 0.24$ acre-ft
 $V_{r(15,y)} = 1.10$ acre-ft

Determine Storage Volume V_s
 $V_s = V_r \times (V_s/V_r)$

Where: V_s = Storage Volume (ac-ft)
 V_r = Runoff Volume (ac-ft)

$V_{s(2,y)} = 0.06$ ac-ft 2527 cf
 $V_{s(15,y)} = 0.27$ ac-ft 11544 cf

WATER QUALITY

Water Quality Volume
 $V_w = (R \times I_p) / 12$

Where: V_w = Water Quality Volume (cubic feet)
 R = Runoff Depth (inches)
 I_p = Impervious Area (square feet)
 12 = Conversion Factor

Total Site Runoff Depth

0.5 inches = Parking lots, city streets, highspeed roads
 0.3 inches = Rooftops, sidewalks, pedestrian plaza areas

$A_1 = 0.75$ acres
 $R_1 = 0.50$ (Parking lots, city streets, highspeed roads)

$A_2 = 1.62$ acres
 $R_2 = 0.30$ (Rooftops, sidewalks, pedestrian plaza areas)

Weighted Runoff Depth $R = 0.36$ inches

STORMWATER QUANTITY HYDROLOGY

Stormwater Rational Method
 $Q = CIA$

Where: Q = Peak flow (cfs)
 C = Runoff Coefficient
 I = Rainfall Intensity (in/hr)
 A = Drainage Area (acres)
 T = Time of Concentration (min)

Total Site Pre-Development Run-Off

$T = 15$ min

Pre-Development Runoff Coefficient
 $A = 0.57$ acres
 $C = 0.9$ (Concrete Pavement)

$A = 0.12$ acres
 $C = 0.65$ (One-Family Detached Dwelling)

$A = 1.67$ acres
 $C = 0.3$ (Grass)

Weighted Runoff Coefficient $C = 0.46$

Pre-Development 2-Year Storm

$Q_{2,y(2,y)} = CIA$ C = Runoff Coefficient
 I = rainfall Intensity (in/hr) - 2-Yr Frequency 20min
 A = Area (acres)

$C = 0.46$ weighted runoff coefficient
 $I = 3.83$ in/hr
 $A = 2.36$ acres

$Q_{2,y(2,y)} = 4.2$ cfs Peak Flow

Pre-Development 15-Year Storm

$Q_{15,y(15,y)} = CIA$ C = Runoff Coefficient
 I = rainfall Intensity (in/hr) - 15-Yr Frequency 20min
 A = Area (acres)

$C = 0.46$ weighted runoff coefficient
 $I = 5.44$ in/hr
 $A = 2.36$ acres

$Q_{15,y(15,y)} = 6.9$ cfs Peak Flow

Total Site Water Quality Volume

$V_w = (R \times I_p) / 12$

Weighted $R = 0.36$ inches
 $I_p = 103,217$ square feet

$V_w = 3,125$ cubic feet

Total Site Post-Development Run-Off

$T = 9$ min

Post-Development Runoff Coefficient
 $A = 0.51$ acres
 $C = 0.9$ (Concrete Pavement)

$A = 0.10$ acres
 $C = 0.65$ (One-Family Detached Dwelling)

$A = 0.51$ acres
 $C = 0.3$ (Grass)

$A = 1.01$ acres
 $C = 0.75$ (Building)

$A = 0.21$ acres
 $C = 0.6$ (Open Cell Pavers)

Weighted Runoff Coefficient $C = 0.67$

Post-Development 2-Year Storm

$Q_{2,y(2,y)} = CIA$ C = Runoff Coefficient
 I = rainfall Intensity (in/hr) - 2-Yr Frequency 5min
 A = Area (acres)

$C = 0.67$ weighted runoff coefficient
 $I = 4.44$ in/hr
 $A = 2.34$ acres

$Q_{2,y(2,y)} = 6.9$ cfs Peak Flow


Post-Development 15-Year Storm

$Q_{15,y(15,y)} = CIA$ C = Runoff Coefficient
 I = rainfall Intensity (in/hr) - 15-Yr Frequency 5min
 A = Area (acres)

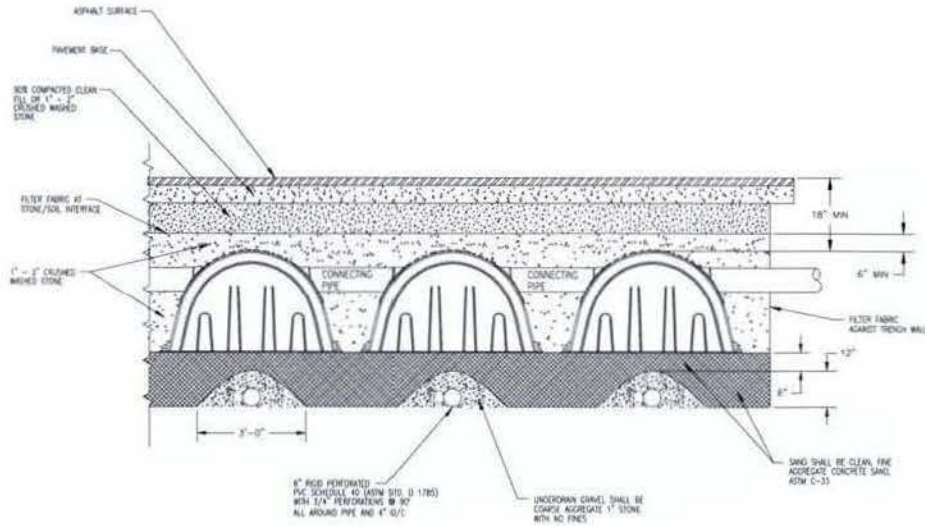
$C = 0.67$ weighted runoff coefficient
 $I = 6.3$ in/hr
 $A = 2.34$ acres

$Q_{15,y(15,y)} = 8.8$ cfs Peak Flow

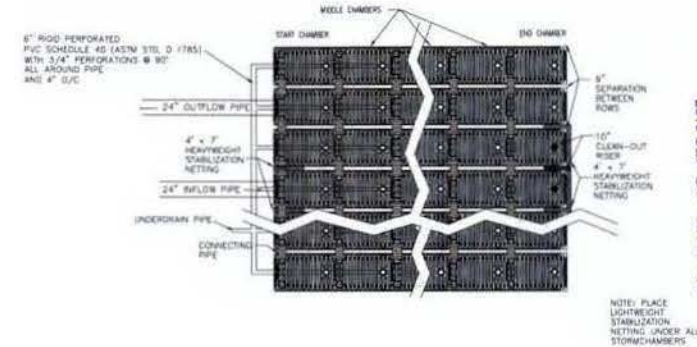
Required Water Quality Volume	3,125 cu ft
Required Storage Volume	11,544 cu ft
Total Volume Required	14,669 cu ft
Volume Provided	14,720 cu ft

 **Kimley-Horn and Associates, Inc.**
 13221 WOODLAND PARK ROAD, SUITE 400
 HERNDON, VA 20171
 TEL: 703.674.1300 FAX: 703.674.1350

TAKOMA PARK - SQUARE 3357 DRAINAGE CALCULATIONS



1 STORM CHAMBER SECTION
NOT TO SCALE



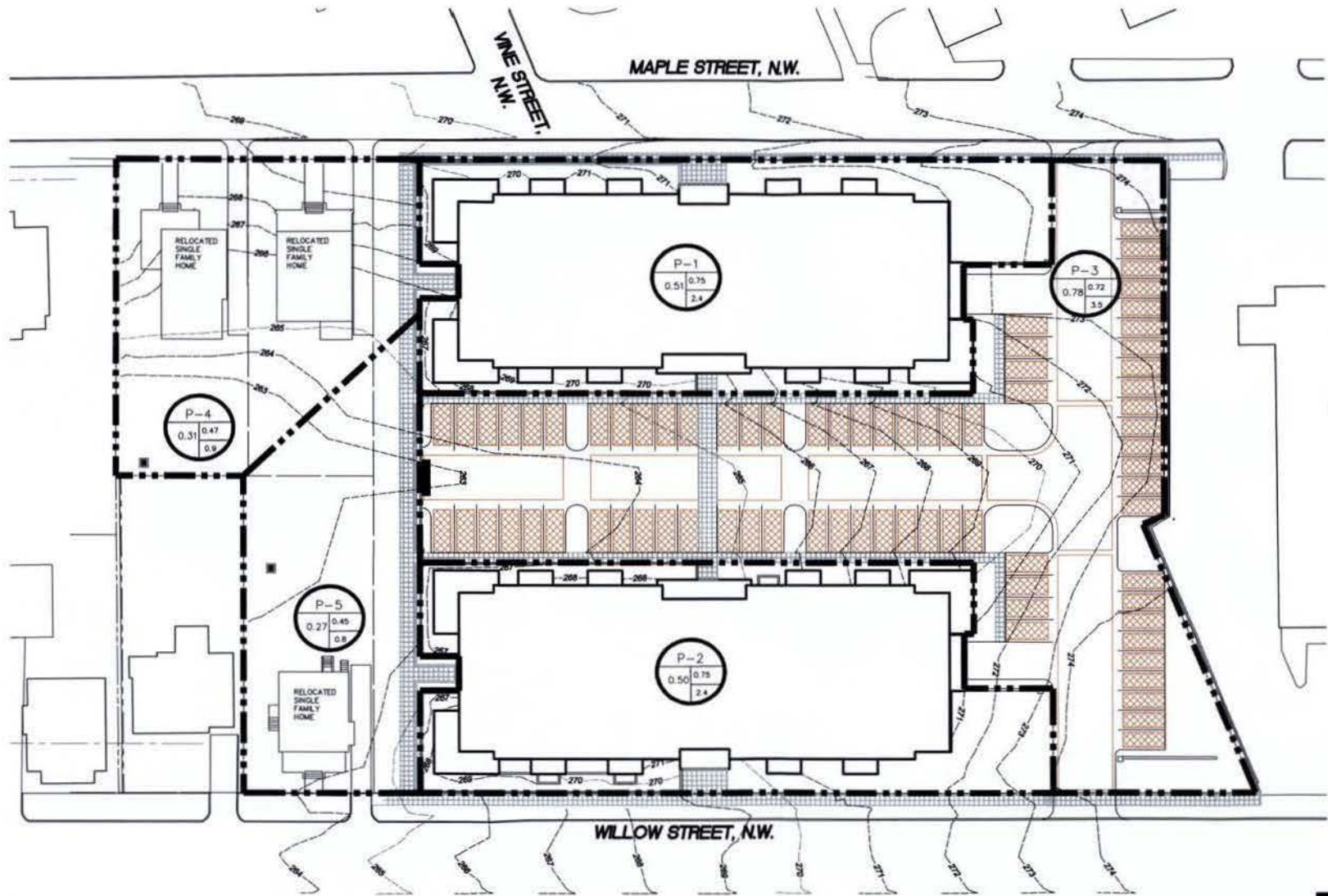
2 TYPICAL STORM CHAMBER LAYOUT
NOT TO SCALE

