

CITY OF CAMBRIDGE

BOARD OF ZONING APPEAL

831 Massachusetts Avenue, Cambridge MA 02139

617-349-6100

2025 MAY 21 PM 2:10

OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

BZA Application Form

BZA Number: 1165941

General Information

The undersigned hereby petitions the Board of Zoning Appeal for the following:

Special Permit: X

Variance: X

Appeal:

PETITIONER: Lubavitch of Cambridge, Inc. C/O Benjamin B. Tymann, Esq.

PETITIONER'S ADDRESS: 38 Banks Street, MA, Cambridge 02138

LOCATION OF PROPERTY: 38-40 -48 - 54-56 Banks Street, Cambridge, MA

TYPE OF OCCUPANCY: Religious Purpose

ZONING DISTRICT: Residence C-1 Zone

REASON FOR PETITION:

/Additions/ /New Structure/ /Parking/ /Sign/

DESCRIPTION OF PETITIONER'S PROPOSAL:

Renovations and additions to nonconforming structures, requiring variance due to increase in Gross Floor Area/Floor Area Ratio.

Certain parking requests requiring special permit.

SECTIONS OF ZONING ORDINANCE CITED:

Article: 4.000	Section: 4.56 & 4.57 (Religious Uses).
Article: 5.000	Section: 5.31 (Table of Dimensional Requirements).
Article: 6.000 & 7.000	Section: 6.000 (Intent and Applicability of Parking, Bicycle Parking and Loading Requirements) & 7.10 (Signs).
Article: 11.000	Section: 11.200 (Incentive Zoning & Inclusionary Housing)
Article: 19.000	Section: 19.50 (Project Review).
Article: 22.000	Section: 22.90 (Green Factor Standard)
Article: 10.000	Section: 10.30 & 10.40 (Variance & Special Permit).

Original
Signature(s):

Benjamin B. Tymann

(Petitioner (s) / Owner)

Benjamin B. Tymann, Esq., for Petitioner
Tymann, Davis & Duffy LLP
45 Bromfield St., 6th FL
Boston, MA 02108

(Print Name)

BZA APPLICATION FORM - OWNERSHIP INFORMATION

To be completed by OWNER, signed before a notary and returned to The Secretary of the Board of Zoning Appeals.


I/We Lubavitch of Cambridge, Inc.
(OWNER)

Address: 38 Banks Street, Cambridge, MA 02138

State that I/We own the property located at 38-40 Banks St., Cambridge,
which is the subject of this zoning application.

The record title of this property is in the name of Lubavitch of Cambridge, Inc.

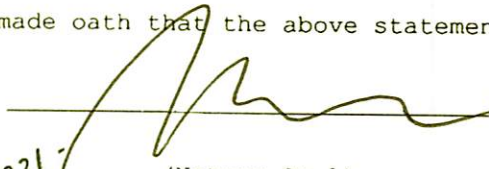
*Pursuant to a deed of duly recorded in the date Jan. 24, 2000, Middlesex South
County Registry of Deeds at Book 31076, Page 52; or
Middlesex Registry District of Land Court, Certificate No. _____
Book _____ Page _____.


SIGNATURE BY LAND OWNER OR
AUTHORIZED TRUSTEE, OFFICER OR AGENT*

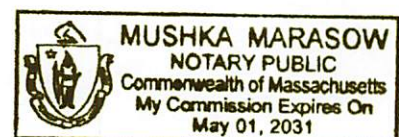
*Written evidence of Agent's standing to represent petitioner may be requested.

Commonwealth of Massachusetts, County of Middlesex

The above-name Hirsh Zarchi personally appeared before me,
this 16 of May, 2025, and made oath that the above statement is true.

 Notary
My commission expires May 01, 2031 (Notary Seal).

- If ownership is not shown in recorded deed, e.g. if by court order, recent deed, or inheritance, please include documentation.



BZA APPLICATION FORM - OWNERSHIP INFORMATION

To be completed by OWNER, signed before a notary and returned to The Secretary of the Board of Zoning Appeals.


I/We Lubavitch of Cambridge, Inc.
(OWNER)

Address: 38 Banks Street, Cambridge, MA 02138

State that I/We own the property located at 48 Banks St., Cambridge,
which is the subject of this zoning application.

The record title of this property is in the name of Lubavitch of Cambridge, Inc.

*Pursuant to a deed of duly recorded in the date July 27, 2007, Middlesex South
County Registry of Deeds at Book 49851, Page 578; or
Middlesex Registry District of Land Court, Certificate No. _____
Book _____ Page _____.


SIGNATURE BY LAND OWNER OR
AUTHORIZED TRUSTEE, OFFICER OR AGENT*

*Written evidence of Agent's standing to represent petitioner may be requested.

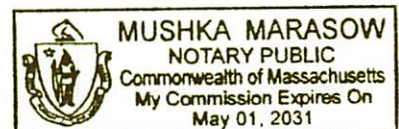
Commonwealth of Massachusetts, County of Middlesex

The above-name Hirsch Zarchi personally appeared before me,
this 16 of May, 2025, and made oath that the above statement is true.


Notary

My commission expires May 01, 2031 (Notary Seal).

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BZA APPLICATION FORM - OWNERSHIP INFORMATION

To be completed by OWNER, signed before a notary and returned to The Secretary of the Board of Zoning Appeals.

I/We Lubavitch of Cambridge, Inc.
(OWNER)

Address: 38 Banks Street, Cambridge, MA 02138

State that I/We own the property located at 54-56 Banks St., Cambridge,
which is the subject of this zoning application.

The record title of this property is in the name of Lubavitch of Cambridge, Inc.

*Pursuant to a deed of duly recorded in the date Dec. 29, 2006, Middlesex South
County Registry of Deeds at Book 48763, Page 272; or
Middlesex Registry District of Land Court, Certificate No. _____
Book _____ Page _____

[Signature]
SIGNATURE BY LAND OWNER OR
AUTHORIZED TRUSTEE, OFFICER OR AGENT*

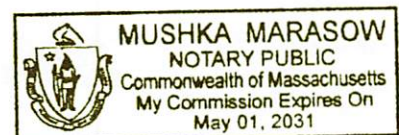
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The above-name Hirsch Zarchi personally appeared before me,
this 16 of May, 2025, and made oath that the above statement is true.

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BZA APPLICATION FORM

SUPPORTING STATEMENT FOR A SPECIAL PERMIT

Please describe in complete detail how you meet each of the following criteria referring to the property and proposed changes or uses which are requested in your application. Attach sheets with additional information for special permits which have additional criteria, e.g.; fast food permits, comprehensive permits, etc., which must be met.

Granting the Special Permit requested for 38-56 Banks Street (location) would not be a detriment to the public interest because:

- A)** Requirements of the Ordinance can or will be met for the following reasons:

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLIUPA, the federal law that prohibits land use regulations that "substantially burden" religious exercise.

- B)** Traffic generated or patterns of access or egress would not cause congestion hazard, or substantial change in established neighborhood character for the following reasons:

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLIUPA, the federal law that prohibits land use regulations that "substantially burden" religious exercise.

- C)** The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLIUPA, the federal law that prohibits land use regulations that "substantially burden" religious exercise.

- D)** Nuisance or hazard would not be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City for the following reasons:

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLIUPA, the federal law that prohibits land use regulations that "substantially burden" religious exercise.

- E)** For other reasons, the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance for the following reasons:

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLIUPA, the federal law that prohibits land use regulations that "substantially burden" religious exercise.

BZA APPLICATION FORM

SUPPORTING STATEMENT FOR A VARIANCE

EACH OF THE FOLLOWING REQUIREMENTS FOR A VARIANCE MUST BE ESTABLISHED AND SET FORTH IN COMPLETE DETAIL BY THE APPLICANT IN ACCORDANCE WITH MGL 40A, SECTION 10:

- A) A Literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or appellant for the following reasons:**

The Petitioner, Lubavitch of Cambridge, Inc., is a nonprofit religious corporation that operates the Harvard Chabad, a synagogue and religious center that holds religious services, Shabbat dinner services, and other religious and Jewish cultural programs for its congregants. Harvard's Chabad community has outgrown their existing facilities and has an urgent need be able to renovate, expand and create one unified building in which to provide safe, code-compliant and ADA accessible space in which to operate. This proposal, including zoning relief sought, is detailed in the plans and materials set forth in the Bruner/Cott submission dated May 19, 2025.

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under the Religious Land Use and Institutionalized Persons Act (42 U.S.C. Secs. 2000cc et. seq.; "RLIUPA"), the federal law that prohibits land use regulations that "substantially burden" religious exercise.

- B) The hardship is owing to the following circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located for the following reasons:**

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLIUPA, the federal law that prohibits land use regulations that "substantially burden" religious exercise.

- C) DESIRABLE RELIEF MAY BE GRANTED WITHOUT EITHER:**

- 1) Substantial detriment to the public good for the following reasons:**

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLIUPA, the federal law that prohibits land use regulations that "substantially burden" religious exercise.

- 2) Relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reasons:**

The Petitioner's religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLIUPA, the federal law that prohibits land use regulations that "substantially burden" religious exercise.

- * If You have any questions as to whether you can establish all of the applicable legal requirements, you should consult with your own attorney.**

DIMENSIONAL FORM

Project Address: 38-40, 48, 54-56 Banks Street

Application Date: 4/18/2025

	Existing	Allowed or Required (max/min)	Proposed	Permitted
Lot Area (sq ft)	12,206 SF	5,000 SF (min)	12,206 SF	Yes
Lot Width (ft)	169.5'	50' (min)	169.5'	Yes
Total Gross Floor Area (sq ft)	9,642 GFA	9,155 GFA	40,164 GFA	WAIVER *
Residential Base				WAIVER *
Non-Residential Base				
Inclusionary Housing Bonus				
Total Floor Area Ratio	0.79	0.75	3.29	WAIVER *
Residential Base	0.79	0.75	3.29	WAIVER *
Non-Residential Base				
Inclusionary Housing Bonus				
Total Dwelling Units	1		3	WAIVER *
Base Units	1		0	
Inclusionary Bonus Units	N/A		0	
Base Lot Area / Unit (sq ft)				
Total Lot Area / Unit (sq ft)	12,206 sf			
Building Height(s) (ft)	38'-1"	35' NR / 74' R total	50' NR / 70'R total	WAIVER *
Front Yard Setback (ft)	10', 48', 8'	10', 10'	10', 5'	WAIVER *
Side Yard Setback (ft)	2', N/A, N/A (left)	2'(exg), 21.5', 11' (left)	2'(exg), 5', 5' (left)	WAIVER *
Side Yard Setback (ft)	N/A, N/A, 20' (right)	14', 13.5', 7.5' (right)	10', 5', 5' (right)	WAIVER *
Rear Yard Setback (ft)	17', 1'-4", 12'	N/A	N/A	WAIVER *
Open Space (% of Lot Area)	47%	30%	56.1%	WAIVER *
Private Open Space	47%	50% of Open Sp.	55.9%	WAIVER *
Permeable Open Space	N/A	50% of Open Sp.	53.8%	WAIVER *
Other Open Space (Specify)	N/A	N/A	N/A	
Off-Street Parking Spaces	10	0	6	Yes
Long-Term Bicycle Parking	0	6	3	WAIVER *
Short-Term Bicycle Parking	0	15	1	WAIVER *
Loading Bays	0	1	0 (street space)	WAIVER *

Use space below and/or attached pages for additional notes:

WAIVER* = Project seeking waivers from the following sections (see attached table): Article 19 and Article 22. For C-1 district, Table 5-1; Sections 5-24, 6.10-6.90, 6.100; and FAR, setbacks, and building height. For housing component in C-1 district, Sections 5.40 footnote 1, 2(a) & 37; 5.22.1; and 11.203. For Non-residential requirements, Sections 4.33a footnote 19; and 8.20, et seq. Requirements for Special Permit under Sect. 4.56-57.

Harvard Chabad Center for Jewish Life

38, 48, 54 Banks Street
Cambridge, MA

Cambridge Board of Zoning Appeal – Case #261068

38-40, 48, & 54 Banks Street, Cambridge
Graphic Materials

March 04, 2024 - Updated May 19th, 2025

Owner: Lubavitch of Cambridge, Inc.
Architect: Bruner/Cott Architects

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Proposed Views

Harvard Chabad Center for Jewish Life

Summary

- Historic District: No
- Neighborhood Conservation District: No
- Zone: C-1 Multifamily Dwellings
- The site is a combined parcel consisting of 38-40, 48 and 54-56 Banks St.
- No change to demolition of 54-56 Banks Street and rear ells of (38-40 and 48), relocation of 48 Banks on the site, and restoration approach for both 38 & 48 per Feb. 6, 2025 CHC hearing, and CHC determination letter of Feb. 27, 2025.



Dimensional Form

Project Address: 38-40, 48, 54-56 Banks Street Application Date: 4/18/2025

	Existing	Allowed or Required (max/min)	Proposed	Permitted
Lot Area (sq ft)	12,206 SF	5,000 SF (min)	12,206 SF	Yes
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Total Dwelling Units	1		3	WAIVER *
Base Units	1		0	
Inclusionary Bonus Units	N/A		0	
Base Lot Area / Unit (sq ft)				
Total Lot Area / Unit (sq ft)	12,206 sf			
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Permeable Open Space	N/A	50% of Open Sp.	53.8%	WAIVER *
Other Open Space (Specify)	N/A	N/A	N/A	
Off-Street Parking Spaces	10	0	6	Yes
Long-Term Bicycle Parking	0	6	3	WAIVER *
Short-Term Bicycle Parking	0	15	1	WAIVER *
Loading Bays	0	1	0 (street space)	WAIVER *

Use space below and/or attached pages for additional notes:

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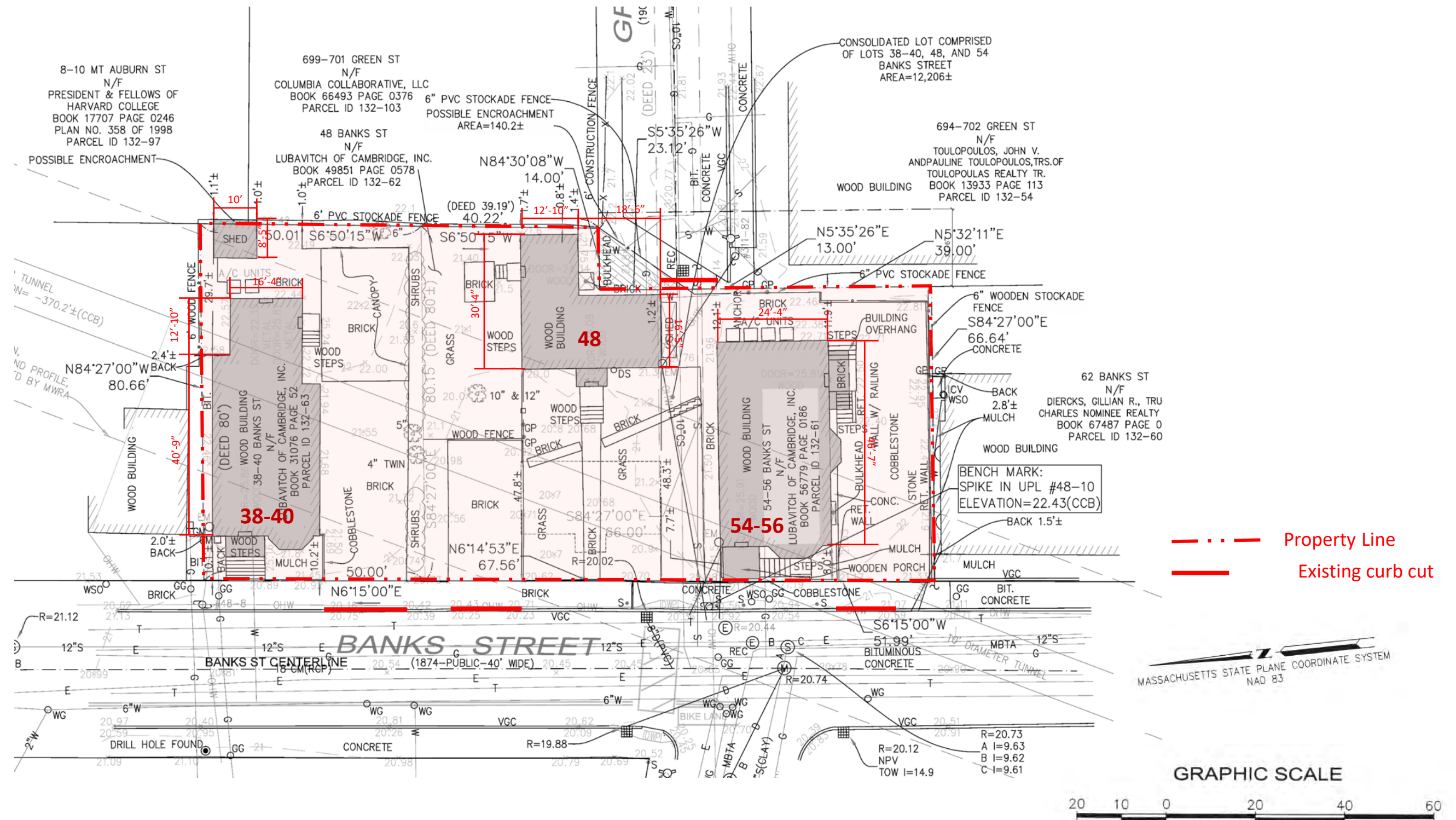
Waiver List

Table of Requested Waivers vs. Existing Zoning Ordinance Requirements

Requested Waivers	Existing Zoning Requirements
Setbacks	For C-1 District, see Table 5-1 and Sect. 5.24
Floor Area Ratio	.75 for non-residential
Height	35 ft. for non-residential
Parking and Loading	Requirements of Sects. 6.10 - 6.90
Bicycle Parking	Requirements of Sect. 6.100
Inclusionary housing	For housing component in C-1 District, see Sects. 5.40 footnote 2(a) and 11.203
Open Space	For housing component in C-1 District, see Sects. 5.40 footnote 1 and 5.22.1
Planning Board Advisory Consultations	For housing component in C-1 District, see Sect. 5.40 footnote 37
Alterations to Non-Conforming Structures	For non-residential requirements in Sects. 8.20, <i>et seq.</i> , and 4.33a footnote 19
Additional Project Review	Requirements of Article 19.00, to the extent deemed applicable
Sustainable Design and Development	Requirements of Article 22.00, to the extent deemed applicable
Institutional Use Regulations	Requirements for Special Permit under Sect. 4.56-57, to the extent deemed applicable to any aspect of project

