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April 12, 2018

Hon. Vince Jarboe, Chair
The Members of the Louisville Metro Planning Commission
c/o Joel Dock, Planner II
Louisville Division of Planning and Design Services
444 South Fifth Street, 3rd Floor
Louisville, Kentucky 40202

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Re: Case No. 17ZONE1031
1576 Cherokee Road
W. Earl Reed III, Applicant
Response to April 10, 2018 Letter of Randall A. Strobo

Dear Mr. Chairman and Members of the Commission:

We are attorneys for the Applicant, W. Earl Reed III.

The Applicant respectfully responds to Mr. Strobo's April 10, 2018 letter (the "Strobo letter") to the Planning Commission, as set forth below.¹

I have summarized the reasons in Mr. Strobo's letter that form the basis of the opposition. The summary of Mr. Strobo's arguments are in **bold**, followed by the Applicant's responses, each of which is indicated by an arrow.

Much of Mr. Strobo's letter makes reference to the August 3, 2017 Preliminary Staff Report. This Preliminary Staff Report was revised on January 25, 2018 at LD&T. Mr. Strobo makes no mention of the January 25, 2018 Staff Report. Moreover, the August 3, 2017 Preliminary Staff Report was prepared *prior to the time* the Applicant *reduced* the proposal from 100 feet and 7 stories to 76-feet in height and 6-stories.

Here, in sequence, are the arguments contained in the Strobo letter in **bold**, together with the Applicant's responses.

1. The Neighbors are not opposed to redeveloping this parcel, but are opposed

¹ Mr. Strobo represents three (3) neighbors: Ed Henson, Tom Cooper and Kevin Waldron.

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to a development with this scale, height and bulk.

- The proposed building at 1576 Cherokee Road (the “Subject Site”) is no wider on the lot than is the present 4-plex, which has a 10-foot side yard adjacent to 1572 Cherokee Road and a 14-foot side yard adjacent to 1572 Cherokee Road.
- The proposed height, at 76-feet, is only 2-1/2 stories taller than the roofline of both the single-family residence at 1572 Cherokee Road and the Bonnycastle Condominium building at 1578 Cherokee Road.
- The proposed building is not significantly closer to Cherokee Road than the present 4-plex on-site. It will be 9-feet closer to the street; the front of the building will remain 15-feet behind the front of the adjacent single-family house at 1572 Cherokee Road. **All building setbacks are within the setback range established for both the R-7 and R-8A zones in the Traditional Neighborhood Form District.**

2. More than one hundred forty (140) Bonnycastle Neighborhood residents have signed petitions to oppose the applications.

- It is impossible to tell when the persons signing the petition did so. In response to neighborhood concerns, the application was amended from a 100-foot tall, 7-story building to a 76-foot tall, 6-story building together with significant design changes to “soften” the appearance of the building. There is no way to determine from the face of the petitions whether the signers opposed the former proposal or the present proposal.

3. The Bonnycastle Homestead Association (“BHA”) has adopted a resolution to oppose the applications.

- The BHA adopted its December 12, 2017 resolution because it is opposed, on its face, to “any height variance.” The Applicant respectfully states that the BHA resolution expresses a rigid and overly restrictive view of the intent of the Bonnycastle Plan as expressed to us by the one or more of the original drafters of the Bonnycastle Plan.
- The primary concern expressed by the BHA is that the grant of the approvals would create a precedent that could lead to additional multi-family buildings. That is not true, and the Bonnycastle Neighborhood Plan speaks directly to this issue. The Plan advocates preserving the Cherokee Road Corridor by

maintaining the (present) balance of single family and multi-family uses in the Corridor. [P. 8.] The proposal preserves the Corridor because it does not seek to convert a single-family dwelling to multi-family.

4. The Neighbors are concerned that BLASTING will be required to excavate the bedrock from the basement level.

- The enclosed April 12, 2018 letter from Michael C. Ronayne, P.E., Chief Engineer of GEM Engineering, Inc. states that based on its geo-technical engineering study of the site, “we do not anticipate that mass rock excavation and/or blasting would be necessary.” The letter further states that some limited rock excavation may be necessary utilizing hammers, hoe-ram or similar equipment.

5. The variance application should be DENIED. A variance to allow the building to be three stories and thirty-one feet taller than the allowable limit (more than 68% taller than what is currently allowed) is incompatible with the neighborhood and incompatible with the statutorily required factors required to grant a variance.

