

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

**APPLICATION OF  
D.C. DEPARTMENT OF GENERAL SERVICES**

**BZA APPLICATION NO. 19452  
HEARING DATE: MARCH 1, 2017**

**APPLICANT'S REPOSE TO THE PRE-HEARING STATEMENT OF CITIZENS FOR RESPONSIBLE OPTIONS**

**I. INTRODUCTION**

The Application is self-certified and, thus, the updated Self-Certification Form is filed in the record at BZA Exhibit No. 39, which lists the complete areas of relief.<sup>1</sup> The District's Office of Planning and the District's Department of Transportation recommends approval of the necessary relief (BZA Exhibit Nos. 49 and 47, respectively). Additionally, there is substantive community support for the Project as documented by the numerous letters of support in the Record.

The CFRO Submission raises the following general concerns about the Project to which the Applicant now responds and will respond further at the March 1, 2017 hearing:

- The Application does not satisfy the variance standard;
- The Project is not an "Emergency Shelter" under the Zoning Regulations;
- The Superior Court's dismissal of CFRO's parallel lawsuit on the issue of site selection somehow negates the BZA application; and
- The Application lacks information about the loading and the Antenna.

As will be discussed briefly below and more in depth during the hearing, all of CFRO's contentions lack merit and are simply an exercise to confuse this Board and the public record. Such efforts fail. The Project is fully compliant with the Zoning Regulations for all the reasons stated in the Record and supplemented by the testimony at the upcoming hearing. This Project is a public service that is necessary

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<sup>1</sup> Furthermore, in BZA Exhibit No. 43, the Applicant filed an updated Self-Certification form at Tab B, noting that it would be providing one loading space and three parking spaces on the Property.

to ensure that the District satisfy the Mayor’s goals confirmed in D.C. Act No. 21-251 that directed the closing of DC General and the construction of 280 units of emergency shelter housing for families.

## II. APPLICATION SATISFIES THE VARIANCE STANDARD<sup>2</sup>

CFRO has alleged that the Application does not satisfy the variance standards necessary for the Application. CFRO’s assertions fall flat because (1) they fail to acknowledge, as they must, that this Board must apply a lower, more flexible standard for a public service project of this kind; and (2) any reliance on a “self-created” hardship standard is completely misplaced as there is no request for a use variance;

### A. **Reduced Standard for Public Service projects**

Pursuant to governing D.C. Court of Appeals and Board precedent a reduced standard is to be applied when reviewing and approving zoning relief needed for a building that will house public services uses. Accordingly, the Applicant – the District’s Department of General Services – and the nature of the Project – an emergency shelter for families experiencing homelessness – are vital aspects in determining whether the Project meets the standard for obtaining zoning relief.

#### 1 D.C. Court of Appeals has established the more flexible “public-service” standard

The D.C. Court of Appeals has consistently applied the reduced public service standard. The seminal case is *Monaco v. D.C. Board of Zoning Adjustment*, in which the Court considered a BZA application of a non-profit, the Republican National Committee (the “RNC”). *See Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1094 (1978). Specifically, the RNC sought area and use variances to expand its offices. *See id.* at 1095.

In analyzing the need for variance relief, the Court concluded that the RNC faced an exceptional condition, specifically noting that

[w]hile a commercial user before the BZA might not be able to establish uniqueness in a particular site’s exceptional profit-making potential, we consider that the **BZA may be**

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<sup>2</sup> As addressed in the initial application at BZA Exhibit No. 3, which identified all area relief as variances and the revised Self-Certification Form filed on February 13 at BZA Exhibit No. 39, the Applicant requires area variance relief for the Project’s height, FAR and loading. Support for this relief was set out in the initial Statement of the Applicant (BZA Exhibit No. 7) and additional evidence will be summarized in Section VIII below and discussed during the March 1 public hearing.

**more flexible when it assesses a non-profit organization** which is a well established element of our government system. (emphasis added) *See id.* at 1098.

The *Monaco* Court explicitly stated that “**public need is an important factor in granting or denying a variance.**” (emphasis added) *See id.* The Court concluded that

[w]hen a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership . . . the Board of Zoning Adjustment does not err in considering the needs of the organization as possible ‘other extraordinary and exceptional situation or condition of a particular piece of property.’ *See id.* at 1099.

Another important Court of Appeals case applying the public service standard to zoning relief is the matter of *National Black Child Development Institute, Inc. v. Board of Zoning Adjustment*. In that case, a nonprofit that benefited young children, applied to the BZA for a use variance to permit an office use on its property. *See National Black Child Development Institute, Inc. v. Board of Zoning Adjustment*, 483 A.2d 687, 688 (1984). The BZA granted that application for zoning relief, but the Board imposed certain conditions on the applicant that were ultimately appealed to the Court of Appeals. *See id.*

On appeal, the Court of Appeals adopted the *Monaco* holding, applying a “more flexible standard for determining hardship when a ‘public service,’ or nonprofit entity, is the applicant.” *See id.* at 690. As to the zoning relief, the Court affirmed the BZA’s grant of the variance, noting that applicant’s “work benefited black children and families within the District,” and concluding that the “situation is unique, that **its work does promote the public welfare....**” (emphasis added) *See id.*

Furthermore, in *Draude v. BZA*, the Court of Appeals considered the BZA’s decision granting area variance and special exception relief to George Washington University. *See James Draude v. D.C. Board of Zoning Adjustment*, 527 A.2d 1242, 1245 (1986). Applying the Court’s clear direction in *Monaco* and *National Black Child Development*, the *Draude* Court applied the reduced public service standard to the university. *See id.* at 1255-56. Notably, the Court established specific factors that must be met for a quasi-public service organization to obtain area variance relief through the reduced standard. *See id.* at 1256.

These factors include the requirements

(1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. *See id.*

The subject Application directly satisfies the two *Draude* factors, demonstrating that it is entitled to the reduced public service standard as to the requested variance relief. Namely, the Applicant has demonstrated that the specific design of the Project is an institutional necessity, and not merely one of many design choices. The Applicant has also submitted evidence documenting precisely how the needed design features require the variance sought.

The requested area variance relief is directly tied to the Project's programmatic requirements, including creating an emergency shelter that is safe and dignified. In order to close D.C. General, the Project must create 46 units without expanding beyond 10 families per floor. Increasing the number of families per floor would conflict with the programmatic need to create a safe environment. Ten units per floor is consistent with the programmatic requirements to design efficient, family-sized units that promote a calm and healthy environment. In conjunction with the severe limitations of the Property – particularly the need to retain a substantial portion of the former police station and certain viewsheds as well as keeping the communications antenna and equipment building in their current locations, the Applicant must build six stories with a height of approximately 70 feet. Similarly, the Applicant's design features and the building area are restricted by these exceptional, site-conditions, which necessitate the relief from loading. Finally, the D.C. Council's legislative authority to administer the use of this Property for the Project necessitates that the Project be located on the Property.

2. The Board has applied the more flexible “public-service” standard to numerous area variance applications

In keeping with precedent established by the Court of Appeals, the Board has applied reduced scrutiny to applications of public service organizations on a number of occasions. In BZA Case 18240, the District of Columbia Public Library applied for an area variance from the minimum rear yard requirement. *See* BZA Case No. 18240. The Board concluded that the “**programmatic requirements of the library constitute an institutional need that contributes to the exceptional situation facing the subject property.**” (emphasis added) *See id.* In so doing, the Board specifically found that the applicant had established the

origins of its standard building program for neighborhood libraries, its efforts to ensure uniform services and facilities, to the extent possible, at each neighborhood library, and the particular need to maximize the services and facilities offered at the subject property as the only neighborhood library in Ward 1. *See id.*

The Board expressly and conclusively dispelled the opposition's attempt to discredit the library's programmatic requirements. Instead of adopting those claims, the Board found that the D.C. Public Library has satisfied this standard because it had professional expertise in the library's needs, the public had input at various stages of the design, and the public service nature of the library use. *See id.*

The Board made similar findings as to the reduced public service standard in BZA Cases 18272 and 17973. In the former case, the Board granted the application of the First Baptist Church of Washington seeking an area variance from a maximum height requirement. *See BZA Case No. 18272.* In the latter case, the Board granted the District of Columbia Public Library's application for an area variance from the minimum parking requirements. *See BZA Case No. 17973.* In both cases, the Board expressly noted that the burden of proof for variance relief is decreased for non-profit or public service organizations. *See BZA Case Nos. 18272 and 17973; see also BZA Case No. 16916 (Board applies reduced public service standard in granting use variance to Friends Committee on National Legislation) and BZA Case No. 17609 (Board applies reduced public service standard to grant use variance to First Baptist Church).*<sup>3</sup>

In the matter before this Board, the Applicant has met the burden of proof for the three requested area variances, particularly in consideration of the reduced standard of scrutiny for a public service organization. Much as in the above-outlined cases, the Applicant, a District agency, has set out to construct

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<sup>3</sup> According to the Supreme Court, *stare decisis*<sup>3</sup> “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Randall v. Sorrell*, 548 U.S. 230, 243 (2006) (citation omitted) (*quoting Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). *Stare decisis* thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. *Id.* at 244. As a quasi-judicial body, the principles of *stare decisis* should not be casually ignored in Board decisions.

In addition to fostering actual and perceived integrity in the judicial process, consistent legal interpretation of law is necessary to avoid being arbitrary and capricious. A decision is arbitrary and capricious when it is not based on reason or evidence, or when there is an unaccountable change in reasoning. The D.C. Court of Appeals has found that an “[u]nexplained’ inconsistency in an agency’s interpretation of its governing statute can be ‘a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.’” *Hensley v. D.C. Dep’t of Empl. Servs.*, 49 A.3d 1195, 1203 (D.C. 2012) (internal citations omitted).

the Project in order to remedy an acute public need in the District – housing for families experiencing homelessness. As described in the Applicant’s previous filings, the Project represents an important part in executing the Mayor’s “Homeward D.C.” initiative, which has a goal of making homelessness in the District rare, brief and non-recurring. Accordingly, the Board must consider the Applicant’s request for zoning relief through the lens of this reduced public service standard. There is no evidence in the record to the contrary, and any efforts to claim otherwise during the hearing will have no basis in the law whatsoever.

**B. Self-Created Hardship is not at issue in this case.**

CFRO takes numerous tacks to advance its unfounded argument that the Board should apply the “self-created” hardship test to this case. All of these efforts must fail for the simple reason that the Applicant seeks *area* variance relief – not use – relief. As discussed in more depth below, the proposed emergency shelter use is permitted as a matter of right and of the proposed size by Special Exception. Accordingly, no use variance is required for the Project.

It is well established that a self-created hardship is not a factor to be considered by the Board in an application for an area variance. *See Ass’n for Pres. Of 1700 Block of N St., NW & Vicinity v. Board of Zoning Adjustment*, 384 A.2d 674, 678 (1978); *see also* BZA Case No. 18651. Indeed, a self-imposed hardship would only justify denial of a request for a use variance, which is not the case here. *See Foxhall Community Citizens Assoc. v. Board of Zoning Adjustment*, 524 A.2d 759, 761 (1987); *see also Oakland Condo Ass’n v. Board of Zoning Adjustment*, 22 A.3d 748, 755 (2011).

In a blatant attempt to shoehorn the Project into this standard, CFRO claims that the “Proposed Shelter” “requires a use variance” because it is larger than an Emergency Shelter could be as a matter of right. In doing so, CFRO appears to ignore that Subtitle U § 513.1(f)(6) specifically permits approval of an Emergency Shelter for more than 25 persons if the requirements of that section are satisfied (which they are in this case). Indeed, the Zoning Regulations specifically do not put a “per person” limit on the size of an Emergency Shelter approved as a special exception. Accordingly, an argument that a use variance is necessary here has no basis in the law whatsoever.

Here, the Applicant has requested three area variances, but no use variances. In support of the request for area variances, the Applicant has set out the exceptional conditions affecting the Property and will summarize them further below, including the Project’s programmatic needs. The D.C. Court of Appeals and BZA precedent clearly establishes that any “self-created” hardship will have no bearing on the Applicant’s request for area variances.

Nonetheless, it remains a question as to whether the exceptional conditions are, in fact “self-created” by the Applicant. The self-created hardship rule is “a manifestation of the equitable principle of estoppel,” meaning that the Applicant must have clean hands and act in good faith. *See DeAzcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1239 (1978). As noted above, the Applicant is a District agency and the Project is a “public service”. The programmatic needs are based upon input from experts in the field of homeless services, and aim to provide families experiencing homelessness with a safe and dignified shelter. The programmatic needs or the site selection do not benefit the Applicant in any way.

Importantly, Court of Appeals cases such as *Oakland* and *A.L.W.* do not concern public services and the perceived “self-created” hardship results in direct financial gain for the applicant. As the Court in *Monaco* distinguished, market rate, commercial users, such as those in *Oakland* and *A.L.W.*, “might not be able to establish uniqueness in a particular site’s exceptional profit-making potential.” In *Oakland*, the applicants sought relief to build additional units in a rooming house; in *A.L.W.*, the applicant was a private developer seeking to develop unimproved property. Here, the programmatic needs and the site selection do not benefit the Applicant in any way. As a “public service,” the Applicant seeks to carry out the policy goals of the District and solve the problem of homelessness.

In summation, the “self-created” hardship is not relevant to the Applicant’s request for area variances. The assertion that the Applicant seeks a use variance is legally unfounded and factually incorrect. Therefore, even if an exceptional condition of the Project is “self-created”, which remains in question, the Board may not consider this factor in determining the zoning relief available to the Applicant.

#### **IV. THE PROJECT SATISFIES THE DEFINITION OF AN “EMERGENCY SHELTER”**

CFRO allocates more than two pages of its Submission to claims that the Project somehow fails the *zoning* definition of an “Emergency shelter” lack basis in the Zoning Regulations. Tellingly, CFRO appears to cite to every possible definition it can locate *except* the only one that governs in this proceeding – the definition of “Emergency Shelter” in the Zoning Regulations.<sup>4</sup>

To be clear, that definition from Subtitle B, §100.2 is:

A *facility* providing *temporary housing* for one (1) or more individuals who are otherwise homeless *as that arrangement* is defined in *the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-751.01 et seq.)*; [the “HSRA”] an emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance. (emphasis added).

As with many other zoning definitions of general categories, when drafting this definition the Zoning Commission determined that a project would be identified as an “Emergency Shelter” use if it satisfied the requirements for “temporary” housing set out in HSRA. Specifically, that law states:

“Temporary shelter” means:

(A) A housing accommodation for individuals who are homeless that is open either 24 hours or at least 12 hours each day, other than a severe weather shelter or low barrier shelter, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter and supportive services; or

(B) A 24-hour apartment-style housing accommodation for individuals or families who are homeless, other than a severe weather shelter, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter and supportive services. D.C. Code § 4-754.24.

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<sup>4</sup> The Applicant acknowledges that the Project has been publicized as a “Short Term Family Housing” facility for the purposes of DGS/ DHS identification. It has never been the Applicant’s intent that the term “Short Term Family Housing” would constitute the *zoning* definition of the Project. Furthermore, CFRO’s reliance on the “Zoning Handbooks” identification of the “Emergency Shelter use” as a use limited to “thirty (30) days or less” is entirely misplaced because that specific “Emergency Shelter use” language was expressly removed from the Zoning Regulations. By way of background, prior to the Zoning Regulations’ effective date, the March 4, 2016 version of the Zoning Regulations included both an “Emergency Shelter” definition (which is similar to the one currently before the Board) at Subtitle B §100.2 *and* a separate “Emergency Shelter Use” at Subtitle B § 200.2(n) Pursuant to ZC Case No. 08-06A, the first set of broad-based technical corrections to the Zoning Regulations adopted in [date]; the “Emergency Shelter use” was *expressly* removed. A copy of the Staff Report identifying the clear intent to remove the “Emergency Shelter Use” is attached here at Exhibit “B”. Accordingly, the Zoning Handbook’s reference to an “Emergency Shelter Use” is in error. Indeed, the Zoning Regulations contain no such language.



The proposed project squarely satisfies these requirements. Indeed, CFRO agrees that this Project is a Temporary Shelter under the HSRA (CFRO Submission at 5 stating “Rather it is a temporary shelter.”) Accordingly, because the Project satisfies the requirements of a HSRA “temporary shelter”, it falls under the *zoning* definition of an “Emergency Shelter.” Importantly, the District’s Zoning Administrator, whose job it is to interpret the Zoning Regulations determined that the similar project in Ward 3 is an “Emergency Shelter” in satisfaction of Subtitle B, §100.2. A copy of the Zoning Administrator’s letter on Ward 3 to this effect is included at Exhibit “A”.

Accordingly, similar to other “zoning definitions” that may be known commercially by other titles (such as projects that are “apartment houses” for zoning purposes, but are known commercially as condominiums/apartments) the “Emergency Shelter” definition encompasses a broader group of housing options, including those known more commercially as “Short Term Family Housing” that satisfies the HSRA requirements for Temporary Shelter.

Accordingly, as an Emergency Shelter, this use is permitted by special exception in the MU-4 zone pursuant to Subtitle U § 513.1(f). Accordingly, no use variance is required for this use on the Property. Any attempt to argue otherwise must fail.

**V. SUPERIOR COURT CASE ON SITE SELECTION IS NOT RELEVANT TO THIS PROCEEDING**

CFRO devotes the first two and a half pages of its Submission and 14 of pages of Exhibits to rehashing the Superior Court’s decision to dismiss CFRO’s court case questioning the D.C. Council’s legislated selection of the Property. Despite all this verbiage, the Superior Court’s decision boils down to one, unremarkable fact: The Applicant needs zoning relief from the Board to build this Project. That is no surprise, and is, indeed, why the Applicant is seeking the relief at this time. CFRO efforts to contort this straight-forward decision into something that it is not – the District’s admission of “self-created hardship” created by the selection Property – and to simultaneously re-litigate this issue before the Board must fail. The site selection issue was heard in the proper forum, and CFRO did not prevail. The Property is the site

that was legislated and it is the one that the Board will review in making its decision on the subject Application.

Indeed, the relevance of the issue of site selection to the subject BZA application is tangential at best. Such question might only be reviewed by the Board as part of its assessment of the special exception standards of Subtitle U § 420.1(f)(6) permitting special exception approval for an emergency shelter for more than 25 persons if the Board “finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District.” As will be discussed at the hearing, the Project satisfies the first requirement because the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the Property and there is no other reasonable alternative to meet these needs in this area.

For these reasons, CFRO’s efforts to raise questions about site selection and the Superior Court’s decision on that matter have no relevance to this proceeding and should be disregarded.