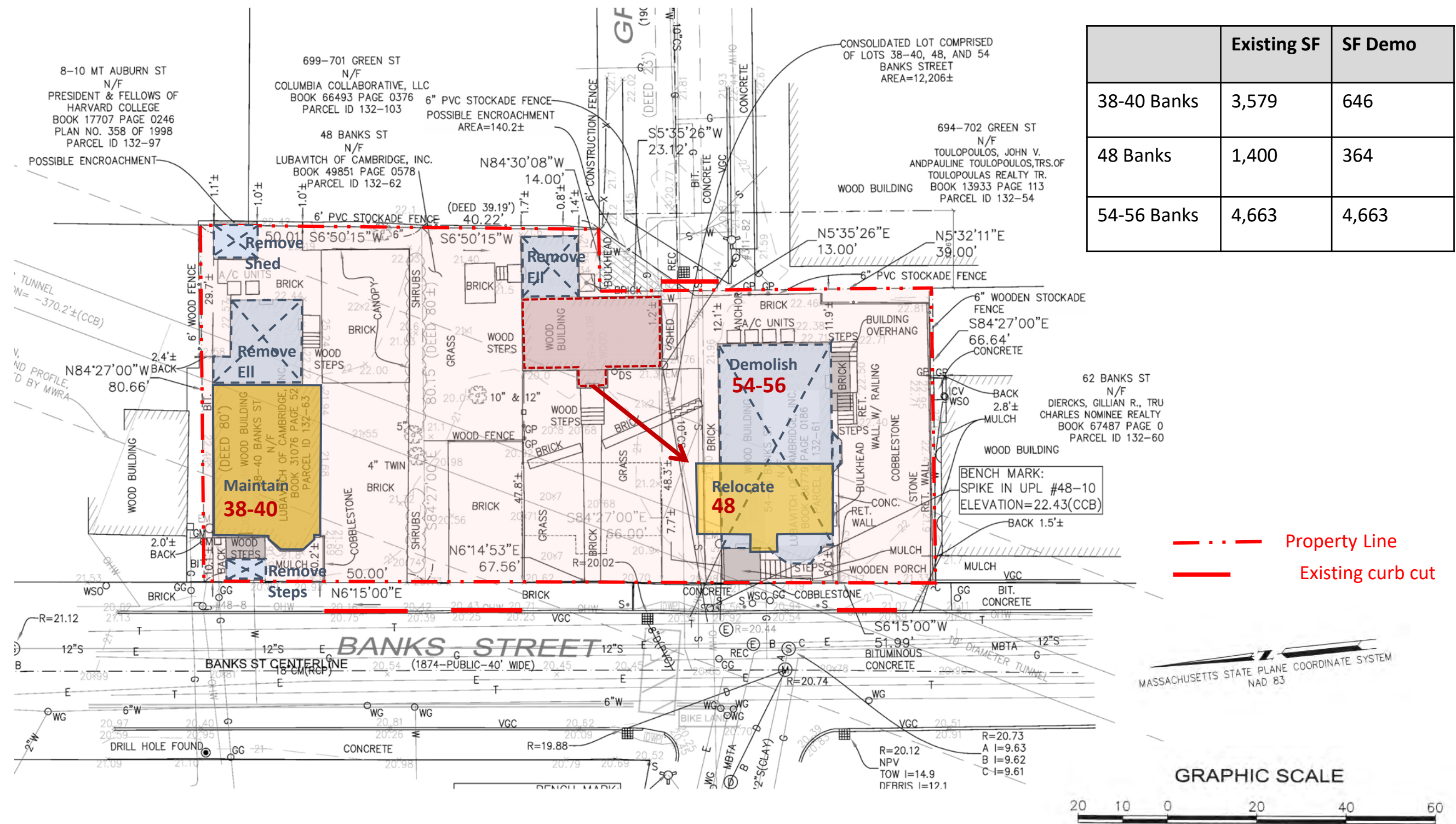
Site Plan

Existing



Site Plan

Proposed Relocation + Demolition

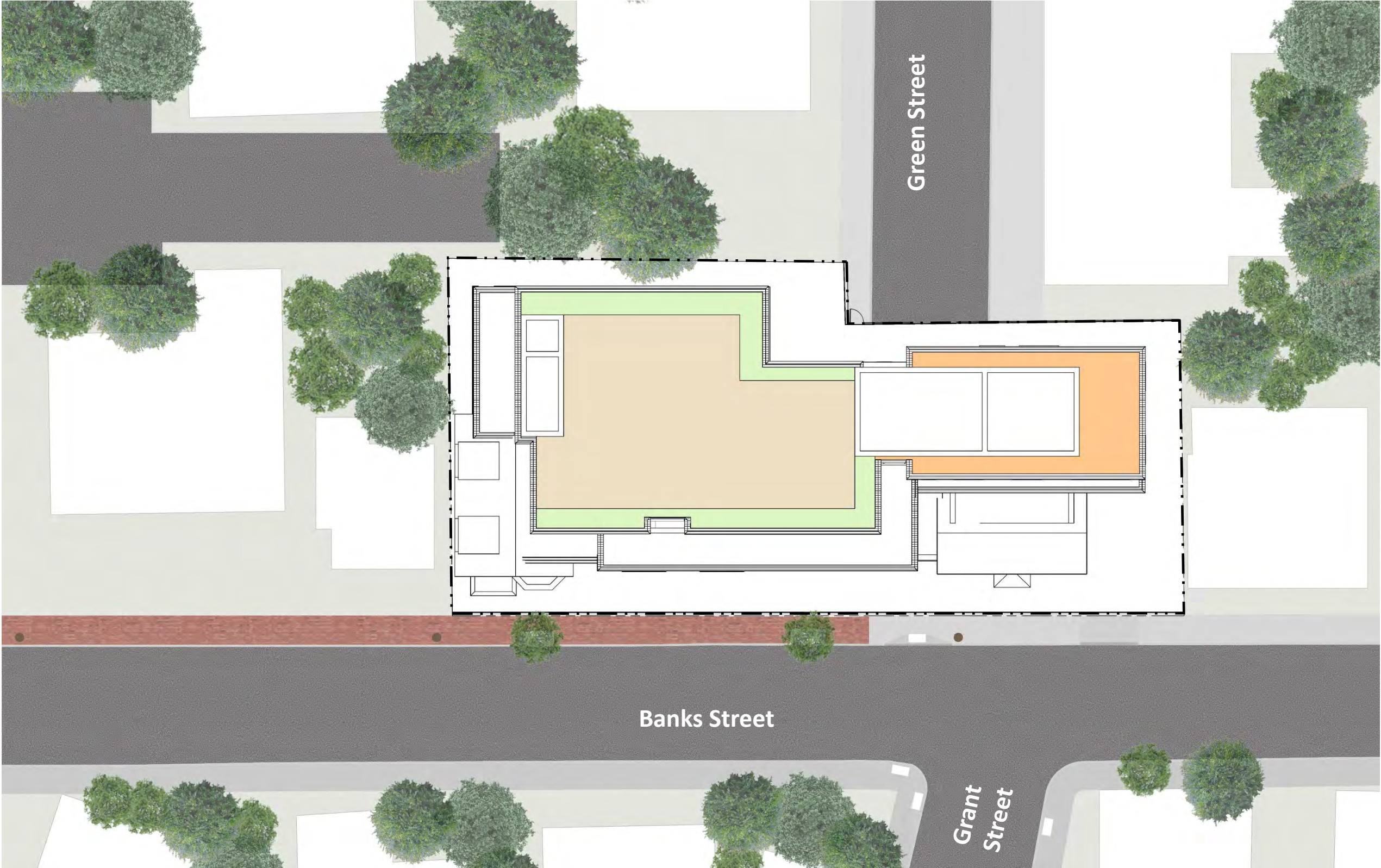


Context and Proposed

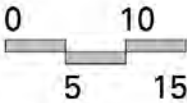
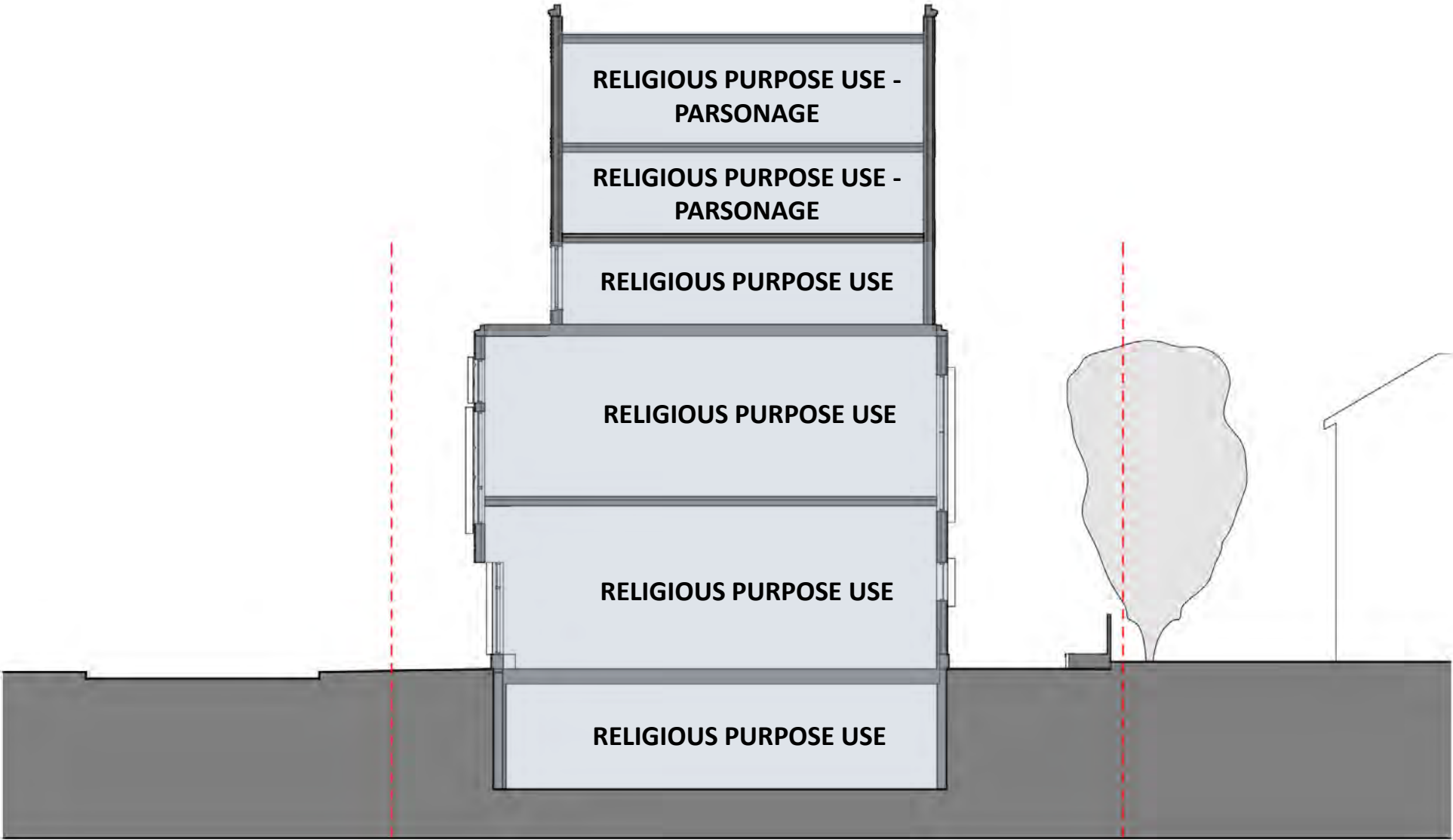
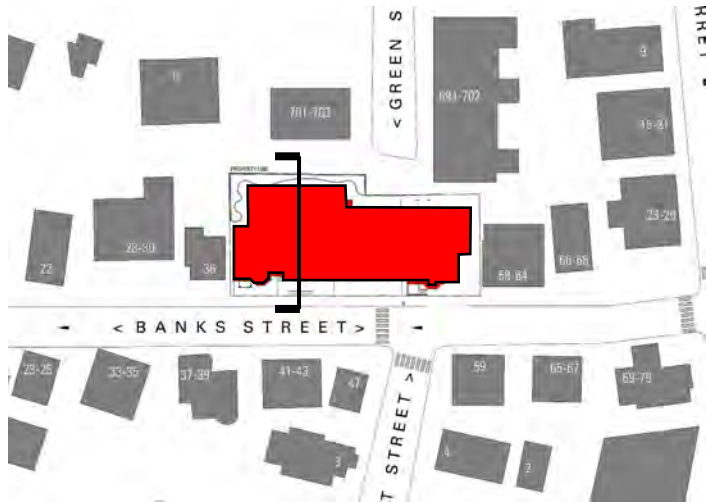


Site Plan

Proposed



Building Use Classification



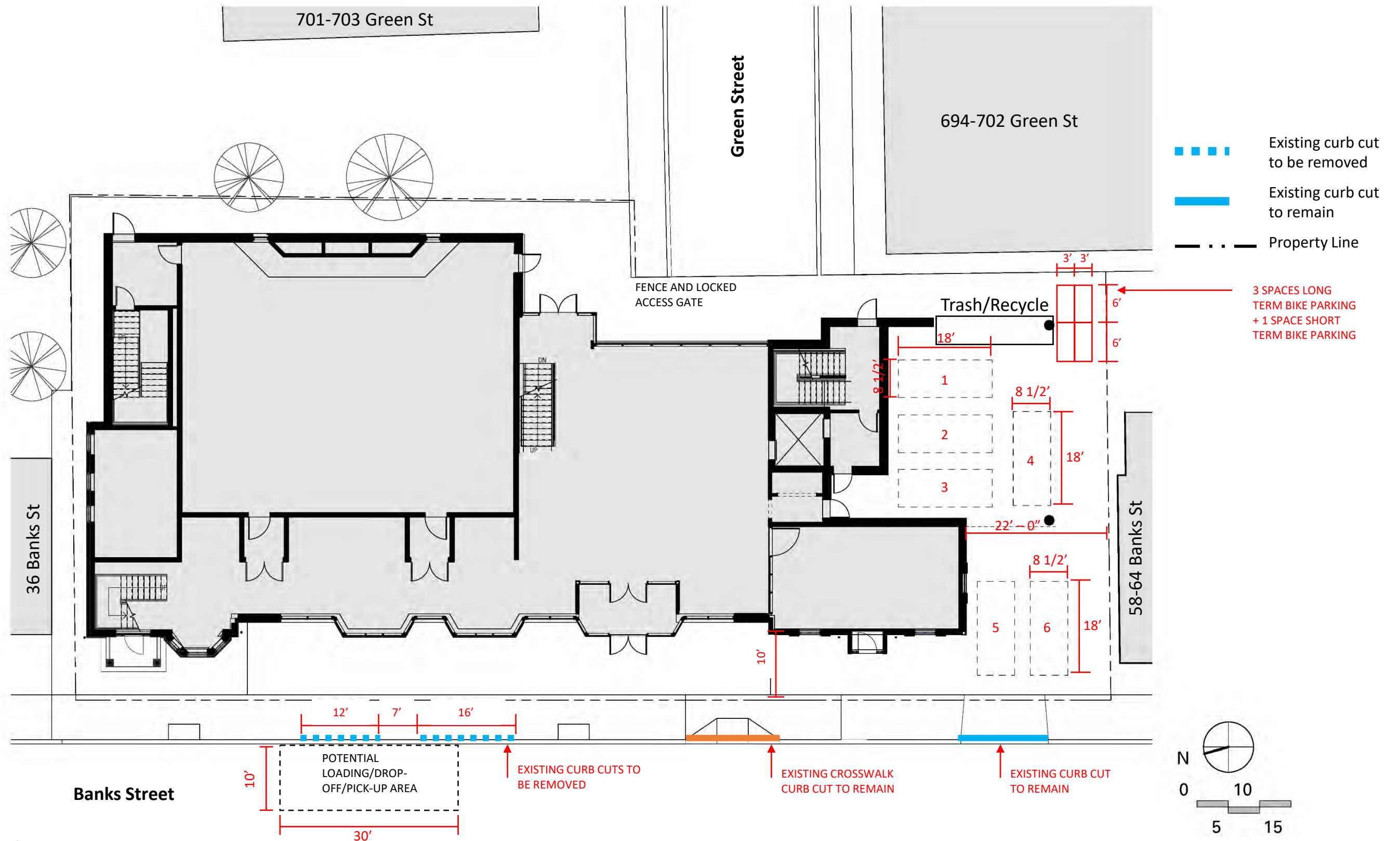
Site Diagram

Parking (Vehicles/Bikes)

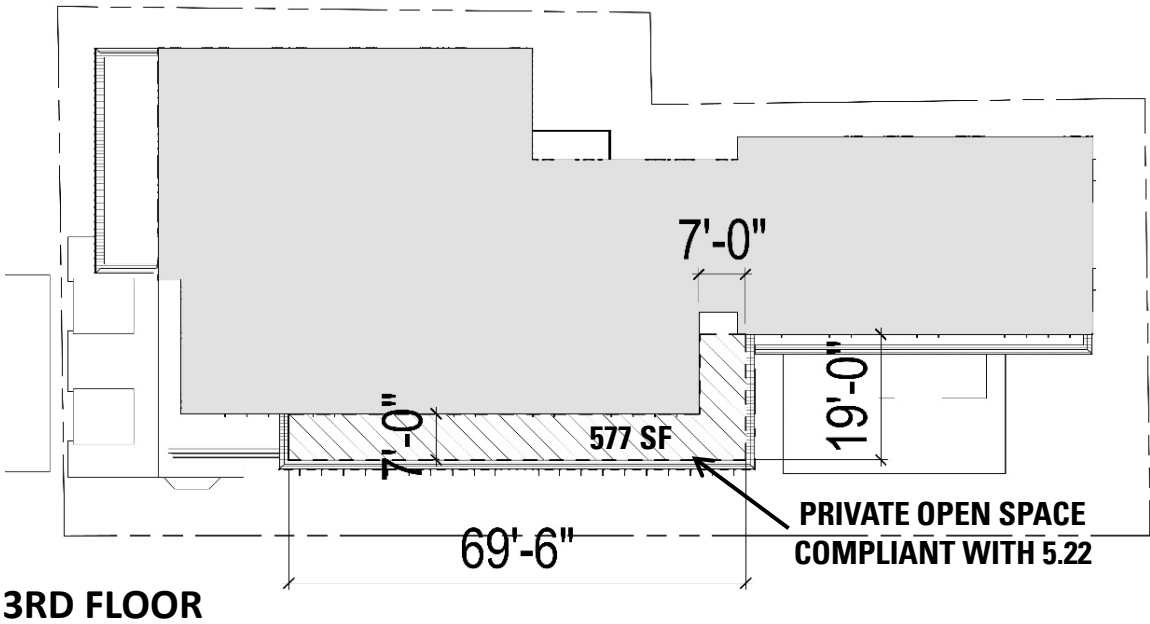
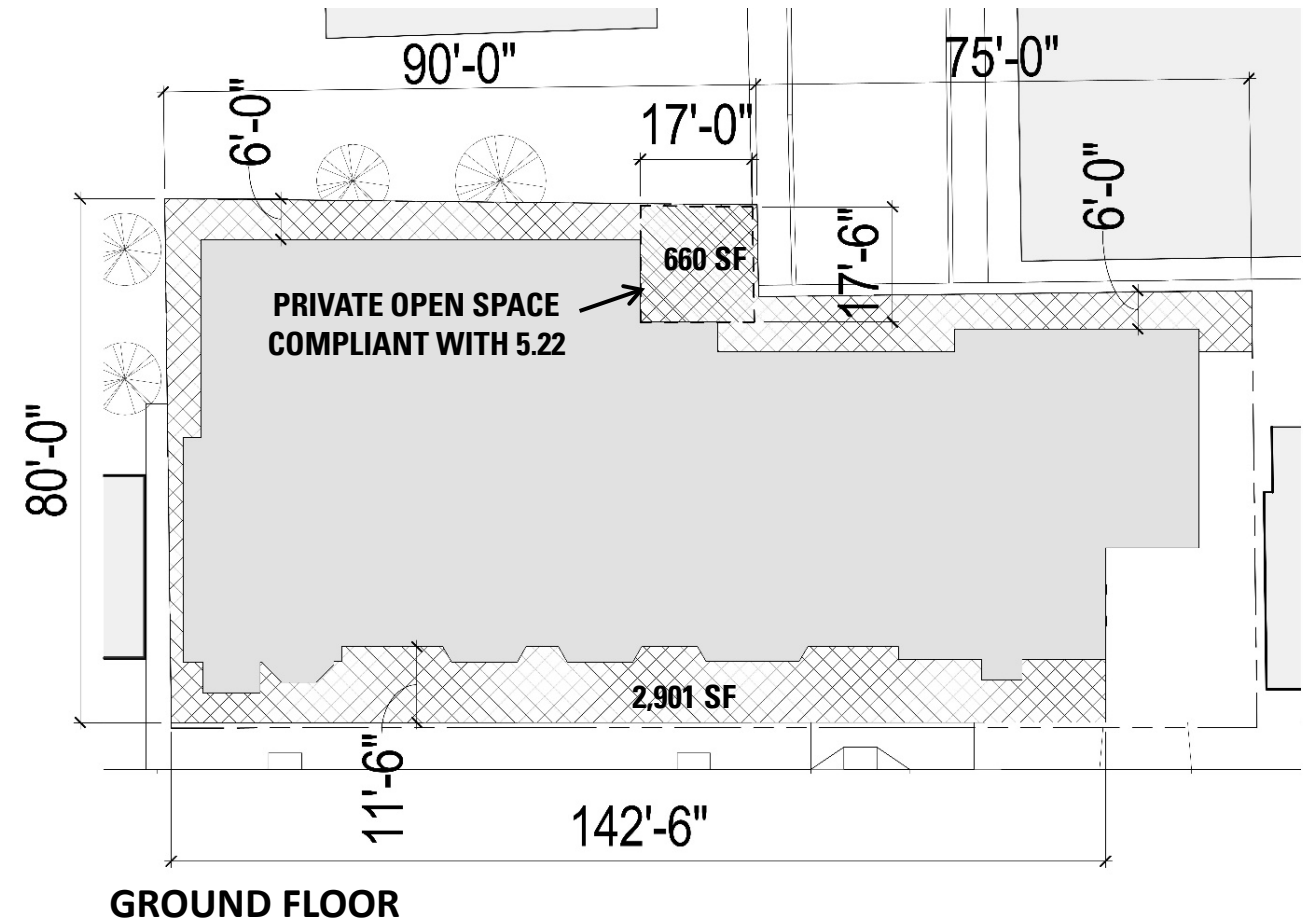
Short Term Bike Parking – required and provided	
Religious Use	21
Total Required	21
Total Provided	1

Long Term Bike Parking – required and provided	
Religious Use	4
Total Required	4
Total Provided	3

Off Street Parking	Compliant with section 6.42
Religious Use	0
Total Required	0
Total Provided	6

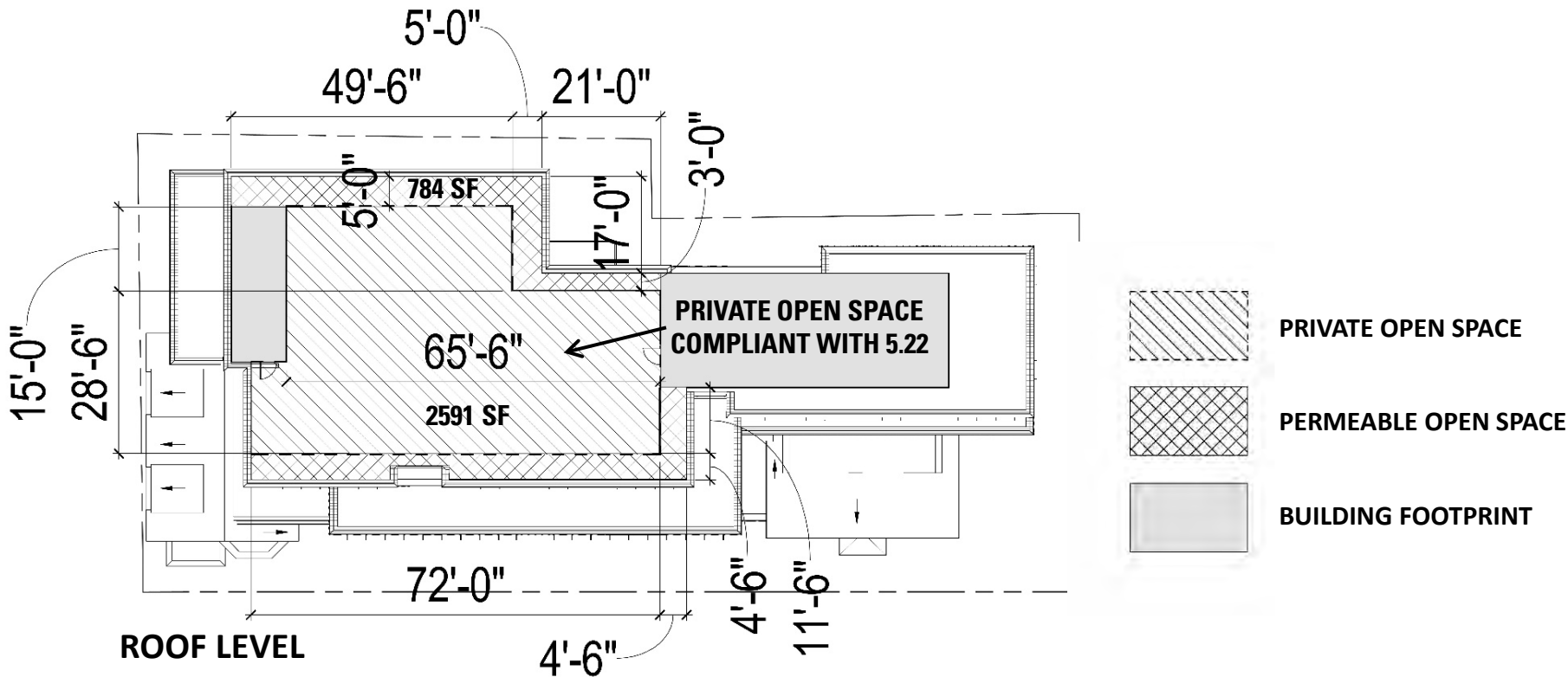


Open Space Calculations



	Total Open Space SF	Private Open Space SF	Permeable Open Space SF
Ground Floor	2,901	660	2,901
3 rd Floor Roof Deck	577	577	0
High Roof Deck	3,375	2,591	784
Total	6,853	3,828	3,685
% of Open Space SF		55.9%	53.4%

Building is **compliant** with Cambridge Open Space requirements based on definitions in Section 5.22 of the March 28, 2025 version of Zoning Ordinance.



GFA Calculations

Proposed GFA	Non-Residential	Residential	Subtotal
Basement	8,375*	-	0
Ground Floor	8,254	-	8,254
Mezzanine	2,987	-	2,987
2 nd Floor	7,702	-	7,702
3 rd Floor	5,848	-	5,848
4 th Floor	5,848	-	5,848
5 th Floor	5,848	-	5,848
3 rd Floor Roof Deck	601	-	601
High Roof Deck	1,793	-	1,793
Roof Access	1,283	-	1,283
Shade Canopy	800*	-	0
Total Gross Floor Area			40,164

* Exempt SF from GFA calculation

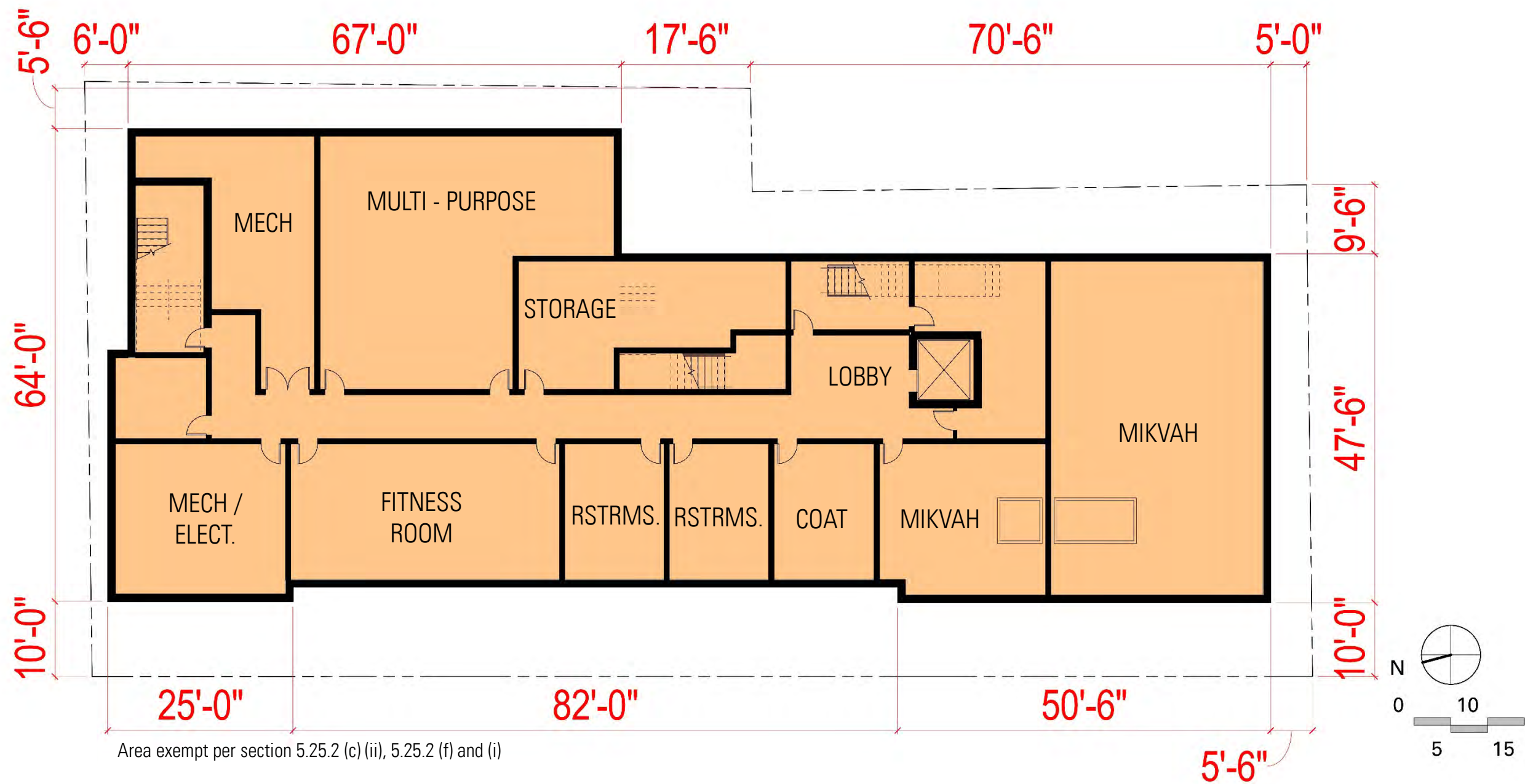
Site GSF 12,206
FAR 3.29

Proposed Plans

Basement Level

GROSS FLOOR AREA
GFA included per Zoning Section 5.25.1

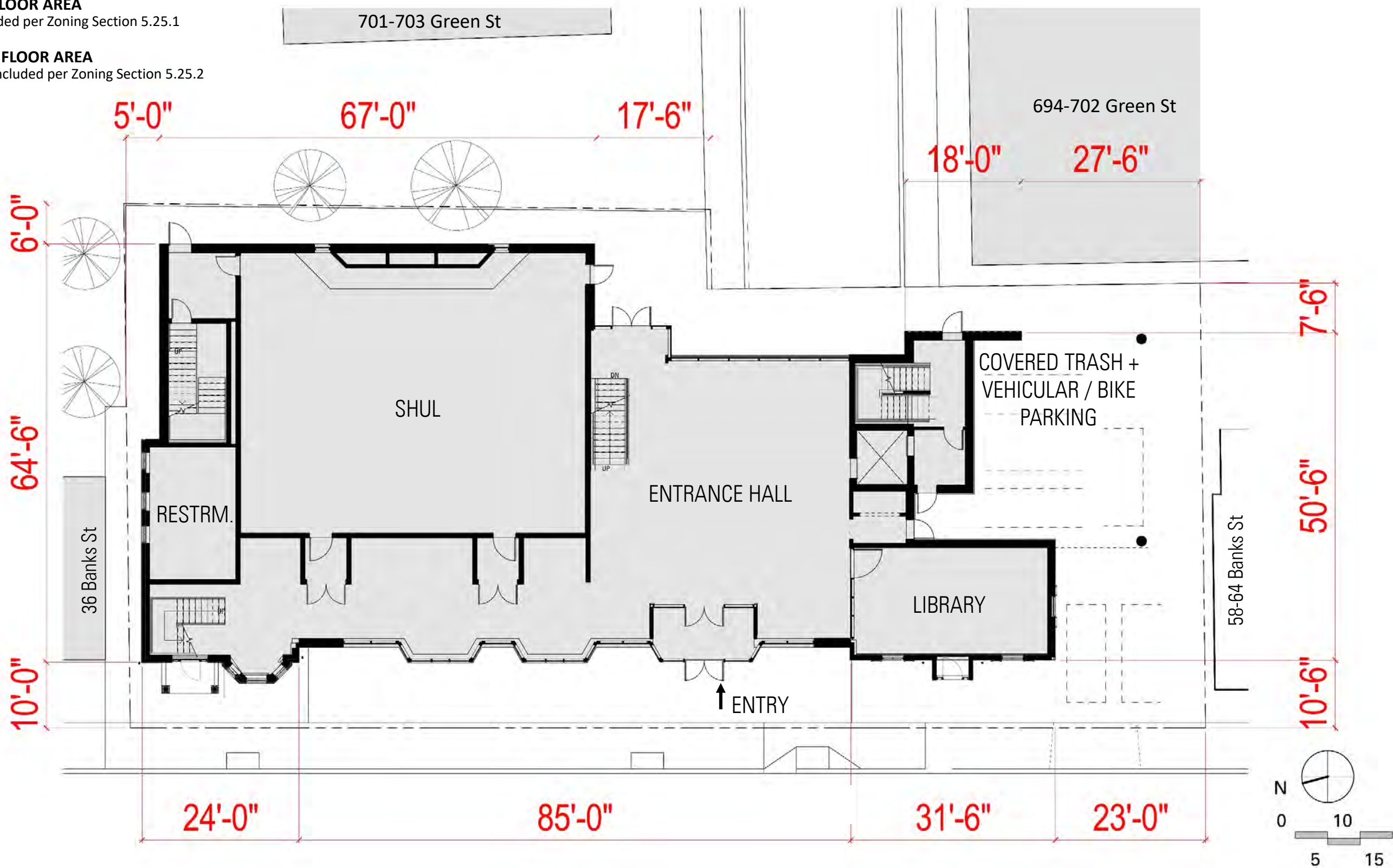
EXEMPT FLOOR AREA
GFA not included per Zoning Section 5.25.2



