



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

November 6, 2017

Mr. Jeremy Schaub
Schaub Ly Architects, Inc.
1360 9th Avenue, Suite 210
San Francisco, CA 94122

Site Address:	838 Grant Avenue
Assessor's Block/Lot:	0209/005
Zoning District:	CVR (Chinatown— Visitor Retail)
Staff Contact:	Nicholas Foster, (415) 575-6167 or nicholas.foster@sfgov.org
Record No.:	2017-010958ZAD

Dear Mr. Schaub:

This letter is in response to your request for a Letter of Determination regarding the property at 838 Grant Avenue ("Property"). The Property is located in the CVR (Chinatown— Visitor Retail) Zoning District and 50-N Height and Bulk District. Your letter seeks two determinations: 1) the correct use size limit for Restaurants in the CVR Zoning District and 2) whether a proposed ground floor expansion would be allowed under the Planning Code's Floor Area Ratio (FAR) limits for the property.

Your letter outlined a proposal to: 1) change the existing 6,597 square foot (sf) Retail Sales and Service Use located on the basement level to a 7,165 square foot Restaurant Use (an expansion of approximately 568 square feet of the occupied floor area of the basement level); 2) expand the envelope of the existing building at the basement level by approximately 192 square feet; and 3) expand the occupied floor area of Retail Sales and Service Use located on the ground level, removing a stairwell and unoccupied floor area, with no expansion of the building envelope (an expansion of approximately 495 square feet). The letter stated that no work is proposed above the ground floor.

Use Size Limit Determination

Pursuant to Planning Code Section 811.44, a Restaurant Use is allowed with Conditional Use Authorization on the second story and below within the CVR Zoning District. Planning Code Section 121.4 establishes non-residential use size limits and use size maximums in the Chinatown Mixed Use Districts. Planning Code Section 890.130 defines non-residential use size as "the permitted gross floor area allowed for each individual non-residential use." For the CVR Zoning District, the use size limit is 2,500 gross square feet (gsf) and the use size maximum is 5,000 gsf. Uses above the use size limit require Conditional Use Authorization up to the use size maximum and individual commercial uses above the use size maximum are not be permitted. In the CVR Zoning District, Restaurant Uses are not subject to the use size limit; however, they are subject to the use size maximum. As such, the maximum use size for a Restaurant in the CVR Zoning District is 5,000 gsf.

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As indicated in your request, the existing basement level Retail Sales and Service Use is approximately 6,597 sf, as such it currently exceeds the use size maximum for the CVR Zoning District. While a Restaurant Use may be established with Conditional Use Authorization in the space of the existing Retail Sales and Service Use, its use size cannot be expanded further. It should also be noted that for the purpose of this determination, it is assumed that the basement level Retail Sales and Service Use previously functioned as one individual non-residential use and was not comprised of multiple Retail Sales and Service Uses. Further, it is also assumed that the proposed basement level Restaurant Use would operate independent of other Restaurant Uses on the subject property and would not result in an expansion of the existing Restaurant Use.

Your letter also outlines a proposal to expand use size of the ground level Retail Sales and Service Use by removing a stairwell and unoccupied floor area (with no expansion of the building envelope) from 6,028 sf to 6,523 sf. As noted previously, the use size maximum for the CVR Zoning District is 5,000 gsf. As such, the proposed expansion of the Retail Sales and Service Use is not allowed under the Planning Code.

Expansion of Structure Determination

Based upon records from the Office of the Assessor-Recorder, the subject building area is 62,370 sf. Based upon information contained in your letter, the subject building area is 69,098 sf. Assuming a building area of 62,370 sf and lot area of 8,250 sf, the existing Floor Area Ratio (FAR) is 7.56:1. Given that the maximum permitted FAR for the CVR Zoning District is 2:1 (Planning Code Section 811.19), the existing Property exceeds the allowed FAR in the CVR Zoning District and is considered to be a non-complying structure.

As noted in your letter, the Property contains a recessed storefront at the basement level, fronting Walter U. Lum Place. Your letter states that this area is used by a nighttime transient population that poses a public health risk and outlines a proposal to infill the recessed storefront as a means to activate the commercial storefront and mitigate the public health risk attributed to the transient users. Your letter seeks a determination as to whether Planning Code Section 181(b)(2) may be utilized to allow a minor alteration to the building to increase the FAR further beyond the amount allowed in the CVR Zoning District. Please note that noncompliance with the FAR requirement renders the building a noncomplying structure. As such, the applicable provision is Planning Code Section 188 (Noncomplying Structures: Enlargements, Alterations and Reconstruction), not Planning Code Section 181 (Nonconforming Structures: Enlargements, Alterations, and Reconstruction). While Planning Code Section 188 does allow for limited expansion of noncomplying structures, such expansions are limited to non-usable space and only under specific circumstances for historic properties or those within the C-3 Zoning Districts. As such, this provision does not appear to be available for the subject property. You may consider other alternatives, such as gates or increase in floor area that is not subject to FAR or use size maximums.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

Mr. Jeremy Schaub
1360 9th Avenue, Suite 210
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November 6, 2017
Letter of Determination
838 Grant Avenue

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Nicholas Foster, Planner
Property Owner
Neighborhood Groups
BBN Requestor (if any)

R#2017-0109587AD
CK # 1218 \$ 664. -
M. LUELLEN (NE)



August 15th, 2017

PROPERTY ADDRESS: 838 Grant Avenue
Block 0209 / Lot 005

CASE NUMBER: #2016-015777

ZONING DISTRICT: Chinatown Visitor Retail

DETERMINATIONS SOUGHT: Modification of Non-Conforming Uses per §811

Dear Mr. Sanchez;

I am writing to request a Letter of Determination regarding the potential change of use at 838 Grant Avenue, also known as the Empress of China Building.

Site Description

The project site at 838 Grant Ave is an approximately 8,250-square-foot (sq. ft.) lot in the Chinatown neighborhood. The project site is located on a block bounded by Grant Avenue, Clay Street, Washington Street, & Walter U. Lum Place. It is a through lot, which also fronts onto Portsmouth Square.

The existing 6-story over two basement building (with two mezzanine levels) has restaurant, office, and retail uses, which date back to the original 1968 construction. The building has one car parking on Walter U. Lum Place, and no bicycle parking.

Project Scope:

The project is to change the basement level (Walter U. Lum Place frontage) from a retail use, to a restaurant use. The new restaurant would also utilize the existing sub-basement restaurant storage area. Two sets of stairs from the basement to the 1st floor will be removed. The proposed restaurant use would be ±7,165 sq. ft. We also would like to remove the existing recessed storefront, and create a more flush entrance off of Portsmouth Square. This would enclose an additional ±192 sq. ft. No work is proposed above the 1st floor.

Determination Requested:

1)The Planning Code contains two conflicting standards related to Use Size in the Chinatown Visitor Retail District.

Table 811.20 lists the Use Size [Nonresidential] at

P up to 2,500 sq. ft.

C 2,501 to 5,000 sq. ft.

Except for Restaurants – 5,000 sq.ft. § 121.4

Whereas Section 121.4 states:

“In the Chinatown Visitor Retail District, the use size limit shall not apply to Restaurants as defined in Section 790.91.”

What is the correct Use Size limit for Restaurants in this zoning district?

SCHAUB LY ARCHITECTS INC.

2) The existing recessed storefront is about 7'-4" deep, and 34'-4" wide. This area is currently heavily used by a nightly transient population, which require a continuous police presence and DPH cleanup crew. To reduce the impacts on health and safety, we would like to propose to enclose most of the recess. This would be an increase of approximately 192 square feet to the gross floor area.

The Floor Area Ratio in the Chinatown Visitor Retail District is 2.01 to 1 per Table 811.19. Currently the gross square footage is 69,098 sq. ft., which equals an FAR of 8.37 to 1. Our proposed area increase would be from 69,098 to 69,290, a change of 0.27%, resulting in an FAR of 8.39.

Section 181(b)(2) states "Minor alterations shall be permitted where ordered by an appropriate public official to correct immediate hazards to health or safety[...]"

May we justify the minor increase in FAR due to the ongoing public health risks?

Conclusion:

I would like to request an official determination from you about the use size limitation and the nonconforming floor area ratio. Site condition photographs and proposed plans are attached for your reference.

Thank you for your consideration

Sincerely,



Jeremy Schaub
Principal Architect

Cc: Aaron Peskin, District 3 Supervisor
JL Realty Partners, Owner





SCHAUB LY ARCHITECTS INC.

