

# TAB A

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



**Application No. 19169 of 311 K Street LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR § 3103.2, for variances from the rear yard requirements under § 774.1, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C District at premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829).

**HEARING DATE:** February 9, 2016  
**DECISION DATE:** February 23, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 25 (revised).)

The Board of Zoning Adjustment ("Board" or "BZA") 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") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC submitted a report in this case, indicating that at a duly called and properly noticed public meeting on January 5, 2016, at which a quorum was present, the ANC voted 5-1-1 to support the application, as amended. (Exhibit 26.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application and testified in support at the hearing. (Exhibit 30.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had an objection to the requested loading relief. (Exhibit 31.). At the February 9, 2016 public hearing, the Board scheduled the case for decision but requested that the Applicant continue to

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<sup>1</sup> The Applicant amended its application to add a request for variance relief from the loading requirements under § 2201.1 and submitted a revised self-certification. (Exhibit 25.) The caption has been amended accordingly.

**BZA APPLICATION NO. 19169**  
**PAGE NO. 2**

work with DDOT on the issues regarding loading and gave leave for DDOT to submit a supplemental report. Subsequently, DDOT submitted a supplemental report, dated February 16, 2016, that stated that it had no objection to the requested relief with conditions. (Exhibit 42.) The Board, in granting approval to the application, adopted DDOT's conditions in this order.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for area variances from the rear yard requirements under § 774.1, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR §§ 774.1, 2101.1, and 2201.1, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 41 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall limit the financial incentive as part of the TDM plan to bikeshare and carshare memberships only.
2. The Applicant shall provide a minimum of eight short-term bicycle spaces.
3. The Applicant shall amend the Loading Management Plan to require any delivery using a truck 20 feet in length or shorter to use the on-site delivery space.

**VOTE:**       **3-0-2** (Frederick L. Hill, Robert E. Miller (by absentee ballot), and Jeffrey L. Hinkle (by absentee ballot), to APPROVE; Marnique Y. Heath not participating or voting; one Board seat vacant.)

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

**ATTESTED BY:**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** February 29, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.

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,

**BZA APPLICATION NO. 19169**

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RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**TAB B**

317 K STREET, NW  
Square: 526 Lots: 20, 21, 804, 805, 824, 829

LIST OF DRAWINGS:

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317 K STREET NW

K St. NW  
Washington, DC 20024  
Square: 526 Lot No: 20-21, 804-805, 824-825, 829

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COVER SHEET

A-00

02-11-2016

ZONING REQUIREMENTS	REQUIRED / ALLOWED		PROVIDED	
Zoning District	C-2-C / DD (Downtown Development) / DD-HPA (Housing Priority Area A)		C-2-C / DD (Downtown Development) / DD-HPA (Housing Priority Area A)	
Lot Area	10,767		10,767	
FAR Total Hotel / Residential (Max. for Preferred uses 11)	11.0	117,997	11.0	
	Inclusive FAR Breakout*			
Non-Residential FAR (Hotel)	3.5	37,685	3.5	
Off Site CLD Residential (Hotel)	3.5	37,685	3.5	
Financial Contribution to Affordable Housing (Hotel)	1.0	10,767	1.0	
Subtotal (Hotel)	8.0	86,136	8.0	
Bonus Financial Contribution to Affordable Housing or TDRs (Hotel)	0.5	5,384	0.5	
	8.5	91,520	8.5	91,368
Residential FAR Onsite	2.5	26,477	2.5	26,477
TOTAL FAR	11.0	117,997	11.0	117,845
Lot Occupancy				
Ground Floor	100%	10,767	100%	10,767
Typical Hotel Floor (2-11)	100%	10,767	78%	8,407
Typical Residential Floor (12-14)	90%	9,690	77%	8,338
Height	130'-0"		130'-0"	
Closed Court at Hotel Floors 1-11 (Height of Court- 100'-0")	Hotel width 3" per foot but not less than 12'-0". Required width= 25'-0" Minimum area- Not less than 250 SF and not less than twice the square width of required court (25x25) x 2= 1,250 SF		35'-6" x 54'-4" 2,054 SF (Irregular shape)	
Closed Court at Residential Floors 12-14 (Height of Court- 30'-0")	Residential width 4" per foot but not less than 15'-0". Required width= 15'-0" Minimum area- Not less than 350 SF and not less than twice the square width of required court (15x15) x 2= 450 SF		35'-6" x 54'-4" 2,054 SF (Irregular shape)	
Rear Yard Setback	15'-0"		None provided Relief Needed	
Side Yard Setback	None required.		None	
Penthouse Height	18'-6"		18'-6"	
Hotel Parking (Based on floors 2-11 hotel / 200 rooms and 2,040 hotel public space/bar)	1 space per 2 rooms plus 1 for each 150 SF of floor area for largest function room. 100 + 14= 114		38 Provided Relief Needed for 76	
Residential Parking (Based on floors 12-14 as residential, 30 units total)	1 for each 4 dwelling units= 8 spaces		8 spaces	
Total Parking (Residential + Hotel)	122 spaces		46 Spaces	
Hotel Loading Berth	1 @ 30'-0" Deep		None provided Relief Needed	
Hotel Loading Platform	1 @ 100 SF		None provided Relief Needed	
Hotel Service/Delivery Loading Space	1 @ 20'-0" Deep		1 @ 20'-0" Deep	
Residential Loading Berth, Platform, Space	None- Less than 50 units		None	
Hotel Bikes	None required.		None	
Residential Bikes	1 space per 3 units. Required 10		34	
GAR	Approx. 30% site area to be vegetated.		Approx. 30% site area to be vegetated.	

\* Applicant requests flexibility. Breakdown is a preliminary option to illustrate how maximum FAR could be reached on the property.

FAR and GSF		HOTEL		RESIDENTIAL		FAR	CONSTRUCTION
Floors	Parking Not FAR	Total Sleeping Rooms	Total Area Hotel FAR	Total Residential Units	Total Area Residential FAR	TOTAL	TOTAL
Penthouse							
Fourteen				10	8,338	8,338	8,338
Thirteen				10	8,338	8,338	8,338
Twelve				10	8,338	8,338	8,338
Eleventh		20	8,325		82	8,407	8,407
Tenth		20	8,325		82	8,407	8,407
Ninth		20	8,325		82	8,407	8,407
Eighth		20	8,325		82	8,407	8,407
Seventh		20	8,325		82	8,407	8,407
Sixth		20	8,325		82	8,407	8,407
Fifth		20	8,325		82	8,407	8,407
Fourth		20	8,325		82	8,407	8,407
Third		20	8,325		82	8,407	8,407
Second		20	8,325		82	8,407	8,407
First			8,118		643	8,761	8,761
Garage 1	10,767						10,767
Garage 2	10,767						10,767
Total	21,534	200	91,368	30	26,477	117,845	139,379

