

MCPB
Item # 7
10/19/06**MEMORANDUM:**

DATE: October 4, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief, Development Review Division *RK*
Carlton Gilbert, Zoning Supervisor, Development Review Division *CG*

FROM: Dan Janousek, AICP, Senior Planner, Development Review Division *DJ*
(301) 495-4564

SUBJECT: **Local Map Amendment No. G-845:** Georgia Avenue Inc., Contract Purchaser; Reclassification of 3.659 acres of land from the C-O Zone to the PD-88 Zone for 383,000 square feet of total development including 63,000 square feet of retail space, and 320,000 square feet of residential space for up to 320 dwelling units including 12.5 percent of the total number of residential units as MPDUs provided on-site.

FILING DATE: December 28, 2005
PUBLIC HEARING: October 19, 2006

RECOMMENDATION

DENIAL, of Local Map Amendment No. G-845 and the Development Plan for the following reasons:

1. The subject property is not recommended in the applicable Sector Plan for residential land use and would not be in substantial compliance with the use and density recommended in the Sector plan; and
2. The Development Plan does not comply with the purpose, standards, and regulations of the PD Zone.
3. Will not serve the public interest

I. SUMMARY

Applicant seeks rezoning to the PD-88 Zone to permit construction of three multifamily residential buildings with a total of no more than 320 dwelling units, including 12.5 percent moderately priced dwelling units (MDPUs) on site, and 63,000 sq. feet of commercial space that includes a 55,883 sq. ft grocery store.

In the most recent case to test the PD Zone applicability (G-841), the Hearing Examiner found (and the County Council, sitting as the District Council concurred) that that the PD Zone can be granted only if (i) the subject property is recommended in the applicable master plan for residential use, with a density of at least two dwelling units per acre, and (ii) the proposed development would be in substantial compliance with the use and density recommended in the master plan. In making the determination, the Hearing Examiner employed a three-part analysis, which is hereby revised for this application as follows:

1. Is the subject property recommended for residential use in the Sector Plan, based on the provision for dwellings in the C-O Zone as a permitted use?

The Wheaton Sector Plan contemplated the location and density of residential dwelling units in the Wheaton CBD and Sector Plan area. Other properties were recommended for the PD Zone and residential use, but not the subject property.

The Zoning ordinance allows a property owner to develop residential use in the C-O zone. This can occur on vacant, C-O Zoned land or in existing office buildings in the C-O Zone. In the case of a vacant, C-O zoned property, new residential development must take place under the regulations of the R-60 Zone (Section 59-C-4). For C-O Zoned properties with existing buildings, new residential development can take place within the approved density range of the C-O Zone (1.5 - 3.0 FAR). Neither of these two scenarios is presented here, and the proposed residential density is higher than the residential density allowed in the Zoning Ordinance for new residential development, which is the case here. In addition, the Sector plan did not contemplate either the "Dwellings" permitted under the C-O Zone or possible use of the subject site for new residential development at the density proposed by the applicant.

2. If the subject property is considered to have a residential use recommendation in the Sector Plan, what residential density should the Sector Plan be considered to recommend?

The applicant intends to apply a density afforded to a commercial zone to property not intended for residential use. The C-O Zone permits a maximum commercial density between 1.5 and 3.0 FAR and allows residential density "subject to the regulations of the R-60 Zone" (Section 59-C-4) and "in an office structure lawfully existing in the C-O Zone..."

3. Would the proposed development be in substantial compliance with the use and density indicated in the Sector Plan?

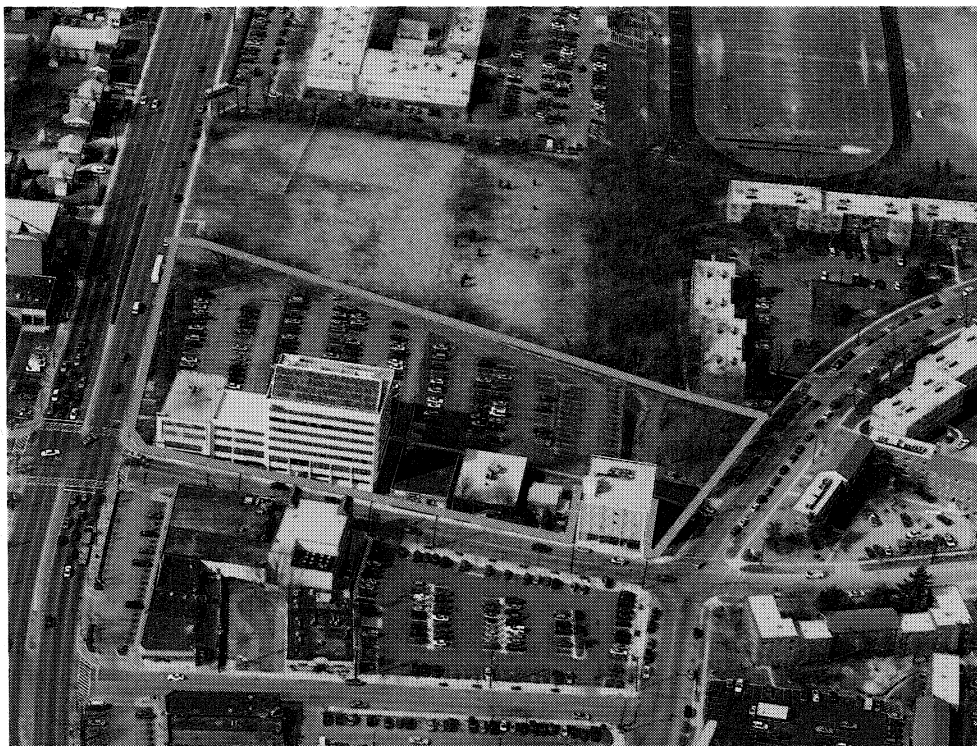
Staff concludes that while the proposed development would be consistent with some of the Sector Plan's general goals (such as providing housing), the record does not support the required finding of substantial compliance with the land use and density indicated in the Sector Plan. The Sector Plan did not recommend the subject property for residential use.

II DESCRIPTION

A. Description of property

The subject property consists of 3.659 gross tract acres of land located north and east of the intersection of Georgia Avenue and Blueridge Avenue. The property is comprised of four lots in a small office park within the Villa Verde subdivision. The lots are identified as Parcel C (3.308 acres), Part of Lot 5 (.117 acres), Part of Lot 6 (.117 acres), and Part of lot 7 (.117 acres). The general shape and location of the subject property are shown on the attached land use and development plan (Attachment 1). The property has an irregular shape, and it abuts an office building within the office park on three sides. The property is sloping, with a large paved asphalt parking facility, scattered trees, and a small green area measuring approximately 0.41 acres near Elkin Street. The green area would be preserved and expanded as part of the proposed development. Three entrances to the office park are located on the subject property, one from Georgia Avenue, one from Elkin Street, and one extending from Blueridge Avenue. The photographs below depict current conditions of the subject site and the small surrounding office park.

Figure 1. Subject Site, Looking North

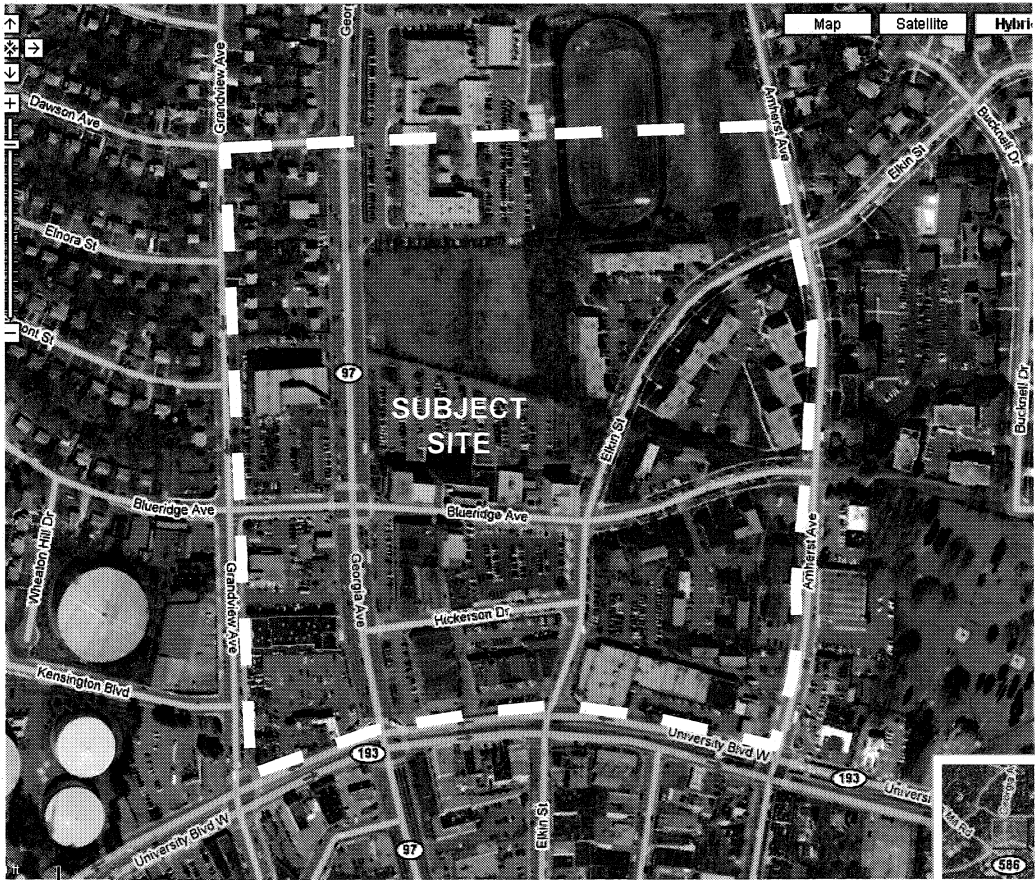


The existing buildings on the subject property include commercial and office buildings that range in height from one to seven stories. These buildings would be razed to make room for the proposed development. Within the office park, the only existing building that would remain is the building on Lot 8.

B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

Figure 2. Surrounding Area (dashed line)

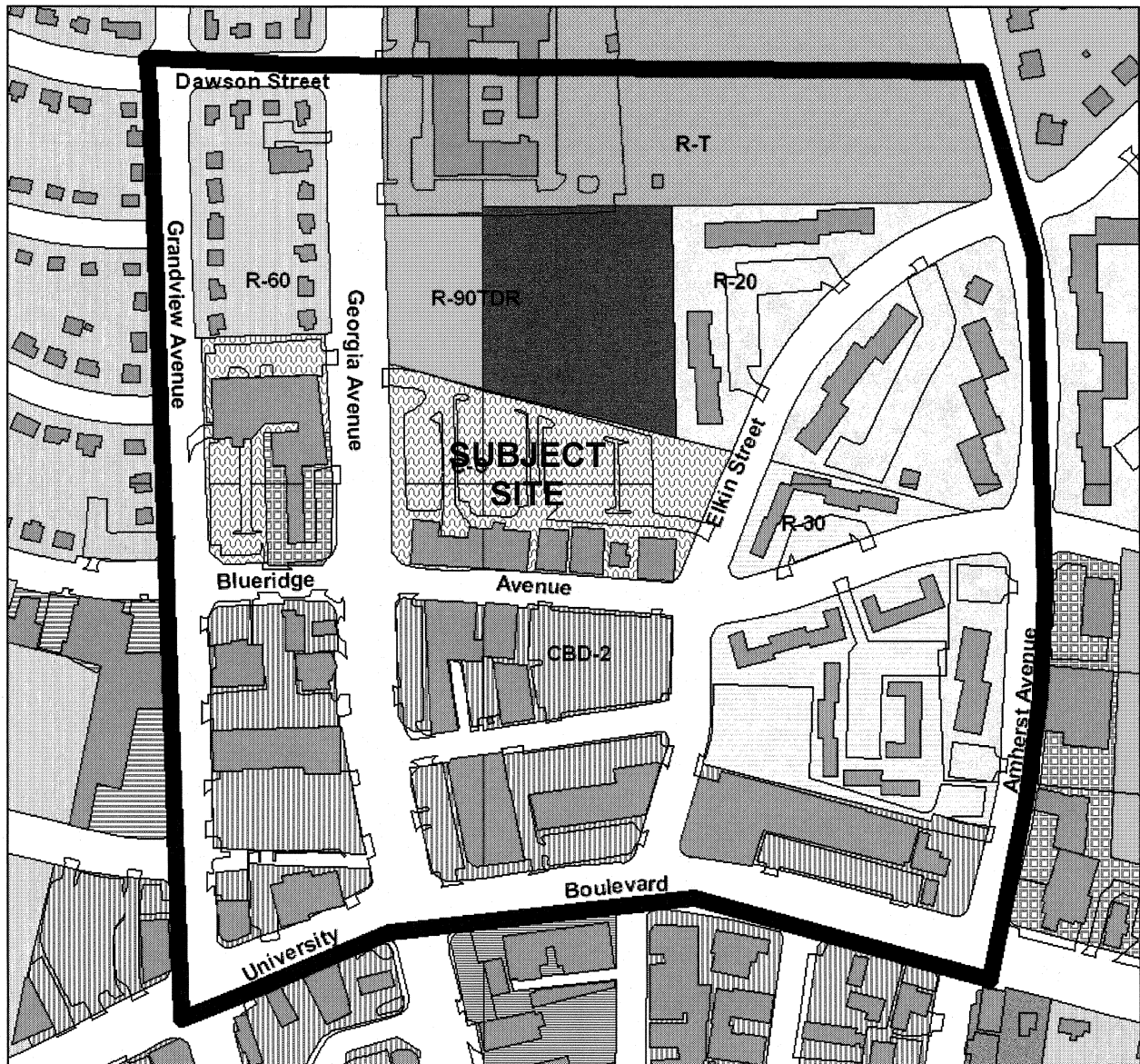


Grandview Avenue to the west, University Boulevard to the south, Amherst Avenue to the East, and Dawson Avenue to the north roughly border the surrounding area. The northern boundary of the neighborhood area runs through the Our Lady of Good Counsel High School site from east to west. Staff considers this area to have a relationship to the subject property. The front portion of the property is within the Wheaton Central Business District, and it is near a variety of retail, entertainment and restaurant uses that are located a short walking distance walk from the subject property.

The front portion of the property is also within the Wheaton Retail Preservation Overlay Zone.

