



June 15, 2022

G. Evan Pritchard
Direct Phone 202-280-6482
Direct Fax 202-618-4854
epritchard@cozen.com

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

RE: BZA Case No. 20718 (the “Application”)

Chairperson Hill and Members of the Board:

On behalf of the Applicant 9 Tree, LLC (the “Applicant”), I am pleased to inform you that we have today arrived at an agreement with Anne Carson (the “Party in Opposition”). The Party in Opposition has agreed to withdraw her opposition to the Application based on certain design commitments reflected on the plans dated June 6, 2022, which are enclosed here at “Tab A,” and as further described in the enclosed Abutter Agreement at “Tab B.” Specifically, these commitments include the Reeded Texture Cleared Glass Screen, non-accessible Green Roof, and wall alignments depicted on sheets 8 through 11. We respectfully request that the design commitments described above and shown on the plans be included as conditions of approval, and that the Abutter Agreement be included as part of the record, should the Board approve the Application.

Since these plans and the Abutter Agreement are being submitted fewer than twenty-one (21) days prior to our hearing before the Board, I have enclosed a Motion for Untimely Filing at “Tab C.” Given the fact that the parties have worked collaboratively to resolve the outstanding concerns, we respectfully request that our motion be granted and that these items be admitted into the record.

SINCERELY,

COZEN O’CONNOR

G. Evan Pritchard

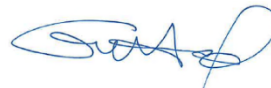
Certificate of Service

I hereby certify that on this 15th day of June, 2022, a copy of this letter with attachments was served, via email, as follows:

District of Columbia Office of Planning
c/o Karen Thomas
1100 4th Street SW, Suite E650
Washington, DC 20024
karen.thomas@dc.gov
planning@dc.gov

Advisory Neighborhood Commission 2B
Matthew Holden, Chair
2B@anc.dc.gov
Meg Roggensack, Vice Chair, 2B01
2B01@anc.dc.gov

Andrea C. Ferster
Counsel for Party in Opposition
2121 Ward Court, N.W. 5th Floor
Washington, D.C. 20037
aferster@railstotrains.org



G. Evan Pritchard

Tab A

Revised Plans for 1722 Swann Street

Prepared by StudioMB

Dated: June 6, 2020

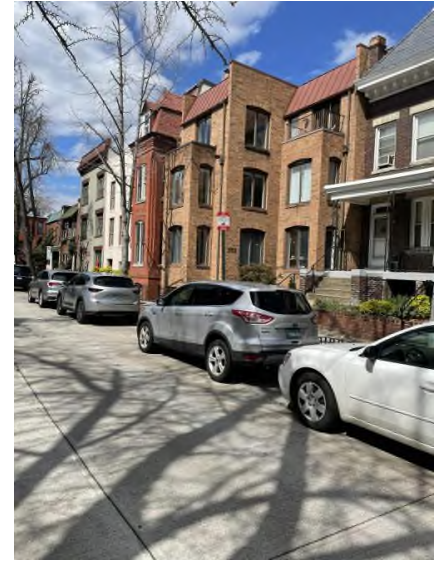


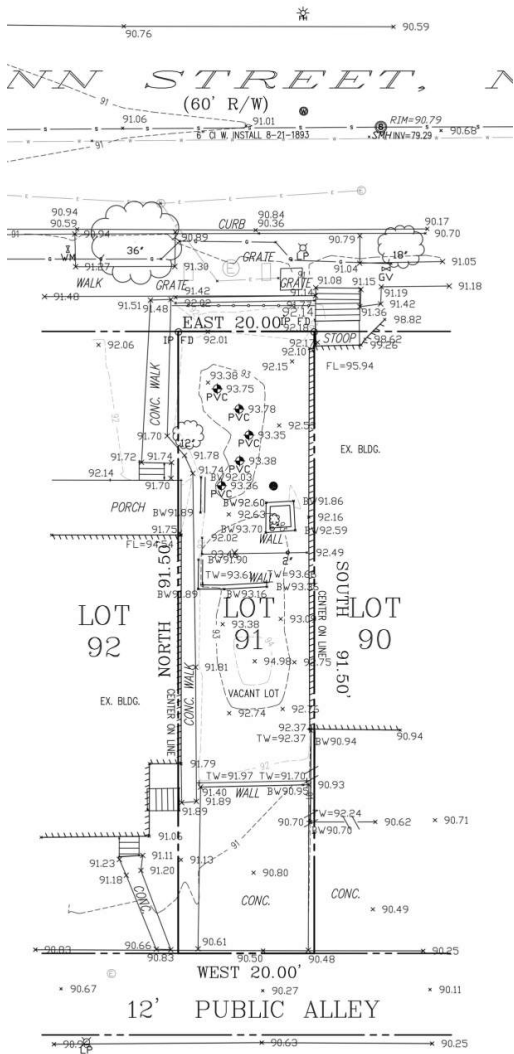
1722 SWANN ST

HPRB Draft Presentation
06/06/2022
STUDIO MB

LOTSQUARED
8133 Leesburg Pike, Suite 801
Vienna, VA 22182







ZONING SUMMARY:

Zone: RA-2
 Dupont Circle Historic District
Lot area: 1,830 sf

REQUIREMENT:

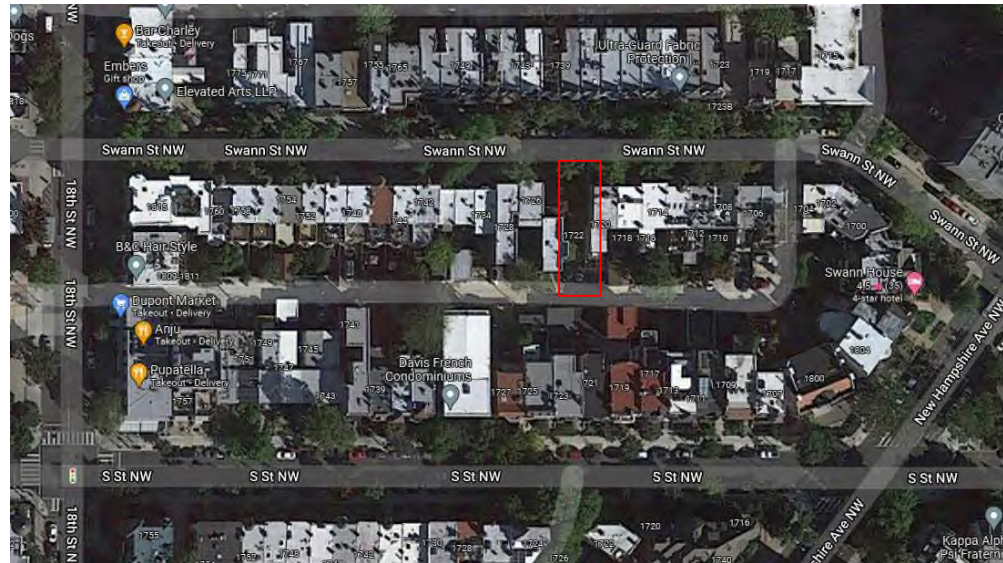
Lot Occupancy: 60% (1,098 SF)
FAR: 1.8 (3,294 SF)
Penthouse FAR: 0.4 (732 SF) Need BZA special exception approval if it is habitable space
Stories: N/A
Max Height: 50'
Penthouse Height: 12' except 15' for mechanical
Rear Yard Setback: Min 15' with 4" per 1' in height
Side Yard Setback: Not required, if provide 8' min
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Residential open court minimum width: 4in/ft of height but not less than 10'
 Residential closed court minimum width: 4in/ft of height but not less than 15'

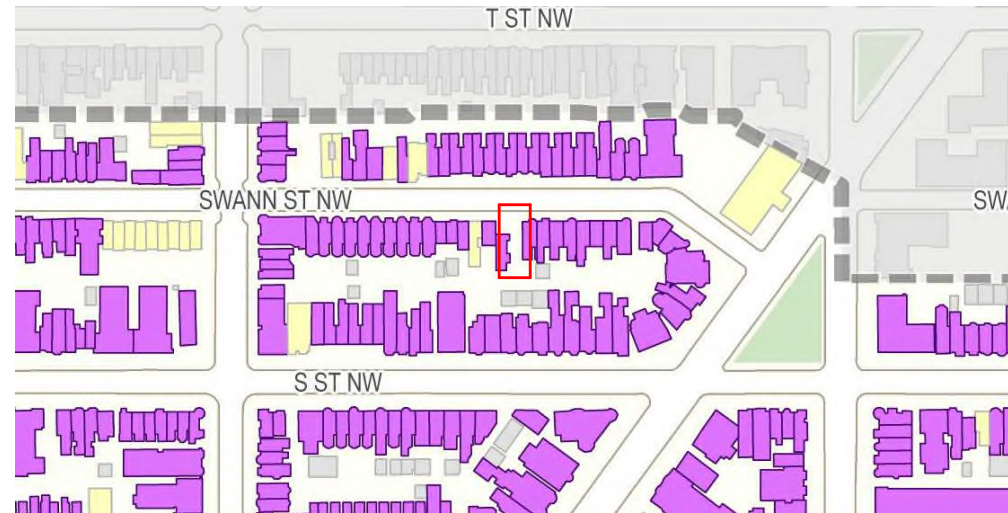
Min Parking: 1 per 3 Dwellings in excess of 4 units
 Dupont Circle metro Station less than 0.5 miles from project, required parking reduce by 50%
Long Term Bike Parking: 1 per 3 Dwellings in excess of 8 units
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Green Area Ratio: 0.4 (732 SF)