STORMCHAMBER SYSTEM CHART										
SYSTEM	NO. WIDE	NO. LONG	MIN. TRENCH DEPTH	MIN. TRENCH WIDTH	MIN. TRENCH LENGTH	MIN. SQUARE FT OF SYSTEM	NUMBER OF CHAMBERS	CUBIC FEET OF STORAGE	SIZE OF CONNECTING PIPES	NUMBER OF CHAMBER SECTIONS LONG WITH CONNECTING PIPES
A	10*	17**	5 FT	60 FT	133 FT	6,395	128	14,720	12"	17

NOTE: ALL SYSTEMS TO HAVE MINIMUM 6" OF STONE ABOVE AND 6" BELOW, IN ADDITION TO AN UNDERDRAIN SYSTEM
 * PORTIONS OF THE SYSTEM ARE 4 OR 8 CHAMBERS WIDE.
 ** 2 ROWS OF THE SYSTEM ARE ONLY 4 CHAMBERS LONG, 4 ARE ONLY 6 CHAMBERS LONG, AND ANOTHER 4 ARE

TAKOMA PARK - SQUARE 3357 DRAINAGE DETAILS

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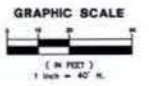
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- A = BASIN DESIGNATION
- B = AREA IN ACRES
- C = RUNOFF COEFFICIENT
- D = PEAK RUNOFF IN CFS (15-YEAR)

————— DRAINAGE BASIN

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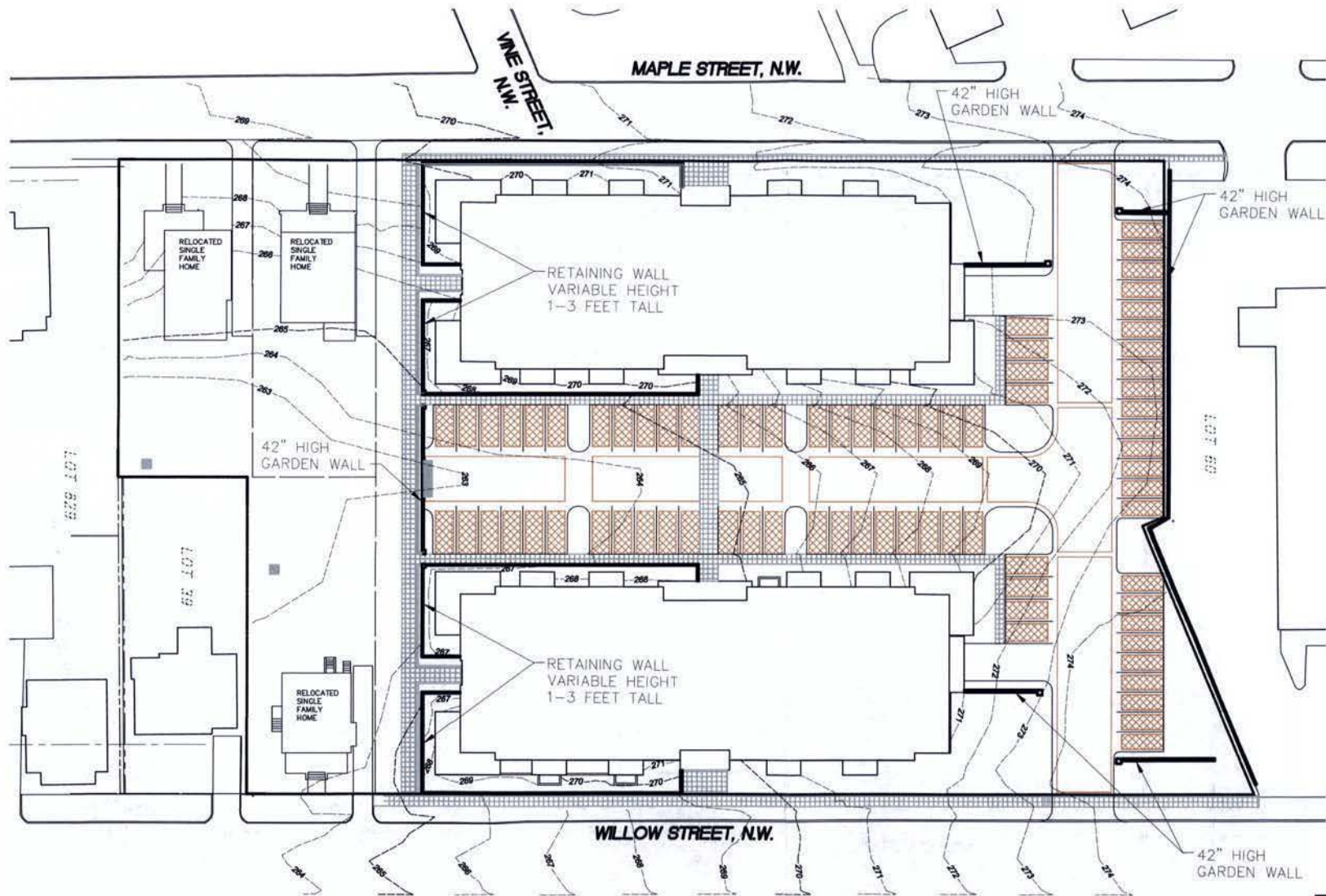


TAKOMA PARK - SQUARE 3357 POST-DEVELOPMENT DRAINAGE AREA MAP



BZA Submission - 05-22-07

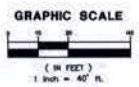
Kimley-Horn and Associates, Inc.
 13221 WOODLAND PARK ROAD, SUITE 400
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 TEL: 703.674.1300 FAX: 703.674.1350