The surrounding area contains a mix of uses. The subject property is part of a small office park in the C-O Zone. Immediately adjacent to the subject property to the north is the WMTA property in the in the R-90/TDR Zone. North of the subject property is another property containing a three story residential property in the R-20 Zone. East of the subject property is a 3-5 story residential building located across Elkin Street in the R-30 Zone.

Figure 3. Zoning and Surrounding Area



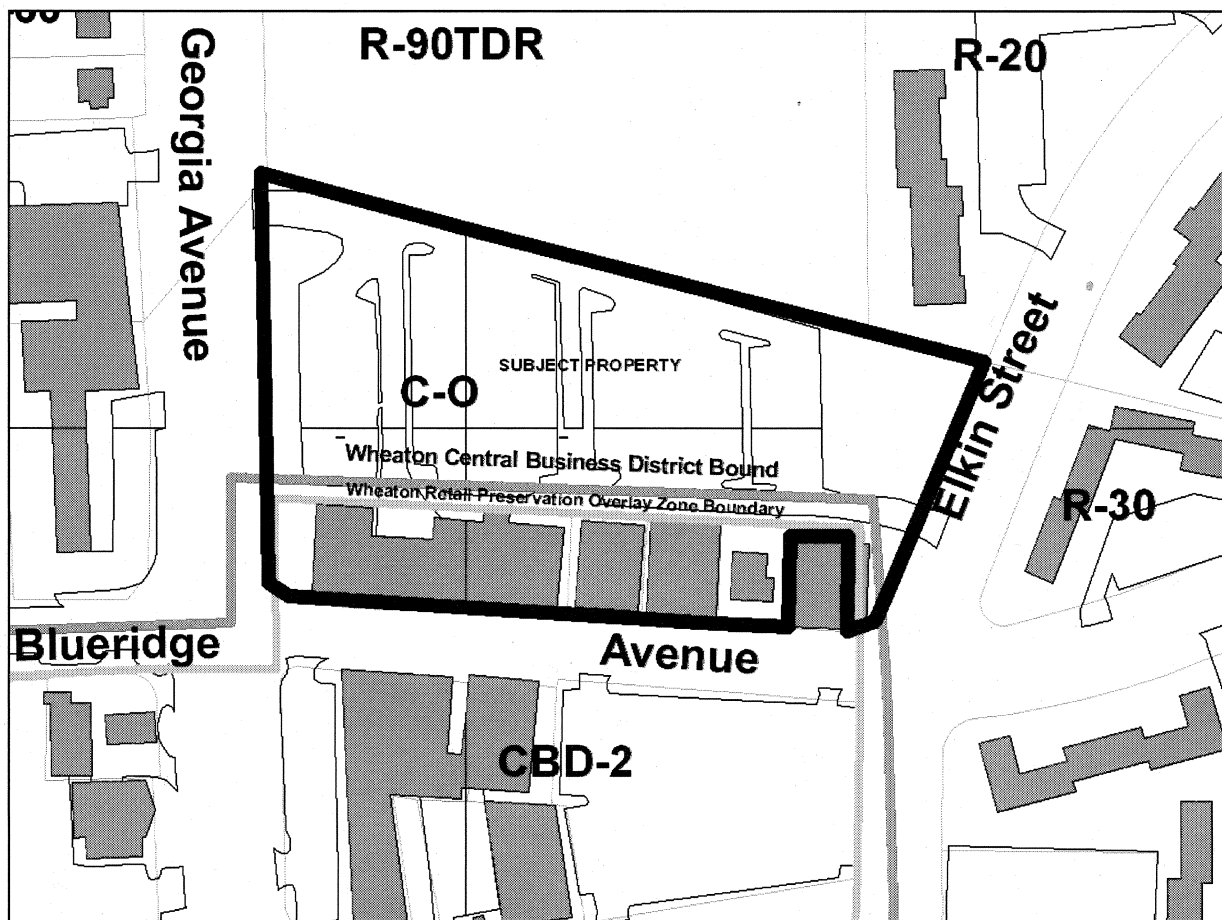
South of the subject property retail, restaurant, office and public parking are located in the CBD-2 Zone. Commercial and office uses are located west of the property along Georgia Avenue in the C-2 and the C-O Zones. This surrounding area is extended to

include some of the lower density residential uses in the R-60 Zone that are north of the subject property, and the Our Lady of Good Counsel High School site in the R-T Zone is included in the surrounding area because it would have clear, unobstructed views of the subject property across the MWTA site.

The subject property is included in both the Wheaton Central Business District area and the Wheaton Retail Preservation Overlay Zone (see Page 17, Figure 7). The boundary of the overlay zone is not consistent with boundary shown in the underlying Wheaton CBD Sector Plan, which shows the boundary of the 'proposed' Wheaton Retail Preservation Overlay Zone south the subject property along Blueridge Avenue.

The resolution creating the overlay zone (Resolution No. 11-2271) does not specifically mention the subject property. The applicant claims that this is a mistake that occurred in between the time that the Wheaton Sector Plan was adopted and when the Sectional Map Amendment (SMA) was approved. The Wheaton Retail Preservation Overlay Zone does not directly affect the subject property in terms of land use or density.

Figure 4. Zoning, CBD Boundary & Overlay Zone Boundary



III. INTENDED USE AND APPROVAL PROCEDURES

A. Proposed Development

The applicant seeks rezoning to the PD-88 Zone to permit construction of three, multifamily residential buildings with a total of no more than 320 dwelling units, including 12.5 percent moderately priced dwelling units (MDPUs) on site. Building One, as shown on the Development Plan, sits over a 55,883 sq. ft. grocery store. The upper floors are residential. Proposed Building Two is situated across from Building One along a main access road from Blueridge Avenue. Building Two sits over a parking structure that will serve the residential and commercial uses, which include a bank branch and the leasing office for the proposed apartments. Building Three contains residential use, and it is located along Elkin Street. A small open area along Elkin Street would serve as a park located east of Building Three.

Building One is shown on the Development Plan as setback about 25 feet from Georgia Avenue. Staff worked with the applicant to agree on this location, which staff feels is in keeping with current building trends along Georgia Avenue. Staff suggested that a double row of trees and landscaping be planted between Georgia Avenue and Building One to serve as a buffer. The relationships of the proposed buildings to the adjacent office building are shown on the land use and development plan (Attachment 1), which simulates how the new buildings would fit into the surroundings. Submissions from the applicant indicated that Buildings One, Two and Three would have six, five and four stories, respectively, with a maximum building height of 65 feet. Under the development standards of the PD-88 Zone, the Applicant would be allowed to have buildings with more than four stories (Section 59-C-7.131.). The preliminary unit breakdown by building unit has been provided. The applicant has indicated the preliminary parking schedule, by unit size, which shows the minimum number of spaces required under the Zoning Ordinance. The Applicant intends to follow the form and prevailing brick materials of the existing office buildings, to maintain architectural compatibility with new development in Wheaton. The residential buildings would have recessed entrances onto Georgia Avenue.

The small park along Elkin Street was widened to satisfy staff's request for additional public use area and more accessible green space. Additional sidewalks would be constructed to connect to the proposed garage parking circulation network in front of the grocery store. Other amenities shown on the Development Plan include an entry plaza located at the main entrance from Blueridge Avenue. This area contains some landscape features and an opening to the parking garage. The area also contains an entrance into the leasing office.

B. Development Plan

Pursuant to Section 59-D-1.11, development under the PD Zone is permitted only in accordance with a Development Plan that is approved by the District Council when the property is reclassified to the PD Zone. This Development Plan must contain several elements, including a land use plan showing site access, proposed buildings and

structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. (Section 59-D-1.3.). The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to Site Plan Review by the Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan. The zones that require a Development Plan generally do not include the type of strict development parameters that are imposed in other zones, for example maximum building heights and minimum building setbacks. They do require the submission of a Development plan, which “must clearly indicate how the proposed development meets the standards and purposes of the applicable zone.” Section 59-D-1.3. The subject Development Plan shows clearly how the proposed development would satisfy all of the standards of the PD Zone.

The Development Plan is reproduced in the attachments. Additional elements of the Development Plan have been submitted through exhibits including vicinity maps and a Natural Resources Inventory/Forest Stand Delineation. The Development Plan shows the approximate locations of proposed buildings and structures, with exact locations to be specified during Preliminary Plan and Site Plan Review. The Development Plan does not include textual binding elements, which normally clarify elements of the proposal.

The Development Plan identifies one phase of development from demolition to construction of all three buildings. The Development Plan and supporting exhibits, satisfies the requirements of Section 59-D-1.3 by showing access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, and areas intended for common use but not public ownership. Road dedications are shown on the Development Plan for a small area along Blueridge Avenue. The internal roads are proposed to be private roads. The parking schedule will support up to 320 Units. The final decision on the total required parking spaces can be determined at subsequent Preliminary Plan and Site Plan proceedings. For this application the following schedule is proposed:

Table 1. Parking Schedule

Units Type	Total Units	Requirements	Required	Requested for Approval
1 Bed Units	140	1.25 Spaces/Unit	175	
2 Bed Units	160	1.50 Spaces/Unit	240	
Studios	16	1.0 Space/Unit	16	
Retail	59,000	5 Spaces/1000 s.f.	295	
Office	4,000,	3 Spaces/1000 s.f.	12	
Total			738	744

The Development Plan shows wide and accessible sidewalks along the major roadways, public open spaces, plazas, and street trees along all of the major roadways and access roads. A double row of trees is shown along Georgia Avenue with additional planting beds along the front of the proposed apartment building. Another series of long plant beds and lights are shown along Georgia Avenue staggered at regular intervals.

The Development Plan does not include textual binding elements separate from the Land Use and Development Plan that shows the proposed conditions, including green space, building heights, parking, unit breakdown, etc. A minimum building setback of 25 feet along Georgia Avenue with wide plant beds along the building and along Georgia Avenue is shown. Staff should also have the flexibility at Site Plan to increase or change the arrangement of the setback features, but not the minimum setback shown on the site landscape plan.

Along Elkin Street, a park is shown that includes a double row of trees in the proposed streetscape. The plan shows two large private open spaces located within a courtyard-like setting and rectangular in shape. These courtyards include green spaces, decorative trees and landscaping. A swimming pool is located in the courtyard of building two. Along Blueridge Avenue, the applicant has proposed a small courtyard setting near the main automobile and pedestrian entrance to the site. The proposed leasing office will have access to the courtyard. Wide sidewalks are provided leading onto the site and the entrance to the grocery store under Building One.

Section 59-C-7.14 of the Zoning Ordinance specifies 88 units per acre as allowable under the PD Zone. Applying this development density to the subject property results in up to 320 residential dwelling units that are provided. The Zoning Ordinance requires that any PD Zone development of more than 28 dwelling units per acre must provide a minimum of 12.5 percent MPDUs. This requirement is met by the proposal.

The PD-88 Zone has a minimum green space requirement of 50%, which is also met by the proposal with 1.82 acres of proposed green. These green areas include the proposed park along Elkin Street, green areas within the streetscape along the road frontages, and private green space with additional marginal applications of green space along road access-ways.

IV. Zoning History

The subject property was classified under the C-O Zone in 1971. (Case No. F666). The Sectional Map Amendment (G-674) reconfirmed the C-O zoning in 1990.

V. Public Facilities

The District Council is charged at the zoning stage with determining whether the proposed development would have an adverse impact on public facilities and, if so,

whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Roads

Under the 2003-05 AGP Policy Element, which remains in effect, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR"). The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.).

The applicant performed a traffic study as required in this case, taking into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt ("background" traffic), and trips expected to be generated by the proposed development. The traffic study was based on the proposal for 320 dwelling units. Staff accepts the traffic study while noting that the applicant may have to provide minor improvements to the roadways during Preliminary Plan and Site Plan Review.

2. Water and Sewer Service

The subject property is served by public water and sewer systems, and it is currently in Water Service Category W-1 and Sewer Service Category S-1.

3. Schools

Based on information provided by Montgomery County Public Schools ("MCPS"), the subject property is in the area served by Kemp Mill Elementary School and Col. E. Brooke Lee Middle School attendance areas and the Northwood High School base area.

Enrollment at the elementary school exceeds capacity and is expected to exceed capacity in to the future. The proposal will add an additional twenty-seven (27) students to the elementary school. Enrollment at the middle and high schools are within capacity and are expected to remain within capacity into the future.

4. Environmental Issues and Stormwater Management

The Preliminary Forest Conservation Plan meets the basic parameters of the forest conservation law. Staff is concerned that the applicant has not conserved specimen trees along Elkin Street. The site has an approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD). A Final Forest Conservation should plan be submitted that provides justification for the need to remove several large trees along Elkin Street.

In addition, staff believes that a better effort can be made to integrate a number of the mature trees along Georgia Avenue into the new streetscape design.

The proposed development, like the existing development, would make use of a nearby regional stormwater management facility for water quantity control. Water quality systems are provided in the form of underground filtration systems.

The existing BB&T Bank building (which would be raised) includes a passive solar collection system on the roof. Staff recommends that further information be provided about the system at the time of Site Plan Review. Staff recommends that energy efficient design features be incorporated into the new buildings.

