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December 23, 2020

VIA IZIS

Board of Zoning Adjustment
of the District of Columbia
441 4th Street, NW, Suite 210S
Washington, D.C. 20001

**Re: BZA Case No. 20350 -- Applicant's Prehearing Submission
401 Anacostia Road, SE (Parcel 0203/0009)**

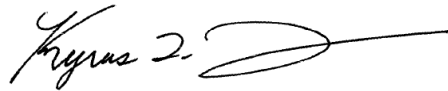
Dear Chairman Hill and Members of the Board of Zoning Adjustment:

On behalf of Mary's House for Older Adults, Inc. (the "Applicant"), enclosed please find the Applicant's Prehearing Submission filed pursuant to Subtitle Y § 300.15 of the Zoning Regulations and no later than twenty-one (21) days before the date of the public hearing. In this case, the Applicant is requesting special exception relief to operate a Continuing Care Retirement Community ("CCRC") in the R-3 zone, as well as a use variance and several area variances that will enable construction of the CCRC design as proposed.

We look forward to the Board's consideration of this application at the public hearing scheduled for Wednesday, January 13, 2021. Should you have any questions, please do not hesitate to have staff contact us.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman
Christopher S. Cohen

Encl.

cc: Certificate of Service

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on December 23, 2020, a copy of the Applicant's Prehearing Submission was served by electronic mail on the following persons and addresses stated below:

1. District of Columbia Office of Planning

Ms. Jennifer Steingasser

Mr. Joel Lawson

Ms. Maxine Browne-Roberts

Via Email: jennifer.steingasser@dc.gov
joel.lawson@dc.gov
maxine.brownroberts@dc.gov

2. Advisory Neighborhood Commission ("ANC") 7F

Commissioner Tyrell M. Holcomb, Chairperson

Commissioner Charlene Exum, Single-Member District 7F-04

Via Email: staff7F@gmail.com
7F01@anc.dc.gov
7F04@anc.dc.gov



Christopher S. Cohen, Esq.
Holland & Knight LLP

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

**APPLICATION OF MARY’S HOUSE
FOR OLDER ADULTS, INC.**

**BZA CASE No. 20350
PARCEL 203, LOT 9
HEARING DATE: JAN. 13, 2021
ANC 7F**

PREHEARING STATEMENT OF THE APPLICATION

I. NATURE OF RELIEF SOUGHT

This Prehearing Statement is submitted on behalf of Mary’s House for Older Adults, Inc. (the “Applicant”), in support of an application pursuant to Subtitle X § 901.2 and Subtitle X § 1000.1 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”) for special exception and variance relief, respectively, as follows:

Special Exception

- for a Continuing Care Retirement Community (“CCRC”), a special exception use in the R-3 zone district in accordance with R-Use Group C;

Variances

- from the special exception criteria for a CCRC under 11-U DCMR § 203.1(g)(2)¹;
- from the driveway width requirement of 11-C DCMR § 711.6;
- from the lot occupancy requirement of 11-D DCMR § 304.1; and
- from the side yard requirement of 11-D DCMR § 206.2.²

The Board’s approval of the requested relief will enable the construction of a unique Continuing Care Retirement Community (“CCRC”) for 15 individuals in the R-3 zone at premises 401 Anacostia Road, SE (Parcel 203, Lot 9) (the “Property”). The Board previously approved the requested zoning relief pursuant to BZA Order No. 19482 to authorize construction of the proposed building. However, that order expired on May 29, 2019. This application reflects a revitalized opportunity to deliver the CCRC at the Property. The Applicant is pleased to share that this application has the unanimous support of Advisory Neighborhood Commission (“ANC”) 7F, the affected ANC. (*See Ex. 16.*)

¹ In its Preliminary Statement of Compliance with Burden of Proof, the Applicant indicated that it would pursue confirmation from the Zoning Administrator (“ZA”) that the limited care provided at the proposed CCRC constitutes an assisted living facility. (*See Ex. 8, Fn. 1.*) Since that time, the Applicant has decided to forgo this ZA confirmation, and will continue to seek the Board’s approval of this variance request from the CCRC/special exception criteria.

² The Applicant has filed an updated and revised Form 135 Self-Certification in support of this application. (Ex. 30.)

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (“BZA” or “Board”) has jurisdiction to grant the requested special exception relief pursuant to Subtitle X § 901.2. The Board has jurisdiction to grant the requested variance relief pursuant to Subtitle X § 1000.1.

III. WITNESSES

An outline of testimony for the Applicant was previously submitted as part of this Application and is included in the record at Exhibit 12. In addition to the Applicant’s representatives, pursuant to Subtitle Y §§ 403.7(b) and 409.1(g), the Applicant will also present Dr. Imani Woody as an individual witness in support of the application.

IV. BACKGROUND

As explained in the Applicant’s Preliminary Statement of Compliance with Burden of Proof (the “Preliminary Statement”) (*see* Ex. 8), this application seeks re-approval to construct a Continuing Care Retirement Community (“CCRC”) at the subject Property. In February 2017, the Applicant filed BZA Application No. 19482, which requested the same relief that is now sought this application. The Board approved the prior application by summary order, however that prior approval expired on May 29, 2019.

Now having obtained sufficient funding, the Applicant is prepared to deliver the previously approved CCRC. Re-approval of the requested relief will enable the Applicant to construct a CCRC for 15 individuals, specifically for seniors who are sixty years or older and identify as lesbian, gay, bisexual, transgendered, queer, or same gender-loving (“LGBTQ/SGL”) (hereinafter referred to as the “Project”). The plans initially submitted for this application were exactly the same in terms of zoning relief and number of units as the plans previously approved under BZA Order No. 19482. (Ex. 6.) However slightly updated and improved plans are being filed concurrently with this Prehearing Statement, attached hereto as Exhibit A.

