
PROPOSED FINDING OF FACTS, CONCLUSION OF LAW AND ORDER

Submitted by Kenyon Street Yes We Can Cooperative, Party

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ORDER NO. 14-24_____, 2016**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 787, et seq.; D.C. Official Code § 6-641.01), and section 102 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”), held a public hearing on December 7, 2015 to consider an application from 1900 11th Street, N.W. LLC (the “Applicant”). The application requested an amendment to the zoning map of the District of Columbia to change Square 2848, Lots 39, 40, 72 and 838 from an R-4 zone to an R-5-B zone and for a parking dimension variance. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

Applicant and Property Owners

1. The Applicant owns the adjacent vacant lots 39 and 40 in square 2848, located at 1370 and 1368 Kenyon Street N.W., respectively.
2. Lot 838 is owned by the Kenyon Street Yes We Can Cooperative (Cooperative) and is improved with a 4-story, 18 unit apartment building located at 1372 Kenyon Street.
3. Lot 72 is owned by the Irving Station Condominium Association and improved with a 3-story, 16 unit apartment building located at 1361 Irving Street NW.

Preliminary Proceedings and Matters

4. The Applicant filed its application for a map amendment on December 23, 2014, and the Zoning Commission set it down for hearing as a contested case at its meeting on

- February 9, 2015.¹ On July 13, 2015, the applicant filed a request to amend its application to include a request for variance relief related to parking dimensions. The Zoning Commission approved the request at a public meeting on July 27, 2015.
5. On October 1, 2015, the Applicant filed its pre-hearing statement.
 6. At its meeting on November 12, 2015, ANC-1A considered the Applicant's application for map amendment and variance relief, but was unable to come to a decision, and therefore took no official position. A motion to oppose failed for lack of a second; a motion to support failed with a vote of 4-4-1.²
 7. On Nov. 25, 2015, the Department of Transportation and the Office of Planning each filed a hearing report.
 8. On November 20, 2015, the Cooperative filed its application to appear as a party in this proceeding, and the Zoning Commission granted it party status at the hearing on December 7, 2015.³
 9. On December 2, 2015, the Cooperative filed a waiver request to submit a late filing identifying the name and credentials of its expert witness, Nick Mroczkowski, Stoiber and Associates. The Zoning Commission accepted the filing at the December 7, 2015 hearing.⁴
 10. On December 3, the Cooperative filed a statement in opposition to the application.

¹ Zoning Commission Public Meeting, February 9, 2015, Case No. 14-24.

² Ex. 34, Advisory Neighborhood Commission (ANC) Report.

³ Ex. No. 31, Transcript, Zoning Commission Public Hearing, December 7, 2015 : Z.C. Case No. 14-24: 1900 11th Street, N.W. LLC.(hereafter "Transcript") at 5-6

⁴ Transcript at 73.

11. The Irving Station Condominium Association has not made an appearance in this proceeding.
12. The hearing to address the proposed zoning map amendment and area variance before the Zoning Commission was held on December 7, 2015.

The Applicant's Proposed Development on Lots 39 and 40

13. The site of the Applicant's proposed construction is lots 39 and 40 in Square 2848. Each lot is 16.667 feet in width and non-conforming in the R-4 zone.⁵ Any proposed construction on either lot as a separate lot would require an area variance to conform to the R-4 zone lot-width requirements.⁶
14. The Applicant proposes to combine the two narrow lots into a single parcel to construct a proposed eight unit building. The Applicant submitted drawings for the proposed development with its Application and submitted revised drawings at the hearing on December 7, 2015.⁷
15. To build the proposed building, the applicant seeks the rezoning of all four lots to an R-5-B designation, which permits matter-of-right multiple dwelling.⁸ With the exception of the parking spaces, the Applicant's project design meets the R-5-B area and use requirements, except for the parking spaces that are the subject of the Applicant's request for variance relief.⁹

⁵ Ex. 38, Applicant's Powerpoint, Existing Plat, p. 23.

⁶ Under R-4, a row dwelling or flat must have a minimum width of 18 feet, with a maximum lot occupancy of 60%, and a rear set-back of 20 feet; a single family detached dwelling must have a minimum lot width of 40 feet; a single family semi-detached building must have a minimum width of 30 feet. 11 DCMR §401.3

⁷ Ex. No. 38.

⁸ 11 DCMR 350.4.

⁹ Ex. No. 38; Ex. No. 46, Office of Planning Supplemental Report. R-5-B requirements include: a maximum height of 50 feet; a maximum lot occupancy of 60%; a maximum Floor Area Ratio (FAR) of 1.8; a rear set-back of 4 inches per 1 foot of the height of the building and not less than 15 feet, and an open court of 4 inches per foot of height. 11 DCMR 400.1, 402.4, 404.1, 406.1.

16. The Applicant has requested variance relief in order to meet the requirements of 11 DCMR §2115.1 to allow for the four (4) required parking spaces for eight (8) units. The proposed design provides a width of 8.2 feet for the parking spaces, as opposed to the required 9 feet.¹⁰
17. The Applicant does not propose development on Lots 72 or 838. Rather, the applicant included those two lots in its application at the suggestion of the Office of Planning, who found it inappropriate to rezone the two vacant lots when the property to the west was an R-4.¹¹
18. No evidence was introduced to demonstrate that the vacant lots could not be developed with variance relief as row houses or developed for other uses permitted in the R-4 Zone.
19. The Applicant and the Cooperative have acknowledged that they entered into negotiations concerning the Applicant's project design and that the revised drawings submitted in this case address some of the concerns with respect to air and light and privacy posed by potential R-5-B development. Moreover, Mr. Brown, Counsel for the Applicant indicated that those discussions would continue after the hearing.

Neighborhood Character

20. The 1300 block of Kenyon Street, is a tree lined, row-house community located in square 2848. Just around a curve in the roadway, an alleyway separates the south side of Kenyon Street from the commercial properties in Square 2843 to the west that front on

¹⁰ Applicant's prehearing statement, p. 15.

¹¹ Statement of Ms. Steingasser, Transcript at 54.

14th Street. The alleyway runs north and south between Kenyon Street and Irving Street.¹²

21. Square 2843 is zoned C-3-A, and is the site of the Columbia Heights metro station and other mixed residential and commercial properties. The entirety of Square 2848 is zoned R-4.¹³
22. Square 2848 is designated as being within a moderate density residential neighborhood under the District's Future Land Use Map and is also located within the Mid-City Area Element and a Neighborhood Conservation Area under the General Policy Map.
23. The four lots that are the subject of the application are zoned R-4 and are located at the western boundary of Square 2848. The buildings that house the Kenyon Street Yes We Can Cooperative on lot 838 and the Irving Street Condominium on lot 72 were built circa 1910 and 1900, respectively. Both are nonconforming under R-4 and R-5-B criteria. However, the pre-war buildings are part of the existing neighborhood character and were incorporated into the R-4 zone upon its creation.¹⁴

South Side of the 1300 Block of Kenyon Street

24. The Cooperative's property, lot 838, is the visual beginning of the row of residential properties that run easterly down the south side of Kenyon Street. Lot 838 abuts the alleyway to its west and the vacant lots to its east.¹⁵
25. Lot 41 at 1366 Kenyon Street, directly to the east of the vacant lots, contains a pre-existing structure characteristic of the neighborhood. It is approximately 45 feet tall at

¹² See Ex. 38, Site View, Zoning Map excerpt, and aerial and ground photo, slides 4-7, 9 .

¹³ Zoning Map

¹⁴ Statement of Ms. Brown Roberts, Transcript, Public Meeting of February 9, 2015, Case No. 14-24. at 94- 95; Ex. No. 33, Memorandum from Jennifer Steingasser, Deputy Director, Development Review and Historic Preservation, Nov. 25, 2015, at 1. (Hereinafter, "Office of Planning Report" or "Ex. No. 33.")

¹⁵ Ex. No. 38 at 5.

- the front, and contains a fourth story, mansard-style roof attic that steps down to three stories in a rear addition.¹⁶
26. To the east of lot 41 is a series of similar row houses, and approximately midway down the block, the structures step down to 3 story buildings.¹⁷ All lots to the east of the vacant lots on the south side of the 1300 block of Kenyon Street contain row houses, a portion of which have been converted to multifamily, as permitted in the R-4 zone.¹⁸
27. The north side of the 1300 block of Kenyon Street is located in Square 2843. It contains predominantly row houses with several apartment buildings intermixed.¹⁹

Existing Nearby R-5-B Zone

28. To the North and across Kenyon Street from the vacant lots is an R-5-B zone, which contains two large apartment buildings that are of a different character than the R-4 zone that predominates most of the 1300 block of Kenyon Street.²⁰ The Zoning Commission granted the R-5-B designation on February 28, 2011.²¹
29. The R-5-B zone consists of three lots (8, 10, and 808 in Square 2843). Its northern boundary (lot 10) fronts on Park Street directly across the street from the commercial and retail development in Square 2837 that extends 348 feet along Park Road.²² Lot 10 contains a twenty-one unit building at 1436 Park Road.

¹⁶ See Ex. No. 38, Front Elevation in Context, Slide #1; Ex. No. 40, Power point Presentation from Party Architect, photo no. 2.