NOTE: Existing Party Walls (70 GSF) count toward Lot Occupancy

SATELITE VIEW



CONTRIBUTING STRUCTURE MAP





Swann Street Composite Elevation



Swann Street Perceptible Height

Height Study - Project Side

1722 SWANN ST



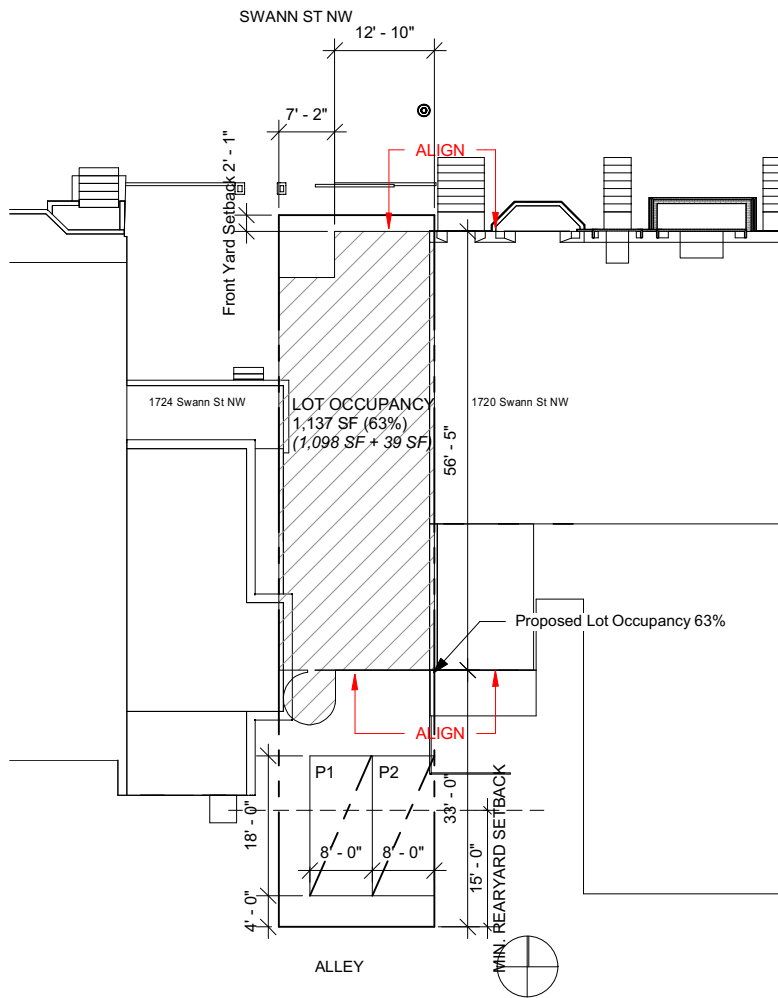
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Swann Street Perceptible Height

Height Study - Opposite Side

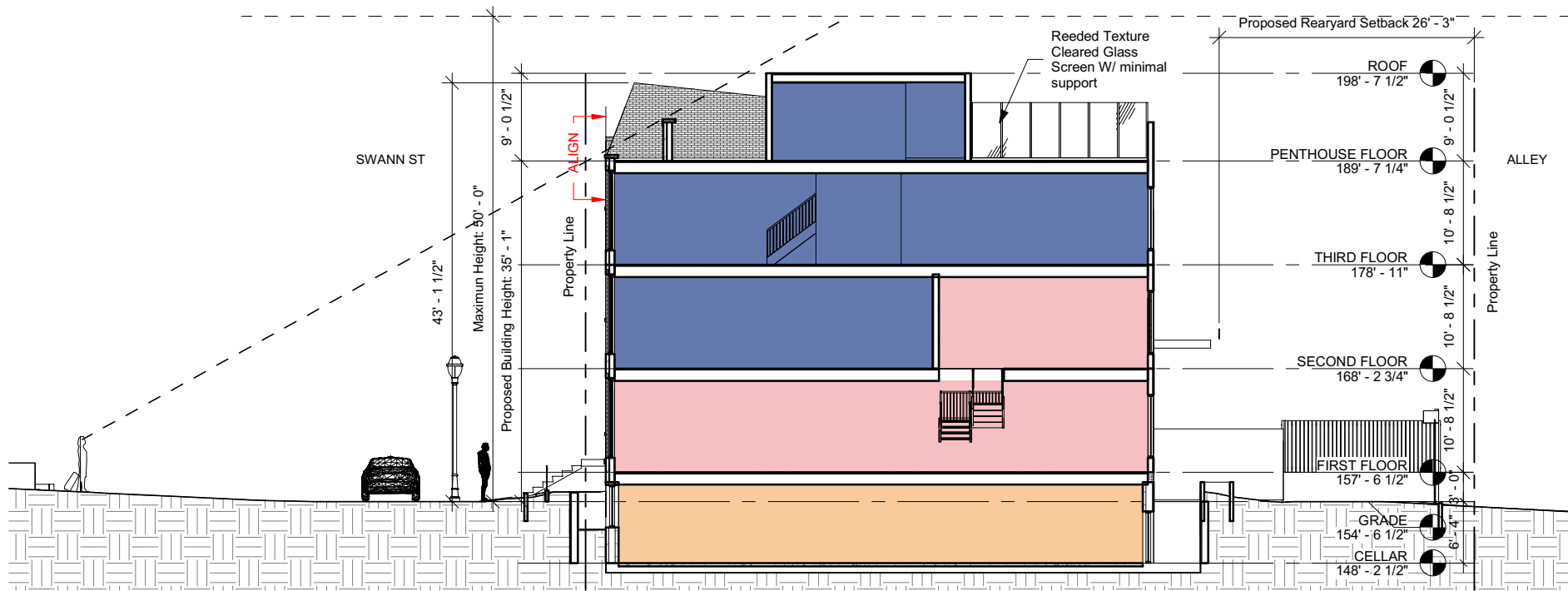
1722 SWANN ST



1 | Concept Site Plan
1/16" = 1'-0"



2 | Volume 4



ZONING SUMMARY:

Zone: RA-2
 Dupont Circle Historic District
 Lot area: 1,830 sf
 Lot Occupancy: 60% (1,098 SF)
 FAR: 1.8 (3,294 SF)
 Penthouse FAR: 0.4 (732 SF)

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Lot Occupancy: 63% (1,137 SF)
 Height: 37'
 Side Yard Setback: NONE
 Parking: 2 Spaces
 GAR: 480 SF (Rearyard covered with pervious pavers)
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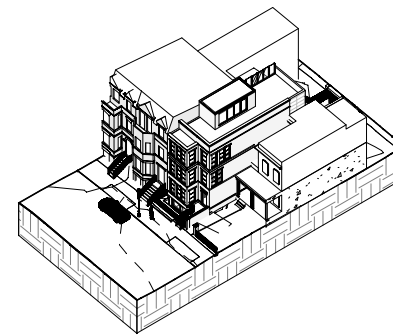
Number of units: 3 units

1 | SECTION
 3/32" = 1'-0"

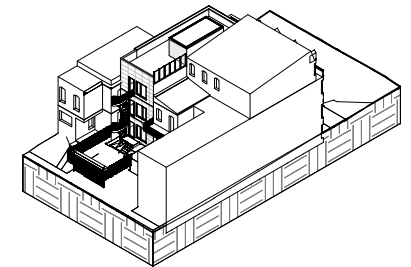
Area Schedule (GSF Option Mod)		
GSA	Level	Area
Included	FIRST FLOOR	1098 SF
Included	SECOND FLOOR	1098 SF
Included	THIRD FLOOR	1098 SF
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Exempted	CELLAR	1098 SF
Exempted	PENTHOUSE FLOOR	215 SF
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		4608 SF

Allowable FAR: 3,294SF
 Proposed FAR: 3,294 SF

Allowable Bonus FAR: 732 SF
 Proposed Bonus FAR: 215 SF



2 | Front Axon

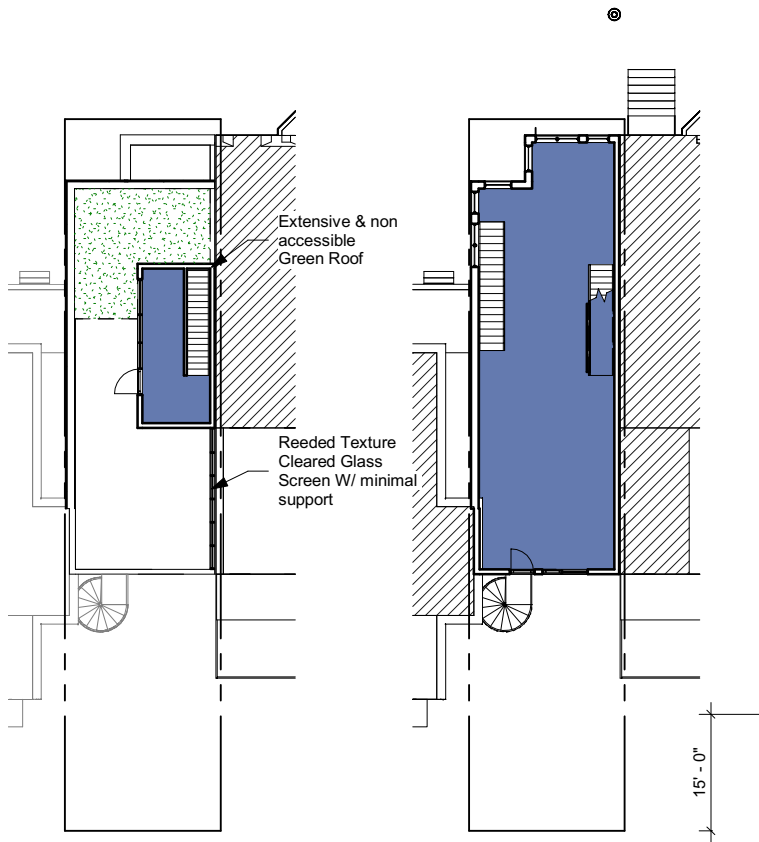


3 | Rear Axon

Section and Axons

1722 SWANN ST

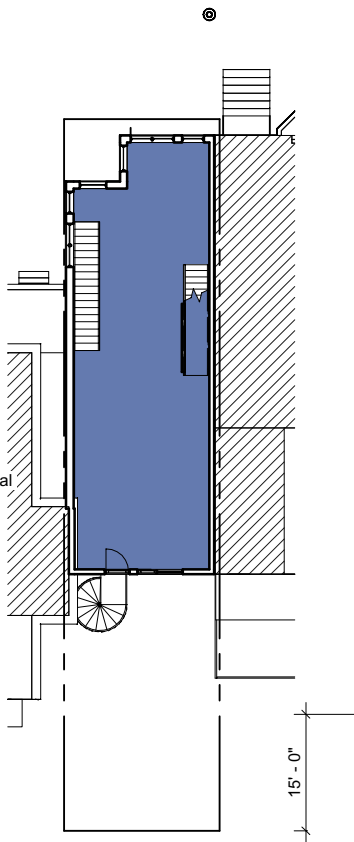
SWANN ST NW



GSF AREA: 215 SF

5 | Penthouse Floor Plan
1/16" = 1'-0"