V. THE PROPERTY

The Property contains approximately 8,885 square feet of land area and is located in the Fort Dupont Park neighborhood of Southeast, Washington D.C. As shown on the portion of the Zoning Map submitted with this application, the Property is located in the R-3 zone district, and is directly adjacent to land that is zoned RA-1. (*See* Ex. 11.) The Property is currently improved with a vacant, single-family residence. The Property abuts Anacostia Road, SE to the east and Minnesota Avenue, SE to the west. The Property is mid-block on the west side of Anacostia Road, which runs between B Street, SE, Croffut Place, SE, and Ely Place, SE.

The predominant land uses near the Property are moderate-density multi-family apartment buildings and institutional buildings (e.g., Kimball Elementary School, Sousa Middle School, religious buildings). The Property is bordered to the north by a large apartment building and associated parking lot. Further to the north along Anacostia Road are several four-story apartment buildings, each with surface parking lots. To the south of the Property is a religious institutional

building and its parking lot, which also wraps around and borders the Property to the west. To the east, across Anacostia Road, are several apartment complexes. To the southeast of the Property is Fort Circle Park, which includes the Washington Nationals' Youth Baseball Academy.

The Property is well-serviced by Metrobus; bus lines V1, V2, and V4 are located within 0.1 miles of the Property, while bus lines U5 and U6 are also nearby. The Property is also 0.3 miles from a Capital Bikeshare station, which is located at the intersection of Ely Place, SE and 37th Place, SE.

VI. PROPOSED CONTINUING CARE RETIREMENT COMMUNITY AND UPDATED PLANS

The Applicant proposes to construct a CCRC for seniors who are sixty years or older and identify as LGBTQ/SGL. The Project is defined by a humble, yet ambitious mission: to establish a warm, intimate, and home-like atmosphere for senior-aged LGBTQ/SGL community members who are unfortunately often subjected to bigoted and prejudicial housing practices. Accordingly, the proposal involves a shared housing experience that honors the whole person as s/he ages in an environment of dignity and respect regardless of gender and/or sexual orientation. The Applicant also aims to provide the residences at a rate affordable to moderate income individuals.

The updated plans indicate that the Project is still designed with three stories and a basement, but various refinements have been made to the floor plans. In brief, the basement floor now consists of a small conference room, a computer room with private stations, an exercise room, and a hot tub. The main level has been reconfigured, but contains many of the same features; it consists of one dwelling unit and various communal amenities and spaces for residents to share meals, congregate, and enjoy recreational activities. The first floor also integrates quiet spaces for more personal pursuits. The second and third floors provide an additional 14 dwelling units, each with a space for a bed, bath, and small independent living area. Thus, the Project will include a total of 15 units.

The Project is therefore designed to accommodate graceful aging in place, and facilitates community interaction without compromising resident privacy. The internal layout prioritizes the use of common spaces at the ground floor, with the goal of keeping residents engaged with one another. Careful attention has been paid to the external aesthetic as well. The updated elevations also show that the façade will be finished with a soft color palate, and that the CCRC building incorporates porch-like elements, which will help create a soothing, comfortable environment for the Project's senior residents.

VII. VARIANCE RELIEF

A. Overview of Relief Requested

Pursuant to Subtitle X §§ 1000.1, 1001.4(a), the Applicant is requesting a use variance from Subtitle U § 203.1(g)(2) which limits a CCRC to eight (8) residents if it does not include assisted living or skilled nursing facilities. As detailed above, the proposed CCRC would contain 15 residents. Additionally, pursuant to Subtitle X §§ 1000.1, 1001.2, the Applicant is requesting

area variances from the applicable driveway width requirement under Subtitle C § 711.6, the lot occupancy requirement of Subtitle D § 304.2, and the side yard requirement provided in Subtitle D § 206.2. The area variances requested in this case are consistent with the example types provided under Subtitle X § 1001.3.

B. General Standard of Review

Pursuant to D.C. Code §6-641.07(g)(3) and 11-X DCMR § 1000.1, the Board is authorized to grant variances "where, 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 the Zoning Regulations "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property." Under these circumstances the Board can grant variance relief, provided that there will be no "substantial detriment to the public good" and "without substantially impairing the intent, purpose, and integrity" of the Zoning Regulations. A showing of "practical difficulties" must be made for an area variance, whereas the more difficult showing of "undue hardship" must be made for a use variance. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535 (1972).

The Applicant's justifications for the requested variances are set forth in Section II.C of the Preliminary Statement. (*See* Ex. 8 at p. 4-6.) The Applicant reiterates and elaborates upon those arguments below.