SHEET INDEX

- A-0 PROJECT INFO & SITE PLAN
- A-2.0 SUB-BASEMENT PLAN
- A-2.1 EXISTING & PROPOSED BASEMENT PLANS
- A-2.2 EXISTING & PROPOSED GROUND FLOOR PLANS
- A-2.3 EXISTING GROUND FLOOR MEZZANINE & SECOND FLOOR PLANS
- A-2.4 EXISTING THIRD & FOURTH FLOOR PLANS
- A-2.5 EXISTING FIFTH FLOOR & MEZZANINE PLANS
- A-2.6 EXISTING SIXTH FLOOR & ROOF PLANS
- A-3.0 ORIGINAL, EXISTING, & PROPOSED FRONT ELEVATIONS (GRANT AVENUE)
- A-3.1 ORIGINAL, EXISTING, & PROPOSED REAR ELEVATIONS (WALTER U. LUM PLACE)
- A-3.2 LEFT ELEVATION
- A-3.3 RIGHT ELEVATION
- A-3.4 EXISTING LONGITUDINAL SECTION
- A-3.5 PROPOSED LONGITUDINAL SECTION



EXISTING PROPERTY INFORMATION

ADDRESS	838 GRANT AVE
BLOCK / LOT	0209 / 005
LOT WIDTH x DEPTH	60.0' x 137.5'
LOT AREA	8,250 S.F.
# OF RESIDENTIAL UNITS	0
(E) OFFICE SPACE S.F.	19,007
(E) RETAIL SPACE S.F.	17,632
(E) RESTAURANT SPACE S.F.	19,542

ZONING INFORMATION

ZONING	CVR (CHINATOWN- VISITOR RETAIL DISTRICT)
HEIGHT LIMIT	50-N
OFF-STREET PARKING	NONE REQUIRED §161 (c)
USE SIZE MAXIMUM	5,000, SHALL NOT APPLY TO RESTAURANTS PER §121.4

AREA CALCULATION (IN SQUARE FEET)

	RETAIL			OFFICE	RESTAURANT			COMMON AREA**			GARAGE	TOTAL		
	EXISTING	PROPOSED	CHANGE	EXISTING	EXISTING	PROPOSED	CHANGE	EXISTING	PROPOSED	CHANGE		EXISTING	PROPOSED	CHANGE
SIXTH FLOOR					6,890			1,146				8,036		
FIFTH FLOOR MEZZANINE					2,784			1,226				4,010		
FIFTH FLOOR					6,896			1,124				8,020		
FOURTH FLOOR				6,593				1,443				8,036		
THIRD FLOOR				6,593				1,443				8,036		
SECOND FLOOR				5,821				1,426				7,247		
GROUND FLOOR MEZZANINE	4,840							993				5,833		
GROUND FLOOR	6,028	6,523	495					1,992	1,497	-495		8,020		
BASEMENT	6,764	0	-6,764			7,165	7,165	1,349	1,140	-209	242	8,355	8,547	192
SUB-BASEMENT					2,972			533				3,505		
TOTAL	17,632	11,363	-6,269	19,007	19,542	26,707	7,165	12,675	11,971	-704	242	69,098	69,290	192

EXISTING BUILDING

TOTAL NET AREA FOR ALL USES = 56,181 S.F.
 TOTAL GARAGE & COMMON AREA = 12,917 S.F.
 TOTAL GROSS AREA = 69,098 S.F.

PROPOSED BUILDING

TOTAL NET AREA FOR ALL USES = 57,077 S.F.
 TOTAL GARAGE & COMMON AREA = 12,213 S.F.
 TOTAL GROSS AREA = 69,290 S.F.

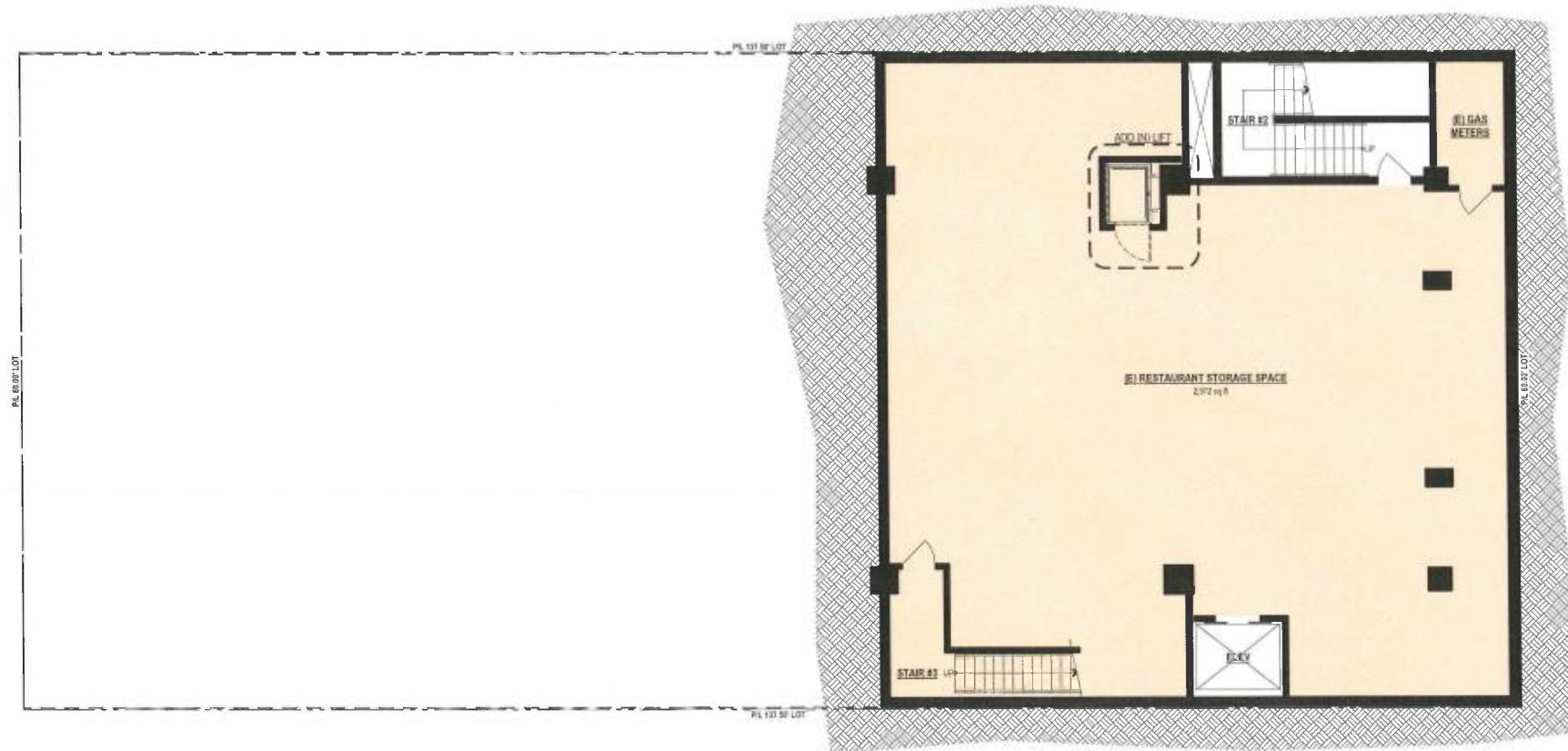
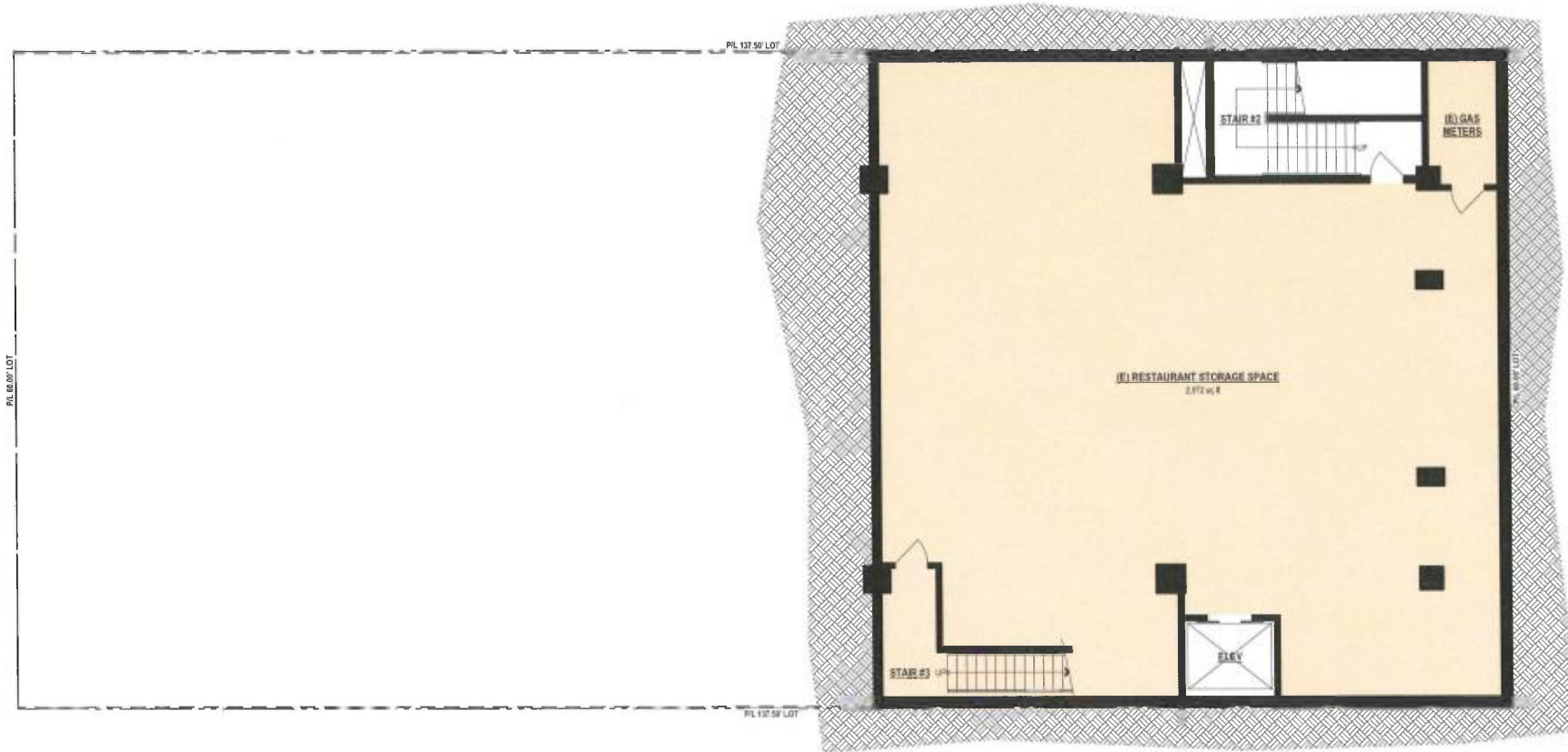
NOTE: AREA CALCULATION AS SHOWN IS INTENDED FOR PERMIT APPLICATION PURPOSES ONLY AND SHALL NOT BE USED FOR SELLING OR LEASING PURPOSES. FINAL SQUARE FOOTAGE AND FINISHED DIMENSIONS MAY VARY FROM THESE PLANS DUE TO CONSTRUCTION VARIABLES.

