

*Preliminary Consultation*  
**MONTGOMERY COUNTY HISTORIC PRESERVATION COMMISSION**  
**STAFF REPORT**

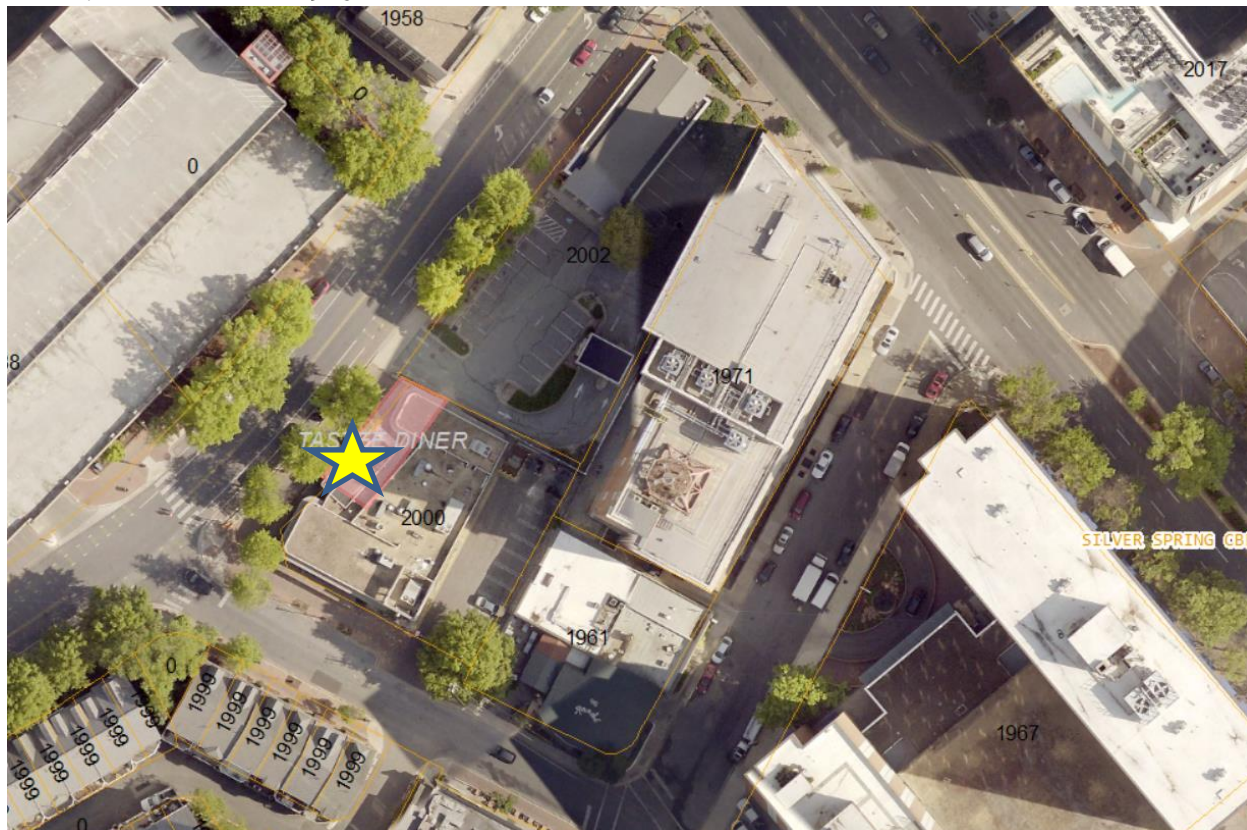
<b>Address:</b>	8601 Cameron St., Silver Spring	<b>Meeting Date:</b>	8/16/2023
<b>Resource:</b>	Individually Listed Master Plan Site (Tastee Diner #36/13)	<b>Report Date:</b>	8/9/2023
<b>Applicant:</b>	8676 Georgia Ave., LLC Stacy Silber, Agent	<b>Public Notice:</b>	8/2/2023
<b>Review:</b>	Preliminary Consultation	<b>Staff:</b>	Dan Bruechert
<b>Proposal:</b>	New Construction and Building Relocation		

**STAFF RECOMMENDATION**

Staff recommends the applicant make any revisions recommended by the HPC and return for a second Preliminary Consultation.

**ARCHITECTURAL DESCRIPTION**

**SIGNIFICANCE:** Individually Listed Master Plan Site #36/13, Tastee Diner  
**STYLE:** Art Moderne  
**DATE:** 1946



*Figure 1: The Tastee Dinner’s environmental setting comprises the four walls of the original diner building. It is*

*located on the east side of Cameron Street in downtown Silver Spring.*

From *Places from the Past*:

“The Silver Spring Tastee Diner is an important example of the machine-expressive Art Moderne style and is one of the few historic diners left in the State of Maryland. The structure is a classic example of vernacular commercial architecture based on the form and styling of sleek, modern railroad cars. The exterior surface of porcelain enamel has rounded corners trimmed with curved bands of stainless steel wrapping around the diner’s streamline form. A continuous band of ribbon windows flows across the front and sides. Jerry O’Mahoney, Inc. constructed the diner at its Elizabeth, N.J. factory and shipped it to Silver Spring in two sections. In 2000, the diner was moved from its original site at the northwest corner of Georgia and Wayne Avenues to its present location. The Tastee Diner is the only historic diner in the county exhibiting its original railroad car design, and is one of only a dozen pre-1960 diners known to exist in Maryland.”

## **PROPOSAL**

The applicant proposes to demolish the non-historic building additions; relocate the diner building; and construct a multi-use high-rise, incorporating the diner building into the ground floor.

## **APPLICABLE GUIDELINES**

Proposed alterations to individual Master Plan Sites are reviewed under Montgomery County Code Chapter 24A (Chapter 24A) and the *Secretary of the Interior’s Standards for Rehabilitation*.

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features, which convey its historical, cultural, or architectural values.

From the Amendment to the Master Plan for Historic Preservation creating the Tastee Diner Individual Master Plan Site

- The Tastee Diner was transported to and assembled on its current site in 1946, and is a very good example of an early 20<sup>th</sup> century diner.
- The diner building (excluding concrete block appendage, which was added later) features an exterior surface of porcelain enamel with wraparound bands of trim on the front section, and stainless steel detailing.
- Diners are a classic vernacular commercial building form, and are representative of the types of “roadside” architecture which sprang up in the United States in the 1930s and 1940s, as a direct result of the increasingly mobile, car-oriented society of the period.
- The diner building itself is an established visual feature which merits preservation even though the concrete block appendage attached to it is of no visual or historic significance. The concrete block appendage is not included in the designation.
- The diner is located on a portion of the property intended for redevelopment as a part of the Silver Spring Urban Renewal project. Since the diner building is a transportable, roadside structure by design and intent, it would consistent with its historic designation for the diner building to be relocated to another suitable site in the Silver Spring CBD, which is central and accessible, with adequate parking and visibility.

### ***Montgomery County Code; Chapter 24A-8***

- (a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

- (b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to ensure conformity with the purposes and requirements of this chapter, if it finds that:
  - (1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or
  - (2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or
  - (3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or
  - (4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or
  - (5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or
  - (6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

***Secretary of the Interior’s Standards for Rehabilitation***

- 2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- 9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportions, and massing to protect the integrity of the property and its environment.
- 10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**STAFF DISCUSSION**

Historically, the Tastee Diner was located at the corner of Georgia Ave. and Wayne Ave. When the diner was designated to the Master Plan for Historic Preservation, the environmental setting of the Master Plan site was limited to the four walls of the historic diner and did not include the later non-historic concrete block additions (see designation information, above). The Master Plan designation contemplated relocating the building “to a suitable location” as it was located in an area intended for redevelopment as part of the urban renewal project for Silver Spring. The diner building was relocated to its current location in 2000 when it was moved to accommodate the construction of the Discovery Channel building. The Tastee Diner’s owner entered into an easement agreement with the County in 2001 when the relocation was approved. The easement was limited to the “Dining Car” and specifically agreed to ensure

the preservation of the “Dining Car Façade” as a historic resource.

The applicant proposes to redevelop the site along Cameron St. between Georgia Ave. and Ramsey Ave. The purpose of this preliminary consultation is to address three primary issues:

1. Whether it is appropriate to demolish the concrete block additions;
2. Whether it is appropriate to relocate the diner building on the site and if so, is the identified location appropriate; and
3. If the integration of the diner building into the new construction preserves the character of the diner consistent with the requisite guidance?

### **Partial Demolition**

When the diner building was designated in 1993, the concrete block additions were specifically excluded from the designation. When the building was relocated in 2000, several additions were constructed to create a larger restaurant on the current site. The additions include some Art Modern design elements including horizontal banding and rounded building corners. As part of the site redevelopment, the applicant proposes to demolish the additions to the south, east, and west. Additionally, the applicant proposes to remove all of the exterior signage from the historic building, including the neon sign above the entrance. None of the existing signage is historic and dates from its 2000 relocation.



*Figure 2: Late 1970s photo of the Tastee Diner, in its original location, with the non-historic "concrete block appendage" to the right.*

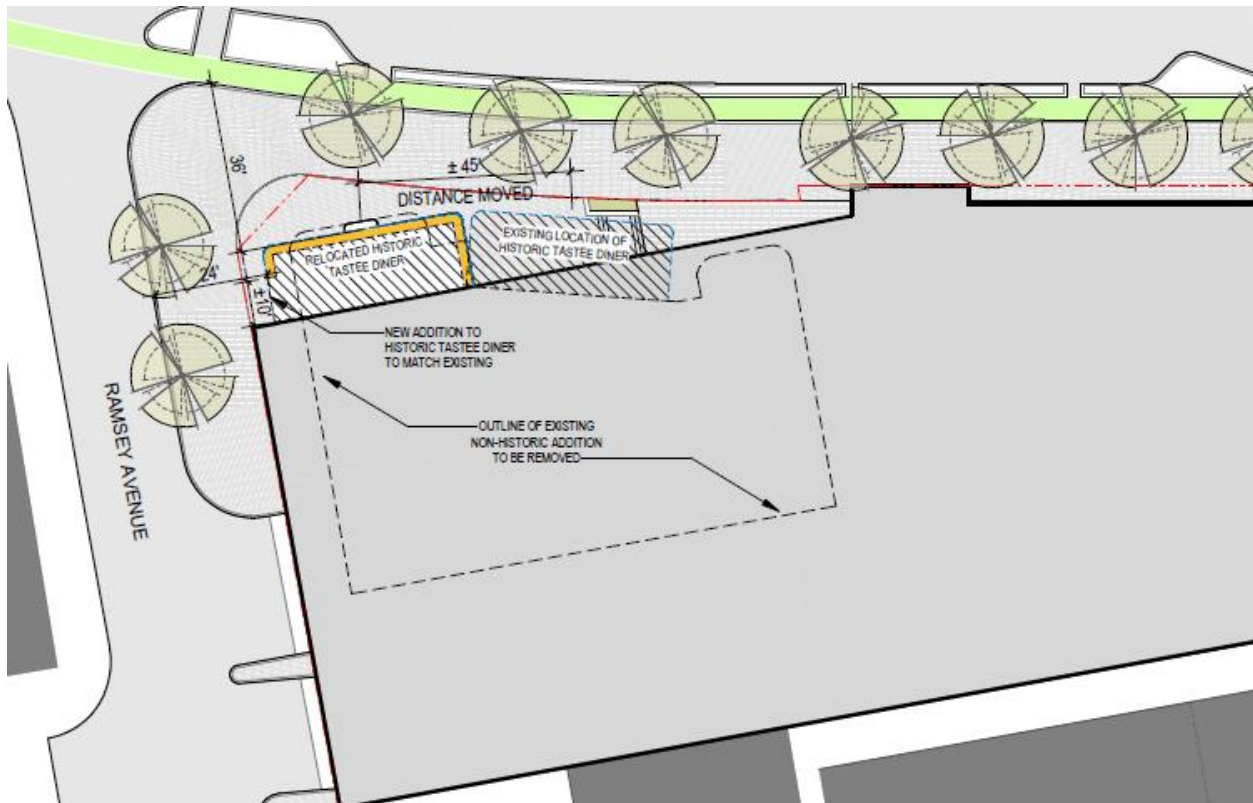


*Figure 3: Tastee Diner in its original location looking north along Georgia Ave.*

Even though the additions are technically outside of the designated environmental setting, Staff finds the HPC should be consulted before the work begins, because demolishing the additions will impact the fabric and appearance of the historic diner building. Staff does not find that removing these non-historic building additions will negatively impact the character of the diner building and requests HPC feedback on the appropriateness of this demolition and if any mitigation should be required. Staff additionally finds the signs do not contribute to the historic character of the building and their removal should be approved.

### **Building Relocation**

To accommodate the proposed large construction on the site, the applicant proposes moving the diner building approximately 45' (forty-five feet) to the west. The diner building will also be rotated slightly, whereas now the building directly fronts Cameron St., the proposed relocation will change the building's orientation so the west wall is parallel to Ramsey Ave. and will face Cameron at a slight angle (see below). The exterior of the diner building will be restored in the new location.



*Figure 4: Site plan showing the existing and proposed location for the diner building.*

Typically, proposing to relocate a historic building is a non-starter, because it is important to preserve the integrity of the building's setting. In this instance, Staff finds relocating the building is an acceptable practice. First, the building has already been relocated from its original location, something contemplated at the time the building was designed on the Master Plan. The second reason Staff finds relocating the subject building is appropriate, is because of the nature of the resource. The Tastee Diner building was constructed as a prefabricated structure in Elizabeth, NJ, delivered on-site, and was intended to be mobile. Integrity of setting is not a contributing element of the significance of this resource, and this is already confirmed by the council-approved language of the site designation. Finally, Staff finds the purpose of the easement is to preserve the "Dining Car Façade" as a historic resource. The façade will be preserved in the proposal under consideration in this Preliminary Consultation, irrespective of its location on the site.

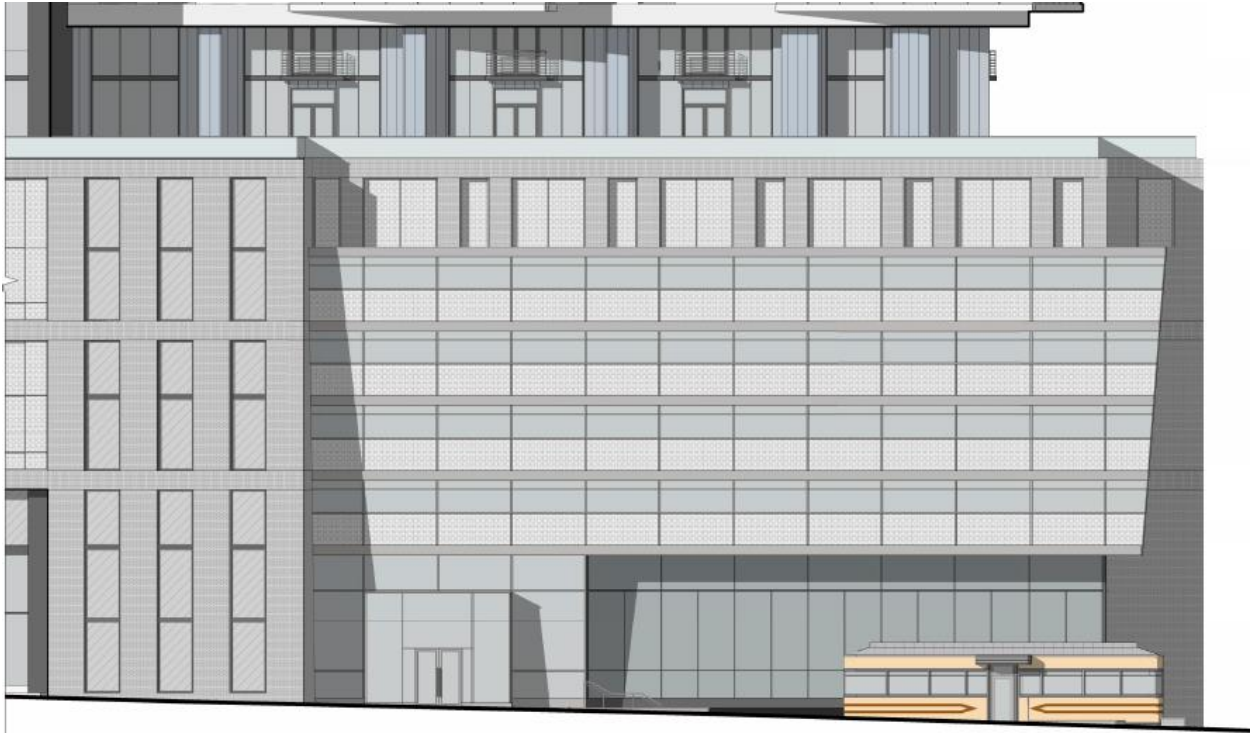
Staff requests feedback from the HPC on the appropriateness of relocating and reorienting the building.