C. Argument

1. Applicant is a Non-Profit Organization Entitled to Flexible Public Interest Standard of Review

It is well-established that public service and non-profit organizations may be afforded a more lenient burden of proof with respect to the variance test in general. There is ample precedent from the Board and the D.C. Court of Appeals ("DCCA") establishing a reduced standard of review when considering zoning relief for a public service use. The seminal case is *Monaco v. District of Bd. of Zoning Adjustment*, 407 A.2d 1091 (1979), a case in which the Board recognized the public importance of locating the headquarters of the Republican National Committee in close proximity to the Capitol. *Id.* at 1098. In support of its holding, the *Monaco* court stated: "public need is an important factor in granting or denying a variance." *Id.* Another important DCCA case applying the public service standard to zoning relief the matter of *National Black Child Development Institute, Inc. v. D.C. Board of Zoning Adjustment*, 483 A.2d 687 (1984). The BZA granted that application for zoning relief, but the Board imposed certain conditions that were ultimately appealed to DCCA. *See id.* at 688. On appeal, DCCA adopted the *Monaco* holding, applying a "more flexible standard for determining hardship when a 'public service,' or nonprofit entity, is the applicant." *See id.* at 690. As to the zoning relief, the Court affirmed the BZA's grant of the variance, noting that applicant's "work benefited black children and families within the District," and concluding that the "situation is unique, that its work does promote the public welfare . . ." *See id.*

Consistent with precedent established by DCCA, the Board has repeatedly applied reduced scrutiny to applications of public service organizations. For example, in BZA Case No. 18240, the Board applied the reduced standard in granting an area variance for the District of Columbia Public Library. The Board made similar findings as to the reduced public interest standards, applying the standard to a church in BZA Case No. 18272, and a public library in BZA Case No. 17973. In both cases, the Board expressly noted that the burden of proof for variance relief is decreased for non-profit or public service organizations. *See also* BZA Case Nos. 16916, 17609, and 17316.

The Board should apply comparable scrutiny in this case. The Applicant, a non-profit, community based transitional organization, seeks to provide critical housing opportunities for seniors of the underserved LGBTQ/SGL population. The Project is a unique development that is not desired for commercial gain. Conversely, the goal of the Project is to provide support and resources to a community that is often overlooked. As such, the Project will promote the public interest and is entitled to a reduced standard of review.

2. Confluence of Prior Zoning Approval, New Special Exception Criteria, and Financial Challenges Results in Undue Hardship that Supports Use Variance From CCRC Eight-Resident Limitation

Pursuant to Subtitle X §§ 1000.1 and 1001.4(a), the Applicant is seeking a use variance from the special criteria under Subtitle U § 203.1(g)(2), which limits a CCRC in the R-3 zone that does not include assisted living or skilling nursing facilities to eight (8) residents. In this case, a use variance is warranted because of an extraordinary situation that would result in exceptional and undue hardship upon the Applicant. *See* 11-X DCMR § 1002.1(b).

The extraordinary situation arises from a confluence of factors that are unique to the Project at the subject Property. The Board may consider a wide range of factors in determining whether there is an “unnecessary burden.” *See Gilmartin v. D.C. Bd. of Zoning Adjustment*, D.C. App. 519, A.2d 1164 (D.C. 1990). Past zoning history can be taken into account in the uniqueness facet of the variance test. *See Monaco* at 1098 (opining that the lapse of a prior variance approval did not preclude a future zoning approval where circumstances were still favorable to the project). Moreover, “the exceptional or exceptional condition which is the basis for a use variance need not be inherent in the land, but can be caused by subsequent events extraneous to the land itself.” *De Azcarate v. D.C. Bd. of Zoning Adjustment*, D.C. App. 388 A.2d 1233, 1237 (D.C. 1978).

The addition of new special exception criteria, following the original approval, is a “subsequent event extraneous to the land itself” that creates an exceptional situation in this case. As discussed above, the Applicant successfully obtained the requisite zoning approval for the Project in June 2017. *See* BZA Order No. 19482. Only a month following the issuance of BZA Order No. 19482 did the Zoning Commission approve a text amendment that added the specific criteria under Subtitle U § 203.1(g), which are now applicable to the Project. *See* Z.C. Order No. 17-01, made final and effective on July 28, 2017. The Board should consider the peculiarity of this zoning history, especially given the Board’s prior approval of the Project.

Due to circumstances beyond its control, the Applicant was unable to submit for a building permit that would have vested the previous approval prior to enactment of the aforementioned

amendments to the CCRC (special exception) use criteria. Under the current use criteria, the Applicant would suffer an undue hardship if the proposed CCRC is required to adhere to the eight-resident maximum. As referenced above, the Applicant is now positioned to seek re-approval from the Board because, after considerable effort, it has recently secured funding for the Project – funding that is based on the 15 units that were previously approved under BZA Order No 19472. Reducing the unit count to eight units would be cost prohibitive and make the Project infeasible at this point. In addition, a redesign of the proposed CCRC would require substantial effort, and is unnecessary given that the same exact plans garnered support from the community and approval from the Board. Strict compliance (with the eight-resident limitation) would jeopardize the Applicant’s funding and ability to deliver a Project that is purposefully designed to serve and integrate 15 residents.

It is appropriate for the Board to consider these financial difficulties when evaluating the merits of the requested use variance. *See Gilmartin* at 1170 (“Increased expense and inconvenience to applicants for a variance among the proper factors for the BZA’s consideration”); *see also Tyler vs. D.C. Bd. of Zoning Adjustment*, D.C. App. 606 A.2d 1362 (D.C. 1992) (holding that BZA was mistaken in *not* purporting to consider added expense as a factor in variance analysis) (emphasis added). The financial constraints in this case should be acknowledged as creating an exceptional situation that would impose an undue hardship on a nonprofit organization, especially when its objective is to provide new housing opportunities for an underserved population.

