

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

**2 Eye Street, SE
Square 695W, Lot 7001
Navy Yard Doghouse, LLC d/b/a Atlas Doghouse**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF
Special Exception to Permit Ground-Floor Animal Boarding Use

This Preliminary Statement is submitted by Navy Yard Doghouse, LLC d/b/a Atlas Doghouse (the “Applicant”) on behalf of Crescent Capitol View MF LLC, the owner of Lot 7001 in Square 695W (the “Property”), in support of an application requesting:

- (1) a Minor Modification or, in the alternative, a Modification of Consequence to the plans approved pursuant to BZA Order No. 19175; and
- (2) a special exception to permit an animal boarding use on the Property, which is presently zoned D-5. This application is filed pursuant to Subtitle X § 901.2 and Subtitle I § 303.1(a) of the District of Columbia Zoning Regulations (Title 11, District of Columbia Municipal Regulations (“DCMR”).

Attached hereto are letters from the Applicant and property owner authorizing Holland & Knight LLP to file and process the application. Upon the Office of Zoning’s acceptance of the application, the Applicant will provide the requisite filing fee for the requested relief (\$3,182.40) via credit card payment.¹

Pursuant to 11-Y DCMR § 300.15, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or the “Board”) no fewer than 21 days prior to the public hearing for the application. In this statement and at the public hearing, the Applicant will provide testimony and evidence to satisfy its burden of proof to obtain the Board’s approval of the requested relief. The following is a preliminary statement demonstrating how the Applicant meets the burden of proof.

I. BACKGROUND

A. Property and Surrounding Area

The Property is located at 2 Eye (I) Street, SE and is more particularly known as Air Rights Lot 7001 in Square 695W, which overlays Assessment and Taxation Lot 802 in Square 695W. *See Exhibit A.* Lot 802 overlays Record Lot 21 in Square 695W, which contains approximately 57,867 square feet of land area, as reflected on the subdivision plat attached hereto at Exhibit B.

¹ The filing fee is calculated in accordance with 11-Y DCMR §§ 1600.1(b)(24) and (e).

The Property is specifically a retail space located along I Street, SE, within the southeast corner of the mixed-use building known as NOVEL South Capitol (the “Novel”). Construction of the Novel occurred in two phases and was recently completed in the fall of 2019. Today, the Novel contains over 500 residential units, approximately 6,500 square feet devoted to ground-floor retail, and 143 vehicle parking spaces.

The Novel is generally bounded by I Street, SE to the south, South Capitol Street, SE to the west, and private property to the north and to the east. Immediately to the south of the Property is the residential building known as One Hill South/10K Hill South, which consists of nearly 600 residential units. Directly to the east of the Property is the site of the former “Splash” car and truck wash establishment, which was approved for a residential development with approximately 520 units pursuant to ZC Order No. 21-12. The Randall Recreation Center and the Capitol Skyline Hotel are located directly to the west of the Property, across South Capitol Street. The Property is generally surrounded by a mix of residential and non-residential uses, including the various retail, commercial, and recreation uses that define the waterside Navy Yard district.

B. Relevant BZA Approval for Property

Construction of the Novel was enabled pursuant to BZA Order No. [19175](#), effective February 21, 2016, which, under the 1958 Zoning Regulations, approved variances from the applicable side yard and loading requirements, and a special exception from the applicable rear yard requirements. The Board granted the approval subject to the revised plans at Exhibit [24A](#) of the public record for the case (No. 19175). A copy of the approved ground floor plan is attached hereto at [Exhibit C](#).

C. Zoning

The Property is zoned D-5, one of the various Downtown (D) zones under Subtitle I of the Zoning Regulations. The D-5 zone is appropriate for high-density development with a mix of office, retail, service, residential, entertainment, lodging, institutional, and other uses. *See* 11-I DCMR §§ 100.1, 300.1, 538.1. The D-5 zone permits matter of right major business and employment centers of high density development, including office, retail, housing, and mixed uses. 11-I DCMR § 302; 11-U DCMR § 515. In the D-5 zone, animal boarding use is permitted by special exception pursuant to Subtitle I § 303.1(a).