5.A. There are no special circumstances justifying the variance.

- The SPECIAL CIRCUMSTANCES justifying the height variance are found in the Comprehensive Plan:

The proposed density of the development is 24 dwelling units per acre, which is in the High Density category established by the Comprehensive Plan.²

Community Form Guideline 1 B.2. “Traditional Neighborhood” states in relevant part: “[H]igher density uses are encouraged to be located in centers or **near parks**...” The location of this property on Cherokee Road immediately opposite Cherokee Park constitutes the “special circumstance” justifying the height variance.

5.B. The strict application of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

² High Density: Defined as greater than 12 up to 35 dwelling units per acre.



- The strict application of the regulation would deprive the Applicant of using the property for a higher density use as permitted by the Comprehensive Plan, which would deprive the Applicant of the reasonable use of his land and would create an unnecessary hardship on the Applicant.

5.C. The circumstances [giving rise to the variance] are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

- The circumstances giving rise to the variance are the immediate proximity of the site to Cherokee Park, advocating a high density development at that location.

6. A 76-foot tall, 40,250 sq. ft., and 1.9 FAR building is incompatible with the neighborhood. Planning Staff's own Preliminary Report (Revised 8/3/17) states the development is "incompatible with the neighborhood."

- The present 76-foot tall proposal did not even exist at the time the 8/3/17 Staff Report was prepared. Hence, the Planning Staff did not determine that the development was incompatible with the neighborhood.
- The "Shadow Study" submitted by the Applicant (enclosed) demonstrates that the proposed building will impact only one building – a single-family house at 1572 Cherokee Road. Even this house is not impacted by building shadows during the summer months when residents typically enjoy their homes and yards.
- Contrary to the Strobo letter, the "Shadow Study" also demonstrates that the building will have **no** shadow impact on the Bonnycastle Condominium building at 1578 Cherokee Road, the Henson home at 2335 Bonnycastle Avenue, or other residences listed as being affected in the Strobo letter.
- The Strobo letter confuses the concepts of "public open spaces" and "public realm." Public open spaces are dedicated public areas such as parks. This concept does not apply to this application. A "public realm" is the area of a lot in the Traditional Form District between the public right-of-way and the front of the principal structure. The Applicant has indeed "activated" the public realm of the lot by providing a 1,000 square foot Courtyard area, similar to the public realm area of The Dartmouth.
- The enclosed traffic study prepared by Accurus Engineering demonstrates that the predicted trip generation caused by the 12-unit condominium development will be 10 vehicle trips during the AM peak hour and 10 vehicle trips during

the PM peak hour. Because the existing 4-plex generates 6 vehicle trips during each of the AM and PM peak hours, the net impact is an additional 6 vehicle trips. The trip generation as a result of this development is an insubstantial impact to the street and alley network.

7. A 76-foot tall, 40,250 sq. ft., and 1.9 FAR building is incompatible with Louisville's Cornerstone 2020 Comprehensive Plan ("Comp. Plan"), and is incompatible with the Bonnycastle Neighborhood Plan.

- During the month of January and the winter months the single-family house at 1572 Cherokee Road will be variably impacted by the proposed building's shadow. The winter months are that period of the year when there is less sunlight than during the warmer months. There is some shadow impact to this house in the spring but no impact in the summer.
- At no time of the year will the proposed building impact sunlight to the Henson home at 2335 Bonnycastle Avenue or to Bonnycastle Condominium building at 1578 Cherokee Road.
- The Strobo letter mis-reads the Bonnycastle Plan with reference to the protection of Cherokee Road, Bonnycastle's "one-of-a-kind-asset." Although the Strobo letter contends that Bonnycastle Plan requires that "the existing façade of the structure should be maintained," P. 8 of the Bonnycastle Plan makes clear that façade preservation applies ONLY to the conversion of single family homes to multifamily, not to multi-family development in which the number of units simply increases from 4 to 12.
- Community Form Guideline 1.B.2 requires the preservation of existing buildings "if the building design is consistent with the predominant building design in [the] neighborhood." The existing 4-plex on the site is a building constructed in 1959 – well after most construction in Bonnycastle neighborhood, and the characteristic of the 4-plex is primarily suburban, not the predominant neighborhood building design.
- The proposed condominium building will not block views to and from the Cherokee Park viewshed. Because the building has been designed by Joseph & Joseph Architects, and as has been made apparent from the renderings submitted, the proposal will enhance the historic integrity and fabric of Cherokee Road.