Furthermore, this is not a case where the “self-imposed hardship” doctrine justifies a denial of the requested use variance. The Board has held that one with actual or constructive knowledge that a use would be nonconforming can be prevented from receiving a use variance. *See A.L.W. v. D.C. Bd. of Zoning Adjustment*, 338 A.2d 428, 431 (1975) (citing *Taylor v Board of Zoning Adjustment*, D.C. App., 308 A.2d 230 (1973)). However, this is not a case where the undue hardship can be attributed to the Applicant’s ignorance. Here, the CCRC criteria was changed only one month after granted approval of the Project; and, as discussed above, the economic viability of the Project is based on the provision of 15 units. In this case, the undue hardship is the culmination of extraneous factors that create an extraordinary situation where it is justifiable – and, perhaps more importantly, in the public interest – to deviate from the eight-resident-limitation.

As a result of the exceptional conditions outlined above, specifically the change in the CCRC use criteria following the Board’s first approval, coupled with the economics of the Project that is contingent on the 15-unit design, strict compliance with the eight-resident limitation under Subtitle U § 203.1(g)(2) would impose an undue burden upon the Applicant. Stated simply, notwithstanding the aforementioned financials, strict adherence to the eight-resident limitation compromises the effectiveness of the Project. In regards to the third prong of the variance test, the granting of such relief can be granted without substantial detriment to the public good (arguably, the granting of such relief would promote the public good), and does not undermine the purpose and intent of the zone plan as embodied in the Zoning Regulations and Map.

3. Area Variances are Justified due to Project Needs and Lot Constraints that Create Practical Difficulties

Pursuant to Subtitle X §§ 1000.1 and 1001.2, the Applicant is seeking area variances from the driveway width requirement under Subtitle C § 711.6, the lot occupancy requirement under Subtitle D § 304.1, and the side yard requirement under Subtitle D § 206.2. A table summary of the requested area variances is offered below:

ZR16 Citation	Development Standard	Min. Required / Max. Permitted	Proposed
Subtitle C § 711.6	Driveway Width	20 ft. wide for 2-way traffic	8 ft.
Subtitle D § 304.1	Lot Occupancy	40%	47%
Subtitle D § 206.2	Side Yard	Two (2) side yards, each a min. of eight feet (8 ft.) for all detached buildings	8 ft. side yard on the south; No side yard on the north

An applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties. *See* 11-X DCMR § 1002.1. However, a more flexible analysis is afforded applicants such as the one in this case. A non-profit organization may be granted an area variance to meet a public need to serve the public interest if it shows: “(1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought.” *Neighbors for Responsive Gov’t v. D.C. Bd. of Zoning Adjustment*, 195 A.3d 45 (2018).

The physical characteristics of the Property, namely its exceptional narrowness and the constraints posed by abutting properties, existed at the time of the Board’s first approval of the Project and are conditions that persist today. (*See* BZA Case No. 19482, Office of Planning Report at Ex. 49.) Physically, the lot has a narrow width of 60 feet; and unlike other R-3 zoned property in the square it is surrounded on three sides by other properties and does not benefit from any form of alley access. These attributes would likely pose challenges for any future development of the Property.

But these physical constraints are particularly relevant to this case. The Project must incorporate specific design elements in order to implement the programmatic needs of a retirement home where elder residents can comfortably age in place. The Project is designed specifically to accommodate the needs of aging individuals and to cultivate an environment that encourages physical and mental well-being. For instance, the first floor of the Project incorporates a living room and a gathering room that will promote socialization and recreational activities for residents. Additional space on the first floor must be dedicated to dining and kitchen facilities, as individual dwelling units do not have full-service kitchens. The cooking arrangement is also designed to

promote a community feel, and is a necessary safety feature for a senior living facility. Other programmatic features include an office/reception area on the first floor, and a computer room and exercise floor at the bottom level. In keeping with the communal theme, individual dwelling units of minimal size, with the hope that residents become more inclined to spend their time in common areas. It should also be noted that the hallways on the second and third floors, which include 14 of the 15 units, are ADA-compliant and wheel-chair accessible. Therefore, the hallways cannot be narrower than currently designed.

As a result of the exceptional conditions outlined above, the Applicant faces practical difficulties in complying with the requirements for driveway width, lot occupancy and side yard. The Project cannot provide 15 dwelling units, ADA-compliance, and the proposed ancillary services and large common areas if strict compliance is required. As detailed above, the CCRC has been purposefully designed to minimize the square footage of individual dwelling units in order to maximize the square footage of communal space – *i.e.*, an institutional necessity. Any further reduction in the building’s lot coverage would create inefficient and undesirable units. Moreover, the units will be occupied by an aging population who must be able to maneuver in their living space. Therefore, the lot occupancy cannot be decreased, nor can the requisite side yard be provided by moving units to the basement and narrowing the building. The Project must also maintain space to the rear of the building for the four parking spaces, which necessitates the need for the driveway located at the southern edge of the building. Simply put, the proposed building envelop and site configuration is directly attributable to the programmatic needs of the CCRC and overcoming the existing lot constraints.

Given these exceptional conditions, coupled with the Applicant’s design that is intended to serve an elder population, approval of the requested area variances is appropriate in this case. The requested variance relief from the driveway width, lot occupancy, and side yard requirements will not cause substantial detriment to the public good or impair the zone plan, as it will enable the construction of a residential use that is compatible with the surrounding context.

VIII. SPECIAL EXCEPTION RELIEF

In addition to variance relief, the Applicant seeks special exception relief pursuant to Subtitle U § 203.1(g) of the use permissions of R-Use Group C. The Board can grant the relief requested pursuant to the general special exception standard of review set forth in Subtitle X § 901.2. The special exception burden of proof standard is set forth in Section III.B of the Preliminary Statement. (Ex. 8 at p. 6-7.)