VI. ANALYSIS

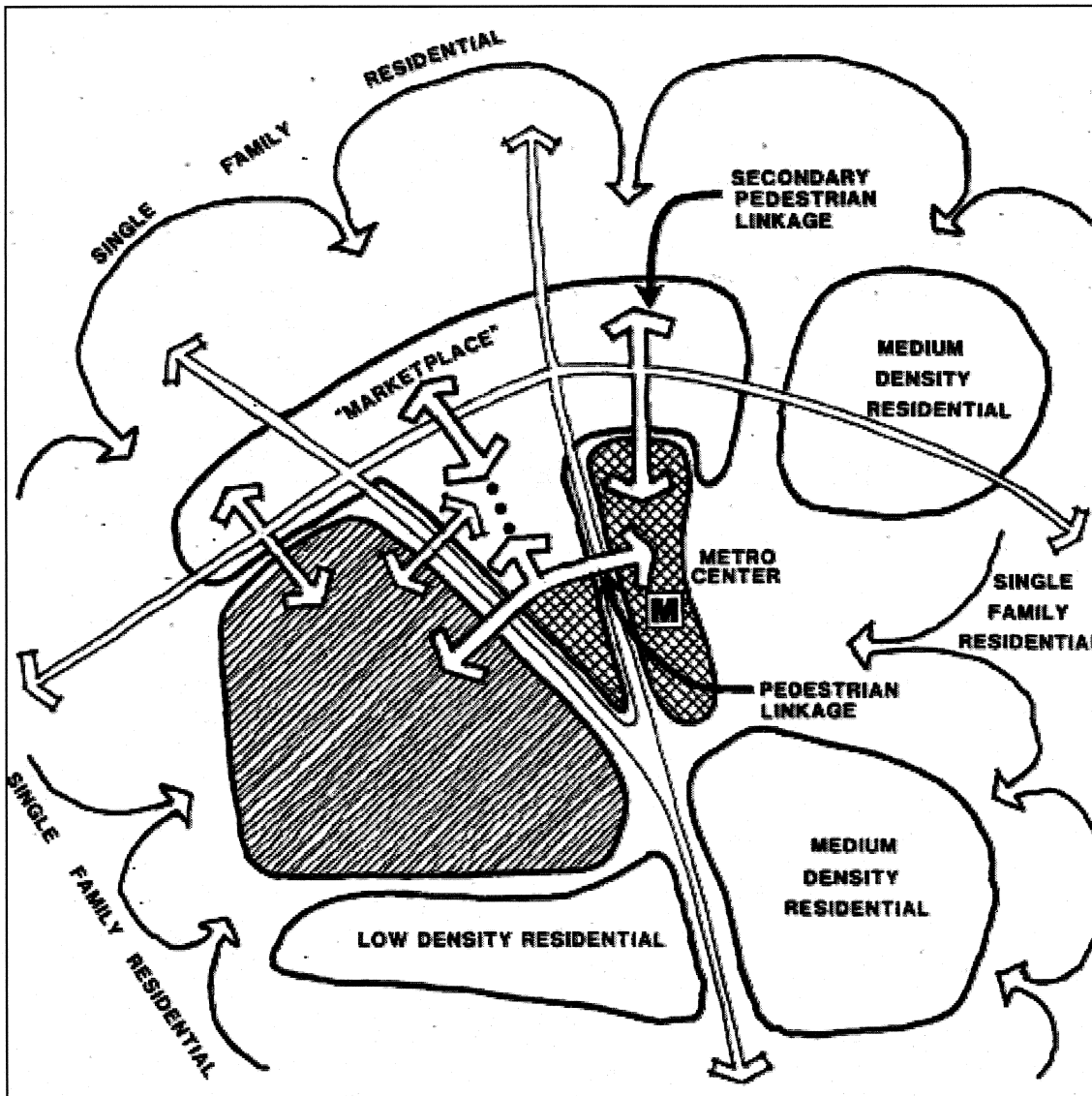
A. Sector Plan

1. Sector Plan Summary of Land Use and Zoning Recommendations

The subject property lies within the area covered by the September, 1990 *Approved and Adopted Comprehensive Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity* (the "Sector Plan"). Emphasis was placed on promoting Wheaton as "one of the County's economic centers" and "transportation centers." The Sector Plan states several land use objectives. The Sector Plan includes a "Concept Plan" on page 24, in which detailed recommendations are made for developing the area around the Metro station "with the highest intensity of new activities" (page 23). The Metro area was envisioned as a mixed-use area with a "range of services" and "retail development scaled to serve the surrounding population." North of the Metro Core is the "Marketplace", the traditional retail area in Wheaton. Outside of the Metro Core and the Marketplace are areas described as "medium" and "low density residential" and "single-family residential". The subject property is located along the boundary of the Marketplace between the single-family residential wedges shown on the Concept Plan below. The plan specifies that "the large vacant tracts of land on the fringes of the business areas should be developed with low and moderate density residential uses (single-family detached units, townhouses, and garden apartments" (page 25).

The Plan recommends "office development" north of Blueridge Avenue. Overall, the Sector Plan describes land use and zoning objectives in terms of "Commercial Land Use", "Mixed Land Use" "Office Land Use" and "Residential Land Use". Urban design Guidelines are also set forth and a Zoning Plan was approved. The subject property is described in the Sector Plan's recommendation for "Office Land Use" (Page 33).

Figure 5. Concept Plan for the 1990 Approved and Adopted Comprehensive Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity



The northern frontage of Blueridge Avenue contains a number of office buildings. These are occupied largely by professional services such as architects, engineers, attorneys, insurance companies, and banks. These functions are peripheral to the Wheaton business area and in close proximity to existing single- and multi-family residential development. Any future office development in the same area which abuts either single- or multi-family residential areas should be restricted to a height limit of 30 to 40 feet. These offices should serve as a transition between the residential areas to the north and the Central Business District south of Blueridge Avenue.

The Sector Plan's general Goals are varied and broad in scope. To the extent possible, the Goals to "preserve the existing scale of development", and to "permit some growth without sacrificing the qualities of livability," are affected by the converse need identified

during the Sector Plan creation to provide additional new housing of varying types. Pedestrian access to Metro and within the Concept Plan area is a prominent theme of the Sector Plan, as well as focusing new residential development near Metro:

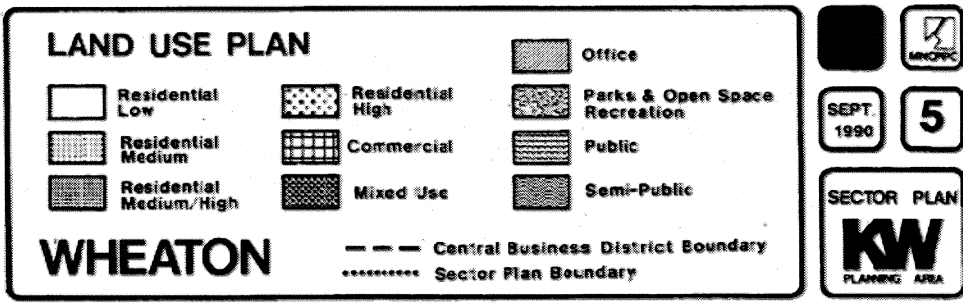
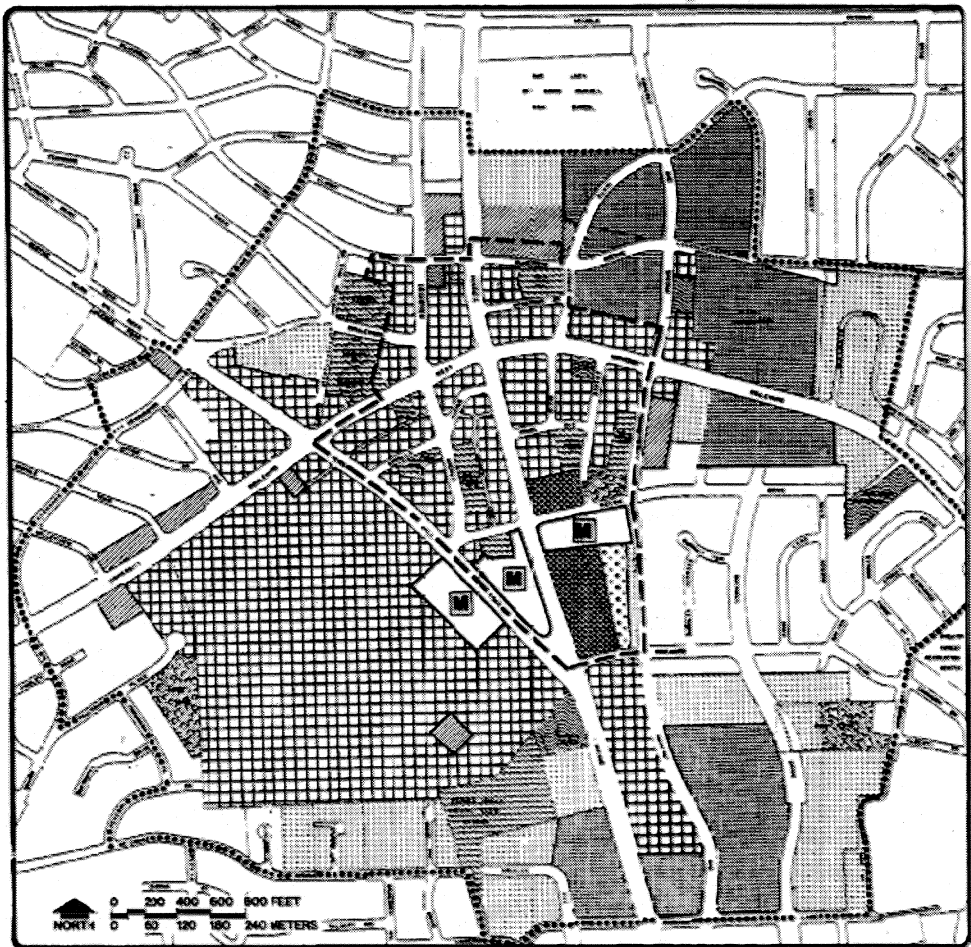
Figure 5. 1990 Wheaton Sector Plan Goals

The goals of this Plan are to:

- Reinforce the Marketplace by preserving the existing scale of development and retaining as much of the mix of goods and services as possible.
- Provide additional new housing and a range of housing opportunities to serve a broad spectrum of the metropolitan population. A variety of housing types would help to satisfy a demand for housing that may not be available in other parts of the County. A combination of apartments, townhouses, and single-family homes can expand the age and family size mix in Wheaton. An increase in the local population base can generate greater support for retail establishments, entertainment and recreation facilities, restaurants, and the like. New residential development should be encouraged to ensure the viability of the business areas.
- Permit some growth without sacrificing the qualities of livability that give Wheaton its special character.
- Ensure that the Metro rapid rail transit line is part of an improved public transportation system designed to induce travelers to use public means rather than private automobiles for inter- and intra-County movements. The Wheaton Metro station should be provided with circulation and parking improvements that would facilitate transit and auto access.
- Ensure that road improvements will facilitate access to and minimize disruption in the business area. The heavy volumes of through traffic should be separated, where possible, from local traffic movements.
- Provide convenient and adequate off-street parking with a maximum of shared use among different facilities. Parking should be located within a minimum walking distance to any desired destination. Massive paved areas should be avoided and, where feasible, parking should be developed in structure.
- Improve pedestrian access to the various parts of Wheaton.
- Protect the existing fabric of low density single-family homes adjoining the Wheaton business area.

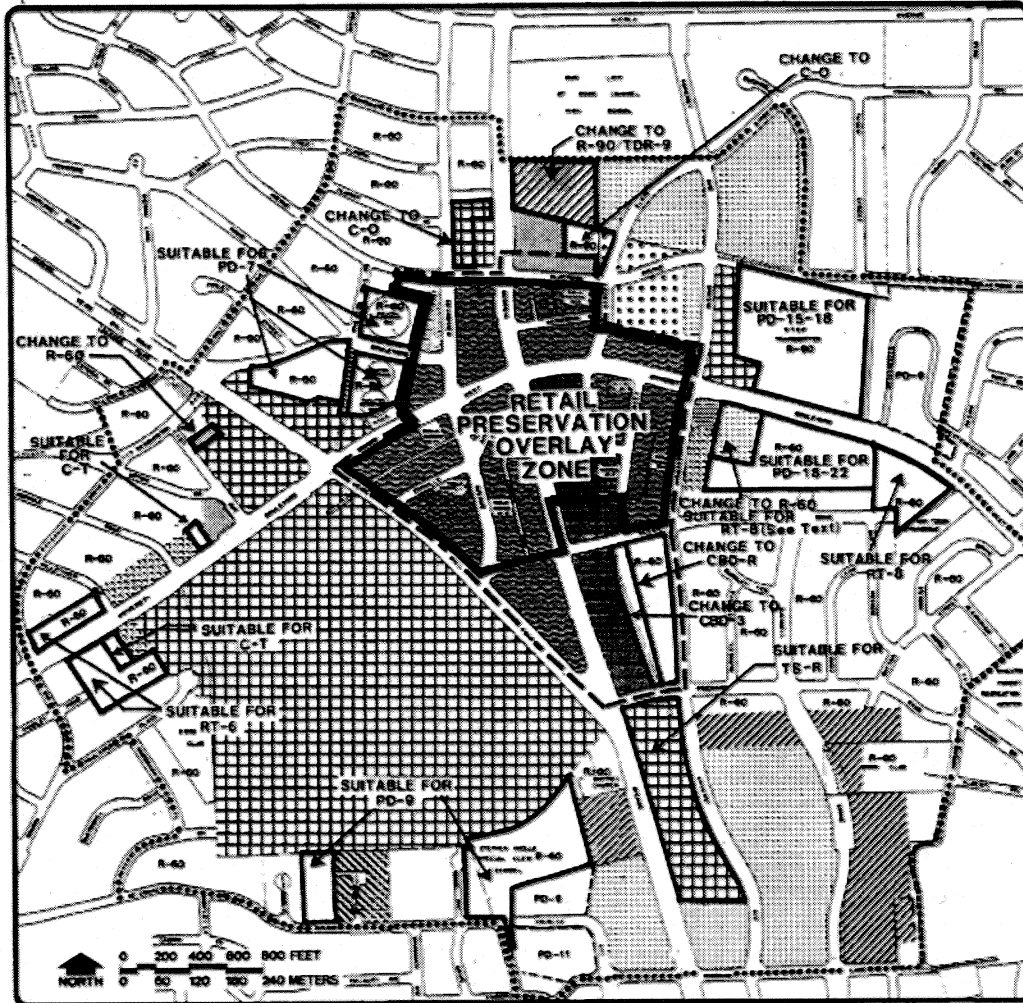
The subject property is not recommended for PD zoning (page 46-47) in the 1990 Plan. The subject property is not considered for residential land use in the Sector Plan. Residential land use is contemplated in great detail in the Sector Plan (pages 33-35). The PD Zone was specifically recommended for several "infill" properties in the 1978 Sector Plan. These recommendations were carried forward as specific PD Zone recommendations in the 1990 Sector Plan Amendment.

Figure 6. Wheaton Sector Plan - Land Use Plan



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Figure 7. Wheaton Sector Plan - Zoning Plan



PROPOSED ZONING PLAN

R-60 One Family	R-20 Low Density Apartment	C-1 Local Commercial
R-60 One Family	P.D. Planned Development Zone	C-2 General Commercial
RT-8 Townhouse	O-M Office Building Moderate Intensity	CBD-1 Central Business District
RT-12.5 Townhouse	C-O High Density Office	CBD-2 Central Business District
R-20 Medium Density Apartment	C-T Commercial Transition Zone	CBD-3 Central Business District

WHEATON

Sector Plan Boundary
 Central Business District Boundary
 Dedicated Street Not Constructed

SEPT. 1990

9

SECTOR PLAN

KW

PLANNING AREA

47

The subject property is included in the *Comprehensive Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity*. The purpose clause of the PD Zone requires substantial compliance with the Sector Plan. When the Sector Plan was adopted in 1990, the subject property contained existing office use, and was expected to be developed for more office use. The proposed Development Plan does not conform to the Sector Plan's land use and zoning recommendations.

