



Planning & Development Services

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MEMORANDUM

TO: Mayor and Boise City Council

FROM: Hal Simmons
Planning Director
Boise City Planning and Development Services

DATE: April 5, 2012

RE: APPEAL-CUP11-00090 / 1004 W. Royal Blvd

The following application has been scheduled for **April 17, 2012:**

917 Lusk LLC is appealing the Planning and Zoning Commission approval of a height exception to construct a five story multi-family residential building on 3.42 acres located at 1004 W. Royal Boulevard in an R-OD (Residential Office with Design Review) zone.

PUBLIC NOTIFICATION

Newspaper publication: March 30, 2012

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ACTION BY THE BOISE CITY PLANNING AND ZONING COMMISSION

The project was originally approved at the February 6, 2012 Planning and Zoning Commission meeting on the consent agenda. It was later learned that two members of the public wishing to testify were outside the hearing chamber when the application was approved. The Commissioners voted to reconsider the application at their February 13, 2012 meeting; they listened to a staff presentation and received public testimony at that time. The Commission then moved to defer the application until March 5, 2012 to allow staff to get clarification from Parks & Recreation Staff on the height and its impacts on the greenbelt. At the March 5, 2012 Planning and Zoning meeting the Commission voted unanimously to approve a height exception for a five-story multi-family apartment building with an associated River System Permit. After hearing the staff report and further public testimony, the Commission found the additional height could be justified under both the variance and conditional use permit findings. The main topics discussed at the hearing were the project's height and the amount of provided parking. The Commission based its decision to approve the project's height based on the height of other buildings along the river as well as the New Urbanism design standards advocated by the Comprehensive Plan. While parking was discussed, the Commission correctly observed that the project meets established zoning ordinance standards and that it was not in their purview to require additional parking.

APPEAL

The appellant contends the Planning and Zoning Commission committed error in approving the height exception. Three grounds were included in the appeal and supporting memoranda. Each has been summarized below along with staff's response.

1. The proposed height exception fails to meet the requirements for a Conditional Use Permit.

Response: The Commission based their decision to grant the height exception on several factors all relating to the required findings. They found that the project was compatible based on the variety of heights that are present along the Boise River corridor. Staff's memo to the Commission describes several buildings along the river and their various heights. These include: the Cottonwood Grill with a height of 61 feet, the Morrison Center with a height of 63 feet, and the Barnes Towers Dormitories on Capitol Blvd. with a height of 74 feet. The proposed building is 59 feet in height along portions of the greenbelt and 63 feet along Royal Boulevard. Commissioner Stevens spoke to this issue during deliberation when she said, *"I do want to say one last thing and that is regarding the height exception specifically. Looking up and down the river it feels to me that the reason I'm going to support the height exception particularly is because it would feel arbitrary to me to look at what we've approved adjacent to this property, not to mention the other properties across the river on the north side. To somehow not approve this feels very uncomfortable to me."*

The appellant also argues that the base zoning classification should be taken into account when examining height. It is staff's assertion that the zoning district's height limit is immaterial to an argument about height when each project is judged on its own merits within the conditional use permit findings.

The Commission also based their decision to grant additional height on the design of the project. The structured parking and high density nature of the project were two reasons stated during deliberation. The appellant's argument is based on the assumption that the idea of compatibility is based on sameness. The appeal memorandum states that the applicant's building would be 10-15 feet taller than the Keynetics building. These buildings are separated by more than 200 feet of horizontal distance; therefore a height difference of 10-15 feet is almost imperceptible from the perspective of a pedestrian.

The appellant states that parking problems associated with the high density project will overburden public facilities. This sentence highlights two fundamental flaws in the appeal: As proposed, the project meets density and parking requirements of Boise City Code. These standards are outlined in detail within the staff report and are discussed in the minutes from the March 5, 2012 hearing. Commissioner Stevens stated at the beginning of the deliberation, *"I want to remind the Commissioners that the parking issue tonight is not actually before us. This Commission is not in position to make findings that require our applicant to be held to standards above that which is in our code. That would be arbitrary and would make the City be in some serious hot water."*

The project is designated multi-family. The appellant also argues that this is an incorrect determination by the Planning Director. The definition for a dwelling unit as defined by the zoning code as follows;

"One or more rooms designed for, or used as, a residence for not more than one family, including all necessary household employees of such family, and constituting a separate and independent housekeeping unit, with a single kitchen permanently installed. A dwelling unit may be occupied by a family (related by blood or marriage), or by up to five (5) unrelated individuals or by a number of physically or mentally handicapped or elderly persons as long as the residential character of the dwelling is preserved. The physically and/or mentally handicapped includes those currently undergoing rehabilitation for drug and/or alcohol addiction. The term does not imply or include such types of occupancy as a lodging or boarding house, club, sorority, fraternity or hotel. The appeal should only be based on the impact of the additional height requested."

A multi-family unit is three (3) or more dwelling units within the same building. The units in the proposed apartment building all have kitchens and bathrooms. They will house up to four individuals. The appellant wishes to characterize the development as a dormitory: a structure with multiple rooms, a communal kitchen, and shared bathrooms. The fact that the project is geared toward students is immaterial to its designation; it is the design and contents of the units, themselves, that matter with respect to the ordinance. Here, that design means the project is "multi-family."

The appellant provided tables showing the shortages created when certain percentages of students bring cars. Boise State University provided parking data demonstrating that the University Suites student housing, which is comprised of four (4) single occupancy rooms sharing a common kitchen/bathroom, has a parking-to-bedroom ratio of 0.34. The applicant's project has a parking-to-bedroom ratio of 0.45, which is more parking than

the BSU example. In other words, the closest real-world example or precedent for this type of project affirms the Commission's determination that this is a multi-family project and that the amount of parking is appropriate.

The appellant states that the building will obscure views of Ann Morrison Park from the Keynetics building. This would be true of a 35 foot tall building of similar mass, as the top of the parapet of the Keynetics building is only 45 feet in height. The floor plate of their tallest story would be at least ten feet below that point. An allowed building 35 feet in height would still block views to the west. Occupants of the Keynetics building are not guaranteed views as of right. If the appellant desires a guaranteed view of the park the proper mechanism would be to buy the subject property or secure a view easement.

Another argument put forth by the appellant is that the project does not meet the intent of the Comprehensive Plan. The City's Comprehensive Plan values projects that promote high-density pedestrian oriented projects near the downtown core. This is exactly what the applicant is proposing. Objective 8.1.3 states, "*Achieve a compact city comprised of a central Downtown with surrounding neighborhoods that have a center focus combining residential, commercial, employment, civic, cultural and recreational uses.*" Finally, the Community Design section of the plan has a three policies advocating high-quality multi-family design. Two of them are exemplified in the project:

1.) Policy 7.2.2.2a- Require modulated building elevations to minimize the visual character of singular building mass and volume.

The project contains balconies and parapet modulation along the Royal Boulevard and side façades. The building is U-shaped with the open part of the design located along the Greenbelt. This reduces its visual impact along the river. Both of these design aspects prevent the building from taking on a sterile box-like appearance.

2.) Policy 7.2.2.2c-Integrating siting and design of parking areas and facilities with the architectural character of the structure and ensure they do not dominate the character of the structure.

The parking for this project is located under the building and is not visible from the street. The building as designed emphasizes pedestrian movement by being located close to the public sidewalk. Commissioner Story elaborated on the project's compliance with the Comprehensive Plan when he said, "*When I look at the Comprehensive Plan I think it fits well. I think it's a project we want, higher densities, closer to the core, structured parking.*"

Finally, the applicant mentions a previous case where a hotel was proposed to be converted to student housing. The project in question, CUP11-00051, located at 475 W. Parkcenter Boulevard was for 158 dwelling units in the Doubletree hotel building. In that instance, the applicant would not commit to the units containing kitchens. Without the kitchens, the project would have been designated a dormitory and would have required additional parking. While the Doubletree project is within walking or biking distance to the BSU campus, it is not located within close proximity to the downtown, a fundamental difference between it and this project.

2. Under LLUPA, the applicant did not submit a valid application for a conditional use permit for a height exception.

Response: The applicant submitted a legal application when the projected was submitted to the City. At the time of application, there was an established history of height exceptions being processed as Conditional Use Permits – both in this city and around the state. The applicant and the City of Boise could not have anticipated that the Idaho Supreme Court, through *Burns Holdings LLC v. Teton County Board of Commissioners*, would rule in January 2012 that height exceptions must be processed as variances. In the wake of that decision, it was the Commission’s position that the conditional use application and variance application were similar enough in content (including having an identical fee of \$366) that the application could proceed. Furthermore, the noticing requirements for the application as a conditional use permit were actually greater than that which were required for a variance.

Commissioner Stevens stated that the public had ample opportunity to know about the project and comment on it when she said, *“I want to start by stating I’m very comfortable with the noticing. I think staff did a good job explaining to us that the noticing which took place for the CUP exceeded what would actually take place under a variance, and because of the wording, it is very clear that we’re dealing with a height issue here.”* The applicant also provided a new Letter of Intent to address the variance prior to the March 5, 2012 hearing.

At its hearing of March 5, 2012, the Commission voted to make the findings for both a conditional use permit and a variance in order to address any legislative changes that could render the Commission’s decision moot. As of the writing of this staff report, House Bill 691, which clarifies that the Local Land Use Planning Act (LLUPA) allows height exceptions to be processed as conditional use permits, is awaiting Governor Otter’s signature.

3. The proposed height exception fails to meet the requirements for a variance.

Response: The appellant argues that the City’s threshold for a variance is less restrictive than the State’s, and argues that the Commission’s finding that the additional height is justified due to unusual circumstances is not valid. The Idaho Code criterion for a variance is as follows: *“A variance shall be not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest.”* Idaho Code § 67-6516 (*emphasis added*). Boise City Code contains three criteria, as follows:

1. *That the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive General Plan for the City, and will not effect a change in zoning.*
2. *That there is either a hardship associated with the property itself or an exceptional circumstance relating to the intended use of the property which is not generally applicable to property or permitted uses in the district.*

3. *The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement.*

The City's criteria is equally, if not more, restrictive as it requires the Commission to determine that the project complies with the Comprehensive Plan, that it won't impact public health, and that it won't be injurious to other property owners. The unusual circumstances that are considered as part of a variance are an expansion upon the definition of a hardship and does not create an easier path for the applicant to obtain a variance especially when considered against the extra scrutiny of the City's Comprehensive Plan.

The appellant contends that the Commission incorrectly concluded that there was a hardship present that justified the granting of the variance. Firstly, the Commission found a hardship due to the site being located in the floodplain. This requires the first habitable floor to be elevated above the flood level. While depth of flooding is only two feet, the applicant's solution was to place the units on top of the parking which results in ten extra feet of elevation. The appellant states that this alone is not justification for the height exception. But the ordinance does not task the Commission with the burden of providing a direct relationship between stated hardships and relief from dimensional standards. In other words, site conditions do not necessitate a one to one relationship with the additional height granted.

The appellant argues, in the memorandum, that the applicant's claim that they must build an apartment complex of a certain size or the project is not feasible is not a valid hardship argument. While the appellant correctly states that this is not justification for the variance, the financial aspect hardship of the project was not argued by staff or the Commission for approving the height exception. The applicant may have argued this aspect of the case, but it was not cited as part of the official decision.

There is also a similar argument forwarded by the appellant that approving the variance based on design considerations, site constraints, and contradictions within the R-O zone is improper. One of the most important aspects of this project is the podium parking. It hides the project's parking stalls while allowing for a more pedestrian-oriented façade along Royal Blvd. Having parking underneath the building also causes the need for additional height.

The appellant's memorandum states that the variance would be the granting of a special privilege because the additional height varies from the standard R-O zone height of 35 feet and that it constitutes a spot zone change. If this is true, then no height exception could ever be approved because any variation from the base zone standard would constitute a zone change or special privilege. This includes the appellant's own Keynetics building.

STAFF RECOMMENDATION/REQUIRED MOTIONS

The Commission did not err in its decision to approve the height exception. It is expected the Governor will soon sign into law amendments to Idaho Code, Title 67, Chapter 65, allowing for height exceptions to be processed as conditional use permits once again. It is staff's opinion that this legislation invalidates points B and C of the appeal and that the only legitimate aspect that can be considered is the appeal of the conditional use permit.

ZONING ORDINANCE**11-03-07 - Quasi-judicial Appeals; Form; Content:****11-03-07.05: Quasi-judicial Appeals to City Council of Decisions of Review Bodies:** the Planning & Zoning Commission, Hearing Examiner and Historic Preservation Commission.**G. Standard of Review:****8. The City Council may find error on the following grounds:**

- (a) The decision below is in violation of constitutional, State or City law. An example would be that the review body's decision would be a taking or failed to comply with mandatory notice required under the Local Land Use Planning Act.
- (b) The review body's decision exceeds its statutory authority. An example would be when there is no authority for the decision in federal or Idaho law, of local ordinance.
- (c) The decision below is made upon unlawful procedure. An example would be if notice of the hearing was inadequate.
- (d) The decision below is arbitrary, capricious or an abuse of discretion. For the review body's actions to be deemed 'arbitrary or capricious,' it must be shown that its actions were without rational basis; or in disregard of the facts and circumstances presented. Where there is room for two opinions, action is not arbitrary and capricious when exercised honestly and upon due consideration.
- (e) The decision below is not supported by substantial evidence.

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature Second Regular Session - 2012

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 691

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO SPECIAL USE PERMITS, CONDITIONS AND PROCEDURES; AMENDING SECTION 67-6512, IDAHO CODE, TO REVISE PROVISIONS RELATING TO NOTICE; AMENDING SECTION 67-6512, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO EXCEPTIONS OR WAIVERS OF CERTAIN STANDARDS; DECLARING AN EMERGENCY, PROVIDING APPLICATION AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6512, Idaho Code, be, and the same is hereby amended to read as follows:

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Each local government is encouraged to post such notice on its official websites, if one is maintained. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission, provided that in all cases notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred (300) feet of the external boundaries of the land being considered and provided further that where a special use permit is requested by reason of height allowance that notice shall be

provided individually by mail to property owners or purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

- (1) Minimizing adverse impact on other development;
- (2) Controlling the sequence and timing of development;
- (3) Controlling the duration of development;
- (4) Assuring that development is maintained properly;
- (5) Designating the exact location and nature of development;
- (6) Requiring the provision for on-site or off-site public facilities or services;
- (7) Requiring more restrictive standards than those generally required in an ordinance;
- (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

SECTION 2. That Section 67-6512, Idaho Code, be, and the same is hereby amended to read as follows:

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed

1 use, and when it is not in conflict with the plan. Denial of a special use
 2 permit or approval of a special use permit with conditions unacceptable to
 3 the landowner may be subject to the regulatory taking analysis provided for
 4 by section 67-8003, Idaho Code, consistent with requirements established
 5 thereby.

6 (b) Prior to granting a special use permit, at least one (1) public
 7 hearing in which interested persons shall have an opportunity to be heard
 8 shall be held. At least fifteen (15) days prior to the hearing, notice of
 9 the time and place, and a summary of the proposal shall be published in the
 10 official newspaper or paper of general circulation within the jurisdiction.
 11 Each local government is encouraged to post such notice on its official
 12 websites, if one is maintained. Notice may also be made available to other
 13 newspapers, radio and television stations serving the jurisdiction for use
 14 as a public service announcement. Notice shall be posted on the premises not
 15 less than one (1) week prior to the hearing. Notwithstanding jurisdictional
 16 boundaries, notice shall also be provided to property owners or purchasers
 17 of record within the land being considered, three hundred (300) feet of the
 18 external boundaries of the land being considered, and any additional area
 19 that may be substantially impacted by the proposed special use as determined
 20 by the commission. Any property owner entitled to specific notice pursuant
 21 to the provisions of this subsection shall have a right to participate in
 22 public hearings before a planning commission, planning and zoning commis-
 23 sion or governing board.

24 (c) When notice is required to two hundred (200) or more property owners
 25 or purchasers of record, alternate forms of procedures which would provide
 26 adequate notice may be provided by local ordinance in lieu of mailed notice.
 27 In the absence of a locally adopted alternative notice procedure, sufficient
 28 notice shall be deemed to have been provided if the city or county provides
 29 notice through a display advertisement at least four (4) inches by two (2)
 30 columns in size in the official newspaper of the city or county at least fif-
 31 teen (15) days prior to the hearing date, in addition to site posting on all
 32 external boundaries of the site.

33 (d) Upon the granting of a special use permit, conditions may be at-
 34 tached to a special use permit including, but not limited to, those:

- 35 (1) Minimizing adverse impact on other development;
- 36 (2) Controlling the sequence and timing of development;
- 37 (3) Controlling the duration of development;
- 38 (4) Assuring that development is maintained properly;
- 39 (5) Designating the exact location and nature of development;
- 40 (6) Requiring the provision for on-site or off-site public facilities
 41 or services;
- 42 (7) Requiring more restrictive standards than those generally required
 43 in an ordinance;
- 44 (8) Requiring mitigation of effects of the proposed development upon
 45 service delivery by any political subdivision, including school dis-
 46 tricts, providing services within the planning jurisdiction.

47 (e) Prior to granting a special use permit, studies may be required of
 48 the social, economic, fiscal, and environmental effects of the proposed spe-
 49 cial use. A special use permit shall not be considered as establishing a

1 binding precedent to grant other special use permits. A special use permit
2 is not transferable from one (1) parcel of land to another.

3 (f) In addition to other processes permitted by this chapter, excep-
4 tions or waivers of standards, other than use, inclusive of the subject
5 matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may
6 be permitted through issuance of a special use permit or by administrative
7 process specified by ordinance, subject to such conditions as may be imposed
8 pursuant to a local ordinance drafted to implement subsection (d) of this
9 section.

10 SECTION 3. An emergency existing therefor, which emergency is hereby
11 declared to exist, Section 2 of this act shall be in full force and effect on
12 and after passage and approval, and shall apply to all permits and approvals
13 granted prior to the effective date hereof. In addition, special use permits
14 that have been approved and for which all opportunities to appeal pursuant
15 to Title 67, Chapter 65, Idaho Code, have expired as of the effective date
16 hereof, are declared to be valid and of continuing force and effect. Pro-
17 vided however, that claims for damages including diminishment of value shall
18 not be extinguished or otherwise affected by the application of the provi-
19 sions of this section. Section 1 of this act shall be in full force and effect
20 on and after July 1, 2012.



Planning & Development Services

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Application for Appeal

Fee: \$ 182.00

I (we) 917 Lusk, LLC, hereby appeal the decision of the Boise City:

- ☒ Planning & Zoning Commission ☐ Hearing Examiner ☐ Design Review Committee
☐ Historic Preservation Commission ☐ Planning Director

File Number: CUP11-00090

Address: 1004 W. Royal Boulevard

Specific Action Being Appealed: Planning and Zoning Commission approval of a height exception to construct a five story multi-family residential building on 3.42 acres at 1004 W. Royal Boulevard in an R-OD zone.

Grounds for Appeal

- The decision is a violation of law; exceeds statutory authority.
- The decision was made on unlawful procedure.
- The decision is arbitrary, capricious, and/or abuse of discretion.
- The decision is not supported by substantial evidence.

Appeal Contact Person: Richard H. Andrus, Spink Butler, LLP

Address: 251 E. Front, Suite 200 Boise, ID 83702 / PO Box 639, Boise, ID 83701

Home Phone: _____ Work Phone: 208 388-0230

Appeals

- ☐ Appeal of an Administrative Decision to the Planning & Zoning Commission or Design Review Committee (non-refundable fee)
☐ Appeal of a Design Review Committee Decision to the Planning & Zoning Commission.*
☒ Appeal of a Planning & Zoning or Historic Preservation Commission decision to City Council.*
☐ Appeal of a Hearing Examiner decision to City Council.*

* Portion of fee is refundable if appeal is successful.

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Notes

- If the reasons for the appeal are resolved prior to the appeal hearing, please contact the Planning Staff at 384-3830.
- The only topics which may be discussed during the appeal hearing are the specific reasons for the appeal as stated in the application.
- Neighborhood groups are encouraged to elect a spokesperson for appeals that are supported by numerous residents of the project to avoid a duplication of testimony.
- Section 11-3-7.2 of the Zoning Ordinance provides that an appeal to Council may not be withdrawn without the consent of Council.

Signature of Appellant/Representative: R. H. Andrus

Date: 3/15/12

For Staff Use Only:

If the appellant is not the applicant, the applicant must be contacted immediately following the acceptance of this appeal.

Applicant contacted on _____ by _____ ☐ Appeal is by applicant

RICHARD H. ANDRUS
JOANN C. BUTLER
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MICHAEL T. SPINK

(208) 388-0230
RANDRUS@SPINKBUTLER.COM

March 29, 2012

Via E-Mail and Hand-Delivery

Attn: Hal Simmons
Attn: Josh Johnson
City of Boise
Planning & Development Services
150 N. Capitol Boulevard
Boise, ID 83701

RE: CUP11-00090 and CFH11-00036 (1004 W. Royal Boulevard)
SB File No. 22868.1

Dear Mr. Simmons and Mr. Johnson:

Our client, 917 Lusk LLC ("**Keynetics**"), owns the Keynetics Inc. building situated immediately east and south of the proposed River Edge Apartment student housing project at 1004 W. Royal Boulevard ("**Project**"). The proposed Project is located in the R-OD zone (Residential – Office with Design Review). The developer, the Michaels Organization ("**Applicant**" or "**Michaels Organization**"), applied for a conditional use permit for a height exception to construct the Project nearly 30 feet taller than the 35-foot height allowed in the R-OD zone. The consequences of this massive increase in height over what Boise City Code and State law allow are far-reaching, prejudicial, and detrimental to our client's substantial rights specifically, and to the surrounding mixed-use neighborhood, which the City would – we hope – like to see re-develop in a manner that benefits all.

In *Burns Holdings, LLC v. Teton County Board of Commissioners*, the Idaho Supreme Court ruled that height limits legislatively-adopted by a local government can only be changed through a variance process – not a conditional use process. After the Boise City Attorney and City Staff were made aware of the *Burns Holdings* decision, Staff responded that they would "convert" the conditional use application to a variance application—despite the fact the Michaels

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P.O. BOX 639
BOISE, IDAHO 83701

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208-388-1001 (F)
WWW.SPINKBUTLER.COM

Organization did not submit a variance application form or pay a variance application fee¹ and despite that the matter had not been noticed as a variance application. Still, the Planning & Zoning Commission (the "**Commission**") proceeded to hear the application as both a conditional use permit as well as a variance. On March 6, 2012, the Commission's action letter was issued containing both Reasons for the Decision and Conditions of Approval (collectively, the "**Decision Letter**").

On March 15, 2012, Keynetics appealed the Commission's decision to the Boise City Council (the "**Council**"). This letter constitutes Keynetics' memorandum in support of the appeal.

ANALYSIS

The Commission's decision approving the conditional use permit application and the variance violates Idaho Code and Boise City Code, exceeds the Commission's statutory authority, is arbitrary, capricious and an abuse of discretion, and is not supported by substantial evidence.²

A. The Proposed Height Exception Fails to Meet the Requirements for a Conditional Use Permit.

Conditional uses "by definition possess characteristics such as to require review and appraisal by the Commission to determine whether or not the use would cause any damage, hazard, nuisance or other detriment to person or property in the vicinity."³ In other words, the "use," in this case a height standard, is deemed a risk to persons or property to be proven otherwise or mitigated with appropriate conditions.⁴ The proposed Project does not satisfy the criteria for conditional use permits under the Boise City Code.⁵ Further, the Commission did not attach conditions of approval that would mitigate the adverse impacts caused by the Project.

1. The Proposed Project is Not Compatible to Other Uses in the General Neighborhood. – Boise City Code § 11-06-04.13.A.

The Commission's sole rationale that the Project is compatible with other uses in the general neighborhood is that "there are buildings of similar height in the immediate vicinity and ample

¹ The Boise City Code requires an "application with the appropriate form and fee." Boise City Code § 11-06-11.02. For variances, the City requires payment of a separate \$366 fee and utilizes a separate Variance Application Form (Department Application form #122).

² Boise City Code § 11-03-07.05.G.8.

³ Boise City Code § 11-06-04.01.

⁴ See *Burns Holdings, LLC v. Teton County Board of Commissioners*, 2012 WL 206010 *4 for a discussion on why it is problematic to call height a "use."

⁵ Boise City Code 11-06-04.13.

separation is provided to shorter structures.”⁶ This is not true and was not supported by the substantial evidence before the Commission. The proposed Project’s five stories and 63-foot height is not compatible with the other buildings in the neighborhood. Most of the office buildings within the Forest River development on the north bank of the Boise River are either two or three stories tall.⁷ It is important to bear in mind that although those buildings are now located in the R-OD zone, they were not at the time they were constructed. According to the architects that designed the buildings, the land was zoned L-OD when the buildings were developed, and the L-OD zone allows a building height of 45 feet. Moreover, all of those buildings, with the exception of the Cornerstone (Cottonwood Grille) building, are 15 to 20 feet shorter than the proposed Project. The proposed Project would tower over the surrounding area—including the Greenbelt—at five stories.

The Keynetics office building is three stories; the proposed Project would be 10 to 15 feet higher than the Keynetics building.⁸ The Keynetics building is located in a zone (C-2D) that permits buildings 10 feet higher than the zone in which the proposed Project is located.⁹ The proposed structure would harm the Keynetics building by completely obscuring views from the Keynetics building to the west toward Ann Morrison Park.

The Commission claims compatibility with surrounding buildings that are not in the immediate vicinity – the Morrison Center (at 63 feet) and the Barnes Towers (at 74 feet), which are both located on the Boise State campus, nearly a third of a mile from the proposed Project.¹⁰ Moreover, the Morrison Center and Barnes Towers are also across two major roadways (9th Street and Capitol Boulevard) from the neighborhood surrounding the Project. More importantly, the Morrison Center and the Barnes Towers are in completely different zones (U and UC), which allow buildings as tall as 75 feet.¹¹ Merely comparing buildings “along the Greenbelt” without accounting for the differing zoning classifications in which they are located ignores what it means to be compatible with surrounding buildings.

Not only is the unusual height of the proposed Project not harmonious with the surrounding uses, but its design is also not compatible. BRS architects designed the buildings in the Forest

⁶ *Decision Letter* p. 3.

⁷ *Barber Letter* p. 1. The Cornerstone (Cottonwood Grille) building is the lone exception with four stories.

⁸ The Keynetics building is located in the C-2D zone. The majority of the Keynetics building’s height is below the zone’s 45-foot height limit; the tallest habitable floor height of the Keynetics building is 41 feet. A design parapet is 46 feet high, and a stairwell structure used to access utility structures on the roof extends to 53 feet. Keynetics obtained a height exception for aesthetic and design characteristics, and not to increase the density or to add floors as is requested in the present application.

⁹ Boise City Code § 11-04-06.10, Table 4A.

¹⁰ *Decision Letter* p. 3.

¹¹ Boise City Code § 11-04-11.04.

River Development as well as the Keynetics building. Those buildings are not carbon copies of each other, but they do include unifying and complimentary themes. The proposed Project contains none of the unifying or complementary themes. In fact, Design Review changes require contemporary colors that, while possibly compatible with downtown, are not compatible with the existing buildings or the natural setting along the Greenbelt.

2. The Proposed Project will Place an Undue Burden on Transportation and Other Public Facilities in the Vicinity. – *Boise City Code § 11-06-04.13.B.*

Parking problems created by the higher density associated with the height of the proposed Project will strain public facilities in the area. Ann Morrison Park, a City owned park, will be clogged with overflow parking. Visitors to the park will not be able to locate parking, and the City will be forced to expend valuable resources policing parking areas within the park and along the Greenbelt. As was noted by the City of Boise in its new comprehensive plan, Blueprint Boise, “while many places are tempted to relax standards during uncertain economic times, our high expectations will hold value many decades later.”¹² The City should resist pressure to make decisions now that will hinder the redevelopment of the area due to impacts of this Project on the attractiveness of the immediate vicinity and the Greenbelt.

3. The Proposed Project Will Adversely Affect Other Property in the Vicinity. – *Boise City Code § 11-06-04.13.D.*

Parking issues created by the Project – with no mitigation – will severely and adversely affect the properties in this re-developing neighborhood.

Staff and the Commission claimed the adverse parking situation created by the Project cannot be considered when determining whether to grant the conditional use permit or the variance for a height exception.¹³ This conclusion ignores Boise City Code requirements that a conditional use permit for a proposed Project will not adversely affect other property within the vicinity.¹⁴ Inadequate parking provided by the proposed Project will severely affect nearby properties. Further, the request for a height exception that is nearly twice that allowed in the R-OD zone cannot be separated from parking concerns. Each added story increases occupant density and the need for additional parking. Because the housing Project would include 175 dwelling units (of which 139 are four-bedroom units), it will contain 622 bedrooms and house at least 622 student tenants, yet only 280 parking spaces are planned.

¹² Blueprint Boise, Foreword.

¹³ March 5th Minutes pp. 1 and 15.

¹⁴ Boise City Code § 11-06-04.13.D. A similar standard exists for variances. Boise City Code § 11-06-11.04.C (requiring that a variance “will not be detrimental to the public health, safety or welfare, or injurious to other property, or the quiet enjoyment thereof.”).

The application was improperly processed as "multi-family" for purposes of calculating off-street parking requirements. This is a significant error because "multi-family" projects under the City's off-street parking requirements must include only 1.5 parking spaces per dwelling unit and one guest space per 10 units.¹⁵ Presumably, the "multi-family" parking requirements were drafted with the notion that one or two car driving adults would live in each unit. That presumption does not logically apply to the proposed student housing Project.

The Applicant and the City have been clear that the Project is aimed at student housing for Boise State students.¹⁶ The student-centered nature of the Project is borne out by the number of bedrooms in each unit and the proposed leasing arrangement. Most multi-family apartment complexes in downtown and the downtown periphery include one-bedroom, two-bedroom, or a combination of one and two bedroom units. The proposed structure would consist almost entirely of four-bedroom units (175 total dwelling units of which 139 are four-bedroom units) and will include 622 bedrooms for at least 622 student tenants.

The leasing arrangement further demonstrates that the proposed Project is not typical multi-family housing, where the lease covers the entire apartment and not, as in this case, a lease for each individual bedroom.¹⁷ Each lease on a bedroom-by-bedroom basis will be guaranteed by a parent guarantor. Thus, each "unit" is a bedroom under the leasing arrangement.

The table below provides the ratio of parking spaces to bedrooms in multi-family apartments and college fraternity/sorority housing projects under Boise City Code:¹⁸

¹⁵ Boise City Code § 11-10-01.01, Table 1.

¹⁶ Compare *Planning Division Staff Report prepared for Commission Hearing on February 6, 2012 and Letter from Engineering Solutions LLP dated November 28, 2012* (the "First Applicant Letter") with *Planning Division Staff Report prepared for Commission Hearing on March 5, 2012 and Letter from Engineering Solutions LLP dated February 27, 2012* (the "Second Applicant Letter").

¹⁷ The foregoing information was obtained by Eileen Barber in conversations with the Applicant's representatives.

¹⁸ The ratios were calculated by using the Boise City Code § 11-10-01.01, Table 1. The Fraternity/Sorority classification best describes the proposed project: groups of young (driving-age) adults living together. Under the Fraternity/Sorority classification the proposed project must (and should) provide at least 622 parking spaces. Staff provided the Commission with parking figures from a few select on-campus housing projects at Boise State. Those on-campus projects provide no guidance for an off-campus project. On campus housing traditionally caters to freshman and sophomores and foreign students without cars, and students that have purposely chosen to live on campus because they do not have cars. Keynetics provided the Commission with parking ratios from off-campus multi-family apartments, which have much higher parking ratios (.78 to 1.19). Those ratios demonstrate the project is severely under-parked.

Bedrooms Per Unit	Ratio Parking Spaces to Bedroom
All one-bedroom Units	1.6
All two-bedroom Units	0.8
Combination of one- and two-bedroom Units	0.9 to 1.5
Fraternity/Sorority	1.0
Proposed Project	0.45

With only 280 proposed parking spaces (including spaces for visitors and complex staff) for 622 bedroom units, the Project creates a parking ratio far below that of typical multi-family apartments.

Even slight changes in the number of student tenants with cars creates a monumental problem. The table below illustrates how the shortage of parking spaces doubles as the percentage of students with cars increases to 75%, which, according to the Applicant, is a realistic expectation:¹⁹

% of Students with Cars	Parking Spaces Needed Based on 622 Occupants	Shortage of Parking Spaces
60%	373	93
65%	404	124
70%	435	155
75%	467	187

The shortage of parking spaces and the excess of cars will be detrimental to the public health, safety, welfare, and injurious to nearby properties and the City of Boise. Parking in this neighborhood has been a problem, remains a problem, and will become an even more serious problem with the severe shortage of parking for the building tenants. Although students will be able to walk or bike to their classes, many will still own cars to drive to grocery stores, retail stores, jobs, recreation, parents' homes, etc. Many students opt for off-campus housing, so they can have a car.

The reduced reliance on auto travel that this particular location may provide for tenants does not reduce the need for parking. The City has recognized that the reduction in travel demand does not equate to a reduction in parking demand for other off-campus student housing projects, which have been required to provide more car and bike parking facilities.

¹⁹ According to the Applicant's representative, at least 60% to 65% of college students own cars. See, *Letter from Eileen Barber to the Commission, dated February 13, 2012* (the "*Barber Letter*") p. 3.

Last fall, the Commission approved CUP11-00051, which involved a plan to repurpose the Doubletree Hotel at 475 W. Parkcenter Boulevard into 158 residential dwelling units aimed at student tenants. The conditions of approval are instructive. The Project was limited to 142 units with a total occupancy of 200 tenants. However, the Project was required to provide 200 bicycle parking spaces and 180 car parking spaces. That is a one-to-one ratio for bikes, and nearly a one-to-one ratio for cars. Yet, the proposed Project provides only 48 bicycle parking spaces and 280 car parking spaces for at least 622 tenants. The disparate treatment of the two off-campus student housing projects is not justified, and it is not fair to either the ultimate tenants of the proposed Project or its neighbors.

Procedurally there remains the nagging problem that the Planning Director has not, as a preliminary matter, made an administrative decision on the number of parking spaces required, thus depriving our client and others to be involved with that decision very early in the process. If a project, such as this, does not fit within either the "multi-family" designation or the "Fraternity/Sorority" classification, the Planning Director is required to determine the appropriate number of required parking spaces.²⁰ The Planning Director has not done so. The Council should, at the very least, remand this application so the Planning Director can properly determine the appropriate number of parking spaces for an off-campus student housing project. The Commission's decision was not based on substantial evidence that included this information.

Ultimately, if not addressed, inadequate parking will make the proposed Project an undesirable place to live, adversely affect the businesses in the area, and harm the ability to enjoy Ann Morrison Park and the Boise River Greenbelt. Students that cannot find parking within the housing Project will park at adjacent properties and within Ann Morrison Park. This situation is against the public interest, will be detrimental to the public health, safety, and welfare, and will injure neighboring properties.

The proposed height of the Project will also adversely affect Keynetics building occupants by obscuring views to the west toward Ann Morrison Park. Individuals walking along the Greenbelt and in Ann Morrison Park will be confronted with the sight of a structure nearly double what is allowed in the R-OD zone, which zone is intended to be a transition zone.²¹ Instead of a transition, the proposed Project will be the tallest building in the neighborhood between the Boise River, Ann Morrison Park, and 9th Street.

Because the Commission stated that it would not even consider the parking situation when assessing the conditional use permit and the variance,²² the Commission failed to consider all necessary evidence and make the required determination under Boise City Code Section 11-06-

²⁰ Boise City Code § 11-10-01.01.C.

²¹ Boise City Code § 11-04-05.03.

²² March 5th Minutes pp. 1 and 15.

04.13.D. Regardless, substantial evidence provided to the Commission demonstrates the proposed Project would adversely affect other property in the vicinity due to not only the parking, but also the design and height of the building.

4. The Proposed Project Does not Comply with or Support the Goals of the Comprehensive Plan. – *Boise City Code § 11-06-04.13.E.*

As set forth above, the proposed Project does not maintain compatibility with surrounding buildings or uses. Thus, contrary to the Commission's findings, the Project does not comply with Objective 7.2.1 of the Comprehensive Plan.²³ In fact, the proposed Project actually contradicts other provisions of the Comprehensive Plan.

Parking issues created by the proposed Project violate the City's Comprehensive Plan. The Comprehensive Plan provides that on-street parking by Boise State students and staff in neighborhoods near campus is discouraged and the City shall explore "[m]ethods for reducing on-street, off-campus parking."²⁴ Further, on-street parking is generally discouraged.²⁵ The proposed Project will only intensify and congest on-street parking in the area around the development and, more generally, the Boise State campus, demonstrating further non-compliance with the Comprehensive Plan.

The proposed Project also fails to provide a "new residential structure that [is] functional and aesthetically pleasing" as required by the Comprehensive Plan.²⁶ The large mass of the structure and the continuous roof line, which is only broken by the parapets required by Design Review, creates an overpowering structure on this portion of the Greenbelt.

The proposed design is not the only design option available for higher density housing at the location. A more appropriately designed project with adequate parking and a height that conforms to the zoning ordinance would support the objective in the Comprehensive Plan for residents to "seek housing in a neighborhood of their choice."²⁷

²³ *Comprehensive Plan Objective 7.2.1* does not expressly provide for "compatibility with surrounding buildings" as stated in the *Decision Letter*. Rather, it provides the City shall "[p]romote and establish a physical framework of development in the City which encourages the development of form and character of its districts, the preservation of its neighborhoods and the conservation of its historical identity." The proposed project does not comply with the express language of *Objective 7.2.1*.

²⁴ *Comprehensive Plan Policies 2.16.1.8 and .9.*

²⁵ *Comprehensive Plan Policies 6.4.3.1 and .2.*

²⁶ *Comprehensive Plan Objective 7.2.2.*

²⁷ *Comprehensive Plan Objective 7.1.2.*

5. The Proposed Project Does Not Include Features That Add to the Visual and Aesthetic Appearance of the Structure and Help Prevent a Sterile, Box-Like Appearance, and the Commission Failed to make the Required Findings that specific Design Features have been added to enhance the physical appearance of the Project. – Boise City Code § 11-06-04.13.F.

Although the Project went through the design review process, the proposed design does not include features that add to the visual and aesthetic appearance and help prevent a sterile, box-like appearance. Even if opinions may differ about whether the design of the proposed Project is attractive, the Commission clearly failed to make any findings that specific design features were added to enhance the physical appearance of the Project.²⁸ This failure to comply with Section 11-06-04.13.F demonstrates error and the application accordingly should be denied.

B. Under LLUPA, the Applicant Did Not Submit a Valid Application for a Conditional Use Permit for a Height Exception.

In *Burns Holdings, LLC v. Teton County Board of Commissioners*,²⁹ the Idaho Supreme Court merely affirmed what the Local Land Use Planning Act ("LLUPA")³⁰ stated long before the present Applicant submitted its request for a height exception: conditional (or special) use permits apply to uses, and variances apply to modification of bulk or placement standards.³¹ As the Idaho Supreme Court explained:

A CUP is used for classifications of uses that the zoning authority has determined will be permitted only if it is allowed to require specified types of conditions that are typically developed on a case-by-case basis in order to mitigate the adverse effects that the development and/or operation of the proposed use may have upon other properties or upon the ability of political subdivisions to provide services for the proposed use.³²

This makes sense. A conditional use permit includes conditions to mitigate the impacts of the particular use, which use has been defined by the City to possess characteristics requiring a determination about whether the use would cause any damage, hazard, nuisance, or other detriment to person or property in the vicinity.³³ Bulk and placement standards (i.e., height and mass and where the building sits on a parcel) are distinguishable from the use of the building.

²⁸ See *Decision Letter*.

²⁹ *Burns Holdings, LLC v. Teton County Board of Commissioners*, 2012 WL 206010.

³⁰ Idaho Code §§ 67-6501 to 67-6538.

³¹ Idaho Code §§ 67-6512 (special or conditional use permits) 67-6516 (variances).

³² *Burns Holdings, LLC v. Teton County Board of Commissioners*, 2012 WL 206010 *4 (emphasis added).

³³ Boise City Code § 11-06-04.01.

Bulk and placement standards adopted by the City, by their very nature as uniform standards within a particular zone, do not allow for site specific manipulation of the standards, lest the uniformity requirements of LLUPA be violated.³⁴ This is why variances only apply "upon a showing of undue hardship because of characteristics of the site. . ."³⁵ In other words, the physical characteristics of the site make it difficult or impossible to comply with the normal bulk and placement standards (which standards apply to all other property located within the same zone). Otherwise, bulk and placement standards within a zone become at best mere "suggestions," and at worst, arbitrary and subject to the whim of the reviewing body or individual.

Regardless of the logic or policy considerations behind the rules established in LLUPA pertaining to conditional use permits and variances, at the time the Applicant submitted its conditional use permit application for a height exception, the Boise City Code provision³⁶ that allowed conditional use permits for height exceptions violated LLUPA and was void.³⁷ The City simply does not possess authority to waive the requirements of LLUPA.³⁸ Thus, the Applicant never submitted a valid conditional use permit application.

Because the application is not a valid conditional use permit application, the variance cannot be heard without a separate variance application. Boise City Code provides that an "application with the appropriate form and fee is required" for a variance.³⁹ The Michaels Organization did not submit a variance application form or pay a variance application fee,⁴⁰ and the notices did not describe the application as a variance application.

Boise City Code Section 11-06-11.05 does provide that the "Commission or Hearing Examiner may grant a variance as part of a conditional use permit without separate application and hearing as long as the notice requirements of Section 11-6-11.3 are met and the findings in Section 11-6-11.4 are made."⁴¹ However, because no valid conditional use permit application

³⁴ See, Idaho Code §67-6511: "...All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district."

³⁵ Idaho Code §67-6516.

³⁶ Boise City Code § 11-06-06.12.

³⁷ *Burns Holdings, LLC v. Teton County Board of Commissioners*, * 3 - *4.

³⁸ *Burns Holdings, LLC v. Teton County Board of Commissioners*, * 3 - *4.

³⁹ Boise City Code Section 11-06-11.02.

⁴⁰ The Boise City Code requires an "application with the appropriate form and fee." Boise City Code § 11-06-11.02. For variances, the City requires payment of a separate \$366 fee and utilizes a separate Variance Application Form (Department Application form #122).

⁴¹ Boise City Code Section 11-06-11.05 (emphasis added).

was submitted to the City, no variance can be made part of a conditional use permit. In other words, a variance cannot be converted from a conditional use permit application that was never authorized under LLUPA that was in effect at the time the application was submitted. The variance can only be heard as part of an authorized conditional use permit application.

C. The Proposed Height Exception Fails to Meet the Requirements for a Variance.

The proposed student housing Project does not comply with the Boise City Code or Idaho Code requirements for a variance. The Boise City Code provides that a "variance shall not be considered a right or special privilege but may be granted upon a showing of undue hardship because of characteristics of the site or unique circumstances relating to the intended use and that the variance is not in conflict with the public interest."⁴² Further, a variance request may only be approved with the findings:

- A. That the granting of the variance will not be in conflict with the Comprehensive Plan for the City and will not affect a change in zoning;
- B. That there is either a hardship associated with the property itself or an exceptional circumstance relating to the intended use of the property that is not generally applicable in the district; and
- C. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property, or the quiet enjoyment thereof.⁴³

The parameters of variance under the Boise City Code, however, must conform to the limits set forth in LLUPA for variances.

Idaho recognizes Dillon's Rule that a "municipal corporation may exercise only those powers granted to it by either the state constitution or the legislature and the legislature has absolute power to change, modify or destroy those powers at its discretion."⁴⁴ If Boise City Code violates or provides a lower/looser standard than set forth in the Idaho Code for variances, the provision of the Boise City Code is void. Idaho Code provides a more succinct standard for a variance than the Boise City Code: "A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest."⁴⁵ To the extent the Boise City Code attempts to impose a lesser standard for variances than those

⁴² Boise City Code § 11-6-11.01.

⁴³ Boise City Code § 11-6-11.04.

⁴⁴ *Caesar v. State*, 101 Idaho 158, 160, 610 P.2d 517, 519 (1980) (citing *State v. Steunenberg*, 5 Idaho 1, 4, 45 P. 462, 463 (1896)).

⁴⁵ Idaho Code § 67-6516 (emphasis added).

set forth in the Idaho Code, the Boise City Code is void. Regardless, the proposed Project meets neither the City requirements nor the Idaho Code requirements.

1. The Applicant has Not Demonstrated an Undue Hardship Due to the Characteristics of the Particular Site.

The hardship must be unique to the particular property and not shared by other properties within the zone and/or self-created by the proposed use. There is simply nothing unique about this particular property in this R-OD zone.

The Commission claims a hardship is present because "the project is located within the floodplain and the site must artificially be raised above base flood elevation."⁴⁶ The Commission's decision cites no other "hardship" unique to the particular property.

The Applicant admits the Boise River Ordinance merely requires the "finished floor of the proposed structure" to be one foot above the Base Flood Elevation."⁴⁷ The current elevation of the property is 2686 feet.⁴⁸ At the Commission hearing on March 5th, the Applicant's representative stated that "with our grading plan I think we're at a 2688.7, which is our highest finish floor elevation."⁴⁹ Thus, using the Applicant's own numbers, the location within the floodplain only adds 2.7 feet to the height of the building from what would be allowed outside the floodplain.⁵⁰ This hardly accounts for the other proposed 26 feet above what the R-OD zone designation allows. The additional 26 feet requested by the Applicant cannot be justified by the floodplain. At most, the Applicant can claim a hardship for 2.7 feet of height.

The fact that the Project will be raised one foot (or even 2.7 feet) above base flood elevation does not support the Commission's decision for a height variance of nearly 30 feet. Even assuming the floodplain is somehow unique only to the proposed site—which it is not—there is no explanation by the Commission as to why the floodplain would require the building to exceed—by nearly 30 feet—the adopted R-OD height of 35 feet. The floodplain alone does not necessitate a 63-foot tall structure.

In fact, the entire floodplain argument is incorrect under Boise Code and misleading. The Boise City Code defines "building height" as the "vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof or the average height of the

⁴⁶ *Decision Letter* p. 3.

⁴⁷ *Second Applicant Letter* p. 4.

⁴⁸ *Andrus Letter* Exhibit A.

⁴⁹ *March 5th Minutes* p. 5.

⁵⁰ *See Second Applicant Letter* p. 4 and *First Applicant Letter* p. 3.

highest gable of a pitch or hip roof.”⁵¹ The “grade” is defined as the “elevation of the finished surface of the ground adjacent to the exterior wall of a building or structure.”⁵² In other words, fill brought onsite to raise the finished floor of the proposed structure one foot above the Base Flood Elevation has no effect on the building height because the building height is determined from the elevation of the fill.⁵³

The Applicant also claims it must build an apartment complex of a particular size in order to make the Project feasible; the Idaho Supreme Court rejected this argument 25 years ago. Economic viability is not an adequate hardship for purposes of obtaining a variance.

In *City of Burley v. McCaslin Lumber Co.*, a property owner began converting a duplex into a triplex, despite the fact that triplexes were not allowed in the zone where the property was located. Upon learning of the issue, the property owner applied for a variance to complete the triplex, which was granted. The Supreme Court invalidated the variance and aptly held as follows:

The variance was granted because increasing the density of the land use, from a duplex to a triplex, would make the remodeling economically feasible. However, the same could be said of any investment in rental property. When the density of land use is increased, the potential income flow also increases. An otherwise unprofitable investment, such as remodeling, may become feasible. This correlation between density of land use and the scope of feasible investments is not “peculiar” to the property at issue in this case. It could apply to rental properties anywhere.⁵⁴

Simply stated, if the Project cannot be built within the height limits adopted by the City and set forth in the R-OD zone, the Project is not suitable for the R-OD zone. A claim for “economic feasibility” will not cure this problem.

During the March 5th hearing, Applicant’s representatives listed items that it believes are unique to its property and demonstrate a hardship, including: the zoning ordinance required setbacks,

⁵¹ Boise City Code § 11-01-03.01 (emphasis added).

⁵² Boise City Code § 11-01-03.01.

⁵³ Mathew Bartner, architect on the project for the applicant, testified at the Commission hearing on February 13, 2012 that the fill brought on the site to account for the location within the floodplain could possibly add “four feet in the overall height of the buildings, but on the north side, the Greenbelt side, grade comes up basically to the floor level so that four feet is mitigated on that side.” *Boise City Planning & Zoning Commission Minutes for February 13, 2012* (the “February 13th Minutes”) p. 2. Mr. Bartner’s statement ignores the fact that not all of the four feet is attributable to the floodplain. Nevertheless, even under the most generous interpretation proposed by Mr. Bartner of grade and building height under the Boise City Code, the floodplain location would only add four feet to the building height, far below the nearly 30 feet extra requested by the Applicant.

⁵⁴ *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (1984).

“special requirements as to the treatment on Royal,” an ACHD storm drain located on the property, small lot size, the desire for higher density housing near Boise State, and the inclusion of podium parking in the Project design.⁵⁵ These items are either not unique to this property or are self-imposed by the Applicant; the existing standards of the R-OD zone do not “mandate” that the Project be designed as it has in order to make the Project economically feasible.⁵⁶ The Applicant did not provide, and the Commission did not find or describe, any connection between those items to justify a variance to exceed the R-OD height limit by nearly double.⁵⁷ Height, setback, parking, and other bulk standards within the R-OD zone are legally required to apply uniformly for all parcels within the R-OD zone. If the City determines it would like higher density student housing projects than what is allowed under the current bulk standards of the R-OD zone—which the City may very well want to consider—the proper course of action is to amend the zoning ordinance. To do otherwise, would violate Idaho Code Section 67-6511 that requires “[a]ll standards shall be uniform for each class or kind of buildings throughout each district.”⁵⁸

2. The Variance Would Constitute a Special Privilege.

All other property within the R-OD zone must comply with the height, setback, and other bulk standards applicable in the R-OD zone. A variance for the proposed Project would constitute a special privilege that other properties within the R-OD zone do not enjoy. If the City determines it would like higher density student housing projects in the R-OD zone, the proper course of action is to amend the zoning ordinance so the changes apply across the board and fairly to all similarly situated property owners.⁵⁹

3. The Variance Would Constitute a Zoning Change.

The maximum building height in the R-OD zone is 35 feet.⁶⁰ If the Council allows the Commission’s decision to stand and the proposed Project is built, it would effectively allow spot zoning within this portion of the R-OD zone. Staff argued that the R-OD zone height limit of 35

⁵⁵ This list appears to be a duplicate of a list included in the *Second Applicant Letter* p. 4:

- The 3.21-acre lot size.
- The parking requirements.
- Eight-foot wide detached sidewalk and eight-foot wide landscape along Royal Boulevard.
- 70-foot setback from the Boise River 6,500 C.F.S. watermark.
- An existing ACHD 15-inch drainage pipe along the property’s west boundary.

