

# **THE WIRELESS INDUSTRY'S OVERRIDING CONCERNS WITH THE DRAFT TEXT AMENDMENTS**

To aid the Zoning Commission in crafting a more balanced alternative to the draft Text Amendments offered by the Office of Planning, the wireless industry would like to set forth its four overriding concerns with the Text Amendments:

## **1. Prohibition on Wireless Pole Siting in Residential and C-1 Zones is Excessive and is a Violation of Federal Law.**

- Such a broad prohibition on wireless pole siting in Residential and C-1 zones amounts to a prohibition of service, and is therefore a violation of federal law. See Telecommunications Act §253, 332(c)(7)(B)(II).
  - Although antennas are allowed in all zones, there may not be sufficient height in certain zones to provide service through an antenna collocated on a building.
- Other jurisdictions have not come to the conclusion that wireless poles are fundamentally incompatible because they understand wireless technology and the needs of their citizens and government agencies to utilize wireless services.
- No evidence has been presented by the Office of Planning regarding how wireless poles are “fundamentally incompatible” with the District’s comprehensive zoning plan, especially in light of the special exception process and utilization of stealth technology.
- The District will want to preserve a certain amount of flexibility for some siting in residential and other areas, particularly as usage patterns change and new services such as 3G come online.
  - C-1 is a light commercial zone in which the maximum height of structures is forty feet. Traditionally, poles and other similar structures have been exempt. The Office of Planning has offered no evidence as to why the Board of Zoning Adjustment would no longer be qualified to determine the appropriateness of new poles in C-1 zones.
- With the special exception process there is no reason why a tower could not be sited in various districts when the character or a particular use would be amenable to a tower siting or by right when stealth technology is used.
- The existing special exception process is very stringent and more than adequate to address due process, aesthetic, and all other concerns of the District and its residents. The wireless industry is unaware of any complaints about this process.

## **2. The Inability to Co-locate on Existing Structures Could Increase the Need to Use Towers and Monopoles.**

- The extraordinary expense of building a monopole (\$250,000- \$350,000) means that it is the “use of last resort.”

- Due to the topography and development of the District, wireless carriers provide wireless coverage typically by co-locating on buildings and other existing structures rather than erecting new wireless antenna towers or monopoles.
- Co-location opportunities provide a revenue source for private and government structure owners.
- Co-location satisfies aesthetic issues by utilizing existing structures such as utility poles, light stanchions at athletic fields, street overpass signage, water towers, and other sites. Communities nationwide have embraced co-location on existing structures as a way to facilitate wireless coverage with minimal impact on surrounding communities.
- Most communities offer incentives to applicants to co-locate on existing structures through a by-right approval process and an expedited zoning review.
- With no express matter of right location opportunities for providers, the draft text amendments serve to discourage co-location and, ironically, necessitate the need for more monopoles.

### **3. Overly Burdensome RF Certification Procedures Do Not Recognize that the Majority of Wireless Antennas are Exempt Due to Very Low RF Emissions.**

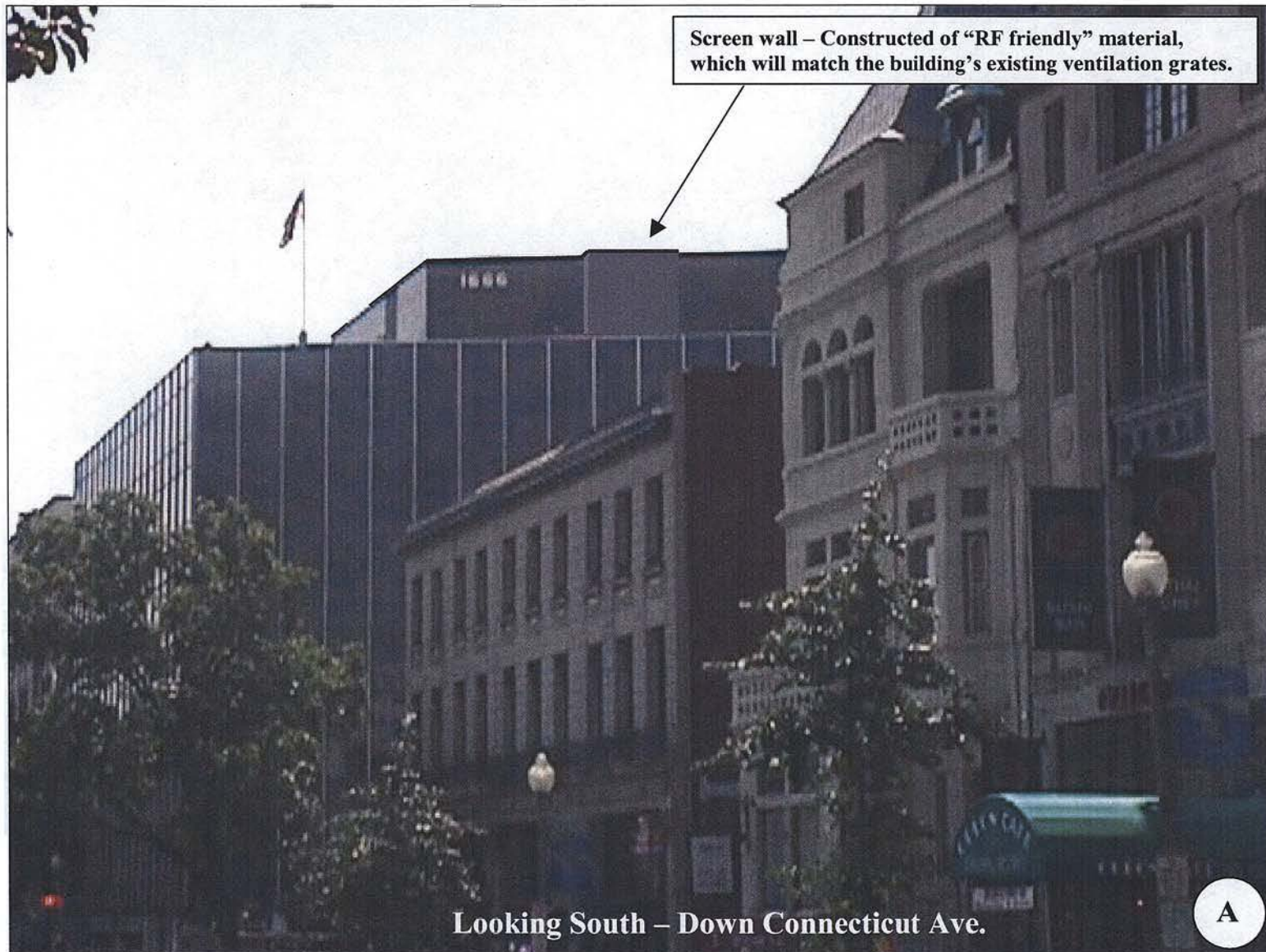
- The District is preempted from any regulation of RF emissions by Section 704(a)(7)(A)(iv) of the 1996 Telecommunications Act.
- Moreover, cellular, paging, and PCS antennas are categorically excluded from the requirement of routine evaluation for RF exposure. (*FCC OET Bulletin 56, Fourth Edition*, August 1999), but are impermissibly covered by the draft ordinance.
- Therefore, the draft text amendment is impermissibly treading on the FCC's exclusive authority over RF emissions by requiring applicants to submit a certification from a licensed engineer (coupled with actual RF testing results) that it complies with FCC guidelines.
- Because the enforcement of RF emissions is under the exclusive jurisdiction of the FCC, the District is preempted from requiring any certification or documentation on this issue.

