

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 17679-C of Jemal's TP Land LLC, Motion for Modification of Approved Plans in Order No. 17679, (formerly BZA Application No. 18671¹), pursuant to § 3129 of the Zoning Regulations.

The original application (No. 17679) was pursuant to 11 DCMR § 3104.1, for special exceptions under sections 353 and 2516, and under section 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

NOTE: In this Order, the application is amended to include the relief already approved in the original application as well as requests for variance relief pursuant to 11 DCMR § 3103.2, from the parking requirements under § 2101.1 (95 spaces proposed; 103 spaces required) and from the loading requirements under § 2201 (30-foot loading berth proposed for each multi-family building; 55-foot loading berth and platform required for each multi-family building) to allow for the increase in the number of units and the modified plans. The revised caption with the amended relief reads as follows:

Application No. 17679-C of Jemal's TP Land LLC (formerly Case No. 18671), pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception for a new residential development under § 353, a special exception to allow more than one principal building on a single lot under § 2516, a special exception from the roof structure provisions under § 411.11, and a variance from the parking requirements under § 2101.1 and a variance from the loading requirements under § 2201, to allow two new apartment buildings, each containing 50 units, in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Maple Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 825, 840 and 843).

¹ The Applicant initially filed a new application, BZA Case No. 18671, but upon review, the Board determined that the case was a Motion for Modification of Approved Plans in BZA Case No. 17679 with a request for additional variance relief added to the original application. The caption has been amended accordingly.

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HEARING DATE (Original Application):	November 13, 2007
DECISION DATE (Original Application):	January 8, 2008 and February 5, 2008
FINAL ORDER ISSUANCE DATE (No. 17679):	April 23, 2008
DECISION ON 1ST MOTION TO EXTEND ORDER:	June 22, 2010
ORDER ISSUANCE DATE OF 1ST EXTENSION (No. 17679-A):	June 29, 2010
DECISION ON 2ND MOTION TO EXTEND ORDER:	June 12, 2012
ORDER ISSUANCE DATE OF 2ND EXTENSION (No. 17679-B):	June 18, 2012
HEARING DATES FOR MODIFICATION:	December 10, 2013, February 11, 2014, and March 18, 2014
MODIFICATION DECISION DATE:	March 18, 2014

**SUMMARY ORDER ON REQUEST FOR MODIFICATION OF APPROVED PLANS
AND AMENDED RELIEF**

BACKGROUND

On January 8 and February 5, 2008, the Board of Zoning Adjustment (the “Board” or “BZA”) approved Jemal’s TP Land LLC’s (the “Applicant”) original request for special exception approval of a new residential development in the R-5-A District with more than one principal building on a single lot and approval of roof structures. The original application (No. 17679) was pursuant to 11 DCMR § 3104.1, for special exceptions under §§ 353 and 2516, and under § 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843). BZA Order No. 17679 (the “Order”), approving the original request, was issued on April 23, 2008. (Exhibit 46.) That order approved the requested special exception relief and was issued on April 23, 2008.

1st Motion to Extend.

On April 6, 2010, the Board received a request from the Applicant, pursuant to 11 DCMR § 3130.6, for a two-year extension in the authority granted in the underlying BZA Order, which was then due to expire on April 23, 2010. (Exhibit 48.) The Applicant also filed supplemental information and a waiver request of § 3130.9 of the Zoning Regulations to accept the Applicant’s time extension motion and to toll the Order’s expiration. (Exhibit 50.) At a decision meeting on June 22, 2010, the Board found that the requirements of § 3130.6 had been met and granted the Applicant both the waiver it requested pursuant to § 3130.9 as well as a two-year time extension of BZA Order No. 17679 until April 23, 2012. (Exhibit 52, BZA Order No. 17679-A.)

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2nd Motion to Extend.

On April 20, 2012, the Board received a request from the Applicant, pursuant to 11 DCMR § 3130.6, upon a showing of good cause, for a second two-year extension of the authority granted in the original BZA Order, which was then due to expire on April 23, 2012, as well as requests for the Board to waive, pursuant to § 3100.5 of the Zoning Regulations, the 30-day filing requirement in § 3130.9, to allow tolling of the expiration of the Order, and the restriction to one extension in § 3130.6, to allow more than one extension of the Order. (Exhibit 54.) At a decision meeting on June 12, 2012, the Board found that the requirements of § 3130.6 had been met and granted the Applicant both the waivers it requested pursuant to §§ 3130.6 and 3130.9 as well as a two-year time extension of BZA Order No. 17679 until April 23, 2014. (Exhibit 59, BZA Order No. 17679-B.)