Pursuant to Subtitle I § 616.2, the Property also falls within the M and South Capitol Streets Sub-Area (the “Sub-Area”). The objectives of the M And South Capitol Streets Sub-Area area are to ensure the preservation of the historically important axial view of the Capitol Dome and further the development of a high-density mixed-use corridor north of the Capitol Gateway neighborhood. 11-I DCMR § 616.1. South Capitol Street is a designated tertiary street segment in Sub-Area, but I Street, SE is not a designated street segment. Thus, because the Property fronts on I Street, SE, the use and design requirements of the Sub-Area are not applicable to the subject application.²

² *See, e.g.*, Subtitle I § 616.8, which provides that any proposed exterior renovation to any existing building or structure that would result in an alteration of the exterior designs facing the street segments in the sub-area shall be subject to review and approval by the Zoning Commission in accordance with the provisions in Subtitle I, Chapter 7.

D. Applicant and Proposed Use

Atlas Doghouse is a local business first established on December 17, 2017. It provides walking, daycare, boarding, pet sitting, and training services for neighborhood dog owners. Atlas Doghouse has a unique, open-concept design that promotes social interaction and supervision for dogs in a cage-free environment. The governing philosophy of Atlas Doghouse is behaviorism, or the study of animals in their natural environment. This approach promotes a healthy and organic social environment with an emphasis on safety that keeps the dogs stimulated and happy for the duration of their stay.

Atlas Doghouse currently operates an establishment along the H Street corridor, which was permitted pursuant to BZA Order No. [19746](#). The Board has also granted approval for Atlas Doghouse to open a second dog daycare center within the Beckert's Park development in Capitol Hill. *See* BZA Order No. [20705](#).

Approval of the subject application would enable Atlas Doghouse to expand at a third location – i.e., the Property. As shown on the plans submitted concurrently with this Preliminary Statement (the “Plans”), the proposed animal boarding establishment would consist of approximately 3,873 square feet and would include a lobby area and four (4) play pens. Separate areas will be devoted to wash and waste. The proposed dog daycare center will not include any external yards or other exterior facilities for the keeping of animals. All pick-up/drop-off access will be made available from I Street, SE, and will occur within the roundabout area that is internal to the Novel.

II. REQUEST FOR MODIFICATION OF APPROVED PLANS

In light of the BZA approval that is tied to the Property, and out of an abundance of caution, the Applicant is requesting a modification of the plans, and specifically the ground floor plan, approved by the Board under BZA Order No. [19175](#). As reflected by the Plans submitted concurrently with this application (*see* pp. 2-3), the ground floor space of the Novel has been rearranged since it was approved by the Board. (*Compare with Exhibit C.*) Thus, the Applicant is requesting a corresponding modification to accommodate the proposed animal boarding use.

Pursuant to Subtitle Z § 703.3, “minor modifications” mean modifications that do not change the material facts upon which the Board based its original approval of the application. The Applicant asserts that the proposed changes to the ground floor plan do not alter the material facts upon which the Board granted the variances from the applicable side yard and loading requirements and the special exception from the applicable rear yard requirements in BZA Order No. [19175](#). If the Board deems the proposed updates to the approved ground floor plan to be a “change to a condition cited by the Board”, the Applicant is requesting a Modification of Consequence pursuant to Subtitle Z § 703.4. The Applicant notes that regardless of the modification type, a public hearing on the subject application is required due to requested special exception, which is further discussed below.

III. SPECIAL EXCEPTION RELIEF

A. Relief Requested for Animal Boarding Use

Pursuant to Subtitle I § 303.1(a), the Applicant seeks special exception approval to permit the proposed animal boarding use at the D-5 zoned Property, which requires satisfaction of the conditions enumerated in Subtitle U § 513.1(b).