In the past, the Planning Board has supported proposals for PD Zone development that were located on properties that were not explicitly recommended in a master or sector

plan for the PD Zone or for residential use. Compliance with the master plan could be found because the Wheaton Sector Plan recommended a non-residential zone that allows residential use. Density then, as limited by a binding element, was thought to be consistent with the residential zone recommended by the plan. Staff has also suggested various anticipated build-out scenarios and the need to provide housing near Metro as reasons for supporting a PD proposal.

This application seeks to rezone land from the C-O Zone to the PD-88 Zone. The central issue in this case is master plan compliance. The PD Zone cannot be applied unless the District Council simultaneously approves a Development Plan that meets the requirements of the Zoning Ordinance. These include a finding that the proposed development substantially complies with the use and density indicated in the applicable master plan.

Based on the above facts and summary of the Sector Plan, Summary Land Use and Zoning Recommendations, the proposed Development Plan does not comply with the land use and density recommendations in the Wheaton Sector Plan.

The proposed development is lacking in commercial use facing on Blueridge Avenue. Based on the specific requirements of the Zoning Ordinance for approval of a Development Plan, Staff concludes that the application should be denied, since the proposed residential use does not conform to the office uses recommended in the Sector Plan.

B. Opposition

The record contains letters from Stanley Abrams, counsel to Wheaton property owner Harold Weinberg, arguing that the property should not be reclassified to the PD Zone because the application does not conform to the purpose clause of the PD Zone (59-C-7.11) or to the location requirements of the PD Zone (59-C-7.12). Mr. Weinberg owns the office building on Lot 8 that is not part of the application and will be surrounded by the proposed development.

In making the case that property should not be reclassified to the PD Zone unless it was recommended in the applicable master plan for residential use as required by Section 59-C-7.12 at a density of at least two dwelling units per acre, Mr. Abrams' maintains that the density referred to in this section is a specific residential density, not a commercial density (expressed in terms of FAR), and this requirement cannot be satisfied by applying a commercial zone density, or by referencing a potential permitted use in the C-O Zone.

Staff notes here that the C-O Zone permits "*Dwellings*", and that these permitted dwellings are "*Subject to the regulations of the R-60 Zone*" and "*In a structure lawfully existing in the C-O Zone, provided any commercial space is limited to the first two floors*" (59-C-4). Staff notes that the C-O Zone was amended. The amendments removed the phrase "*one-family detached*", and added the current language "*In a*

structure lawfully existing in the C-O Zone, provided any commercial space is limited to the first two floors”

Mr. Abrams maintains the proposal does not conform to the Purpose Clause of the PD Zone and does not facilitate and encourage a maximum of social and community interaction, does not provide significant open space, and does not achieve the maximum of amenities for residents of neighboring areas or assure compatibility of development with existing and proposed land uses. He also maintains the proposal must be consistent with the densities proposed in the Sector Plan and in substantial compliance with the Sector Plan. Staff notes that the Purpose Clause of the PD Zone requires “*substantial compliance with the duly approved and adopted General Plan and Master Plans.*” Mr. Abrams states that the importance of compliance with the recommended zoning plan and land use plan is reinforced by the location requirements of Section 59-C-7.121.

Mr. Abrams argues that neither the Zoning Ordinance nor the Sector Plan contemplates the conversion of commercial density to residential to fulfill their requirements and that if the “permitted” dwellings in the C-O Zone is found to be the basis for a residential use recommendation in the Sector Plan, then the maximum density permitted should be considered the Sector Plan’s residential density recommendation for the site.

The Applicant maintains the following:

(1) That the proposed development substantially complies with the Sector Plan’s use and density recommendation for the site because, although the Sector Plan does not provide a specific density recommendation, the Development Plan would limit building density to the measure of density commonly permitted in the C-O Zone. The applicant maintains that the Sector Plan recommends a zoning for the property which allows, as a matter of right, residential density at more than 2 dwelling units per acre.

(2) That the context of the current proposal makes the proposal compatible with surrounding development. The applicant maintains that the proposal confronts land in the CBD that is recommended for densities greater than 100 dwelling units per acre and the phrase “...in substantial compliance with the use and density indicated by the Master or Sector Plan” should be viewed in the context of the potential density that could occur on the subject and surrounding C-2, C-O and CBD properties.

Staff feels that in the case of a vacant, C-O zoned property, new residential development must take place under the regulations of the R-60 Zone (Section 59-C-4). For C-O Zoned properties *with existing buildings*, new residential development can take place within the approved density range of the C-O Zone (1.5 - 3.0 FAR). But neither of these two scenarios is presented here, and the proposed residential density is higher than the residential density allowed in the Zoning Ordinance for new residential development, which is the case here. In addition, the Sector plan did not contemplate either the “Dwellings” permitted under the C-O Zone or possible use of the subject site for *new* residential development at the density proposed by the applicant.

The applicant also maintains that the proposed building is set back sufficiently from Mr. Weinberg's building. The applicant maintains that they have provided landscaping and open space to maintain compatibility with Mr. Weinberg's property.

C. Zoning

The PD (Planned Development) zones have performance specifications embedded into the requirements. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications are set forth on a Development Plan to facilitate appropriate zoning oversight by the District Council. Pursuant to Section 59-D-1.11, development under the PD Zone is permitted only in accordance with a Development Plan that is approved by the District Council when the property is reclassified to the PD Zone. Once it is approved, the Development Plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. The evaluation of zoning issues must begin with the Development Plan *and* proceed to the requirements of the zone itself.

1. Adequacy of the Development Plan

Before approving a Development Plan, the District Council must make five specific findings set forth in Section 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Code, together with grounds for the staff's conclusion that the evidence in this case does not support some of the required findings.

Sec. 59-D-1.6. Approval by district council.

(a) That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies...

The proposed development would not be in substantial compliance with the use and density indicated by the Wheaton Sector Plan.

The first sentence of the purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone. The purpose of this zone is to implement the General Plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans.

The density category indicated on the applicable master plan has special status in a PD Zone. If the District Council desires to grant reclassification to a PD Zone with a density category *higher* than that indicated on the applicable master plan, such action requires the affirmative vote of at least six members of the District Council. Code §59-D-1.62. The problem with the present application is that the Wheaton Sector Plan does not make a residential density recommendation for the subject site – it recommends office use. The Sector Plan is not silent with regard to residential density and recommends PD Zones for other properties in the Wheaton CBD, but not the subject property.

The “Dwellings” permitted by the C-O Zone is limited to single-family dwellings consistent with the R-60 Zone (Section 59-C-4²). The Zoning Ordinance also stipulates that dwelling units in the C-O Zone must be located “*in an office structure lawfully existing in the C-O Zone, provided any commercial space is limited to the first two floors.*” (Section 59-C-4⁵²).

The text of the Wheaton Sector Plan makes specific reference to the office development north of Blueridge Avenue. The subject property is specifically described in the Sector Plan’s recommendation for “Office Land Use” (Page 33). The Plan recommends “office development” north of Blueridge Avenue:

The density permitted under the “Dwellings” permitted in the C-O Zone is lower than the density the Applicant seeks in this case. The C-O Zone permits density that is between 1.5 and 3.0 FAR by right. The proposal here would have a base density around 2.4 FAR. But this proposal is for *new* residential development. New residential development in the C-O Zone is only permitted at the density permitted in the R-60 Zone. If the building exists, and the property owner wished to convert some of the *existing* building to residential, then a higher FAR could be achieved.

Where the Wheaton Sector Plan did recommend residential uses, the highest densities recommended in the entire study area were near the Metro core. Outside of the Metro Core and the Marketplace are areas described as “medium” and “low density residential” and “single-family residential”. Just north of the subject property the land is recommended and Zoned R-90/TDR. Staff concludes that the density proposed cannot be considered to substantially comply with the Wheaton Sector Plan. The PD Zone may be applied only to land that is recommended for residential use.

2. Purposes of the Zone

Sec. 59-D-1.6. Approval by district council.

(b) That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

The purpose clause for the PD Zone is found in Section 59-C-7.11. This zone provides a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses, and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. The zoning category should be utilized to implement the General Plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with County plans and policies than may be possible under other zoning categories.

The purpose clause states that the PD Zone “is in the nature of a special exception,” and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

The proposed development would promote some of the Sector Plan’s objectives, but it does not comply with the Sector Plan’s specific recommendations for this site. The Sector Plan provides a recommendation for office use on the site. The proposed development would be consistent with the County’s General Plan and Housing Policy. Staff concludes that the proposed development would not permit “development consistent with densities proposed by” the Wheaton Sector Plan, nor would it implement the General Plan and area Master Plans in a manner and to a degree more closely compatible with said county plans than may be possible under other zoning categories.

The subject Land Use and Development Plan show three buildings at a maximum height of 65 feet. Staff feels this elements does not satisfy the basic requirements of Section 59-D-1.3 with regard to establishing the building height requirements of the PD Zone. Elevations have been submitted indicating that the buildings will be brick, with sufficient glass window coverage to meet the minimum requirements of the PD-88 Zone. No building height limit is required by the Zone, but analysis of building height should be evaluated in terms of the Sector Plan recommendation for the C-O Zone properties north of Blueridge Avenue. Here, the Sector plan recommends that any future office development in the same area which abuts either single or multi-family residential areas should be restricted to a height limit of 30 to 40 feet. These offices should serve as a transition between the residential areas to the north and the Central Business District south of Blueridge Avenue.” The following requirements apply where a planned development zone adjoins land for which the area master plan recommends a one-family detached zone:

3. Compatibility

Sec. 59-C-7.15. Compatibility.

- (a) *All uses must achieve the purposes set forth in section 59-C-7.11 and be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development.*
- (b) *In order to assist in accomplishing compatibility for sites that are not within, or in close proximity to a central business district or transit station development area, the following requirements apply where a planned development zone adjoins land for which the area master plan recommends a one-family detached zone:*
 - (1) *No building other than a one-family detached residence can be constructed within 100 feet of such adjoining land; and*
 - (2) *No building can be constructed to a height greater than its distance from such adjoining land.*
- (c) *A waiver of the requirement of paragraph (b) (1), may be permitted if:*
 - (1) *The area master plan recommends other than a one-family detached use for the property immediately adjoining the area where the waiver is to occur; and*
 - (2) *The immediately adjoining property will not be adversely affected by the waiver for present or future use.*
- (d) *A waiver of subsection (b) may be permitted if:*
 - (1) *The site is within or in close proximity to a central business district or transit station development area and reduced setbacks are recommended by the master or sector plan, and the Planning Board finds that the reduced setbacks are compatible with existing or proposed development in the adjoining or confronting one-family detached zones; or*
 - (2) *The site is within or in close proximity to a historic district and the Planning Board finds that reduced setbacks or increased building height will facilitate the preservation, reuse, or redevelopment of a designated historic district and the immediately adjoining property will not be adversely affected by the waiver.*
 - (3) *The maximum building height under this waiver must not exceed 50 feet.*
- (e) *Compliance with these requirements does not, by itself, create a presumption of compatibility.*

The heights and setbacks proposed would not necessarily require a waiver at the time of site plan approval, but staff can evaluate the height of the proposed building in terms of the Sector Plan recommendation for height north of Blueridge Avenue. The proposal at 65 feet is higher than the "transition" heights of between 30 and 40 feet that the Sector Plan recommends. Staff would not support the waiver request, because the proposal provides a building height that is higher than that recommended in the Sector Plan.

The District Council should carefully consider whether the PD Zone would be appropriate in the location for which it is requested. Based on the preponderance of the evidence, staff concludes that the present application is not proper for the comprehensive and systematic development of the County due to a lack of Sector Plan compliance; is not in compliance with or capable of accomplishing all of the purposes of the zone, and is not in substantial compliance with the Wheaton Sector Plan.

D. Public Interest

The evidence of record indicates that the proposed development would have no adverse effects on traffic conditions or public utilities. The proposed development would add a small number of students (27) to an elementary school that is over capacity, as that term is defined by MCPS, and is expected remain over capacity for the next several years. The Planning Board has made a finding that all school clusters have adequate capacity to support subdivision approval during FY 2007. In the past, the District Council has considered such a finding sufficient to support the approval of rezoning requests. The present application would add only marginally to the existing overcrowding. As the Hearing Examiner has stated, the master plan plays a central role in the purpose clause for the PD Zones, so in this context its recommendations and objectives are entitled to particular deference. Because Staff concludes that the proposed development would not be consistent with the Wheaton Sector Plan, the Staff must conclude that approval of the application in its current form would not be in the public interest.

VII. CONCLUSIONS

The submitted Development Plan is not in substantial compliance with the Sector Plan. The Development Plan does not fully comply with the purposes, standards, and regulations of the PD-88 Zone, although it would provide for a form of development that would be compatible with adjacent development in terms of use and architecture.