C500



LEGEND

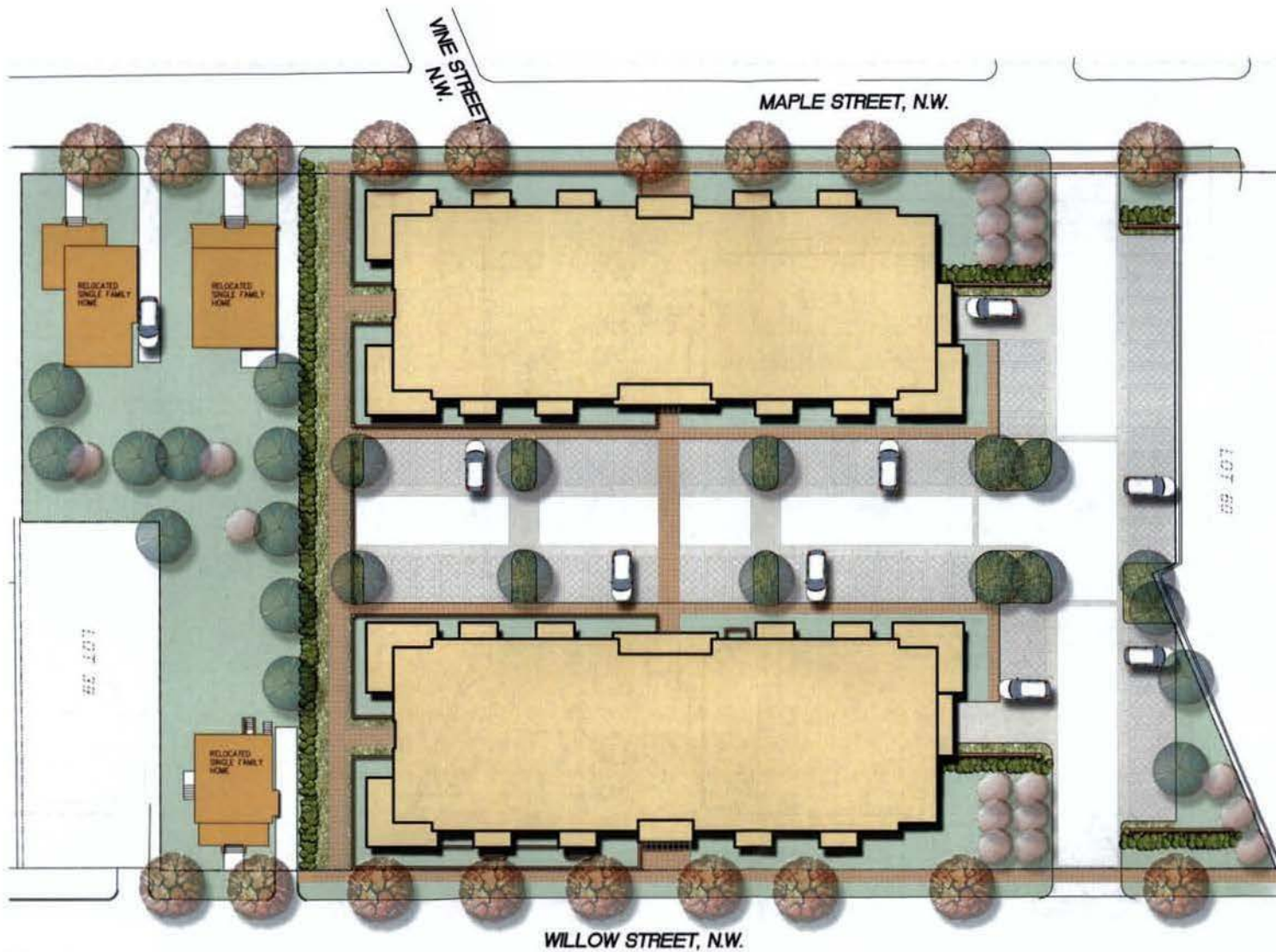
-  MINOR CONTOUR
-  MAJOR CONTOUR



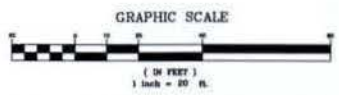
TAKOMA PARK - SQUARE 3357 GRADING PLAN

BZA Submission - 05-22-07

Kimley-Horn and Associates, Inc.
 13221 WOODLAND PARK ROAD, SUITE 400
 HERNDON, VA 20171
 TEL: 703.674.1300 FAX: 703.674.1350



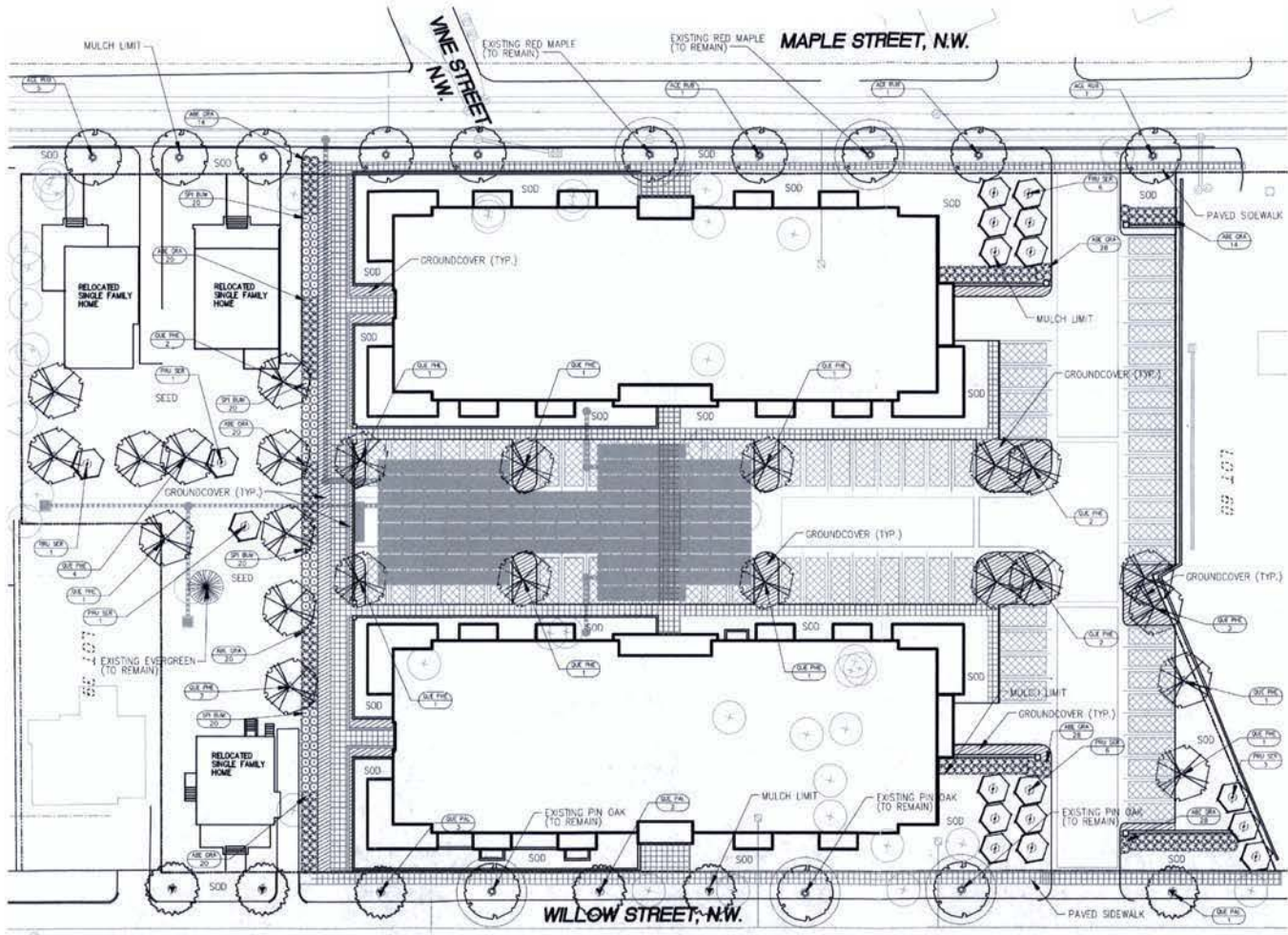
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TAKOMA PARK - SQUARE 3357 LANDSCAPE PLAN RENDERING

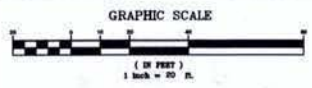
BZA Submission - 05-22-07

U R G **Kimley-Horn and Associates, Inc.**
 13221 WOODLAND PARK ROAD, SUITE 400
 HERNDON, VA 20171
 TEL: 703.674.1300 FAX: 703.674.1350



PLANTING SCHEDULE						
QTY	SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	DESCRIPTION	
3	ACE RB	Acer natum	OCTOBER GLORY RED MAPLE	BB	12' DA. HT., 3.5" CAL.	
18	PRU SOD	Prunus virginiana 'Snowglobe'	WHITE SPINICE FLOWERING CHERRY	BB	6-7' DA. HT.	
6	QUF PAL	Quercus palustris	PIN OAK	BB	12' DA. HT., 3.5" CAL.	
24	QUF PHE	Quercus phellos	MELLOW OAK	BB	12' DA. HT., 3.5" CAL.	
192	ABC GRA	Abelia grandiflora	GLOSSY ABELIA	3 Gal.	FUL, 36" O.C.	
80	SPI BUM	Spiraea x bumalda 'Goldflame'	GOLDFLAME BURNING SPIREA	3 Gal.	FUL, 36" O.C.	
42	(Symbol)	Existing tree to be removed.				
5	(Symbol)	Existing deciduous tree to remain.				
1	(Symbol)	Existing evergreen tree to remain.				

- N " N " = NATIVE PLANT
- MISCELLANEOUS**
- SEED 50/50 Mix Annual Ryegrass & Cereal (Winter) Rye
 - SOD Tall Fescue
 - MULCH STRIP Double shredded hardwood mulch, natural (undyed) Mulch between Ground Cover and Shrubs to Top of Curb.



