



4800 Ashford Dunwoody Road
Dunwoody, GA 30338
Phone: (678) 382-6800
dunwoodyga.gov

MEMORANDUM

To: Mayor and City Council

From: Madalyn Smith, Senior Planner

Date: July 10, 2023

Subject: RZ 23-02 & SLUP 23-03 – 84 Perimeter Center East, Parcel ID#18 347 01 013

REQUEST

The applicant, JSJ Perimeter LLC, requests a modification of the zoning and special land use permit conditions of cases RZ 20-03 & SLUP 20-02, to remove the condition of approval #25, which reads:

“As agreed by the developer at the March 8, 2021 City Council meeting, the land disturbance permit must be applied for within two years of the date of the zoning approval and must be issued within 30 months of the date of the zoning approval or the land use reverts to what is zoned currently.”

For reference the original requests for RZ **20-03** & SLUP **20-02** are as follows:

1. **RZ 20-03:** a rezoning from the current C-1 conditional (Commercial) District to a PC-2 (Perimeter Center) District.
2. **SLUP 20-02(A):** Special Land Use Permits to allow an exception to Section 27-104(c), Figure 27-104-3, for an increase in the maximum impervious coverage from 65% to 72% and of combined impervious and semi-pervious coverage from 75% to 78%.
3. **SLUP 20-02(B):** Special Land Use Permit from Chapter 27, Section 27-104(f)(2) to allow residential use of age-restricted multi-family housing. Section 27-104(f)(2);
4. **SLUP 20-02(C):** To allow an exception to Section 27-105(b)(2) to reduce the required interior side yard setback from 15 feet to 0 feet and to reduce the rear yard setback from 30 feet to 10 feet; and
5. **SLUP 20-2(D):** To allow an exception to Section 27-105(b)(2) to allow both residential and commercial uses at the street facing ground floor level for a horizontal length of 100 feet from the eastern façade of the multi-family building that will not be service or lobbies for lodging. The street facing ground level of the remainder of multi-family buildings shall contain active uses for a minimum depth of 10 feet.

APPLICANT

Property Owner & Petitioner:
JSJ Perimeter LLC
John DiGiovanni

CITY COUNCIL, 6.12.23

City Council held a public hearing regarding the subject cases on June 12, 2023. There were no public comments.

There was a short discussion regarding the subject cases. City Council asked for clarification on whether the condition #25 should be updated with a new date, rather than eliminated. Staff answered that such a condition is not advised.

PLANNING COMMISSION, 5.9.23

Planning Commission held a public hearing regarding the subject cases on May 9, 2023. There were no public comments.

Following a limited discussion, Deb Cameron moved to approve RZ 23-02 subject to staff conditions, Erika Harris seconded, and the motion passed 5-0. Deb Cameron then moved to approve SLUP 23-03 subject to staff condition, Erika Harris seconded, and the motion passed 5-0.

BACKGROUND & PROPOSED DEVELOPMENT

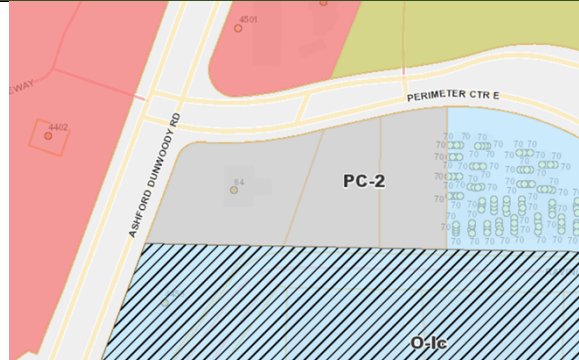


Figure 1. Zoning Map

The subject site, 84 Perimeter Center East, is a 2.86 acre property located at the corner of Ashford Dunwoody Road and Perimeter Center East. The site currently contains a vacant one-story building, formerly occupied as a bank. The site is zoned PC-2 and is within the Perimeter Center Overlay.

The property has undergone a series of zoning amendments over the past 15 years. In 2008, the property was rezoned from O-I to C-1 conditional (Z-08-14825) to allow for the development of a hotel, a 7,050 square foot full service restaurant, a 5,369 square foot meeting space, and a 70,000 square foot fitness club. The site also received a special land use permit to increase the height of the hotel from 2 to 12-stories (SLUP-08-14791). In 2019, the property’s site plan and zoning conditions were amended to allow a 11-story, 160-room hotel and two additional multi-story buildings containing approximately 43,140 square feet of commercial uses, including but not limited to restaurants and retail, patio and rooftop terrace seating and a multi-story parking deck (see MA 19-02). In 2020, the applicant removed the plans for a hotel and proposed to replace it with 14-story building with 225 units of age-restricted rental housing, which prompted a rezoning to PC-2 and several special land use permit requests (RZ 20-03 & SLUP 20-02). Overall, these series of zoning actions resulted in the following approved site plan:

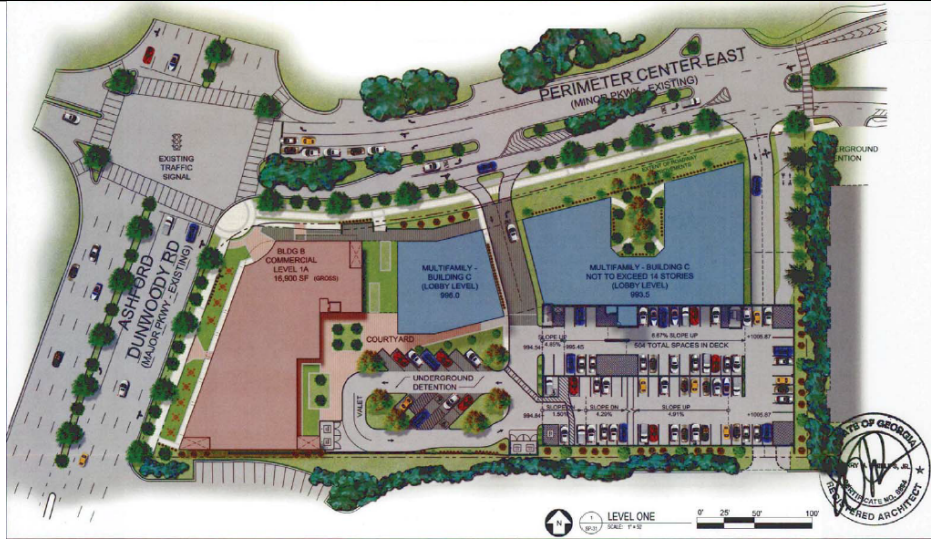


Figure 2. Approved site plan

The applicant does not propose any major amendments to this site plan. Rather, the subject of their request is related to the timeline in which this development is delivered. The previous zoning actions, RZ 20-03 & SLUP 20-02, prompted a condition that required the applicant to have an approved Land Disturbance Permit by September 8, 2023. Per the applicant, the current economic conditions have severely financially impacted the project and the prescribed deadline cannot be feasibly met and, as such, they have requested the removal of this condition.

SITE PLAN ANALYSIS

The applicant does not propose any major amendments to the approved site plan (see Fig. 2). Overall, the property is generally subject to all requirements of the PC-2 zoning district and the Perimeter Center Overlay, with several exceptions that were granted through the SLUP process (SLUP 20-02).

The development includes a 2-story commercial building facing Ashford Dunwoody Road, with the 14-story age-restricted multifamily building facing Perimeter Center East. There is also a parking garage to the rear of the multi-family building and a small surface parking lot, which is completely interior to the site. This redevelopment prompts streetscape improvements, which include an 8-foot sidewalk and 16-feet of outdoor patio/dining along Ashford Dunwoody Road and a 6-foot sidewalk and 5-foot bike lane along Perimeter Center. The new streetscape will also include new planting buffers and street trees.

SURROUNDING LAND ANALYSIS

Direction	Zoning	Future Land Use	Current Land Use
N	C-1 & OCR	Perimeter Center	Commercial-Service Station
S	O-I	Perimeter Center	Office-Chase Bank, Ravinia Office Complex

E	O-I	Perimeter Center	Apartment Complex
W	C-1	Perimeter Center	Retail/Restaurants-Perimeter Mall

ZONING AMENDMENT REVIEW AND APPROVAL CRITERIA

Chapter 27, Section 27-335 identifies criteria for evaluating applications for zoning amendments. No application for an amendment shall be granted by the City Council unless satisfactory provisions and arrangements have been made concerning each of the following factors, all of which are applicable to each application:

- (1) Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan;
- (2) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;
- (3) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
- (4) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
- (5) Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal;
- (6) Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources; and
- (7) Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The current proposal that is under review will remain the same as previous, with all previous conditions remaining the same, except for the removal of condition #25 which reads:

“As agreed by the developer at the March 8, 2021 City Council meeting, the land disturbance permit must be applied for within two years of the date of the zoning approval and must be issued within 30 months of the date of the zoning approval or the land use reverts to what is zoned currently.”

The previous zoning amendment, RZ 20-03, demonstrated that the proposed development is in conformity with the 2015-2035 Comprehensive Plan. The plan has since been updated to the 2020-2040 Comprehensive Plan. The proposed development, which includes street-fronting retail, senior housing, new sidewalks and bike lanes, and minimal surface parking all aligns with the goals of the current Comprehensive Plan and vision for the Perimeter Center which include high-quality design, mixed-use development, expanding options for aging-in-place, and reducing surface parking.

This project is aligned with the kind of redevelopment that is needed in the Perimeter Center, and is one of the very few properties in the area where the zoning and proposed development is reflective of the future goals for the Perimeter Center. Based on feedback from the applicant, the current proposed timeline is not feasible and allowing the zoning to revert to C-1 would be a step backwards for the Perimeter Center. The C-1 district is not conducive to implementing the goals of the Perimeter Center;

the zoning regulations for the C-1 do not allow for adequate activity along the street, nor do they encourage the type of mixed-use redevelopment that is envisioned for the area. Additionally, the development is suitable in relation to nearby properties (which include retail, office, and multi-story housing), will not adversely impact these neighboring properties, will not impact an historic properties, and lastly will not cause an excessive burden on streets, utilities, or schools.