Proposed Plans

Ground Floor

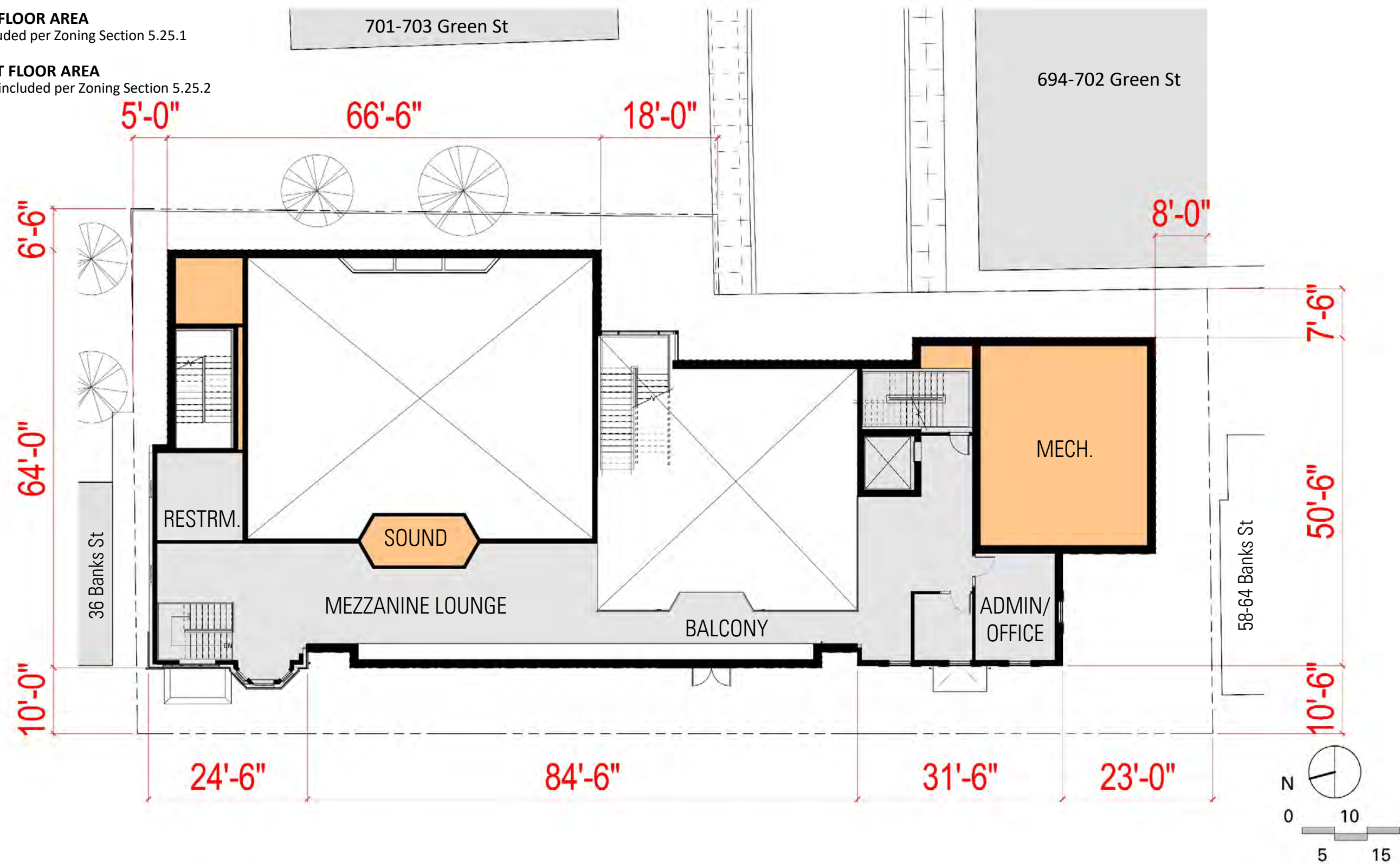
- GROSS FLOOR AREA**
GFA included per Zoning Section 5.25.1
- EXEMPT FLOOR AREA**
GFA not included per Zoning Section 5.25.2



Proposed Plans

Mezzanine Level

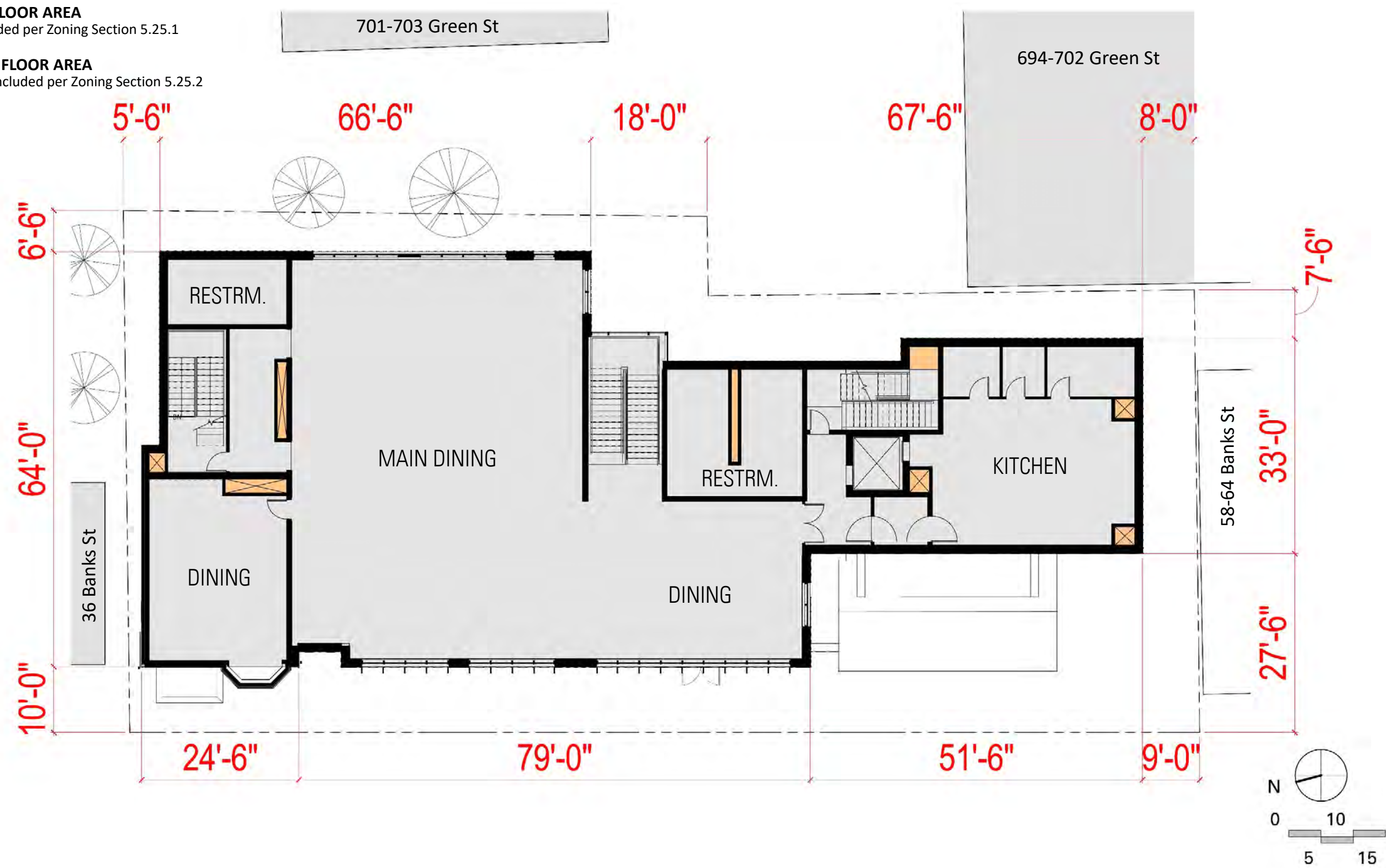
- GROSS FLOOR AREA**
GFA included per Zoning Section 5.25.1
- EXEMPT FLOOR AREA**
GFA not included per Zoning Section 5.25.2



Proposed Plans

Second Floor

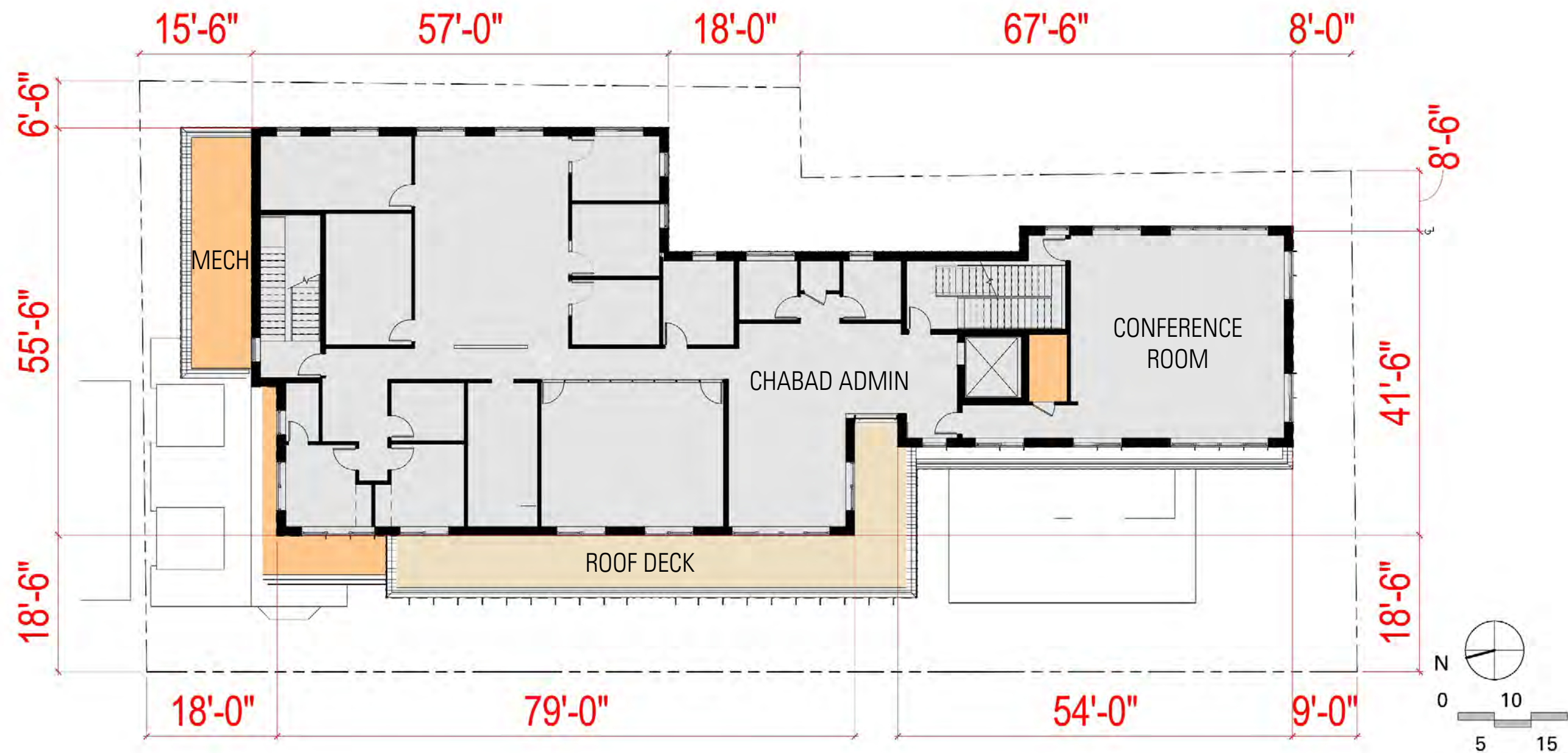
- GROSS FLOOR AREA**
GFA included per Zoning Section 5.25.1
- EXEMPT FLOOR AREA**
GFA not included per Zoning Section 5.25.2



Proposed Plans

Third Floor

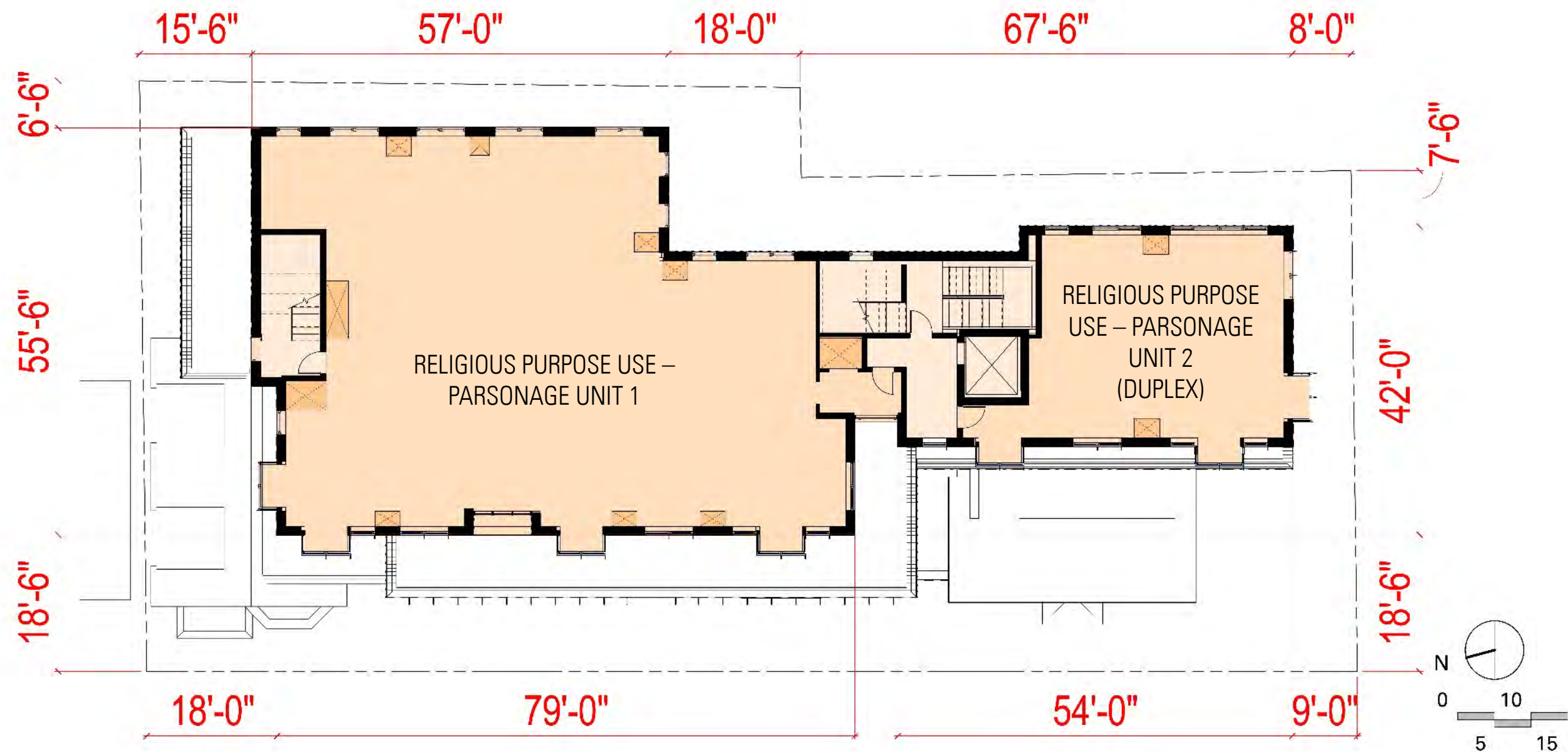
- GROSS FLOOR AREA**
GFA included per Zoning Section 5.25.1
- EXEMPT EQUIPMENT AREA**
GFA not included per Zoning Section 5.25.2
- ROOF DECK**



Proposed Plans

Fourth Floor

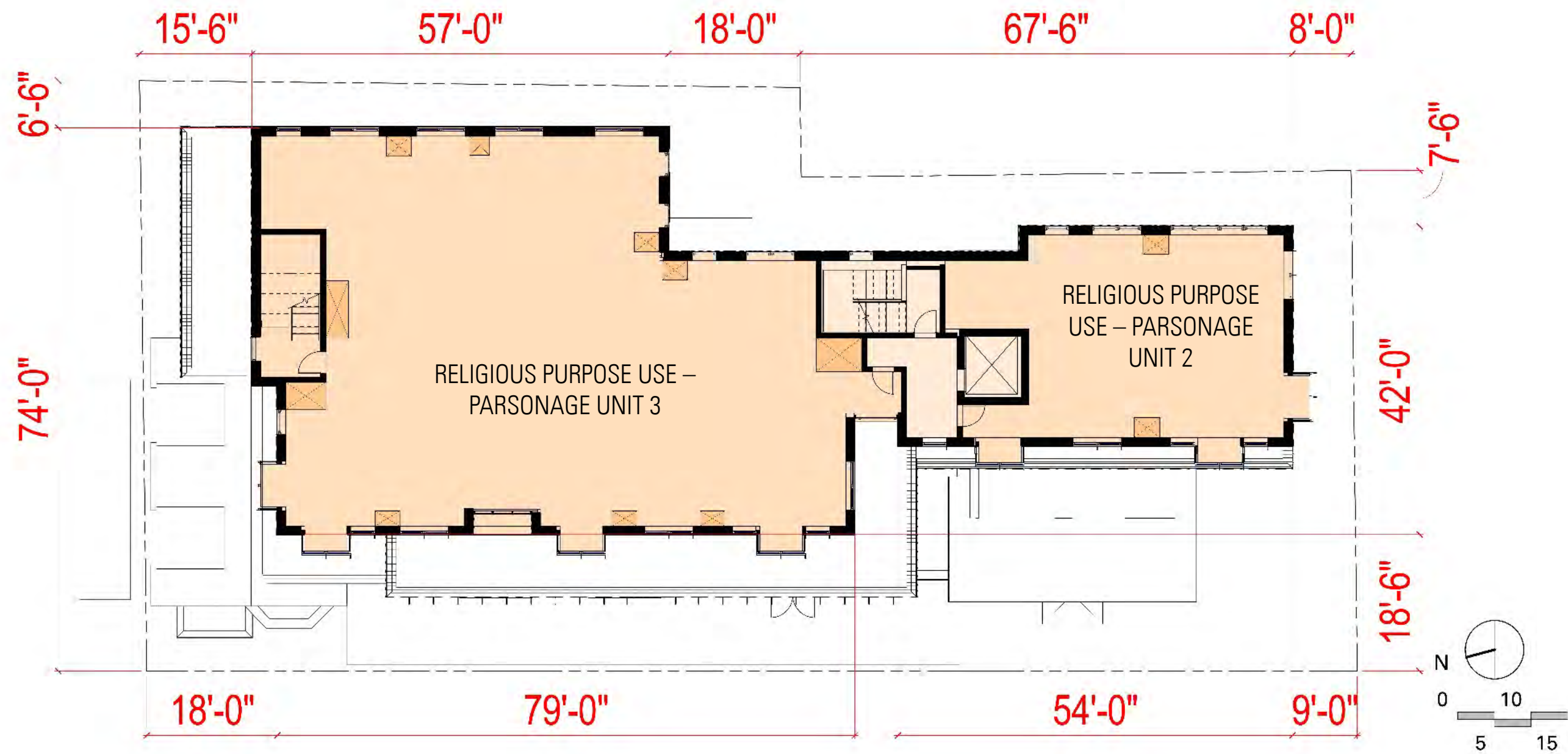
EXEMPT FLOOR AREA
GFA not included per Zoning Section 5.25.2



Proposed Plans

Fifth Floor

EXEMPT FLOOR AREA
GFA not included per Zoning Section 5.25.2



Proposed Plans

Roof Level

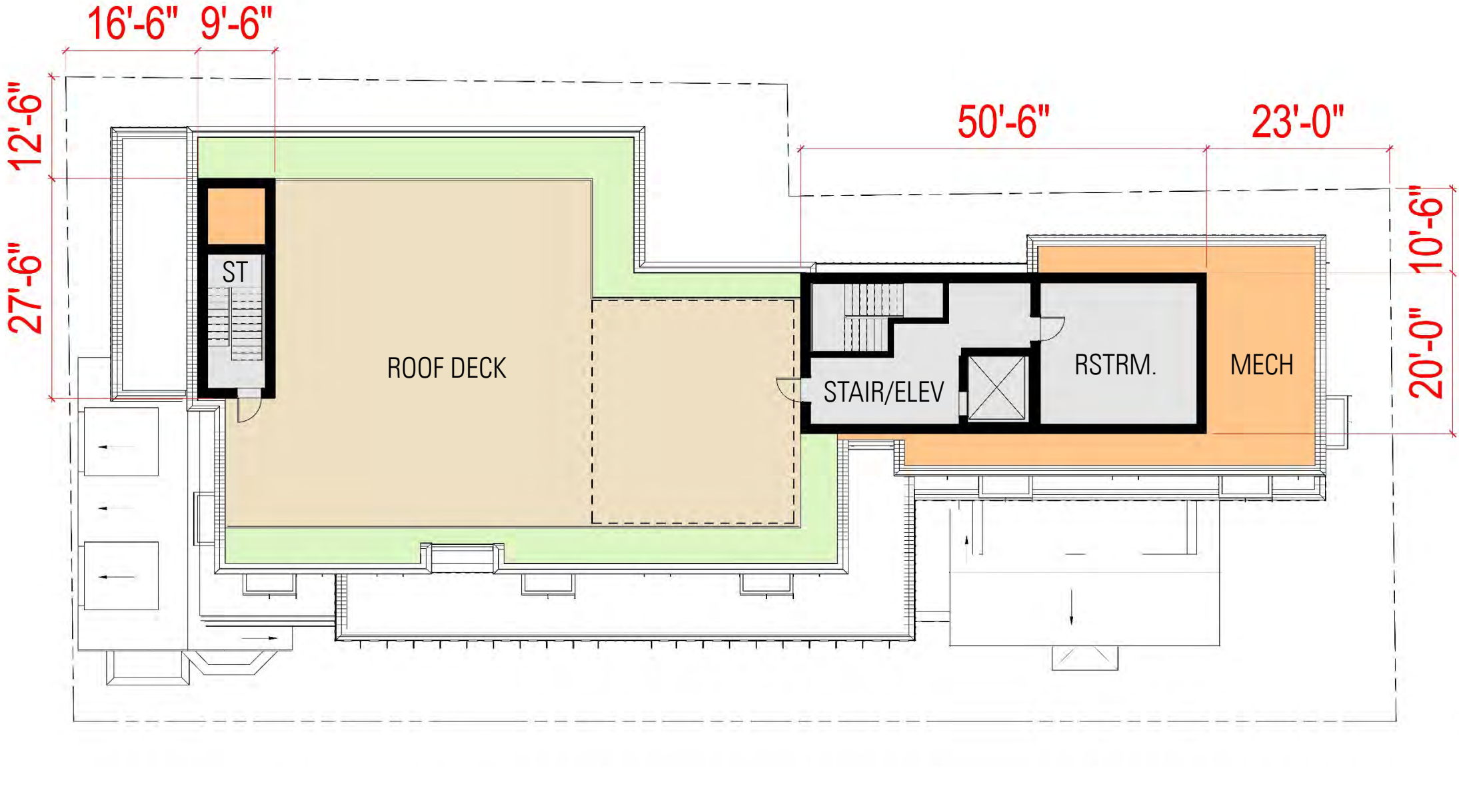
GROSS FLOOR AREA
GFA included per Zoning Section 5.25.1