B. Burden of Proof

Pursuant to D.C. Code § 6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant a special exception where it finds the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

C. Justification for Requested Special Exception Relief

The proposed animal boarding use is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. As discussed above, the D zones are deemed appropriate for a “high density mix of office, retail, service, residential, entertainment, lodging, institutional, and other uses” and are intended to “create a balanced mixture of land uses by providing incentives and requirements for retail, residential, entertainment, arts and cultural uses.” 11-I DCMR § 100.1(b), 100.2(a) (emphasis added). The D zones also emphasize streetscape activation with attractive and appropriate uses. *See, e.g.*, 11-I DCMR §§ 100.2(e) and 601. The proposed animal boarding use aligns with the objectives of the D-5 zone, because it will help to create a “balanced mixture” of non-residential uses in the ground floor of a high-density mixed-use project that is surrounded by other neighborhood-serving retail and service uses.

The proposed animal boarding use is also fully compatible with the Novel development and surrounding uses. Atlas Doghouse is a neighborhood serving use; and any negative impacts generated by animal waste activities, noise, and odor will be adequately controlled and properly mitigated in accordance with the criteria of Subtitle U § 513.1(b). The retail space is also relatively buffered from the other residential and non-residential activities within the Novel, and particularly at the ground floor. With respect to the abutting residential unit, the adjacent space of the animal boarding establishment will include “back of house” items such as the staff room and storage, and the abutting wall will be treated with acoustic material, gypsum plaster, or other comparable material to help mitigate transmission. In light of the foregoing, residents of the Novel or

neighboring residents to the south in the One Hill South/10K Hill South building should not be disturbed or adversely impacted.

In addition to satisfying the special exception criteria under Subtitle X §§ 901.2(a) and 901.2(b), the Applicant must show that the proposed animal boarding use meets the special use conditions in Subtitle U § 513.1(b). *See* 11-I DCMR § 303.1(a) and 11-X DCMR § 901.2(c). The justifications for the proposed animal boarding use are set forth below.

In accordance with Subtitle I § 303.1(a)(1) and (2), the proposed animal boarding establishment will be located in the ground floor of the Novel and does not involve a pet grooming or pet shop component. Atlas Doghouse will satisfy the applicable conditions enumerated under Subtitle U § 513.1(b)(1)-(9) as follows:

- (1) *The animal boarding use shall take place entirely within an enclosed building;*

All proposed animal boarding activities will take place entirely within the ground floor of the Novel, and specifically within the designated tenant space that fronts I Street, SE, as reflected in the Floor Plan.

- (2) *Buildings shall be designed and constructed to mitigate noise to limit negative impacts on adjacent properties, including residential units located in the same building as the use. Additional noise mitigation shall be required for existing buildings not originally built for the boarding of animals, including the use of acoustical tiles, caulking to seal penetrations made in floor slabs for pipes, and spray-on noise insulation;*

As explained above, the proposed dog daycare center will be designed and constructed to mitigate noise to limit negative impacts on adjacent properties, including other ground-floor retail and services use and the residential unit abutting the retail space. The proposed tenant space will be outfitted with an animal boarding acoustic ceiling and a demising wall that will significantly reduce the negative impact of sounds within the space. The proposed flooring for the tenant space will also be designed to absorb sound and mitigate noise levels.

- (3) *The windows and doors of the space devoted to the animal boarding use shall be kept closed, and all doors facing a residential use shall be solid core;*

The windows and doors of the tenant space devoted to the animal boarding use will be kept closed. There are no doors that face the residential building to the south, across I Street, SE. Moreover, the door leading to the exit passageway (leading the building trash area), which is located relatively near the abutting residential unit, will also be of solid core.

- (4) *No animals shall be permitted in an external yard on the premises;*

The dogs served by the dog daycare center will not be permitted in any outdoor areas or courtyards at the Novel, which are provided only for residential use. Atlas Doghouse will keep all dogs within the establishment for the entirety of their stay, except for when they are on accompanied walks.

- (5) *Animal waste shall be placed in closed waste disposal containers and shall be collected by a waste disposal company at least weekly;*

Animal waste will be placed in closed waste disposal containers and will be collected by a waste disposal company on a weekly basis, at minimum. As shown on the Floor Plan, the animal boarding establishment will include a separate service room for animal waste.

- (6) *Odors shall be controlled by means of an air filtration system or an equivalently effective odor control system;*

The Applicant will utilize a filtration system or an equivalently effective odor control system that will utilize best practiced odor neutralizing technology.