¹⁷ Testimony of Mr. Mroczkowski, Transcript at 82-83; Exhibit No. 40, pictures 4 and 5; Ex. 38 at 3.

¹⁸ Id.

¹⁹ Ex. No. 38 at 5.

²⁰ Ex. No. 40, photo 5; Ex. No. 38 at 5.

²¹ Zoning Commission Order No. 10-25, February 28, 2011.

²² The Tivoli Partners development is described in Zoning Commission Order No. 956, Case No. 01-15MA, March 11, 2002. The R-5-B Zone is described in Zoning Commission Order No. 10-25, February 28, 2011.

30. The southern boundary of the R-5-B zone fronts on Kenyon Street and spans two lots in Square 2843 (lots 8 and 808). The two lots contain a single four story apartment building at 1349 Kenyon Street with 40 units.²³
31. The applicant in Case No. 25 requested the rezoning of the three lots in order to add additional units in the basements of the existing buildings.²⁴
32. The impact of the existing R-5-B zone differs significantly from the proposed R-5-B zone that is the subject of this proceeding. As described in Z.C. Order No. 10-25, the existing buildings were not to be altered externally and therefore would pose no appreciable effect on light and air or privacy to neighboring properties.
33. In response to questioning from Commissioner Turnbull, Ms. Steingasser stated that the Office of Planning would not interpret the Comprehensive Plan to extend the R-5 further down Kenyon Street.²⁵

Office of Planning Report and Statements

34. The Office of Planning based its recommendation to approve of the application on three grounds:
 - 1) The Proposed Map Amendment is not inconsistent with the Comprehensive Plan designation for moderate density residential and as being within a neighborhood conservation area;
 - 2) The proposed development meets all requirements of the R-5-B zone except for a small reduction in the parking space dimension, which should have no impact on the surrounding neighborhood;

²³ Zoning Commission Order No. 10-25, February 28, 2011; Ex. No. 38 at 5.

²⁴ Id.

²⁵ Transcript at 55.

- 3) The design of the building would not be incompatible with the surrounding neighborhood and would not substantially impact the light, air, and privacy of the adjacent property.²⁶
35. The Office of Planning Report states with respect to the rezoning of lots 72 and 838²⁷ that the nonconforming buildings would be allowed to remain non-conforming although future building changes or additions may require some form of building relief. The report further states “(h)owever, the proposed R-5-B zone would make this building less non-forming, especially for “use,” and would allow a conforming building, except for parking space dimensions, to be constructed on lots 39 and 40.”²⁸
36. The Office of Planning Report does not address whether matter of right developments under an R-5-B designation, other than the Applicant’s proposed design, would have an impact on the surrounding neighborhood or impact the air, light and privacy of the adjacent property.

Office of Planning’s Communications with Neighboring Property Owners

37. In response to a question from Commissioner Turnbull, Ms. Brown -Roberts stated that she did not talk to any other owners in the proposed area about the rezoning.²⁹ In response to questioning from Ms. Howells, Ms. Brown Roberts acknowledged having spoken to the Cooperative’s representatives in a phone conversation initiated by the Ms. Howells concerning the Cooperative’s concerns.³⁰
38. In response to further inquiry from Commissioner Turnbull, Ms Steingasser explained that she advised the Applicant to proceed by working with other owners and that the

²⁶ Ex. No. 33 at 1.

²⁷ Ex. No. 33 at 4. A typographical error in the Office of Planning Report incorrectly refers to lot “832” instead of lot “838.”

²⁸ Ex. No. 33 at 4.

²⁹ Transcript at 52.

³⁰ Transcript at 52-53, 59-60.

expectation was that the application would be from the property owner and that they would work in concert with their neighbors.³¹

Impact of R-5-B Zone Designation on Privacy and Light and Air

39. At the hearing, the Applicant and the Cooperative acknowledged having engaged in negotiations concerning the design of the proposed building and its effect on privacy, noise, and light and air. In response to these negotiations, the Applicant's project designer, Daniel Snook, McAllister Architects, P.C., has revised the plans that the Applicant initially filed with the Commission in order to lessen the proposed building's impact on light and air and privacy.³²
40. The Cooperative's expert witness, Nick Mroczkowski, Stoiber and Associates, testified to the potential density impact effect on the Cooperative, particularly with respect to light and air, and presented a shadow study that examined three scenarios under light conditions on April 21 at 8:00 AM and 10 AM. The three scenarios include: 1) the Applicant's proposed design reflected in the Applicant's revised drawings; 2) a theoretical three story, R-4 development at a 30 to 35 foot wall on a portion of the boundary line. The scenario depicts a maximum development under R-4; and 3) a theoretical R-5-B development with a 50 foot wall on the property line. The scenario represents a maximum development under R-5-B.³³
41. Mr. Mroczkowski's testimony and study, which the Commission credits, demonstrate the comparative effects on light and air imposed under the three scenarios. His findings are summarized as follows:

³¹ Transcript at 54.

³² For revised plans, see Ex. 38, 26-34.

³³ Ex. No. 40, Example R-5-B at 1,2.

- a. A theoretical R-5-B development with a 50 foot wall on the boundary line would allow almost no light to reach the Cooperative's eastern wall at 8:00 a.m., and very little light at 10:00 a.m.³⁴
 - b. A theoretical maximum R-4 development at 30 – 35 feet with a wall along a portion of the boundary line, would permit the most amount of direct light to reach the Cooperative's eastern wall, but the difference between the R-4 development and the proposed development differs with the time of day.³⁵
 - c. At 8:00 a.m., as compared to the proposed design, the R-4 development permits an additional story and a half of light to reach the building.
 - d. At 10:00 a.m., as compared to the proposed design, the R-4 development still permits more light to reach the Cooperative's eastern wall. However, the difference between the two scenarios is much smaller. Past 10:30 or 11:00 a.m. the effect is almost identical between the R-4 development and the proposed development.³⁶
42. If the rezoning of the vacant lots is granted, it cannot be guaranteed that the proposed design will be built. The rezoning to R-5-B would permit any as-of-right development, including the worst-case scenario illustrated in Ex. 40.³⁷
43. Residents of the Cooperative testified in opposition the rezoning, based on their concerns about parking, noise, impact on light and air and privacy.³⁸

³⁴ Testimony of Mr. Mroczkowski. Transcript at 81

³⁵ Id., Ex. No. 40 at 1, 2.

³⁶ Exchange between Commissioner May and .Mroczkowski, Transcript at 103.

³⁷ Exchange between Commissioner Turnbull and Mr. Mroczkoski, Transcript at 99-101.

³⁸ Transcript at 84-89

- a. Luzmilla Tivey, President of the Board of Directors of the Cooperative, testified that she was not opposed to development in general. However, she was opposed to the development and its effect on quality of life for the cooperative and her household' including the impact on overcrowding; and parking.
 - b. Mr. Daryl Foster, the son of Ms. Tivey, testified to his concerns for the loss of natural light; the effect on electric bills accompanying the loss of light; the loss of fresh air flow and ventilation; and the effect of the terrace design on noise pollution, smoke and privacy.
 - c. Ms. Janet Bersch, the daughter of Ms. Fannie Bersch, testified as to her concerns about the loss of light to her family's first floor apartment on the east side of the building, including increased utility costs, the effect on her mother's indoor plants, the loss of privacy and noise caused by the roof top terraces and balconies, and overcrowding.
44. The Office of Planning proffered that rezoning will make existing buildings" less non-conforming."³⁹ However, the existing structures are 100 years old; they have been in a nonconforming status since 1958 and will remain so under R-5-B. Each building would require additional zoning relief for future changes or additions. Therefore, making the buildings "less non-conforming" does not resolve any perceived concerns about their presence and opens Lot 838's residents to potential harm.

³⁹ Ex. No. 33 at 4.

CONCLUSIONS of LAW

ZONE DESIGNATION REQUEST

The Zoning Commission has the responsibility to weigh and balance competing goals within the Comprehensive plan in considering map amendments.

1. The Comprehensive Plan is not by itself self-executing, and its provisions are guidelines that afford flexibility and are not to be construed as binding policy directives.⁴⁰
2. The authority to implement the Comprehensive Plan falls exclusively with the Zoning Commission,⁴¹ has the prerogative to ascertain the suitability of a zone change by “comparing” the change to “all elements of the Plan.”⁴²
3. Under Section 2 of the Zoning Act, consistency with the Comprehensive Plan is a minimum requirement for any rezoning.⁴³ However, beyond that, the Commission has the responsibility to weigh and balance competing goals within the Comprehensive plan, and in carrying out that duty, the Commission has a great deal of discretion.⁴⁴
4. Section 1 of the Zoning Act empowers the zoning commission to undertake a number of actions in carrying out its responsibilities, including the power to “divide the District of Columbia into districts or zones of such number, shape, and area as said Zoning Commission may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures and the uses of land “.⁴⁵

⁴⁰ 10-A DCMR §226.1.

⁴¹ *Watergate W. Inc.* 815 A. 2d 762 (2003 D.C.); App Lexis 18; [Tenley & Cleveland Park Emergency Comm. v. D.C. Bd. of Zoning Adjustment, 550 A.2d 331,336-37 \(D.C. 1988\).](#)

⁴² Zoning Act of 1938, 52 Stat 797, D.C. Code §6-641.01 *et seq.* (“Zoning Act”); *Wisconsin-Newark Neighborhood Coalition v. D.C. Zoning Comm'n*, 33 A.3d 382, 395, 2011 D.C. App. LEXIS 691, *33 (D.C. 2011).