SWANN ST NW

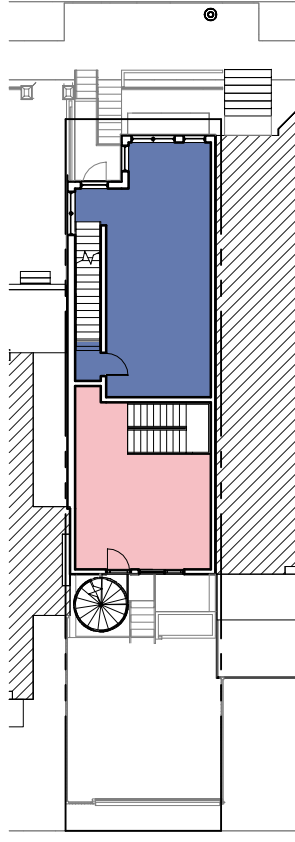


GSF AREA: 1,098 SF

UNIT B: 1,750 SF

4 | Third Floor Plan
1/16" = 1'-0"

SWANN ST NW



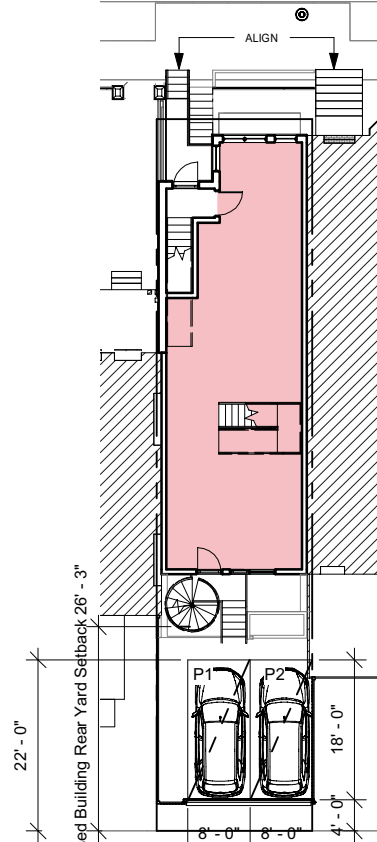
GSF AREA: 1,098 SF

UNIT A: 800 SF

UNIT B

3 | Second Floor Plan
1/16" = 1'-0"

SWANN ST NW

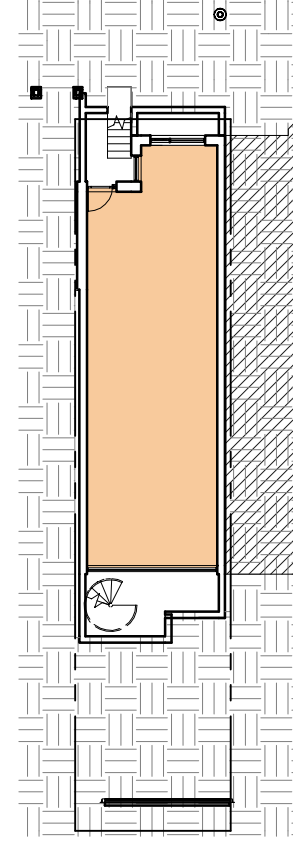


GSF AREA: 1,098 SF

UNIT A: 1,350 SF

2 | First Floor Plan
1/16" = 1'-0"

SWANN ST NW



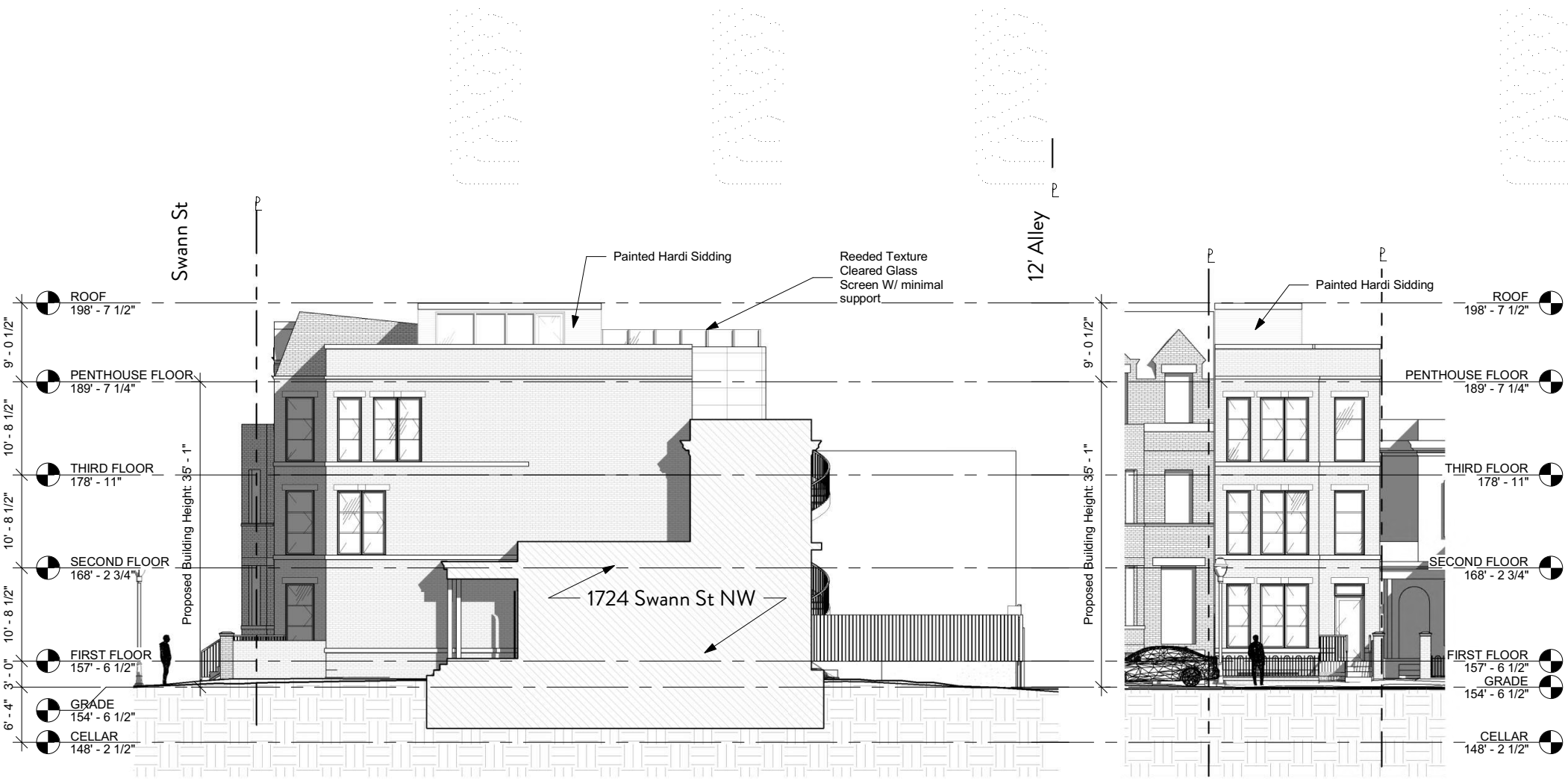
GSF AREA: 1,116 SF

UNIT D: 1,010 SF

1 | Cellar Floor Plan
1/16" = 1'-0"

Proposed Floor Plans

1722 SWANN ST

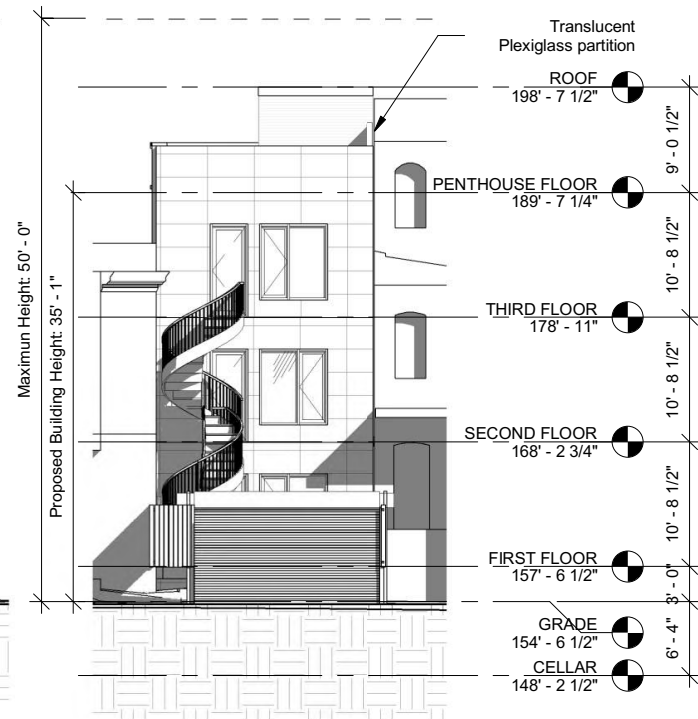
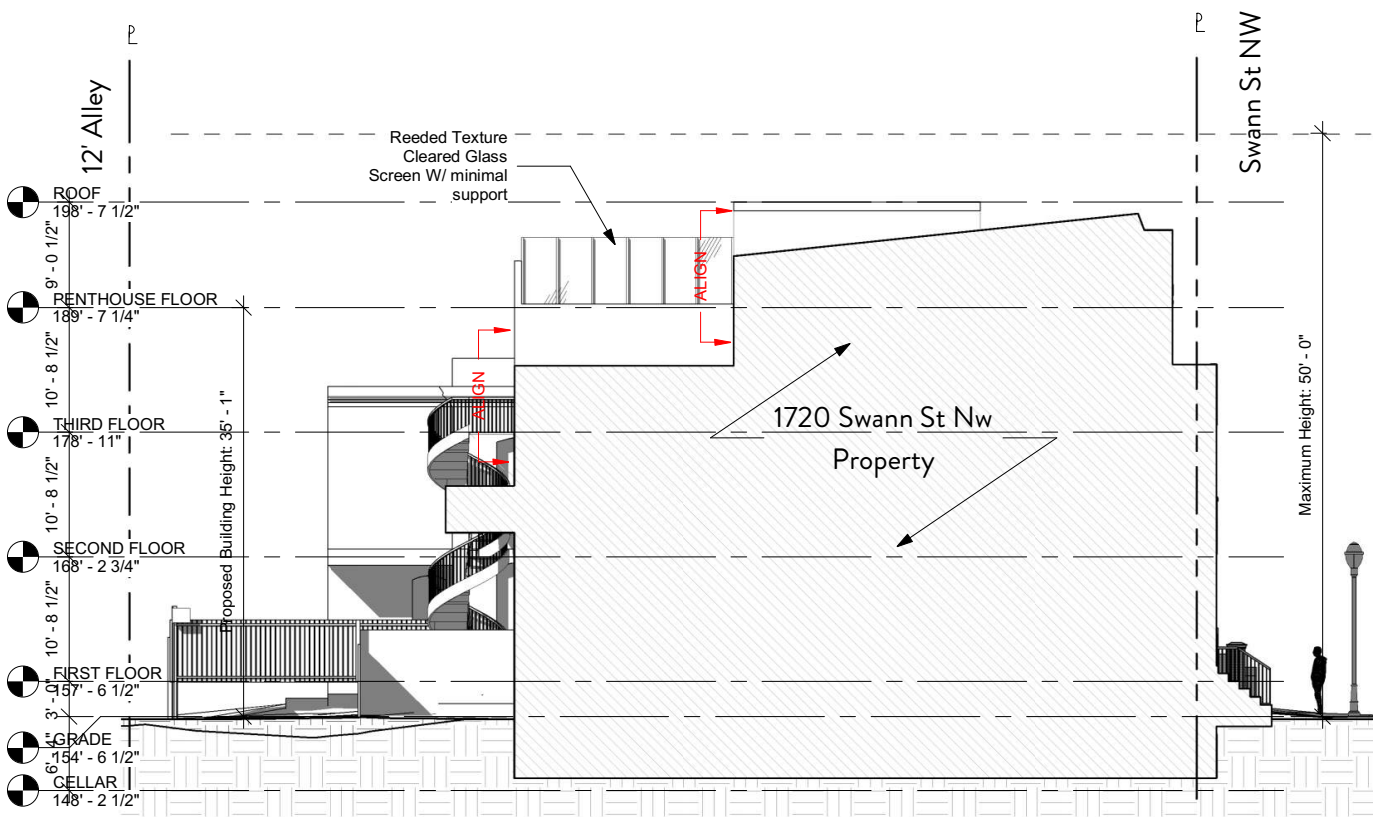