EXEMPT EQUIPMENT AREA
GFA not included per Zoning Section 5.25.2

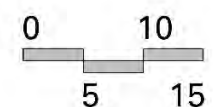
VEGETATED GREEN ROOF
GFA not included per Zoning Section 5.25.2

ROOF DECK

SHADE CANOPY
GFA not included per Zoning Section 5.25.2



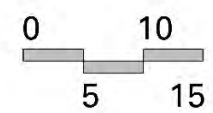
West Elevation



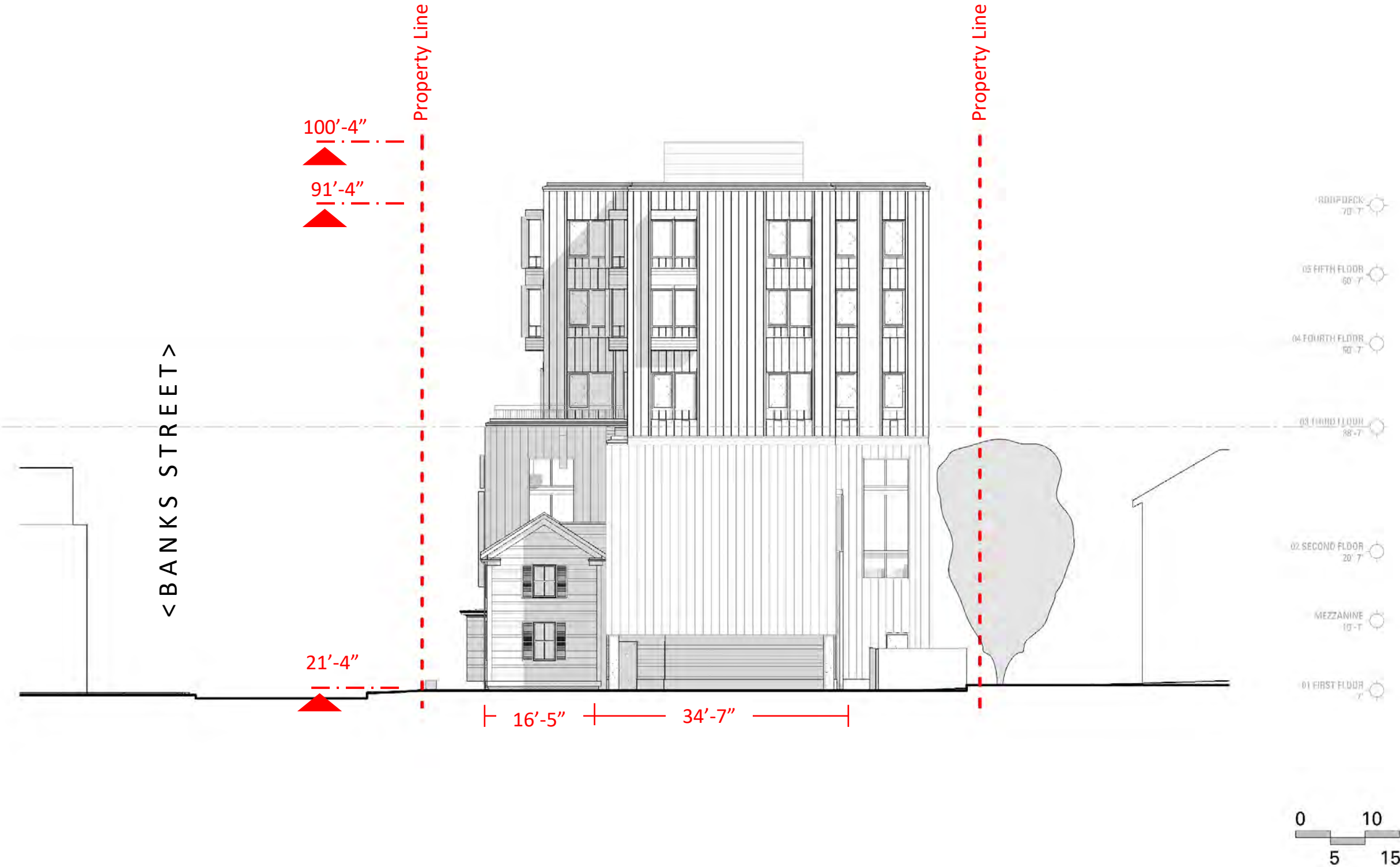
North Elevation



East Elevation

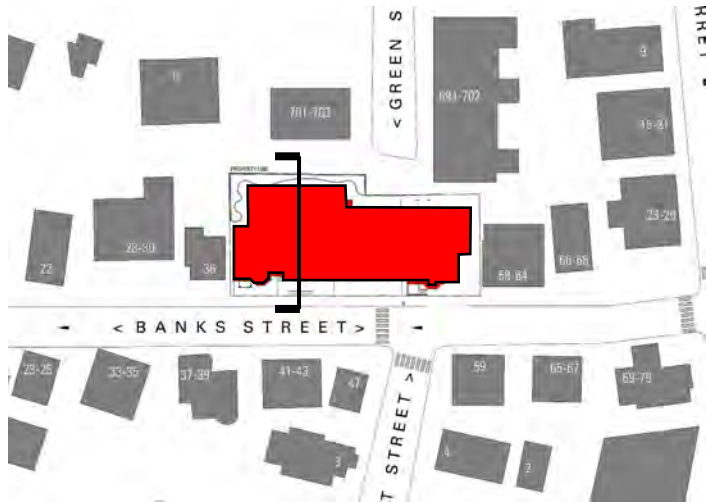


South Elevation



Flood Resilience

Site + Building Section



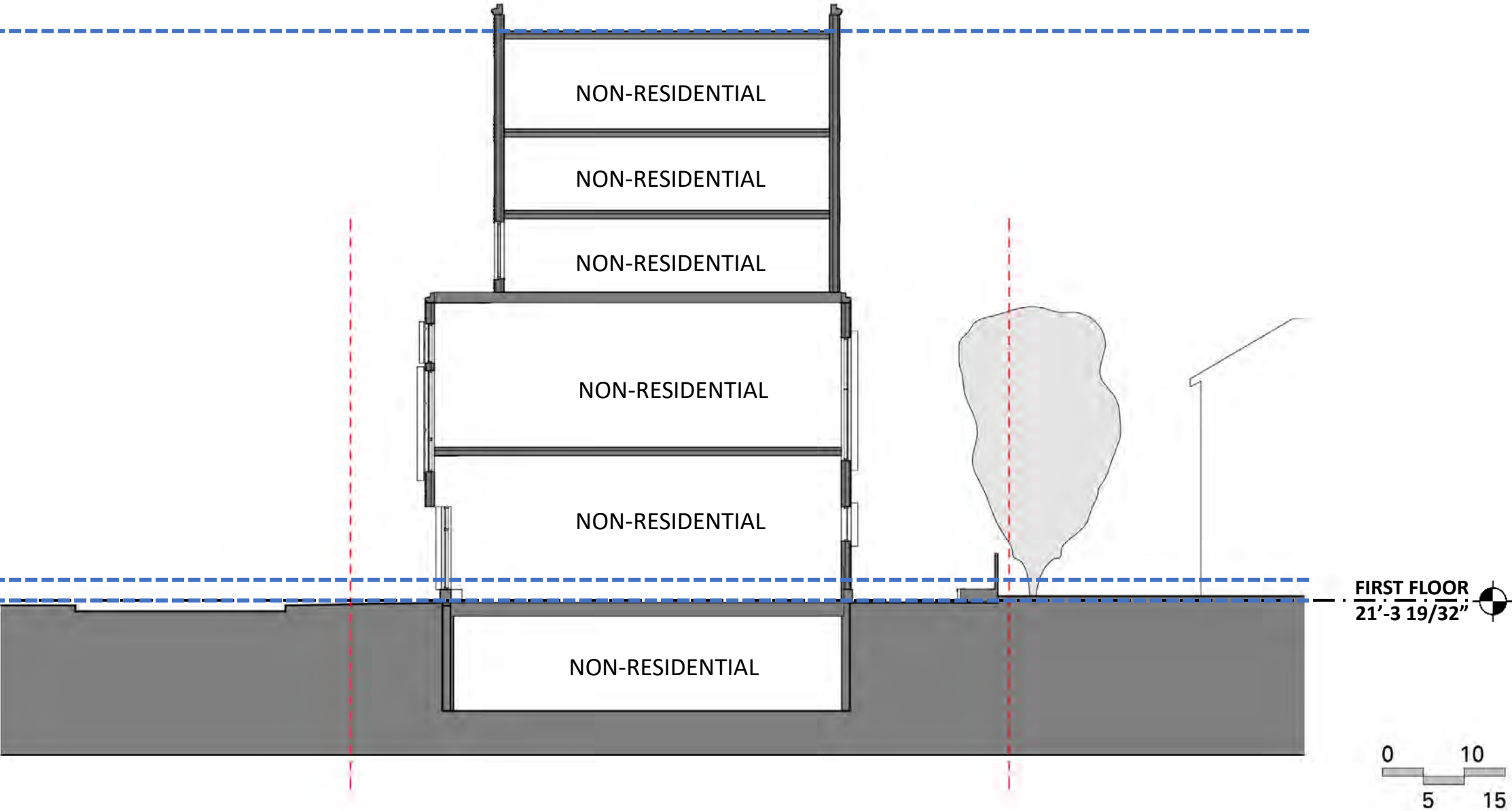
91.3' – Total Building Height

Building is compliant with recoverability standards for 1% LTFE.

23.6' – 2070 – 1% LTFE

21.3' – 2070 – 10% LTFE

Building is compliant with Cambridge Flood Resilience Standards as outlined in Section 22.80 of the Zoning Ordinance.



Flood Resiliency

Project Narrative – Mitigation Measures

This document outlines efforts in considering and implementing sustainable and resilient measures to mitigate the impacts related to climate change in the design, construction, and operation of the Proposed Building.

The Proposed Building and site design addresses climate change impacts via the following:

- In accordance with the requirements of the Zoning Ordinance of the City of Cambridge Section 22.80 “Flood Resilience Standards,” the Project is designed to protect against flooding events associated with the 2070 10% Long-Term Flood Elevation (10% LTFE) of 21.3 feet and to recover from flooding events associated with the 2070 1% LTFE of 23.6 feet.
- The ground floor elevations of the synagogue, lobby/living area, and stairwell entrances are set above the 2070 10% LTFE of 21.3 feet.
- The front entry vestibule is equipped with a Floodbreak™ passively deployed, hydraulically activated flood prevention barrier. The Floodbreak™ is designed such that the top of barrier elevation at full deployment is at elevation 23.8 feet, or 0.2 feet above the 2070 1% LTFE of 23.6 feet. The Floodbreak™ system was selected for this door location due to the low profile of installation to accommodate vertical clearance provisions at the basement level. This limits flooding within the Proposed Building to minor nuisance flooding within the vestibule.
- The rear door entrances to the lobby/living area and the two stairwells are equipped with Self Activating Flood Barrier™ (SAFB™) systems at the exterior of the Proposed Building. Each SAFB™ is designed such that the top of barrier elevation at full deployment is at elevation 23.8 feet, or 0.2 feet above the 2070 1% LTFE of 23.6 feet. This prevents advancing flood waters from entering the lobby/living area and protects the basement level from the 2070 1% LTFE due to infeasibility of recoverability at the basement level.
- All Floodbreak™ and SAFB™ systems are designed with gravity outlets to convey flood waters to new on-site stormwater management infrastructure as flood stage recedes.
- Exterior areas from which flood waters cannot recede are equipped with at-grade drain inlets connected to new on-site subsurface stormwater management infrastructure which retain and infiltrate on-site runoff and flood waters.
- Piped stormwater discharge connections to off-site combined sewer infrastructure are equipped with shut-off valving and backflow prevention devices to prevent combined sewer overflows from entering the on-site stormwater management system.
- Regular monitoring and management of the Floodbreak™ and SAFB™ systems and all valving and backflow prevention devices will be incorporated into the Long-Term Operation and Maintenance Plan for the stormwater management system.

Site Aerial



Existing Property

38-40, 48, 54-56 Banks Street



Existing Property

38-40 Banks Street



Existing Property

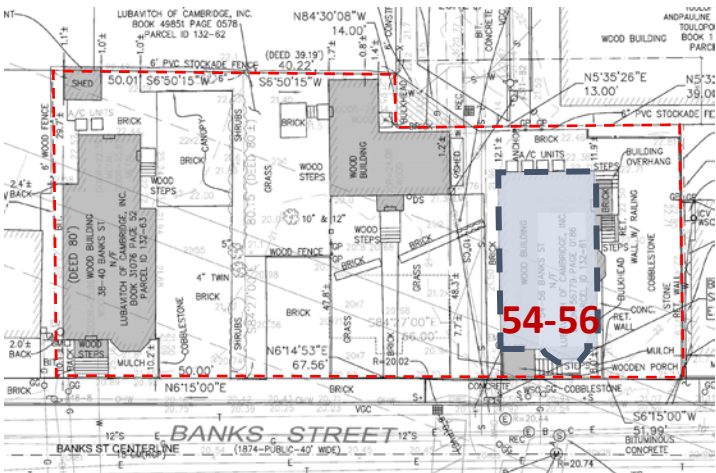
48 Banks Street



Existing Buildings

54-56 Banks Street

- To be demolished



Key Plan – 54-56 Banks St.



Pre-Renovation Condition: West Elevation



Pre-Renovation Condition: West Elevation



Current Condition: South / West Elevation

Chabad Center for Cambridge

Banks Street Context



Banks Street – west side



Banks Street – east side

Chabad Center for Cambridge

Green Street Context



21-23 Putnam Avenue



679-699 Green Street



27-29 Putnam Avenue



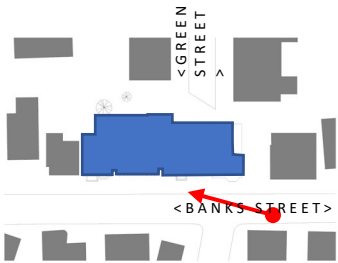
694-702 Green Street



Green Street – West End
View of project site from Green Street

Proposed

Banks Street, Looking North



Proposed

Banks Street, Looking Southeast



Harvard Chabad Center for Jewish Life
38-40, 48, 54 Banks Street
April 18, 2025

Proposed

Banks Street, Looking Northeast



Harvard Chabad Center for Jewish Life
38-40, 48, 54 Banks Street
April 18, 2025

Examiner

Name

Approved

The Commonwealth of Massachusetts

William Francis Galvin

Secretary of the Commonwealth

One Ashburton Place, Boston, Massachusetts 02108-1512

ARTICLES OF ORGANIZATION

(General Laws, Chapter 180)

ARTICLE I

The exact name of the corporation is:

Machine Israel of Cambridge, Inc.

ARTICLE II

The purpose of the corporation is to engage in the following activities:

See attached Rider II-1

97266048

R

C

P

M

R.A.

☒
☐
☐
☐
☐

7

P.C.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.

ARTICLE III

A corporation may have one or more classes of members. If it does, the designation of such classes, the manner of election or appointments, the duration of membership and the qualification and rights, including voting rights, of the members of each class, may be set forth in the by-laws of the corporation or may be set forth below:

As permitted by Section 3 of Chapter 180 of the General Laws, the designation of the class or classes of members of the corporation, the manner of their election or appointment, the duration of membership, and the qualification and rights, including voting rights, of the members of each class are set forth in the by-laws of the corporation.

ARTICLE IV

**Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:

See attached Rider IV-1.

ARTICLE V

The by-laws of the corporation have been duly adopted and the initial directors, president, treasurer and clerk or other presiding, financial or recording officers, whose names are set out on the following page, have been duly elected.

***If there are no provisions, state "None".*

Note: The preceding four (4) articles are considered to be permanent and may only be changed by filing appropriate Articles of Amendment.

MACHNE ISRAEL OF CAMBRIDGE, INC.

Articles of Organization

RIDER II-1

The corporation is organized, and is to be operated, exclusively as a religious organization within the meaning of Section 4(a) of Chapter 180 of the General Laws, as now in force or as hereafter amended, and within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as now in force or as hereafter amended. The purpose of the corporation shall include:

- (a) The establishment and maintenance of a synagogue for public worship and study in accordance with the tenets of strictly traditional Judaism and Chabad Chassidus;
- (b) The promotion and furtherance of the religious observance and spiritual growth of the members of the corporation and their families, as well as other interested persons from the local Jewish community, through adult and children's educational programs and classes;
- (c) The promotion and furtherance of a traditional Jewish community in Cambridge, Massachusetts in accordance with the principles and practices of Chabad Chassidus;
- (d) To carry on any activity connected with or incidental to the foregoing purposes; and
- (e) All other purposes conferred by the Commonwealth of Massachusetts upon religious corporations under Chapter 180 of the General Laws, as now in effect or as hereafter amended.

In carrying out the foregoing purposes, the corporation shall have all of the powers granted to a corporation formed under Chapter 180 of the General Laws, as now in effect or as hereafter amended, and, in addition, (i) shall have the power to become a partner, general or limited, in any business enterprise that the corporation would have the power to conduct by itself, and (ii) shall have all other powers necessary or convenient to effect any or all of the purposes for which the corporation is formed except, and to the extent that, any such power (or its exercise in any instance) is inconsistent with said Chapter 180 or any other chapter of the General Laws.

MACHNE ISRAEL OF CAMBRIDGE, INC.

Articles of Organization

RIDER IV-1

(a) No part of the assets of or the net earnings of the corporation shall be divided among, inure to the benefit of, or be distributable to its directors, officers, members, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes set forth in Article II of these Articles of Organization.

(b) No substantial part of the activities of the corporation shall consist of carrying on propaganda, or otherwise attempting, to influence legislation; and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

(c) Notwithstanding any other provision of these Articles of Organization, the corporation shall neither engage in nor carry on any activity that is not permitted to be engaged in or carried on by (1) a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as hereafter amended, or (2) a corporation contributions to which are deductible under section 170(c)(2), 2055(a)(2) or 2522(a)(2) of the said Internal Revenue Code.

(d) In the event that the corporation is a private foundation, within the meaning of section 509(a) of the Internal Revenue Code of 1986, as now in effect or as hereafter amended, then, notwithstanding any other provision of these Articles of Organization or the By-Laws of the corporation, the following provisions shall apply:

(1) The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws.

(2) The corporation shall not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws.

(3) The corporation shall not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws.

(4) The corporation shall not make any investments in such manner as to subject it to tax under section 4944 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws.

(5) The corporation shall not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws.

(e) Meetings of the Board of Directors of the corporation may be held anywhere in the United States.

(f) Upon the dissolution of the corporation, the funds, properties and assets of the corporation, after the payment or provision for payment of all of the liabilities and obligations of the corporation, shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

(g) No officer or director of the corporation shall be personally liable to the corporation for monetary damages for breach of fiduciary duty as an officer or director, notwithstanding any provision of law imposing such liability; provided, however, that the foregoing shall not eliminate or limit the liability of an officer or director for (i) any breach of the officer's or director's duty of loyalty to the corporation, (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or (iii) any transaction from which the officer or director derived an improper personal benefit. A director, officer, or incorporator of the corporation shall not be liable for the performance of his or her duties if he or she acts in compliance with section 6C of Chapter 180 of the General Laws.

ARTICLE VI

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a *later* effective date is desired, specify such date which shall not be more than *thirty days* after the date of filing.

ARTICLE VII

The information contained in Article VII is not a permanent part of the Articles of Organization.

a. The street address (post office boxes are not acceptable) of the principal office of the corporation *in Massachusetts* is:

8 Goodman Road, Cambridge, MA 02139

b. The name, residential address and post office address of each director and officer of the corporation is as follows:

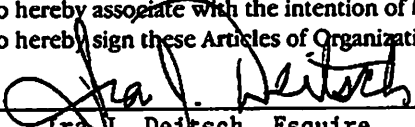
NAME	RESIDENTIAL ADDRESS	POST OFFICE ADDRESS
President: Hirsch Zarchi	8 Goodman Road Cambridge, MA 02139	8 Goodman Road Cambridge, MA 02139
Treasurer: Elka Zarchi	8 Goodman Road Cambridge, MA 02139	8 Goodman Road Cambridge, MA 02139
Clerk: Ira J. Deitsch	77 Paul Revere Road Lexington, MA 02173	77 Paul Revere Road Lexington, MA 02173
Directors: Hirsch Zarchi (or officers	8 Goodman Road Cambridge, MA 02139	8 Goodman Road Cambridge, MA 02139
having the Elka Zarchi powers of	8 Goodman Road Cambridge, MA 02139	8 Goodman Road Cambridge, MA 02139
directors)		

c. The fiscal year of the corporation shall end on the last day of the month of: August

d. The name and business address of the resident agent, if any, of the corporation is: Not applicable

I/We, the below signed incorporator(s), do hereby certify under the pains and penalties of perjury that I/we have not been convicted of any crimes relating to alcohol or gaming within the past ten years. I/We do hereby further certify that to the best of my/our knowledge the above-named officers have not been similarly convicted. If so convicted, explain.

IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as incorporator(s) and whose name(s) and business or residential address(es) are clearly typed or printed beneath each signature, do hereby associate with the intention of forming this corporation under the provisions of General Laws, Chapter 180 and do hereby sign these Articles of Organization as incorporator(s) this 14th day of October, 19 97.


Ira J. Deitsch, Esquire
Posternak, Blankstein & Lund, L.L.P.
100 Charles River Plaza
Boston, MA 02114-2723

Note: If an existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

591681

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION

(General Laws, Chapter 180)

SECRETARY OF
THE COMMONWEALTH

97 OCT 15 PM 2:52

CORPORATION DIVISION

I hereby certify that, upon examination of these Articles of Organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$ 35 having been paid, said articles are deemed to have been filed with me this 15th day of October 19 97.

Effective date: _____

William Francis Galvin

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

TO BE FILLED IN BY CORPORATION

Photocopy of document to be sent to:

Ira J. Deitsch, Esquire

Posternak, Blankstein & Lund, L.L.P.