⁴³ Zoning Act, D.C. Code § 6-641.02.

⁴⁴ See, eg, *Capital Properties, Inc. v. Zoning Com. Of District of Columbia*, 229 F. Supp. 255, 257 (D.C 1964); *Tenley & Cleveland Park Emergency Comm. v. D.C. Bd. of Zoning Adjustment*, 550 A.2d 331 (D.C. 1988).

⁴⁵ D.C. Code §6-641.01.

5. Section 2 of the Zoning Act mandates that, among other things, the “zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land.”⁴⁶
6. The Zoning Commission must take into consideration the Cooperative’s concerns with respect to privacy, density , overcrowding , and air and light in the its application of the regulations in this case.⁴⁷
7. The Zoning Commission must also give “reasonable consideration,” in formulating its regulations to, among other things, “the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.”⁴⁸

The Office of Planning’s position is to be considered in the context of the case.

8. Although the Office of Planning’s recommendation is entitled to great weight, the Zoning Commission has the authority to credit contrary expert opinion and to give the agency the deference it merits in the context of the entire proceedings.⁴⁹

⁴⁶ D.C. Code §6-641.02.

⁴⁷ See, *Draude v DCZA*, 527 A 2d 1242, 1251-53 (D.C.1986). See also, 11 DCMR 101.1, which provides:

In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:

- (a) Provide adequate light and air;
- (b) Prevent undue concentration of population and the overcrowding of land; and
- (c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

⁴⁸ D.C. Code 6-641.02.

⁴⁹ § 13(d), Office of Zoning Independence Act, D.C. Law 8-163, D.C. Code 6-623.04; *Neighbors against Foxhall Gridlock v. D.C. Bd. Of Zoning Adjustment* 792 A. d 246, 250 (DC 2002).

9. The Zoning Commission's charge in a map amendment is to consider the potential effect and desirability of the zoning designation in promoting the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia.⁵⁰ As noted, once a zone designation is approved, there is no further regulatory control over matter-of-right development and the Cooperative would have no right to oppose a matter of right development that differs from the Applicant's revised plans.⁵¹
10. In this case, the testimony and shadow analysis provided by the Party's Architect is compelling, since it shows the effect that revisions or alternative as-of-right development under the R-5-B zone might have on the adjacent property, and is to be considered along with the Office of Planning's position in formulating the relief granted.

The R-5-B zone designation is consistent with moderate density residential in *some locations* but not generally.

11. The Comprehensive Plan designates the lots that are the subject of the application as a moderate density residential area. The Comprehensive Plan defines moderate density residential as neighborhood characterized by "a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings, and in some older inner city neighborhood existing multi-story apartments, many built decades ago."⁵² The R-5-B may apply in *some locations*, but is not always appropriate in a moderate density residential area, and it is incumbent upon the Commission to decide whether it would be in this case.⁵³

⁵⁰ D.C. Code §6-641.01.

⁵² 10 DCMR 225.4

⁵³ Id. (emphasis added).

12. The present case involves a rezoning that will permit an R-5-B development on two narrow, vacant lots sandwiched between two existing buildings. The rezoning to R-5-B, without conditions, would allow for the as of right construction of a structure that would essentially block all direct light to the east side of the Cooperative's building and create issues of privacy and overcrowding, an effect which would be inconsistent with the Comprehensive Plan.
13. While an R-5-B zone is sometimes consistent with development in moderate residential areas, the R-5-B zone regulations do not, under the circumstances, provide sufficient protection against the negative impact that the permissible density and bulk zone could have on the neighboring property. The R-5-B designation provides no guaranty that the proposed project will actually be built.

The Zoning Commission is presented with Competing Concerns

14. The Comprehensive Plan warrants against the rezoning of an R-4 neighborhood to an R-5-B zone designation under circumstances that would permit a substantial detrimental effect to the residents of existing neighboring property:
 - a. The Comprehensive Plan provides “[t]he overarching goal for housing is [to] [d]evelop and *maintain* a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia (emphasis added).”⁵⁴
 - b. The Comprehensive Plan's strong support for infill development on vacant lots is qualified. Development must be “compatible in scale with its surroundings and consistent with environmental protection and public safety objectives,”⁵⁵ “the

⁵⁴ 10-A DCMR § 501.1.

⁵⁵ 10-A DCMR § 307.2.

privacy of neighboring structures should be respected,” and “the density and scale should reflect the desired character of the surrounding area.”⁵⁶

- c. The Comprehensive Plan singles out row house communities that are near metro stations for heightened attentiveness to the encroaching reach of transit-oriented development.⁵⁷ It warns against succumbing to development pressures that threaten the qualities that make neighborhoods desirable.⁵⁸

- 15. On the other hand, the rezoning to R-5-B will permit the Applicant to develop the property in accordance with its revised plans, and serves to encourage infill development on vacant land.⁵⁹

The Zoning Commission has the authority to address the competing concerns presented in this case through the imposition of conditions on the development in the R-5-B Zone

- 16. The Commission is presented with the competing considerations. t On the one hand, development that is consistent with the Applicant’s revised plans would not be inconsistent with the Comprehensive plan. But, on the other hand, as -of-right development under an R-5-B designation might not be.

- 17. In contested map amendments cases, the Zoning Commission may impose conditions to the order permitting the map amendment in order to ameliorate the potential for harm to existing uses within the affected area.⁶⁰

- 18. Under the Comprehensive Plan, there is no compelling reason to rezone the subject property other than to permit the Applicant’s proposed moderate density residential

⁵⁶ 10-A DCMR § 307.3. The purpose of zoning is to create districts, large or small, and not to zone or rezone specific property. Capital Properties, Inc. v. Zoning Comm. of District of Columbia, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C. 1964).

⁵⁷ 10-A DCMR § 306.8.

⁵⁸ 10-A DCMR § 218.

⁵⁹ L.U. 1.4.3, 10 DCMR 307.5.

⁶⁰ e.g., District of Columbia Zoning Commission Case No. 10-30, Page 7.

infill on the vacant lots, which could not be developed under the present R-4 designation.

19. The Zoning Commission finds it necessary to place conditions on its approval of the Map Amendment because of the possibility that other maximum, as-of-right uses under R-5-B may cause undue harm to the neighboring property.

CONCLUSIONS of LAW

Area Variance Relief

A proposed development's effects on neighboring property, including light and air, density, overcrowding, and privacy, must be considered in granting area variance relief

1. The Applicant has requested area variance relief from required parking lot dimensions for its proposed project, which will enable it to construct an eight- unit apartment building.
2. The opposing party's primary objection to the proposed development is that development may have a detrimental impact on light and air, privacy, and parking for the residents of the neighboring property under the flexible criteria for development in R-5-B zones.
3. Section 2 of the Zoning Act mandates that, among other things, the "zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land."⁶¹
4. Detrimental impacts on light and air and privacy for neighboring properties are particular areas of concern that the Zoning Commission must consider in its interpretation of the regulation.⁶²

⁶¹ D.C. Code §6-641.02.

⁶² See, *Draude v DCZA*, 527 A 2d 1242, 1251-53 (D.C.1986). See also, 11 DCMR 101.1, which provides:

In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:

- (a) Provide adequate light and air;
- (b) Prevent undue concentration of population and the overcrowding of land; and
- (c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and

The Applicant's building plans are a significant and essential component to the overall application.

5. The concerns raised by the Cooperative about the effects of development under the R-5-B zone designation are germane to the Applicant's request for variance. The need for variance relief on parking dimensions is related to the number of units in the proposed development and the location of improvements, which in turn relates to consideration of light and air, overcrowding, and privacy for adjacent properties.
6. Thus, the Zoning Commission has examined the concerns of the opposing party with respect to potential detrimental effects and has considered those concerns in formulating the variance relief granted, and shall require that the variance be subject to conditions related to the building plans.

An area variance may be granted where exceptional conditions of the property would result in exceptional practical difficulties

7. The Board of Zoning Adjustment [and the Zoning Commission] has the power to grant a variance "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property." 11 DCMR 3103.2

recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

8. The area variance request for an additional parking space stems from an “exceptional situation” in which the Applicant seeks to develop the property as an R-5-B zone when the property, previously zoned as an R-4, is too narrow by a small margin to accommodate the required parking spaces.⁶³ Under an R-5-B zone designation the proposed multi-family, multi-story building would require an area variance in order to conform to 11 DCMR §2115.1, which would require four (4) parking spaces for the proposed 8-unit building with nine foot widths.

Conditions to the area variance relief will ensure promotion of the public good.