## 317 K STREET NW

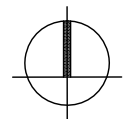
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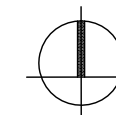
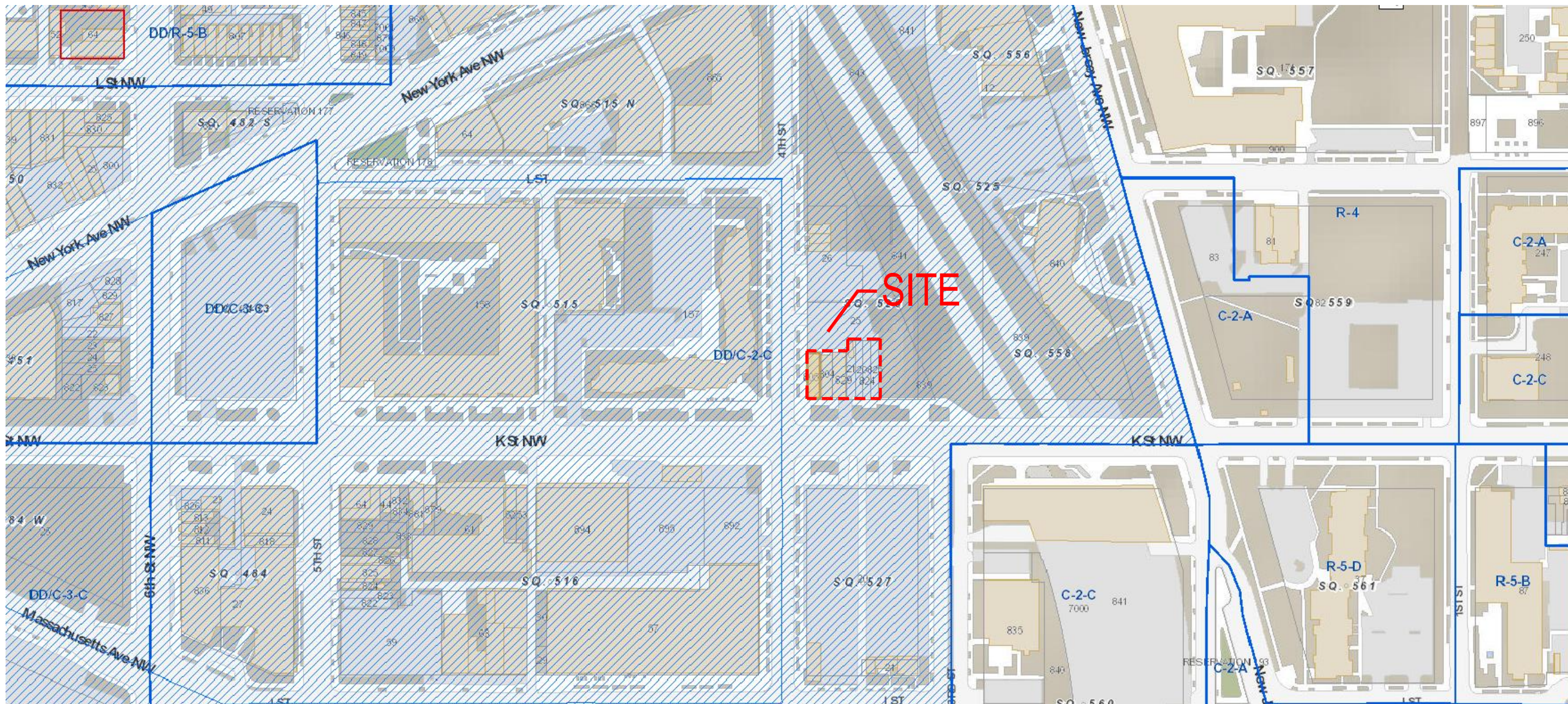
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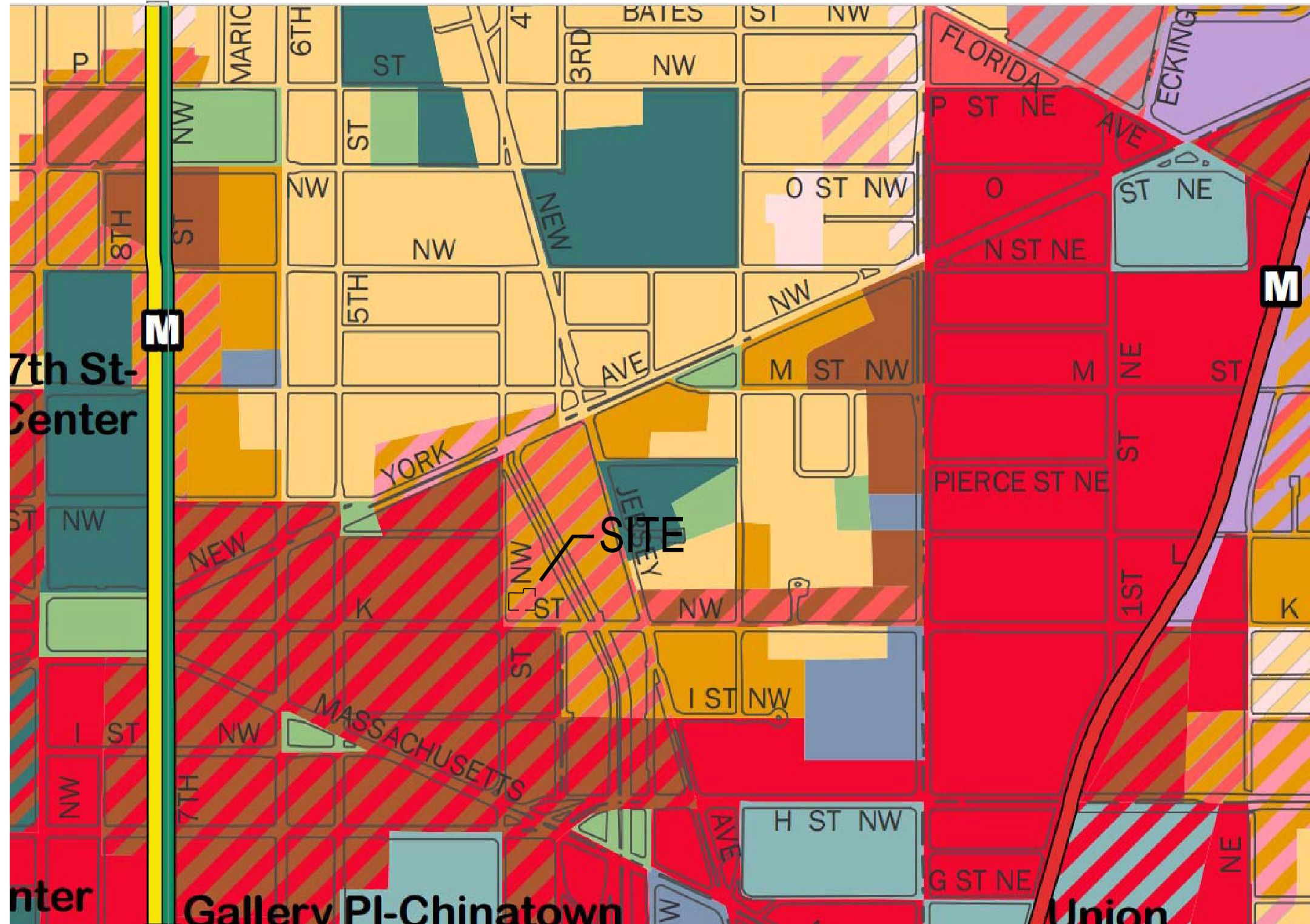
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KEYPLAN