100 Charles River Plaza

Boston, MA 02114-2723

Telephone: (617) 973-6224

This is a detailed street map of a residential area in Lowell, Massachusetts. The map shows a grid of streets including Mt Auburn St, Putnam Ave, Green St, Grant St, Banks St, and Surrey St. A red circle highlights a specific block bounded by Banks St, Green St, and Grant St. A blue arrow points to a specific lot within this block, labeled 132-61. The map also shows various lot numbers and street addresses, such as 132-18, 132-19, 132-21, 132-23, 132-24, 132-25, 132-28, 132-29, 132-30, 132-31, 132-32, 132-33, 132-34, 132-35, 132-36, 132-37, 132-38, 132-39, 132-40, 132-41, 132-42, 132-43, 132-44, 132-45, 132-46, 132-47, 132-48, 132-49, 132-50, 132-51, 132-52, 132-53, 132-54, 132-55, 132-56, 132-57, 132-58, 132-59, 132-60, 132-61, 132-62, 132-63, 132-64, 132-65, 132-66, 132-67, 132-68, 132-69, 132-70, 132-71, 132-72, 132-73, 132-74, 132-75, 132-76, 132-77, 132-78, 132-79, 132-80, 132-81, 132-82, 132-83, 132-84, 132-85, 132-86, 132-87, 132-88, 132-89, 132-90, 132-91, 132-92, 132-93, 132-94, 132-95, 132-96, 132-97, 132-98, 132-99, 132-100, 132-101, 132-102, 132-103, 132-104, 132-105, 132-106, 132-107, 132-108, 132-109, 132-110, 132-111, 132-112, 132-113, 132-114, 132-115, 132-116, 132-117, 132-118, 132-119, 132-120, 132-121, 132-122, 132-123, 132-124, 132-125, 132-126, 132-127, 132-128, 132-129, 132-130, 132-131, 132-132, 132-133, 132-134, 132-135, 132-136, 132-137, 132-138, 132-139, 132-140, 132-141, 132-142, 132-143, 132-144, 132-145, 132-146, 132-147, 132-148, 132-149, 132-150, 132-151, 132-152, 132-153, 132-154, 132-155, 132-156, 132-157, 132-158, 132-159, 132-160, 132-161, 132-162, 132-163, 132-164, 132-165, 132-166, 132-167, 132-168, 132-169, 132-170, 132-171, 132-172, 132-173, 132-174, 132-175, 132-176, 132-177, 132-178, 132-179, 132-180, 132-181, 132-182, 132-183, 132-184, 132-185, 132-186, 132-187, 132-188, 132-189, 132-190, 132-191, 132-192, 132-193, 132-194, 132-195, 132-196, 132-197, 132-198, 132-199, 132-200, 132-201, 132-202, 132-203, 132-204, 132-205, 132-206, 132-207, 132-208, 132-209, 132-210, 132-211, 132-212, 132-213, 132-214, 132-215, 132-216, 132-217, 132-218, 132-219, 132-220, 132-221, 132-222, 132-223, 132-224, 132-225, 132-226, 132-227, 132-228, 132-229, 132-230, 132-231, 132-232, 132-233, 132-234, 132-235, 132-236, 132-237, 132-238, 132-239, 132-240, 132-241, 132-242, 132-243, 132-244, 132-245, 132-246, 132-247, 132-248, 132-249, 132-250, 132-251, 132-252, 132-253, 132-254, 132-255, 132-256, 132-257, 132-258, 132-259, 132-260, 132-261, 132-262, 132-263, 132-264, 132-265, 132-266, 132-267, 132-268, 132-269, 132-270, 132-271, 132-272, 132-273, 132-274, 132-275, 132-276, 132-277, 132-278, 132-279, 132-280, 132-281, 132-282, 132-283, 132-284, 132-285, 132-286, 132-287, 132-288, 132-289, 132-290, 132-291, 132-292, 132-293, 132-294, 132-295, 132-296, 132-297, 132-298, 132-299, 132-300, 132-301, 132-302, 132-303, 132-304, 132-305, 132-306, 132-307, 132-308, 132-309, 132-310, 132-311, 132-312, 132-313, 132-314, 132-315, 132-316, 132-317, 132-318, 132-319, 132-320, 132-321, 132-322, 132-323, 132-324, 132-325, 132-326, 132-327, 132-328, 132-329, 132-330, 132-331, 132-332, 132-333, 132-334, 132-335, 132-336, 132-337, 132-338, 132-339, 132-340, 132-341, 132-342, 132-343, 132-344, 132-345, 132-346, 132-347, 132-348, 132-349, 132-350, 132-351, 132-352, 132-353, 132-354, 132-355, 132-356, 132-357, 132-358, 132-359, 132-360, 132-361, 132-362, 132-363, 132-364, 132-365, 132-366, 132-367, 132-368, 132-369, 132-370, 132-371, 132-372, 132-373, 132-374, 132-375, 132-376, 132-377, 132-378, 132-379, 132-380, 132-381, 132-382, 132-383, 132-384, 132-385, 132-386, 132-387, 132-388, 132-389, 132-390, 132-391, 132-392, 132-393, 132-394, 132-395, 132-396, 132-397, 132-398, 132-399, 132-400, 132-401, 132-402, 132-403, 132-404, 132-405, 132-406, 132-407, 132-408, 132-409, 132-410, 132-411, 132-412, 132-413, 132-414, 132-415, 132-416, 132-417, 132-418, 132-419, 132-420, 132-421, 132-422, 132-423, 132-424, 132-425, 132-426, 132-427, 132-428, 132-429, 132-430, 132-431, 132-432, 132-433, 132-434, 132-435, 132-436, 132-437, 132-438, 132-439, 132-440, 132-441, 132-442, 132-443, 132-444, 132-445, 132-446, 132-447, 132-448, 132-449, 132-450, 132-451, 132-452, 132-453, 132-454, 132-455, 132-456, 132-457, 132-458, 132-459, 132-460, 132-461, 132-462, 13

38-40-48-54-56 Banks St. Petitioner

132-97-112-122-25-113
PRESIDENT & FELLOWS OF HARVARD COLLEGE
C/O HARVARD REAL ESTATE, INC.
HOLYOKE CENTER, ROOM 1000
1350 MASSACHUSETTS AVE
CAMBRIDGE, MA 02138-3895

132-121
BUKHARI, SAMIR A. & LYNETTE M. SHOLL
9-13 SURREY ST UNIT 3
CAMBRIDGE, MA 02138

TYMANN DAVIS & DUFFY
C/O BENJAMIN B. TYMANN, ESQ.
45 BROMFIELD STREET - 6TH FL.
BOSTON, MA 02108

132-139
PAGER, DEVAH & MICHAEL T. SHOHL
21 SURREY ST
CAMBRIDGE, MA 02138

132-138
HRI PUTNAM SQUARE II LLC
810 MEMORIAL DR - SUITE 102
CAMBRIDGE, MA 02139

132-61
LUBAVITCH OF CAMBRIDGE, INC.
54-56 BANKS ST
CAMBRIDGE, MA 02138

132-155
HARTMAN, HYMAN &
BEULAH M. HARTMAN CO-TRUSTEES
28 BANKS ST
CAMBRIDGE, MA 02138

132-55
ENVIRON REALTY CORP
P.O. BOX 47
LEXINGTON, MA 02420

132-62
LUBAVITCH OF CAMBRIDGE, INC.
38 BANKS ST
CAMBRIDGE, MA 02138-6013

132-64
JOSLIN, ALAN R. &
DEBORAH A. EPSTEIN, TRUSTEES
36 BANKS ST
CAMBRIDGE, MA 02138

132-66
ALEXANDER, REED K. & DORIS J. JURISSON
22 BANKS STREET
CAMBRIDGE, MA 02138-6013

132-63
LUBAVITCH OF CAMBRIDGE, INC.
38-40 BANKS ST
CAMBRIDGE, MA 02138

132-98
INTERVARSITY CHRISTIAN FELLOWSHIP/USA
C/O LEGAL DEPARTMENT
P.O. BOX 7895
MADISON, WI 53707-7895

132-54
TOULOPOULOS, JOHN V. AND
PAULINE TOULOPOULOS,
TRS. OF TOULOPOULOS REALTY TR.
931 MASS. AVE.
ARLINGTON, MA 02474

132-80
LUBAVITCH OF CAMBRIDGE INC
38 BANKS ST
CAMBRIDGE, MA 02138

132-79
PRESIDENT AND FELLOWS OF HARVARD COLLEGE
HOLYOKE CENTER, RM 1017
1350 MASS AVE
CAMBRIDGE, MA 02138

132-103
COLUMBIA COLLABORATIVE, LLC
697-699 GREEN ST
CAMBRIDGE, MA 02139

132-98
INTERVARSITY CHRISTIAN FELLOWSHIP/USA
20 BANKS ST UNIT 1
CAMBRIDGE, MA 02138

132-120
DIERKER, CARL F.
15 SURREY ST.
CAMBRIDGE, MA 02138-6017

132-121
RESNICK, MITCHEL
9 SURREY ST UNIT 2
CAMBRIDGE, MA 02138

132-155
SERWOLD, THOMAS & AMY WAGERS
30 BANKS ST UNIT 30
CAMBRIDGE, MA 02138

132-60
DIERCKS, GILLIAN R.,
TR. OF CHARLES NOMINEE REALTY TRUST
64 BANKS ST
CAMBRIDGE, MA 02138

132-59
HAWKINSON, JACQUELYN A.,
TR. THE PARADIS-ALMER INVESTMENT TRS
91 GRANT ST
LEXINGTON, MA 02420

132-121
WALKER, DAVID I. &
LAUREN M. BARAKAUSKAS
9 SURREY ST UNIT 1
CAMBRIDGE, MA 02138

132-131
MALGWI CHARLES A &
CHRISTIANA C MALGWI
4A MOUNT AUBURN ST
CAMBRIDGE, MA 02139

132-50
PUTNAM AVENUE, LLC
P.O. BOX 600683
NEWTON, MA 02460-0683

132-51
COVE, MARY
23 PUTNAM AVE UNIT 21
CAMBRIDGE, MA 02138

132-51
MOUNTFIELD, RICHARD J.
23 PUTNAM AVE
CAMBRIDGE, MA 02139



City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

3 Bds

BZA

POSTING NOTICE – PICK UP SHEET

The undersigned picked up the notice board for the Board of Zoning Appeals Hearing.

Name: Mendy Paslin (Print) Date: X

Address: 38-40-48-54-56 Bank St.

Case No. BZA-1165941

Hearing Date: 6/12/25

Thank you,
Bza Members

Pacheco, Maria

From: Tom Serwold <tserwold@gmail.com>
Sent: Monday, June 9, 2025 1:14 PM
To: Simmons, Denise; McGovern, Marc; Azeem, Burhan; Nolan, Patricia; Siddiqui, Sumbul; Sobrinho-Wheeler, Jivan; Toner, Paul; Wilson, Ayesha; Zusy, Catherine; City Council; City Clerk; Pacheco, Maria; Bayer, Megan
Subject: Public Comment Regarding Fair Process in upcoming June 12 Chabad House Zoning Hearing

Dear Members of the Zoning Board, City Council and City Solicitor,

I am writing as a concerned neighbor regarding the upcoming hearing, June 12, on the proposed demolition of three homes and construction of a 40,000 square foot religious center by the Chabad House on Banks Street in Cambridge (CASE NO. BZA-1165941).

As you may know, the Chabad previously submitted a proposal for a significantly smaller building—approximately 17,000 square feet—which was already viewed by the neighborhood as far too large for our residential street. That proposal failed to gain the required four votes on the Zoning Board, receiving only a 3-2 majority. Following that vote, the Chabad filed a lawsuit against the City, alleging religious discrimination. The lawsuit directly cites the votes of the two Zoning Board members who voted against the project.

Although those two members are **not personally named as defendants**, they are clearly being targeted by the lawsuit's allegations. I am deeply concerned that they may feel pressured to recuse themselves from participating in the upcoming hearing—or that the City may ask them to do so—despite there being no legal basis for recusal. In my view, their votes were entirely appropriate and consistent with their responsibility to evaluate proposals on zoning and land use grounds.

The City should take care not to allow this lawsuit to have a chilling effect on the fair and independent operation of the Zoning Board. Recusal under pressure would create a deeply troubling precedent: that board members who vote against a powerful applicant may find themselves sidelined by legal threats in future proceedings. That is not how a fair process should function.

This is not a question of religious bias. It is a question of **process, independence, and public confidence**. Allowing any applicant to remove or neutralize critical voices through litigation—even indirectly—risks undermining the integrity of zoning decisions in our city.

We respectfully ask the City to:

- Make clear that Zoning Board members are not obligated to recuse themselves merely because their votes were cited in litigation;
- Affirm its support for the independence of the Zoning Board and its members;
- Protect the integrity of the upcoming hearing by ensuring that all qualified members—including those who voted on the previous proposal—are permitted to participate.

Thank you for your attention to this matter, and for your commitment to a zoning process that is transparent, fair, and resistant to undue influence.

Sincerely,
Tom Serwold

30 Banks Street,

Cambridge, MA 02138

Pacheco, Maria

From: hwalker434@rcn.com
Sent: Wednesday, June 11, 2025 5:04 AM
To: Pacheco, Maria
Subject: COMMENT ON CASE NO. BZA-1165941, 38-40, 48, 54-56 BANKS STREET

CASE NO. BZA-1165941, 38-40, 48, 54-56 BANKS STREET

Dear Members of the Board of Zoning Appeal:

The project before you on June 12, 2025, seeks a variance due to increase in gross floor area/ floor area ratio. It is ironic that on June 20, 2024, this Board denied such a variance to a similar project that involved *less than half* the gross floor area/ floor area ratio of the present project.

As you know, the petitioners followed with legal action, leading to mediation, which (so far as I know as I write to you) has not yet been resolved. Presumably the outcome of the mediation will have a bearing on the current case and should be waited for.

In addition, the petitioners submitted the Marasao zoning petition, heard separately by the Ordinance Committee and the Planning Board on 5/20/25, seeking for religious uses to have the same relaxed height and setback requirements, and the same relief from certain reviews, as granted to multifamily housing with inclusionary units under the new Multifamily Housing Zoning. During both hearings, the petitioners' attorneys alluded to possible legal action under RLUIPA if the proposed zoning changes were not made.

The scheme before you would build to what would be allowed under the Marasao petition, should that be ordained. But, of course, that petition has not been ordained. Both the Ordinance Committee and the Planning Board felt that they could not proceed on the Marasao petition without guidance from the city solicitor regarding what the city must do to respond to the requirements of RLUIPA and the Dover Amendment. That guidance has been requested. Obviously the BZA must respond to that same guidance; nothing of significance can be decided without it.

An important consideration in this discussion is that Cambridge's exemption from the Dover Amendment, and thus also its Chapter 4.50 Institutional Use Regulations, have been compromised by an innovation in the new Multifamily Housing Zoning, i.e., the elimination of residentially zoned districts which require a lot of one thousand two hundred (1,200) square feet or more per dwelling unit. The institutional Use Regulations were created to prevent loss of housing to institutional expansion. The last thing Cambridge needs during a housing crisis is loss of housing to institutional expansion. Should the petitioners be allowed to expand into a residential district at the scale they propose, a precedent might be set that might encourage other institutional uses (i.e., nonprofit educational uses) to demand the same.

Many of the neighborhood concerns about a project of the scale before you are valid. These include: issues of traffic, deliveries, parking and trash pickup on a narrow residential street with only one lane

of car traffic; lack of outdoor space for gathering of congregants entering and exiting (given that the building code assumes over 800 occupants); night time disruption from light and noise generated by indoor assembly spaces and the outdoor roof deck; loss of outdoor green space. These concerns could be mitigated by a smaller project.

The petitioners own many additional properties in Cambridge (at least eight)¹. It is not out of line to ask whether certain program areas might be accommodated on these other properties.

In deciding the case before you, please take into account:

- 1) the outcome of the mediation,
- 2) the city solicitor's guidance,
- 3) a prudent caution about setting precedents regarding institutional use, and
- 4) appreciation of the neighborhood concerns that have not been addressed.

With many thanks for your consideration,

Helen Walker
Massachusetts Registered Architect

43 Linnaean Street, Cambridge, MA 02138

¹ Other properties in Cambridge owned by Lubavitch of Cambridge:

65-67 Banks Street
118 Magazine Street
38 Pearl Street
243 Hampshire Street
Unit CU-7, 8 Museum Way
Unit CU-10, 8 Museum Way
2269-2275 Massachusetts Avenue
299 Concord Avenue

Pacheco, Maria

From: Lily Shen <lily.shen@me.com>
Sent: Wednesday, June 11, 2025 9:48 AM
To: Ratay, Olivia; Pacheco, Maria
Cc: Lily Shen
Subject: Comment on CASE NO. BZA-1165941, 38-40, 48, 54-56 BANKS STREET

CASE NO. BZA-1165941, 38-40, 48, 54-56 BANKS STREET

Dear Members of the Board of Zoning Appeal:

The project above seeks a variance due to increase in gross floor area/ floor area ratio. It is puzzling that on June 20, 2024, this Board denied such a variance to a similar project that involved *less than half* the gross floor area/ floor area ratio of the present project.

Before diving into further details, I would like to highlight the general issue of the impact of institutionalization, religious or otherwise, on the neighborhood existence, especially when the institutionalization process does not collaborate with the community and neighborhood members to seek input, as is here. As some board members and speakers said at the May 20, 2025 Planning Board meeting: allowing this project in its current proposal could be opening a flood gate to many other similar projects in City of Cambridge. This impact will be devastating to existence of residential neighborhood and community in the city of Cambridge.

Kerry Corner Neighborhood (KCNA) is a very small intimate neighborhood. The segment of Banks Street from Grant Street to Mount Auburn street is a very narrow and short one-way street, only 170-yards. This is the segment where most of the project proposed by the petitioners will be built upon. We are the last few independent residential condos left on Banks street. We, KCNA members, fully support the recent city of Cambridge zoning change to expand to six floors to accommodate residential needs. We would like to emphasize **residential**. However, our tiny neighborhood simply does not have the capacity for such massive expansion and institutionalization as proposed by the petitioner. We want to work with the petitioners but it is the size of their proposal that is simply too big, and now it has gotten much bigger than the one rejected by BZA last year due to then already too big of a size for this neighborhood and zoning variance.

An important consideration in this discussion is that Cambridge's exemption from the Dover Amendment, and thus also its Chapter 4.50 Institutional Use Regulations, have been compromised by an innovation in the new Multifamily Housing Zoning, i.e., the elimination of residentially zoned districts which require a lot of one thousand two hundred (1,200) square feet or more per dwelling unit. The institutional Use Regulations were created to prevent loss of housing to institutional expansion. The last thing Cambridge needs during a housing crisis is loss of housing to institutional expansion. Should the petitioners be allowed to expand into a residential district at the scale they propose, a precedent might be set that might encourage other institutional uses (i.e., nonprofit educational uses) to demand the same.

Many of the neighborhood concerns about a project of the scale before you are valid. These include: issues of traffic, deliveries, parking and trash pickup on a narrow residential street with only one lane of car traffic; lack of outdoor space for gathering of congregants entering and exiting (given that the building code assumes over 800 occupants); night time disruption from light and noise generated by indoor assembly spaces and the outdoor roof deck; loss of outdoor green space. These concerns could be mitigated by a smaller project.

As a bicyclist commuter myself, I want to highlight to you the already challenging safety situation on Banks Street between Mount Auburn and Grant Street, where most of the petitioners' proposal will be built upon. Currently there is a one-way bike lane on the side of this short 170-yard segment that is often temporally blocked by UPS and Amazon delivery trucks. To avoid completely occupy this one-way Banks Street, the trucks always perch onto pedestrian walks besides occupying the one-way bike lane. Bicyclists and scooters are forced to bike against the cars on the one-way car lane to get by. I witnessed several times a near collision that was life-threatening. If such an expansive project proposed by the petitioners is allowed to proceed, there will be significantly more delivery trucks and traffic on this small one-way traffic car lane and against traffic one-way bike lane, which will result in potential safety threat to the residents and commuters.

If the city of Cambridge allows the petitioners to proceed with its current proposal, a flood gate is open – imagine every house remaining can be transferred and turned into another big project like this. Would our residential neighborhood still exist?

In deciding the case before you, please take into account:

- 1) the outcome of the mediation,
- 2) the city solicitor's guidance,
- 3) a prudent caution about setting precedents regarding institutional use, and

4) appreciation of the neighborhood concerns that have not been addressed.

Many thanks for your careful consideration,

Sincerely yours,

Lily Shen

Owner and resident of 23 Banks Street

Natola, Stephen

From: S Ringler <sringle23@hotmail.com>
Sent: Wednesday, June 11, 2025 10:56 PM
To: Natola, Stephen; Pacheco, Maria; Ratay, Olivia
Cc: City Clerk; City Council
Subject: Re: BZA 1165941 Banks St. OPPOSE

PS: By the way, the opposition to this huge building has nothing to do with anti-semitism and is about the size of the planned building, and how out of scale it is.

From: S Ringler <sringle23@hotmail.com>
Sent: Wednesday, June 11, 2025 10:48 PM
To: snatola@cambridgema.gov <snatola@cambridgema.gov>; mpacheco@cambridgema.gov <mpacheco@cambridgema.gov>; oratay@cambridgema.gov <oratay@cambridgema.gov>
Cc: Cambridge City Council <cityclerk@cambridgema.gov>; council@cambridgema.gov <council@cambridgema.gov>
Subject: BZA 1165941 Banks St. OPPOSE

Dear Zoning Board,

I write to you to oppose the requested variance on Banks St. The building they plan is ENORMOUS and Banks St. is a small narrow street. The drawings in the Cambridge Day (front page, June 5-12) shows how completely out of proportion their planned building is.

It is completely unacceptable to build such a huge building on this quiet residential street. The neighborhood would be changed and disrupted, and the property values of the adjoining houses would suffer. The negative impacts on the neighborhood would be severe, (to traffic as well).

I don't live on Banks St, but nearby and I would hope that neighbors would oppose such a building on my street too. Please respect the residents and OPPOSE this huge, oversize, out of scale project.

Thank you for your consideration.

Susan Ringler
82 Kinnaird St.
Cambridge 02139

Pacheco, Maria

From: S Ringler <sringle23@hotmail.com>
Sent: Wednesday, June 11, 2025 10:49 PM
To: Natola, Stephen; Pacheco, Maria; Ratay, Olivia
Cc: City Clerk; City Council
Subject: BZA 1165941 Banks St. OPPOSE

Dear Zoning Board,

I write to you to oppose the requested variance on Banks St. The building they plan is ENORMOUS and Banks St. is a small narrow street. The drawings in the Cambridge Day (front page, June 5-12) shows how completely out of proportion their planned building is.

It is completely unacceptable to build such a huge building on this quiet residential street. The neighborhood would be changed and disrupted, and the property values of the adjoining houses would suffer. The negative impacts on the neighborhood would be severe, (to traffic as well).

I don't live on Banks St, but nearby and I would hope that neighbors would oppose such a building on my street too. Please respect the residents and OPPOSE this huge, oversize, out of scale project.

Thank you for your consideration.

Susan Ringler
82 Kinnaird St.
Cambridge 02139

Pacheco, Maria

From: Laura Sheffield <austinsheffield@comcast.net>
Sent: Wednesday, June 11, 2025 2:28 PM
To: Pacheco, Maria
Subject: In regard to Lubavitch of Cambridge, Inc. v. Jim Monteverde as member of Cambridge BZA

Dear Mr. Monteverde and members of the Board of Zoning Appeal,

I am writing as a Cambridge resident since 1990, and as a former member of the Planning Board, 1995-1999. We are witnessing a period of rapid change in the Cambridge built environment, and decisions made now become exemplars of how recent zoning changes will play out across the city. In Cambridgeport and Riverside in particular, convenience and high property values are creating unusual pressures and demonstrably changing neighborhood character. Along with many other neighborhood observers, I understand that change and adaptation are part of city life, and that pressure on our housing supply has resulted in some bold action (accompanied by thoughtful planning we hope).

However — in the case cited below, Lubavitch of Cambridge v. Jim Monteverde as member of the Cambridge BZA, it is difficult to see how allowing a significant upzoning requested by an institutional client in the dense Bank St. neighborhood helps to accomplish the goals set out by Community Development and the Planning Board, especially those related to neighborhood livability, safety and traffic. Also, establishing a precedent, specifically for religious institutions which amounts to “immunity” from existing zoning regulations also brings into question the complex arrangements the City has with our many, many institutions, both religious and academic.

I urge you to stand with existing City zoning regulations and ask that the client work with the City’s departments to accomplish their goals within the rules. We are a welcoming city, but to be welcoming we also have to have balance, fairness and respect for Cambridge’s rules about new buildings.

Yours,

Laurie Sheffield
219 Brookline St.
Cambridge, MA. 02139
857-212-5321

Lubavitch of Cambridge, Inc. v. Jim Monteverde as member of the Cambridge Board of Zoning Appeals et al. (Land Court Docket No. 24 Misc 00622), John W. Touloupoulos

Trustee of the Touloupoulos Realty Trust, et al. v. Lubavitch of Cambridge Inc. et al. (Land Court, Docket No. 24 Misc 000528), and Lubavitch of Cambridge, Inc. v. Cambridge Board of Zoning Appeal and City of Cambridge (United States District Court District of Massachusetts, Docket No. 1:24-cv-12403), which all relate to the BZA's Decision in BZA-261068 38-40, 48, 54-56 Banks Street and BZA application #1165941 38-40-48-54-56 Banks Street.

Pacheco, Maria

From: Pamela N. Fourtounis <pfourtounis@DavisMalm.com>
Sent: Wednesday, June 11, 2025 3:55 PM
To: Pacheco, Maria
Cc: Shawn M. McCormack
Subject: Opposition to Variance and Special Permit Application - BZA Case No BZA 1165941
Attachments: Letter to Cambridge BZA_Case No BZA-1165941.pdf

Members of the Board of Zoning Appeal,

Please find attached a Letter of Opposition to the Variance and Special Permit Application referenced below:

BZA Case Number: 1165941
Project & Location: Harvard Chabad Center for Jewish Life
38-40, 48, and 54-56 Banks Street, Cambridge, MA
Petitioner: Lubavitch of Cambridge, Inc.

Best,

Pamela Fourtounis

Attorney at Law
Davis Malm
One Boston Place, 37th Floor | Boston, MA 02108
P: 617.589.3849
pfourtounis@DavisMalm.com

PAMELA N. FOURTOUNIS

Attorney at Law
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pfourtounis@DavisMalm.com | www.davismalm.com



DAVIS MALM
ATTORNEYS

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Shawn M. McCormack

P: 617.589.3895 | F: 617.523.6215
smccormack@davismalm.com

June 11, 2025

City of Cambridge Board of Zoning Appeal
831 Mass Avenue, Cambridge, MA
(617) 349-6100

VIA ELECTRONIC MAIL -
mpacheco@cambridgema.gov

RE: Opposition to Variance and Special Permit Application

BZA Case Number: 1165941

Project & Location: Harvard Chabad Center for Jewish Life
38-40, 48, and 54-56 Banks Street, Cambridge, MA

Petitioner: Lubavitch of Cambridge, Inc.

Dear Members of the Board:

This letter is submitted in opposition to the application of Lubavitch of Cambridge, Inc. (the "Applicant") to construct an oversized facility in a residential neighborhood in complete disregard of applicable zoning regulations. In particular, this letter seeks to counter the incorrect notion that religious uses are exempt from local zoning controls concerning density, building size, and parking. Rather, the Federal Courts have made clear that RLUIPA¹ does not provide "religious institutions with immunity from land use regulation" as has been inaccurately suggested.²

I. Background

This office represents the Charles Nominee Realty Trust, and Columbia Collaborative, LLC, (collectively, "Clients"), the owners of the properties at 58-64 Banks Street, Cambridge and 701-703 Green Street Extension (a private way), Cambridge, respectively, regarding Board of Zoning Appeal ("BZA") Case No. BZA-1165941. The case concerns the applications for several variances and special permits in connection with the demolition, expansion, and new construction on the properties located at 38-40, 48, and 54-56 Banks Street (collectively, the "Application"). For the reasons described below, the BZA is well within its rights under federal law to deny the Application. Even further, the BZA *should* deny the Application due to its failure to satisfy the variance and special permit criteria in the Cambridge Zoning Ordinance (the "Ordinance").

¹ "RLUIPA" is the federal Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et. seq.