The application of the PD-88 Zone at the proposed location is not proper for the comprehensive and systematic development of the County because the proposed development:

1. Will not serve the public interest;
2. Will not be in substantial compliance with the applicable Wheaton Sector Plan; and

3. Will not fully satisfy the purposes, standards and regulations of the zone.

Attachments:

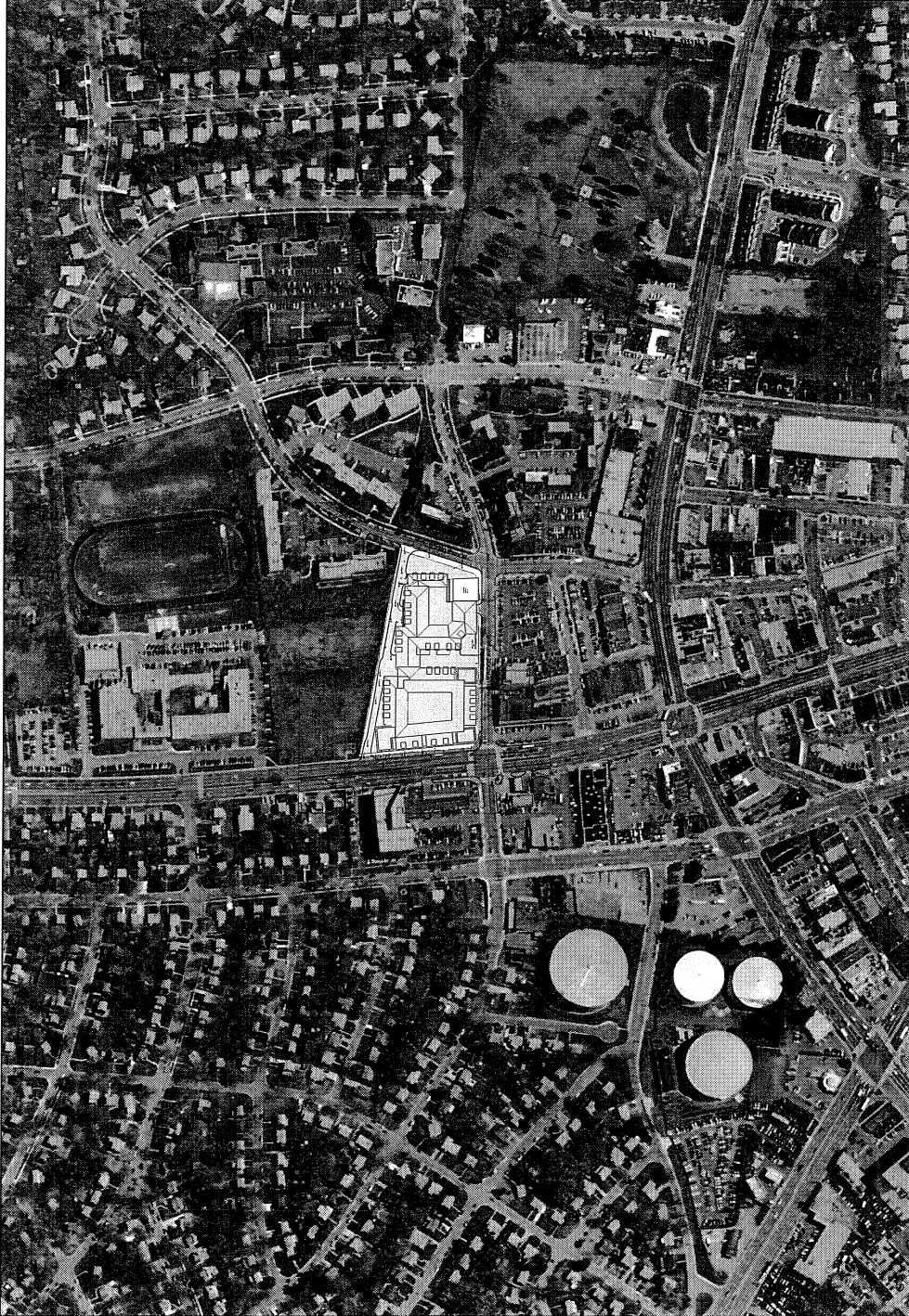
1. Land Use and Development Plan and Elevations

AVALON at WHEATON

Wheaton, Maryland

RECEIVED
SEP 25 2006

DEVELOPMENT REVIEW DIVISION



AVALON at WHEATON



WHEATON, MD

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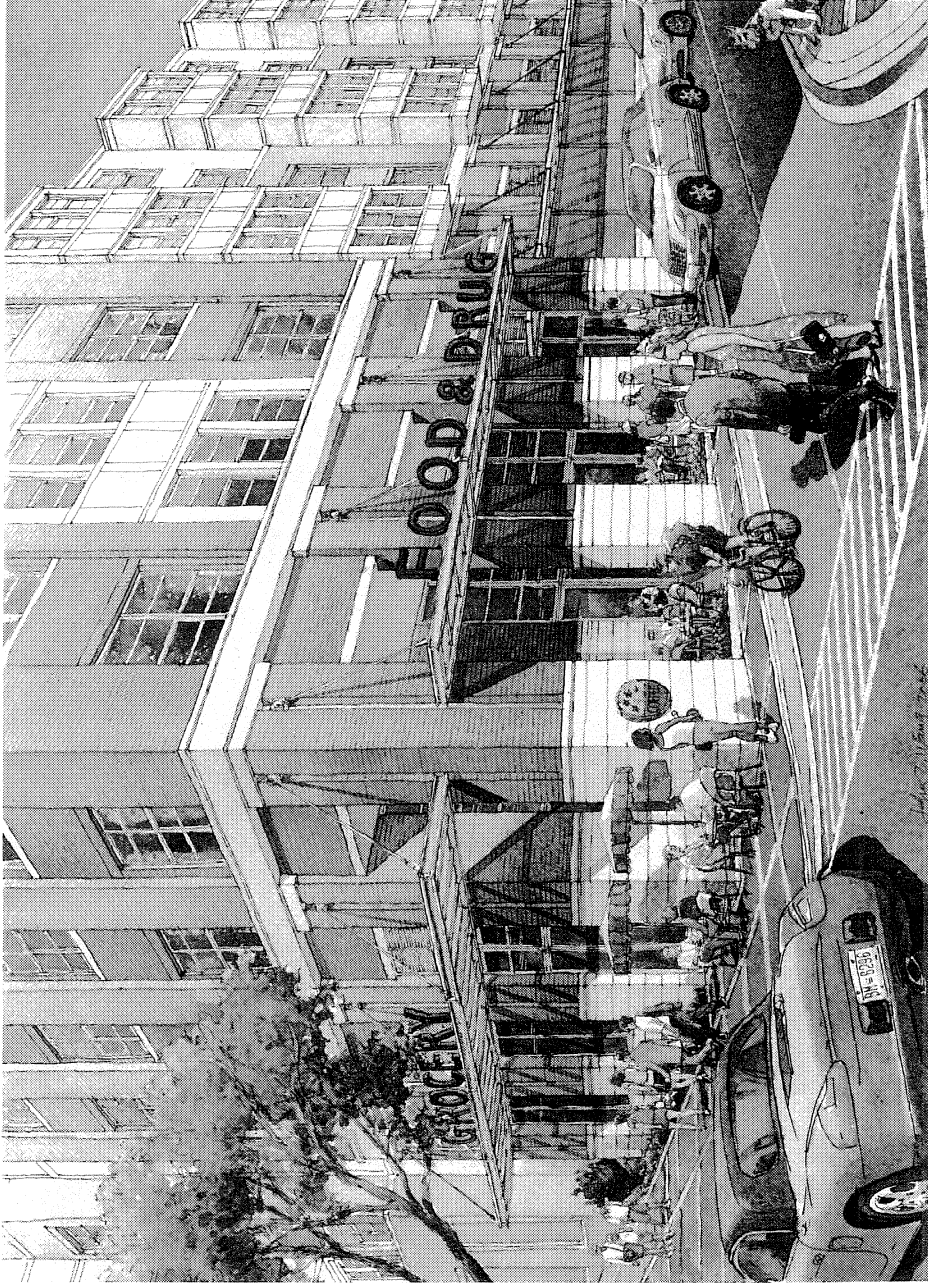
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AVALONBAY

AVALON at WHEATON

Wheaton, Maryland



AVALON at WHEATON



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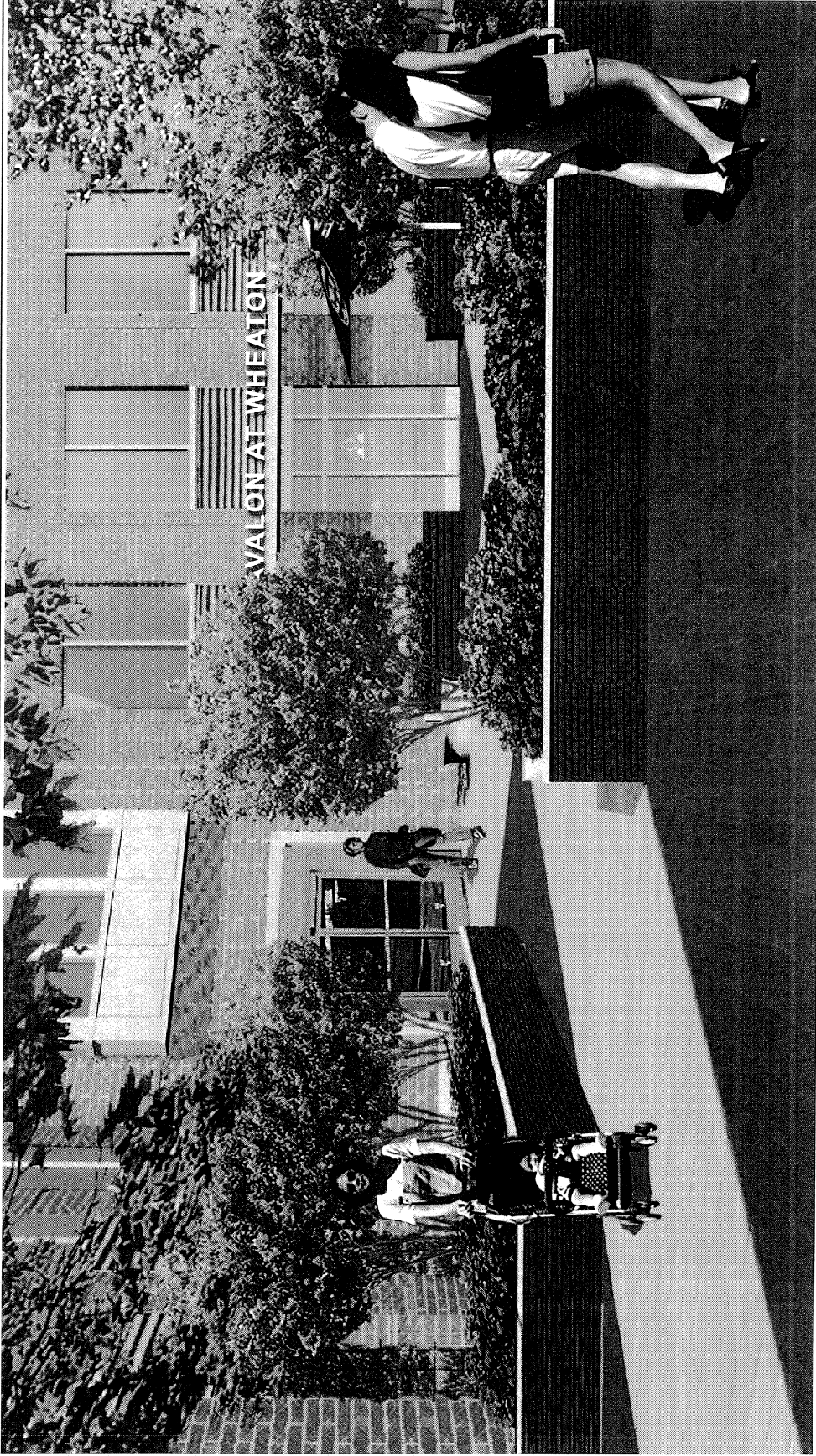
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ARCHITECTS

SK&I
ARCHITECTS

AVALONBAY

AVALON at WHEATON

Wheaton, Maryland



AVALON at WHEATON



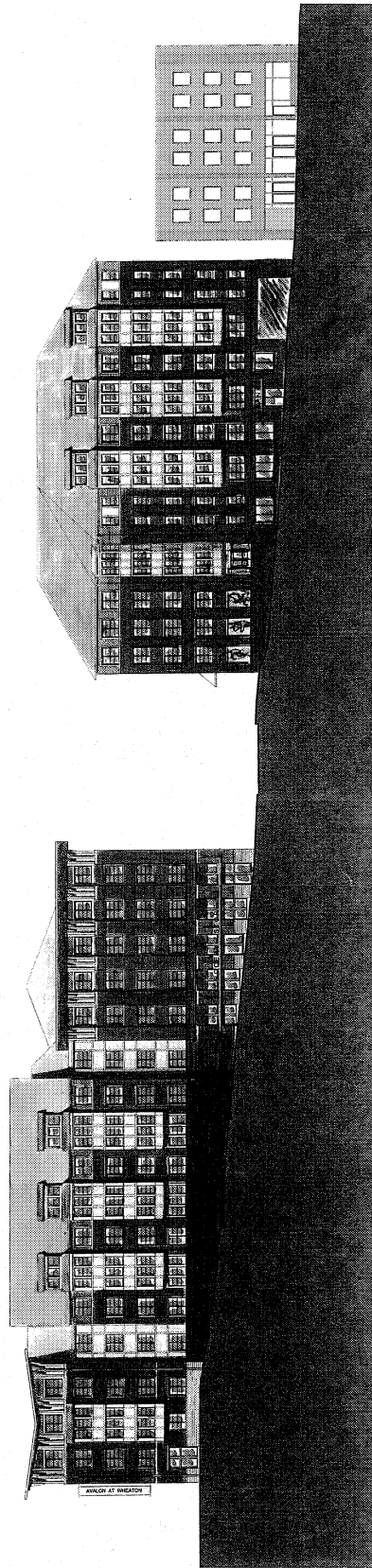
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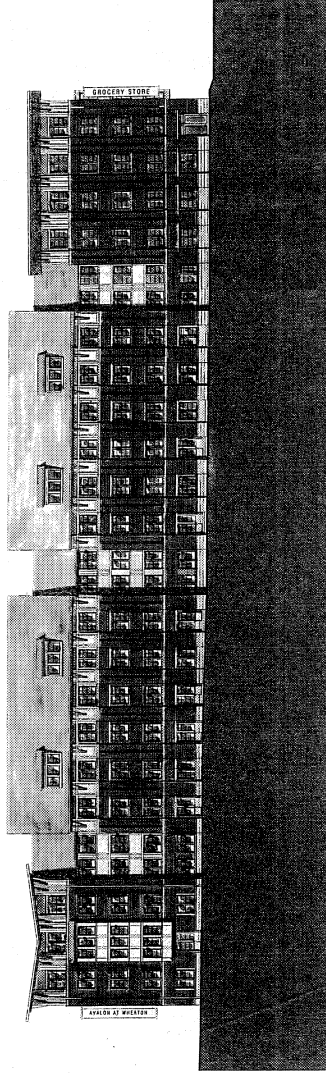
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Architectural Group, Inc.