9. The area variance to accommodate parking spaces of eight and two tenths width would serve the public good *under certain conditions*, should the R-5-B zone designation be granted.
10. The variance can be granted only if “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.” 11 DCMR 3103.2. Thus, the Applicant’s building plans should demonstrate that the proposed variance would have “no detrimental effect on the neighborhood or zone plan.” Nat’l Black Child Dev. Inst., Inc. v. D.C. Bd. of Zoning Adjustment, 483 A.2d 687, 691 (D.C. 1984).
11. The variance will avoid “substantial detriment to the public good” if it is granted *under the condition* that the Applicant’s building plans (Exhibit A) are substantially adhered to upon the development of the property.
12. Furthermore, the variance relief will not impair the “intent, purpose and integrity” of the Zoning Regulations’ requirement that light, air flow, traffic, overcrowding and the public welfare be considered in applying the regulations *under the condition* that the property is developed in accordance with the plans in Exhibit A and the conditions that are included in the Order. The building plans in Exhibit A were developed in

⁶³ 11 DCMR 3103.2

consultation with the Party to address neighboring residents' concerns regarding light, air, privacy, overcrowding on the property and traffic.

Under the zoning regulations, the Granting of the area variance relief requires adherence to the plans approved by the Zoning Commission.

13. Under the regulations, approval of an application must “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, unless the Board orders otherwise.” 11 DCMR 3125.7.
14. Any conditions listed in this order shall not be particular to the Applicant property owner, given the well-established principle that any conditions imposed on the granting of a variance “like the variance itself, must run with the land.”⁶⁴
15. The Applicant is required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise. 11 DCMR 3125.8.
16. Any building permit to develop on the property subject to the variance shall be conditioned upon the use of plans in Exhibit A. See 11 DCMR 3205.1, 11 DCMR 3205.3, 11 DCMR 3205.5.

DECISION AND ORDER

Having considered the evidence, the Zoning Commission finds that, in balance, the rezoning of the lots in question in this particular case is inappropriate without the imposition of conditions to protect the adjacent properties from detrimental consequences related to development. Any conditions listed in this Decision and Order shall not be particular to the

⁶⁴ National Black Child Development Institute v. District of Columbia Board of Zoning Adjustment, 483 A.2d 687, 691 (D.C.1984) (citations omitted).

Applicant property owner. Future property owners shall be subject to the conditions listed in the Decision and Order for this case.

Furthermore, to accommodate for the property owner's interest in flexibility of design while substantially meeting the intent of the Zoning Act, the Comprehensive Plan, and the conditions contained in this order, the Zoning Administrator shall only approve minor modifications in the final plans within limitations. Modifications to building design and the process for approval of those modifications should generally follow PUD modification standards outlined in 11 DCMR 2409.6 and 11 DCMR 2409.7, except as may conflict with the specific provisions of this order relating to minimum set-backs. The procedures in 11 DCMR 3129 shall apply with regard to modification of approved plans if the Applicant seeks to modify the plans used for the variance application. Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts upon which the Board based its original approval of the application. 11 DCMR 3129.6.

ORDER

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, and subject to the conditions contained herein, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of an amendment to the zoning map of the District of Columbia to change Square 2848, Lots 39, 40, 72 and 838 from an R-4 zone to an R-5-B zone and **ORDERS APPROVAL** of a related parking dimension variance subject to the conditions stated in this order. "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner:

1. Infill development of the property shall substantially conform to the Applicant's submitted building plans in Exhibit A.

2. In an effort to preserve a reasonable amount of light and air to the existing adjacent property, the Applicant's building will be generally configured with the highest (50' high) sections toward the North and East edges of the property and gradually terrace down toward the South and West. The highest sections (31' up to 50' in height) of the Applicant's building should set back at least 11'-5" from the West property line. Lower sections (30' in height or less) should set back at least 4'-8" from the West property line, except where the two buildings meet to form a party wall at the North end of the site.

3. In order to preserve the adjacent property residents' privacy concerns, no window or balcony shall be positioned so as to face directly into the windows of the adjacent property. The railing of the roof deck balcony shall only face the south side of the building and no part shall face west toward the adjacent property.

4. The Applicant shall continue to coordinate with the Cooperative to incorporate design features and buffers between their respective properties to minimize any adverse impacts.

5. Any property owner who will make use of the variance shall follow BZA modification procedures per 11 DCMR 3129.6 and PUD modification standards per 11 DCMR 2409.6, except that the set-backs stated in this order shall be considered minimum, and 11 DCMR 2409.7.

LOT SIZE 4042 SF	LOT OCCUPANCY SHOWN: 82.5%
	BUILDING 2162 SF
	TERRACES 131 SF
	EXTERIOR STAIR 205 SF
	TOTAL 2498 SF
LOT PERVIOUS SURFACE: 32.5%, 1400 SF	

Ceiling:	2,750 SF
FIRST FLOOR:	2,142 SF
SECOND FLOOR:	2,162 SF
THIRD FLOOR:	2,142 SF
FOURTH FLOOR:	2,169 SF
FIFTH FLOOR:	350 SF
MECH. ROOF STRUCTURE:	255 SF
TOTAL:	12,180 SF

STRUCTURE FARE	1.8	\$895 SF
ROOF STRUCTURE FARE:	0.1	\$35 SF
TOTAL FARE	1.9	\$930 SF
GATE	0.4	\$977 SF



1475 BOWMAN STREET
ALEXANDRIA VA 22314
703.917.8078
703.519.0102 FAX
LMAIL@NIDA-ADHD.EDU

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3316 14TH STREET NW
WASHINGTON, D.C. 20010

SCHEMATIC DESIGN
1368 & 1370 KENYON STREET NW
WASHINGTON, DC 20010

ISSUE DATE: 11/28/2015

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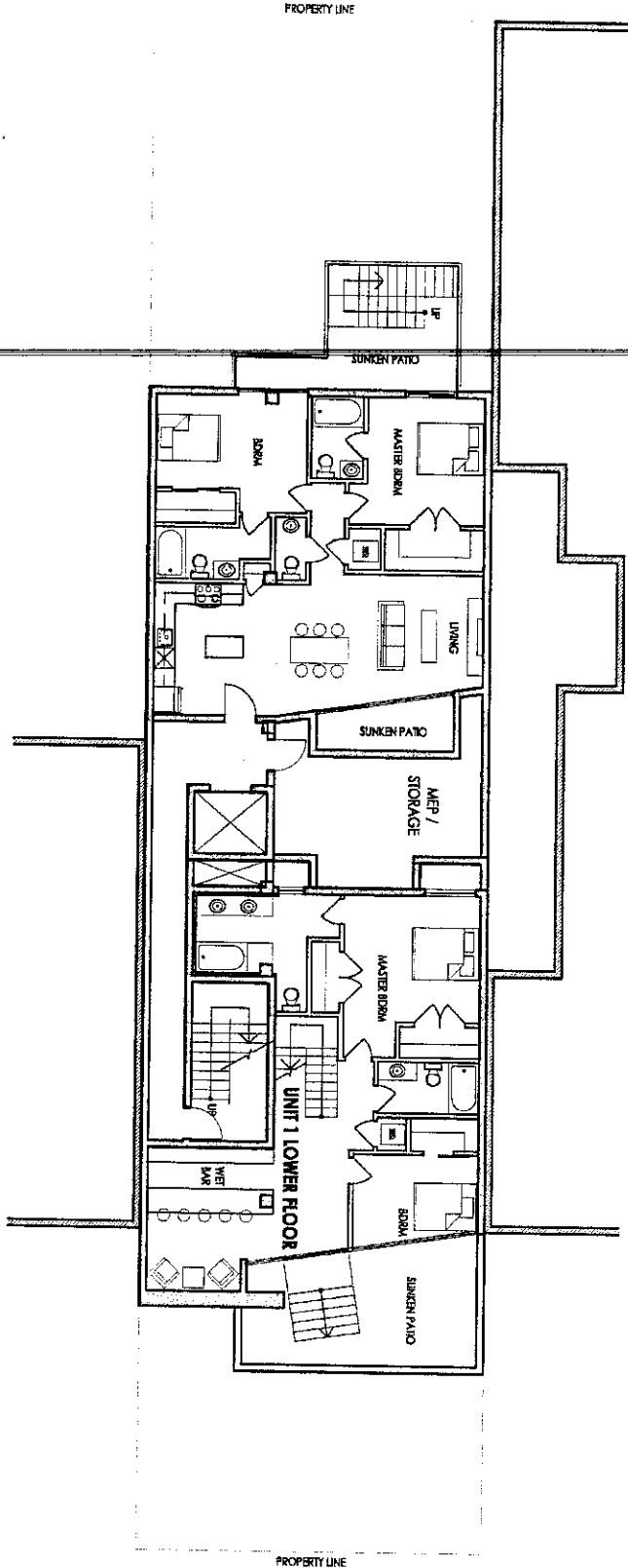
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A1.1

1
CELLAR FLOOR PLAN
3/32" = 1'-0"

(1/320/CDPLANS-1)