### **New Construction**

The final issue for consideration at the Preliminary Consultation is the effectiveness of integrating the diner building into the proposed new construction. While the new building will be approximately 30 stories tall, this preliminary consultation is focused on the bottom six stories (the pedestal) near the intersection of Cameron St. and Ramsey Ave. The applicant has been consulting with Staff on integrating the diner building into the new design and requests HPC feedback on the proposed design, materials, and integration of the historic diner building. While no tenant has been identified for the historic diner, the applicant indicated that a restaurant that operated both in the atrium and diner would be the most likely use for the space.

The proposed design includes a 20' (twenty foot) tall glass atrium, inset from the floors above, surrounding the diner. The four floors above the atrium have a horizontal orientation with alternating bands of glazing and spandrel panels that match the color of the enamel panels on the historic diner building. The applicant is also considering integrating horizontal lighting into this section of the

proposed construction to reinforce the horizontal orientation of the historic diner building.



*Figure 5: North elevation showing the relocated diner building and new construction.*



*Figure 6: Renderings showing the northwest corner of the proposed development.*



*Figure 7: Rendering looking east along Cameron St. towards Georgia Ave.*

Staff finds the design of the pedestal and the integration of the historic diner into the new construction are successfully done. The large glazed atrium, inset from the floors above allows, the diner to be viewed from three sides from the public right-of-way. Additionally, Staff finds the horizontal orientation and banding of the floors above reinforce the characteristics of the diner building without trying to copy the Art Moderne design. Because a material specification for the solid panels was not included with the submitted materials, Staff cannot take a position on its appropriateness, but encourages the HPC to discuss the appropriateness of several potential materials.

In earlier discussions with the applicant, Staff asked about the potential to have the diner building operate independently of the proposed construction. The applicant stated that the diner could not operate economically due to a variety of reasons including ADA requirements, the additional cost of providing electrical/mechanical/water/sewer systems, and the diner building's modest size. There are additional zoning and setback implications with such a scheme as well, and the current proposal represents the most feasible method of building preservation and site design.

Staff requests HPC feedback on:

- The appropriateness of integrating the diner building into the proposed glass atrium;
- The appropriateness of the design of the four stories above the atrium;
  - A discussion of appropriate materials for the horizontal banding (i.e. enameled panels, spandrel glazing, a textured material, etc.);
- Any other considerations (i.e. signage, access, etc).



**STAFF RECOMMENDATION**

Staff Recommends the applicant make revisions to the design based on the feedback from the HPC and return for a second Preliminary Consultation.



**APPLICATION FOR  
HISTORIC AREA WORK PERMIT**  
HISTORIC PRESERVATION COMMISSION  
301.563.3400

FOR STAFF ONLY:  
HAWP# \_\_\_\_\_  
DATE ASSIGNED \_\_\_\_\_

**APPLICANT:**

Name: 8676 Georgia Ave LLC  
Address: 3939 Wisconsin Ave. NW, #100  
Daytime Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_  
City: Washington Zip: 20016  
Tax Account No.: 13-03277450 and 13-00964637

**AGENT/CONTACT (if applicable):**

Name: Stacy P. Silber  
Address: 7600 Wisconsin Ave., Suite 700  
Daytime Phone: 301-841-3833

E-mail: spsilber@lercheearly.com  
City: Bethesda Zip: 20814  
Contractor Registration No.: \_\_\_\_\_

**LOCATION OF BUILDING/PREMISE:** MIHP # of Historic Property 36/013-000A

Is the Property Located within an Historic District? Yes/District Name \_\_\_\_\_  
X No/Individual Site Name Tastee Diner

Is there an Historic Preservation/Land Trust/Environmental Easement on the Property? If YES, include a map of the easement, and documentation from the Easement Holder supporting this application.

Are other Planning and/or Hearing Examiner Approvals /Reviews Required as part of this Application? (Conditional Use, Variance, Record Plat, etc.?) If YES, include information on these reviews as supplemental information.

Building Number: 8601 Street: Cameron Street (& 8676 Georgia Ave)  
Town/City: Silver Spring Nearest Cross Street: Ramsey Avenue  
Lot: 10 and P1 Block: \_\_\_\_\_ Subdivision: 001 Parcel: N297 and N217

**TYPE OF WORK PROPOSED: See the checklist on Page 4 to verify that all supporting items for proposed work are submitted with this application. Incomplete Applications will not be accepted for review. Check all that apply:**

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> New Construction | <input type="checkbox"/> Deck/Porch                     | <input type="checkbox"/> Shed/Garage/Accessory Structure                     |
| <input type="checkbox"/> Addition                    | <input type="checkbox"/> Fence                          | <input type="checkbox"/> Solar   |
| <input type="checkbox"/> Demolition                  | <input checked="" type="checkbox"/> Hardscape/Landscape | <input type="checkbox"/> Tree removal/planting                               |
| <input type="checkbox"/> Grading/Excavation          | <input checked="" type="checkbox"/> Roof                | <input type="checkbox"/> Window/Door   |
|  |   | <input checked="" type="checkbox"/> Other: <u>Relocation and Restoration</u> |

I hereby certify that I have the authority to make the foregoing application, that the application is correct and accurate and that the construction will comply with plans reviewed and approved by all necessary agencies and hereby acknowledge and accept this to be a condition for the issuance of this permit.

\_\_\_\_\_  
*Stacy P. Silber*  
Signature of owner or authorized agent

\_\_\_\_\_  
6/30/2023  
Date

Adjacent and Confronting Properties:

Silver Spring, MD 20910

8676 Georgia Avenue

8670 Georgia Avenue

8530 Cameron Street

Description of Property: Please describe the building and surrounding environment. Include information on significant structures, landscape features, or other significant features of the property:

The Historic Tastee Diner dates from 1946 and was originally located at 8516 Georgia Avenue. It features an “exterior surface of porcelain enamel with wraparound bands of trim on the front section, and stainless steel detailing.” (See Approved and Adopted Amendment to the Master Plan for Historic Preservation, Silver Theatre and Shopping Center, and Tastee Diner, approved by the Montgomery County Council in February 1994, page 6). The Historic Tastee Diner was relocated in 1994 to the Property located 8601 Cameron Street - this relocation was found to be consistent with its historical designation as a type of roadside architecture. The Restaurant currently located on the Property consists of the Historic Tastee Diner and a very large, non-historic one-story addition, and associated surface parking.

See attached Statement for more information.

Description of Work Proposed: Please give an overview of the work to be undertaken:

The Historic Tastee Diner will be retained, relocated and restored in connection with the redevelopment of the overall Property with a mixed-use, predominately residential development containing up to 550,000 square feet of density, including up to 525,000 square feet of residential use (or up to 525 units, including 15% Moderately Priced Dwelling Units) and up to 25,000 square feet of ground floor commercial use, with any given combination of commercial and/or residential density not to exceed 550,000 square feet (the "Project"). In connection with the Project, the Applicant is proposing to retain the Historic Tastee Diner's orientation toward Cameron Street but move it west approximately 45 feet toward Ramsey Street, to a more prominent corner location, with wider open space at its front. The Historic Tastee Diner will be restored and its west wall and roof extended to recapture the diner car's original rectangular shape and volume, adding to the prominence of the Historic Resource. Although the Historic Tastee Diner will be connected to the first floor of the Project it will read as an independent building and stand proud of the Project, with no new construction immediately above it. The architecture of the Project will be specifically designed to not compete with the Historic Tastee Diner. It is currently anticipated that the Historic Tastee Diner will function as a retail space, restaurant, or other street-activating space.

See attached Statement for additional details.

Work Item 1: _____	
Description of Current Condition:	Proposed Work:

Work Item 2: _____	
Description of Current Condition:	Proposed Work:

Work Item 3: _____	
Description of Current Condition:	Proposed Work:

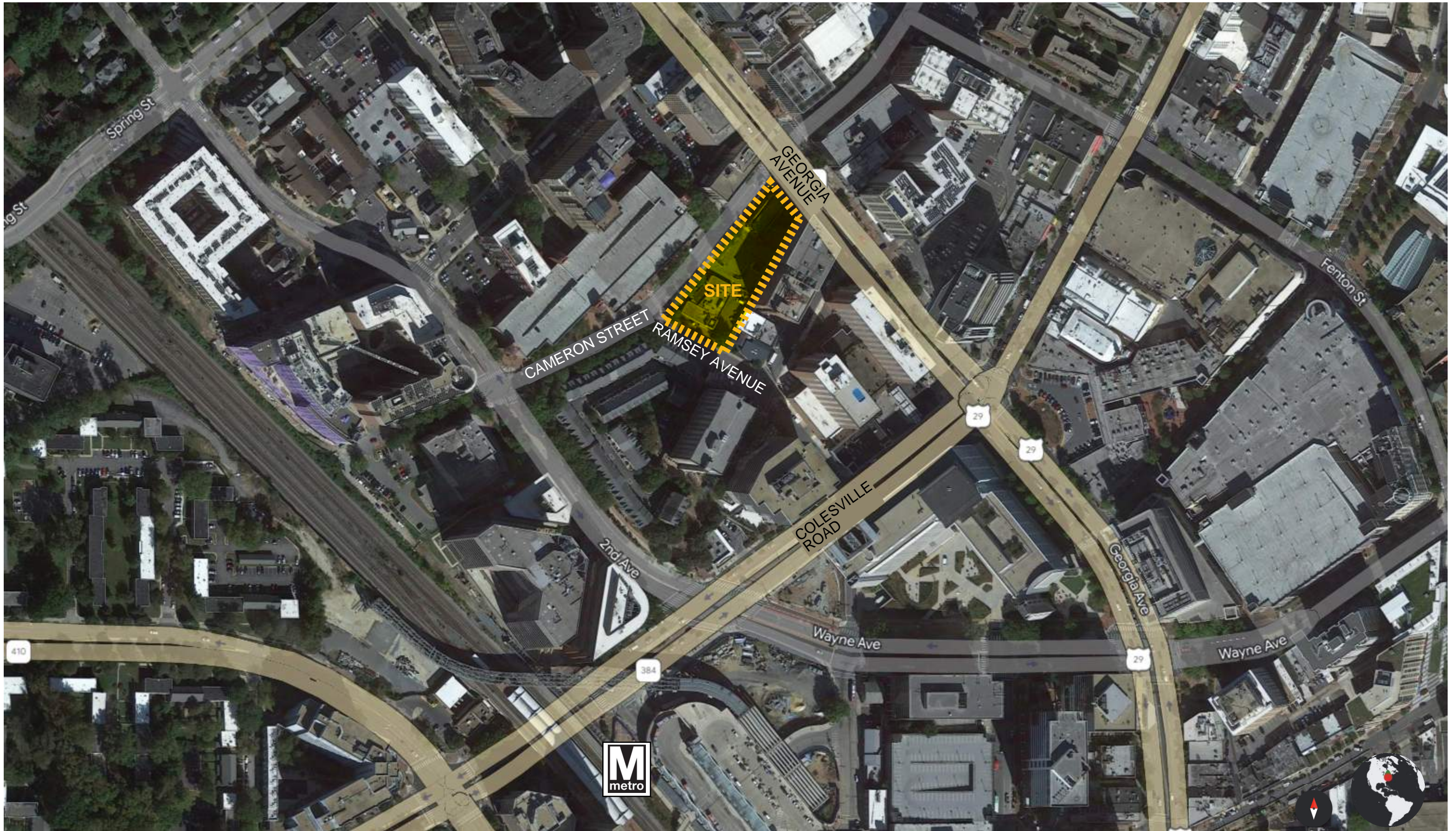
**HISTORIC AREA WORK PERMIT  
CHECKLIST OF  
APPLICATION REQUIREMENTS**

	Required Attachments						
Proposed Work	I. Written Description	2. Site Plan	3. Plans/ Elevations	4. Material Specifications	5. Photographs	6. Tree Survey	7. Property Owner Addresses
New Construction	*	*	*	*	*	*	*
Additions/ Alterations	*	*	*	*	*	*	*
Demolition	*	*	*		*		*
Deck/Porch	*	*	*	*	*	*	*
Fence/Wall	*	*	*	*	*	*	*
Driveway/ Parking Area	*	*		*	*	*	*
Grading/Exc avation/Land scaing	*	*		*	*	*	*
Tree Removal	*	*		*	*	*	*
Siding/ Roof Changes	*	*	*	*	*		*
Window/ Door Changes	*	*	*	*	*		*
Masonry Repair/ Repoint	*	*	*	*	*		*
Signs	*	*	*	*	*		*