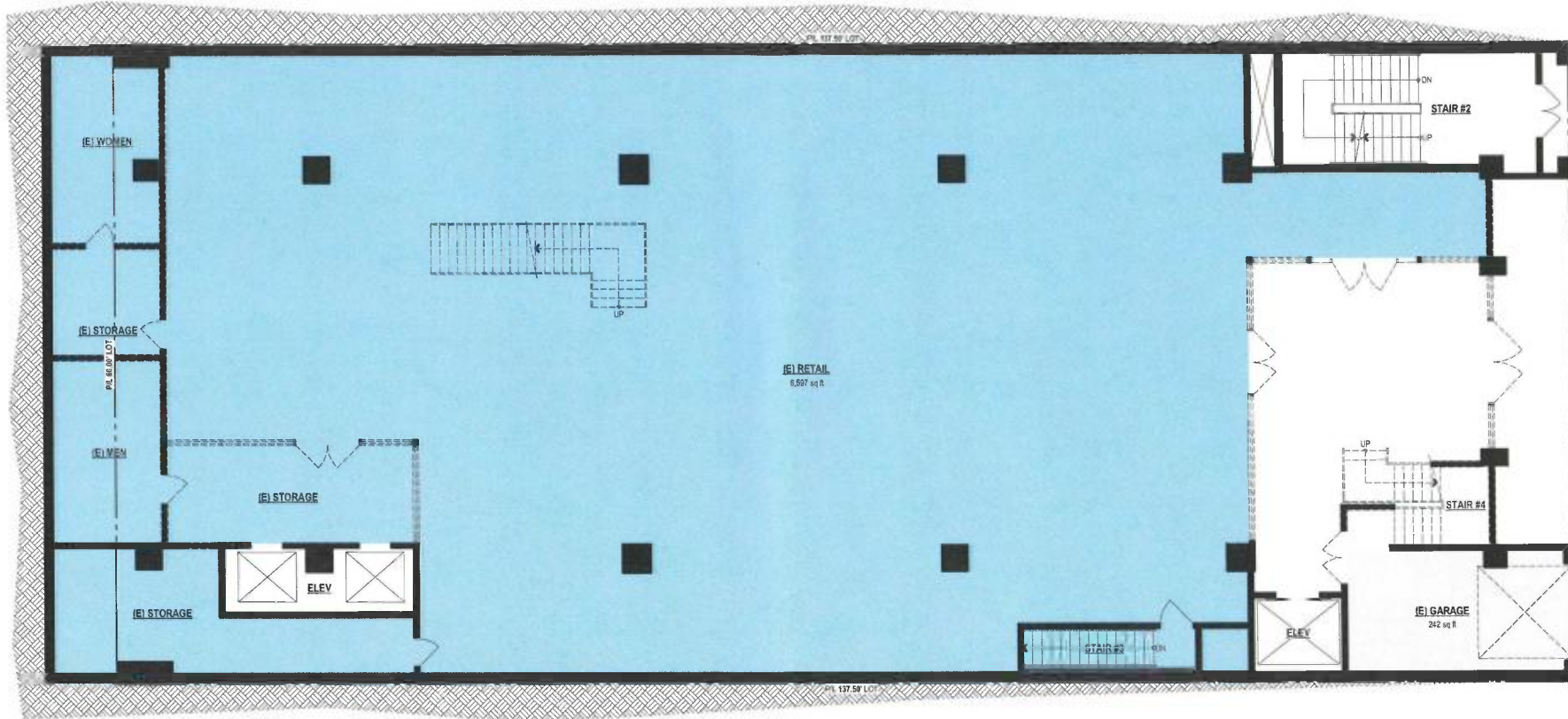
* UNIT AREA INCLUDES NET AREA INSIDE OF UNIT ONLY

** COMMON AREA INCLUDES ALL AREAS OUTSIDE OF UNIT (COMMON STAIR/HALLWAY, EXTERIOR WALLS, ETC.)