⁵⁶ The list includes the items listed in footnote 56 above. *See Second Applicant Letter* p. 4.

⁵⁷ *See Decision Letter.*

⁵⁸ Idaho Code § 67-6511.

⁵⁹ This would also help assure compliance with Idaho Code Section 67-6511.

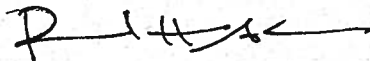
⁶⁰ Boise City Code § 11-04-05.05.

feet and the "desire of this zone . . . for multi-story high density residential projects" "presents an unusual circumstance."⁶¹ The unusual circumstance appears to be manufactured for this particular Project. A variance for one property is not the solution for a zone wide problem. If 35 feet is insufficient for high density apartment buildings within the zone and the City desires to have higher density projects within the zone, the appropriate method of changing the bulk standards would be to amend the zoning classification ordinance.

CONCLUSION

Keynetics understands the desire of the City in promoting economic development. As a business that located to Boise from out of state, and as a local employer, Keynetics has a long-term investment in the City of Boise and the quality of life of its employees that live and work here. Keynetics is not opposed to a student housing project per se; in fact, it invites redevelopment of this underutilized property. However, redevelopment should not only comply with the City's ordinances and the Idaho Code, and it should not injure its neighbors. The present design meets none of these criteria. The Applicant appears to have the resources available to design the building suitable for City of Boise and the neighborhood surrounding the property. Keynetics respectfully requests that the Council take the actions suggested above and deny the approval.

Very truly yours,



Richard A. Andrus

RHA:g

c: Eileen Barber (*via e-mail*)
Brad Wiskirchen (*via e-mail*)
JoAnn C. Butler (*via e-mail*)

⁶¹ Planning Division Staff Report prepared for Commission Hearing on March 5, 2012 p. 2.



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April 4, 2012

Boise City Council
Boise Planning and Development Services
150 N. Capitol Boulevard
Boise, Idaho 83701

Re: River Edge Apartments, CUP 11-00090
Applicant's Response to Appeal by 917 Lusk LLC

Dear Boise City Council Members,

This law firm represents the Michaels Organization ("Michaels"), the developer of the River Edge Apartments ("River Edge") proposed to be built on Royal Boulevard along the Boise River near Ann Morrison Park. River Edge is the kind of project the City of Boise has been looking for: a quality residential product near downtown, serving a critical need for close-in housing for Boise State students.

On March 5, 2012, the Planning and Zoning Commission ("P&Z") approved a conditional use permit ("CUP") and variance for a height exception for River Edge. A single neighboring property owner, 917 Lusk LLC ("Appellant"), has appealed the approval of the project, complaining it will obscure the view from Appellant's office building to the west toward Ann Morrison Park. In its appeal, Appellant fails to meet its burden to show that the P&Z's decision is erroneous. Therefore, the P&Z decision must be upheld.¹

I. The standard of review is deferential to the P&Z decision.

The Boise City Council has adopted an appellate (i.e. on the record), rather than a *de novo* (i.e. new proceeding with new evidence), standard of review for appeals of P&Z decisions to City Council. The City Council may not consider any new facts or evidence on appeal.²

¹ The P&Z also approved a Boise River System Permit, but Appellant did not appeal that permit.

² Boise City Code § 11-03-07.05(F)(5)(a).

Further, so long as the P&Z's decision is supported by substantial evidence, the City Council shall accept those findings.³

The City Council may only find error with a P&Z decision if it: (a) violates the constitution, a state statute or City ordinance; (b) exceeds statutory authority; (c) is made upon unlawful procedure; (d) is arbitrary, capricious or an abuse of discretion; or (e) is not supported by substantial evidence.⁴

II. The 2012 Legislature amended LLUPA to clarify that height exceptions are and have been allowed by CUP.

Appellant's primary assertion—that the Boise City ordinance allowing height exceptions by CUP is void based on the Local Land Use Planning Act ("LLUPA")⁵ and a recent Idaho Supreme Court decision—has no merit because new legislation retroactively amends LLUPA to expressly state that height exceptions are allowed by CUP.

In *Burns Holdings, LLC v. Teton County Board of Commissioners*, 12.3 ISCR 45 (Jan. 25, 2012), the Court interpreted LLUPA to find that a variance rather than a CUP must be used to obtain a waiver of a zoning ordinance provision limiting the height of buildings. Based on this interpretation of LLUPA, Appellant argues that Boise City Code § 11-06-06.12, which allows height exceptions by CUP, is void and that the River Edge CUP application filed pursuant to this code section is invalid.⁶

Although we do not agree with Appellant's interpretation of LLUPA or the effect of *Burns Holdings* on the River Edge application (which preceded the decision), these issues are no longer material as the 2012 Idaho Legislature passed legislation to amend LLUPA to expressly state that height exceptions are allowed by CUP.⁷ The new legislation provides:

In addition to other processes permitted by this chapter, exceptions or waivers of standards, other than use, inclusive of the subject matter addressed in Section 67-6516, Idaho Code [i.e. variances], in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance, subject to such conditions as may be imposed pursuant

³ Boise City Code § 11-03-07.05(G)(1).

⁴ Boise City Code § 11-03-07.05(G)(8).

⁵ Idaho Code §§ 67-6501 *et seq.*

⁶ This position is directly contrary to Appellant's own interests since Appellant received a height exception for their office building pursuant to the same code provision.

⁷ As of this writing, the Legislation (H0691) has passed both houses of the Legislature by wide margins and has been delivered to the Governor. Absent prior action by the Governor, the bill will be enacted by operation of law on April 9, 2012 (10 days following adjournment of the Legislature).

to a local ordinance drafted to implement subsection (d) of this section.⁸

The Legislature explained that its intent was to reject the *Burns Holdings* interpretation of LLUPA, to amend the language to clarify that height exceptions are allowed by CUP, and to make the amendment retroactive to confirm that LLUPA has always allowed height exceptions by CUP.⁹ Thus, Boise City Code § 11-06-06.12 is not void and the River Edge CUP application filed pursuant to that section is not invalid. Further, although we disagree with Appellant's arguments challenging the P&Z decision to approve a variance,¹⁰ those issues need not be addressed since the project does not require a variance in light of H0691.

III. The P&Z decision granting the CUP is proper.

Appellant has not shown that the P&Z decision is erroneous based on applicable law and the administrative record. Therefore, it must be upheld.

A. The P&Z decision, and P&Z's exercise of authority in making the decision, comply with state statutes and city ordinances.

Both LLUPA and Boise City Code allow a height exception to be granted by CUP.¹¹ As discussed above, any uncertainty created by *Burns Holdings* about whether LLUPA allows height exceptions by CUP has been resolved by amendments to LLUPA.

B. The P&Z decision was made in accordance with lawful procedure.

Appellant does not specifically allege, or cite evidence of, any procedural errors.

C. The P&Z decision is not arbitrary, capricious or an abuse of discretion.

Appellant has not demonstrated that the P&Z's actions "were without rational basis; or in disregard of the facts and circumstances presented. Where there is room for two opinions, action is not arbitrary and capricious when exercised honestly and upon due consideration."¹² Rather,

⁸ H0691, to be codified as Idaho Code § 67-6512(f).

⁹ "The [Burns Holdings] court decision interpreted the law contrary to legislative intent and to practices that have been followed for over 30 years, and places in question prior permits issued through an otherwise valid hearing process. ... [The bill] clarifies that the Legislature intended the conditional use permit to be a process through which waivers of or exceptions to zoning standards could be permitted. ... Finally, it makes the application of the clarified conditional use permit language retroactive to demonstrate that this was the Legislature's original intent." Statement of Purpose RS21549 (H0691).

¹⁰ The P&Z properly found that a variance was warranted in light of the hardship and exceptional circumstances created by the site's location within the floodplain (requiring the base elevation to be raised) and its relatively small size and frontage on the Boise River greenbelt and the Ann Morrison Park entryway (requiring podium parking to accommodate pedestrian access).

¹¹ Idaho Code § 67-6512; Boise City Code § 11-06-06.12.

¹² Boise City Code § 11-03-07.05(G)(8)(d).

as detailed below, the P&Z's decision was made reasonably based on the applicable standards for a CUP and the facts presented. Thus, even if an alternate decision could have been made, the P&Z decision cannot be deemed arbitrary and capricious.

D. The P&Z decision is supported by substantial evidence.

1. The P&Z properly determined River Edge is compatible to other uses in the general neighborhood (Boise City Code § 11-06-04.13(A)).

Appellant claims the P&Z's "sole rationale" for compatibility is that there are buildings of similar height in the immediate vicinity. It is true that the surrounding buildings are similar in height, but it is not the only factor the P&Z considered for compatibility. The P&Z's determination of compatibility to other uses in the general neighborhood is based on numerous considerations and supported by substantial evidence in the record including:

- There are buildings of similar height in the immediate vicinity.¹³ River Edge is proposed to be 59' at the greenbelt and 63' along Royal Boulevard.¹⁴ Appellant's Keynetics building was approved for 56' and constructed at 53'.¹⁵ Cottonwood Grill was approved for a height exception of its parapet at around 61' and additional elements at 64' to 65', stairwells, elevators and things of that nature.¹⁶ The Morrison Center is 63', and the student dormitories on Capitol Boulevard are 74'.¹⁷ Along the river corridor, multiple buildings have received height exceptions, including the Cottonwood Grill, the Mallard Building, Blue Heron and the Arid Club.¹⁸
- River Edge provides ample separation from shorter structures.¹⁹ There are some three-story apartment buildings to the southwest; the impact to these structures will be reduced due to the distance created by Royal Boulevard and setbacks.²⁰ Neither the complex owner nor its residents have objected to the project.
- The additional height does not increase the density to the point it exceeds parking standards.²¹
- The proposed building height does not obstruct pedestrian views of the river any more than a 35-foot building would, and the pedestrian pathway mitigates this impact.²²

¹³ P&Z Action Letter (3-6-12) ("Decision Letter"), p. 3.

¹⁴ Staff Report (3-5-12), p. 2, in Staff Packet (3-5-12), p. 2.

¹⁵ Staff Report (2-6-12), p. 6, in Staff Packet (3-5-12), p. 66; Applicant testimony, P&Z Hearing Minutes (3-5-12), p. 5.

¹⁶ Staff testimony, P&Z Hearing Minutes (3-5-12), p. 1.

¹⁷ Staff Report (3-5-12), p. 3, in Staff Packet (3-5-12), p. 3.

¹⁸ Applicant testimony, P&Z Hearing Minutes (3-5-12), p. 5.

¹⁹ Decision Letter, p. 3.

²⁰ Staff Report (2-6-12), p. 6, in Staff Packet (3-5-12), p. 66.

²¹ Decision Letter, p. 3; Staff Report (2-6-12), p. 8, in Staff Packet (3-5-12), p. 68.

- The additional height will not create privacy concerns given that adjacent uses consist of offices and park land.²³ Adjacent uses are mostly office and industrial in nature.²⁴
- The additional height allows podium parking which creates a desirable aesthetic for the neighborhood.²⁵ The podium parking minimizes surface parking, creates a better streetscape, and creates a more pedestrian friendly environment.²⁶

Although Appellant is upset that River Edge will obstruct the view from its office of the park to the west, the P&Z properly considered the impact to the neighborhood as a whole and determined the proposed building height is compatible based on substantial evidence in the record. Compatibility does not equate to a promise to existing uses that they will experience no impact from new uses. It is the nature of infill and redevelopment that existing uses will experience minor impacts from new uses. A reduced viewshed is a common example. Existing uses in the neighborhood experienced a similar impact when Appellant constructed its new office building (with added height per a CUP height exception).

2. *The P&Z properly determined River Edge will not place an undue burden on transportation and public facilities in the vicinity (Boise City Code § 11-06-04.13(B)).*

Appellant claims River Edge will create parking problems for the City-owned Ann Morrison Park. However, no City department shared this concern. Moreover, River Edge meets all parking requirements and has not requested any reduction of parking.²⁷ Further, as discussed in section 4 below, the parking provided should match actual parking needs based on the applicant's experience and that of Boise State housing projects.

The P&Z's determination of no undue burden on transportation and public facilities is supported by substantial evidence in the record including:

- Most roads within the general vicinity operate at acceptable levels.²⁸
- ACHD issued a letter December 22, 2011 concurring with the traffic study.²⁹
- The traffic generated by this development is mitigated by its intended use as student housing and the fact that the site is served by many modes of transportation. Boise State University provides bus service only one block away, which runs every 20

²² Decision Letter, p. 3; Staff Report (2-6-12), pp. 6, 8, in Staff Packet (3-5-12), pp. 66, 68.

²³ Decision Letter, p. 3.

²⁴ Staff Report (2-6-12), p. 6, in Staff Packet (3-5-12), p. 66.

²⁵ Decision Letter, p. 3.

²⁶ Applicant testimony, P&Z Hearing Minutes (3-5-12), p. 7.

²⁷ Staff Report (2-6-12), p. 3, in Staff Packet (3-5-12), p. 63.

²⁸ Decision Letter, p. 3; Staff Report (2-6-12), pp. 4, 6-7, in Staff Packet (3-5-12), pp. 64, 66-67.

²⁹ Staff Report (2-6-12), p. 7, in Staff Packet (3-5-12), p. 67.

minutes on weekdays. The project is next to the greenbelt, which allows a direct walking/biking path to Boise State University, which is only ¼ mile away.³⁰

- The Boise Parks and Recreation Commission voted to support River Edge.³¹

3. *The P&Z properly determined the site is large enough to accommodate the use (Boise City Code § 11-06-04.13(C)).*

Appellant does not allege any deficiencies with this finding.

4. *The P&Z properly determined River Edge will not adversely affect other property in the vicinity (Boise City Code § 11-06-04.13(D)).*

Appellant claims River Edge will create parking problems for other properties. This is not the case. River Edge meets all parking requirements and has not sought any reduction of parking.³² Further, Appellant's arguments are based on a misunderstanding of the different parking needs of student housing as compared to market-rate apartments.³³ Student housing projects simply need less parking. This should be good news to the City of Boise as it works to develop a less auto-dependent culture and increase the vibrancy of its downtown.

Michaels is acutely aware of the needs of its tenants, as it develops student housing projects all over the country. Michaels has every incentive to provide adequate parking or students will not rent in its projects. The simple fact is a student housing project does not need a sea of surface parking when it is located immediately adjacent to a college campus.

The P&Z understood this difference. The P&Z's determination of no adverse affect on other properties is supported by substantial evidence in the record including:

- River Edge will provide 280 parking spaces for 175 units to satisfy the Boise Zoning Ordinance parking requirement of 1.5 spaces per dwelling unit and 1 guest space per 10 units.³⁴ Appellant's attempts to transform the project from an apartment project into a fraternity or sorority are simply inconsistent with the plain language of the Boise City Code.
- The additional height does not increase the density to the point it exceeds parking standards.³⁵ This should prevent overflow parking from spilling into the neighborhood.³⁶

³⁰ Decision Letter, p. 3; Staff Report (2-6-12), p. 7, in Staff Packet (3-5-12), p. 67.

³¹ Parks Commission letter (2-17-12) and minutes (2-16-12), in Staff Packet (3-5-12), pp. 11, 23-24.

³² Staff Report (2-6-12), p. 3, in Staff Packet (3-5-12), p. 63.

³³ In addition, the parking arguments in Appellant's memorandum do not cite to the record and rely on numerous facts that are not in the record.

³⁴ Staff Report (2-6-12), p. 3, in Staff Packet (3-5-12), p. 63.

³⁵ Decision Letter, p. 3; Staff Report (2-6-12), p. 8, in Staff Packet (3-5-12), p. 68.

- River Edge parking is consistent with parking ratios provided by Boise State University housing developments.³⁷ Selected on-campus projects show parking to bedroom ratios of 0.34, 0.46 and 0.54.³⁸ These are not all freshman and sophomore projects as Appellant contends and we believe they are entirely representative of the campus and of the needs of Boise State students. River Edge provides a parking to bedroom ratio of 0.45, based on 39 two-bedroom units and 136 four-bedroom units.³⁹
- River Edge will promote the use of zip-cars and provide 5-6 stalls within the parking garage for zip-car use, which may be rented by the hour or by the day.⁴⁰
- River Edge will promote bicycle use, U-bikes and rental bikes and will provide secured bicycle parking on site.⁴¹
- The proposed building height does not obstruct pedestrian views of the river any more than a 35-foot building would, and the pedestrian pathway mitigates this impact.⁴²
- The operating characteristics of the multi-family development do not conflict with the surrounding uses. The area is comprised of other multi-family developments, office and industrial uses that are of similar or greater intensity to River Edge.⁴³
- The increase in traffic generated by the development is offset by the potential for existing businesses to capitalize on the increase in customers to the surrounding neighborhood as well as by access to bus stops and the greenbelt.⁴⁴
- The traffic generated by this development is mitigated by its intended use as student housing and the fact that the site is served by many modes of transportation. Boise State University provides bus service only one block away, which runs every 20 minutes on weekdays. The project is next to the greenbelt, which allows a direct walking/biking path to Boise State University, which is only ¼ mile away.⁴⁵

³⁶ Staff Report (2-6-12), p. 8, in Staff Packet (3-5-12), p. 68.

³⁷ Staff testimony, P&Z Hearing Minutes (3-5-12), p. 1.

³⁸ Boise State University Parking Ratios for Select On-Campus Housing Properties (3-2-12).

³⁹ Applicant letter (2-27-12), in Staff Packet (3-5-12), p. 43.

⁴⁰ Applicant testimony, P&Z Hearing Minutes (3-5-12), p. 4.

⁴¹ Applicant testimony, P&Z Hearing Minutes (3-5-12), p. 4.

⁴² Decision Letter, p. 3; Staff Report (2-6-12), pp. 6, 8, in Staff Packet (3-5-12), pp. 66, 68.

⁴³ Staff Report (2-6-12), p. 8, in Staff Packet (3-5-12), p. 68.

⁴⁴ Staff Report (2-6-12), p. 8, in Staff Packet (3-5-12), p. 68.

⁴⁵ Decision Letter, p. 3; Staff Report (2-6-12), p. 7, in Staff Packet (3-5-12), p. 67.

5. *The P&Z properly determined River Edge will comply with and support the goals of the Comprehensive Plan (Boise City Code § 11-06-04.13(E)).*

Appellant claims River Edge will not comply with the Comprehensive Plan because it is not compatible with other properties, creates parking problems, and has a design that is not aesthetically pleasing. The substance of the compatibility and parking issues has already been addressed. Appellant's opinion regarding design aesthetics is not well-founded and in any case does not dictate whether a project complies with the Comprehensive Plan. The current design has been considered and approved by the City's Design Review Committee, the Parks and Recreation Commission, and the P&Z.

The P&Z's determination of compliance with the Comprehensive Plan is supported by substantial evidence in the record including:

- Objective 7.1.2 calls for opportunities for residents of Boise to find housing in the neighborhood of their choice. River Edge will allow for prospective students to find housing near the university.⁴⁶
- The lack of BSU dormitories has also created a situation where there are many single-family residential homes in historic neighborhoods being rented out to students. This has produced problems with compatibility in older sections of town. River Edge reduces the demand for conversion of existing housing stock into rentals in conformance with Objective 7.2.1.⁴⁷
- Although the project is single-use in nature, the height exception creates a large supply of housing in a mixed-use part of town where there are many commercial businesses that can take advantage of the increase in customers within the area in conformance with Objective 8.1.3.⁴⁸
- The use of structured parking allows the project to better address Royal Boulevard and create a more pedestrian friendly streetscape.⁴⁹ New urbanism design values are discussed throughout the Comprehensive Plan, specifically Policy 7.2.2.2C, which speaks to dovetailing parking with the architectural character of the structure so as not to dominate the streetscape.⁵⁰

⁴⁶ Decision Letter, p. 3; Staff Report (2-6-12), pp. 8-9, in Staff Packet (3-5-12), pp. 68-69.

⁴⁷ Decision Letter, p. 3; Staff Report (2-6-12), pp. 8-9, in Staff Packet (3-5-12), pp. 68-69.

⁴⁸ Staff Report (2-6-12), pp. 8-9, in Staff Packet (3-5-12), pp. 68-69.

⁴⁹ Decision Letter, p. 3; Staff testimony, P&Z Hearing Minutes (3-5-12), p. 1.

⁵⁰ Staff testimony, P&Z Hearing Minutes (3-5-12), p. 1.

- River Edge complies with Comprehensive Plan Objectives 6.1.2 and 6.1.4 and Policies 6.1.2.1, 6.1.4.4 (Transportation); Goal 7.2, Objectives 7.2.1 and 7.2.6, and Policy 7.2.6.2 (Community Quality); and Policies 8.1.17.3 and 8.1.17.6 (Land Use).⁵¹

6. *The P&Z properly determined River Edge includes features that add to the aesthetic appearance of the structure, avoid box-like appearance and includes design features to enhance the physical appearance (Boise City Code § 11-06-04.13(F)).*

Appellant argues the design of River Edge is not aesthetically pleasing. As noted above, the design includes numerous features to enhance its aesthetic appeal. The design has been considered and approved by the City's Design Review Committee, the Parks Commission, and the P&Z.

Further, Appellant argues the P&Z erred because it "failed to make any findings that specific design features were added to enhance the physical appearance of the Project."⁵² To the contrary, the P&Z specifically made the requisite multi-family finding⁵³ by express reference to the Staff Report findings.⁵⁴

Likewise, the Boise City Design Review Committee previously approved the River Edge design based on numerous findings of fact that describe design features that have been added to enhance the physical appearance of the project.⁵⁵

The P&Z Decision Letter is not required to specifically state the multi-family finding or any other finding of fact. The City Code does not require this finding to be included in the P&Z decision document or even to be in writing.⁵⁶ And the Idaho Code has not required a P&Z decision document to be in the form of findings of fact and conclusions of law since the Legislature amended LLUPA in 1999 to remove this requirement. Instead, LLUPA requires a decision to "be in writing and accompanied by a reasoned statement" that explains the rationale for the decision based on the relevant law and facts.⁵⁷

⁵¹ Staff Report (2-6-12), p. 4, in Staff Packet (3-5-12), p. 64.

⁵² Appellant's letter (3-29-12), p. 9.

⁵³ "The Commission or committee must make a finding that specific design features have been added to enhance the physical appearance of such multiple-family residential structures." Boise City Code 11-06-04.13(F).

⁵⁴ P&Z Motion to Approve, P&Z Hearing Minutes (3-5-12), p. 16; Staff Report (2-6-12), p. 9, in Staff Packet (3-5-12), p. 69.

⁵⁵ Boise City Design Review Committee Action Letter (DRH12-00013), p.6.

⁵⁶ Boise City Code 11-06-04.13(F). In fact, the Code language suggests that either the P&Z or the Design Review Committee could make this finding.

⁵⁷ Idaho Code § 67-6535(b); *Evans v. Teton County*, 139 Idaho 71, 80-81 (2003).

IV. Conclusion

River Edge is a great example of quality, compact, urban housing that will serve Boise State University students and add housing options for the downtown area. The project will serve to redevelop an older industrial site and will help to revitalize the area.

The development has been carefully considered by the P&Z, the Design Review Committee, and the Parks and Recreation Commission, as well as all of the commenting agencies and City departments.

For all of the reasons described herein, Appellant has failed to meet its burden to show that the P&Z's decision is erroneous. Therefore, under the applicable standard of review, the City Council must uphold the P&Z decision.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary G. Allen", with a stylized, flowing script.

Gary G. Allen

1434378_3

cc: Josh Johnson
(via e-mail)



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Director

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President
Maryanne Jordan

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David Eberle

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Lauren McLean
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Ben Quintana

Planning & Development Services

March 6, 2012

Nick Zaferes
The Michaels Organization
3 East Stow Road, Suite 100
Marlton, NJ 08053

Re: CUP11-00090 & CFH11-00036 / 1004 W. Royal Boulevard

Dear Mr. Zaferes:

This letter is to inform you of the action taken by the Boise City Planning and Zoning Commission on your request for a height exception to construct a five story multi-family residential building on 3.42 acres at 1004 W. Royal Boulevard in an R-OD zone. A Boise River System Permit is included in the request.

The Boise City Planning and Zoning Commission, at their hearing of March 5, 2012, **approved** your request, based on compliance with the attached Reasons for the Decision and Conditions of Approval. A regulatory takings analysis may be requested by the landowner.

May we also take this opportunity to inform you of the following:

1. This approval will not take effect until after the appeal period has lapsed.
2. The decision of the Boise City Planning and Zoning Commission may be appealed to the Boise City Council within ten (10) calendar days from the issuance of this decision. The appeal must be written, accompanied by the appropriate fee, and submitted to the Boise City Planning and Development Services Department prior to the deadline set forth herein. Appeal application forms are available in the Planning Department or online under Applications at:

www.cityofboise.org/pds/
or <http://www.cityofboise.org/pds/index.aspx?id=apps>

3. All appeals of this permit must be filed by **5:00 P.M., on March 15, 2012.**
4. If these Permits are not acted upon within two (2) years, they will become null and void without further notification from this Department.

This letter constitutes your Conditional Use, Variance and Boise River System Permit. If you have any questions, please contact this department at (208) 395-7857.

Sincerely,

A handwritten signature in black ink, appearing to read 'JJ', with a long horizontal line extending to the right.

Josh Johnson
Planning Analyst
Boise City Planning and Development Services Department

JJ/bjc

Attachment

cc: Becky McKay / Engineering Solutions, LLP / 1029 N. Rosario St., Ste. 100 /
Meridian, ID 83642
DBNA / Walt Sledzieski / 199 N. Capitol Blvd., #705 / Boise, ID 83701
DBA / Karen Sander / 720 W. Idaho St. / Boise, ID 83702
Gary Allen / 601 W. Bannock / Boise, ID 83702

Reason for the Decision

Variance

The variance is not in conflict with the Comprehensive Plan and does not effect a change in zoning. The additional height as requested by the applicant maintains compatibility with surrounding buildings. *Objective 7.2.1* encourages development to maintain and develop the character and form of its neighborhood. The R-O zone's height limit of 35 feet presents an unusual circumstance. The desire of this zone is for multi-story high density residential projects. Limiting buildings to 35 feet creates a situation where the type of desired projects for the R-O zone is difficult to develop without larger parcels. There is also a hardship present in that the project is located within the floodplain and the site must artificially be raised above base flood elevation. This was accomplished by constructing the building on top of required surface parking, significantly increasing the height of the building. The variance will not be materially detrimental to public health, safety or welfare and will not be injurious to surrounding property owners. The additional height does not increase the density of the project to the point where parking standards cannot be met. Views to the greenbelt from nearby public streets will be blocked, but a building that obeyed the height limit of 35 feet would also block views to the greenbelt. Pedestrian access to the greenbelt is provided to mitigate this impact. The proposed height is generally similar to other buildings in the vicinity including the Keynetics building which is 46 feet in height, the Morrison Center which is 63 feet in height, and the student dormitories on Capitol are 74 feet in height. Also adjacent uses consist of offices and parks land, indicating that the additional height will not cause any privacy concerns. Structured parking creates the need for additional height and will provide a dramatic improvement in terms of aesthetics when compared to numerous other projects in the vicinity.

Conditional Use Permit

The height exception is compatible as there are buildings of similar height in the immediate vicinity and ample separation is provided to shorter structures. The height exception will not place an undue burden on transportation and other public facilities. Most roads within the general vicinity operate at acceptable levels of service. The traffic generated by this development is mitigated by its intended use as student housing. The project is next to the greenbelt that allows a direct walking/biking path that is ¼ mile from BSU. The project meets all setback and open space requirements of the R-O zone. The height exception will not adversely affect surrounding property owners as the building's additional height does not allow for more units than the site's available parking. The proposed use is supported by the general goals, objectives and policies of the Comprehensive Plan. Currently, there is a lack of on campus housing for BSU. The height exception allows for the applicant to maximize the number of units, while providing adequate parking. *Objective 7.1.2* calls for opportunities for residents of Boise to find housing in the neighborhood of their choice. This project will allow for prospective students to find housing near the university.

River System

The subject property is classified as Class C lands and waters which states that all allowed and conditional uses of the base zone are permissible. No riparian habitat will be disturbed with this application as the project is located outside the 70 foot greenbelt setback. The project complies with the Boise Comprehensive Plan.

Objective 3.4.2 state that bald eagle habitat should be protected as a unique feature of the City. There are no bald eagle perch trees or heron rookeries in the general vicinity of the project. A condition of approval requires that the applicant obey all local, state and federal laws and regulations.

Conditions of Approval

Site Specific

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received **November 29, 2011**, except as expressly modified by the Design Review Committee or staff and the following conditions:
2. Comply with the requirements of the Boise City Public Works Solid Waste Division as specified in the attached memo dated **December 1, 2011**.
3. Comply with Boise City Parks comments dated **November 21, 2011** and additional comments dated **February 17, 2012**.
4. Comply with the requirements of the Boise City Fire Department as specified in the attached memo dated **December 14, 2011**.
5. All utilities along Royal Blvd. shall be relocated underground.
6. A painted striped crosswalk shall be installed across the main service drive on the eastern portion of the site to provide greenbelt access.
7. Comply with the requirements of the Boise City Public Works Department (BCPW) for drainage, sewers, Solid Waste/Ground Water Manager, and street lights as specified in the attached comments dated **December 8, 2011**. Please contact BCPW at 384-3900. All items required by BCPW shall be included on the plans/specifications that are submitted for a Building Permit. Please note that any changes or modifications by the owner to the approved Storm Water Plan must be resubmitted to BCPW for approval.
8. Comply with the requirements of the Ada County Highway District as specified in the attached letter dated December 22, 2011.
9. The applicant shall comply with all local, state and federal laws and regulations.
10. The applicant shall combine the three parcels that make up the project area prior to issuance of a building permit.
11. The height of the building shall comply with elevations received January 23, 2012.
12. The site plan submitted to Design Review staff shall include the following:
 - a. Detached sidewalks along Royal Blvd.

- b. Trash pickup shall be moved to the south and slightly expanded. This will eliminate one parking space on the exterior of the building that will be replaced with a compact space on the building's interior. Public Works Solid Waste division will review these changes.
- c. Additional trees shall be added along the north façade to provide additional buffering to the fence wall associated with the open air parking.
- d. A stepped parapet should be added to break up the roof line.

Standard Conditions of Approval

- 13. A Building Permit approval is contingent upon the determination that the site is in conformance with the Boise City Subdivision Ordinance. Contact the Planning and Development Services Subdivision Section at 384-3998 regarding questions pertaining to this condition.
- 14. Vision Triangles as defined under Section 11-1-3 and Section 11-10-4.4G of the Boise City Code shall remain clear of sight obstructions.
- 15. Any outside lighting shall be reflected away from adjacent property and streets. The illumination level of all light fixtures shall not exceed two (2) footcandles as measured one (1) foot above the ground at property lines shared with residentially zoned or used parcels.
- 16. Trash receptacles and on-grade and rooftop mechanical fixtures and equipment shall be concealed from public view by use of an approved sight-obscuring method. All screening materials shall be compatible with the building materials/design.
- 17. An Occupancy Permit will not be issued by the Planning and Development Services Department until all of these conditions have been met. In the event a condition(s) cannot be met by the desired date of occupancy, the Planning Director will determine whether the condition(s) is bondable or should be completed, and if determined to be bondable, a bond or other surety acceptable to Boise City will be required in the amount of 110% of the value of the condition(s) that is incomplete.
- 18. No change in the terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his authorized representative and an authorized representative of Boise City. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Boise City.
- 19. Any change by the applicant in the planned use of the property, which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant, or successors of interest, advise Boise City of intent to change the planned use of the property described herein, unless a variance in said requirements or other legal relief is granted pursuant to the law in effect at the time the change in use is sought.
- 20. Failure to abide by any condition of this approval shall be grounds for revocation by the Boise City Planning and Zoning Commission.

21. This Permit shall be valid for a period not to exceed two (2) years from the date of approval by the Planning and Zoning Commission. Within this period, the holder of the permit must commence the use permitted by the permits in accordance with the conditions of approval.
22. Prior to the expiration of this Permit, the Commission may, upon written request by the holder, grant a two-year time extension. A maximum of two (2) extensions may be granted.

CUP11-00090 & CFH11-00036 / THE MICHAELS ORGANIZATION

Location: 1004 W. Royal Boulevard

RECONSIDERATION OF A HEIGHT EXCEPTION TO CONSTRUCT A FIVE STORY MULTI-FAMILY RESIDENTIAL BUILDING ON 3.42 ACRES IN AN R-OD ZONE. A BOISE RIVER SYSTEM PERMIT IS INCLUDED IN THE REQUEST.

Josh Johnson – Tonight we are continuing a hearing for a height exception for a multi-family project located at 1004 W. Royal Boulevard. I'd like to focus my presentation on the letter of opposition received in electronic form on March 2, 2012 via e-mail and a hard copy delivered tonight. I would also like to note that around 3:30 PM today I received five additional pages, which were also in the physical packets I gave to you.

The letter begins by stating the application has been improperly converted from a Conditional Use Permit (CUP) to a variance. The City's Attorney's office has examined this issue and has determined that since the variance application is nearly the same form as the conditional use application, and the fee for a height exception and variance are identical, there is no conflict. In addition, the noticing requirements for a Conditional Use Permit are those properties within 300', whereas the variance would only require those properties adjacent to the project to be noticed.

The letter also contends the grant of the additional height would constitute a zone change for a grant of a special privilege. If this is true, it would create too great of a threshold for height exceptions as many other properties along the river have received. The variance also does not conflict with the Comprehensive Plan. The use of structure parking allows the project to better address the street and create a more pedestrian friendly streetscape. New urbanism design values are discussed throughout our Comprehensive Plan, specifically *Policy 7.2.2.2C*, that speaks to sighting parking with the architectural character of the structure so as not to dominate the streetscape. The (inaudible) into what we consider the main unusual circumstances associated with this variance for a height exception that the additional height is necessary to get the parking under the building to create a more pedestrian friendly street scape for Royal Boulevard, and along the Greenbelt.

The letter ends by stating there is also a shortage of parking and that this issue cannot be separated from the height exception. This building is a multi-family dwelling unit and meets our Parking Code. This issue is not before the Commission tonight. The application tonight only concerns the additional height requested by the applicant. Commissioner Story contacted staff and asked for information on the BSU (Boise State University) dormitories along Capitol, as far as their parking ratios, which is depicted on this slide. It shows the level of occupancy of each structure, the number of beds and the number of parking permits that have been issued. There is also a text detailing the number of students per suite and what kind of students are in there. These three examples include both freshman and sophomore classmen.

Commissioner Stevens also requested information on the height of the Cottonwood Grill. It was approved for a height exception of its parapet at around 61' and additional elements at 64' to 65', stairwells, elevators and things of that nature.

The additional height will not be injurious to other property owners, or a detriment to public safety. This variance finding also touches on issues similar to compatibility and adverse impacts found in your Conditional Use Permit that we already discussed in an earlier hearing. When we discuss issues of compatibility, the term does not mean sameness. In other words, where there are different types of housing, the Comprehensive Plan encourages this. We don't want to see a streetscape of identical buildings or identical product types. Different heights can provide some variety of the building environment and make for a more interesting streetscape. In addition, there are no privacy impacts to the surrounding the properties, as they are exclusively made up, on this side of Royal, of office and commercial uses, as well as Park's lands.

I would like to end by showing the differences along the river. This is the original view from the river and if you'll pay attention to these elements here, you can see where the changes happen. That additional height provides more modulation to the façade and also allows for additional screening of mechanical equipment. If you'd like to discuss design in more detail, Sarah Schafer, the Design Review Manager, is here to answer those questions, as well.

Becky McKay (Engineering Solutions, Applicant Team) – For those of you who are new on the Commission, I have been a planner in the Boise Valley for over 21 years. This is a unique opportunity that we've had to work on this particular project. It's one of the more complex projects I've seen over the past 20 years, but it is one that is exciting and I feel will definitely be a benefit to the City of Boise.

We have a Power Point this evening. I'd like to do a two prong approach if you don't mind. Roger Kiser from Kitchen and Associates came all the way from New Jersey to answer any specific questions you may have concerning the building and the architecture. The owner from The Michaels Organization is here, Nick Saparis. We have our legal representation Gary Allen from Givens Pursley here this evening, if you have any legal questions, so we feel we have someone here regardless of what your questions are, they can answer them for you.

To give you an overview of the project, I was out of town when this came before the Commission when they reopened the hearing and looked at it, so I apologize. I was here the night we were on the consent agenda. We went to Design Review the following Wednesday, so I would like to give you a good overview of the project. I read through the minutes from the last meeting. I understand there was some confusion and questions the Commission had and I believe we can answer those this evening. The aerial photo you see before you is the subject property. This particular property, the plat called the Boise City Parks Subdivision was done in 1910, so their particular area was platted really early in Boise's history. This particular parcel is made up of three different parcels, two of them are vacated right-of-way, and the other one was a block five, they called it, and it was originally split up in tiny lots, kind of like the North End where they have the little 35' lots, alleys and so forth. In the forties and fifties they vacated right-of-way and what you see before you now became an industrial use. On the property right now is Estes Express Freight Trucking. It is a truck transfer terminal. We believe it was probably built in the forties. It's all gravel with block type buildings. I have some examples for you. That's what the existing buildings look like. As you can see they're circa forties, fifties. They bring semi-truck trailers in, load them and drop trailers. There's no internal landscaping. Obviously, the development does not meet any current standards due to its age.

The property is bounded on the west by Ann Morrison Park. The Parks Department Headquarters are adjacent to our west boundary and their maintenance yard is located to the north. They also have some accessory buildings. On our east boundary is the Keynetics Building located at this location and of course, we have the Boise River and then Royal Boulevard. Across the street are primarily industrial uses, then we have a multi-family project called Morrison Park Condominiums which is kiddy-corner to us. That gives you a feel for what's out in this vicinity.

The particular property is zoned R-OD, which is a residential office Design Review overlay. That particular zone has a height limitation of 35', with a height exception allowed under a Conditional Use Permit, due to obvious judicial decisions on January 25th to be exact. We submitted on the 29th of November. The Idaho Supreme Court indicated you need to make variance findings if you're going to deal with height exceptions, since it is part of the dimensional standards. This evening, I think staff indicated they would like you to do both variance findings and conditional use for the project.

This is obviously a permitted use. This particular zone allows up to 87.1 dwelling units per acre. We have 175, so based on the density we can have, based on the density up to 279 dwelling units. We meet all the parking requirements. They have 1.5 spaces, plus 1 per 10 units, with a total of 280 spaces. We meet that. We have two bicycle parking areas located in the building. We have two bicycle parking areas located in the northwest and the northeast corners. There are exit doors and auxiliary paths that lead directly to the Boise Greenbelt, and the Greenbelt comes along our boundary here. We meet the 70' setback from the high water mark in the Boise River. Our closest point to the River is 20' on the east boundary, on the west boundary we are at 31'. We meet all dimensional standards for the R-OD zone. The particular here is five stories. It's kind of an A shaped and the purpose for this is obviously the aesthetics. We wanted to emphasize a complimentary project along that Greenbelt. We didn't want to create a wall effect and therefore the design is shaped like an A.

The length of these two wings is 40'. Then we have a 140' area, and the building recesses back to this location. One of the nice and unique things about this particular project is almost all of the parking is internalized. We have 17 exterior spaces along the east boundary. That's what you're looking at there, the east elevation. All the other spaces are under the residential spaces, which is called podium parking. They are screened. We have wrought iron, masonry, heavy landscaping adjacent to the river and as you can see it's screened there on the east and west boundaries. We have an entrance only here, but yet it's two-way here for the guest parking spaces. This is the elevation that faces the Boise River. As you can see there's the Greenbelt which shows our interconnection to that pedestrian pathway.

We started working on this particular project last summer. Multiple meetings were held with the Parks Department. We worked hand-in-hand with the Parks Department because obviously, we adjoin Boise Parks and Ann Morrison Park. We adjoin the Greenbelt and it was important they be pleased with this project. We wanted to make sure the project fit, wasn't overbearing and the mass wasn't too great. We went before the Open Space Sub-Committee. They approved the project and recommended approval to the Boise Parks Committee.

Staff recommended approval. It was highly scrutinized by the Parks Department; the landscaping, the style of the building and location of all of our pathways. They were pleased. We will be targeting mostly Boise State students, but this is a multi-family project and we do have two-bedroom units, so you could end up having married couples where one may be a student, one may not. On Royal Boulevard we have two access points. We did a traffic study and submitted it to Ada County Highway District (ACHD). The Highway District Commissioners approved that. Basically, the traffic study indicated that none of the study areas are intersected within this area would require improvements based on the site generated traffic.

This particular project, we emphasize green. We want to limit the number of cars. We want to promote shuttle use, walking on the Greenbelt, going under the tunnel and over to the campus. Biking, we want to discourage vehicle use.

The Michaels Organization has built multiple projects very similar to this on other college campuses throughout the country. They understand what the demographics are of their clients, and understand what their needs are. One of the things they promote is the zip-car use. If you're not familiar with that, they intend on having five to six stalls within their parking garage and have a zip-car. Zip-cars may be rented by the hour or by the day. It's becoming quite popular in the urban areas. It fits very well within the university model. In fact, Boise State has a couple of zip-cars on campus now; that I was not aware of.

One of the other things they promote is bicycle use, U-bikes and rental bikes. They want these kids to have the lowest impact on our transportation system as absolutely possible. If you look at Boise State they're making the same in-roads. They have their bike barns. They have all kind of storage areas; enclosed and outdoor. They are trying to promote bicycle use onto the campus so we can reduce the number of parking garages and parking spaces that are required. Obviously, with the increase of the student population there is a large demand for parking, and they are doing everything they can and we're doing what we can to make sure we use alternative methods. The parking area will be gated. They'll have a card to enter, so it will be secure and safe for all of the residents.

There are adequate public services in this area. Royal Boulevard is designated as a local street. We will be going in and installing curb, gutter and sidewalk. We coordinated with the Parks Department and the planning staff and determined that an 8' walk will be required. They also want an 8' parkway or landscaped strip at the back of curb. They want to soften the look as you come into Ann Morrison Park and we have agreed to do so. One of the other things is there are huge distribution lines, power lines that run along the north side of Royal Boulevard. They're not attractive. There are three other utilities hanging on that have been there since the forties. We are going to place those utilities underground, so we have Idaho Power working on their design right now at a cost of my client of over \$150,000. We're going to put all of those utilities underground. That's going to improve the aesthetics for that gateway into Ann Morrison Park.

We've been working with the Parks Department as far as them dealing with the power poles located on their property. My client has agreed they will go ahead and pay for the design. There is one pole that extends across the frontage where the headquarters is located to their driveway. It's about 160' off-site.

They have agreed they will go ahead and pay Idaho Power and other utilities to put their equipment underground and it will benefit the Parks Department. They said they had considerable problems with the existing mature trees getting into those power lines. They had one incident they said cost them \$10,000 when there was equipment damage, or damage to the utility companies. We obviously feel we're doing what we can to make sure this corridor looks as nice as possible.

One of the other things we worked on was the Fire Department. Boise Fire Department wanted to make sure they had adequate access because of the fact this building is five stories. We have aerial access on the east boundary with a 26' wide drive. We are working with the Parks Department and submitted a design for emergency access clear at the northwest corner, so even though this building is sprinkled, in the event there is a three alarm type fire, there would be access at multiple locations to the furthest point of this particular structure.

Regarding the height of the building, we have 59' back at the Greenbelt and Boise River area, then the building transitions due to topography and the building style to 63' up along this corridor. We did significant research in this area. The Cottonwood Grill was approved for a height exception. I think it ended up at 61', 6" and the stairway was a little bit taller. The Mallard Building received a height exception. The Keynetics Building, right next door to us, came through the City's conditional use height exception and received a height exception for 56'. I looked at their building permit which says they ended up constructing at 53'. Along this entire corridor we've consistently seen multiple height exceptions, as you can see. Here is the Cottonwood Grill, the Mallard Building, Blue Heron and this is the Arid Club. The Parks Department indicated to me that the Arid Club also received a height exception, but because of its age we could not find that information with the City of Boise. You can see the Keynetics Building located right here.

This is the last parcel that is along this river corridor leading up to Ann Morrison Park that is available for development. When we look at the findings required for a variance, we believe this meets those requirements. One finding is that we are in a floodplain and a floodway. We have high ground water due to the close proximity of the river. We will be filling this site between 1.7' and a little over 5', in order to get the elevation we need to get the storm drainage separation of 3' from the bottom of our swell to the high seasonal ground water. Also, we need to build our finish floor elevation 1' above base flood elevation. That base flood elevation is at 2687 so we'll be building a minimum of 2688, but with our grading plan I think we're at a 2688.7, which is our highest finish floor elevation.

Regarding Royal Boulevard and the additional detached walk obviously determined our footprint of our building. The other thing we have that is very unusual is that we have an existing 10' storm drained height that is in ACHD's jurisdiction on the west boundary. That pipe is located about 7' east of that western boundary. We can't touch that pipe because it's been there for along time and it goes down to the river. The Highway District has asked us not to disturb the pipe. We also received comments from them on our design plans. They are asking that we install a sand and grease trap to improve the water quality from the drainage coming from Dale Street and Royal Boulevard.

Before you is the Boise River Permit for Class C lands. We have no wetlands on this property. There's no mitigation required. No enhancement required. We have no Blue Heron rookeries and no Bald Eagle habitat that adjoins us. In talking with the Army Corp. of Engineers, I talked with Eric Derkey who I work with on a regular basis. Eric said, basically this site is developed with its industrial use, so there is no sensitive habitat along here.

We have an excellent project we believe will contribute to Boise State University and the community as a whole. It's a whole new idea on student housing, student luxury housing. They are bringing in new concepts from urban areas I think as a community we should welcome. This project is exciting and is going to be a cornerstone of this area.

Roger Kiser (Kitchen and Associates Architects) – Thank you for letting me come here and express my opinions. Ms. McKay said it all and the only thing I have to say about it is we introduced a building that is a contemporary design that harks to, and vows to the heritage of the Boise area, including materials you might see in buildings of historic nature and buildings of modern nature. It's a modern building in all aspects that it is an enhancement to the life style of the people who will be living in it, and also introduces a more urban scale to the City, which I believe is the goal for this particular area.

Commissioner Story – This question is for the applicant. As you are aware, you spoke about all of the other buildings receiving height exceptions, but in light of the recent judicial case that came down, we have an increased hurdle of a variance application, correct?

Becky McKay – Correct.

Commissioner Story – So we're going to have to hang our hat on a hardship. You mentioned several of them and are you aware of the letter we received from Spink Butler addressing the staff report?

Becky McKay – Yes.

Commissioner Story – I would really like to get your opinion, or legal's opinion on your side of where do we hang our hat on a hardship for this property, if you think there is one?

Becky McKay – I'll give you a little entry into it, but I'll probably turn the podium over to Gary Allen to address. In the variance we don't have to substantiate there is a hardship. We have to substantiate there are special circumstances, or conditions related to this particular property and that the grant in this variance is consistent with your Comprehensive Plan which does not change the zoning and does not create any hazard, nuisance or safety hazards associated with that particular height. I'll turn it over to Gary to go into more detail.

Gary Allen (Legal Representative of the applicant) – First, I want to clarify we think this is still a Conditional Use Permit application. You can properly consider that as well as the variance findings in that we filed our application prior to the Burns Holding decision. We're entitled to have law applied effectively at the time our application was filed. I can go into more if you'd like. We are asking you to make findings on both. Your question is about the variance.

In looking at the letter you received this morning, we think it was a little misleading to the standard that is applied. It seemed to us in reading that they were saying you have to have unique circumstances related to the property. That is definitely not the standard. In looking at your ordinance, you either have to show a hardship, or exceptional circumstances that aren't everywhere in the district. We think there are both. You have a hardship in that you are in the floodplain and you have to deal with all of that, and you have to deal with the topography of the site. Those are the unusual parts of the site. That gets you part of the way. Becky went into some of the exceptional circumstances you have to address. You have the Greenbelt setback, you have special requirements such to the treatment on Royal, you have a different storm drains, or an unusual storm drain situation that limits your footprint. You have a relatively small site so you don't have a lot of options you might have in other places. You have a unique need in this situation for this higher density housing to support Boise State University. You also have this very nice feature of podium parking because that is going to minimize the surface parking. You have what will create a better streetscape and more pedestrian friendly environment. It's going to allow you to increase the density in this area and create vibrancy here that you want in this area. We believe all of those are exceptional circumstances. With that said, Burns Holding made absolutely no sense, so we think ultimately this is going to wind up being a Conditional Use Permit and we want you to make those findings. We think the Legislature is going to fix that, if nothing else, so please make both sets of findings. We know this isn't the perfect fit for a variance, but we do think this is enough to justify it and there is clearly justification for a Conditional Use Permit in this area.

Commissioner Bradbury – Do you think the City of Boise can write a definition of a variance that is different than the definition of the variance contained in Idaho Code?