## **VI. ISSUES REGARDING LOADING HAVE BEEN ADDRESSED**

CFRO attempts to derail and delay the March 1 hearing by baselessly claiming that there are “unresolved questions” about the loading and delivery space. First, to be clear, the Applicant continues to seek variance relief for loading, and it is not contending that the proposed, on-site loading space is in full satisfaction of the Zoning Regulations. That said, CFRO appears to concede that the record provides sufficient information regarding the location and documentation of the proposed loading space. (CFRO Submission at pg. 15, stating “The first floor diagram included in the application is consistent with the delivery plan”). However, even with this evidence, CFRO claims that the Application is insufficient because CFRO believes evidence that this use of the public alley “would be in the public interest” is lacking. As an initial matter, the test for this relief is whether the loading relief would cause “substantial detriment” to the public good, not whether it would be “in the public interest.” *See* Subtitle X § 1000.1 (c). Second, the District’s Department of Transportation (“DDOT”) has reviewed the loading plan, including the

Applicant's initial traffic report and supplemental report for loading at BZA Exhibit Nos. 29 and 43, and determined:

- Generally, DDOT's loading requirements "often results in loading being accessed through an alley network"; and
- The "proposed loading area is sufficient to accommodate the project and is consistent with DDOT's standards".

See BZA Exhibit No. 47.

Accordingly, the information provided on loading was sufficient to satisfy DDOT's standards.

## **VII. ISSUES REGARDING THE ANTENNA HAVE BEEN ADDRESSED BY DGS**

CFRO also alleges that there are "unaddressed issues" regarding the existing, on-site antenna. As discussed in the Applicant's pre-hearing statement at BZA Exhibit No. 36, the necessary zoning relief for the antenna and equipment room were approved in BZA Case No. 16991. A copy of the order approving this relief is included here at Exhibit "E". As also stated in the Applicant's pre-hearing statement, the Project will not impact or move the antenna, and the Project will be constructed over the equipment room along the rear property line. The Applicant neither requires, nor has sought, any relief for the antenna/equipment room. Furthermore, DGS has confirmed that the location of the proposed antenna adjacent to the Project (as well as the 4-story, matter of right apartment house that has been constructed along the rear) is "compliant" with rules adopted by the Federal Communication Commission "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields." Specifically, DGS commissioned "SiteSafe, RF Compliance Experts" to study whether there was negative impact created by exposure of the general public to radio frequency electromagnetic fields from the antenna. Those experts conducted a site visit and determined that the Site is "Compliant based on FCC Rules and Regulations." A copy of the SafeSite report is attached here as Exhibit "D". Furthermore, as designed, the Project will maintain the required three-foot clearance from the antenna recommended in the SafeSite Report.

Therefore, although this issue is not directly relevant to the subject BZA proceeding, DGS has

conducted the required review of the antenna and determined that it was compliant with the necessary regulations.

### **VIII. SUMMARY OF COMPLIANCE WITH THE VARIANCE STANDARD FOR HEIGHT, FAR AND LOADING**

As explained in the Initial Application and detailed again in the revised Self-Certification form in the record at BZA Exhibit No. 39, the Applicant requires variance relief from the height, FAR and loading relief for the Project in the MU-4 zone.<sup>5</sup> The support for this relief is already in the record and will be discussed more fully at the March 1 hearing, but is summarized below as well.

The Board is authorized to grant an area variance where it finds exceptional conditions for the Property, practical difficulties to the applicant and no substantial detriment to the public good or substantial impairment to the Zone Plan. *See French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Importantly, as discussed above when the applicant is a public service, the Board may apply a more flexible standard when applying the variance test. *See Nat'l Black Child Dev. Inst. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984) (citing *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979)).

In this case, all three prongs of the area variance test are satisfied.

#### **A. The Property is affected by an Exceptional Situation or Condition**

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<sup>5</sup> The Applicant's pre-hearing submission at BZA Exhibit No. 36, incorrectly stated that height and FAR were permitted by special exception in the MU zone pursuant to Subtitle G § § 409.1 and 1200. After this filing, the Applicant was informed that a technical correction to Subtitle G § 101.5 to establish that relief from height and FAR would be approved as an area variance had been adopted in January 2017. However, it was not clear whether the on-line version of the Zoning Regulations reflected those changes at the time of filing the pre-hearing statement. Irrespectively, once the Applicant was informed that variance for height and FAR were required, it filed a revised self-certification with the Board on February 13, 2017 at BZA Exhibit No. 39 and served it on the counsel for CFRO. As stated above, the initial application requested variance relief height and FAF. Furthermore, the notices of public hearing sent by the Office of Zoning and the notice signage posted on the Property on February 2, 2017 all reference variance relief necessary for height and FAR. *See BZA Exhibit Nos. 14-25 and 41*. Also, the Office of Planning analyzed these areas of relief as variances when issuing its recommendation of support. *See BZA Exhibit No. 49*. Accordingly, CFRO had sufficient notice and knowledge of the required variance relief necessary for this Application.

The phrase “exceptional situation or condition” in the variance test applies not only to the land, but also to the property’s history. *See, Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). As described in the initial submission and summarized here, the Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) unique corner lot location bounded by 15-foot alley to the rear; (2) significant 20-foot sidewalk public space along Rhode Island Avenue; (3) significant 24-foot sidewalk public space along 17<sup>th</sup> Street; (4) Retention of the main building of the former police station and inability to build over it; (5) retention of the previously-approved 150’-communications antenna and approximately 360 s.f. control/ equipment and (6) the Project’s programmatic needs. The above creates a property-specific confluence of factors that create an exceptional condition on this Property that is unique in the Square.

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

Due to the Property’s exceptional conditions, strict application of the Zoning Regulations with respect to height (Subtitle G § 403.1), FAR (Subtitle G § 402.1) and (loading (Subtitle C § 901.1) would result in a practical difficulty to the Applicant.

*1. Height (Subtitle G § 503.1)/ FAR (Subtitle G § 502.1)*

The maximum permitted building height in the MU-4 Zone District is 50 feet and the maximum FAR is 2.5. The Applicant seeks an area variance from these requirements because the Project has a proposed height of 69.83 feet and a proposed FAR of 3.51. As a result of the exceptional conditions affecting the Property and the Project, specifically the need to retain the existing police station structure without building over it, the significant public space areas along both Rhode Island Avenue and 17<sup>th</sup> Street NE that reduce the property size, and strict application of the zoning regulations as to height and FAR would result in a practical difficulty for the Applicant.

Importantly, amongst other conditions, the height is increased by the floor to ceiling heights of the first two floors of the police station, which are 14 feet and 11 feet, respectively. Accordingly, the first three floors of the Project are set higher to meet the floor plates of the former police station which directly increases the height of the Project. Also, the police station's base is set at almost three feet above the level of the curb on 17th Street, N.E. which further disadvantages the addition in terms of height. Cumulatively, these physical features add 6 to 8 feet of height as opposed to a design without the former police station.

As to FAR, the Property's confluence of exceptional conditions – existence of the police station and antenna; substantial public space along both street frontages and corner lot condition – create a practical difficulty for the Applicant. Indeed, the inefficiency of the Existing Structure and the non-utility of the Antenna, together amount to approximately 1.0 FAR, creating a clear practical difficulty for the Applicant. These property-specific exceptional conditions result in a building that must be constructed to the height and density as proposed.

Furthermore, as has been discussed, the need for height and FAR (as well as all the requested zoning) relief is directly related to the programmatic needs of the Project. The program requirements of the Project are driven by D.C. Council legislation, including D.C. Law 21-75<sup>6</sup> and D.C. Law 21-141<sup>7</sup> that required 280 replacement units for the closure of DC General and legislated an emergency shelter of up to 50 replacement units on the Property, respectively.

The programmatic needs for the Project are further informed through the Interagency Council on Homelessness ("ICH"), a statutorily created group comprised of experts in homeless services from the District government, federal government and other third-party service providers. *See* D.C. Code § 4-752.01. In a report issued to Mayor Bowser dated October 16, 2015, the ICH concluded that the number of sleeping units on each floor should be limited to 10 in order to ensure a small, familial environment for each shelter. The ICH recommended that a space for security/staff be located on each floor, with a view of

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<sup>6</sup> D.C. Law 21-75 was enacted by the Council on December 29, 2015, and the law became effective on February 27, 2016.

<sup>7</sup> D.C. Law 21-141 was enacted by the Council on June 13, 2016, and the law became effective on July 29, 2016.

common areas. Accordingly, the Project's design, which incorporates 10 units per floor, is driven by ICH recommendations.

Under D.C. Law 21-75, each shelter unit must consist of "a private room that includes space to store and refrigerate food." *See* D.C. Code § 4-750.01(11A). D.C. Law 21-75 further requires certain design standards for bathroom facilities. The law establishes that, at a minimum, shelters must provide "[a] private bathroom, including a toilet, sink, and bathtub or shower, in at least 10% of" units and for every five shelter units "one private lockable bathroom that includes a toilet, sink, and bathtub and shall be accessible to all residents." *See* D.C. Code § 4-750.03(3)(A-B). Maximizing private bathroom space was of significant concern to the ICH due to concerns over "privacy, safety, cleanliness, and convenience." For the Project, the Applicant has worked to exceed the legislatively established "family-unit to bathroom" ratio, by ensuring that only two families, at most, share a family bathroom.

The Project must also dedicate building space to on-site wrap-around services, which are also mandated by law. *See* D.C. Code § 4-753.01. D.C. Law 21-141 identifies these vital wrap-around services, noting that "[b]est practices suggest that children and families do best when short-term housing is provided in smaller-scale, service-enriched, community-based settings. . ." These on-site services offer a "continuum of services" designed to assist homeless individuals and families in quickly exiting the shelter and returning to permanent housing. The requirement to include on-site wrap-around services further drives the Applicant's need for zoning relief.

Accordingly, the need to provide safe, dignified, small-scale, community-based, short-term housing facilities has driven the design of the building and is an exceptional condition that results in practical difficulties to the Applicant. To provide 50 sleeping units, while limiting each floor to 10 units, along with a floor dedicated to wrap-around services, requires six stories and the additional height proposed. Each floor must have direct lines of sight so that parents and security staff can easily observe activity on the floor, limiting alternative designs for the Project. Simply put, the Project cannot provide the requisite units while complying with the shelter's programmatic needs in a matter-of-right facility.

Due to the confluence of these exceptional conditions, the strict application of the zoning regulations regarding height and FAR would result in peculiar and exceptional practical difficulties to the Applicant because the Applicant would not be able to construct a building in satisfaction of the D.C. Council's legislation and District agency guidelines.

2. *Loading (Subtitle C § 901.1)*

Pursuant to Subtitle C § 901.1, an emergency shelter use with a gross floor area between 30,000 and 100,000 square feet, must provide one loading berth and one service/delivery space. The Project does not provide a compliant loading berth or a service-delivery area and requests relief from this requirement. Although, it must be noted that the Applicant will dedicate one of the on-site parking spaces as a loading area that will comply with the Applicant's needs and has been determined to be sufficient by DDOT. *See BZA Exhibit No. 47*.

The need for relief arises from the exceptional conditions on the Property including the corner lot condition, the alley, the street-side public space as well as the existing police station and antenna/ equipment room. Taken together, these exceptional conditions on the site result in a practical difficulty if this relief is not approved.

Notably, the Applicant's traffic assessment and supplemental traffic study on loading concludes that the Project provides sufficient on-site circulation as well as loading and unloading areas. *See BZA Exhibit Nos. 29 and 43*. As stated above, DDOT concurs. *BZA Exhibit No. 47*. The Project will not be receiving large shipments or deliveries, and a majority of the families moving into the Property will not have many personal items; thus, a loading berth is not a necessity. The shelter units will be fully furnished, which further decreases residents' need for a loading berth. The most frequent delivery to the Property will be food delivery, which will be done by a van, not a large truck. The proposed loading space along the alley will offer a short-term parking space for such food deliveries.

For these reasons, the Applicant requests relief from the loading berth and service/delivery space requirement.

**C. No Substantial Detriment to the Public Good or Impairment 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 by approving the variance relief. The Project represents a step toward meeting the goal of the ICH strategic plan, “Homeward D.C.”, which seeks to make homelessness in the District rare, brief and non-recurring by 2020. The Project will provide families who are experiencing homelessness with a safe and dignified shelter facility that will further assist families in stabilizing and returning to permanent housing. In this regard, the Project is a positive contribution to the community and the District as a whole.<sup>8</sup>

The design of the Project is further intended to minimize any detriment to the surrounding neighborhood. Importantly, because the Applicant is retaining the Existing Structure, the bulk of the tallest portions of the Project are clustered on the east side of the Property, adjacent to the 15-foot alley, the auto repair uses and other property that is also zoned MU-4. Accordingly, due to the width of 17th Street, the bulk of the tallest portions of the Project will be separated from the single-family dwellings along 17th Street by the 90-foot right of way. This separation is enhanced by the approximately 50-foot wide Existing Structure, the height of which will not be increased. Furthermore, additional landscaping and screening will provide additional separation between the Project and the surrounding properties. Due to this substantial separation of approximately 140 feet, the light and air available to those properties will not tend to be affected adversely over what could be constructed as a matter of right as documented by the sun studies attached here as Exhibit “C”. Furthermore, Rhode Island Avenue’s 130-foot right of way can easily support a building of this height and density.

Finally, the Project and the relief requested will not cause a substantial impairment to the intent, purpose, and integrity of the zone plan. Furthermore, the height and density of the Project aligns with the stated goals of the District’s Comprehensive Plan to:

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<sup>8</sup> In 2016, the District obtained zoning relief from this Board for short-term family housing shelters located in Wards 4, 7 and 8. *See* BZA cases 19287, 19288 and 19289. Notably, all three projects requested and obtained relief to operate an emergency shelter in the applicable zone. Wards 4, 7 and 8 were granted relief from the applicable height limitation as well. Additionally, both Wards 7 and 8 requested and obtained relief from the minimum parking requirement. Ward 8 obtained relief from the loading requirement.

Encourage the provision of homeless services through neighborhood-based supportive housing and single room occupancy (SRO) units, rather than through institution-like facilities and large-scale emergency shelters. The smaller service model can reduce the likelihood of adverse impacts to surrounding uses, improve community acceptance, and also support the reintegration of homeless individuals back into the community. (Policy H-4.2.8: Neighborhood-Based Homeless Services, 10A DCMR § 516.14)

Accordingly, the replacement of D.C. General with emergency shelters that follow the ICH design guidelines that dictate the height and density of this Project furthers the goals of the Comprehensive Plan, and this Project is a critical element of that initiative. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or Zone Plan.

**IX. CONCLUSION**

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case and will be enumerated at the public hearing, we hereby submit that the application meets the requirements for area variance and special exception relief.

We look forward to presenting our case to the Board on March 1, 2017.

Respectfully submitted,

GRIFFIN, MURPHY,  
MOLDENHAUER & WIGGINS,  
LLP



Meridith H. Moldenhauer  
Eric J. DeBear  
1912 Sunderland Place, N.W.  
Washington, D.C. 20036  
(202) 429-9000

# EXHIBIT A

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



February 17, 2017

Meridith Moldenhauer  
Griffin, Murphy, Moldenhauer & Wiggins, LLP  
1912 Sunderland Place, N.W.  
Washington, DC 20036

SUBJECT: Construction of Short-Term Family Housing Emergency Shelter  
3320 Idaho Avenue, NW (the "Property") Lot 849 in Square 1818

Dear Ms. Moldenhauer:

As we discussed on February 13, 2017, the subject Property is owned by the District of Columbia government, and is operated by the District's Department of General Services ("DGS"). The Property is presently improved with the Metropolitan Police Department's ("MPD") Second District Station and the Newark Street Community Garden ("Community Garden").

DGS proposes to construct a Short-Term Family Housing Emergency Shelter (the "Project") that will share the Property with the MPD station and the Community Garden, and is zoned RA-1.

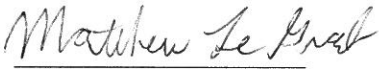
It is my understanding that the Project will be a six-story building that provides up to 50 units of emergency housing for families experiencing homelessness. The proposed building will be 72' in height with six (6) stories, will provide the required number of parking spaces in a multi-level parking structure that will be attached to the building, and will not have a loading berth or service/delivery space. During construction, DGS will temporarily relocate many of the MPD's parking spaces to the tennis courts located on the adjacent lot, which is owned by the National Park Service.

The Project requires Board of Zoning Adjustment [BZA] approval as follows:

- 1) The proposed use satisfies the definition of "emergency shelter", as that term is defined in Subtitle B § 100.2. Therefore, pursuant to Subtitle U § 420.1(f), special exception relief, as set forth in Subtitle X § 901.2, is required for construction of an emergency shelter in the subject RA-1 Zone District.

- 2) Pursuant to Subtitle F § 303.1, area variance relief, as set forth in Subtitle X § 1000.1, is required to construct a building that exceeds 40 feet in height and three (3) stories.
- 3) Pursuant to Subtitle C § 901.1, area variance relief, as set forth in Subtitle X § 1000.1, is required because the Project does not provide a loading berth or a service/delivery area.
- 4) Pursuant to Subtitle C § 302.2, area variance relief, as set forth in Subtitle X § 1000.1, is required because the Project will be the second primary structure on Property.
- 5) Pursuant to Subtitle U § 203.1(j), special exception relief will be required to temporarily relocate accessory parking for MPD on the adjacent tennis courts during construction of the Project.

Please let me know if you have any further questions.

Sincerely,   
Matthew Le Grant  
Zoning Administrator

# EXHIBIT B

**MEMORANDUM**

**TO:** Sara Bardin, Director, Office of Zoning  
**FROM:** <sup>JLS</sup> Jennifer Steingasser, Deputy Director, Historic Preservation and Development Review  
**DATE:** May 18, 2016  
**SUBJECT:** Zoning Commission Case No. 08-06A.  
Request for Consent Calendar consideration of a technical corrections to DCMR 11 Zoning Regulations as adopted in Case 08-06A

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**1. LATE FILING REQUEST**

This Office of Planning report is being submitted less than ten (10) days prior to the Zoning Commission's Public Meeting. The Office of Planning respectfully requests that the Commission waive its rule and accept this report into the record.

**2. OP RECOMMENDATION**

OP recommends that the Commission make the attached technical corrections and minor modifications to Zoning Regulations as approved in case 08-06-A, and respectfully requests that the matter be placed on the May 23, 2016 consent calendar pursuant to § 3030 of the Commission's rules.