**8676 GEORGIA AVENUE  
SILVER SPRING, MD**

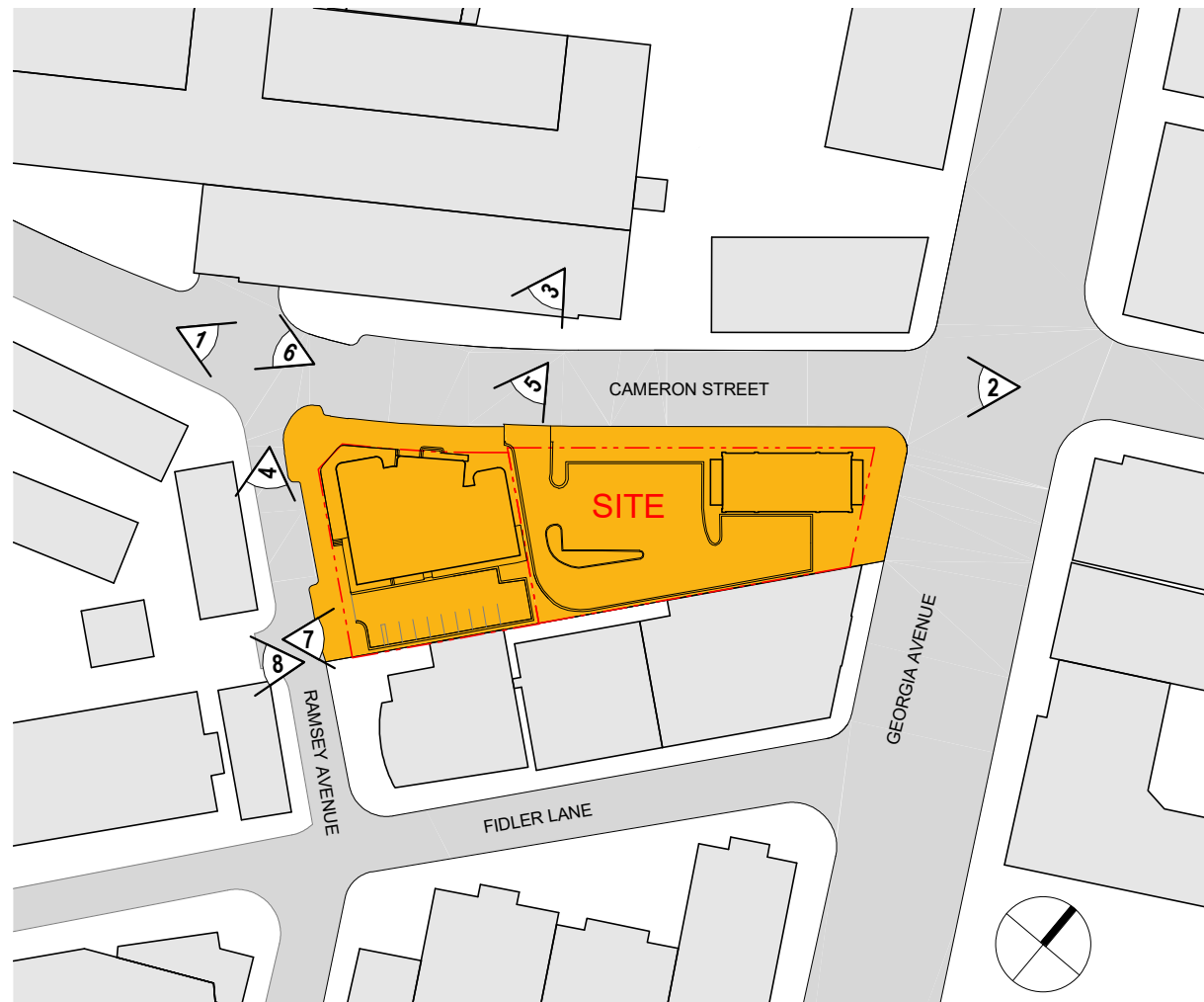
**HPC SUBMISSION**

**07/26/2023**









1 VIEW FROM CAMERON STREET LOOKING SOUTHEAST



2 VIEW FROM GEORGIA AVE LOOKING WEST



3 TASTEE DINER LOOKING SOUTH



4 RAMSEY AVENUE LOOKING SOUTH



5 VIEW FROM CAMERON STREET LOOKING SOUTH



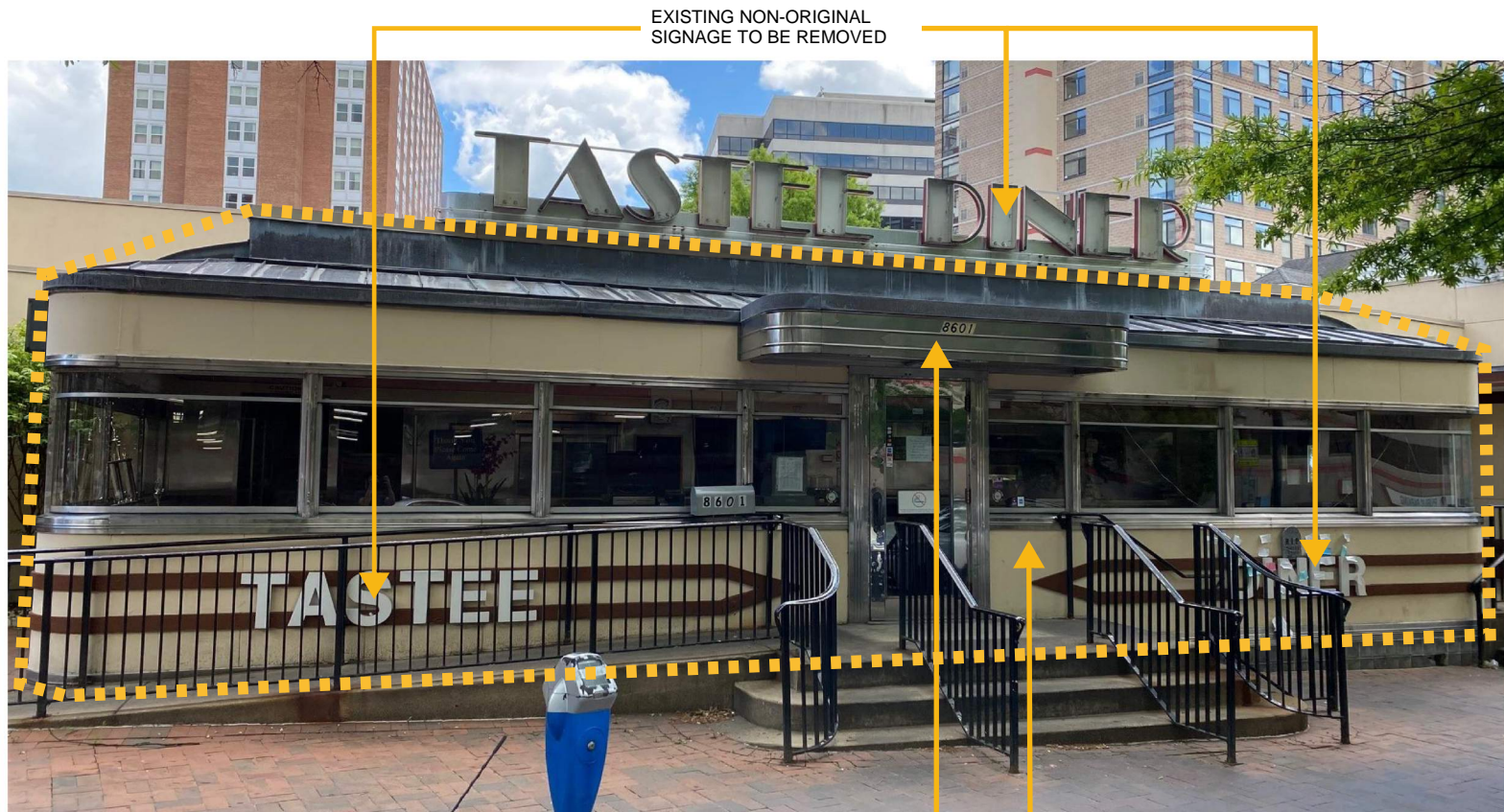
6 VIEW FROM CAMERON STREET LOOKING WEST



7 RAMSEY AVENUE LOOKING EAST



8 RAMSEY AVENUE LOOKING WEST

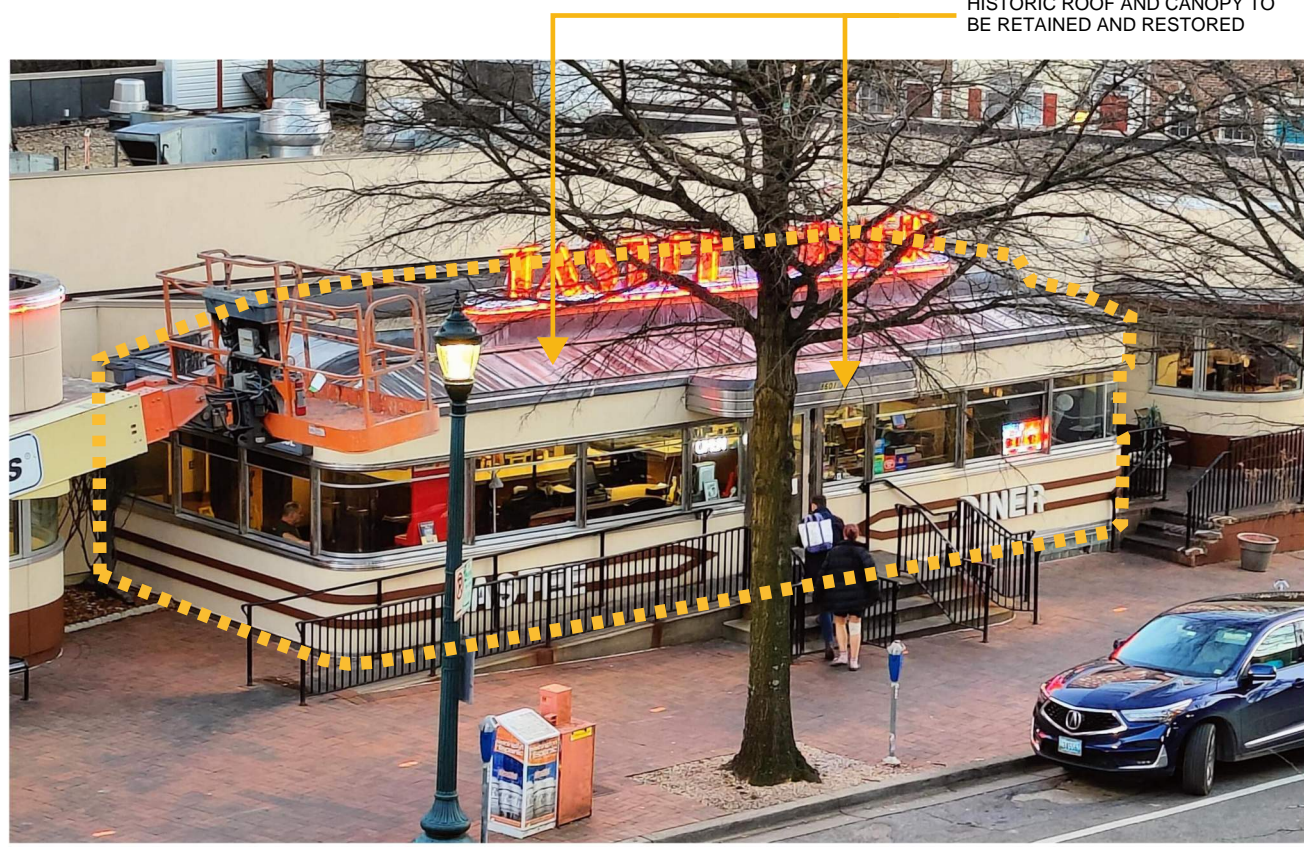


EXISTING VIEW FROM NORTH

EXISTING NON-ORIGINAL SIGNAGE TO BE REMOVED

STAINLESS STEEL CANOPY TO BE PRESERVED

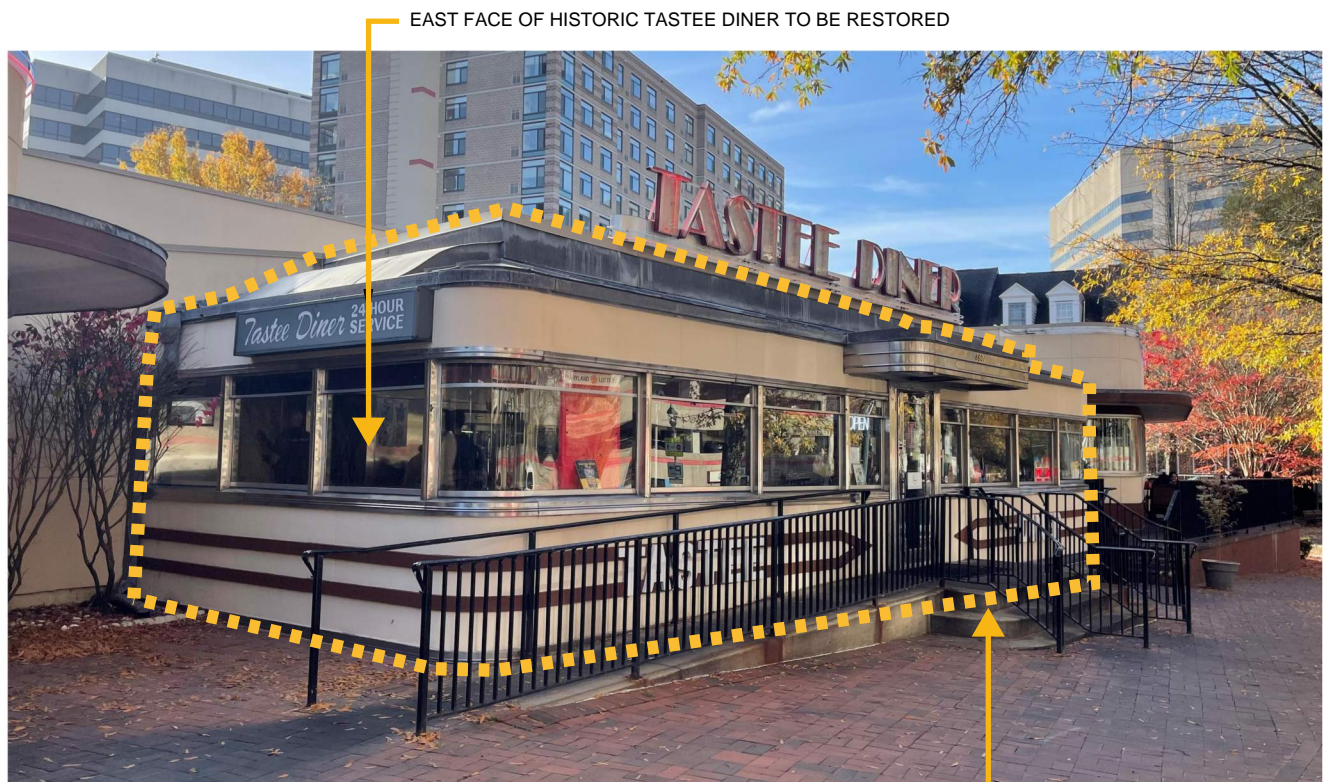
NORTH FACE OF HISTORIC TASTEE DINER TO BE RESTORED



EXISTING AERIAL VIEW

HISTORIC ROOF AND CANOPY TO BE RETAINED AND RESTORED

EXPOSED WEST FACE OF HISTORIC RESOURCE TO BE RESTORED



EXISTING VIEW FROM NORTHEAST

EAST FACE OF HISTORIC TASTEE DINER TO BE RESTORED

NON-HISTORIC STEPS, RAILING AND RAMP TO BE REMOVED



EXISTING VIEW FROM NORTHWEST

EXISTING NON-ORIGINAL SIGNAGE TO BE REMOVED

GLASS BLOCK BASE TO BE REPLACED WITH STONE



NON-HISTORIC ADDITION  
TO BE REMOVED



RESTORATION AND  
EXTENSION OF HISTORIC  
ROOF TO FORMER FULL  
WIDTH TO MATCH EXISTING

RESTORATION AND  
EXTENSION OF WEST  
FAÇADE TO FORMER FULL  
WIDTH TO MATCH  
EXISTING

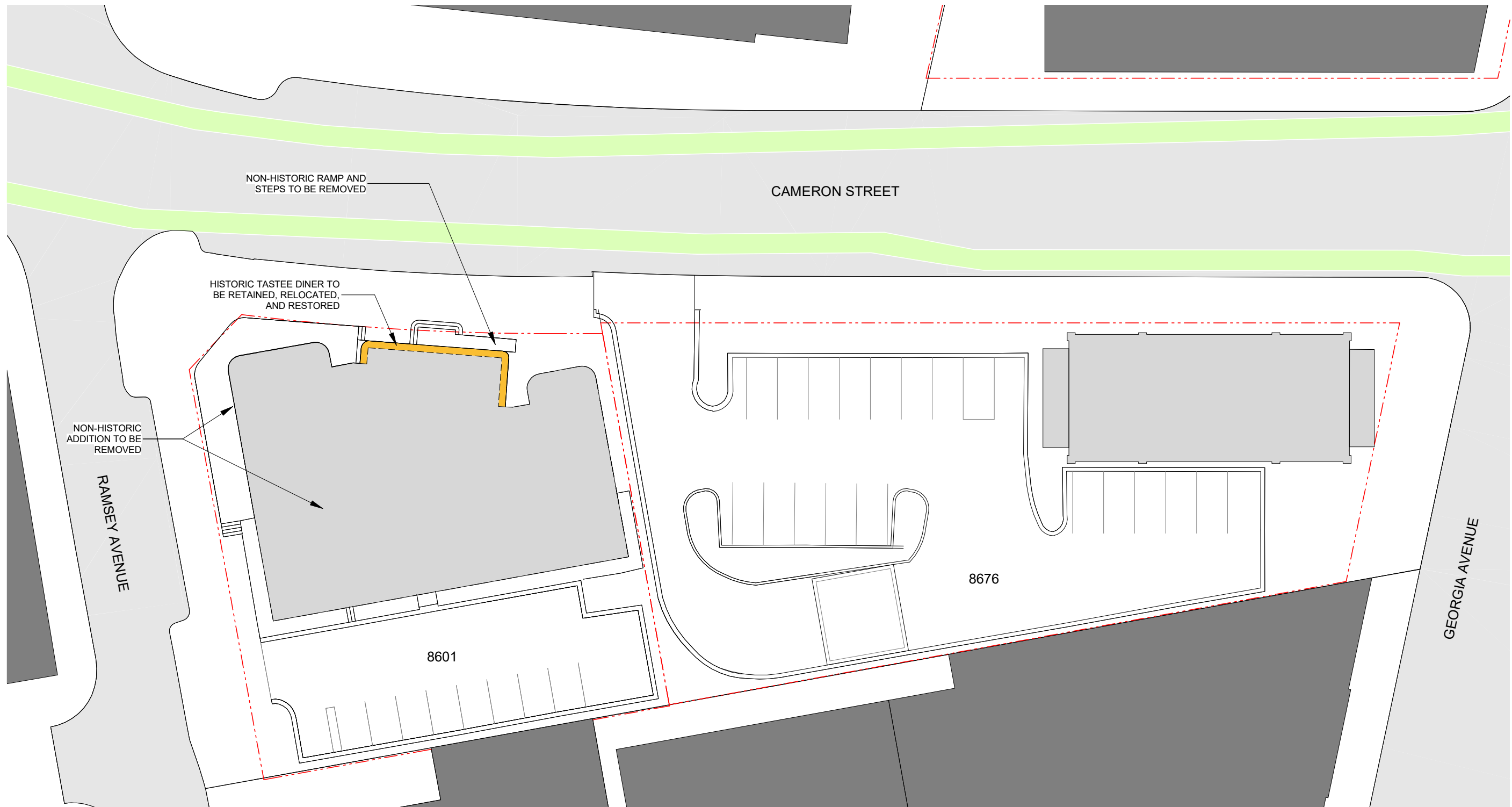


NON-HISTORIC SIGNAGE  
TO BE REMOVED



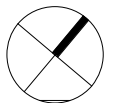