Gary Allen – I think it has to be consistent with the Idaho Code. Idaho Code focuses on hardship, but it also contains language regarding the special conditions of the site. The City of Boise has had its variance definition for a long time and has never been overturned. I think it's consistent. I think it's within the City's power to uphold the Variance Ordinance that it has. Yes, I think you have some leeway as to compliance with the state statute.

Commissioner Bradbury – Will you please tell me about the notion that these folks are entitled to have their application reviewed under the pre Burns Holding decision?

Gary Allen – There is a fairly long line of case law in Idaho which gives the applicant the right to be heard under the law as it existed at the time the application was made. There is no indication in Burns Holding that it was going to have retroactive application and we've got a whole heap of trouble if it is retroactively applied, because as you heard, you have all kinds of Conditional Use Permits that have been granted for height exceptions.

Our clients, who are industrial clients, are beside themselves about this, that's why there is legislation there because so many industrial facilities have been approved in agricultural zones with height exceptions. If this is retroactively applied, then the people who are concerned about this, the Keynetics, have a problem just like we do.

Commissioner Morrison – I think I remember the just of what were discussing earlier tonight is since it was done as a Conditional Use Permit, if we take an action that is read into the meeting as a variance, will you stand behind that if it needs to be defended later on?

Gary Allen – As we've seen what's happened, obviously, we applied for a Conditional Use Permit. When we did nobody had any idea the Supreme Court was going to do what they did. That's where we came into the original proceedings here. We think it is appropriate the way City staff has handled this to say, this decision creates some uncertainty here. We think we have the right to say we are entitled to a Conditional Use Permit. There are other reasons for that apart from the just timing. There is an exception in the Burns Holding decision we think we fall under, and there was this legislation working its way through that and by the time this is all done may make the whole thing go away. We need to cover that base for sure. As far as the variance goes, your code does allow the City the flexibility to do exactly what it is doing. I'll read *Section 11-06-11.05* which says; *the commission or hearing examiner may grant a variance as part of a Conditional Use Permit. Without a separate application and hearing as long as the notice requirements of Section 11-06-11-03 are met, which they have been, and the findings in Section 11-06-11.4 are made,* which is what you're doing tonight. Basically, we have added a variance to this proceeding to the extent that it's necessary. If that is the necessary procedure to get this approval, yes, we will stand behind that.

Commissioner Morrison – I have one question for staff. Virtually, every other jurisdiction I've had recent experience in, on the applicant side, there has been a term called grandfathering. When you go back and look at when the date of the application was made, how long that process has taken, and whether or not any current laws have transpired since the application was made having merit that I'm aware of, grandfathering has stood up as precedence. Is that an issue we are discussing here?

Josh Johnson – Before deferring to my attorney, we do that often. For instances, this application came in under the 1997 Comprehensive Plan, so that's why you're seeing those policies, that's why we don't switch gears midway through and are applying a new Comprehensive Plan, so there is some legitimacy in what you're saying, but Mary may be able to speak to this more.

Commissioner Stevens – Mary is nodding her head that she has nothing to add.

Commissioner Bradbury – I think you may have already answered the question in a round-about way. As I sit here, I can think of another way to skin this cat. There is another way to accomplish what I think your client wants to get accomplished. It would take some time and would require a new application.

My question to you and your client is, would you rather run the risk of an appeal being taken of the decision of this Commission, and I don't know what the Commission will do, but assuming the Commission were to approve it, would you be inclined to skin this cat a different way? It seems to me the solution to this particular problem is to simply amend the Zoning Ordinance, which your client can make an application to do. Then we don't have to concern ourselves with appeals.

Commissioner Stevens – Mr. Allen, I understand you've been asked a very broad question that requires you to do some hypothetical thinking. If you could keep your answer to what's in front of us tonight, we would all be greatly appreciative.

Gary Allen – Timing is really important in this application. For student housing, you've got to be open in the fall, so the delays are problematic here. Especially, amending the Zoning Ordinance and then having to come back and file an application, I don't think that's acceptable timing from our standpoint. We think this is adequately covered and if I had to bat, I think there is a good chance the Burns Holding problem will be handled by the Legislature this session.

Josh Johnson – I think the difficulty we're dealing with here is when the applicant went to apply, the correct procedure was a height exception. They built into their timeframe possibilities for appeals, building permits and all that. As they said, they are on somewhat of a tight timeframe. We missed our hearing in January. We reconsidered and now we're all the way into March, when we originally scheduled for a January hearing. They are kind of up against the wall. They went into this in good faith by thinking a height exception was correct.

Commissioner Bradbury – I understand perfectly, I just wanted to toss out an idea for Mr. Allen and his client to think about and with all due respect, I'm not entirely convinced I agree with his analysis of the potential retroactive effect of this Burns Holding decision. But that's the matter for Mr. Allen and his client to deal with.

Josh Johnson – Also, we would be hard pressed to make the findings for increasing the height limit for the R-O zone just citing one project. It would be more of a global rewrite, is how we want to approach it.

Commissioner Stevens – I'm going to add I think there needs to be discussion in a work session at a different time to talk about this, because I think it's very clear the R-O zone needs to be revisited. I don't know we can do it in the context of a simple application tonight. If we could just make the point to put it on our agenda for the next month or so, we can address it then.

PUBLIC TESTIMONY

Eileen Barber – I'm an owner and co-founder of Keynetics, which I own with the other founders of our company, which is located directly adjacent to the proposed development. As you remember, I was here in February to testify before you. As I said then, we welcome new development. We would like to see new neighbors, especially, if it enhances our community. I had the opportunity to meet with the developer today, Tom Galuski and his broker. Although, our concerns were not addressed and he recapped their vision for their project.

We continue to have two major concerns with the design of the current proposed development. First, the proposed height of the building isn't similar to the other buildings along this stretch of the Greenbelt. Again, this stretch of the Greenbelt has mostly three story office buildings. The Cornerstone Cottonwood is four stories. The (inaudible) is three stories and the Arid Club is only two stories. BRS Architect designed all the buildings on this stretch of the Greenbelt from Mallard, the Arid Club, down to the Cornerstone.

We purposely chose BRS Architects to also design our buildings so we can be consistent with the buildings on this stretch of the Greenbelt. We wanted very natural looking materials used that blend in with the Parks, and the landscape along the river. The height of the proposed building is far above the City Code for housing in this zone, which is classified R-OD, and the details of the height issue has been submitted to you in my comments, as well as others.

I wanted to talk a little bit about Becky's comments. She said the City of Boise allows 187 dwelling units per acre. They will have 175-units total on 3 acres, so they could do more units if they wanted to, but they have 4-bedroom units. Part of the issue is since they are doing 4-bedroom units, which are virtually unheard of in multi-family housing; true multi-family housing consists primarily of 1 and 2-bedroom units. If they actually have all of those as 2-bedroom, not even a mixture of one and two, they would have 311-units and there would be about 500 parking spaces. The fact they have quads and are calling this multi-family housing means the project is terribly under parked. This project should not be classified as multi-family. College students living together are not families. There is nothing in the Boise City Code that fits this type of use. I suggest the City consider creating a new residential category for private off-campus student housing. This is new to Boise. The issue with the proposed five floors and the issue of inadequate parking are the result of a density that deserves a more in-depth examination. Boise only has four people per acre. That comes right from the census data. Portland is close to 7 and Seattle is a little over 11.

Kate Lenz – We have 101 employees in our building. As the Human Resource Director I'm responsible for hiring these great employees, preparing their benefits and retention. Part of that retention includes some of the things we offer, like adopting the one mile section of the Greenbelt in front of our building and we clean that up. In the summer months employees volunteer to do that, as well as a project I created called the Go Green Program. You've heard previous testimony that the proposed building will be green. As the creator of the Keynetics Go Green Program I feel I am uniquely qualified to speak to this. Our Go Green Program incentivizes employees who use alternative forms of transportation to get to work. We have 18 employees, out of the 101, who participate during what I would describe as warm weather months, May through September. Then we have 9 employees who participate October through April. We also have a combination of indoor and outdoor bike parking, roughly right under 25 spaces, so a good amount of spaces. For employees to receive a small stipend, they have to go green 60 percent of the month. If you can compare what Keynetics successes with our Go Green Program, you'll see the proposed project provides 48 bike spaces for 622 occupants. Again, as a reminder we have 25 spaces for 101 employees. The Michaels Organization is only providing bike spaces for less than 8 percent of their occupants, and they will need at least 112 bike spaces if 18 percent of their residents' bike and that is what they are proposing. They are proposing this is a Go Green community and I just don't see it. What's important to note is that every one of the employees I manage who participates in the Go Green Program at Keynetics, every one of them own cars. I just don't see how there is ample allocations for cars and bikes for these future students, with the proposal that is in front of you.

Makho Ngazimbi – I've live at Morrison Park Apartments since about July of 2008. In addition, I've been employed at Keynetics for about the past four years while I have been living at Morrison Park. I was a student at Boise State. I got my Masters in 2009.

In addition, I participate in the Go Green Program, so I ride my bike to work every single day along that portion of the Greenbelt that was shown. I think I am an appropriate representative for the people who live, work and commute to work on that portion of the Greenbelt. I do agree this development would be a great benefit to the City. I like all the things they talked about as far as being green and I am also advocate to see the truck lot go away. It's very dirty, it's dusty. In the summer it stinks, it smells like oil, so I think this will be a very good thing.

My main concern is the pressure that this development will have on the already limited parking in that part of town. From what I understand the maximum capacity would be about 600 people and they will be providing parking for about 45 percent. Everybody I know who lives in that area, including myself. Chances are the overflow will end up being on Lusk Street, Dale, Island and Royal, which are all streets in that area. It is probably a workable solution. I think they tried to emphasize that what they do is encourage people not to own vehicles. I don't know how you can do that in Boise. Pretty much everybody needs a car to get around. I think we are all very proud of our public transportation, but it's not great. I tried it one time and never did it again. That was 10 years ago. I would urge you to consider the impact of this development on surrounding neighborhoods.

Brad Wiskirchson – Tonight I am here in my capacity as the Chief Executive Officer of Keynetics. By way of background, Keynetics is Idaho's largest privately owned technology company. You probably never heard of it. We have two operating subsidiaries Click Bank, which is one of the worlds 15 largest online retailers, and (inaudible) which is the premier (inaudible) solution first of the biggest banks in the world and online retailers. We were founded in 1998 and as Kate indicated we employ over 100 individuals in our Boise Facility. We have a class A three story building at 917 Lusk, adjacent to the property in question. We built that and made a significant investment of the design of that building by hiring BRS Architects, who we recognized did all of the buildings on the north side of the river so we had a consistent look and feel of the buildings there. As you heard from Eileen, we have some concerns about this project, the least of which is the height and lack of parking for this site and for the project. We are here tonight to ask for you to consider this decision that perhaps gives everyone, including the City, more sustainable (inaudible).

First I would encourage you to consider approving this development proposal only with the removal of one floor of the housing. While this project will never be in line with the surrounding buildings, by removing at least one floor of the units will create a more realistic or more practical ratio of parking to residents.

Secondly, I urge the Commission to consider reevaluating the definition in the code for multi-family housing, including the parking regulations. Boise State has moved from a commuter orientate school to a residential orientation school, which will only create the additional need in the area for well designed off-campus student housing and given the recent interest by builders to develop off campus student housing, it's probably a good time to consider the standards by which the City will allow student housing.

The proposal you have before you is clearly not a multi-family housing development. It's aimed at students by their own admissions. In fact, it more appropriate fits in with the City's definition of fraternity or sorority type of living situation, although 622 residents would make an awfully large fraternity. This is an opportune time to hold out approving these types of developments until you have a plan for the management, both in the development phase and the on-going maintenance phase. We're not opposed to the development of this particular parcel. In fact, we are excited to welcome new neighbors and excited to say goodbye to the truck lot, but nevertheless, we're asking the development of the property be done right and given consideration of the impacts and influx of people in the surrounding area, including the property's neighbors, and more importantly, the City's own assets, the Boise River and Ann Morrison Park.

Richard Andrus – I was the one who started the fire storm earlier of my letter of March 2, 2012. I stand by the two issues I pointed out in that letter, first, the problem with this conversion to a variance from the CUP. It was stated earlier that this provision in the code that does allow a variance to be heard as long as there is a pending CUP. Given, not the decision in Burns Holding, but the Idaho Code provisions that Burns Holding interpreted that the CUP is not valid, so you can't adopt this variance into the CUP proceeding. It has to be a new application. That has not been done. There may have been an application made, but it wasn't for a variance.

The second issue, which is really the issue here, is the application does not meet the standards for a variance. I've heard a lot tonight about the benefits of redeveloping this property and redevelopment will improve this area. What I do hear tonight is how it meets the conditions of the Idaho Code to obtain a variance. The City does have the provisions and the definitions of a variance. That's one element of meeting the variance conditions, but you also have to meet the Idaho Code provisions. I think Commissioner Bradbury hints to that. In fact, regarding the suggestion Commissioner Bradbury had, I think amending the Zoning Ordinance should have been done at the beginning of the process. What we have here is a zone that allows 35'. If you're seeking a 63' building, I don't know if an exception or a variance is the right term to use. I think this is a situation where there should have been a rezone or an amendment to the zoning ordinance.

Commissioner Bradbury – I guess the question I wanted to ask you is this notion about the fact that we can't convert, or include a variance with the application for a Conditional Use Permit. The code section mentioned earlier tonight seemed to suggest to me that if there is an application for a Conditional Use Permit, we're entitled to also issue a variance. Help me to understand why the application for a Conditional Use Permit is invalid. It seems to me that if we grant the Conditional Use Permit under the Burns Holding we have a problem. But I don't quite understand how it is the application is invalid before we take actions.

Richard Andrus – I sent an e-mail to the City Attorney on this very issue. In there I discussed that it's not Burns Holding that causes the Conditional Use Permit application given out, it's the definition of the Conditional Use Permit under the Idaho Code, that's why there's a problem with the retroactive argument Mr. Allen was making. You don't look at Burns Holding and say well that changes the law.

No, the Idaho Code was in effect at the time the application was made and it defined what a Conditional Use Permit is, and it doesn't include height and it doesn't include bulk. I know this decision is a problem for a lot of people, but it's what the law is, as far as this issue taking a variance including it into a Conditional Use Permit, because there was an invalid Conditional Use Permit application under State Code. There is no valid pending CUP application, so you can't reference in the City Code where it talks about converting an existing CUP application, because if it's not valid, that means there can't be a variance as part of that application.

Dave Kangas – I did not plan on testifying for this but listening to the testimony, I am President of the Vista Neighborhood Association and one of the biggest problems we have with multi-family housing is parking. Planning and Zoning will admit that their ordinance does not adequately address parking. When you look at a proposal, most multi-family housing comes in at two bedrooms and they are allowed so many spots considering that formula. If you're going to one bedroom apartment, you have to realize there's probably a couple living there and there's going to be two cars. If you have quads and you're gearing towards Boise State students, you're going to have four vehicles and four bikes. That's what they're going to have. That's how they get around. From everything I've heard if there's a proposed 600 residents and they are allowed 45 bike spaces, give me a break. You're imposing big problems on every other business in that area for parking. I love the building. I think it's a unique location and a nice replacement for the industrial park, but if you have 600 people coming in and out of that apartment in the summertime when Ann Morrison Park is full of rafters, that whole shoreline from that building from the bridge, all the way through the park is going to be trashed by people coming in and out of the river. You're potential of 600 more people floating the river coming in and out to access the park apartment. They're not going to go down to the concrete ramp to get out. They're going to get out right along that river. The parking addressed by the people who have already testified is a major issue with multi-family housing throughout the City and all the neighborhood associations will testify to that, I would think because that is one of the biggest problems in the neighborhoods.

Monika Anderson – I live next to BSU and parking is a problem. I have two roommates and I have proper parking for them. They usually bike to wherever they go, but they don't drive the Geo, they are driving SUVs. I came to this country and for the first time in my life I felt handicapped without a car, especially in Idaho. You want to go out to the mountains. You want to go to the river. Everybody I know has a car. I have two.

The height is a problem for the river. It makes the river more confined. When I go through University Drive, one side is the parking garage and the other side is those apartments. It feels like it is really confined driving through there, compared to the open space that was there before.

Every time I drive there, especially in the summertime, because you used to see the sun all the time and this might even take away the sun from the river. I don't know, but it might.

REBUTTAL

Becky McKay – I think Gary has a couple of comments he wants to make so I'll try to be brief. As Josh indicated, we submitted on November 29, 2011, so we come under the old Comprehensive Plan which has this designated as the Central Bench Area. Under Blueprint Boise this is now part of the Downtown Planning Area. When you look at your new Blueprint Boise you see that the vision calls for higher urban densities and new urbanism concepts. That's what we're bringing with this project. The reason we have asked for the height exception for the variance is the fact that we have three different varying parapet heights. The Design Review staff asked us to increase some of the height to give it a more varied roof line with 6' intervals in order to create more modulation; more interest and the aesthetics of the building would also be enhanced.

You ask about parking. There is a shuttle that comes by here on Royal Boulevard every 20 minutes. I was there this morning for a meeting with Idaho Power and it went by four times. As far as our bike parking area, I was the one who put the 48 spaces in there, but that doesn't take into consideration the vertical racks. The reason I was extremely conservative was because the building was still evolving. It was going through different stages with the architects and I wanted to be conservative. As far as accommodating more bikes, we have the room.

We have followed all Boise City's procedures. We submitted that Conditional Use on the 29th of November. The same procedures for the Conditional Use as far as hearing, notice, going to this decision body are identical to the variance. Your code also allows for a Conditional Use application to include a variance. It says without a separate application. This project has gone through a lot and we've worked hard. The Keynetics Building is over 180' from the east face of our building to their west face. We've got significant separation. We have other height exceptions approved along this corridor. If you look at this R-O zone purpose statement, it promotes that this is identified as a Downtown area intended to provide higher density residential and office uses, with an emphasis of high quality urban design pedestrian oriented. That is exactly what we are providing here. It talks about flexible design standards. Thirty five feet is what is in your R-1C, R-2B zones and every other municipality in this valley is a single-family height restriction. I know exactly what they were thinking. They thought, we'll put 35' then we will have a little more review over a particular project if it's over 35'. They were looking for a little more input into these projects and that's why that 35' is totally irrational for the purpose statement I've given you.

Your code asks to calculate by dwelling units. Eighty seven point one dwelling units doesn't say bedrooms. We look at the definition of multi-family, it says they can be family or they can be up to five individuals that are totally unrelated. The applicable Zoning Ordinance is what is in effect at the time they apply, even if Ms. Barber would like code amendments. This is not the time to do it. You can't tailor a code for a particular project. We meet the requirements of the R-OD. We are not asking for anything that has not already been approved for other projects in this area, R-OD, L-OD and R-2D, regardless of zone. We think this is reasonable and it makes sense. I ask the Commission to take a look at this and notice all the hoops we've been through. Don't be hung up on the stories. Consistent and compatible does not mean identical. Her building is 53', but its three stories. We're looking at height not stories. This is a good project and I ask for your support.

Gary Allen – I want to quickly address two points that Mr. Andrus brought up. The first one is he says we have to meet the code provisions in addition to the ordinance. That is not the case. You're ordinance has to be consistent with the state code. You don't apply the state code separately.

Secondly, he comes up with some creative arguments about how the CUP application is not valid. Here's what we think is important. You guys are the finders of fact. We need you to make findings of fact on both the CUP and the variance because we've got all of these legal issues flying around. Don't try and be a court and decide what the right answer is on all of those things. We've given you our view and they've given you their view, that's going to sort itself out. We are pretty sure we're not done with this at this hearing. Please make those factual findings we need on both sides so we don't have to come back to you for those later on.

PUBLIC HEARING CLOSED

Commissioner Stevens – I want to remind the Commissioners that the parking issue tonight is not actually before us. This Commission is not in position to make findings that require our applicant to be held to standards above that which is in our code. That would be arbitrary and would make the City be in some serious hot water, so I want to make sure that when we have our discussion tonight, that we keep the parking out of it. It is not before us. They have met code and to require that is above and beyond what we are allowed to do.

Commissioner Story – Like you said parking is off the table. This complies. I can't say our code is correct on parking and the way it should be handled, but I think the rubber meets the road where we're talking about height and that's really the only thing we have before us. When I look at the Comprehensive Plan I think it fits well. I think it's a project we want, higher densities, closer to the core, structured parking. I think there is question on the variance. Is one even needed here? I agree, we're not attorneys and I think we need to take a look at the height and see if we think it fits the necessary requirements.

Commissioner Bradbury – I agree with Commissioner Story, I think he is correct in his analysis of the application and what our job is tonight. Clearly, the use is allowed in this zone, although it may be debatable whether our ordinance requires adequate parking for this particular use. The application applies to the ordinance. My view after having heard the presentations and having seen the drawings and thought about the proposed use, I think it's clearly an improvement for the vicinity. It appears to me to be a good project. Our catch, if there is one, is with respect to the height of the building, and clearly the applicant kind of got caught in a bit of whiplash with the Supreme Court throwing a curve ball that the applicant has to try to hit and we have to duck as it goes by, I guess. The bottom line in my mind is whether or not we can make findings. I think we can clearly make findings for the Conditional Use Permit and the height exception, if there is such a thing under Idaho law anymore. The other question is, can we make findings for a variance, and that in my mind is a little more tricky.

Commissioner Morrison – I think it's a great project. I think it's very well thought out. This particular site has been under study for years. I know because I've studied it in the past and I think the Conditional Use Permit was the application in which we heard this project.

This is what we initially acted on, on this project. It was brought back before us because of lack of clarity on the height exception, which I believe we took action on in the past and again, I have to support this project. I think it's what the plan and the City desires for this location.

Commissioner Stevens – I want to start by stating I'm very comfortable with the noticing. I think staff did a good job explaining to us that the noticing which took place for the CUP exceeded what would actually take place under a variance, and because of the wording, it is very clear that we're dealing with a height issue here. I feel very comfortable the City has met with the City's needs to meet and make sure people are noticed. We have a lot of people here who are interested so they know about the application and clearly have been noticed appropriately.

I also want to say I feel comfortable with the findings staff provided to us for a variance in a memo that stated March 5, 2012, and that's in our packet. I'm not sure how it got dated March 5, 2012 because that's today's date and we got it last week. In any case, the memo and the findings in the memo for the variance I am very comfortable with. Specifically, with regard to the hardship verse the exceptional circumstance. Mr. Allen did read that appropriately. It does say that, *either a hardship with the property itself, or an exceptional circumstance*. I think the applicant has made a very good presentation to explain both. I feel comfortable there is a hardship with regard to the floodplain and I think frankly the developer has done a good job of being creative with this site to meet the Comprehensive Plan goals related to structured parking and not require us to see an asphalt parking lot. By doing so has kind of dealt with the hardship of the floodplain and I think that is a creative solution. I'm glad to see it that way. I think it's what the City is looking for in terms of our vision for that area.

I also think there are a lot of exceptional circumstances associated with the property, most of which were outlined by Mr. Allen which are very well put in our findings staff put together. I feel very comfortable with that regardless of the legal stuff going on, which happens all the time. The Supreme Court throws stuff like this all the time at you, Gary and the rest of us, for that matter. I do feel comfortable that even with what's happened with the Supreme Court that what's in front of us meets the standards we need to have it meet for our City Ordinance, so I'm very comfortable with where we stand right now.

COMMISSIONER BRADBURY MOVED TO APPROVE CUP11-00090 & CFH11-00036 INCLUDING A VARIANCE TO THE EXTENT REQUIRED BY LAW, IN ACCORDANCE WITH AND PURSUENT TO THE PROPOSED FINDINGS AND CONCLUSIONS SET FORTH IN OUR STAFF REPORT.

COMMISSIONER STORY SECONDED THE MOTION.

Commissioner Stevens – For the record, I want to make clear that with regard to the findings you're including both the findings that were in the original staff report related to the CUP, as well as the findings that were in the memo dated March 5, 2012 related to the variance.

Commissioner Bradbury – That was my intention.

Commissioner Stevens – Does the seconder agree?

Commissioner Story – Yes.

Commissioner Bradbury – Sometimes I struggle with being over technical or being practical, and in this case I think practical is the one tonight. I think with all things considered the project is appropriate to the location. It complies with our ordinances. I have no problem what-so-ever with the height and the design of the building. I think we need to try and find a way to approve the application and I think the applicant has demonstrated their requisite hardship, although on a personal note, I think it's a little thin, but it's enough.

Commissioner Story – I would agree with Commissioner Bradbury that all night I guess the only thing I was looking for was the exceptional circumstance related to the intended use of the property, and I think in our Zoning Code it talks about high density projects is what we want in this kind of zone and with increased river setbacks and floodplain, those circumstances just aren't found in all of the R-OD zones. I think this is a little bit of an exceptional circumstance for this property.

Commissioner Stevens – I do want to say one last thing and that is regarding the height exception specifically. Looking up and down the river it feels to me that the reason I'm going to support the height exception particularly is because it would feel arbitrary to me to look at what we've approved adjacent to this property, not to mention the other properties across the river on the north side. To somehow not approve this feels very uncomfortable to me. That's the reason I'll be supporting the motion.

Commissioner Morrison – As an observation, because it is probably inappropriate for me to say this, but a section through the proposed height of the building in relationship to the other examples around the property and the trees along the river, would have been very helpful in establishing a case.

ROLL CALL VOTE

COMMISSIONER BRADBURY	AYE
COMMISSIONER STORY	AYE
COMMISSIONER MEYER	AYE
COMMISSIONER MORRISON	AYE
COMMISSIONER STEVENS	AYE

ALL IN FAVOR, NONE OPPOSED. MOTION CARRIES.

CUP11-00090 & CFH11-00036 / THE MICHAELS ORGANIZATION

Location: 1004 W. Royal Boulevard

RECONSIDERATION OF A CONDITIONAL USE PERMIT FOR A HEIGHT EXCEPTION TO CONSTRUCT A FIVE STORY MULTI-FAMILY RESIDENTIAL BUILDING ON 3.42 ACRES IN AN R-OD ZONE. A BOISE RIVER SYSTEM PERMIT IS INCLUDED IN THE REQUEST.

Josh Johnson (Staff) – If I’m not mistaken, I believe we need to vote for reconsideration.

COMMISSIONER BRADBURY MOVED TO RECONSIDER CUP11-00090 & CFH11-00036 FOR THE PURPOSE OF TAKING TESTIMONY THAT WAS MISSED WHEN THIS WAS ORIGINALLY PLACED ON OUR AGENDA.

Commissioner Meyer – I wasn’t here at the last meeting so I will be sitting out on this item.

COMMISSIONER STORY SECONDED THE MOTION.

Commissioner Stevens – Does the maker and the seconder wish to include that we will hear that testimony tonight?

Commissioner Bradbury – That was the intent of my motion.

Commissioner Story – Yes.

ROLL CALL VOTE

COMMISSIONER BRADBURY	AYE
COMMISSIONER STORY	AYE
COMMISSIONER MORRISON	AYE
COMMISSIONER STEVENS	AYE

ALL IN FAVOR, NONE OPPOSED, MOTION CARRIES.

Josh Johnson (Staff) – This application is back before you. As at the last hearing a member of the public wished to testify in opposition to the project. Her name is Eileen Barber and she signed up with John Starr. Those two citizens and the applicant team are those only able to testify tonight because they were signed up at the last hearing. We recommend that after our staff report you let the applicant go as normal, then those members of the public, and then give the applicant the chance for a five minute rebuttal.

The issue before you tonight is the height of the structure. The structure is 59 feet along the Greenbelt and 63 feet along Royal Boulevard. The Parks Department’s comments on the original application recommended a limit of 55 feet. Staff had talked to the Parks Department and thought we had worked out a compromise as we were recommending the parapet be raised to provide more modulation of the façade. Further discussions with Park’s staff today revealed they wanted the building held to a 55-foot limit.

As you know they are the recommending body to this and if you wanted to exceed that, you would have that discretion.

Commissioner Stevens – Josh, can you remind me, when we approved this last week was it 55 feet, or was it higher?

Josh Johnson – No, we concluded a condition that referred to these revised elevations in a brief paragraph summary stating those additional heights that were part of the application. At that point we thought the Parks Department understood the additional height, but today they said, no, they did want that 55-foot limit adhered to.

Mathew Bartner (Applicant) – I'm the architect for the project working with Michael's Organization, the applicant. I know you've heard about the project as of last week so I won't belabor the points too significantly. As Josh mentioned, when we submitted for a conditional use permit back in December the project was intended to be a 55-foot height limit. One of the items mentioned in the staff report at that time was the consideration of some additional height to help animate the façade and provide relief to an otherwise flat roofline for the project. We worked within those parameters to bring some additional height, which started the discussion of 58-foot height limit. At that time we did believe the Parks Department, as well as Planning & Zoning, were in agreement of that height extension. Further, moving from that point I worked with the Design Review staff. Again, they were looking for a little more extenuation in the façade and some changes there, so we ended up at the 63-foot limit you see before you today. That is what we are requesting as the conditional use tonight.

Commissioner Bradbury – Just so I'm clear, is the building different heights on different sides?

PUBLIC TESTIMONY

Mathew Bartner – Yes, because of the way the ordinance is written it's written such that the height is measured from the adjacent grade at the curb-line. Our building, because of the flood plain issues and some other things on this site, is actually 4 feet higher than the Royal Boulevard side where the sidewalk is currently, or would be. So we include that 4 feet in the overall height of the building, but on the north side, the Greenbelt side, grade comes up basically to the floor level so that 4 feet is mitigated on that side.

Eileen Barker – I am one of the owners of Kinetics in the Kinetics building and I am representing Kinetics today. Just a heads-up, I did write a letter to the Commission and I would refer to some of the charts in there, so I'm assuming you'll have them there.

First, let me start by saying I love new development. We would love to see the truck terminal replaced with something that enhances the Greenbelt and that serves our city. There are two main concerns with different proposed housing. The proposed height of building above what Boise City Code allows and lack of adequate parking. The current design would harm not only the neighborhood, including Ann Morrison Park, and the Boise River Greenbelt may make the propose project not a desirable place to live. The first concern is that the proposed student housing project is not similar in height to the office buildings in the vicinity.

The table on page one speaks for itself. This stretch of the Greenbelt has 3-story office buildings, including our building. An average typical height of a 3-story office building along this stretch is 45 feet. I did provide elevation of these buildings to staff.

The chart on page two demonstrates a big difference between the Kinetics building, a three-story office, and the proposed project with five stories. The important thing to remember is our building and the proposed buildings are located in different zones. The Kinetics building is located in a C-2D zone with a maximum height limit of 45 feet. The typical height of the Kinetics building is 46 feet, or one-foot above the C-2D zone restriction. The tallest part of the Kinetics building is a single exterior stairwell at 53 feet on the Royal facing side of the property.

The proposed project is located in R-OD zone with a maximum height limit of 35 feet. The typical height of the proposed building is 55 feet, or 20 feet above the R-OD zone restriction. The tallest part of the proposed building in order to accommodate the multiple exterior stairwells is 63 feet along Royal Boulevard, to 9 feet along the Greenbelt. The proposed building exceeds the applicant's stated height exception at 55 feet, and additionally exceeds a limit set by Boise Parks and Recreation at 55 feet.

The last concern is closely tied to the second concern, a severe shortage of proposed parking spaces. The applicant describes the proposed apartments as student housing for Boise State students. However, the project has been placed into the City's multi-family apartment classification for the purpose of the present application. The first chart on page three shows parking spaces to bedroom ratios for the typical multi-family dwelling units. Most multi-family dwelling units are one and two bedroom units. The proposed student housing lists a fourth bedroom unit would create ratios far below acceptable occupant vehicle averages. The proposed structure of 175 dwelling units, again, in which most are four bedroom units, will create 622 bedrooms, for 622 students. The planned 280 parking spaces will provide less than half the student tenants a place to park their cars. This is far below acceptable averages. We could expect at least 60 to 75 percent of students will bring a car to school. The second table on page three illustrates these ranges. The project will be almost 100 spaces short if 60 percent of the students have cars. At 75 percent, this doubles to almost 20 becomes almost 202 few parking spaces.

Mary Watson – Could you inquire if there is anybody else in the audience who would like to testify?

REBUTTAL

Mathew Bartner – I'll touch briefly on the parking issue. The building is a multi-family apartment building. It's not a sorority or fraternity house, it's intended to be a multi-family apartment for grown adults who happen to be college students. It's targeted at college students of Boise State. The site is chosen to be in close proximity of the Boise State campus which we feel will mitigate some of the need for cars. None the less, the project does meet the ordinance for a multi-family building for car parking and we believe it is an adequate amount of parking for the residents.

Regarding height, Eileen is correct. Our building is in a different zone than the Kinetics building. However, I'm going to reference from the staff report, which you have been noted, that the 35-foot height limit is unusual in the R-O zone because it is intended as a mixed use urban development zone. While our project is not mixed use per-say, it is residential use. We do believe it represents a good attempt to be an urban type building and urban type of housing. Not focused on cars beyond what the ordinance requires. It is more focused on pedestrian and bike use coming from the housing to the campus of Boise State.

PUBLIC HEARING CLOSED

Commissioner Bradbury – I've gotten confused about where we are in terms of the height that was approved last week, and that which the Parks Department is asking us to hold this building to this week. If I'm remembering correctly, the height exceeded the 55 feet that Parks had asked and is now asking the building height be maintained. Is that correct?

Commissioner Stevens – My recollection, and of course other commissioners feel free to jump in, is that we had a letter from Parks voicing their support for the revised drawings which included the height increase. That's my recollection and we unfortunately don't have the application in front of us this week so we can't look back, but my recollection is that they supported at the time and what's in front of us now is no different than what we had last week in front of us. If they've changed their mind, which will certainly be taken into account.

Commissioner Story – I think it is a little bit different. I think Parks did come back and say they would like it to stick to 55 feet, verses the 63 feet, which is different than it was last week. That's my recollection.

Commissioner Stevens – I wonder if it would behoove us to hold this over considering we don't have documentation in front of us and we seem to have some questions. Or we could reopen the hearing to staff and get some clarification, if we have additional questions that we want to have answered.

COMMISSION BRADBURY MOVED TO CONTINUE THIS HEARING TO UR NEXT REGULARLY SCHEDULED MEETING DATE TO MARCH 5, 2012 FOR THE PURPOSE OF FURTHER CONSIDERING THE APPLICATION.

Commissioner Bradbury – I guess I would leave open the potential for allowing additional public testimony if there are other members of the public who wanted to testify.

COMMISSIONER STORY SECONDED THE MOTION.

Mary Watson – For clarification, is this to get information from the Parks Department, what the current recommendation is, or maybe get some clarification on what we are looking for, for next time? Maybe staff at this point could answer the question.

Commissioner Bradbury – What I really want is the staff report in front of me so I can be sure I am making the right decision when the time comes to developing. I just feel a little naked at the moment. I don't have a good enough memory as you can see by the gray hair. Even a week is too long for me to remember the details that I would like to try and remember.

ROLL CALL VOTE

COMMISSIONER BRADBURY	AYE
COMMISSIONER STORY	AYE
COMMISSIONER MORRISON	NAY
COMMISSIONER STEVENS	AYE

THREE IN FAVOR, ONE IN OPPOSED MOTION CARRIES.

Commissioner Stevens – We will be continuing that item to March 5, 2012 to get the documentation in front on us that we need.



Planning & Development Services

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1

MEMORANDUM

MEMO TO: Boise City Planning and Zoning Commission

FROM: Joshua Johnson
Boise City Planning and Development Services

RE: CUP11-00090 and CFH11-00036

DATE: March 5, 2012

Project Description and Background:

Height exception to construct a five story multi-family residential building on 3.42 acres located at 1004 W. Royal Boulevard in an R-OD (Residential-Office with Design Review) zone.

The following is a list of events that have led the project to where it is now.

1. The Parks Department's original recommendation was to limit the buildings height to 55 feet along the greenbelt.
2. During the original review process Design Review staff asked the applicant to provide more parapet modulation. This increased the height from what Parks originally approved.
3. Parks staff verbally indicated that since the building was outside the seventy foot greenbelt setback there were no concerns with the additional height.
4. The project was approved on the Planning and Zoning Commission consent agenda at the February 6, 2012 hearing with a memo from staff clarifying the height. Two members of the public were outside the hearing chamber and wanted to testify in opposition to the application.
5. On February 13, 2012 Parks Department staff contacted staff and indicated that the limit of 55' should be obeyed.
6. At the February 13, 2012 hearing the Commission voted to reconsider the request to allow those in opposition to testify. After hearing a brief staff presentation followed by applicant and public testimony, the Commission deferred the application to March 5, 2012 to get clarification on the additional height and the impact of comments from the City Parks Commission.
7. At a Parks Commission meeting on February 16, 2012 staff presented the latest elevations.

The Commission felt the additional height would have a negligible effect on the greenbelt. The minutes from this meeting and Parks Commission comments are attached to the memo. The proposed building with modulation is 59 feet in height along portions of the greenbelt and 63 feet along Royal Boulevard.

Another issue that has affected this application is the recent decision in *Burns Holdings, LLC v. Teton County Board of Commissioners*. In its January 25, 2012 decision, the Idaho Supreme Court ruled that a Conditional Use Permit cannot be used to obtain a waiver of a zoning ordinance provision limiting the height of buildings. Under the Local Land Use Planning Act (LLUPA), Title 67, Chapter 65, Idaho State Code, the Court stated that “a variance is required to waive the bulk and placement requirements of a zoning ordinance, including those [requirements] limiting the height of buildings.” While the basic facts of the case remain unchanged from the time of initial application, staff has now provided the reasons for decision and findings for a variance.

Finally, the landowner who testified in opposition to the height also brought up a perceived shortage of parking as a further point of opposition. The project meets City parking standards for multi-family units and this issue is not before the Commission. The only two items that should be considered are the Variance for a height exception and the Boise River System Permit.

Attachments:

Elevations and Perspectives

Comments from February 16, 2012 Parks Commission Hearing

Minutes from the February 16, 2012 Parks Commission Hearing

Original Staff Report with Agency Comments

Minutes from February 13, 2012 Planning and Zoning Commission Meeting

Letter of Opposition

Reason for the Decision*Variance*

The variance is not in conflict with the Comprehensive Plan and does not effect a change in zoning. The additional height as requested by the applicant maintains compatibility with surrounding buildings. *Objective 7.2.1* encourages development to maintain and develop the character and form of its neighborhood. The R-O zone’s height limit of 35 feet presents an unusual circumstance. The desire of this zone is for multi-story high density residential projects. Limiting buildings to 35 feet creates a situation where the type of desired projects for the R-O zone is difficult to develop without larger parcels. There is also a hardship present in that the project is located within the floodplain and the site must artificially be raised above base flood elevation. This was accomplished by constructing the building on top of required surface parking, significantly increasing the height of the building. The variance will not be materially detrimental to public health, safety or welfare and will not be injurious to surrounding property owners. The additional height does not increase the density of the project to the point where parking standards cannot be met. Views to the greenbelt from nearby public streets will be blocked, but a building that obeyed the height limit of 35 feet would also block views to the greenbelt. Pedestrian access to the greenbelt is provided to mitigate this impact.

The proposed height is generally similar to other buildings in the vicinity including the Keynetics building which is 46 feet in height, the Morrison Center which is 63 feet in height, and the student dormitories on Capitol are 74 feet in height. Also adjacent uses consist of offices and parks land, indicating that the additional height will not cause any privacy concerns. Structured parking creates the need for additional height and will provide a dramatic improvement in terms of aesthetics when compared to numerous other projects in the vicinity.

River System

The subject property is classified as Class C lands and waters which states that all allowed and conditional uses of the base zone are permissible. No riparian habitat will be disturbed with this application as the project is located outside the 70 foot greenbelt setback. The project complies with the Boise Comprehensive Plan. *Objective 3.4.2* state that bald eagle habitat should be protected as a unique feature of the City. There are no bald eagle perch trees or heron rookeries in the general vicinity of the project. A condition of approval requires that the applicant obey all local, state and federal laws and regulations.

Section 11-06-11.04 Criteria and Findings

The Commission, following the procedures outlined below, may approve a variance when the evidence presented at the hearing is such as to establish:

- A. *That the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive General Plan for the City, and will not effect a change in zoning;***

The granting of the variance will not be in conflict with the spirit and intent of the Comprehensive Plan and will not effect a change in zoning. Although the building exceeds the height limit of the R-O zone, it is still compatible with the height, bulk and massing of other structures along the greenbelt. Other buildings in the immediate adjacent area were constructed to a height of 45 feet. The applicant's proposal of 59 feet along the greenbelt is not such a difference in height as to block excessive amounts of light or create privacy issues. Similar building heights exist in the BSU campus 1,500 feet from the subject building. *Objective 7.2.1* encourages the development of form and character of districts. This part of the City is directly linked to downtown where high-density, multi-story development is appropriate. The Plan also seeks development that integrates amenities that encourage walking and cycling through *Goal 7.2*. The additional height will allow residents to seek housing near downtown and the BSU campus. (*Objective 7.1.2*) This will allow for residents of the development to utilize alternative forms of transportation such as walking and bicycling. This should reduce vehicle trips for the surrounding traffic system in conformance with *Goal 6.3*. Locating the building on top of the parking are allows efficient use of the site in a pedestrian friendly manner.

- B. *That there is either a hardship associated with the property itself or an exceptional circumstance relating to the intended use of the property which is not generally applicable to property or permitted uses in the district.***

There is an unusual circumstance associated with the thirty five foot height limit of the R-O zone. The project is located within a mixed use area and the R-O zone is intended for multi-story development. Opposition to this project has noted that many buildings along the river in this area are constructed to a height of 45', a height above what is allowed in the R-O zone. The R-O zone is normally supposed to be used as a transition from less intense uses to more urban uses. In this case, the site is located near commercial and office buildings that are zoned commercial. The building is u-shaped and the aspects of the building that are 59 feet in height do not run the entire length of the façade. This is in contrast to other buildings along the greenbelt that present solid building masses to the river. There is also a hardship present as the project is located within the floodplain. This requires that the entire building be raised above the base flood elevation. Also due to the slope of the site, the measured height of the building from adjacent grade at Royal is higher than at the greenbelt at 63 feet. Also, the project utilizes structured parking that creates a taller building. Surface parking is generally discouraged in urban environments. The use of structured parking will provide a dramatic improvement in terms of aesthetics when compared to numerous other projects in the vicinity.

C. The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement.

The variance will not be materially detrimental to public health, safety or welfare and will not be injurious to surrounding property owners. Views of the riparian habitat will be blocked from Royal Blvd. and other surrounding streets. However, a building of 35 feet, the allowed height, would also block a pedestrian's view of the river. The applicant is mitigating this by providing pedestrian access to the greenbelt through their development. The operating characteristics of the multi-family development do not conflict with surrounding uses. The area is comprised of other multi-family developments, office, and industrial uses that are of similar or greater intensity to the applicant's proposal.

8. Recommended Conditions of Approval

Site Specific

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received **November 29, 2011**, except as expressly modified by the Design Review Committee or staff and the following conditions:
2. Comply with the requirements of the Boise City Public Works Solid Waste Division as specified in the attached memo dated **December 1, 2011**.

3. Comply with Boise City Parks comments dated **November 21, 2011** and additional comments dated **February 17, 2012**.
4. Comply with the requirements of the Boise City Fire Department as specified in the attached memo dated **December 14, 2011**.
5. All utilities along Royal Blvd. shall be relocated underground.
6. A painted striped crosswalk shall be installed across the main service drive on the eastern portion of the site to provide greenbelt access.
7. Comply with the requirements of the Boise City Public Works Department (BCPW) for drainage, sewers, Solid Waste/Ground Water Manager, and street lights as specified in the attached comments dated **December 8, 2011**. Please contact BCPW at 384-3900. All items required by BCPW shall be included on the plans/specifications that are submitted for a Building Permit. Please note that any changes or modifications by the owner to the approved Storm Water Plan must be resubmitted to BCPW for approval.
8. Comply with the requirements of the Ada County Highway District as specified in the attached letter dated December 22, 2011.
9. The applicant shall comply with all local, state and federal laws and regulations.
10. The applicant shall combine the three parcels that make up the project area prior to issuance of a building permit.
11. The height of the building shall comply with elevations received January 23, 2012.
12. The site plan submitted to Design Review staff shall include the following:
 - a. Detached sidewalks along Royal Blvd.
 - b. Trash pickup shall be moved to the south and slightly expanded. This will eliminate one parking space on the exterior of the building that will be replaced with a compact space on the building's interior. Public Works Solid Waste division will review these changes.
 - c. Additional trees shall be added along the north façade to provide additional buffering to the fence wall associated with the open air parking.
 - d. A stepped parapet should be added to break up the roof line.

Standard Conditions of Approval

13. A Building Permit approval is contingent upon the determination that the site is in conformance with the Boise City Subdivision Ordinance. Contact the Planning and Development Services Subdivision Section at 384-3998 regarding questions pertaining to this condition.

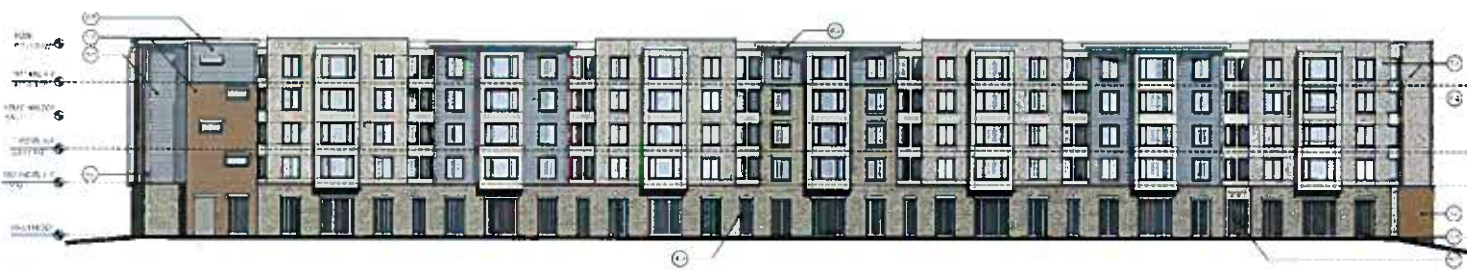
-
14. Vision Triangles as defined under Section 11-1-3 and Section 11-10-4.4G of the Boise City Code shall remain clear of sight obstructions.
 15. Any outside lighting shall be reflected away from adjacent property and streets. The illumination level of all light fixtures shall not exceed two (2) footcandles as measured one (1) foot above the ground at property lines shared with residentially zoned or used parcels.
 16. Trash receptacles and on-grade and rooftop mechanical fixtures and equipment shall be concealed from public view by use of an approved sight-obscuring method. All screening materials shall be compatible with the building materials/design.
 17. An Occupancy Permit will not be issued by the Planning and Development Services Department until all of these conditions have been met. In the event a condition(s) cannot be met by the desired date of occupancy, the Planning Director will determine whether the condition(s) is bondable or should be completed, and if determined to be bondable, a bond or other surety acceptable to Boise City will be required in the amount of 110% of the value of the condition(s) that is incomplete.
 18. No change in the terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his authorized representative and an authorized representative of Boise City. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Boise City.
 19. Any change by the applicant in the planned use of the property, which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant, or successors of interest, advise Boise City of intent to change the planned use of the property described herein, unless a variance in said requirements or other legal relief is granted pursuant to the law in effect at the time the change in use is sought.
 20. Failure to abide by any condition of this approval shall be grounds for revocation by the Boise City Planning and Zoning Commission.
 21. This Permit shall be valid for a period not to exceed two (2) years from the date of approval by the Planning and Zoning Commission. Within this period, the holder of the permit must commence the use permitted by the permits in accordance with the conditions of approval.
 22. Prior to the expiration of this conditional use, the Commission may, upon written request by the holder, grant a two-year time extension. A maximum of two (2) extensions may be granted.



1 EAST ELEVATION
SCALE: 1/8" = 1'-0"



2 SOUTH ELEVATION (ROYAL BLVD. ELEVATION)
SCALE: 1/8" = 1'-0"



3 WEST ELEVATION
SCALE: 1/8" = 1'-0"



4 NORTH ELEVATION (GREENBELT ELEVATION)
SCALE: 1/8" = 1'-0"

- ELEVATION KEY NOTES**
- FINISHES - WALLS**
 - +1. BRICK, 8" x 8"
 - +2. BRICK, 8" x 8"
 - +3. BRICK, 8" x 8"
 - +4. BRICK, 8" x 8"
 - +5. BRICK, 8" x 8"
 - +6. BRICK, 8" x 8"
 - FINISHES - FLOORS**
 - +1. POLISHED CONCRETE
 - +2. POLISHED CONCRETE
 - +3. POLISHED CONCRETE
 - +4. POLISHED CONCRETE
 - +5. POLISHED CONCRETE
 - +6. POLISHED CONCRETE
 - FINISHES - ROOFS**
 - +1. FLAT ROOF, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE
 - +2. FLAT ROOF, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE
 - +3. FLAT ROOF, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE
 - +4. FLAT ROOF, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE
 - +5. FLAT ROOF, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE
 - +6. FLAT ROOF, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE, 2" POLYURETHANE INSULATION, 2" POLYURETHANE MEMBRANE
 - FINISHES - CEILING**
 - +1. POLISHED CONCRETE
 - +2. POLISHED CONCRETE
 - +3. POLISHED CONCRETE
 - +4. POLISHED CONCRETE
 - +5. POLISHED CONCRETE
 - +6. POLISHED CONCRETE
 - FINISHES - EXTERIOR**
 - +1. BRICK, 8" x 8"
 - +2. BRICK, 8" x 8"
 - +3. BRICK, 8" x 8"
 - +4. BRICK, 8" x 8"
 - +5. BRICK, 8" x 8"
 - +6. BRICK, 8" x 8"
 - FINISHES - INTERIOR**
 - +1. POLISHED CONCRETE
 - +2. POLISHED CONCRETE
 - +3. POLISHED CONCRETE
 - +4. POLISHED CONCRETE
 - +5. POLISHED CONCRETE
 - +6. POLISHED CONCRETE

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 Planning
 Interior Design

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 Fax: (208) 333-1101
 Email: info@kitchenandassociates.com

Date	01/05/12
Drawn	1/2/12
Revised	
Project	
Client	



RIVER EDGE APARTMENTS
 1004 W. Royal Boulevard
 Boise, ID 83706

A3.1
 ELEVATIONS

01/05/12 - PROGRESS PRINT - PREAPPLICATION MEETING



1 EAST ELEVATION
SCALE: 1/8" = 1'-0"



2 SOUTH ELEVATION (ROYAL BLVD. ELEVATION)
SCALE: 1/8" = 1'-0"



3 WEST ELEVATION
SCALE: 1/8" = 1'-0"



4 NORTH ELEVATION (GREENBELT ELEVATION)
SCALE: 1/8" = 1'-0"

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Date	07/11/11
Arch	07/11/11
Drawn	
Reviewed	
By	
Date	



RIVER EDGE APARTMENTS
1004 W. Royal Boulevard
Bosc, ID 83706

A3.1
ELEVATIONS



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Boise Parks & Recreation

James R. Hall

Director

Parks & Recreation

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Mayor

David H. Bieler

City Council

President

Maryanne Jordan

Council Pro Tem

Alan W. Shealy

Elaine Clegg

David Eberle

Lauren McLean

TJ Thomson

February 17, 2012

Josh Johnson, Planner

City of Boise Planning & Zoning Department

150 N. Capitol Blvd.

Boise, Idaho 83702

Re: Action: River Edge Apartments (formerly Royal Boulevard Apartments)

Dear Mr. Johnson:

Boise Parks & Recreation Commission at a regularly scheduled meeting held Thursday, February 16, 2011 approved a recommendation to support City Design Review staff's recommendation for building height and modulation. The Park & Recreation Commission stated for the record that the extra height was negligible and the modulation made for a better design.

