

# Memorandum to the City of Markham Committee of Adjustment

January 10, 2020

**File:** A/150/19  
**Address:** 8333 Kennedy Rd – Markham, ON  
**Applicant:** Ming Zhao  
**Agent:** N/A  
**Hearing Date:** Wednesday January 22, 2020

The Central Team provides the following comments. The proposed variance relates to an existing bubble tea café (“the business”) in units 2019, 2020, 2021, and 2022 (the “subject units”), having access to internet and computers, arcade and electronic gaming systems, book reading, television, and board game activities. Therefore, the Applicant requests relief from the following requirement of the “Community Amenity One Zone Exception \*374 (CA1\*374) Zone”, under By-law 177-96, as amended:

a) **Section 7.374, Table A2:**

To permit a Recreational Establishment use, whereas the By-law does not permit a Recreational Establishment use.

## **BACKGROUND**

### **Property Description**

The subject lands are located on the east side of Kennedy Road, between Highway 7 East and Helen Avenue (the “subject lands”). The subject units have a cumulative floor area of approximately 193.77 m<sup>2</sup> (2,085.73 ft<sup>2</sup>) and are within the second floor of a residential-commercial, mixed-use building. Staff note that although the subject units are identified in Appendix “B” as units 111 to 114, inclusive, the actual unit numbers are 2019 to 2022.

The subject lands directly abuts the Markham Centre Secondary Plan Area and is in close proximity to a wide range of uses including, commercial, industrial, residential, and parks/open space.

### **Proposal**

A Restaurant use currently exists within the subject units and is permitted by the Zone. Other existing uses within the subject units include: internet, computers & video games, and board game activities. The Applicant is proposing a Recreational Establishment use within the subject units to allow the activities to continue to exist with the Restaurant Use. For clarity, while the Zone permits a Restaurant use, a Recreational Establishment use is not permitted.

### **Official Plan and Zoning**

Official Plan 2014 (partially approved on Nov 24/17, and updated on April 9/18)  
*“Mixed Use Mid Rise”*

The subject lands are designated “Mixed Use Mid Rise”, which provides for a range of uses including, but not limited to, residential, sports and fitness recreation, entertainment, restaurant, office, and retail uses. The intent of mixed-use development is to integrate residential development with a compatible mix of uses, such as retail and service activities where people can shop, live, and work all within close proximity. Section 8.3.3.1 of the Official Plan further outlines that lands designated “Mixed Use Mid Rise” are to be

established as focal points for neighbourhood activities. It is the opinion of staff that the variance is consistent with the general intent of the designation for a mid-rise building.

#### Zoning By-Law 177-96

The subject lands are zoned “Community Amenity One Zone Exception \*374 (CA1\*374) Zone”, under By-law 177-96, as amended, which permits a Restaurant Use and a variety of commercial, residential, institutional, and entertainment (nightclub) uses. However, the Zone does not permit a Recreational Establishment use.

Recreational Establishments are defined as:

*“a use of land, building or structure that has been designed and equipped for the conduct of sports and leisure time activities such as a public hall, billiard or pool room, bowling alley, ice/curling or roller skating rink, miniature golf or driving range, an establishment offering three or more electronic video games for public use and other similar uses, but shall not include a commercial fitness centre, adult entertainment parlour, any use entailing the outdoor operation or racing of animals or motorized vehicles, a casino or any other establishment accommodating or providing gambling or gaming activities, wagering or betting, video lottery or gaming machines, or any other similar type of gambling use, or any other sports or leisure time use otherwise defined in this By-law.”*

Staff recognize the recent trend of combining board games and leisure time activities with restaurant uses and see this as being compatible with the restaurant use. Staff also see this as being generally compatible with the overall intent of a mixed-use site, which permits a range of uses. Having access to video, arcade and electronic gaming software, and internet can be seen as a modern day extension to this trend, which staff do not object. However, staff emphasize that should Committee approve the requested variance, the Applicant recognizes that any gambling activity, including wagering or betting, are strictly prohibited in accordance with the By-law.