- (7) *Floor finish material, and wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor, shall be impervious and washable;*

The floor finish material, and wall finish materials measured a minimum of 48 inches from the floor, will be impervious and washable.

- (8) *External yards or other exterior facilities for the keeping of animals shall not be permitted; and*

The proposed animal boarding use will not rely upon external yards or other exterior facilities for the keeping of animals.

- (9) *The Board of Zoning Adjustment may impose additional requirements pertaining to the location of buildings or other structures, entrances and exits; buffers, banners, and fencing, soundproofing, odor control, waste storage and removal (including frequency), the species and/or number of animals; or other requirements, as the Board deems necessary to protect adjacent or nearby property.*

As discussed herein, the proposed use will not result in any objectionable conditions to residents or other tenants of the mixed use building or to neighboring properties. A variety of measures will be implemented to mitigate any effects due to noise, odor, and waste. Accordingly, the Applicant does not believe that additional requirements are necessary.

In light of the foregoing, the Applicant submits that the proposed animal boarding use satisfies the general special exception criteria under Subtitle X § 901.2 and the applicable conditions enumerated under Subtitle U § 513.1(b)(1)-(9), in accordance with Subtitle I § 303.1(a).

IV. COMMUNITY ENGAGEMENT

The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 8F, the affected ANC pursuant to Subtitle Y § 101.8, and is under the jurisdiction of ANC 8F05. As required under Subtitle Y § 300.8(1), the Applicant will apprise ANC 8F and any other known stakeholders of this application and conduct thorough outreach to the community as the application moves forward.