The current economic conditions, which began during the global COVID-19 pandemic, have complicated and extended timelines for financing and construction for many developers. The implementation of this condition would create further barriers for any future redevelopment on this site and impacts the economic use of the property. Overall, these conditions do prompt a reevaluation of this condition and staff finds the removal of the September 8, 2023 deadline to be appropriate.

SPECIAL LAND USE PERMIT REVIEW AND APPROVAL CRITERIA

Chapter 27, Section 27-359 identifies criteria for evaluating applications for special land use permits. No application for special land use permit shall be granted by the City Council unless satisfactory provisions and arrangements have been made concerning each of the following factors, all of which are applicable to each application:

- (1) Whether the proposed use is consistent with the policies of the comprehensive plan;
- (2) Whether the proposed use complies with the requirements of this zoning ordinance;
- (3) Whether the proposed site provides adequate land area for the proposed use, including provision of all required open space, off-street parking and all other applicable requirements of the subject zoning district;
- (4) Whether the proposed use is compatible with adjacent properties and land uses, including consideration of:
 - a. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust or vibration generated by the proposed use;
 - b. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use;
 - c. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use;
 - d. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the character of vehicles or the volume of traffic generated by the proposed use;
 - e. Whether the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings; and
 - f. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources.
- (5) Whether public services, public facilities and utilities—including motorized and nonmotorized transportation facilities—are adequate to serve the proposed use;
- (6) Whether adequate means of ingress and egress are proposed, with particular reference to nonmotorized and motorized traffic safety and convenience, traffic flow and control and emergency vehicle access;
- (7) Whether adequate provision has been made for refuse and service areas; and

(8) Whether the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building.

The previously approved Special Land Use Permit, SLUP 20-02, included all the following requests:

1. **SLUP 20-02(A):** Special Land Use Permits to allow an exception to Section 27-104(c), Figure 27-104-3, for an increase in the maximum impervious coverage from 65% to 72% and of combined impervious and semi-pervious coverage from 75% to 78%.
2. **SLUP 20-02(B):** Special Land Use Permit from Chapter 27, Section 27-104(f)(2) to allow residential use of age-restricted multi-family housing. Section 27-104(f)(2);
3. **SLUP 20-02(C):** To allow an exception to Section 27-105(b)(2) to reduce the required interior side yard setback from 15 feet to 0 feet and to reduce the rear yard setback from 30 feet to 10 feet; and
4. **SLUP 20-2(D):** To allow an exception to Section 27-105(b)(2) to allow both residential and commercial uses at the street facing ground floor level for a horizontal length of 100 feet from the eastern façade of the multi-family building that will not be service or lobbies for lodging. The street facing ground level of the remainder of multi-family buildings shall contain active uses for a minimum depth of 10 feet.

Again, the applicant does not wish to amend these requests, which all remain as approved in March 2021. The applicant wishes to remove condition #25. The removal of this condition does not affect the compliance with the above criteria and appropriateness of the previously approved Special Land Use Permits.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION

Based on the written findings above, staff recommends that the request for modification of the zoning and special land use permit conditions of cases RZ 20-03 & SLUP 20-02, to remove the condition of approval #25, be **approved** subject to the following exhibit and conditions:

- EXHIBIT A: Site plans, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT B: Streetscaping Sections, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT C: Open Space Diagram, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT D: Bldg. B Elevations (RA-4.1), completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT E: HUD Housing for Older Persons Regulations.

1. The owner shall develop the site in general conformity with “Exhibit A” with minor changes allowed as defined by Section 27-337(b) or necessary changes to meet conditions of zoning or land development requirements made necessary by actual field conditions at the time of development;
2. The owner shall construct the streetscaping in general conformity with “Exhibit B”. Any minor variations to the streetscapes made necessary by actual field conditions at the time of development shall be subject to approval by the Public Works Director and Community Development Director;
3. Major façade materials shall include natural brick, natural stone and natural wood, hard coat stucco and glass, natural brick veneer or stone veneer materials and other high quality materials approved by the Community Development Director during the permit review process;
4. Stamped brick and cultured stone, manufactured stone, or other imitation materials shall be prohibited. Synthetic EIFS may be used only as accents for cornices or other minor decorative

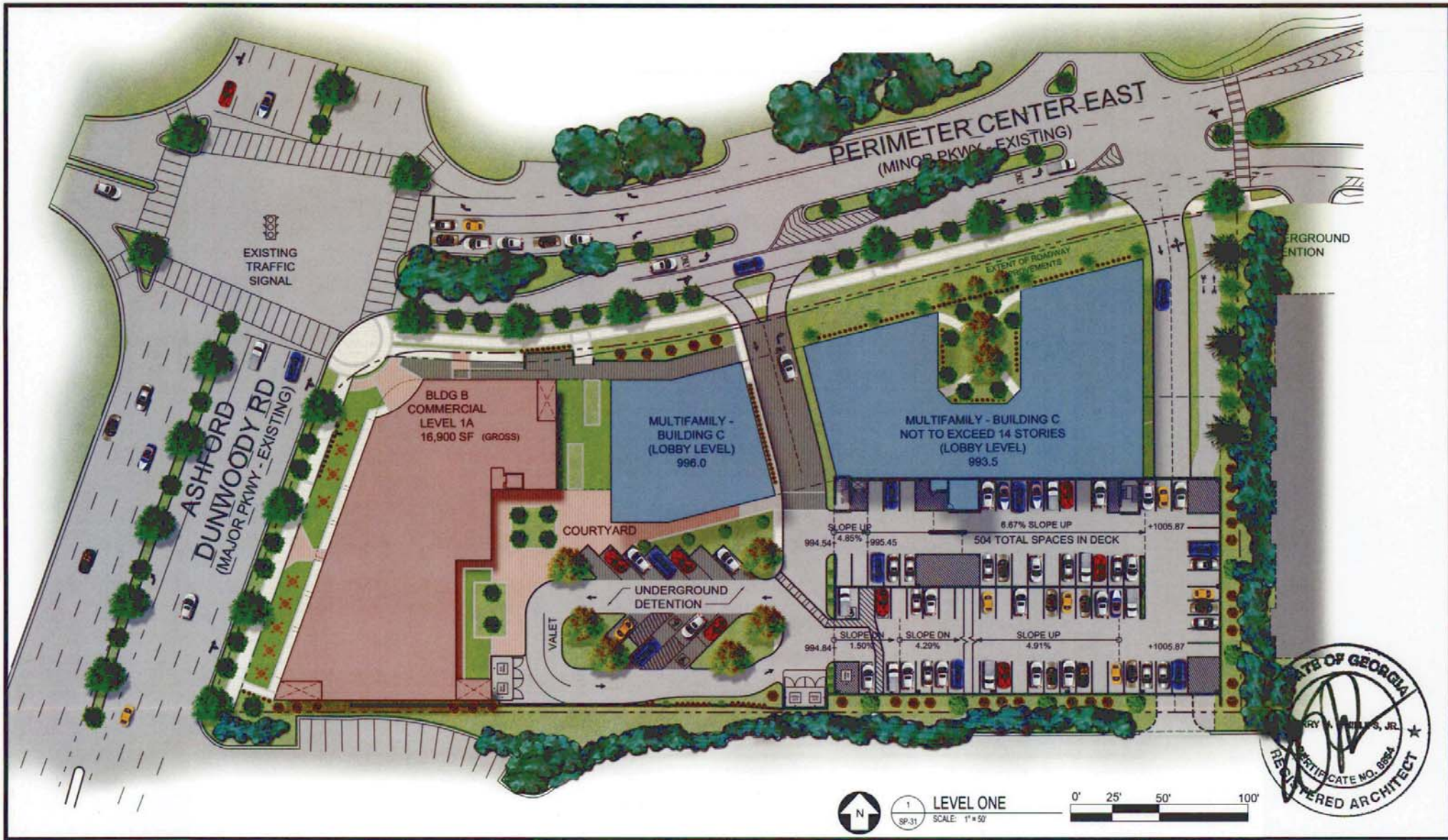
- elements;
5. Maximum impervious plus semi-pervious cover shall be 78% and include pedestrian or plaza areas, as shown on "Exhibit C";
 6. No monument sign shall be constructed along the Ashford Dunwoody Road frontage. As an alternative, the owner is allowed one sign with a sign area up to 120 square feet attached to the building. The design of such signage shall be incorporated into the design of the building as approved by the Community Development Director during the site plan review process. Other building signage will be allowed in accordance with Section 20-57;
 7. All trash/recycling enclosure(s) must be screened from view of public rights-of-way by landscaping and a solid masonry wall at least eight feet in height;
 8. Prior to certificate of occupancy, the owner shall pay a sum into the tree bank for the replacement density balance of trees removed, as determined by the tree ordinance and City Arborist;
 9. All utilities servicing the site shall be underground with the exception of required aboveground elements, such as transformers and cable boxes;
 10. All mechanical equipment (e.g., air conditioning, heating, cooling, ventilation, exhaust and similar equipment) shall be roof mounted and screened in all directions by walls or parapets or will be enclosed in opaque structures to hide the mechanical equipment from view from public right-of-way within 200 feet;
 11. Prior to the issuance of certificates of occupancy, the Owner will convey to the City right-of-way to incorporate the sidewalk, bike lane, and landscape buffers along Ashford Dunwoody Road and Perimeter Center East;
 12. Prior to the issuance of certificates of occupancy, the Owner will convey an easement on the eastern portion of the development sufficient to accommodate two travel lanes and two bicycle lanes as shown on Exhibit A to connect to adjacent property to the south. For the vehicular component, it will be responsibility of others to connect to this public easement outside of the property lines of the development. For the bicycle component, the Owner shall complete the physical connection to the adjacent property to the South prior to the issuance of certificates of occupancy unless the property owner of the adjacent property objects in writing.
 13. There shall be no left turn lane into the western most driveway from Perimeter Center East into the development. Access at this driveway shall be restricted to right in and right out turns only;
 14. The owner will contribute up to \$20,000 to extend the southbound turn lane for left turns from Ashford Dunwoody Road on to Perimeter Center East;
 15. The uses on the site shall be limited to eating and drinking establishments, brokerage services, office, medical facilities, retail sales, lodging, personal improvement, office, non-traditional bank without a drive-thru such as a banking café, credit union, savings and loans, and laundry drop-off and pick-up service;
 16. A crosswalk and pedestrian refuge shall be provided across Perimeter Center East on the northeastern corner of the property pursuant to approval of the Public Works Director;
 17. The age-restricted rental building shall not exceed 14 stories in height;
 18. Parking deck openings that face the apartment building to the east shall be shielded with landscaping and/or an architectural mesh, grille, screening or other cladding component that enhances the architectural character of the structure. The final design of the parking deck shall be subject to approval of the Community Development Director; and
 19. The completed architectural design shall be substantially similar to "Exhibit D" and meet the requirements of the PC-2 District. Where both conflict, the requirements of the PC-2 district shall govern. The drawings shall be submitted by the Community Development Director to City Council for feedback prior to the issuance of a building permit.
 20. Both residential and commercial uses are allowed at the street-facing ground floor level for a horizontal length of 100 feet from the eastern façade of the multi-family buildings. The street-facing ground level of the remainder of the building shall contain active uses for a minimum depth of 10 feet. Such active uses may include, but shall not be limited to, retail space, restaurants or other