The following table represents the first group of minor modifications and technical corrections to the 2016 Zoning Regulations. The explanation of the modifications or correction is in blue, followed by a brief description for the public notice, and the third paragraph is the proposed text correction. The Office of Planning will work with Office of Attorney General to refine the language prior to notice if necessary.

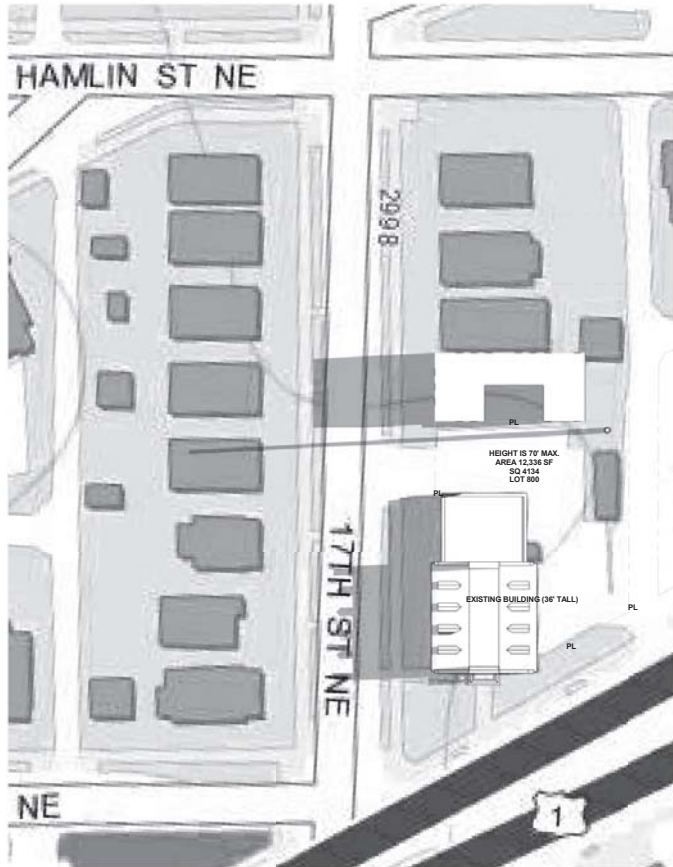
Some of the modifications represent an effort to make the language consistent with existing text, or between Subtitles and chapters, some are corrections of wrong number citations, and some represent language that was either inadvertently omitted or misstated. A separate report including additional minor modifications and technical correction is expected to be filed in June and will include subtitles not included in this report.

<p>B-100.2</p>	<p><b>Definitions</b>                  Definition of “Use, Principal” might not apply to “structures” as adopted; the word “structure” should be inserted between “land” and “or building” of the definition.</p> <p>The Definition of Use, Principal, in Subtitle B § 100.2 is amended by adding the word “structure” should be inserted between “lot” and “or building” of the definition as follows:</p> <p style="padding-left: 40px;"><u>Use, Principal</u>: The primary purpose or activity for which a lot, <b>structure</b> or building is occupied.</p>
<p>B-100.2</p>	<p><b>Definitions</b>                  The definition of retaining wall from case ZC. No. 13-06 is missing and should be included.</p> <p>Subtitle B § 100.2 is amended by adding the Definition of retaining wall as follows:  <u><b>Retaining Wall – a vertical, self-supporting structure constructed of concrete, durable wood, masonry or other materials, designed to resist the lateral displacement of soil or other materials. The term shall include concrete walls, crib and bin walls, reinforced or mechanically stabilized earth systems, anchored walls, soil nail walls, multi-tiered systems, boulder walls, or other retaining structures.</b></u></p>
<p>B-100.2</p> <p>200.2 (n)</p>	<p><b>Definitions</b>                  Emergency Shelter is defined as a Use and as a Use Group but is only referenced when permitted as a use in Subtitle U (not a Use Group);</p> <p>Subtitle B § 100.2 is amended by correcting the Definition of Emergency Shelter by adding <u><b>“an emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance”</b></u> to the definition of Emergency Shelter as follows:</p> <p style="padding-left: 40px;"><u>Emergency Shelter</u>: A facility providing temporary housing for one (1) or more individuals who are otherwise homeless as that arrangement is defined in the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-751.01 <i>et seq.</i>); <u><b>An emergency shelter use may also provide ancillary services such as counseling, vocational training, or similar social and career assistance.</b></u></p> <p>Subtitle B § 200.2, Use Groups, is amended by deleting § 200.2 (n) Emergency Shelter, and renumbering § 200.2 (n) through § 200.2 (ii) accordingly.</p> <p style="padding-left: 40px;"><del>200.2 (n) — <b>Emergency Shelter:</b></del></p> <p style="padding-left: 80px;"><del>A use providing thirty (30) days or less of temporary housing to indigent, needy, homeless, or transient individuals; and</del></p> <p style="padding-left: 80px;"><del>Emergency shelter uses may also provide ancillary services such as counseling, vocational training, or similar social and career assistance;</del></p>
<p>B-200.2 (bb) (3)</p>	<p>The description of Production, Distribution and Repair references “warehouses” as an example of the PDR use, but there is no reference to “storage” or “self-storage.”</p> <p>Subtitle B § 200.2, Use Groups, is amended by adding “storage, self-storage,” to the list of Production Distribution and Repair examples in (bb)(3) as follows:</p> <p>(bb) Production, Distribution, and Repair:</p>

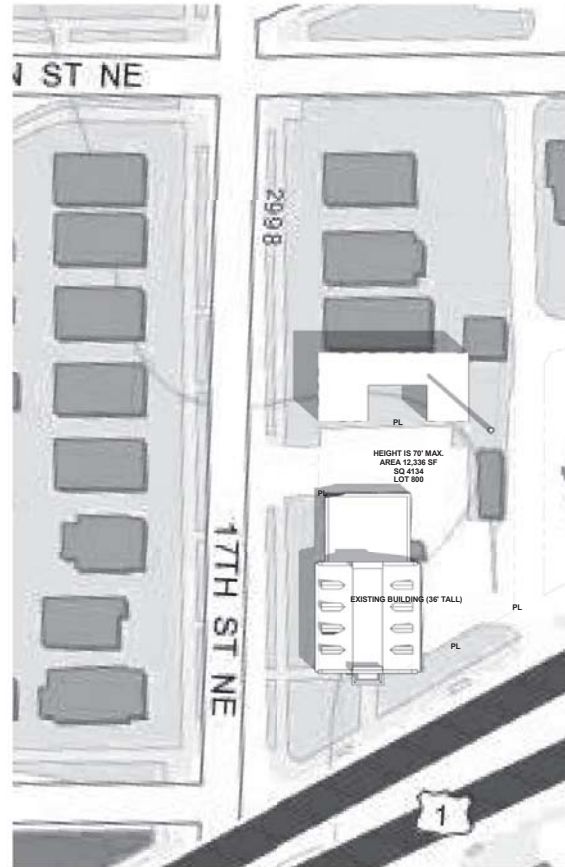


# EXHIBIT C

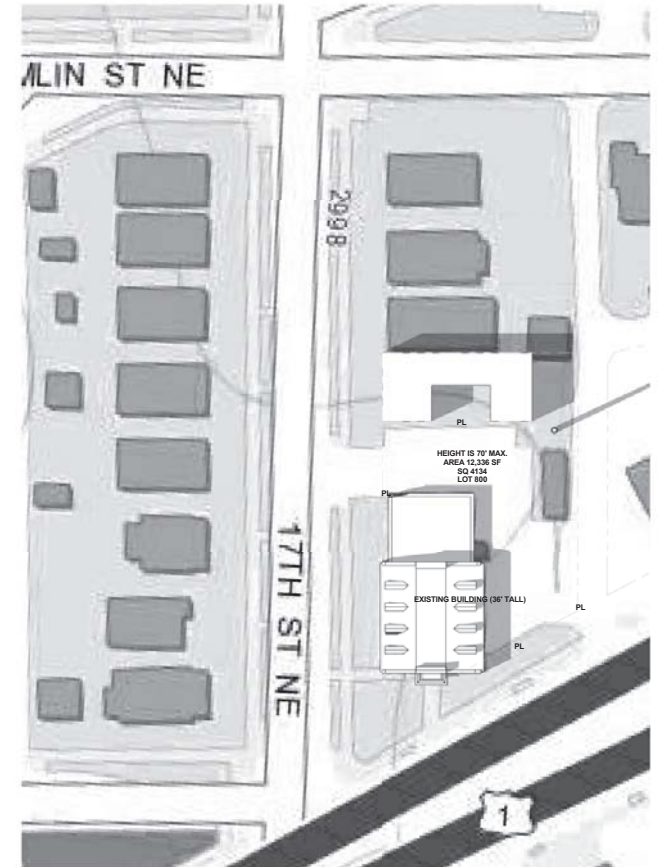
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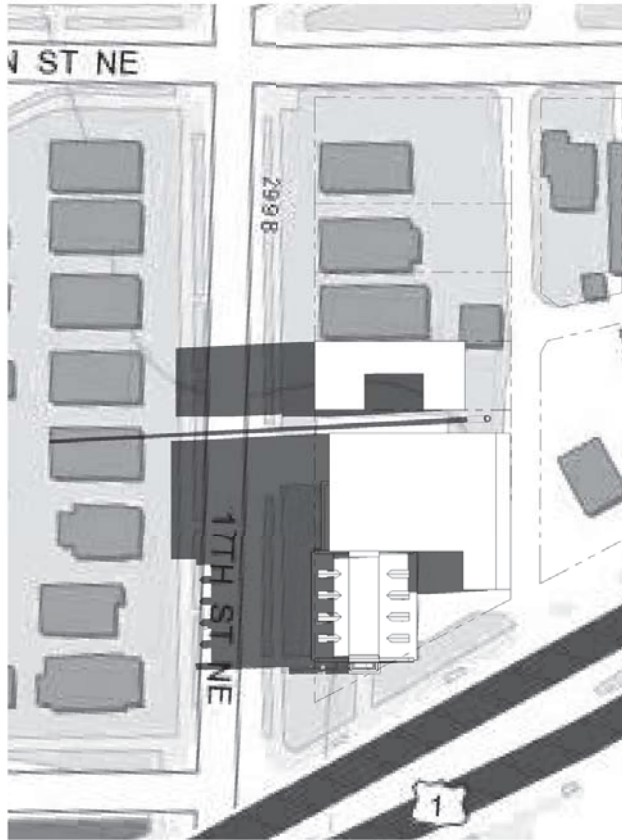
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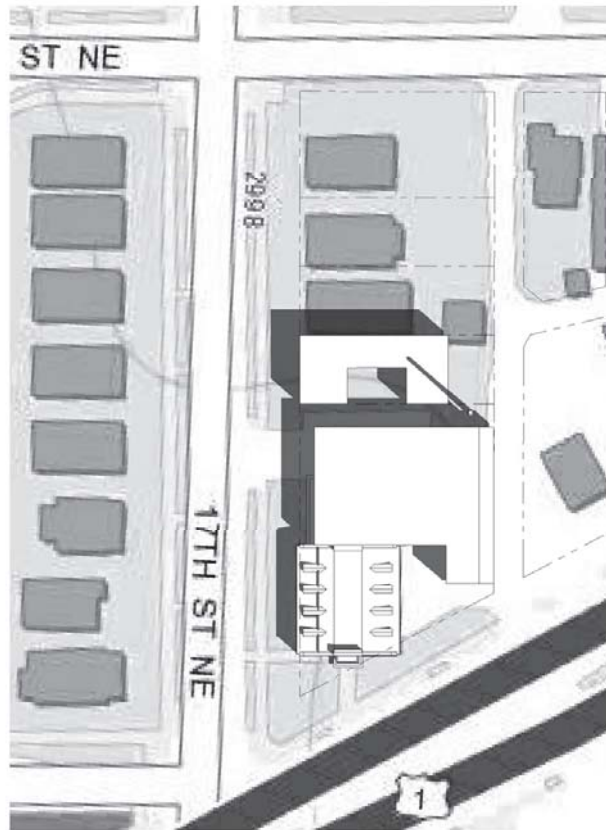
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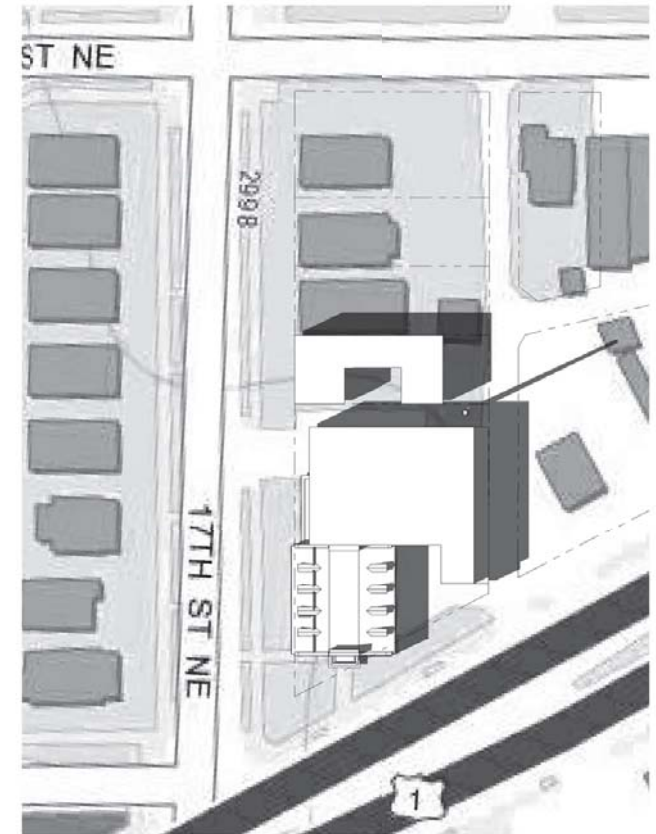
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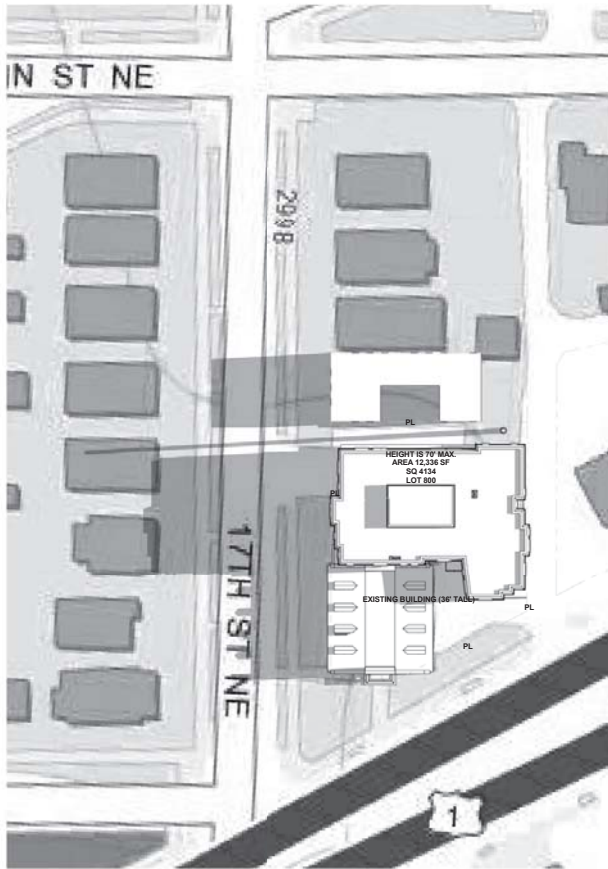