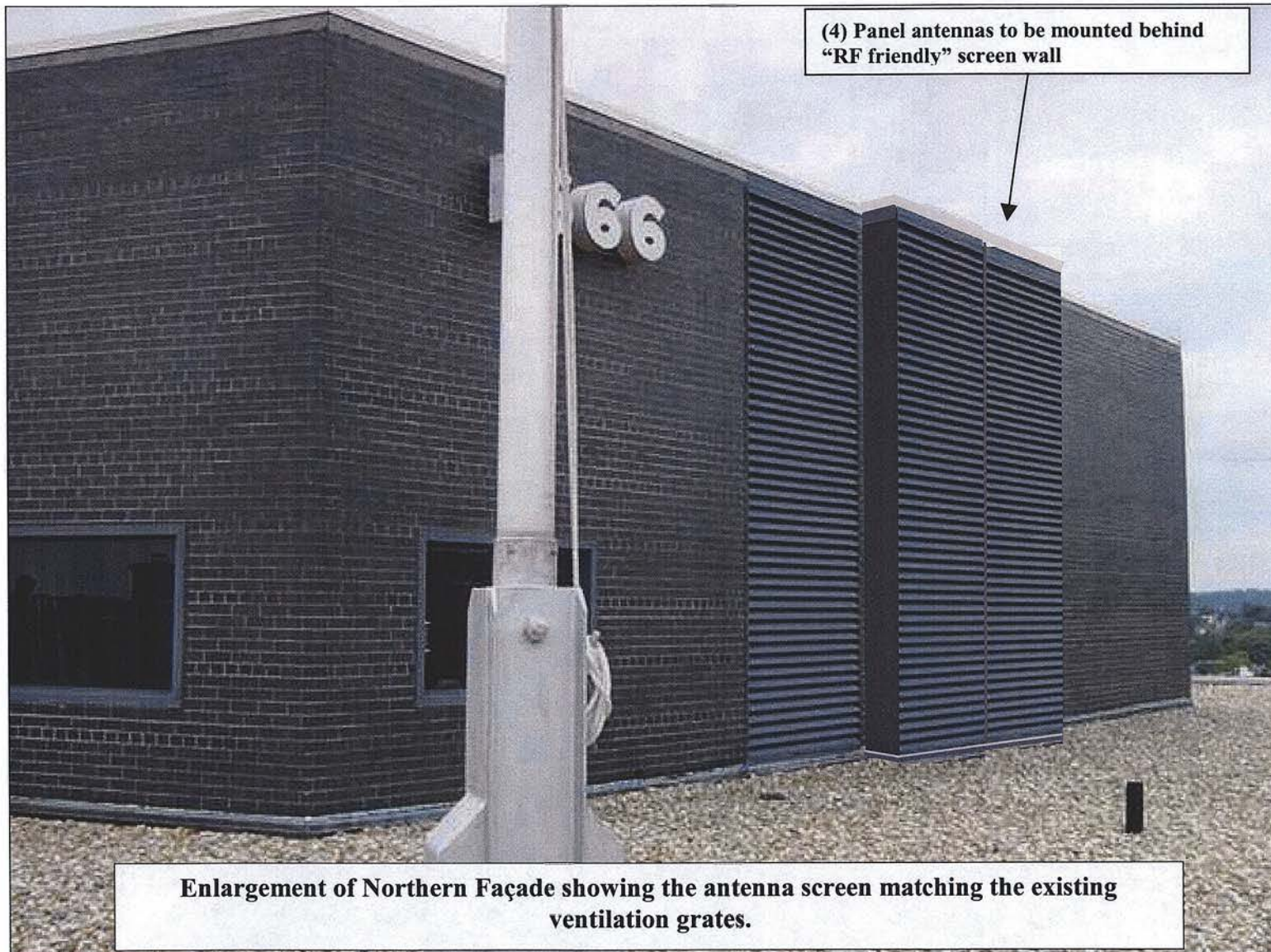
### **4. The Zoning Commission Should Encourage the Use of Camouflaged Wireless Sites ("Stealth Structures") By Allowing Right Approval and an Expedited Review.**

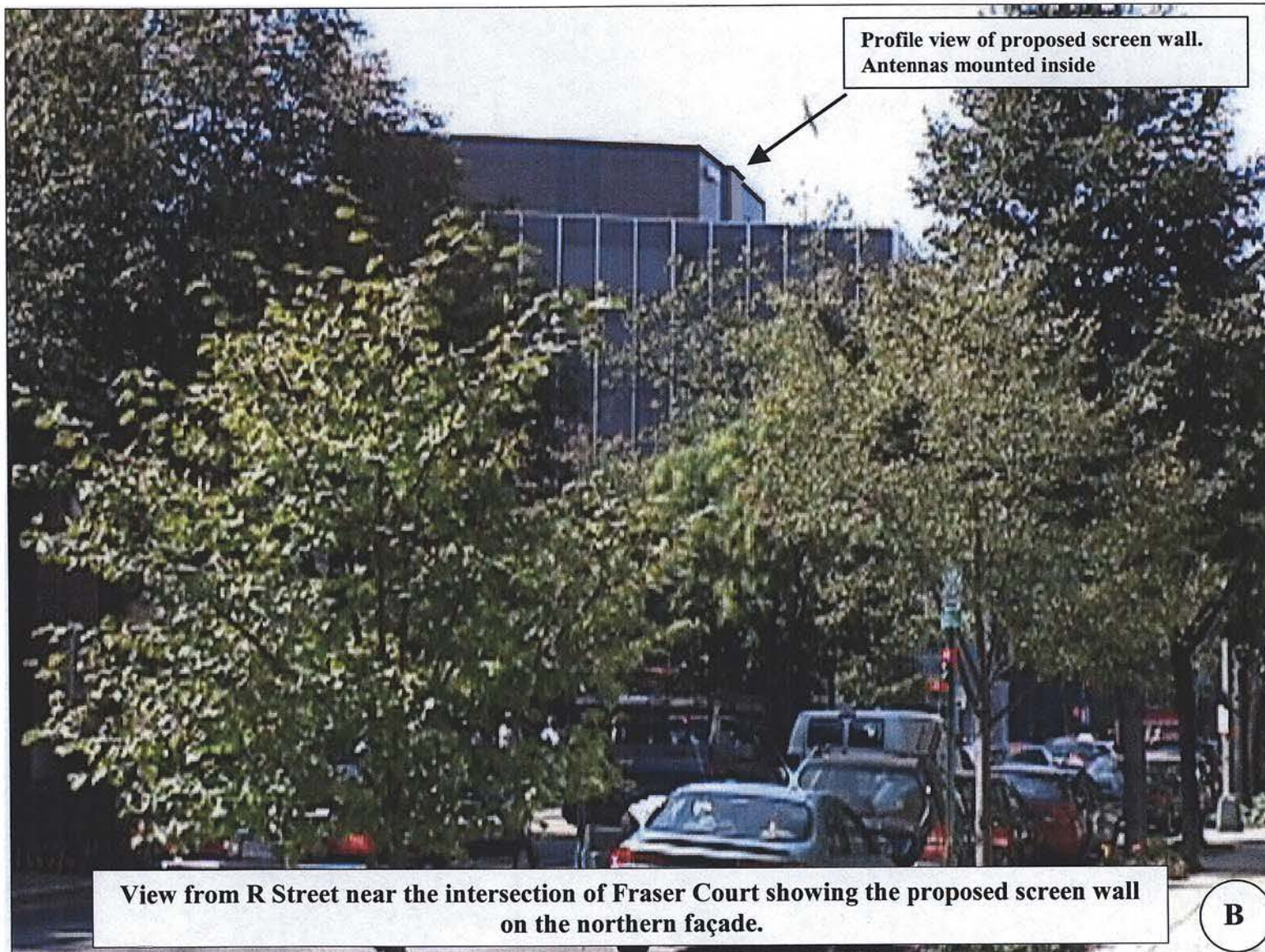
- Camouflaged wireless sites ("stealth") can be accomplished in many ways from painting an antenna to match the color of the building; building a façade to encase an antenna; to building a tower where antennas are incorporated into the design (such as a church steeple or a flagpole).
- The Office of Planning's proposed limitation on stealth structures, which limits the number of stealth applications in the District, effectively destroys the