food sales, building leasing areas, resident lounges, lobbies, fitness centers, cycle training and cycle maintenance areas, live-work units, and residential stoops.

21. Ground-level retail spaces along Ashford-Dunwoody Road and Perimeter Center East shall have public entrances from the sidewalk that are kept open during business hours.
22. Balconies at the residential units shall have a minimum depth of 5 feet from the exterior wall.
23. The roof plaza above the retail spaces shall be open to the public during business hours.
24. The Applicant shall provide manufacturer's specifications for the pervious paver systems that conform with the site's soil percolation characteristics and the chosen engineered base and engineered sub-base. An engineer who is GA Stormwater certified (GSWCC) will provide a letter at permitting testifying that, based on the manufacturer's specifications, the chosen engineered base and engineered sub-base, the proposed pervious paver systems and similar improvements counted towards the semi-pervious cover has sufficient water permeability and is recommended for the site's soil percolation characteristics.
- ~~25. As agreed by the developer at the February 22, 2021 City Council meeting, the land disturbance permit must be issued within two years of the date of the zoning approval or the land use reverts to what is zoned currently.~~
- ~~26.25.~~ The applicant shall comply with the requirements of Subpart E – Housing for Older Persons of Title 24 - Housing and Urban Development. Subtitle B - Regulations Relating to Housing and Urban Development. CHAPTER I - OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. SUBCHAPTER A - FAIR HOUSING. PART 100 - DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT, as amended, and as cited on "Exhibit E".
- ~~27.26.~~ The applicant shall forward the results of its verification of occupancy, as required by §100.307 of "Exhibit E", to the Community Development Director one year after receiving a Certificate of Occupancy and every two years after that.

ATTACHMENTS

- EXHIBIT A: Site plans, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT B: Streetscaping Sections, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT C: Open Space Diagram, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT D: Bldg. B Elevations (RA-4.1), completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT E: HUD Housing for Older Persons Regulations.
- RZ 23-03 & SLUP 23-02 Application

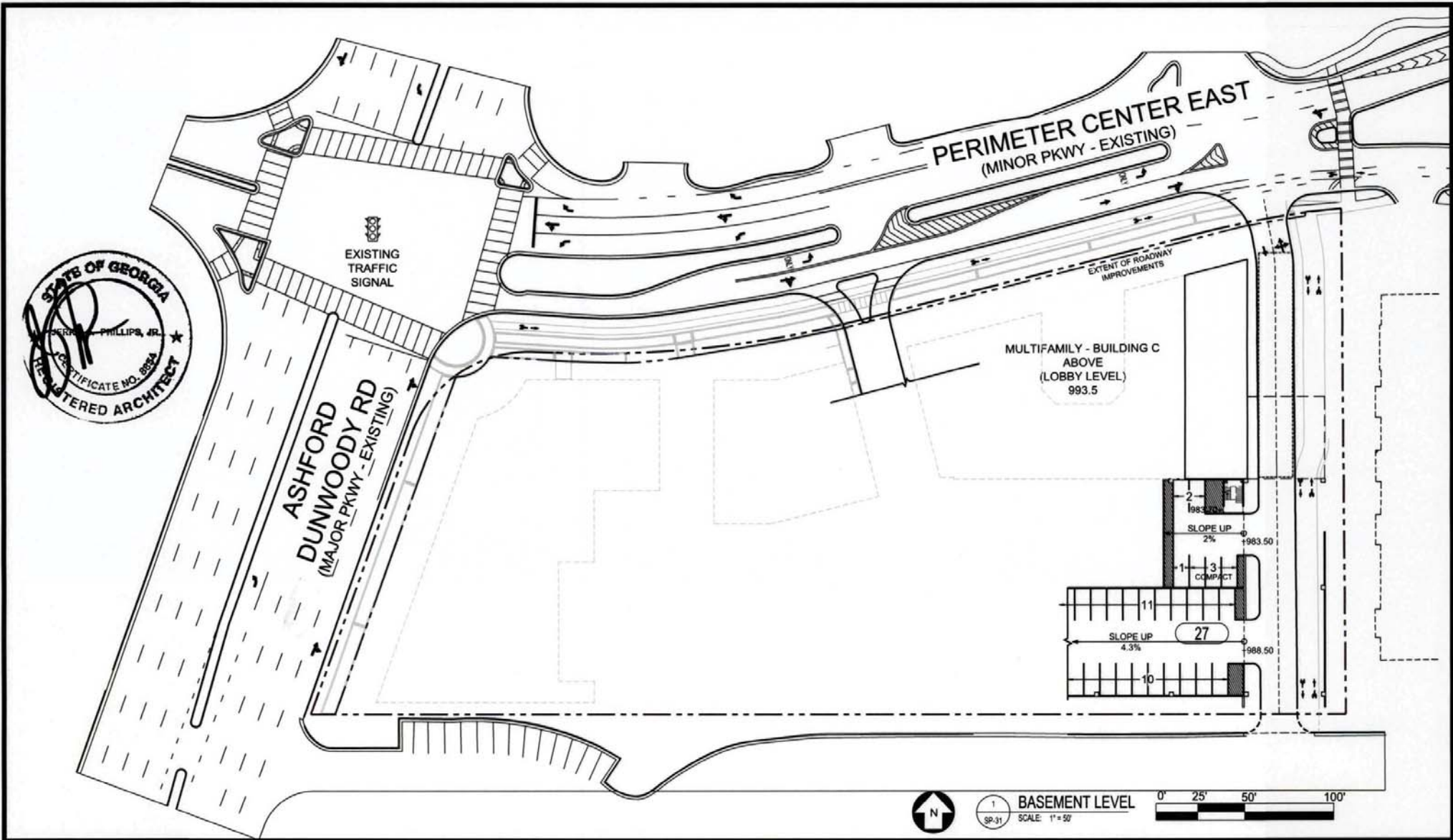


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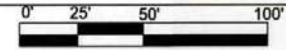
84 PERIMETER
DUNWOODY, GA

JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/MRE/RWF
DRAWING: LEVEL 1
SITE PLAN RENDERING
(SP-31)

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1
SP-31
BASEMENT LEVEL
SCALE: 1" = 50'



84
PERIMETER

84 PERIMETER
DUNWOODY, GA

JOB NUMBER: 1889901 | DATE: 2021-02-17 | BY: EMP/RWF
DRAWING: LEVEL 0 AT GRADE W/ PERIMETER CENTER EAST
MULTIFAMILY CONCEPT SKETCH
(SP-31)