8. The scale and bulk, especially in the form of height and depth of the proposed building is unlike any other building in the vicinity.

- This paragraph of the Strobo letter is simply wrong. The proposed building, at 76-feet tall, is 36 feet shorter than the Park Grande at 1604 Cherokee Road.

The Commodore – situated only two blocks from the Subject Site -- earned special mention in the Bonnycastle Plan. Referring to The Commodore, the Plan states on P. 12:

“Most Bonnycastle residents view this high-rise condominium as a prime representation of the character of the neighborhood. Its architecture is outstanding, the entrance off Bonnycastle Avenue and the garden at the rear of the property represent some of the best applications of landscape architecture, and **the building itself is certainly representative of the broad range of housing types available.**” [Emphasis added.]

9. The approval of the application for the zone map amendment would constitute unlawful “spot zoning.”

- Approval of the zone change for Cherokee Springs would not constitute spot zoning. The proposal is for a use – a height, bulk and scale – that the Comprehensive Plan provides is appropriate for an area adjacent to Cherokee Park.³
- “The real evil of spot zoning consists in the reclassification of a site for a use not consistent with the character of the neighborhood or area; the evil is not in the preference of one lot owner over another in the selection of the particular site for a use appropriate to a neighborhood or area.” *Wells v. Fiscal Court*, 457 S.W. 2d 498, 500 (Ky. 1970).
- This parcel will not be the only parcel in the area zoned R-8A. The Willow Terrace (1416 Willow Avenue) and The Dartmouth (1412 Willow Avenue) are both zoned R-8A. Moreover, The Commodore (2140 Bonnycastle Avenue – only 2 blocks from the Subject Site), is zoned OR-3. The building at 2111 Eastern Parkway, although zoned R-5B and R-6, would require R-8A if it were rezoned today.

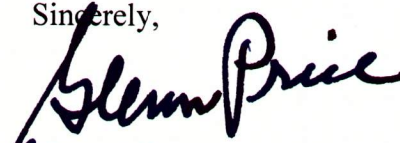
³ Comprehensive Plan Objective C3.2 “Traditional Neighborhood Districts” states, in relevant part, “The objectives governing traditional neighborhoods shall include:(b)...**Appropriate locations for larger scale multi-family developments include land adjacent to parks....**”; Comprehensive Plan Community Form Guideline I.B.2 states in relevant part: “....**[H]igher density uses are encouraged to be located in centers or near parks....**” [Emphasis added.]

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For the foregoing reasons, and for the reasons previously stated by the Applicant and which will be presented at public hearing, the proposal conforms with applicable sections of KRS Chapter 100, the Land Development Code, the Comprehensive Plan, and the Bonnycastle Plan, and the proposal should be approved.

Sincerely,



Glenn Price

Enclosures

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April 12, 2018

Joseph and Joseph Architects
550 South 4th Street
Louisville, KY 40202

Attention: Cash Moter, AIA

**Subject: Rock Soundings Report: Revision 2
Proposed Cherokee Springs Condominiums
1576 Cherokee Road
Louisville, Kentucky
GEM Project No.: G-4701**

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Dear Mr. Moter:

On July 14, 2016, GEM Engineering, Inc. (GEM) drilled 10 soundings for the proposed residential building with full basement for car parking at 1576 Cherokee Road in Louisville, Kentucky. These services were provided by your authorization and in general accordance with GEM proposal GP-6244 dated June 28, 2016. The approximate sounding locations are shown on the attached "Sounding Location Plan." Sounding S-7 was moved from its initially proposed location due to the likely presence of utilities. The sounding refusal depths are shown below:

| Sounding | Depth (feet) |
|-----------------|---------------------|
| S-1 | 13.2 |
| S-2 | 10.7 |
| S-3 | 12.0 |
| S-4 | 25.3 |
| S-5 | 12.1 |
| S-6 | 16.7 |
| S-7 | 24.3 |
| S-8 | 13.0 |
| S-9 | 16.0 |
| S-10 | 24.2 |

According to the Kentucky Geological Survey, the underlying bedrock formations consist of the Sellersburg and Jeffersonville Limestones. These formations have a high potential for karst features and solution weathering, creating the potential for a highly variable limestone surface. Ten feet of rock was cored at sounding S-8 to confirm and evaluate the limestone unit. The material cored at S-8 consisted of gray, fairly continuous, thin to thick bedded, slightly weathered, hard limestone.