The Project will be harmonious with the purpose and intent of the Zoning Regulations and Zoning Map. Subtitle B § 100.2 of the Zoning Regulations defines “continuing care retirement community” as follows:

A building or group of buildings providing a continuity of residential occupancy and health care for elderly persons. This facility includes dwelling units for independent living, assisted living facilities, or a skilled nursing care facility of a suitable size to provide treatment or care of the residents; it may also include ancillary facilities for the further enjoyment,

service, or care of the residents. The facility is restricted to persons sixty (60) years of age or older or married couples or domestic partners where either the spouse or domestic partner is sixty (60) years of age or older.

The proposed use is entirely consistent with the defined vision for a CCRC. Additionally, with respect to zoning, under Subtitle D § 100.2(b) the R zones are intended to “recognize and reinforce the importance of neighborhood character, walkable neighborhoods, **housing affordability**, **aging in place**, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city” (emphasis added.) As discussed above, the Project will provide affordable, comfortable, and desirable housing opportunities to an underserved, elder population. The CCRC use and specifically an independent living facility, is therefore deemed by the regulations to be a compatible use in the R-3 zone.

The proposed CCRC will also not affect adversely the use of neighboring property. The Property is generally surrounded by land that is zoned R-3 and RA-1 – properties that contain numerous apartment buildings. Adjacent properties along Anacostia Road are primarily moderate density apartment buildings of three or four stories. There are also several multi-story apartment houses directly behind the Property along Minnesota Avenue. Given the Property’s proximity to apartment buildings that are of greater density than the proposed Project, the proposed CCRC will be a compatible addition to the Fort Dupont Park Area, and will blend seamlessly with the residential character of the immediate neighborhood.

The proposed use would be residential and the number of residents (15), albeit in excess of the eight-resident limitation under Subtitle U § 203.1(g)(2), would be compatible given the surrounding context. Given the desired demographic, the proposed CCRC is not expected to generate undue noise or other activities greater than other apartments in the area. Moreover, pursuant to DDOT’s review of the Applicant’s prior application, the driveway is located on the southern property line to prevent any conflicts with the driveways into the parking lot of the Stoneridge apartments. (See BZA Case No. 19482, Ex. 50.) The Board has once recognized that the proposed CCRC would not adversely impact the use of neighboring properties. This level of compatibility holds true for this application.

Lastly, with the exception of the eight-resident limitation provided under subparagraph (g)(2) the Project satisfies all of the “special conditions” required for CCRC special exception approval under Subtitle U § 203.1(g). The Applicant incorporates by reference the information provided on pages 7-9 of its Preliminary Statement (Ex. 8), and notes that it is requesting variance relief from subparagraph (g)(2) to allow the CCRC to accommodate 15 residents. With respect to subparagraph (g)(1), the Applicant updates its preliminary comment as follows:

- (g) *Continuing care retirement community, subject to the provisions of this paragraph:*
- (1) *The use shall include on or more of the following services:*
 - (A) *Dwelling units for independent living;*
 - (B) *Assisted living facilities; or*
 - (C) *A licensed skilled nursing facility;*

The Project will include 15 dwelling units for independent living to support the LBGTQ/SGL community aged sixty years and older.

IX. DESIGN FLEXIBILITY

The Applicant respectfully requests design flexibility in order to make modifications to the Project that may deviate from the architectural plans submitted with this application. The Applicant recognizes that such design flexibility will be granted so long as the changes do not increase the special exception relief being requested under Subtitle Y § 901.2 and Subtitle U § 203.1(g), the variances requested pursuant to Subtitle X § 1000.1, or create new areas of relief that require further review by the Board.

X. COMMUNITY ENGAGEMENT

The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 7F04. The Applicant presented the proposed CCRC and explained the need for the requested variance and special exception relief at ANC 7F’s duly-noticed regularly scheduled public meeting on September 15, 2020. ANC 7F voted unanimously in support of the Application, and filed its resolution on October 14, 2020. (Ex. 16.)³

Additionally, there was extensive support for the Applicant’s proposal in BZA Case No. 19482 – the first iteration of the subject application that was approved by the Board. The record for BZA Case No. 19482 includes 19 filings conveying support from individuals of the nearby community, local, and national organizations. (*See* BZA Case No. 19482, Ex. Nos. 30-47, 51.) Due to the challenges posed by the ongoing Covid-19 pandemic, the Applicant was limited in its ability to engage in similar outreach for this application. Nevertheless, the Applicant recalls the considerable support evidenced in the prior BZA case, and notes that the current application is for re-approval of the same Project that was received so favorably by the community.

XI. CONCLUSION

For the reasons stated above and described elsewhere in the case record, the Applicant has established that its request for special exception relief to allow a CCRC at the Property is in harmony with the purpose and intent of the Zoning Regulations and Zoning Map, does not affect adversely the use of neighboring property, and with the exception of one provision from which the Applicant seeks variance relief, satisfies the special conditions under Subtitle U § 203.2(g). Therefore, the Applicant’s special exception request satisfies the criteria under Subtitle X § 901.2. Additionally, the Applicant has demonstrated that an exceptional and undue hardship would result from the strict application of the eight-resident maximum, and that peculiar and exceptional practical difficulties would result from the Property’s physical characteristics. For these reasons, variance relief from the CCRC/special exception criteria under Subtitle U § 203.2(g)(2), and area variances from the driveway width requirement under Subtitle C § 711.6, the lot occupancy requirement under Subtitle D § 304.1, and the side yard requirement of Subtitle D § 206.2 can be

³ ANC 7F also voted in support of the Project in BZA Case No. 19482. *See* Ex. 56.

granted with substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.