1



2



3

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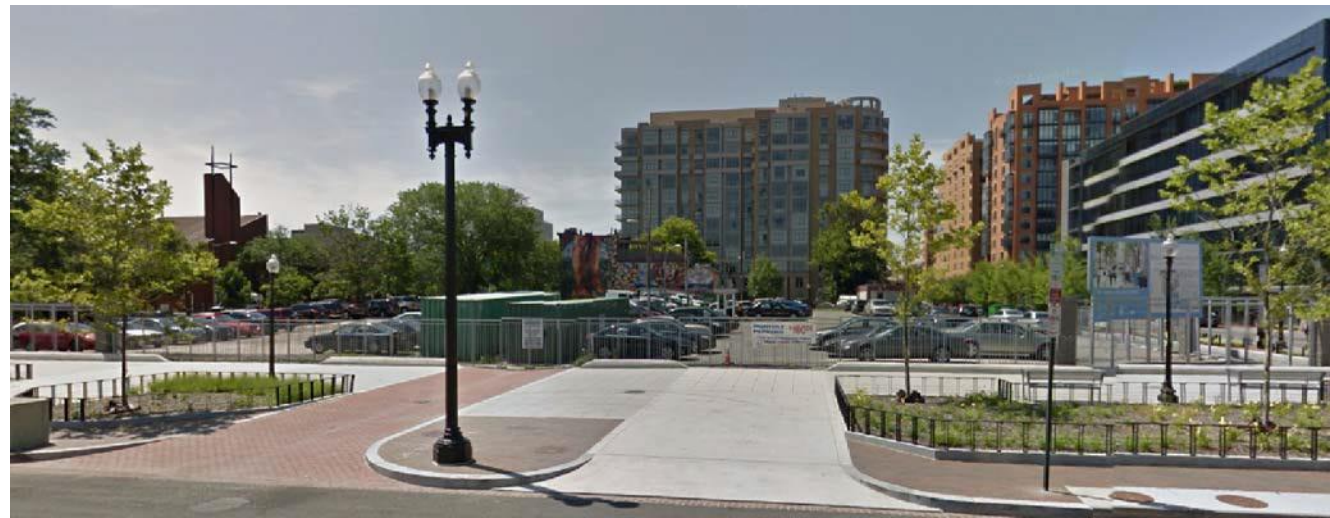
KEYPLAN



4



5



6

### 317 K STREET NW

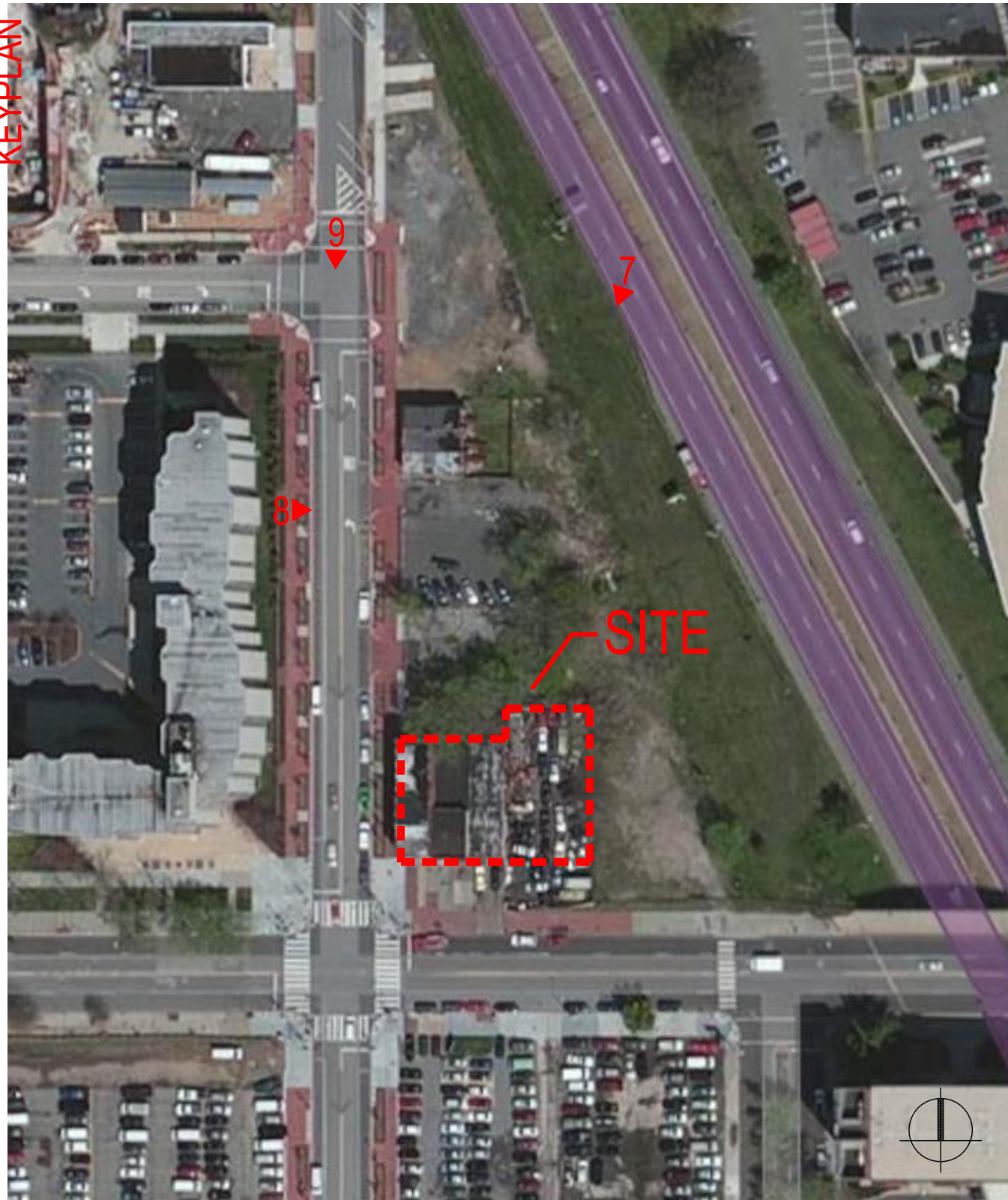
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KEYPLAN