NON-HISTORIC SIGNAGE  
TO BE REMOVED

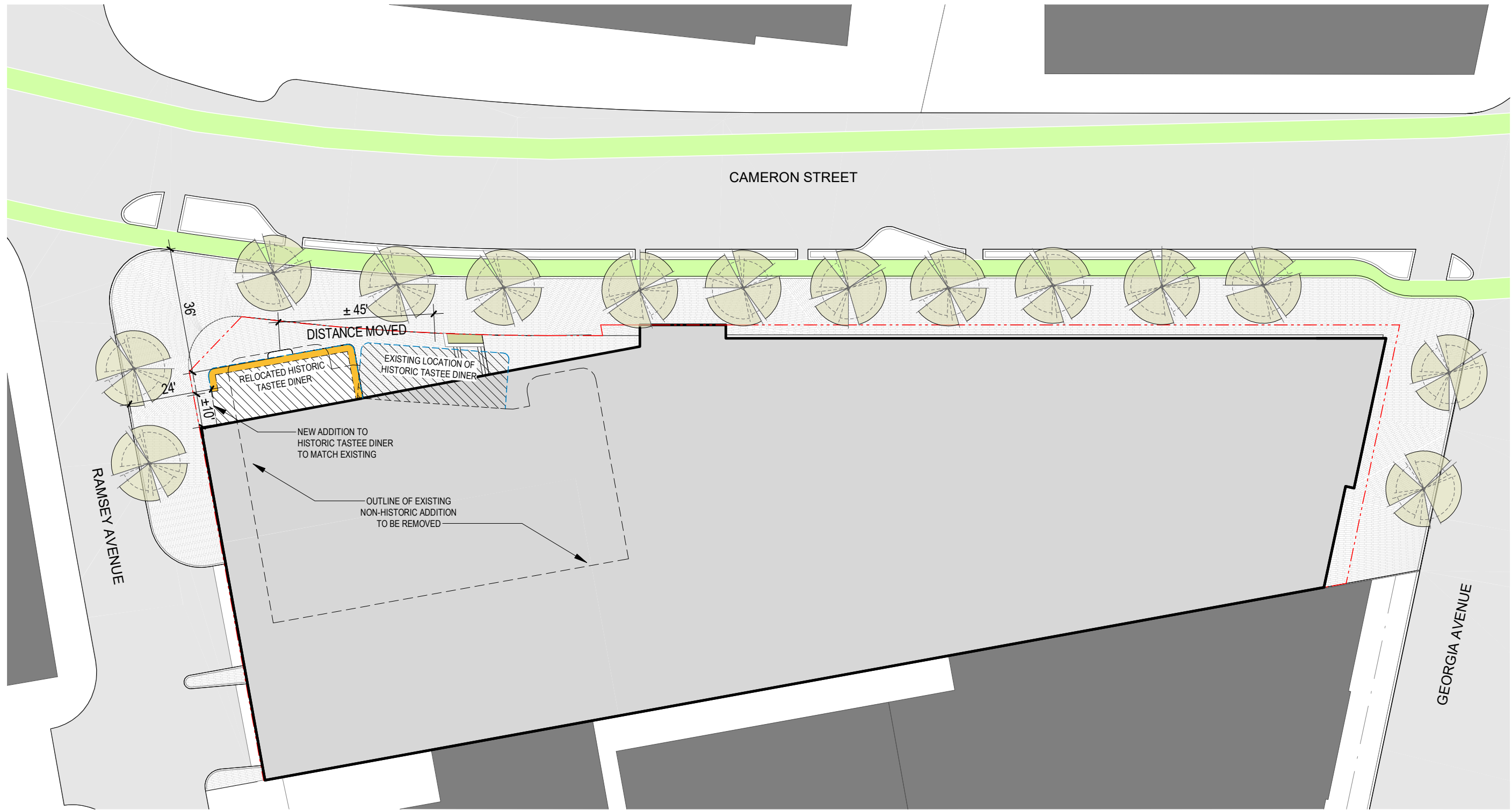
NON-HISTORIC RAMP  
AND STEPS TO BE  
REMOVED



LEGEND

BIKE LANES

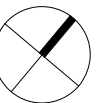




FIRST FLOOR PLAN AT RELOCATED DINER CAR

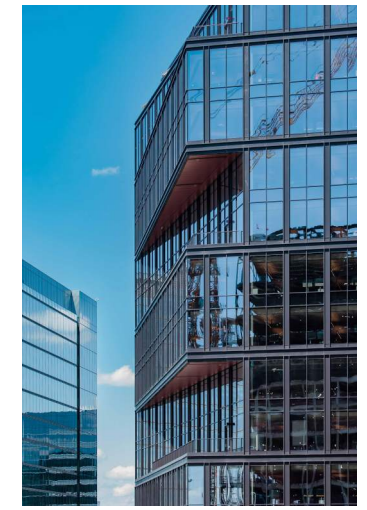
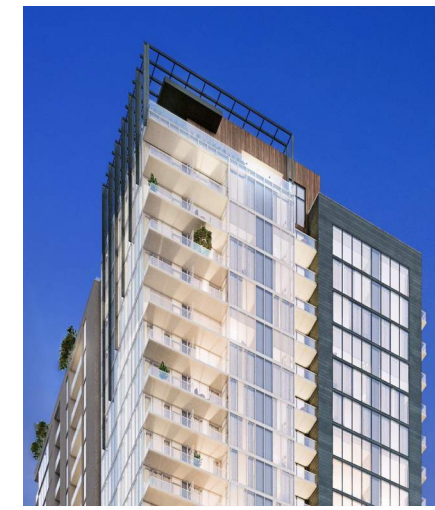
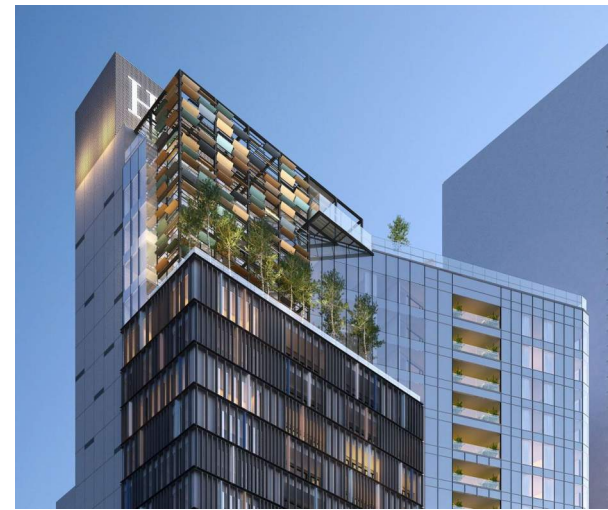
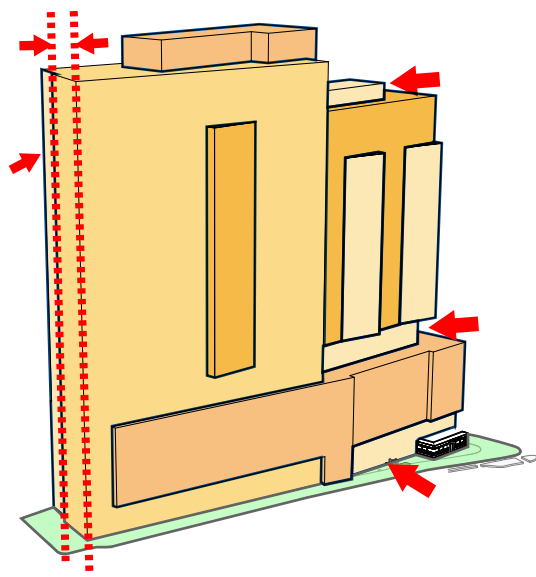
LEGEND

- BIKE LANES
- TASTEE DINER
- EXTENT OF HISTORIC TASTEE DINER

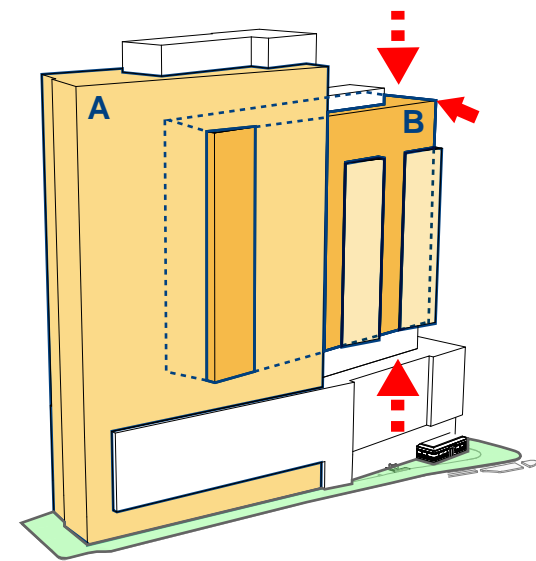




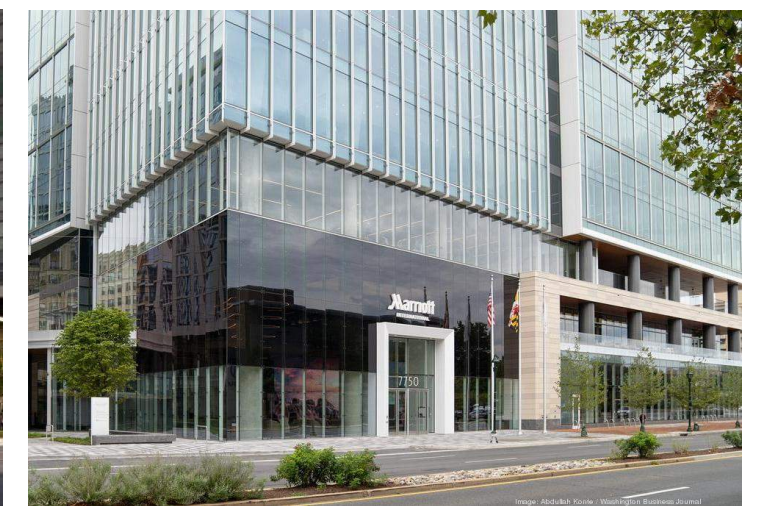
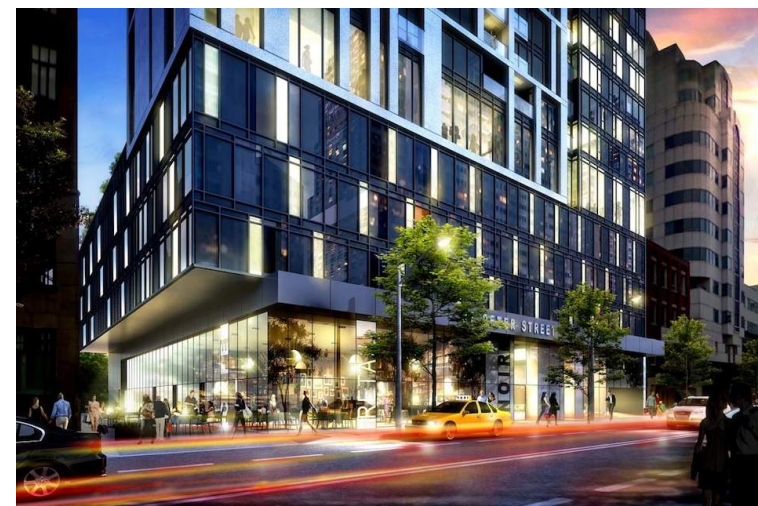
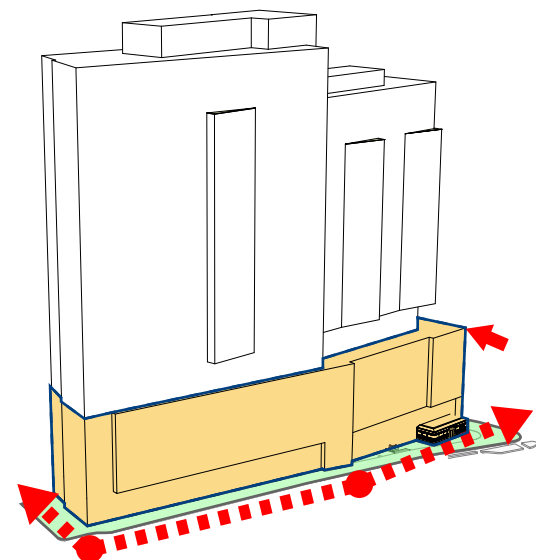
- DESIGN GOALS:**
- HISTORIC TASTEE DINER TO BE RETAINED, RESTORED AND RELOCATED TO THE EAST ON THE GROUND FLOOR OF THE PROPOSED BUILDING. THE SURROUNDING BUILDING WILL BE DESIGNED IN A MANNER THAT ENSURES COMPATIBILITY.
  - CREATE AN INTERPRETIVE NODE AT STREET LEVEL AT THE CORNER OF CAMERON STREET AND RAMSEY AVENUE, ACTIVATING SIDEWALK IN FRONT OF THE RELOCATED HISTORIC TASTEE DINER.
  - PROVIDE RESIDENTIAL UNITS IN DOWNTOWN SILVER SPRING
  - PROVIDE ARCHITECTURAL DESIGN THAT RESPONDS AND RELATES TO THE URBAN CONTEXT ALONG GEORGIA AVENUE, CAMERON STREET, AND RAMSEY AVENUE WHILE ALSO ENSURING COMPATIBILITY WITH THE SURROUNDING DEVELOPMENT.
  - FURTHER THE SILVER SPRING DOWNTOWN AND ADJACENT COMMUNITIES PLAN (SS-DAC) GOAL OF ACTIVATING CAMERON STREET AS A GREEN LOOP CONNECTOR