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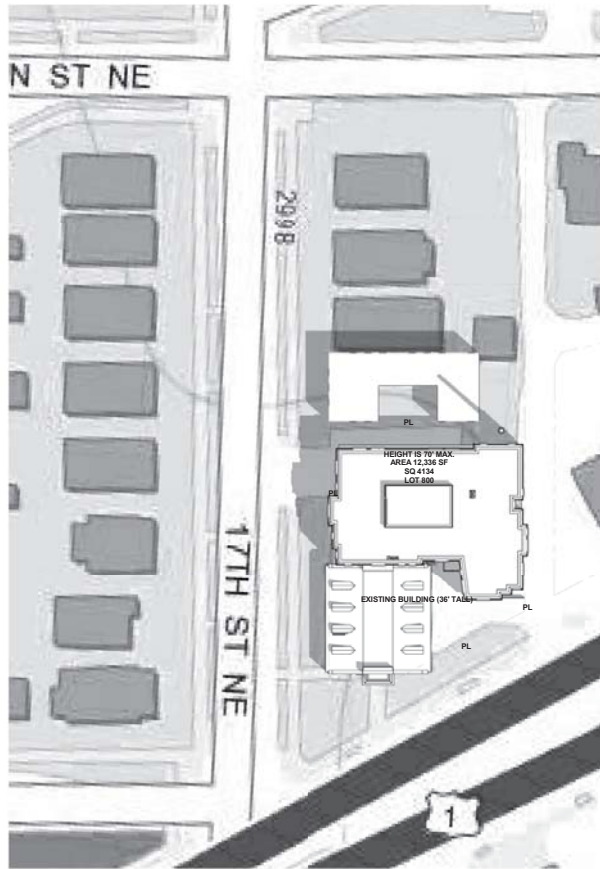
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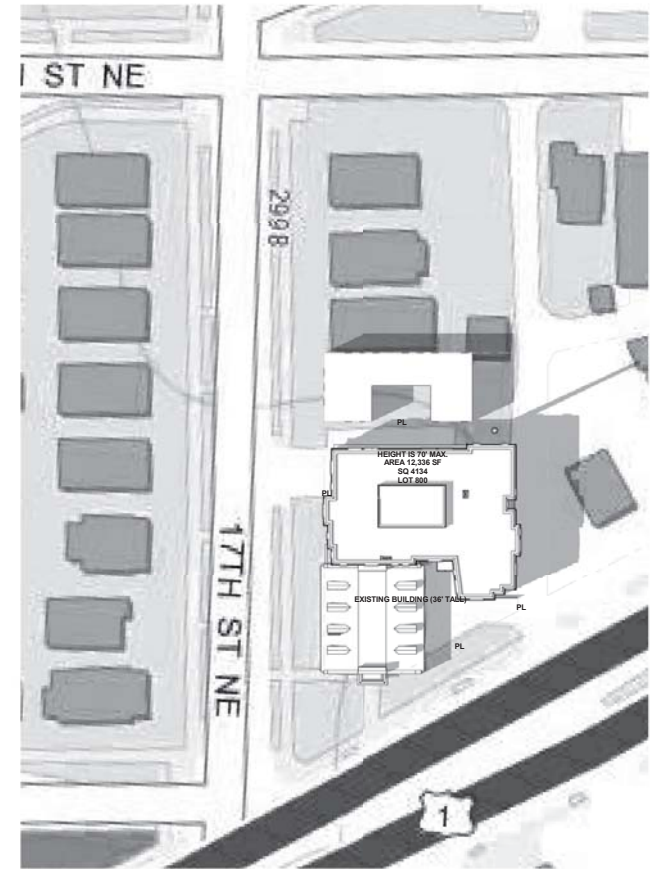
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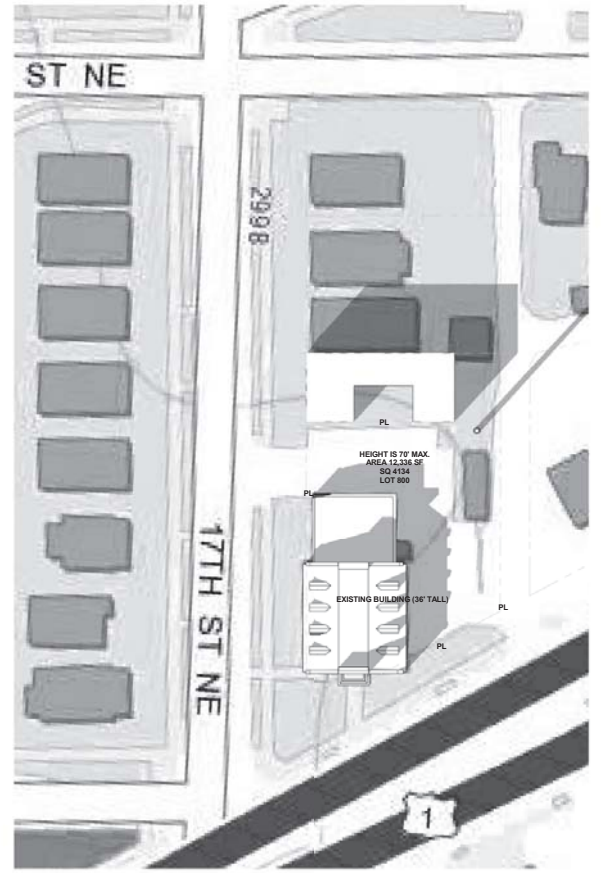
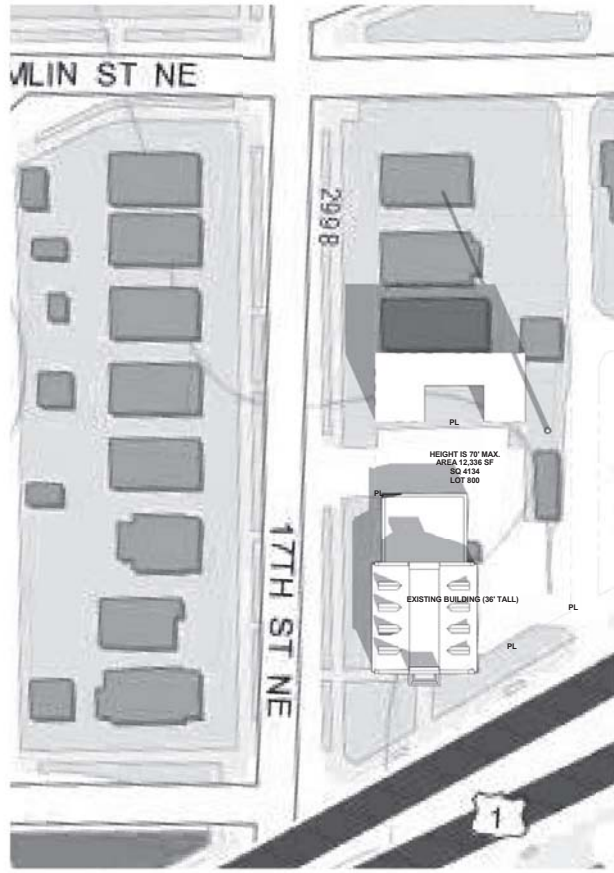
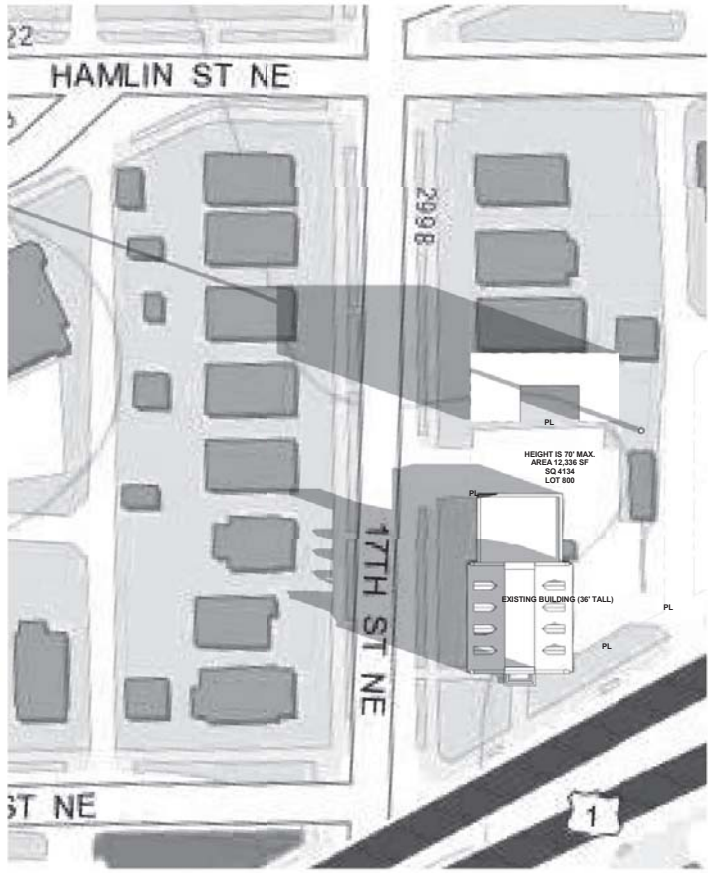


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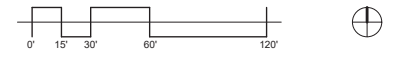
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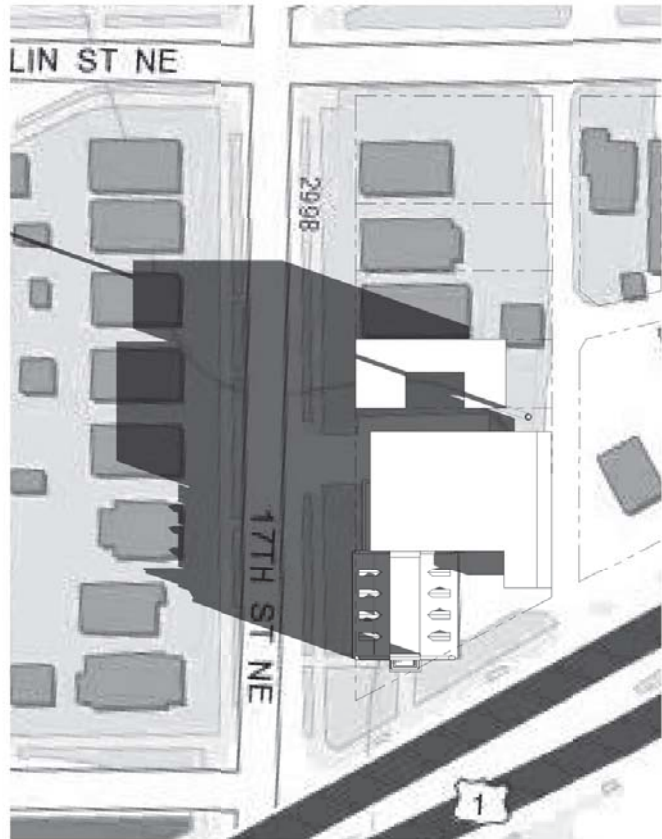
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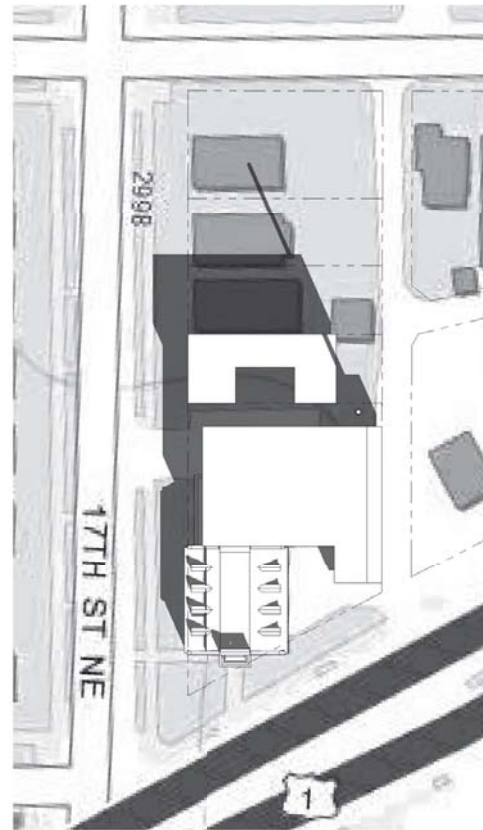
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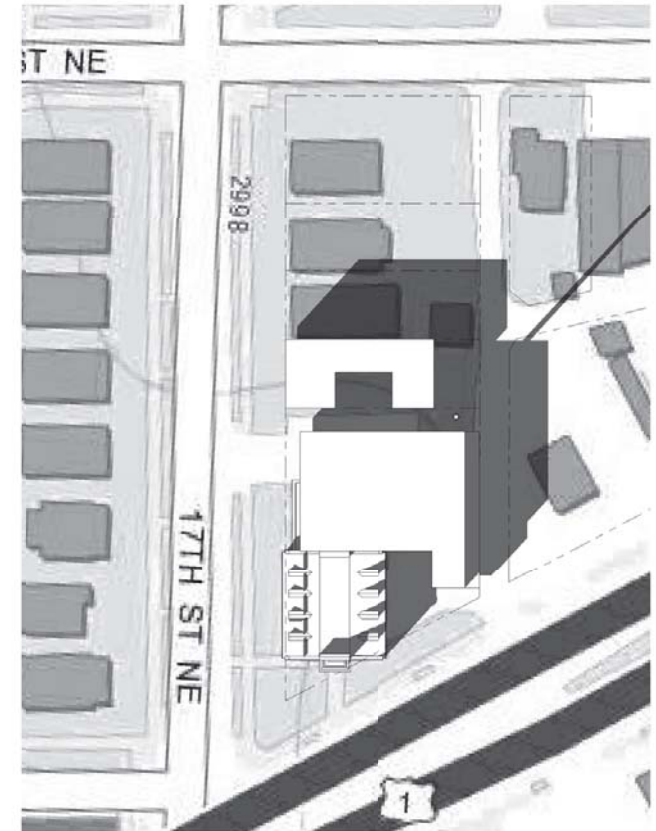
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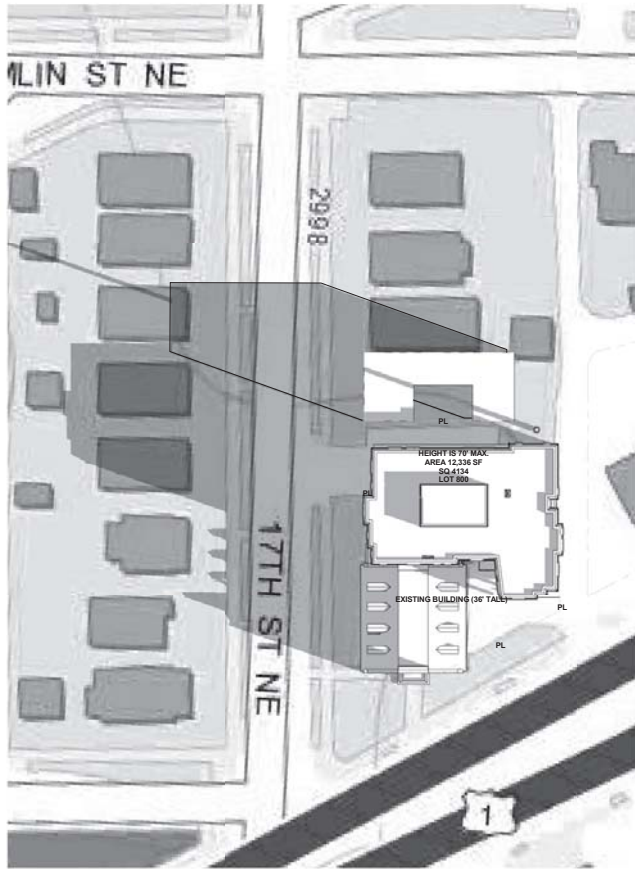


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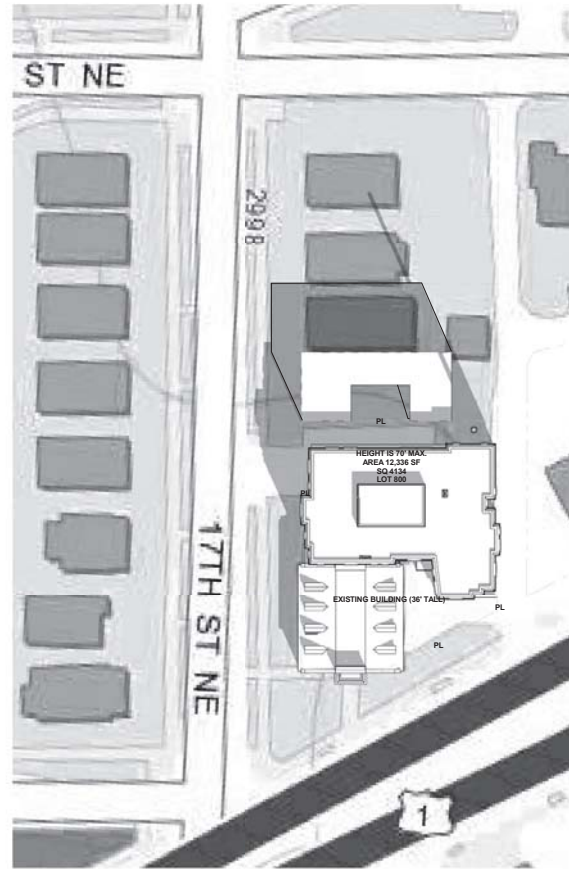
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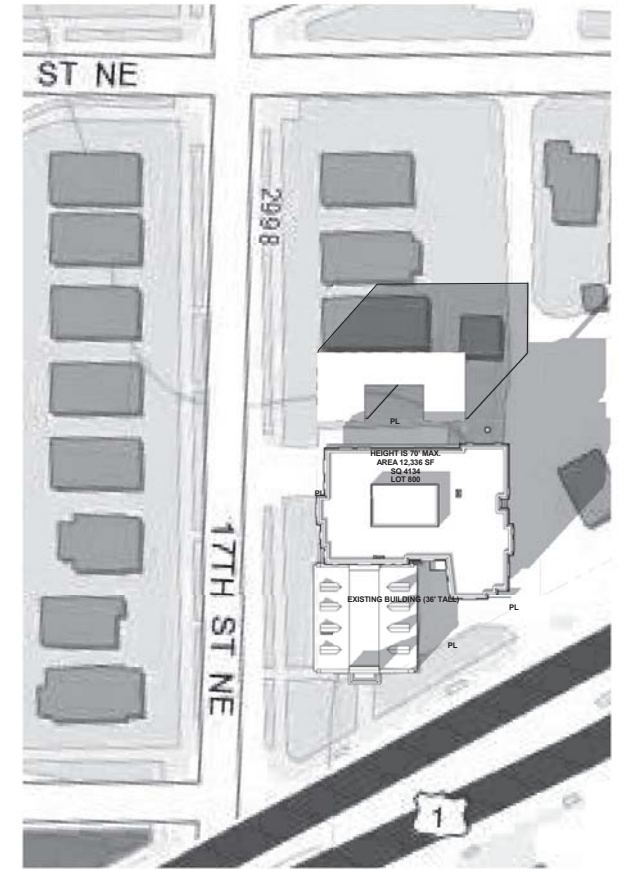
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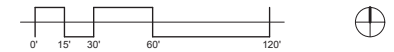
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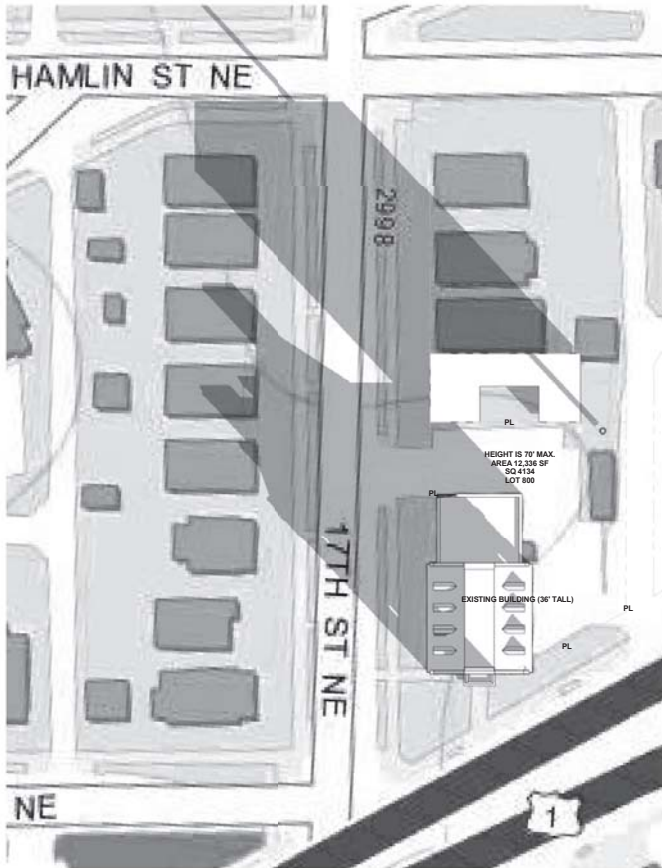