2 | West Elevation
3/32" = 1'-0"

1 | North Elevation
3/32" = 1'-0"

Proposed Elevations

1722 SWANN ST



2 | East Elevation
3/32" = 1'-0"

1 | South Elevation
3/32" = 1'-0"



Facade Precedents

1722 SWANN ST

LOTSQUARED **StudioMB**

HPRB Draft Presentation 06/06/2022



Facade Precedents

1722 SWANN ST

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View 1



View 2

Previously Submitted Views

1722 SWANN ST

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View 1



View 2



View 3

Proposed - Bird View

1722 SWANN ST

Tab B

Abutter Agreement Dated June 15, 2022

ABUTTER AGREEMENT

This ABUTTER AGREEMENT (“**Agreement**”) is made as of this 15th day of June, 2022, by 9 Tree, LLC and between and Anne Carson, referred to together as the “**Parties**” and individually as a “**Party**.”

WHEREAS, the 9 Tree, LLC (the “**Applicant**”) is the owner of 1722 Swann Street NW (the “**Application Property**”;

WHEREAS, Anne Carson (the “**Neighbor**” or “**Neighboring Owner**”) owns certain real property and a three-family dwelling located at 1720 Swann Street, N.W. (the “**Neighboring Property**”), which is immediately adjacent to the Application Property;

WHEREAS, the Applicant has submitted an application (the “**Application**”) to the District of Columbia Board of Zoning Adjustment (“**BZA**”) for approval pursuant to the special exception standards of the District of Columbia Zoning Regulations in BZA Case No. 20718 (“**Project**”);

WHEREAS, representatives of the Applicant and the Neighboring Owner have discussed on multiple occasions the Neighboring Owner’s concerns about the Project and the impact of the Project, including the construction process, on the Neighbor and her enjoyment of the Neighboring Property, and possible design and other solutions that the Applicant could implement to address such concerns;

WHEREAS, the Applicant and the Neighbor have agreed to a resolution of the Neighbor’s concerns as set forth more fully herein;

WHEREAS, this Agreement and the design commitments set forth below are public records and constitute a part of the BZA Case No. 20718; and

WHEREAS, the Neighbor, in both her capacity as owner of the Neighboring Property and as an individual, has agreed to withdraw her Party Status Request regarding the Project pursuant to the terms of this Agreement and to take certain acts set forth more fully herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, as further described herein, the mutual receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Design Commitments. Both parties want to preserve Neighbor's light, air, and privacy. To this end, Applicant shall construct the penthouse so that the rear wall of the facade is even with and in the same plane as the rear wall of the Neighbor's third floor rear facade and shall build the textured glass wall as set forth on pages 8-11 of the revised HPRB Draft Presentation prepared by StudioMB and dated June 6, 2022 (hereinafter "**Privacy Wall**"), attached hereto as Exhibit A. The material to be used will be Pikington Texture

Clear Reeded glass. If unavailable or impractical, Applicant and Neighbor will confer and select a mutually acceptable substitute.

2. The Privacy Wall will be a structural part of the project.
3. Alternative Design commitment. Applicant will use best efforts to comply with any DCRA requirements concerning the Privacy Wall. In the event that DCRA does not issue a permit for the Privacy Wall, the parties shall discuss alternative options intended to ensure that the Neighbor will enjoy privacy, light, and air equivalent to that which would have been provided by the Privacy Wall. This includes the option for a 42 inch fence five feet in from the Project's rear east wall.
4. Construction Management. The Applicant shall at all times during construction of the Project abide by the construction management terms detailed in EXHIBIT B.
5. Nothing in this agreement shall abrogate or limit in any way any of Neighbor's rights under DC law, including but not limited to, Neighbor's right to receive a copy of the plans submitted to DCRA and to make objections thereto as provided by law.
6. Copies of Permits. The Applicant shall provide Neighbor with a copy of all DCRA building permits, including revised permits, and DCRA-approved architectural, structural, and underpinning plans for the Project and any new construction on the Application Property within five (5) days of receipt by the Applicant and no less than fifteen (15) days prior to the start of construction. Applicant will ensure that the construction plans accurately depict the design commitments as set forth in this Agreement.
7. Neighbors Covenant Not to Oppose or Sue.
 - a. From and after the Effective Date hereof, the Neighbor, whether acting in her capacity as owner of the Neighboring Property or as an individual, shall not:
 - i. Directly or indirectly oppose, appeal, or interfere with any aspect of the Project or subsequent permitting up to and including the Certificate of Occupancy, related to the construction of the Property as approved by the BZA, before Advisory Neighborhood Commission 2B, the BZA, the Office of Administrative Hearings, any court of law, any government agency, any community organization, or any elected official, so long as Project plans conform to the commitments set forth in this Agreement; It being understood that the neighboring owner retains all rights under DC to receive a copy of the permit application and to make objections to that application as provided by that law.
 - ii. Induce, assist, or financially contribute to, any condominium association, tenants association, cooperative, community organization, or individual

person to oppose or interfere with any aspect of the Project, permitting, or construction as approved by the BZA;

- iii. Initiate, prosecute, or otherwise participate in any litigation (including, without limitation, any appeal to the D.C. Court of Appeals) contesting the validity of the order issued by the BZA following approval of the Application.
 - iv. The provisions of this subparagraph (a) shall be void if building plans, construction management, landscaping, and traffic management, change in any material respect from the date of this Agreement or if the Applicant fails to meet any of its obligations under this Agreement.
- b. The provisions of this subparagraph (a) shall not preclude the Neighbor from taking action before any court, administrative agency, or governmental official to (i) enforce the Applicant's obligations under this Agreement or (ii) for physical damages to persons or the Neighboring Property resulting from construction of the Project.
8. Neighboring Owner's Testimony. Prior to or at the public hearing before the BZA on the Application, the Neighboring Owner shall file written testimony with the BZA acknowledging that the Applicant has worked collaboratively with the Neighboring Owner to address concerns raised by the Neighboring Owner about the Project.
9. Notices. Any notice, consent, or approval required or permitted to be given under this Agreement shall be in writing, signed by the party giving the same or by its attorneys, and shall be deemed to have been given upon (i) hand delivery, (ii) one business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) five (5) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, addressed as set forth below or at such other address within the continental United States as such other Party may designate by notice specifically designated as a notice of change of address and given in accordance herewith. Notices shall be given as follows:

If to the Neighboring Owner:

Anne Carson
1720 Swann Street NW
Washington, DC

With a copy to:

Andrea C. Ferster
Attorney at Law

2121 Ward Court, N.W. 5th Floor
Washington, D.C. 20037
afenster@railstotrails.org

If to the Applicant:

9 Tree, LLC
8133 Leesburg Pike, Suite 801
Vienna, VA 22182-2733

With a copy to:

G. Evan Pritchard
Cozen O'Connor
1200 19th Street, N.W.
Washington, DC 20036
epritchard@cozen.com

10. Miscellaneous.

- a. Except as to claims arising under or related to the implementation or enforcement of this Agreement, each Party on behalf of itself, its respective agents, heirs, legatees, successors, and assigns hereby irrevocably and unconditionally release, remise, and forever discharge the other Party and its agents, subsidiaries, affiliates, predecessors, successors, and assigns of and from any and all actions, causes of action, suits, debts, charges, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs), of any nature whatsoever, known or unknown, in law or equity, which such Party had or has against the other Party by reason of any matter, cause or thing arising from any time prior to the date of this Agreement.
- b. Except as otherwise provided in this Agreement, in the event the BZA denies or does not approve the Application or places conditions on the approval of the Application that are in the sole discretion of the Applicant unreasonable such that the Applicant does not proceed to construct the Project, or in the event the D.C. Court of Appeals (or any other body with jurisdiction over the Application) reverses, remands, overturns, or vacates the order approving the Application such that the Project cannot be constructed, then this Agreement shall be null and void and neither of the Parties shall have any liabilities or obligations hereunder. During the pendency of any appeal taken on the Application, all of the

Applicant's obligations hereunder shall be tolled until the final and complete resolution of all appeals.

- c. This Agreement constitutes the entire agreement between the parties hereto and no Party shall be liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements, or representations pertaining to the subject matter hereof except as such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth herein.
 - d. This Agreement shall be binding upon and enforceable against the Applicant and the Neighboring Owner, and their respective heirs, successors, and assigns and all purchasers now or in the future of condominiums located in 1722 Swann St., NW. Neighbor and her heirs, successors and assigns shall enjoy the right to enforce this Agreement. This includes, but is not necessarily limited to, initiating an action for specific enforcement in a court of competent jurisdiction. This Agreement, including the Privacy Wall and other design commitments specified in this Agreement, shall be conditions to any BZA order approving the Application and shall also be set forth in the condominium offering plans/marketing materials/purchase and sale agreement. The Neighbor has the right to enforce the agreement on heirs, successors, and assigns, and this right will be stated in condominium offering plans/marketing materials and purchase and sale agreements, as set forth below.
11. Incorporation of the Applicant's Obligation in Condominium Documents. All persons acquiring ownership interests in the project to be built by the Applicant shall be bound by all terms of this Agreement including the Design Commitments set forth in paragraph 1 and depicted in the draft concept plan attached as Exhibit A. To achieve this result, the Applicant shall cause all applicable terms of the agreement to be incorporated in the pertinent condominium documents and shall transfer the property to the any condominium purchaser subject to such terms. Upon the transfer of all or any portion of the property, subject to such terms, the Applicant's obligations hereunder with respect to that portion of the property shall cease.
- a. Neighbor, her heirs, successors and assigns are intended third party beneficiaries of the terms of this Agreement and any subsequent purchase and sale agreements for the property, and shall enjoy the right to enforce this Agreement against the

Applicant and any successor, including but is not necessarily limited to, initiating an action for specific enforcement in a court of competent jurisdiction.