CARVING AND ARTICULATING THE MASS



STEPPING THE TOWER MASSING



DEFINING THE BUILDING BASE AND STREETScape





TRANSPARENT GROUND LEVEL FACADE



ACTIVATED STREETScape



ARTICULATED PARKING FACADE



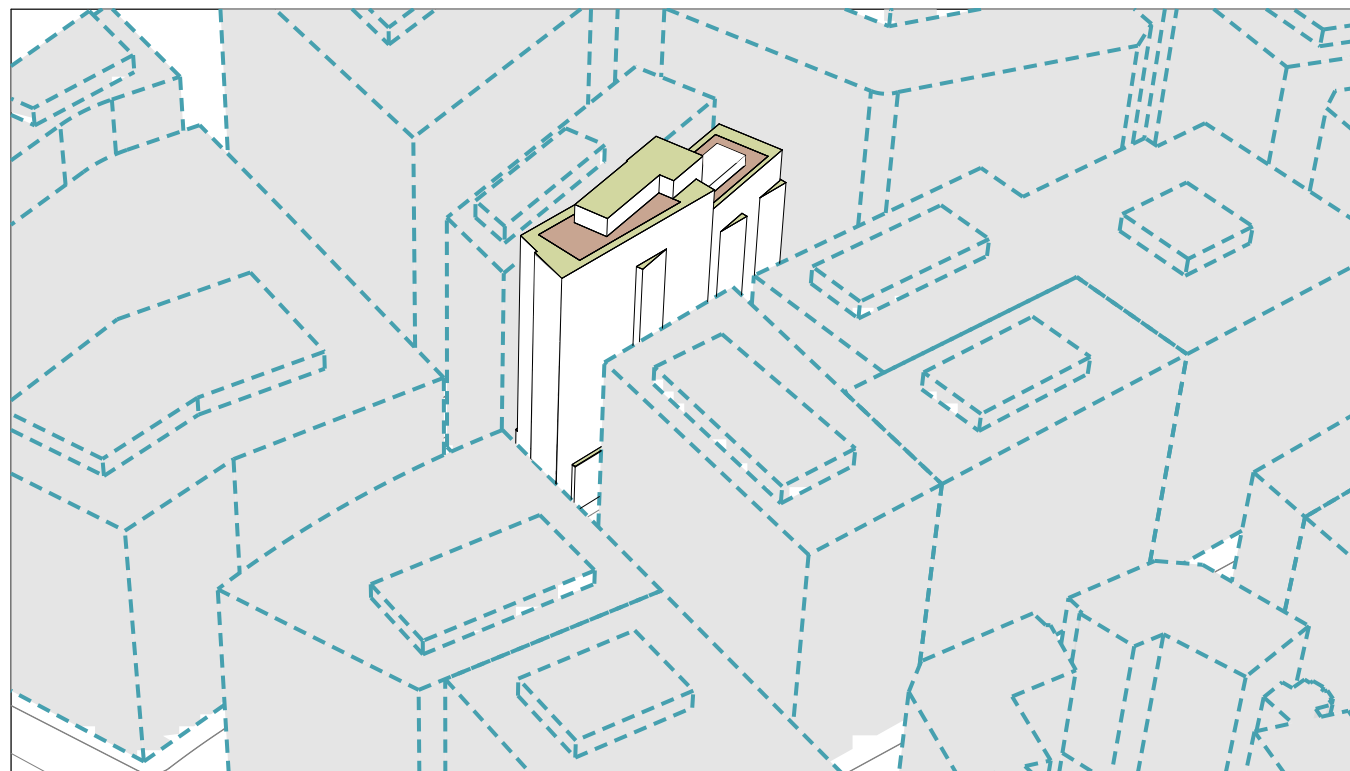
UNIQUE BASE MASSING



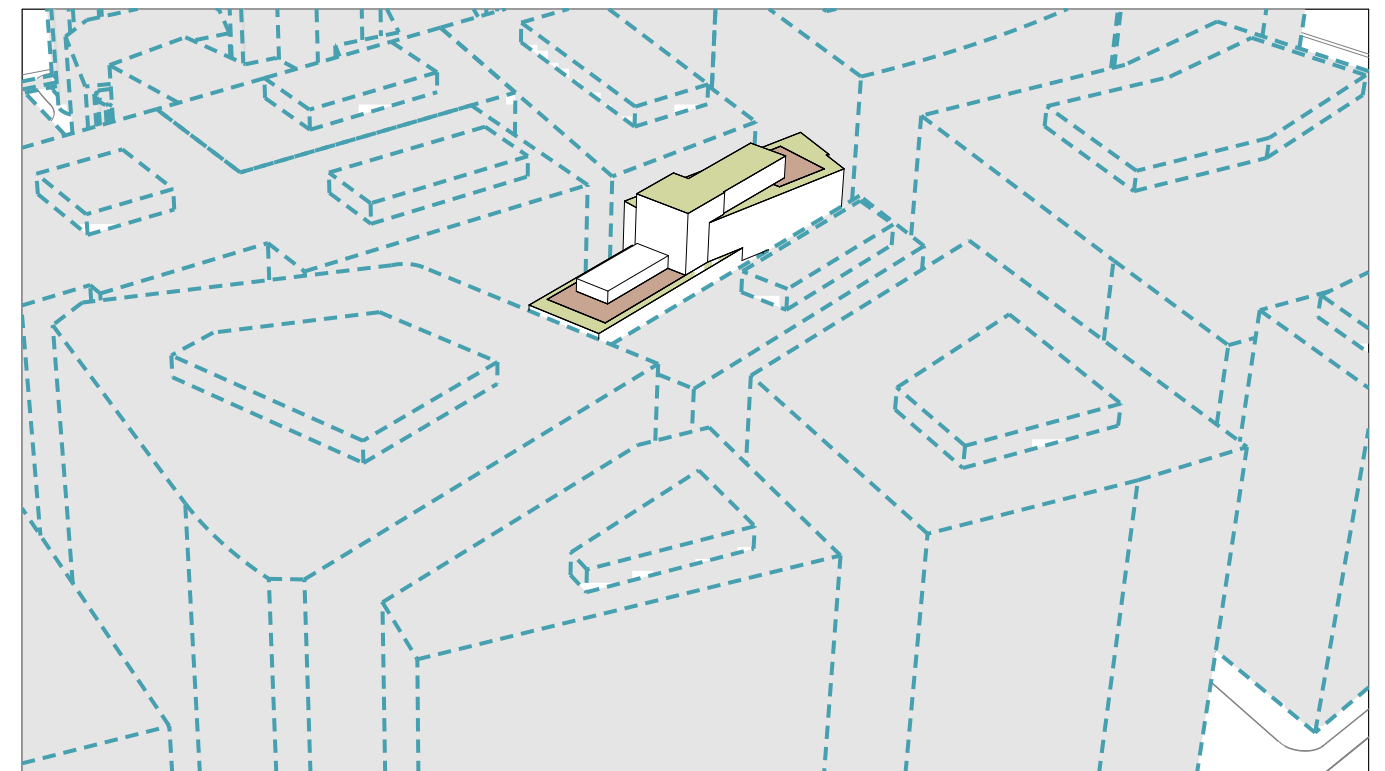
AERIAL VIEW LOOKING SOUTH-WEST (CURRENT CONTEXT)



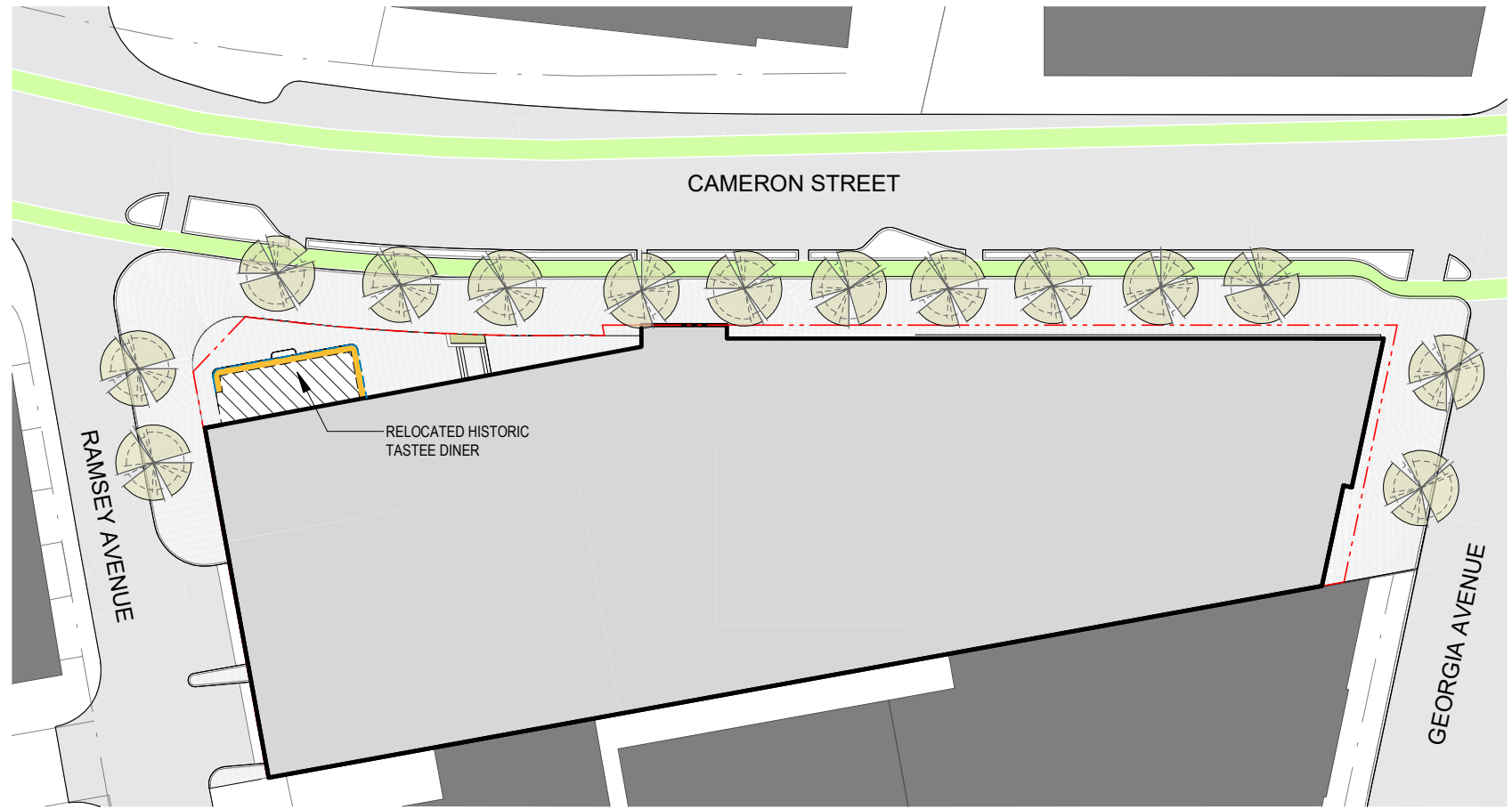
AERIAL VIEW LOOKING NORTH-EAST (CURRENT CONTEXT)



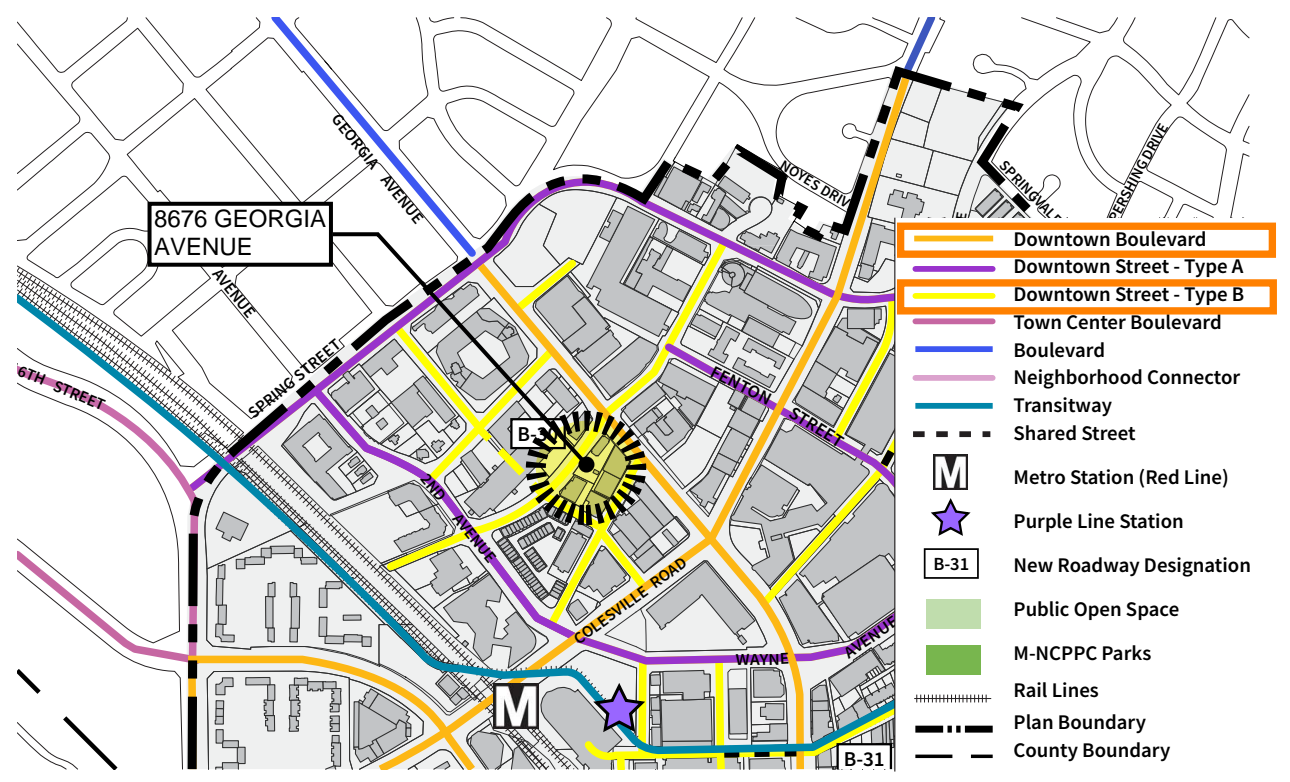
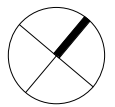
AERIAL VIEW LOOKING SOUTH-WEST (SS SECTOR PLAN FULL BUILDOUT)



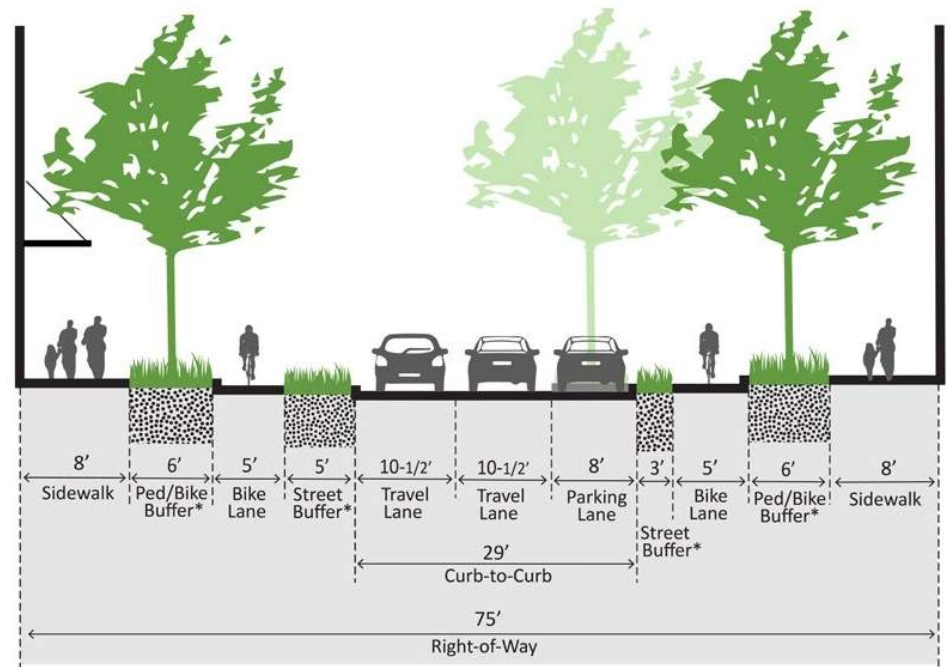
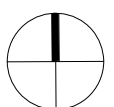
AERIAL VIEW LOOKING NORTH-EAST (SS SECTOR PLAN FULL BUILDOUT)