7



8



9

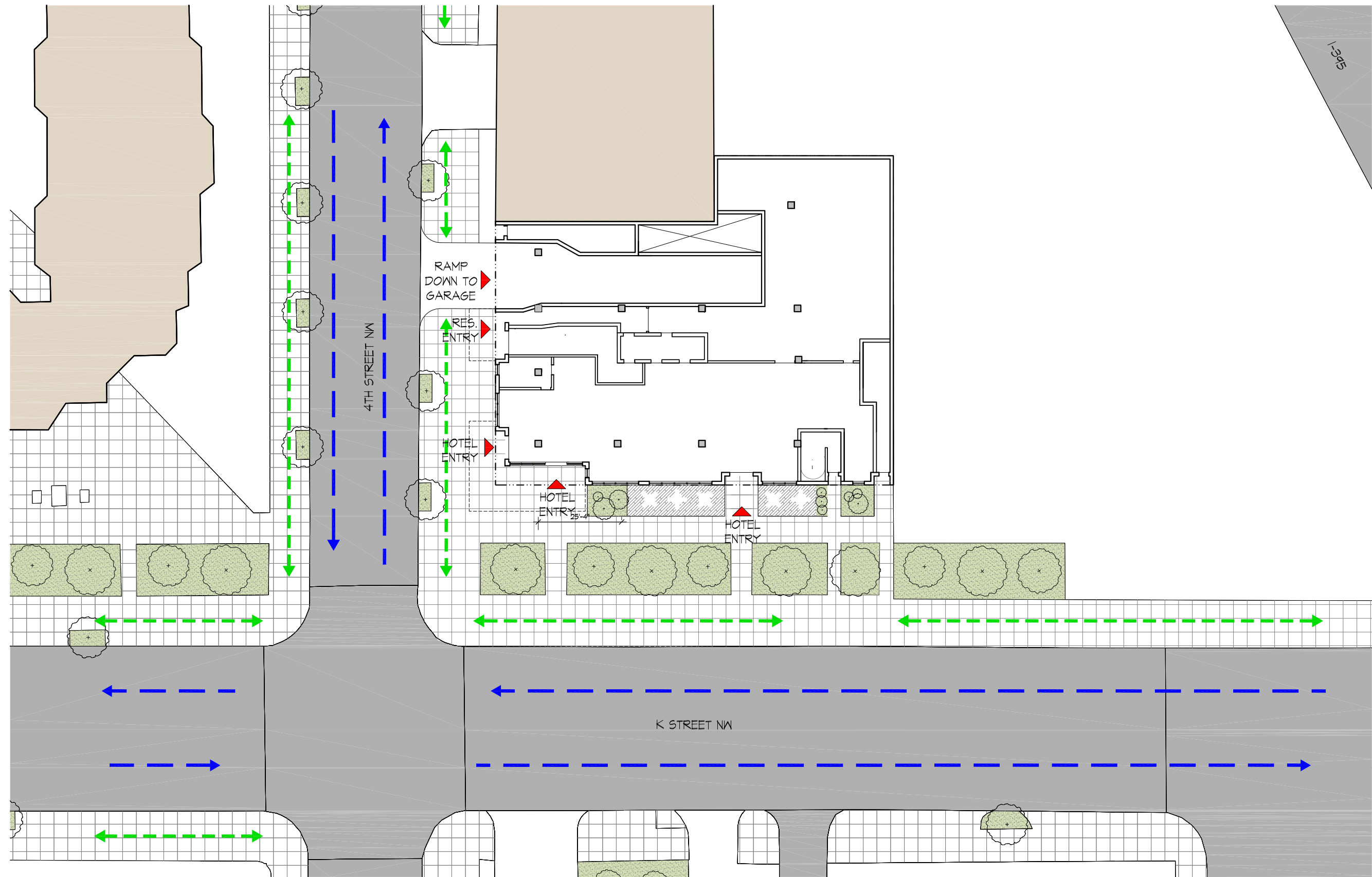
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1 SITE PLAN  
SCALE: 1" = 30'-0"

← - - - - - → 2 WAY STREET   
 ← - - - - - → 1 WAY STREET   
 ← - - - - - → PEDESTRIAN CIRCULATION

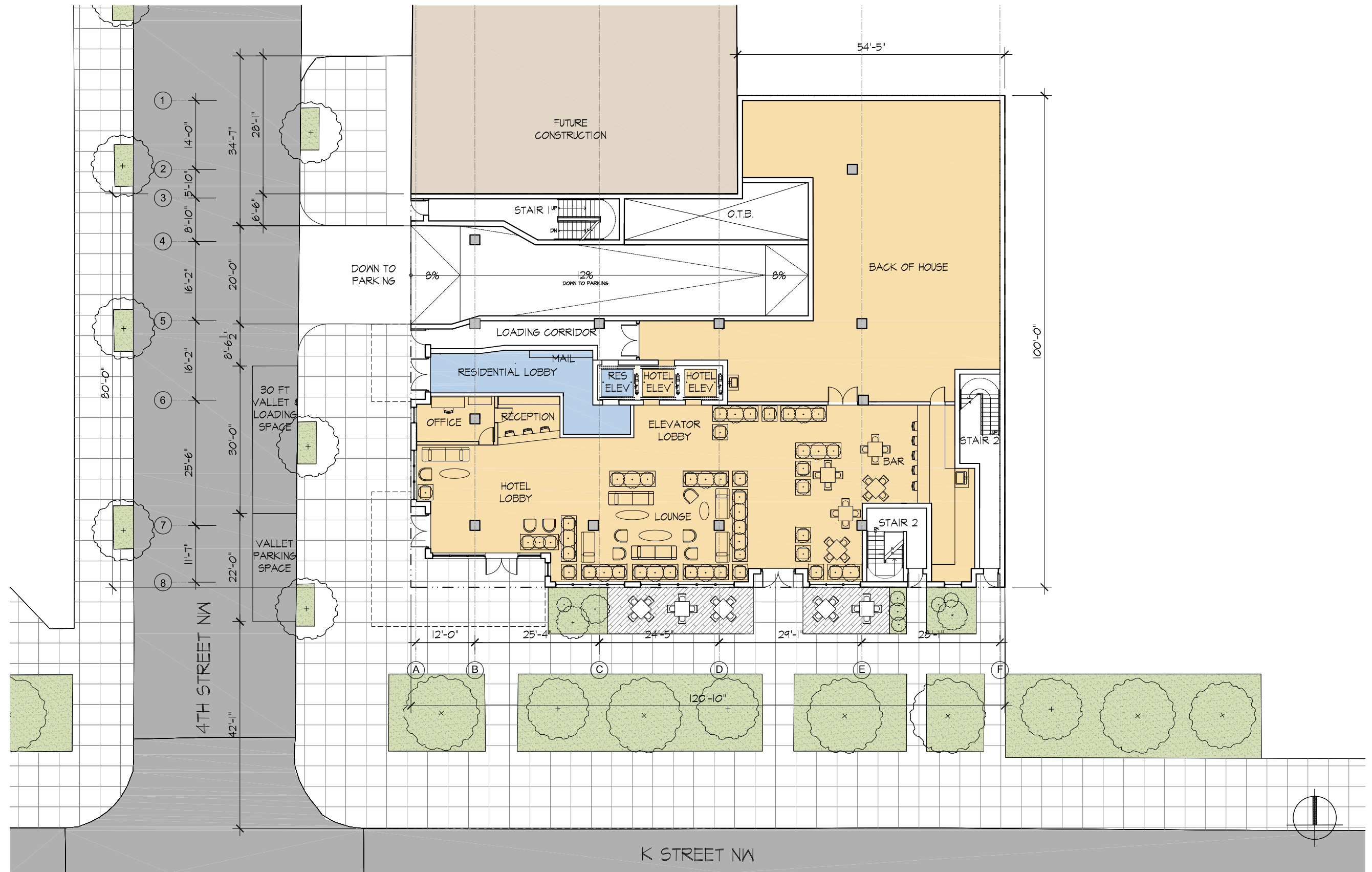
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1 GROUND FLOOR PLAN  
SCALE: 1" = 20'-0"