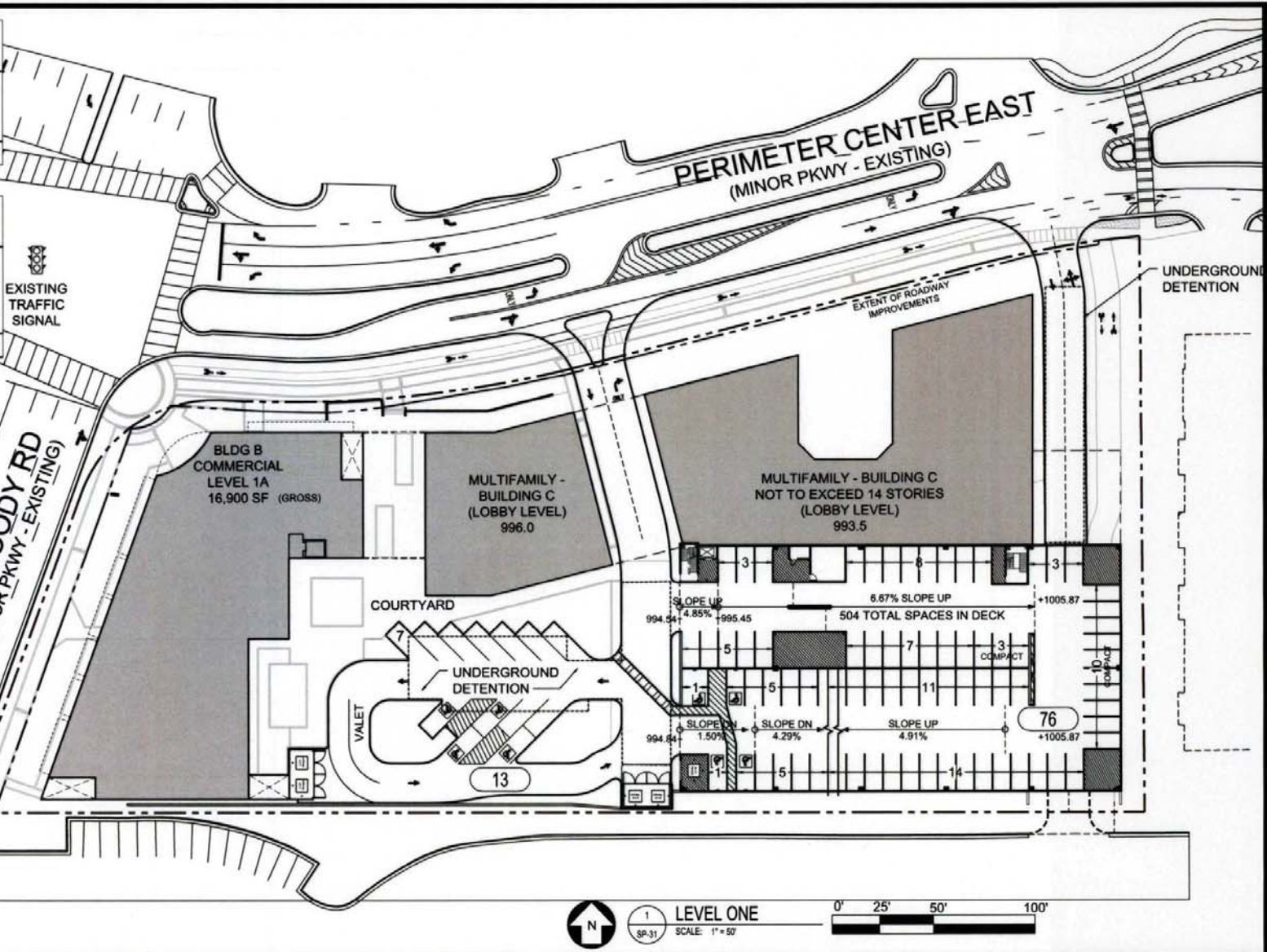
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BUILDING SUMMARY (GROSS)	GROSS AREA
BLDG B - LEVEL 1	16,900 SF
BLDG B - LEVEL 2	13,210 SF
BLDG B - LEVEL 3	10,348 SF
TOTAL BUILDING AREA	40,458 SF

BUILDING SUMMARY	
COMMERCIAL (GROSS AREA)	40,458 SF
MULTIFAMILY (NOT TO EXCEED)	225 UNITS

PARKING SUMMARY	
TOTAL PARKING PROVIDED	504 SPACES

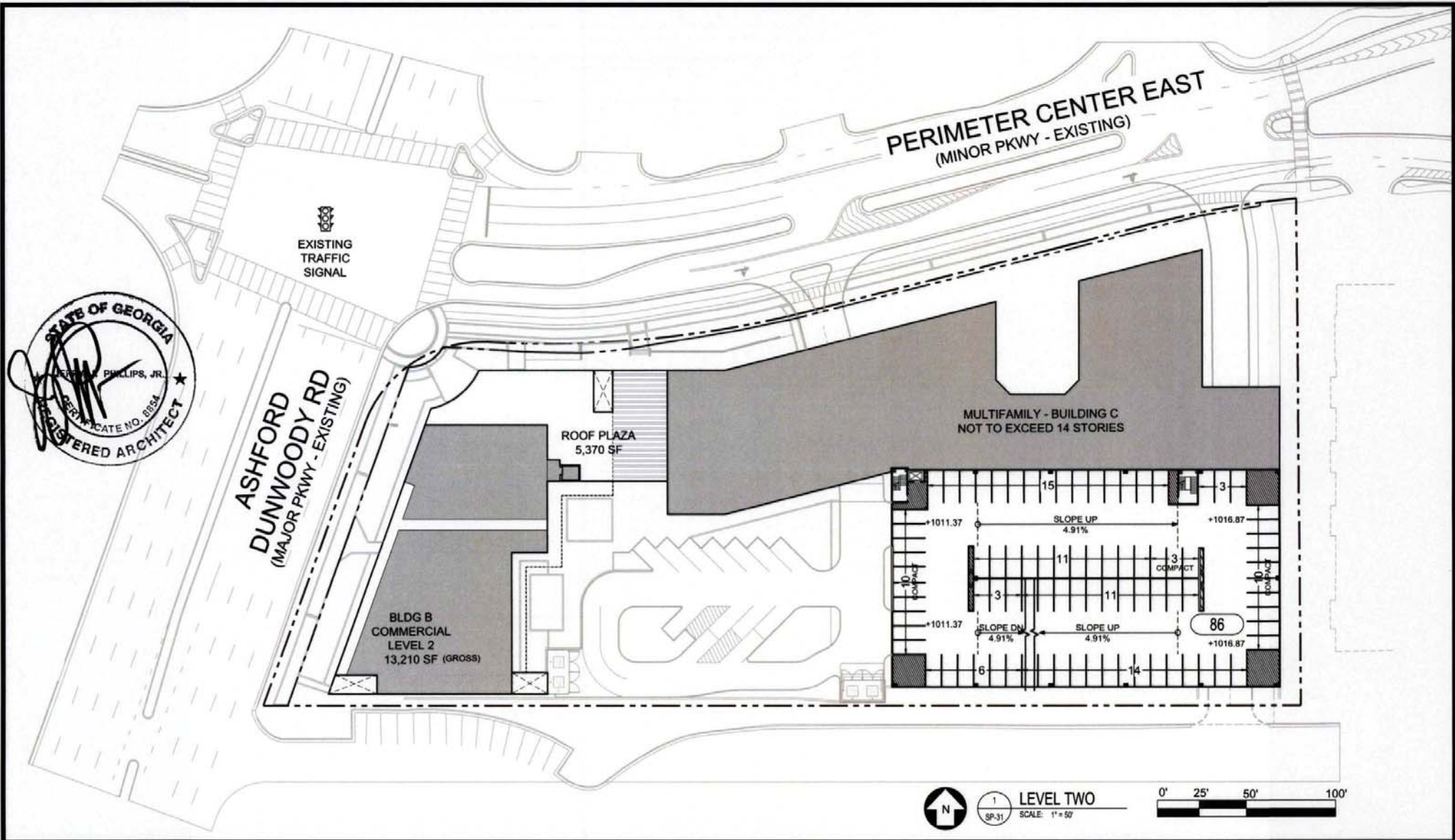


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PERIMETER

84 PERIMETER
DUNWOODY, GA

JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/MRE/RWF
DRAWING: LEVEL 1 MULTIFAMILY CONCEPT SKETCH (SP-31)

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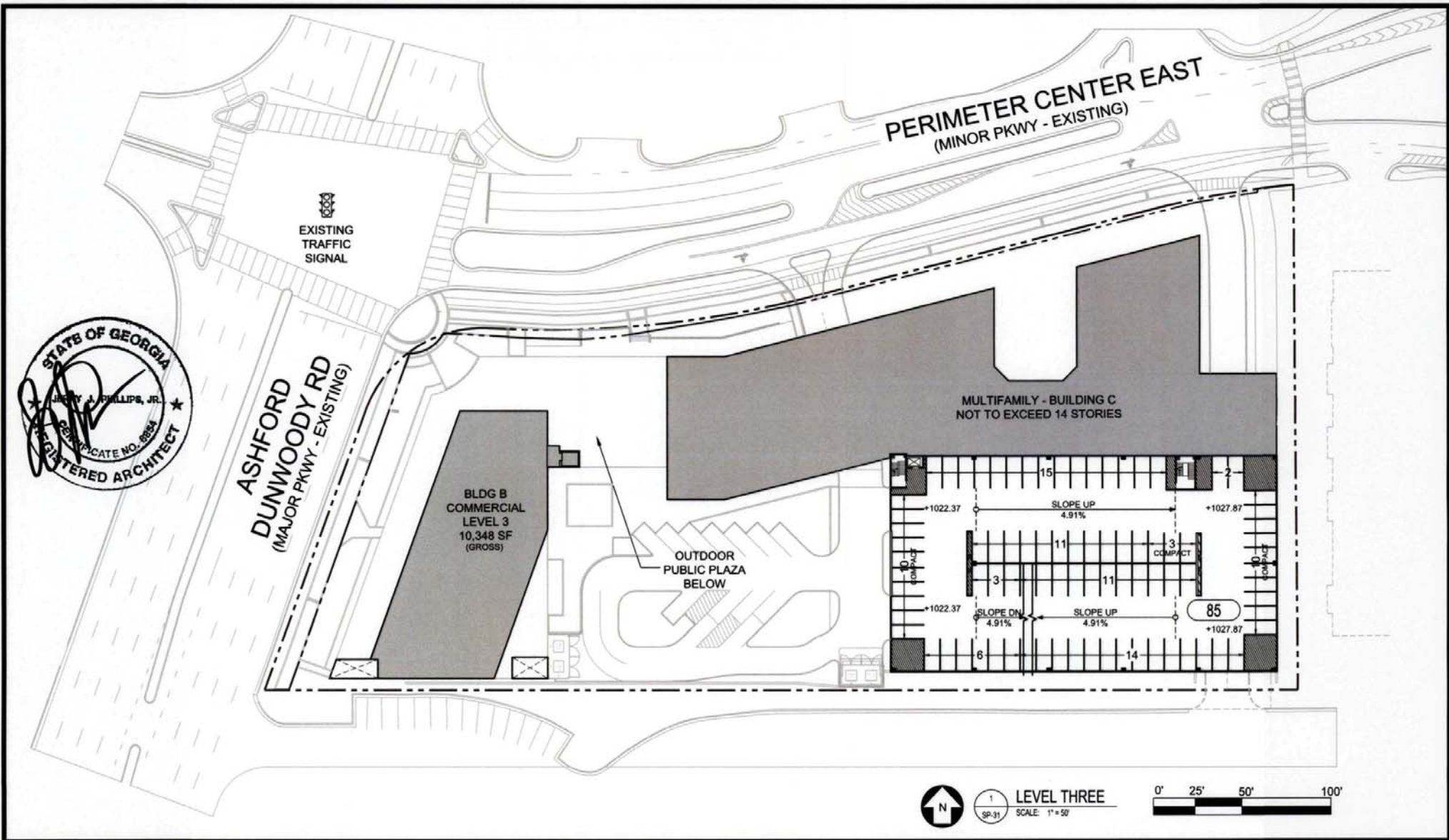
84 PERIMETER
DUNWOODY, GA

JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/MRE/RWF
 DRAWING: LEVEL 2
 MULTIFAMILY CONCEPT SKETCH
 (SP-31)

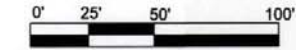


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LEVEL THREE
SCALE: 1" = 50'

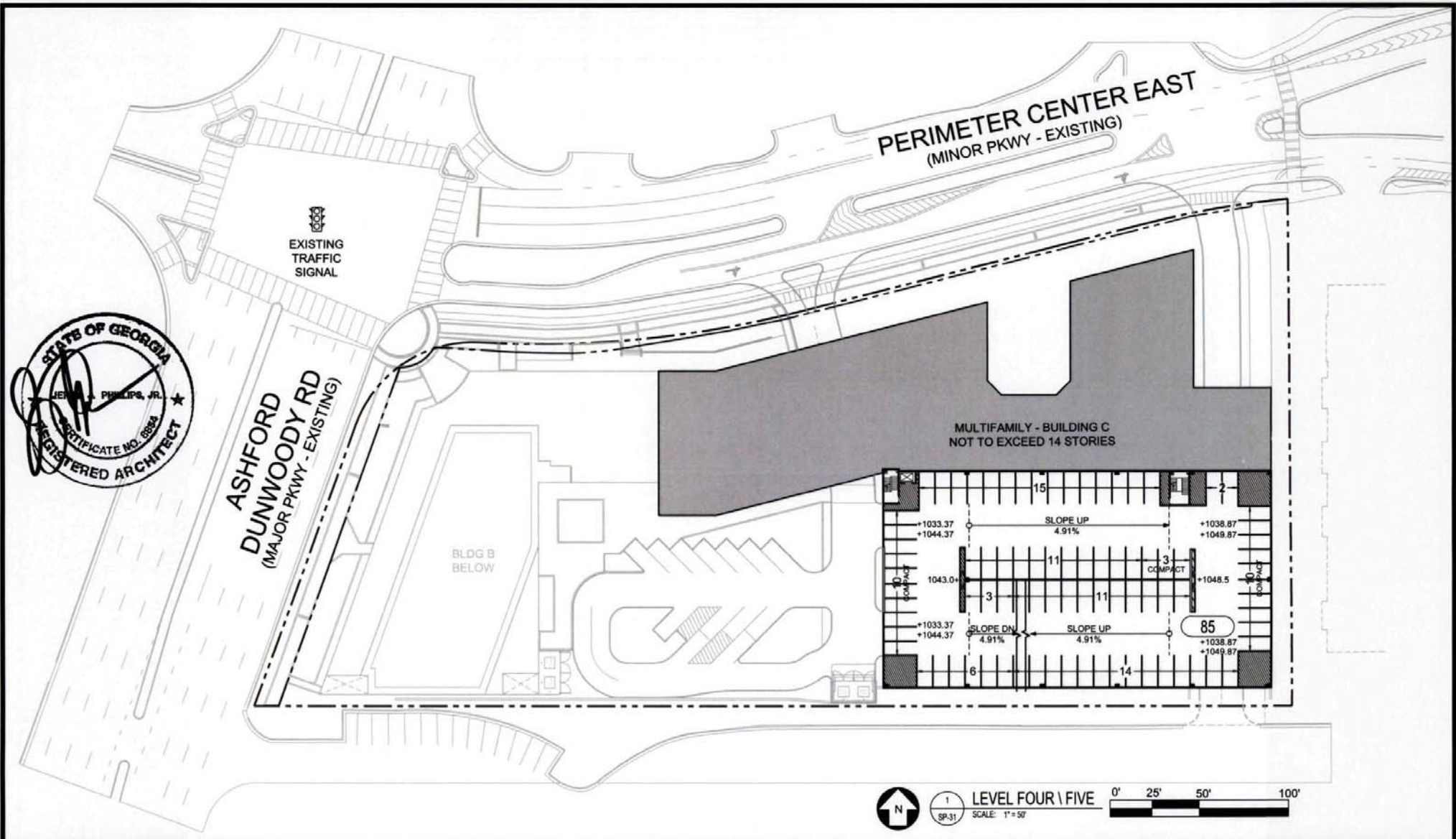



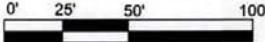
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PERIMETER

84 PERIMETER
DUNWOODY, GA

JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/MRE/RWF
DRAWING: LEVEL 3
MULTIFAMILY CONCEPT SKETCH
(SP-31)

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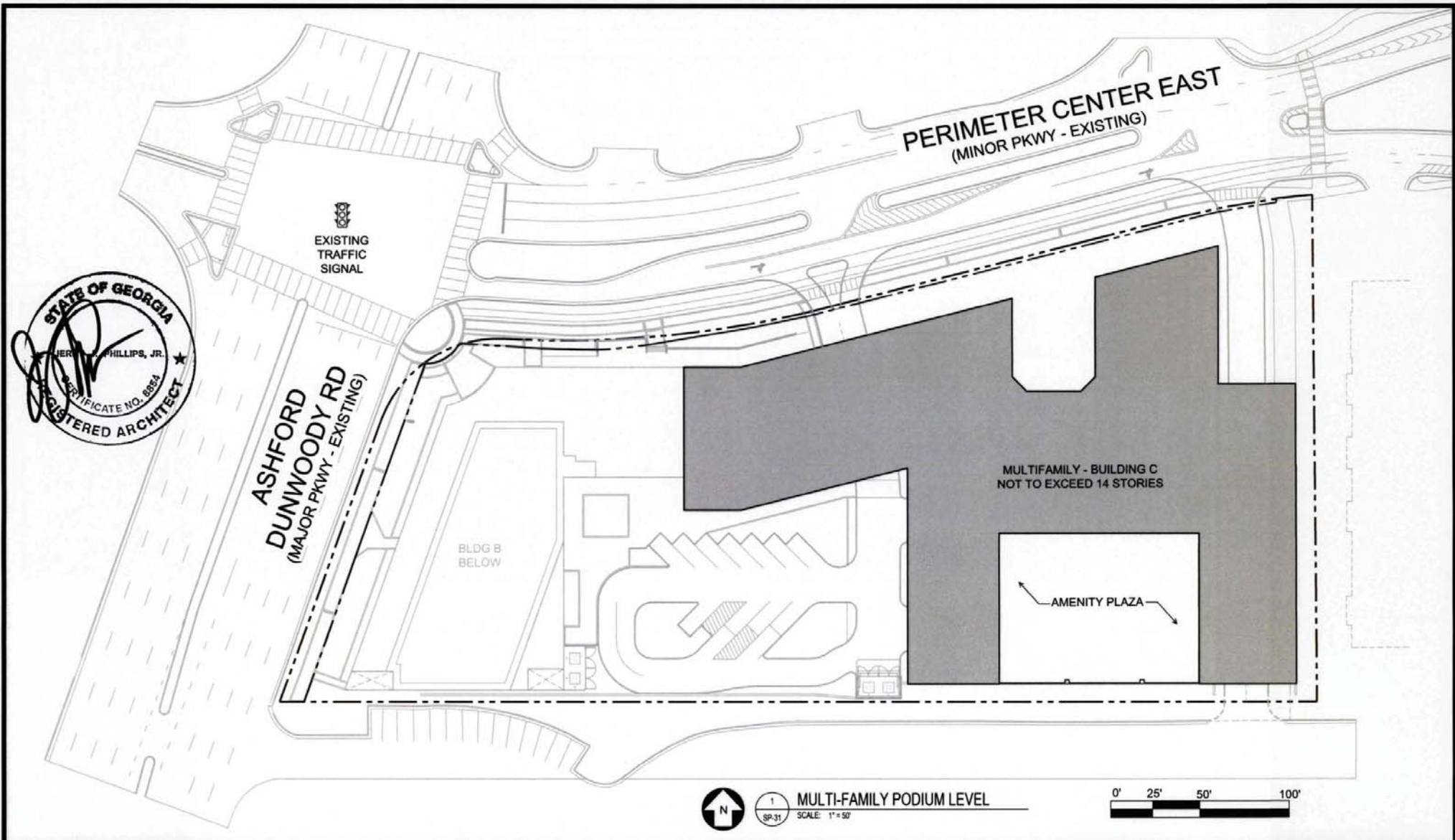


 LEVEL FOUR | FIVE
 SP-31 SCALE: 1" = 50'

84
PERIMETER

84 PERIMETER
DUNWOODY, GA

JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/MRE/RWF
 DRAWING: LEVEL 4 & 5
 MULTIFAMILY CONCEPT SKETCH
 (SP-31)