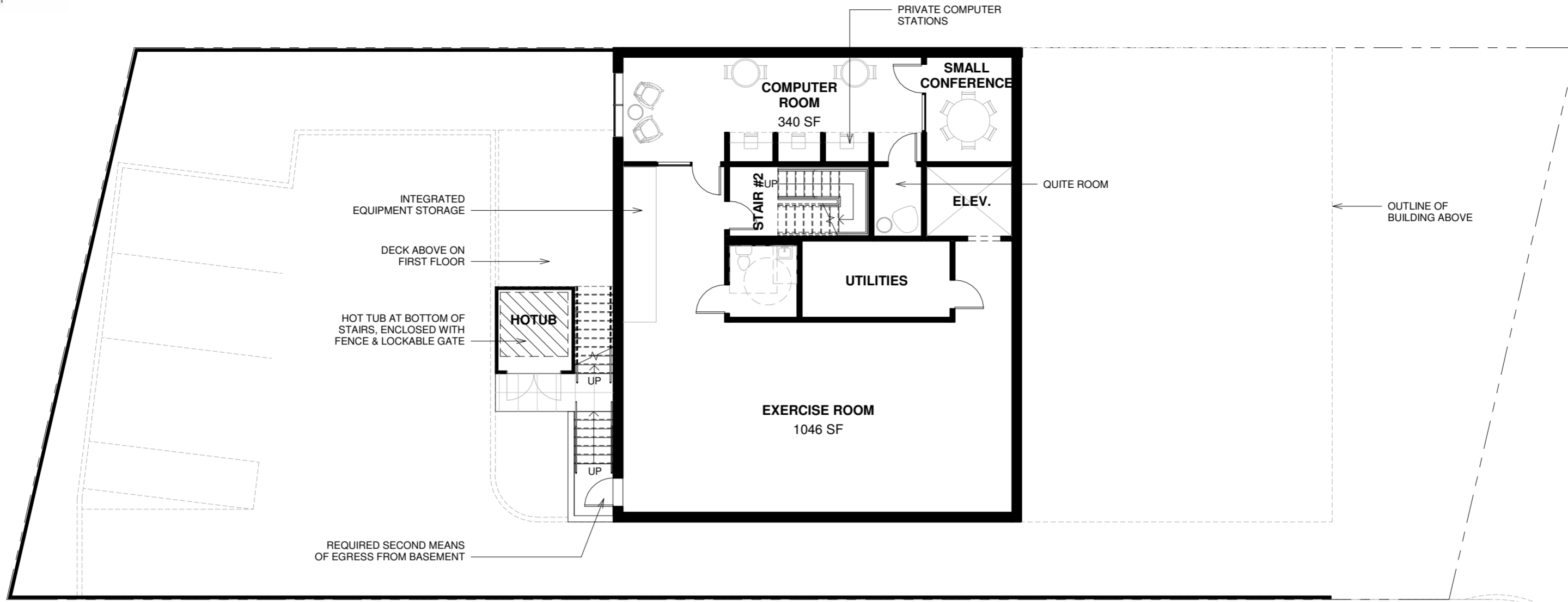
In light of the foregoing, the Applicant respectfully requests that the Board grant the requested relief.