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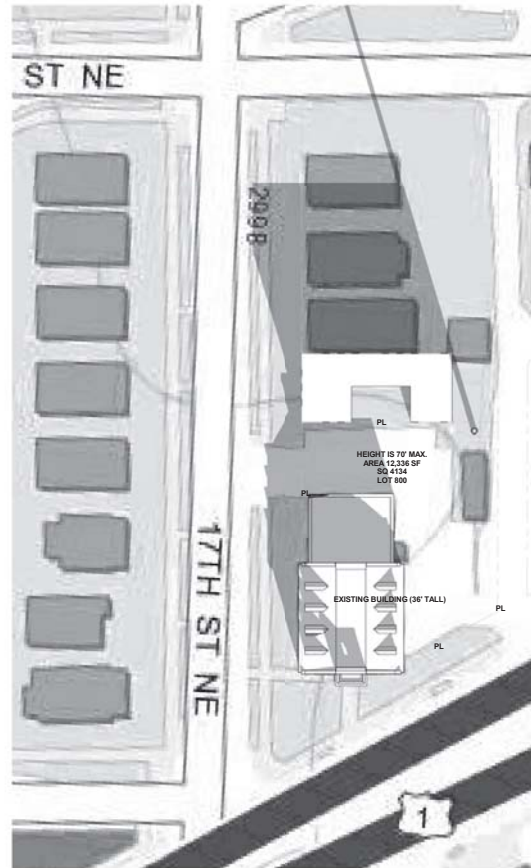
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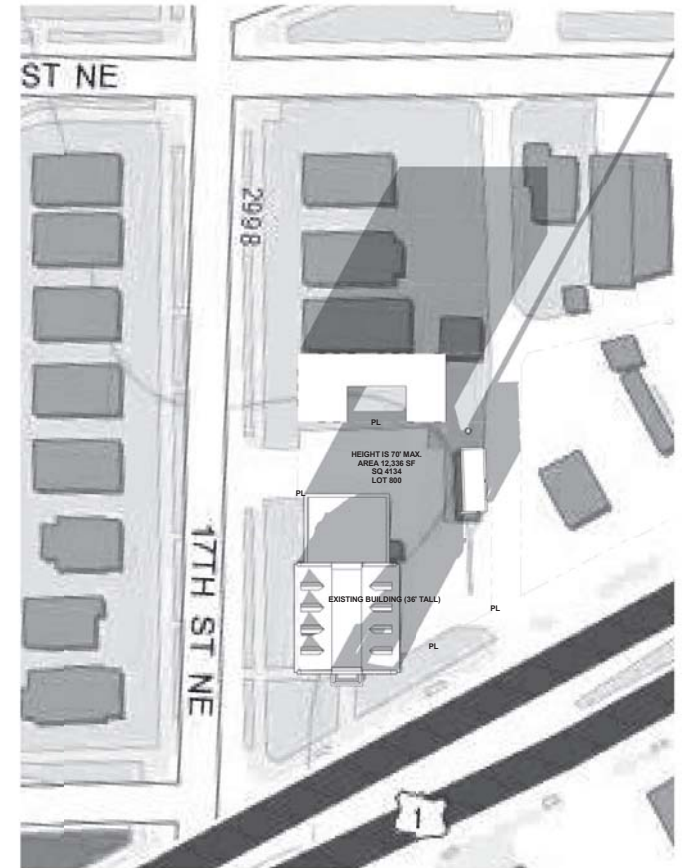
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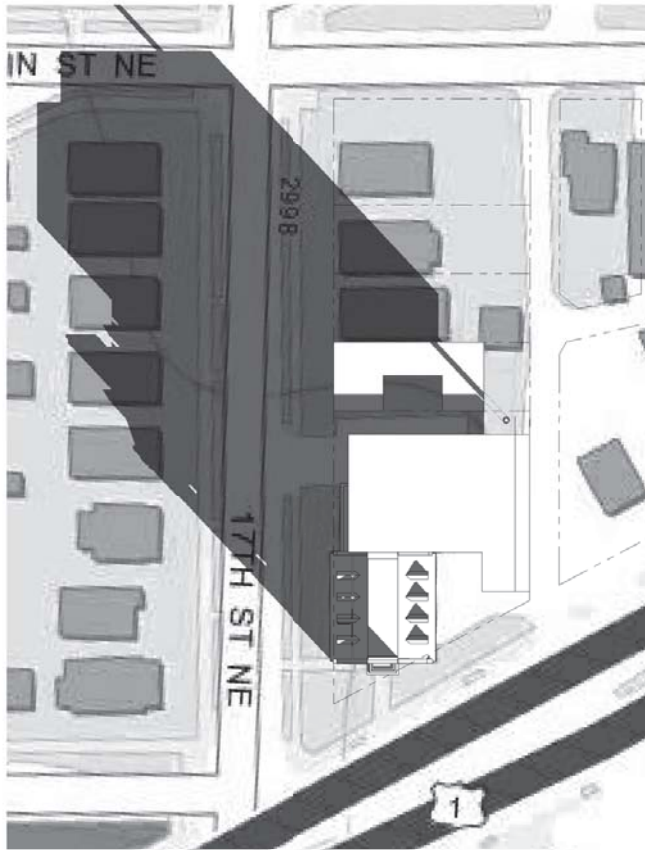


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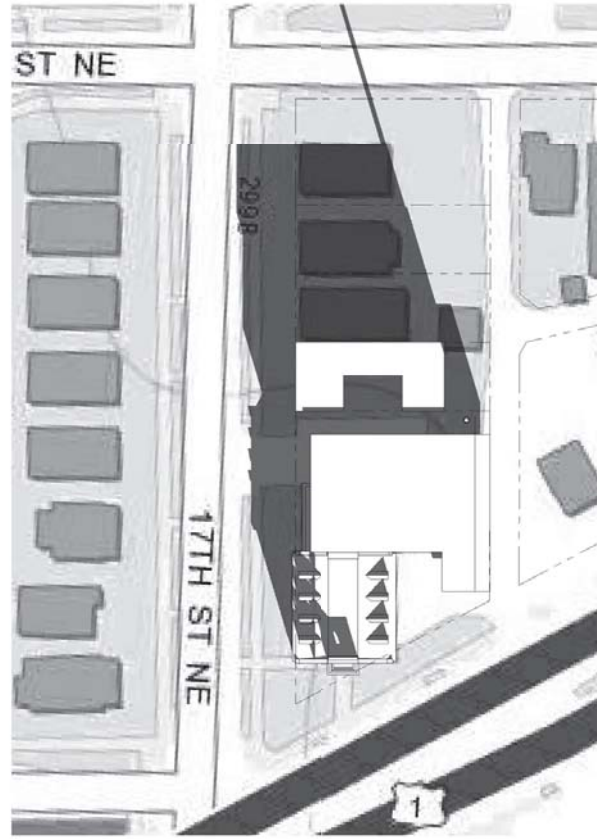
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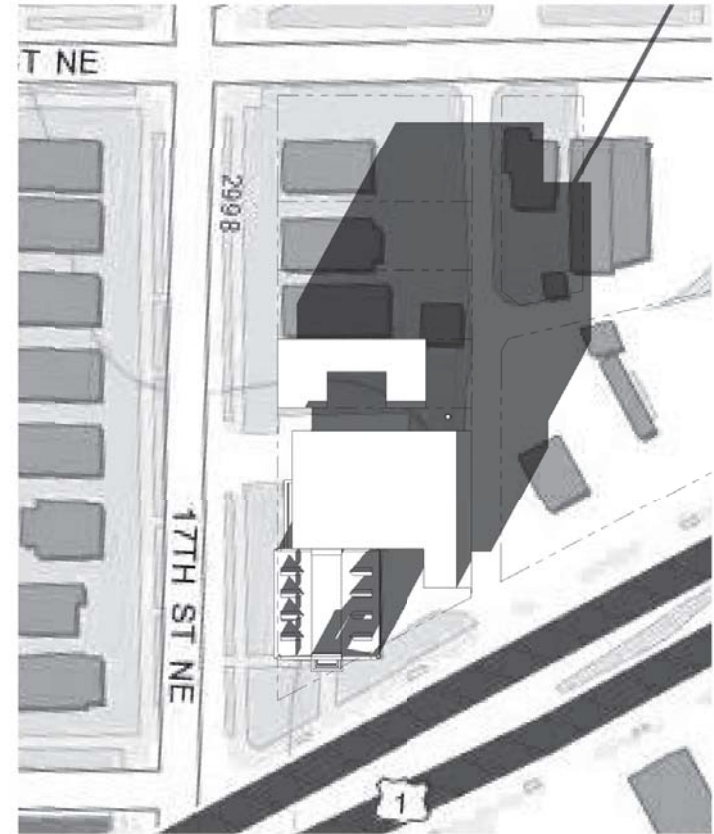




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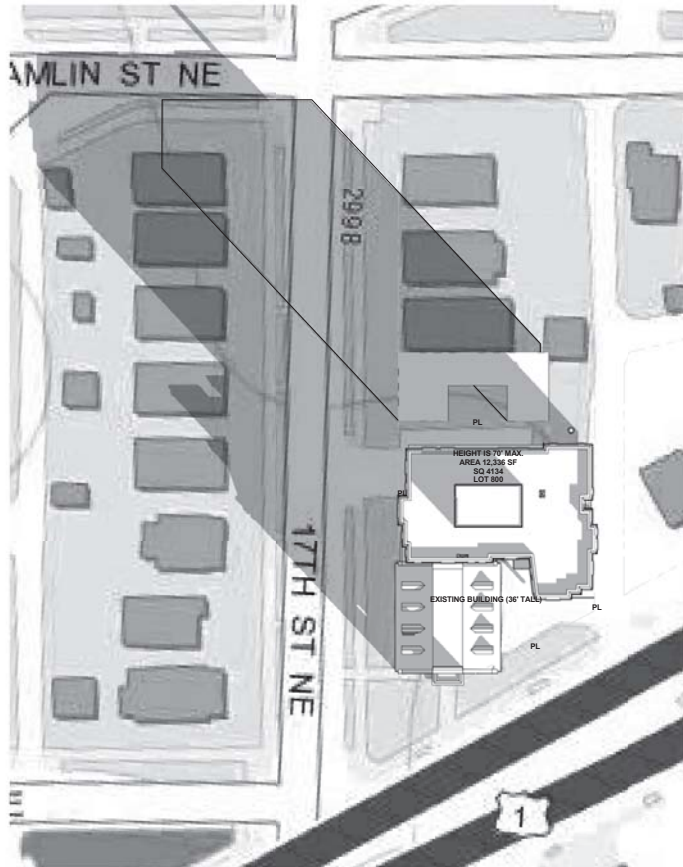


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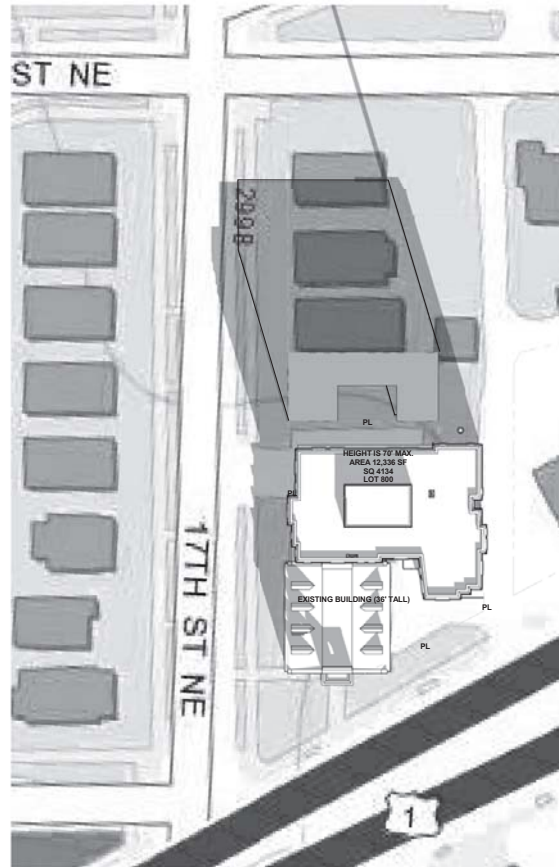
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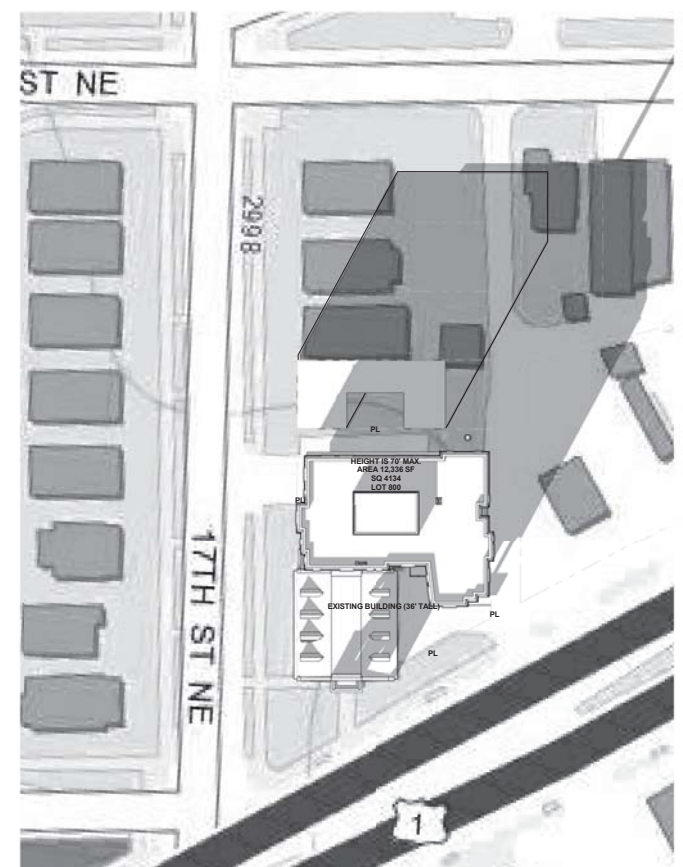
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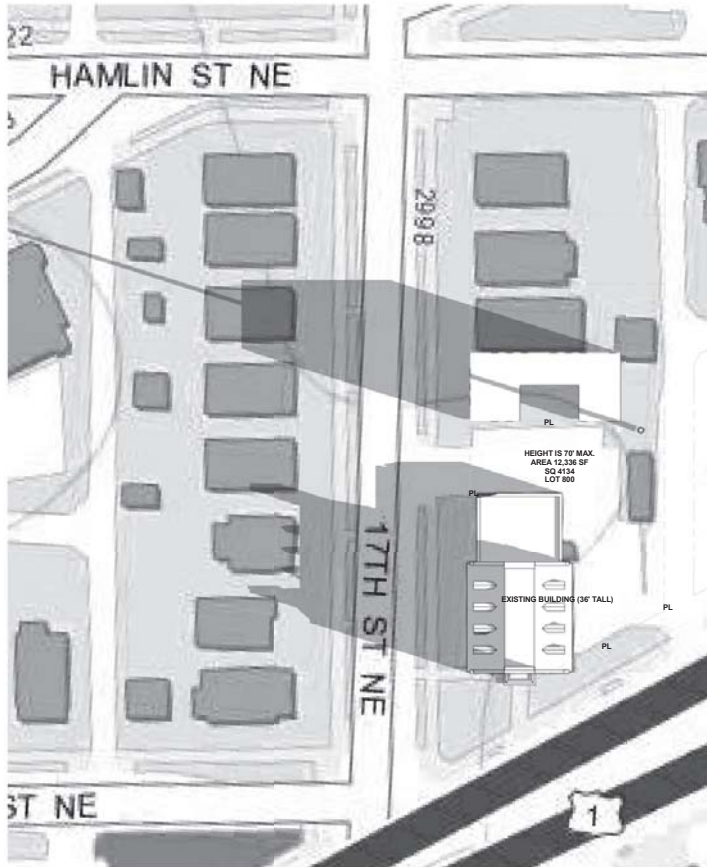