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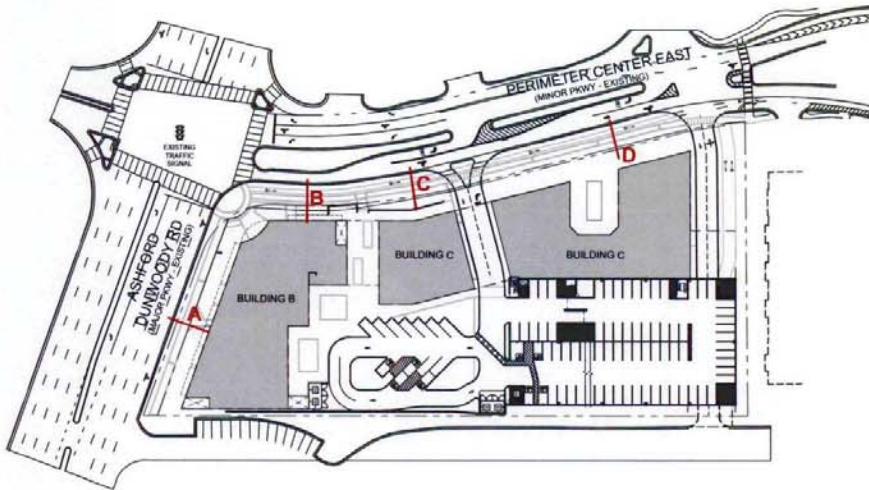


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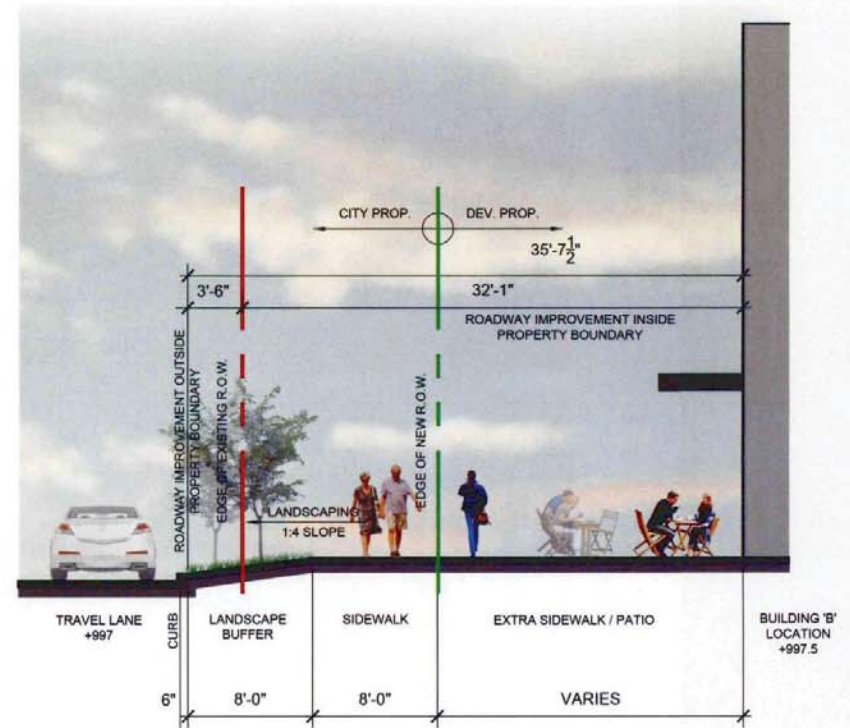
84 PERIMETER
DUNWOODY, GA

JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/MRE/RWF
DRAWING: MULTIFAMILY PODIUM LEVEL (SP-31)

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1 KEY SITE PLAN
 SP-31 SCALE: N.T.S.



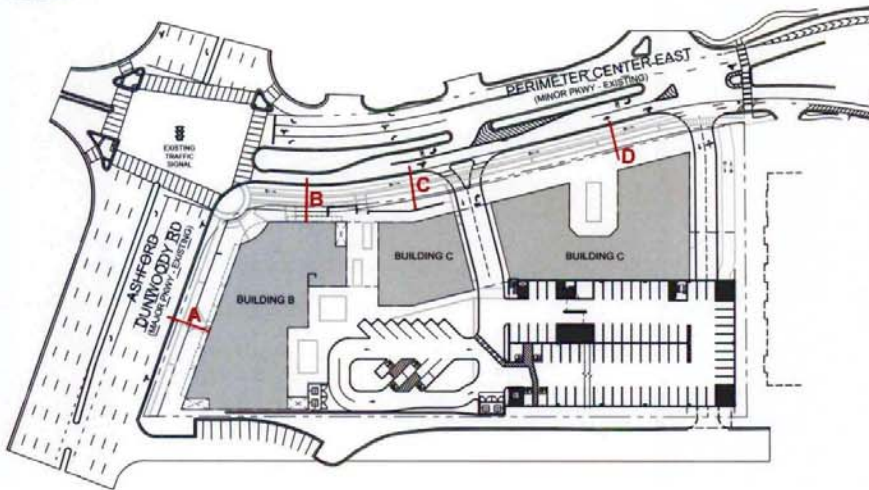
2 STREETScape SECTION 'A'
 SP-31 SCALE: 1/8" = 1'-0"

84
 PERIMETER

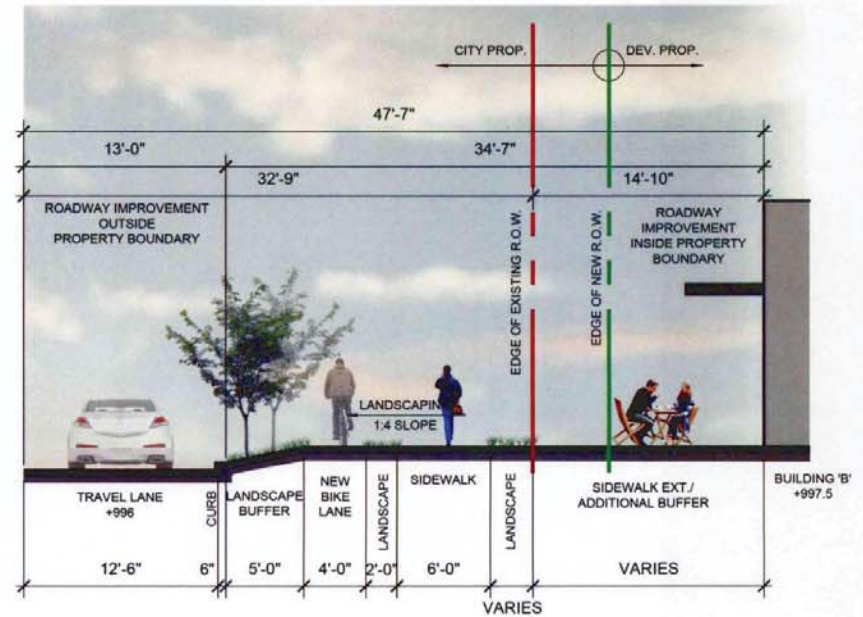
84 PERIMETER
 DUNWOODY, GA

JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/RWF
 DRAWING: STREETScape SECTION 'A'

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1 KEY SITE PLAN
 SP-31 SCALE: N.T.S.



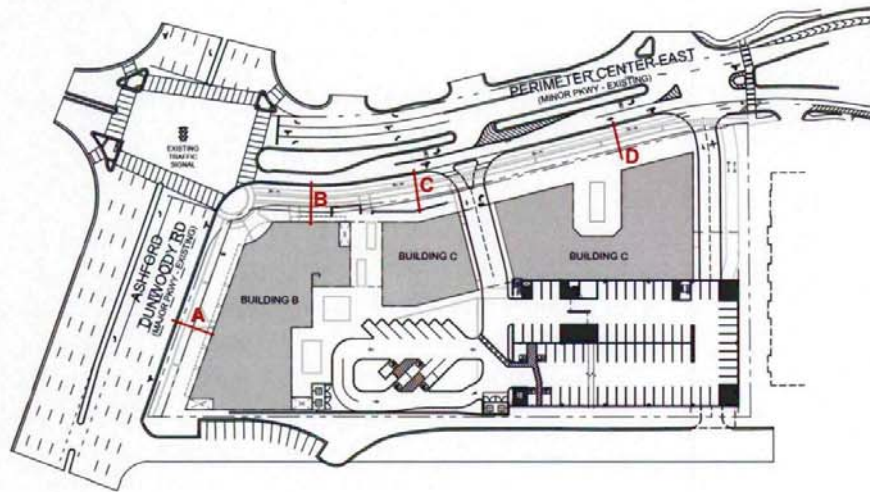
2 STREETScape SECTION 'B'
 SP-31 SCALE: 1/8" = 1'-0"

84
 PERIMETER

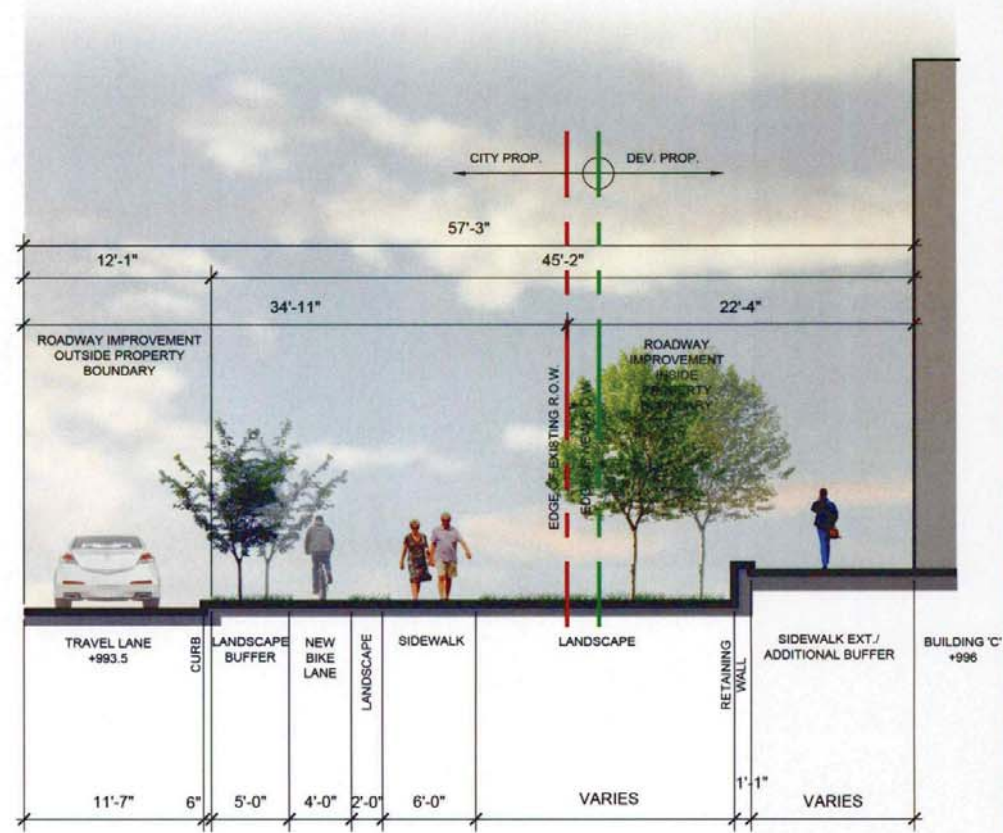
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JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/RWF
 DRAWING: STREETScape SECTION 'B'

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1 KEY SITE PLAN
 SP.31 SCALE: N.T.S.