- b. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.
- c. The Neighbor and the Applicant acknowledge and agree that they have negotiated and executed this Agreement of their own free will and with the benefit of advice from legal counsel. Each of the Parties hereto also acknowledges that he, she, or it has read and understands all of the terms and conditions of the Agreement.
- d. If any provision of this Agreement or any application thereof shall be declared to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions hereof and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect.
- e. Except as expressly provided herein, the terms of this Agreement shall continue in full force and effect as an Agreement among the parties and shall be enforceable as permitted by law, including, but not limited to, specific performance, the Parties agreeing that there is no ready means to ascertain the specific amount of money damages for the breach of any obligation hereunder.
- f. Time shall be of the essence with regard to all matters contained within this Agreement.
- g. Modifications, waivers, and consents regarding this Agreement shall be binding only if set forth in writing and signed by all Parties.
- h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or scanned signatures shall constitute originals.

[Remainder of page intentionally blank – signature page follows]

IN WITNESS WHEREOF, on the day and year first above written, this Agreement is executed under seal and delivered according to law.

9 Tree, LLC

Name:
Title:

and

_____/s/ Anne Carson_____

Anne Carson

IN WITNESS WHEREOF, on the day and year first above written, this Agreement is executed under seal and delivered according to law.

9 Tree, LLC


Name: Tarique Jawed
Title:

and

Anne Carson

EXHIBIT A

HPRB Draft Presentation

Dated: June 6, 2022



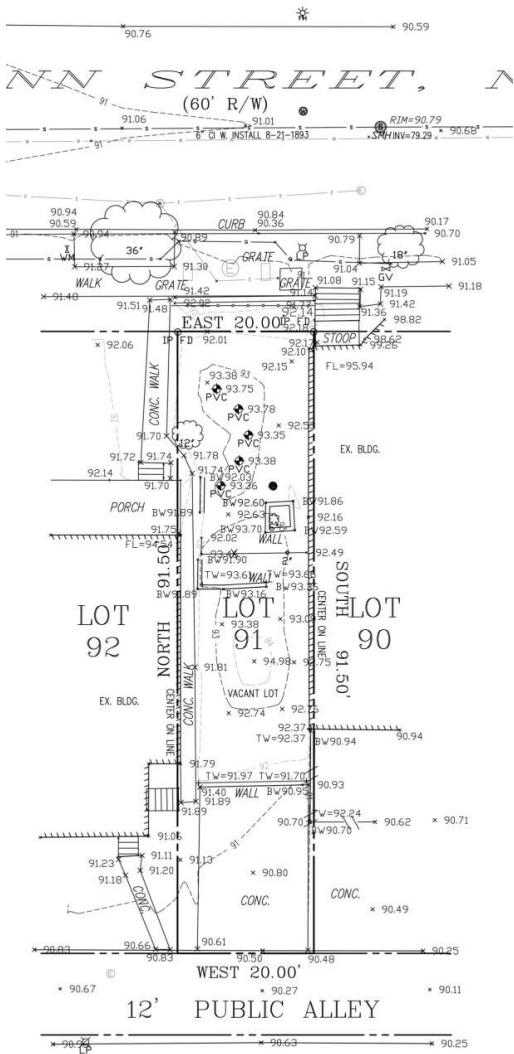
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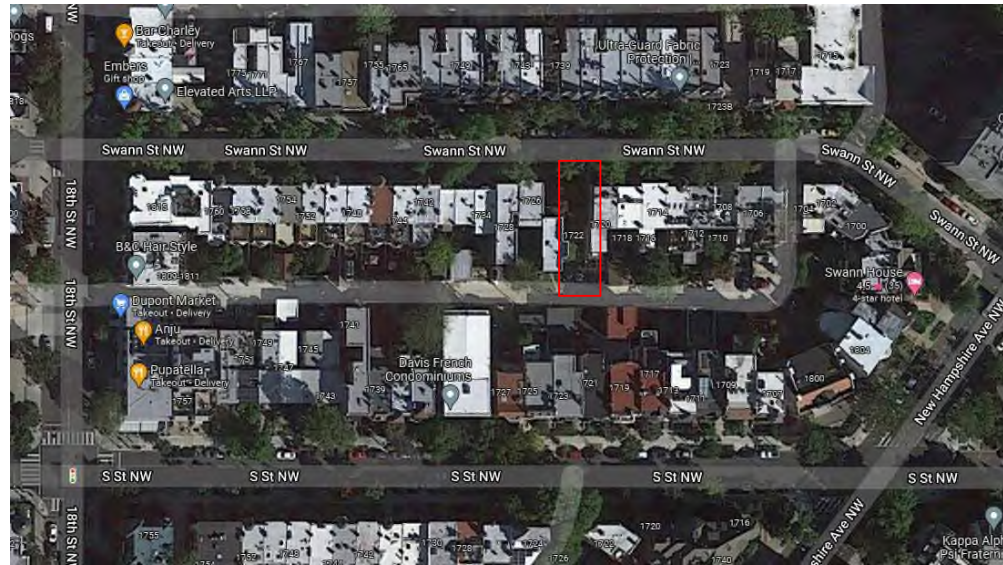
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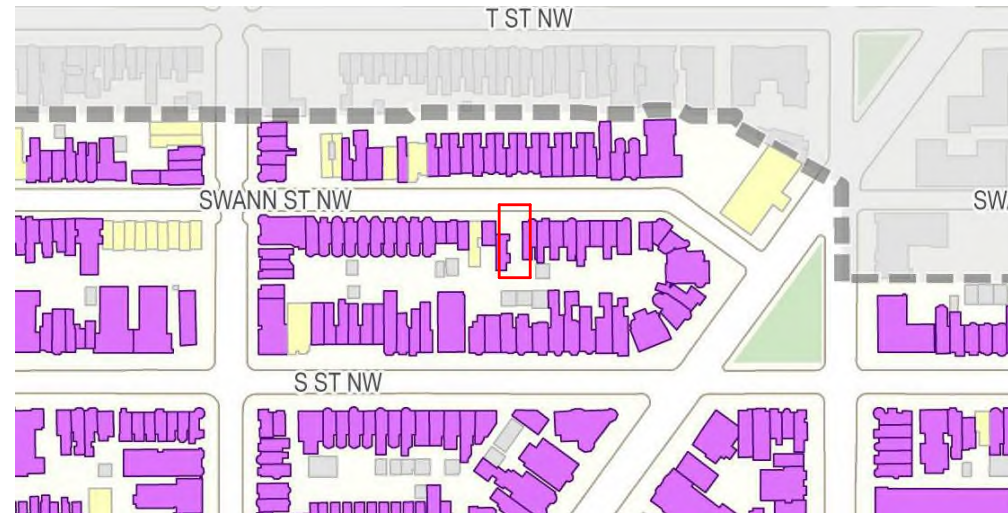
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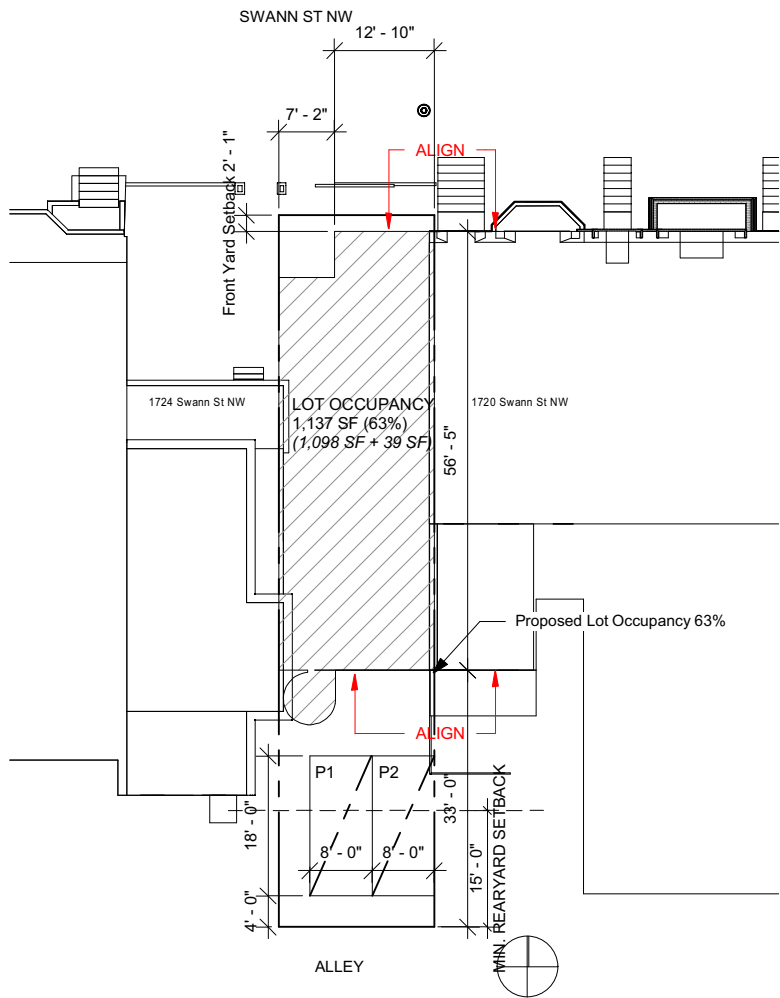
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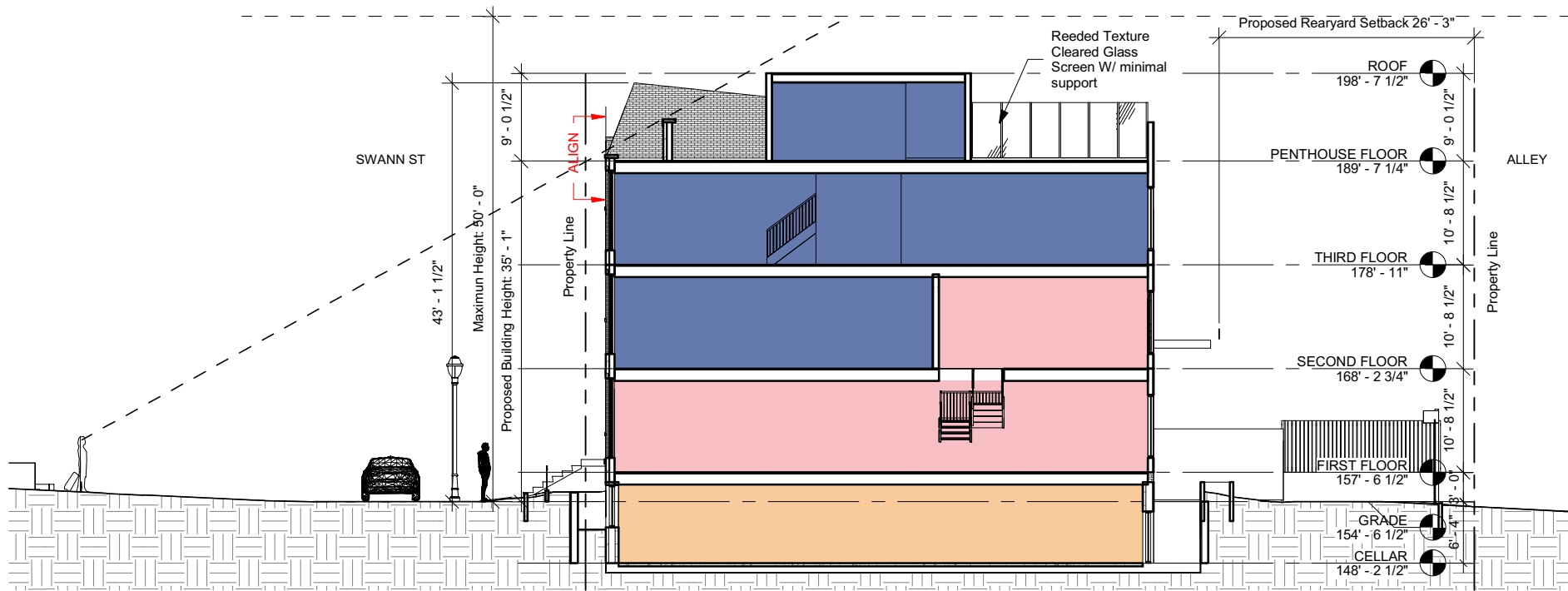
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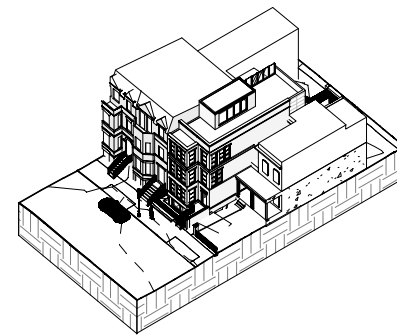
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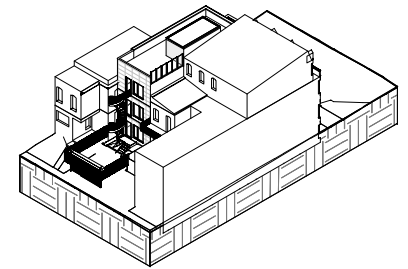
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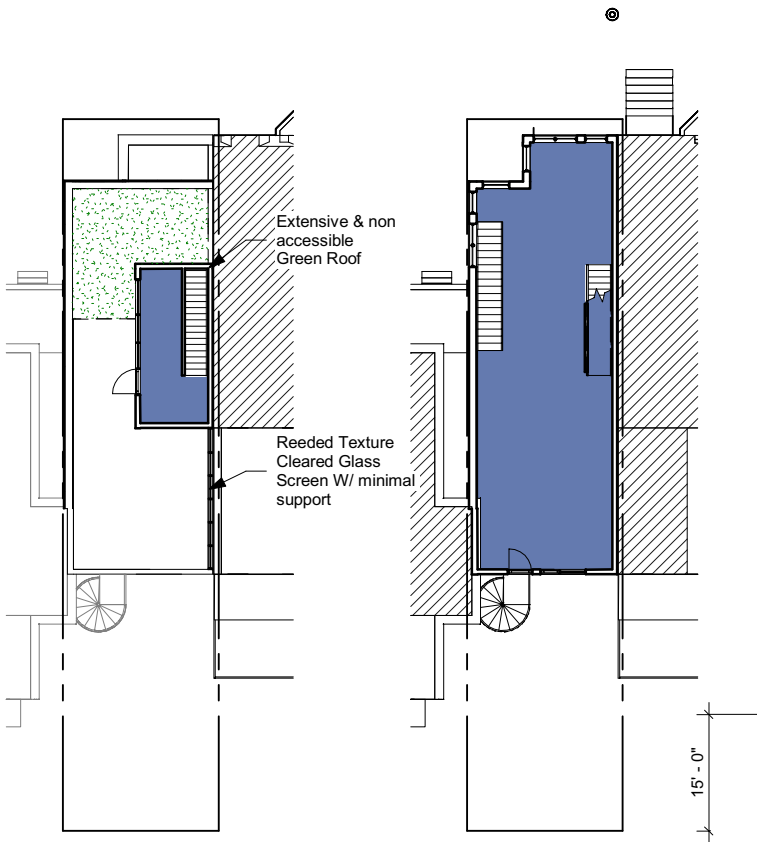