TAKOMA PARK - SQUARE 3357 LANDSCAPE PLAN

BZA Submission - 05-22-07

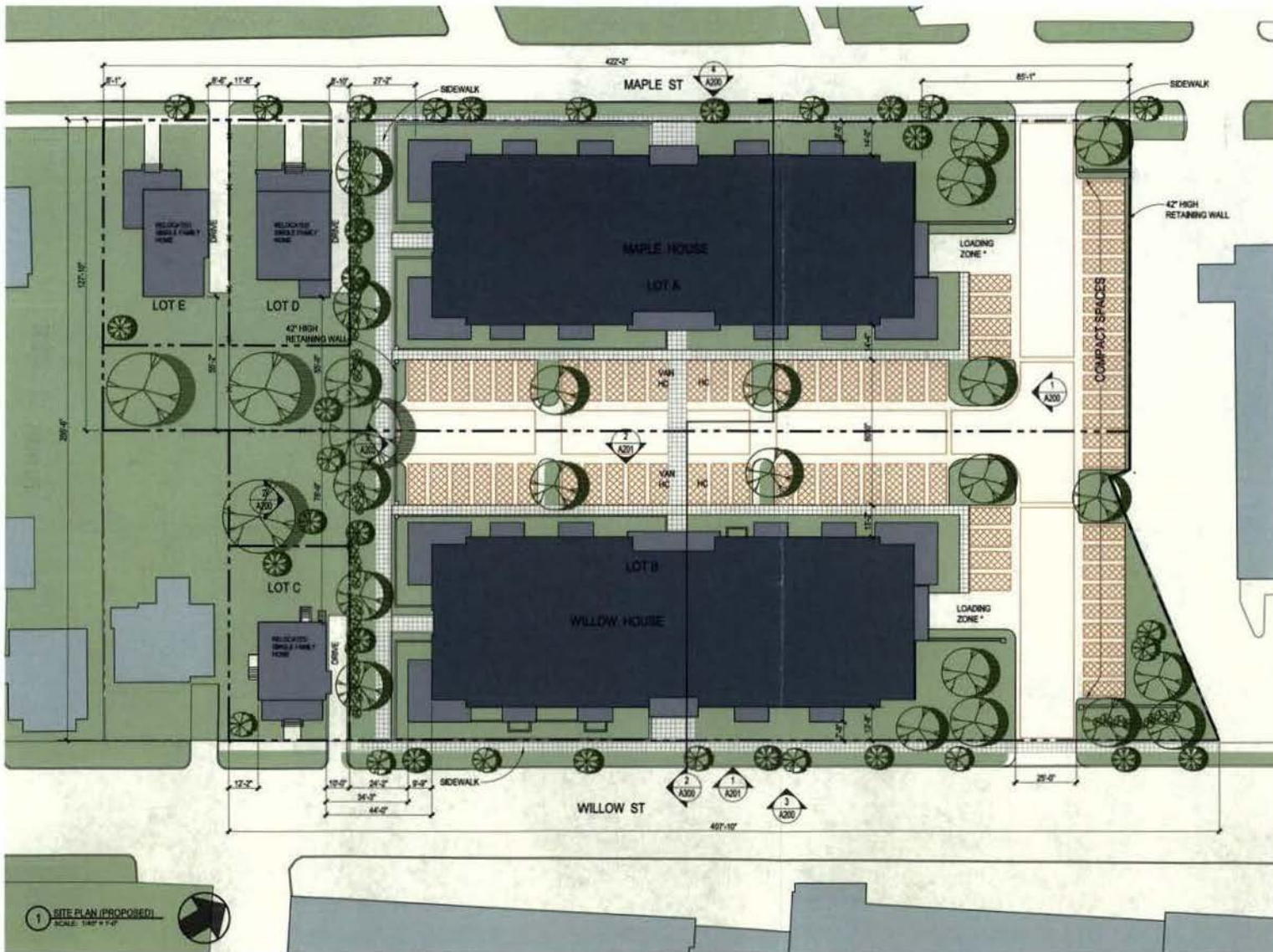
NOT FOR CONSTRUCTION

13221 WOODLAND PARK ROAD, SUITE 400
 HERNDON, VA 20171
 TEL: 703.674.1300 FAX: 703.674.1350



TAKOMA PARK - SQUARE 3357 - EXISTING SITE CONDITIONS

G T M ARCHITECTS



PARKING COUNT	
STANDARD SPACES	48
COMPACT CARS	24
HANDICAPPED	2
VAN-ACCESSIBLE	2
TOTAL	76

PAVED PARKING AREA: 26,054sf
 REQUIRED GREEN SPACE (5%): 1,303sf
 PROVIDED GREEN SPACE (lot A&B): 25,611sf

1 SITE PLAN (PROPOSED)
 SCALE: 1/4" = 1'-0"



TAKOMA PARK - SQUARE 3357 - SITE PLAN AND PARKING

G T M ARCHITECTS



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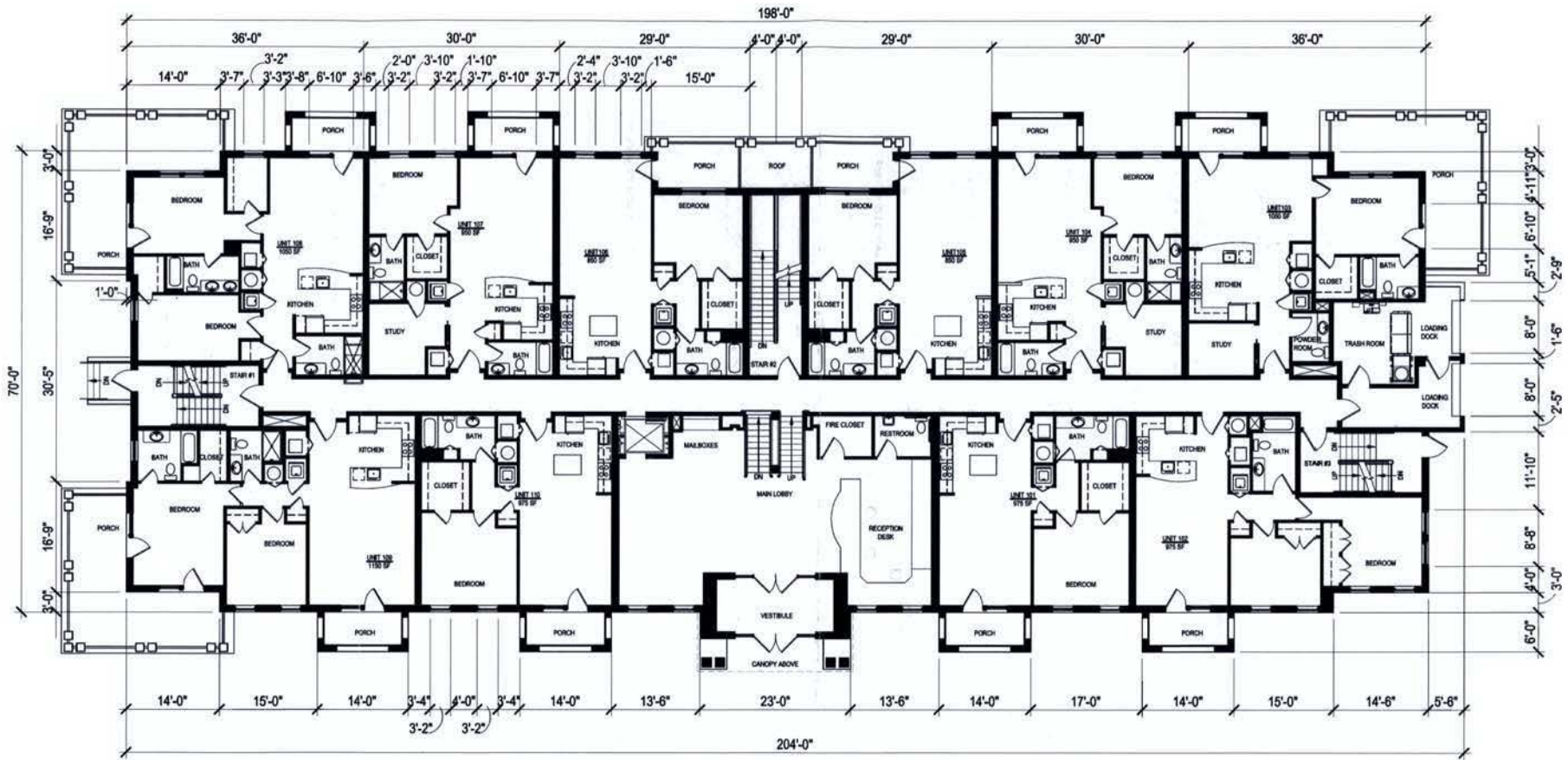
1 CELLAR FLOOR PLAN
 SCALE: 1/8" = 1'-0"

NOTES:
 1. THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOPE OR THE SQUARE FOOTAGE DISTRIBUTION MAY OCCUR.



TAKOMA PARK - SQUARE 3357 - CELLAR FLOOR PLAN

GTM ARCHITECTS



1 FIRST FLOOR PLAN
SCALE: 1/16" = 1'-0"



NOTES:
1. THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOPE OR THE SQUARE FOOTAGE DISTRIBUTION MAY OCCUR.