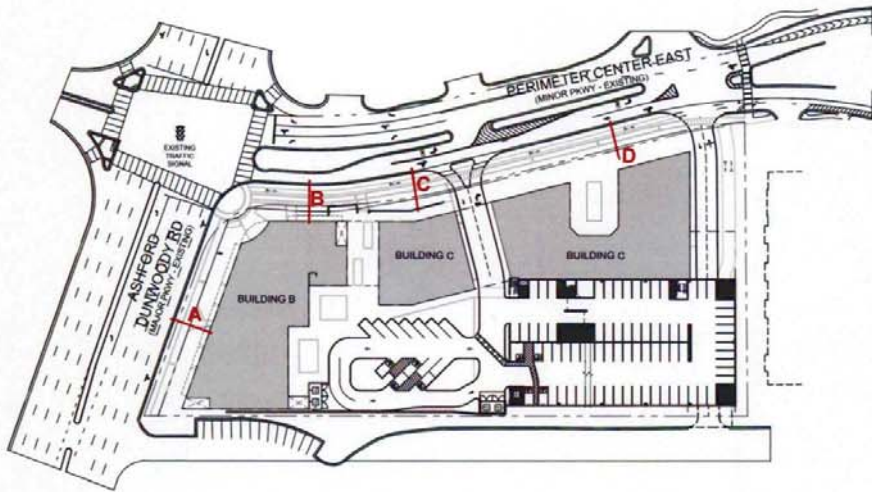
2 STREETScape SECTION 'C'
 SP.31 SCALE: 1/8" = 1'-0"

84
 PERIMETER

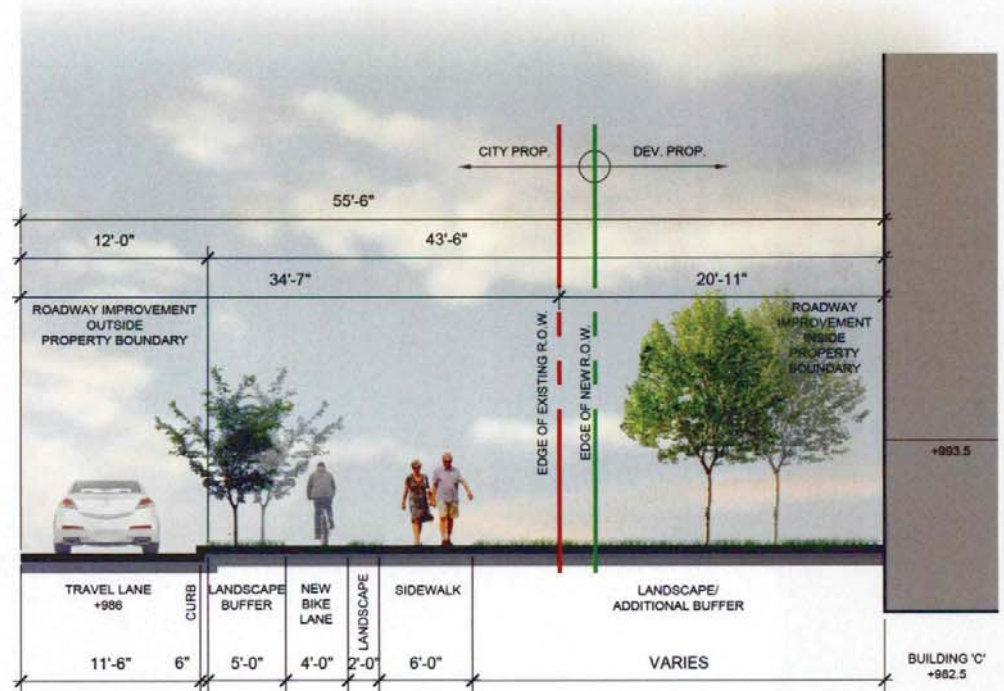
84 PERIMETER
 DUNWOODY, GA

JOB NUMBER: 1869901 | DATE: 2021-02-17 | BY: EMP/RWF
 DRAWING: STREETScape SECTION 'C'

PHILLIPS
 ARCHITECTURE · CONSULTANTS
 5901 PEACHTREE DUNWOODY RD. · SUITE A450 · ATLANTA, GA 30328 · 770.394.1616



1 KEY SITE PLAN
 SP-31 SCALE: N.T.S. [UPDATED 10/05/20]



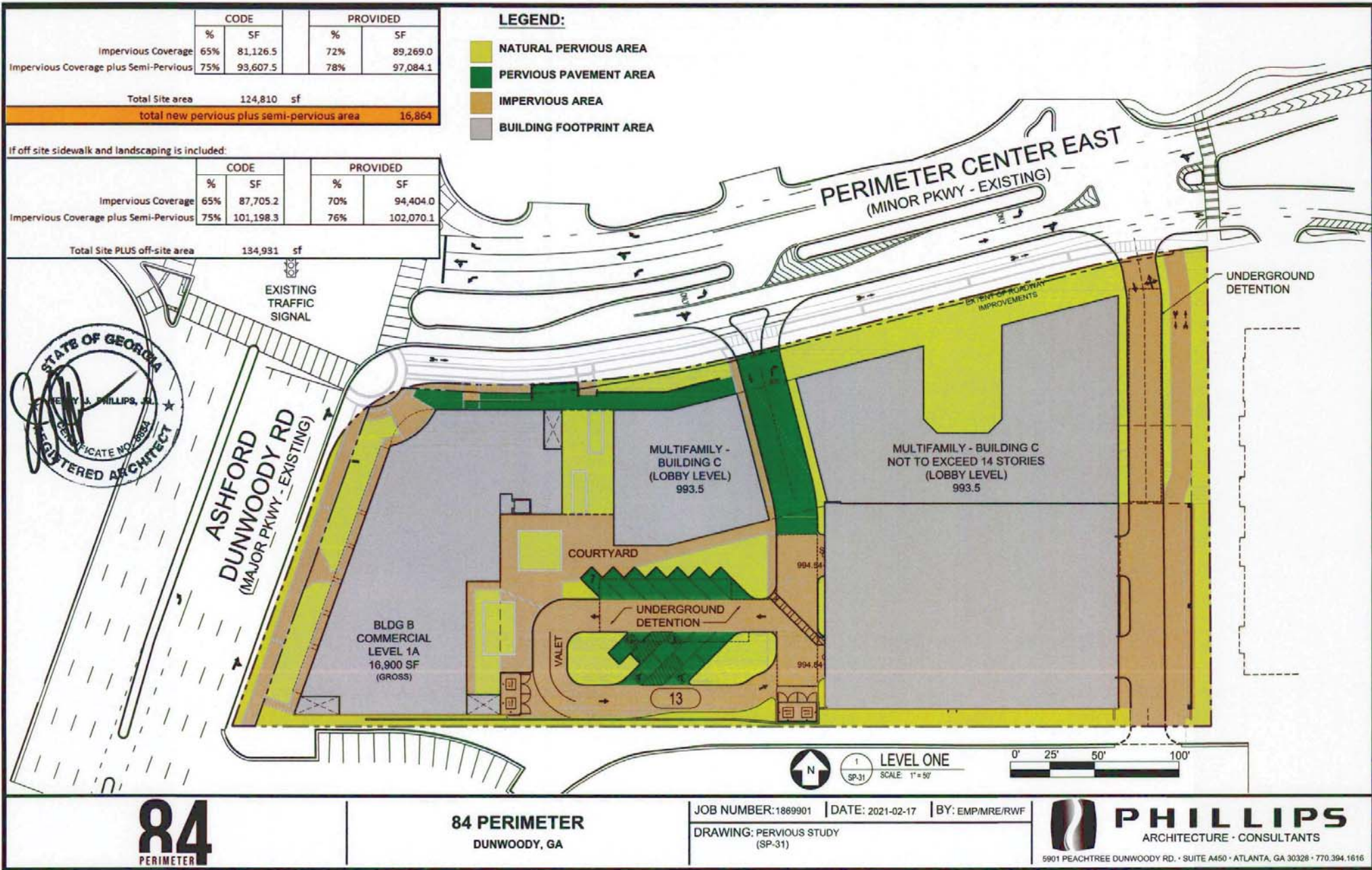
2 STREETScape SECTION 'D'
 SP-31 SCALE: 1/8" = 1'-0"

84
PERIMETER

84 PERIMETER
DUNWOODY, GA

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Code of Federal Regulations

Title 24 - Housing and Urban Development

Volume: 1

Date: 2017-04-01

Original Date: 2017-04-01

Title: Subpart E - Housing for Older Persons

Context: Title 24 - Housing and Urban Development. Subtitle B - Regulations Relating to Housing and Urban Development. CHAPTER I - OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. SUBCHAPTER A - FAIR HOUSING. PART 100 - DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT.