Respectfully,

Cheyne Weston, BPR Park Planner

Cc. James R. Hall, Director, Boise Parks & Recreation
Harvey Neff, President, Boise Parks & Recreation Commission
Thomas Governale, Superintendent of Parks
Pat Recici, Assistant City Attorney
Hal Simmons, City Planning Director

**Boise Parks & Recreation Commissioners Meeting
Department of Parks & Recreation
Boise City Library Auditorium**

February 16, 2012

Members Present: AJ Browning, Tom Chandler, Maggie Frole Spurling, Mike Cunningham, Mary McGown, Harvey Neef, and Louie Uranga.

Others: Fred Hahn, Michelle Crawford, Mr. & Mrs. Kirk Braun, 3109 Crescent Rim Drive; Paul Bandas, 1714 W. Howe Street; Steve W. Needles, 2373 Annett; Mike & Caroline Curry, 2759 Crescent Rim Drive; Dave Rittenhouse, 3978 E. Aspen Hill Court; Kathy Royster, 5394 S. Pegasus Way; Tamarra Hallan, 2011 Ranchero Way; Matt Lindsay, 3029 Shadweyh Court; David Turnbull, 12601 W. Explorer Drive; Jack Cortabitarte, 3115 Crescent Rim Drive; Josh Johnson and Sara Schafer, Planning & Zoning; Pat Riceci, Boise City Legal; Karen Bubb, Boise City Arts & History; Mark Baltes, Landmark Impressions; Jim Hall, Brian Jorgenson, Earl Kilian, Chuck Darby, Jerry Pugh, Toby Norton, Doug Holloway, Dee Oldham and Cheyne Weston, staff Boise Parks & Recreation Department.

I. CALL TO ORDER

The meeting was called to order at 4:05 P.M.

II. MINUTES

Commissioner Spurling requested that the motion on page three (3) of the December 15, 2011 minutes be amended as follows:

THAT THE BOISE PARKS & RECREATION COMMISSION APPROVE THE MASTER PLAN FOR ESTHER SIMPLOT PARK WITH THE RECOMMENDATION TO PROVIDE BICYCLE ACCESS FROM STEWART ST. TO THE GREENBELT, AND WITH A POSSIBLE DOLA REQUEST FOR COMMUNITY DONATIONS.

MOTION

A motion was made by Commissioner Cunningham **THAT THE BOISE PARKS & RECREATION COMMISSION APPROVE THE DECEMBER 15, 2011 MINUTES AS AMENDED**, seconded by Commissioner Madigan.

Motion was approved by all Commissioners present.

III. CONSENT AGENDA

It was brought to staff's attention that there is a typo in the Murgoitio Lease Agreement.

MOTION

A motion was made by Commissioner Cunningham **THAT THE PARKS & RECREATION COMMISSION APPROVE THE CONSENT AGENDA CONSISTING OF:**

**FIVE (5) YEAR LEASE WITH LOU AND VICKI MURGOITIO
RIVERROOTS LICENSING AGREEMENT
ONE YEAR AGREEMENT WITH UNITED STATES
SPECIALTY SPORTS OFFICIALS ASSOCIATION, INC
(USSSOA) AGREEMENT**

seconded by Commissioner Browning.

Motion was approved by all Commissioners present.

IV.

ACTIONS/PRESENTATIONS

**VISUAL ARTS
ADVISORY
COMMITTEE**

Karen Bubb, Boise City Arts & History, came before the Commission seeking a replacement for Maggie Frole Spurling who will be going off the Visual Arts Advisory Committee (VACC) this coming May. The VACC provides design review for all art projects. If interested, by talk with Maggie or contact Karen Bubb.

**HYATT HIDDEN
LAKES RESERVE
WETLANDS –
HYATT BAT
SCULPTURE**

Funds have been identified for projects, particularly parks that are being developed. \$10,000 has been committed for Hyatt Hidden Lakes. The VACC helps to provide input into these projects. Mark Baltes, the chosen artist for this project, has a background in doing porcelain on enamel. Mark has created a project based on origami.

Mark Baltes' intention was to take \$10,000, which is a very modest budget to do anything significant in a wetland habitat. What he came up with is a bat sculpture based on origami. The pole itself will be powder coated. It is virtually a maintenance free project. The height will be 10' at the wing tip and 17' at the shoulder. Bats like nice little tight areas.

Mark met with Idaho Fish & Game education people. Foothills Learning Center has an Eagle Scout troop tied into his project. Part of the scout's project will be to monitor bat presence.

Once Mark looked at the budget, he determined that \$10,000 was not enough to do the project and offered to donate the rest. The budget is now at \$16,500.

Maggie, please address some of the things that bats do. I know bats like mosquitoes.

Mark had to go to Amy Stahl, Public Information Officer and ask her how she felt about cultivating a bat presence in the location. The mosquitoes around there are horrendous. A bat will eat their weight in mosquitoes daily. If our project is successful, the mosquito numbers will be kept down.

The inside of the bat part will be wood, it will be totally contained. That part will be totally removable and replaced.

Question was asked what if it doesn't attract bats. It can be used as a way to educate about bats. It is an experiment. You can build it and they may not come and if they do, they may not stay as bats are migratory.

Commissioner Cunningham asked if there is any potential for vandalism. Mark Baltes noted it will be made of 12 gauge steel thus as far as sustaining damage, no.

MOTION

A motion was made by Commissioner Cunningham **THAT THE BOISE PARKS & RECREATION COMMISSION RECOMMEND PRELIMINARY APPROVAL OF THE CONCEPT DESIGN OF MARK BALTES' FOR A BAT HABITAT AND PUBLIC ARTWORK IN ORDER THAT HE MAY GO FORWARD WITH DESIGN REFINEMENTS. VAAC REQUESTED THAT MARK BALTES COME BACK WHEN THE PROJECT HAS BEEN STRUCTURALLY ENGINEERED AND A FINAL SITE WITHIN THE PARK HAS BEEN IDENTIFIED FOR FINAL APPROVAL,** seconded by Commissioner Spurling.

Motion was approved by all Commissioners present.

ANN MORRISON BALL FIELD LIGHTING PROJECT

Toby Norton, Landscape Architect, presented the project to Commissioners and public in attendance.

Ann Morrison has two softball fields. The ball fields were built by Morrison Knudsen in 1959 and the existing lights were installed in the late '60's or early '70's. Conduits, boxes, etc. are currently located in the dugouts of the fields.

A public meeting was held in December and the residents of the condos and any homes overlooking the park were invited.

For typical softball play, the Amateur Softball Association (ASA) looks for 60'-70' lights with 50-foot candles average infield and 30-foot candles average outfield. The lights that are out there now are insufficient. What we have now is a safety issue. As a result of the meeting with residents a light study was requested. Staff contracted with Musco for a study. The higher foot candle you go the better your uniformity is. With the newer technology in lighting you get more uniform lighting. Lower poles mean you have to angle the light out further. The taller poles can be angled down.

Toby showed pictures of the existing park now and proposed configurations.

After the public meeting, a meeting was held with the softball advisory board and they came back and said that they preferred staying with the ASA standards. They would be willing to go with a 55' uniform pole height.

Doug Holloway stated when staff met with condominium and home owners in December staff felt like they had done a pretty good job of educating the public. The concern they had was primarily from the folks on the rim and some of the condominium owners regarding the height of the poles. We want to be good neighbors. The new floodlights won't be an issue. The e-mails and conversations Doug has had is they would support the 55' height. The preference for staff and the board would be to get the highest height that we possibly can. Our pole heights at Fort Boise are at 60'. They work very, very well. There is some loss of fly balls. The same report went to the neighbors that the Commissioners received.

Questions and comments from Commissioner then the public will be asked to participate.

Commissioner Cunningham asked staff at what height would the balls break out of the ray. Staff responded at 60-65' the ball would break out of the ray. Commissioner Cunningham noted the lights don't give any light above that. Staff stated no.

Question was asked how many games are played at Ann Morrison at night, how late, how much are the lights used during the summer and how often are these lights going to be on that would affect the neighbors. Staff noted three games a night five nights a week with tournaments on weekends sometimes. Earl Kilian responded that our current season

begins April 9th and goes through the end of August and into September. The sun stays up later and later and we turn the lights on sooner because of the berm. Two to three games a night are played. Currently there are 325 slow pitch teams.

Chuck Darby, staff, was asked how much the lights are basically used. 850 hours. It is not used just by softball but by the football program as well. Quite often the balls get lost in the lights.

Earl noted there is an ordinance and lights are off at 11:00 PM. Mr. Cunningham questioned if the lights are on a timer. Response yes. And they are off at 11:00? Occasionally a game goes a little late and the lights may be on a little later. Mr. Cunningham asked if staff is suggesting that you would schedule more games that would go in there. Earl responded with most likely. Doug Holloway noted the lights would not be on past 11:00 PM.

Commissioner Spurling questioned if the canopy of the trees would hide some of the lighting. Toby noted the trees would continue to grow over the years. Taller poles would be covered as the trees grow.

Commissioner Chandler question Mr. Brian Jorgenson as to whether the trees are Class 2 or Class 3. Mr. Jorgenson responded with Class 2 which grows to 60' or more.

Commissioner Uranga questioned the cost of the project. Toby noted it will cost \$300,000 to do both fields and upgrade the system that uses the lights.

Commissioner Neef questioned if the fees are paid and by whom. The players through some of the fees that they pay and some from our budget. We anticipate reducing our cost per usage about 50% by putting the light use where it needs to be.

Commissioner Chandler wanted to know the life span of these lights. The manufacturer is saying 25 years. In the contract they would come out and replace bulbs as needed. Earl Kilian noted that after 25 years Musco would come in and change all of the bulbs for free.

Toby Norton noted the pole life would be 25 years and they will be made of aluminum. Chuck noted the poles are metal

Open for public comment.

Jack Cortabitarte, 3115 Crescent Rim Drive – he is a member of the Depot Neighborhood Association. He thanked the officials of Boise Parks & Recreation for inviting everyone to the meeting. He would like to review the feeling of the neighborhood and go over a couple of issues then make a couple of requests. The majority of the neighborhood is soundly for anything that improves our parks. Currently it is their understanding that lights were on from 9-9:30 or 9:30-10. The neighborhood didn't feel that was an issue. What was an issue, as you can see by the photos, originally Boise Parks & Recreation is so involved with recreation, quality of lights and they glare, they didn't take into consideration the views. The unsightly views of the neighbors. We currently live with two 55' poles and the rest are 45'. The opinion is that it would affect property values. The most affected is ParkView Apartments. We didn't know about the extended playing time possibility. That would be more hours. The neighborhood would have to discuss that. Fort Boise doesn't have the residential property owner presence that Ann Morrison does. There are homes all around Ann Morrison. That is some of the concerns of the neighbors. He thinks this is an important issue. If Boise Parks & Recreation feels they want to go above the 55' level, the neighborhood is feeling that the max would be 55'. He requests whatever the decisions or recommendations you make as a Commission to hold a meeting in the evening and present what Boise Parks & Recreation wants and let the neighborhood respond.

Carolyn Curry, 2759 Crescent Rim Drive - She thought it was further along in the approval process and is just like the last. She does want to second what he said. No way can they live with higher poles. Property values will go down. She would like to have seen what it would look like with the poles all the same height. When 15' is added to the top of 40' poles that kind of difference is huge. Looking at the poles all winter long, the 70' ones are out of the question. It would be nice to have some reassurance through another meeting at what we would be looking at with all 55' poles. We do look at it 365 days a year.

Toby Norton showed a view with all poles uniform at 60'.

Matt Lindsay is in the softball association and lived on the rim for 10 years. Having had that opportunity, what is important is what we are looking at now. They are old wooden poles; some

were donated by the penitentiary years ago. The latest games begin at 9:00 and are through by 10 or 10:10. That will not change. He hopes to be good neighbors and give them something nice to look at. 70' poles would be ideal. We can compromise at the 60'-65' range. When the lights are lower, they need to shine out more and we lose the safety factor.

Fred Hahn, ASA Board President noted that technology has changed dramatically. There are 300+ teams in our organization. It is a safety issue. The poles are not what they are looking for. We are not trying to ruin property values. We are concerned with safety. We talk about it constantly on the board. We don't use those lights right now as they are shut down after 9:00. We get the new lights and we'll have to look at it. The field is growing.

Michelle Crawforth questioned staff if the style of lights at Fort Boise is what is being planned for in Ann Morrison. Staff noted that the current technology is used at Fort Boise.

Director Jim Hall stated the staff recommendation, after consulting with Doug Holloway, Supt. of Recreation, because the neighborhood was concerned about the height and the softball players are concerned for safety, we compromised at 55'. He feels this is a good compromise and definitely recommends to the Commission.

Commissioner Chandler asked if there had been a study on property values and the 11:00 cut off on the lights, is it a park thing or code. Pat Riceci, Boise City Legal noted our park hours are sunset unless otherwise posted.

Commissioner Madigan is concerned about the property value and concerned about the safety issue. Are we compromising at the cost of the safety issue?

Director Hall asked the same question of staff. He doesn't know of any accidents where there has been a foul ball or a pop up come down and injuring someone. The lighting is so poor on the field that when a ball is hit, a person has a short response time to get that ball. With the poor lighting conditions in the infield is it an unsafe condition.

Commissioner McGown noted two things; this is an expensive project and the life span of the lights is very long. Go a little higher and build in a little insurance. She struggles with

meeting the neighborhood concerns. She feels they should be higher to increase safety.

Commissioner Chandler stated that ASA should be our guiding standard as we don't have recreational immunity for this. If we do this, we need to do it right the first time. He doesn't want to run the risk of reducing those standards and subjecting the department to results of those decisions.

MOTION

A motion was made by Commissioner Chandler **THAT THE BOISE PARKS & RECREATION COMMISSION APPROVE THE RELIGHTING OF THE SOFTBALL FIELDS IN ANN MORRISON PARK FOLLOWING THE ASA STANDARDS OF UTILIZING 60' AND 70' POLES TO ACHIEVE THE BEST LIGHTING FOR BALL PLAYER'S SAFETY AND PLAYABILITY AND ACCOMMODATING THE RESIDENTS WITH ANOTHER MEETING**, seconded by Commissioner Uranga.

Commissioner Cunningham supports the motion. He played softball on those fields in 1970. We worked very hard with the people in the apartments and up on the rim. I am very aware that we need to work together in our community to make it the best. He's trying to balance that with what Commissioner Chandler is talking about. Players in the infield are at risk due to the existing light. The new lights would be ten fold better. Nothing is worse than a player losing a ball into the sun. \$100,000 is a large sum of money for the players to put out. This is a partnership we need to encourage. It is important to do what they want and balance with the community. He would be in favor of a little less, 60'-65'. There are two fields not being used to the efficiency they could be. He is concerned about where this goes from here; turned back to us or on to Mayor and Council to make a decision.

Commissioner Neef questioned what the schedule is to begin this project. Toby noted not until the end of August. A meeting with the neighborhood could be held within a month or so.

Joshua Johnson, Planning & Zoning noted that this project is a height exception and a public meeting is needed.

Commissioner Cunningham questioned what the requirement for heights is. Joshua noted anything above 55' would need a height exception.

Motion was approved seven (7) to one (1).

Director Hall noted we will be working with recreation staff as early as the March meeting or sooner to hold a public meeting at 7:00 PM.

RIVER PARK OPERATING PROCEDURE

Tom Governale, Superintendent of Parks, noted that the River Recreation Park is getting close to being complete. There are kayakers in the river now and the bank work is being finished. The hope is to be open to the public at the end of March. There is only one other in the country near like ours. How are we going to operate it? Staff has been in contact with others who operate river parks looking at operating procedures, policies, etc. This is by no means a final list. Staff will probably be bringing this back several times over the next couple of years. The season will be a seven (7) day a week operation as long as we have water. Need to look at making recommendations for safety; i.e. wear vest, helmets, etc. However, people in tubes and rafts don't always do that.

Vendors will be charged and fee and food vendors won't be allowed. Recommendations are as follows:

1. Park Hours - operating hours should be dawn to dusk consistent with other City of Boise Parks.
2. Season - The Park should be open year around 7 days per week, pending water levels.
3. Operational water flow - tentatively 250 – 3,500 cfs pending concurrence from the project design engineer, McLaughlin, Inc.
4. Safety - safety gear will be recommended, not required, for users. The reason for recommending versus requiring is lack of enforcement capability and liability. Recommending will be consistent with existing park policies such as "Swim at your Own Risk" and "Unsafe Ice", etc. Signs describing safety equipment, safety procedures and appropriate use are to be installed at strategic locations. In addition to safety signs, signs relating to park rules, regulations, phone and web site information and user protocol are recommended.
5. Allowable Uses - The Team recommends that the park be open to non-motorized boaters, tubers, rafts, canoes, body boards; stand up paddle boards and surf boards.
6. Non Allowable Uses – The Team recommends that boogie boards, bungee boards and any devices that are required to be tied off to another object not be

- permitted in the park. Motorized craft (including jet skis and jet boats) and remote control devices are recommended to be prohibited. However, in order to prohibit motorized craft either a jurisdictional boundary adjustment needs to occur (the park is currently in Garden City jurisdiction) or Garden City needs to enact such a prohibition and the two Cities share a joint powers of agreement.
7. Wave Master – All wave operators will be employees of the City of Boise. The waves will be adjusted as reasonable and feasible with consideration for user demand, City resources, and facility maintenance considerations.
 8. Wave Shape Information for the Public – After much Team discussion and legal counsel, it was determined that the City will not attempt to educate users on the type of wave or its' level of difficulty. This is in line with using other park facilities at your own risk. However, it is recommended that the site will be posted (as well as the various electronic mediums available) when water levels are dangerous.
 9. Events - events will not be scheduled/permitted until Esther Simplot Park and support facilities such as permanent parking, restrooms, changing rooms, access paths and other related amenities are developed.
 10. Instructional contract vendors - Instructional vendors be limited to one vendor at a time with a maximum of 2 instructors with not more than 10 students. The number of vendors permitted is to be determined. Vendors will be given a specific day and time to offer instruction. This is being recommended to mitigate user and vendor conflict and congestion. Vendors are anticipated to be charged a permit fee to offer lessons. The cost of the permit has not yet been determined, although, other cities have indicated a fee of \$200 - \$500 per vendor per season.
 11. Food Vendors – Food vendors will only be permitted during special events. Food vendors will not be allowed on a regular basis in order to mitigate Greenbelt path and spectator area congestion as well as mitigate litter.
 12. Alcohol – Prohibit.

There are a couple of little nuances; the River Recreation Park is actually in Garden City. Both mayors are open to a boundary adjustment or do a joint use agreement. Staff is looking for your

endorsement.

It was noted that we don't have recreation immunity for softball. Will we have it here? Tom Governale stated yes as we won't be charging.

Director Hall noted that we will however; charge an event for all direct costs but not a user fee for the facility.

Commissioner Chandler noted, as a result of the Parks, Trails, & Open Space Sub-Committee, that these rules will evolve as time goes by and to allow additional flexibility add a number 13; that the Director of Boise Parks & Recreation Department have the authority to impose new regulations as necessary.

Commissioner Spurling questioned how are regulations considered with other parks? Staff noted that some of them are pretty loose. Some have food vendors. None require safety gear.

Commissioner Spurling asked how you will determine who gets what spot for vendors. Staff stated probably put out a request and see how many apply. Look at the criteria first and if they are all close go to a lottery system.

MOTION

A motion was made by Commissioner McGown **THAT THE BOISE PARKS & RECREATION COMMISSION APPROVE THE PROPOSED REGULATION AND POLICY RECOMMENDATIONS REGARDING THE OPERATION OF THE RIVER PARK, WITH THE ADDITION OF NUMBER 13 THE POWER OF THE DIRECTOR TO IMPOSE NEW REGULATIONS AS NECESSARY,** seconded by Commissioner Cunningham.

Motion was approved by all Commissioners present.

UPDATE ON DOG PARK EVALUATION PROCESS

Jerry Pugh, Volunteer Coordinator, noted we are coming up on a year with the pilot program in seven (7) of our parks. We sent out the follow-up survey February 1st and the initial survey response rate is 17%. The survey deadline is March 1st at which time we will try to get the results compiled as quickly as we can so you have time to review. What can be expected will be a summary of initial survey, summary of survey that was implemented after the beginning of the program, a summary of the daily log, as well as enforcement stats through the year? We would like to set up a Parks, Trails, & Open Space Sub-Committee meeting at the end of March to review all the

information.

Commissioner Cunningham noted that when he looked at some of the reports, was the enforcement that relates to the Police Department. They don't write a ticket every time they stop someone. Are we doing some things that when you hear the comments from the public about the fact that a guy just had his dog jump out of the truck and hadn't got the leash on the dog and was ticketed, is that prevalent?

Jerry doesn't think the daily log reflects the true issues. Certain people are just going to be upset.

Director Hall informed Commissioners that the enforcement section works out of Finance Administration. They are not our employees. When we receive complaints, we forward those on to the enforcement section. They have had to work on some communication style. What you don't hear about, is what the dog owners do to the enforcement people. It is not the most sought after job in the City. There are always two sides to every story.

**RIVER EDGE
APARTMENTS AKA
ROYAL BLVD.
APARTMENTS**

Sarah Schafer and Joshua Johnson, Planning & Zoning brought the Royal Blvd. Apartments, now called River Edge Apartments to the Commission as they are seeking a waiver on the height of the modulation. The height recommendation is 55' and the design review came in and asked for two areas of modulation that would go above the 55'. The apartments are kind of a U shape. Looking at the elevation, there is 55' at the height. We needed to add additional modulation up to 59' on two pieces adjacent to the Greenbelt. This is pretty minimal.

Commissioner Chandler questioned if we waive this, what about the other buildings up and down the Greenbelt.

Sarah noted that the Kinetics building had a height exception of 55' and it is actually 53'.

Cheyne Weston, staff, noted we granted an exception to the Cottonwood Grille of 71' to hide the air conditioning unit. A person can't see it from any angle along the Greenbelt.

Director Hall indicated that he would be willing to allow an exception so a motion can be made tonight as this is scheduled to go to the Planning Commission on March 5th.

Pat Riceci, Boise City Legal, stated to clarify; we are allowed to amend an agenda on the spot if there is a motion made and a good faith reason why.

MOTION

A motion was made by Commissioner Chandler **TO ADD A RECONSIDERATION OF THE HEIGHT RESTRICTION FOR RIVER EDGE APARTMENTS AKA ROYAL BLVD. APARTMENTS PREVIOUSLY RECOMMENDED BY THE COMMISSION. COMMISSIONER CHANDLER STATED THE NEED TO CONSIDER THE ITEM WAS BROUGHT TO THE STAFF'S ATTENTION BY PDS ONLY YESTERDAY, TOO LATE TO INCLUDE IT AS A REGULAR AGENDA ITEM. THE PLANNING AND ZONING COMMISSION HAS THIS ON ITS MARCH 5 AGENDA, PRIOR TO THE COMMISSION'S NEXT MEETING,** seconded by Commissioner McGown

Motion to amend agenda approved by all Commissioners.

A motion was made by Commissioner Cunningham, **THAT THE PARKS & RECREATION COMMISSION ACCEPT THE HEIGHT VARIANCE OF THE ROYAL BLVD. APARTMENT NOW KNOWN AS RIVERSIDE APARTMENT, FROM 55' TO 59' AS OUTLINED BY PLANNING AND DEVELOPMENT,** seconded by Commissioner Uranga.

Staff reminded Commissioners that the Shilo Motel requested a height exception. The Shilo wanted to go to 70' and staff and Commissioners left it at 55'. The issue was appealed to Mayor and Council and approved. In the 30th Street Plan, buildings can go to 70'.

Sarah showed renderings of what the Commissioners approved versus what is being asked for. The extra height will be screening air conditioners. A bit of modulations is needed to break up the lines as well.

Commission Chandler asked if the City is requesting the change. Sarah stated yes.

Motion was approved by all Commissioners present.

Meeting adjourned at 6:20 P.M.

Respectfully submitted,

Margaret C. Lancaster CAP-OM

/mcl



Planning & Development Services

Boise City Hall, 2nd Floor
150 N. Capitol Boulevard
P. O. Box 500
Boise, Idaho 83701-0500

Phone: 208/384-3830
Fax: 208/384-3753
TDD/TTY: 800/377-3529
Website: www.cityofboise.org/pds

9

CUP11-00090 & CFH11-00036/ The Michaels Organization

Summary

Conditional use permit for a height exception to construct a five story multi-family residential building on 3.42 acres located at 1004 W. Royal Boulevard in an R-OD (Residential-Office with Design Review) zone.

Prepared By

Joshua Johnson, Current Planning

Recommendation

Staff recommends **approval** of CUP11-00001 & CFH11-00036.

Reason for the Decision

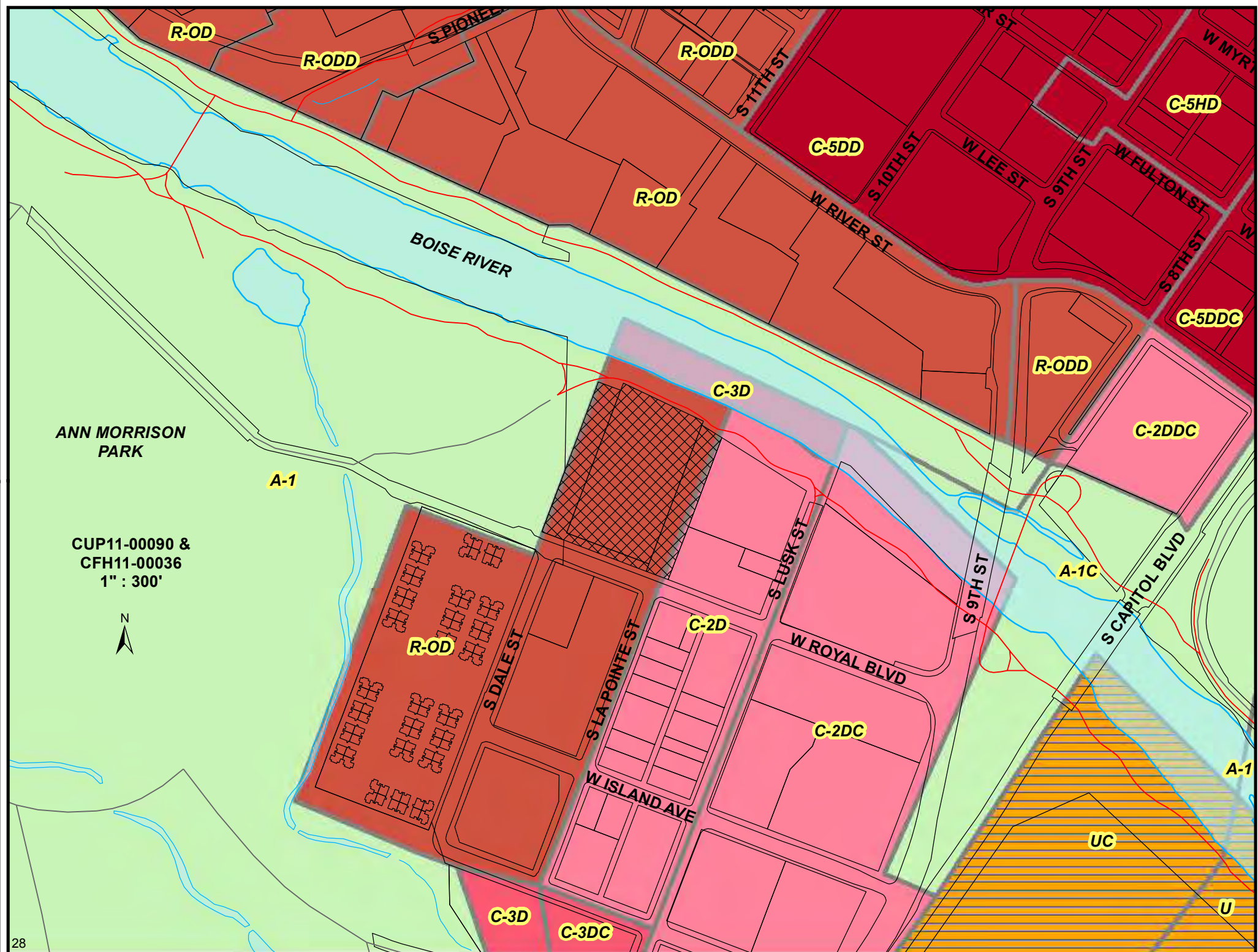
Conditional Use Permit

The height exception is compatible as there are buildings of similar height in the immediate vicinity and ample separation is provided to shorter structures. The height exception will not place an undue burden on transportation and other public facilities. Most roads within the general vicinity operate at acceptable levels of service. The traffic generated by this development is mitigated by its intended use as student housing. The project is next to the greenbelt that allows a direct walking/biking path that is ¼ mile from BSU. The project meets all setback and open space requirements of the R-O zone. The height exception will not adversely affect surrounding property owners as the building's additional height does not allow for more units than the site's available parking. The proposed use is supported by the general goals, objectives and policies of the Comprehensive Plan. Currently, there is a lack of on campus housing for BSU. The height exception allows for the applicant to maximize the number of units, while providing adequate parking. *Objective 7.1.2* calls for opportunities for residents of Boise to find housing in the neighborhood of their choice. This project will allow for prospective students to find housing near the university

River System

The subject property is classified as Class C lands and waters which states that all allowed and conditional uses of the base zone are permissible. No riparian habitat will be disturbed with this application as the project is located outside the 70 foot greenbelt setback. The project complies with the Boise Comprehensive Plan. *Objective 3.4.2* state that bald eagle habitat should be protected as a unique feature of the City. There are no bald eagle perch trees or heron rookeries in the general vicinity of the project. A condition of approval requires that the applicant obey all local, state and federal laws and regulations.



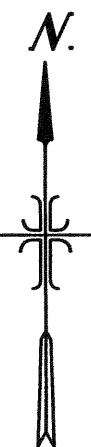


COORDINATE 20' WIDE EMERGENCY VEHICLE ACCESS IMPROVEMENT WITH BOISE CITY PARKS DEPARTMENT. RECONSTRUCT EXISTING PATHWAY TO A 20' WIDE ACCESS TO MEET 70,000 GVW.

20' FIRE EMERGENCY VEHICLE ACCESS

EXISTING PAVED DRIVEWAY (PARK ACCESS)

BOISE PARKS



30 15 0 30 60 90
SCALE IN FEET

MORRISON PARK CONDOMINIUMS

S DALE ST
30' R/W

BOB FIFER SUBDIVISION
BLOCK 1

W. ROYAL BLVD

S LA POINTE ST
30' R/W

5-STORY, 175-UNIT
APARTMENT COMPLEX

MECHANICAL & TRASH ROOM

OFFICE

SITE PLAN KEY NOTES:

- S1 NO PARKING AREA - TRASH PICK-UP AREA
- S2 CONSTRUCT WROUGHT IRON FENCING WITH PILLARS. SEE LANDSCAPE AND ARCHITECT PLANS FOR DETAILS.

S3 CONCRETE SIDEWALK OR PATHWAY

- S4 VERTICAL CURB AND GUTTER
- S5 PERVIOUS CONCRETE PAVING
- S6 VALLEY GUTTER
- S7 TRANSFORMER
- S8 GENERATOR
- S9 PARKING LIGHTS

SITE DATA

TOTAL SITE AREA = 139,939 SF± (3.21 ACRES±)

PAVING AREA
(Exterior Driveways & Parking)
TOTAL PAVING AREA = 25,752 sf
TOTAL PAVING % OF SITE = 18.40%

SIDEWALK AREA
(Concrete Pedestrian Pathways/Sidewalks)
TOTAL SIDEWALK AREA = 3,924 sf
TOTAL SIDEWALK AREA % OF SITE = 2.80%

LANDSCAPED AREA
(Including Infiltration Swales)
TOTAL LANDSCAPED AREA = 27,449 sf
TOTAL LANDSCAPED AREA % OF SITE = 19.62%

BUILDING AREA
(Excluding Open Parking)
TOTAL BUILDING AREA = 82,814 sf
TOTAL BUILDING AREA % OF SITE = 59.18%

PROPOSED BUILDING HEIGHT = 55 FEET
EXISTING ZONING: R-O(D)
GROSS DENSITY: 54.517 DWELLING UNITS/ACRE

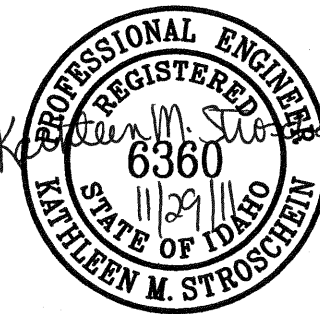
PARKING DATA
TOTAL PARKING: 280 SPACES
COMPACT PARKING: 108 SPACES
HANDICAPPED PARKING: 7 SPACES
OTHER PARKING: 165 SPACES
BIKE PARKING: 48 SPACES

SITE NOTES:

- THE BOISE RIVER SYSTEM ORDINANCE APPLIES TO THIS PROPERTY - CLASS C LANDS.
- THIS ENTIRE PROPERTY LIES IN THE BOISE RIVER 100-YEAR FLOODPLAIN. SEE FEMA MAP NUMBER 16001C0277 H FOR ADDITIONAL INFORMATION.
- LIGHTING:
EXTERIOR: BUILDING-MOUNTED LIGHT FIXTURES
COVERED PARKING AREA: CEILING-MOUNTED LIGHT FIXTURES

ARCHITECT
KITCHEN & ASSOCIATES
8 PENN CENTER
1628 JOHN KENNEDY BLVD., SUITE 1600
PHILADELPHIA, PA. 19103
(215) 985-0111

DEVELOPER
THE MICHAELS ORGANIZATION
3 EAST STOW ROAD, SUITE 100
MARTON, NJ 08053
(856) 596-3008



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1029 N. ROSARIO STREET, SUITE 100
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Phone (208) 938-0980 Fax (208) 938-0941

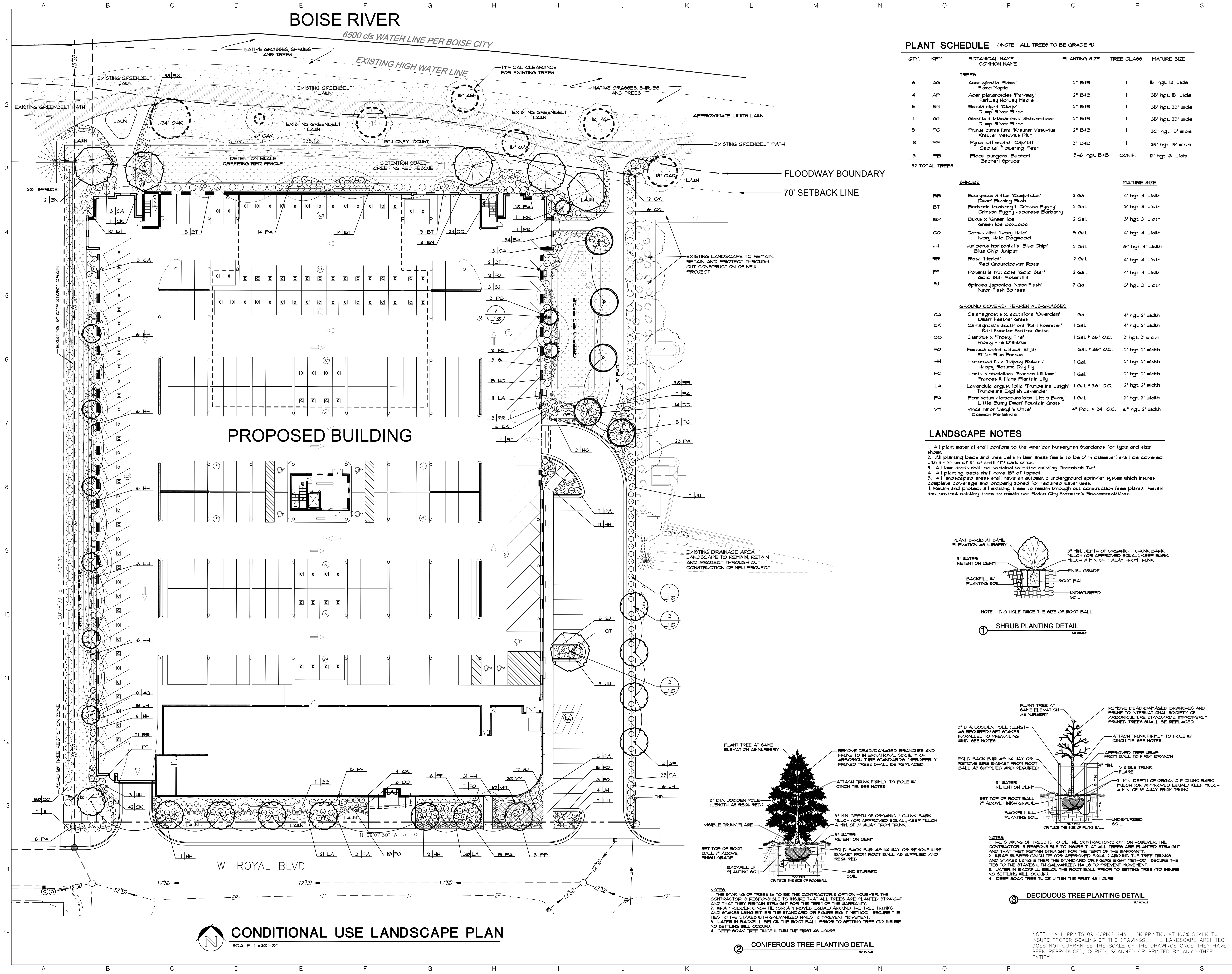
RIVER EDGE
APARTMENTS
1004 W. ROYAL BOULEVARD, BOISE, IDAHO
SITE & DIMENSIONING PLAN

SCALE 1"=30' N/A
DWG. DATE 11/29/11
PROJ. NO. 110801

SHEET 2 OF 3

SITE

/SHEETS/110801-SITE.DWG



STAMP:

STATE OF IDAHO
LANDSCAPE ARCHITECTURE
LA-157

DATE:

11-29-11

South

LANDSCAPE ARCHITECTURE, P.C.

2002 S. VISTA AVE.
BOISE, IDAHO 83705

CONSULTANT:

ENGINEERING
SOLUTIONS
1029 N. ROSARIO ST., STE. 100
MERIDIAN, IDAHO 83542
Phone (208) 336-9880 Fax (208) 336-0841

REVISIONS:

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RIVER EDGE APARTMENTS
1004 ROYAL BOULEVARD
BOISE
IDAHO

DRAWN BY:

TLB

CHECKED BY:

JDR

PROPERTY NUMBER:

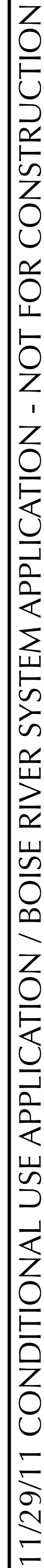
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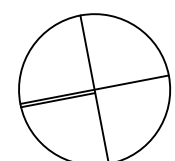
DEVEL. NUMBER:

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SHEET:

L1.0

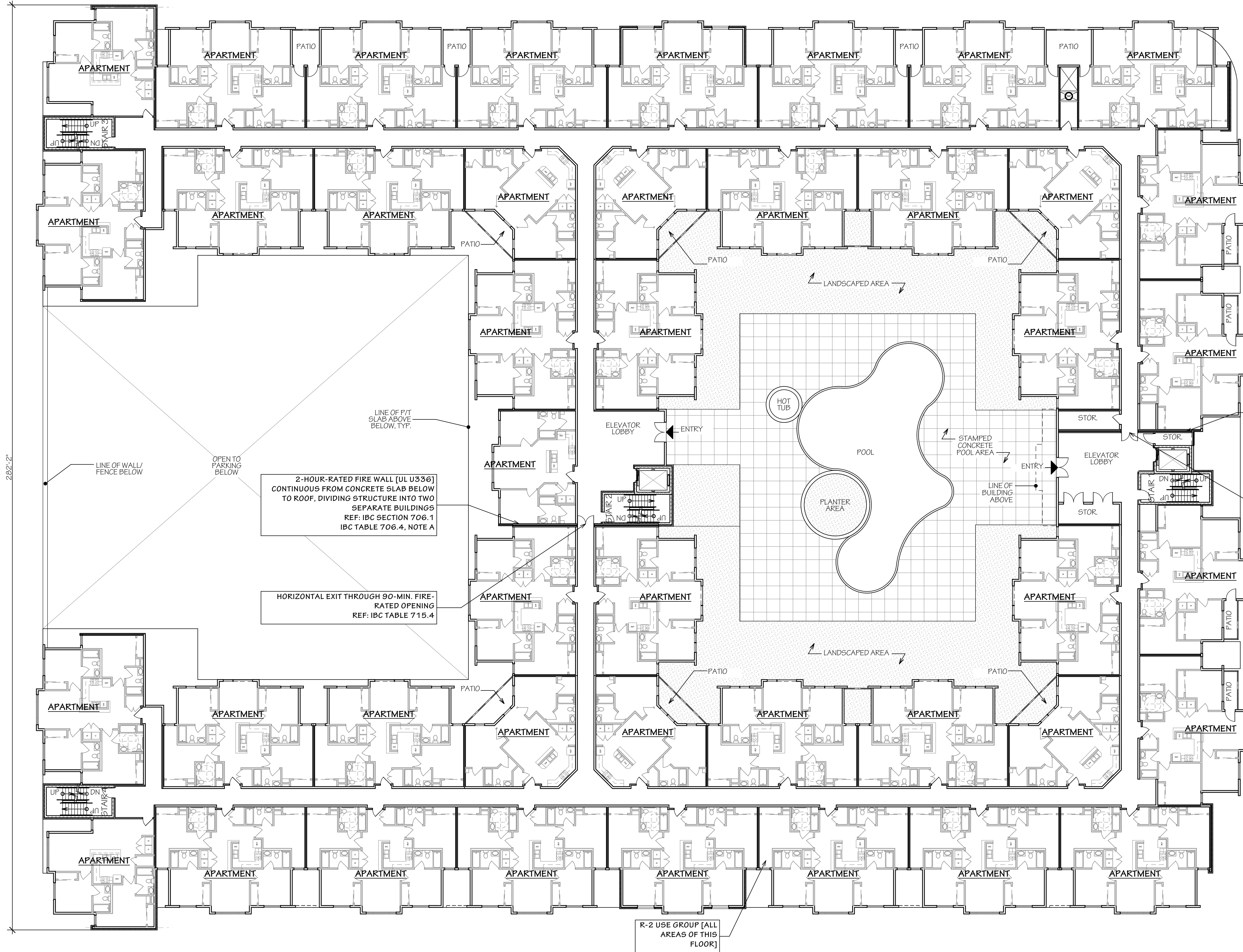




SECOND FLOOR PLAN

SCALE: 1/16" = 1'-0"

USE GROUP THIS FLOOR: R-2 APARTMENT
NFPA 13 AUTOMATIC SPRINKLER SYSTEM THROUGHOUT PER IBC SECTION 903.2.6



A6.2



A6.1



A6.1

2-HOUR-RATED FIRE WALL [UL U336]
CONTINUOUS FROM CONCRETE SLAB BELOW
TO ROOF, DIVIDING STRUCTURE INTO TWO
SEPARATE BUILDINGS
REF: IBC SECTION 706.1
IBC TABLE 706.4, NOTE A

HORIZONTAL EXIT THROUGH 90-MIN. FIRE-
RATED OPENING
REF: IBC TABLE 715.4

11/29/11 CONDITIONAL USE APPLICATION / BOISE RIVER SYSTEM APPLICATION - NOT FOR CONSTRUCTION

Date	11/29/11
Job	11211
Drawn	TPB
Revision	Date

11211_composite [bimserv-k2a]



River Edge Apartments

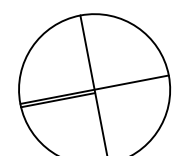
1004 W. Royal Boulevard
Boise, ID 83706

A2

SECOND FLOOR
PLAN

teamwork\k2a\11211_composite\TYPICAL FLOOR PLAN Monday, November 28, 2011 2:04 PM

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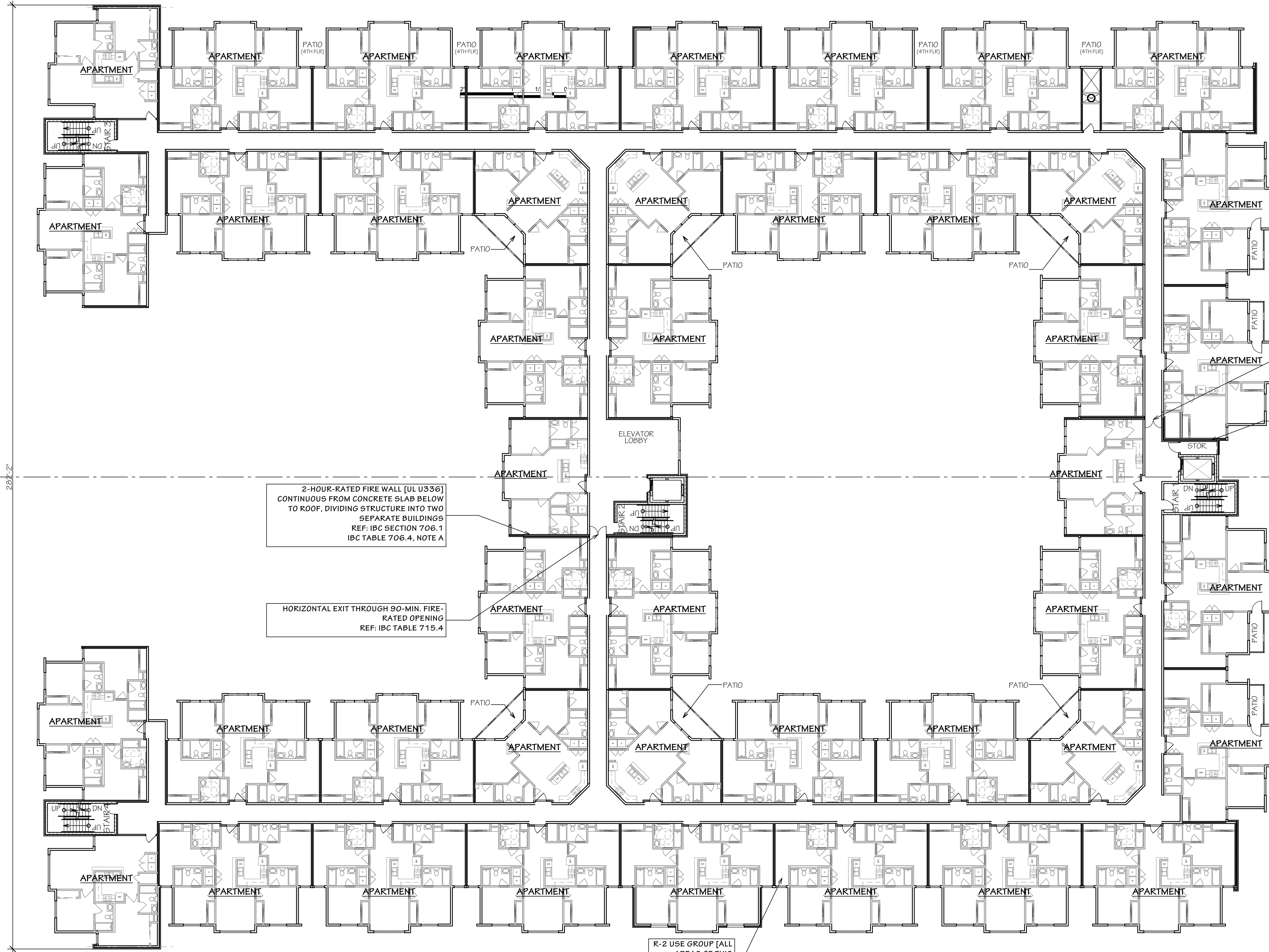


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TYPICAL FLOOR PLAN (3RD THRU 5TH)

SCALE: 1/16" = 1'-0"

USE GROUP THESE FLOORS: R-2 APARTMENT
4 STORIES OF R-2 USE GROUP ABOVE S-2 PARKING PER IBC 509.4
NFPA 13 AUTOMATIC SPRINKLER SYSTEM THROUGHOUT PER IBC SECTION 903.2.8



HORIZONTAL EXIT THROUGH 90-MIN. FIRE-RATED OPENING
REF: IBC TABLE 715.4

2-HOUR-RATED FIRE WALL [UL U336]
CONTINUOUS FROM CONCRETE SLAB BELOW TO ROOF, DIVIDING STRUCTURE INTO TWO SEPARATE BUILDINGS
REF: IBC SECTION 706.1
IBC TABLE 706.4, NOTE A

11/29/11 CONDITIONAL USE APPLICATION / BOISE RIVER SYSTEM APPLICATION - NOT FOR CONSTRUCTION

Kitchen & Associates Architectural Services, PA
Architecture
Engineering
Planning
Interior Design

Collingswood, NJ
756 Haddon Avenue - 08108
Tel: 856.854.1880
Philadelphia, PA
8 Penn Center
1628 John F Kennedy Blvd 19103
Suite 1600
Tel: 215.985.0111

On the Web
www.kitchenandassociates.com

Date	11/29/11
Job	11211
Drawn	TPB
Revision	Date

11211_composite [bimserv.k2a]



River Edge Apartments

1004 W. Royal Boulevard
Boise, ID 83706

A3

TYPICAL FLOOR
PLAN



1 EAST ELEVATION
SCALE: 1/16" = 1'-0"



2 SOUTH ELEVATION (ROYAL BLVD. ELEVATION)
SCALE: 1/16" = 1'-0"

[illegible]

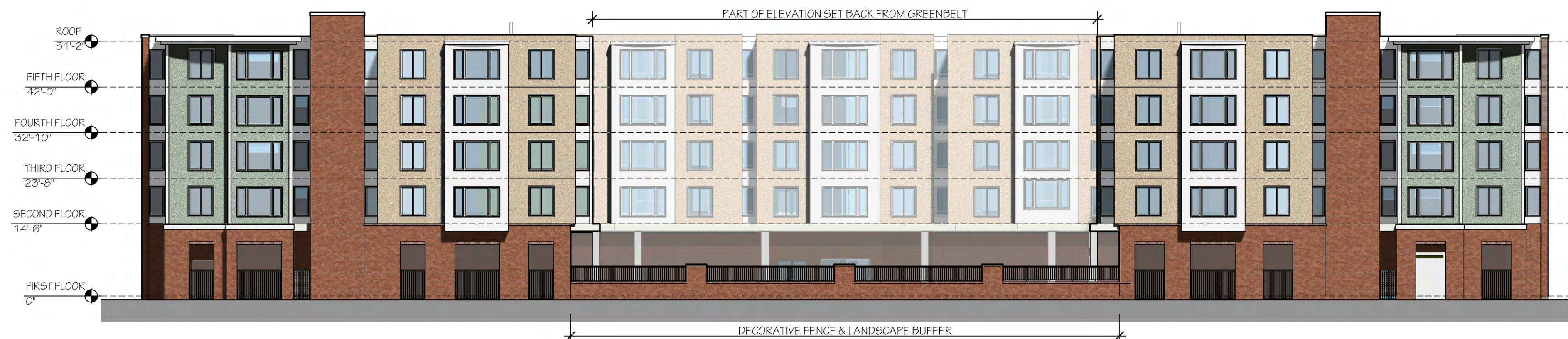
River Edge Apartments
1004 W. Royal Boulevard
Boise, ID 83706

A6.1

COLOR ELEVATIONS



1 WEST ELEVATION
SCALE: 1/16" = 1'-0"



2 NORTH ELEVATION (GREENBELT ELEVATION)
SCALE: 1/16" = 1'-0"

11/29/11 CONDITIONAL USE APPLICATION / BOISE RIVER SYSTEM APPLICATION - NOT FOR CONSTRUCTION

Date	11/29/11
Job	11211
Drawn	TPB
Revision	Date
11211_composite [Bimserv.k2a]	

Michaels ORGANIZATION
Together We Build Communities

River Edge Apartments
1004 W. Royal Boulevard
Boise, ID 83706

Ada County Assessor



LOOKING NORTHEAST AT SITE



LOOKING NORTH ALONG EASTERLY BOUNDARY



LOOKING NORTH AT SITE



LOOKING EAST ALONG ROYAL BOULEVARD



LOOKING WEST ALONG ROYAL BOULEVARD



EXISTING STRUCTURE TO BE REMOVED



EXISTING STRUCTURE AT NORTHERLY BOUNDARY



GREENBELT AT NORTHERN BOUNDARY OF PROPERTY



WEST BOUNDARY OF SITE ADJACENT TO PARKS PROPERTY



1029 N. Rosario Street, Suite 100
Meridian, ID 83642
Phone: (208) 938-0980
Fax: (208) 938-0941

February 27, 2012

City of Boise
Attn: Planning and Zoning Commission
150 N. Capitol Blvd.
Boise, Idaho 83701

Re: River Edge Apartments (1004 W. Royal Boulevard) – Variance/Conditional Use, Boise River System and Floodplain Applications

Dear Commissioners:

Engineering Solutions, LLP, is pleased to submit the accompanying applications on behalf of The Michaels Organization for the River Edge Apartments. The Michaels Organization proposes a modern, state-of-the-art living environment oriented toward Boise State University students. The subject property is 3.21 acres in size and is located north of Royal Boulevard and west of Lusk Street. Lying adjacent to the Boise River Greenbelt and Ann Morrison Park, the property is currently utilized for industrial purposes by Estes Trucking and Express Freight. Two existing concrete block structures occupy the site with gravel loading/unloading areas and storage for truck trailers. The existing site has no landscape buffers or internal landscaping as required by the Boise City Zoning Ordinance. The parcel is currently zoned R-OD (Residential Office District with Design Review).