MOTION FOR MODIFICATION OF APPROVED PLANS AND AMENDED APPLICATION

On September 20, 2013, the Applicant submitted a new, self-certified application form for BZA Case No. 18671 for the special exception relief already approved in BZA Case No. 17679 and for modifications to the approved plans in that case. (See, Self-Certification Form 135 at Exhibit 65 and revised Self-Certification Form 135 at Exhibit 90B.) The application also requested new variance relief from loading requirements under § 2201.1, to allow the redevelopment of the approximately 2.3 acre parcel located at 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. with two new apartment buildings with a total of 110 units², a parking ratio of one space per unit, and a maximum building height of 40 feet. Initially, that application was given a new case number, BZA Case No. 18671. After the Applicant clarified that this was a request for a Modification of Approved Plans and amended relief in Case No. 17679, the Board directed staff to renumber the application to BZA 17679-C. (Exhibit 61.) The case was re-advertised and reposted as BZA Case No. 17679-C.

The record indicates that the new application was served on the parties to that case: the Office of Planning (“OP”) and Advisory Neighborhood Commission (“ANC”) 4B, the affected ANC, and the Single District Member. There also was a party in opposition in the original case, BZA Case No. 17679, Mr. Jack Werner, IV. Mr. Werner submitted a new party status application in opposition for this case. (Exhibit 86.) The Board granted Mr. Werner’s request for party status and allowed him to testify at the hearing. At the public hearing on March 18, 2014, Mr. Werner appeared and testified. In his testimony, he withdrew his request for party status in opposition on the record, indicating that he had discussions with the Applicant and that the Applicant had agreed to prepare a new traffic study.

² The request for 110 units was ultimately lowered to a request for 100 units in the revised final plans.

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The Applicant requested new variance relief in order to construct the project as modified. The caption in this case has been amended to reflect both the original and amended relief being granted. Thus, this application is considered a continuation of Case No. 17679, and that Case was amended to include the relief already approved in the original application together with the additional variance relief requested pursuant to 11 DCMR § 3103.2, from the parking requirements under § 2101.1 (95 spaces proposed; 103 spaces required) and from the loading requirements under § 2201 (one 30-foot loading berth proposed for each multi-family building; one 55-foot loading berth and platform required for each multi-family building). According to the Applicant's pre-hearing statement, the purpose of the requests for variance relief is to permit the redevelopment of the Property with two multiple dwellings, each containing 50 units³, in the R-5-A District, as depicted on the modified plans. Three single family homes are also depicted on the proposed modified plans. According to the Applicant, two of the single family homes currently exist on the Property, but will be relocated. A third single family home will be re-constructed on the Property. (See, Exhibit 90.)

The Applicant submitted a request for modification to the plans approved in BZA Order No. 17679, pursuant to 11 DCMR § 3129. According to the Applicant, the development proposed under the modification application is nearly identical to the one approved in 2008 as it relates to architectural design, building height, FAR, lot occupancy, parking ratio, and roof structures. However, the interior of the building has been modified so that each building has 55 (lowered to 50 in the final approved plans) units instead of the 38 units approved in 2008 for each building. The site plan (Sheet A101 in the plans) was also modified to accommodate additional parking commensurate with the increase in the number of units. There is also an additional point of ingress and egress for the project on Maple Street. (Exhibit 64.) The site plan was revised to address comments raised by the traffic consultant and the District Department of Transportation ("DDOT"). (Exhibit 94.) In order to redevelop the property with the modifications to the plans, the additional variance relief is needed. No other material facts have changed.

Subsection 3129.3 of the Zoning Regulations indicates that a request for minor modification "of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application." The motion was filed within the two-year period following the second extension of the final order in the underlying case and thus is timely. Pursuant to § 3129.7, requests to modify other aspects of a Board order may be made at any time, but require a hearing. Subsection 3129.8 of the Zoning Regulations limits the scope of the hearing conducted to review a request for modification to the impact of the modification on the subject of the original application. Also, § 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.) The Board held a public hearing on this motion, pursuant to § 3129.7 and heard the requests for a modification to the approved plans and variances.

³ The final revised plans lowered the increase of the number of units from 55 to 50. (See, Exhibits 64 and 90.)

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Pursuant to § 3129.4 of the Zoning Regulations, all parties are allowed to file comments within 10 days of the filed request for modification. OP submitted a timely report on the modification request, dated February 4, 2014, recommending approval of the Applicant's request to modify the approved plans and recommending approval of variance relief under §§ 2101 (parking requirements) and 2200 (loading requirements). (Exhibit 91.) DDOT submitted a timely report indicating it had no objection to the modifications or variance relief. DDOT recommended several Transportation Demand Management ("TDM") measures, which the Board adopted as conditions to this order. (Exhibit 93.) ANC 4B submitted a timely report, dated February 3, 2014, recommending approval of the motion to modify the plans and the variances. The ANC report indicated that at its regularly scheduled, duly noticed public meeting of January 27, 2014, at which a quorum was present, ANC 4B voted unanimously by a vote of 9-0 that it did not object to the proposed modifications and variances. (Exhibit 92.) As previously discussed, the party in opposition withdrew his opposition at the public hearing on the record. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modifications of approved plans.