UNIT 2
955 SF
1 SLEEP
1 BATH
25 BARS
2 PANIC

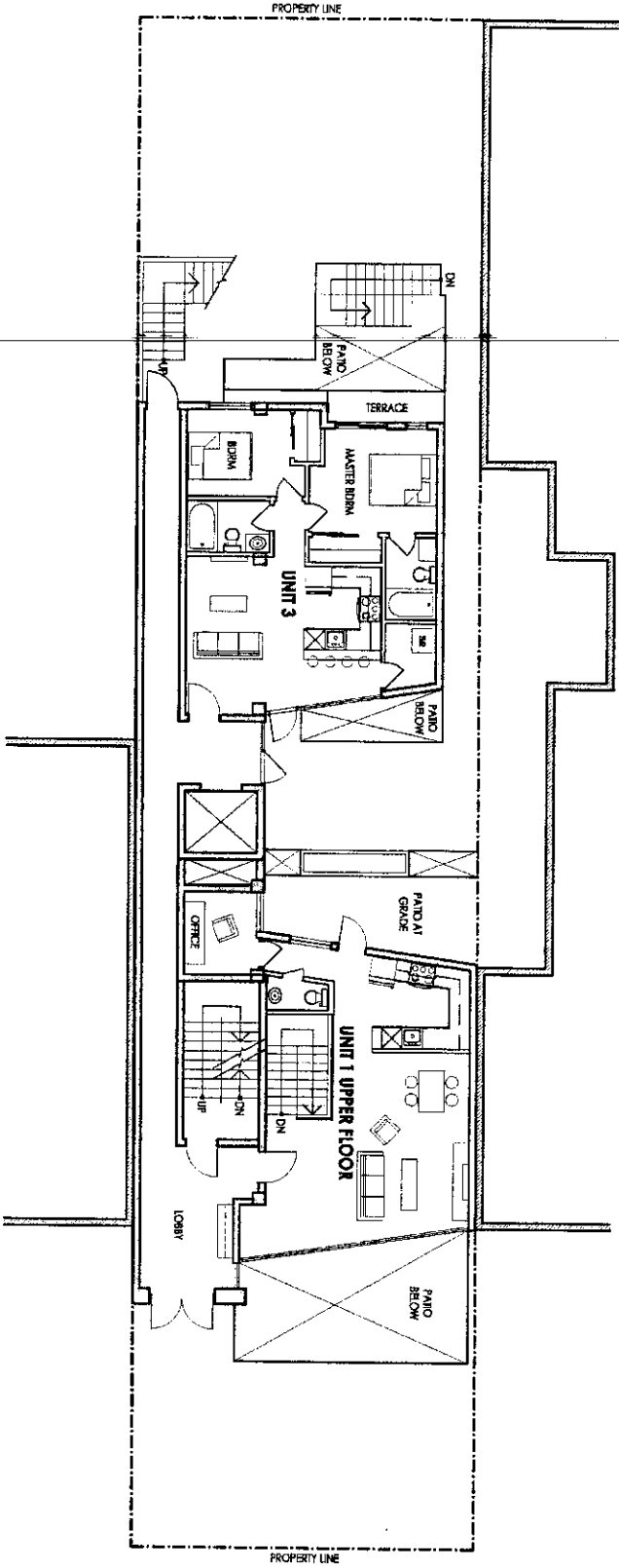
UNIT 1
1537 SF
2 SLEEP
2 BATH
25 BARS
2 PANIC
OFFICE
DEN

UNIT 3

402 SF
1 BEDRM
2 BDRM
2.5 BATH
1 TERRACE

UNIT 1

1,544 SF
2 BEDRMS
2 BDRM
2.5 BATH
2 PATIOS
OFFICE
DEN



1

FIRST FLOOR PLAN

3/32" = 1'-0"

(1320/DFPLANS-1)



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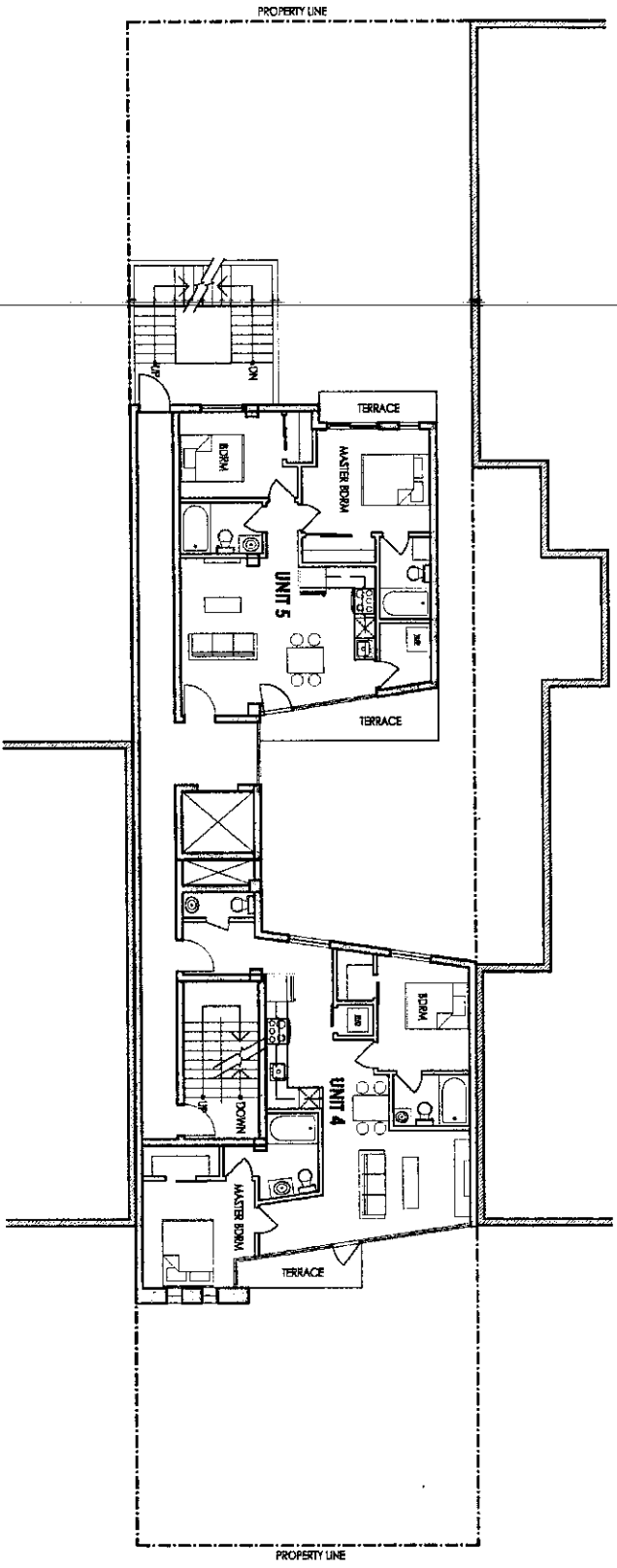
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A1.2

UNIT 5
640 SF
1 STOR
2 BDRM
2.5 BATH
2 TERRACES

UNIT 4
739 SF
1 STOR
2 BDRM
2.5 BATH
1 TERRACE



1 SECOND FLOOR PLAN
3/32" = 1'-0"

(1320/DFPLANS-1)

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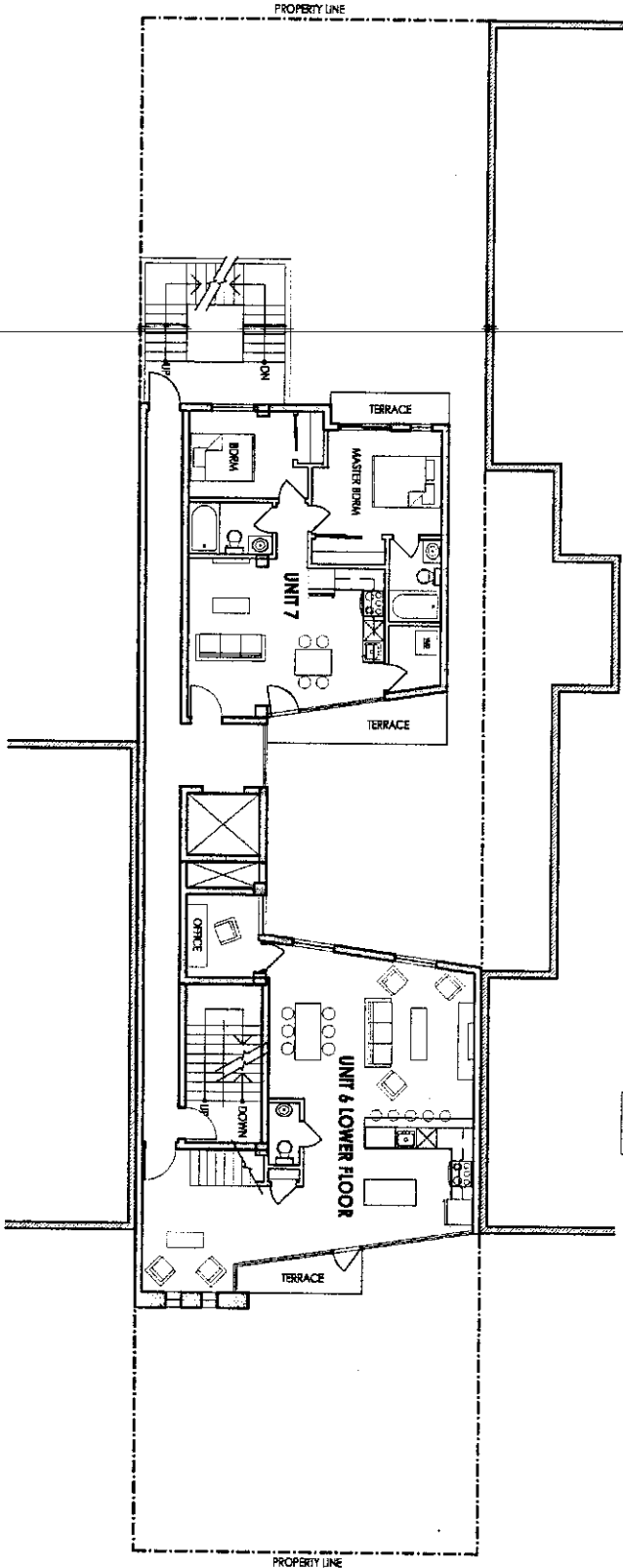
A1.3