3 | Rear Axon

Section and Axons

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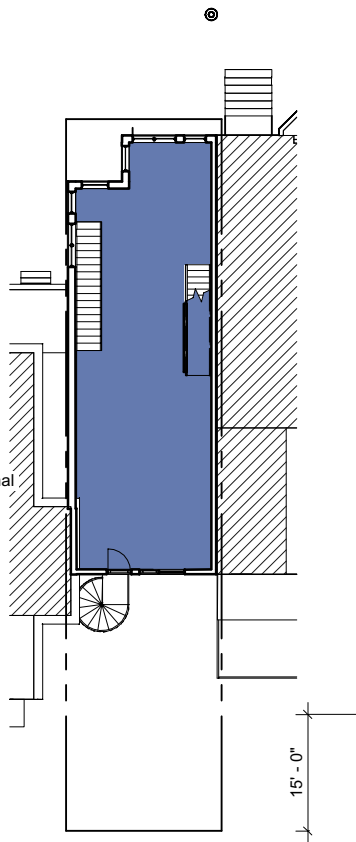
SWANN ST NW



GSF AREA: 215 SF

5 | Penthouse Floor Plan
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SWANN ST NW

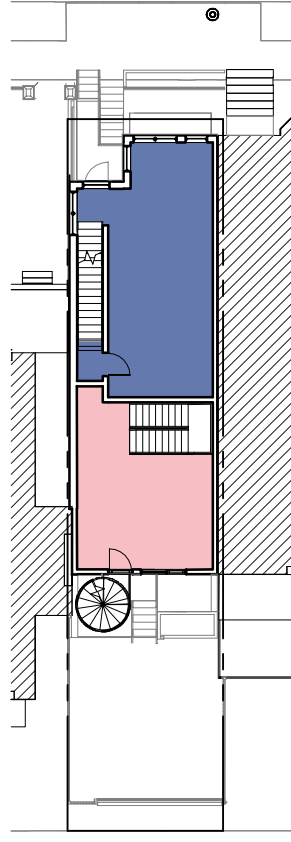


GSF AREA: 1,098 SF

UNIT B: 1,750 SF

4 | Third Floor Plan
1/16" = 1'-0"

SWANN ST NW



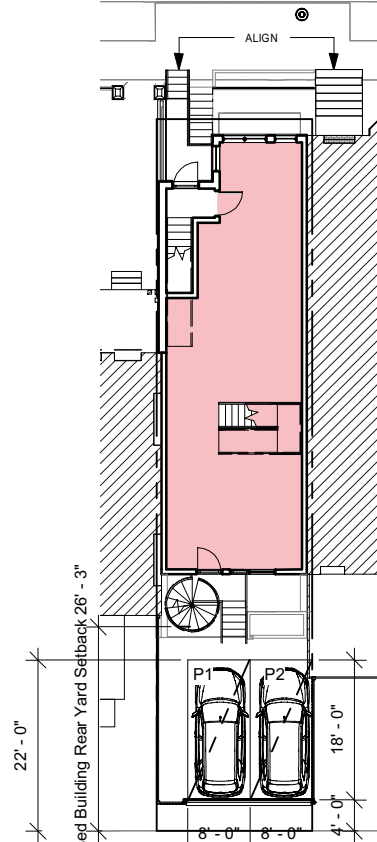
GSF AREA: 1,098 SF

UNIT A: 800 SF

UNIT B

3 | Second Floor Plan
1/16" = 1'-0"

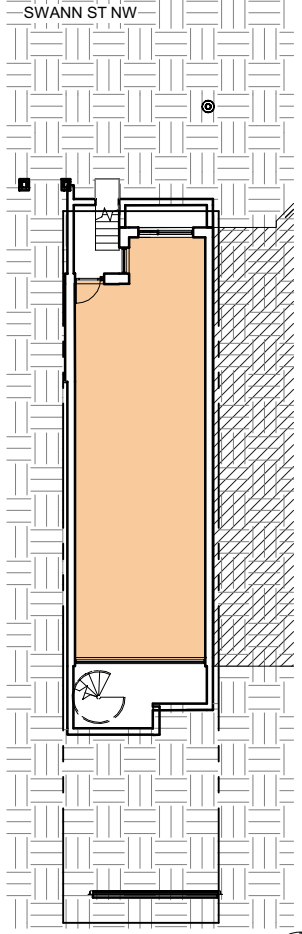
SWANN ST NW



GSF AREA: 1,098 SF

UNIT A: 1,350 SF

2 | First Floor Plan
1/16" = 1'-0"