EXHIBIT A

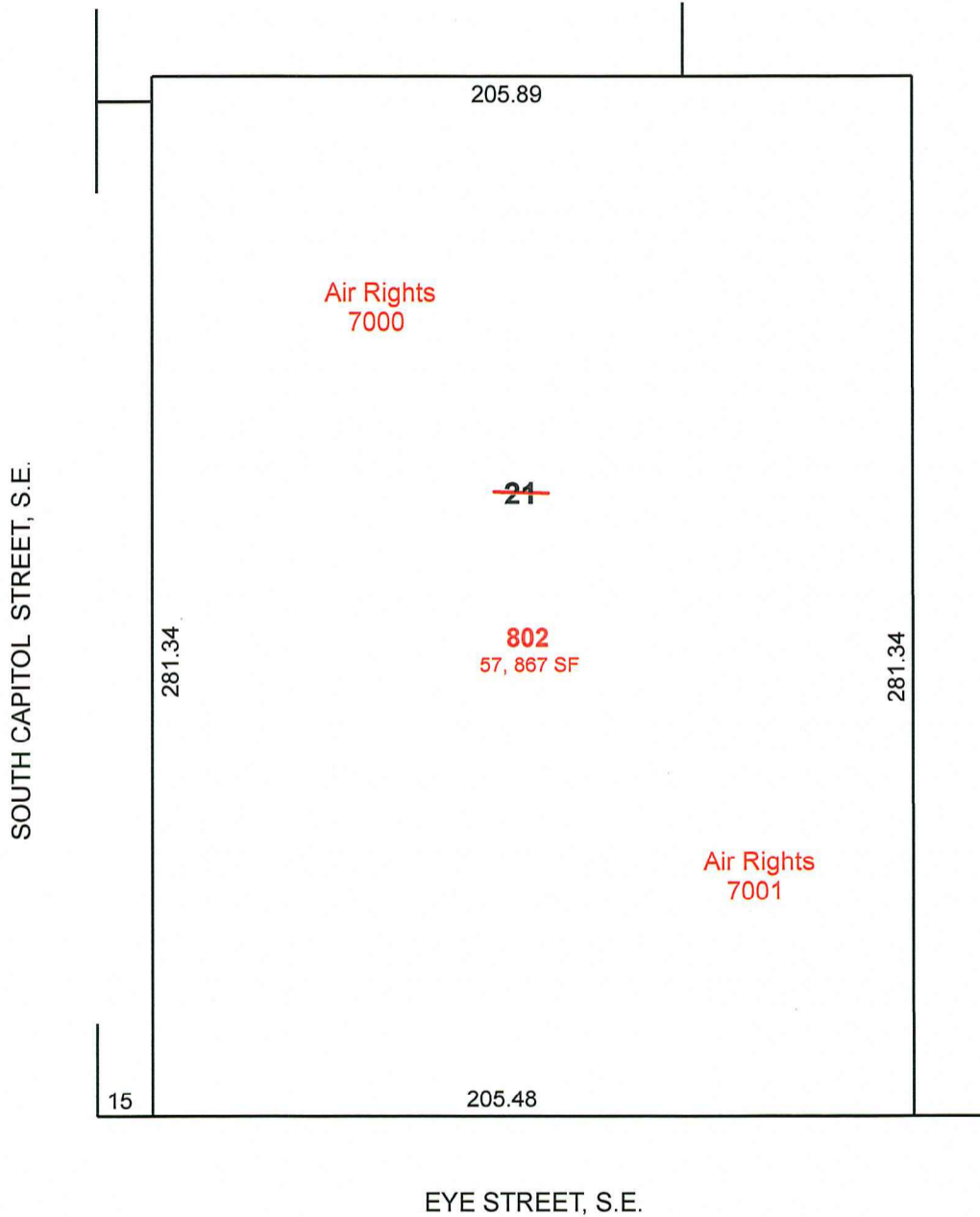
OFFICE OF TAX AND REVENUE
ASSESSMENT DIVISION



3871-2

ASSESSMENT AND TAXATION PLAT

Square 695W



David Smith A073381 4/12/2017 Scale, 1 inch 50 ft.
Draftsman Reference Date

The Office of Surveyor of the District of Columbia shall admit this plat to record under the provisions of Chapter 7 of Title 47, District of Columbia Code, Designation of Real Property for Assessment and Taxation, and for other purposes.


Chief Assessor, Office of Tax and Revenue

EXHIBIT B

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or actions that affect title to the property; that parties to any deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby

subdivides part of Lot 20 in Square W-695 (Bk. 26, Pg. 55) and part of H Street Vacated (Section 7, Public Act #49) into one lot and part of a new Square W-695 as shown hereon and requests that this subdivision be approved and recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

OWNERS

Jeanne Batten

MCDONALDS CORPORATION

By: *Lynne Greenman*
Vice President

Jamela Carver

Attest: *Michael J. ...*
Director of Real Estate Legal Dept.

Subscribed and sworn before me this 1st day of May 1985

June Machala
Notary public
JUNE Machala

November 19, 1988
My Commission Expires

NUMBER OF TRUSTS: 0

ASSENT BY TRUSTEES:

SURVEYOR'S OFFICE, D.C.

Made for: Dreyfuss, Henry
Drawn by: AL Checked by: J.M.
Record and computations by: Robert C. King
Recorded at: 10:00 A.M. May 21, 1985
Recorded in Book 176 Page 125 S.O. 98469
Scale: 1 inch = 40 feet. File No. 85-73

OFFICE OF THE SURVEYOR

May 21 1985

I certify that this plat is correct and is hereby recorded.

Acting *R.B. Sheaffer*
Surveyor, D.C.

DEPARTMENT OF FINANCE AND REVENUE

May 16 1985

I certify that the following statements relating to this subdivision are correct.

1. Ownership agrees with our records: 5-16-85 *AB*
2. Real estate taxes are paid to: 4-30-85 *AB*
3. There are no unpaid special assessments: 5-16-85 *T.C.E. AB*

John W. ...
Associate Director, Office of Real Property Tax

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-405.