EXHIBIT A

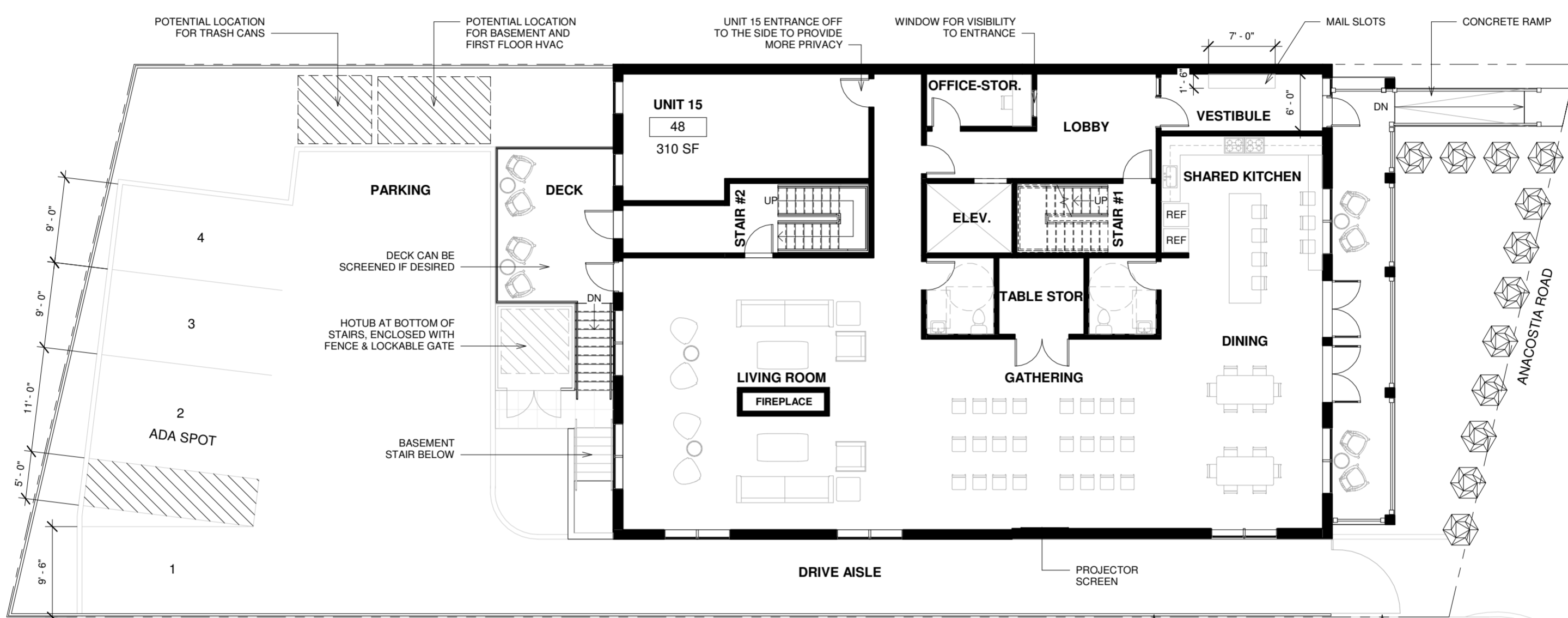


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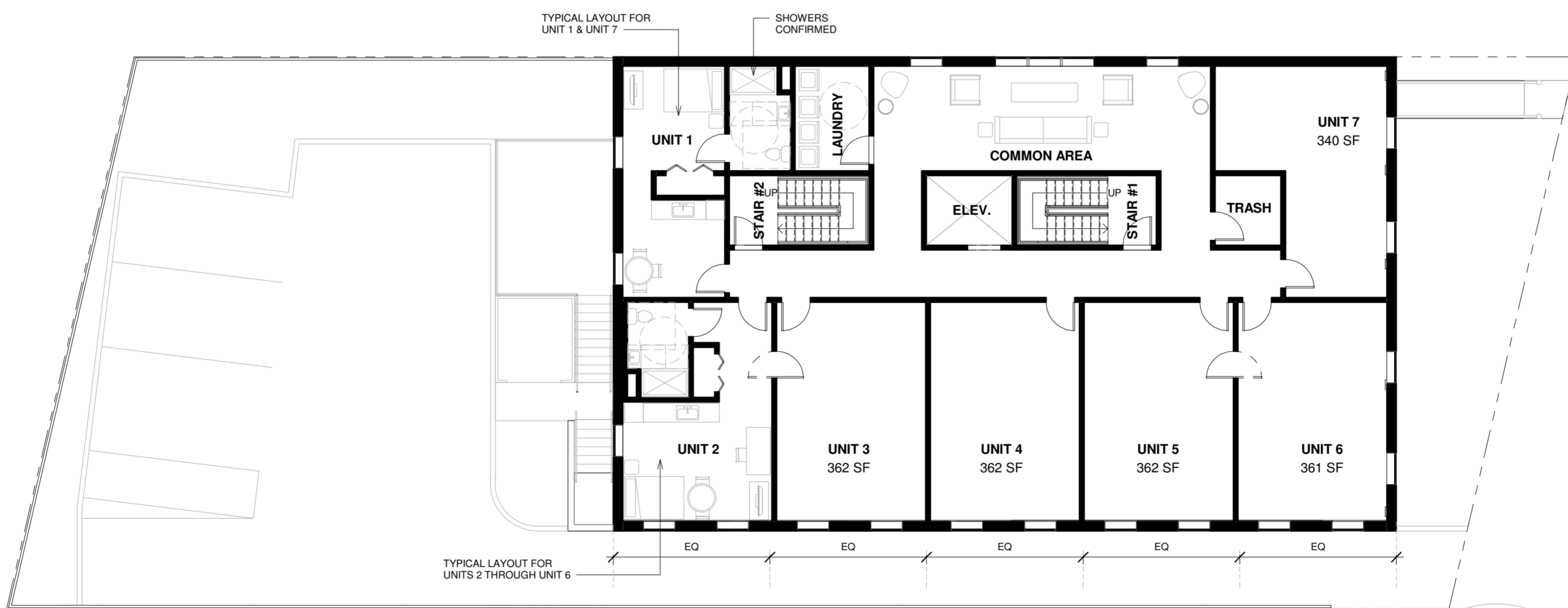
MARY'S HOUSE - SCHEMATIC PLANS - NOVEMBER 12TH, 2020