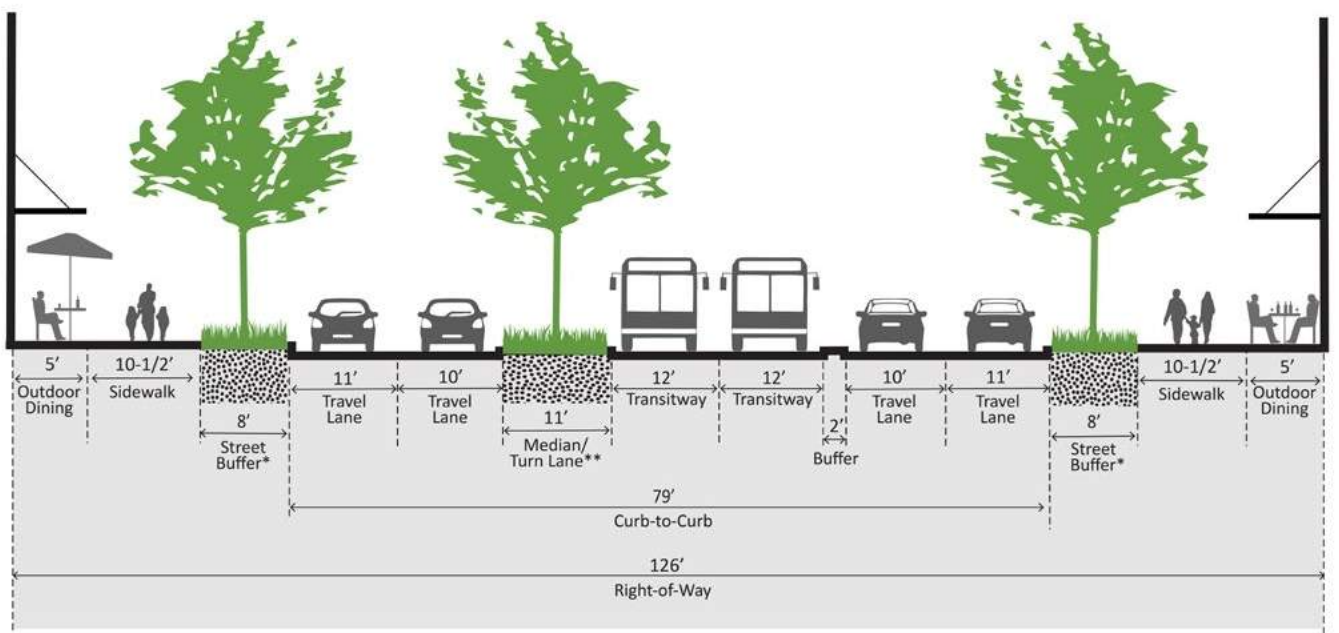
GROUND FLOOR PLAN



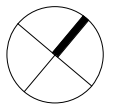
NORTH SILVER SPRING

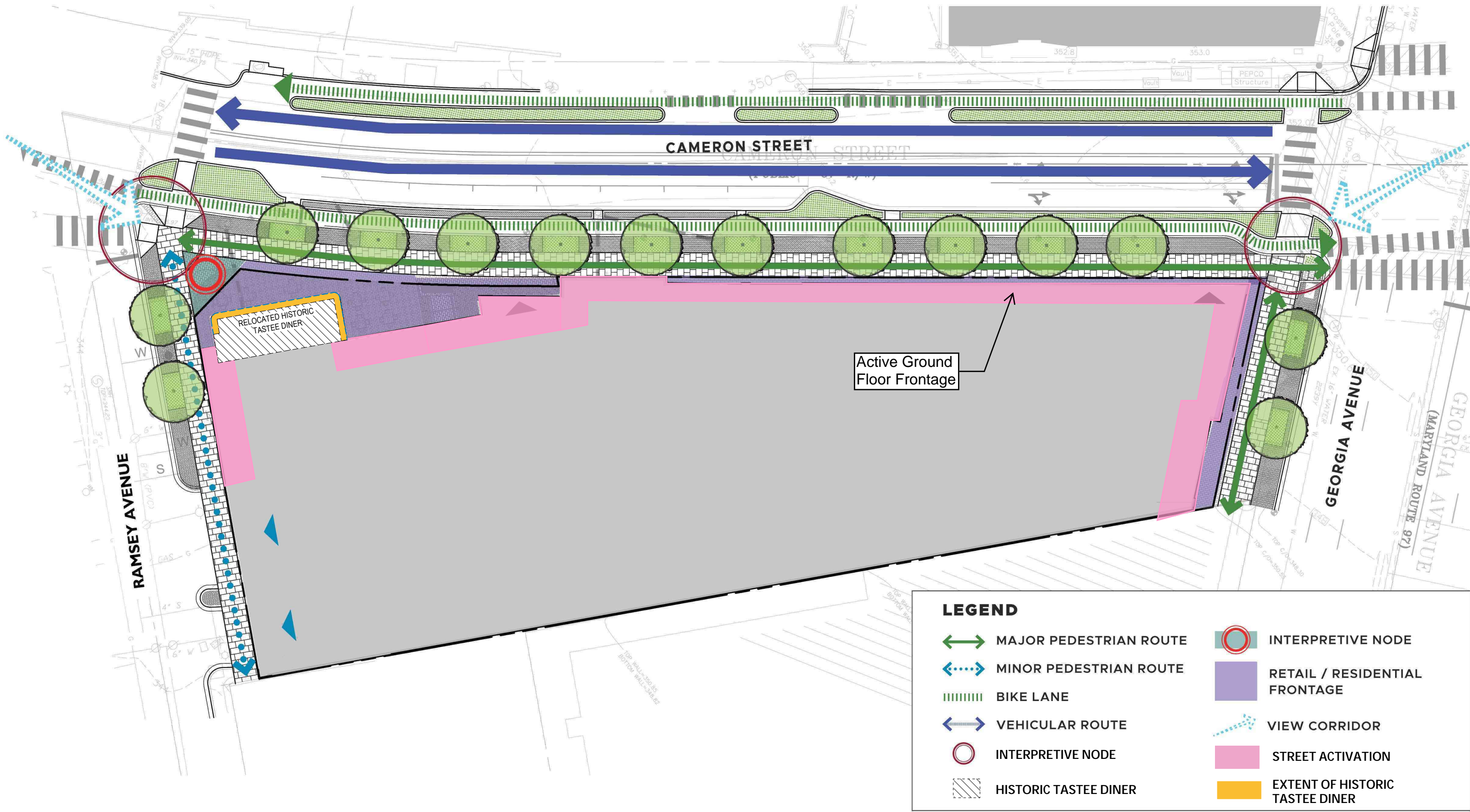


CAMERON STREET SECTION



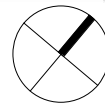
GEORGIA AVENUE SECTION





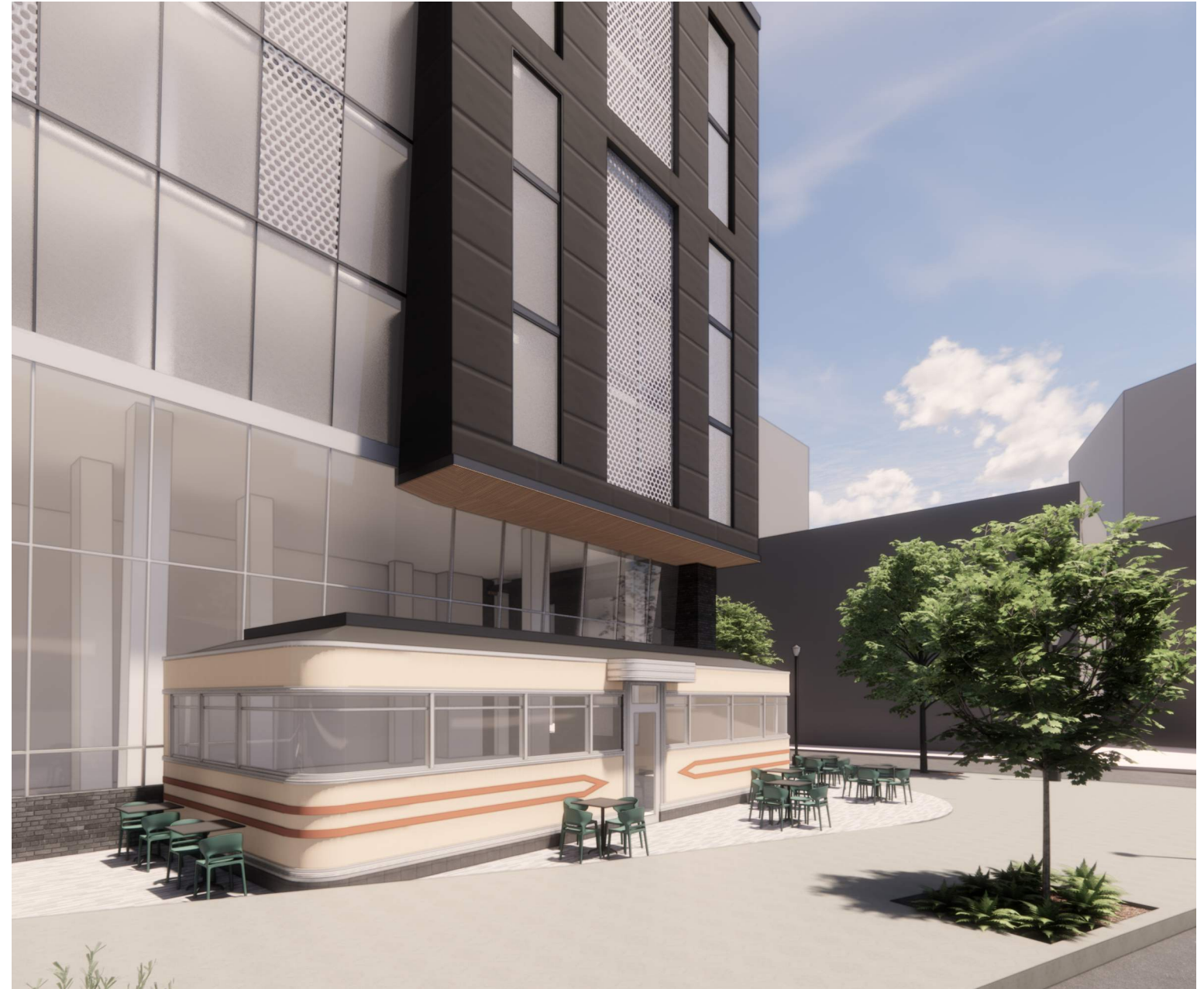
**LEGEND**

	MAJOR PEDESTRIAN ROUTE		INTERPRETIVE NODE
	MINOR PEDESTRIAN ROUTE		RETAIL / RESIDENTIAL FRONTAGE
	BIKE LANE		VIEW CORRIDOR
	VEHICULAR ROUTE		STREET ACTIVATION
	INTERPRETIVE NODE		EXTENT OF HISTORIC TASTEE DINER
	HISTORIC TASTEE DINER		

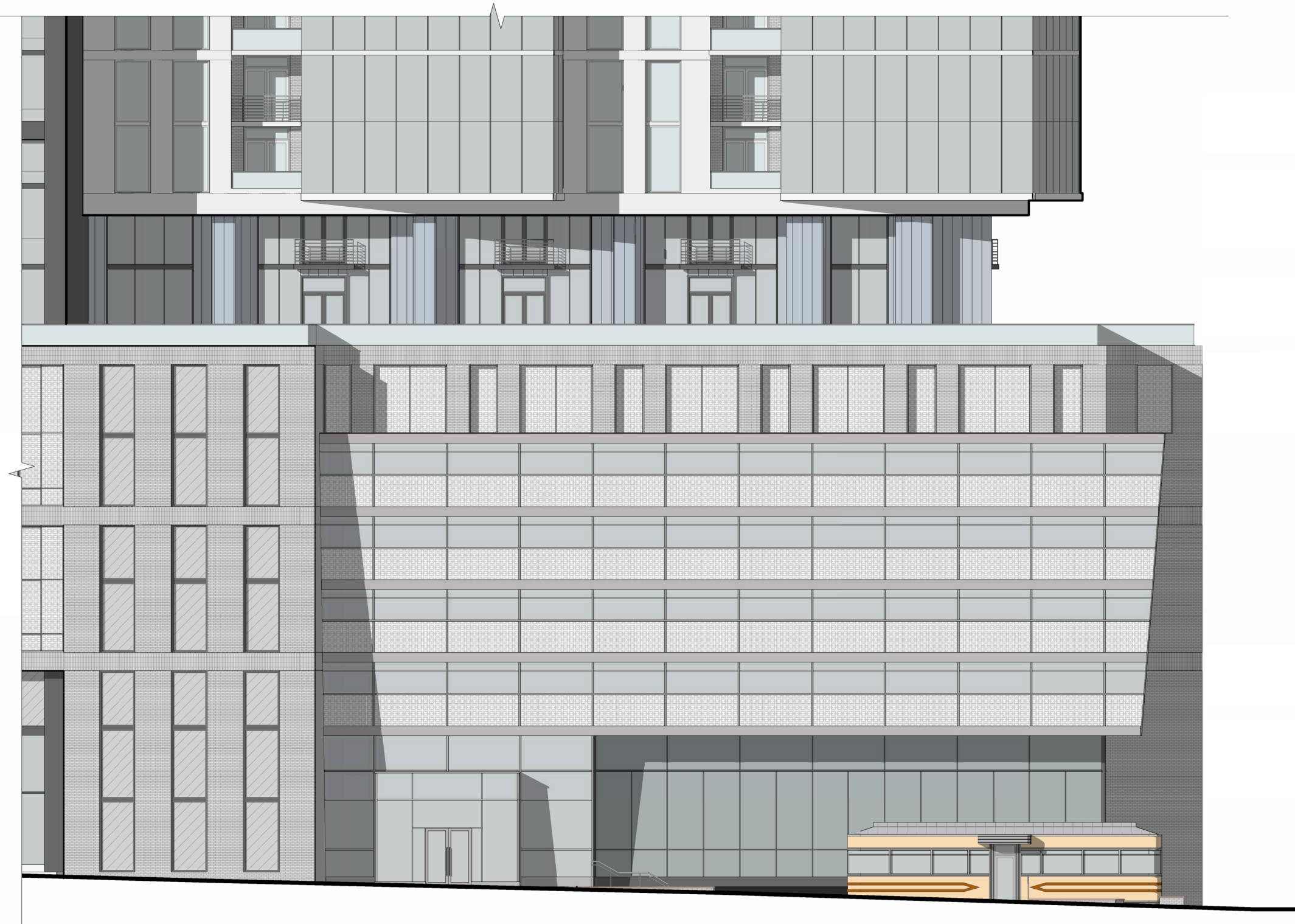




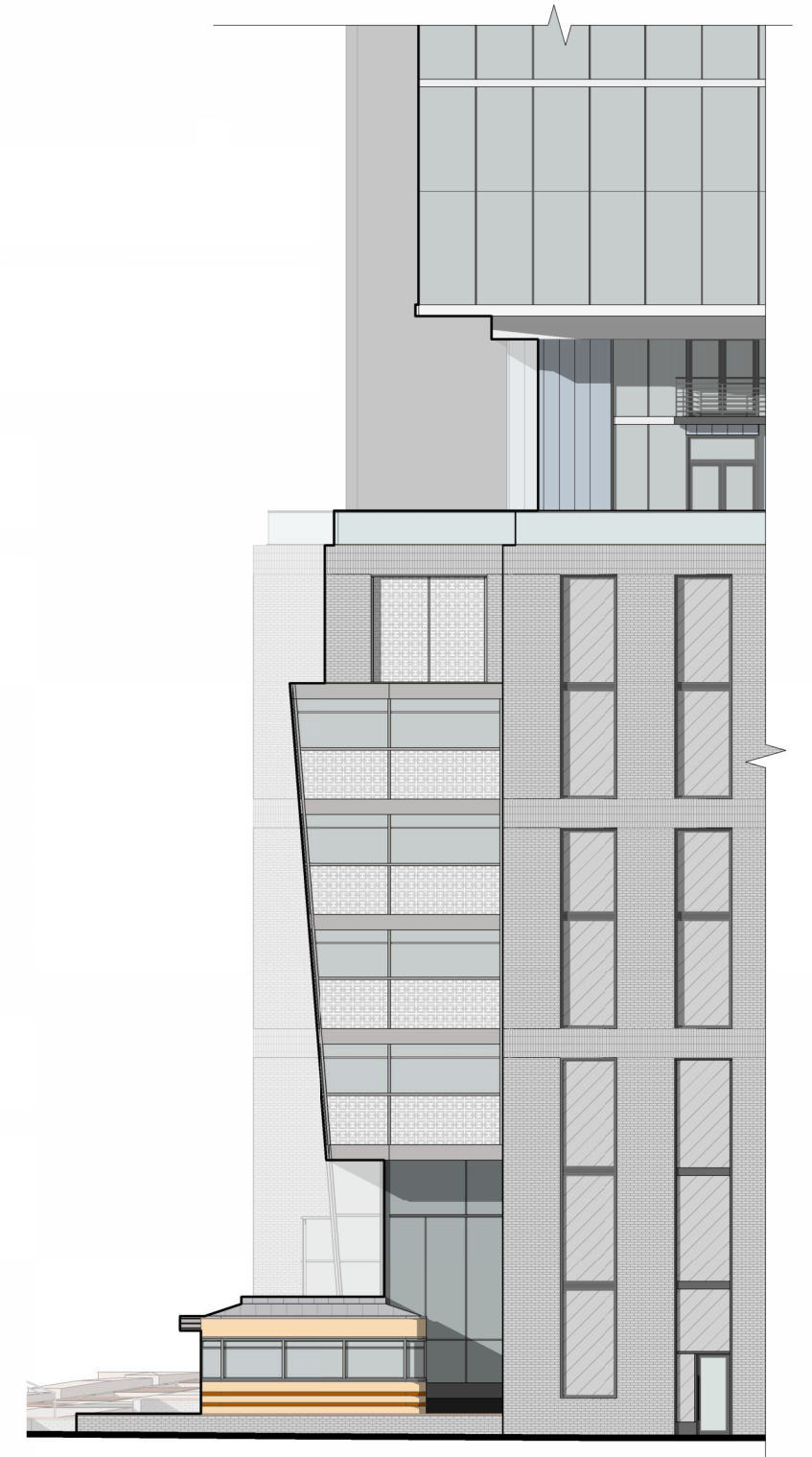
EARLIER VERSION DESIGN ILLUSTRATION 1



EARLIER VERSION DESIGN ILLUSTRATION 2



PARTIAL NORTH ELEVATION AT CAMERON STREET



PARTIAL WEST ELEVATION AT RAMSEY AVENUE









**Statement in Support  
Historic Preservation Commission – Preliminary Consultation  
Tastee Diner (8601 Cameron Street) and 8676 Georgia Avenue  
Silver Spring, Maryland**

**July 26, 2023**

8676 Georgia Avenue LLC, an affiliate of Roadside Development, (the "Applicant") is submitting this request for a Preliminary Consultation with the Historic Preservation Commission ("HPC") for the Tastee Diner (the "Historic Tastee Diner") at properties located at 8601 Cameron Street (also known as 8711 Ramsey Avenue) and 8676 Georgia Avenue, in Silver Spring, Maryland (collectively, the "Property"). The Applicant is proposing to retain, relocate, and restore the Historic Tastee Diner in connection with the redevelopment of the Property with a high-rise, mixed-use, predominately residential development (the "Project"). In addition to the preservation of the Historic Tastee Diner, the Project implements and achieves the County's goals and objectives consistent with the Property's recent rezoning and the 2022 Silver Spring Downtown and Adjacent Communities Plan (the "Downtown Plan"). The Project is currently at Sketch Plan (and Preliminary Plan – subdivision) review. Although the Applicant has focused on the massing of the building, rather than on site-specific architecture or specific details of the preservation effort, it has been working with the staff of the HPC to develop appropriate and compatible concept designs for the section of the Project adjacent to the Historic Tastee Diner. The Applicant will file a Site Plan application, which will specifically address the architectural details of the proposed building and the treatment of the Historic Tastee Diner.