UNIT 7

647 SF
1 STORY
2 BDRM
2 BATH
2 TERRACES

UNIT 6

1043 SF
2 STORIES
3 BDRM
2.5 BATH
1 TERRACE
OFFICE
ROOF DECK



1 THIRD FLOOR PLAN

3/32" = 1'-0"

(1320/DDPLANS-1)

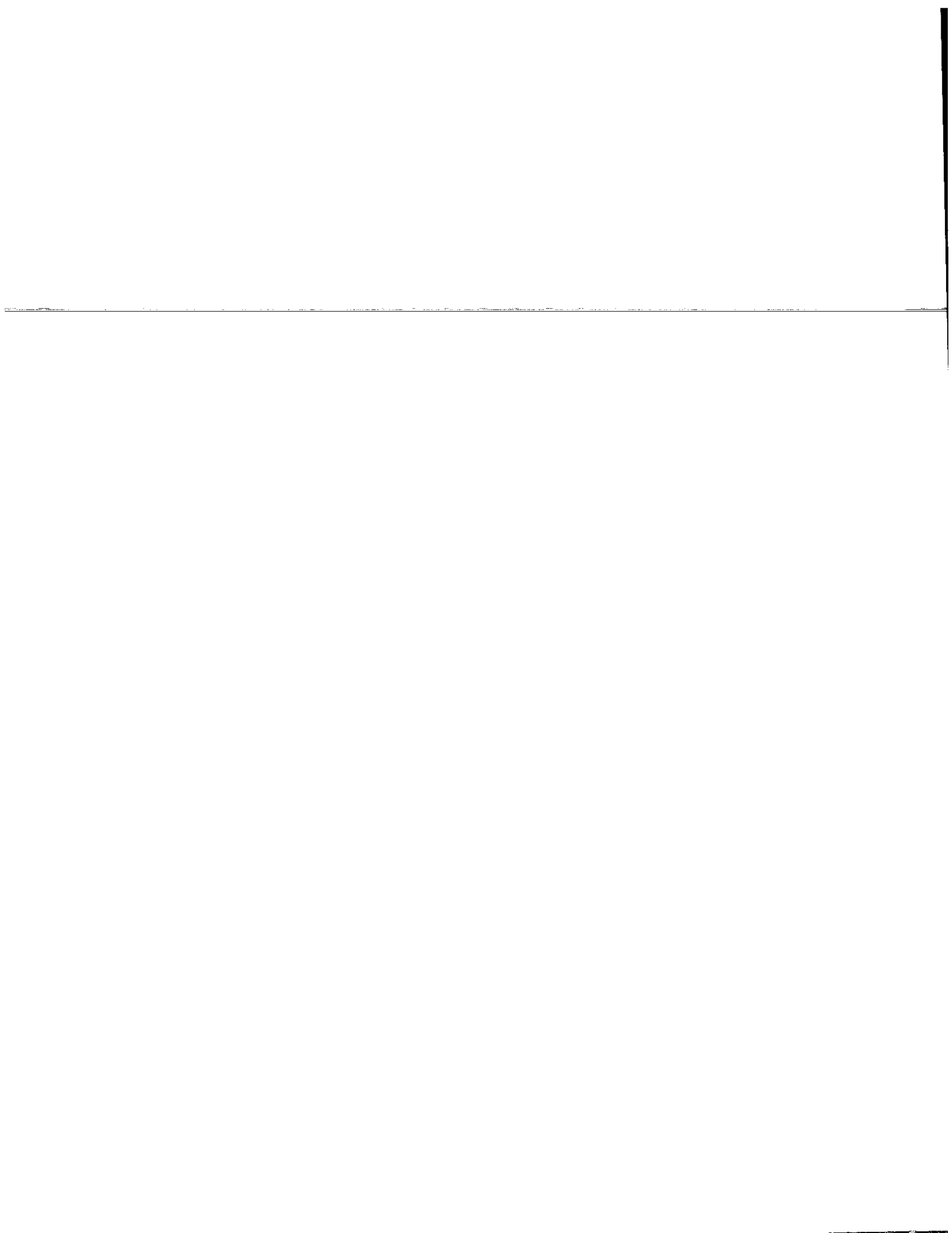


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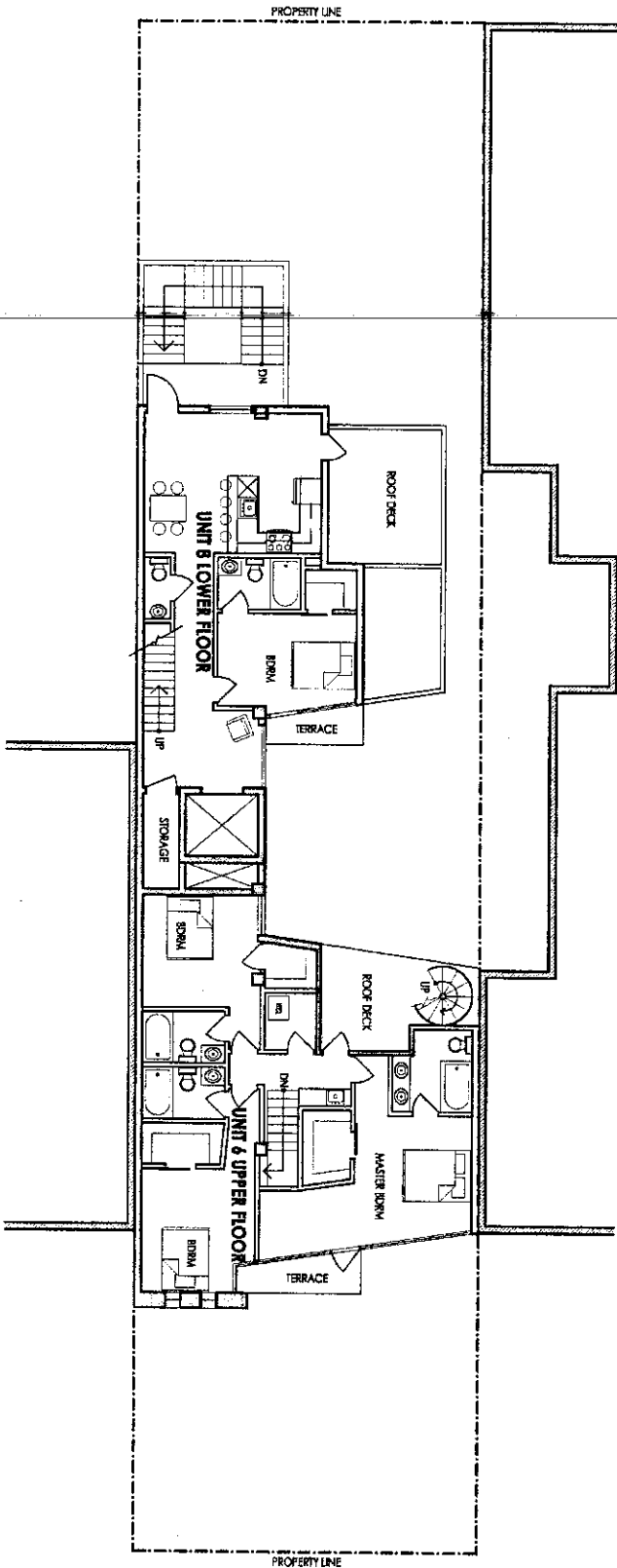


UNIT 8

1017 SFT
2 STORIES
2 BDRM
2.5 BATH
2 TERRACES
OFFICE
ROOF DECK

UNIT 6

1443 SFT
2 STORIES
3 BDRM
3.5 BATH
1 TERRACE
OFFICE
ROOF DECK



1

FOURTH FLOOR PLAN

3/32" = 1'-0"

(1320/DD/PLANS-U)