Gary A. Baker
Agent

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

May 16 1985

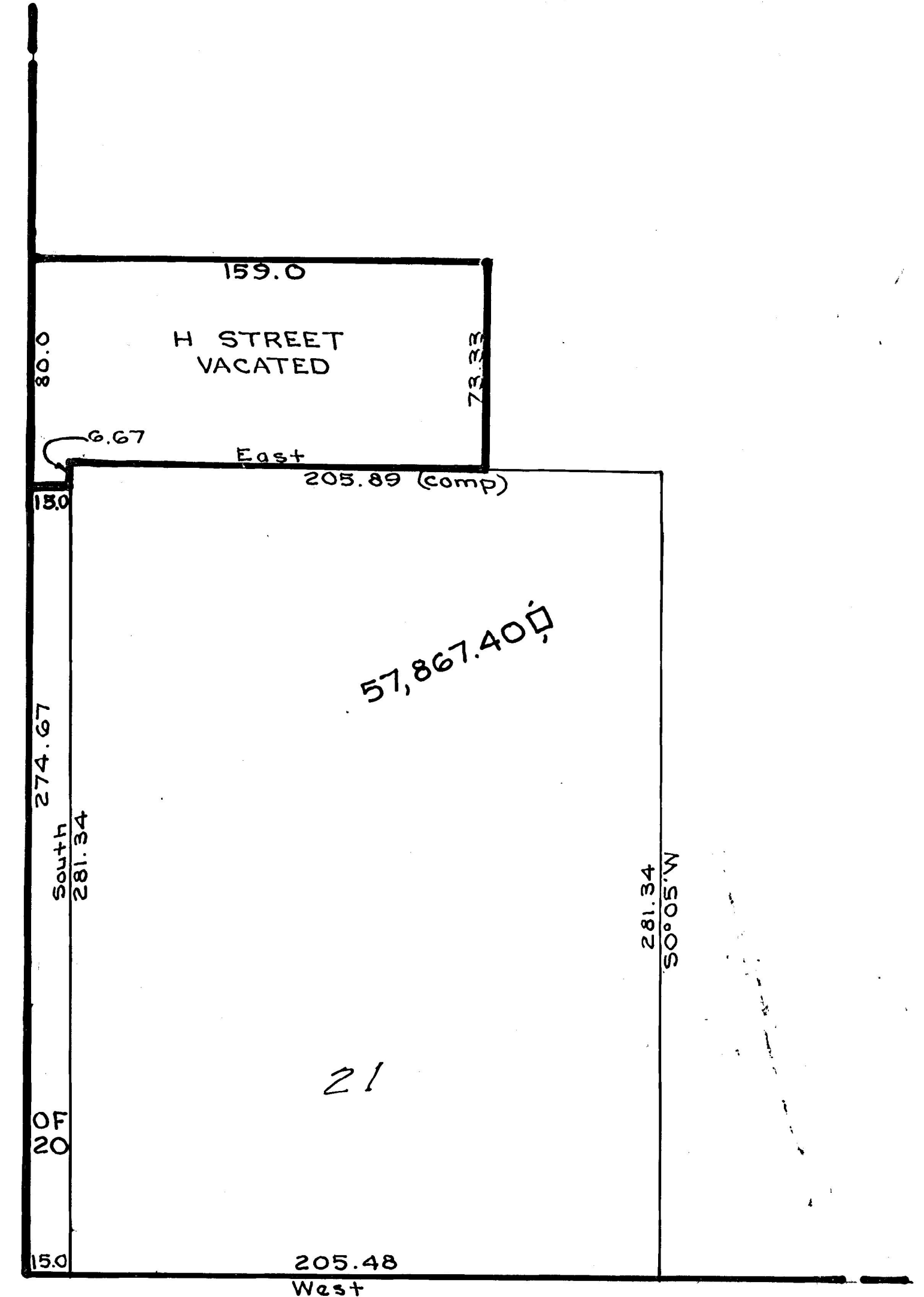
I certify that this subdivision complies with the zoning regulations of the District of Columbia.