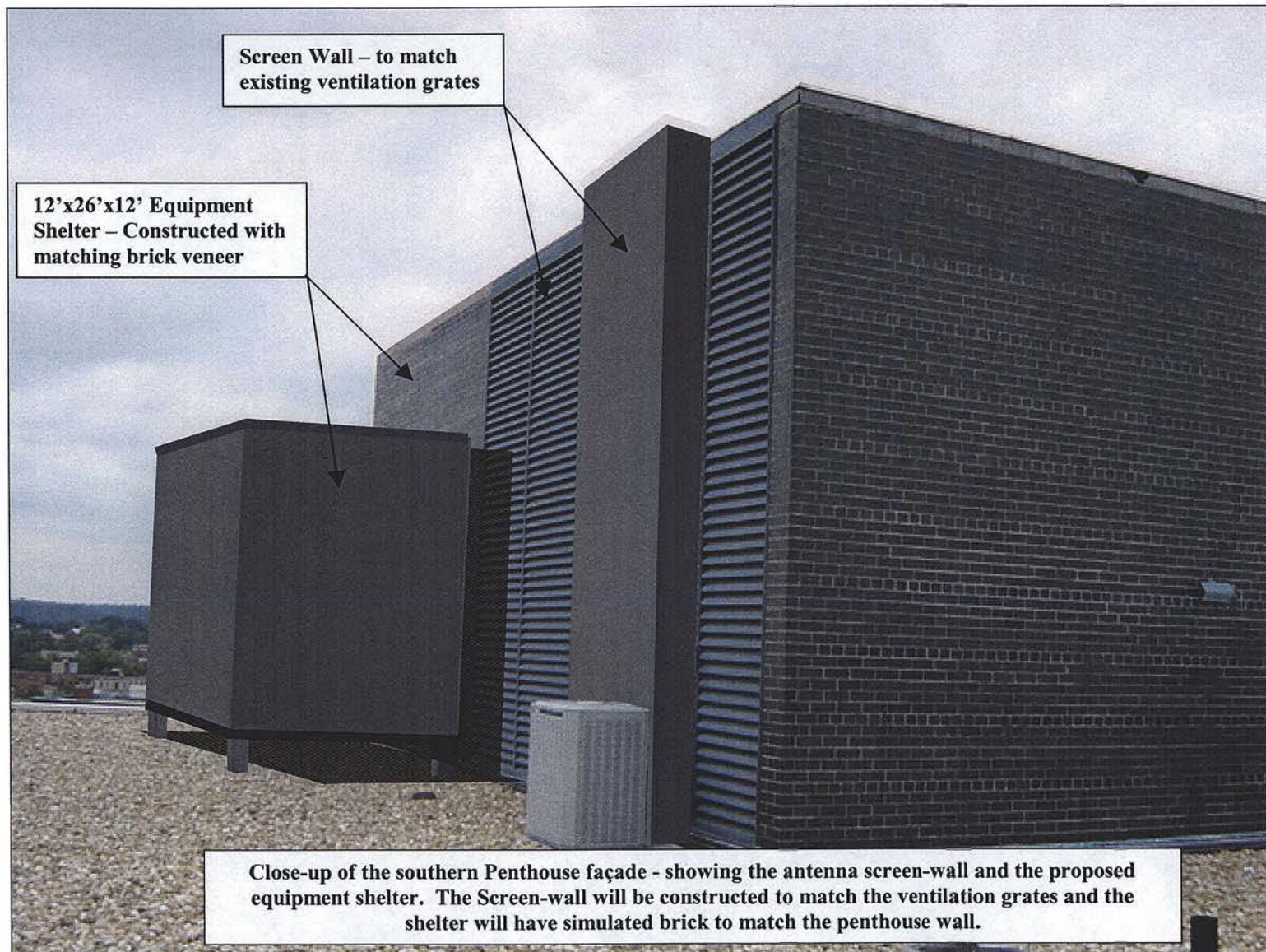
incentive (matter of right treatment rather than special exception) to providers to employ stealth techniques.

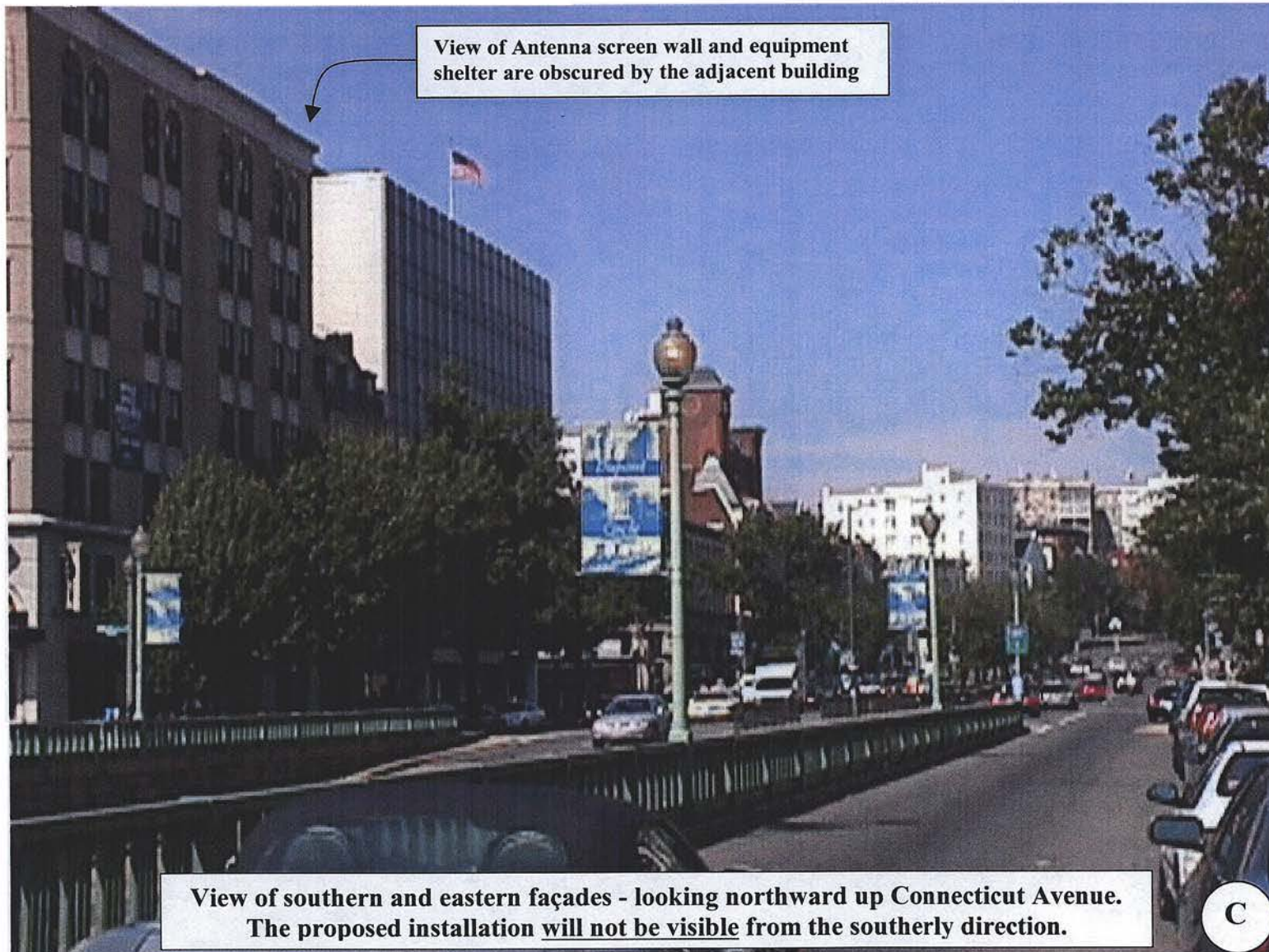
- Stealthing should be permitted as a matter of right, so long as the structure complies with certain parameters, including height, width and set-back requirements.
- In their definition of a stealth structure, the Office of Planning eliminated light standards as a potential stealth structure.
  - This distinction is without merit as many stealth structures across the country are light standards located on park district and school ball fields.
  - This type of stealth structure provides the community with wireless coverage while providing revenue to the institution. The light standard structure is an unobtrusive application of stealth design.
  - It is clear from the testimony of staff and residents that the limitation on stealth structures at “schools, hospitals, and nursing homes” is directly (and impermissibly) tied to health concerns from RF emissions.
  - The Zoning Commission should strike the exception of light standards from their definition of stealth structures.