#### **Applicant’s Stated Reason for Not Complying with Zoning**

According to the information provided by the applicant, the reason for not complying with Zoning is because, *“a Recreational Establishment is not a permitted use.”*

#### **Zoning Preliminary Review (ZPR) Not Undertaken**

The Applicant confirmed that a ZPR has not been conducted. It is the Applicant’s responsibility to ensure that the application has accurately identified all the variances to the Zoning By-law required for the proposed development. If the variance request in this application contains errors, or if the need for additional variances is identified during the Building Permit review process, further variance application(s) may be required to address the non-compliance.

#### **COMMENTS**

The *Planning Act* states that all four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- a) The variance must be minor in nature;

- b) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- c) The general intent and purpose of the Zoning By-law must be maintained;
- d) The general intent and purpose of the Official Plan must be maintained.

### **PUBLIC INPUT SUMMARY**

One written submission was received in support of the requested variance as of January 10, 2020 noting that the use is complimentary to other businesses existing within the building.

No written objections have been received as of the date of this memorandum. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

### **CONCLUSION**

Planning Staff have reviewed the application with respect to Section 45(1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance request meets the four tests of the *Planning Act* and have no objection, provided that any form of gambling activity is strictly prohibited. Staff recommend that the Committee consider public input in reaching a decision.

The onus is ultimately on the Applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the *Planning Act* required for the granting of minor variances.

### **APPENDICES**

Appendix "A" – Conditions List

Appendix "B" – Plans

PREPARED BY:



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Aleks Todorovski, Planner, Zoning and Special Projects

REVIEWED BY:



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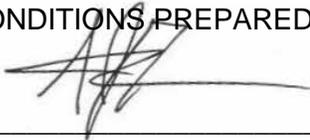
Stephen Lue, Development Manager, Central District

File Path: Amanda\File\ 19 141307 \Documents\District Team Comments Memo

**APPENDIX "A"**  
**CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/150/19**

1. The variances apply only to the proposed development as long as it remains.

CONDITIONS PREPARED BY:



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Aleks Todorovski, Planner, Zoning and Special Projects