### 317 K STREET NW

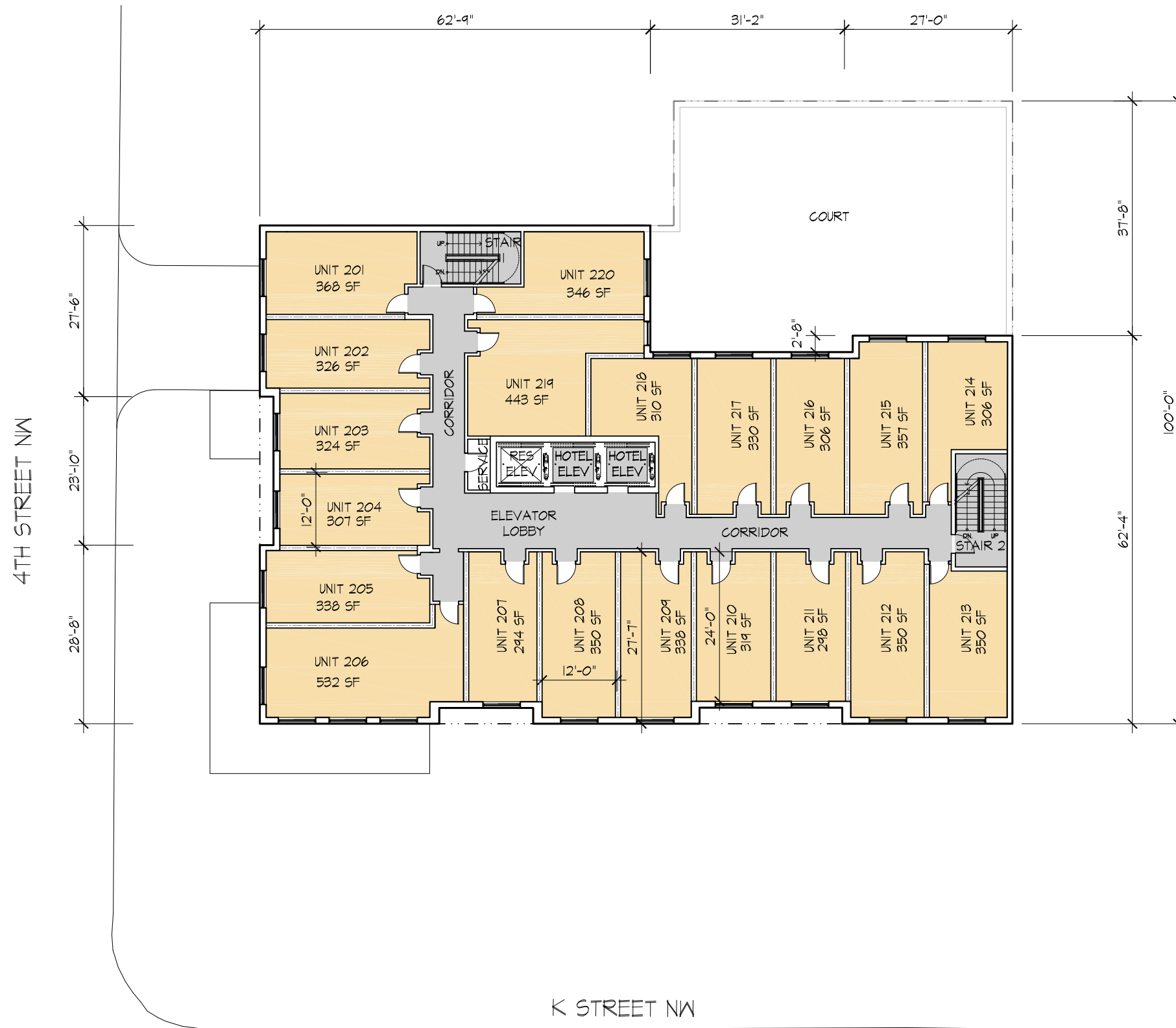
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1 TYPICAL HOTEL PLAN (2-11)  
SCALE: 1" = 20'-0"

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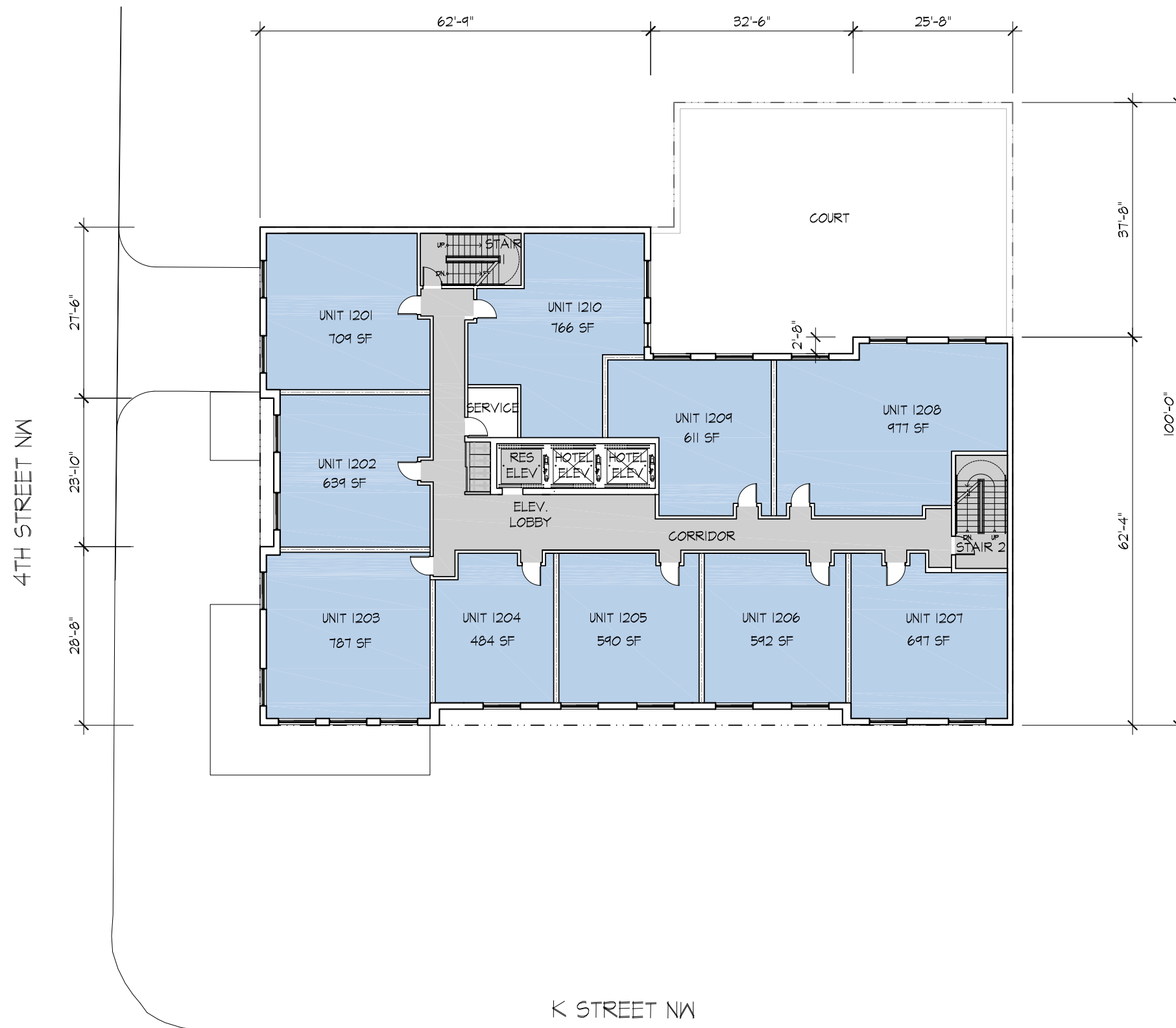


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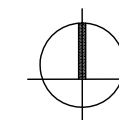
TYPICAL HOTEL FLOOR PLAN (2-11)