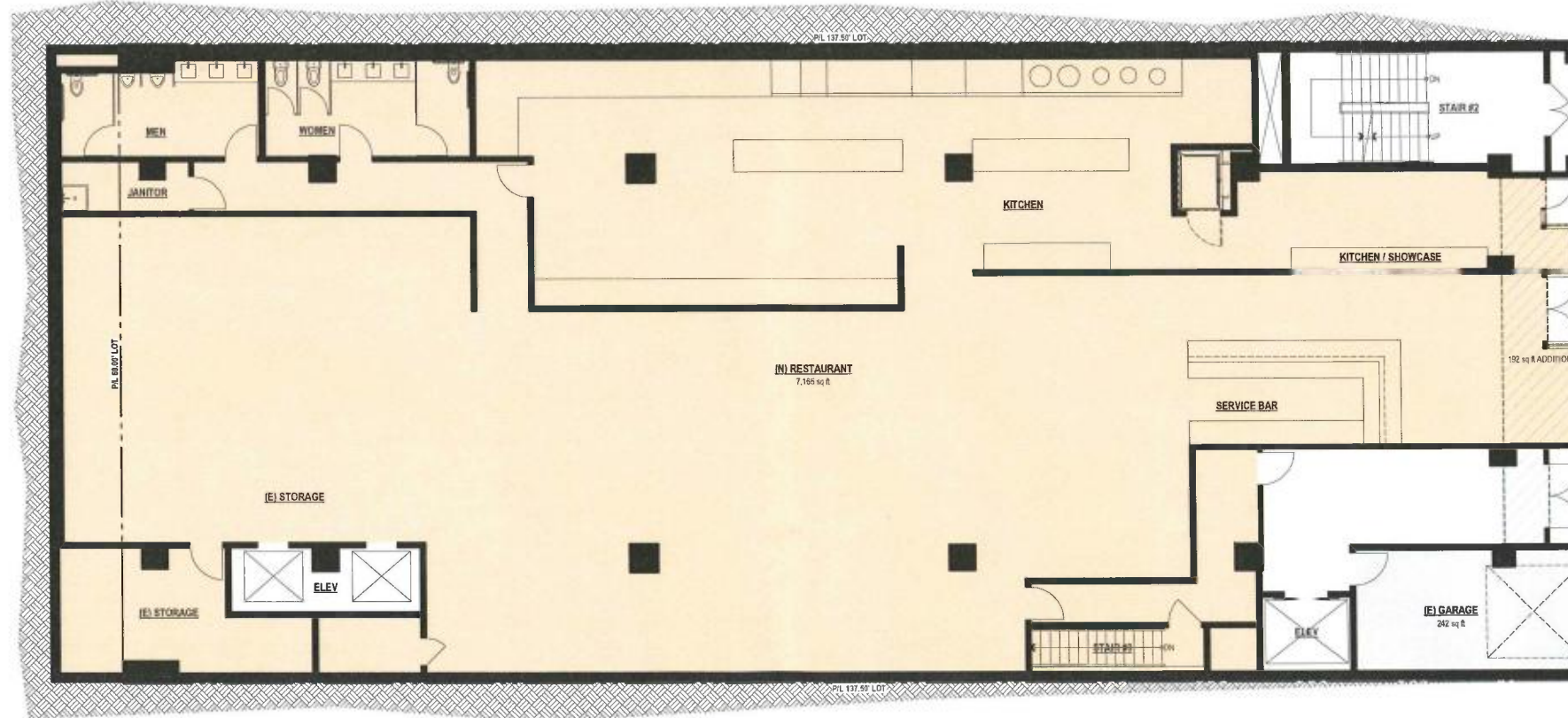
VICINITY MAP



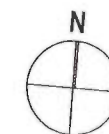


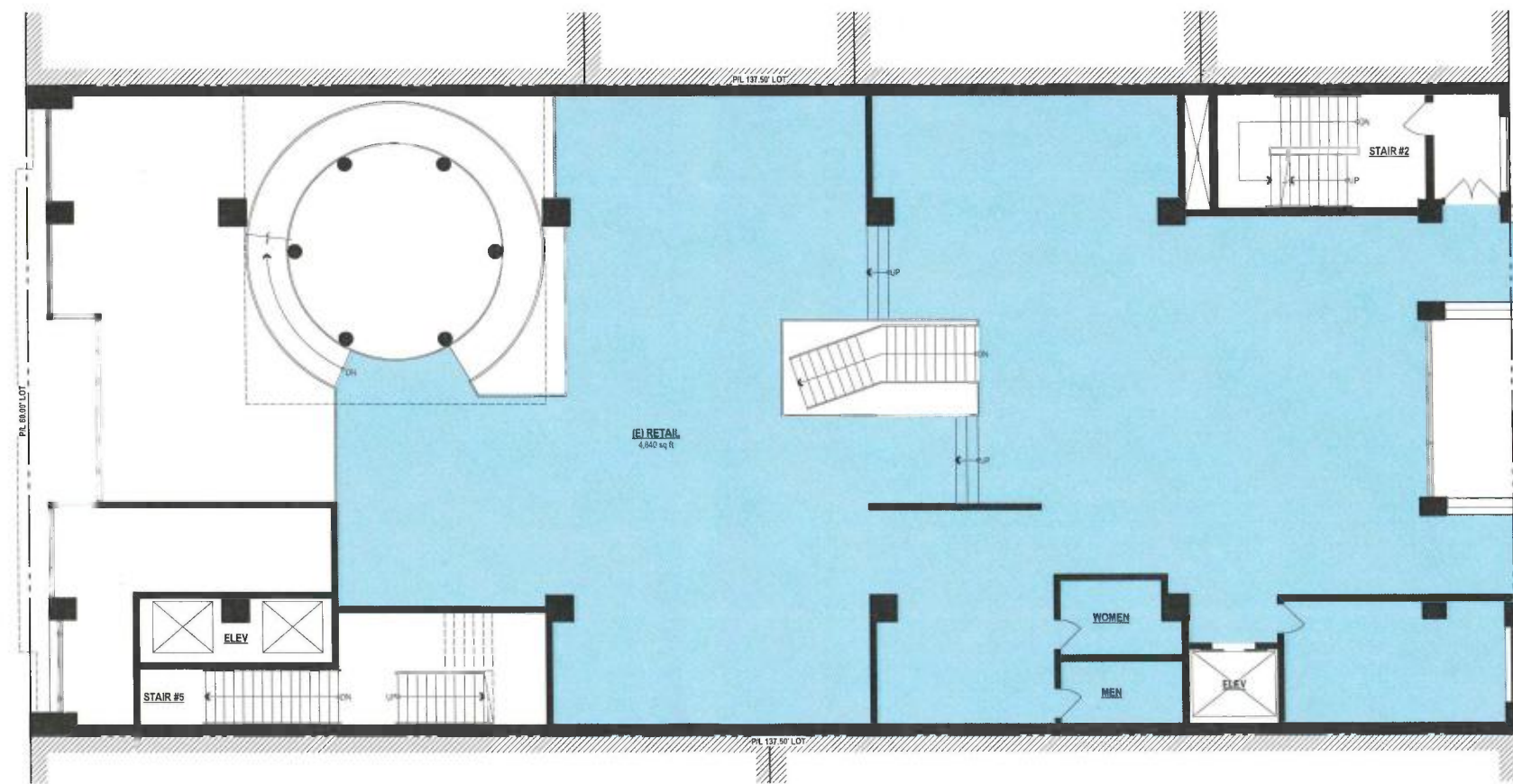
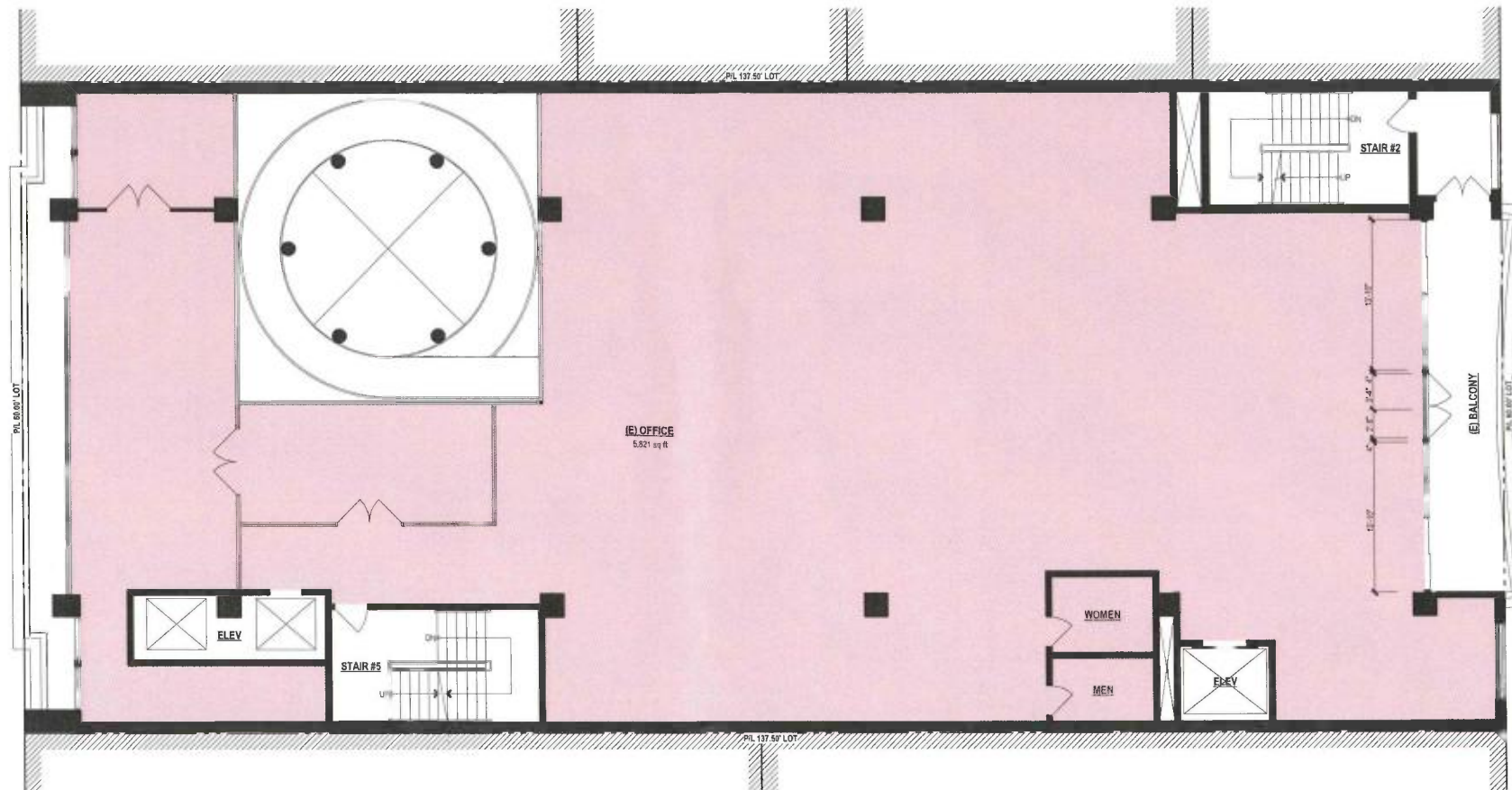