**APPENDIX "B"**  
**PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/150/19**

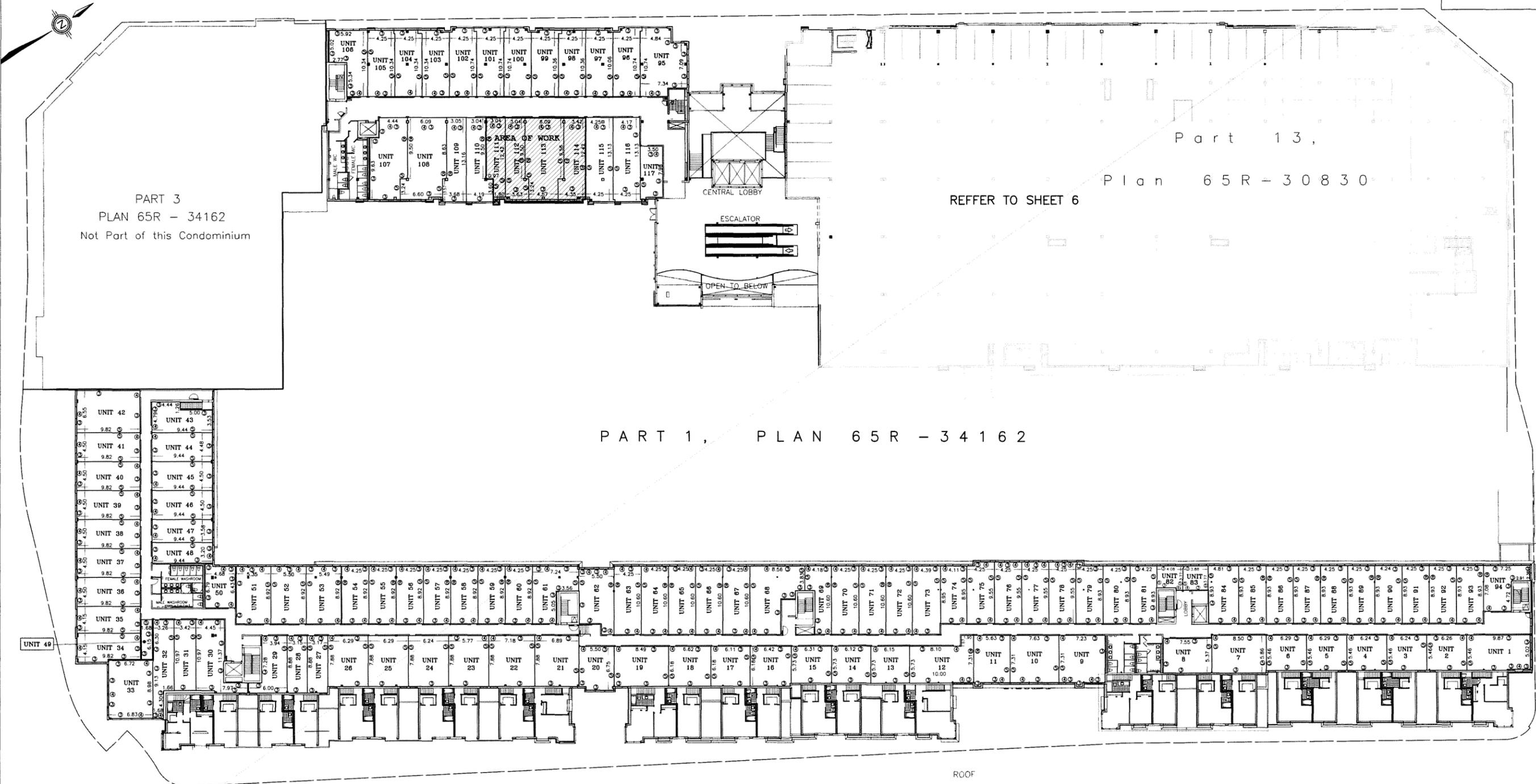


# PROOF



NORTH

PART/SHEET	
PART 1 OF 4 PARTS	SHEET 5 OF 7 SHEETS



PART 3  
PLAN 65R - 34162  
Not Part of this Condominium

Part 13,  
Plan 65R - 30830

REFER TO SHEET 6

PART 1, PLAN 65R - 34162

TO	ISSUED	DATE

**GENERAL NOTES**

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ALL CONSTRUCTION TO BE ACCORDING TO BEST COMMON PRACTICE AND CONFORM TO THE ONTARIO BUILDING CODE.