A-10

02-11-2016



1 TYPICAL RESIDENTIAL PLAN (12-14)  
SCALE: 1" = 20'-0"



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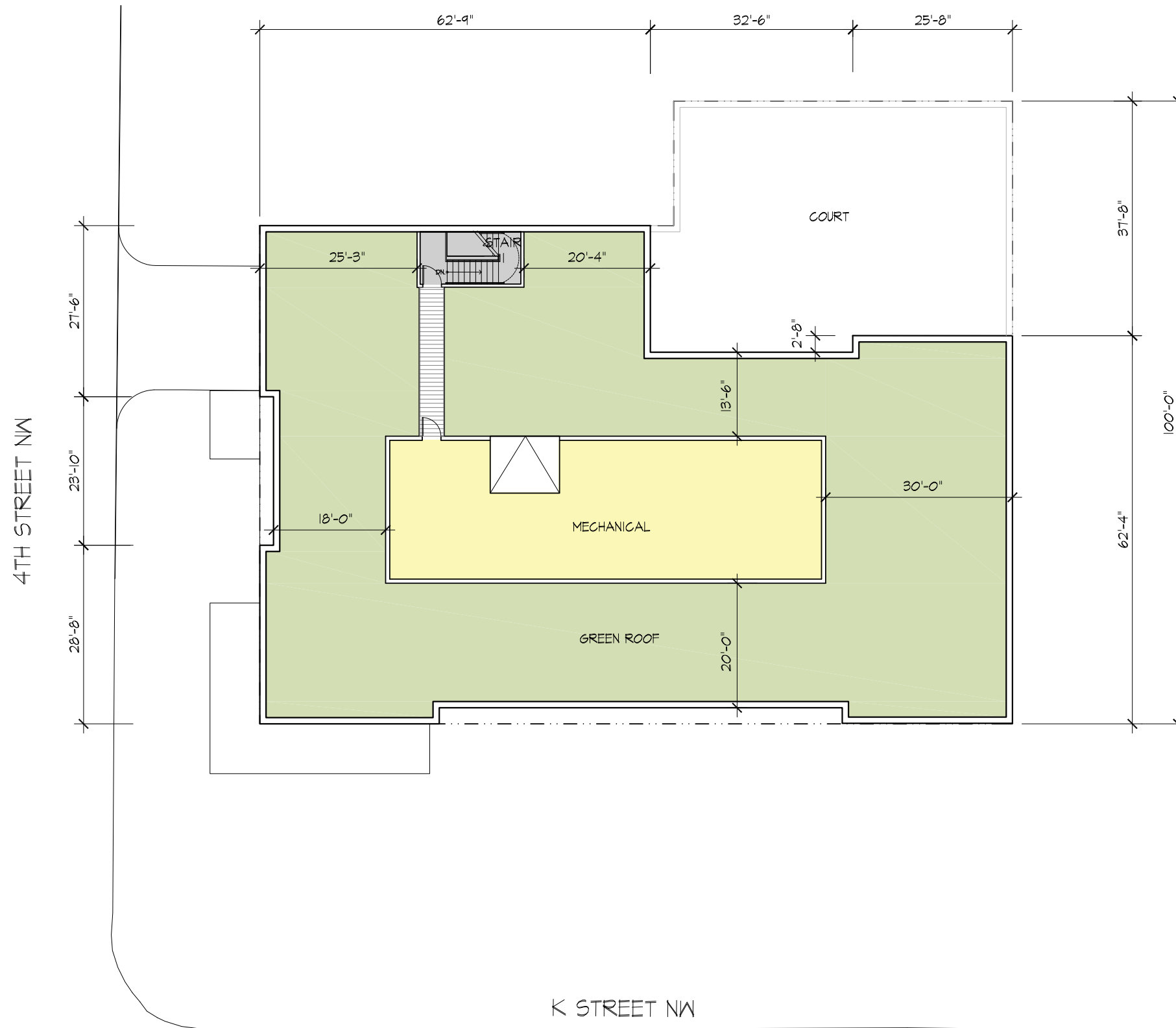


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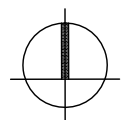
TYPICAL APARTMENT FLOOR PLAN (12-14)

A-11

02-11-2016



1 ROOF PLAN  
SCALE: 1" = 20'-0"



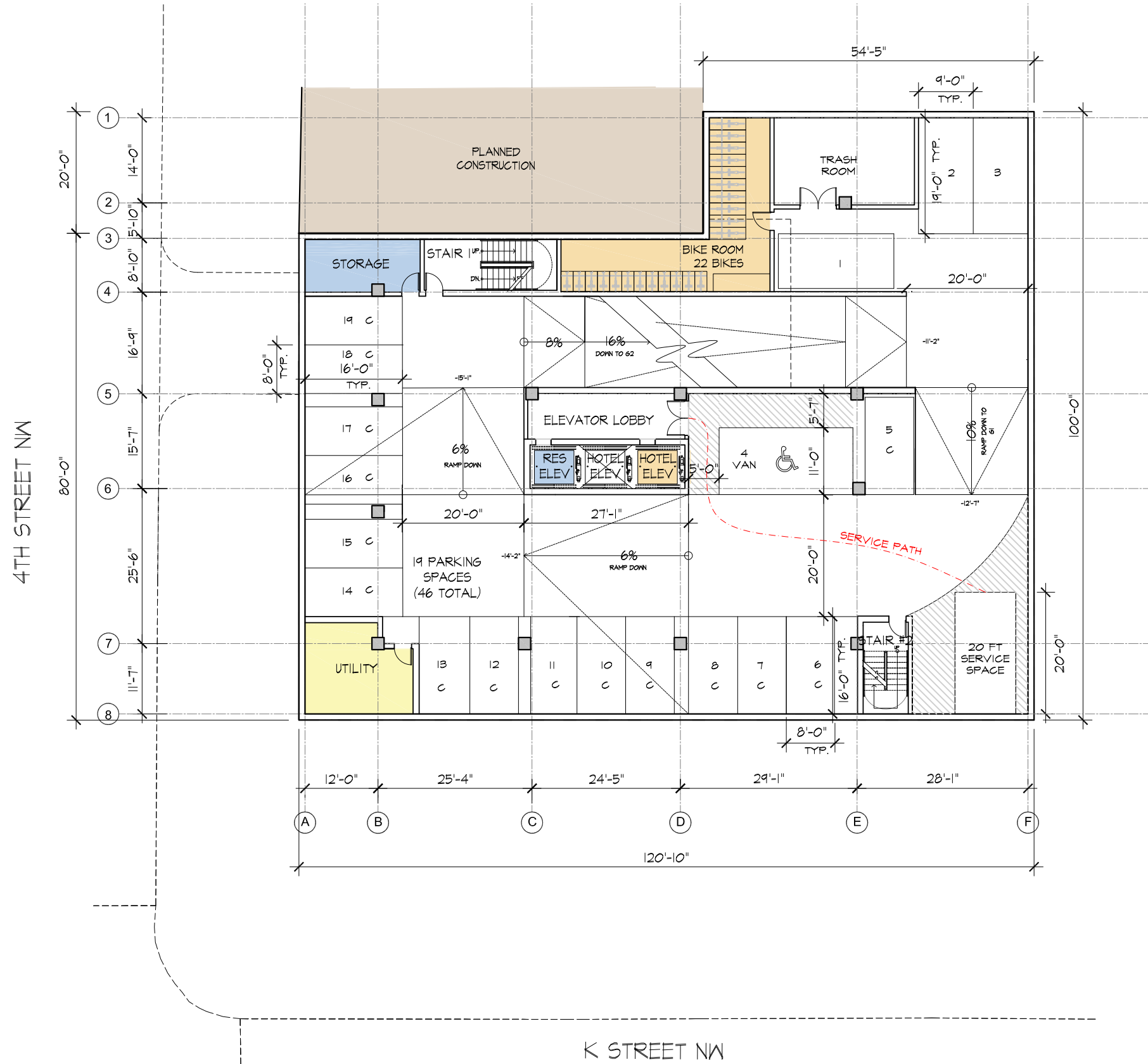
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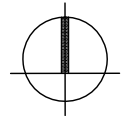
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1 GARAGE PLAN-G1  
SCALE: 1" = 20'-0"



