

March 16, 2022

**CASE# PLNZAD2022-00139
Administrative Interpretation
DECISION AND FINDINGS**



REQUEST:

Gonzalo Calquin, property owner representative, is requesting an Administrative Interpretation regarding the open space requirements in accordance with the Salt Lake City Zoning Ordinance, 21A.24.170.G. The property under review is located at 370 E 200 S and is within the R-MU (Residential Mixed Use) zoning district. The purpose of the request is to determine if elevated/roof top garden areas can be included as a form of open space area to meet the minimum open space area requirements of a residential development in the R-MU zoning district.

DECISION:

The Zoning Administrator, based on the language found within 21A.24.170.G, finds that elevated/roof top garden areas are not included as forms of open space area allowed to meet the minimum open space area requirements of the R-MU zoning district.

FINDINGS:

1) Forms of Open Space Area Specified in the R-MU Zoning District

The open space area requirements for properties located within the R-MU zoning district, are located in section 21A.24.170.G of the Salt Lake City Municipal Code which states:

Minimum Open Space Area: For residential uses and mixed uses containing residential use, not less than 20% of the lot area shall be maintained as an open space area. This open space area may take the form of landscaped yards or plazas and courtyards subject to site plan review and approval.

21A.24.170.G specifically states three forms of open space area which can be included to meet the minimum open space area requirement for the R-MU Zoning District which are landscaped yards, or plazas and courtyards.

21A.62.040 defines a landscaped yard as:

LANDSCAPE YARD: That portion of a lot required to be maintained in landscape area.

21A.62.040 defines a plaza as:

PLAZA: An open area which is available to the public for uses such as, but not limited to, walking, seating, socializing, reading and eating.

The Salt Lake City Zoning Ordinance does not specifically define a courtyard. Any word not defined in the Zoning Ordinance shall be defined in Webster's Collegiate Dictionary (see 21A.62.010). The Webster's Collegiate Dictionary includes the following definition:

Courtyard: a court or enclosure adjacent to a building.

These definitions, in addition to the language in 21A.24.170.G do not state the forms of open space area allowed to meet the R-MU zoning requirements (landscape yard, plaza or courtyard) are elevated or located on top of a building.

2) Forms of Open Space Area Specified in Other Zoning Districts

The Salt Lake City Zoning Ordinance does not define a roof top garden/elevated garden area, however there are several Zoning Districts standards which specifically state the minimum open space area may take the form of roof gardens, decks, and terrace gardens on top of buildings. For example, 21A.30.040.H states the following standard for the D-3 Downtown Warehouse/Residential District:

Minimum Open Space Area: All lots containing dwelling units shall provide common open space area in the amount of twenty percent (20%) of the lot area. This common open space area may take the form of ground level plazas, interior atriums, landscape areas, roof gardens and decks on top of buildings or other such forms of open space available for the common use by residents of the property.

In addition, the TSA Zoning District Standards specifically state the open space area may include rooftop and terrace gardens in section 21A.26.078.E.5:

Open Space Area: Open space areas shall be provided at a rate of one square foot for every ten (10) square feet of land area included in the development, up to five thousand (5,000) square feet for core areas, and up to two thousand five hundred (2,500) square feet for transition areas. Open space areas includes landscaped yards, patios, public plazas, pocket parks, courtyards, rooftop and terrace gardens and other similar types of open space area amenities. All required open space areas shall be accessible to the users of the building(s).

Since roof top garden/elevated garden areas are specified as a form of open space area in other zoning districts, the omission of a similar language in 21A.24.170.G must be considered as purposeful to exclude the forms not listed. The provisions listed in 21A.Part III, Specific District Regulations, and 21A.62, Definitions of the Salt Lake City Municipal Code support Salt Lake City's interpretation that elevated/roof top garden areas are not included as forms of open space area allowed to meet the minimum open space area requirements of the R-MU zoning district.

APPEAL PROCESS:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this Title may appeal to the Appeals Hearing Officer. Notice of appeal shall be filed within ten (10) days of the administrative decision. The appeal shall be filed with the Planning Division and shall specify the decision appealed and the reasons the appellant claims the decision to be in error. Applications for appeals are located on the Planning Division website at <http://www.slccgov.com/planning/planning-applications> along with information about the applicable fee. Appeals may be filed in person at the Planning Counter, 451 South State Street, Room 215 or by mail at Planning Counter PO BOX 145471, Salt Lake City, UT 84114-5471.