**I. Property Background**

The former Tastee Diner Restaurant, which includes both the Historic Tastee Diner car and a large one-story, non-historic addition (the "Restaurant"), is located at 8601 Cameron Street in the heart of Downtown Silver Spring, approximately 0.3 miles from the Silver Spring Metro Station and future Purple Line Station. The Restaurant site is comprised of approximately 14,595 square feet. The Historic Tastee Diner, as designated, consists only of the facades of the diner car. The undesignated interior space, enclosed by those historic facades, consists of approximately 800 square feet.

The overall Property is comprised of two parcels: (1) a 22,054 square foot parcel located at the intersection of Georgia Avenue and Cameron Street ("8676 Georgia Avenue"), and (2) a 14,595 square foot parcel known as Lot 10 in the "Ward & Fidler" subdivision, as recorded among the Land Records of Montgomery County, Maryland at Plat No. 21255 ("8601 Cameron Street"), on which the Historic Tastee Diner currently sits. Collectively, the overall Property has a net lot area of 36,649 square feet (or 0.84 acres) and, including prior and proposed right-of-way dedications, a gross tract area of 45,503 square feet (or 1.04 acres).

In October 2022, the County Council rezoned the Property, including the Historic Tastee Diner, to the CR-5.0, C-5.0, R-5.0, H-300' Zone making way for redevelopment of the Property

with heights of up to 300 feet, consistent with the recommendations of the Downtown Plan.<sup>1</sup> The Council also placed the Property within the Downtown Silver Spring Overlay Zone (the “DSS Overlay Zone”). The Project achieves many of the goals and objectives of the Downtown Plan, including providing more housing diversity, improving pedestrian and bicycle connectivity, and supporting resiliency through sustainable strategies. Additionally, the Project promotes the specific objectives of the Downtown North District, within which the Property is located. Specifically, the Downtown North District seeks to “encourage redevelopment of underutilized parcels,” and “promote infill development on either side of Georgia Avenue north of Colesville Avenue.”

The Property is a constrained site, being a very long, narrow site with frontage on three streets. A two-story bank building with remote drive-thru stands at the eastern end of the Property. The Restaurant, which consists of the Historic Tastee Diner and its very large, non-historic one-story addition and associated surface parking, occupies the western portion of the Property at the intersection of Cameron Street and Ramsey Avenue. The Historic Tastee Diner was originally transported to and assembled at 8516 Georgia Avenue in 1946. was moved to its current location in 1994; it has no historic setting beyond its designated façades.



Approximate limits of 800 square foot historic resource.

The remainder of the Restaurant is not original and has no historic significance. The Tastee Diner signage is also not original; it was noted in connection with the relocation of the Historic Tastee Diner in 1994 that the original signs had already been removed. As discussed below, the Applicant proposes to move the Historic Tastee Diner approximately 45 feet to the west and restore its exterior, allowing it to read as a special feature of the proposed redevelopment.

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<sup>1</sup> Sectional Map Amendment H-146 was approved by the County Council sitting as the District Council on October 18, 2022 (Resolution No. 19-1412).

## **II. Proposed Development**

### **A. Development Program**

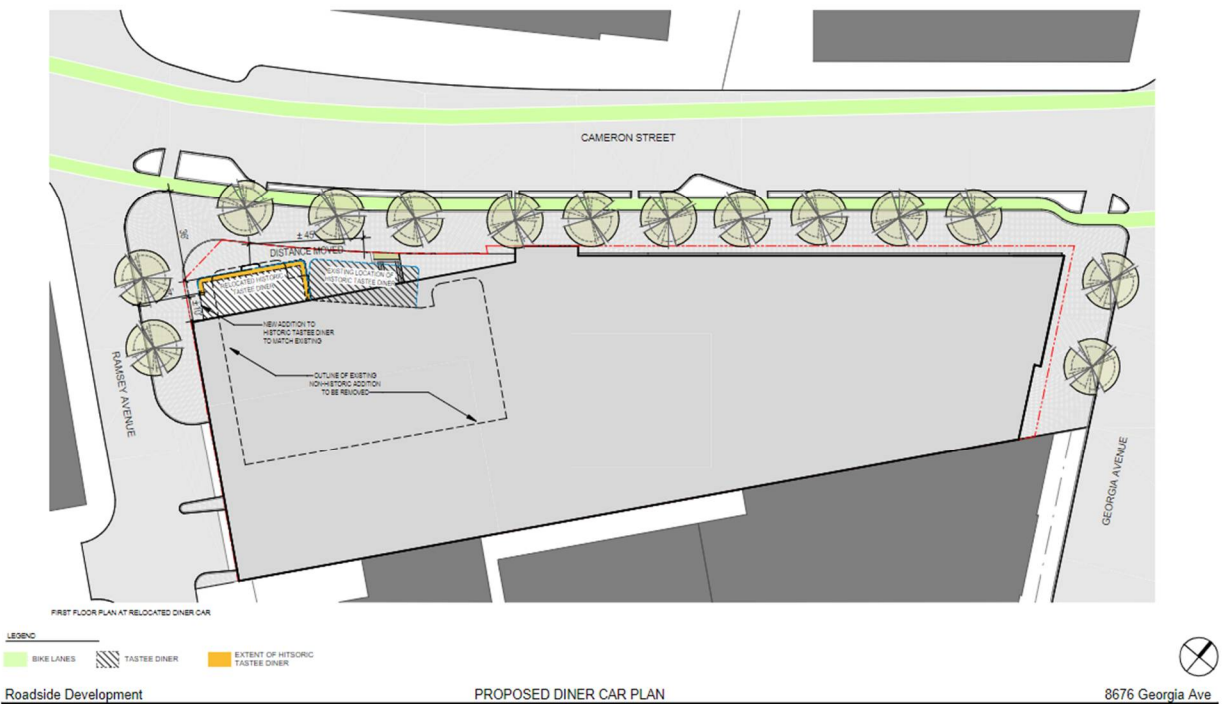
The Applicant is proposing to redevelop the Property with a high-rise, mixed-use, predominately residential development containing up to 550,000 square feet of density, including up to 525,000 square feet of residential use (or up to 525 units, including 15% Moderately Priced Dwelling Units) and up to 25,000 square feet of ground floor commercial use, with any given combination of commercial and/or residential density not to exceed 550,000 square feet. The Applicant is seeking flexibility as part of the Sketch Plan Application to provide either commercial or street-activating residential amenity uses on the ground floor of the building, to activate the adjacent streets. The Applicant is seeking flexibility in the commercial/residential breakdown of the overall density to allow for either of these scenarios, with the final use to be determined at the time of Site Plan.

### **B. Treatment of the Historic Tastee Diner**

The Historic Tastee Diner is listed in the Montgomery County Master Plan for Historic Preservation as resource #36/013-000A. The former owner of the Restaurant chose to close the Restaurant and sell the property to the Applicant, which will retain, relocate, and restore the Historic Tastee Diner as part of the Project.

As discussed above, the Historic Tastee Diner dates from 1946 and was originally located at 8516 Georgia Avenue. It features an “exterior surface of porcelain enamel with wraparound bands of trim on the front section, and stainless steel detailing.” (*See* Approved and Adopted Amendment to the Master Plan for Historic Preservation, Silver Theatre and Shopping Center, and Tastee Diner, approved by the Montgomery County Council in February 1994, page 6). Attachment A. The Historic Tastee Diner was recognized as a “classic vernacular commercial building form” that is “representative of the types of ‘roadside’ architecture which sprang up in the United States in the 1930s and 1940s, as a direct result of the increasingly mobile, car-oriented society of the period.” (*See Id.*, Pages 6-7). It was recognized as “a transportable roadside structure by design and intent”. Consequently, its 1994 relocation was found to be “consistent with its historical designation ...” (*See Id.*).

In connection with the Project, the Applicant is proposing to retain the Historic Tastee Diner’s orientation toward Cameron Street but move it west approximately 45 feet toward Ramsey Street, to a more prominent corner location, with wider open space at its front.



Historic Tastee Diner moved approximately 45 feet towards Ramsey Street.

The Historic Tastee Diner will be restored and its west wall and roof extended to recapture the diner car’s original rectangular shape and volume, adding to the prominence of the Historic Resource. Although the Historic Tastee Diner will be connected to the first floor of the Project it will read as an independent building and stand proud of the Project, with no new construction immediately above it. The architecture of the Project will be specifically designed to not compete with the Historic Tastee Diner. With input from HPC staff, the Applicant has begun developing the design of the base of the new building adjacent to the Historic Tastee Diner. Specifically, the building proposes horizontal banding and window placements as an homage to the architecture of the Historic Tastee Diner and also allows the Historic Tastee Diner to read as a special element in the streetscape.

The overall concept is for the main building base to break and pull back to create a backdrop for the Historic Tastee Diner. The Historic Tastee Diner is shifted west toward the corner of Ramsey and Cameron with the addition of landscape design to create an interpretive node. This break on the façade is treated with a glass façade (light material) that turns the corner and extends to the south end of the building.

The design intent is to read horizontally in a parallel fashion to the horizontality of the Historic Tastee Diner. This horizontality will be achieved with the introduction of horizontal bands that extend throughout and with glazing panels designed to reduce scale and be consistent with the scale of the Historic Tastee Diner. Additionally, a second line of mullions on the new

glass façade creates a direct relationship to the glazing design used on the historic diner. Other elements that will be considered during the more detailed Site Plan review are the addition of horizontal lighting to enhance the horizontality of the new building and the use of similar colors of the original Historic Tastee Diner to be applied to the horizontal bandings of the glass façade.

Furthermore, the first two levels of the glass backdrop are recessed, and the main plane of the façade comes down at the north corner, where the residential entrance vestibule is located. This move frames the Historic Tastee Diner as the main feature of the corner. The angled façade points down to the Historic Tastee Diner and directs your eye to it, while also retaining the architectural language of the angled tower above.



Illustrative New building homage to Historic Tastee Diner

It is currently anticipated that the Historic Tastee Diner will function as a retail space, restaurant, or other street-activating use.

The overall massing of the Project turns away from Cameron Street as it approaches Ramsey Avenue. This massing, in combination with the new location of the Historic Tastee Diner and the treatment of the public space around the Historic Tastee Diner will allow it to be the prominent feature in the streetscape at the west end of the Property. Furthermore, on-site open space will allow for the celebration of the Historic Tastee Diner. While public open space is not required on the Property, the Applicant proposes to strategically set the Project back from the street by the relocated Historic Tastee Diner to allow room for space around it and an interpretive Node that will celebrate the Historic Tastee Diner.

### **C. Architectural Design**

The architectural design of the building will be fully developed and finalized through the subsequent Site Plan application process and review by the HPC. The Applicant's design intent is for the Project to both meet the criteria for approval under Chapter 24A and to respond to the recommendations of the Downtown Plan and Design Guidelines.

The design intent is for the Historic Tastee Diner to appear as an independent volume, separate and in front of the modern glass façade of the proposed building base. The Historic Tastee Diner will be restored and it will sit against a glass backdrop, so that pedestrians can experience the three faces of the Historic Resource projecting out from the building. The resource will stand at grade on a stone base. The sill of the door opening will be lowered and a transom will be added within the existing door frame so that the Historic Tastee Diner will be accessible from grade. This allows the non-historic steps, ramp, and railings to be removed and the restored resource to read as a complete volume uncluttered by additional items in front.

The overall Project is comprised of multiple forms and façade treatments to break down the scale. The Project incorporates a series of set-backs, unique geometry that responds to its unusual site, and modulated and articulated facades. A variety of building materials and colors may also be used. Collectively, these treatments reduce the perceived mass and height of the Project as viewed from different perspectives.

The overall massing of the Project is derived from the simple diagram of two intersecting forms. As the site widens near Ramsey Avenue the western form turns to widen the view corridor down Cameron Street as it transitions from bustling commercial Georgia Avenue to calmer, residential Ramsey Avenue. This angle in the Project creates open space at the street level as the base turns with the tower above. The west tower is stepped down several floors from the taller form, and it is set back from the property lines on Cameron Street and Ramsey Avenue approximately 40 feet (to be more fully refined at time of Site Plan) to provide a compatible transition to the surrounding development. Additionally, there is a two-story setback directly above the base, which allows the tower to appear separated from the base along the Ramsey Avenue elevation.

### **D. Treatment of the Historic Tastee Diner**

The Historic Tastee Diner will be treated in accordance with the Secretary of the Interior's Standards for Rehabilitation. It will be retained, relocated, and restored and incorporated into the first floor of the Project. More detailed plans for that work will be developed as the Project moves through the review process. Contemplated work includes:

- Removal of non-historic access ramps, guard rails, stairs, and signage;

- Relocation of the Historic Tastee Diner approximately 45 feet to the west to provide a more prominent location at the intersection of Cameron Street and Ramsey Avenue;
- Restoration of the enamel panels and stainless steel at the façade of the Historic Tastee Diner
- Replacing the missing panels at the west end of the Historic Tastee Diner and extending the roof to recapture of the rectangular shape and volume of the diner car;
- Placing the Historic Tastee Diner on an approximately one (1) foot tall stone base to provide ADA-compliant access at grade without the use of ramps and allow easy access into the resource and overall building; and
- Lower existing door opening to new grade, insert new transom, and replace existing door with a stainless steel and glass door (with transom window above); existing door surround to be retained.



Existing representative conditions to be modified



Illustrative rendering of proposed preservation and restoration

### **III. Secretary of Interior's Standards for Rehabilitation**

The alterations to the Historic Tastee Diner will conform with the Secretary of the Interior's Standards for Rehabilitation.

1. *A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*

The Historic Tastee Diner may no longer legally be operated as a Tastee Diner. Its new use, whether it be retail, a different restaurant, or a use connected with the residential space in the Project, will require minimal change to the Historic Tastee Diner.

2. *The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*

The designated character-defining façade of the Historic Tastee Diner will be retained and preserved.

3. *Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*

The Historic Tastee Diner will continue to read as a 1946 diner car. No conjectural features or architectural elements will be added.



- 4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.*

The restaurant space and exterior stairs and ramp that were added to the Historic Tastee Diner in conjunction with its 1994 relocation have no historic or architectural significance and will be removed. The existing signage is also not historically significant and must be removed because the name Tastee Diner can no longer be used at this location.