**PROJECT MANAGEMENT:**  
KBK STUDIOS - T: (647) -867-3210 | 800-203-7010  
INFO@KBKSTUDIOS.CA

**ENGINEERING REVIEW BY:** BE, M.Sc., P.ENG.  
TBM ENGINEERS  
(905)893-9070, 133 ADRIANA LOUISE DR., WOODBRIDGE, ON

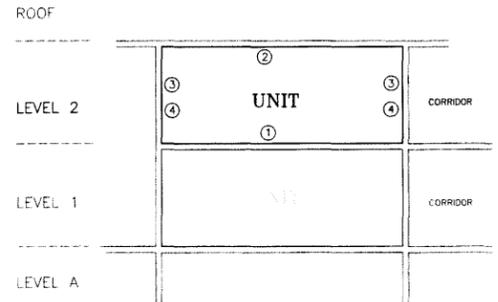
**PROJECT**

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON



## KEYPLAN

UNITS 1 to 117, (Incl.)  
LEVEL 2  
SCALE = 1:250

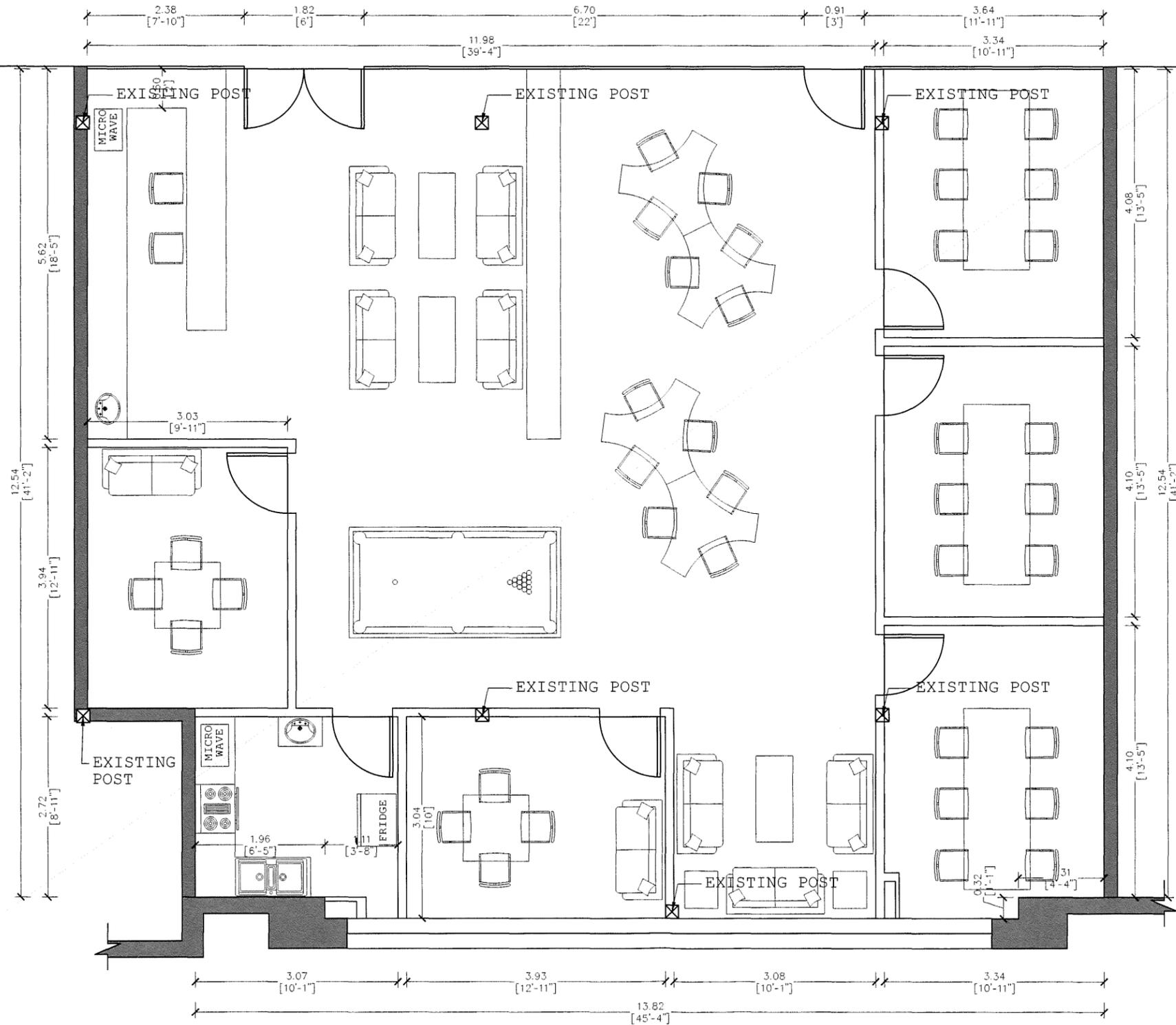


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KEYPLAN	
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PLOTTED DATE MAR 20, 2017	DRAWING NO
SCALE NTS@11"x17"	<b>A1.1</b>
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# PROOF