NOTICE:

Please be advised that a determination finding a particular use to be a permitted use or a conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure. It shall merely authorize the preparation, filing, and processing of applications for any approvals and permits

that may be required by the codes and ordinances of the City including, but not limited to, a zoning certificate, a building permit, and a certificate of occupancy, subdivision approval, and a site plan approval.

Dated this 16th day of March, 2022 in Salt Lake City, Utah.

Brooke Olson

Brooke Olson
Associate Planner
Salt Lake City Planning Division

CC: Nick Norris, Planning Director
Mayara Lima, Zoning Administrator
John Anderson, Planning Manager
Posted to Web

ADMINISTRATIVE INTERPRETATION - OPEN SPACE IN RMU ZONE (21A.24.170.G)

Please provide the following information (electronically attach additional sheet/s as necessary)

- a) The provision(s) and section number(s) of the Zoning Ordinance for which an interpretation is sought.

21A.24.170

G. Minimum Open Space Area: For residential uses and mixed uses containing residential use, not less than twenty percent (20%) of the lot area shall be maintained as an open space area. This open space area may take the form of landscape yards or plazas and courtyards, subject to site plan review approval.

https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity_ut/0-0-0-64688#:text=C2%A0G.%C2%A0C2%A0C2%A0Minimum%20Open,plan%20review%20approval.

21A.62.040:

Open Space Area: Any area of a lot which is completely free and unobstructed from any structure or parking areas. Landscaping, walkways, uncovered patio areas, light poles and other ornamental features shall not be considered as obstructions for purposes of this definition. Driveways that provide access to parking lots shall not be considered as an obstruction subject to the driveways not exceeding twenty percent (20%) of any required yard area that they provide access through.

https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity_ut/0-0-0-72030#:text=OPEN%20SPACE%20AREA,provide%20access%20through.

- b) The facts of the specific situation giving rise to the request for an interpretation.

The Open Space requirement in the RMU describes certain types of spaces that can be counted toward the minimum requirement. It lists landscape yards, plazas and courtyards. We plan to use our landscaped yards between the building in the property lines towards this calculation. These areas will be landscaped in different ways (xeriscaping, planters, bushes, grasses, walkways and patios for the ground level units). (See Image 1)

The code also mentions courtyards can count toward this requirement. The proposed project includes two large courtyards that give access to residents to an exterior, open-air space. These courtyards will contain walkways, seating/lounge areas, landscaping (shrubs and trees), and BBQ areas. Following the definition of a courtyard, these spaces are enclosed and surrounded by the building, giving residents a view of the exterior into a courtyard. This directly follows the intent of the code and the use of the word courtyard found in 21A.24.170.G. (See image 2)

The project will also provide another open-space amenity at Level 6. This will be a pool deck with seating/lounge areas, BBQ, landscaping, and a pool and spa. This area will be accessible from Level 6 and will provide residents with open-air space, with spectacular views of the mountains. (See image 3)

Under the definition of open space areas, the SLC code mentions that these areas shall be “completely free and unobstructed from any structure or parking areas”. This definition prohibits counting an area that is used for parking (such as asphalt or concrete parking areas) or any area of a building which is obstructed overhead by a building. All Open spaces counted in this proposed project are free and unobstructed from parking areas or buildings. (See image 4)

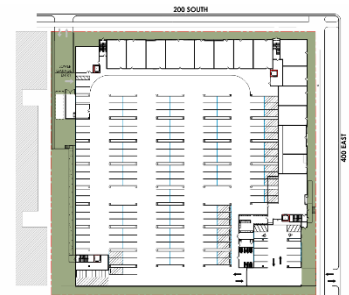


Image 1

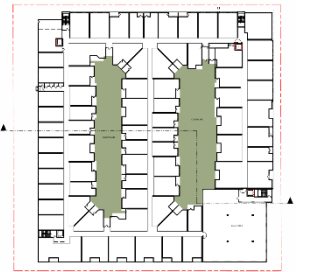


Image 2



Image 3



Image 4

c) **The precise interpretation the applicant believes to be correct.**

We believe the Open Space requirements in 21A.24.170.G. are clear. Clear language is used that permits the use of landscape yards, plazas, and courtyards. The language of the code does not invalidate spaces that may be elevated, at podium level, or at roof tops. It simply lists their description and the requirement for them to be unobstructed. The examples below show that SLC staff has taken this position with very similar projects in the same zone. We agree with these previous interpretations.