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BLUERIDGE AVENUE CONCEPTUAL ELEVATION



GEORGIA AVENUE CONCEPTUAL ELEVATION

AVALON at WHEATON



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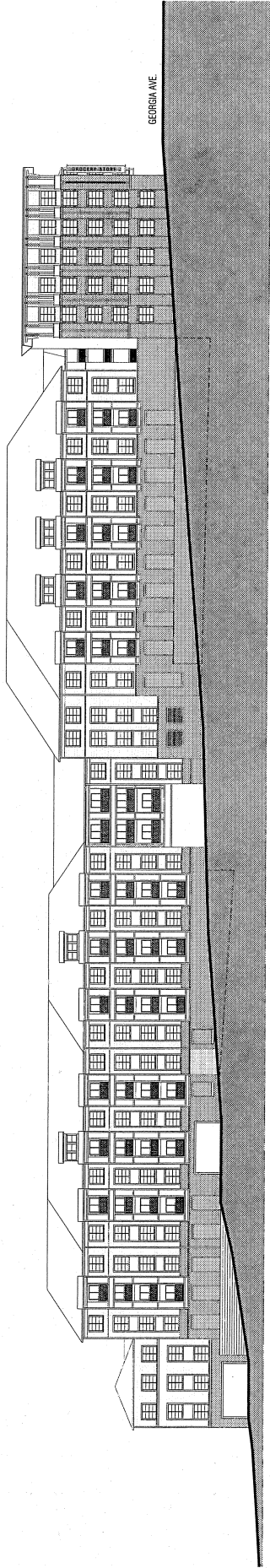
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A KIMLEY-HORN & CO. COMPANY

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A01



ALLEY CONCEPTUAL ELEVATION

AVALON at WHEATON



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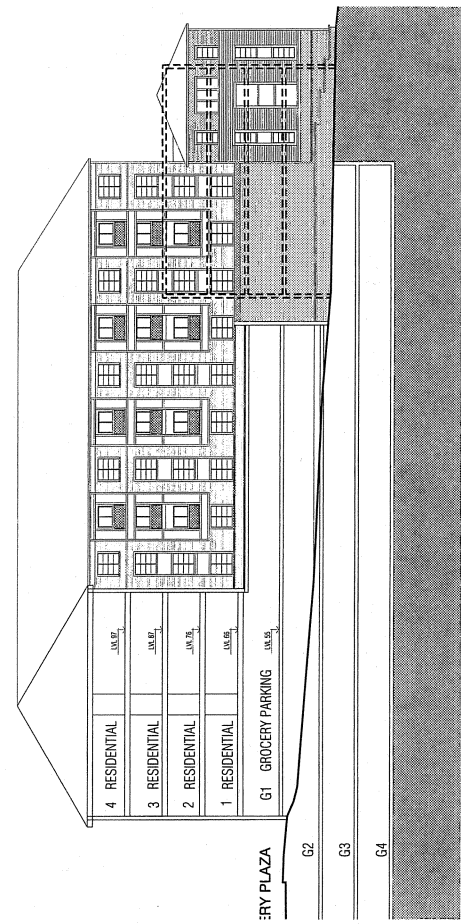


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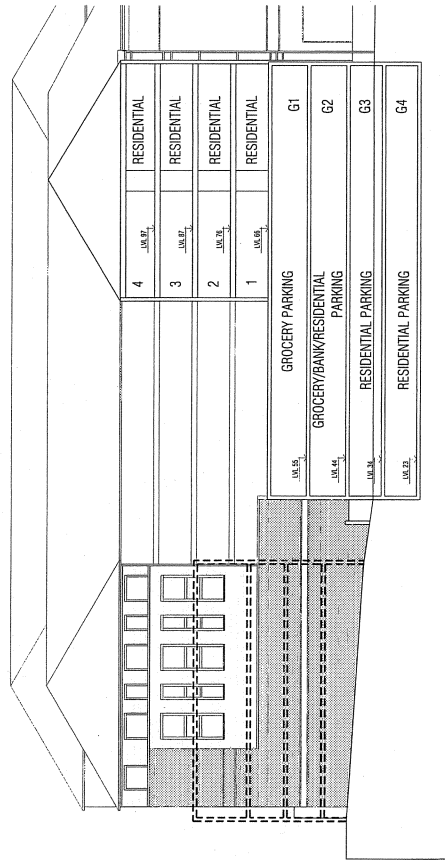


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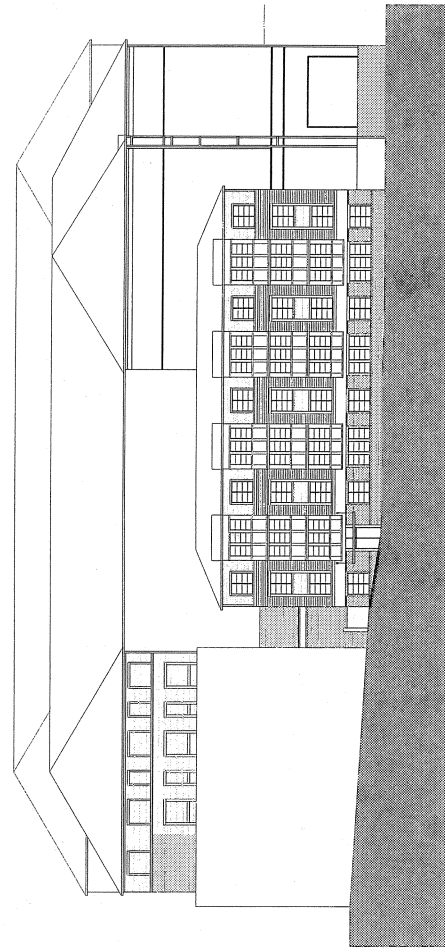
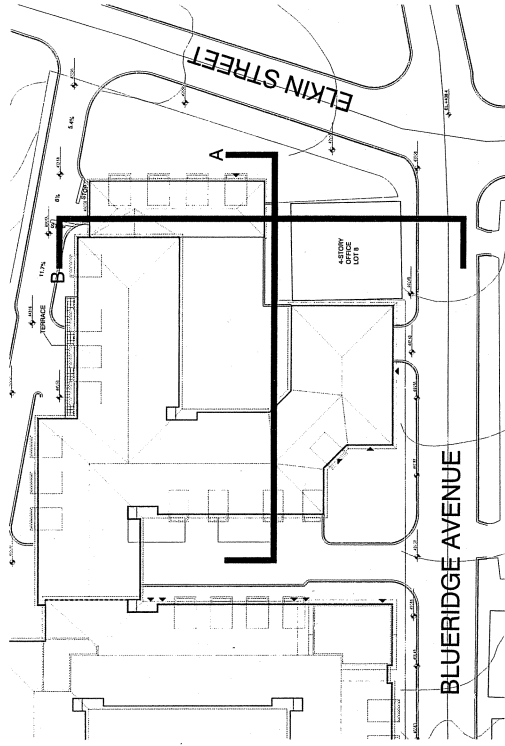
A02



BLUERIDGE SECTION (A)



ELKIN STREET SECTION (B)



ELKIN STREET ELEVATION

AVALON at WHEATON



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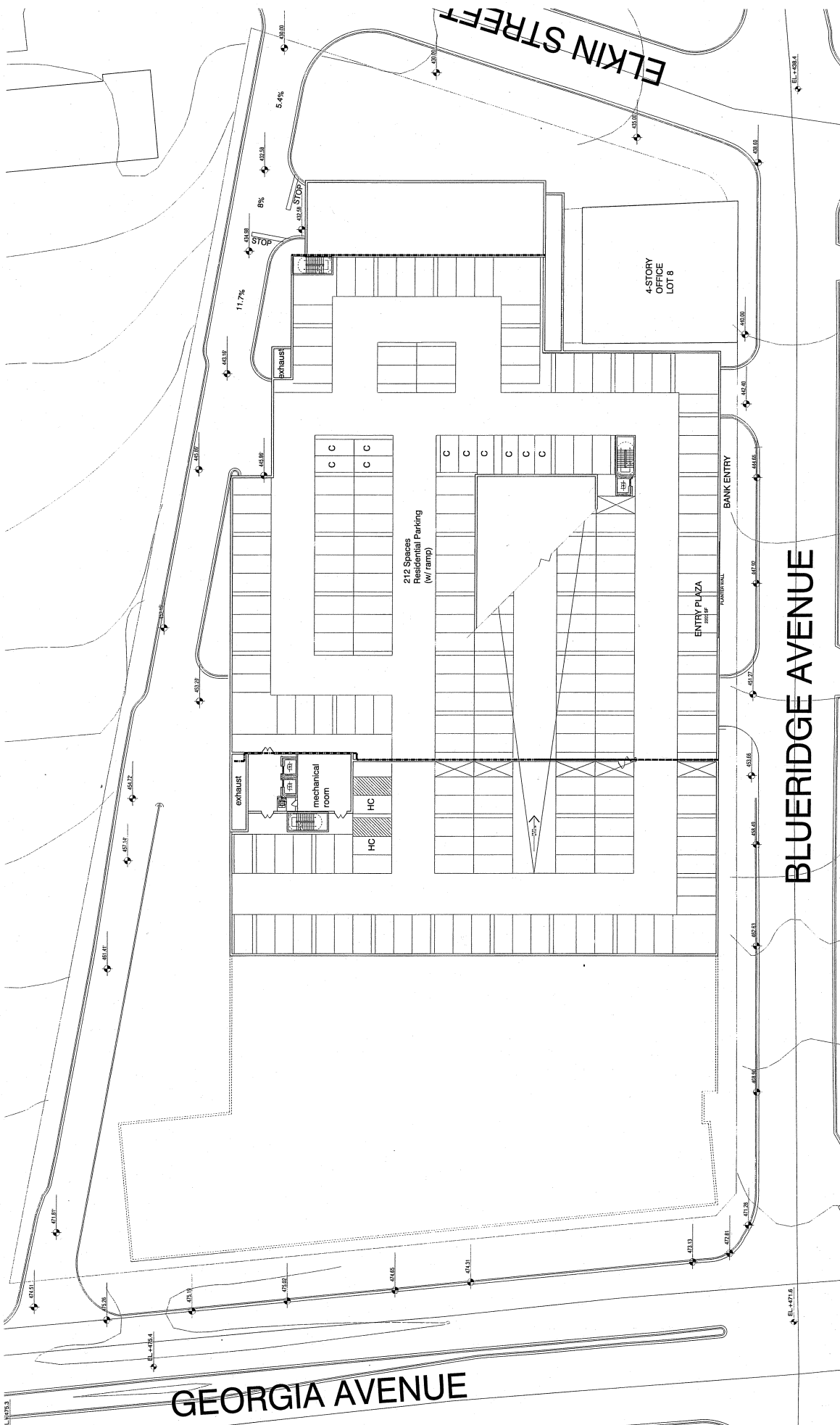
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Date: 2006.09.20



AVALONBAY

A04



GEORGIA AVENUE

ELKIN STREET

BLUERIDGE AVENUE

4-STORY OFFICE LOT 8

212 Spaces Residential Parking (w/ ramp)

mechanical room

HC

HC

ENTRY PLAZA

BANK ENTRY

AVALON at WHEATON

FLOOR PLAN - LEVEL 23
RESIDENTIAL PARKING

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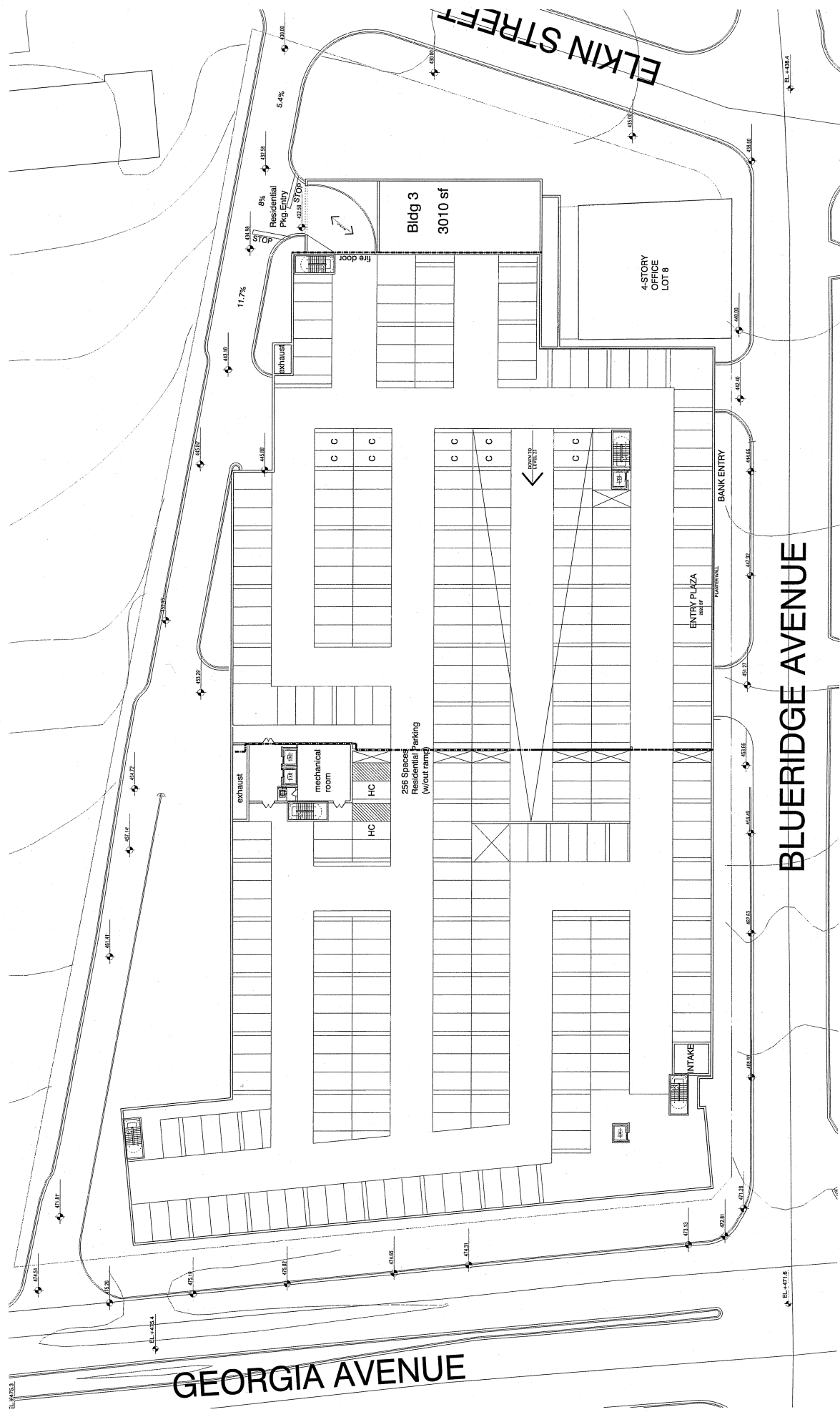
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AVALONBAY