## CORRIDOR



### PROPOSED LAYOUT

- EXISTING WALL
- NEW WALL



TO	ISSUED	DATE

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**PROJECT**

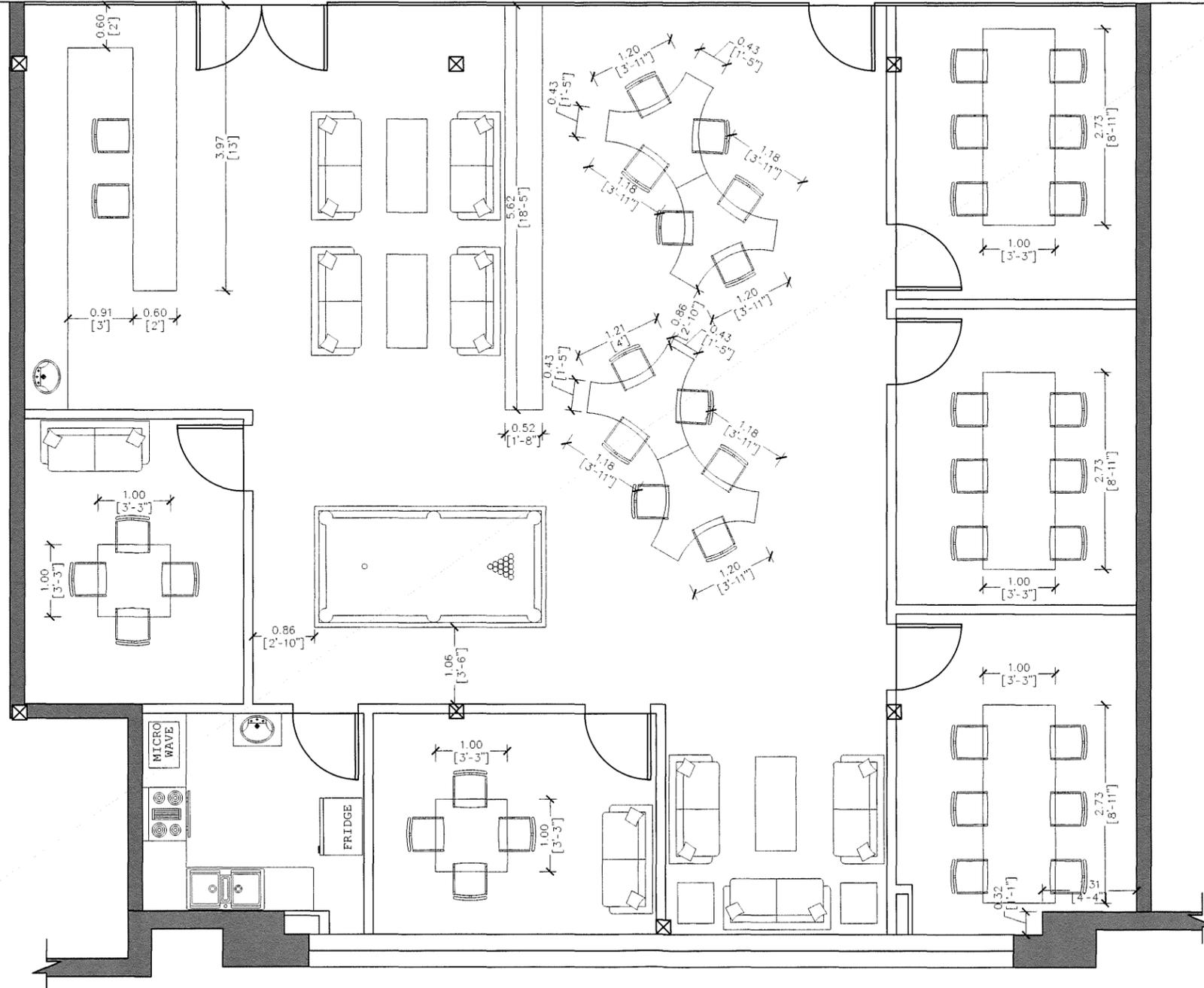
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PLOTTED DATE MAR 20, 2017	DRAWING NO
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## CORRIDOR