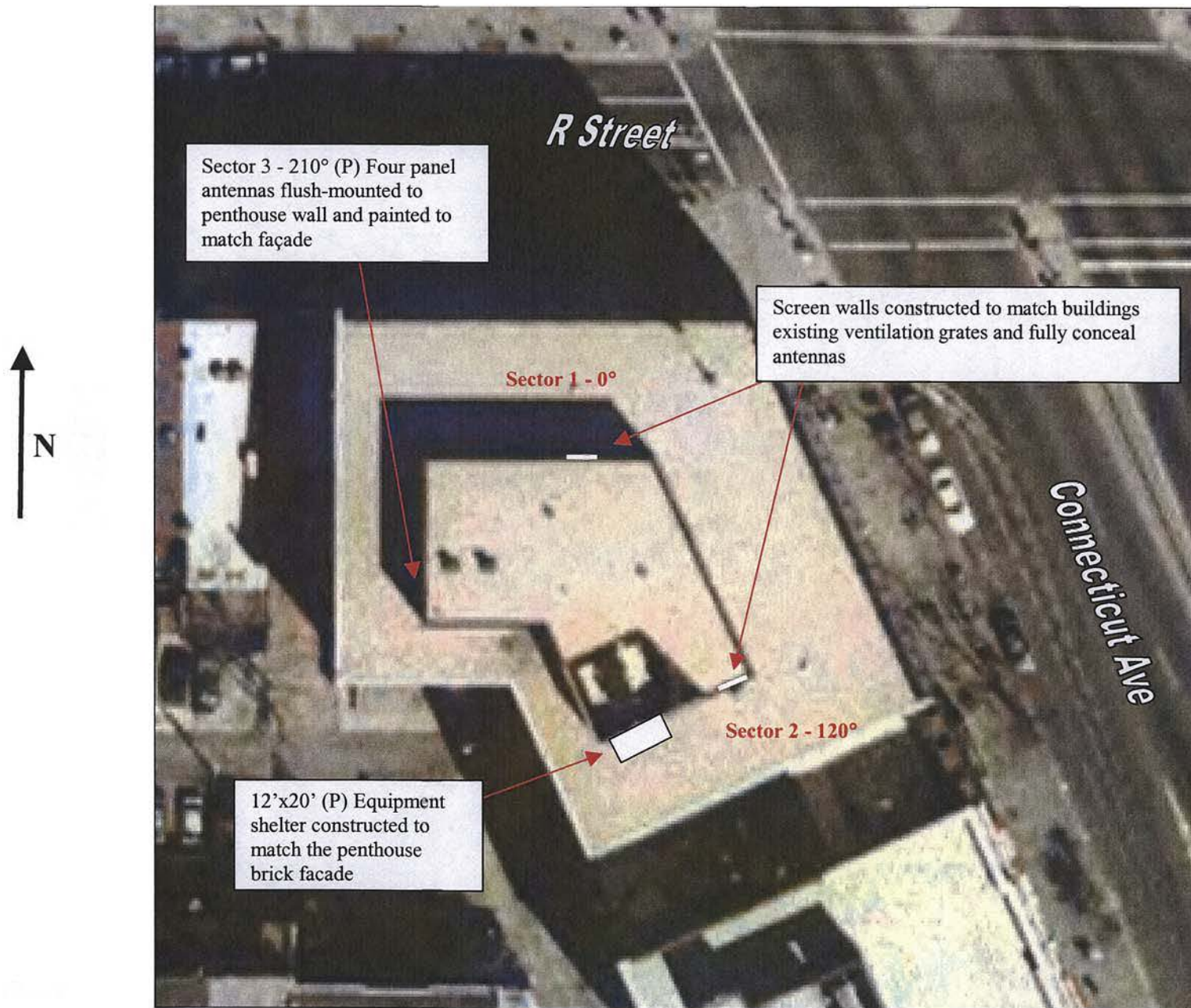






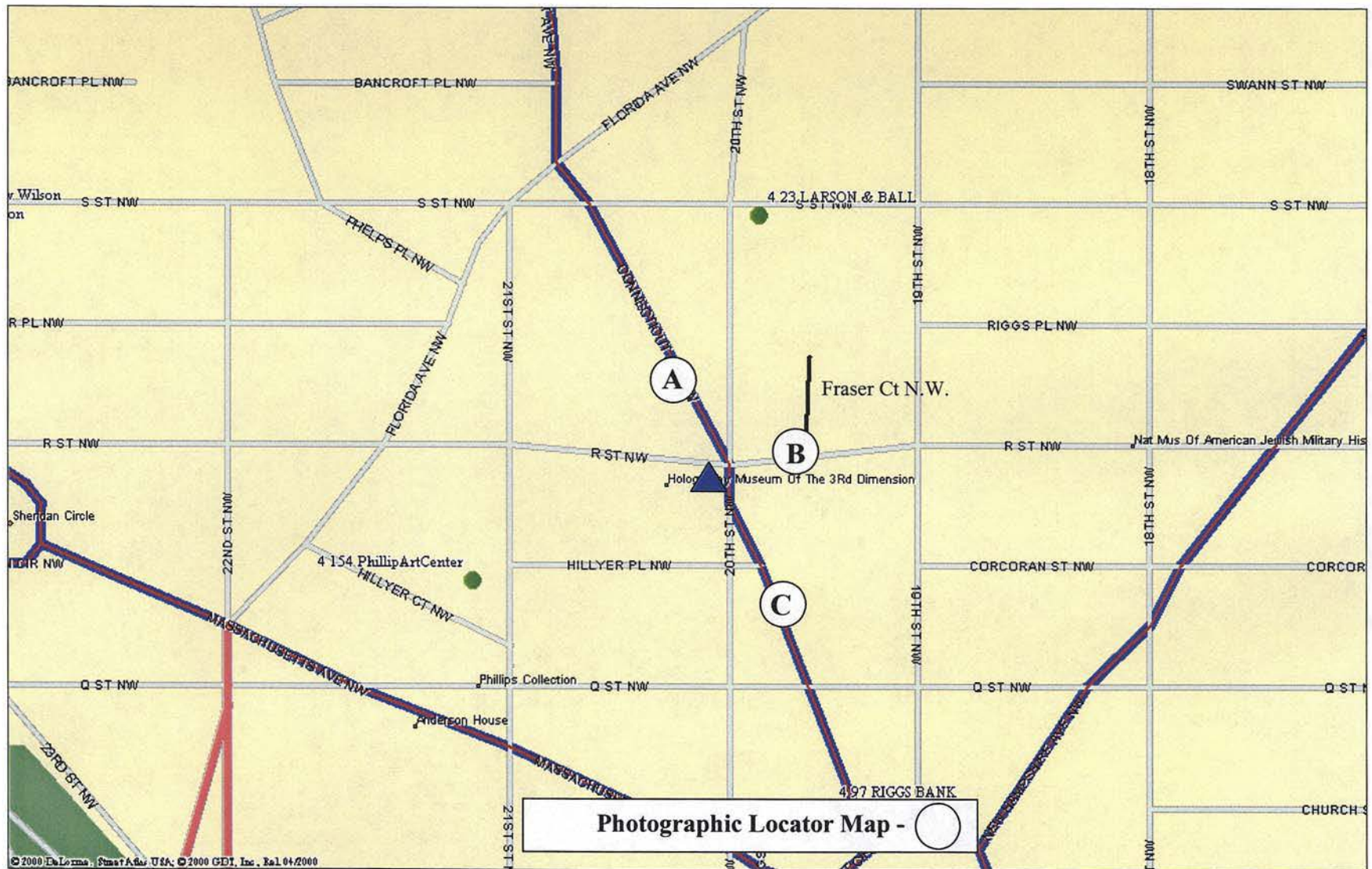


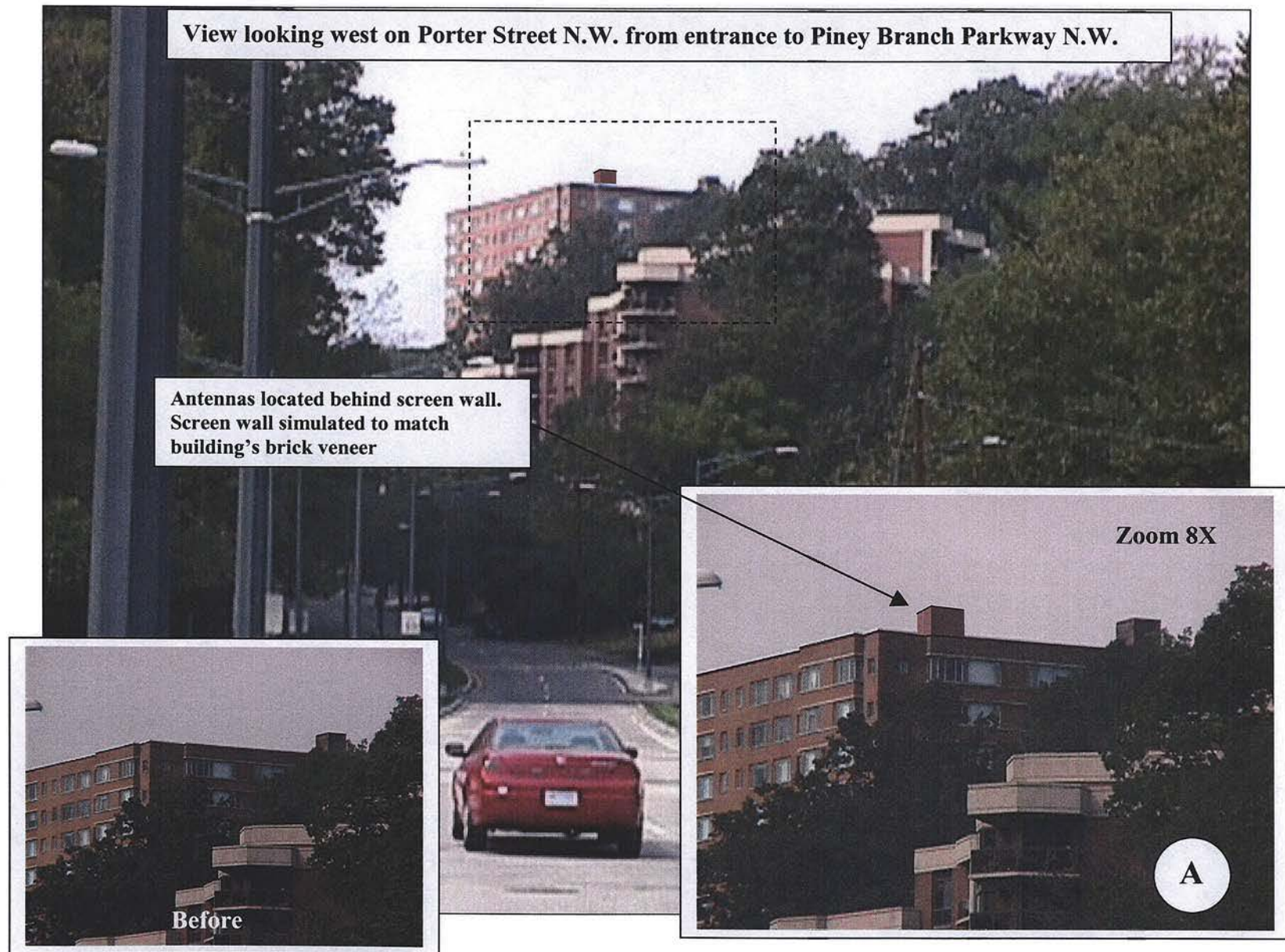