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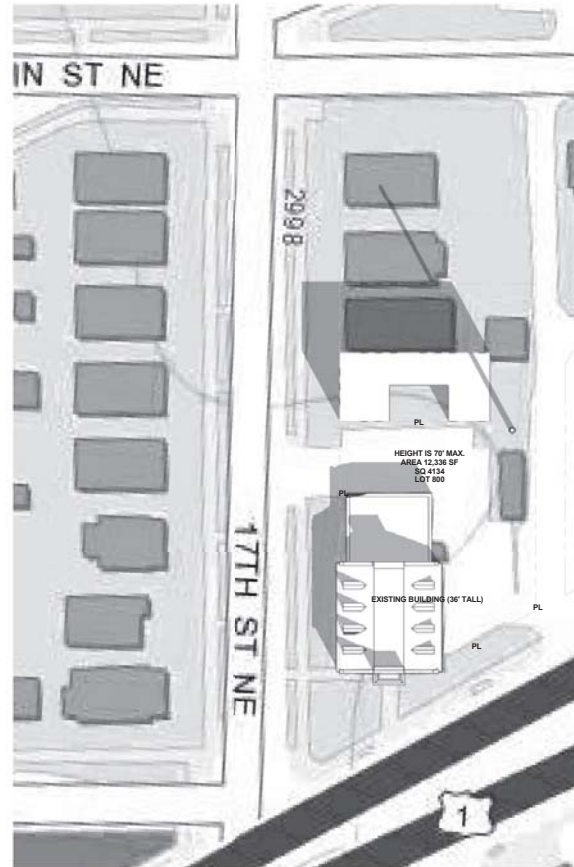
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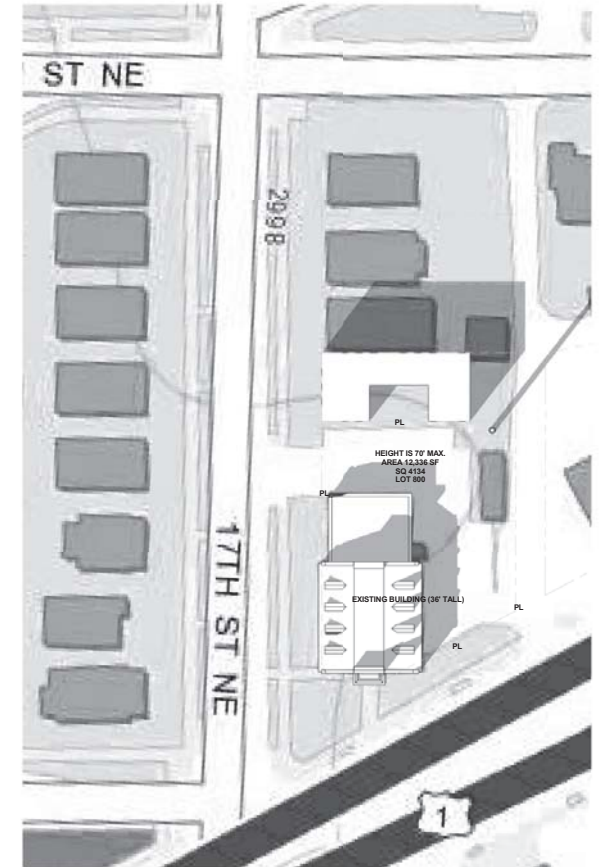
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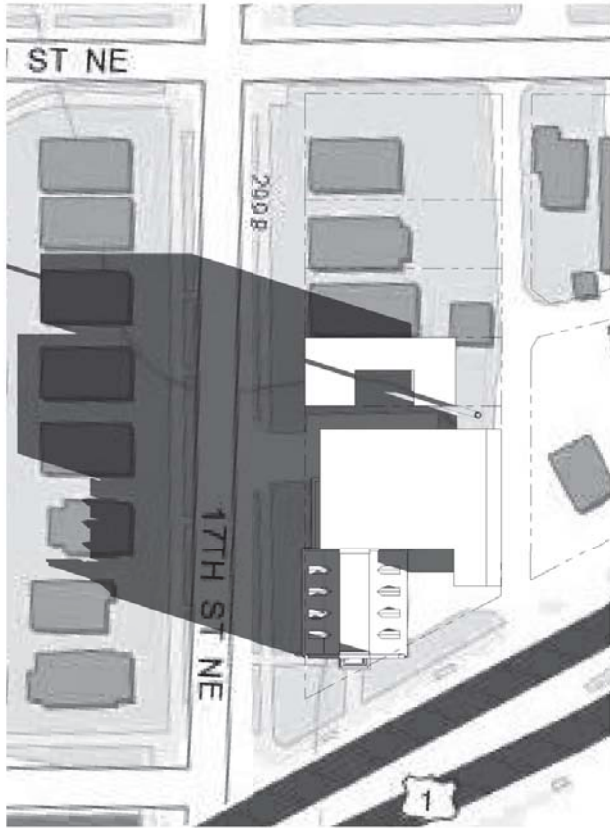
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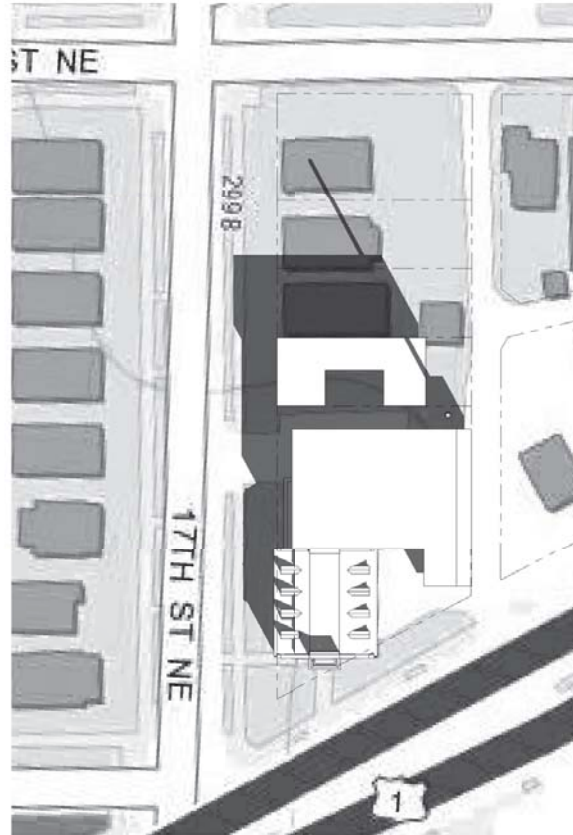
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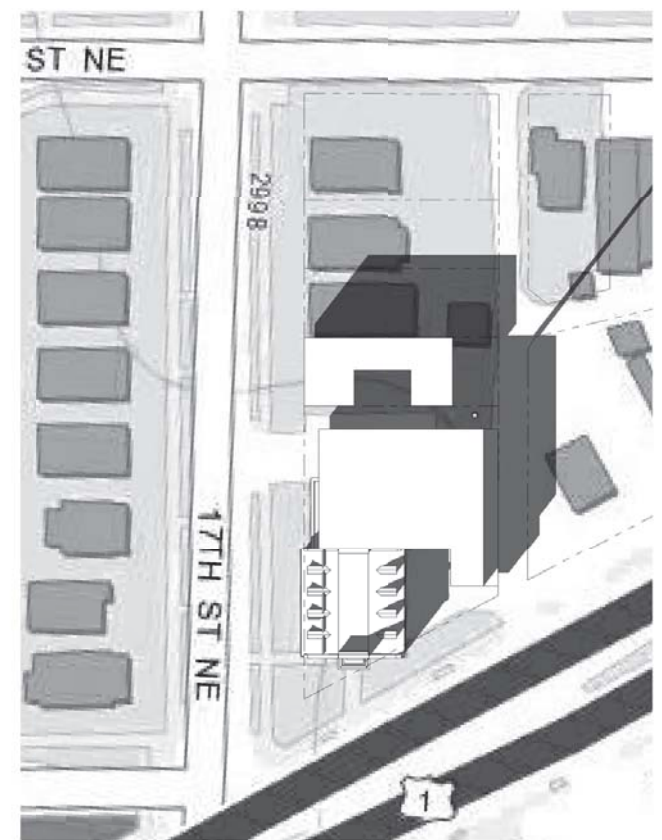
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R. MCGHEE & ASSOCIATES  
ARCHITECTURE | INTERIOR DESIGN | HISTORIC PRESERVATION

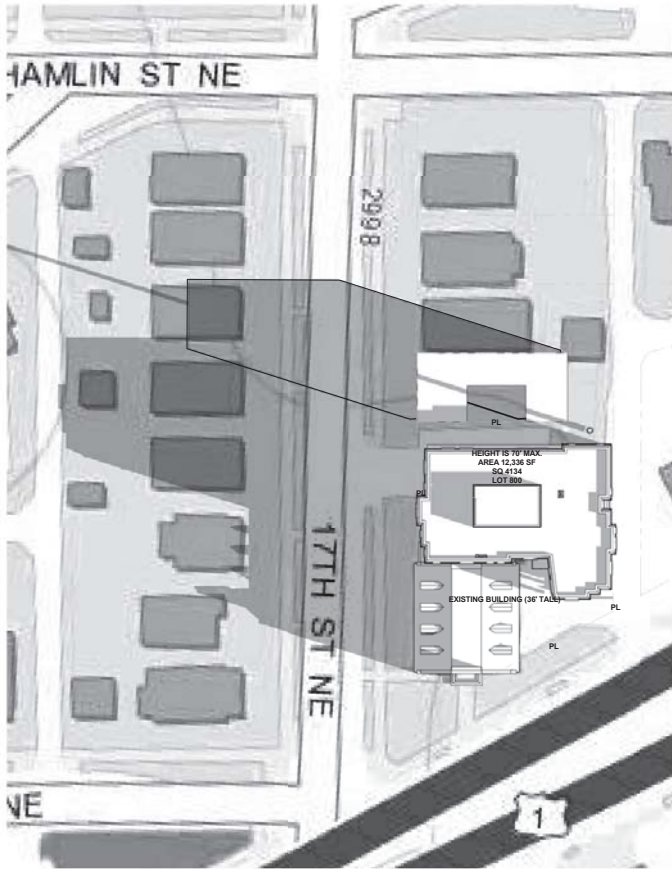


**SHORT-TERM HOUSING**

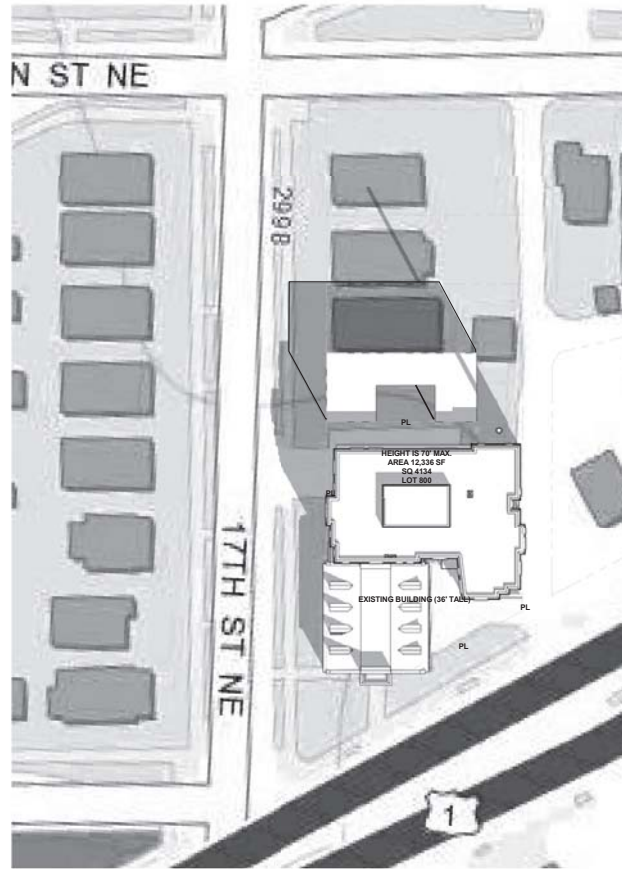
1700 Rhode Island Avenue, NE  
Washington, DC 20018

Issue Date:  
02/14/2017

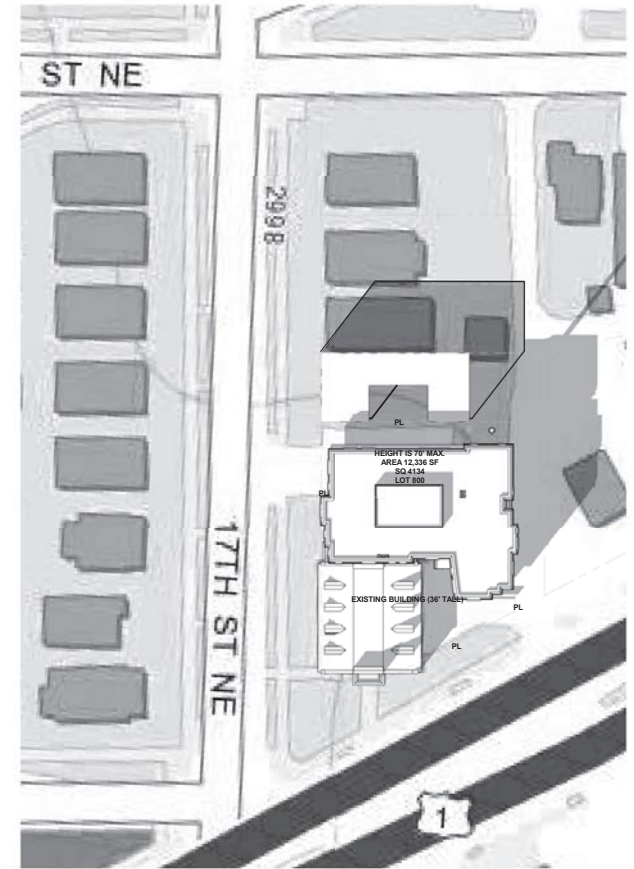
# PROPOSED BUILDING SUN STUDY - MARCH 21



March 21, 9AM



March 21, 12PM



March 21, 3PM



**R. MCGHEE & ASSOCIATES**  
ARCHITECTURE | INTERIOR DESIGN | HISTORIC PRESERVATION



## SHORT-TERM HOUSING

1700 Rhode Island Avenue, NE  
Washington, DC 20018

Issue Date:  
02/14/2017

# EXHIBIT D



**SITE SAFE**  
RF COMPLIANCE EXPERTS

A BUSINESS OF FDH VELOCITEL

200 North Glebe Road, Suite 1000, Arlington, VA 22203-3728  
703.276.1100 • 703.276.1169 fax  
info@sitesafe.com • www.sitesafe.com

# **R. McGhee & Associates Site Name – Ward 5 Family Housing Facility Site Compliance Report**

**1700 Rhode Island Ave N.E.  
Washington, DC 20036**

Latitude: N38-55-39.27  
Longitude: W76-58-49.07  
Structure Type: Monopole

Report generated date: December 16, 2016  
Report by: Kobi Thompson  
Customer Contact: Amoy McGhee

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**Site will be compliant upon completion of the  
remediation identified in Section 3.2.**

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# **R. McGhee & Associates Ward 5 Family Housing Facility - Radio Frequency (RF) Site Compliance Report**



**1700 Rhode Island Ave N.E., Washington, DC 20036**





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## 1 Executive Summary

R. McGhee & Associates has contracted with Sitesafe, Inc. (Sitesafe), an independent Radio Frequency (RF) regulatory and engineering consulting firm, to determine whether the proposed communications site, Ward 5 Family Housing Facility, located at 1700 Rhode Island Ave N.E., Washington, DC, is in compliance with Federal Communication Commission (FCC) Rules and Regulations for RF emissions.

This report contains a detailed summary of the RF environment at the site including:

- Diagram of the site
- Inventory of the make / model of all antennas
- Theoretical MPE based on modeling

This report addresses exposure to radio frequency electromagnetic fields in accordance with the FCC Rules and Regulations for all individuals, classified in two groups, "Occupational or Controlled" and "General Public or Uncontrolled." This **site will be compliant** with the FCC rules and regulations, as described in OET Bulletin 65 **upon implementation of the proposed changes**. The corrective actions needed to make this site compliant are located in Section 3.2.

A new 70 foot building is being constructed near an existing 120 foot monopole with active antennas. Analysis of the RF energy at the proposed roof level, with current antenna radiation centers, shows energy levels predicted to exceed the occupational limit in the FCC regulations. (See RF emissions diagram on page 10 for details.) Site Safe recommends Verizon Wireless move their antennas to a new radiation center of 95 feet above ground maintaining a minimum vertical separation of 10ft from the other existing cell carrier. (See RF emissions diagram on page 12 for details.)

This document and the conclusions herein are based on the information obtained during a field visit conducted by Site Safe on November 30, 2016. This document specifically addresses compliance of all transmitting facilities on the tower, which constitute the RF environment at the site.

If you have any questions regarding RF safety and regulatory compliance, please do not hesitate to contact Sitesafe's Customer Support Department at (703) 276-1100.

## 2 Regulatory Basis

### 2.1 FCC Rules and Regulations

In 1996, the Federal Communication Commission (FCC) adopted regulations for the evaluating of the effects of RF emissions in 47 CFR § 1.1307 and 1.1310. The guideline from the FCC Office of Engineering and Technology is Bulletin 65 ("OET Bulletin 65"), *Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields*, Edition 97-01, published August 1997. Since 1996 the FCC periodically reviews these rules and regulations as per their congressional mandate.

FCC regulations define two separate tiers of exposure limits: Occupational or "Controlled environment" and General Public or "Uncontrolled environment". The General Public limits are generally five times more conservative or restrictive than the Occupational limit. These limits apply to *accessible* areas where workers or the general public may be exposed to Radio Frequency (RF) electromagnetic fields.

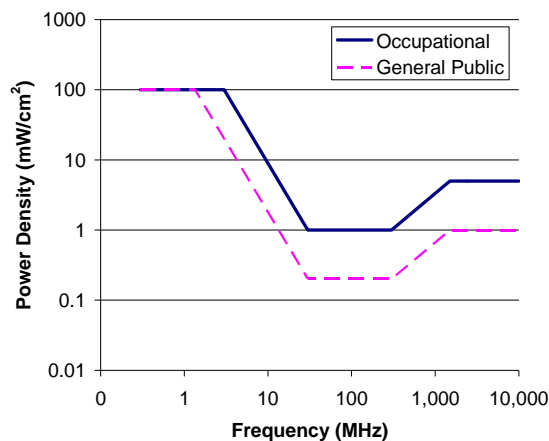
Occupational or Controlled limits apply in situations in which persons are exposed as a consequence of their employment and where those persons exposed have been made fully aware of the potential for exposure and can exercise control over their exposure.

An area is considered a Controlled environment when access is limited to these aware personnel. Typical criteria are restricted access (i.e. locked or alarmed doors, barriers, etc.) to the areas where antennas are located coupled with proper RF warning signage. A site with Controlled environments is evaluated with Occupational limits.

All other areas are considered Uncontrolled environments. If a site has no access controls or no RF warning signage it is evaluated with General Public limits.

The theoretical modeling of the RF electromagnetic fields has been performed in accordance with OET Bulletin 65. The Maximum Permissible Exposure (MPE) limits utilized in this analysis are outlined in the following diagram:

**FCC Limits for Maximum Permissible Exposure (MPE)**  
Plane-wave Equivalent Power Density





Areas predicted to be less than 100% of the General Public MPE have no time restrictions. These are the areas designated with gray or green in the diagrams below. Workers and the public may occupy freely. Areas designated blue or yellow in our diagrams are predicted to exceed FCC general public MPE limits.

## 2.2 OSHA Statement

The General Duty clause of the OSHA Act (Section 5) outlines the occupational safety and health responsibilities of the employer and employee. The General Duty clause in Section 5 states:

- (a) Each employer –
  - (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
  - (2) shall comply with occupational safety and health standards promulgated under this Act.
  
- (b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

OSHA has defined Radiofrequency and Microwave Radiation safety standards for workers who may enter hazardous RF areas. Regulation Standards 29 CFR § 1910.147 identify a generic Lock Out Tag Out procedure aimed to control the unexpected energization or start up of machines when maintenance or service is being performed.



### 3 Site Compliance

#### 3.1 Site Compliance Statement

Upon evaluation of the cumulative RF emission levels from all operators at this site, Sitesafe has determined that:

**Site will be compliant** with the FCC rules and regulations, as described in OET Bulletin 65 **upon implementation of the proposed changes.**

The compliance determination is based on theoretical modeling, RF signage placement recommendations, proposed antenna inventory and the level of restricted access to the antennas at the site.

#### 3.2 Actions for Site Compliance

Based on common industry practice and our understanding of FCC and OSHA requirements, this section provides a statement of recommendations for site compliance.

Site Safe recommends Verizon Wireless move their antennas to a new radiation center of **95 feet above ground**. This will ensure RF levels on the rooftop do not exceed 5% of the General Public MPE limit. See RF emissions diagram on page 12 for details.

## 4 Safety Plan and Procedures

The following items are general safety recommendations that should be administered on a site by site basis as needed by the carrier.

**General Maintenance Work:** Any maintenance personnel required to work immediately in front of antennas and / or in areas indicated as above 100% of the Occupational MPE limits should coordinate with the wireless operators to disable transmitters during their work activities.

**Training and Qualification Verification:** All personnel accessing areas indicated as exceeding the General Population MPE limits should have a basic understanding of EME awareness and RF Safety procedures when working around transmitting antennas. Awareness training increases a workers understanding to potential RF exposure scenarios. Awareness can be achieved in a number of ways (e.g. videos, formal classroom lecture or internet based courses).