### PROPOSED FURNITURE PLAN

- EXISTING WALL
- NEW WALL



TO	ISSUED	DATE

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**PROJECT**

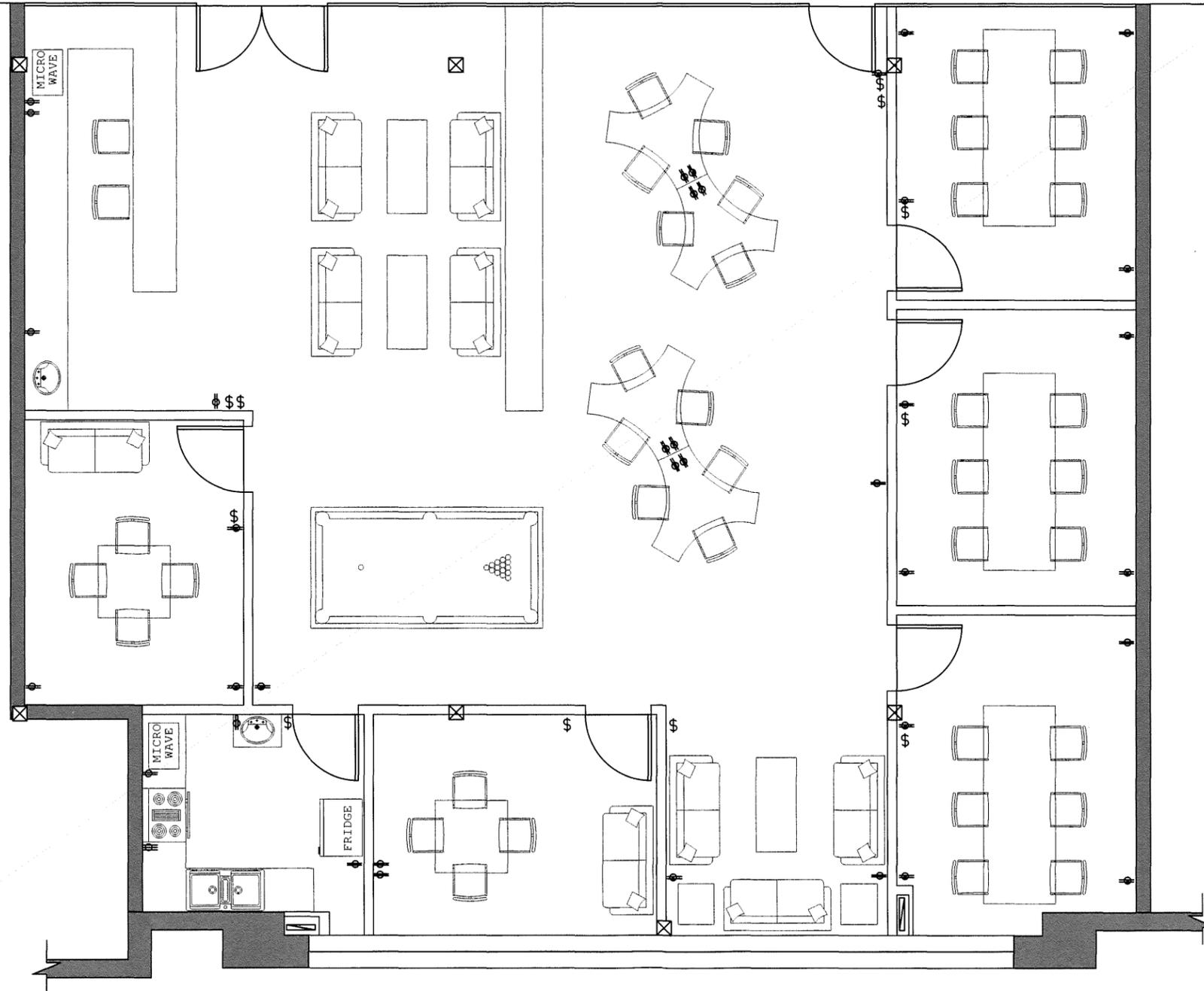
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PLOTTED DATE MAR 20, 2017	DRAWING NO
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CORRIDOR



## PROPOSED ELECTRICAL RECEPTACLE SWITCH PLAN

— EXISTING WALL  
 - - - NEW WALL

FOR LIGHTING DETAILS REFER TO ARCHITECTURAL DRAWINGS  
 (REFLECTED CEILING PLAN)

● - 120V DUPLEX OUTLET  
 ⊕ - 220V SINGLE OUTLET  
 □ - ELECTRIC PANEL  
 \$ - 3 OR 4 WAY SWITCH  
 INSTALL AT 3'-3" AFF  
 SPECIFICATION GRADE  
 WHITE, WITH WHITE  
 COVER PLATE