Project Overview

The proposed development consists of a five-story, multi-family structure approximately 347,094 square feet in size. The ground floor level includes a lobby, residential amenities (media, fitness, jacuzzi and computer rooms) and 280 parking spaces. The four upper floors will accommodate 175 apartments; 39 two-bedroom units and 136 four-bedroom units. The proposed building will be fully sprinklered. The design highlights will feature a modern motif, incorporating sustainable material materials and practices.

Two enclosed bicycle parking areas (48 spaces) have been provided in the north portion of the structure and adjacent to the greenbelt. Two pedestrian walkways interconnect with the Boise River Greenbelt. The northeast pathway connection includes a walkway from Royal Boulevard to the greenbelt. The Boise Open Space and Trails Sub-Committee discussed the proposed development on October 27, 2011. The Committee found the project adequately addressed the need to conserve the aesthetic views along the river as viewed from the greenbelt. Greenbelt

safety will be enhanced by the construction of an eight-foot-wide illuminated concrete pathway connection on the northeast side of the subject site to the greenbelt, with an auxiliary path at the northwest corner of the property. The pedestrian connections will allow residents to conveniently walk or bike to Boise State University.

The building is oriented toward Royal Boulevard with two vehicular access points in alignment with LaPointe Street and Dale Street. A traffic study was submitted to Ada County Highway District and the City of Boise. The Ada County Highway District Commissioners accepted the traffic study and approved the development application on January 11, 2012. The project will generate approximately 1,055 vehicle trips per day, an increase of approximately 785 daily trips compared to the truck terminals' present traffic generation. The traffic study concluded that none of the study area roadways will require further expansion to accommodate the site-generated traffic volumes. Curb, gutter and an eight-foot-wide detached sidewalk will be installed along Royal Boulevard (designated a local street) in compliance with the Ada County Highway District Policy Manual. An eight-foot-wide landscaped parkway will be installed adjacent to the curb, creating an enhanced entryway into Ann Morrison Park.

Adequate public services are available to the site in Royal Boulevard. The facilities include a Boise City 42-inch sewer main, a United Water six-inch water main, an Idaho Power 12,500-volt distribution line along with Cable One, Intermountain Gas and Qwest lines. United Water has field-verified the available fire flow from the existing six-inch water main is 2,000 gpm. Another water main (12-inch) is within 800 feet of the subject property and could be extended and looped to increase fire flow if required by Boise Fire Department. The existing Idaho Power distribution line installed in the 1940's will be relocated underground.

The easterly driveway will be constructed to a 26-foot-wide travel lane to accommodate emergency aerial fire access. A second emergency access to the north portion of the building is available west of the subject site. Boise Parks and Recreation will allow the applicant to upgrade a portion of the greenbelt to a 20-foot-wide emergency vehicle access from the existing cul-de-sac within Ann Morrison Park. The emergency access will be traffic-rated at 70,000 gvw. The applicant is required by Boise City Parks to submit a proposal and a design for review and approval by the Director and staff.

Variance (Waiver of Height Requirement)/Conditional Use Application (Height Exception)

The applicant has submitted a variance/conditional use application for a waiver of the maximum building height of 35 feet height in the R-O(D) zone under Section 11-04-05.05 (Table 2.2A) of the Boise City Zoning Ordinance. The proposed request is an allowance for a building height of 63 feet adjacent to Royal Boulevard and 59-feet adjoining the greenbelt. The additional height allows for modulation of the parapet as requested by the Design Review staff. There are three parapets which vary in height by 6-feet. The Design Review Committee approved the design review application (DRH12-00013) on February 8, 2012, with the modified building height.

The building will be constructed with a non-combustible, concrete slab “podium” forming the first floor ceiling supported by concrete columns at the first floor level. Above the concrete deck will be wood-framed construction for the apartments on the second through fifth floors.

We do not believe this additional height will have any negative impact on the surrounding area. An existing three-story office building (Keynetics) is located east of the subject site. The adjacent Keynetics building received a height exception for 56 feet under CUP-04-00063 and was constructed to a height of 53 feet. The Boise Parks and Recreation maintenance building/yard and administration building are adjacent to the west boundary, north of the proposed project are the Boise River and greenbelt, and south are multiple uses which include three-story apartments (Morrison Park Condominiums), industrial uses (proposed multi-family) and offices.

The Boise Planning and Parks staff has indicated the proposed height of 59 feet at the Boise Greenbelt and 63 feet at Royal Boulevard is consistent with other exceptions (Arid Club, Cottonwood Grille and Keynetics) approved along this section of the Boise River. The Boise Parks and Recreation staff have reviewed and recommended approval of this apartment project, including the request for Boise River System Permit and the height exception. The Boise Parks and Recreation Commission reviewed and approved the site plan, landscape plan and building elevations at their public meeting on November 17, 2011. A copy of the Parks and Recreation Department staff report was attached to the application. The Parks Department requested the applicant note in the application submittal that they recognize the current Parks maintenance building and equipment yard. The existing Parks use shall not be considered a nuisance due to noises associated with its operation.

On February 16, 2012, the Design Review Manager, Sarah Schafer, and Planning and Zoning staff member, Josh Johnson, presented to Boise Parks and Recreation Commission an updated building elevation reflecting an increase of the height at the greenbelt to 59 feet. Design Review staff informed the Commission they desired additional modulation on two sections of the building which adjoin the greenbelt. Sarah indicated the City staff is requesting this modification in height to the Boise River Permit. The Boise Parks and Recreation Commission recommended approval of the increase in height to 59 feet at greenbelt.

The height variance/exception is necessary for the River Edge Apartments for the following reasons:

- The granting of this variance of height is not in conflict with the Comprehensive Plan in effect at the time of submittal on November 29, 2011. The property is located in the Central Bench Planning Area which promotes higher-density housing between Capitol Boulevard and Ann Morrison Park. The Plan encourages New Urbanism principles and standards. Blueprint Boise, adopted on November 29, 2011, includes the parcel within the Downtown Planning Area and designates the subject property on the Land Use Map as Mixed-Use. Policies within Blueprint Boise support the project since it promotes urban housing and redevelopment in the Downtown area. The policies encourage bicycle commuting and pedestrian-friendly development.

- Downtown housing is viewed as a key to offering a sizeable workforce, thereby decreasing fuel consumption and the number of vehicular trips. The granting of the height variance will not effect a change in zoning since all other dimensional standards of the R-OD will apply.
- The conditions or special circumstances related to the intended use of the property that do not generally apply to other lands or uses in the district. The property is 3.21 acres in size and is bounded by the Boise River. To satisfy the parking requirements on the parcel and have a financially viable project, the podium structure is necessary. This mandates the residential units be located above the parking area on four floors. The exposure to the Boise River, greenbelt and Ann Morrison Park entryway corridor were the driving force on the overall design of the building. The building footprint was impacted by an eight-foot-wide detached walk with an eight-foot-wide landscaped parkway along Royal Boulevard, the 70-foot minimum setback from the Boise River 6500 C.F.S. (highwater) mark, an existing ACHD 15-inch drainage pipe along the property's west boundary, the request to add building modulation, and internalize a majority of the parking. All these factors decreased the building area and required an increase in height above the 35 feet for the R-OD zone.
- The granting of the variance will not be detrimental to the public health, safety or welfare of persons residing or working in the vicinity of the property. The variance or waiver of height will not adversely impact other properties in the vicinity. There are no health or safety issues associated with the proposed project. The additional height of the structure is consistent with other structures along the Boise River corridor. The Cottonwood Grille under building permit (BLD11-02361) indicates the height of the structure was 65 feet in the R-OD zone. The Keynetics building was constructed to 53 feet in a C-2D zone which limits height to 45 feet. The Arid Club on the north side of the Boise River was also approved for a height exception.
- The building is the optimum size necessary to provide the vibrant amenities and living spaces that a Boise State University student population demands in an economically feasible fashion.
- The Boise Zoning Ordinance parking standards of 1.5 spaces per dwelling unit and 1 guest space per 10 units requires a significant amount of parking (280 spaces). After evaluating several alternatives, it was determined that placing the apartments above ground-level parking was the only viable solution.
- The Boise River Ordinance requires the finished floor of the proposed structure be one foot above the Base Flood Elevation, which requires filling of the site.
- Given the height required by the ground floor spaces by the ordinance and the necessary height for the interior floors, and recommendation of Design Review Committee; the typical building parapet must be located 59 feet above grade for the north portion of the building adjoining the greenbelt and 63 feet adjacent to Royal Boulevard.

Boise River System Permit and Floodplain Review Applications

This is a formal request for Boise River System and Floodplain Permits. The subject site lies within the 100-year floodplain as delineated in the FIRM Map (Number 16001C0277 H).

The estimated Base Flood Elevation for the property is 2687. The finished floor elevation (excluding the parking area) of the structure will be required to meet a minimum elevation of 2688.

The subject site is designated Class C Lands and Water. No mitigation or enhancement plans are required for the Class C areas. Consulting with Boise Public Works and the U.S. Army Corps of Engineers, there are no heron rookeries or bald eagle perching areas adjacent to this site. The property has no emergent wetlands and no improvements are planned within the riparian areas. Consulting with Eric Gerke of the Army Corps of Engineers, no 404 Permit will be required for this project. The site is considered developed with the current industrial improvements.

The proposed apartment structure complies with the 70-foot Greenbelt Setback from the 6500 c.f.s. line as required by the Boise River Ordinance. The Boise Parks property along the north boundary is improved with the greenbelt, trees and turf. A landscape plan includes additional turf, trees and shrubs to complement the existing manicured area. The landscape plan submitted with this application reflects comments from Boise Parks and Recreation staff, Open Space and Trails Committee and the Commission. The parking area in between the two wings of the structure will be screened from the Boise River Greenbelt with wrought iron fencing, decorative pillars and vegetation. The attached site grading and utility plan delineates the floodway boundary, 6500 c.f.s. line and preliminary grades.

We look forward to your favorable action regarding the accompanying applications. Thank you for your time and consideration.

Sincerely,

Engineering Solutions, LLP

Becky McKay, Partner
Principal Planner

BM:ss
Attachments



1029 N. Rosario Street, Suite 100
Meridian, ID 83642
Phone: (208) 938-0980
Fax: (208) 938-0941

November 28, 2011

City of Boise
Attn: Planning and Zoning Commission
150 N. Capitol Blvd.
Boise, Idaho 83701

Re: River Edge Apartments (1004 W. Royal Boulevard) – Conditional Use, Boise River
System and Floodplain Applications

Dear Commissioners:

Engineering Solutions, LLP, is pleased to submit the accompanying applications on behalf of The Michaels Organization for the River Edge Apartments. The Michaels Organization proposes a modern, state-of-the-art living environment oriented toward Boise State University students. The subject property is 3.21 acres in size and is located north of Royal Boulevard and west of Lusk Street. Lying adjacent to the Boise River Greenbelt and Ann Morrison Park, the property is currently utilized for industrial purposes by Estes Trucking and Express Freight. Two existing concrete block structures occupy the site with gravel loading/unloading areas and storage for truck trailers. The existing site has no landscape buffers or internal landscaping as required by the Boise City Zoning Ordinance.

Project Overview

The proposed development consists of a five-story, multi-family structure approximately 351,900 square feet in size. The ground floor level includes a lobby, residential amenities (media, fitness and computer rooms) and 280 parking spaces. The four upper floors will accommodate 175 apartments; 39 two-bedroom units and 136 four-bedroom units. The proposed building will be fully sprinklered. The design highlights will feature a modern motif, incorporating sustainable material materials and practices.

Two enclosed bicycle parking areas (48 spaces) have been provided in the north portion of the structure and adjacent to the greenbelt. Two pedestrian walkways interconnect with the Boise River Greenbelt. The northeast connection includes a walkway from Royal Boulevard to the greenbelt. The Boise Open Space and Trails Sub-Committee discussed the proposed development on October 27, 2011. The Committee found the project adequately addressed the need to conserve the aesthetic views along the river as viewed from the greenbelt. Greenbelt safety will be enhanced by the construction of an eight-foot high concrete pathway connection on

the northeast side of the subject site to the greenbelt, with an auxiliary path at the northwest corner of the property.

The building is oriented toward Royal Boulevard with two vehicular access points in alignment with LaPointe Street and Dale Street. A traffic study has been submitted to Ada County Highway District, and a copy is included with this application. The project will generate approximately 1,055 vehicle trips per day, an increase of approximately 785 daily trips compared to the truck terminals' present traffic generation. The traffic study concluded that none of the study area roadways will require further expansion to accommodate the site-generated traffic volumes. Curb, gutter and an eight-foot-wide sidewalk will be installed along Royal Boulevard (designated a local street) in compliance with the Ada County Highway District Policy Manual.

Adequate public services are available to the site in Royal Boulevard. The facilities include a Boise City 42-inch sewer main, a United Water six-inch water main, an Idaho Power 12,500-volt distribution line along with Cable One, Intermountain Gas and Qwest lines. United Water has field-verified the available fire flow from the existing six-inch water main is 2,000 gpm. Another water main (12-inch) is within 800 feet of the subject property and could be extended and looped to increase fire flow if required.

The easterly driveway will be constructed to a 26-foot-wide travel lane to accommodate emergency aerial fire access. A second emergency access to the north portion of the building is available west of the subject site. Boise Parks and Recreation will allow the applicant to upgrade a portion of the greenbelt to a 20-foot-wide emergency vehicle access from the existing cul-de-sac within Ann Morison Park. The emergency access will be traffic-rated at 70,000 gvw. The applicant is required by Boise City Parks to submit a proposal and a design for review and approval by the Director and staff.

Conditional Use Application (Height Exception)

The applicant has submitted a conditional use application to allow a height exception in the R-O(D) zone. The Residential Office District allows for a maximum height of 35 feet. The proposed request is an allowance for a 55-foot height. The building will be constructed with a non-combustible, concrete slab "podium" forming the first floor ceiling supported by concrete columns at the first floor level. Above the concrete deck will be wood-framed construction for the apartments on the second through fifth floors. The overall building will not exceed five stories, or 55 feet in height above the finished ground floor elevation.

We do not believe this additional height will have any negative impact on the surrounding area. An existing three-story office building (Keynetics) is located east of the subject site. The adjacent Keynetics building is 56 feet in height and was approved for a height exception under CUP-04-00063. The Boise Parks and Recreation maintenance building/yard and administration building are adjacent to the west boundary, north of the proposed project are the Boise River and greenbelt, and south are multiple uses which include three-story apartments (Morrison Park Condominiums), industrial uses (proposed multi-family) and offices.

Boise Planning and Parks staff have indicated the proposed height of 55 feet is consistent with other exceptions (Arid Club and Keynetics) allowed along this section of the Boise River. The Boise Parks and Recreation staff have reviewed and recommended approval of this apartment project, including the request for Boise River System Permit and the height exception of 55 feet. The Boise Parks and Recreation Commission reviewed and approved the site plan, landscape plan and building elevations at their public meeting on November 17, 2011. A copy of the Parks and Recreation Department staff report is attached to this application. The Parks Department requested the applicant note in this application submittal that they recognize the current Parks maintenance building and yard. The existing use shall not be considered a nuisance due to noises associated with its operation.

The height exception is necessary for the River Edge Apartments for the following reasons:

- The building is the optimum size necessary to provide the vibrant amenities and living spaces that a Boise State University student population demands in an economically feasible fashion.
- The Boise Zoning Ordinance parking standards of 1.5 spaces per dwelling unit and 1 guest space per 10 units requires a significant amount of parking (280 spaces). After evaluating several alternatives, it was determined that placing the apartments above ground-level parking was the only viable solution.
- The Boise River Ordinance requires the finished floor of the proposed structure be one foot above the Base Flood Elevation, which requires filling of the site.
- Given the height required by the ground floor spaces by the ordinance and the necessary height for the interior floors, the typical building parapet must be located 55 feet above grade.

Boise River System Permit and Floodplain Review Applications

This is a formal request for Boise River System and Floodplain Permits. The subject site lies within the 100-year floodplain as delineated in the FIRM Map (Number 16001C0277 H). The estimated Base Flood Elevation for the property is 2687. The finished floor elevation (excluding the parking area) of the structure will be required to meet a minimum elevation of 2688.

The subject site is designated Class C Lands and Water. No mitigation or enhancement plans are required for the Class C areas. Consulting with Boise Public Works and the U.S. Army Corps of Engineers, there are no heron rookeries or bald eagle perching areas adjacent to this site. The property has no emergent wetlands and no improvements are planned within the riparian areas. Consulting with Eric Gerke of the Army Corps of Engineers, no 404 Permit will be required for this project. The site is considered developed with the current industrial improvements.

The proposed apartment structure complies with the 70-foot Greenbelt Setback from the 6500 c.f.s. line as required by the Boise River Ordinance. The Boise Parks property along the north boundary is improved with the greenbelt, trees and turf. A landscape plan includes additional turf, trees and shrubs to complement the existing manicured area. The landscape plan submitted with this application reflects comments from Boise Parks and Recreation staff, Open Space and Trails Committee and the Commission. The parking area in between the two wings of the

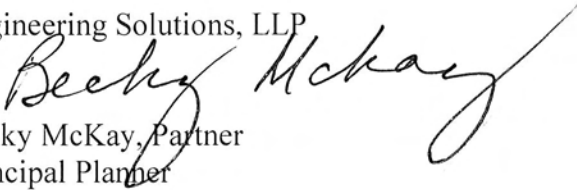
structure will be screened from the Boise River Greenbelt with wrought iron fencing, decorative pillars and vegetation.

The attached site grading and utility plan delineates the floodway boundary, 6500 c.f.s. line and preliminary grades.

We look forward to your favorable action regarding the accompanying applications. Thank you for your time and consideration.

Sincerely,

Engineering Solutions, LLP


Becky McKay, Partner
Principal Planner

BM:ss
Attachments

Conditional Use Application Form

PDS	Department Application
	# 109

New! Type data directly into our forms.

Case #: _____

Note: Be sure to print this form before closing it or you will lose your data. This form cannot be saved to your computer.

Property Information

Address: Street Number: 1004 Prefix: West Street Name: Royal Boulevard
Subdivision: Boise City Park Sub. (Vacated) Block: 5 Lot: Section: 9 & 10 Township: 3N Range: 2E
***Primary Parcel Number:**

R	1	0	1	3	2	5	0	1	5	0
---	---	---	---	---	---	---	---	---	---	---

 Additional Parcels: R1013250151, R1013250155

Applicant Information

***First Name:** Nick ***Last Name:** Zaferes
Company: The Michaels Organization ***Phone:** (856) 596-3008
***Address:** 3 East Stow Road, Suite 100 ***City:** Marlton ***State:** NJ ***Zip:** 08053
E-mail: NZaferes@themichaelsorg.com **Cell:** (267) 886-4502 **Fax:** (856) 355-1547

Agent/Representative Information

First Name: Becky **Last Name:** McKay
Company: Engineering Solutions, LLP **Phone:** (208) 938-0980
Address: 1029 N. Rosario St., Suite 100 **City:** Meridian **State:** ID **Zip:** 83642
E-mail: es-beckym@qwestoffice.net **Cell:** (208) 484-3904 **Fax:** (208) 938-0941
Role Type: ☐ Architect ☐ Land Developer ☒ Engineer ☐ Contractor ☐ Other

Owner Information

Same as Applicant? ☐ Yes ☒ No (If yes, leave this section blank)
First Name: Douglas **Last Name:** Tamura
Company: Boise Terminal Company **Phone:**
Address: 499 Main Street **City:** Boise **State:** ID **Zip:** 83702
E-mail: doughtamura@msn.com **Cell:** (208) 721-2151 **Fax:**

www.cityofboise.org/pds



City of Boise Planning & Development Services

P.O. Box 500 • 150 N. Capitol Blvd • Boise, Idaho 83701-0500
Phone 208/384/3830 • Fax 208/433-5688 • TDD/TTY 800/377-3529

Date Received: _____
Revised 10/2008

1. **Neighborhood Meeting Held** (Date): November 10, 2011

2. **Neighborhood Association:** N/A

3. **Comprehensive Planning Area:** Central Bench

4. This application is a request to construct, add or change the use of the property as follows:

Request for a height exception of 55 feet in an R-OD zone for a 175-unit apartment complex. The proposed structure will be five stories with podium parking.

A. Is this a modification? ☐ Yes ☒ No

B. File number being modified: _____

5. **Size of property:** _____ ☒ Acres ☐ Square Feet

6. Water Issues

A. What are your fire flow requirements? (See International Fire Code) 2,000 gpm

B. Number of hydrants (show location on site plan): (**Note:** Any new hydrants/hydrant piping require United Water approval.)

Number of Existing : 1 Number of Proposed: 2

C. Is the building sprinklered? ☒ Yes ☐ No

D. What volume of water is available? (Contact United Water of Idaho at 362-7330.) 2,000 gpm

7. Existing uses and structures on the property are as follows:

The existing use is industrial, a freight terminal (Estes Trucking and Express Freight). Two existing structures occupy the parcel and are utilized as a truck freight terminal.

8. Are there any known hazards on or near the property?

(Such as canals, hazardous material spills, soil or water contamination.) If so, describe them and give their locations:
No. A Phase One Site Assessment was conducted on the subject site in 2002 and revealed no evidence of recognized environmental hazards.

9. Adjacent Property Information

Building types and/or uses:		Zone:
North:	<u>Boise River/Greenbet</u>	<u>C-3D</u>
South:	<u>Industrial</u>	<u>R-OD</u>
East:	<u>Office</u>	<u>C-2D</u>
West:	<u>Boise Parks</u>	<u>A-1</u>

10. Proposed Non-Residential Structures

A. Number of non-residential structures: _____

Square footage of proposed non-residential structures or additions (If 5+ floors, attach narrative with chart):

	Gross Square Feet	Net Leasable Square Feet
1st Floor:	_____	_____
2nd Floor:	_____	_____
3rd Floor:	_____	_____
4th Floor:	_____	_____

B. Maximum Proposed Structure Height(s): _____

C. Number of Stories: _____

11. Proposed Residential Structures

A. Number of Residential Units (if applicable): 175

B. Maximum Proposed Structure Height(s): 55'

C. Number of Stories: 5

12. Site Design

A. Percentage of site devoted to building coverage: 59.2

B. Percentage of site devoted to landscaping: 19.6

C. Percentage of site devoted to paving: 18.4

D. Percentage of site devoted to other uses: 2.8

E. Describe other use: Pathways and walks

13. Loading Facilities, if proposed (For Commercial uses only):

Number: _____ Location: _____
 Size: _____ Screening: _____

14. Parking

	Required		Proposed
A. Handicapped Spaces:	<u>7</u>	Handicapped Spaces:	<u>7</u>
B. Parking Spaces:	<u>280</u>	Parking Spaces:	<u>280</u>
C. Bicycle Spaces:	<u>28</u>	Bicycle Spaces:	<u>48</u>
D. Proposed Compact Spaces:	<u>108</u>		
E. Restricted (assigned, garage, reserved spaces) parking spaces proposed:			_____
F. Are you proposing off-site parking?	<input type="radio"/> Yes <input checked="" type="radio"/> No	If yes, how many spaces?	_____
G. Are you requesting shared parking or a parking reduction?	<input type="radio"/> Yes <input checked="" type="radio"/> No	If yes, how many spaces?	_____

Note: If you are requesting shared parking or a parking reduction, you must submit a survey of persons using and working on the premises and any additional information demonstrating that use by the regular employees and visitors to the premises will require fewer off-street parking spaces than required by the Zoning Ordinance.

15. Setbacks (Plans that are not graphically dimensioned will not be accepted.)

	Building Required	Building Proposed	Parking Required	Parking Proposed
Front:	<u>10'</u>	<u>15.2</u>	<u>N/A</u>	_____
Rear:	<u>5'</u>	<u>20.3</u>	<u>N/A</u>	_____
Side 1:	<u>5'</u>	<u>55.9</u>	<u>N/A</u>	_____
Side 2:	<u>10'</u>	<u>19.9</u>	<u>N/A</u>	_____

16. Drainage (proposed method of on-site retention): Infiltration Swales**17. Floodways & Hillside**

- A. Is any portion of this property located in a Floodway or a 100-year Floodplain? ☐ Yes ☐ No
- B. Does any portion of this parcel have slopes in excess of 15%? ☐ Yes ☒ No

Note: If the answer to either of the above is yes, you will be required to submit an additional Floodplain and/or Hillside application and additional fee. You must submit the additional required application(s) for review at the same time as this request.

properties by area(s) to be considered.

- d. Method of irrigation
- e. Cross-sections through areas of special features, berms, retaining walls, etc.
- f. Footprints of all buildings to be constructed

Note: If Site and Landscape plans are combined, one full-size copy and one reduced copies must be submitted.

- ☐ **9. (2 +1) Building elevations** (Two complete sets, one of which is colored, and one 8½" x 11" reduction), drawn to scale. Colored photographs may be substituted for colored elevation drawings when an existing structure is to undergo minor exterior alteration, and the photos depict the design material/colors of the new construction.
- ☐ **10.(1 +1) One set of floor plans** and one 8½" x 11" reduction, to scale, with sizes and types of interior spaces indicated.
- ☐ **11.(1) Set of colored and labeled photos** of site.
- ☐ **12. CD with electronic copies of all submittal documents in Adobe Acrobat format (.pdf).** If you do not have the software to create the CDs, they can be created by local printing/copying establishments. Documents should be labeled as follows:
 - Applicant's letter = Doc_Applicant_Letter.pdf
 - Supplemental Information = Doc_Supplemental_Information.pdf
 - Site Plan = DWG_Site_Plan.pdf
 - Landscape Plan = DWG_Landscape_Plan.pdf
- ☐ **13. Pre-application Materials**
 - a. Pre-application form
 - b. Neighborhood radius notice letter
 - c. List of notified owners, residents and association president, if applicable
 - d. Sign in sheet from neighborhood meeting

Note:

- A. All blueprints must be folded with the title block/panel face up so as to fit within a legal size file folder.
- B. The application submittal cut-off time is 4:00 pm.
- C. Application must be complete at time of submittal.



Planning & Development Services

Boise City Hall, 2nd Floor
150 N. Capitol Boulevard
P. O. Box 500
Boise, Idaho 83701-0500

Phone: 208/384-3830
Fax: 208/384-3753
TDD/TTY: 800/377-3529
Website: www.cityofboise.org/pds

Boise River System Application

This box for office use only

File #: _____ Fee: _____

Cross Referenced File(s): _____ Zone(s): _____

Are Pre-Application materials attached? ☒ Yes ☐ No

This application is a request to construct, add or change the use of the property as follows:

Review Process

☐ Staff

☒ Commission

Development Proposal

☐ Simple

☐ Complex

Abbreviated Procedures

☐ Yes

☐ No

Applicant Information

Applicant: The Michaels Organization – Nick Zaferes, V.P. Phone: 856-596-3008

Applicant's Address: 3 East Stow Road, Suite 100, Marlton, NJ Zip: 08053

Agent/Representative: Engineering Solutions, LLP/Becky McKay Phone: 208-938-0980

Agent/Representative's Address: 1029 N. Rosario St., Suite 100, Meridian, ID Zip: 83642

Contact Person (if different from above): _____ Phone: _____

Address of Subject Property: 1004 Royal Boulevard

Mapping Division must initial here _____ to signify address verification.

Property description (Lot, Block & Subdivision name or recorded deed with a metes and bounds description):
Vacated Block 5, Boise City Park Subdivision (see attached deed and legal description).

I. Floodplain Related Issues and Questions

Is the development proposal located within the Boise River 100-year floodplain? ☒Yes ☐No

If so, then a separate floodplain review application shall also be completed and submitted with the application for a Boise River Systems Permit.

II. Setback Lands and Waters

1. **Greenbelt Setback Lands and Waters:** Is any portion of the development property located in the Greenbelt Setback Lands and Waters? ☒Yes ☐No
2. **Heron Rookeries Setback Lands and Waters:** Is any portion of the development property located in the Heron Rookeries Setback Lands and Waters? ☐Yes ☒No
3. **Eagle Perching, Feeding & Loafing Setback Lands and Waters:** Is any portion of the development property located in the Eagle Perching, Feeding & Loafing Setback Lands and Waters? ☐Yes ☒No
4. **Riparian Setback Lands and Waters:** Is any portion of the development property located in the Riparian Setback Lands and Waters? ☐Yes ☒No

III. Class A, Class B, Class C Issues and Questions

Indicate which categories of land your development falls within:

☐ Class A Lands and Waters
☐ Class B Lands and Waters
☒ Class C Lands and Waters
 (Lands and Waters not classified as either A or B are classified C)

Applicable Standards for Class A, B and C Lands and Waters

1. **Emergency Access:** Does the proposal provide emergency access to the Boise River for the purpose of repair and rescue equipment and personnel? ☐Yes ☒No
2. **Public Access:** Does the proposal provide public access to the Boise River Greenbelt Setback?
☒ Yes ☐ No
 Does this access include public parking for bicycle and motor vehicles? ☐Yes ☒No
3. **Parks:** Are you proposing any public or private parks? ☐Yes ☒No
4. **Water Amenity:** Are you proposing to use or create a water amenity within your development? ☐Yes ☒No
5. **Emergent Wetlands:** Are there emergent wetlands on the development site?
☐Yes ☒No

6. **Side Channels:**

Does a Boise River side channel exist on your property? ☐ Yes ☒ No

If so, has the Idaho Fish & Game Department identified them as trout spawning and/or rearing waters? ☐ Yes ☒ No

Applicable Standards for Class A Lands and Waters Only – N/A

1. **Preservation of Class A Lands and Waters:** As required by the ordinance, describe how you propose to preserve Class A Lands and Waters by:
 - a. Platting land into distinct common ownership parcel(s) _____ and/or
 - b. Conservation easement _____ and/or
 - c. Other method (describe): _____

2. **Removal of Vegetation (living or dead) from the Floodway:** Are you proposing to remove any vegetation (living or dead) from the floodway? ☐ Yes ☒ No
 If so, then please indicate the location of such removal on the site plan.

IV. Mitigation Plans – N/A

Mitigation plans must include the following:

1. **Field Data**, including:
 - a. Written assessment of existing conditions, constraints and their magnitude, and existing natural resource functions and values.
 - b. A comprehensive technical plan to mitigate impacts to natural resource functions and values listed:
 - 1) Water quality protection and improvement
 - 2) Habitat for fish & wildlife
 - 3) Nutrient retention and removal
 - 4) Channel stability
 - 5) Food chain support
 - 6) Flood storage & desynchronization
 - 7) Groundwater recharge & discharge
 - 8) Active and passive recreation
 - 9) Aesthetics
 - 10) Cultural resources

2. **Preliminary Site Plan** which includes a discussion and map identifying the location and quality of existing natural resources, impacts to those resources and the proposed enhancement measures.
3. The **mitigation sequence** or combination thereof, which is proposed to be used?

4. **Documented consultation with resource and regulatory agencies** having responsibility for threatened and endangered species, and species of special concern (US Fish & Wildlife), fish and wildlife habitat requirements and their sensitivity to disturbance; and measures needed to mitigate for project related impacts or enhance existing habitat (Idaho Department of Fish & Game).

V. Enhancement Plans – N/A

Does the development proposal include an enhancement plan? ☐ Yes ☒ No

The enhancement plan shall include the following:

1. A preliminary site plan which identifies the location and quality of existing natural resources, impacts to those resources and the proposed enhancement measures.
2. Are waters planned to be enhanced? ☐ Yes ☒ No

If so, are these waters held by Idaho Fish & Game, or are they Non Idaho Fish & Game waters? ☒ Idaho Fish & Game ☐ Non Idaho Fish & Game

3. Description of proposed design of Class A lands.
4. Description of proposed design of Class B and C lands.

VI. Waiver and Variance Requests

Does the development proposal include any request to vary from the requirement imposed by the zoning or subdivision ordinances? ☐ Yes ☒ No

If so, then submit a list of and justification statement for variance/waiver requests.



Planning & Development Services

Boise City Hall, 2nd Floor
150 N. Capitol Boulevard
P. O. Box 500
Boise, Idaho 83701-0500

Phone: 208/384-3830
Fax: 208/384-3753
TDD/TTY: 800/377-3529
Website: www.cityofboise.org/pds

9

Planning Division Staff Report

File Number	CUP11-00090 & CFH11-00036
Applicant	The Michaels Organization
Property Address	1004 West Royal Boulevard
Public Hearing Date	February 6, 2012
Heard by	Planning and Zoning Commission
Analyst	Joshua Johnson
Reviewed by	Cody Riddle

Public Notification

Neighborhood meeting conducted: November 10, 2011

Newspaper notification published on: January 21, 2012

Radius notices mailed to properties within 300 feet on: January 20, 2012

Staff posted notice on site on: January 6, 2012

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Exhibits

Public Works Comments

Parks Comments

ACHD Comments

Fire Comments

1. Project Data and Facts

Project Data	
Applicant	The Michaels Organization
Architect/Representative	Becky McKay / Engineering Solutions
Location of Property	1004 West Royal Boulevard
Size of Property	± 3.42 Acres
Zoning	R-OD (Residential Office with Design Review Overlay)
Comprehensive Plan Designation	Mixed Use
Planning Area	Central Bench
Neighborhood Association/Contact	N/A
Procedure	Planning and Zoning Commission decision that can be appealed to City Council.

Current Land Use/ Site Characteristics
The site is located directly to the south of the Boise River and to the east of Ann Morrison Park. It contains two trucking terminal buildings with gravel surfacing.

Description of Applicant's Request
The applicant proposes to construct a five-story multi-family apartment building that is 351,900 square feet in size and 58' in height. The height limit for the R-O zone is 35'.

2. Land Use

Description and Character of Surrounding Area
The surrounding area is comprised of a wide variety of uses including an auto body shop, restaurants, and retail uses. The project site is just south of the Boise River.

Adjacent Land Uses and Zoning

North:	Boise River and Greenbelt / C-3D
South:	Royal Boulevard then Industrial / R-OD
East:	Office / C-2D
West:	Park / A-1

3. Project Proposal

Parking

Proposed		Required	
Handicapped spaces proposed:	7	Handicapped spaces required:	7
Total parking spaces proposed:	280	Total parking spaces required:	280
Number of compact spaces proposed:	108	Number of compact spaces allowed:	112
Bicycle parking spaces proposed:	48	Bicycle parking spaces required:	28
Parking Reduction requested?	No	Shared Parking	No

Setbacks

Yard	Required	Proposed for Building	Proposed for Parking*
Front (Royal)	10' (bldg.) 20' (prkg.)	15'	**7'
Side (East)	0' (bldg.) 5' (prkg.)	49'	5'
Side (West)	15' (bldg.) 5' (prkg.)	18'	5'
Rear (South)	5' (bldg.) 5' (prkg.)	20'	20'

*Parking is located under the building structure

**Addressed through a condition of approval

4. Zoning Ordinance

Section	Description
11-04-05.03	Regulations for the Residential Office District
11-06-04	Conditional Use Permits
11-10-01	Off-Street Parking Requirements
11-16	Boise River System Ordinance

5. Comprehensive Plan

CHAPTER	GOALS, OBJECTIVES & POLICIES
CHAPTER 6-TRANSPORTATION	Objective 6.1.2 Policy 6.1.2.1 Objective 6.1.4 Policy 6.1.4.4
CHAPTER 7-COMMUNITY QUALITY	Goal 7.2 Objective 7.2.1 Objective 7.2.6 Policy 7.2.6.2
CHAPTER 8-LAND USE	Policy 8.1.17.3 Policy 8.1.17.6

6. Transportation Data

Roadway	Frontage	Functional Classification	Traffic Count ADT	Level of Service	Acceptable Level of Service
Royal Boulevard	350-feet	Commercial	E/O Lusk Street was 2,200 in 8/2011	C	C
Capitol Boulevard	None	Principal Arterial	S/O University Avenue was 32,432 in 4/211	C	E
University Drive	None	Collector	E/O Capitol Boulevard was 12,575 in 4/2011	F	D
9 th Street	None	Principal Arterial	At the Boise River was 20,667 in 12/2010	C	E
Boise Avenue	None	Principal Arterial	East of Capitol Boulevard was 7,332 in 6/2009	C	E
Ann Morrison Park Drive	None	Commercial	E/O Lusk Street was 5,637 in 8/2011	C	C
LaPointe Drive	None	Commercial	N/O Island Avenue was 262 in 8/2011	C	C
Island Avenue	None	Commercial	E/O Lusk Street was 366 in 8/2011	C	C
Sherwood Drive	None	Commercial	N/O Lusk Street was 401 in 8/2011	C	C
Dale Street	None	Commercial	N/O Island Avenue was 1,115 in 8/2011	C	C

7. Analysis/Findings

The applicant is proposing a five-story apartment building consisting of 175 units in the R-OD zone. The multi-family use is allowed in the base zone. The Conditional Use Permit is required because the height limit of the zone is 35 feet where the applicant is requesting 58 feet. The main façade along Royal is 54 feet in height, however, the fire escape stairs extend up to 58 feet. This 35 foot limit is unusual as the R-O zone is intended as a mixed use urban development zone. The project is designed to serve the student population of BSU but is being constructed as multi-family units not dormitories. Since a River System Permit is included in this application Boise City Parks has commented on the height exception. Their letter states that the building height should be limited to 55 feet along the greenbelt. The legal advertisement for this project states that the requested height exception is for a five-story building. The elements of this building that reach above 58 feet are fire escape stairs along the Royal Blvd façade. Along the greenbelt the limit of 55 feet is obeyed. Staff sent Parks planner Cheyne Weston an email confirming that Parks was in agreement with building elements along Royal Blvd exceeding 55 feet in height. This correspondence is attached to this report as agency comments. Parking has been an important issue for many business owners in this area. Other applications that have requested parking reductions were opposed by surrounding property owners. This application meets the City mandated parking requirements for a multi-family development. The R-O zone's intent is to emphasize buildings in order to create a pedestrian friendly environment. To this end, the applicant has located the parking underneath the building.

The River System Permit is necessary because parts of the site are within the floodplain associated with the Boise River. The subject property is considered a Class "C" land due to its industrial use as a trucking terminal. There is a required 70 foot setback from the 6500 Cubic Feet per Second (CFS) flow line of the river. The building obeys this standard and will not disturb any riparian habitat. There are no eagle perch trees or heron rookeries in the vicinity of the site. Some landscape improvements will occur at the edge of the 70 foot setback but the greenbelt in this area is already established and will not be disturbed with this project. Since the project is partially in the floodplain, a staff level Floodplain Permit will be required if the conditional use permit is approved. The applicant has designed a public access that will allow pedestrians to access the greenbelt from Royal Blvd. There is a point where crossing the primary service drive is necessary to get to the greenbelt. To improve safety staff, is recommending that a striped crosswalk be installed.

Royal Boulevard acts as a gateway to Ann Morrison Park. As such new developments in this area are required to provide detached sidewalks with an eight foot planter strip. The applicant's site plan shows an attached sidewalk with a planter strip adjacent to the building. Staff has discussed changing the current design with the applicant to accommodate the City's desired streetscape and they have agreed to make appropriate changes. A modified site plan reflecting the detached sidewalk will be provided at the Design Review phase of the project. There are also some overhead power lines that run along the front of the site. The applicant has stated that they do not wish to bury these utilities due to cost. Since this street is a gateway to the park, staff is recommending that these utilities be buried.

FINDINGS

Section 11-06-04.13 Criteria and Findings

The Commission, following the procedures outlined below, may approve a conditional use permit when the evidence presented at the hearing is such as to establish:

A. That the proposed use is compatible to other uses in the general neighborhood.

The height exception is compatible with other uses in the general neighborhood. Adjacent uses are mostly office and industrial in nature. There is an office building directly to the east that is 56 feet in height, where the applicant is proposing 55 for the façade and 58 feet for some elements such as the top of the fire escape stairs. There are also some three-story apartment buildings to the southwest. The impact to these structures will be reduced due to the distance created by Royal Boulevard and setbacks. It is also important to note that the view to the riparian zone from Royal Boulevard would be just as impeded with a 35 foot tall building, an allowed height.

B. That the proposed use will not place an undue burden on transportation and other public facilities in the vicinity.

According to the submitted traffic impact study, the site is currently occupied by a commercial trucking and storage facility that generates approximately 270 vehicle trips per day. The 175 multi-family residential dwellings that are proposed are anticipated to generate 1,055 vehicle trips per day, which is an increase of 785 vehicle trips per day. Of the 1,055 vehicle trips per day, 79 of those trips will be in the a.m. peak hour, while 94 of those trips will be in the p.m. peak hour.

The Capitol Boulevard and University Drive intersection is currently a signalized intersection that operates at a level of service C during the am peak hour and a level of service F during the pm peak hour. This development is anticipated to represent 1.8% of the total traffic utilizing this intersection. Based on the statistics that have been provided, this intersection currently needs improvements. The traffic engineer has recommended that the westbound through lane on University Drive be converted into a westbound right turn lane in order to improve the level of service of this intersection to a level of service C in the am peak hour and a level of service E during the pm peak hour. Even with the conversion of this through lane, the anticipated regional growth in this area suggests that in the year 2016 this intersection would operate at a level of service D in the am peak hour and a level of service F during the pm peak hour without the extra vehicle trips per day that this site would generate. Unfortunately, the traffic engineer has stated that there is no apparent solution to improve this scenario other than widening Capitol Boulevard to provide additional through lanes.

The forecast build out volumes (2016) on Capitol Boulevard, 9th Street, University Drive, Boise Avenue, Ann Morrison Park Drive, Island Avenue, LaPointe Street, Royal Boulevard and Sherwood Street during the peak hour are lower than the planning development thresholds in the vicinity. As such, the roadways will not require any additional improvements to accommodate the vehicle trips per day that are generated by this development. Although there are substantial traffic impacts associated with this development, they may be mitigated by the fact that the site is served by many modes of transportation. BSU provides bus service only one block away. Also, there is access to the greenbelt that provides both pedestrian and bicycle access to the BSU campus located ¼ mile to the east without having to cross 9th Street and Capitol Blvd.

In a letter, dated December 22, 2011, ACHD stated that they agreed with the findings of the traffic study. They are also requiring detached sidewalk with an eight foot planter strip and that the applicant dedicate a sidewalk easement to the district.

In a December 14, 2011 memo, the Fire Department stated that the project would need to upgrade the existing water line in order to meet fire flow requirements. United Water has indicated there is enough capacity to meet fire safety standards.

Public Works, in a memo dated December 6, 2011, provided standard comments regarding the conditional use permit aspect of the application. Their detailed comments for the associated floodplain permit will be reviewed when that application is processed. The Solid Waste Division made some general comments regarding the trash enclosures and required height clearances. The applicant met with City staff regarding this issue and determined that there are slight adjustments required for the site plan to accommodate the level of waste disposal associated with this project. One parking space near the waste disposal area will be eliminated to create more room to maneuver a garbage truck. An additional space can be added to the building interior by maxing out the projects available compact spaces.

Boise City Parks has commented on the River System Permit, which will be discussed later in the report.

Other than those listed above, no public agency has voiced concerns with this request.

- C. That the site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls and fences, parking, loading, landscaping and such other features as are required by this title.***

The project meets the setback requirements of the R-O zone. Window pop-outs protrude two feet into the front setback. The R-O allows such encroachment in order to encourage visual interest on facades. The subject property is made up of three separate parcels.

These will have to be combined prior to issuance of a building permit. Parking requirements have been met through at-grade parking located under the building. There are some open air parking spaces at the rear of the site but no planter islands will be required as there is a perimeter fence that screens this parking area from the greenbelt. Design Review staff was consulted and additional trees near the fence will be required to provide buffering of the parking lot from the greenbelt. Landscaping will be reviewed in detail by the Design Review Committee. However, there are some other issues with the plan. During a recent land use hearing located across the street, City Council stated that they wanted to see a detached sidewalk on Royal Blvd. The landscaping depicted along the road should be moved into a planter strip along Royal. This change will be reflected in a revised site plan to be presented at a Design Review hearing. Boise City Parks, through their River System review, noted that the proposed landscaping would blend harmoniously with the greenbelt. They also stated that the landscape plan must be approved by Parks for final review. The project contains three amenities for residents, a pool, a fitness center and a computer/game room. These enhance the project's livability.