² *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 96 (1st Cir. 2013), citing 146 Cong. Rec. S7776 (daily ed. July 27, 2000) ("This Act does not provide religious institutions with immunity from land use regulation....") (joint statement of Sens. Hatch and Kennedy) (internal citations omitted).

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Moreover, it appears that no site plan stamped by a professional land surveyor was submitted with the Application, and it is impossible to determine exactly how close the proposed building and parking lot will be to the abutting properties, including 58-64 Banks Street and 701-703 Green Street Extension. However, judging from the architectural plans included in the Application, there are significant questions whether the proposed parking lot will constitute an encroachment onto the property at 58-64 Banks Street.

II. No Substantial Burden Under RLUIPA

In its Application, the Applicant provides no attempt at an explanation of how Cambridge's land use regulations of general application are a substantial burden to Applicant's religious exercise. Rather, the Application merely states (over and over) that it is "entitled" to "full approval by the BZA." But that is simply not the law. As the U.S. Court of Appeals for the First Circuit has held, "RLUIPA does not mean that any land use restriction on a religious organization imposes a substantial burden[]." ³

Whether the application of a particular land use regulation imposes a substantial burden on the religious exercise of an institution must be evaluated on a case-by-case basis based on the particular facts involved.⁴ The Application is not entitled to heightened protection unless this showing is made.⁵

Federal caselaw interpreting "substantial burden" under RLUIPA under facts similar to those here clearly demonstrates that (1) no substantial burden is imposed by the dimensional and parking requirements from which Applicant seeks relief, and (2) no substantial burden would result if the

³ *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 96 (1st Cir. 2013), citing 146 Cong. Rec. S7776 (daily ed. July 27, 2000) ("This Act does not provide religious institutions with immunity from land use regulation....") (joint statement of Sens. Hatch and Kennedy) (internal citations omitted); see *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1235 n.17 (11th Cir. 2004). (RLUIPA "does not inhibit a zoning authority's right to adopt other reasonable 'run of the mill' zoning regulations—such as those related to size, parking, safety and health concerns...As long as restrictions or distinctions are unrelated to the religious characterization, RLUIPA is not implicated.").

⁴ *Roman Cath. Bishop of Springfield*, 724 F.3d at 95. It is Applicant's burden to prove that, under the present facts, the Zoning Ordinance's dimensional and parking requirements impose a substantial burden on Applicant's religious exercise. See *St. Paul's Found. v. Baldacci*, 540 F. Supp. 3d 147, 154 (D. Mass. 2021), *aff'd sub nom. St. Paul's Found. v. Ives*, 29 F.4th 32 (1st Cir. 2022), citing *Roman Catholic Bishop of Springfield*, 724 F.3d at 94.

⁵ See *Id.* at 152, quoting *Sossamon v. Texas*, 563 U.S. 277, 281 (2011) (RLUIPA "'accord[s] heightened statutory protection to religious exercise ... in all cases where free exercise of religion is substantially burdened.'").



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BZA were to deny the Application upon finding that the Project does not meet the special permit and variance criteria.⁶

This is especially true given that these dimensional and parking requirements are not newly imposed and apply to the zoning district generally. That is, Applicant could not have had any reasonable expectation of the Project being approved by the BZA in light of long-existing state and local land use laws.⁷ Thus, any hardship Applicant experiences as a result of not being able to build the Project as proposed is self-imposed. “A self-imposed hardship generally will not support a substantial burden claim under RLUIPA, because the hardship was not imposed by governmental action altering a legitimate, pre-existing expectation that a property could be obtained for a particular land use.”⁸

⁶ See *C.L. for Urb. Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) (zoning ordinance requirements that religious uses: (i) obtain a special use permit to operate in business and commercial districts, (ii) obtain a rezoning/map amendment to operate in a manufacturing district or C-4 commercial district; and (iii) for uses consisting of two or more acres, obtain Planned Development approval, did not constitute a substantial burden; requirements were “incidental to any high-density urban land use” and did not make the use of property for religious exercise “impracticable”); *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App’x 729, 738 (6th Cir. 2007) (where special use permit was required by the zoning ordinance to construct a building over 25,000 square feet, denial of special use permit to church to construct a 34,989 square foot education building was not a substantial burden; church was entitled to build a 14,075 square-foot building as originally proposed or expand same up to the 25,000 square-foot limit); *Church of Scientology of Georgia, Inc. v. City of Sandy Springs, Ga.*, 843 F. Supp. 2d 1328, 1358 (N.D. Ga. 2012) (Plaintiff church was not substantially burdened by city’s conditional approval which allowed church to convert 32,053 square foot of office building into a church, but did not allow church to convert full 44,000 square feet of building into a church); *Castle Hills First Baptist Church v. City of Castle Hills*, No. SA-01-CA-1149-RF, 2004 WL 546792, at *11 (W.D. Tex. Mar. 17, 2004) (Denial of special use permit for church for additional parking did not work a substantial burden; church was not entitled to “have an unlimited and ever-expanding place of worship with open doors and a parking space for all who would enter.”).

⁷ See *Alive Church of the Nazarene, Inc. v. Prince William Cnty., Virginia*, 59 F.4th 92, 107 (4th Cir. 2023) (Agricultural Zoning Ordinance requirement that church, located in an agricultural district, obtain a license from the Alcoholic Beverage Commission to conduct any activity other than growing and selling agricultural goods, was not a substantial burden under RLUIPA; church purchased the property with knowledge of the Ordinance’s requirements, and requirements were generally applicable); *Andon, LLC v. City of Newport News, Va.*, 813 F.3d 510, 515 (4th Cir. 2016) (Plaintiffs who entered a contingent lease agreement for a lot in a commercial zone, which lot was noncompliant with setback requirements at the time had no reasonable expectation of obtaining variance from setback requirements to build church); *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007) (Plaintiff “had no reasonable expectation of obtaining a permit” to build a church when it purchased property in an industrial zoning district in which churches were not an allowed use, rather, plaintiff “assumed the risk of having to sell the property and find an alternative site for its church” should the permit denial be upheld).

⁸ *Andon, LLC*, 813 F.3d at 515, citing *Bethel World Outreach Ministries*, 706 F.3d at 556–58 and *Petra Presbyterian Church*, 489 F.3d at 851.



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Likewise, even if the present Application is denied, there would be no substantial burden because Applicant could change the design and dimensions of the Project and submit a new application which results in less nonconformities and potentially receive approval.⁹ There is no governmental barrier to a religious or institutional use in this location. And the Applicant has not demonstrated that its religious exercise will be substantially burdened if it must comply with the dimensional regulations that apply to all other property owners in this district. It bears repeating that less than a year ago, the Applicant sought variances for a substantially smaller structure. Today, the Applicant is seeking nearly double the floor area with no explanation why, and no explanation for why the increased size is fundamental to its religious exercise.

III. Denial is Warranted Because the Variance and Special Permit Criteria are not Met

Given that the Applicant has not shown a substantial burden under RLUIPA, the BZA can and should deny the Application because it does not meet the required variance and special permit criteria in the Ordinance.

First, the Application itself is deficient because it does not describe “in complete detail” how the Project meets the special permit and variance criteria, as the BZA application forms require. Rather, Applicant repeatedly states “The Petitioner’s religious use and proposed renovation and expansion of the properties are entitled to heightened protection and full approval by the BZA under RLUIPA [sic], the federal law that prohibits land use regulations that ‘substantially burden’ religious exercise.”

With respect to the variance criterion that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship, Applicant states, in addition to the above language, that it has outgrown its current facilities and has “an urgent need to renovate, expand, and create one unified building.” Under decades of Massachusetts case law, this is simply not the type of hardship that allows a property owner to obtain a variance under M.G.L. c. 40A, § 10. Rather, the hardship required for a variance must result from the condition of the land itself—more specifically, the “soil conditions, shape, or topography” of the land or structures—and cannot be based on a personal hardship of the owner of the land.¹⁰

⁹ See *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007) (“rejection of a submitted plan, while leaving open the possibility of approval of a resubmission with modifications designed to address the cited problems, is less likely to constitute a ‘substantial burden’ than definitive rejection of the same plan, ruling out the possibility of approval of a modified proposal”).

¹⁰ *Huntington v. Zoning Bd. of Appeals of Hadley*, 12 Mass. App. Ct. 710, 715 (1981); see *Paulding v. Bruins*, 18 Mass. App. Ct. 707, 711 (1984) (Health of lot's owner, his financial situation, and any other considerations unrelated to underlying real estate, were irrelevant to zoning board of appeals' inquiry into question of substantial hardship required for a variance from frontage and width requirements).



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Applicant cannot meet the other variance criteria, that the “desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of” the Ordinance,¹¹ either. The proposed structure is totally out of scale with the neighborhood. Allowing a building of this height and square footage, that is noncompliant with all setback requirements and open space requirements, would eviscerate the following purposes of the Ordinance: lessening congestion in the streets, preventing overcrowding of land, providing adequate light and air, and facilitating the adequate provision of open space.¹²

Applicant cannot meet the special permit criteria, either. The proposed design/configuration and location of the parking lot would likely cause congestion or hazard¹³, as it appears there is not adequate maneuvering space¹⁴ for vehicles to safely enter and exit from the parking lot from a single curb cut. Although six vehicle parking spaces are proposed, it appears that the layout of the parking spaces make it impossible for vehicles to enter and exit without moving other vehicles parked in other spaces.¹⁵ The proposed design includes two columns in the center of the parking area (supporting the building above), which further reduces the area available for parking, entering and exiting the lot, and maneuvering within the lot. These design problems are exacerbated by the fact that the curb cut for the proposed parking area is across Banks Street from the intersection with Grant Street. Vehicles maneuvering in and out of the existing parking area already conflict with vehicles turning onto Grant Street from Banks Street, and this problem will only get worse if the unnatural parking layout is approved. Dangers to pedestrians will also increase due to these design flaws, compounded by the likely increase in traffic to the parking lot.

For the same reasons, the proposed parking lot will likely create a specific nuisance or hazard to the detriment of the health, safety and/or welfare of the residents of 58-64 Banks Street, as cars will be entering and exiting the tight parking lot located right on the property line between 54-56 Banks Street and 58-64 Banks Street.¹⁶ There is no buffer whatsoever built into the proposed parking lot design to ensure that cars entering and exiting the parking lot do not go over the property line and onto the 58-64 Banks Street property. Neither is any screening proposed to lessen the impact of the parking lot on 58-64 Banks Street.¹⁷ Even today, visitors to the Applicant’s property routinely trespass on 58-64 Banks Street and open cars doors into the side of the building, when using the existing parking area. Thus, the continued use of 58-64 Banks Street as a private

¹¹ M.G.L. c. 40A, § 10.

¹² See Ordinance Section 1-30.

¹³ See Ordinance Section 10.43(b).

¹⁴ See Ordinance Section 6.43.

¹⁵ See Ordinance Section 6.43.2.

¹⁶ See Ordinance Section 10.43(d).

¹⁷ See Ordinance Section 6.47.



Cambridge Board of Zoning Appeals
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residence would be adversely affected by the proposed parking lot and substantially expanded structure.¹⁸ Further, the creation of a new pathway for pedestrians on Green Street Extension would aggravate these problems by funneling pedestrians into the poorly designed parking area—assuming that Applicant has any legal rights at all to use Green Street Extension, a private way, which rights are contested.

IV. Conclusion

For the above reasons, Clients encourage the BZA to vote to deny the Application at the June 12 BZA hearing.

Sincerely,

A handwritten signature in blue ink that reads 'Shawn M. McCormack'.

Shawn M. McCormack

SMM:pnf

¹⁸ See Ordinance Section 10.43(c).

Pacheco, Maria

From: ALAN JOSLIN <ajoslin@icloud.com>
Sent: Wednesday, June 11, 2025 4:01 PM
To: Pacheco, Maria
Cc: Alan Joslin; Deborah Epstein
Subject: Opposition Letter to CASE NO. BZA-1165941, 38-40, 48, 54-56 BANKS STREET
Attachments: 250610a Rebuttal.pdf

Ms. Pacheco,

Please enter this attachment PDF and the following email text into the BZA Case Record for this Thursday's BZA hearing.

Many thanks, Alan

Dear Members of the Board of Zoning Appeals,

We write to express our deep appreciation to the BZA for its careful consideration of the Banks Street neighborhood project in June of 2024 which resulted in a denial of the Petitioner's Variance Request due to excessive FAR. **Unfortunately, with regard to the above-mentioned case, the Petitioner has returned a year later, while in the midst of litigation in Federal and State Land Court over your previous denial, with a project that is double-the-size of their previous project.** Thus, the Kerry Corner Neighborhood Association (KCNA) and its members, listed below, must oppose the granting of any variance for the Project as **currently proposed** by the Petitioner.

Concerns around "Intensity of Use"

The central concern for our neighborhood and the City at large is the increased "intensity of use" that large Religious and Institutional buildings can bring to residential neighborhoods compared with residential buildings of the same size. Not one of bulk nor aesthetics. The Project is seeking a variance to grow their Gross Floor Area to approximately 4.4 times the allowable floor area ratio (FAR) from .75 to 3.29. The result is an Occupancy Capacity (OC) of 1694, roughly 6.5x from the 250 people the petitioner has consistently claimed as the size of community to be served (see Appendix 2). It should be noted that the Occupancy Capacity of a residential project of the size of the Petitioner's current project would be only 200 people, a far less impact on pedestrian safety; parking and traffic, trash, noise, lighting, loss of trees and green space. (See Appendix 5)

Avoiding a Dangerous Precedent

The secondary concern, is the potential that a project of this size, set within the context of the Dover Amendment, could become a precedent for other religious and non-religious educational [and non-profit?] institutions to argue their rights to similar growth and expansion in such neighborhoods. This would undo the City's long held interests in holding back large-scale institutional development from

threatening the strength, accessibility and quality of its precious residential housing stock. (See Appendix 1)

Challenging Petitioner's RLUIPA claim

The final concern is that the City strongly defend itself from the Petitioner's misrepresentation that RLUIPA offers them unlimited "heightened protection" as a religious organization. In fact, courts have found that even religious organizations must abide by reasonable dimensional regulations, including FAR. Particularly in a case such as this, where the Petitioner has not been able to demonstrate how limiting a project of this size, in this place, produces a "substantial burden" on their religious exercise. Even a smaller proposal, like that considered in 2024, would not substantially burden the Petitioners. And even if burdened, the City should be able to show a "compelling governmental interest" to limit excessive FAR, without violating the "Heightened Protection". Specifically, with the unique challenge Cambridge faces as a home of so many educational and religious organizations, dimensional regulations are needed to prohibit projects of excessive intensity of occupancy, and are the "least restrictive means" that can be consistently and uniformly applied to all religious and educational institutional development across the City. (See Appendix 1)

Neighborhood is Neither Exclusive nor Anti-Semitic

We were saddened by the comments of the Petitioner's lead representative, Rabbi Hirschy Zarchi. His claims of neighborhood resistance as anti-Semitic are hurtful, and untrue. To be clear, KCNA members have lived alongside and supported the Petitioner for many years. All of us -- many of us are Jewish -- deeply value all of our neighbors and we are especially glad that Harvard Chabad is part of our community. We do not seek to exclude them from our neighborhood, only to have them scale their project to their current use and intensity of occupancy, while addressing the neighborhood disturbances this has caused. If they would, we would be pleased to support a variance that would allow this to happen. (See Appendix 3 and 4)

We hope you can look past the unfortunate and unnecessary emotional rhetoric and judge this case based upon facts of the case, federal and state law, the Cambridge Zoning Ordinances and the values which they represent. At heart, this a simple case of FAR overreach.

Thus, we ask the BZA to reject the Petitioner's variance, or at a minimum postpone consideration until the City has had a chance to fully resolve the new city-wide approach to regulating institutional development. This is not a matter of aesthetics, bulk, or anti-Semitism, but one of unlimited "intensity of use" by religious and educational institutions within residential neighborhoods.

Respectfully yours,

Alan Joslin FAIA, at 36 Banks Street, Cambridge, MA
On behalf of the Kerry Corner Neighborhood Association (KCNA) --
all signatories to this letter and enclosures, are provided on the following page.

Supporting Attachments in PDF form

Appendix 1: Response to Petitioner's Claim of RLUIPA offering "heightened protection"

Appendix 2: Calculations of Potential Occupancy Loads and its implications

Appendix 3: KCNA respect towards the Petitioner

Appendix 4: Recommendations for “Right Sizing” to serve the “Greatest Public Interest”

Appendix 5: Substantial Detriment to the public good

KERRY CORNER NEIGHBORHOOD ASSOCIATION

June 10, 2025.

Board of Zoning Appeal (BZA)
831 Massachusetts Avenue
Cambridge, MA

RE: Summary: Rebuttal of Petitioner's Variance and Special Permit Application
BZA Case Number: 1165941
Project & Location: Harvard Chabad Center for Jewish Life
38-40, 48, and 54-56 Banks Street, Cambridge, MA
Petitioner: Lubavitch of Cambridge, Inc.
C/O Benjamin B. Tymann Esq.

Dear Members of the Board of Zoning Appeals,

We write to express our deep appreciation to the BZA for its careful consideration of the Banks Street neighborhood project in June of 2024 which resulted in a denial of the Petitioner's Variance Request due to excessive FAR. **Unfortunately, with regard to the above-mentioned case, the Petitioner has returned a year later, while in the midst of litigation in Federal and State Land Court over your previous denial, with a project that is double-the-size of their previous project.** Thus, the Kerry Corner Neighborhood Association (KCNA) and its members, listed below, must oppose the granting of any variance for the Project as **currently proposed** by the Petitioner.

Concerns around "Intensity of Use"

The central concern for our neighborhood and the City at large is the increased "intensity of use" that large Religious and Institutional buildings can bring to residential neighborhoods compared with residential buildings of the same size. Not one of bulk nor aesthetics. The Project is seeking a variance to grow their Gross Floor Area to approximately 4.4 times the allowable floor area ratio (FAR) from .75 to 3.29. The result is an Occupancy Capacity (OC) of 1694, roughly 6.5x from the 250 people the petitioner has consistently claimed as the size of community to be served (see Appendix 2). It should be noted that the Occupancy Capacity of a residential project of the size of the Petitioner's current project would be only 200 people, a far less impact on pedestrian safety; parking and traffic, trash, noise, lighting, loss of trees and green space. (See Appendix 5)

Avoiding a Dangerous Precedent

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The final concern is that the City strongly defend itself from the Petitioner's misrepresentation that RLUIPA offers them unlimited "heightened protection" as a religious organization. In fact, courts have found that even religious organizations must abide by reasonable dimensional

KERRY CORNER NEIGHBORHOOD ASSOCIATION

regulations, including FAR. Particularly in a case such as this, where the Petitioner has not been able to demonstrate how limiting a project of this size, in this place, produces a “substantial burden” on their religious exercise. Even a smaller proposal, like that considered in 2024, would not substantially burden the Petitioners. And even if burdened, the City should be able to show a “compelling governmental interest” to limit excessive FAR, without violating the “Heightened Protection”. Specifically, with the unique challenge Cambridge faces as a home of so many educational and religious organizations, dimensional regulations are needed to prohibit projects of excessive intensity of occupancy, and are the “least restrictive means” that can be consistently and uniformly applied to all religious and educational institutional development across the City. (See Appendix 1)

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Thus, we ask the BZA to reject the Petitioner’s variance, or at a minimum postpone consideration until the City has had a chance to fully resolve the new city-wide approach to regulating institutional development. This is not a matter of aesthetics, bulk, or anti-Semitism, but one of unlimited “intensity of use” by religious and educational institutions within residential neighborhoods.

Respectfully yours,



Alan Joslin FAIA, at 36 Banks Street, Cambridge, MA

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Supporting Attachments

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 - Appendix 5: Substantial Detriment to the public good

KERRY CORNER NEIGHBORHOOD ASSOCIATION

We, the following members of the Kerry Corner Neighborhood Association have participated in the preparation and are in full support of the attached letter and associated documents, dated June 10, 2025, pertaining to BZA case 1165941,

- Reed Alexander and Doris Jurisson
22 Banks Street, Cambridge, MA

Reed Alexander Doris Jurisson

- Lily Shen and Hui Liu
23 Banks Street, Cambridge, MA

Lily Shen Hui Liu

- Barry Oemar and Debbie Hartman
25 Banks Street, Cambridge, MA
Barry Oemar and Debbie Hartman, 25 Banks Street, Cambridge, MA

Barry Oemar Debbie Hartman

- Hy and Berl Hartman
28 Banks Street, Cambridge, MA

Hyman Hartman Berl Hartman

- Thomas Serwold
30 Banks Street, Cambridge, MA

Tom Serwold

- Deborah Epstein and Alan Joslin
36 Banks Street, Cambridge, MA

Deborah Epstein Alan Joslin

- Elizabeth Foote and Eric Thorgerson
29 Surrey Street, Cambridge, MA

Elizabeth Foote Eric Thorgerson

- Carl Dierker
15 Surrey Street, Cambridge, MA

Carl F. Dierker

- Samir Bukhari and Lynette Sholl,
13 Surrey Street, Cambridge, MA

Samir Bukhari

- Joan and Darman Wing

701/703 Green Street, Cambridge, MA

Joan and Darman Wing, 701/703 Green Street, Cambridge, MA

Joan Wing Darman Wing

- Pamela and John W. Touloupoulos,
694-698-702 Green Street, Cambridge, MA

Pamela Touloupoulos John W. Touloupoulos

- Roseanne Rankin and Ray Desimone,
27-29 Putnam Avenue and Green Street,
Cambridge, MA

Roseanne Rankin Ray Desimone

- Monica Leitner-Laserna,
17 Banks Street, Cambridge, MA

Monica Leitner-Laserna

- Henry Leitner and Catalina Laserna
19 Banks Street, Cambridge, MA

Henry Leitner Catalina Laserna

- Albert and Nancy Lamb
21 Grant Street, and 33 Athens Street,
Cambridge, MA

Albert Lamb Nancy S. Lamb

- Tom O'Leary and Rosalie Post
24 Mt Auburn Street, Cambridge, MA

Thomas F O'Leary Rosalie N Post

- David Walker, Lauren Barakausakas,
9 Surrey Street, Unit 1, Cambridge, MA

David Walker Lauren Barakausakas

**APPENDIX 1 to Letter of June 10 2025 from KCNA to Cambridge BZA
per case BZA-1165941**

Response to Petitioner's claim that RLUIPA entitles it to "heighted protection and full approval by the BZA."

KCNA notes that the Petitioner's application provides only **one** justification for the requested variance: the Religious Land Use and Institutionalized Persons Act (42 U.S.C. Secs. 2000 cc et. seq.) ("RLUIPA") requires "full approval" of its request.

In an effort to better understand RLUIPA and to provide a resource to the BZA, the KCNA conducted extensive and professional RLUIPA research. The research we provide in this appendix makes clear—**Petitioner's assertion that it is entitled to full approval is not correct and is a misrepresentation of federal law.**

The BZA may impose reasonable size limitation on the proposal without violating RLUIPA. Contrary to Petitioner's assertion, it is NOT entitled to automatic approval. Here we highlight several important points supported by the enclosed:

- RLUIPA "does not provide religious institutions with immunity from land use regulation."
- The onus is on the Petitioner to show that a BZA denial or conditional approval would substantially burden its sincerely held religious beliefs.
- Many cases explain that a religious institution is **not** entitled to build a project without size or other reasonable limitations.
- The BZA has the authority to request a smaller proposal without running afoul of RLUIPA.
- RLUIPA does NOT give religious institutions the right to circumvent to application process and or omit essential elements of a typical land use application.
- The BZA need not consider the Petitioner's religious needs at some indefinite point in the future or give credit to a speculative assertion that it requires almost unlimited capacity. Instead, it may consider the Petitioner's current needs and impose reasonable size limitations.

While we recognize that the threat of a lawsuit under RLUIPA is intimidating, we urge the BZA to reject the Petitioner's unsupported assertion that a project on a smaller scale (less than the requested 4.4 times allowable FAR) substantially burdens the Petitioner's religious exercise.

To date the Petitioner has not demonstrated that:

1. Chabad could not serve their current and previously articulated needs of 250 community members on this site with a significantly smaller structure,
2. All program elements being added on this site by the petitioner in the current scheme are required for Chabad to function on this site, rather than simply a matter of preference or convenience for the religious group, and/or

KERRY CORNER NEIGHBORHOOD ASSOCIATION

3. Chabad could not find property elsewhere in the City that would meet their desire for provision of the newly added and/or expanded program spaces. As they currently own at least 12 properties across the City of Cambridge, we posit that some of the program elements could be on a different property close by.

Even if the Petitioner sought to demonstrate a substantial burden from FAR limits, the City of Cambridge would be able to show, as required by RLUIPA law, that its long-lived commitment to limit excessive FAR for religious and educational institutions within residential neighborhoods advances a “compelling governmental interest” using the least restrictive means possible. Specifically, it serves to hold back highly aggressive institutional development, in a City dominated by such institutions from reducing and disturbing its vital residential neighborhood districts.

Thus, we kindly ask that the BZA reject the Petitioner’s variance, or at a minimum, request that the Petitioner work with the BZA and the neighborhood to develop a proposal that is an appropriate size for the neighborhood and that can accommodate the Petitioner’s religious exercise. We also request that the BZA,

1. Allow the Federal lawsuit against the City of Cambridge and select members of the ZBA Board, be concluded in the Federal and Land Courts before acting on this proposal, and
2. Allow the City Council’s legal office to complete their review of legal implications of zoning revisions for Institutional use that will be consistent with the requirements of the Dover Amendment, RLUIPA law and City Planning guidance.