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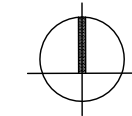
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1 GARAGE PLAN- G2  
SCALE: 1" = 20'-0"

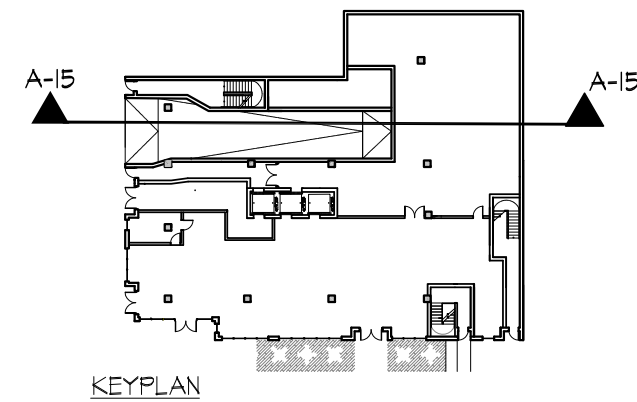
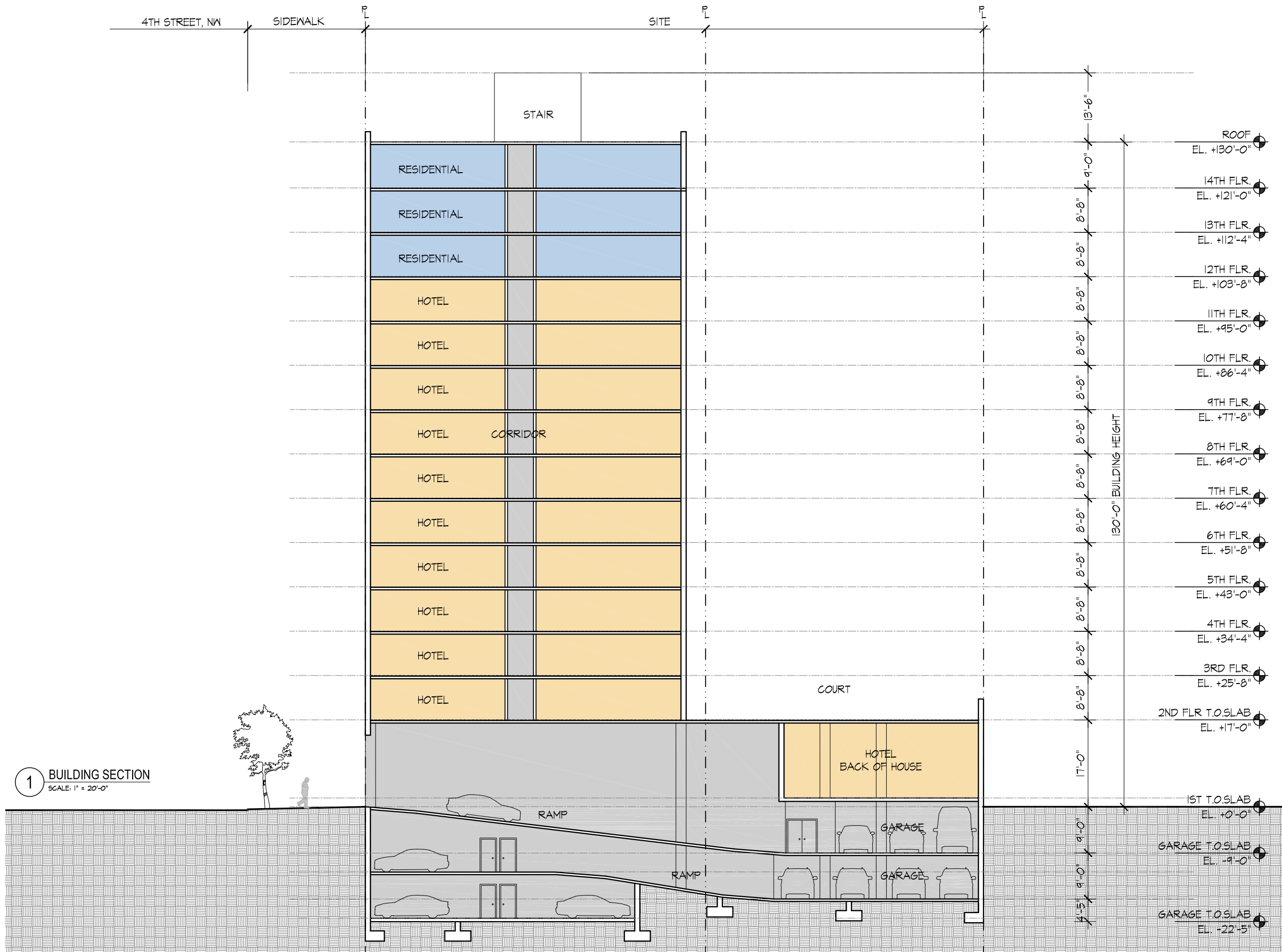