D. That the proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity.

The requested height exception will not adversely affect the surrounding neighborhood. The additional height is not allowing for enough dwelling units where a parking reduction is necessary. This should prevent overflow parking from spilling into the neighborhood. Views of the riparian habitat will be blocked from Royal Blvd and other surrounding streets. However, a building of 35 feet, the allowed height, would also block a pedestrian's view of the river. The applicant is mitigating this by providing pedestrian access to the greenbelt through their development. The operating characteristics of the multi-family development do not conflict with surrounding uses. The area is comprised of other multi-family developments, office, and industrial uses that are of similar or greater intensity to the applicant's proposal. There will be a substantial increase in traffic. This is offset by the potential for existing businesses to capitalize on the increase in customers to the surrounding neighborhood as well as access to bus stops and the greenbelt.

E. That the proposed use is in compliance with and supports the goals and objectives of the Comprehensive Plan.

The proposed use is supported by the general goals, objectives and policies of the Comprehensive Plan. This project will provide possible student housing for BSU, which is situated nearby. Currently, there is a lack of on campus housing. The height exception allows for the applicant to maximize the number of units, while providing adequate parking. *Objective 7.1.2* calls for opportunities for residents of Boise to find housing in the neighborhood of their choice. This project will allow for prospective students to find housing near the university.

The lack of BSU dormitories has also created a situation where there are many single-family residential homes in historic neighborhoods being rented out to students. This has produced problems with compatibility in older sections of town. The applicant's project reduces the demand for conversion of existing housing stock into rentals in conformance with *Objective 7.2.1*. Although the project is single-use in nature, the height exception creates a large supply of housing in a mixed use part of town where there are many commercial businesses that can take advantage of the increase in customers within the area. (*Objective 8.1.3*)

- F. Multiple family buildings (any building containing more than 2 residential units) must be designed to include features which add to the visual and aesthetic appearance of the structure and help prevent a sterile, box-like appearance. Such features may include the use of brick or stone, roof or facade modulation, planter boxes, bay windows, balconies, porches, etc.***
The Commission or committee must make a finding that specific design features have been added to enhance the physical appearance of such multiple-family residential structures.

The building design contains the necessary features to prevent a sterile box-like appearance. The façade contains substantial material changes that add visual interest. Vertical elements within the building design are given different colors. This creates an appearance of additional depth. The façade is modulated through recessed balconies and window pop-outs. Staff does have some minor concerns that can be addressed through the Design Review process. While the number of differing materials is good, there has been little specificity about what is being used. The applicant and Design Review staff will have to insure that high quality materials are chosen. Another issue is the roof line. Currently the roof line is mostly flat, which can contribute to a box-like appearance. Staff is recommending that Design Review staff pursue a stepped parapet that doesn't exceed the requested height exception of 58 feet to break up the roof line.

River System

Section 11-16-05.06 Conclusions of Law

A. The findings of fact and conclusions of law to support decisions on Boise River System Development Permit applications must be based upon compliance with the Boise River System Ordinance. A Boise River System Development Permit may be approved when the evidence presented meets all of the following conclusions of law:

- 1. That the proposed development is in compliance with the applicable Standards for Uses in Class A, B or C lands and waters (Section 11-16-03).***

The subject property is considered Class C lands and waters. The site is home to an industrial use, a trucking terminal.

One definition of Class C lands are former industrial sites. The project only requires a River System Permit because part of the site is within the floodplain of the Boise River. No riparian habitat will be impacted with this development as the project obeys the 70 foot setback from the 6500 cfs line for the greenbelt. Class C lands permit all conditional and allowed uses in the base zone. In this case the multi-family use and height exception are permitted within the River System Ordinance.

2. ***That the proposed development complies with all the policies and standards of the Boise Comprehensive Plan, the Boise River Plan, the Floodplain Ordinance (Chapter 12), and the Boise River System Ordinance (Chapter 16).***

The project complies with the Boise Comprehensive Plan. *Objective 3.4.2* states that bald eagle habitat should be protected as a unique feature of the City. There are no bald eagle perch trees or heron rookeries in the general vicinity of the project. The applicant is providing pedestrian access to the greenbelt from Royal Blvd. Also, the project will not interfere with citizen's enjoyment of the greenbelt. The plan encourages enhancement and maintenance of the City's greenbelt system through *Policy 5.1.5.6*. The project will comply with the City's Floodplain Ordinance. Public Works has commented that the building and parking lot need to be elevated one foot above base flood elevation. The applicant's site and grading plan reflect that they have already been designing with this in mind. This will reduce the chance of hazards during flood events.

3. ***That the proposed development includes measures designed to insure that natural resources functions and values are preserved or enhanced and maintained.***

The Boise City Parks and Recreation Commission reviewed this project at a November 17, 2011 meeting. They determined that the project area consisted of Class C Lands and waters. And that the project is not expected to degrade riparian habitat or water quality. Parks has included several conditions to reduce construction impacts on the Boise River system. These include fencing to separate construction activities from the greenbelt and stipulating that trees within the existing 70 foot greenbelt setback be protected. The proposed use triggered a River System Permit because part of the site in the floodplain of the Boise River, not due to any habitat impacts or degradation due to construction.

4. ***That the proposed development complies with or shall comply with all local, State and Federal laws and regulations.***

A recommended condition of approval shall require that the applicant comply with all local, state and federal laws and regulations. To date, no agencies have voiced opposition to this request.

8. Recommended Conditions of Approval

Site Specific

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received **November 29, 2011**, except as expressly modified by the Design Review Committee or staff and the following conditions:
2. Comply with the requirements of the Boise City Public Works Solid Waste Division as specified in the attached memo dated **December 1, 2011**.
3. Comply with Boise City Parks comments dated **November 21, 2011**.
4. Comply with the requirements of the Boise City Fire Department as specified in the attached memo dated **December 14, 2011**.
5. All utilities along Royal Blvd. shall be relocated underground.
6. A crosswalk shall be installed across the main service drive on the eastern portion of the site to provide greenbelt access.
7. Comply with the requirements of the Boise City Public Works Department (BCPW) for drainage, sewers, Solid Waste/Ground Water Manager, and street lights as specified in the attached comments dated **December 8, 2011**. Please contact BCPW at 384-3900. All items required by BCPW shall be included on the plans/specifications that are submitted for a Building Permit. Please note that any changes or modifications by the owner to the approved Storm Water Plan must be resubmitted to BCPW for approval.
8. Comply with the requirements of the Ada County Highway District as specified in the attached letter dated December 22, 2011.
9. The applicant shall comply with all local, state and federal laws and regulations.
10. The applicant shall combine the three parcels that make up the project area prior to issuance of a building permit.
11. The height of the building shall be limited to 55' along the greenbelt and 63' along Royal Blvd.
12. The site plan submitted to Design Review staff shall include the following:
 - a. Detached sidewalks along Royal Blvd.
 - b. Trash pickup shall be moved to the south and slightly expanded. This will eliminate one parking space on the exterior of the building that will be replaced with a compact

space on the building's interior. Public Works Solid Waste division will review these changes.

- c. Additional trees shall be added along the north façade to provide additional buffering to the fence wall associated with the open air parking.
- d. A stepped parapet should be added to break up the roof line.

Standard Conditions of Approval

- 13. A Building Permit approval is contingent upon the determination that the site is in conformance with the Boise City Subdivision Ordinance. Contact the Planning and Development Services Subdivision Section at 384-3998 regarding questions pertaining to this condition.
- 14. Vision Triangles as defined under Section 11-1-3 and Section 11-10-4.4G of the Boise City Code shall remain clear of sight obstructions.
- 15. Any outside lighting shall be reflected away from adjacent property and streets. The illumination level of all light fixtures shall not exceed two (2) footcandles as measured one (1) foot above the ground at property lines shared with residentially zoned or used parcels.
- 16. Trash receptacles and on-grade and rooftop mechanical fixtures and equipment shall be concealed from public view by use of an approved sight-obscuring method. All screening materials shall be compatible with the building materials/design.
- 17. Utility services shall be installed underground.
- 18. An Occupancy Permit will not be issued by the Planning and Development Services Department until all of these conditions have been met. In the event a condition(s) cannot be met by the desired date of occupancy, the Planning Director will determine whether the condition(s) is bondable or should be completed, and if determined to be bondable, a bond or other surety acceptable to Boise City will be required in the amount of 110% of the value of the condition(s) that is incomplete.
- 19. No change in the terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his authorized representative and an authorized representative of Boise City. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Boise City.
- 20. Any change by the applicant in the planned use of the property, which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant, or successors of interest, advise Boise City of intent to change the planned use of the property described herein, unless a variance in said requirements or other legal relief is granted

pursuant to the law in effect at the time the change in use is sought.

21. Failure to abide by any condition of this approval shall be grounds for revocation by the Boise City Planning and Zoning Commission.
22. This Permit shall be valid for a period not to exceed two (2) years from the date of approval by the Planning and Zoning Commission. Within this period, the holder of the permit must commence the use permitted by the permits in accordance with the conditions of approval.
23. Prior to the expiration of this conditional use, the Commission may, upon written request by the holder, grant a two-year time extension. A maximum of two (2) extensions may be granted.

BOISE CITY PUBLIC WORKS DEPARTMENT

DEPARTMENT CORRESPONDENCE

To: Boise City Planning & Zoning

Re: CUP 11-00090; 1004 W. Royal Blvd.

Date: December 6, 2011

RECEIVED
DEC - 8 2011
DEVELOPMENT
SERVICES

CONDITIONS OF APPROVAL

SEWER CONDITIONS – MIKE SHEPPARD (384-3920)

Upon development of the property, connection to central sanitary sewer is required. Sewers are available in W. Royal Blvd (384-3900).

Prior to granting of final sewer construction plan approval, all requirements by Boise City Planning and Development Services must be met.

DRAINAGE / STORM WATER CONDITIONS – BRIAN MURPHY (384-3752)

A drainage plan must be submitted and approved by Public Works prior to issuance of a building permit.

STREET LIGHT CONDITIONS – MIKE HEDGE (388-4719)

No comment.

PERSON MAKING OTHER COMMENTS – JIM WYLLIE (384-3925)

OTHER COMMENTS –

See attached memo.


PUBLIC WORKS REPRESENTATIVE


PUBLIC WORKS REPRESENTATIVE

cc: Applicant

CITY OF BOISE

INTRA-DEPARTMENT CORRESPONDENCE

Date: December 5, 2011

To: Rob Bousfield

From: Jim Wyllie 

Subject: River Edge Apartments
Floodplain Review Comments
CFH11-00035
FPR 999

I have reviewed the Floodplain Review Application for River Edge Apartments and have the following comments:

1. The subject project is located in the floodplain of the Boise River. Property development is subject to the regulations and requirements of Chapter 12, Boise City Zoning Ordinance.
2. If this project is approved:
 - a. Three Elevation Certificates will be required for building construction. One is required for issuance of a building permit, another is required prior to obtaining a framing inspection, and a third is required that is based upon finished construction.
 - b. Minimum finish floor elevation of all apartment units and other occupied areas shall be no less than 1.0 feet above the base flood elevation (BFE).
 - c. Recommend that finish floor of the garage area be elevated to the same level as for item (b) above. If this cannot be accomplished, recommend that the garage floor be elevated to or slightly above the BFE.
 - d. Building utilities shall be elevated above the base flood elevation or floodproofed to prevent entry of flood waters into building utility systems.
 - e. Recommend that the structure be constructed with a slab-on-grade foundation.

Call if you have questions.

cc:

sf FPR 999 2.4

FPR999CFH11-00035RiverEdgeApts

Memo

To: Planning and Development Services
From: Peter McCullough, Public Works Department
Date: 12/1/11
Re: Solid Waste Comments- CUP11-0090, 1004 Royal Blvd.

City of Boise Solid Waste staff has reviewed the application for this project and has the following comments:

1. Trash enclosures/containers will be required to comply with all Solid Waste Ordinance requirements detailed at:

http://curbit.cityofboise.org/Trash/Commercial/Commercial_Trash_Home/page51871.aspx

2. 6-yard containers can not be moved by hand (they are not on wheels) so they likely can not be stored inside the building unless 25' of overhead clearance, and all other clearances, are provided.
3. Show details of enclosures/solid waste area (including required access dimensions and containers) in all future plans.

The applicant may contact me with any questions at 384-3906.



James R. Hall

Director

Parks & Recreation

1104 Royal Boulevard
Boise, Idaho 83706-2840

Phone

208/608-7600

Fax

208/608-7648

TDD/TTY

800/377-3529

Web

www.cityofboise.org/parks

Mayor

David H. Bieter

City Council

President

Maryanne Jordan

Council Pro Tem

Alon W. Shealy

Elaine Clegg

David Eberle

Lauren McLean

TJ Thomson

Boise Parks & Recreation

November 21, 2011

Cody Riddle, PDS Planner III

150 N. Capitol Blvd.

Boise, Id 83702

RE: Park Commission Action Letter – Royal Blvd. Apartments

Dear Cody:

The Boise Parks & Recreation Commission at a regularly scheduled meeting held Thursday November 17, 2011 voted to **approve** a request for a Boise River System Ordinance permit to construct an apartment complex for approximately 600 students on approximately 3.21 acres in an R-OD zone. Below are the findings and recommended conditions of approval.

Boise Parks & Recreation Commission Findings:

The Parks, Trails & Open Space Sub Committee met to discuss the proposed development on Thursday October 27, 2011.

1. The project adequately addresses the need to conserve aesthetic views along the river as viewed from the Greenbelt.
2. Water quality will not be adversely affected.
3. Greenbelt Safety will be enhanced by construction of a concrete pathway connection on the north side of the property from the apartments through the Greenbelt Setback Area to the Greenbelt and second, auxiliary path/sidewalk from La Pointe driveway access on the east side through to the Greenbelt.
4. There will be no discernable adverse noise impacts resulting from development of the project.
5. The project falls within the category of Class C Lands and Water and therefore has no adverse effect upon the protection of bald eagles or other threatened or endangered species.
6. No significant cultural or geologic landmarks as viewed from within the Greenbelt corridor will be adversely affected.
7. Unique and/or special conditions will be listed in the recommended conditions of approval including flood plain approval by City Public Works Dept.
8. PDS will regulate the height of the building with the understanding that the Boise Parks & Recreation Commission recognizes that the building should not exceed 55 feet in height to coincide with buildings currently in the same area.
9. The Fire Department reviewed the applicants plans and requested a

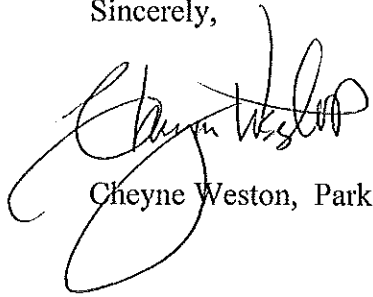
150' concrete fire lane 20' wide on the west side of the proposed apartment building. After further review by the Boise Parks & Recreation Commission an option was provided to the Applicant to extend a 20 ft wide fire access (and pathway) north from the existing culdesac at BPR's maintenance yard to the edge of the applicant's property and at the confluence with the existing Greenbelt. The difference in cost between constructing the approved fire access road on-site and developing the fire access off-site on BPR owned property shall be paid to BPR for use as youth scholarships.

RECOMMENDATION: The Boise Parks & Recreation Commission recommends **approval** of the proposed apartments with the following conditions:

Recommended Conditions of Approval

1. Comply with all conditions listed under Sections 11-16-04.2 Setback Lands and Water Standards under the Boise River System Ordinance.
2. Provide two (2) paved pathway/sidewalk connections to the Boise River Greenbelt as shown on the Applicant's Site Plan.
3. Final Landscape Plan shall be designed to BPR specifications and requires final approval by BPR Design staff and City Forester.
4. Install or leave existing chain link fencing along the entire length of the project adjacent to the Greenbelt during construction.
5. Coordinate with BPR's G.R.O.W. unit when installing irrigation to prevent disruption of service.
6. The building structure shall install non-reflective glass to prevent glare as viewed from Greenbelt pathway system.
7. No equipment staging will be allowed on park/owned or maintained property.
8. Existing trees with the 70' Greenbelt setback shall be protected during construction.
9. Any areas disturbed within the 70' Greenbelt setback shall be returned to it's original condition prior to construction.
10. The proposed site plan and apartment building will be substantially designed to reflect the drawings and plan elevations submitted.
11. The parking area will be screened sufficiently from public view as seen from the Greenb
12. PDS will regulate the height of the building with the understanding that the Boise Parks & Recreation Commission recognizes that the building should not exceed 55 feet in height to coincide with buildings currently in the same area.
13. An approved fire lane will constructed to the satisfaction of Fire Department on both the east and west side of the apartment complex.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cheyne Weston'. The signature is stylized with a large, sweeping initial 'C' and a long, horizontal stroke extending to the right.

Cheyne Weston, Park Planner

From: Cheyne Weston
To: Josh Johnson
Date: 12/6/2011 9:50 AM
Subject: Re: Royal Blvd Apartments

Josh;

The Riparian Setback Area and the Greenbelt Setback Area are described in the Boise River System Ordinance. Boise Parks & Recreation Commission makes recommendation on Boise River System Ordinance permits when structure are either in or adjoin these described areas. In regards to Royal Blvd. Apts. the Commission made recommendation that the building structure not exceed 55' in height. This recommendation was made to insure the apartment building as viewed from the Greenbelt does not overwhelm the pathway user. BPR's authority to comment only concerns structures within these setback areas. Thank you for allowing BPR to comment.

Cheyne

Cheyne Weston
BPR Park Planner
(208) 6087637 phone
(208) 489-2039 fax
>>> Josh Johnson 12/6/2011 9:29 AM >>>
Cheyne,

We have to advertise a height exception that is over the 55' mentioned in your river system letter for this project. This is due to the height of the building at Royal Blvd. Where the building interfaces with the river it is 55' as measured from adjacent grade. I don't think this should change your comments. Could you just send me back an email indicating that you are okay with this or not?

Joshua Johnson
Planner II
City of Boise
Planning and Development Services
Second Floor, City Hall
150 N. Capitol Blvd.
Boise, ID 83702
Phone: (208) 384-3830
Fax: (208) 433-5688



Committed to Service

Project/File: CUP11-00090

This is a conditional-use permit application for the construction of a 175-unit apartment complex. Also being requested is a height exception of 55-feet. The site is located at 1004 W. Royal Boulevard in Boise, Idaho.

Lead Agency: City of Boise

Site address: 1004 W. Royal Boulevard

Commission: January 11, 2012

Hearing: Consent Agenda

Applicant: Nick Zaferes
The Michaels Organization
3 E. Stow Road, Suite 100
Marlton, NJ 08053

Representative: Becky McKay
Engineering Solutions, LLP
1029 N. Rosario Street, Suite 100
Meridian, ID 83642

Staff Contact: Jarom Wagoner
Phone: 387-6174
E-mail: jwagoner@achdidaho.org



Tech Review: December 22, 2011

A. Findings of Fact

1. **Description of Application:** The applicant is proposing to construct a 175-unit apartment complex. The proposed structure will be five stories with podium parking.

2. **Description of Adjacent Surrounding Area:**

Direction	Land Use	Zoning
North	Boise River	A-1
South	Residential Office District	R-OD
East	General Commercial District	C-2D
West	Ann Morrison Park	A-1

3. **Site History:** ACHD has not previously reviewed this site for a development application.

4. **Adjacent Development:** The following developments are pending or underway in the vicinity of the site:

- Royal Cubes Apartments, 108-unit apartment/residential office project, located directly south of the site, was reviewed and approved by the District on June 20, 2011.

5. **Impact Fees:** There will be an impact fee that is assessed and due prior to issuance of any building permits. The assessed impact fee will be based on the impact fee ordinance that is in effect at that time.
6. **Capital Improvements Plan (CIP)/Five Year Work Plan (FYWP):**
There are currently no roadways, bridges or intersections in the general vicinity of the project that are currently in the Five Year Work Program or the District's Capital Improvement Plan (CIP).

B. Traffic Findings for Consideration

1. **Trip Generation:** This development is estimated to generate 785 additional vehicle trips per day (270 existing); 72 additional vehicle trips per hour in the PM peak hour (22 existing), based on the traffic impact study.

2. **Traffic Impact Study**

Bailey Engineers prepared a traffic impact study for the proposed Riverwalk Apartments. Below is an executive summary of the findings **as presented by Bailey Engineers**. The following executive summary is **not the opinion of ACHD staff**. ACHD has reviewed the submitted traffic impact study for consistency with ACHD policies and practices, and may have additional requirements beyond what is noted in the summary. ACHD Staff comments on the submitted traffic impact study can be found below under staff comments.

The proposed Riverwalk Apartments is a multi-family development located north of Royal Boulevard and west of Capitol Boulevard / 9th Street in Boise, Idaho. This project is planned to include up to 180 multi-family units. The site was previously occupied by a commercial trucking and storage facility.

The following are the **principal conclusions** of the traffic analysis for the Royal Boulevard development.

- 1) The proposed development is projected to generate an average daily traffic (ADT) volume of 1,055 vehicles of which the a.m. and p.m. peak hour traffic is 79 and 94 vehicles per hour respectively. When compared to the previous trucking terminal's traffic volumes, this is an increase of 785 daily trips and an increase of 55 and 72 vehicles per hour during the a.m. and p.m. peak hours respectively.
- 2) As a result of the site build-out, traffic on the area roadways is expected to increase in the vicinity. Traffic on Capitol Boulevard / 9th Street may increase by 633 trips per day north of University Drive. Traffic on Capitol Boulevard may increase by 211 trips per day south of University Drive. Traffic on Ann Morrison Park Drive may increase by 1,055 trips per day west of Capitol Boulevard. Traffic on University Drive may increase by 211 trips per day east of Capitol Boulevard. Boise Avenue traffic may increase by 53 trips per day east of University Drive.
- 3) The intersection of **Capitol Boulevard and University Drive** is a signal controlled intersection. Boise Avenue also intersects the Capitol/University intersection, but ACHD recently reconstructed the Boise Avenue approaches to create a standard four-legged intersection.

Capitol and 9th Street form a one-way couplet north of the University Drive intersection. Both roadways provide four travel lanes in each direction. The southbound approach has dual left turn lanes. The Capitol Drive roadway has three travel lanes for each direction south of University Drive. The northbound approach has a single left turn lane. Ann Morrison Park Drive is a four lane roadway west of Capitol Boulevard with an added left turn lane at the Capitol Boulevard intersection. University Drive provides four travel lanes and adds dual left turn lanes on the westbound approach to Capitol Boulevard.

This intersection currently operates at LOS C and F during the a.m. and p.m. peak hours respectively. **Improvements are needed to accommodate the existing traffic volumes.** The conversion of the westbound University Drive approach to provide a separate right turn lane can improve the intersection's LOS to C and E during the a.m. and p.m. peak hours respectively.

With the improvements identified to mitigate the existing conditions, the Year 2016 background conditions (i.e., regional growth but without the site-generated traffic), are forecast to operate at LOS D and F during the a.m. and p.m. peak hours respectively.

Additional improvements are needed to accommodate the background traffic volumes. No apparent solution is available other than widening Capitol Boulevard to provide additional through lanes.

With the improvement identified to mitigate the existing conditions, the Year 2016 build out condition (i.e., background regional growth plus the site-generated traffic), is forecast to operate at LOS D and F during the a.m. and p.m. peak hours. **Additional improvements are needed to accommodate the existing traffic volumes.** No apparent solution is available other than widening Capitol Boulevard to provide additional through lanes. The traffic from the Riverwalk Apartments project represents only 1.8% of the intersection traffic volumes during the p.m. peak hour.

- 4) The intersection of **Boise Avenue with Protest Road / Beacon Street** is currently a signal controlled intersection. All four approaches provide two through travel lanes plus an added left turn lane. This intersection currently operates at LOS B and C during the a.m. and p.m. peak hours respectively. For the Year 2016 background condition (i.e., regional growth but without the site-generated traffic), the intersection will continue to operate at LOS B and C during the a.m. and p.m. peak hours. **No improvements are needed to accommodate the existing or background traffic volumes.**

For the year 2016 build out condition (i.e., background regional growth plus the site-generated traffic), the intersection is forecast to operate at LOS B and C during the a.m. and p.m. peak hours. **No additional improvements are needed to accommodate the build out traffic volumes.**

- 5) The forecast peak hour, build-out volumes (Year 2016) for Capitol Boulevard, 9th Street, University Drive, Boise Avenue and Ann Morrison Park Drive area is lower than the planning development thresholds in the vicinity of the project. **None of the study area roadways will require further expansion to accommodate the site generated traffic volumes.**
- 6) ACHD has provided additional traffic counts on Island Avenue, La Pointe Street, Royal Boulevard and Sherwood Street. The build out traffic volumes on each of these streets is well below the planning thresholds for a two lane local commercial street. **None of these roadways will require further expansion to accommodate the site generated traffic volumes.**
- 7) This project is expected to generate approximately \$314,000 in impact fee revenues to the Ada County Highway District under the requirements of Ordinance 208.

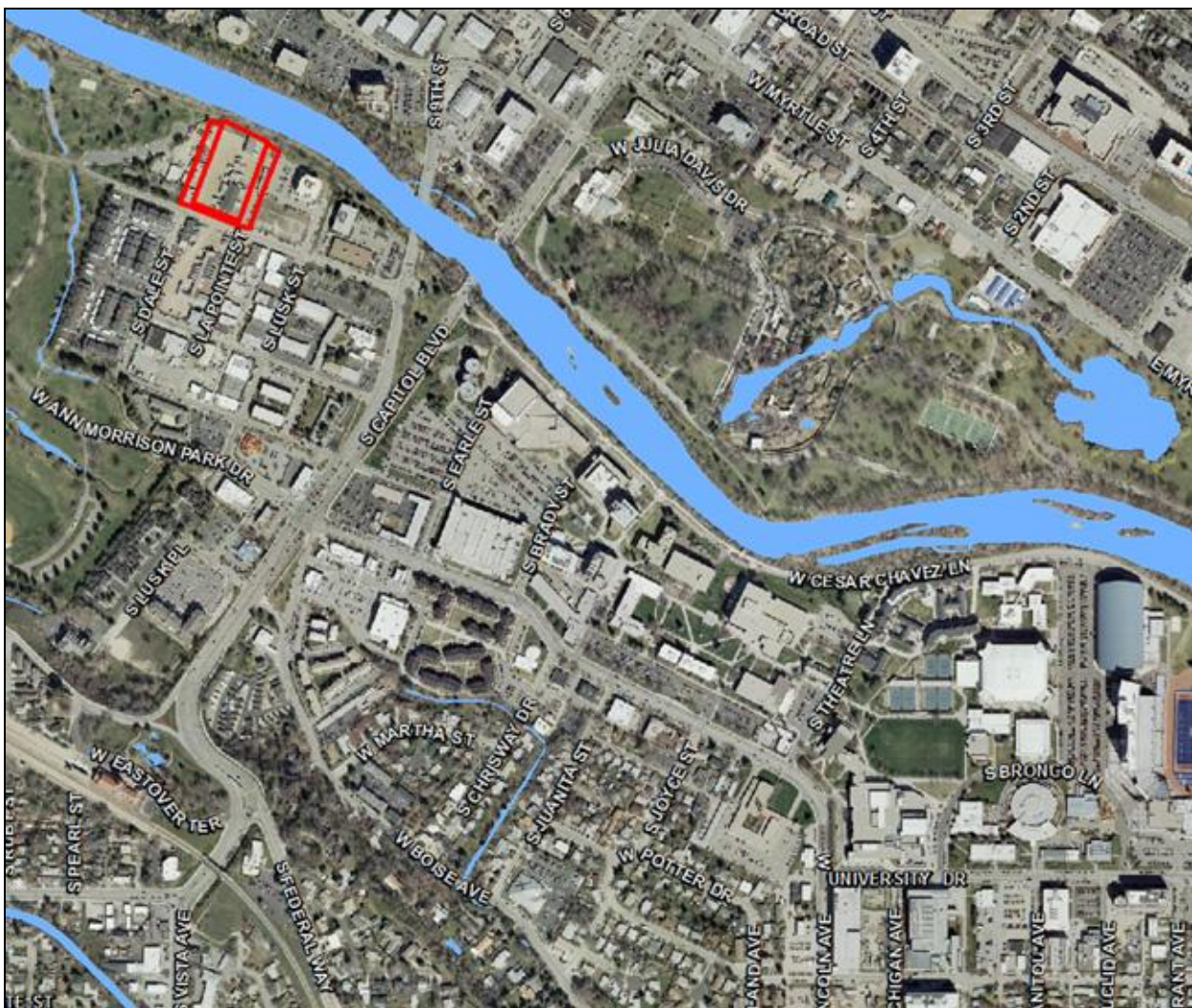
Following are the **transportation-related improvements needed to accommodate the traffic volumes** generated by the Royal Boulevard development:

- No traffic-related improvements have been identified with this analysis.

The following improvement is needed to increase capacity at the Capitol Boulevard / University Drive intersection but is not required by the traffic generated by the proposed development.

- Convert one of the westbound through lanes into a westbound right turn lane. This conversion will allow more green time for the right turning traffic and improve the overall level of service at the intersection.

Area of Influence



Staff Comments/Recommendations: Staff has reviewed the revised Traffic Impact Study; dated December 14, 2011; and agrees with the findings of the report as presented.

3. Condition of Area Roadways

Traffic Count is based on Vehicles per hour (VPH)

Roadway	Frontage	Functional Classification	PM Peak Hour Traffic Count	PM Peak Hour Level of Service	Existing Plus Project	Future Level of Service
Royal Boulevard	350-feet	Local	101	N/A	N/A	N/A

4. Average Daily Traffic Count (VDT)

Average daily traffic counts are based on ACHD's most current traffic counts.

- The average daily traffic count for Royal Boulevard east of Lusk Street was 2,225 on September 1, 2011.

5. Signalized Intersection

LT = Left Turn Lane TH = Thru Lane RT = Right Turn Lane

Boise Ave. / Beacon St.	NB LT	NB TH	NB RT	SB LT	SB TH	SB RT	EB LT	EB TH	EB RT	WB LT	WB TH	WB RT	Over All
Current V/C Ratio	.33	.40	-	.06	.50	-	.23	.68	-	.72	.26	-	.40
Existing Plus Project	.51	.49	-	.09	.60	-	.22	.84	-	.70	.33	-	.47
Future V/C Ratio	.50	.48	-	.09	.60	-	.22	.83	-	.70	.32	-	.47

*An acceptable level of service for an intersection has an overall V/C ratio of 0.9 or less and lane group V/C ratio of 1.0 or less.

University / Capitol	NB LT	NB TH	NB RT	SB LT	SB TH	SB RT	EB LT	EB TH	EB RT	WB LT	WB TH	WB RT	OverAll
Current V/C Ratio	1.15	1.04	-	.98	.62	-	1.91	0.71	-	.90	.43	.52	.92
Existing Plus Project	1.29	1.01	-	1.16	.68	-	1.62	1.13	-	.70	.72	.49	.98
Future V/C Ratio	1.21	1.0	-	1.14	.65	-	1.64	1.05	-	.77	.65	.48	.95

*An acceptable level of service for an intersection has an overall V/C ratio of 0.9 or less and lane group V/C ratio of 1.0 or less.

C. Findings for Consideration

1. Royal Boulevard

a. **Existing Conditions:** Royal Boulevard is improved with 2-travel lanes and no curb, gutter or sidewalk abutting the site. There is 60-feet of right-of-way for Royal Boulevard (30-feet from centerline).

b. **Policy:**

Commercial Roadway Policy: District Policy 7208.2.1 states that the developer is responsible for improving all commercial street frontages adjacent to the site regardless of whether or not access is taken to all of the adjacent streets.

Street Section and Right-of-Way Policy: District Policy 7208.5 states that right-of-way widths for new commercial streets shall typically be 50 and 70-feet wide and that the standard street section will vary depending on the need for a center turn lane, bike lanes, volumes, percentage of truck traffic, and/or on-street parking.

- A 36-foot street section (back-of-curb to back-of-curb) will typically accommodate two travel lanes and on-street parking.
- A 40-foot street section (back-of-curb to back-of-curb) will typically accommodate two travel lanes and a center turn lane.
- A 46-foot street section (back-of-curb to back-of-curb) will typically accommodate two travel lanes and a center turn lane and bike lanes.

Sidewalk Policy: District Policy 7208.5.6 requires a concrete sidewalks at least 5-feet wide to be constructed on both sides of all commercial streets. A parkway strip at least 6-feet wide between the back-of-curb and street edge of the sidewalk is required to provide increased

safety and protection of pedestrians. Consult the District's planter width policy if trees are to be placed within the parkway strip.

Appropriate easements shall be provided if public sidewalks are placed out of the right-of-way. The easement shall encompass the entire area between the right-of-way line and 2-feet behind the back edge of the sidewalk. Sidewalks shall either be located wholly within the public right-of-way or wholly within an easement.

- c. **Applicant's Proposal:** The applicant is proposing to construct vertical curb, gutter, an 8-foot parkway strip and a 6-foot wide detached concrete sidewalk. The sidewalk is proposed to be constructed outside of the right-of-way, within an easement.
- d. **Staff Comments/Recommendations:** The applicant's proposal meets District Policy and should be approved, as proposed. The applicant should be required to enter into a license agreement with the District regarding landscaping proposed within the right-of-way.

The applicant should provide the District with a sidewalk easement for the sidewalk located outside of the right-of-way.

2. Driveways

2.1 Royal Boulevard

- a. **Existing Conditions:** There are no defined driveways abutting the site, the entire frontage is used for ingress and egress.

b. **Policy:**

Driveway Location Policy: District Policy 7208.4.1 requires driveways located near intersections to be located a minimum of 75-feet (measured centerline-to-centerline) from the nearest street intersection.

Successive Driveways: District Policy 7208.4.1 states that successive driveways away from an intersection shall have no minimum spacing requirements for access points along a local street, but the District does encourage shared access points where appropriate.

Driveway Width Policy: District Policy 7208.4.3 restricts commercial driveways to a maximum width of 40-feet. Most commercial driveways will be constructed as curb-cut type facilities.

Driveway Paving Policy: Graveled driveways abutting public streets create maintenance problems due to gravel being tracked onto the roadway. In accordance with District policy, 7208.4.3, the applicant should be required to pave the driveway its full width and at least 30-feet into the site beyond the edge of pavement of the roadway.

- c. **Applicant's Proposal:** The applicant is proposing two driveways on Royal Boulevard. They are located as follows:

- 26-foot wide enter-only driveway offset approximately 15-feet east of the centerline of La Pointe Street (measured centerline-to-centerline).
- 20-foot wide exit-only driveway offset approximately 10-feet east of the centerline of Dale Street (measured centerline-to-centerline).

- d. **Staff Comments/Recommendations:** The applicant's proposal does not meet District Driveway Location Policy; which requires driveways to either offset a minimum of 75-feet or be in alignment with existing driveways/streets. The two driveways are not in direct alignment with the La Pointe Street and Dale Street, to the south. Staff, however, recommends a modification of policy to allow the driveways to remain, as proposed. This is due to the fact that the western driveway is constrained by a drainage swale abutting the western property line and the eastern driveway is located along the east property line to facility parking.

Additionally, traffic services reviewed the proposed driveway locations and had no concerns due to the restricted enter-only and exit-only nature of the driveways.

3. Tree Planters

Tree Planter Policy: Tree Planter Policy: The District's Tree Planter Policy prohibits all trees in planters less than 8-feet in width without the installation of root barriers. Class II trees may be allowed in planters with a minimum width of 8-feet, and Class I and Class III trees may be allowed in planters with a minimum width of 10-feet.

4. Landscaping

Landscaping Policy: A license agreement is required for all landscaping proposed within ACHD right-of-way or easement areas. Trees shall be located no closer than 10-feet from all public storm drain facilities. Landscaping should be designed to eliminate site obstructions in the vision triangle at intersections. District Policy 5104.3.1 requires a 40-foot vision triangle and a 3-foot height restriction on all landscaping located at an uncontrolled intersection and a 50-foot offset from stop signs. Landscape plans are required with the submittal of civil plans and must meet all District requirements prior to signature of the final plat and/or approval of the civil plans.

D. Site-Specific Conditions of Approval

1. Construct vertical curb, gutter and 6-foot wide detached concrete sidewalk with an 8-foot parkway strip on Royal Boulevard abutting the site, as proposed.
2. Construct a 26-foot wide enter-only driveway located approximately 15-feet east of the intersection of Royal Boulevard and La Pointe Street (measured centerline-to-centerline), as proposed. Pave the driveway its entire width and at least 30-feet into the site beyond the edge of pavement. Coordinate a signage program for the driveway (enter only) with District Traffic Services and Development Review staff.
3. Construct a 20-foot wide exit-only driveway located approximately 10-feet east of the intersection of Royal Boulevard and Dale Street (measured centerline-to-centerline), as proposed. Pave the driveway its entire width and at least 30-feet into the site beyond the edge of pavement. Coordinate a signage program for the driveway (exit only) with District Traffic Services and Development Review staff.
4. Provide the District with a sidewalk easement for the sidewalk on Royal Boulevard located outside of the right-of-way, abutting the site.
5. Payments of impact fees are due prior to issuance of a building permit.
6. Comply with all Standard Conditions of Approval.

E. Standard Conditions of Approval

1. Any existing irrigation facilities shall be relocated outside of the ACHD right-of-way.
2. Private sewer or water systems are prohibited from being located within the ACHD right-of-way.
3. In accordance with District policy, 7203.6, the applicant may be required to update any existing non-compliant pedestrian improvements abutting the site to meet current Americans with Disabilities Act (ADA) requirements. The applicant's engineer should provide documentation of ADA compliance to District Development Review staff for review.
4. Replace any existing damaged curb, gutter and sidewalk and any that may be damaged during the construction of the proposed development. Contact Construction Services at 387-6280 (with file number) for details.
5. A license agreement and compliance with the District's Tree Planter policy is required for all landscaping proposed within ACHD right-of-way or easement areas.

6. All utility relocation costs associated with improving street frontages abutting the site shall be borne by the developer.
7. It is the responsibility of the applicant to verify all existing utilities within the right-of-way. The applicant at no cost to ACHD shall repair existing utilities damaged by the applicant. The applicant shall be required to call DIGLINE (1-811-342-1585) at least two full business days prior to breaking ground within ACHD right-of-way. The applicant shall contact ACHD Traffic Operations 387-6190 in the event any ACHD conduits (spare or filled) are compromised during any phase of construction.
8. Utility street cuts in pavement less than five years old are not allowed unless approved in writing by the District. Contact the District's Utility Coordinator at 387-6258 (with file numbers) for details.
9. All design and construction shall be in accordance with the ACHD Policy Manual, ISPWC Standards and approved supplements, Construction Services procedures and all applicable ACHD Standards unless specifically waived herein. An engineer registered in the State of Idaho shall prepare and certify all improvement plans.
10. Construction, use and property development shall be in conformance with all applicable requirements of ACHD prior to District approval for occupancy.
11. No change in the terms and conditions of this approval shall be valid unless they are in writing and signed by the applicant or the applicant's authorized representative and an authorized representative of ACHD. The burden shall be upon the applicant to obtain written confirmation of any change from ACHD.
12. If the site plan or use should change in the future, ACHD Planning Review will review the site plan and may require additional improvements to the transportation system at that time. Any change in the planned use of the property which is the subject of this application, shall require the applicant to comply with ACHD Policy and Standard Conditions of Approval in place at that time unless a waiver/variance of the requirements or other legal relief is granted by the ACHD Commission.

F. Conclusions of Law

1. The proposed site plan is approved, if all of the Site Specific and Standard Conditions of Approval are satisfied.
2. ACHD requirements are intended to assure that the proposed use/development will not place an undue burden on the existing vehicular transportation system within the vicinity impacted by the proposed development.

G. Attachments

1. Vicinity Map
2. Site Plan
3. Utility Coordinating Council
4. Development Process Checklist
5. Request for Reconsideration Guidelines



Fire Department

Dennis Doan
Chief

City Hall West
333 N. Mark Stall Place
Boise, Idaho 83704-0644

Phone
208/570-6500

Fax
208/570-6586

TDD/TTY
800/377-3529

Web
www.cityofboise.org/fire



Mayor
David H. Bieter

City Council
President
Maryanne Jordan

Council Pro Tem
Alan W. Shealy

Elaine Clegg
David Eberle
Lauren McLean
TJ Thomson

December 14, 2011

Joshua Johnson
PDS – Current Planning

Re: Conditional Use Permit – River Edge Apartment; CUP11-00090
1004 W. Royal Blvd.

Dear Josh,

This is request for a conditional use permit for a five-story, multifamily structure of approximately 351,900 square feet.

The Boise Fire Department has reviewed and can approve the application subject to compliance with all of the following code requirements and conditions of approval. Any deviation from this plan is subject to Fire Department approval. Please note that unless stated otherwise, this memo represents the requirements of the International Fire Code (IFC) as adopted and amended by Ordinance 6308.

Comments:

1. It is anticipated that the waterline from Capital Blvd. to Dale St. will need to be upgraded to support this project. Required fire flows for the structure may be up to 4,000 gallons per minute (gpm) based upon final building design. United Water has indicated that 2,000 gpm is currently available and with the waterline upgrades up to 4,000 gpm would be available.

General Requirement:

Specific building construction requirements of the International Building Code, International Fire Code, International Residential Code and Boise City Code will apply. However, these provisions are best addressed by a licensed Architect at building permit application.

Please feel free to have the applicant contact Romeo Gervais at 570-6567 if they have any questions.

Regards,

Romeo P. Gervais, P.E.
Deputy Chief – Fire Marshal
Boise Fire Department

CUP11-00090 & CFH11-00036 / THE MICHAELS ORGANIZATION

Location: 1004 W. Royal Boulevard

RECONSIDERATION OF A CONDITIONAL USE PERMIT FOR A HEIGHT EXCEPTION TO CONSTRUCT A FIVE STORY MULTI-FAMILY RESIDENTIAL BUILDING ON 3.42 ACRES IN AN R-OD ZONE. A BOISE RIVER SYSTEM PERMIT IS INCLUDED IN THE REQUEST.

Josh Johnson (Staff) – If I’m not mistaken, I believe we need to vote for reconsideration.

COMMISSIONER BRADBURY MOVED TO RECONSIDER CUP11-00090 & CFH11-00036 FOR THE PURPOSE OF TAKING TESTIMONY THAT WAS MISSED WHEN THIS WAS ORIGINALLY PLACED ON OUR AGENDA.

Commissioner Meyer – I wasn’t here at the last meeting so I will be sitting out on this item.

COMMISSIONER STORY SECONDED THE MOTION.

Commissioner Stevens – Does the maker and the seconder wish to include that we will hear that testimony tonight?

Commissioner Bradbury – That was the intent of my motion.

Commissioner Story – Yes.

ROLL CALL VOTE

COMMISSIONER BRADBURY	AYE
COMMISSIONER STORY	AYE
COMMISSIONER MORRISON	AYE
COMMISSIONER STEVENS	AYE

ALL IN FAVOR, NONE OPPOSED, MOTION CARRIES.

Josh Johnson (Staff) – This application is back before you. As at the last hearing a member of the public wished to testify in opposition to the project. Her name is Eileen Barber and she signed up with John Starr. Those two citizens and the applicant team are those only able to testify tonight because they were signed up at the last hearing. We recommend that after our staff report you let the applicant go as normal, then those members of the public, and then give the applicant the chance for a five minute rebuttal.

The issue before you tonight is the height of the structure. The structure is 59 feet along the Greenbelt and 63 feet along Royal Boulevard. The Parks Department’s comments on the original application recommended a limit of 55 feet. Staff had talked to the Parks Department and thought we had worked out a compromise as we were recommending the parapet be raised to provide more modulation of the façade. Further discussions with Park’s staff today revealed they wanted the building held to a 55-foot limit.

As you know they are the recommending body to this and if you wanted to exceed that, you would have that discretion.

Commissioner Stevens – Josh, can you remind me, when we approved this last week was it 55 feet, or was it higher?

Josh Johnson – No, we concluded a condition that referred to these revised elevations in a brief paragraph summary stating those additional heights that were part of the application. At that point we thought the Parks Department understood the additional height, but today they said, no, they did want that 55-foot limit adhered to.

Mathew Bartner (Applicant) – I'm the architect for the project working with Michael's Organization, the applicant. I know you've heard about the project as of last week so I won't belabor the points too significantly. As Josh mentioned, when we submitted for a conditional use permit back in December the project was intended to be a 55-foot height limit. One of the items mentioned in the staff report at that time was the consideration of some additional height to help animate the façade and provide relief to an otherwise flat roofline for the project. We worked within those parameters to bring some additional height, which started the discussion of 58-foot height limit. At that time we did believe the Parks Department, as well as Planning & Zoning, were in agreement of that height extension. Further, moving from that point I worked with the Design Review staff. Again, they were looking for a little more extenuation in the façade and some changes there, so we ended up at the 63-foot limit you see before you today. That is what we are requesting as the conditional use tonight.

Commissioner Bradbury – Just so I'm clear, is the building different heights on different sides?

PUBLIC TESTIMONY

Mathew Bartner – Yes, because of the way the ordinance is written it's written such that the height is measured from the adjacent grade at the curb-line. Our building, because of the flood plain issues and some other things on this site, is actually 4 feet higher than the Royal Boulevard side where the sidewalk is currently, or would be. So we include that 4 feet in the overall height of the building, but on the north side, the Greenbelt side, grade comes up basically to the floor level so that 4 feet is mitigated on that side.

Eileen Barker – I am one of the owners of Kinetics in the Kinetics building and I am representing Kinetics today. Just a heads-up, I did write a letter to the Commission and I would refer to some of the charts in there, so I'm assuming you'll have them there.

First, let me start by saying I love new development. We would love to see the truck terminal replaced with something that enhances the Greenbelt and that serves our city. There are two main concerns with different proposed housing. The proposed height of building above what Boise City Code allows and lack of adequate parking. The current design would harm not only the neighborhood, including Ann Morrison Park, and the Boise River Greenbelt may make the propose project not a desirable place to live. The first concern is that the proposed student housing project is not similar in height to the office buildings in the vicinity.

The table on page one speaks for itself. This stretch of the Greenbelt has 3-story office buildings, including our building. An average typical height of a 3-story office building along this stretch is 45 feet. I did provide elevation of these buildings to staff.

The chart on page two demonstrates a big difference between the Kinetics building, a three-story office, and the proposed project with five stories. The important thing to remember is our building and the proposed buildings are located in different zones. The Kinetics building is located in a C-2D zone with a maximum height limit of 45 feet. The typical height of the Kinetics building is 46 feet, or one-foot above the C-2D zone restriction. The tallest part of the Kinetics building is a single exterior stairwell at 53 feet on the Royal facing side of the property.

The proposed project is located in R-OD zone with a maximum height limit of 35 feet. The typical height of the proposed building is 55 feet, or 20 feet above the R-OD zone restriction. The tallest part of the proposed building in order to accommodate the multiple exterior stairwells is 63 feet along Royal Boulevard, to 9 feet along the Greenbelt. The proposed building exceeds the applicant's stated height exception at 55 feet, and additionally exceeds a limit set by Boise Parks and Recreation at 55 feet.

The last concern is closely tied to the second concern, a severe shortage of proposed parking spaces. The applicant describes the proposed apartments as student housing for Boise State students. However, the project has been placed into the City's multi-family apartment classification for the purpose of the present application. The first chart on page three shows parking spaces to bedroom ratios for the typical multi-family dwelling units. Most multi-family dwelling units are one and two bedroom units. The proposed student housing lists a fourth bedroom unit would create ratios far below acceptable occupant vehicle averages. The proposed structure of 175 dwelling units, again, in which most are four bedroom units, will create 622 bedrooms, for 622 students. The planned 280 parking spaces will provide less than half the student tenants a place to park their cars. This is far below acceptable averages. We could expect at least 60 to 75 percent of students will bring a car to school. The second table on page three illustrates these ranges. The project will be almost 100 spaces short if 60 percent of the students have cars. At 75 percent, this doubles to almost 200 becomes almost 202 few parking spaces.

Mary Watson – Could you inquire if there is anybody else in the audience who would like to testify?

REBUTTAL

Mathew Bartner – I'll touch briefly on the parking issue. The building is a multi-family apartment building. It's not a sorority or fraternity house, it's intended to be a multi-family apartment for grown adults who happen to be college students. It's targeted at college students of Boise State. The site is chosen to be in close proximity of the Boise State campus which we feel will mitigate some of the need for cars. None the less, the project does meet the ordinance for a multi-family building for car parking and we believe it is an adequate amount of parking for the residents.

Regarding height, Eileen is correct. Our building is in a different zone than the Kinetics building. However, I'm going to reference from the staff report, which you have been noted, that the 35-foot height limit is unusual in the R-O zone because it is intended as a mixed use urban development zone. While our project is not mixed use per-say, it is residential use. We do believe it represents a good attempt to be an urban type building and urban type of housing. Not focused on cars beyond what the ordinance requires. It is more focused on pedestrian and bike use coming from the housing to the campus of Boise State.

PUBLIC HEARING CLOSED

Commissioner Bradbury – I've gotten confused about where we are in terms of the height that was approved last week, and that which the Parks Department is asking us to hold this building to this week. If I'm remembering correctly, the height exceeded the 55 feet that Parks had asked and is now asking the building height be maintained. Is that correct?

Commissioner Stevens – My recollection, and of course other commissioners feel free to jump in, is that we had a letter from Parks voicing their support for the revised drawings which included the height increase. That's my recollection and we unfortunately don't have the application in front of us this week so we can't look back, but my recollection is that they supported at the time and what's in front of us now is no different than what we had last week in front of us. If they've changed their mind, which will certainly be taken into account.

Commissioner Story – I think it is a little bit different. I think Parks did come back and say they would like it to stick to 55 feet, verses the 63 feet, which is different than it was last week. That's my recollection.

Commissioner Stevens – I wonder if it would behoove us to hold this over considering we don't have documentation in front of us and we seem to have some questions. Or we could reopen the hearing to staff and get some clarification, if we have additional questions that we want to have answered.

COMMISSION BRADBURY MOVED TO CONTINUE THIS HEARING TO UR NEXT REGULARLY SCHEDULED MEETING DATE TO MARCH 5, 2012 FOR THE PURPOSE OF FURTHER CONSIDERING THE APPLICATION.