Please remember that opposition is not a matter of aesthetics, but one of intensity of use that could hurt that entire City of Cambridge. Please find our research memorandum on the next page.

RLUIPA RESEARCH

Given the quoted statement from the petitioner's application, this memorandum focuses on the meaning of a "substantial burden." In RLUIPA cases, **the initial burden is on the Proponent to show that a regulation imposes a substantial burden.** *Roman Catholic Bishop v. City of Springfield*, 724 F.3d 78, 94 (2013). If a substantial burden is found, then it is only justified if is in furtherance of a compelling governmental interest and the least restrictive means of furthering such interest.

MUNICIPALITIES MAY REGULATE RELIGIOUS USES WITHOUT IMPOSING A SUBSTANTIAL BURDEN.

A "substantial burden" is not defined by statute and the U.S. Supreme Court has not defined the meaning of a RLUIPA substantial burden in the land use context. While there is no uniform definition of a substantial burden, the case law is clear: **Reasonable regulation of a religious institution is not a per se RLUIPA violation.** Whether land use regulation imposes a substantial burden is a fact-specific inquiry.

Substantial burden and the First Circuit

While the First Circuit has not adopted a specific test to evaluate whether land use regulation imposes a substantial burden, it has clearly ruled **"that RLUIPA does not mean that any land use restriction on a religious organization imposes a substantial burden...."** *City of Springfield*, 724 F.3d at 96 (emphasis original). As noted in RLUIPA's congressional record, "This Act does not provide religious institutions with immunity from land use regulation" *Id.* quoting 146 Cong. Rec. S7776 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy).

In *Roman Catholic Bishop v. City of Springfield*, the Court considered an appeal by the Roman Catholic Bishop of Springfield ("RCB") regarding the designation of a historic district over Our Lady of Hope Church. The Court found that enactment of the district itself was not a substantial burden. In reaching the conclusion, the Court provided a non-exclusive summary of factors that may indicate imposition of a substantial burden:

- Even if the review process appears neutral on its face, it may not have a predetermined outcome.
- Regulation cannot be "imposed on the religious institution arbitrarily, capriciously, or unlawfully."
- A misunderstandings RLUIPA can indicate misapplication of the law—City officials have an obligation to understand the parameters of RLUIPA and other legal protections.
- "[A] government may not single out for special benefit or burden a religious group or institution solely because of its religious beliefs."
- The imposition of some expenses on the proponent does not automatically constitute a substantial burden.

City of Springfield, 724 F.3d at 96-98. ***The Springfield case illustrates that, in the First Circuit, courts will look to the totality of the circumstances when considering a substantial burden claim.***

The First Circuit “applie[s] a ‘common-usage understanding’ of . . . burden [as] ‘something . . . oppressive or worrisome,’ while something ‘substantial’ is . . . ‘significantly great.’” St. Paul's Found. v. Baldacci, 540 F. Supp. 3d 147, 154 (2021) (quoting Signs for Jesus v. Town of Pembroke, NH, 977 F.3d 93, 111 (1st Cir. 2020)).

In other words, while a burden need not be “disabling to be substantial,” the onus is on a RLUIPA plaintiff to demonstrate why a land use regulation oppresses or significantly impedes religious exercise. City of Springfield, 724 F.3d at 96.

Guidance from other circuit courts

In a leading Second Circuit case, that court commented on situations where a permit denial or a conditional approval would not constitute a substantial burden. Where a reviewing board is genuinely open to approving a revised proposal and the requested revisions were not economically infeasible or overly burdensome, no substantial burden should be found. Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338, 349 (2nd Cir. 2007). It explained:

Imagine, for example, a situation where a school could easily rearrange existing classrooms to meet its religious needs in the face of a rejected application to renovate. In such case, the denial would not substantially threaten the institution’s religious exercise, and there would be no substantial burden, even though the school was refused the opportunity to expand its facilities.

***Id.* This case illustrates that a municipality can request a smaller proposal and that the petitioners are obligated to show why an alternative proposal cannot meet its religious needs.**

In Vision Church v. Vill. of Long Grove, 468 F.3d 975, 984 (7th Cir. 2006), the plaintiffs challenged issuance of a conditioned special permit as imposing a substantial burden because the village did not approve a proposed 99,000-square foot religious complex. The proposed development was substantially larger than plans presented to the Village several years before and greatly exceeded the 55,000 square-foot floor area allowed by the underlying zoning. Since the conditions were based in municipal land planning goals and a complex meeting the maximum size limitations likely would have been approved, the court declined to find a substantial burden. *Id.* at 999. ***This case illustrates that the petitioners may be limited by reasonable size limitations without suffering a substantial burden.*** As the Seventh Circuit also stated, RLUIPA “is not meant to allow religious exercise to circumvent facially-neutral zoning regulations.”

Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro, 734 F.3d 673, 681 (2nd Cir. 2013).

In Grace United Methodist Church v. City of Cheyenne, 451 F.3d 643, 664 (10th Cir. 2006) the Tenth Circuit reaffirmed the principal that religious exercise must be sincerely held to obtain protections under RLUIPA and the First Amendment. However, based on the statute itself, such sincerely held religious belief need not be a “central” or “fundamental” tenant of belief. ***This case illustrates that the requested size of a proposal should be needed in order to accommodate a sincerely held religious belief.***

Note, it is not a substantial burden to require that a religious institution comply with local procedural requirements. San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024, 1035 (9th Cir. 2004) (“The City’s ordinance imposes no restriction whatsoever on College’s

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religious exercise; it merely requires College to submit a complete application, as is required of all applicants. Should College comply with this request, it is not at all apparent that its re-zoning application will be denied.”)

There are also many cases illustrating that neutral and generally applicable regulation that furthers thoughtful land use policy can support a compelling government interest. However, an analysis of this case law is not within the scope of this letter.

Summary

The collection of cases discussed above is not exhaustive, and every RLUIPA substantial burden case is extremely fact specific. Therefore, as the BZA considers the Proposal, it will be extremely important to consult with the City’s Legal Department, which can assist in applying case law to the facts of the Proposal.

In summary, however, the following points are respectfully offered for consideration:

- RLUIPA does not prohibit reasonable land use regulation that is applied equally to religious and secular uses.
- A permitting board must always be mindful and respectful of the proponent’s religious objectives and sincerely held religious beliefs. It should not opine on what is or is not religious exercise.
- Endeavor to understand why the Proposal is its current size and why a smaller proposal would burden its religious exercise.
- A municipality may consider the a proponent’s current needs, but is not required to accept speculation on what such needs might be in the future. *See Living Water Church of God v. Charter Twp. Meridian*, 258 Fed. Appx. 729, 738 (2007) (“The question before us here is whether the Township’s denial substantially burdens Living Water’s religious exercise now -- not five, ten or twenty years from now -- based on the facts in the record.”).
- If the BZA decides to condition an approval or deny the Proposal, it should describe the planning goals and public health and safety objectives its action is designed to achieve. It should also ensure that the same objectives could not be achieved by less restrictive means.
- If the Proposal is denied, the City should be open to a new proposal that addresses the City’s clearly stated concerns.

**APPENDIX 2 to Letter of June 10 2025 from KCNA to Cambridge BZA
per case BZA-1165941**

Response to BZA's Questions regarding Potential Occupancy Loads

The Petitioner claims that the KCNA Jewish members are “not Jewish”, and are unfamiliar with how Jewish institutions function in relation to their use of space. While our Jewish members are not regular members of the Petitioner’s community gatherings, they have a deep and long history with their own Jewish communities, at all levels, and this, of course, is not the business of the Petitioner. However, KCNA members have attended the Petitioner’s events, including in the past when the Petitioner’s group was much smaller, joining them for prayer to help meet their minyan requirement -- that is, joining the Petitioner’s morning service to get the number up to the 10 men required to pray collectively. We have been there for Chabad.

Occupancy Load Calculations from the Petitioner’s plans, using International Building Code loading factors – the basis for the Massachusetts Building Code -- demonstrate that **the proposed facilities can be legally occupied by as many as 1694 people, and should the Parsonage floors, which are considered non-residential, be renovated or built to be classroom space, the occupancy of the building would be 2119.** When there were 1000 people on our street for a single event, the police closed the street, and residents could not get to their homes. We are talking about double that number, as of right. (For details see the following page). Will this happen?

Consider:

First, the Petitioner has already held events on their property and in our streets, requiring the closure of the street, which they have proudly heralded in the Jewish Journal and on their own website as having been attended by over 1000 people. And even in the last BZA hearing they announced to you that their membership is currently well over 1000.

Secondly, the Petitioner already hosts larger scale Jewish holiday services and celebratory events in University spaces, off-site, because their current on-site facilities do not offer the capacity they desire and need for these events. However, the new facility will finally allow these much larger activities to move to their Banks Street properties.

And finally, in our first meeting on December 5 2023 with the Petitioner, their Architect presented how the designed flexibility and size of the new facility will not only handle current needs, but also vastly increase the Petitioner’s opportunity to host a much broader array of programming activities throughout the week, which they currently are unable to do.

While the Petitioner, in these meetings may “promise” to use the space in one way, this does not assure that it will not be used with greater capacity, frequency or use by themselves or by future leaders of the community.

Thus, we kindly request that the Board deny the variance based upon the facility’s oversize and increase in occupancy capacity.

KERRY CORNER NEIGHBORHOOD ASSOCIATION

APPENDIX 2 (continued): Potential Occupancy Loads

OCCUPANCY LOAD CALCULATION PER INTERNATIONAL BUILDING CODE
for Harvard Chabad Center for Jewish Life

June 10, 2025

Floor	Room	width (Feet)	depth (Feet)	area (SF)	SF per Person	occupancy per plans	parsonage as classrooms	notes or IBC use Categories
B	Program Space	35	35	1225	15	82	82	Assembly Unconcentrated
	Mikvah (women's)	30	46	1380	200	7	7	
	Mikvah (men's)	23	21	483	200	2	2	
	Storage (east)	17	7	119	20	6	6	available as alt. classroom
	Storage (north)	12	11	132	150	1	1	available as alt. office
	Bathroom, Coat Room	43	20	860	50	0	0	not counted
	Fitness Room	37	20	740	50	15	15	
	Subtotal area			4939				
1	Sanctuary/Lecture Hall	55	44	2420	7	346	346	Assembly: Concentrated Chairs
	Lobby/Living	43	40	1720	7	246	246	Assembly: Concentrated Chairs
	Area outside of doors into sanctuary	55	15	825	7	0	0	not counted
	Library	30	17	510	20	26	26	Classroom
	Bathroom	13	21	273	75	0	0	not counted
	Subtotal area			5748				
	Mezzanine Lounge	55	12	660	15	44	44	
	Office 1	12	17	204	150	1	1	
	Office 2	10	10	100	150	1	1	
	Bathroom	12	12	144	75	0	0	not counted
M	Balcony					0	0	
	Subtotal area			1108				
	Dining	55	63	3465	15	231	231	Assembly: Chairs and Tables
	Dining	35	25	875	15	58	58	Assembly: Chairs and Tables
	Private Dining	22	28	616	15	41	41	Assembly: Chairs and Tables
	Bathrooms	21	20	420	75	0	0	not counted
	Bathroom	20	10	200	75	0	0	not counted
	Kitchen	32	31	992	200	5	5	Industrial Kitchen
	Subtotal area			6568				
	Conference Room	30	28	840	20	42	42	Classroom
3	Classroom	25	20	500	20	25	25	Classroom
	Open Office	17	20	340	50	7	7	Business Area
	Open Office	22	28	616	50	12	12	Business Area
	Office 1	12	8	96	150	1	1	Business Area
	Office 2	12	8	96	150	1	1	Business Area
	Office 3	12	8	96	150	1	1	Business Area
	Office 4	10	12	120	150	1	1	Business Area
	Office 5	22	10	220	150	1	1	Business Area
	Office 6	12	18	216	150	1	1	Business Area
	Office 7	10	11	110	150	1	1	Business Area
	Office 8	10	11	110	150	1	1	Business Area
	Office 9	10	8	80	150	1	1	Business Area
	Office 10	10	20	200	150	1	1	Business Area
	Bathroom	8	8	64	75	0	0	not counted
	Bathroom	8	8	64	75	0	0	not counted
	Roof Terrace	70	8	560	7	0	0	not counted
	Subtotal area			3768				
4 S 4/S	Parsonage 1	68	55.5	3774	200	19	189	residential vs classroom (20 ilo 200)
	Parsonage 2 (Duplex: area x 2 for two flrs)	35	27	1890	200	9	95	residential vs classroom (20 ilo 200)
	Parsonage 3	68	55.5	3774	200	19	189	residential vs classroom (20 ilo 200)
	Subtotal area			9438				
	Roof Terrace: open air	40	43	1720	7	346	346	Assembly: Concentrated Chairs
	Roof Terrace: covered	25	28	700	7			
R	Subtotal area			1720				

SUBTOTAL OCCUPANCY LOAD

1599 95	2024 95
1694 per plans	2119 parsonage as classrooms

Note 4

TOTAL OCCUPANCY LOAD

TOTAL OCCUPANCY LOAD IF FULLY RESIDENTIAL

200

Note 5

NOTES

1. SF per Person is per 2021 IBC Occupancy Load standards
2. Area is measured from Petitioner's plans of Harvard Chabad Center for Jewish Life, dated May 12 2025
3. Circulation, Stairs, and Utility Spaces are not included
4. Petitioner's Furnishing Plans for Dining show a capacity of 1.29 greater than IBC's load factor
5. Residential calculation based on: 40,000 gsf / 200 gsf per person per IBC

KERRY CORNER NEIGHBORHOOD ASSOCIATION

APPENDIX 3 to Letter of June 10 2025 from KCNA to Cambridge BZA per case BZA-1165941

Lastly, KCNA remains sympathetic to the community members who have called in to support the Petitioner, and to the Petitioner, despite some of their members' inaccurate claims of KCNA being Anti-Semitic or NIMBY.

KCNA treasures and has supported the diversity of our community, and especially has appreciated the Chabad Community's religious home on Banks Street for the last 20+ years.

KCNA wants to see that community thrive, but with a sensitive balance between the Petitioner's interests and the residents' concerns. We seek development of a project with a reasonable scale of building, capacity and activities, comparable to its current operations for 250 congregants. And not the 1684-person capacity that the FAR variance would allow.

Since day one, December 2023, as outlined in a MEMO KCNA presented to Chabad (Attachment 1), we acknowledged, that,

- Chabad should be able to move the activities of their tent into a permanent and safe building; that they should be able to have a sanctuary and dining hall to serve the community; that they should have outdoor open space for required religious practice; and they should have corresponding supporting functions. Architects in our group even demonstrated how that could be reasonably accomplished with modest adverse impact on the neighborhood.
- We also offered that "If these recommendations [to create a project size that handles the capacity of the current Chabad community, and reduces or eliminates neighborhood disturbances] can be fully and appropriately absorbed in future plans, we hope to be able to support Harvard Chabad in the eventual permitting applications for this project."

Unfortunately, the Petitioner refused to enter into dialogue around the most critical issues of building size, capacity and neighborhood impact. Instead,

- After every single hearing with either the CHC or ZBA, the petitioner returned to the next meeting with an even larger structure, as they are tonight, and a refusal to negotiate with the neighbors, despite each board's request for reduction in project size and respectful communication with the neighborhood. As stated by the Petitioner to the Harvard Crimson, "If there are modifications to the project, that will only be to further enhance the project's ability to fulfill its mission," (July 8, 2024)
- They recently applied and received a Demolition Permit from the CHC based upon a significantly smaller project. And, per their current application, have no intention of bringing back this project for CHC review.
- At the conclusion of each and every hearing, the petitioner has dramatically and falsely accused, contrary to evidence, that the neighbors, 25% being Jewish, are Anti-Semitic and/or NIMBY.

KERRY CORNER NEIGHBORHOOD ASSOCIATION

- In the face of the ZBA's decision to deny the petitioner's variance request for significantly more FAR, they appealed the case to the Federal Court, falsely accusing discrimination by both the City and specific members of this Board.
- They have also proposed City wide zoning changes to eliminate restrictions on the size and scale of Religious Structures; to eliminate oversight by Boards they deem irresponsible (such as yours), and to eliminate need for engagement with neighbors whom they deem a nuisance (such as us).

Thus, in the face of the extreme expansion of the petitioner's project, before you tonight, it is hard to see it as anything other than retaliatory against the City, the ZBA and the neighborhood, just as the Federal Government is seeking to punish Harvard for their resistance to Federal demands.

As we have, since day one in 2023, we remain willing to support a modest building expansion by the petitioner on the Banks Street site to support its current capacity, we kindly ask that,

- 1) The Petitioner's community seek actual negotiation and balance with the BZA and KCNA on development that shows mutual respect for all parties.
- 2) The BZA provide the cooler heads to help guide a fair conclusion that benefits Chabad, its neighbors, and the City at large.

Appendix 4: Letter of June 10, 2025 from KCNA to Cambridge BZA
per case BZA 1165941

MEMORANDUM

DATE: December 22, 2023

TO: Rabbi Hirschy and Elkie Zarchi

FROM: Kerry Corner Neighborhood Association Members and Residents (per pg. 5)

CC: Cambridge Historical Commission

RE: **Recommendations for “Right Sizing” to Serve the “Greatest Public Interest”**
Harvard Chabad Center for Jewish Life

Based upon review of recent plans for the Harvard Chabad Center for Jewish Life it has been found that the Center's size, scale and operations is incompatible with the tranquil quality of life and historic nature of the Kerry Corner residential neighborhood. And specifically, it well exceeds numerous dimensional limitations governed by Cambridge Zoning Ordinance. Thus, to assist you in your endeavor, we offer the following recommendations for your consideration during the refinement of these plans. They seek to support Harvard Chabad through the **“Right Sizing” of the project to serve the “Greatest Public Interest”**, striking an appropriate balance between the needs of the three affected parties that comprise such “Public Interest”.

PUBLIC INTEREST #1: Harvard Chabad House Community

Harvard Chabad should be able to develop its 38-40, 48 Banks Street property to better support the successful functioning of its current programming activities serving the Harvard Jewish Student Community in a respectful manner conforming to City regulations and without detriment to its residential neighborhood. Specifically, to,

- **Replace the Community Gathering Tent**: Build new and permanent interior space to replace the temporary tent space and modestly expand dining capacity.
- **Expand Community Gathering Space**: Build lobby space, a modest sanctuary/lecture hall and child care room to avoid programming conflicts currently occurring in existing community dining spaces.
- **Expand and Enhance Gathering Support Spaces**: Build facility administration offices, kitchen, restrooms, elevators, trash rooms and egress elements associated with the programming of the Gathering Spaces.
- **Locate further “aspirational” activities in off-site Chabad properties**: New, rental and/or existing off-site properties can be utilized for a) a “Mikveh”; b) larger meeting and dining spaces needed for exceptionally large sized gatherings; and/or c) dedicated

conference/office/meeting/lounge spaces for expanded programming, without compromising the operation of the Community Gathering Spaces, above.

PUBLIC INTEREST #2: Kerry Corner Historic Residential Neighbors

Mitigation measures should be taken within the sizing, organization and administration of the Harvard Chabad Center expansion in order to reduce or ideally eliminate the “substantial detriment to the public good” currently experienced by neighborhood residents and visitors. Specifically,

- **Improve Pedestrian Safety in the Context of Heavy Traffic:** Dedicate on or off-street temporary parking spaces for delivery, staff, visitor, and/or daycare pick-up and drop-off, that eliminates the need for Chabad community and service vehicles to double park, park in the bike lane, or use residents’ driveways. Banks Street experiences high levels of traffic, particularly as it serves both local and regional vehicles traveling between Memorial Drive and Mt Auburn Street / Mass Avenue. The stopping of the above-mentioned vehicles creates back-ups, sidewalk congestion, jaywalking, and dangerous conditions for day care children, general pedestrians, and bicyclists trying to navigate the resulting congestion.
- **Develop a Parking Plan and Policy:** Address the specific parking needs of the Chabad congregants, administration, teachers and staff, particularly in the face of a) planned elimination of six (6) dedicated parking spaces at 38-40, 48 Banks Street, b) planned increase of seating capacities for the new Community Gathering Spaces, and c) needed avoidance of illegal patron parking caused by the improper use of Visitor Parking Permits; security parking; and/or the parking of cars within non-Chabad residential driveways.
- **Address Excessive Trash Build-up, Pick-up and the Resulting Rat Problem:** Provide a maintained on-site sealable interior trash room to control offending odors and continued proliferation of a rat population. Demonstrate a viable trash pick-up plan with a private commercial or public trash collection company that will a) service Chabad House more than once a week to avoid excessive trash build up, b) eliminate the dangerous and unsightly pile-up of trash cans left in the public way, c) avoid dangerous and noisy maneuvering of trash vehicles on Banks, and d) prohibit use of such service vehicles on Green Street.
- **Limit Noise Intrusions:** Eliminate the leakage of noise from a) evening programming of Chabad community gatherings and sidewalk socializing between the hours of 6 pm and 7 am, that otherwise have intruded on resident’s social and sleeping schedules (children and adults), by keeping all such activity indoors and acoustically isolated from nearby residences -- thus, an open roof deck should not be included in the project design.
- **Prohibit Green Street Usage:** Exclude use of Green street for planned servicing of Chabad due to danger from lack of turn around space, need for emergency vehicle and snow removal clearances, and maintenance of major drainage structure.

- **Eliminate Evening Light Intrusion**: Minimize all exterior general and security lighting and thoroughly shield them from intrusion on abutting properties -- in particular, bedroom windows.
- **Planning of Security Presence**: Keep the neighborhood fully abreast of the Harvard Chabad security plans that effect the public space of the Kerry Corner neighborhood, to coordinate protection of all parties. Current on-street parking of security is problematic.
- **Develop Rain/Roof Run-off Drainage Plan**: Demonstrate plans for the handling of current and potential site and street flooding around the Harvard Chabad property in a manner that also protects adjoining properties and doesn't overwhelm city storm drainage system.

PUBLIC INTEREST #3: Larger Cambridge Resident Community, and International Visitors

The current Harvard Chabad Center design dwarfs all other buildings within the historic Kerry Corner district -- with the exception of the Harvard Dormitories purposefully confined to Cowperthwaite Street during the 2006 rezoning -- thus making it an incompatible presence and dangerous precedent for future development in the neighborhood.

Rather the design should be developed more modestly to respect the historic "worker cottage" scale and protect the unique character of the Kerry Corner Neighborhood, as a "Cambridge Legacy". Specifically,

- **Protect 38 and 48 Banks Street**: Maintain and rehabilitate the "architecturally significant" residence (w/o ell), Move 48 Banks Street residence forward (w/o ell) to the Banks Street front yard set-back, as allowed by zoning. Rehabilitate the slate roof pattern that displays the original owner's advertising of his business as a roofing contractor.
- **Limit Location and Size of New Construction**: Limit building area and height to protect the scale and composition of the historic residential urban pattern of the neighborhood, with particular sensitivity to the rehabilitation of the "architecturally significant" 38-40 and 48 Banks street; thus minimizing the need for a Variance from the Cambridge BZA for added FAR. Specifically,
 - **Front Yard Set Back**: Locate all construction of expansion space four feet back from the rear of the relocated 48 Banks Street historic structure, except directly behind it, where the set-back could be reduced to zero feet without detriment.
 - **Rear and Side Yard Set Backs**: Meet the requirements of Cambridge Zoning Ordinance
 - **Building Height**: Limit the height to two above-grade stories, plus a mechanical attic.
- **Avoid Daylight Shading**: Exclude new dormers and other new building massing that adds daylight shadowing across both private abutters and adjoining public spaces

ILLUSTRATIONS OF DEVELOPMENT PLAN AND MASSING RECOMMENDATIONS

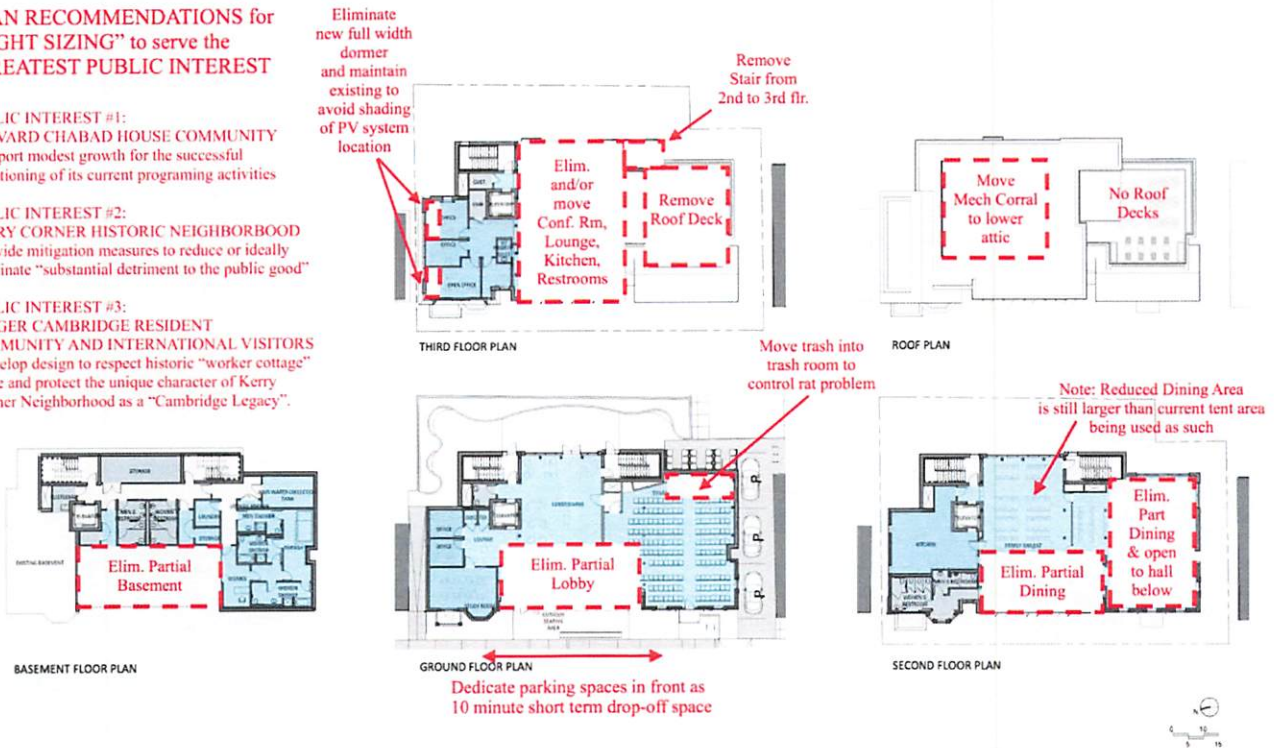
1) Plan Modifications per Recommendations for "Right Sizing"

PLAN RECOMMENDATIONS for "RIGHT SIZING" to serve the "GREATEST PUBLIC INTEREST"

PUBLIC INTEREST #1:
HARVARD CHABAD HOUSE COMMUNITY
- Support modest growth for the successful functioning of its current programming activities

PUBLIC INTEREST #2:
KERRY CORNER HISTORIC NEIGHBORHOOD
- Provide mitigation measures to reduce or ideally eliminate "substantial detriment to the public good"

PUBLIC INTEREST #3:
LARGER CAMBRIDGE RESIDENT COMMUNITY AND INTERNATIONAL VISITORS
- Develop design to respect historic "worker cottage" scale and protect the unique character of Kerry Corner Neighborhood as a "Cambridge Legacy".