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 a modification to the approved plans, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

Variance Relief:

As previously discussed, the Applicant also requested variance relief to effectuate the modifications to the approved plans. 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 a variance from the strict application of the parking requirements under § 2101.1 and a variance from the strict application of the loading requirements under § 2201. 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 adverse 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 the variance relief that the Applicant has met the burden of proving 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 requested relief can be granted without

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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 § 3125.3, 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.

It is therefore **ORDERED** that this application for modification of approved plans and variances is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS IN EXHIBITS 90 AND 94, WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall identify a TDM Leader (for planning, construction, and operations) and provide DDOT/Zoning Enforcement with annual TDM Leader contact updates.
2. The Applicant shall provide an adequate amount of short- and long-term bicycle parking spaces, including a secure bike room within each building that can house up to 48 bicycles each (or 96 bicycles total).
3. The Applicant shall provide at least 30 secure bicycle parking spaces in each bicycle storage room.
4. The Applicant shall unbundle the parking costs from the cost of lease or purchase.
5. The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites.

In all other respects, Order No. 17679 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON JANUARY 8, 2008 AND FEBRUARY 5, 2008: 3-0-2

(Ruthanne G. Miller, Michael G. Turnbull, and Mary Oates Walker to Approve; Shane L. Dettman abstaining; Marc D. Loud not participating or voting.)

VOTE ON MODIFICATION OF APPROVED PLANS AND VARIANCE RELIEF ON MARCH 18, 2014: 3-0-2

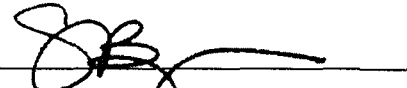
(Lloyd J. Jordan, Marnique Y. Heath, and Jeffrey L. Hinkle to Approve; S. Kathryn Allen,, not present or voting; no Zoning Commission member present or voting.)

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

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

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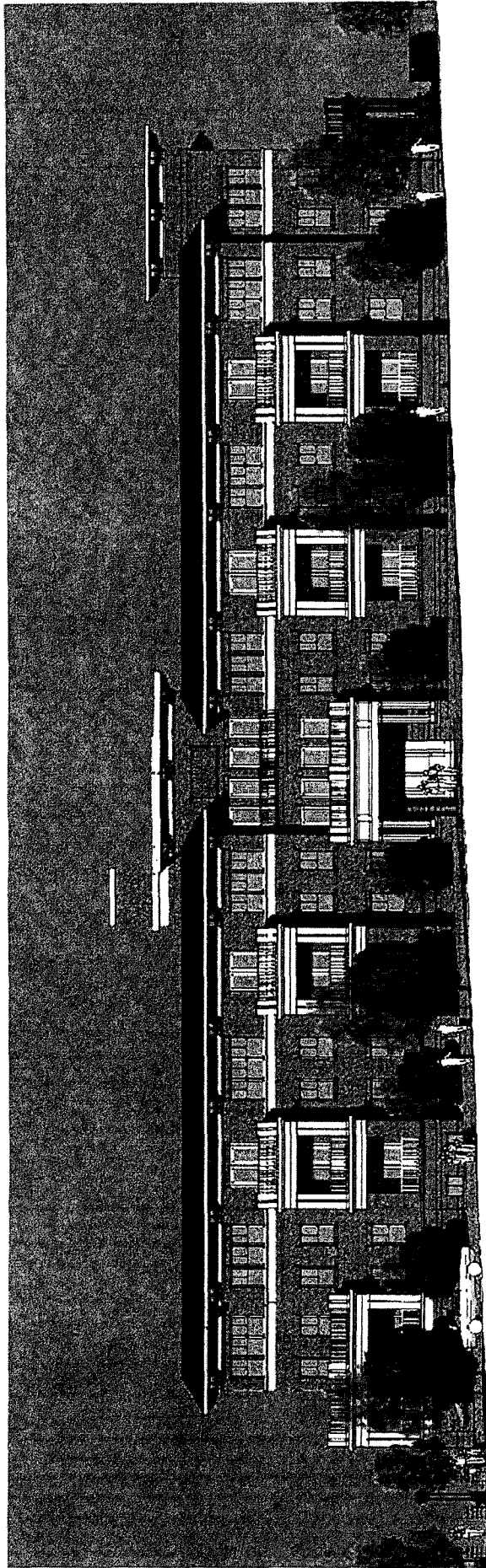
ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 28, 2014

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 § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, 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.