The proposed structure can be supported by shallow foundations bearing on competent limestone bedrock with an allowable bearing pressure of 5,000 pounds per square foot. The recommended minimum width for continuous footings is 18 inches and the minimum dimension for spread footing is 24 inches. The bearing conditions should be evaluated by GEM at the time of construction and to evaluate the variability in the rock surface. Groundwater is commonly present at the soil/rock interface and drainage system is recommended below the basement floor.



We understand that the basement level floor would be about 9' below existing grades. Foundations would extend several feet below that level. Based on the sounding refusal depths, we do not anticipate that mass rock excavation and/or blasting would be necessary. With any limestone formation there will be peaks and valleys in the rock surface and some limited rock excavation with hammers, hoe-ram, or other such equipment may be required.

Due to the irregularity of the bedrock surface encountered during this exploration, deep limestone slots resulting from solution weathering are likely present on this site. Significant slots may require removal of the soil to expose the limestone surface. Depending on the location, the slots may require concrete backfill in foundation areas or a granular backfill in floor slab areas to provide a level surface.

Please notify us if you have any questions concerning this report, or if you need any additional information about the sounding results.

Sincerely,
GEM Engineering, Inc.

Michael C. Ronayne, P.E.
Chief Engineer

Attachment: Sounding Location Plan

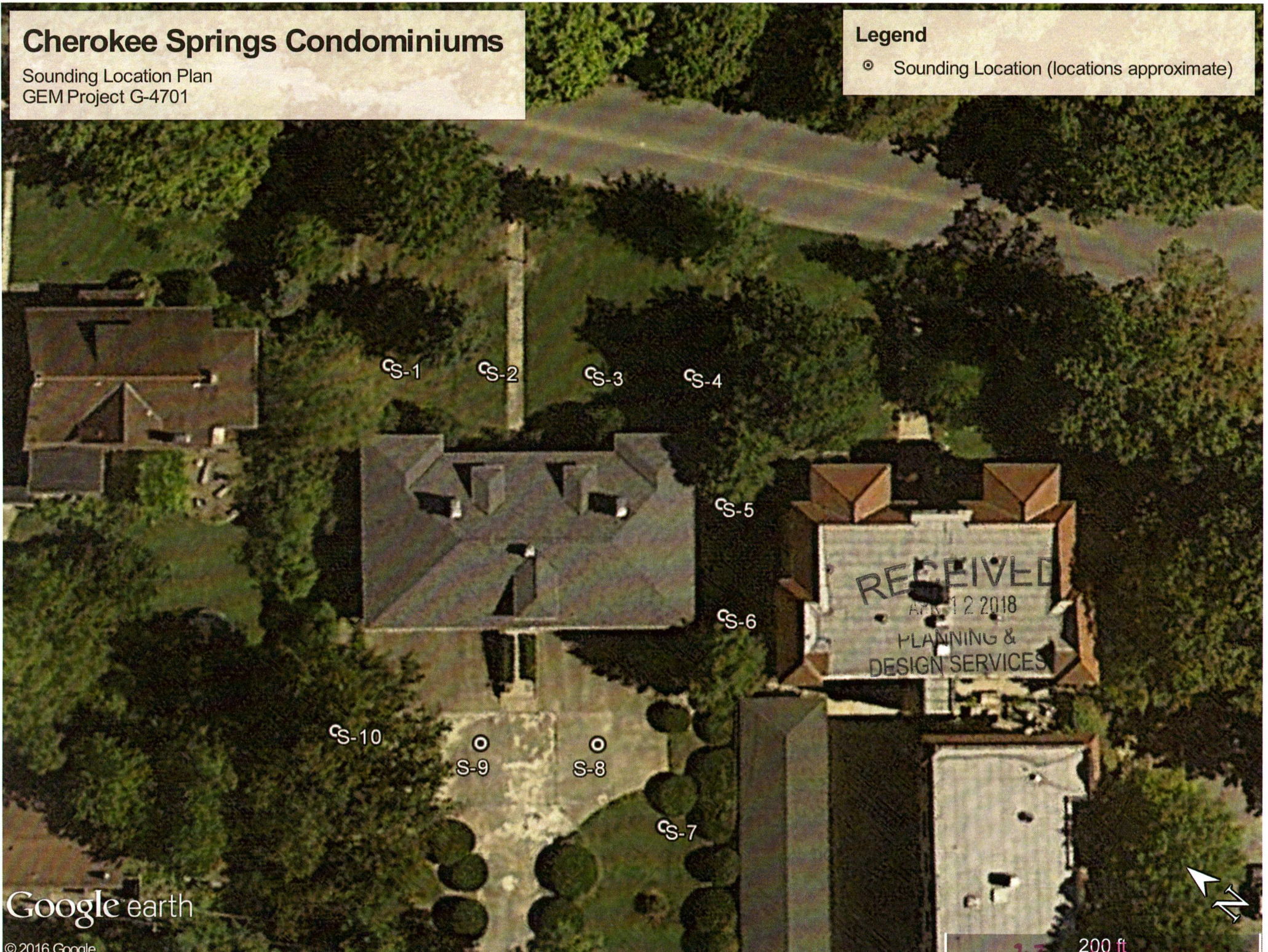
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Cherokee Springs Condominiums