§ 100.304 Housing for persons who are 55 years of age or older.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, *housing facility or community* means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

(1) A condominium association;

(2) A cooperative;

(3) A property governed by a homeowners' or resident association;

(4) A municipally zoned area;

(5) A leased property under common private ownership;

(6) A mobile home park; and

(7) A manufactured housing community.

(c) For purposes of this subpart, *older person* means a person 55 years of age or older.

[64 FR 16329, Apr. 2, 1999]

§ 100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as housing for older persons under § 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, *occupied unit* means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, *occupied by at least one person 55 years of age or older* means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(i) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of §§ 100.304, 100.306, and 100.307.

(f) For purposes of the transition provision described in § 100.305(e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

(g) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of § 100.306.

[64 FR 16329, Apr. 2, 1999]

§ 100.306 Intent to operate as housing designed for persons who are 55 years of age or older.

(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

- (1) The manner in which the housing facility or community is described to prospective residents;
- (2) Any advertising designed to attract prospective residents;
- (3) Lease provisions;
- (4) Written rules, regulations, covenants, deed or other restrictions;
- (5) The maintenance and consistent application of relevant procedures;
- (6) Actual practices of the housing facility or community; and
- (7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) Phrases such as “adult living”, “adult community”, or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of §§ 100.305 and 100.306(a). (Approved by the Office of Management and Budget under control number 2529-0046)

[64 FR 16330, Apr. 2, 1999]

§ 100.307 Verification of occupancy.

(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license;

(2) Birth certificate;

(3) Passport;

(4) Immigration card;

(5) Military identification;

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

(7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

(1) Government records or documents, such as a local household census;

(2) Prior forms or applications; or

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person. (Approved by the Office of Management and Budget under control number 2529-0046)

[64 FR 16330, Apr. 2, 1999]

§ 100.308 Good faith defense against civil money damages.

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this subpart.

(b)(1) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

(2) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.

(3) For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

(4) For purposes of this section, a person means a natural person.

(5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

[64 FR 16330, Apr. 2, 1999]

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2023-XX-XX

AN ORDINANCE TO AMEND THE CONDITIONS OF ZONING OF LOT PARCEL NUMBER 18 347 01 013, 18 347 01 021 AND 18 347 01 028 IN CONSIDERATION OF SPECIAL LAND USE PERMIT SLUP 23-03 (84 PERIMETER CENTER EAST)

WHEREAS, JSJ Perimeter Center LLC seeks a major modification to conditions of zoning of Special Land Use Permit case SLUP 20-02; and

WHEREAS: the properties, Tax Parcels 18 347 01 013, 18 347 01 031 and 18 347 01 028, are located on the southeastern side of Perimeter Center East at the intersection of Ashford Dunwoody Road, and consists of 2.86 acres; and

WHEREAS, the property is currently consisting of a one-story vacant building and a wooded lot along Perimeter Center East; and

WHEREAS, the Mayor and City Council find that the proposed use aligns with the Dunwoody Comprehensive Plan, which calls for the Perimeter Center District to be a livable, regional center with a mix of housing, first-class office and retail; and

WHEREAS: the Mayor and City Council have conducted a public hearing as required by the Zoning Procedures Act prior to adoption of this Ordinance.

NOW THEREFORE, THE MAYOR AND CITY COUNCIL OF THE CITY OF DUNWOODY, GEORGIA HEREBY **ORDAIN AND APPROVE** the major modifications to the conditions of zoning subject to the following conditions:

- EXHIBIT A: Site plans, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT B: Streetscaping Sections, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT C: Open Space Diagram, completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT D: Bldg. B Elevations (RA-4.1), completed by Phillips Architecture, dated February 17, 2021.
- EXHIBIT E: HUD Housing for Older Persons Regulations.

1. The owner shall develop the site in general conformity with "Exhibit A" with minor changes allowed as defined by Section 27-337(b) or necessary changes to meet conditions of zoning or land development requirements made necessary by actual field conditions at the time of development;
2. The owner shall construct the streetscaping in general conformity with "Exhibit B". Any minor variations to the streetscapes made necessary by actual field conditions at the time of development shall be subject to approval by the Public Works Director and Community Development Director;
3. Major façade materials shall include natural brick, natural stone and natural wood, hard coat stucco and glass, natural brick veneer or stone veneer materials and other high quality materials approved by the Community Development Director during the permit review process;

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2023-XX-XX

4. Stamped brick and cultured stone, manufactured stone, or other imitation materials shall be prohibited. Synthetic EIFS may be used only as accents for cornices or other minor decorative elements;
5. Maximum impervious plus semi-pervious cover shall be 78% and include pedestrian or plaza areas, as shown on "Exhibit C";
6. No monument sign shall be constructed along the Ashford Dunwoody Road frontage. As an alternative, the owner is allowed one sign with a sign area up to 120 square feet attached to the building. The design of such signage shall be incorporated into the design of the building as approved by the Community Development Director during the site plan review process. Other building signage will be allowed in accordance with Section 20-57;
7. All trash/recycling enclosure(s) must be screened from view of public rights-of-way by landscaping and a solid masonry wall at least eight feet in height;
8. Prior to certificate of occupancy, the owner shall pay a sum into the tree bank for the replacement density balance of trees removed, as determined by the tree ordinance and City Arborist;
9. All utilities servicing the site shall be underground with the exception of required aboveground elements, such as transformers and cable boxes;
10. All mechanical equipment (e.g., air conditioning, heating, cooling, ventilation, exhaust and similar equipment) shall be roof mounted and screened in all directions by walls or parapets or will be enclosed in opaque structures to hide the mechanical equipment from view from public right-of-way within 200 feet;
11. Prior to the issuance of certificates of occupancy, the Owner will convey to the City right-of-way to incorporate the sidewalk, bike lane, and landscape buffers along Ashford Dunwoody Road and Perimeter Center East;
12. Prior to the issuance of certificates of occupancy, the Owner will convey an easement on the eastern portion of the development sufficient to accommodate two travel lanes and two bicycle lanes as shown on Exhibit A to connect to adjacent property to the south. For the vehicular component, it will be responsibility of others to connect to this public easement outside of the property lines of the development. For the bicycle component, the Owner shall complete the physical connection to the adjacent property to the South prior to the issuance of certificates of occupancy unless the property owner of the adjacent property objects in writing.
13. There shall be no left turn lane into the western most driveway from Perimeter Center East into the development. Access at this driveway shall be restricted to right in and right out turns only;
14. The owner will contribute up to \$20,000 to extend the southbound turn lane for left turns from Ashford Dunwoody Road on to Perimeter Center East;
15. The uses on the site shall be limited to eating and drinking establishments, brokerage services, office, medical facilities, retail sales, lodging, personal improvement, office, non-traditional bank without a drive-thru such as a banking café, credit union, savings and loans, and laundry drop-off and pick-up service;
16. A crosswalk and pedestrian refuge shall be provided across Perimeter Center East on the northeastern corner of the property pursuant to approval of the Public Works Director;
17. The age-restricted rental building shall not exceed 14 stories in height;
18. Parking deck openings that face the apartment building to the east shall be shielded with landscaping and/or an architectural mesh, grille, screening or other cladding component that enhances the architectural character of the structure. The final design of the parking deck shall be subject to approval of the Community Development Director; and
19. The completed architectural design shall be substantially similar to "Exhibit D" and meet the requirements of the PC-2 District. Where both conflict, the requirements of

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2023-XX-XX

the PC-2 district shall govern. The drawings shall be submitted by the Community Development Director to City Council for feedback prior to the issuance of a building permit.

- 20. Both residential and commercial uses are allowed at the street-facing ground floor level for a horizontal length of 100 feet from the eastern façade of the multi-family buildings. The street-facing ground level of the remainder of the building shall contain active uses for a minimum depth of 10 feet. Such active uses may include, but shall not be limited to, retail space, restaurants or other food sales, building leasing areas, resident lounges, lobbies, fitness centers, cycle training and cycle maintenance areas, live-work units, and residential stoops.
- 21. Ground-level retail spaces along Ashford-Dunwoody Road and Perimeter Center East shall have public entrances from the sidewalk that are kept open during business hours.
- 22. Balconies at the residential units shall have a minimum depth of 5 feet from the exterior wall.
- 23. The roof plaza above the retail spaces shall be open to the public during business hours.
- 24. The Applicant shall provide manufacturer’s specifications for the pervious paver systems that conform with the site’s soil percolation characteristics and the chosen engineered base and engineered sub-base. An engineer who is GA Stormwater certified (GSWCC) will provide a letter at permitting testifying that, based on the manufacturer’s specifications, the chosen engineered base and engineered sub-base, the proposed pervious paver systems and similar improvements counted towards the semi-pervious cover has sufficient water permeability and is recommended for the site’s soil percolation characteristics.
- 25. The applicant shall comply with the requirements of Subpart E – Housing for Older Persons of Title 24 - Housing and Urban Development. Subtitle B - Regulations Relating to Housing and Urban Development. CHAPTER I - OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. SUBCHAPTER A - FAIR HOUSING. PART 100 - DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT, as amended, and as cited on “Exhibit E”.
- 26. The applicant shall forward the results of its verification of occupancy, as required by §100.307 of “Exhibit E”, to the Community Development Director one year after receiving a Certificate of Occupancy and every two years after that.

SO ORDAINED AND EFFECTIVE, this ___ day of _____, 2023.

Approved by:

Lynn P. Deutsch, Mayor

Attest:

Approved as to Form and Content

Sharon Lowery, City Clerk

Office of City Attorney

SEAL