Commissioner Bradbury – I guess I would leave open the potential for allowing additional public testimony if there are other members of the public who wanted to testify.

COMMISSIONER STORY SECONDED THE MOTION.

Mary Watson – For clarification, is this to get information from the Parks Department, what the current recommendation is, or maybe get some clarification on what we are looking for, for next time? Maybe staff at this point could answer the question.

Commissioner Bradbury – What I really want is the staff report in front of me so I can be sure I am making the right decision when the time comes to developing. I just feel a little naked at the moment. I don't have a good enough memory as you can see by the gray hair. Even a week is too long for me to remember the details that I would like to try and remember.

ROLL CALL VOTE

COMMISSIONER BRADBURY	AYE
COMMISSIONER STORY	AYE
COMMISSIONER MORRISON	NAY
COMMISSIONER STEVENS	AYE

THREE IN FAVOR, ONE IN OPPOSED MOTION CARRIES.

Commissioner Stevens – We will be continuing that item to March 5, 2012 to get the documentation in front on us that we need.

February 13, 2012

City of Boise
Attn: Planning and Zoning Commission
150 N. Capitol Boulevard
Boise, Idaho 83701



Re: Objection to the Requested Height Exception for the Proposed River Edge Apartments at 1004 W. Royal Boulevard in the R-O(D) Zone (CUP11-00090 & CFH11-00036).

Dear Commissioners:

I am a co-founder and board member of Keynetics Inc., which is a neighbor directly adjacent to the proposed River Edge student housing project (CUP 11-00090 & CFH11-00036). The Keynetics building located at 917 Lusk Street is a 3-story, Class A office building and is owned along with the adjacent 914 Royal and 915 Lusk lots by entities affiliated with Keynetics Inc. The Keynetics building was designed by BRS Architects to be consistent with other buildings on this section of the Boise River Greenbelt. Both the Keynetics building and the proposed student housing project are located not only along the Greenbelt connection to Julia Davis Park but also adjacent to Ann Morrison Park.

Although we welcome new development in the area, the current design causes serious concerns and would adversely affect not only the neighborhood, including Ann Morrison Park and the Boise River Greenbelt, but also the viability of the proposed River Edge Apartment project itself. In particular, the proposed height of the building (above what the Boise City Code allows) and the lack of adequate parking demonstrate the proposed student housing has not been properly designed for the location or the proposed tenants. Each of these issues is addressed below.

Height Concerns

The Applicant incorrectly states that the proposed apartments are “similar in height” to the office buildings in the immediate vicinity. The table below¹ demonstrates that the proposed student housing building would be two or three stories taller than nearly all of the nearby office buildings:

Building	Location	# of Levels	Building (GSF)	1st Floor (SF)	Total Site Area (Acres)	Building Footprint to Site
Mallard	1161 W River	3	47,175	15,725	3.13	11.5%
Arid Club	1137 W River	2	15,500	11,500	1.59	16.6%
Golden Eagle	1101 W River	3	42,673	14,095	1.06	30.5%
Blue Heron	1087 W River	3	34,902	10,684	1.62	15.1%
Cornerstone (Cottonwood Grill)	913 W River	4	55,895	13,973	3.42	9.4%
Keynetics	917 Lusk	3	27,958	9,172	1.25	16.9%
Proposed Project	1004 Royal	5	351,900	82,814	3.21	59.2%

¹ The information in the table was obtained from the Ada County Assessor’s website.

Additionally, even if the proposed building was a similar height to the nearby buildings (which it is not), the project is located in an R-OD zone with a maximum height limit of 35 feet. **The typical height of the proposed building is 55 feet, or 20 feet above the R-OD zone restriction.** Therefore, not only does the proposed building exceed the height of neighboring buildings, but it also far exceeds the height restriction of the zone where it would be located.

Although Keynetics obtained a CUP for the height of its building, the height variation of the Keynetics building is minimal compared to what is actually allowed in its zone (C-2D). The Keynetics Building is located in a C-2D zone with a maximum height limit of 45 feet. **The typical height of the Keynetics building is 46 feet, or one foot above the C-2D zone restriction.** The Keynetics CUP was necessary to accommodate an exterior stairwell. The tallest part of the Keynetics building is the single exterior stairwell at 53 feet (on the Royal facing side). Please note that the 53' exterior stairwell is only approximately 5% of the total roofline. The table below provides a comparison between the Keynetics building and the proposed student housing:

	Keynetics Building	Proposed Student Housing²
# of levels	3	5
Avg. Height per Floor	14'	10'
Height to Roof Deck	42'	53'
Height to Parapet	46'	55'
Height to Exterior Stairwell(s)	53'	63'

The tallest part of the proposed building (in order to accommodate the multiple exterior stairwells) is 63 feet along Royal Boulevard and 59 feet along the Greenbelt. The Applicant states that the “overall building will not exceed five stories, or 55 feet above the finished ground floor elevation,” but the proposed building exceeds this stated height exception of 55 feet. Additionally, the proposed building exceeds the 55 foot height limit that Boise Parks and Recreation determined the building should not exceed. Boise Parks and Recreation included this recommendation in its November 21, 2011 letter to PDS staff, and Cheyenne Weston, confirmed the 55 foot height limitation in an email dated December 6, 2011.

Parking Concerns

The height concern is closely tied to the second concern –a severe shortage of proposed parking spaces. The shortage of parking in this area is already a serious issue. Ann Morrison Park hosts a variety of high traffic events throughout the year. During the summer river floating season, the parking in Ann Morrison Park and along Royal Boulevard becomes heavily congested.

Ultimately, if not addressed, inadequate parking will make the proposed project an undesirable place to live, adversely affect the businesses in the area, and harm the ability to enjoy Ann Morrison Park and the Boise River Greenbelt.

According to the application, the Applicant, the Michaels Organization, specializes in student housing and other quality affordable housing. The applicant describes the proposed River Edge

² The parapet heights were provided by City Planner Joshua Johnson at a meeting I had with him on February 9, 2012.

Apartments as student housing for Boise State students. However, the project has been placed into the City's "multi-family" apartment classification for purposes of the present application. This conflation of multi-family housing and single student housing in the Boise City Code poses significant problems.

The general parking standards in the Boise City Code for multi-family dwelling require 1.5 spaces per dwelling unit and one guest space per 10 units. However, most downtown and downtown peripheral multi-family apartment complexes are one-bedroom units, two-bedroom units, or a combination of one and two bedroom units. The table below provides the ratio of parking spaces to bedrooms in the typical multi-family apartment under the Boise City Code:

Bedrooms Per Unit	Parking Spaces to Bedroom Ratio
Complex with all one-bedroom Units	1.6
Complex with all two-bedroom Units	0.8
Complex with combination of one and two bedroom Units	0.9 to 1.5
Fraternity/Sorority	1.0
Proposed Project	0.45

The proposed student housing would create ratios far outside those noted above for typical multi-family apartments. The proposed structure of 175 dwelling units (of which 139 are four-bedroom units) will create 622 bedrooms for 622 students. However, 280 parking spaces to 622 bedrooms allocates **only a 0.45 Parking to Bedroom Ratio, which is far below acceptable averages.**

In a conversation with Guy Tomlinson (affiliated with the proposed development) on Wednesday, February 8, 2012, I expressed my concern with the Parking Spaces per Occupant Ratio. According to Mr. Tomlinson, 60-65% of college students have cars. I quickly calculated with him, his stated best case scenario of 60% of student with cars; if 60% of students living in this complex have a car, there would a shortage of almost 100 parking spaces. The table below illustrates how the shortage of parking spaces double as the percentage of students with cars increases to 75%, which is a realistic expectation:

% of Students with Cars	Parking Spaces Needed Based on 622 Occupants	Shortage of Parking Spaces
60%	373	93
65%	404	124
70%	435	155
75%	467	187

The shortage of parking spaces and the excess of cars will adversely affect the neighborhood and the City of Boise. Parking in this neighborhood has been a problem, remains a problem, and will become even more of a problem with such a serious shortage of parking for the building occupants. Although students will be able to walk/bike to their classes, many will still have cars to drive to grocery stores, malls, jobs, parents' homes, etc. **Many students opt for off-campus housing, so they *can* have a car.**

No ideal residential category for student housing structures currently exists in Boise City Code Chapter 11-10: Off-Street Parking and Loading Requirements. Technically, since the proposed apartments include a kitchen, the project falls under the multi-family category. However, college students are not families with children that do not drive. **The Fraternity/Sorority category describes the proposed living arrangement better: groups of young adult students living together.** For the Fraternity/Sorority category, the general parking requirement is 1 parking space per occupant. **This standard would require 622 parking spaces for the proposed project.**

If the City is uncomfortable describing all student housing as a “Fraternity/Sorority House,” **the City should create a new residential category for private off-campus student housing and set minimum realistic parking requirements for this category.** A parking study or survey is needed for a project of this magnitude and for a structure (4-bedroom units) that does not fit the normal scope of apartment complexes in downtown Boise.

Finally, there is a concern about the administration and management of the parking for the proposed project. The Applicant proposes allowing “first come/first serve” parking and no assigned stalls. The Applicant should provide more detailed information on how this method of minimally managing parking will affect the neighborhood and the City.

A Solution - Recognizing the Extra Height of the Proposed Building Directly Relates to the Parking Problem

A possible solution is to limit the project to four levels (one level of parking with three levels of apartments). Three residential floors would accommodate 131 apartments creating 466 bedrooms for 466 students. If 60% of the 466 students have cars, the site would need 279 spaces. This falls nicely in the scope of the 280 proposed spaces and would have less of an impact on the neighborhood, the Boise River Greenbelt, Ann Morrison Park, and the City.

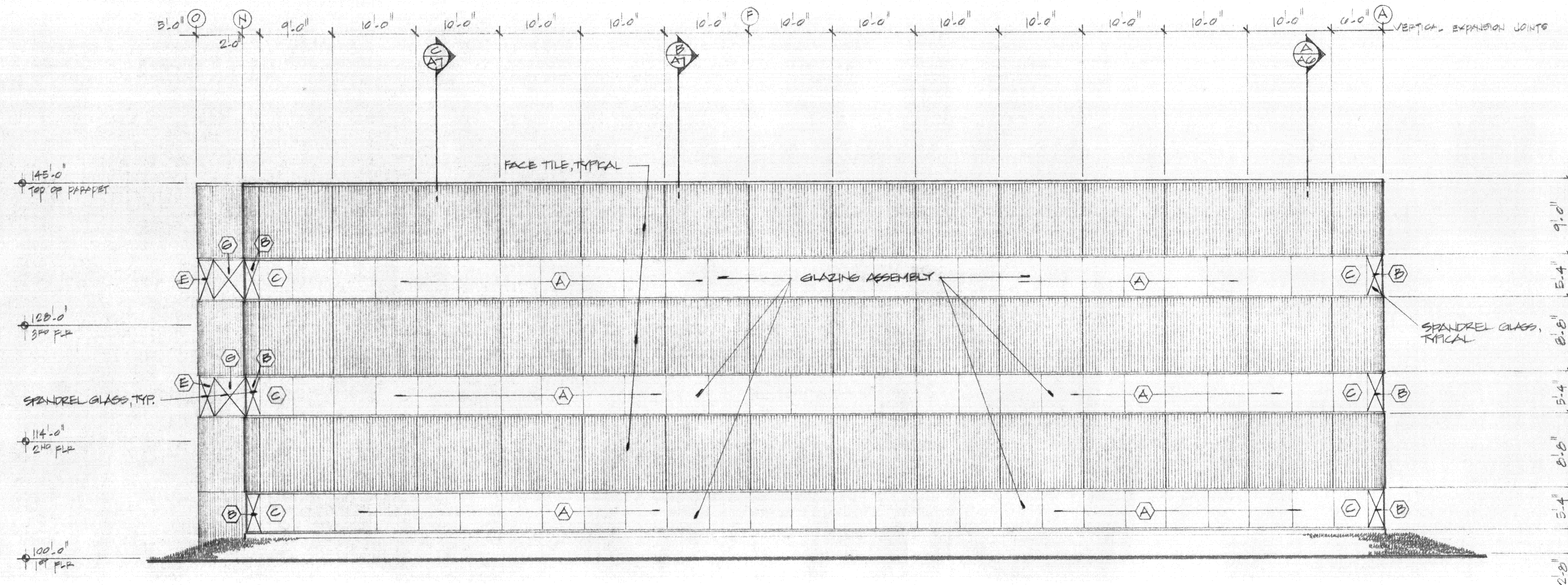
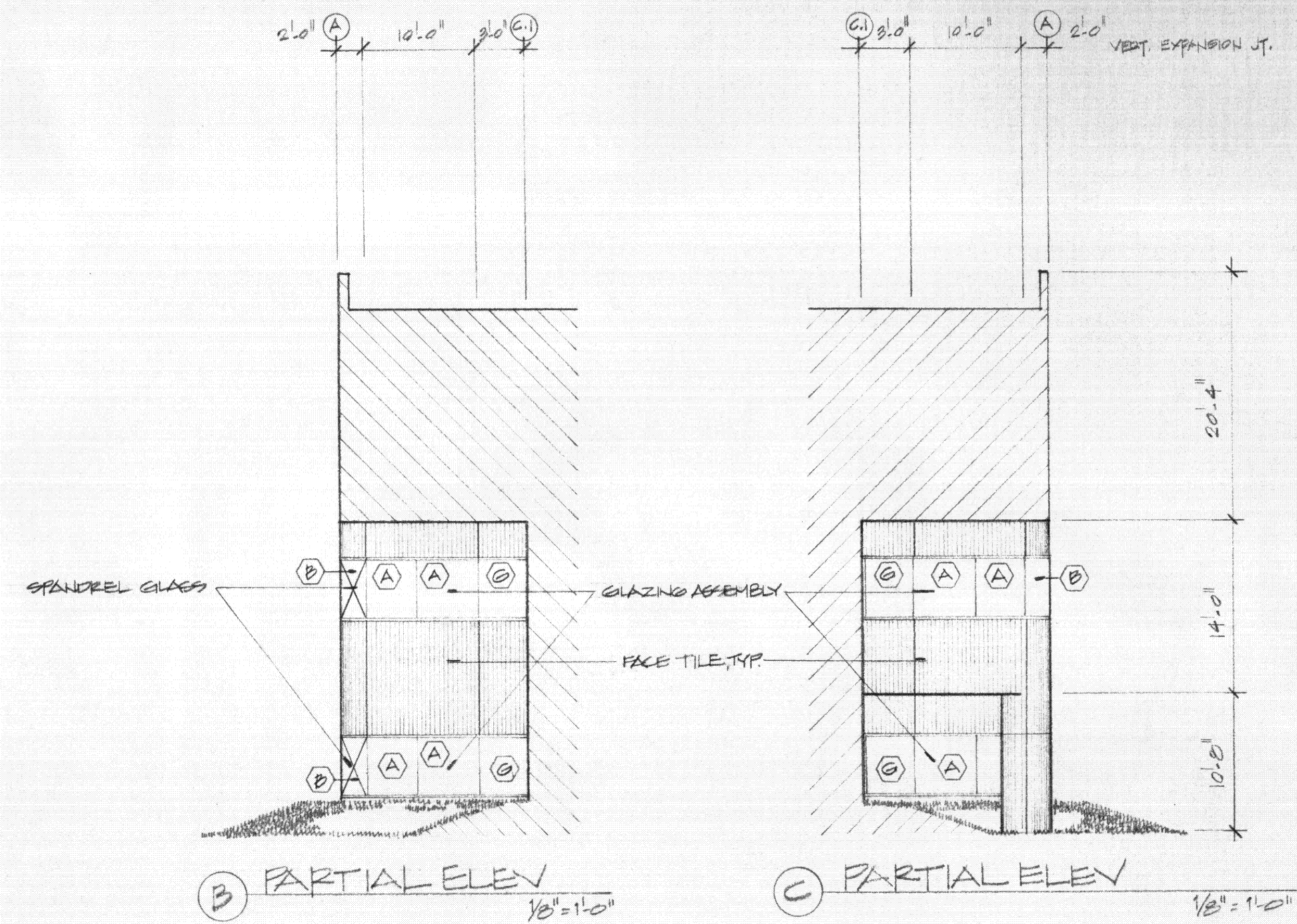
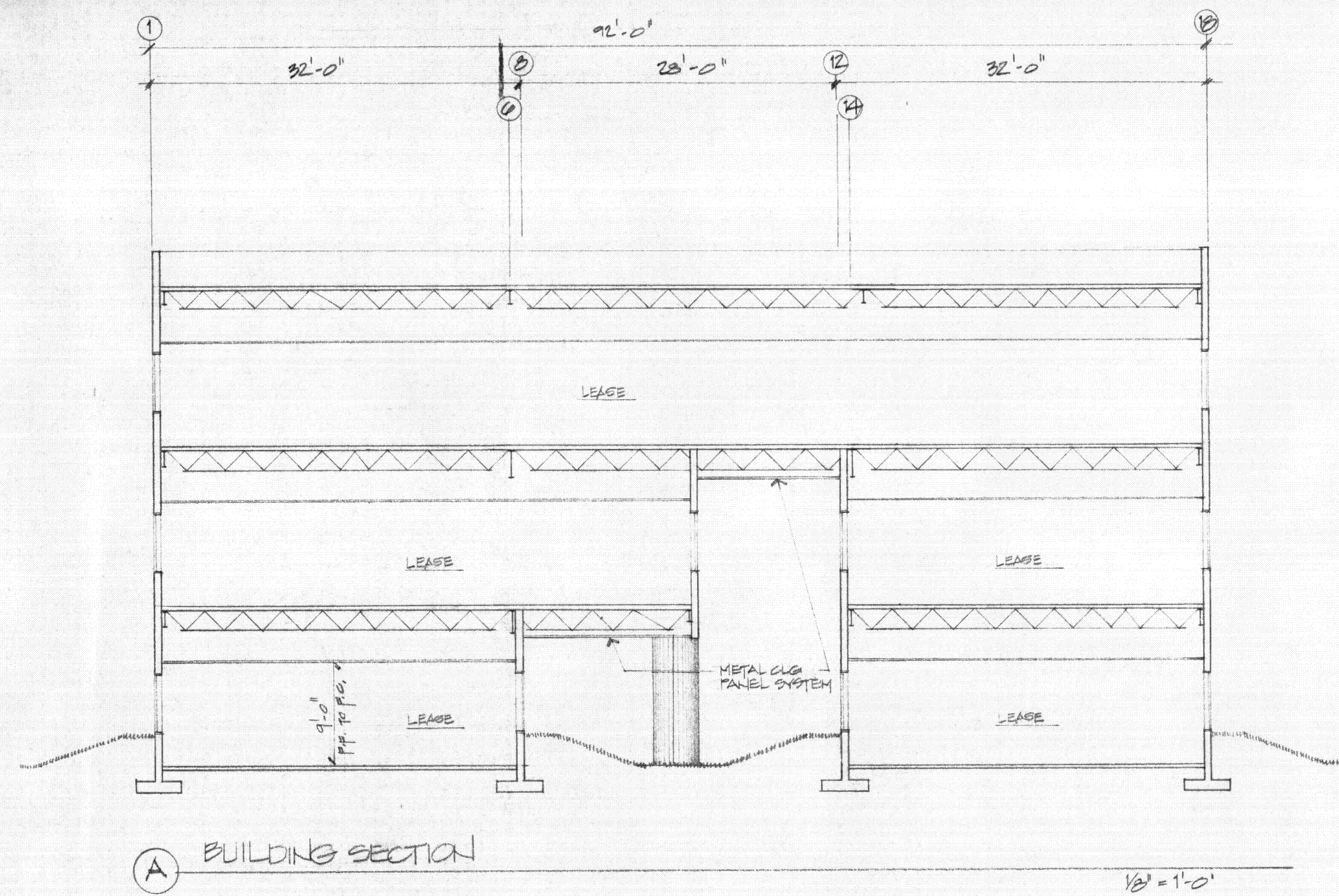
With one level of parking and three levels of apartments, the height of the building to the roof deck would be 42 feet. **The typical height with parapets would be approximately 46 feet, or 11 feet above the R-OD zone restriction.** With exterior stairwells, the building would be 54 feet along Royal Boulevard and 50 feet along the Greenbelt. This would keep the building within the requested 55 feet height exception and would be somewhat more consistent with the other buildings on this stretch of the Greenbelt.

A four-story structure would better meet the parking needs of the occupants and will have less of a parking impact on the neighborhood and the City. A four-story structure is more consistent with other buildings on this section of the Greenbelt. The Greenbelt is a treasured resource and asset to the City of Boise; this section is especially unique because of its location between two of the City’s most beautiful parks.

Sincerely,

Eileen Langan Barber
Keynetics Inc.

cc: Richard Andrus, Spink Butler, LLP



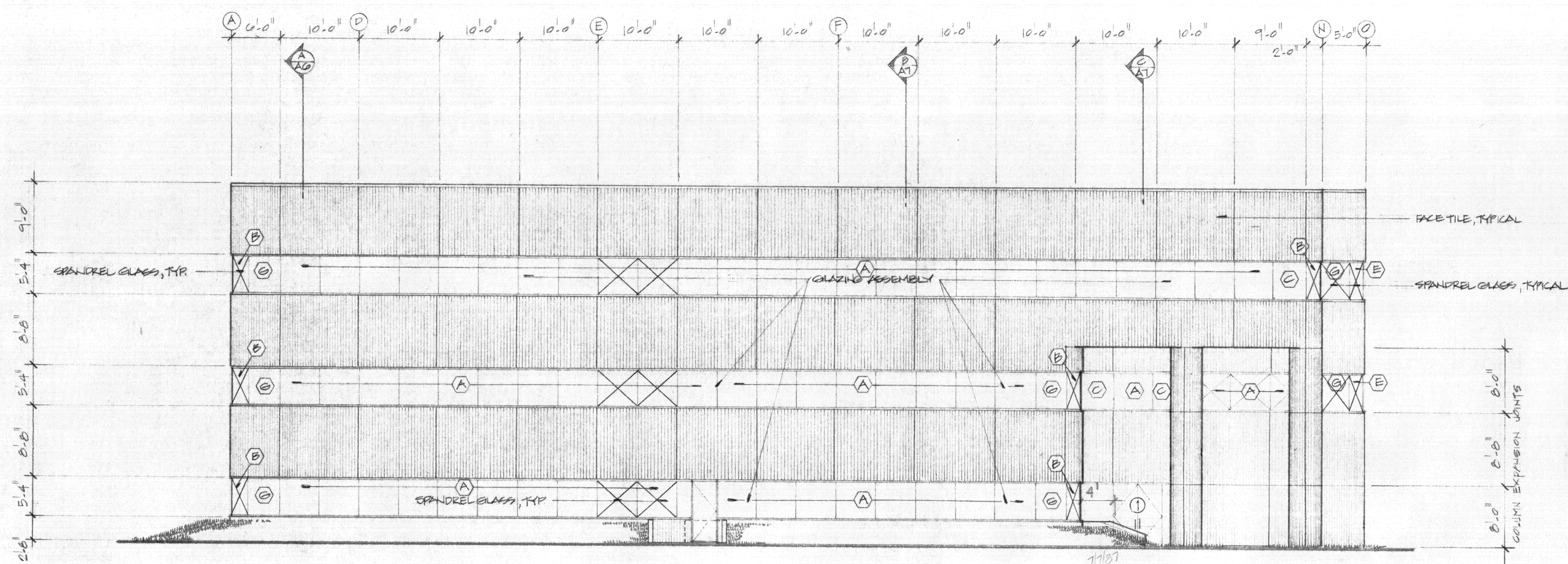
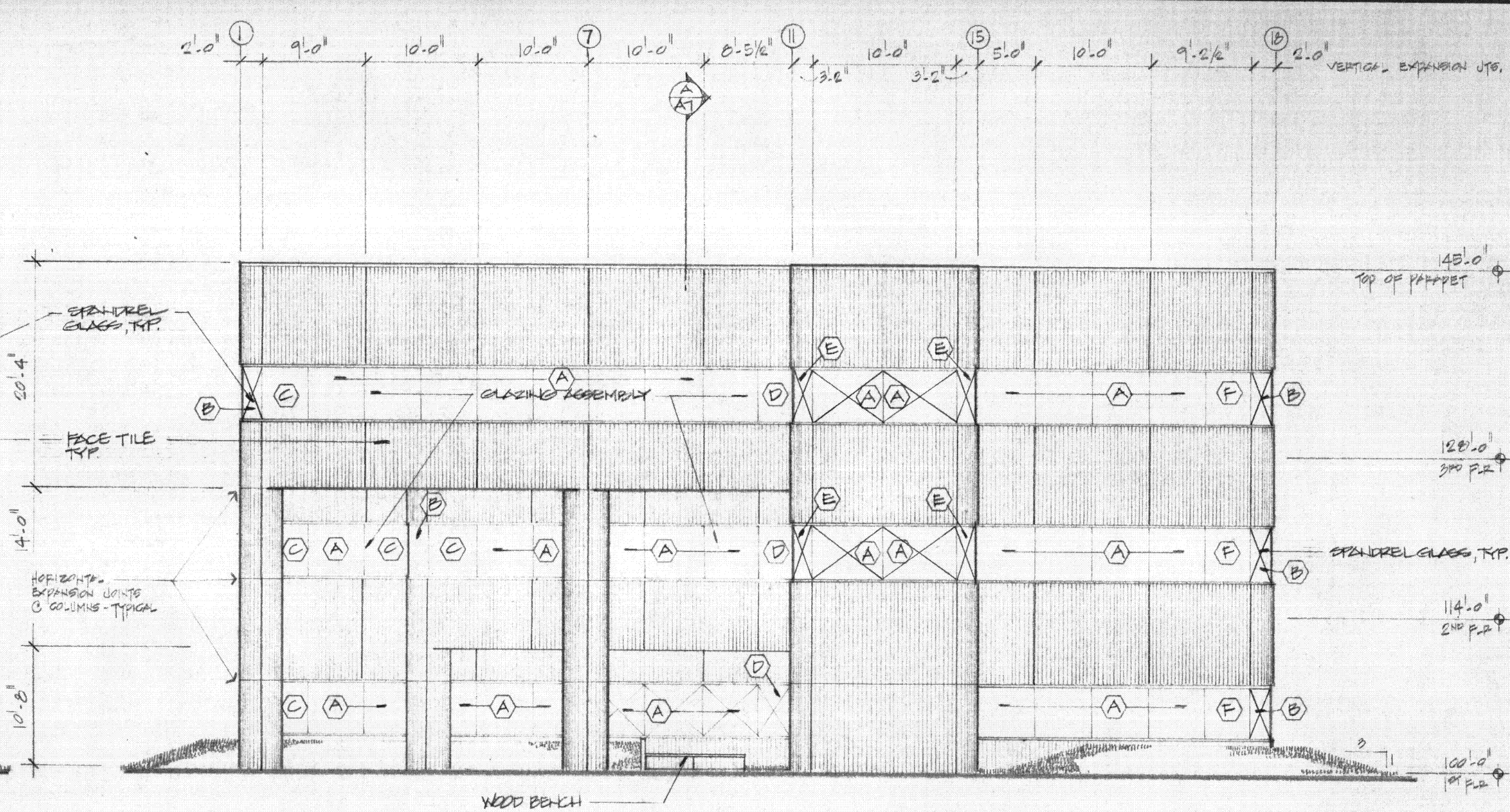
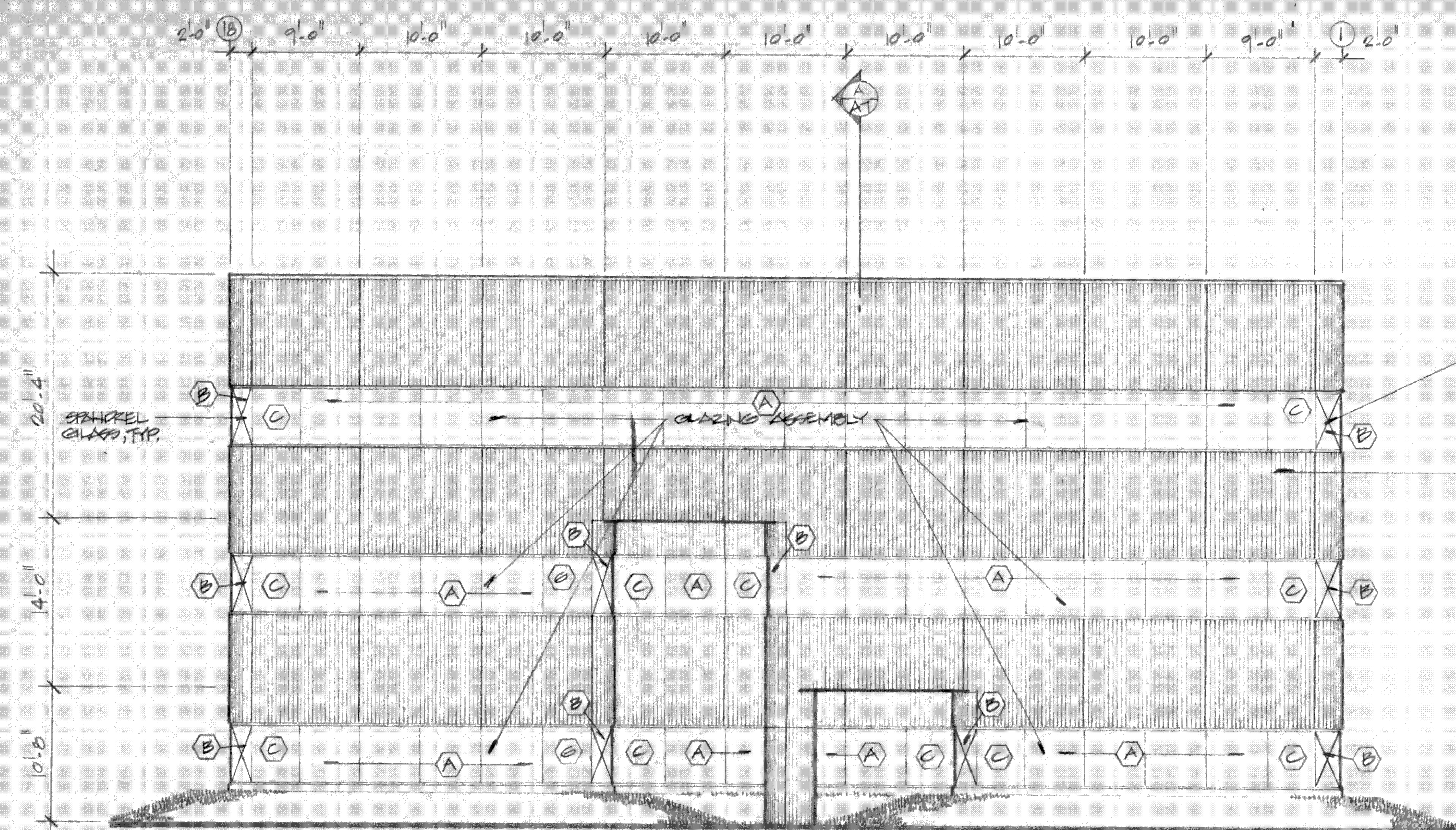
no	revisions	date

billy ray strite
architect p.a. a.i.a.
 twenty six sixty grover court
 boise, idaho 83705 208-336-8370

brs



drawn	CMY
date	21 APRIL 1986
checked	
job no.	8601 PP2
sheet	A-6

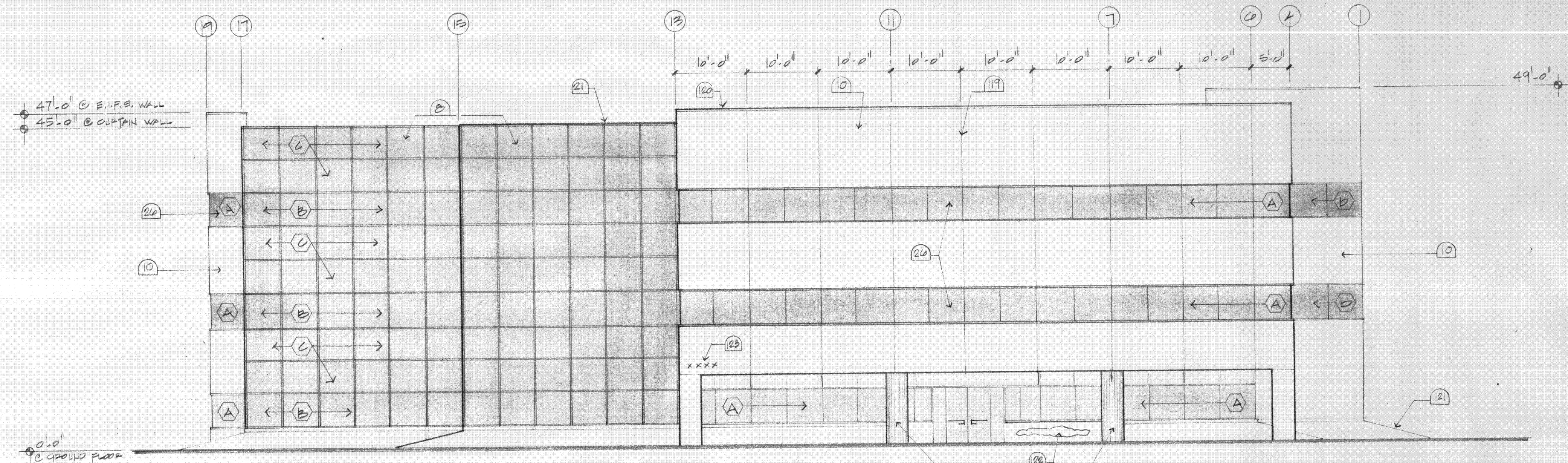
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billy ray strite
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twenty six sixty grover court
boise, idaho 83705 208-336-8370

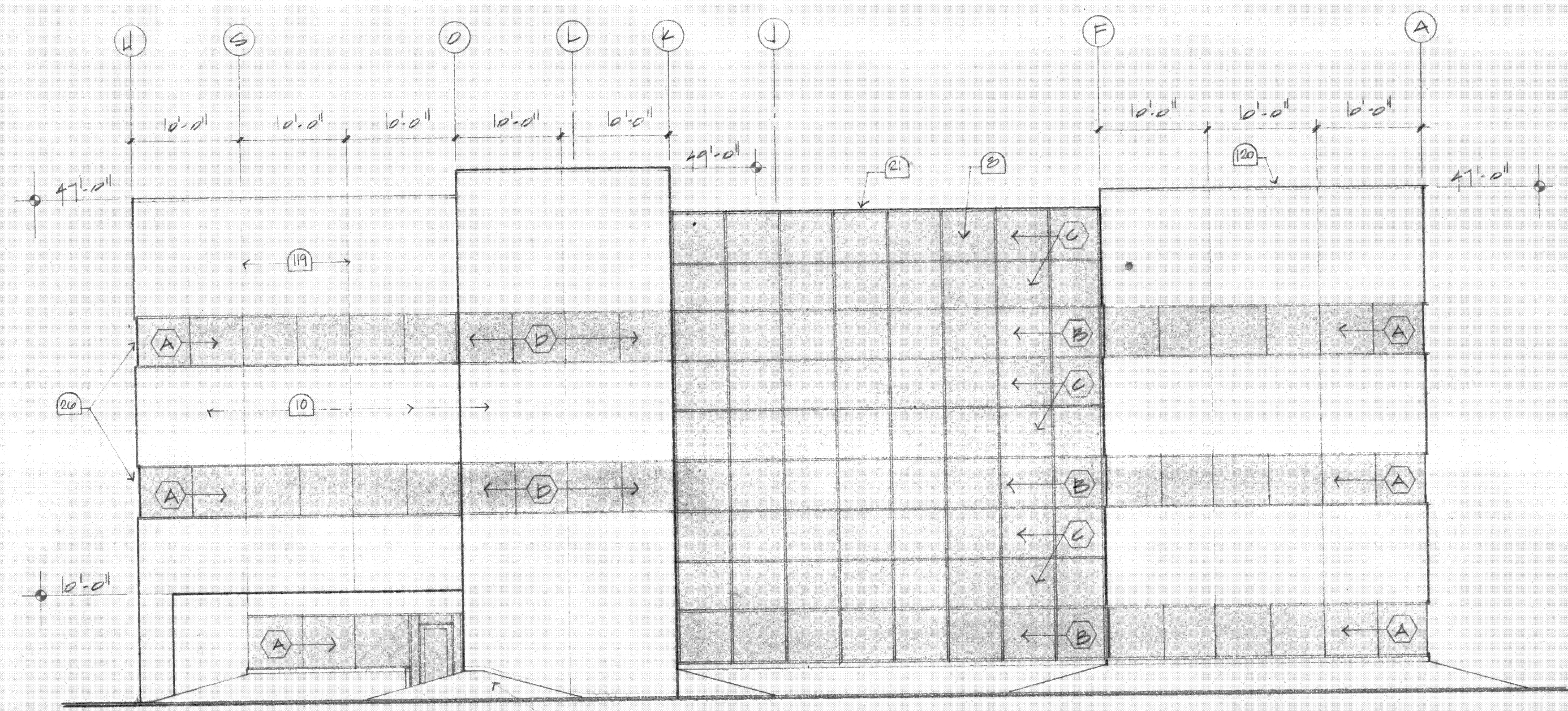
brsThe Forest River logo, featuring the words "forest" and "River" in a stylized, stacked font, with a graphic of a river flowing to the right.

drawn	CMT
date	21 APRIL 1980
checked	
job no.	8601FR2
sheet	A-5

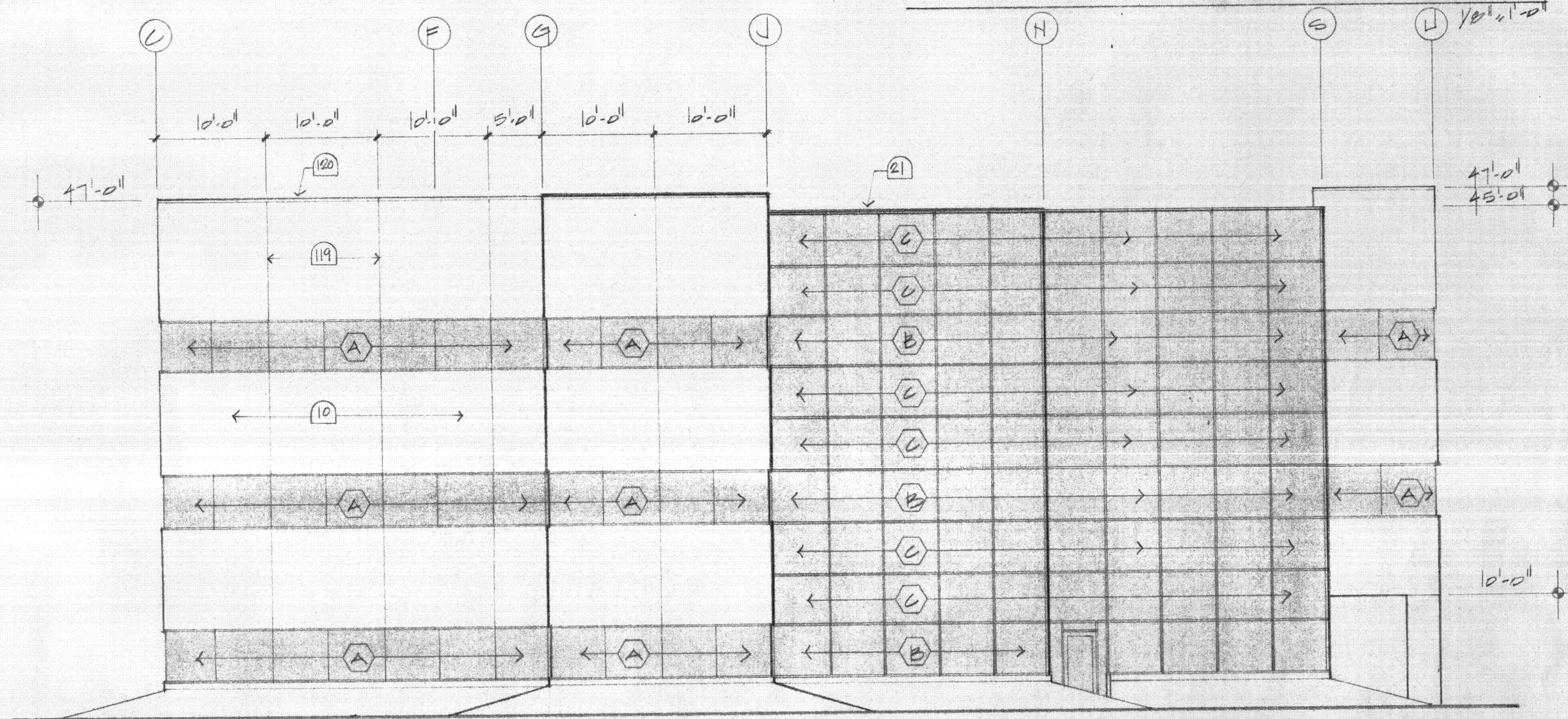
KEYNOTES:



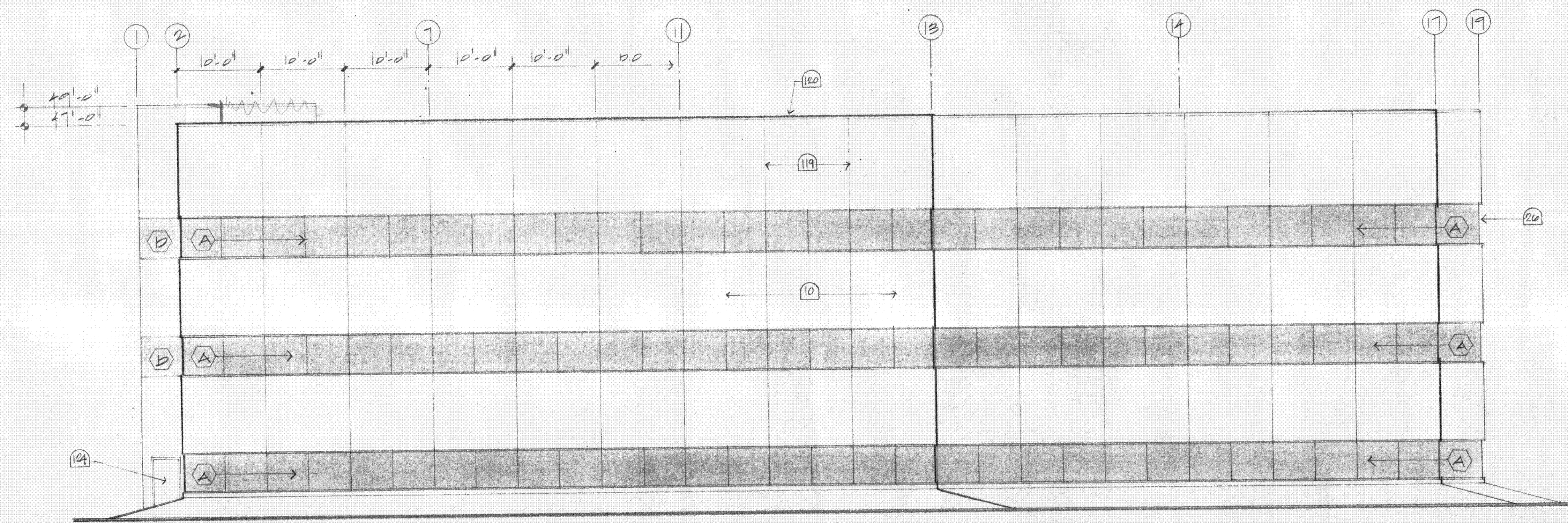
NORTH ELEVATION



WEST ELEVATION



EAST ELEVATION



SOUTH ELEVATION



FOREST RIVER IX
730 PIONEER WAY
BOISE, IDAHO

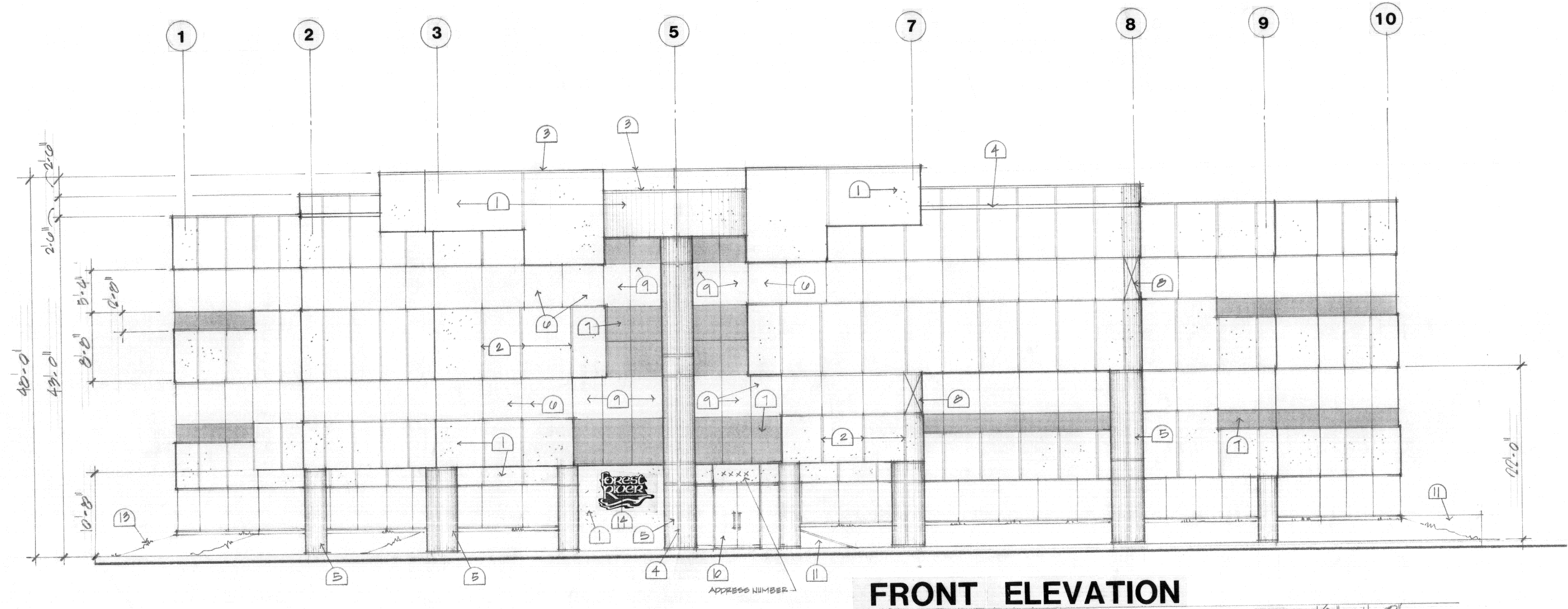
billy ray stite
architect p.a. aia
twenty six sixty grover court
boise, idaho 83705 208-336-8370

brs

drawn	city/cal
date	july 1990
checked	city

no.	revisions	date

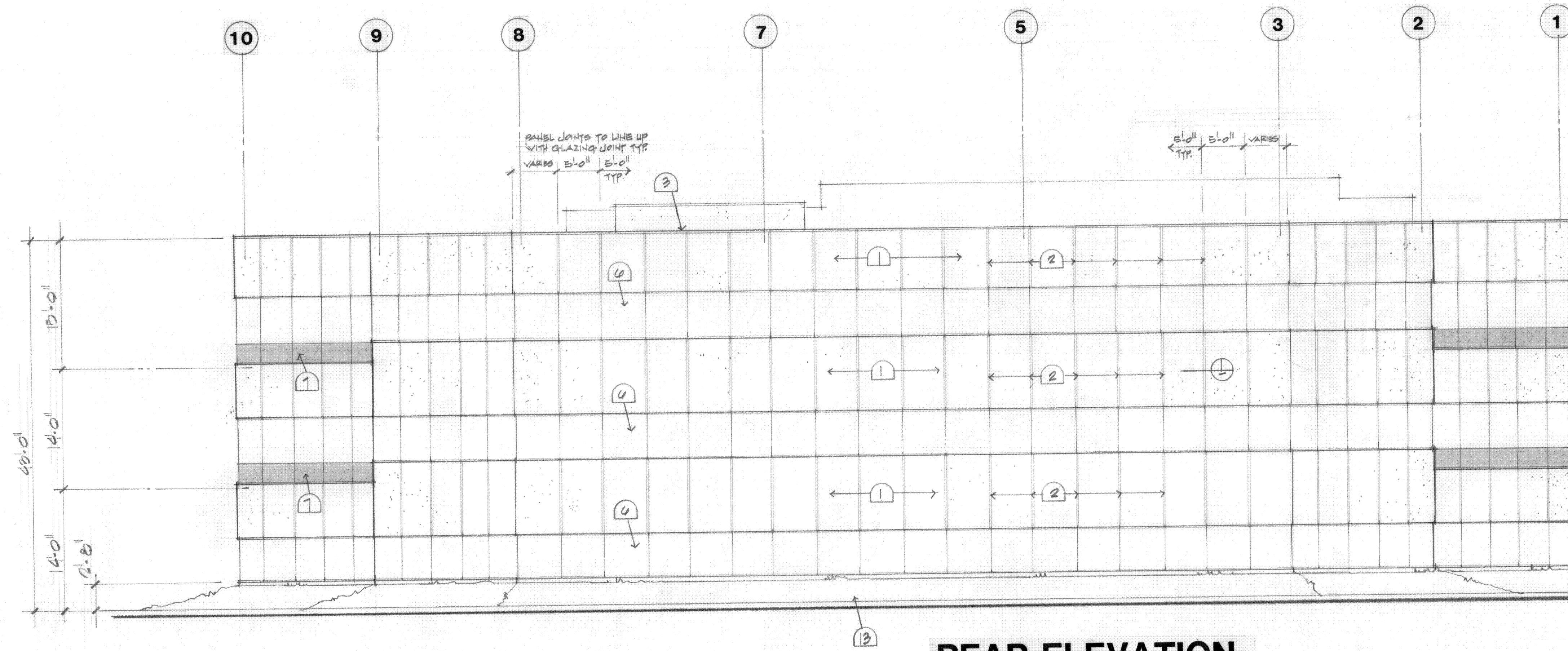
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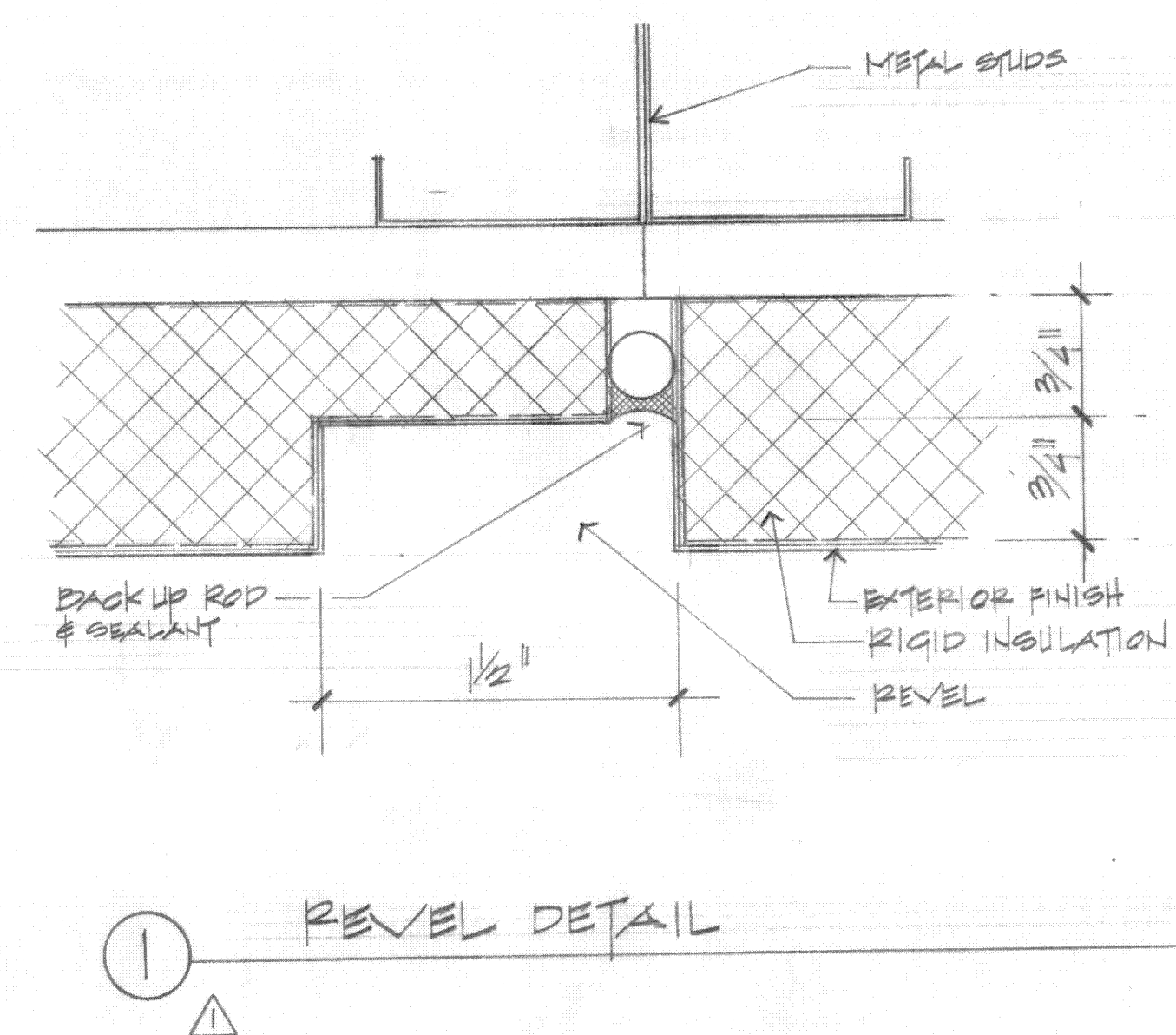
FRONT ELEVATION

KEYNOTES:

1. Integral colored Drivite composite panels.
2. Panel joints, Typical.
3. Pre-colored metal flashing.
4. Colored recessed accent strip.
5. (Same as #1) Composite column.
6. Colored semi-reflective mullionless glazing.
7. Colored spandrel mullionless glazing.
8. Round spandrel mullionless glazing.
9. Colored accent mullionless glazing.
10. Matching herculite entry system.
11. Concrete retaining wall.
12. Painted steel column.
13. Landscaped berm.
14. Brushed aluminum Forest River logo.
15. Line of mechanical screen.