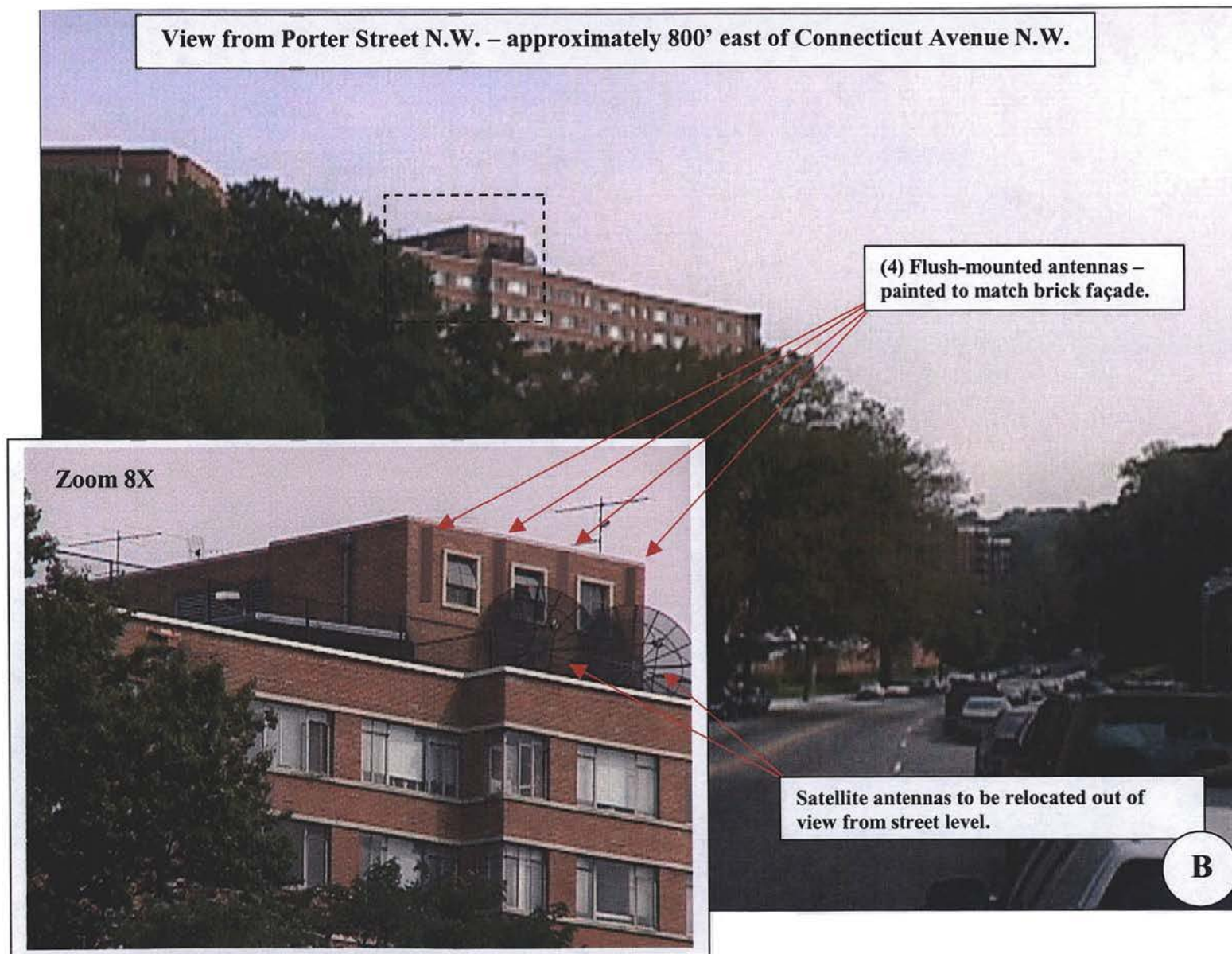


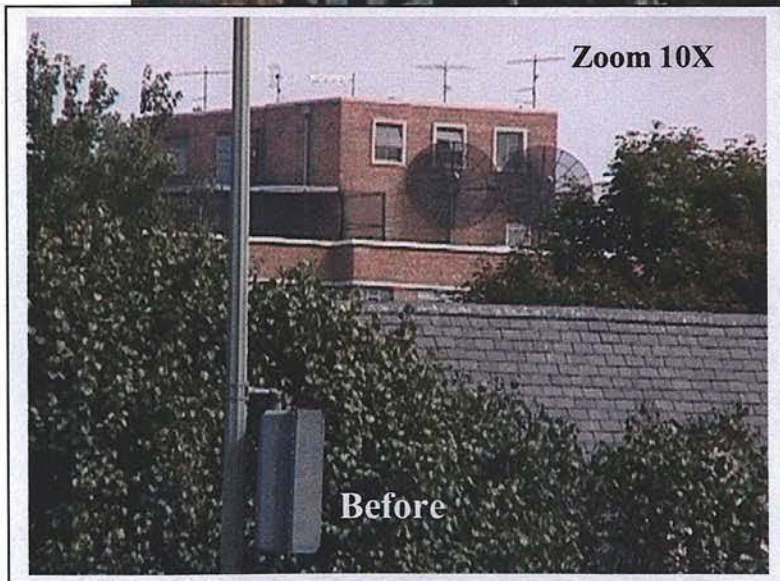
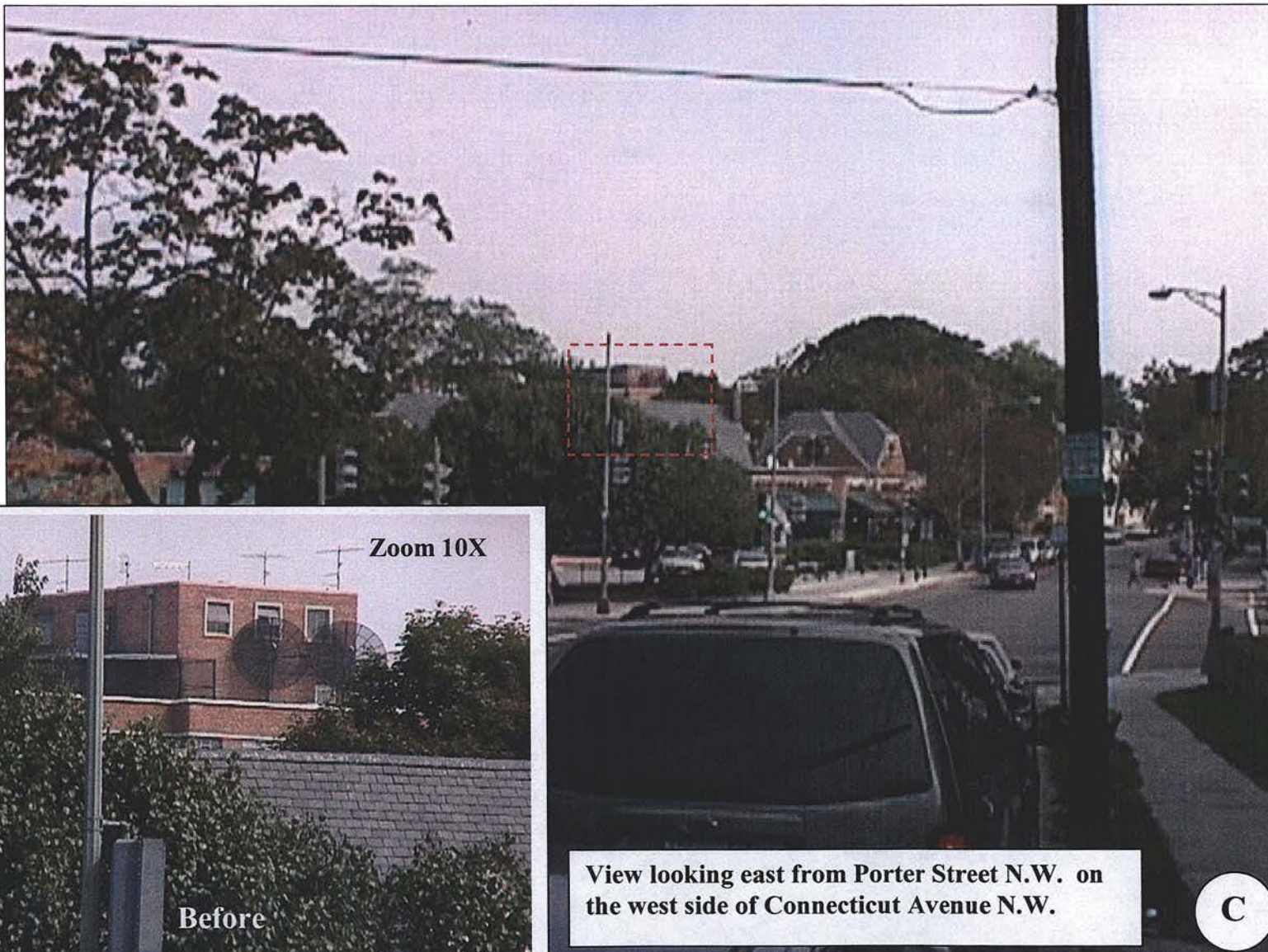
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