TAKOMA PARK

RECEIVED
2014 JAN 23 PM 2:41

SQUARE 3357, WASHINGTON, D.C.
MODIFICATION OF BZA APPLICATION
PREHEARING SUBMISSION
ORDER NO. 17679
JANUARY 28, 2014
OWNER / DEVELOPER:
DOUGLAS DEVELOPMENT CORPORATION

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GTM

TAKOMA PARK - SQUARE 3357

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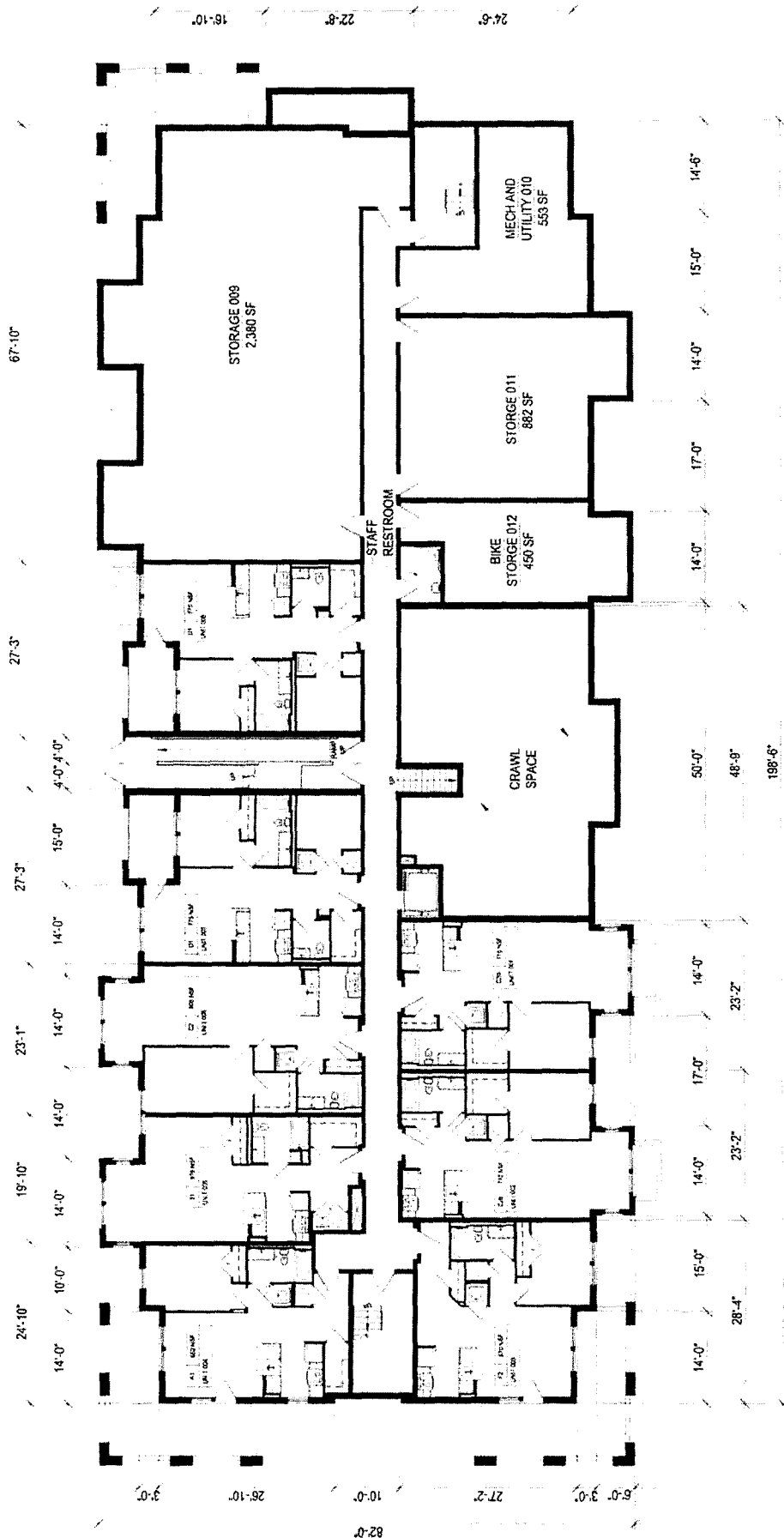
BZA MODIFICATION 01-28-14

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Σx.96



NOTES:

1. THE INTERIOR LAYOUTS SHOWN ON THE BUILDING PLANS ARE SCHEMATIC. CHANGES TO THE LAYOUTS, NOT AFFECTING THE EXTERIOR ENVELOPE OR THE SQUARE FOOTAGE DISTRIBUTION MAY OCCUR.



1 CELLAR FLOOR PLAN
SCALE 1/8" = 1'-0"