REAR ELEVATION



REAR ELEVATION

PROPOSED OFFICE

billy ray strite
architect p.a. a.i.a.
twenty six sixty grover court
boise, idaho 83705 208-336-8370

drawn

date

checked

revisions

date

no.

date

job no.

8830

sheet no.

A-5



brs **billy ray strite**
architect p.a. aia
twenty six sixty grover court
boise, idaho 83705 208-336-8370

no.	revisions	date
1	100% Design & Detailing	9/27/82

drawn
date
checked

job no.
8830

sheet no.
A-6

LOCATION:
Boise, Idaho

OWNER:
917 Lusk LLC.

CONSTRUCTION DATE:
2005

SQUARE FOOTAGE:
28,000

PRIMARY USE:
Office



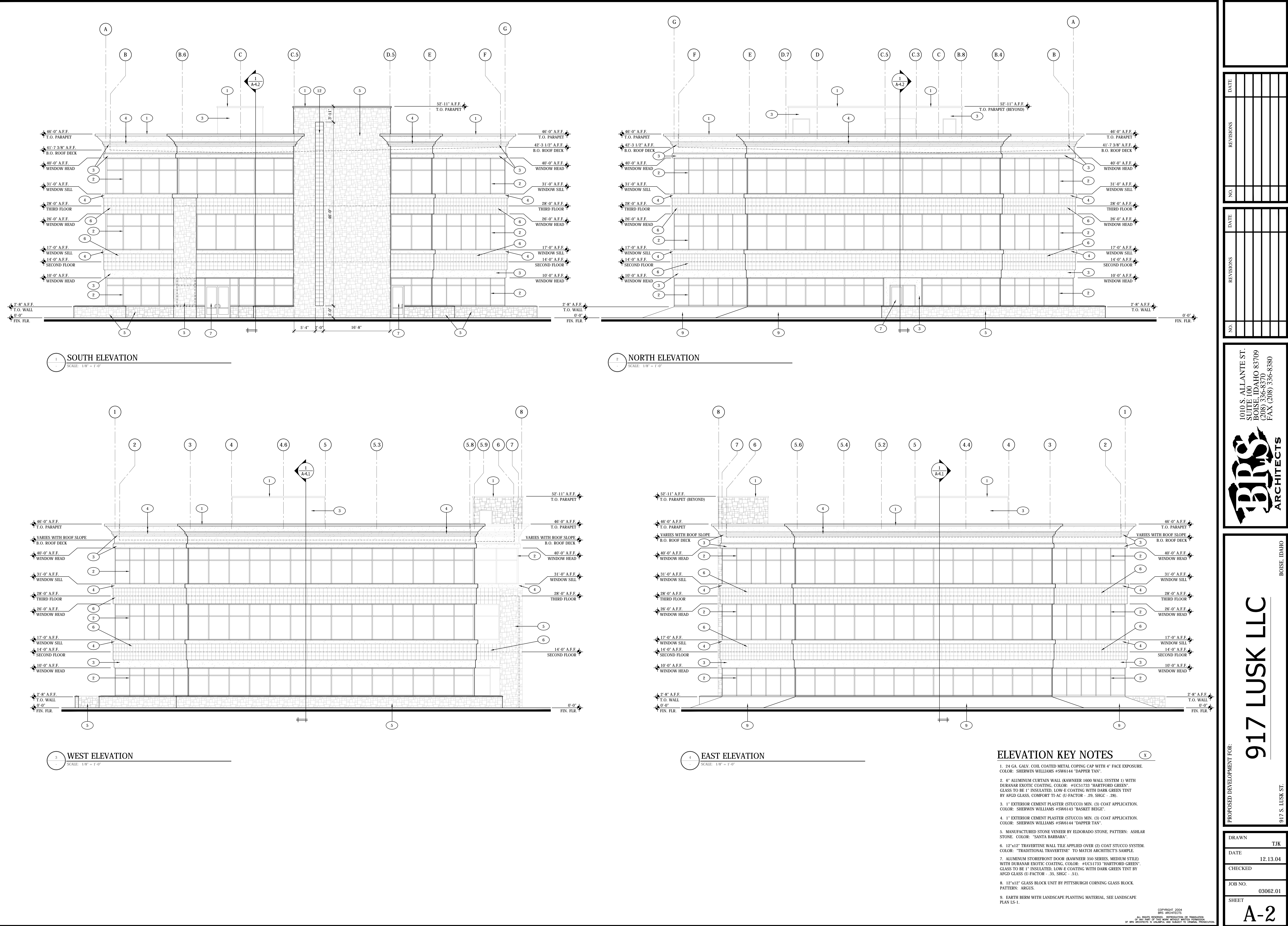
KEYNETICS BUILDING

Office | boise, idaho



BRS Architects designed a three story Class A office building to house the Keynetics corporate offices and their subsidiary Clickbank on the banks of the Boise River. Careful attention was needed in positioning the building due to the river floodplain and greenbelt recreation access setbacks. Buildings along the river have additional requirements to protect water, wildlife and aesthetics; mandating all parking, landscaping and exterior finishes comply with the Boise River System Ordinance.

The exterior cladding materials were chosen for their natural coloring and textures in an effort to blend with the surroundings. Glazing was picked for its non-reflective anti-glare properties. Interior infrastructure was designed for a call center with large server capacity using innovative fiber optic service and cable routing, backup emergency and redundant power systems, and energy efficient heating and cooling systems.



1 SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

2 NORTH ELEVATION
SCALE: 1/8" = 1'-0"

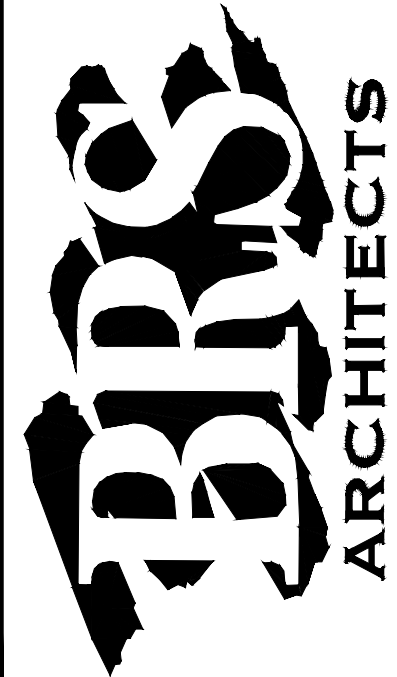
3 WEST ELEVATION
SCALE: 1/8" = 1'-0"

4 EAST ELEVATION
SCALE: 1/8" = 1'-0"

ELEVATION KEY NOTES

- 1. 24 GA. GALV. COIL COATED METAL COPING CAP WITH 4" FACE EXPOSURE. COLOR: SHERWIN WILLIAMS #SW6144 "DAPPER TAN".
- 2. 6" ALUMINUM CURTAIN WALL (KAWNEER 1600 WALL SYSTEM 1) WITH DURANAR EXOTIC COATING, COLOR: #UC31733 "HARTFORD GREEN". GLASS TO BE 1" INSULATED, LOW-E COATING WITH DARK GREEN TINT BY AFGD GLASS, COMFORT T1-AC (U-FACTOR - .29, SHGC - .28).
- 3. 1" EXTERIOR CEMENT PLASTER (STUCCO) MIN. (3) COAT APPLICATION. COLOR: SHERWIN WILLIAMS #SW6143 "BASKET BEIGE".
- 4. 1" EXTERIOR CEMENT PLASTER (STUCCO) MIN. (3) COAT APPLICATION. COLOR: SHERWIN WILLIAMS #SW6144 "DAPPER TAN".
- 5. MANUFACTURED STONE VENEER BY ELDORADO STONE, PATTERN: ASHLAR STONE. COLOR: "SANTA BARBARA".
- 6. 12"x12" TRAVERTINE WALL TILE APPLIED OVER (2) COAT STUCCO SYSTEM. COLOR: "TRADITIONAL TRAVERTINE" TO MATCH ARCHITECT'S SAMPLE.
- 7. ALUMINUM STOREFRONT DOOR (KAWNEER 350 SERIES, MEDIUM STYLE) WITH DURANAR EXOTIC COATING, COLOR: #UC31733 "HARTFORD GREEN". GLASS TO BE 1" INSULATED, LOW-E COATING WITH DARK GREEN TINT BY AFGD GLASS (U-FACTOR - .35, SHGC - .51).
- 8. 12"x12" GLASS BLOCK UNIT BY PITTSBURGH CORNING GLASS BLOCK. PATTERN: ARGUS.
- 9. EARTH BERM WITH LANDSCAPE PLANTING MATERIAL. SEE LANDSCAPE PLAN LS-1.

1010 S. ALLANTE ST.
SUITE 100
BOISE, ID 83709
PH (208) 336-8370
FAX (208) 336-8380



BOISE, IDAHO

917 LUSK LLC

917 S. LUSK ST.

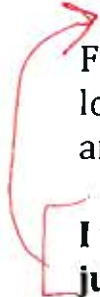
PROPOSED DEVELOPMENT FOR:

DRAWN	TJK
DATE	12.13.04
CHECKED	
JOB NO.	03062.01
SHEET	

A-2

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My name is Eileen Barber. My address is 917 Lusk, Boise 83716. I am one of the owners of Keynetics and the Keynetics building and am representing Keynetics today.



First off, let me start by saying that I welcome new development and would love to see the truck lot replaced with something that enhances the Greenbelt and that serves our City.

I will be referring to some of the charts in my letter to the Commission – just a heads up.

There are two main concerns with the proposed student housing - the proposed height of the building (above what the Boise City Code allows) and the lack of adequate parking. The current design would harm not only the neighborhood, including Ann Morrison Park and the Boise River Greenbelt, but it **may make the proposed project an undesirable place to live.**

The first concern is that the proposed student housing project is NOT “similar in height” to the office buildings in the immediate vicinity. The table on page 1 speaks for itself.

This stretch of the Greenbelt has mostly 3 story office building, including our building. The average typical height of the 3 story office buildings along this stretch is 45 feet. [Please note that I provided elevations of these buildings to the staff].

The chart on page 2 demonstrates the big differences between the Keynetics building and the proposed project. An important thing to remember is that our building and the proposed building are located in different zones.

The Keynetics Building is located in a C-2D zone with a maximum height limit of 45 feet. The typical height of the Keynetics building is 46 feet, or one foot above the C-2D zone restriction. The tallest part of the Keynetics building is the single exterior stairwell at 53 feet (on the Royal facing side of the property).

The proposed project is located in an R-OD zone with a maximum height limit of 35 feet. The typical height of the proposed building is 55 feet, or 20 feet above the R-OD zone restriction. The tallest part of the proposed building (in order to accommodate the multiple exterior stairwells) is 63 feet along Royal Boulevard and 59 feet along the Greenbelt.

The proposed building exceeds the Applicant's stated height exception of 55 feet. Additionally, it exceeds the limit set by Boise Parks and Recreation at 55 feet.

The height concern is closely tied to the second concern – a severe shortage of proposed parking spaces.

The applicant describes the proposed apartments as student housing for Boise State students. However, the project has been placed into the City's "multi-family" apartment classification for purposes of the present application.

The first chart on page 3 shows parking spaces to bedroom ratios for the typical multi-family dwelling units. Most multi-family apartment complexes are one and two-bedroom units. The proposed student housing (with mostly four-bedroom units) would create ratios far below acceptable occupant - to - vehicle averages.

The proposed structure of 175 dwelling units (again... of which most are four-bedroom units) will create 622 bedrooms for 622 students. The planned 280 parking spaces will provide less than half of the student tenants a place to park their cars; this is far below acceptable averages.

We could expect at least 60-75% of students will bring a car to school. **The second table on p. 3 illustrates these more realistic ranges...** the project will be almost 100 spaces short if 60% of the students have cars, and at 75% **this doubles** to almost 200 too few parking spaces.

YES, students will be able to walk and bike to their classes. However, many will still have cars to drive to the grocery store, to the mall, to their job, home for the weekend, etc. Even if the students are walking or biking to campus, they WILL have cars for their other activities.

This project should not be classified as multi-family housing. College students are not families... with young children that don't drive.

The Fraternity/Sorority category better describes the proposed living arrangement: groups of young adult students living together. For the Fraternity/Sorority residential category, the general parking requirement is 1 parking space per occupant.

If the City is uncomfortable describing all student housing as a "Fraternity/Sorority House," the City should create a new residential category for **private. off-campus. student. housing** and set minimum realistic parking requirements for this category.

There is no need to rush a decision tonight. If you as a commission feel like there needs to be more information, please do a study, have a survey done. Please get the staff involved.

As I mentioned earlier, the Extra Height of the Proposed Building is directly related to the Parking Problem

One possible solution is to limit the project to four levels (one level of parking with three levels of student apartments). This would create 466 bedrooms for 466 students. This would still allow for the high density housing that the city is seeking... 146 students per acre (that's a lot!). The planned 280 parking spaces would then accommodate 60% of the student occupants. Still not ideal, but closer to realistic parking needs.

Furthermore, a four story structure would keep the building within the 55 feet height exception that was actually requested. It would still be higher than most of the buildings on this stretch of the Greenbelt, but at least it would be somewhat more consistent.

Thank you for your time and I appreciate that I was given the opportunity to speak tonight. Do you have any questions for me?

RICHARD H. ANDRUS
JOANN C. BUTLER
T. HETHE CLARK
PHIL E. DE ANGELI
MICHAEL T. SPINK

(208) 388-0245

RANDRUS@SPINKBUTLER.COM

Via E-Mail & Hand Delivery

March 2, 2012

City of Boise
Planning & Development Services
Attention: Planning and Zoning Commission
150 N. Capitol Blvd.
Boise, ID 83701

Re: CUP11-00090 and CFH11-00036 (1004 W. Royal Boulevard)
SB Matter No.: 22868.1

Dear Commissioners:

Our client, 917 Lusk LLC, owns the Keynetics Inc. building located immediately to the east and south of the proposed River Edge Apartment student housing project at 1004 W. Royal Boulevard.

A New Jersey developer, the Michaels Organization, applied for a conditional use permit for a height exception to construct a student housing project nearly thirty feet higher (nearly double) the thirty-five foot height allowed in the R-OD (Residential –Office with Design Review) zone. On January 25, 2012 the Idaho Supreme Court ruled in *Burns Holdings, LLC v. Teton County Board of Commissioners* that conditional use permits cannot be used to obtain a height exception. After the Boise City Attorney and City Staff were notified of *Burns Holdings, LLC*, City Staff responded that the application would be “converted” from a conditional use permit application to a variance application. This occurred despite the fact the Michaels Organization had not submitted a variance application form or paid a variance application fee¹ and despite that the matter has not been noticed as a variance application.

¹ The Boise City Code requires an “application with the appropriate form and fee.” Boise City Code § 11-06-11.02. For variances, the City requires payment of a separate \$366 fee and utilizes a separate Variance Application Form (Department Application form #122).

251 E. FRONT STREET
SUITE 200
P.O. BOX 639
BOISE, IDAHO 83701

208-388-1000
208-388-1001 (F)
WWW.SPINKBUTLER.COM

Regardless, the proposed student housing project does not comply with the Boise City Code and Idaho Code requirements for a variance. The Boise City Code provides that a "variance shall not be considered a right or special privilege but may be granted upon a showing of undue hardship because of characteristics of the site or unique circumstances relating to the intended use and that the variance is not in conflict with the public interest."² Further, a variance request may only be approved if the Boise City Planning and Zoning Commission (the "Commission") can find:

- A. That the granting of the variance will not be in conflict with the Comprehensive Plan for the City and will not effect a change in zoning;
- B. That there is either a hardship associated with the property itself or an exceptional circumstance relating to the intended use of the property that is not generally applicable in the district; and that [sic],
- C. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property, or the quiet enjoyment thereof.³

The Idaho Code provides that a "variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest."⁴

A property owner seeking a variance must meet the requirements of both the Boise City Code and the Idaho Code. As demonstrated below, the proposed project meets neither.

1. The Applicant has Not Demonstrated an Undue Hardship Due to the Characteristics of the Particular Site.

Although the Boise City Code provides that a variance may be granted when "there is either a hardship associated with the property itself or an exceptional circumstance relating to the intended use of the property that is not generally applicable in the district," the Idaho Code makes it clear that a variance cannot be granted solely when there is no "showing of undue hardship because of the characteristics of the site."⁵ In other words, the hardship must be unique to the particular property and not shared by other properties within the zone and/or self-created by the proposed use.

Staff claims the Applicant's property suffers a hardship due to the location within the floodplain that requires "the entire building be raised above the base flood elevation."⁶ Staff notes no "hardship" other than the location of the property within the floodplain. Claiming the

² Boise City Code § 11-6-11.01.

³ Boise City Code § 11-6-11.04.

⁴ Idaho Code § 67-6516.

⁵ Idaho Code § 67-6516.

⁶ Memorandum from Joshua Johnson to the Boise City Planning and Zoning Commission (the "Staff Report") p. 4.

floodplain constitutes a hardship assumes that no other properties in the R-OD zone are located within the floodplain. Obviously, that is not the case.

Even if we assume the floodplain is somehow unique only to the proposed site, there is no explanation as to why the floodplain would require a building nearly thirty feet taller than the allowed height within the R-OD zone of thirty-five feet. The floodplain alone does not necessitate a sixty-three foot tall structure.

In fact, the entire floodplain argument is misleading. The Boise City Code defines "building height" as the "vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof or the average height of the highest gable of a pitch or hip roof."⁷ The "grade" is defined as the "elevation of the finished surface of the ground adjacent to the exterior wall of a building or structure."⁸ In other words, fill brought on site to raise the finished floor of the proposed structure one foot above the Base Flood Elevation has no effect on the building height because the building height is determined from the elevation of the fill.⁹

At any rate, the Applicant admits the Boise River Ordinance merely requires the "finished floor of the proposed structure" to be one foot above the Base Flood Elevation."¹⁰ Attached as **Exhibit A** is a depiction of the property showing the current elevation of the property at 2686 feet. According to the Applicant, "the estimated Base Flood Elevation for the property is 2687. The finished floor elevation (excluding the parking area) of the structure will be required to meet a minimum elevation of 2688."¹¹ Thus, using the Applicant's own numbers, the location within the floodplain only adds two feet to the height of the building from what would be allowed outside the floodplain.¹² This hardly accounts for the other proposed twenty-six feet above what the R-OD zone designation allows. The additional twenty-six feet requested by the Applicant cannot be justified by the floodplain. At most, the Applicant can claim a hardship for two feet of height.

The Applicant claims the feasibility of building the project also demonstrates a hardship. Economic viability is not an adequate hardship for purposes of obtaining a variance. The Applicant claims it must build an apartment complex of a particular size in order to make the

⁷ Boise City Code § 11-01-03.01 (emphasis added).

⁸ Boise City Code § 11-01-03.01.

⁹ Mathew Bartner, architect on the project for the applicant, testified at the Commission hearing on February 13, 2012 that the fill brought on the site to account for the location within the floodplain could possibly add "four feet in the overall height of the buildings, but on the north side, the Greenbelt side, grade comes up basically to the floor level so that four feet is mitigated on that side." *Boise City Planning & Zoning Commission Minutes for February 13, 2012* p. 2. Mr. Bartner's statement ignores the fact that not all of the four feet is attributable to the floodplain. Nevertheless, even under the most generous interpretation proposed by Mr. Bartner of grade and building height under the Boise City Code, the floodplain location would only add four feet to the building height, far below the nearly thirty feet extra requested by the Applicant.

¹⁰ *Letter from Engineering Solutions LLP dated February 27, 2012* (the "Second Applicant Letter") p. 4.

¹¹ *Letter from Engineering Solutions LLP dated November 28, 2012* (the "First Applicant Letter") p. 3.

¹² See *Second Applicant Letter* p. 4 and *First Applicant Letter* p. 3.

project feasible, but the Idaho Supreme Court rejected this argument twenty-five years ago. In *City of Burley v. McCaslin Lumber Co.*, a property owner began converting a duplex into a triplex, despite the fact that triplexes were not allowed in the zone where the property was located. Upon learning of the issue, the property owner applied for a variance to complete the triplex, which was granted. The Supreme Court invalidated the variance and aptly held as follows:

The variance was granted because increasing the density of the land use, from a duplex to a triplex, would make the remodeling economically feasible. However, the same could be said of any investment in rental property. When the density of land use is increased, the potential income flow also increases. An otherwise unprofitable investment, such as remodeling, may become feasible. This correlation between density of land use and the scope of feasible investments is not "peculiar" to the property at issue in this case. It could apply to rental properties anywhere.¹³

This language could just as easily read: "When the density of land use is increased, the potential income flow also increases. An already profitable investment, such as a thirty-five foot tall student housing project, becomes more profitable." Simply stated, if the project cannot be built within the height limits set forth in the R-OD zone, the project is not suitable for the R-OD zone. Economic feasibility will not cure this problem.

The Applicant sets forth a list of height, setback, parking, and other bulk standards within the R-OD zone that "mandate" the residential units be located above the parking area in order to make the project economically feasible.¹⁴ Again, economic feasibility does not satisfy the variance requirement that the hardship be unique to the particular property. Moreover, those standards apply to any property within the R-OD zone. If the City determines it would like higher density student housing projects than what is allowed under the current bulk standards of the R-OD zone, the proper course of action is to amend the zoning ordinance (but not to grant a variance).

2. The Variance Would Constitute a Special Privilege.

All other property within the R-OD zone must comply with the height, setback, and other bulk standards applicable in the R-OD zone. A variance for the proposed project would constitute a

¹³ *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (1984).

¹⁴ The list includes the following:

- The 3.21 acre lot size.
- The parking requirements.
- Eight foot wide detached sidewalk and eight foot wide landscape along Royal Boulevard.
- 70-foot setback from the Boise River 6,500 C.F.S. watermark.
- An existing ACHD 15-inch drainage pipe along the property's west boundary.

Second Applicant Letter p. 4.

special privilege that other properties within the R-OD zone do not enjoy. If the City determines it would like higher density student housing projects in the R-OD zone, the proper course of action is to amend the zoning ordinance so the changes apply across the board and fairly to all similarly situated property owners.

3. The Variance Would Constitute a Zoning Change.

The maximum building height in the R-OD zone is thirty-five feet.¹⁵ If the Commission allows the proposed project to be built, it would effectively allow a spot zoning change to the requirements of the R-OD zone. Staff argues that R-OD zone height limit of thirty-five feet and the "desire of this zone . . . for multi-story high density residential projects" "presents an unusual circumstance."¹⁶ The unusual circumstance appears to be manufactured for this particular project. A variance for one property is not the solution for a zone wide problem. If thirty-five feet is insufficient for high density apartment buildings within the zone and the City desires to have higher density projects within the zone, the appropriate method of changing the bulk standards would be to amend the zoning classification ordinance.

4. The Proposed Variance Conflicts with the Comprehensive Plan.

Staff claims the project does not conflict with the City's Comprehensive plan because it maintains compatibility with surrounding buildings.¹⁷ Specifically, staff cites the Morrison Center (at sixty-three feet tall) and the Barnes Towers (at seventy-four feet tall), which are both located on the Boise State campus. Staff neglects to mention that both the Morrison Center and the Barnes Towers are located in a completely different zone than either the proposed project or the Keynetics building. The Morrison Center and Barnes Towers are located in the U and U-C zones that allow buildings as tall as seventy-five feet. The Keynetics building is located in the C-2D zone that allows buildings as tall as forty-five feet. Merely comparing buildings without accounting for the different zoning classifications where they are located improperly ignores what it means to be compatible with surrounding buildings. Moreover, Staff implies the Morrison Center and Barnes Towers are a mere 1,500 feet from the proposed project. However, those building are also located across two major roadways – 9th Street and Capitol Boulevard.

The proposed project is also not compatible with the buildings north of the Boise River located in the Forest River development, including the Mallard, the Arid Club, the Golden Eagle, the Blue Heron, and the Cornerstone buildings. It is important to bear in mind that although those buildings are now located in the R-OD zone, they were not at the time they were constructed. According to the architects that designed the buildings, the land was zoned L-OD when the buildings were developed, which allows a building height of forty-five feet. Moreover, all of those buildings, with the exception of the Cornerstone building, are two to three stories and fifteen to twenty feet shorter than the proposed project.

¹⁵ Boise City Code § 11-04-05.05.

¹⁶ *Staff Report* p. 2.

¹⁷ *Staff Report* p. 3 citing the 1997 Boise City Comprehensive Plan *Objective 7.2.1*.

5. The Proposed Variance Conflicts with the Public Interest, Will be Detrimental to the Public Health, Safety, or Welfare, and Will be Injurious to Other Properties.

On February 13, 2012 Eileen Barber, a principal in 917 Lusk LLC and Keynetics Inc., sent a letter to the Commission providing information about why the proposed project causes serious height and parking concerns. Rather than restate everything contained in that letter¹⁸, the following demonstrates how the proposed project and proposed variance will injure other properties within the vicinity.

The request for a height exception nearly twice what is allowed in the R-OD zone cannot be separated from the parking concerns. Each additional story (which adds height to the building) increases the need for parking. Because the housing project would include 175 dwelling units (of which 139 are four-bedroom units), it will contain 622 bedrooms and house at least 622 student tenants. However, only 280 parking spaces are planned for the expected student count of 622. It is simply unrealistic to expect that only 280 students will own cars, even if they walk to the Boise State campus because students can and will use cars for other aspects of their lives. This will create a severe parking shortage that will encroach on other properties within the area.

The density of the proposed project created by the extra height creates concern because it exacerbates the parking problem. As the number of student tenants rises with the increased density, so too does the number of car-owning, student tenants without a place to park. Attached as **Exhibit B** to this letter, are density comparisons prepared by Eileen Barber. The density comparisons account for other cities in southwest Idaho and the Pacific Northwest, as well as comparisons of neighborhood and apartment densities throughout Boise. The comparisons demonstrate that the property could still contain a high density student housing project suitable for an urban environment and that still complies with the height requirements of the R-OD zone, but not as dense as what the five-story design creates.

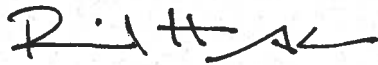
The shortage of parking in the area is already a serious issue. Ann Morrison Park hosts a variety of high traffic events throughout the year. During the summer river floating season and soccer season, parking in Ann Morrison Park and along Royal Boulevard becomes heavily congested. Although pedestrian orientated residential projects are laudable, the neighborhood around the project does not have the infrastructures or services to support an all pedestrian project. Ultimately, if not addressed, inadequate parking will make the proposed project an undesirable place to live, adversely affect the businesses in the area, and harm the ability to enjoy Ann Morrison Park and the Boise River Greenbelt. Students that cannot find parking within the housing project will park at adjacent properties and within Ann Morrison Park. This situation is against the public interest, will be detrimental to the public health, safety, and welfare, and will injure the neighboring properties.

¹⁸ By this reference, this letter incorporates the statements and information contained in Ms. Barber's February 13th letter.

CONCLUSION

During what have been lean economic times, Keynetics and 917 Lusk LLC certainly understand the interest of the City in promoting economic development. As a business that located to Boise from out of state, and as a local employer, Keynetics has a long-term investment in the City of Boise and the quality of life of its employees that live and work here. They also support redevelopment of this underutilized property. That being said, redevelopment of the property should not only comply with the City's ordinances, but it should not injure its neighbors. The present design meets neither of these criteria.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Andrus', with a stylized flourish at the end.

Richard A. Andrus

RHA:g

Enclosures

c: Client (*via email*)
Josh Johnson (*via email*)
Mary Watson (*via email*)

EXHIBIT A

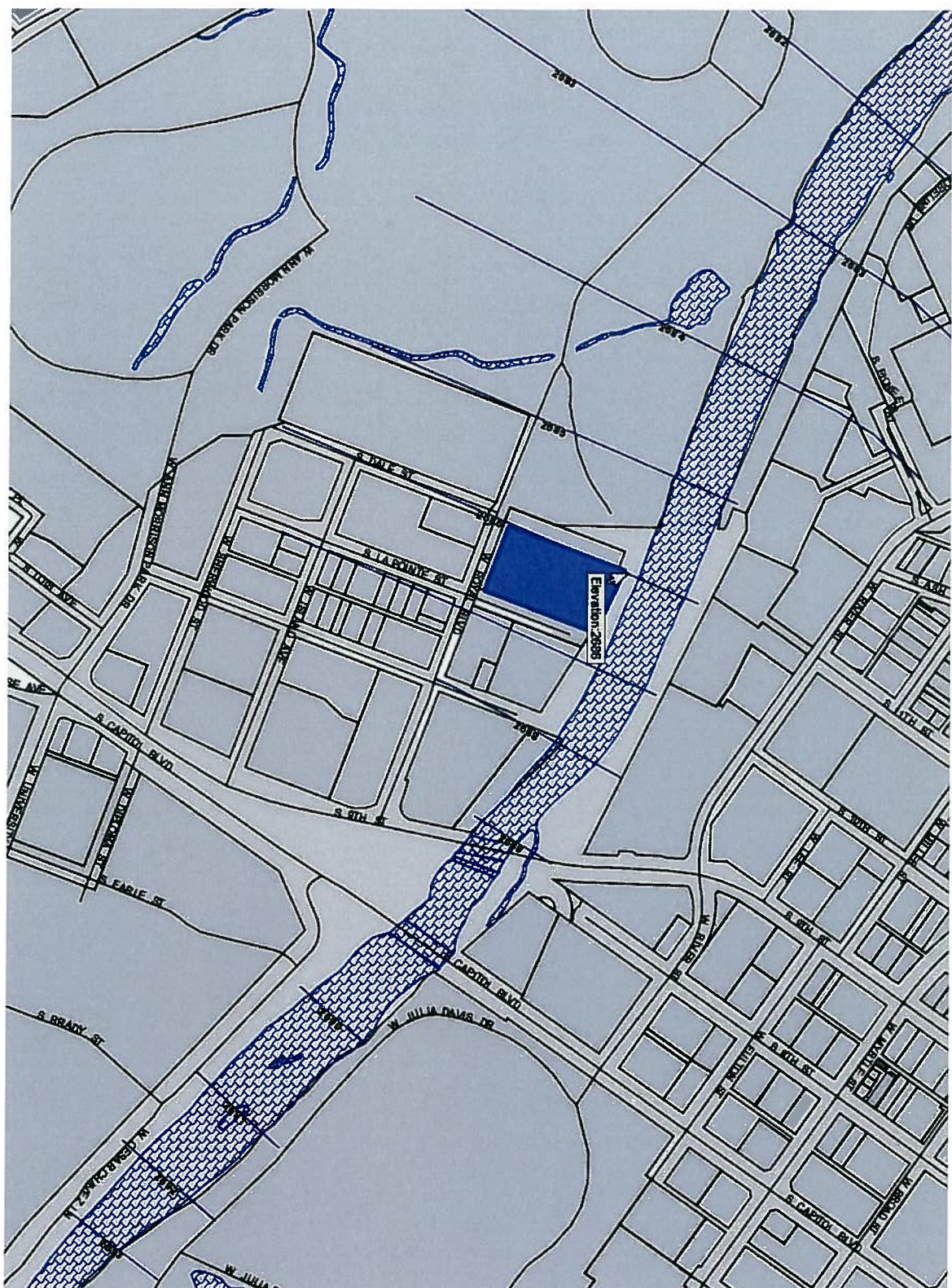


EXHIBIT B

Boise, Idaho Census Data*

205,671 Population, 2010
92,700 Housing units, 2010
61.8% Homeownership rate, 2006-2010
26.2% Housing units in multi-unit structures, percent, 2006-2010
86,032 Households, 2006-2010
2.36 Persons per household (pph), 2006-2010
79.36 Land area in square miles, 2010 (Boise is 51,200 acres)
2,591.50 Persons per square mile, 2010

*<http://quickfacts.census.gov/qfd/states/16/1608830.html>

Conversions Boise

50,790 Land area in acres
4.05 Average persons per acre

Summary

Average Persons Per Acre in Boise

4.05 City of Boise (per Census)
8 Highlands Example
25 North End Example
62 Typical Apartment Living in Boise
120 Urban Density Living in Boise

Average Persons Per Acre in Proposed Student Housing on 3.21 acres

194 Proposed Project w/622 Student Occupants - 4 levels of residential
145 Solution - Modified Project w/466 Student Occupants - 3 levels of residential
97 Solution - Modified Project w/311 Student Occupants - 2 levels of residential

Eagle, ID

28.92 Land area in square miles, 2010
688 Persons per square mile, 2010
1.08 persons per acre

Portland, OR

133.43 Land area in square miles, 2010
4,375 Persons per square mile, 2010
6.84 persons per acre

Seattle, WA

83.94 Land area in square miles, 2010
7,251 Persons per square mile, 2010
11.33 persons per acre

RESIDENTIAL LIVING IN BOISE

North End

A typical North End City block

N. 7th St. between Ada & Resseguie

Address	Acres*
1404	0.211
1408	0.11
1410	0.11
1416	0.11
1420	0.11
1419	0.14
1415	0.10
1413	0.16
1407	0.13
1403	0.07
1401	0.09
<hr/>	
	1.341 Total Acres
Range: 26 persons, 11 households at 2.36 pph**	
44 persons, 11 households at 4 pph	
19	33 persons per acre
	25 Persons per Acre (estimated)

The Highlands

Thornberry Dr. - a typical street in the Highlands

Address	Acres*
353	0.480
345	0.700
337	0.740
329	0.610
321	0.340
313	0.290
305	0.290
297	0.290
269	0.290
243	0.390
225	0.320
201	0.260
177	0.334
212	0.520
270	0.350
308	0.220
336	0.270
<hr/>	
	6.694 Total Acres
Range: 40 persons, 17 households at 2.36 pph**	
68 persons, 17 households at 4 pph	
6	10 persons per acre
	8 Persons per Acre (estimated)

*Address & Acres data from Ada County Assessor website

<http://www.adacountyassessor.org/propsys/AddressSearch.do>

**<http://quickfacts.census.gov/qfd/states/16/1608830.html>

2.36 Persons per household (pph) in Boise, 2006-2010

APARTMENT LIVING IN BOISE ON THE GREENBELT

Apartment complexes have surface parking surrounding the units.

Morrison Apartments (R5844610010) - 3 levels residential

S DALE ST	5.448	acres
	280	units (1-bedroom units)
Range:	350	persons, 280 units at 1.25 pph
	661	persons, 280 units at 2.36 pph*
64	121	persons per acre
	75	Persons per Acre (estimated)
	280	bedrooms
	307	parking spaces
	1.10	parking spaces to bedroom ratio

Clearwater Apartments (R1088500317) - 3 levels residential

660 S CLEARWATER LN	2.25	acres
	60	units (1, 2, & 3 bedrooms)
Range:	75	persons, 60 units at 1.25 pph
	142	persons, 60 units at 2.36 pph*
33	63	persons per acre
	55	Persons per Acre (estimated)

Cottonwood Apartments (R7475920010) - 3 levels residential

1659 S RIVERSTONE LN	7.97	acres
	188	units (1 & 2 bedrooms)
Range:	235	persons, 188 units at 1.25 pph
	444	persons, 188 units at 2.36 pph*
29	56	persons per acre
	50	Persons per Acre (estimated)

*<http://quickfacts.census.gov/qfd/states/16/1608830.html>

2.36 Persons per household (pph) in Boise, 2006-2010

URBAN LIVING IN BOISE

CW Moore Apartments (R1013002200) - 3 levels residential plus parking level

450 W GROVE ST **0.42 acres**
 47 units (1-bedroom units only)

Range: 59 persons, 280 units at 1.25 pph
 111 persons, 280 units at 2.36 pph

140 264 persons per acre
 150 Persons per Acre (estimated)

47 bedrooms
 Zoned P-2 47 parking spaces
 1.00 parking spaces to bedroom ratio

Riverwalk Apts. (S1009120888) - 3 levels residential plus parking level

1689 SHORELINE DR **1.095 acres**
 75 units (studios, 1 & 2 bedroom units)

Range: 94 persons, 60 units at 1.25 pph
 177 persons, 60 units at 2.36 pph

86 162 persons per acre
 110 Persons per Acre (estimated)

Cityside Lofts Phase I (R1431970010) - 5 levels residential plus underground parking*

S 13TH ST BOISE **0.875 acres**
 42 units (1, 2, & 3 bedroom units)**

Range: 53 persons, 188 units at 1.25 pph
 99 persons, 188 units at 2.36 pph

60 113 persons per acre
 95 Persons per Acre (estimated)

64 bedrooms
 Zoned P-3 97 parking spaces
 1.52 parking spaces to bedrooms ratio

*additional parking on level 1
 **23 one-bedroom units; 16 two-bedroom units; 3 three-bedroom units

Crescent Rim Phase I - 4 levels residential plus underground parking

3005 CRESCENT RIM DR **3.0 acres**
 41 units (1 & 2 bedroom units)***

Range: 51 persons, 41 units at 1.25 pph
 97 persons, 41 units at 2.36 pph

17 32 persons per acre
 30 Persons per Acre (estimated)

76 bedrooms
 82 parking spaces
 1.08 parking spaces to bedrooms ratio

***6 one-bedroom units & 35 two-bedroom units
 Data from Russell Corp.

Proposed Rivers Edge Student Housing - 4 levels residential plus parking level

1004 ROYAL BLVD **3.21 acres**
 175 units (2 & 4 bedroom units)****

622 persons, 1 per bedroom
 194 Persons per Acre

622 bedrooms
 280 parking spaces
 0.45 parking spaces to bedrooms ratio

****136 four-bedroom units & 39 two-bedroom units
 Data from the Applicant letter.

Boise, Idaho Census Data*

205,671 Population, 2010
92,700 Housing units, 2010
61.8% Homeownership rate, 2006-2010
26.2% Housing units in multi-unit structures, percent, 2006-2010
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Conversions Boise

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4.05 Average persons per acre

Summary

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97 Solution - Modified Project w/312 Student Occupants - 2 levels of residential

Eagle, ID

28.92 Land area in square miles, 2010
688 Persons per square mile, 2010

1.08 persons per acre

Portland, OR

133.43 Land area in square miles, 2010
4,375 Persons per square mile, 2010

6.84 persons per acre

Seattle, WA

83.94 Land area in square miles, 2010
7,251 Persons per square mile, 2010

11.33 persons per acre

PRIVATE STUDENT HOUSING PROJECT

Proposed Rivers Edge Student Housing - 4 levels residential plus parking level

1004 ROYAL BLVD

3.21 acres

175 units (2 & 4 bedroom units)*

622 *persons, 1 per bedroom*

194 Persons per Acre

622 bedrooms

194 Bedrooms Per Acre

280 parking spaces

0.45 Parking Spaces to Bedrooms ratio

*136 four-bedroom units & 39 two-bedroom units

Data from the Applicant letter.

Solution I - 3 levels residential plus parking level

1004 ROYAL BLVD

3.21 acres

132 units (2 & 4 bedroom units)**

466 *persons, 1 per bedroom*

145 Persons per Acre

466 bedrooms

145 Bedrooms Per Acre

280 parking spaces

0.60 Parking Spaces to Bedrooms ratio

**102 four-bedroom units & 29 two-bedroom units

Solution II - 2 levels residential plus parking level

1004 ROYAL BLVD

3.21 acres

88 units (2 & 4 bedroom units)***

312 *persons, 1 per bedroom*

97 Persons per Acre

312 bedrooms

97 Bedrooms Per Acre

280 parking spaces

0.90 Parking Spaces to Bedrooms ratio

***68 four-bedroom units & 20 two-bedroom units

URBAN LIVING IN BOISE

Cityside Lofts Phase (R1431970010) - 5 levels residential plus underground parking*

S 13TH ST BOISE

0.875 acres

77 units (1, 2, & 3 bedroom units)**

Range: 96 persons, 188 units at 1.25 pph

182 persons, 188 units at 2.36 pph

110 208 persons per acre

125 Persons per Acre (estimated)

124 bedrooms

142 Bedrooms Per Acre

Zoned P-3

97 parking spaces

0.78 Parking Spaces to Bedrooms ratio

*additional parking on level 1

**33 one-bedroom units; 41 two-bedroom units; 3 three-bedroom units

CW Moore Apartments (R1013002200) - 3 levels residential plus parking level

450 W GROVE ST

0.42 acres

47 units (1-bedroom units only)

Range: 59 persons, 280 units at 1.25 pph

111 persons, 280 units at 2.36 pph

140 264 persons per acre

150 Persons per Acre (estimated)

47 bedrooms

112 Bedrooms Per Acre

Zoned P-2

47 parking spaces

1.00 Parking Spaces to Bedrooms ratio

Riverwalk Apts. (S1009120888) - 3 levels residential plus parking level

1689 SHORELINE DR

1.095 acres

77 units (studios, 1 & 2 bedroom units)*

Range: 96 persons, 60 units at 1.25 pph

177 persons, 60 units at 2.36 pph

88 162 persons per acre

110 Persons per Acre (estimated)

107 bedrooms

98 Bedrooms Per Acre

90 parking spaces

0.84 Parking Spaces to Bedrooms ratio

*60% one-bedroom units & 40% two-bedroom units

Data from the Applicant letter.

Crescent Rim Phase I - 4 levels residential plus underground parking

3005 CRESCENT RIM DR

3.0 acres

41 units (1 & 2 bedroom units)**

Range: 51 persons, 41 units at 1.25 pph

97 persons, 41 units at 2.36 pph

17 32 persons per acre

30 Persons per Acre (estimated)

76 bedrooms

25 Bedrooms Per Acre

82 parking spaces

1.08 Parking Spaces to Bedrooms ratio

**6 one-bedroom units & 35 two-bedroom units

Data from Russell Corp.

APARTMENT LIVING IN BOISE ON THE GREENBELT

Apartment complexes have surface parking surrounding the units.

Morrison Apartments (R5844610010) - 3 levels residential

S DALE ST	5.448 acres
	280 units (1-bedroom units)
Range:	350 persons, 280 units at 1.25 pph
	661 persons, 280 units at 2.36 pph*
64	121 persons per acre
	75 Persons per Acre (estimated)
	280 bedrooms
	51 Bedrooms Per Acre
	307 parking spaces
	1.10 Parking Spaces to Bedrooms ratio

Clearwater Apartments (R1088500317) - 3 levels residential

660 S CLEARWATER LN	2.25 acres
	60 units (1, 2, & 3 bedrooms)
Range:	75 persons, 60 units at 1.25 pph
	142 persons, 60 units at 2.36 pph*
33	63 persons per acre
	55 Persons per Acre (estimated)
	93 bedrooms
	41 Bedrooms Per Acre
	101 parking spaces
	1.09 Parking Spaces to Bedrooms ratio

Cottonwood Apartments (R7475920010) - 3 levels residential

1659 S RIVERSTONE LN	7.97 acres
	188 units (1 & 2 bedrooms)***
Range:	235 persons, 188 units at 1.25 pph
	444 persons, 188 units at 2.36 pph*
29	56 persons per acre
	50 Persons per Acre (estimated)
	247 bedrooms
	31 Bedrooms Per Acre
verify	294 parking spaces
	1.19 Parking Spaces to Bedrooms ratio

***129 one-bedroom units & 59 two-bedroom units

*<http://quickfacts.census.gov/qfd/states/16/1608830.html>

2.36 Persons per household (pph) in Boise, 2006-2010

RESIDENTIAL LIVING IN BOISE

North End

A typical North End City block

N. 7th St. between Ada & Resseguie

Address	Acres*
1404	0.211
1408	0.11
1410	0.11
1416	0.11
1420	0.11
1419	0.14
1415	0.10
1413	0.16
1407	0.13
1403	0.07
1401	0.09
<hr/>	
	1.341 Total Acres
Range: 26 persons, 11 households at 2.36 pph**	
44 persons, 11 households at 4 pph	
19	33 persons per acre
25 Persons per Acre (estimated)	

The Highlands

Thornberry Dr. - a typical street in the Highlands

Address	Acres*
353	0.480
345	0.700
337	0.740
329	0.610
321	0.340
313	0.290
305	0.290
297	0.290
269	0.290
243	0.390
225	0.320
201	0.260
177	0.334
212	0.520
270	0.350
308	0.220
336	0.270
<hr/>	
	6.694 Total Acres
Range: 40 persons, 17 households at 2.36 pph**	
68 persons, 17 households at 4 pph	
6	10 persons per acre
8 Persons per Acre (estimated)	

*Address & Acres data from Ada County Assessor website

<http://www.adacountyassessor.org/propsys/AddressSearch.do>

**<http://quickfacts.census.gov/qfd/states/16/1608830.html>

2.36 Persons per household (pph) in Boise, 2006-2010

Boise State University
 Parking Ratios for Select On-Campus Housing Properties
 As of 3/2/12

Name:	Barnes Towers Residence Hall
Beds:	300
Occupancy:	95%
Description:	Dormitory style living arrangement (4 students per suite). A student must have freshman status in order to live at Barnes Towers. Many of these students do not bring a car to campus as it is generally their first year away from home and living on campus does not require a personal vehicle.
Parking Permits:	132
Parking/Bed	0.46
Name:	University Suites
Beds:	300
Occupancy:	95%
Description:	Single occupancy rooms in an apartment style setting (4 bedrooms sharing a community living room/kitchenette). A student must have freshman or sophomore status to qualify. Many of these students do not bring a car to campus as it is generally their first year away from home and living on campus does not require a personal vehicle.
Parking Permits:	96
Parking/Bed	0.34
Name:	University Square
Beds:	200
Occupancy:	95%
Description:	Two bedroom apartment style living. The units typically house two adults. Qualifications are minimum age, head of household, or junior or senior status.
Parking Permits:	102
Parking/Bed	0.54