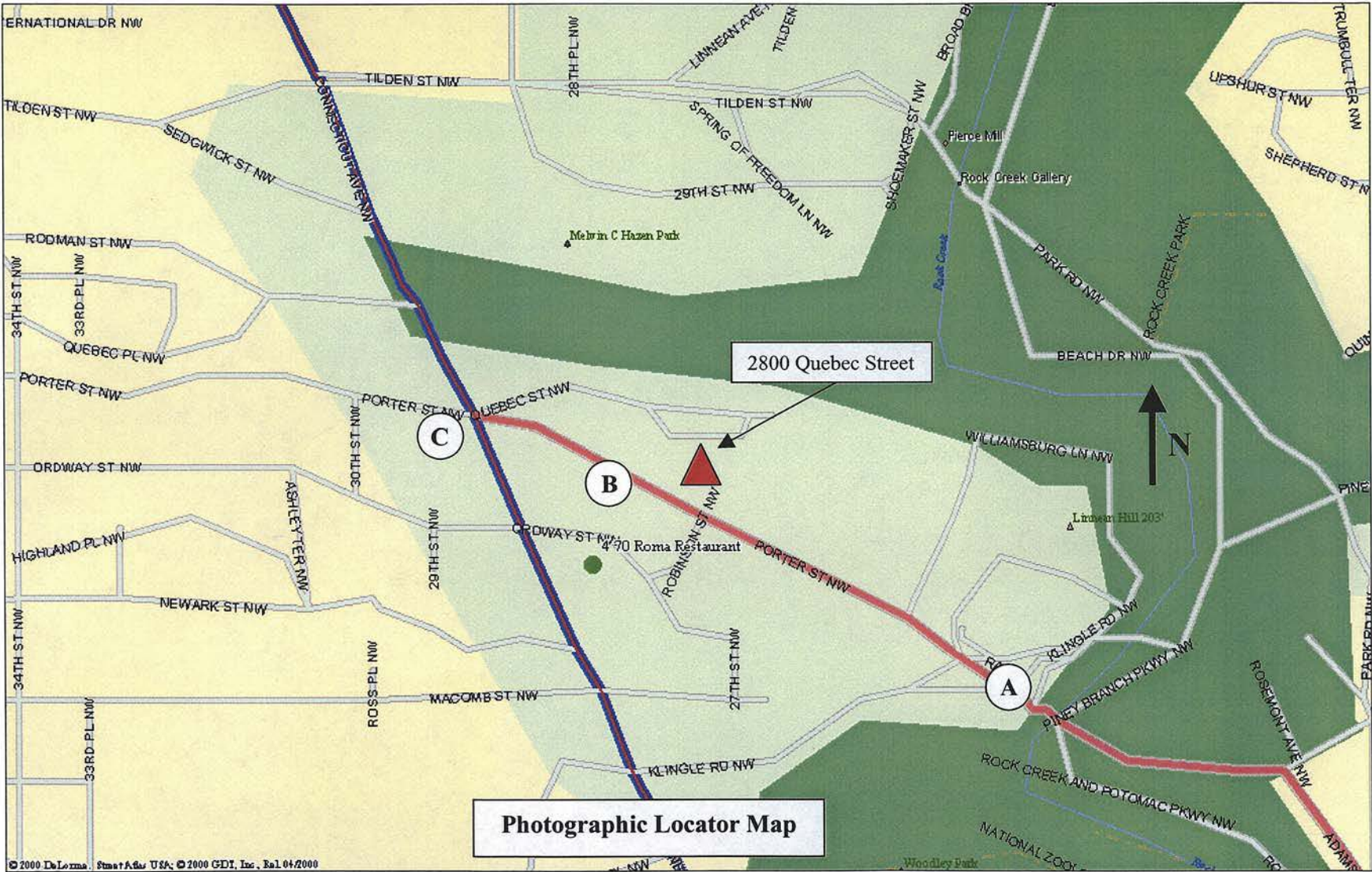






View looking east from Porter Street N.W. on the west side of Connecticut Avenue N.W.