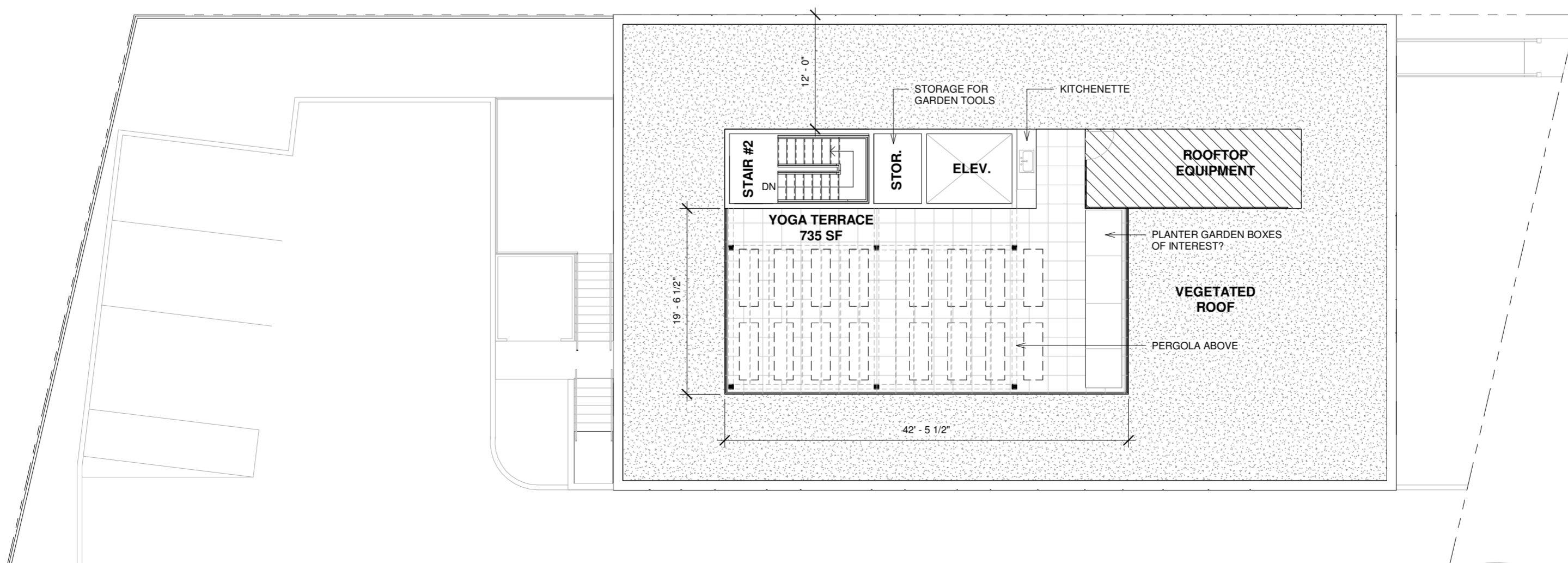
1 BASEMENT FLOOR PLAN
S1 1/8" = 1'-0"



2 FIRST FLOOR PLAN
S1 1/8" = 1'-0"

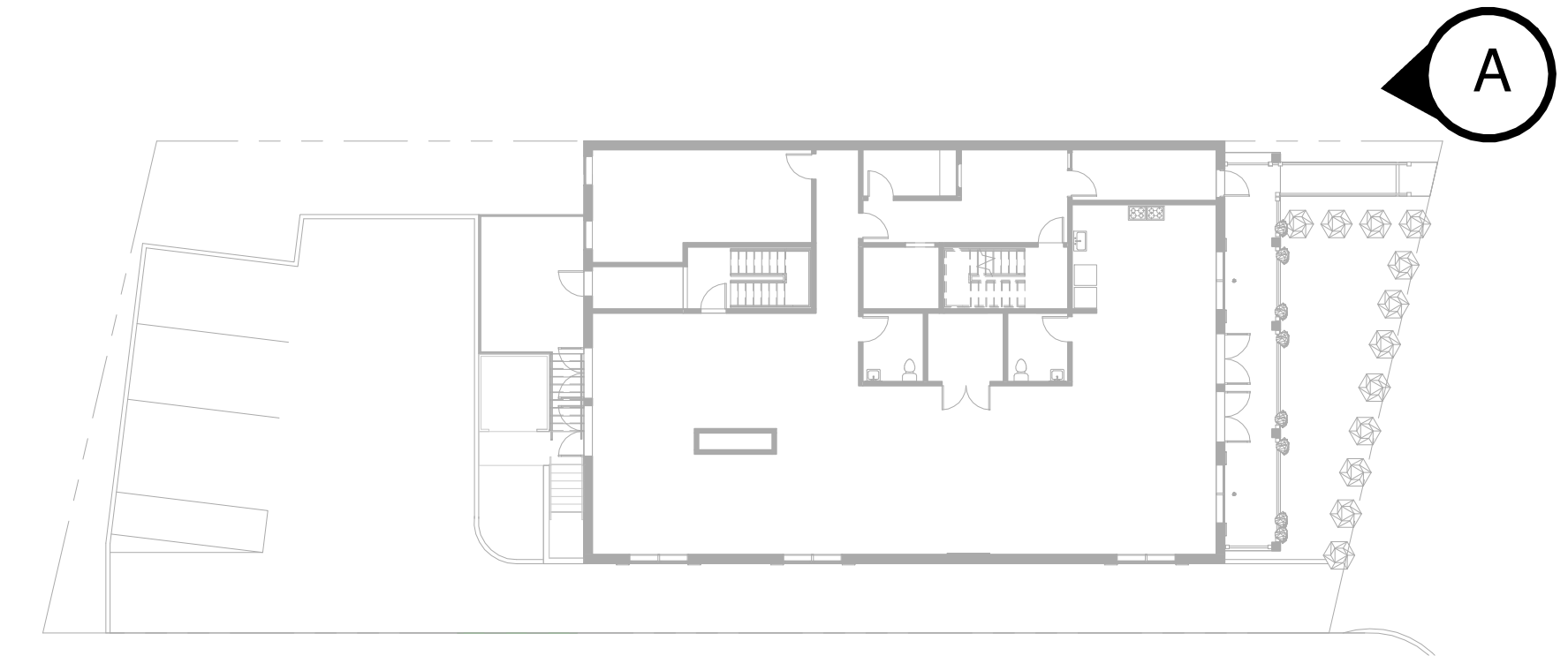


3 SECOND THRU THIRD FLOOR PLAN
S1 1/8" = 1'-0"



4 ROOF PLAN
S1 1/8" = 1'-0"

A



B