Zoning: "C-M-3" *AB*

James G. Falvey
Zoning Administrator

SUBDIVISION SQUARE W-695

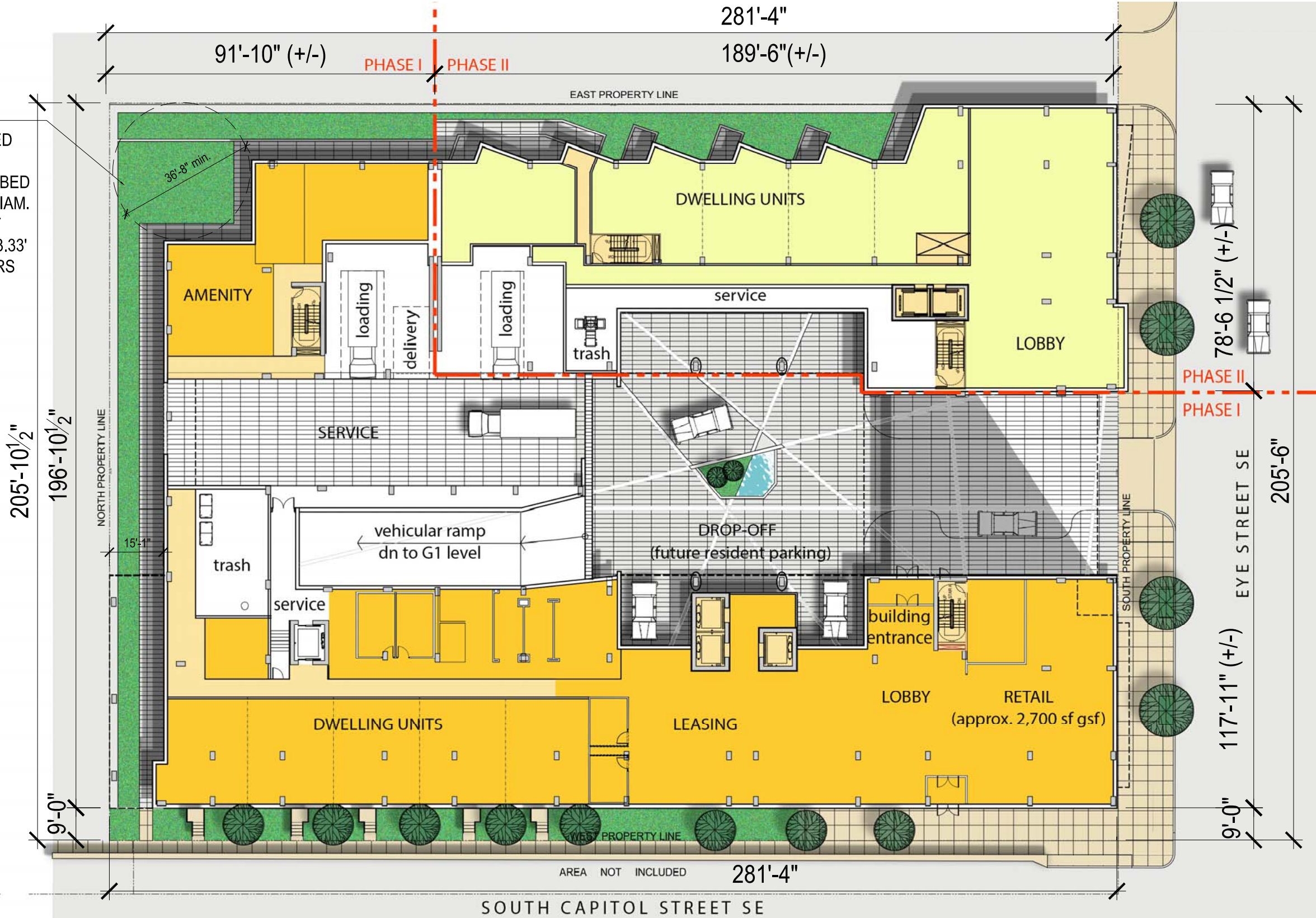
SOUTH CAPITOL STREET, S.E.



1 STREET, S.E.

EXHIBIT C

NOTE:
 IRREGULAR SHAPED
 COURT [5,297 SF]
 BELOW; W/ INSCRIBED
 CIRCLE OF 36.66' DIAM.
 FROM FLOORS 1ST
 THRU 11TH, AND 43.33'
 DIAM. FROM FLOORS
 11TH THRU 13TH



Revision Note: A single vehicular entrance is now provided for both phases, which allows for easier truck maneuvering at the ground level as well as less mixing between service access and vehicular access, and allows room for dwelling units with stoops along South Capitol.



2 Eye Street SE | Washington, DC

January 26, 2016

04



Ground Floor Plan