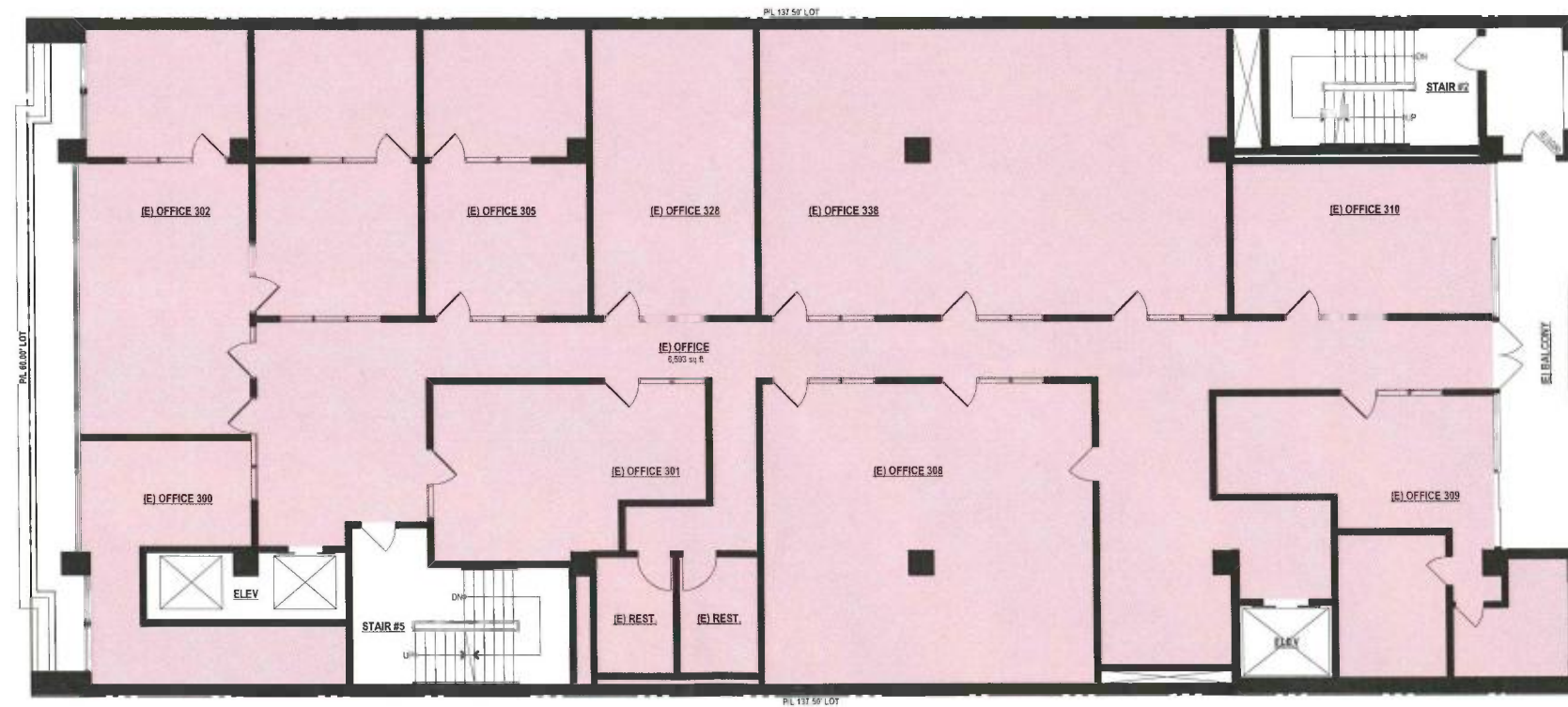
WALTER U. LUM PL.
(86.25' WIDE)