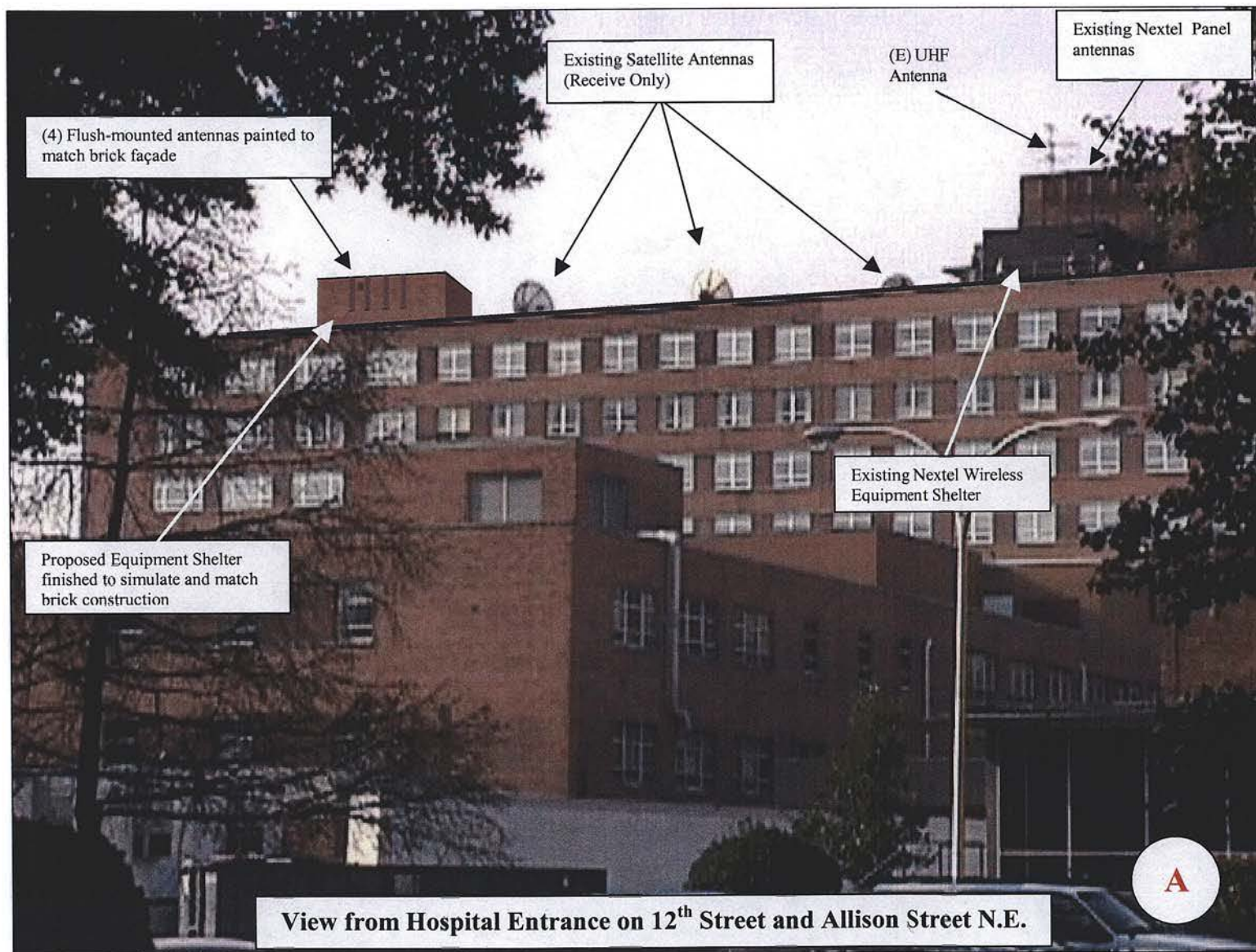
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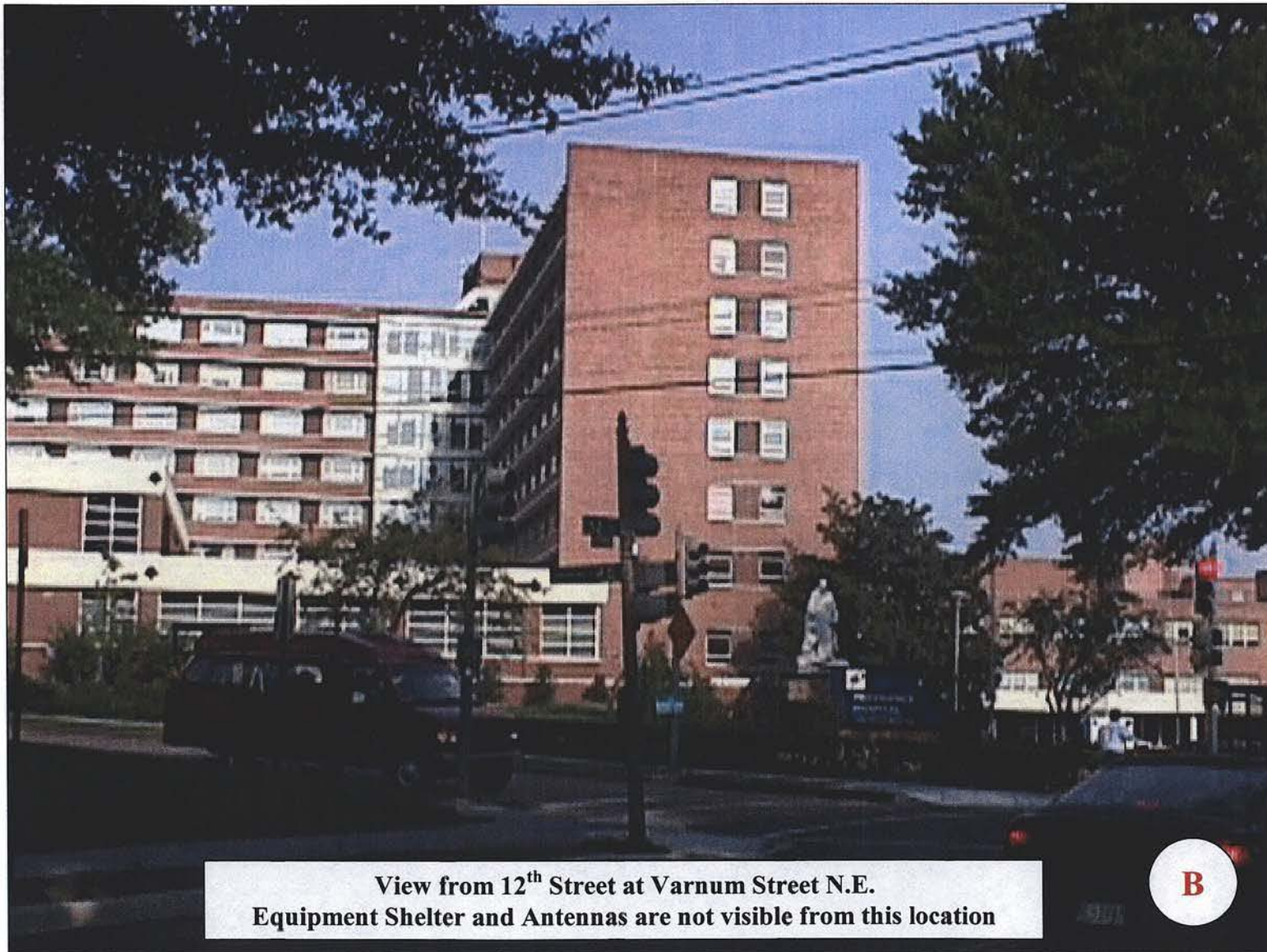