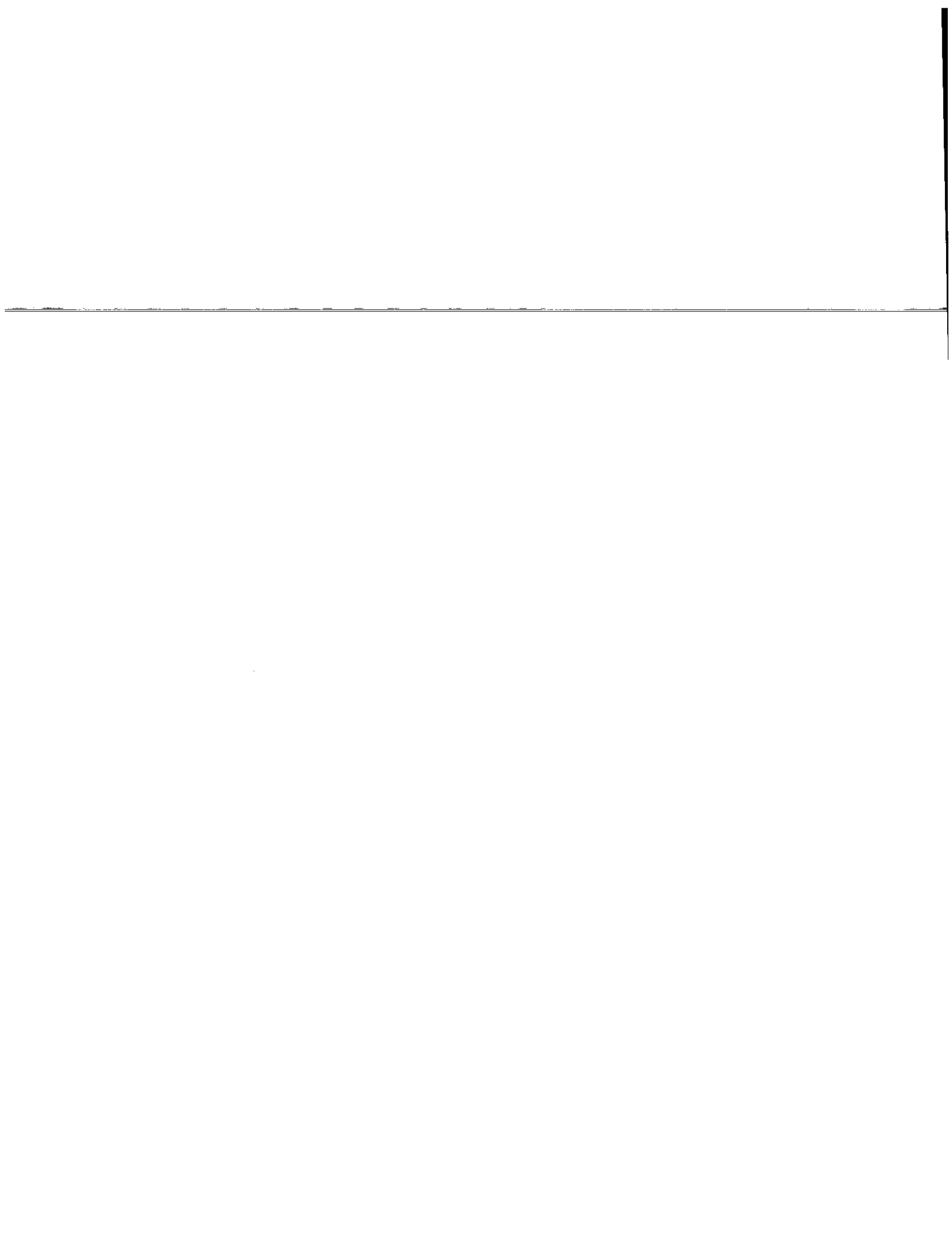
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ISSUE DATE: 12/07/2015

A1.5



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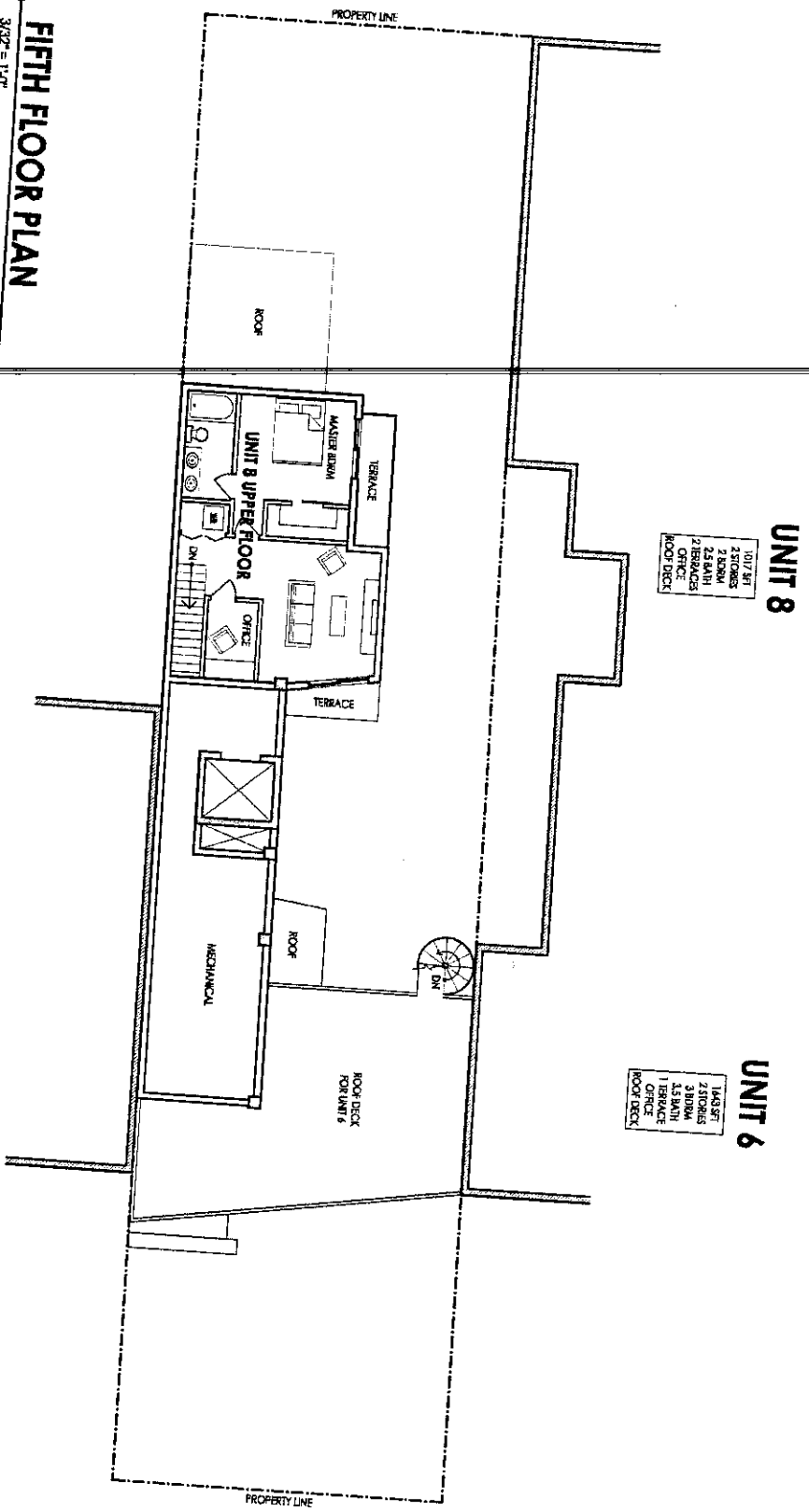
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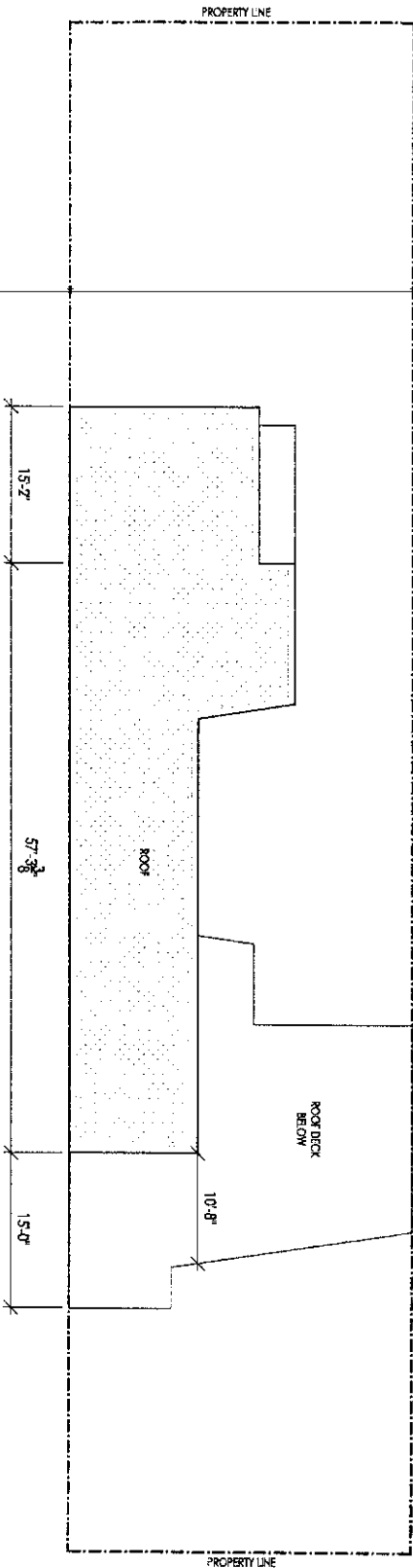
A1.6

(1:320/DOPLAN-1)



1 FIFTH FLOOR PLAN
3/32" = 1'-0"





1

ROOF PLAN

3/32" = 1'-0"