TAKOMA PARK - SQUARE 3357- FIRST FLOOR PLAN

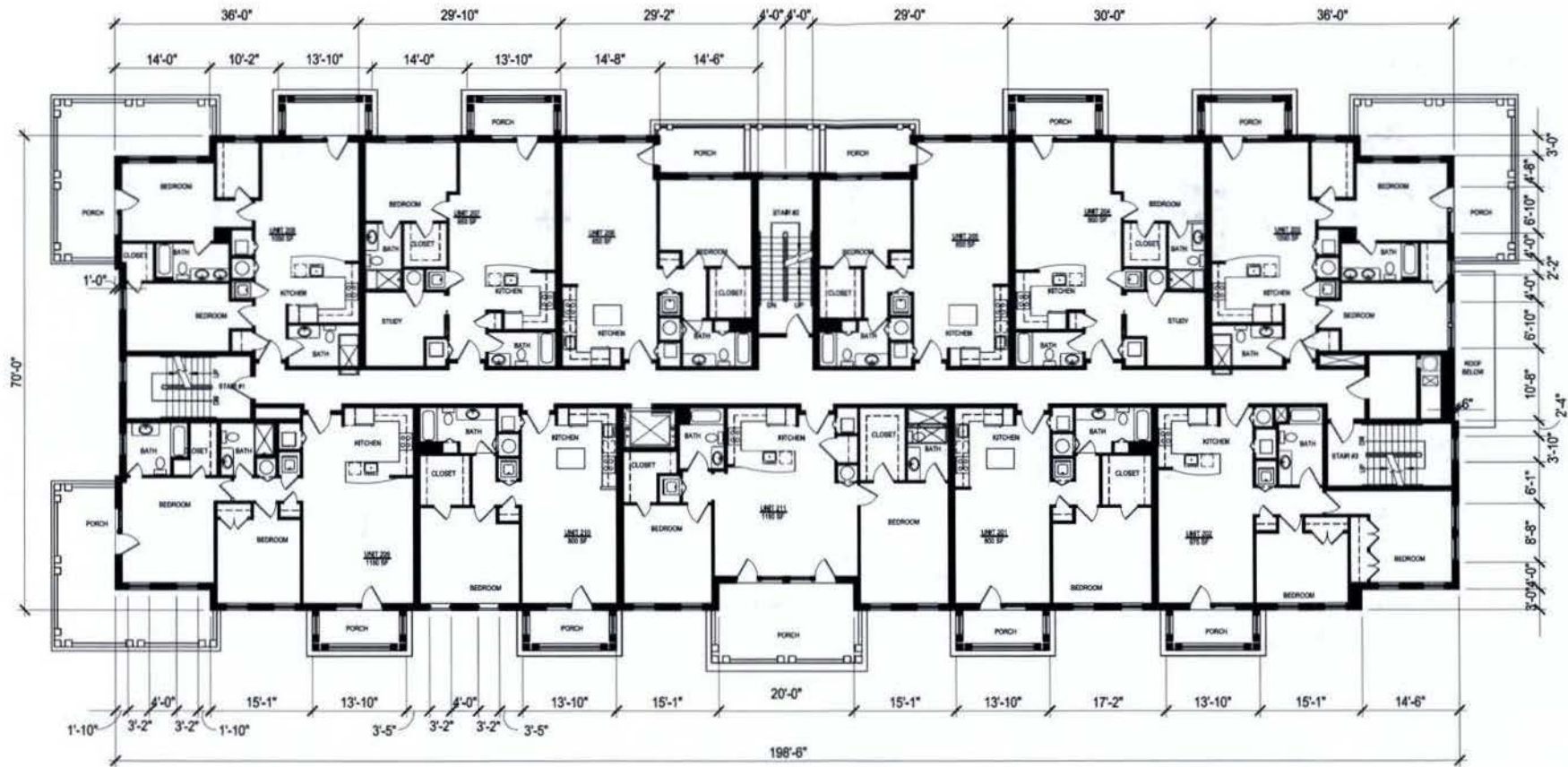
GTM ARCHITECTS

BZA SUBMITTAL - 05-22-07

PROJECT NO: 06.0069

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1 SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"



NOTES:

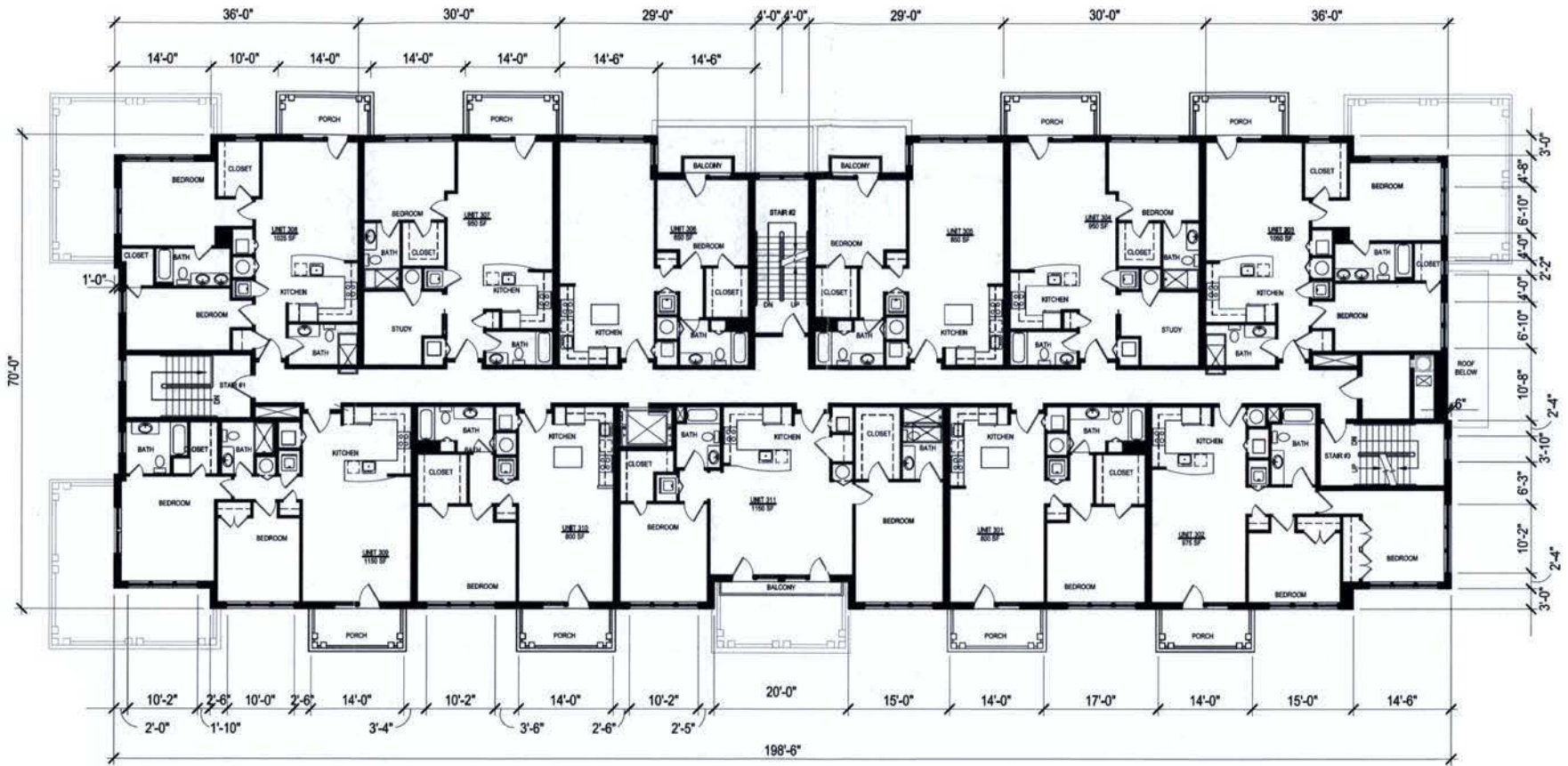
1. THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOPE OR THE SQUARE FOOTAGE DISTRIBUTION MAY OCCUR.

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TAKOMA PARK - SQUARE 3357- SECOND FLOOR PLAN

G T M ARCHITECTS



1 THIRD FLOOR PLAN
SCALE: 1/16" = 1'-0"



NOTES:

1. THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOPE OR THE SQUARE FOOTAGE DISTRIBUTION MAY OCCUR.

GTM

TAKOMA PARK - SQUARE 3357 - THIRD FLOOR PLAN

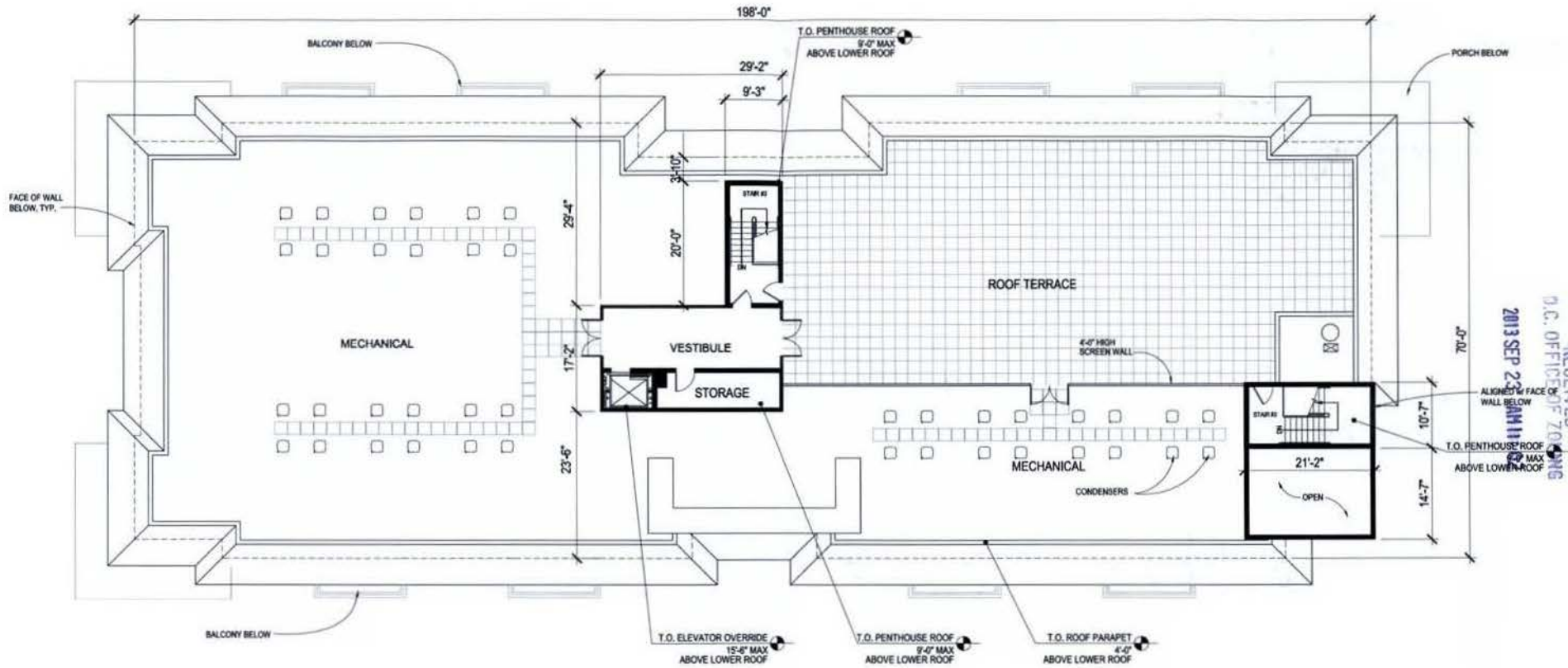
G T M ARCHITECTS

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 ALIGNED TO FACE OF WALL BELOW
 T.O. PENTHOUSE ROOF 9'-0" MAX ABOVE LOWER ROOF

1 ROOF PLAN
 SCALE: 1/16" = 1'-0"

NOTES:
 1. THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOPE OR THE SQUARE FOOTAGE DISTRIBUTION MAY OCCUR.



TAKOMA PARK - SQUARE 3357- ROOF PLAN

GTM ARCHITECTS



1 CONTEXT ELEVATION LOOKING SOUTH
SCALE: 1"=60'-0"



2 CONTEXT ELEVATION LOOKING NORTH
SCALE: 1"=60'-0"



3 WILLOW STREET CONTEXT ELEVATION
SCALE: 1"=60'-0"



4 MAPLE STREET CONTEXT ELEVATION
SCALE: 1"=60'-0"



TAKOMA PARK - SQUARE 3357 CONTEXT ELEVATIONS

G T M ARCHITECTS

EL:321.83
T.O. ELEV OVERRIDE

EL:307.33
ROOF LEVEL

EL:296.0
THIRD LEVEL

EL:284.83
SECOND LEVEL

EL:273.67
FIRST LEVEL

EL:270
LOBBY LEVEL

EL:262.0
CELLAR LEVEL



1 STREETFRONT ELEVATION
SCALE: 3/32" = 1'-0"

EL:321.83
T.O. ELEV OVERRIDE

EL:307.33
ROOF LEVEL

EL:296.0
THIRD LEVEL

EL:284.83
SECOND LEVEL

EL:273.67
FIRST LEVEL

EL:270
LOBBY LEVEL

EL:262.0
CELLAR LEVEL



2 INTERIOR SITE ELEVATION
SCALE: 3/32" = 1'-0"

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TAKOMA PARK - SQUARE 3357 WILLOW HOUSE ELEVATIONS

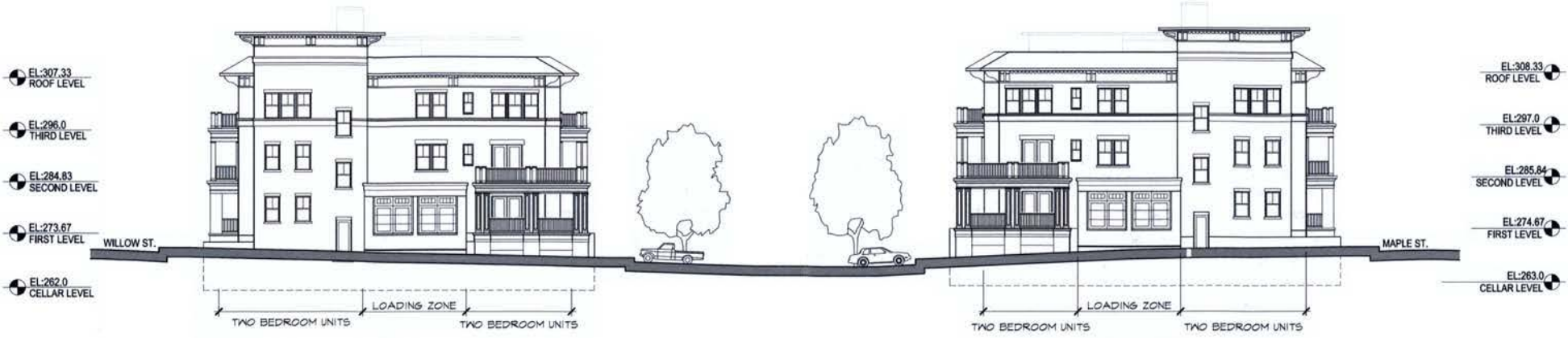
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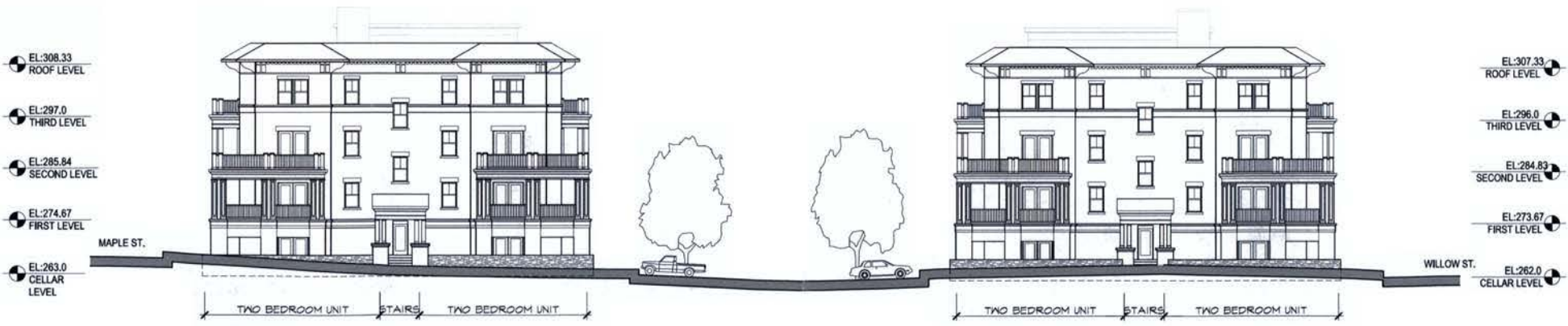
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1 NORTH ELEVATION
SCALE: 3/32" = 1'-0"



2 SOUTH ELEVATION
SCALE: 3/32" = 1'-0"

TAKOMA PARK - SQUARE 3357 - BUILDING ELEVATIONS

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TAKOMA PARK - SQUARE 3357

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G T M A R C H I T E C T S



TAKOMA PARK - SQUARE 3357

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C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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Application No. 17679-A of Jemal's TP Land and LLC, pursuant to 11 DCMR §3104.1, for special exceptions under sections 353 and 2516, and under section 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

HEARING DATE (Orig. Application): November 13, 2007
DECISION DATES (Orig. Application): January 8, 2008 and February 5, 2008
FINAL ORDER ISSUANCE DATE: April 23, 2008
MOTION TO EXTEND DECISION DATE: June 22, 2010

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17679

The Underlying BZA Order

On January 8 and February 5, 2008, the Board of Zoning Adjustment (the "Board" or "BZA") approved the Applicant's request for special exceptions under §§ 353 and 2516, and under § 411 regarding roof structures to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District. Thus, pursuant to 11 DCMR § 3104.1, the Board granted special exceptions under §§ 353 and 2516 which authorizes exceptions to building lot control in residence districts to permit the construction of a new residential development in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843). The Order was issued April 23, 2008. (BZA Order 17679).

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until April 23, 2010.

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

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BZA APPLICATION NO. 17679-A
PAGE NO. 2

Section 3130.1¹ states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(11 DCMR § 3130.1).

Waiver of 30-day filing requirement pursuant to 11 DCMR § 3130.9

The Applicant first filed its request for a time extension on April 6, 2010, approximately three weeks prior to the expiration of Order No. 17679 on April 23, 2010. (Exhibit 48). At its special public meeting on May 11, 2010, the Board granted the Applicant permission to file supplemental information by May 18, 2010 and to address the waiver of the 30-day filing requirement, pursuant to § 3130.9. Subsection 3130.9 says: “A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request.” 11 DCMR § 3130.9.

On May 17, 2010, the Applicant filed a letter with the Board, dated May 11, 2010, that contained a request to waive § 3130.9 of the Zoning Regulations to accept the Applicant’s time extension motion that, with the supplemental information being filed, was completely filed less than 30 days prior to the expiration of the underlying order and to toll that order’s expiration. (Exhibit 50). In its May 11, 2010 letter to the Board, the Applicant stated that due to dramatic reductions in staffing resulting from the weakened economy and its inability to timely verify key information relied upon in its affidavit supporting the extension request, the Applicant was unable to file its completed request for an extension at least 30 days prior to the order’s expiration. The Applicant indicated that no one was prejudiced by the delay in filing. (Exhibit 50). At its June 22, 2010 meeting, the Board, by consensus, approved the waiver of the 30-day filing requirement.