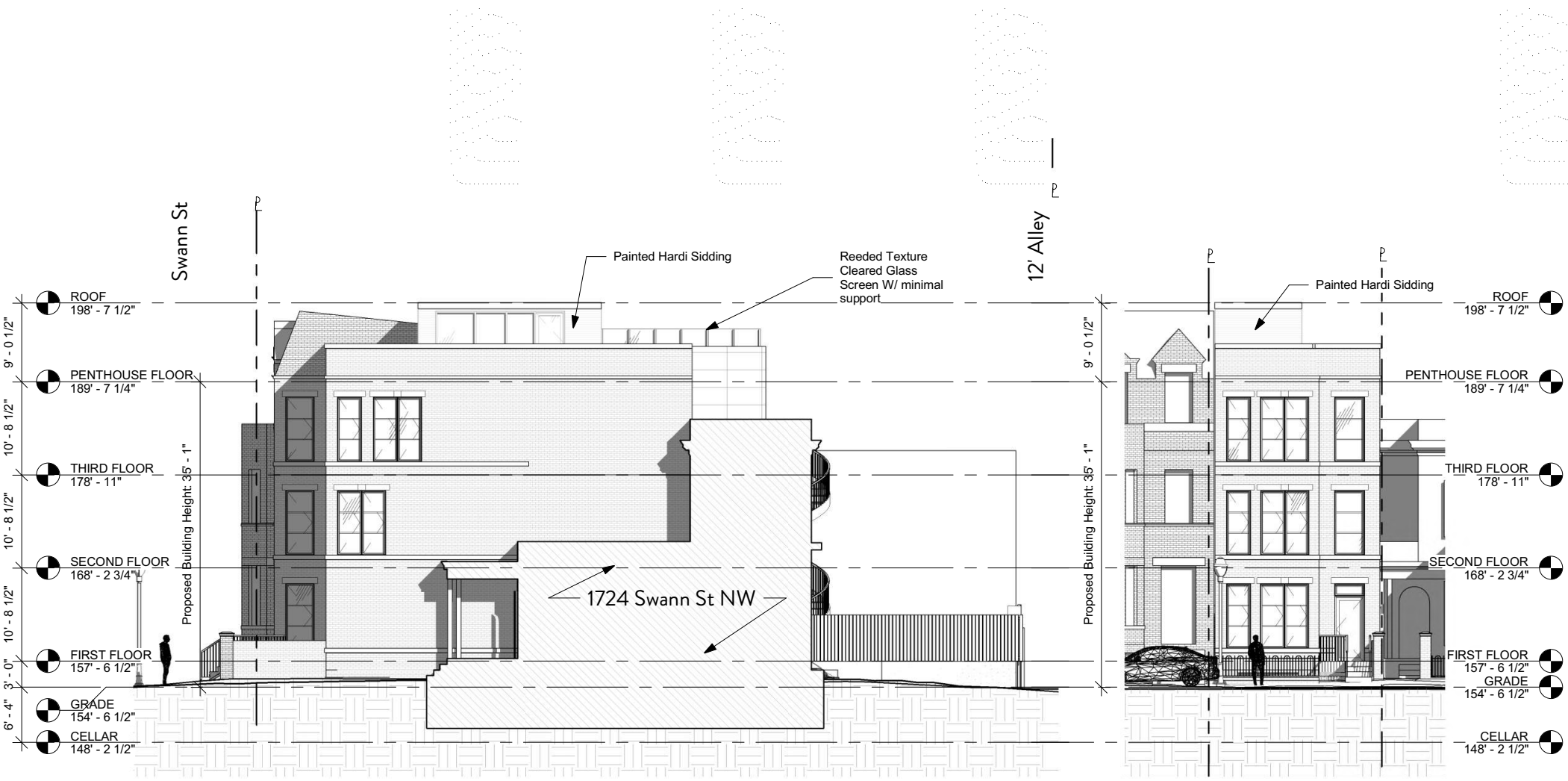
GSF AREA: 1,116 SF

UNIT D: 1,010 SF

1 | Cellar Floor Plan
1/16" = 1'-0"

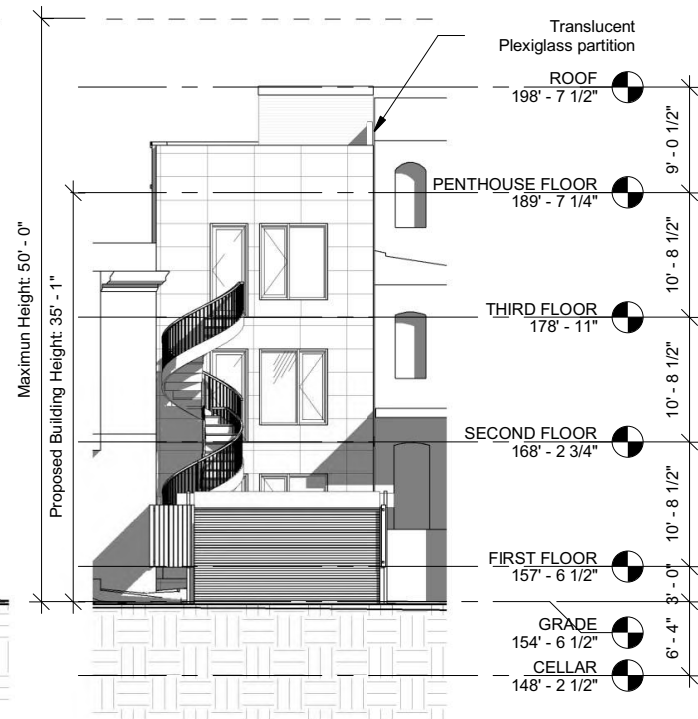
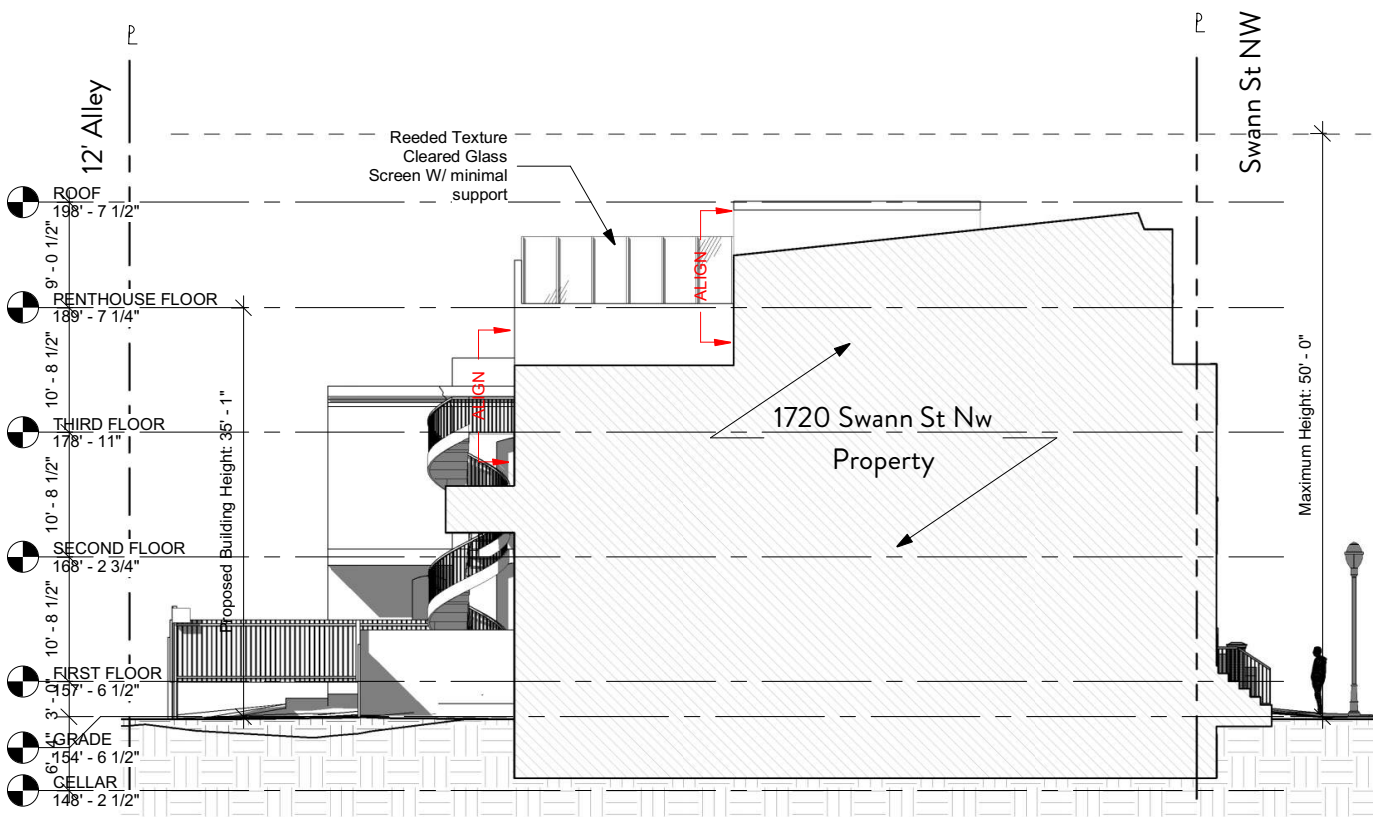
Proposed Floor Plans

1722 SWANN ST



2 | West Elevation
3/32" = 1'-0"

1 | North Elevation
3/32" = 1'-0"



2 | East Elevation
3/32" = 1'-0"

1 | South Elevation
3/32" = 1'-0"



Facade Precedents

1722 SWANN ST

LOTSQUARED **StudioMB**

HPRB Draft Presentation 06/06/2022



Facade Precedents

1722 SWANN ST

LOTSQUARED **StudioMB**

HPRB Draft Presentation 06/06/2022



View 1



View 2

Previously Submitted Views

1722 SWANN ST

LOTSQUARED **StudioMB**

HPRB Draft Presentation 06/06/2022



View 1



View 2



View 3

Proposed - Bird View

1722 SWANN ST

EXHIBIT B

CONSTRUCTION MANAGEMENT

Construction activities in connection with the proposed development of 1722 Swann Street, NW (the “**Property**”), subject to the approval of the plans set forth in BZA Application Number 20718 (the “**Project**”), will be conducted in accordance with the following terms:

1. **Communication.** 9 Tree, LLC (the “**Applicant**”) shall designate a representative (the “**Representative**”) to be the primary point of contact with Anne Carson (the “**Neighbor**”) during the period of construction of the Project. During all business hours and at any time construction activity is occurring on the Property in relation to the Project, the Representative or his/her designee shall be available on-site or by telephone to receive communications from the Neighbor. In addition, a name and telephone number of a person designated by Applicant to contact in case of emergency during hours in which no construction activity is occurring shall be readily available to the Neighbor. The Representative and his/her designee shall be able to answer questions and receive comments about the Project, address any concerns throughout the construction process, and have authority to remedy promptly violations of the construction management terms detailed herein. Specifically, the Representative shall: (i) monitor activity during construction hours and post-construction cleanup measures; (ii) provide prior notice to the Neighbor of any anticipated public space work (limited street or sidewalk closures) that may impact pedestrian or vehicular circulation around the Property or Neighbor’s property; (iii) receive notice of and respond as soon as possible to any reported violations of these construction management terms; and (iv) act to remedy any violation as soon as possible.
2. **Construction.** The Applicant shall require that all of its personnel and vendors, including supply and service vendors, comply with all applicable District of Columbia Municipal Regulations pertaining to hours of work, noise, dirt, trash, and public health and safety and agrees that the following covenants shall be binding on Applicant, its general contractor, and all subcontractors undertaking the Project:
 - a. **Permits.** Prior to the period of construction, Applicant shall secure all permits that are required to complete the Project. During the period of construction, copies of all plans and permits shall be kept on-site as required under the DC Construction Code.
 - b. **Site Management.** The Applicant shall locate toilets, materials, and equipment on the Property as far away from the Neighbor’s property as is reasonably practicable and shall take commercially reasonable steps so as to avoid any adverse effects on the Neighbor. Any temporary lighting that may be installed on the Property shall be directed away from the Neighbor, and the Applicant agrees that there will be no outward facing lights during construction. Applicant shall provide Neighbor with advance notice of all demolition work. All demolition

work shall occur within the Property and all demolition materials or any other debris will not be permitted on Neighbor's or on public property. All construction equipment and materials will be stored and/or maintained on the Property.