TO	ISSUED	DATE

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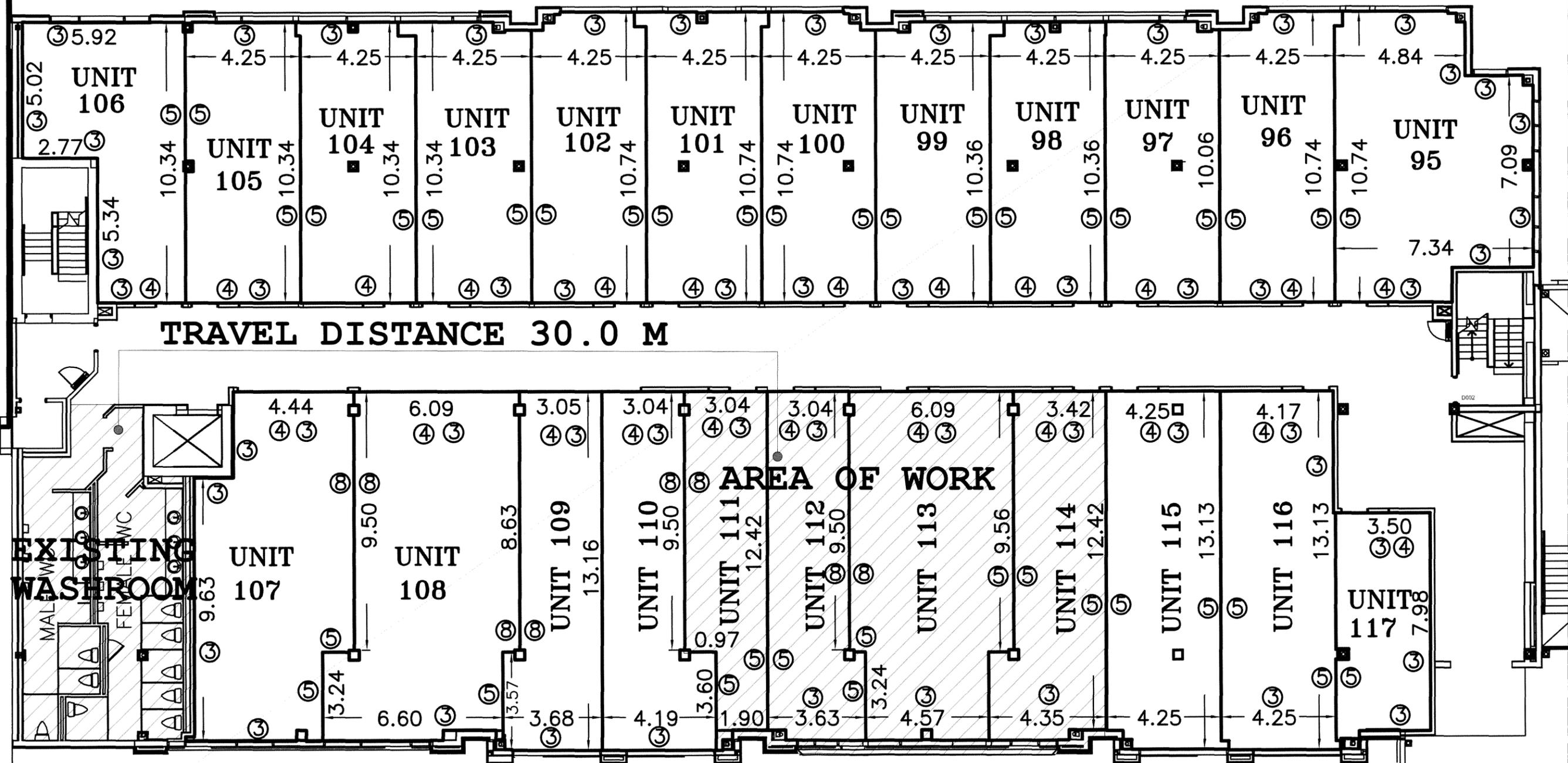
**PROJECT**

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PROJECT

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DRAWING  
PROPOSED LAYOUT

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