Motion to Extend Time

On May 17, 2010, the Board received a letter from the Applicant, dated May 11, 2010, which included the April 6, 2010 letter and additional supporting documentation and

¹ Section 3130.1 was amended by the addition of the phrase “except as permitted in § 3130.6” by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

BZA APPLICATION NO. 17679-A
PAGE NO. 3

which requested, pursuant to 11 DCMR § 3130.6,² a two-year extension in the authority granted in the underlying BZA Order, which was due to expire April 23, 2010. (Exhibit 50).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because, due to the deterioration of the real estate market in Washington, D.C., the frozen credit markets, and the continuing economic crisis these have caused, the Applicant has been unable to obtain the necessary financing commitment to begin the project, despite attempts to obtain financing for the project ever since the Board originally approved it. To meet its burden of proof, the Applicant provided a signed and notarized affidavit which indicated that the Applicant has diligently sought financing and attempted to move forward with development of the site since the time of the BZA's original approval. The Applicant noted that while the latest reports suggest that the multi-family housing sector may be starting to stabilize, the economy is not expected to rebound prior to the time when the underlying BZA Order was due to expire. (Exhibit 50, Exhibit B).

The Applicant filed a letter, dated May 13, 2010, with the Board which had been sent to the Chair of the Advisory Neighborhood Commission ("ANC") 4B, which is the affected ANC, and to the other party in the case, Mr. Jack Werner, notifying them of the Applicant's motion for a two-year time extension and sharing all the documentation in support of that motion with them. (Exhibit 50). There was no response to the Applicant's motion filed from any party in the case or the Office of Planning ("OP"). The project is within the boundaries of ANC 4B. ANC 4B did not file a report.

According to the Applicant, the reasons for its request to the Board to extend the time of the Order are because of its inability to secure financing for the project due to the prevailing unstable economic and real estate market conditions, both locally and nationally. The Applicant stated that it has aggressively pursued financing options for the project without success because of the continuing economic real estate crisis. The Applicant noted that while it was anticipated that the markets for existing residential products may begin to stabilize in future and the credit crunch for new multi-family construction may lessen, these improved conditions were not expected to occur prior to the expiration of the above-mentioned order. In addition, the Applicant indicated that the plans approved for the development of the site and other material facts are unchanged from those approved by the Board in its Order issued on April 23, 2008. The extension would allow the Applicant the necessary additional time in which to secure financing. Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the

² Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

Criteria for Evaluating Motion to Extend

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Section became effective on June 5, 2009.

Section 3130.6 of the Zoning Regulations states in full:

3130.6 The Board may grant one extension of the time periods in §§ 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

- (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

(11 DCMR § 3130.6)

As discussed herein, pursuant to 11 DCMR § 3130.9, for a request for a time extension to toll the expiration date of the underlying order for the sole purpose of allowing the Board to consider the request, the motion must be filed at least 30 days prior to the date on which an order is due to expire. Although the Applicant filed its request with the supplemental information on May 17, 2010, which was less than the required 30-day period for tolling, the Applicant presented reasons, as described above, for its delay in filing its motion and the supporting documents. By consensus, pursuant to § 3100.5, the Board granted the Applicant's request for flexibility and tolled the effect of the underlying Order.

Also, the Board found that the Applicant has met the criteria set forth in § 3130.6. The motion for a time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). The Applicant's inability to secure the necessary financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated April 23, 2008 (Exhibits No. 27 and 42 in the record). There have been no changes to the zone district classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order.

Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

Accordingly, pursuant to § 3130.6 of the Regulations, the Board hereby extends the validity of the underlying Order, for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of April 23, 2012.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and

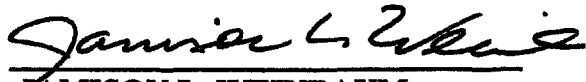
**BZA APPLICATION NO. 17679-A
PAGE NO. 6**

conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until April 23, 2012.

VOTE ON WAIVER MOTION: 3-0-2 (Meridith H. Moldenhauer, Shane L. Dettman, Nicole C. Sorg, to approve; no other Board members participating, nor voting)

VOTE ON TIME EXTENSION MOTION: 4-0-1 (Shane L. Dettman, Meridith H. Moldenhauer, Nicole C. Sorg, Michael G. Turnbull (by absentee ballot) to approve; no other Board member (vacant) participating, nor voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: JUN 29 2010

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 § 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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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,

BZA APPLICATION NO. 17679-A
PAGE NO. 7

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. 17679-A

As Director of the Office of Zoning, I hereby certify and attest that on JUN 29 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Norman M. Glasgow, Jr., Esq. and Carolyn Brown, Esq.
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2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Paul Millstein
Douglas Development Corporation
702 H Street, N.W., Suite 400
Washington, D.C. 20001

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W. #314
Washington, D.C. 20012

Single Member District Commissioner 4B07
Advisory Neighborhood Commission 4B
25 Sheridan Street, N.W.
Washington, D.C. 20011

Muriel Bowser, Councilmember
Ward Four
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BZA APPLICATION NO. 17679-A
PAGE NO. 2

Melinda Bolling, Esq.
Acting General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W.
Washington, D.C. 20024

ATTESTED BY:


JAMISION L. WEINBAUM
Director, Office of Zoning

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 17679-B of Jemal’s TP Land and LLC, Motion for a Second Two-Year Extension of BZA Order No. 17679, pursuant to 11 DCMR § 3130.

The original application was pursuant to 11 DCMR § 3104 1, for special exceptions under §§ 353 and 2516, and under § 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N W and 6916-6926 Willow Street, N W (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840, and 843)

HEARING DATE (Orig. Application): November 13, 2007
DECISION DATES (Orig. Application): January 8, 2008 and February 5, 2008
FINAL ORDER ISSUANCE DATE (No. 17679): April 23, 2008
DECISION ON FIRST MOTION TO EXTEND ORDER June 22, 2010
ISSUANCE DATE OF FIRST EXTENSION (No. 17679-A): June 29, 2010
DECISION ON 2ND MOTION TO EXTEND ORDER: June 12, 2012

**ORDER ON SECOND MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17679**

The Underlying BZA Order

On January 8 and February 5, 2008, the Board of Zoning Adjustment (the “Board” or “BZA”) approved the Applicant’s request for special exceptions under §§ 353 and 2516, and under § 411 regarding roof structures to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District Thus, pursuant to 11 DCMR § 3104 1, the Board granted special exceptions under §§ 353 and 2516 which authorizes exceptions to building lot control in residence districts and under § 411 to permit the construction of a new residential development in the R-5-A District at premises 6923-6953 Maple Street, N W and 6916-6926 Willow Street, N W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843) Order No 17679 (the “Order”) was issued April 23, 2008. (Exhibit 46)

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Under the Order, and pursuant to § 3130 1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until April 23, 2010

Section 3130 1¹ states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130 6

(11 DCMR § 3130 1)

2010 Motion to Extend

On April 6, 2010, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR § 3130 6,² a two-year extension in the authority granted in the underlying BZA Order, which was then due to expire on April 23, 2010 (Exhibit 48) Also, on May 17, 2010, the Applicant filed a letter with the Board, dated May 11, 2010, that contained supplemental information together with a request to waive § 3130 9 of the Zoning Regulations to accept the Applicant's time extension motion that, with the supplemental information being filed, was completely filed less than 30 days prior to the expiration of the underlying Order and to toll that Order's expiration (Exhibit 50)

At a decision meeting on June 22, 2010, the Board found that the requirements of 11 DCMR § 3130 6 had been met and granted the Applicant both the waiver it requested pursuant to § 3130 9 as well as a two-year extension of BZA Order No 17679 until April 23, 2012. (Exhibit 52, BZA Order No 17679-A)

2012 Motion to Extend

On April 20, 2012, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR § 3130 6, upon a showing of good cause, a second two-year extension of the authority granted in the original BZA Order, which was then due to expire on April 23, 2012, as well as requests for the Board to waive, pursuant to § 3100.5 of the Zoning Regulations, the 30-day filing requirement in § 3130.9, to allow tolling of the expiration of the Order, and the restriction to one extension in § 3130 6, to allow more than one extension of the Order (Exhibit 54)

Waiver of 30-Day Filing Requirement Pursuant to 11 DCMR § 3130 9

¹ Section 3130 1 was amended by the addition of the phrase "except as permitted in § 3130 6" by the Zoning Commission in Z C Case No 09-01 The amendment became effective on June 5, 2009

² Section 3130 6 was adopted by the Zoning Commission in Z C Case No 09-01 and became effective on June 5, 2009

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As stated, the Applicant's request for a second extension of the Order that was submitted on April 20, 2012 contained a request to waive § 3130.9 of the Zoning Regulations to accept the Applicant's time extension motion that was filed less than 30 days prior to the expiration of the underlying order and to toll that order's expiration. (Exhibit 54.) Subsection 3130.9 says "A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request" (11 DCMR § 3130.9) The request was submitted three days before the Order was due to expire on April 23, 2012, thereby requiring a waiver of the requirements of § 3130.9³