- c. **Cleanliness.** Applicant shall remove rubbish and construction debris continuously during the construction period during the normal construction workday. No construction related trash or materials will be deposited in private trash cans belonging to the Neighbors. In addition, Applicant shall monitor and clean the area surrounding the construction site as required to ensure cleanliness. Applicant, as necessary, shall undertake a program of pest control to ensure that no increase in pest activity occurs during the construction period and that no pest activity adversely affects the Neighbor. All excavation or back fill trucks shall be covered before proceeding from the Property onto public streets. Dust and debris shall be removed from the Property on an as needed basis, and Applicant shall employ dust control measures during any demolition work.
 - d. **Noise.** Applicant will require any contractors to abide by District noise regulations for construction. Applicant shall make reasonable efforts to limit work that is likely to disturb the residents of the neighborhood adjacent to the Neighbor's property due to noise to weekdays. Applicant shall notify the Neighbor in writing of potentially noisy, disruptive, or hazardous events, such as blasting or pile driving at least one (1) week prior to the start of such events.
 - e. **Work Hours.** The normal exterior construction work week shall be Monday through Saturday from 7:00 a.m. until 7:00 p.m. except as expressly required or permitted by a District agency or in the event of an emergency. Heavy machinery use that generates sound levels in excess of 90 decibels (90 db) and any construction related vehicles weighing over five tons (i.e., a box truck) coming to and from the Property must not begin before 7:00 AM and must end at 5:00 PM. No exterior construction activity shall occur on Sundays or federal holidays. All trucks for delivery of materials, construction or otherwise, shall arrive, depart, and operate on the Property only during the foregoing hours. There shall be no queuing of construction related vehicles in front of the Neighbor's property and there shall be no queuing of such vehicles on the adjacent streets prior to the stated work hours. Applicant shall make good faith efforts to limit work and noise that could disturb the Neighbor to weekdays, except where limitations on work during the week require work on Saturdays.
3. **Contractors and Subcontractors.** Applicant shall require that all contractors and subcontractors be contractually required to follow the terms of, and comply with, the policies set forth in this Construction Management Plan. Applicant shall also require that all contractors and subcontractors use only licensed vehicles and comply with all DC traffic laws and regulations.
 4. **Traffic, Loading, and Parking.** Specific truck queuing and routing shall be agreed upon with the District Department of Transportation. Applicant shall require all

vehicle operators entering the Property abide by the D.C. “Motor Vehicle Excessive Idling Act” of 1984, as amended (1997), which allows idling of up to three minutes while a motor vehicle is parked, stopped or standing, except, *inter alia*, “to operate for 15 minutes air conditioning equipment on buses with an occupancy of twelve or more persons” or “to operate heating equipment when the local temperature is thirty-two degrees Fahrenheit or below.” A flagperson shall be assigned to expedite movement of construction related traffic, if any consistent traffic backups occur on any of the public streets adjacent to the Property. Applicant will ensure that vehicles will not double park on streets surrounding the site, shall keep one clear lane of traffic open at all times, and shall otherwise obey all posted parking, stopping, and standing restrictions on streets surrounding the site. All contracts with contractors and service providers shall include a provision that requires all vehicles coming to the site (including any subcontractors) to refrain from double parking, keep one clear lane of traffic open at all times, and otherwise obey all posted parking, stopping, and standing restrictions on streets surrounding the Property. Parking for construction workers will be provided on-site, off-site, and in the curb lane immediately adjacent to the Property frontage, provided Applicant shall not permit construction parking immediately in front of the Neighbor’s property.

5. **Utilities.** In connection with the work associated with the Project, proper provisions shall be made at the expense of the Applicant to ensure that electric, water, sewer, cable, and all other utilities serving the Neighbor’s property are not adversely affected at any time.
6. **Drainage.** Consistent with the requirements of D.C. law and municipal regulations (DCMR, Title 21), Applicant will develop and implement a plan for effective storm water management. Applicant and its contractors shall work with the Department of Consumer and Regulatory Affairs as required to maintain temporary storm water management/sediment erosion control systems throughout the Project’s construction until such time as the permanent facilities are constructed, approved, and functioning so that there shall be no adverse water impacts on the Neighbor’s property.
7. **Underpinning.** The Applicant shall provide at least one (1) week’s notice to the Neighbor prior to commencement of any underpinning work. The Applicant will coordinate with Neighbor to allow for one or inspections by her engineer during the underpinning work, at times and dates to be mutually agreed upon. The Applicant shall furnish a copy to the Neighbor of the third-party underpinning report that must be submitted to the Department of Consumer and Regulatory Affairs as required to maintain temporary storm water management/sediment erosion control systems throughout the Project’s construction until such time as the permanent facilities are constructed, approved, and functioning so that there shall be no adverse water impacts on the Neighbor’s property.
8. **Pre-Construction Survey.** Prior to commencement of any underpinning and excavation work on the Property, Applicant shall require its General Contractor, pursuant to Construction License (as hereinafter defined), undertake a survey (the

“Pre-Construction Survey”) of the Neighbor’s property and all improvements thereon. The Survey must be date stamped and performed by a 3rd party surveyor with a minimum of ten (10) years of experience conducting such Survey (“Surveyor”). The Pre-Construction Survey shall include photographic evidence of the condition of the Neighbor’s property and is intended to provide the parties a reference point from which to determine the effect, if any, that excavation and construction activity on the Property had on the Neighbor’s property. The Neighbor is entitled to provide evidence of the existing exterior or interior condition of her property, which shall be included in the Survey. The Pre-Construction Survey shall be performed at the sole cost and expense of Applicant and its General Contractor and a copy of same shall be provided to the Neighbor. A pre-construction meeting will also be held on site with the Neighbor and her engineer.

9. **Construction monitoring.** A 3rd party inspector shall provide monitoring services throughout the construction (periodically as outlined in the agreement for the services). If significant movement is detected, there should also be a stabilization plan in place as part of the permit documents that is put into action. Copies of all 3rd party inspector reports will be provided to the Neighbor within three (3) days. In addition, should issues arise during the construction process that will impact the Neighbor or her property, Applicant shall coordinate a time to permit the Neighbor or her engineer to meet with the Applicant on site and inspect the Project.
10. **Post-Construction Survey.** Prior to the issuance of the certificates of occupancy required for the initial full occupancy of the Project (the “C of O”), Applicant shall require its General Contractor, pursuant to Construction License, to undertake a survey (the “Post-Construction Survey”) of the Neighbor’s property and all improvements thereon. The Survey must be date stamped and performed by a 3rd party surveyor with a minimum of ten (10) years of experience conducting such Survey (“Surveyor”). The Post-Construction Survey shall include photographic evidence of the condition of the Neighbor’s property and is intended to provide the parties a reference point from which to determine the effect, if any, that excavation and construction activity on the Property had on the Neighbor’s property. The Neighbor is entitled to provide evidence of the exterior or interior condition of property, which shall be included in the Survey. The Post-Construction Survey shall be performed at the sole cost and expense of Applicant and its General Contractor and a copy of same shall be promptly provided to the Neighbor.
11. **Responsibility for Damage to the Neighbor.** Applicant shall repair, at its own expense and as promptly as reasonably possible, the full cost of any damage to the Neighbor’s property including any improvements thereon, which is caused by the construction activity. Applicant will repair and/or replace in kind any plant or tree located on the Neighbor’s property sustaining damage as a result of the construction.
12. **Insurance.** During all periods in which work on the Project is being performed, Applicant shall carry and maintain, and cause its general contractor and subcontractors to carry and maintain, builder’s risk insurance (or such similar successor form of

insurance as is then currently available) insuring against injury to persons or damage to Neighbor's property arising out of or in connection with in any way the Project. No less than fifteen (15) days prior to the start of construction, Applicant will provide the Neighbor with a certificate(s) of insurance identifying the Neighbor as an additional insured party. In the event Applicant fails to secure and/or maintain in full force and effect the insurance covering any loss described in this paragraph, the Neighbor shall notify Applicant in writing of such failure and allow Applicant thirty (30) days to cure (the "Cure Period") such defect.

13. Nothing in this agreement shall abrogate or limit in any way any of Neighbor's rights under DC law, including but not limited to, Neighbor's right to receive a copy of the plans submitted to DCRA and to make objections thereto as provided by law.
14. **Expiration; Termination.** Except as otherwise provided herein, this Construction Management Plan shall terminate upon ninety (90) days following Applicant's receipt of the C of O. Applicant shall have no obligation to commence work on the Project and in the event Applicant intends to abandon its plans for the Project may provide notice at any time to the Neighbor and upon such notice these construction management terms shall have no further force or effect.

Tab C

Motion for Untimely Filings



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



FORM 150 – MOTION FORM

**THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.**

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:

Motion of:

Applicant
 Petitioner
 Appellant
 Party
 Intervenor
 Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

allow for the untimely filing of revised plans and Abutter Agreement

Points and Authorities:

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

- Yes, consent was obtained by all parties
 Consent was obtained by some, but not all parties
 No attempt was made
 Despite diligent efforts consent could not be obtained

Further Explanation: _____

CERTIFICATE OF SERVICE

I hereby certify that on this day of ,

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:
 Mailed letter
 Hand delivery
 E-Mail
 Other _____

Signature: 

Print Name: **G. Evan Pritchard**

Address: **Cozen O'Connor, 1200 19th Street, NW, Washington, DC 20036**

Phone No.: **703-304-0430** E-Mail: **epritchard@cozen.com**