Sounding Location Plan
GEM Project G-4701

Legend

⊙ Sounding Location (locations approximate)



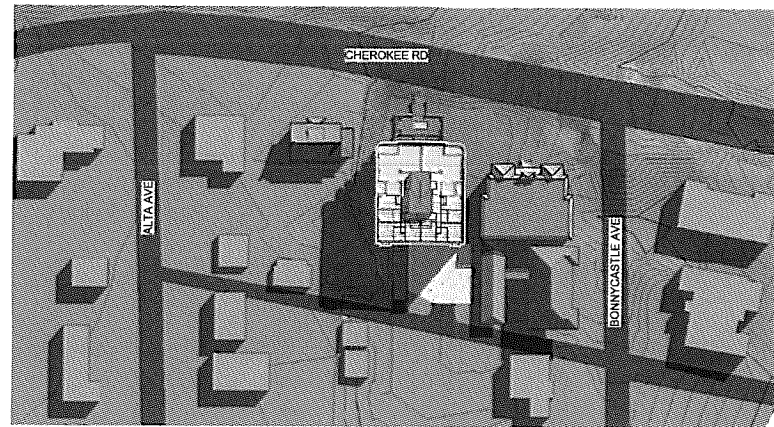
Google earth

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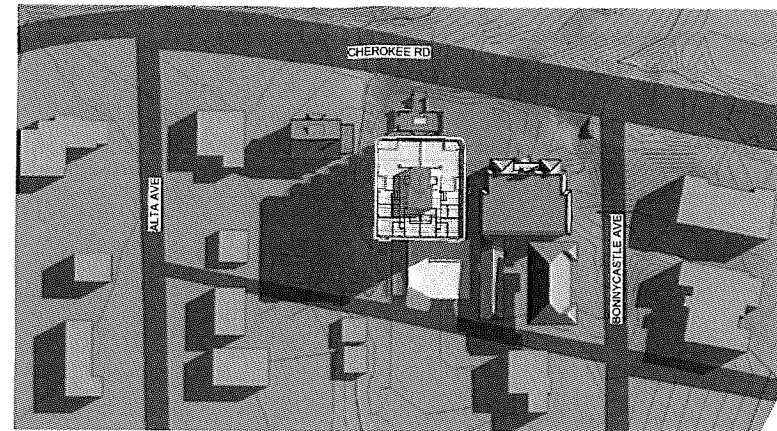
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1 Shadow Study - January 10am
AX1



4 Shadow Study - June 10am
AX1



7 Shadow Study - March/Sept 10am
AX1



2 Shadow Study - January Noon
AX1



5 Shadow Study - June Noon
AX1



8 Shadow Study - March/Sept Noon
AX1



3 Shadow Study - January 2pm
AX1



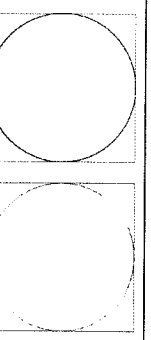
6 Shadow Study - June 2pm
AX1



9 Shadow Study - March/Sept 2pm
AX1

REVISIONS

| COMM | DATE | REVISION |
|-------|---------|----------|
| A7215 | 3/22/18 | Author |
| | | In HSE |
| | | Designer |
| | | DATE |



A7215 - CHEROKEE SPRINGS

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