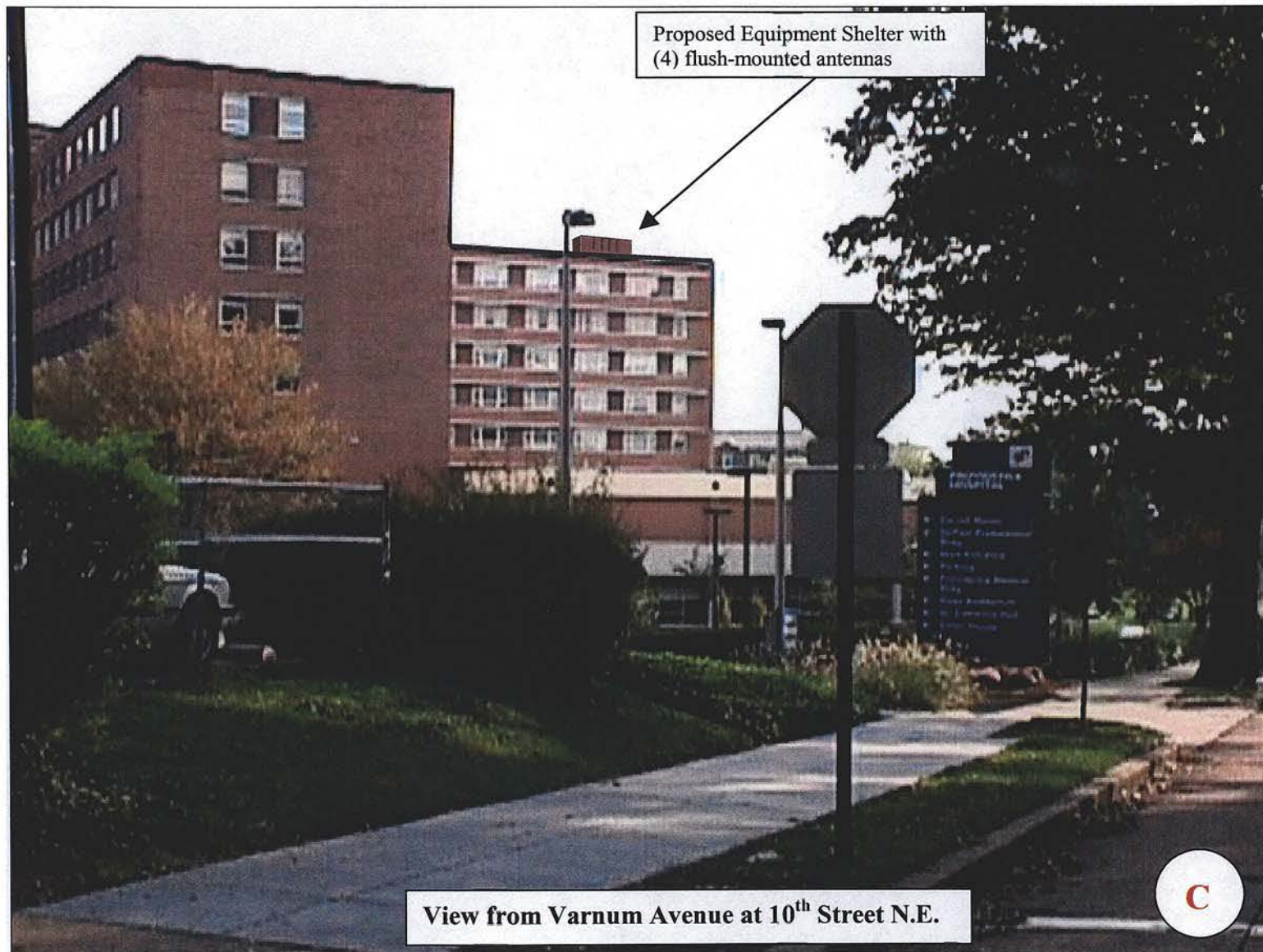
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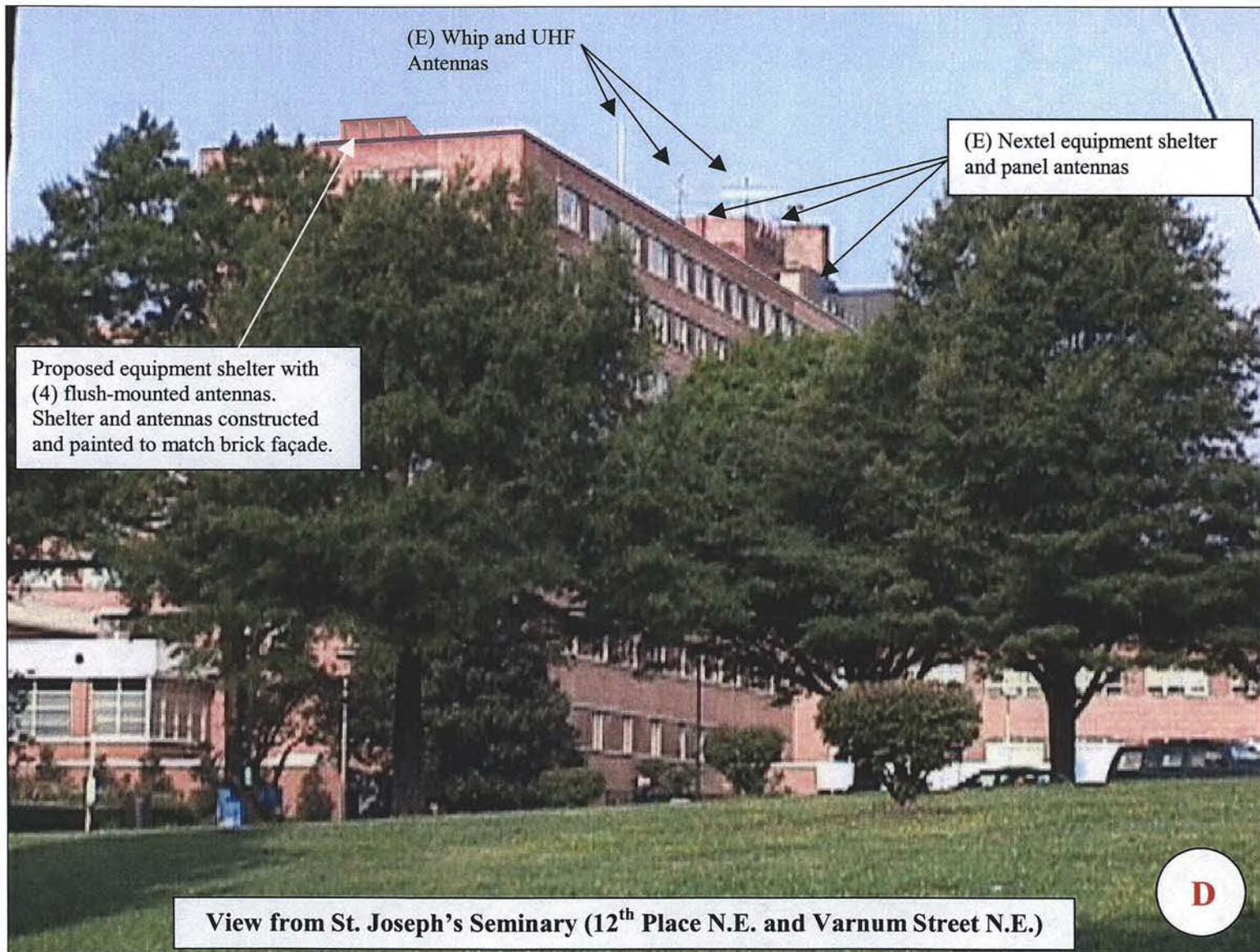
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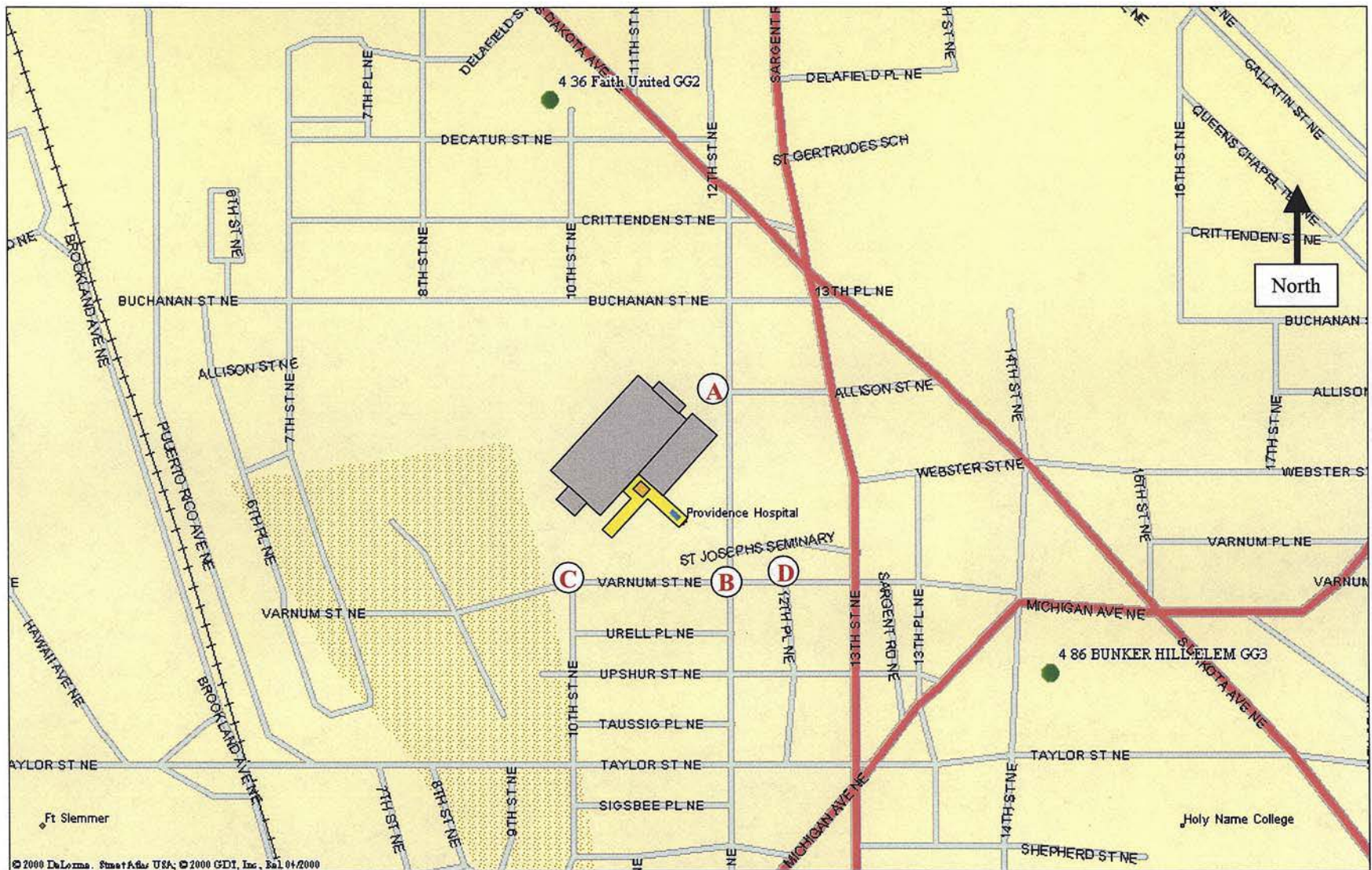












Street Map – Showing



Photographic View Locations