- 5. Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a property shall be preserved.*

The porcelain enamel panels, wraparound bands of trim, and stainless steel trim that are distinctive feature of the Historic Tastee Diner will be retained and restored.

- 6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.*

The Historic Tastee Diner is in relatively good repair. Detailed plans for the treatment of the Historic Tastee Diner will be developed for the repair and restoration of the historic fabric. Historic fabric will only be replaced to match if a careful survey of the Historic Tastee Diner determines that fabric cannot be repaired. Extra care will be taken to prevent damage to the Historic Tastee Diner during its relocation and construction of the Project.

- 7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.*

Cleaning of the Historic Tastee Diner will be done using the gentlest means possible.

- 8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.*

There are no known archeological resources on the Property that will be affected by the relocation and continued use of the Historic Tastee Diner.

- 9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*

The Historic Tastee Diner will be retained and restored and incorporated into the first floor of the Project. It is currently anticipated that it will function as retail, restaurant, or other street-activating use, all uses compatible with the character of the Historic Tastee Diner. Its treatment and use will be compatible with the Secretary's Standards for Rehabilitation, and the Historic Tastee Diner will read as a structure distinct from the rest of the Project.

The Project must also respond to the goals of the Sector Plan and recent rezoning of the Property. The massing and design of that portion of the Project that is proximate to the Historic Tastee Diner will be articulated so as to both be compatible with and not compete with the Historic Tastee Diner. The Applicant will submit specific architectural details regarding the design and materials of the Project as part of the future Site Plan application and HPC review process.

*10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

The Project will be designed and constructed in a manner that if removed, the essential form and integrity of the Historic Tastee Diner will remain unimpaired.

#### **IV. Criteria for Historic Area Work Permit**

Pursuant to Section, 24A-8 (Same-Criteria for issuance) of the Code, the HPC shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to ensure conformity with the purposes and requirements of this chapter, if it finds that:

- 1. The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or*
- 2. The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or*
- 3. The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or*
- 4. The proposal is necessary in order that unsafe conditions or health hazards be remedied; or*
- 5. The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or*

6. *In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.*

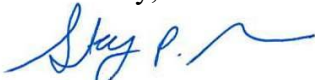
The proposed Project meets several of these enumerated criteria, as discussed herein. The Project proposes to preserve and restore the Historic Tastee Diner and give it a viable long-term use. It will be incorporated into the Project and is currently anticipated to function as a retail, restaurant, or other street activating space, which will allow for its continued utilization in a manner that is consistent with its historic use. The Historic Tastee Diner will be strategically relocated approximately 45 feet to the west, closer to the intersection of Cameron Street and Ramsey Avenue. The proposed location, in combination with the design and massing of the Project, will allow the Historic Tastee Diner to stand proud of the rest of the Project and to be a significant visual feature in the streetscape. The Historic Tastee Diner will also be prominently visible from the surrounding public streets. By removing the incompatible railings and ramps along with the non-historic portion of the existing Restaurant, the Historic Tastee Diner will be much more visible and be able to stand as its own volume with the backdrop of a new compatible mixed-use building. As discussed in this Statement, the Property was recently rezoned to allow for high-rise development that is up to 300 feet tall. In fact, the Downtown Plan encourages redevelopment of this underutilized Property. The Project allows the Applicant to preserve the Historic Tastee Diner in an appropriate manner, while simultaneously implementing the goals and objectives of the County, as expressed through the Downtown Plan. For all of these reasons, the Project is in the public interest and will provide numerous public benefits.

## **V. Conclusion**

The Applicant is seeking preliminary guidance from the HPC on the treatment of the Historic Tastee Diner and the Project. As mentioned above, the Applicant will come back before the HPC in connection with the subsequent Site Plan Application and thereafter will submit for Historic Area Work Permit review and approval.

We look forward to receiving your feedback. Please do not hesitate to contact us if you have any questions or need more information.

Sincerely,



Stacy P. Silber



Elizabeth C. Rogers

TAX I.D.: 13-1-3277450

**HISTORIC EASEMENT AGREEMENT**

**THIS HISTORIC EASEMENT AGREEMENT** is made this 5th day of June, 2001, by and between **TASTEE DINER, INC.**, a Maryland corporation (the "Grantor") and **MONTGOMERY COUNTY, MARYLAND**, a chartered political subdivision of the state of Maryland (the "Grantee").

**WHEREAS**, the Grantor and the Grantee are parties to a certain Lease/Purchase and Development Agreement dated November 5, 1998 (the "Development Agreement") related to certain real property located at 8601 Cameron Street, Silver Spring, Maryland, 20910, and more particularly described on the attached Exhibit "A" (the "Property");

GROUNDING FEE	20.00
IMP PD SURVE \$	5.00
TOTAL	25.00
REC'D MONTG	REPT: 5 69304
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**WHEREAS**, the Development Agreement granted certain rights and benefits to the Grantee relating to the development of the Property in return for the Grantee's covenant to relocate to the Property the Grantor's restaurant dining car formerly located at 8516 Georgia Avenue, Silver Spring, Maryland (the "Dining Car");

**WHEREAS**, the Dining Car is designated as an historic resource pursuant to the provisions of Chapter 24A of the Montgomery County Code, 1994, as amended;

**WHEREAS**, the Dining Car has been relocated to the Property, and Grantor represents it has now been installed and constructed in accordance with: plans approved by the Grantee and the Historic Preservation Commission of Montgomery County; a Historic Area Work Permit issued by the Grantee; and all applicable building codes and zoning regulations;

**WHEREAS**, the Development Agreement provides that at such time as the Property is conveyed to the Grantor, this Agreement is to be executed and recorded to insure the preservation of the façade of the Dining Car (the "Dining Car Façade") as an historic resource;

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) MQR 19295, p. 0317, MSA\_CE63\_19249. Date available 06/20/2005. Printed 08/08/2023.

01 JUN 15 A 10: 10.3  
FILED  
MOLLY O. RUHL  
CLERK'S OFFICE  
MONTGOMERY CO. MD

*WHEREAS*, the parties hereto now wish to convey the Property from the Grantee to the Grantor;

*NOW THEREFORE*, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do agree as follows:

1. **GRANT**. Grantor hereby grants and conveys to the Grantee an easement (the "Easement") upon the Property for the purpose of preserving and enforcing the rights hereinafter enumerated.

2. **EASEMENT TERMS**. The terms of the Easement are as follows:

(A) **Duration and Nature of the Easement**. The Easement shall be perpetual in duration. The parties agree that it is and shall be considered an easement in gross and as such is inheritable and assignable and runs with the land as an incorporeal property interest in the Property enforceable by Grantee and its successors, transferees and assigns with respect to the Property and against Grantor and Grantor's heirs, successors, transferees and assigns, all of whom are collectively referred therein as "Grantee and "Grantor", respectively. The Easement is subject to any and all presently existing easements and rights-of-ways upon the Property, but excluding any mortgages, deeds of rust or other such liens.

(B) **Maintenance and Administration**. Grantor shall keep and maintain the Dining Car Façade in good, clean and safe condition. Grantor shall maintain, repair and administer the Dining Car Façade in a manner to preserve the historic, aesthetic and cultural character and appearance of the Dining Car Façade in accordance with the aforementioned plans approved by the Grantee and the Historic Preservation Commission of Montgomery County. Notwithstanding the foregoing, if damage occurs to the Dining Car Façade from casualty loss, deterioration, or wear and tear, then the Grantor shall be permitted, and required, to repair

promptly such damage without such written permission of the Grantee, subject to the conditions hereinafter set forth in section 2(C)(ii) of this agreement.

(C) Changes and Alterations.

(i) The term Dining Car Façade shall be interpreted to mean the exterior surface of that portion of the Dining Car which has previously been designated as an historic resource pursuant to the provisions of Chapter 24A of the Montgomery County Code, 1994, as amended, including its architectural style and the color and texture of its building materials.

(ii) Without the express written consent of the Grantee, Grantor shall not cause, permit or suffer any construction which would materially alter or change the Dining Car Façade provided, however, that if damage occurs to the Dining Car Façade from casualty loss, deterioration or wear and tear, then the maintenance, reconstruction, repair, repainting or refinishing to correct the damage shall be permitted without such written permission of the Grantee, provided that such maintenance, reconstruction, repair, repainting or refinishing is performed in a manner that will not substantially alter the appearance of Dining Car Façade upon conclusion of the restoration of the Property.

(D) INSPECTION. Grantee shall have the right to enter the Property on reasonable notice to Grantor for the purpose of inspecting the Property to determine whether there is compliance by the Grantor with the terms of this agreement.

3. BREACH OF GRANTOR. Upon any breach of the terms of this agreement by Grantor, Grantee may, after reasonable notice to Grantor, exercise any or all of the following remedies:

(A) institute suit(s) to enjoin any breach or enforce any covenant by ex

parte, temporary, and/or permanent injunction;

(B) demand that the Dining Car Facade be restored promptly to the condition required by this agreement; and

(C) enter upon the Property, correct any breach and Grantor shall be responsible for the resulting cost, which costs shall constitute a lien against the Property.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity. If Grantor is found to have breached any of Grantor's obligations under this agreement, Grantor shall reimburse Grantee for any costs or expenses incurred by Grantee, including court costs and reasonable attorneys fees.

4. **INDEMNIFICATION.** Grantor shall hold the Grantee, its employees, contractors, subcontractors, and agents, harmless from and against any loss, damage, claim of damage, liability, fine, penalty, judgment, cost or expense of any kind (including reasonable attorneys' fees, expert fees and other expenses incurred by the Grantee in defending or preparing for defense of the same), or for any damage or injury to any persons or property during the duration of this Historic Easement from any cause whatsoever, whether negligent, intentional or otherwise by reason of the presence upon the Property of any use, occupation, or enjoyment of the Property or improvements thereon by the Grantor, its employees, agents, visitors, tenants, licensees, concessionaires or invitees or arising from the Grantor's performance or exercise of any of its obligations under this Historic Easement or Grantor's breach of this Agreement. Grantor shall indemnify and pay for the defense of the Grantee in any action or suit brought against the Grantee and shall hold the Grantee harmless from all losses, damages, claims of damage, liability or expense whatsoever on account of any such damage or injury; provided, however, that the foregoing indemnification for loss, damage, claim of damage, liability or expense of injury of to

persons or property shall not apply to the extent due to any intentional misconduct or grossly negligent act or admission of the Grantee, its employees or agents. In no event shall the limits of any insurance policy provided for herein, be deemed to limit the Grantor's liability to the Grantee as set forth herein.

5. **WAIVER.** No waiver of any term or condition of this agreement shall have any force or effect unless it be in writing and approved by the parties hereto. No failure on the part of Grantee to enforce any covenant or provision herein, nor the waiver of any right thereunder by Grantee shall discharge or invalidate such covenant or provision of any other covenant, condition, or provision hereof, or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

6. **CONSENT AND DISAPPROVAL.** In any event where the terms of this easement agreement require the consent and approval of the Grantee, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

7. **NOTICE.** Any notice required to be given by this Agreement shall be in writing and may be given by certified or registered mail, with postage prepaid and return receipt requested, if to the Grantor, addressed to the Grantor as follows:

Tastee Diner, Inc.  
C/o Gene W. Wilkes  
20910 Peach Tree Road  
Dickerson, Maryland, 20842

**With a copy to:**

Joseph A. Lynott, III  
Lynott & Lynott, P.A.  
51 Monroe Street, Suite 701  
Rockville, Maryland 20850

Or to the Grantor at such other address as the Grantor may from time to time designate by Notice to the Grantee:



County Executive  
 Montgomery County, Maryland  
 101 Monroe Street  
 Rockville, Maryland 20850

**With a copy to:**

County Attorneys' Office  
 Montgomery County, Maryland  
 101 Monroe Street, 3<sup>rd</sup> Floor  
 Rockville, Maryland 20850

Or to Grantee at such other address as the Grantee may from time to time designate by notice to the Grantor. Any notice given in the foregoing manner shall be deemed to have been given upon receipt thereof, which shall be presumed to be two (2) days after the day notice has been deposited with the United States Post Office.


8. **TRANSFER OF OWNERSHIP.** The Grantor agrees for itself, its personal representatives, heirs, successors, transferees and assigns, to notify the Grantee in writing of the names and addresses of any party to whom the Property, or any part thereof, is being transferred before or within forty-five (45) days of the time the transfer is consummated.

9. **SUBSTANTIAL DESTRUCTION OF THE PROPERTY.** Notwithstanding anything contained herein to the contrary, in the event the Dining Car is ever substantially damaged or destroyed by fire or other casualty such that the cost of its repair or replacement would exceed 100% of its value, the rights granted herein shall be extinguished, and the Grantor shall be under no further obligation to restore the Dining Car or the Property to its present condition.

IN WITNESS WHEREOF, TASTEE DINER, INC., Grantor, has executed and delivered this Historic Easement Agreement as of the day and year first above written.

**THIS SPACE INTENTIONALLY LEFT BLANK**

WITNESS:

  
\_\_\_\_\_

GRANTOR: TASTEE DINER, INC.

  
\_\_\_\_\_ [SEAL]  
BY: GENE W. WILKES

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
THIS 21<sup>st</sup> DAY OF May, 2001

  
MONTGOMERY COUNTY, MARYLAND,

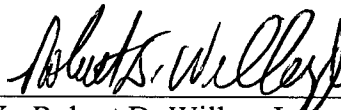
\_\_\_\_\_

  
\_\_\_\_\_ [SEAL]  
BY: DOUGLAS M. DUNCAN

**ACKNOWLEDGEMENT**

The foregoing easement is expressly consented to by the undersigned lender and it is agreed that the lender's mortgage is subordinate to the terms of the easement.

SEQUOIA BANK formerly  
SEQUOIA NATIONAL BANK

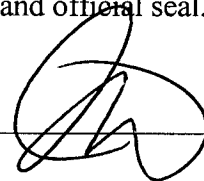
  
\_\_\_\_\_ [SEAL]  
BY: Robert D. Willey, Jr.,  
Executive Vice President

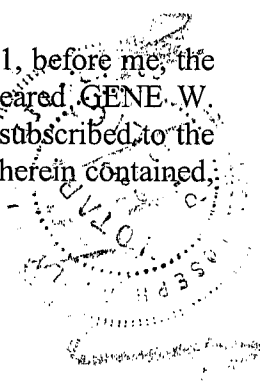
STATE OF MARYLAND :  
COUNTY OF MONTGOMERY, to wit :

*I HEREBY CERTIFY* that on this 14 day of June, 2001, before me, the subscriber, a Notary Public for the State and County aforesaid, personally appeared GENE W. WILKES, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained, and in my presence signed and sealed the same.

*IN WITNESS WHEREOF*, I hereunto set my hand and official seal.

My commission expires: 10/1/01

  
\_\_\_\_\_  
, Notary Public



STATE OF MARYLAND :  
COUNTY OF MONTGOMERY, to wit :

I HEREBY CERTIFY that on this 5th day of June, 2001, before me, the subscriber, a Notary Public for the State and County aforesaid, personally appeared DOUGLAS M. DUNCAN, County Executive of Montgomery County, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as County Executive for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires

June 1, 2002

J Anne Poore  
Notary Public

STATE OF VIRGINIA :  
COUNTY OF LOUDOUN, to wit :

I HEREBY CERTIFY that on this 25th day of APRIL, 2001, before me, the subscriber, a Notary Public for the State and County aforesaid, personally appeared ROBERT D. WILLEY, JR., Executive Vice President of Sequoia Bank, known to me or satisfactorily proven to be the person whose name is subscribed to the above acknowledgment and acknowledged that he executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

11/30/04

Mirinda D. ...  
Notary Public

**ATTORNEY CERTIFICATION**

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

[Signature]  
Joseph A. Lynott, III

UPON RECORDATION, PLEASE RETURN TO:

Joseph A. Lynott, III  
Lynott & Lynott, P.A.  
51 Monroe Street, Suite 701  
Rockville, Maryland 20850  
(301) 424-5100

**EXHIBIT "A"**

Lot numbered Ten (10) in the subdivision called "WARD & FIDLER SUBDIVISION," as per plat thereof recorded among the Land Records of Montgomery County, Maryland, in Plat Book 196 at Plat No. 21255