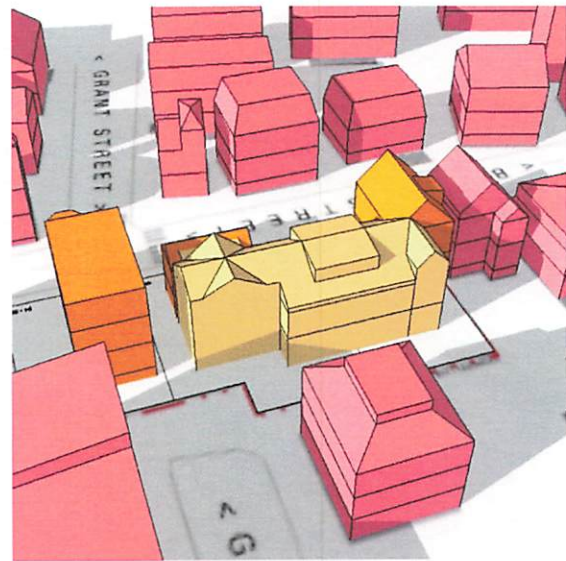


Harvard Chabad Center for Jewish Life
38, 40, 54 Banks Street
November 06, 2023

KERRY CORNER NEIGHBORHOOD ASSOCIATION
Redline notes and diagrams, December 22, 2023

BRUNER/COTT
ARCHITECTS

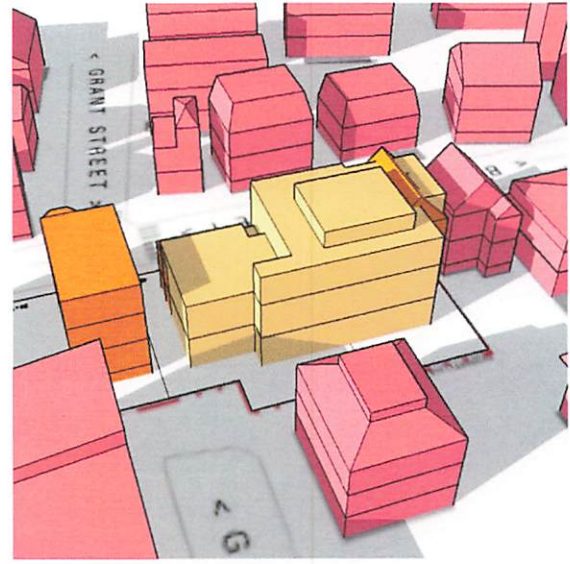
2) Building Massing Modifications per Recommendations for "Right Sizing"



LEGEND: Red= Existing Residential Orange= Existing Harvard Chabad Yellow= New Harvard Chabad Construction

Page 4

3) Excessive Building Massing per original Harvard Chabad Center Proposal, November 6, 2023



LEGEND: Red= Existing Residential Orange= Existing Harvard Chabad Yellow= New Harvard Chabad Construction

NEIGHBORHOOD PARTICIPANTS

These recommendations represent the collective concerns and requests of the Kerry Corner Neighborhood Association and residents of the Kerry Corner neighborhood, as follows,

- Reed Alexander and Doris Jurisson, 22 Banks Street, Cambridge, MA
- Lily Liu, 23 Banks Street, Cambridge, MA
- Hy and Berl Hartman, 28 Banks Street, Cambridge, MA
- Amy Wagers and Thomas Serwold, 30 Banks Street, Cambridge, MA
- Deborah Epstein and Alan Joslin, 36 Banks Street, Cambridge, MA
- David Wing and Gillain Diercks, 58 Banks Street, Cambridge, MA
- Sarah Almer and Avi Green, 66 Banks Street, Cambridge, MA
- Elizabeth Foote and Eric Thorgerson, 29 Surrey Street, Cambridge, MA
- Joan and Darman Wing, 701/703 Green Street, Cambridge, MA
- Pam and Jack Touloupoulos, 694-698-702 Green Street, Cambridge, MA
- Ray Desimone, 27-29 Putnum and Green Street, Cambridge, MA

If these recommendations can be fully and appropriately absorbed in future plans, we hope to be able to support Harvard Chabad in the eventual permitting applications for this project.

KERRY CORNER NEIGHBORHOOD ASSOCIATION

Appendix 5 to Letter of June 10 2025 from KCNA to Cambridge BZA
per case BZA-1165941

KCNA finds, in detail, "Substantial detriment to the public good for the following reasons: "

1. Pedestrian and cyclist Safety: Banks Street is a narrow one lane and one-way street, with a well-used bike lane across from a single-sided street parking lane. It often experiences high levels of traffic, particularly as it serves both local and regional vehicles traveling between Memorial Drive and Mt Auburn Street / Mass Avenue, especially at rush hour and when Memorial Drive is closed. The stopping of service and drop-off vehicles serving residents, and a significantly higher proportion serving the Petitioner, creates back-ups, sidewalk parking, parking in the bike lane, jaywalking, and dangerous conditions for pick-up and drop-off of day care children, as well as for pedestrians, motorists, and bicyclists trying to navigate the resulting congestion. Given the Petitioner's current design, pedestrian and cyclist safety will only decrease.



2. Parking: Petitioner claims that visitors and staff are not in need of on-site or off-site parking because they travel via public transportation and on foot. This is far from always the case. And the petitioner has offered no parking/traffic flow study to prove otherwise. As proposed, the Project will exacerbate current problems with parking and vehicular flow on Banks Street due to:



- i. Planned elimination of six (6) dedicated on-site parking spaces at 38-40 and 48 Banks Street which are currently filled beyond capacity during daytime hours by Petitioner's staff.
- ii. Planned increase of seating capacities for the new Community Gathering Spaces, and
- iii. Illegal parking by Petitioner's patrons, staff and/or security; parking involving the improper use of Visitor Parking Permits; parking in residential spaces by vehicles with no visitor or residential permits; and the parking of cars by the Petitioner's patrons, staff and/or security within non-Chabad residential driveways. All are already problems in the vicinity. These problems would be worsened by the proposed Project.

While the Petitioner offers to provide off-site parking for staff utilizing other properties, these have not been identified, nor is there any assurances that such spaces would be available throughout the life of the building, or following change of ownership or leadership.

Note, in image above, all on-site parking spaces are in full use, as well as the on-street space provided in front of the curb cuts.

3. Service/Loading: Petitioner has incorrectly summarized their GSF. New construction actually exceeds *both* 15% of existing GSF, and 10,000 GSF of new construction. Thus, the project needs a variance to eliminate the requirement for provision of "F" type off-street loading. Currently, the Petitioner's community and service vehicles double park, park in the bike lane, or within residents' driveways, as shown. The Petitioner claims that they do so no more than residents receiving standard package deliveries, but the amount of deliveries required by the Petitioner's current uses are far greater than residential levels. Most importantly, an off-street loading dock would be needed due to the increase in the Petitioner's dining room seating and addition of sanctuary space. Both will bring substantially larger and more frequent deliveries of food, equipment and supplies with cars and trucks, large and small -- only exacerbating the current situation in the absence of an off-street loading dock. The Petitioner's proposal to seek a dedicated "on-street" loading dock presents a substantial detriment to the public good in itself, as 1) it is not assured to be granted by traffic and parking; 2) it requires further loss of on-street parking; and 3) it would result in dangerous truck maneuvering and off-loading in the public way and proximate to young children in a daycare setting.



4. Street Closures: Although the petitioner says that they don't have large gatherings on Banks St, our experience is that on occasion, the Petitioner will invite the larger Jewish community to participate in events on Banks Street, a setting so small that 1000+ attendees recently filled and required the closure of Banks St by Cambridge police. With no notice, neighbors were restricted from driving in or out of their own homes, told by CPD to "come back later". As the Project further becomes the nucleus of an institutional/religious community, this type of neighborhood disturbance is likely to occur with greater frequency.



5. Trash: Current dining activities generate a significantly high volume of trash incomparable to the adjoining residential community, and the type of trash that attracts a significant rat population. Whereas most residents put out one trash can and one recycling can, Chabad puts out a dozen trash and recycling containers, stacked with plastic bags, which block the sidewalk, challenging pedestrians, and especially wheelchairs and strollers. The added dining capacity will only generate a greater volume of trash create and a greater disturbance to the public sidewalk from which it is serviced. The Petitioner's plans are inadequate to address these concerns because they show 1) an area for trash even smaller than current, 2) an open-air trash area which does not isolate them from rats, and 3) the lack of a clear path from trash storage, around tandem parking, to an inadequately sized area for trash to be placed for pick up.



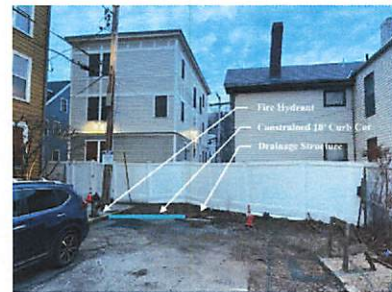
6. Security Lighting: Poorly placed and maintained security lighting currently spills off-site and into neighbor's bedroom windows. This is likely to only become more challenging with the new design.



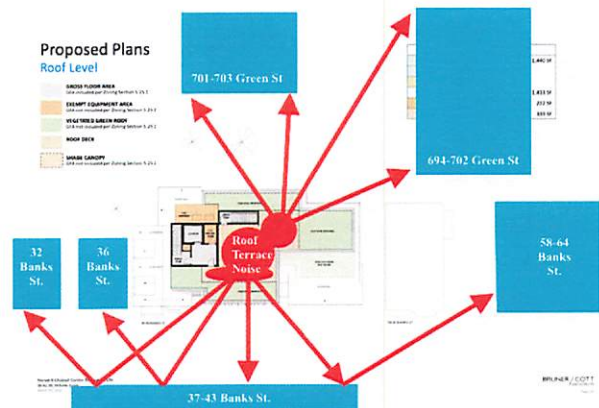
7. Architectural Lighting and Glazing: Because of the Petitioner's desire for their architecture to present itself as open and inviting, there are expansive areas of glazing facing both residential units across the street and rear abutters, which allow interior lighting at all hours of the night and morning to shine into these homes. If the Petitioner's project is built as proposed, these harms would become more detrimental to livability for neighbors in adjoining properties. Yellow rectangles in the adjoining elevations show areas of large glazing creating glare on public way and abutters.



8. Safety of Green Street: Petitioner proposes new site access off of Green Street for planned servicing of on-site tandem parking. Solution requires a Special Permit for the Tandem Parking. KCNA opposes this because 1) the Petitioner has no legal right to a curb cut, and 2) if such was granted, they are unable to provide a safe solution to ingress and egress maneuvering and turn around. For detail on such concerns, see *Enclosure 2: Full Rebuttal to Petitioner's Special Permit, April 8, 2024, attached*.



9. Noise: The Project includes a roof deck for social and ceremonial purposes. Its location, surrounded on all sides by abutting residential bedrooms, will produce acoustic intrusions throughout the neighborhood, particularly during evening hours. The claims by the Petitioner that roof deck planting and adjoining mechanical enclosures will contain noise generated on the roof deck does not conform to standard practice for engineered acoustic isolation, and would be insufficient to maintain sound levels at or below those allowed by City Ordinances.



Also, at the street level, it is common for students, after leaving the activities of the Petitioner, to linger along the sidewalks and socialize well into the evening. Their chatter carries through the neighborhood and will increase in frequency and volume as the number of attendees increases if Petitioner's appeal is granted.

10. Loss of Trees and Green Space: The Petitioner has exhibited a history of tree, shrub and ground cover removal in order to achieve greater congregating areas and parking. The excessive proposed building size would dramatically limit future opportunities for the Petitioner to reverse this trend. The green roof on the fourth floor, the only green open space, will be seen by and benefit only the Petitioner.
11. Shading of Solar Array area by Dormer Expansion: The Petitioner is expanding a dormer on the north side of 38 Banks Street. The dormer creates shading of the abutters roof in the only area available for the abutters solar array, thus diminishing its electrical capacity.

Pacheco, Maria

From: ALAN JOSLIN <ajoslin@icloud.com>
Sent: Wednesday, June 11, 2025 5:51 PM
To: Simmons, Denise; McGovern, Marc; Azeem, Burhan; Nolan, Patricia; Siddiqui, Sumbul; Sobrinho-Wheeler, Jivan; Toner, Paul; Wilson, Ayesha; Zusy, Catherine; City Council; City Clerk; Pacheco, Maria; Bayer, Megan
Cc: Alan Joslin
Subject: 250611 RE: Response to Lubavitch of Cambridge misrepresentation of RLUIPA
Attachments: 250611 RLUIPA Analysis.pdf

RE: Response to Lubavitch of Cambridge misrepresentation of **RLUIPA**

Dear Cambridge City Council, Members of the Board of Zoning Appeals and the Cambridge Solicitor's Office,

In an effort to better understand the Religious Land Use and Institutionalized Persons Act (42 U.S.C. Secs. 2000 cc et. seq.) ("RLUIPA") in the context of the Marasao zoning petition, and the BZA Case for Harvard Chabad Center for Jewish Life on 38-40, 48, and 54-56 Banks Street, Cambridge, MA, the Kerry Corner Neighborhood Associations (KCNA) has developed this resource through extensive and professional RLUIPA research.

KCNA notes that the Petitioner's current application to the BZA provides only **one** justification for the requested variance: requires "full approval" of its request. The research we provide in this document makes clear—**Lubavitch of Cambridge's assertion that it is entitled to full approval is not correct and is a misrepresentation of federal law.**

The City and BZA may impose reasonable size limitation on the Lubavitch of Cambridge (Petitioner) proposal without violating RLUIPA. Contrary to Petitioner's assertion, it is NOT entitled to automatic approval. Here we highlight several important points supported by the enclosed:

- ▪ RLUIPA "does not provide religious institutions with immunity from land use regulation."
- ▪ The onus is on the Petitioner to show that a BZA denial or conditional approval would substantially burden its sincerely held religious beliefs.
- ▪ Many cases explain that a religious institution is **not** entitled to build a project without size or other reasonable limitations.
- ▪ The BZA has the authority to request a smaller proposal without running afoul of RLUIPA.
- ▪ RLUIPA does NOT give religious institutions the right to circumvent to application process and or omit essential elements of a typical land use application.
- ▪ The BZA need not consider the Petitioner's religious needs at some indefinite point in the future or give credit to a speculative assertion that it requires almost unlimited capacity. Instead, it may consider the Petitioner's current needs and impose reasonable size limitations.

While we recognize that the threat of a lawsuit under RLUIPA is intimidating, we urge the City and the BZA to reject the Petitioner's unsupported assertion that a project on a smaller scale (less than the requested 4.4 times allowable FAR) substantially burdens the Petitioner's religious exercise.

To date the Petitioner has not demonstrated that:

1. Chabad could not serve their current and previously articulated needs of 250 community members on this site with a significantly smaller structure,
2. All program elements being added on this site by the petitioner in the current scheme are required for Chabad to function on this site, rather than simply a matter of preference or convenience for the religious group, and/or
3. Chabad could not find property elsewhere in the City that would meet their desire for provision of the newly added and/or expanded program spaces. As they currently own at least 12 properties across the City of Cambridge, we posit that some of the program elements could be on a different property close by.

Even if the Petitioner sought to demonstrate a substantial burden from FAR limits, the City of Cambridge would be able to show, as required by RLUIPA law, that its long-lived commitment to limit excessive FAR for religious and educational institutions within residential neighborhoods advances a “compelling governmental interest” using the least restrictive means possible. Specifically, it serves to hold back highly aggressive institutional development, in a City dominated by such institutions from reducing and disturbing its vital residential neighborhood districts.

Thus, we kindly ask that the City to reject the Petitioner’s zoning amendment and the BZA reject the Petitioner’s variance for their project on Banks Street, or at a minimum, request that the Petitioner work with the BZA and the neighborhood to develop a proposal that is an appropriate size for the neighborhood and that can accommodate the Petitioner’s religious exercise. We also request that the BZA,

1. Allow the Federal lawsuit against the City of Cambridge and select members of the ZBA Board, be concluded in the Federal and Land Courts before acting on this proposal, and
2. Allow the City Council’s legal office to complete their review of legal implications of zoning revisions for Institutional use that will be consistent with the requirements of the Dover Amendment, RLUIPA law and City Planning guidance.

Please remember that opposition is not a matter of aesthetics, but one of intensity of use that could hurt that entire City of Cambridge. Please find our research memorandum on the next page.

Respectfully, Alan Joslin

on behalf of the Kerry Corner Neighborhood Association

Attachment: RLUIPA Research

KERRY CORNER NEIGHBORHOOD ASSOCIATION

Board of Zoning Appeal (BZA)
831 Massachusetts Avenue
Cambridge, MA

RE: **Response to Lubavitch of Cambridge misrepresentation of [RLIUPA](#)**

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KERRY CORNER NEIGHBORHOOD ASSOCIATION

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Respectfully, Alan Joslin

on behalf of the Kerry Corner Neighborhood Association

Attachment: RLUIPA Research

RLUIPA RESEARCH

Given the quoted statement from the petitioner's application, this memorandum focuses on the meaning of a "substantial burden." In RLUIPA cases, **the initial burden is on the Proponent to show that a regulation imposes a substantial burden.** *Roman Catholic Bishop v. City of Springfield*, 724 F.3d 78, 94 (2013). If a substantial burden is found, then it is only justified if is in furtherance of a compelling governmental interest and the least restrictive means of furthering such interest.

MUNICIPALITIES MAY REGULATE RELIGIOUS USES WITHOUT IMPOSING A SUBSTANTIAL BURDEN.

A "substantial burden" is not defined by statute and the U.S. Supreme Court has not defined the meaning of a RLUIPA substantial burden in the land use context. While there is no uniform definition of a substantial burden, the case law is clear: **Reasonable regulation of a religious institution is not a per se RLUIPA violation.** Whether land use regulation imposes a substantial burden is a fact-specific inquiry.

Substantial burden and the First Circuit

While the First Circuit has not adopted a specific test to evaluate whether land use regulation imposes a substantial burden, it has clearly ruled **"that RLUIPA does not mean that any land use restriction on a religious organization imposes a substantial burden...."** *City of Springfield*, 724 F.3d at 96 (emphasis original). As noted in RLUIPA's congressional record, "This Act does not provide religious institutions with immunity from land use regulation" *Id. quoting 146 Cong. Rec. S7776* (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy).

In *Roman Catholic Bishop v. City of Springfield*, the Court considered an appeal by the Roman Catholic Bishop of Springfield ("RCB") regarding the designation of a historic district over Our Lady of Hope Church. The Court found that enactment of the district itself was not a substantial burden. In reaching the conclusion, the Court provided a non-exclusive summary of factors that may indicate imposition of a substantial burden:

- Even if the review process appears neutral on its face, it may not have a predetermined outcome.
- Regulation cannot be "imposed on the religious institution arbitrarily, capriciously, or unlawfully."
- A misunderstandings RLUIPA can indicate misapplication of the law—City officials have an obligation to understand the parameters of RLUIPA and other legal protections.
- "[A] government may not single out for special benefit or burden a religious group or institution solely because of its religious beliefs."
- The imposition of some expenses on the proponent does not automatically constitute a substantial burden.

City of Springfield, 724 F.3d at 96-98. ***The Springfield case illustrates that, in the First Circuit, courts will look to the totality of the circumstances when considering a substantial burden claim.***

The First Circuit “applie[s] a ‘common-usage understanding’ of . . . burden [as] ‘something . . . oppressive or worrisome,’ while something ‘substantial’ is . . . ‘significantly great.’” St. Paul’s Found. v. Baldacci, 540 F. Supp. 3d 147, 154 (2021) (quoting Signs for Jesus v. Town of Pembroke, NH, 977 F.3d 93, 111 (1st Cir. 2020)).

In other words, while a burden need not be “disabling to be substantial,” the onus is on a RLUIPA plaintiff to demonstrate why a land use regulation oppresses or significantly impedes religious exercise. City of Springfield, 724 F.3d at 96.

Guidance from other circuit courts

In a leading Second Circuit case, that court commented on situations where a permit denial or a conditional approval would not constitute a substantial burden. Where a reviewing board is genuinely open to approving a revised proposal and the requested revisions were not economically infeasible or overly burdensome, no substantial burden should be found. Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338, 349 (2nd Cir. 2007). It explained:

Imagine, for example, a situation where a school could easily rearrange existing classrooms to meet its religious needs in the face of a rejected application to renovate. In such case, the denial would not substantially threaten the institution’s religious exercise, and there would be no substantial burden, even though the school was refused the opportunity to expand its facilities.

***Id.* This case illustrates that a municipality can request a smaller proposal and that the petitioners are obligated to show why an alternative proposal cannot meet its religious needs.**

In Vision Church v. Vill. of Long Grove, 468 F.3d 975, 984 (7th Cir. 2006), the plaintiffs challenged issuance of a conditioned special permit as imposing a substantial burden because the village did not approve a proposed 99,000-square foot religious complex. The proposed development was substantially larger than plans presented to the Village several years before and greatly exceeded the 55,000 square-foot floor area allowed by the underlying zoning. Since the conditions were based in municipal land planning goals and a complex meeting the maximum size limitations likely would have been approved, the court declined to find a substantial burden. *Id.* at 999. ***This case illustrates that the petitioners may be limited by reasonable size limitations without suffering a substantial burden.*** As the Seventh Circuit also stated, RLUIPA “is not meant to allow religious exercise to circumvent facially-neutral zoning regulations.”

Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro, 734 F.3d 673, 681 (2nd Cir. 2013).

In Grace United Methodist Church v. City of Cheyenne, 451 F.3d 643, 664 (10th Cir. 2006) the Tenth Circuit reaffirmed the principal that religious exercise must be sincerely held to obtain protections under RLUIPA and the First Amendment. However, based on the statute itself, such sincerely held religious belief need not be a “central” or “fundamental” tenant of belief. ***This case illustrates that the requested size of a proposal should be needed in order to accommodate a sincerely held religious belief.***

Note, it is not a substantial burden to require that a religious institution comply with local procedural requirements. San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024, 1035 (9th Cir. 2004) (“The City’s ordinance imposes no restriction whatsoever on College’s

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religious exercise; it merely requires College to submit a complete application, as is required of all applicants. Should College comply with this request, it is not at all apparent that its re-zoning application will be denied.”)

There are also many cases illustrating that neutral and generally applicable regulation that furthers thoughtful land use policy can support a compelling government interest. However, an analysis of this case law is not within the scope of this letter.

Summary

The collection of cases discussed above is not exhaustive, and every RLUIPA substantial burden case is extremely fact specific. Therefore, as the BZA considers the Proposal, it will be extremely important to consult with the City’s Legal Department, which can assist in applying case law to the facts of the Proposal.

In summary, however, the following points are respectfully offered for consideration:

- RLUIPA does not prohibit reasonable land use regulation that is applied equally to religious and secular uses.
- A permitting board must always be mindful and respectful of the proponent’s religious objectives and sincerely held religious beliefs. It should not opine on what is or is not religious exercise.
- Endeavor to understand why the Proposal is its current size and why a smaller proposal would burden its religious exercise.
- A municipality may consider the a proponent’s current needs, but is not required to accept speculation on what such needs might be in the future. *See Living Water Church of God v. Charter Twp. Meridian*, 258 Fed. Appx. 729, 738 (2007) (“The question before us here is whether the Township's denial substantially burdens Living Water's religious exercise now -- not five, ten or twenty years from now -- based on the facts in the record.”).
- If the BZA decides to condition an approval or deny the Proposal, it should describe the planning goals and public health and safety objectives its action is designed to achieve. It should also ensure that the same objectives could not be achieved by less restrictive means.
- If the Proposal is denied, the City should be open to a new proposal that addresses the City’s clearly stated concerns.