A05



FLOOR PLAN - LEVEL 34
RESIDENTIAL PARKING

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Date: 2006.09.20



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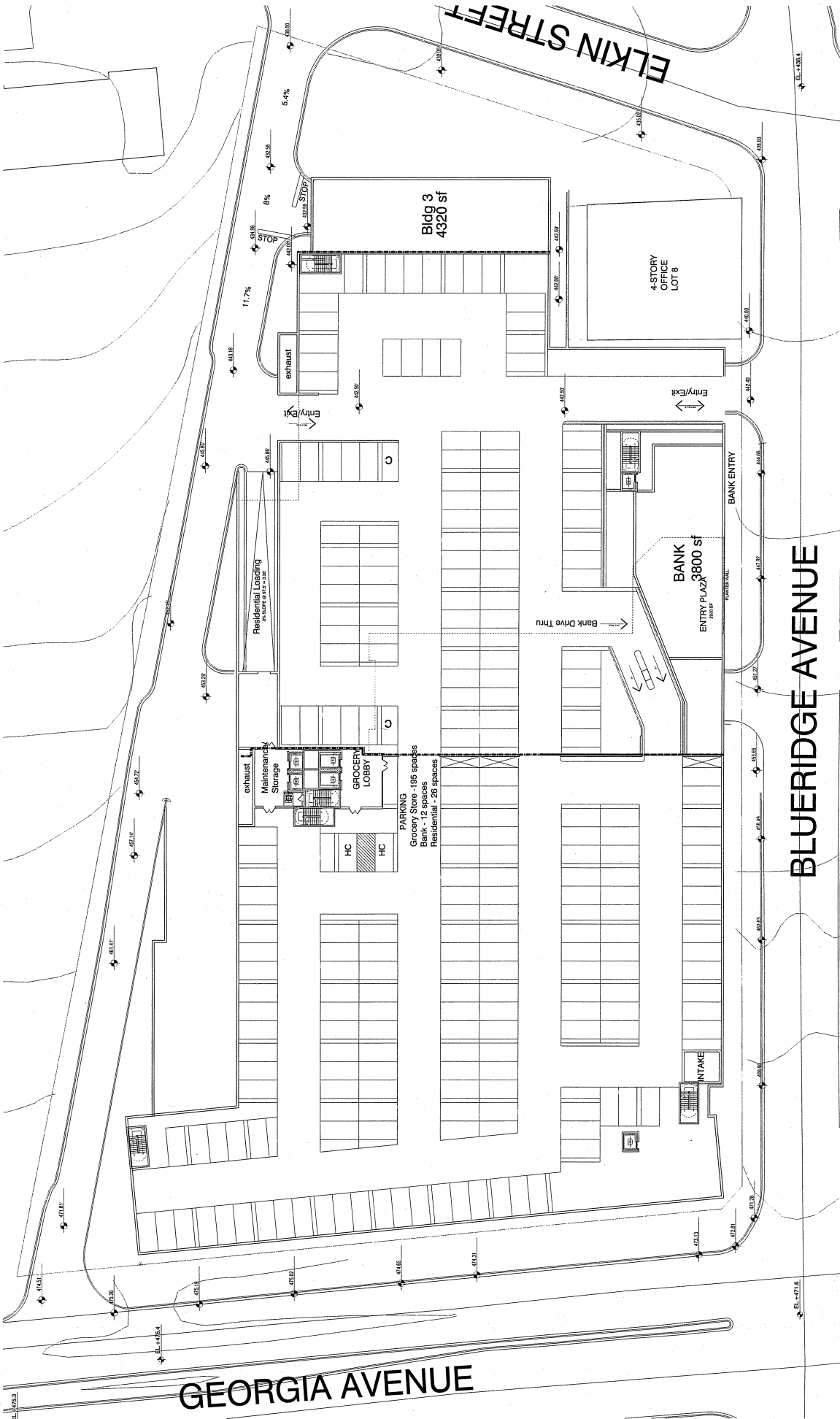
AVALONBAY

A06

GEORGIA AVENUE

BLUERIDGE AVENUE

ELKIN STREET



AVALON at WHEATON

FLOOR PLAN - LEVEL 44
 GROCERY/BANK/RESIDENTIAL PARKING

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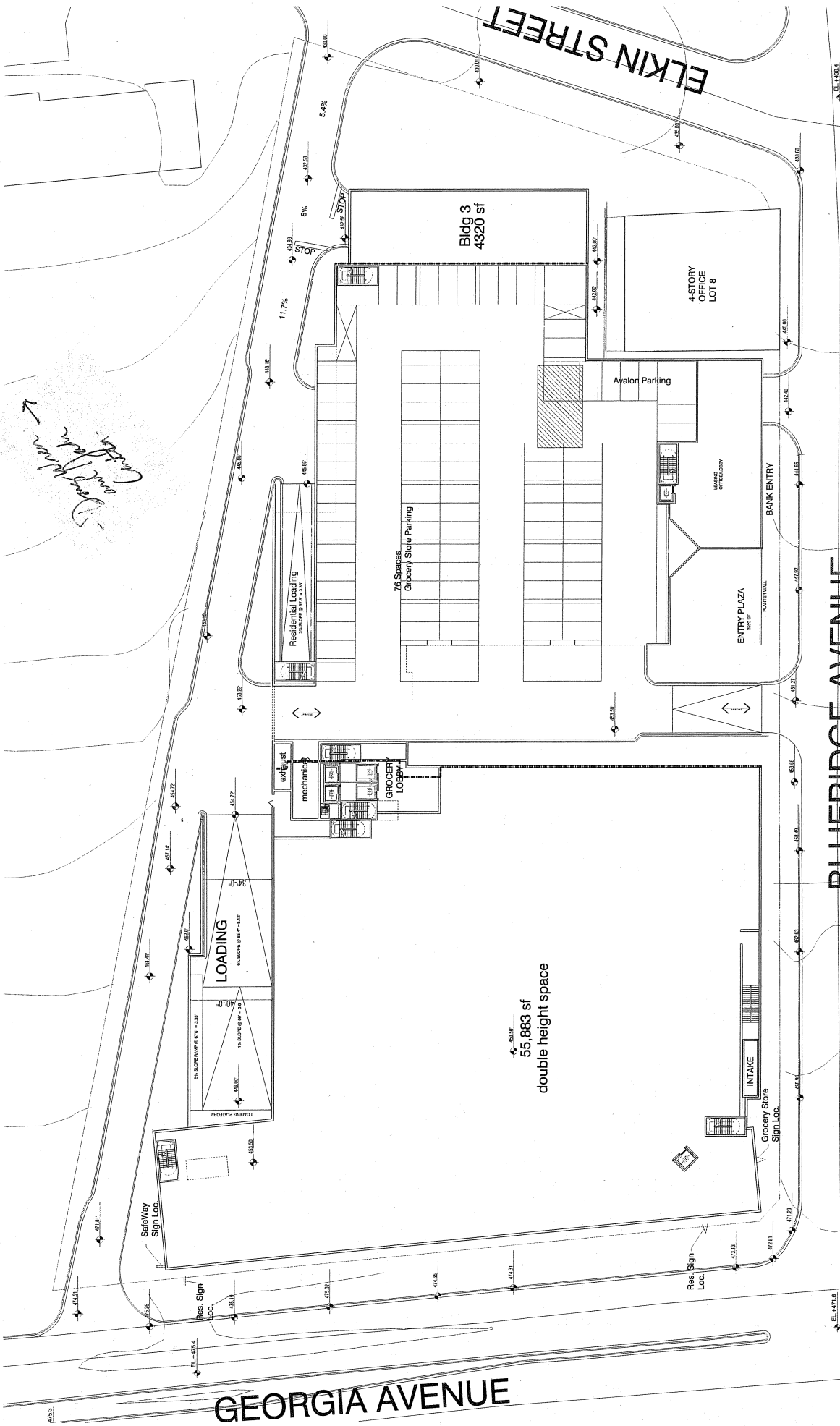
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A07

Scale: 1/8" = 1'-0"
 Date: 2008.08.20



See Notes on Center

55,883 sf
double height space

AVALON at WHEATON

**FLOOR PLAN - LEVEL 55
GROCERY STORE SCHEME**

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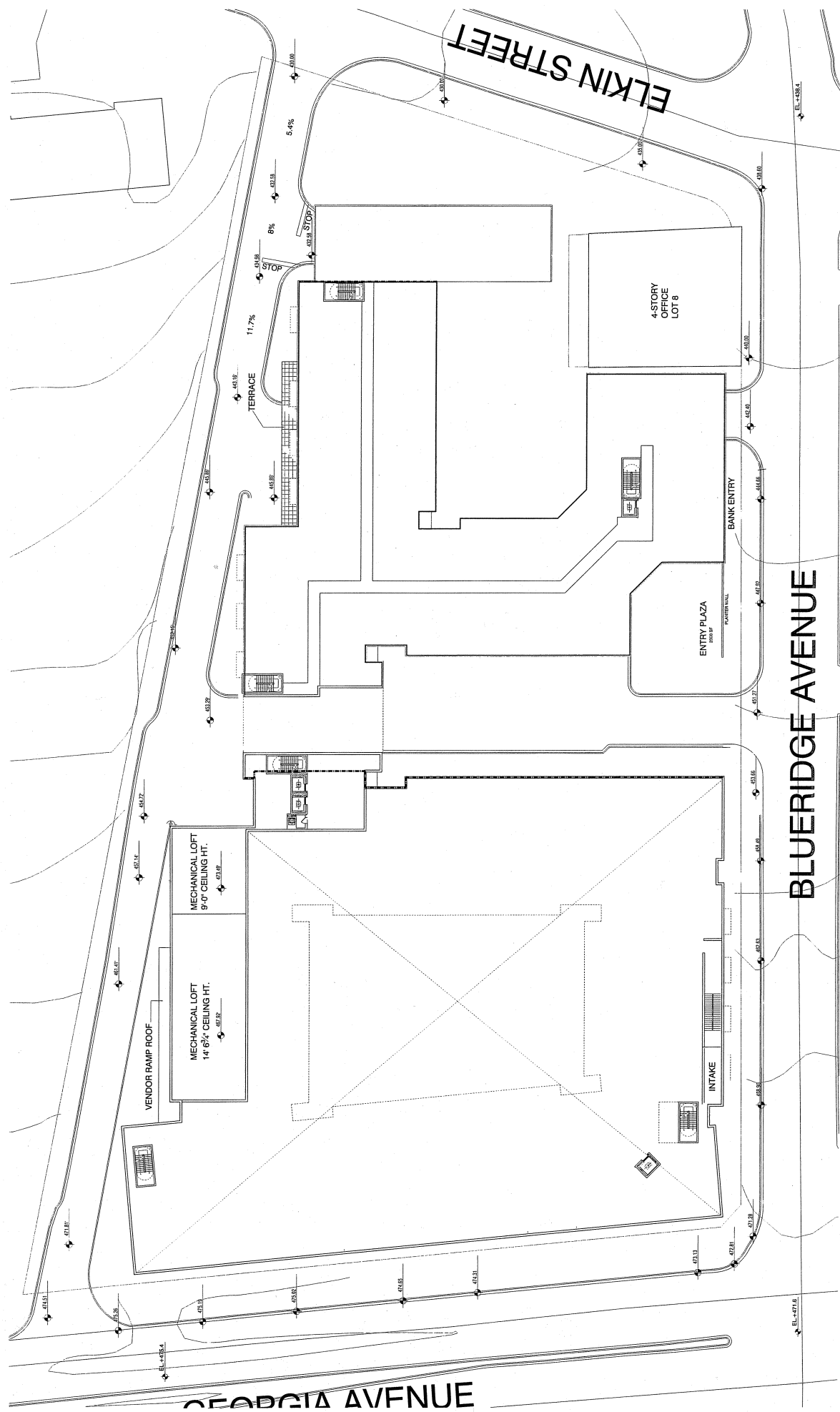
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A08



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Date: 2006.03.20



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FLOOR PLAN - LEVEL 66
RESIDENTIAL SCHEME