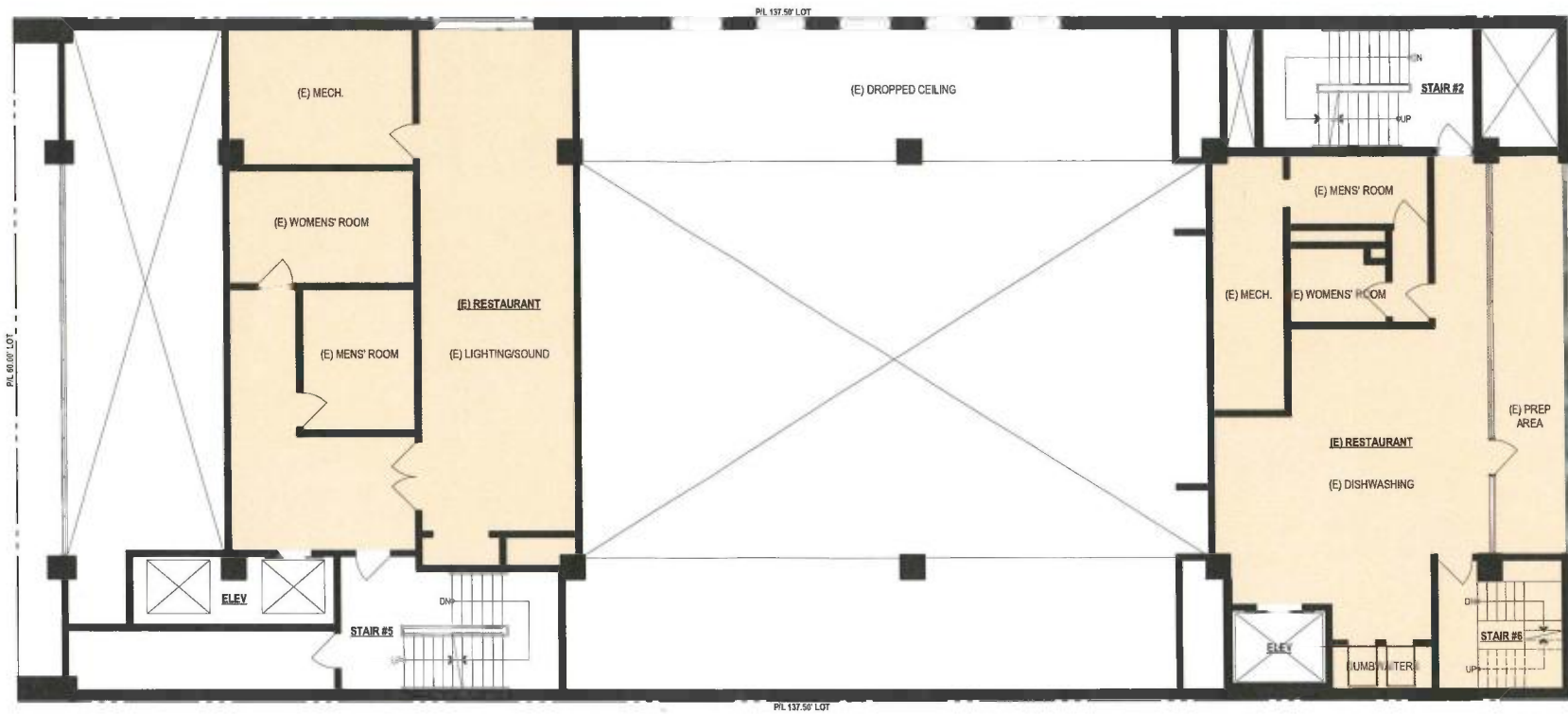


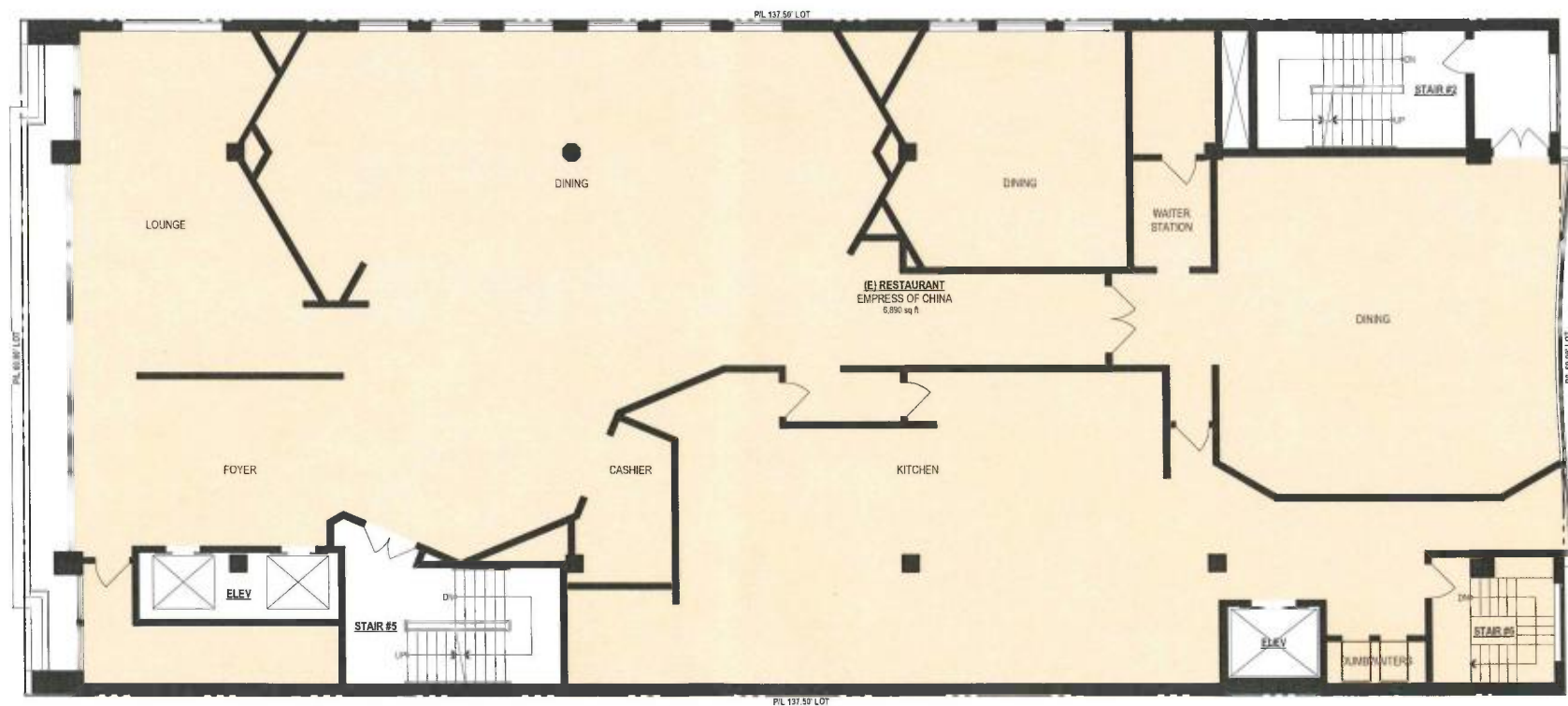
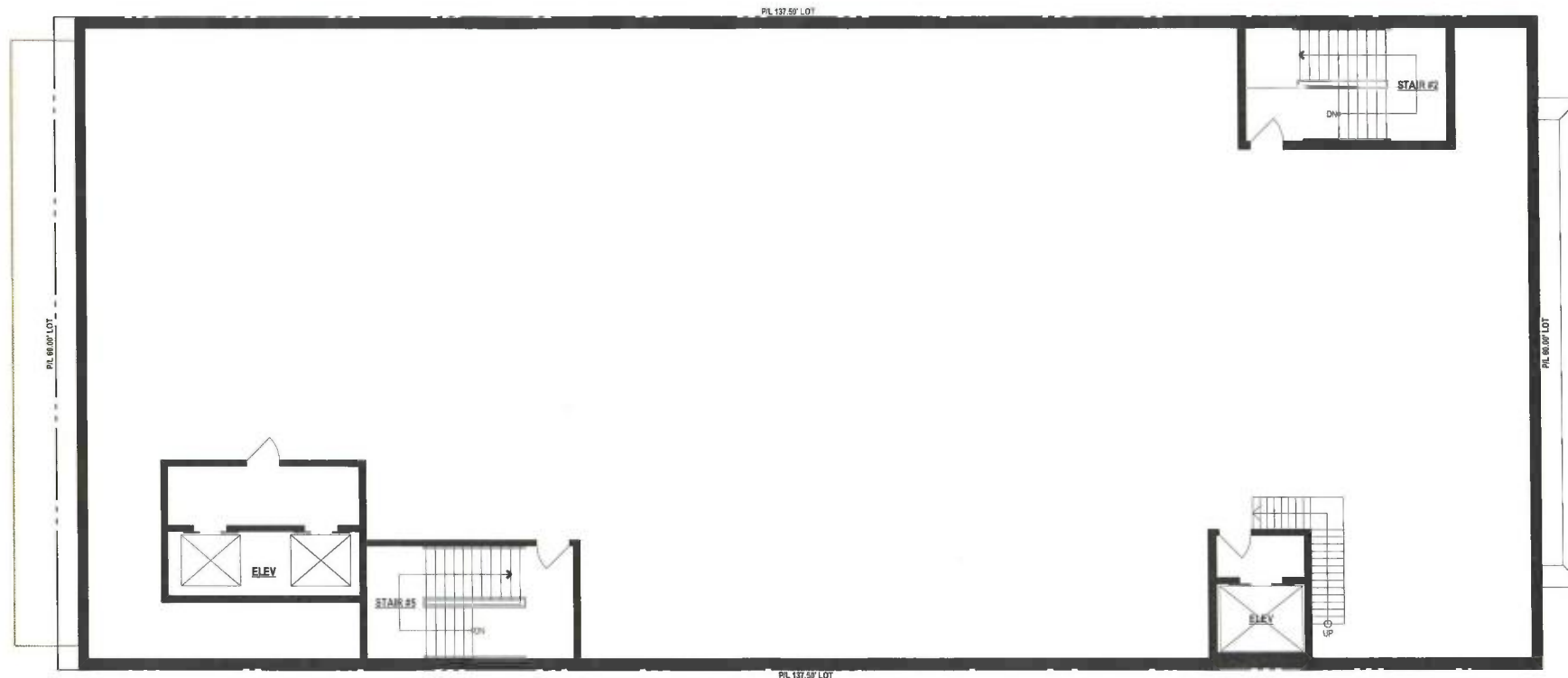
WALTER U. LUM PL.
(86.25' WIDE)