**Physical Access Control:** Access restrictions to transmitting antennas locations is the primary element in a site safety plan. Examples of access restrictions are as follows:

- Locked door or gate
- Alarmed door
- Locked ladder access
- Restrictive Barrier at antenna (e.g. Chain link with posted RF Sign)

**RF Signage:** Everyone should obey all posted signs at all times. RF signs play an important role in properly warning a worker prior to entering into a potential RF Exposure area.

**Assume all antennas are active:** Due to the nature of telecommunications transmissions, an antenna transmits intermittently. Always assume an antenna is transmitting. Never stop in front of an antenna. If you have to pass by an antenna, move through as quickly and safely as possible thereby reducing any exposure to a minimum.

**Maintain a 3 foot clearance from all antennas:** There is a direct correlation between the strength of an EME field and the distance from the transmitting antenna. The further away from an antenna, the lower the corresponding EME field is.

**Site RF Emissions Diagram:** Section 5 of this report contains an RF Diagram that outlines various theoretical Maximum Permissible Exposure (MPE) areas at the site. The modeling is a worst case scenario assuming a duty cycle of 100% for each transmitting antenna at full power. This analysis is based on one of two access control criteria: General Public criteria means the access to the site is uncontrolled and anyone can gain access. Occupational criteria means the access is restricted and only properly trained individuals can gain access to the antenna locations.

## 5 Analysis

### 5.1 RF Emissions Diagram

The RF diagram(s) below display theoretical spatially averaged percentage of the Maximum Permissible Exposure for all systems at the site unless otherwise noted. These diagrams use modeling as prescribed in OET Bulletin 65 and assumptions detailed in Appendix B.

The key at the bottom of each RF Emissions Simulation indicates percentages displayed referenced to FCC General Public Maximum Permissible Exposure (MPE) limits. Color coding on the diagram is as follows:

- Areas indicated as Gray are predicted to be below 5% of the MPE limits. **Gray represents areas more than 20 times below the most conservative exposure limit.**
- Green represents areas are predicted to be between 5% and 100% of the MPE limits. **Green areas are accessible to anyone.**
- Blue represents areas predicted to exceed the General Public MPE limits but are less than Occupational limits. **Blue areas should be accessible only to RF trained workers.**
- Yellow represents areas predicted to exceed Occupational MPE limits. **Yellow areas should be accessible only to RF trained workers able to assess current exposure levels.**
- Red represents areas predicted to have exposure more than 10 times the Occupational MPE limits. **Red indicates that the RF levels must be reduced prior to access.** An RF Safety Plan is required which outlines how to reduce the RF energy in these areas prior to access.

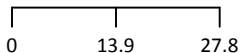
General Population diagrams are specified when an area is accessible to the public; i.e. personnel that do not meet Occupational or RF Safety trained criteria, could gain access.

If trained occupational personnel require access to areas that are delineated as **Blue** or above 100% of the limit, Sitesafe recommends that they utilize the proper personal protection equipment (RF monitors), coordinate with the carriers to reduce or shutdown power, or make real-time power density measurements with the appropriate power density meter to determine real-time MPE levels. This will allow the personnel to ensure that their work area is within exposure limits.

RF Exposure Simulation For: Ward 5 Family Housing Facility  
 Composite Plan View with Verizon Antennas @ Current Height (75ft)

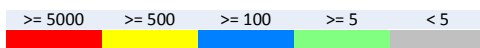


(Feet)



www.sitesafe.com  
 Site Name: Ward 5 Family Housing Facility  
 12/16/2016 3:15:36 PM

% of FCC Public Exposure Limit  
 Spatial average 0' - 6'



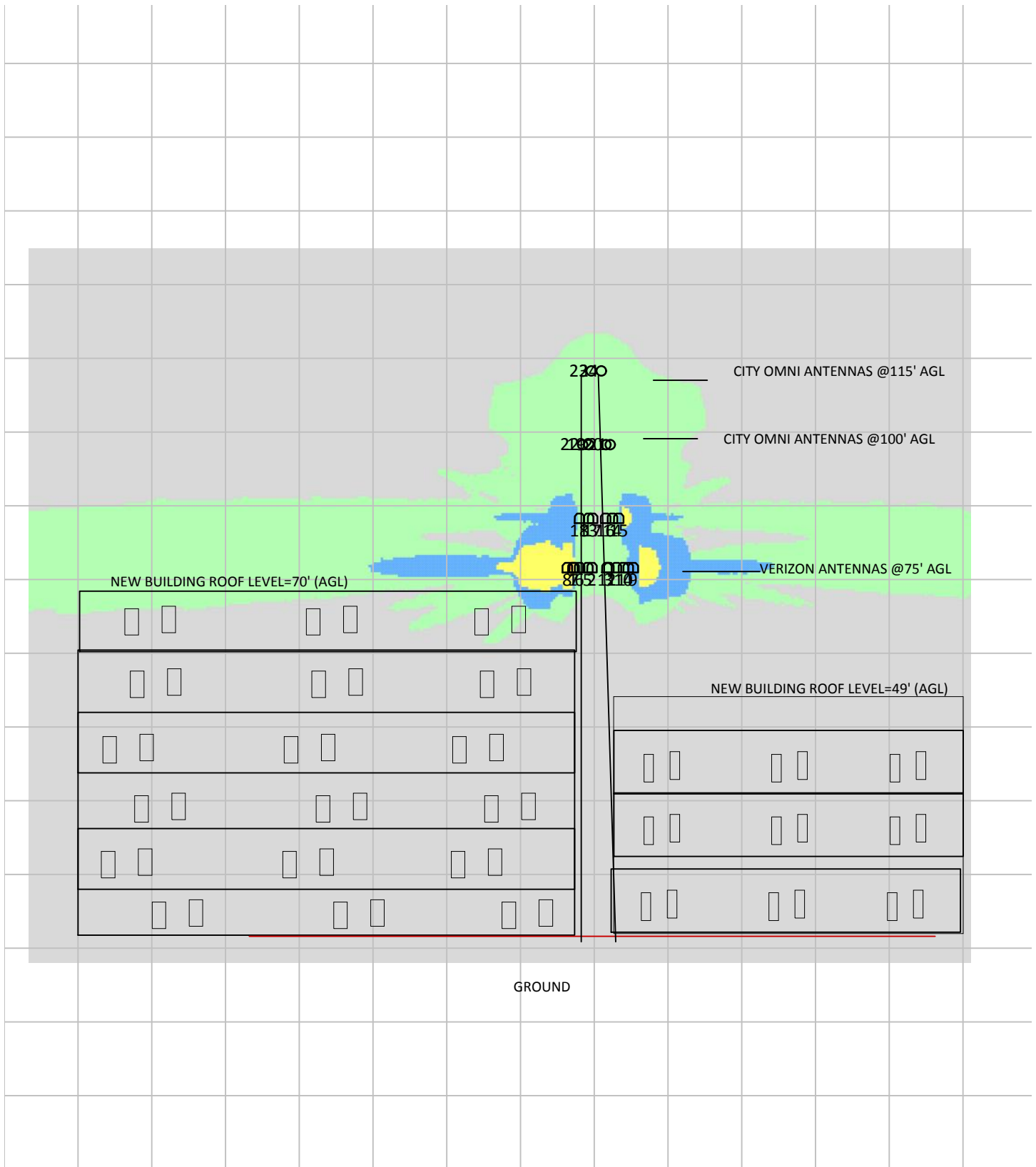
CARRIER IDENTIFICATION

AT&T MOBILITY LLC	VERIZON WIRELESS	T-MOBILE	METROPCS	CRICKET COMMUNICATIONS	CLEARWIRE	SPRINT
AT&T MOBILITY LLC	VERIZON WIRELESS	T-MOBILE	METROPCS	CRICKET COMMUNICATIONS	CLEARWIRE	SPRINT

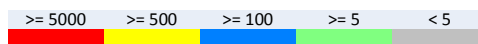
SitesafeTC Version: 1.0.0.0 - 0.0.0.249  
 Sitesafe OET-65 Model  
 Near Field Boundary: 1.5 \* Aperture  
 Reflection Factor: 1  
 Spatially Averaged



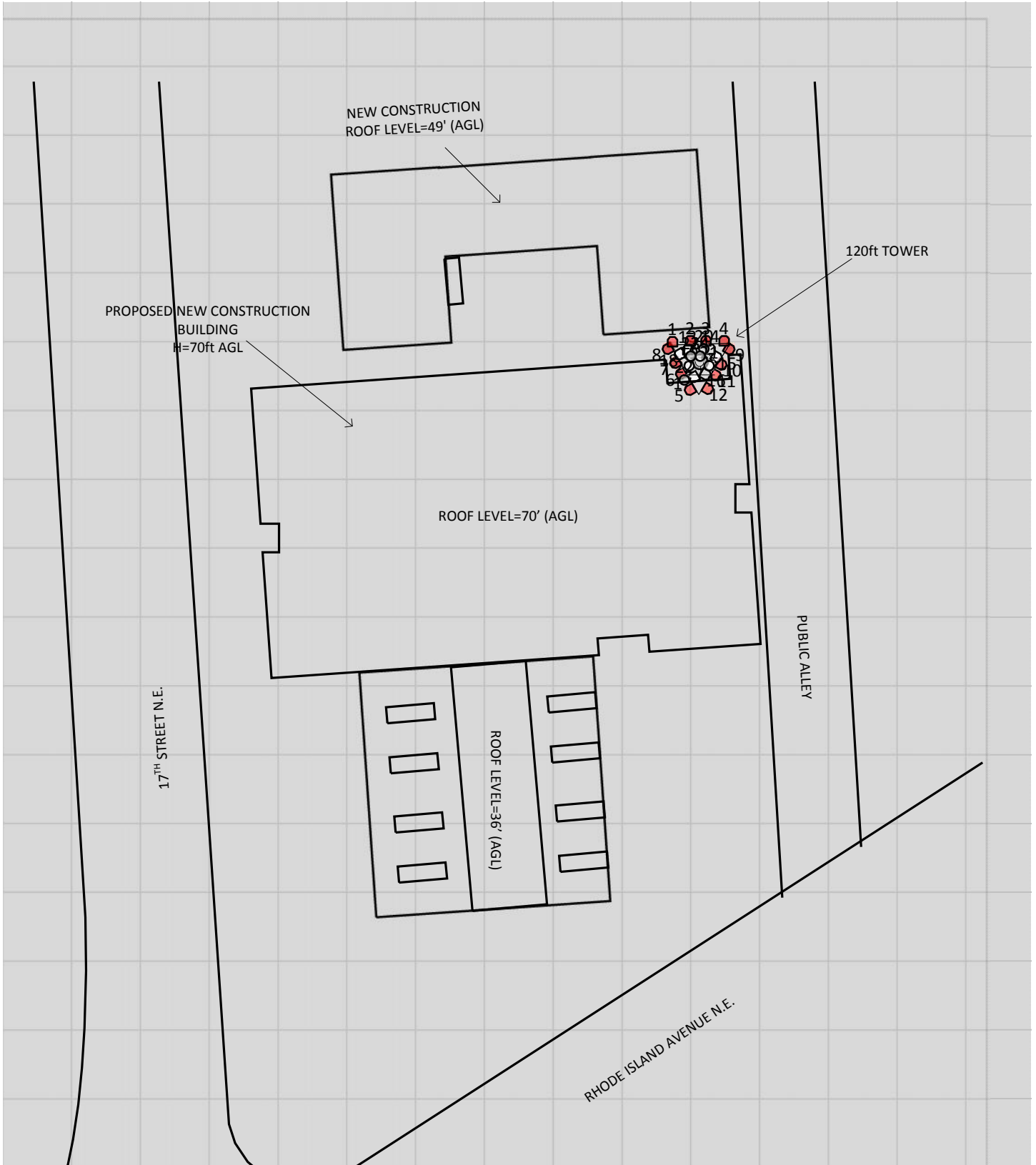
# RF Exposure Simulation For: Ward 5 Family Housing Facility Elevation View with Verizon Antennas @ Current Height (75ft)



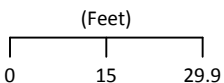
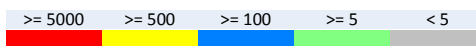
% of FCC Public Exposure Limit  
Spatial average 0' - 6'



RF Exposure Simulation For: Ward 5 Family Housing Facility  
 Composite Plan View with Verizon Antennas @ Proposed Height (95ft)



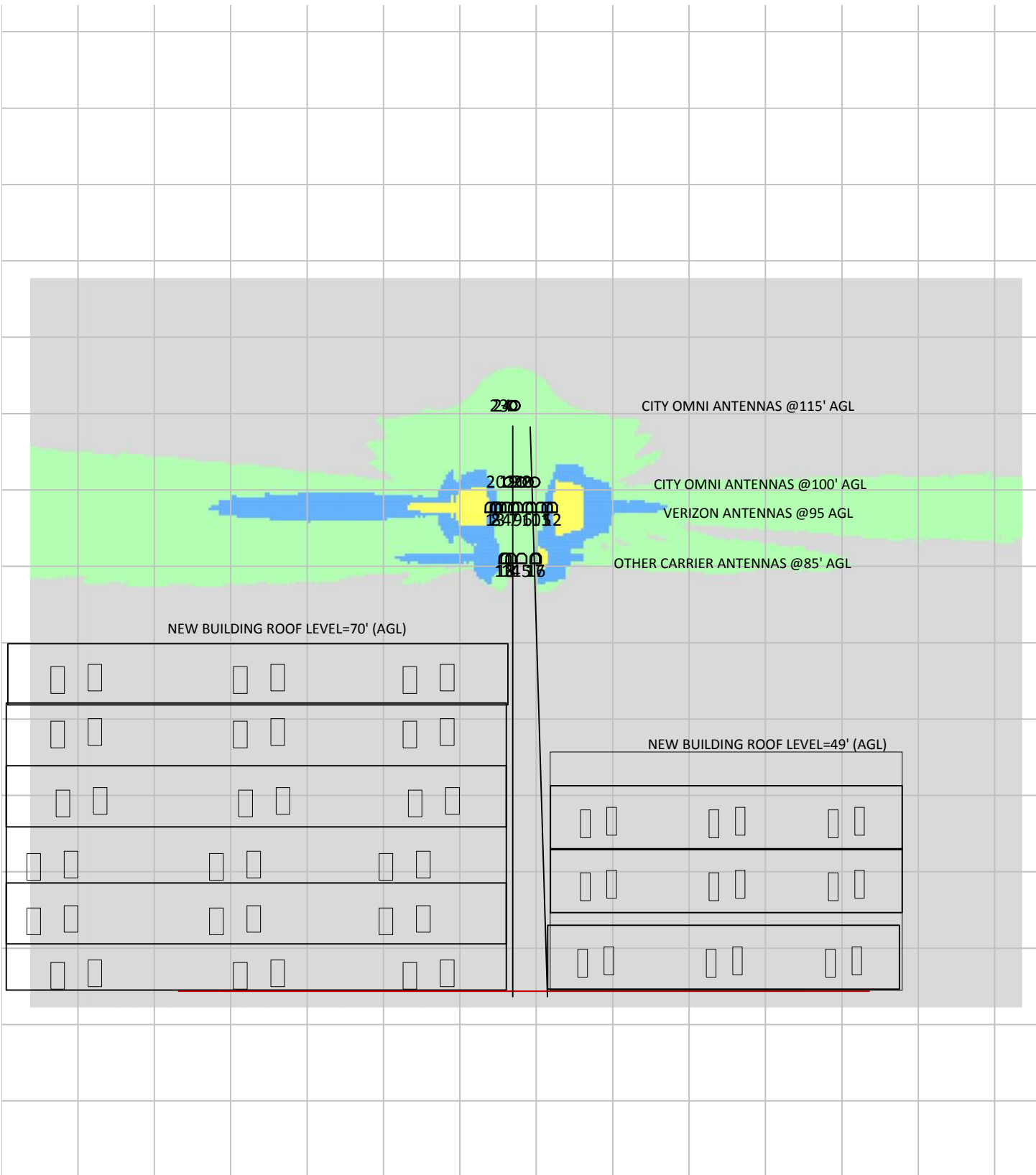
% of FCC Public Exposure Limit  
 Spatial average 0' - 6'



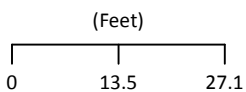
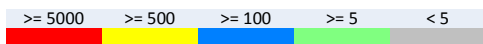
CARRIER IDENTIFICATION

AT&T MOBILITY LLC	VERIZON WIRELESS	T-MOBILE	METROPCS	CRICKET COMMUNICATIONS	CLEARWIRE	SPRINT

RF Exposure Simulation For: Ward 5 Family Housing Facility  
 Elevation View with Verizon Antennas @ Proposed Height (95ft)



% of FCC Public Exposure Limit  
 Spatial average 0' - 6'



## 6 Antenna Inventory

The Antenna Inventory shows all transmitting antennas at the site. This inventory was provided by the customer, and was utilized by Sitesafe to perform theoretical modeling of RF emissions. The inventory coincides with the site diagrams in this report, identifying each antenna's location at Ward 5 Family Housing Facility. The antenna information collected includes the following information:

- Licensee or wireless operator name
- Frequency or frequency band
- Transmitter power – Effective Radiated Power ("ERP"), or Equivalent Isotropic Radiated Power ("EIRP") in Watts
- Antenna manufacturer make, model, and gain

For other carriers at this site, the use of "Generic" as an antenna model, or "Unknown" for an operator means the information with regard to carrier, their FCC license and/or antenna information was not available nor could it be secured while on site. Equipment, antenna models and nominal transmit power were used for modeling, based on past experience with radio service providers.