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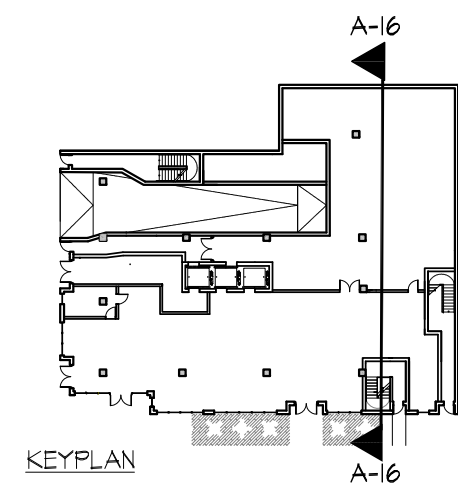
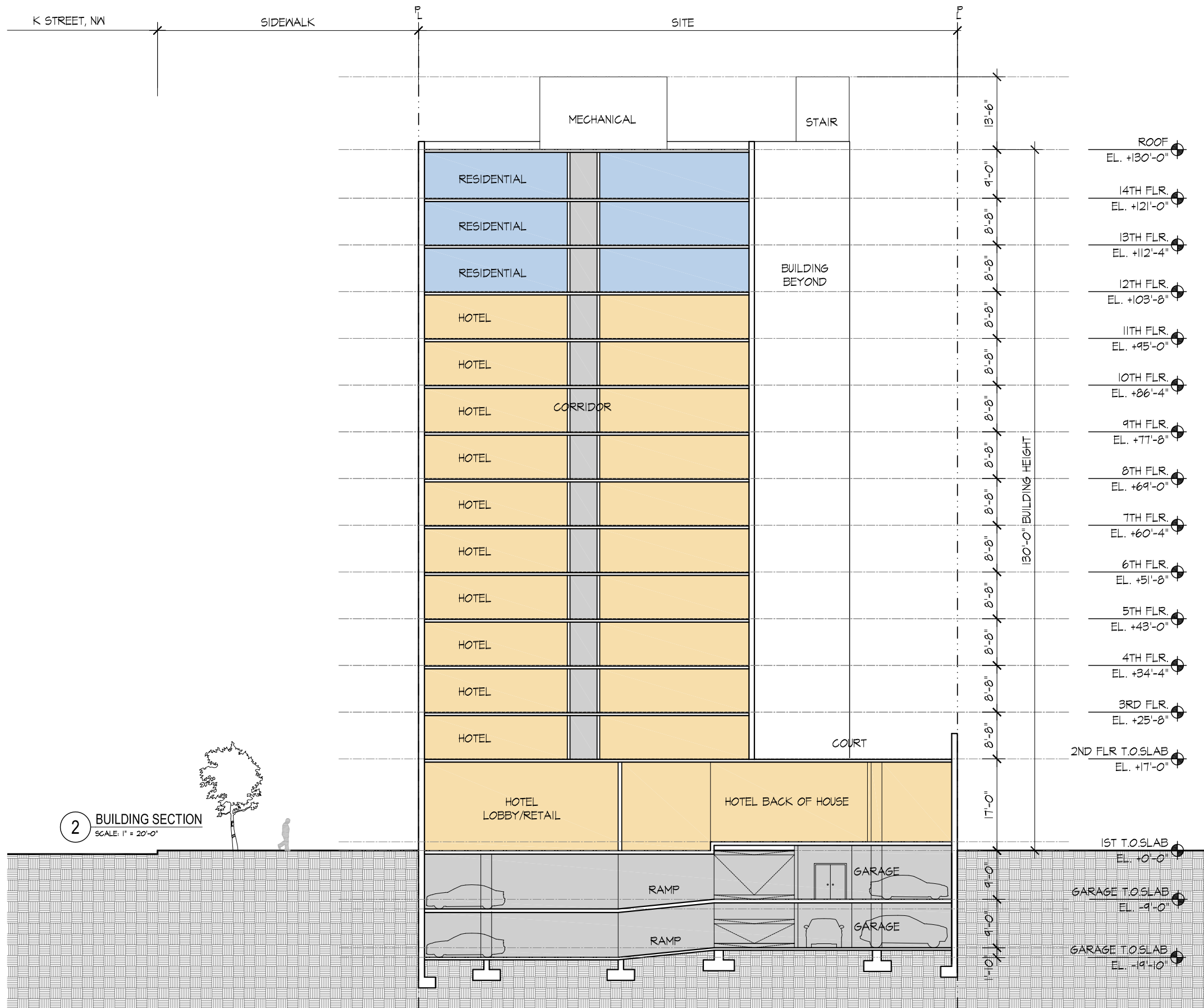
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BUILDING SECTION | A-15

02-11-2016



**317 K STREET NW**

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BUILDING PERSPECTIVE

A-17

02-11-2016



TAB C

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



**Application No. 19169-A of Birchington, LLC**, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 19169 approving variances from the rear yard requirements under § 774.1, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C District (now D-4-R)<sup>1</sup> at premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829).

**HEARING DATE (Case No. 19169):** February 6, 2016  
**DECISION DATE (Case No. 19169):** February 23, 2016  
**ORDER ISSUANCE DATE (Order No. 19169):** February 29, 2016  
**TIME EXTENSION DECISION:** March 28, 2018

**SUMMARY ORDER ON MOTION TO EXTEND**  
**THE VALIDITY OF BZA ORDER NO. 19169**

The Underlying BZA Order

On February 23, 2016, the Board of Zoning Adjustment (the "Board") approved the Applicant's<sup>2</sup> request pursuant to the 1958 Zoning Regulations<sup>3</sup> under 11 DCMR § 3103.2, for variances from the rear yard requirements under § 774.1, and the off-street parking requirements under § 2101.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C (now D-4-R) District at

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<sup>1</sup> The zone name has changed as a result of the update of the zoning regulations as described in footnote 3. New zone names went into effect on September 6, 2016. The zone name of the property was DD/DD-HPA/C-2-C at the time of the original approval and is now D-4-R.

<sup>2</sup> Birchington, LLC, the Applicant for the time extension herein, is the successor in interest to the original Applicant in Case No. 19169, which was 311 K Street, LLC.

<sup>3</sup> This and all other references to the relief granted in Order No. 19169 are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's original decision or the validity of Order No. 19169.

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**Board of Zoning Adjustment**  
**District of Columbia**  
**CASE NO. 19169A**  
**EXHIBIT NO. 7**

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premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829). The Board issued its written order ("Order") on February 29, 2016. Pursuant to 11 DCMR § 3125.9 (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on February 29, 2016 and took effect 10 days later. Under the Order and pursuant to 11 DCMR § 3130 (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued -- until February 29, 2018.

Motion to Extend Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

On February 13, 2018, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 19169. This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations of 2016, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.1(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. Pursuant to Subtitle Y § 705.1(a), the record reflects that the Applicant served the only party to the original application, Advisory Neighborhood Commission ("ANC") 6E, as well as the Office of Planning. (Exhibit 3.) ANC 6E submitted a report, dated March 19, 2018, in support of the time extension request. The ANC's report indicated that at a duly noticed and scheduled public meeting on March 6, 2018, at which a quorum was present, the ANC voted 5-0-0 to support the Applicant's Request for Extension, raising no issues or concerns. (Exhibit 6.) The Office of Planning ("OP") submitted a report, dated March 16, 2018, recommending approval of the request for the time extension. (Exhibit 5.)

As required by Subtitle Y § 705.1(b), the Applicant demonstrated that there has been no substantial change in any of the material facts upon which the Board based its original approval in Order No. 19169. There have also been no substantive changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order that would affect the application.

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To meet the burden of proof for good cause required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding factors causing a delay in obtaining a building permit. (Exhibit 3.) The good cause basis for the Request was the Applicant's inability to obtain sufficient financing due to economic and market conditions beyond its control, pursuant to Subtitle Y § 705(c)(1). The Applicant submitted exhibits detailing the softening of the hotel market during 2016-2017 due to the rapid increase in new hotel rooms and the decreased availability of mortgage backed securities. The Applicant documented how the combination of a rapid increase in new hotel rooms in 2016-2017 and the decreased availability of commercial mortgage backed securities led to difficulties in financing the project, thus causing a delay in completing the project. The property was purchased by a new owner in December 2017 and the Applicant states that financing has now been obtained. (Exhibit 3.)

Given the totality of the conditions and circumstances described above and after reviewing the information that was provided, the Board finds that the Applicant satisfied the "good cause" requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(1). The Board finds that the delay in securing the necessary financing to purchase the Property is beyond the Applicant's reasonable control and that the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

Having given the written reports of ANC 6E and OP great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.


Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of a two-year time extension of Order No. 19169, which Order shall be valid until **February 29, 2020**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

**VOTE: 5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Robert E. Miller to APPROVE.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:

  
SARA A. BARDIN  
Director, Office of Zoning

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**FINAL DATE OF ORDER:** March 29, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.