AVALON at WHEATON

WHEATON, MD

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A09

ELKIN STREET

BLUERIDGE AVENUE

GEORGIA AVENUE

4-STORY OFFICE LOT 8

BANK ENTRY

ENTRY PLAZA

INTAKE

TERRACE

STOP

STOP

STOP

STOP

STOP

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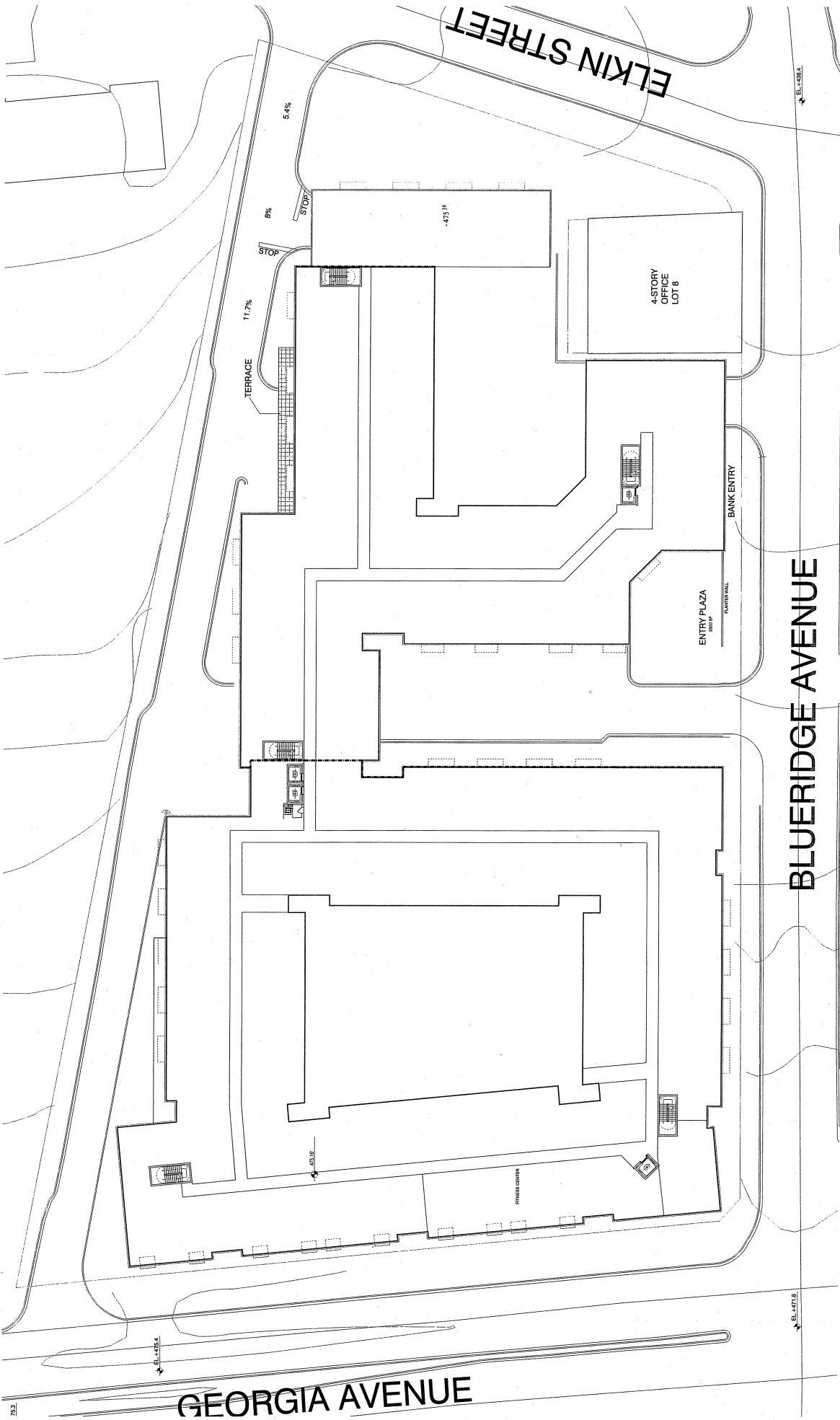
STOP

STOP

STOP

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STOP



AVALON at WHEATON

**FLOOR PLAN - LEVEL 76
RESIDENTIAL SCHEME**

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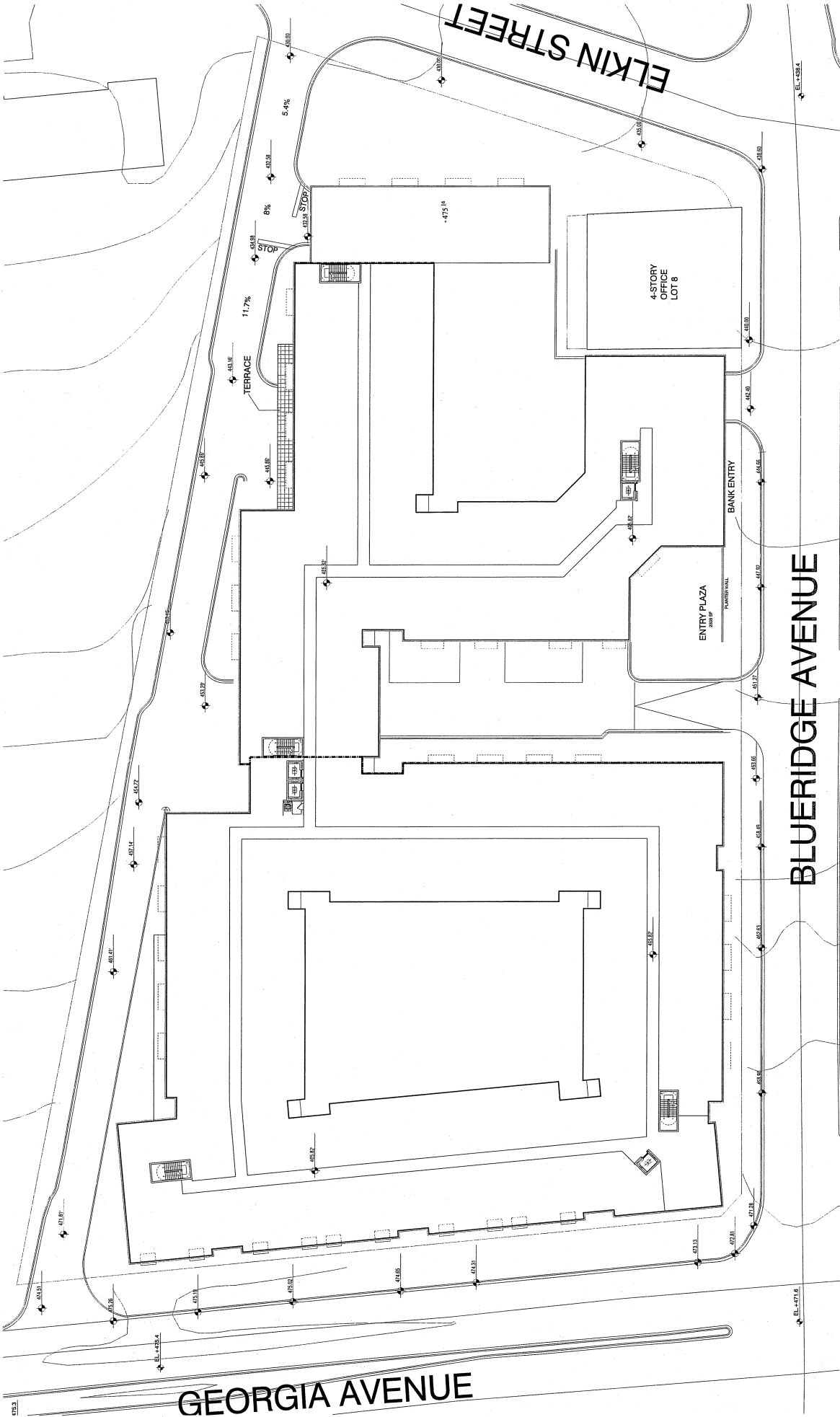
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A10



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FLOOR PLAN - LEVEL 87/97
RESIDENTIAL SCHEME

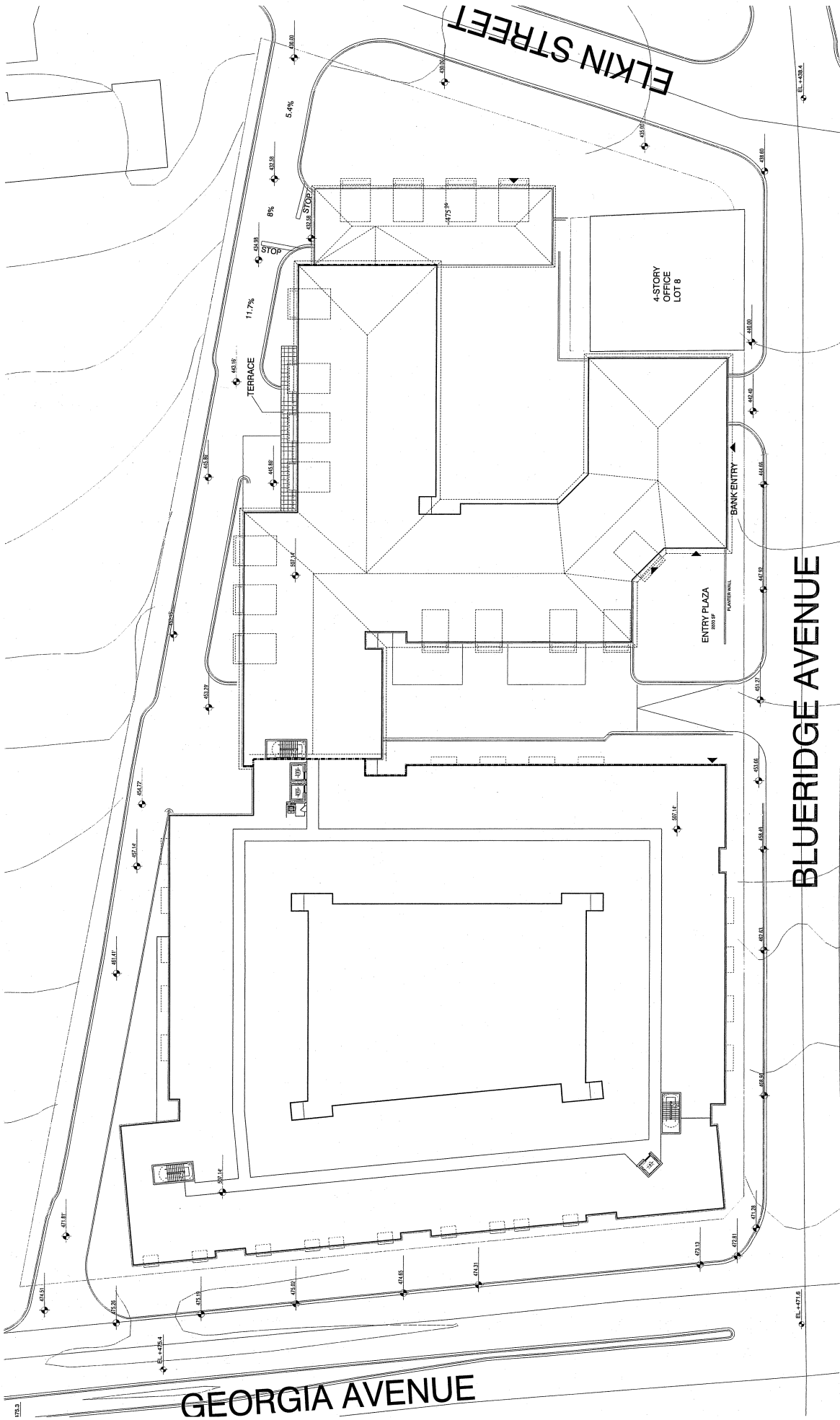
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Scale: 1/20
 Date: 2006.09.20



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Date: 2008.09.20



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FLOOR PLAN - LEVEL 108
RESIDENTIAL SCHEME

AVALON at WHEATON

WHEATON, MD

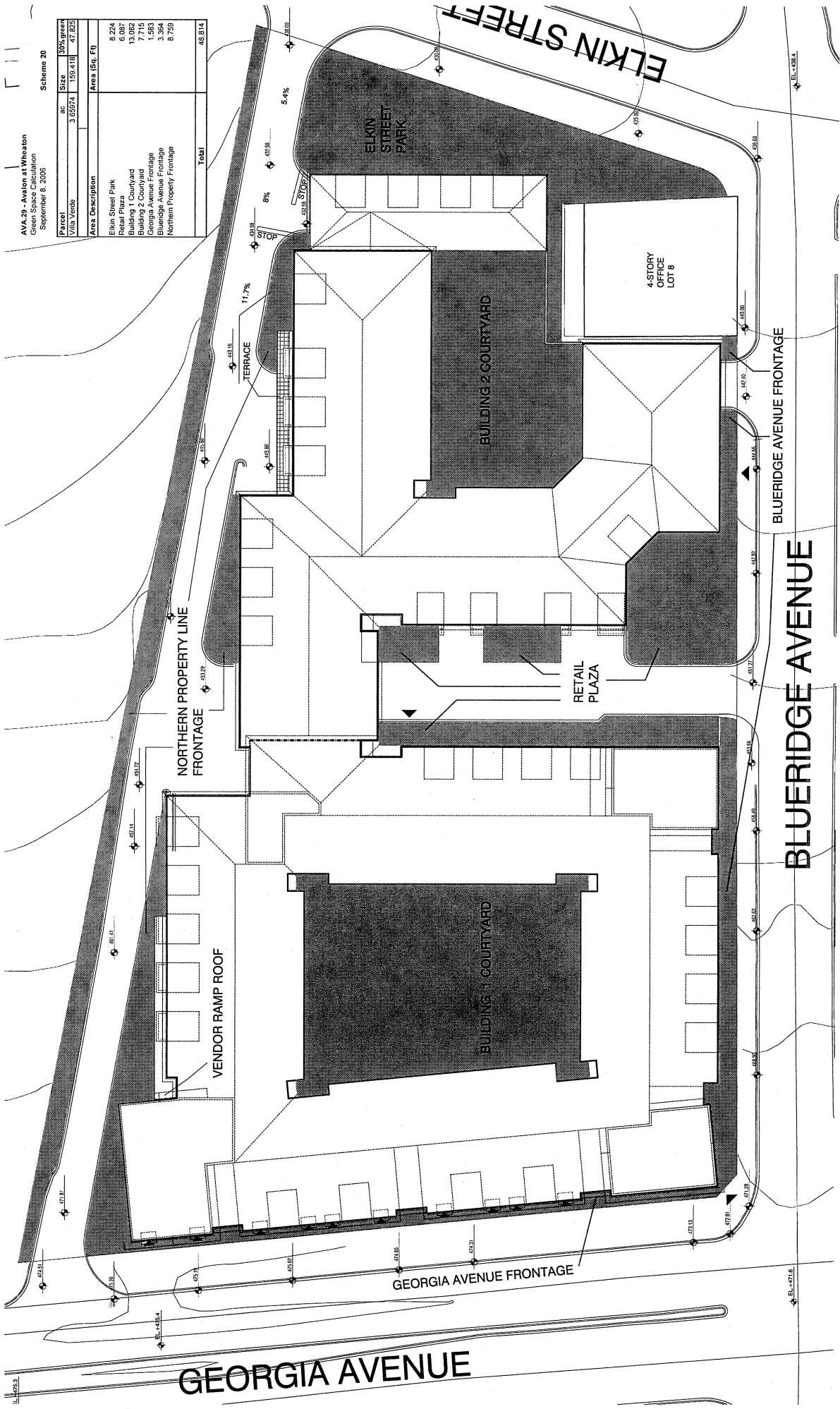
AVALONBAY


A12

AVALON at Wheaton
 Construction
 September 8, 2005

Scheme 20

Parcel	ac	Size	30% green
Villa Verde	3.65974	159,418	47,825
Area Description			
Elkin Street Park		8,224	
Retail Plaza		6,087	
Building 1 Courtyard		13,082	
Building 2 Courtyard		7,715	
Georgia Avenue Frontage		1,563	
Blueridge Avenue Frontage		3,364	
Northern Property Frontage		8,759	
Total		48,814	



AVALON at WHEATON  **GREEN SPACE CALCULATION**

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Scale: 1/20
 Date: 2006.09.20

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