The following antenna inventory was obtained or verified during the site visit and was utilized to create the site model diagrams:

Table 3: Antenna Inventory												
Ant #	Operated By	TX Freq (MHz)	ERP (Watts)	Antenna Gain (dBd)	Az (Deg)	Antenna Model	Ant Type	Len (ft)	Horizontal Half Power Beamwidth (Deg)	Location		
										X	Y	Z (AGL)
1	VERIZON WIRELESS	751	4406.5	17.41	0	CSS X7C-FRO-840	Panel	8	40	151.5'	237.3'	95'
2	VERIZON WIRELESS	1900	4317	15.56	0	CSS QAP-FRO-660-V	Panel	6	61.6	155.4'	237.5'	95'
3	VERIZON WIRELESS	2100	4956.6	16.16	0	CSS QAP-FRO-660-V	Panel	6	54.5	158.8'	237.5'	95'
4	VERIZON WIRELESS	850	8812.9	17.41	0	CSS X7C-FRO-840	Panel	8	40	162.8'	237.5'	95'
5	VERIZON WIRELESS	751	4406.5	17.41	240	CSS X7C-FRO-840	Panel	8	40	155.3'	226.8'	95'
6	VERIZON WIRELESS	1900	4832.6	16.05	240	CSS QAP-FRO-440-V	Panel	4.2	42	153.4'	230.2'	95'
7	VERIZON WIRELESS	2100	5274.5	16.43	240	CSS QAP-FRO-440-V	Panel	4.2	36	152.1'	232.6'	95'
8	VERIZON WIRELESS	850	8812.9	17.41	240	CSS X7C-FRO-840	Panel	8	40	150.5'	235.7'	95'
9	VERIZON WIRELESS	751	3048.5	15.81	120	CSS X7C-FRO-860	Panel	8	57	163.9'	235.6'	95'
10	VERIZON WIRELESS	1900	4317	15.56	120	CSS QAP-FRO-660-V	Panel	6	61.6	162.2'	232.2'	95'
11	VERIZON WIRELESS	2100	4956.6	16.16	120	CSS QAP-FRO-660-V	Panel	6	54.5	160.9'	229.9'	95'
12	VERIZON WIRELESS	850	6097.1	15.81	120	CSS X7C-FRO-860	Panel	8	57	159.2'	227'	95'
13	UNKNOWN	1900	2094.8	15.43	0	Generic Panel	Panel	4.6	65	154.8'	235.5'	85'
14	UNKNOWN	1900	2094.8	15.43	0	Generic Panel	Panel	4.6	65	159.7'	235.6'	85'
15	UNKNOWN	1900	2094.8	15.43	120	Generic Panel	Panel	4.6	65	161.1'	233.9'	85'
16	UNKNOWN	1900	2094.8	15.43	120	Generic Panel	Panel	4.6	65	158.7'	230.1'	85'
17	UNKNOWN	1900	2094.8	15.43	240	Generic Panel	Panel	4.6	65	156.1'	229.5'	85'
18	UNKNOWN	1900	2094.8	15.43	240	Generic Panel	Panel	4.6	65	153.1'	234.5'	85'
19	DISTRICT OF COLUMBIA PD	855	237	11.97	0	Andrew DB810KE-XC	Omni	23.9	360	155.1'	232'	100'
20	DISTRICT OF COLUMBIA PD	855	237	11.97	0	Andrew DB810KE-XC	Omni	23.9	360	158.4'	235.7'	100'
21	DISTRICT OF COLUMBIA PD	855	237	11.97	0	Andrew DB810KE-XC	Omni	23.9	360	159.5'	232'	100'
22	DISTRICT OF COLUMBIA PD	855	237	11.97	0	Andrew DB810KE-XC	Omni	23.9	360	154.1'	228.9'	100'



**Table 3: Antenna Inventory**

Ant #	Operated By	TX Freq (MHz)	ERP (Watts)	Antenna Gain (dBd)	Az (Deg)	Antenna Model	Ant Type	Len (ft)	Horizontal Half Power Beamwidth (Deg)	Location		
										X	Y	Z (AGL)
23	DISTRICT OF COLUMBIA	855	237	11.97	0	Andrew DB810KE-XC	Omni	23.9	360	155.5'	234.1'	115'
24	DISTRICT OF COLUMBIA	855	237	11.97	0	Andrew DB810KE-XC	Omni	23.9	360	157.5'	234.1'	115'

NOTE: X, Y and Z indicate relative position of the antenna to the origin location on the site, displayed in the model results diagram. Specifically, the Z reference indicates antenna **height above ground level (AGL)**. ERP values provided by the client and used in the modeling may be greater than are currently deployed. For other carriers at this site the use of "Generic" as an antenna model or "Unknown" for a wireless operator means the information with regard to carrier, their FCC license and/or antenna information was not available nor could it be secured while on site. Equipment, antenna models and nominal transmit power were used for modeling, based on past experience with radio service providers.



## 7 Engineer Certification

The professional engineer whose seal appears on the cover of this document hereby certifies and affirms that:

I am registered as a Professional Engineer in the jurisdiction indicated in the professional engineering stamp on the cover of this document; and

That I am an employee of Sitesafe, Inc., in Arlington, Virginia, at which place the staff and I provide RF compliance services to clients in the wireless communications industry; and

That I am thoroughly familiar with the Rules and Regulations of the Federal Communications Commission (FCC) as well as the regulations of the Occupational Safety and Health Administration (OSHA), both in general and specifically as they apply to the FCC Guidelines for Human Exposure to Radio-frequency Radiation; and

That I have thoroughly reviewed this Site Compliance Report and believe it to be true and accurate to the best of my knowledge as assembled by and attested to by Kobi Thompson.

December 16, 2016

## **Appendix A – Statement of Limiting Conditions**

Sitesafe will not be responsible for matters of a legal nature that affect the site or property.

Due to the complexity of some wireless sites, Sitesafe performed this analysis and created this report utilizing best industry practices and due diligence. Sitesafe cannot be held accountable or responsible for anomalies or discrepancies due to actual site conditions (i.e., mislabeling of antennas or equipment, inaccessible cable runs, inaccessible antennas or equipment, etc.) or information or data supplied by R. McGhee & Associates, the site manager, or their affiliates, subcontractors or assigns.

Sitesafe has provided computer generated model(s) in this Site Compliance Report to show approximate dimensions of the site, and the model is included to assist the reader of the compliance report to visualize the site area, and to provide supporting documentation for Sitesafe's recommendations.

Sitesafe may note in the Site Compliance Report any adverse physical conditions, such as needed repairs, observed during the survey of the subject property or that Sitesafe became aware of during the normal research involved in performing this survey. Sitesafe will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because Sitesafe is not an expert in the field of mechanical engineering or building maintenance, the Site Compliance Report must not be considered a structural or physical engineering report.

Sitesafe obtained information used in this Site Compliance Report from sources that Sitesafe considers reliable and believes them to be true and correct. Sitesafe does not assume any responsibility for the accuracy of such items that were furnished by other parties. When conflicts in information occur between data provided by a second party and physical data collected by Sitesafe, the physical data will be used.



## Appendix B – Assumptions and Definitions

### General Model Assumptions

In this site compliance report, it is assumed that all antennas are operating at **full power at all times**. Software modeling was performed for all transmitting antennas located on the site. Sitesafe has further assumed a 100% duty cycle and maximum radiated power.

The site has been modeled with these assumptions to show the maximum RF energy density. Sitesafe believes this to be a *worst-case* analysis, based on best available data. Areas modeled to predict emissions greater than 100% of the applicable MPE level may not actually occur, but are shown as a *worst-case* prediction that could be realized real time. Sitesafe believes these areas to be safe for entry by occupationally trained personnel utilizing appropriate personal protective equipment (in most cases, a personal monitor).

Thus, at any time, if power density measurements were made, we believe the real-time measurements would indicate levels below those depicted in the RF emission diagram(s) in this report. By modeling in this way, Sitesafe has conservatively shown exclusion areas – areas that should not be entered without the use of a personal monitor, carriers reducing power, or performing real-time measurements to indicate real-time exposure levels.

### Use of Generic Antennas

For the purposes of this report, the use of “Generic” as an antenna model, or “Unknown” for an operator means the information about a carrier, their FCC license and/or antenna information was not provided and could not be obtained while on site. In the event of unknown information, Sitesafe will use our industry specific knowledge of equipment, antenna models, and transmit power to model the site. If more specific information can be obtained for the unknown measurement criteria, Sitesafe recommends remodeling of the site utilizing the more complete and accurate data. Information about similar facilities is used when the service is identified and associated with a particular antenna. If no information is available regarding the transmitting service associated with an unidentified antenna, using the antenna manufacturer's published data regarding the antenna's physical characteristics makes more conservative assumptions.

Where the frequency is unknown, Sitesafe uses the closest frequency in the antenna's range that corresponds to the highest Maximum Permissible Exposure (MPE), resulting in a conservative analysis.

## Definitions

**5% Rule** – The rules adopted by the FCC specify that, in general, at multiple transmitter sites actions necessary to bring the area into compliance with the guidelines are the shared responsibility of all licensees whose transmitters produce field strengths or power density levels at the area in question in excess of 5% of the exposure limits. In other words, any wireless operator that contributes 5% or greater of the MPE limit in an area that is identified to be greater than 100% of the MPE limit is responsible taking corrective actions to bring the site into compliance.

**Compliance** – The determination of whether a site is safe or not with regards to Human Exposure to Radio Frequency Radiation from transmitting antennas.

**Decibel (dB)** – A unit for measuring power or strength of a signal.

**Duty Cycle** – The percent of pulse duration to the pulse period of a periodic pulse train. Also, may be a measure of the temporal transmission characteristic of an intermittently transmitting RF source such as a paging antenna by dividing average transmission duration by the average period for transmission. A duty cycle of 100% corresponds to continuous operation.

**Effective (or Equivalent) Isotropic Radiated Power (EIRP)** – The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

**Effective Radiated Power (ERP)** – In a given direction, the relative gain of a transmitting antenna with respect to the maximum directivity of a half wave dipole multiplied by the net power accepted by the antenna from the connecting transmitter.

**Gain (of an antenna)** – The ratio of the maximum intensity in a given direction to the maximum radiation in the same direction from an isotropic radiator. Gain is a measure of the relative efficiency of a directional antennas as compared to an omni directional antenna.

**General Population/Uncontrolled Environment** – Defined by the FCC, as an area where RFR exposure may occur to persons who are **unaware** of the potential for exposure and who have no control of their exposure. General Population is also referenced as General Public.

**Generic Antenna** – For the purposes of this report, the use of “Generic” as an antenna model means the antenna information was not provided and could not be obtained while on site. In the event of unknown information, Sitesafe will use our industry specific knowledge of antenna models to select a worst case scenario antenna to model the site.

**Isotropic Antenna** – An antenna that is completely non-directional. In other words, an antenna that radiates energy equally in all directions.

**Maximum Measurement** – This measurement represents the single largest measurement recorded when performing a spatial average measurement.

**Maximum Permissible Exposure (MPE)** – The rms and peak electric and magnetic field strength, their squares, or the plane-wave equivalent power densities associated with these fields to which a person may be exposed without harmful effect and with acceptable safety factor.

**Occupational/Controlled Environment** – Defined by the FCC, as an area where Radio Frequency Radiation (RFR) exposure may occur to persons who are **aware** of the potential for exposure as a condition of employment or specific activity and can exercise control over their exposure.

**OET Bulletin 65** – Technical guideline developed by the FCC's Office of Engineering and Technology to determine the impact of Radio Frequency radiation on Humans. The guideline was published in August 1997.

**OSHA (Occupational Safety and Health Administration)** – Under the Occupational Safety and Health Act of 1970, employers are responsible for providing a safe and healthy workplace for their employees. OSHA's role is to promote the safety and health of America's working men and women by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual process improvement in workplace safety and health. For more information, visit [www.osha.gov](http://www.osha.gov).

**Radio Frequency Radiation** – Electromagnetic waves that are propagated from antennas through space.

**Spatial Average Measurement** – A technique used to average a minimum of ten (10) measurements taken in a ten (10) second interval from zero (0) to six (6) feet. This measurement is intended to model the average energy an average sized human body will absorb while present in an electromagnetic field of energy.

**Transmitter Power Output (TPO)** – The radio frequency output power of a transmitter's final radio frequency stage as measured at the output terminal while connected to a load.

## Appendix C – Rules & Regulations

### Explanation of Applicable Rules and Regulations

The FCC has set forth guidelines in OET Bulletin 65 for human exposure to radio frequency electromagnetic fields. Specific regulations regarding this topic are listed in Part 1, Subpart I, of Title 47 in the Code of Federal Regulations. Currently, there are two different levels of MPE - General Public MPE and Occupational MPE. An individual classified as Occupational can be defined as an individual who has received appropriate RF training and meets the conditions outlined below. General Public is defined as anyone who does not meet the conditions of being Occupational. FCC and OSHA Rules and Regulations define compliance in terms of total exposure to total RF energy, regardless of location of or proximity to the sources of energy.

It is the responsibility of all licensees to ensure these guidelines are maintained at all times. It is the ongoing responsibility of all licensees composing the site to maintain ongoing compliance with FCC rules and regulations. Individual licensees that contribute less than 5% MPE to any total area out of compliance are not responsible for corrective actions.

OSHA has adopted and enforces the FCC's exposure guidelines. A building owner or site manager can use this report as part of an overall RF Health and Safety Policy. It is important for building owners/site managers to identify areas in excess of the General Population MPE and ensure that only persons qualified as Occupational are granted access to those areas.

### Occupational Environment Explained

The FCC definition of Occupational exposure limits apply to persons who:

- are exposed to RF energy as a consequence of their employment;
- have been made aware of the possibility of exposure; and
- can exercise control over their exposure.

OSHA guidelines go further to state that persons must complete RF Safety Awareness training and must be trained in the use of appropriate personal protective equipment.

In order to consider this site an Occupational Environment, the site must be controlled to prevent access by any individuals classified as the General Public. Compliance is also maintained when any non-occupational individuals (the General Public) are prevented from accessing areas indicated as Red or Yellow in the attached RF Emissions diagram. In addition, a person must be aware of the RF environment into which they are entering. This can be accomplished by an RF Safety Awareness class, and by appropriate written documentation such as this Site Compliance Report.

All R. McGhee & Associates employees who require access to this site must complete RF Safety Awareness training and must be trained in the use of appropriate personal protective equipment.

## Appendix D – General Safety Recommendations

The following are *general recommendations* appropriate for any site with accessible areas in excess of 100% General Public MPE. These recommendations are not specific to this site. These are safety recommendations appropriate for typical site management, building management, and other tenant operations.

1. All individuals needing access to the main site (or the area indicated to be in excess of General Public MPE) should wear a personal RF Exposure monitor, successfully complete proper RF Safety Awareness training, and have and be trained in the use of appropriate personal protective equipment.

2. All individuals needing access to the main site should be instructed to read and obey all posted placards and signs.

3. The site should be routinely inspected and this or similar report updated with the addition of any antennas or upon any changes to the RF environment including:

- adding new antennas that may have been located on the site
- removing of any existing antennas
- changes in the radiating power or number of RF emitters

4. Post the appropriate **NOTICE**, **CAUTION**, or **WARNING** sign at the main site access point(s) and other locations as required. Note: Please refer to RF Exposure Diagrams in Appendix B, to inform everyone who has access to this site that beyond posted signs there may be levels in excess of the limits prescribed by the FCC. The signs below are examples of signs meeting FCC guidelines.



5. Ensure that the site door remains locked (or appropriately controlled) to deny access to the general public if deemed as policy by the building/site owner.

6. For a General Public environment the four color levels identified in this analysis can be interpreted in the following manner:

- Gray represents area at below 5% of the General Public MPE limits or below. This level is safe for a worker to be in at any time.
- Green represents areas predicted to be between 5% and 100% of the General Public MPE limits. This level is safe for a worker to be in at any time.

- Blue represents areas predicted to be between 100% and 500% of the General Public MPE limits. This level is safe for a worker to be in at any time.
- Yellow represents areas predicted to be between 500% and 5000% of the General Public MPE limits. This level is safe for a worker to be in.
- Red areas indicated predicted levels greater than 5000% of the General Public MPE limits. This level is not safe for the General Public to be in.

7. For an Occupational environment the four color levels identified in this analysis can be interpreted in the following manner:

- Areas indicated as Gray are at 5% of the Occupational MPE limits or below. This level is safe for a worker to be in at any time.
- Green represents areas predicted to be between 5% and 20% of the Occupational MPE limits. This level is safe for a worker to be in at any time.
- Yellow represents areas predicted to be between 20% and 100% of the Occupational MPE limits. Only individuals that have been properly trained in RF Health and Safety should be allowed to work in this area. This is not an area that is suitable for the General Public to be in.
- Red areas indicated predicted levels greater than 100% of the Occupational MPE limits. This level is not safe for the Occupational worker to be in for prolonged periods of time. Special procedures must be adhered to such as lock out tag out procedures to minimize the workers exposure to EME.

8. Use of a Personal Protective Monitor: When working around antennas, Sitesafe strongly recommends the use of a Personal Protective Monitor (PPM). Wearing a PPM will properly forewarn the individual prior to entering an RF exposure area.

Keep a copy of this report available for all persons who must access the site. They should read this report and be aware of the potential hazards with regards to RF and MPE limits.

### **Additional Information**

Additional RF information is available by visiting both [www.Sitesafe.com](http://www.Sitesafe.com) and [www.fcc.gov/oet/rfsafety](http://www.fcc.gov/oet/rfsafety). OSHA has additional information available at: <http://www.osha-slc.gov/SLTC/radiofrequencyradiation>.

# EXHIBIT E

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Application No. 16991 of Government of the District of Columbia, Office of the Chief Technology Officer, pursuant to 11 DCMR § 3104.1, for a special exception to replace and operate a support structure (150-foot monopole) and telecommunications facility as part of the District's emergency communications network under section 212 (section 2520) (Antenna, Other Than Commercial Broadcast Antenna), in the C-2-A District at premises 1700 Rhode Island Avenue, N.E. (Square 4134, Lot 800).**

**HEARING DATE:** March 11, 2003  
**DECISION DATE:** March 11, 2003 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 5B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. ANC 5B submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under §§ 212 and 2520. No persons or entities appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, and 212, and 2520, that the requested relief can



be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS**:

1. There shall be now lighting of the monopole unless required by federal or local government authorities.
2. There shall be no commercial advertising on the monopole.
3. There shall be no collocation of antennas for commercial use.
4. The existing monopole shall be removed within six (6) months of the date that the new replacement monopole is erected and becomes operational.

**VOTE:**        **5-0-0**            (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr., David A. Zaidain and Carol J. Mitten, to approve).

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

Each concurring member approved the issuance of this order.

ATTESTED BY:

  
**JERRILY R. KRESS, FAIA**  
Director, Office of Zoning

**FINAL DATE OF ORDER:** MAR 19 2003

UNDER 11 DCMR 3103.1, "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 § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. 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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 16991**

As Director of the Office of Zoning, I hereby certify and attest that on MAR 19 2003 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:

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Single Member District Commissioner 5B09  
Advisory Neighborhood Commission 5B  
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Vincent Orange, City Councilmember  
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Robert Kelly, Zoning Administrator  
Building and Land Regulation Administration  
Department of Consumer and Regulatory Affairs  
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rsn

ATTESTED BY:

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**JERRILY R. KRESS, FAIA**  
Director, Office of Zoning