In its April 20, 2012 letter, the Applicant requested that the Board exercise the discretion that it is granted pursuant to 11 DCMR § 3100.5, and waive the 30-day requirement in 11 DCMR § 3130.9 Also in its April 20th submission, the Applicant stated that when it was made aware of the impending expiration, the Applicant researched the loan documents and financing restrictions related to the Property and that, due to the Applicant's extensive real estate portfolio, this was not an insignificant task and took considerable time to complete, thereby resulting in the Applicant filing its request for an extension less than 30 days prior to the expiration of the underlying Order. The Applicant indicated that no one was prejudiced by the delay in filing (Exhibit 54)

Subsection 3100.5 provides

Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law

As §§ 3100 through 3105, 3121.5, and 3125.4 do not apply to extension requests, the Board concludes that it is authorized, for good cause shown, pursuant to 11 DCMR § 3100.5, to waive the 30-day provision and toll the expiration date of the Order for the sole purpose of allowing the Board to consider the request. At its June 12, 2012 meeting, finding sufficient good cause shown, the Board voted to approve the waiver of the 30-day filing requirement

Waiver of One-Extension-Only Requirement Pursuant to 11 DCMR § 3130.6

Also as a preliminary matter, the Board addressed whether to waive the limitation to one extension in 11 DCMR § 3130.6 to allow the grant of a second extension of the Order In Z.C. Case No. 09-01, the Zoning Commission ("Commission") amended 11 DCMR § 3130, in part, by adding § 3130.6. The amendments adopted by the Commission in Z.C. Case No. 09-01 became effective on June 5, 2009 Subsection 3130.6 expressly limits the number of time

³ During the Board's deliberations of this waiver request, it was mentioned that at a recent Zoning Commission public meeting, the Office of Planning had announced that it intended to bring forward a text amendment to amend 11 DCMR § 3130 to change or eliminate this requirement.

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extensions to one.⁴ In Z.C. Case No 09-01, the Commission also specifically authorized the Board to extend the time limits of § 3130 1 and provided the criteria for doing so *Z C Order No 09-01*, 56 DCR 4388 (June 5, 2009).

In its letter of April 20, 2012, the Applicant requested that the Board exercise its discretion pursuant to 11 DCMR § 3100 5, and waive the limitation in 11 DCMR § 3130 6 to a single time extension⁵

To show good cause for granting the waiver, the Applicant indicated that it is unable to obtain financing for the construction of the Project, the Applicant has not benefitted in any way from the delay of development of the property; and there would be no benefit to the District, the neighborhood, or the Applicant in depriving the Applicant additional time in which to develop the Project. The Applicant also asserted that granting the waiver would be in the interest of administrative efficiency for the Board and the community

As §§ 3100 through 3105, 3121 5, and 3125 4 do not apply to extension requests, the Board concludes that it is authorized, for good cause shown, pursuant to 11 DCMR § 3100 5, to waive the restriction to one extension pursuant to § 3130 6. At its June 12, 2012 meeting, finding sufficient good cause shown, the Board voted to approve the waiver of the one extension restriction requirement. Further, the Board concludes that granting the waiver will not prejudice the rights of any party and is not otherwise prohibited by law

The merits of the 2012 request to extend

As noted above, the Board received the Applicant's request, dated April 20, 2012, for a two-year extension in the authority granted in the underlying BZA Order, which was due to expire April 23, 2012. Included with the request was a sworn and signed affidavit from Douglas Jemal, Managing Member of the Applicant, to show good cause, pursuant to 11 DCMR § 3130.6 (Exhibit 54)

The Applicant served its extension request dated April 20, 2012 to the Chair of the Advisory Neighborhood Commission ("ANC") 4B, which is the affected ANC, and to the Office of Planning ("OP"), notifying them of the Applicant's motion for a two-year time extension and

⁴ During the Board's deliberations of this waiver request, it was mentioned that at a recent Zoning Commission public meeting, the Office of Planning had announced that it intended to bring forward a text amendment to amend 11 DCMR § 3130 to change or eliminate this restriction

⁵ Subsection 3100 5 provides

Except for §§ 3100 through 3105, 3121 5 and 3125 4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law

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sharing all the documentation in support of that motion with them (Exhibit 54) OP, in its report dated June 5, 2012, noted that the application submitted by the Applicant dated April 20, 2012, has been in the public record since it was filed on April 20, 2012. (Exhibit 55)

The project is within the boundaries of ANC 4B. ANC 4B filed a letter on May 30, 2012, with an attached resolution in support of the request for an extension. The ANC stated that at a regularly scheduled, duly noticed meeting on May 22, 2012, at which a quorum of eight of nine members were present, ANC 4B voted unanimously (8 0) to adopt the resolution supporting the application (Exhibit 57)

OP filed a report recommending that the Board grant the Applicant's request for a second two-year extension of Order No 17679 (Exhibit 55) Councilmember Muriel Bowser, who represents Ward 4, which is the ward in which the project is sited, also submitted a letter on June 7, 2012, in support of the application (Exhibit 56)

According to the Applicant, the reasons for its request to the Board to extend Order No 17679 for another two years are because of its inability to finance the construction of the project in view of the deterioration the real estate market. The Applicant also stated that a portion of the property is encumbered by a securitized loan which matures in 2013 and that the lender is unwilling to release that encumbered portion of the property and allow the development to proceed. In its affidavit the Applicant indicated that over the last four years, there has been a downturn in the real estate market and the economy has fallen into recession, leading to economic conditions beyond the Applicant's control. This has discouraged financial institutions from lending for residential projects The Applicant also stated that its attempts to seek financing for the project from financial institutions such as Berkadia, Wells Fargo, and Virginia Commerce Bank have not been successful because of the uncertainty in market conditions and the softening of the housing market. The Applicant noted in its sworn statement that it had acquired a securitized loan with Morgan Stanley Mortgage Capital, Inc which matures in 2013 That securitized loan encumbers a portion of the property and the lender is unwilling to release it and allow the development of the project to proceed The Applicant stated that due to the downturn in residential market conditions since the approval of the project in 2008, it is unable to pay off the loan prior to the loan's maturity date in 2012 Therefore, due to the encumbrance and market conditions, the Applicant is unable to proceed with the development The Applicant requests the second two-year extension to allow time for the securitized loan to mature and to allow it to obtain financing for the construction of the project. The Applicant believes that the real estate sub-market of the project area will be stronger by 2015, giving potential lending institutions more comfort with the project (Exhibit 54)

In addition, the Applicant indicated that the plans approved for the development of the site and other material facts are unchanged from those approved by the Board in its Order issued on April 23, 2008 Also, there have been no changes to the Zone District classification or the Comprehensive Plan applicable to the property The extension would allow the Applicant the necessary additional time in which to secure financing. Accordingly, the Applicant requested

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that, pursuant to § 3130 6 of the Regulations, the Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

The Zoning Commission adopted 11 DCMR § 3130 6 in Zoning Commission Case No 09-01 The Subsection became effective on June 5, 2009

Subsection 3130 6 of the Zoning Regulations states in full.

3130 6 The Board may grant one extension of the time periods in §§ 3130 1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval, provided, that the Board determines that the following requirements are met

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond,
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application, and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control,
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
 - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control

(11 DCMR § 3130.6)

As discussed herein, pursuant to 11 DCMR § 3130 9, for a request for a time extension to toll the expiration date of the underlying order for the sole purpose of allowing the Board to consider the request, the motion must be filed at least 30 days prior to the date on which an order is due to

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expire Although the Applicant filed its request with a sworn affidavit on April 20, 2012, which was less than the required 30-day period for tolling, the Applicant presented reasons, as described above, for its delay in filing its motion and the supporting documents Pursuant to § 3100 5, the Board voted to grant the Applicant's request for flexibility and tolled the effect of the underlying Order

The Board also found that the Applicant has met the criteria set forth in § 3130 6 The motion for a time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130 6(a) The Applicant's inability to secure the necessary financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

As required by § 3130 6(b), there is no substantial change in any of the material facts upon which the Board based its original approval In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated April 23, 2008 (Exhibits No 27 and 42 in the record). There have been no changes to the Zone District classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's original Order

Neither the ANC nor any party to the application objected to an extension of the Order The Board concludes that the extension of that relief is appropriate under the current circumstances

Pursuant to 11 DCMR § 3101 6, the Board has determined to waive the requirement of 11 DCMR § 3125 3, that the order of the Board be accompanied by findings of fact and conclusions of law Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No 17679-B for a second two-year time extension of Order No 17679, which Order shall be valid until April 23, 2014, within which time the Applicant must file plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE ON WAIVER OF § 3130.9 MOTION (30-DAY FILING DEADLINE): 5-0-0
(Michael G Turnbull, Nicole C Sorg, Lloyd J Jordan, Rashida Y. V. MacMurray, and Jeffrey L. Hinkle, to Approve)

VOTE ON WAIVER OF § 3130.6 MOTION (ONE-TIME EXTENSION): 5-0-0
(Lloyd J. Jordan, Nicole C. Sorg, Rashida Y V MacMurray, Jeffrey L Hinkle, and Michael G Turnbull, to Approve)

VOTE ON TWO-YEAR TIME EXTENSION MOTION: 5-0-0
(Lloyd J. Jordan, Nicole C Sorg, Rashida Y V MacMurray, Jeffrey L Hinkle, and Michael G Turnbull, to Approve)

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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: JUN 18 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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



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As Director of the Office of Zoning, I hereby certify and attest that on June 18, 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 ANCs and SMDs 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

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ATTESTED BY:



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