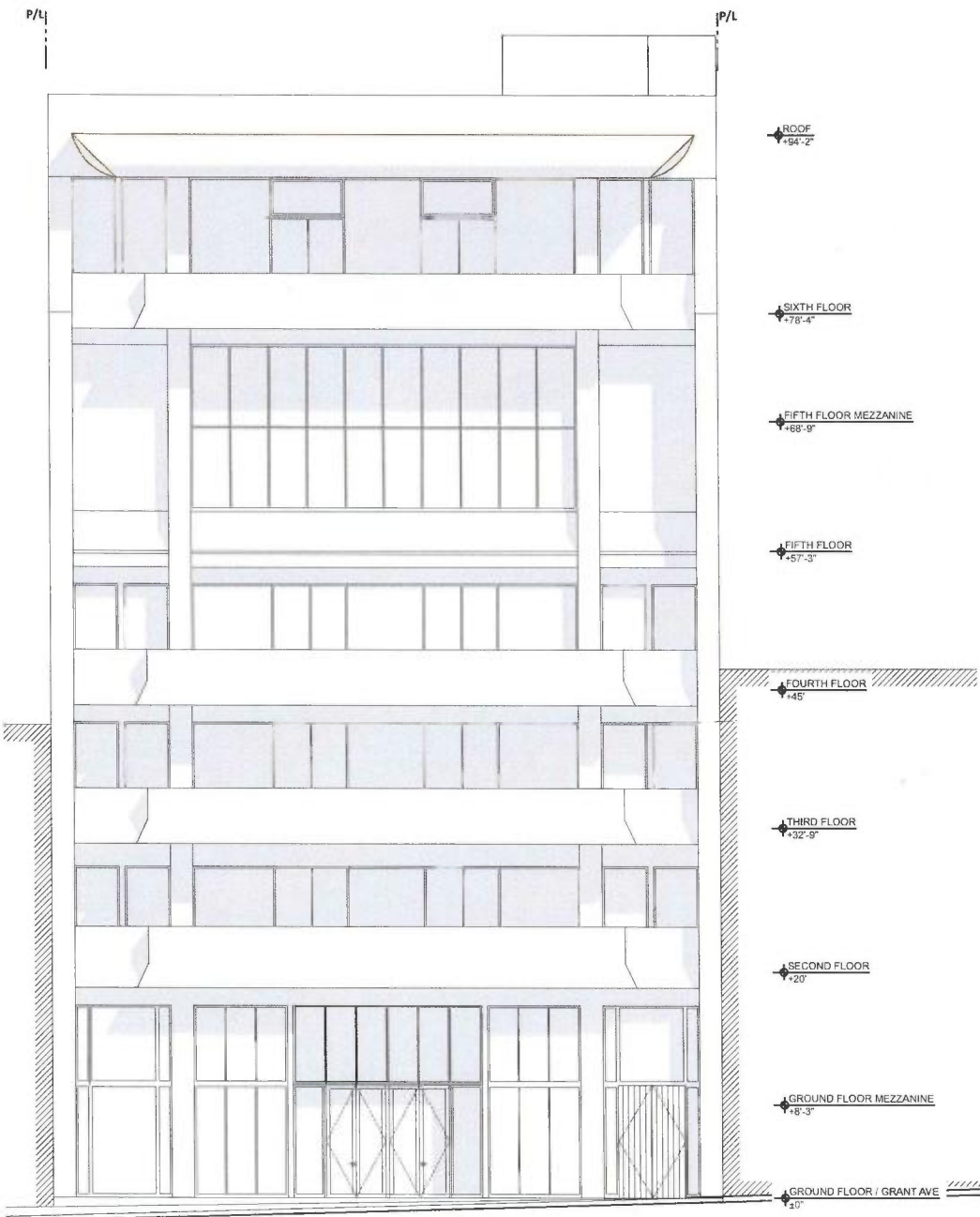








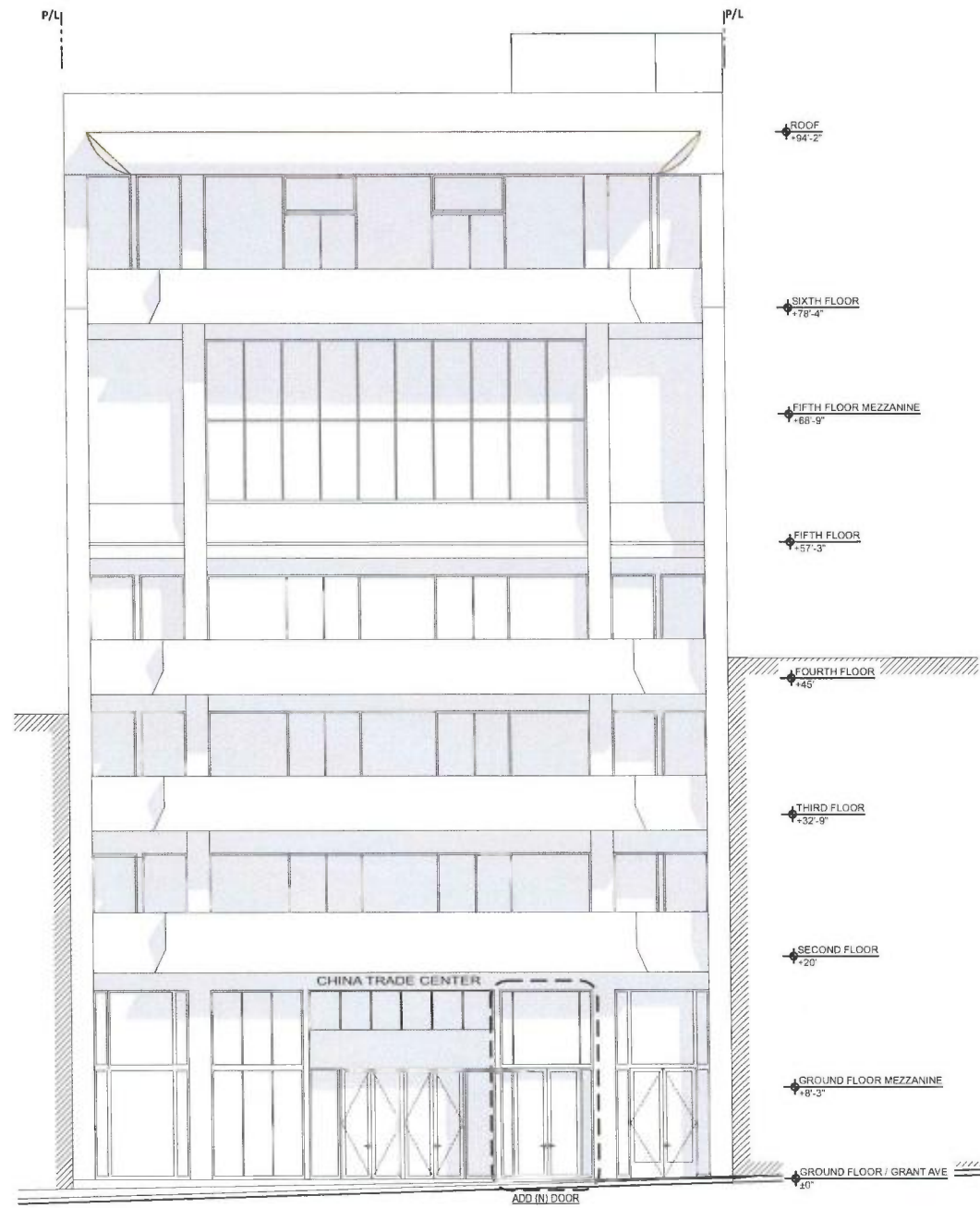




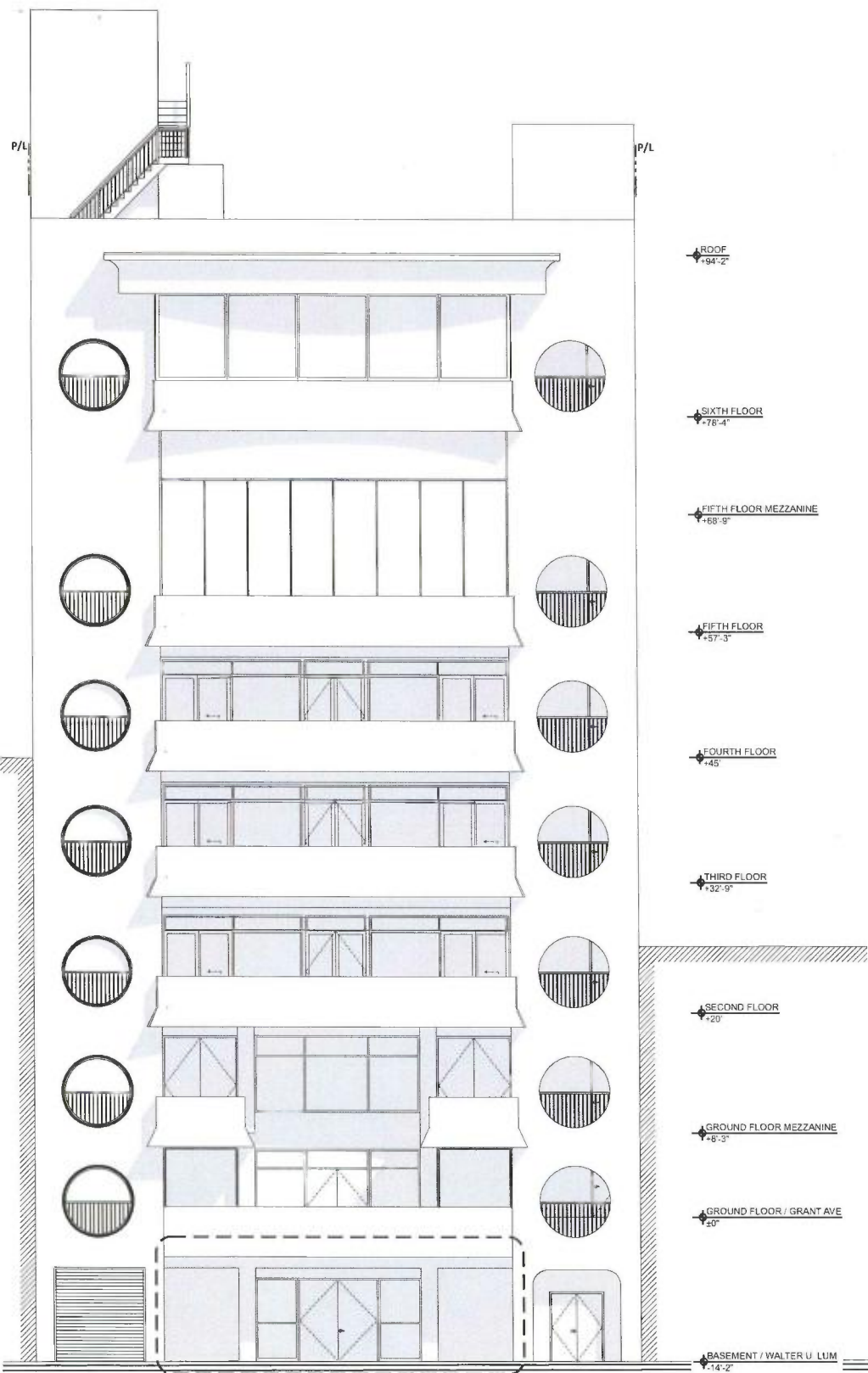
ORIGINAL FRONT ELEVATION



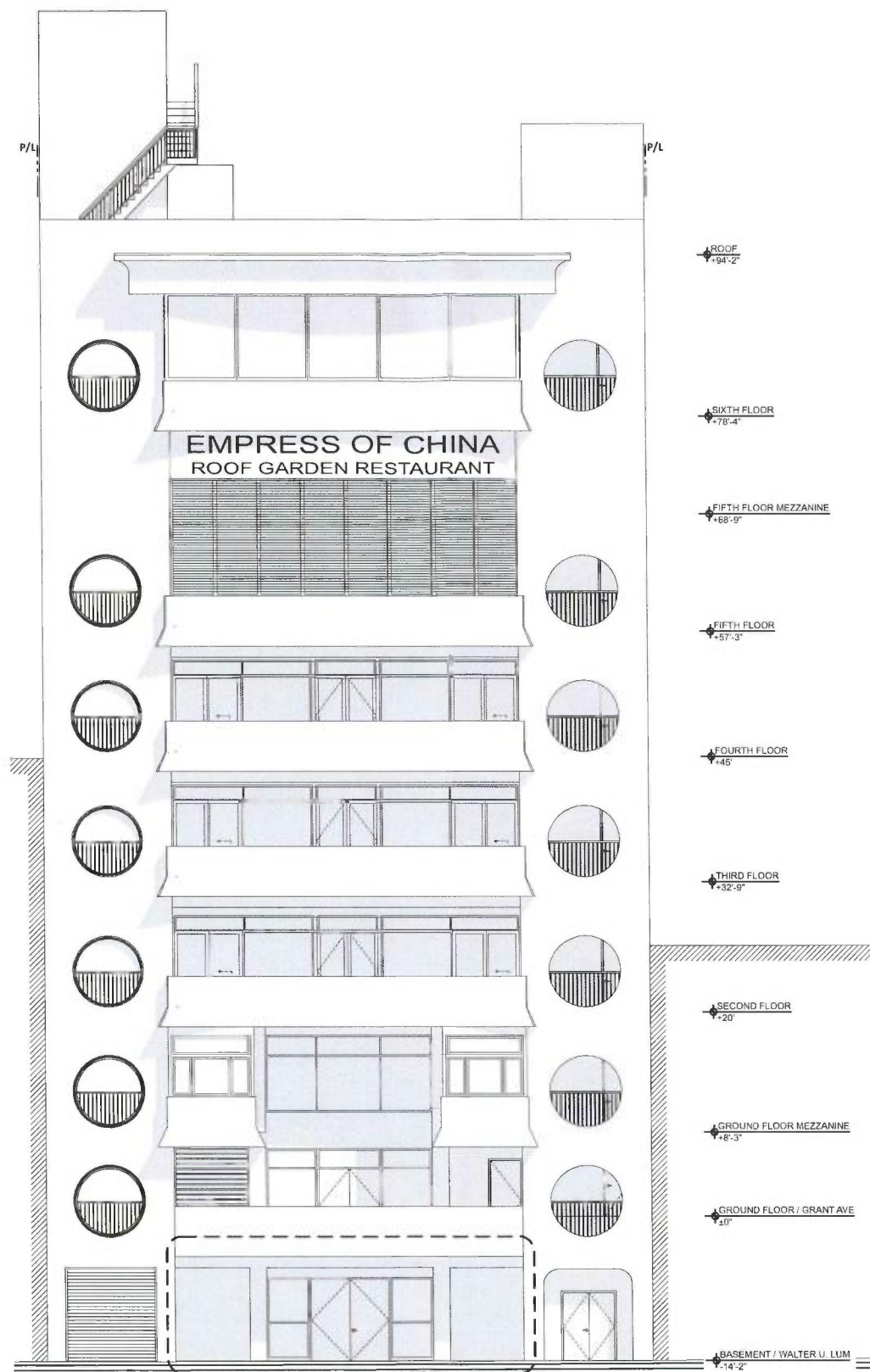