(1320)DDPLANS-11



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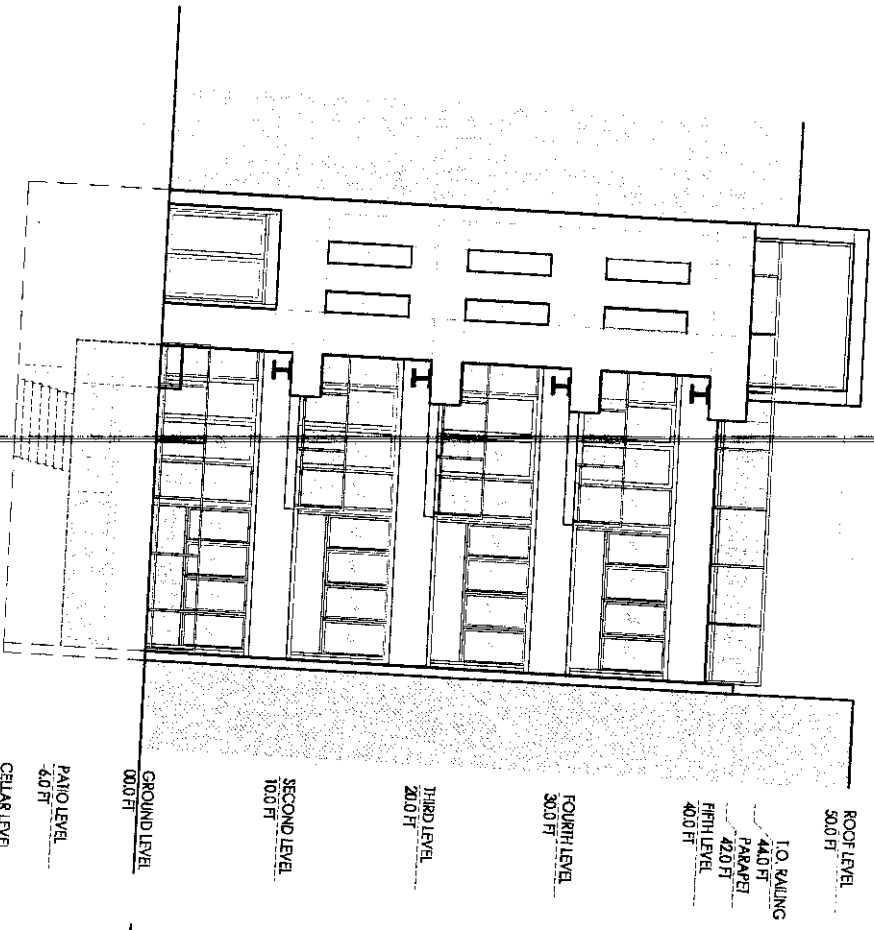
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A1.7

PROPERTY OWNER:
SAHR BOCKAI
3106 14TH STREET NW
WASHINGTON, D.C. 20010

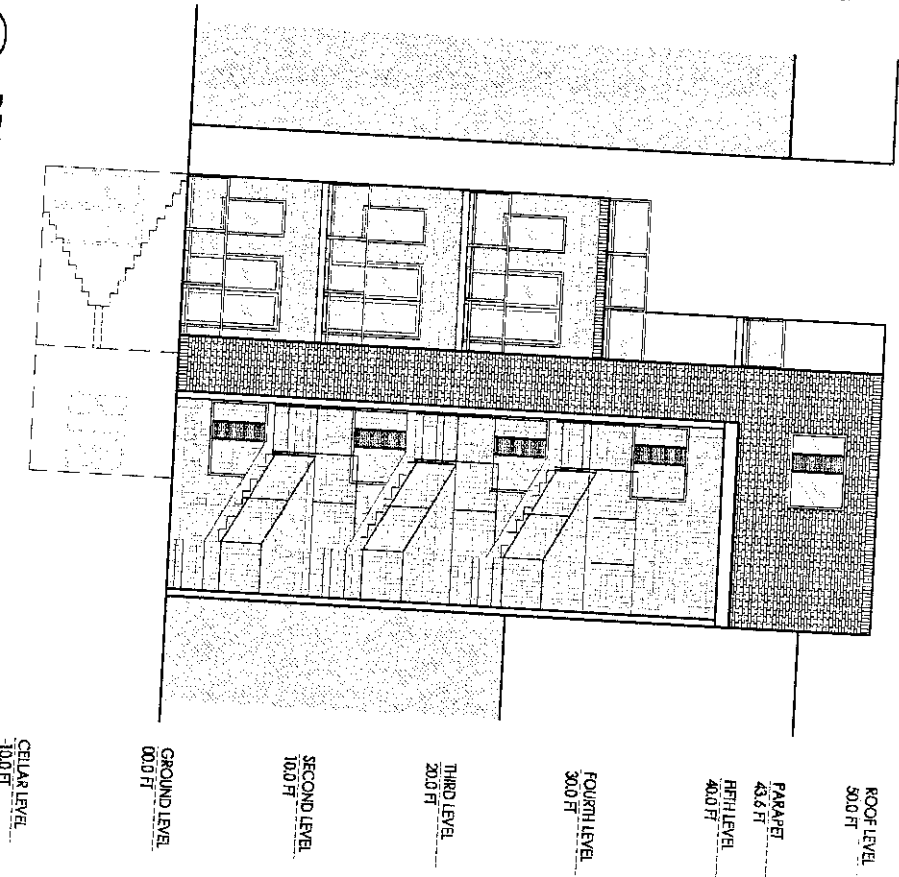
1 FRONT ELEVATION (KENYON ST NW)
1/8" = 1'-0"

(1320/BZ/PLANS-1)



2 REAR ELEVATION (ALLEY SIDE)
1/8" = 1'-0"

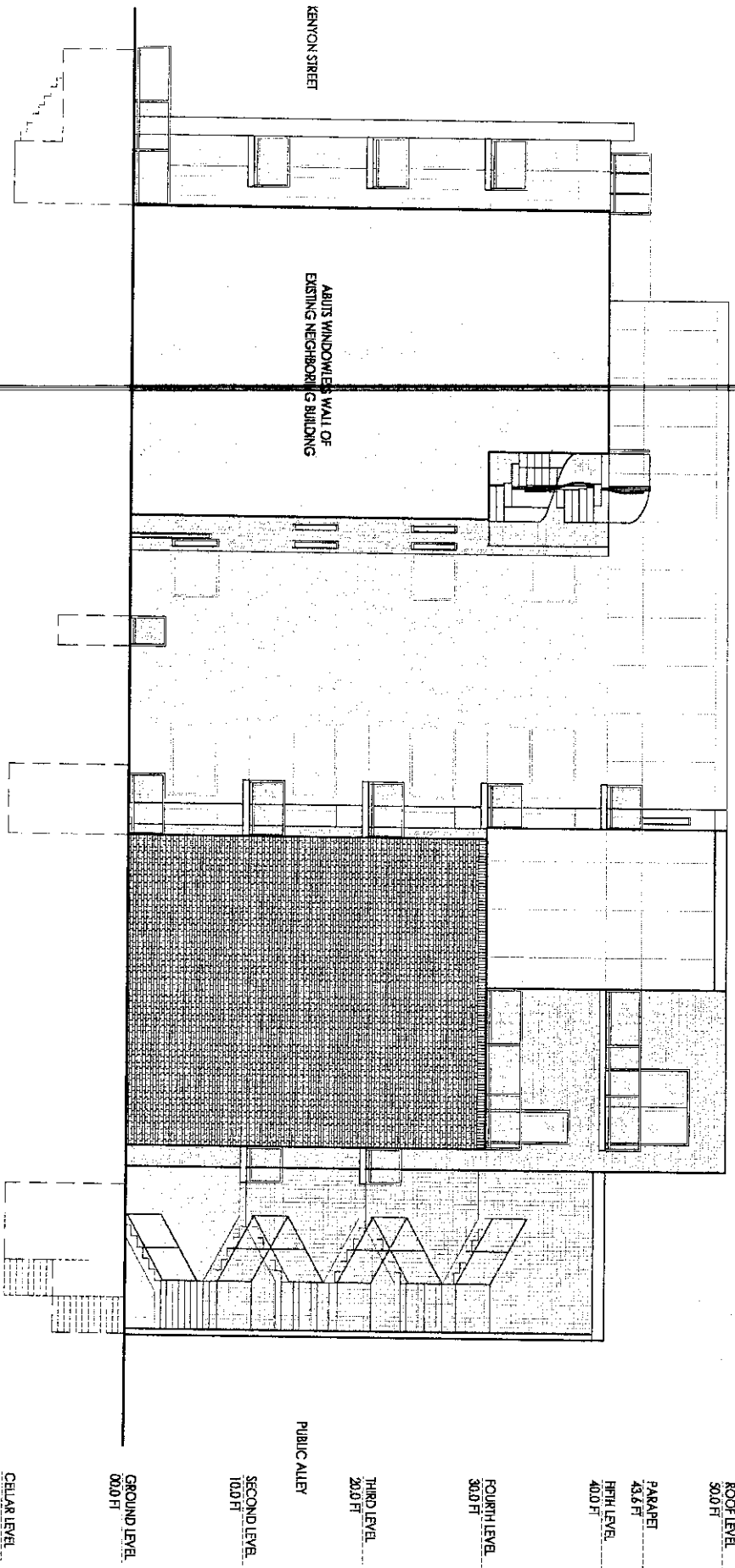
(1320/BZ/PLANS-1)



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A2.1



2 WEST ELEVATION
1/8" = 1'-0"

(1320/BL/PLANS-1)

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A2.2