EXISTING FRONT ELEVATION



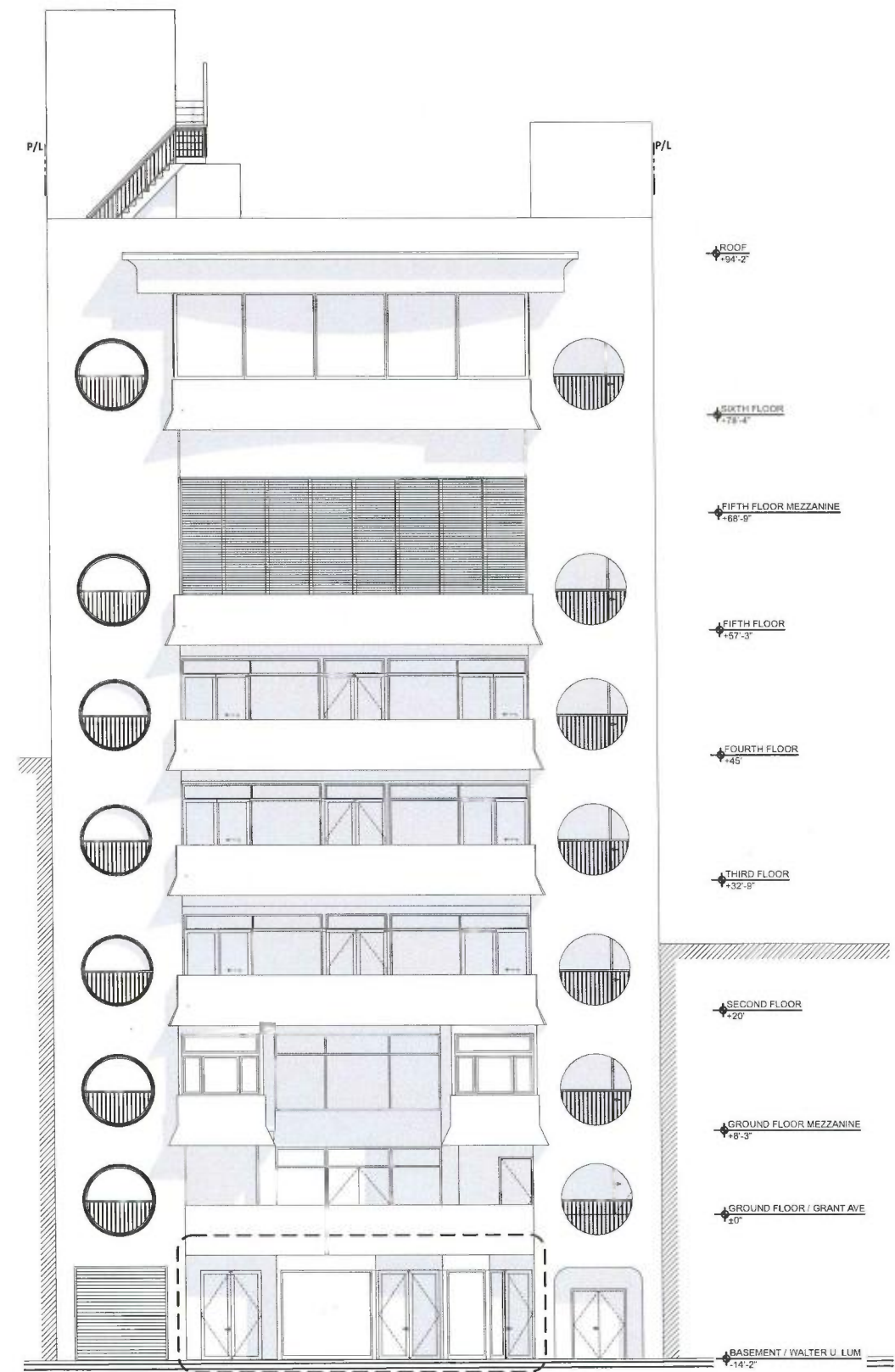
PROPOSED FRONT ELEVATION



ORIGINAL REAR ELEVATION



EXISTING REAR ELEVATION



PROPOSED REAR ELEVATION