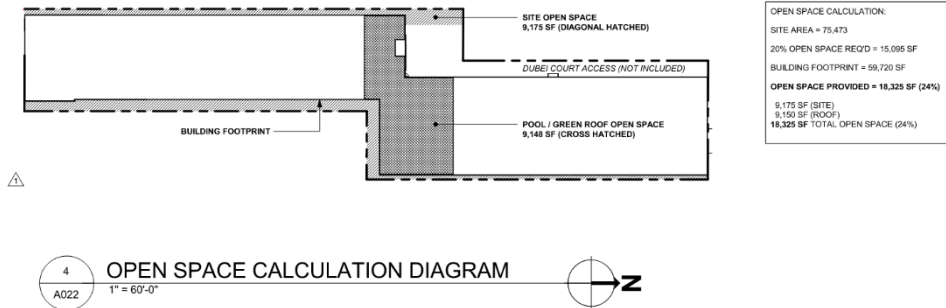
Salt Lake City staff has interpreted this section of this code in the same manner. During PLNPCM2018-00390 the Broadway Apartments (neighbor property to the West) applied for Design Review for additional height. Ultimately this additional height was denied, and the project went on to be built under conformance with the RMU zone ordinance. The staff report for this project shows that staff counted the landscaped rooftop areas.

3. SLC Comment, CBSD Review 08/21/18, Item 3:

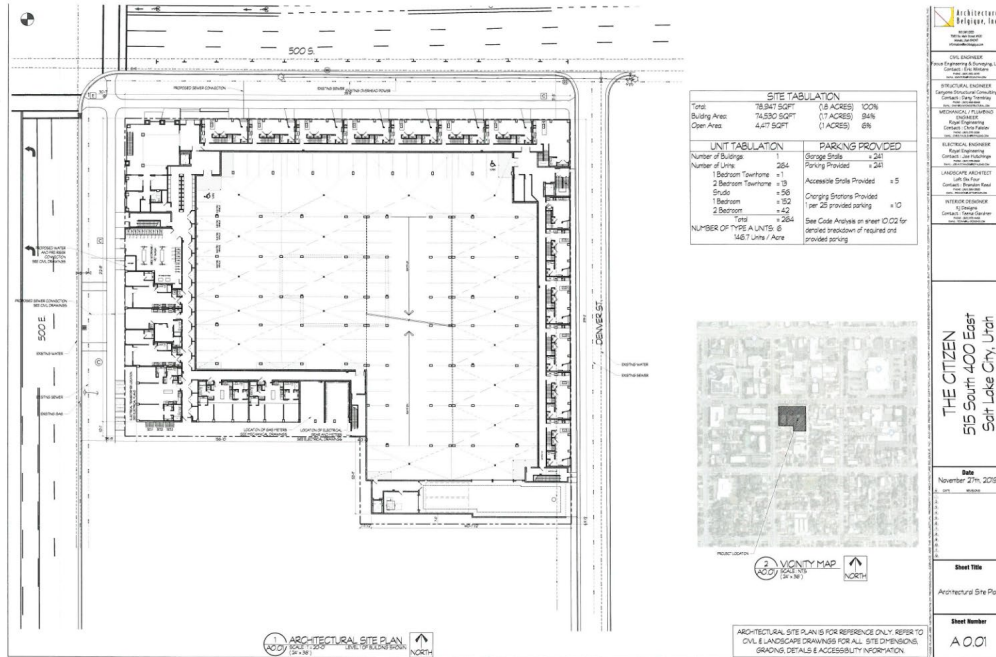
Open Space Requirement

*Please keep in mind that the loading dock area on the west side of the building does not count towards open space. **Instead we can count the landscaped rooftop area. Please revise your open space calculation accordingly.***

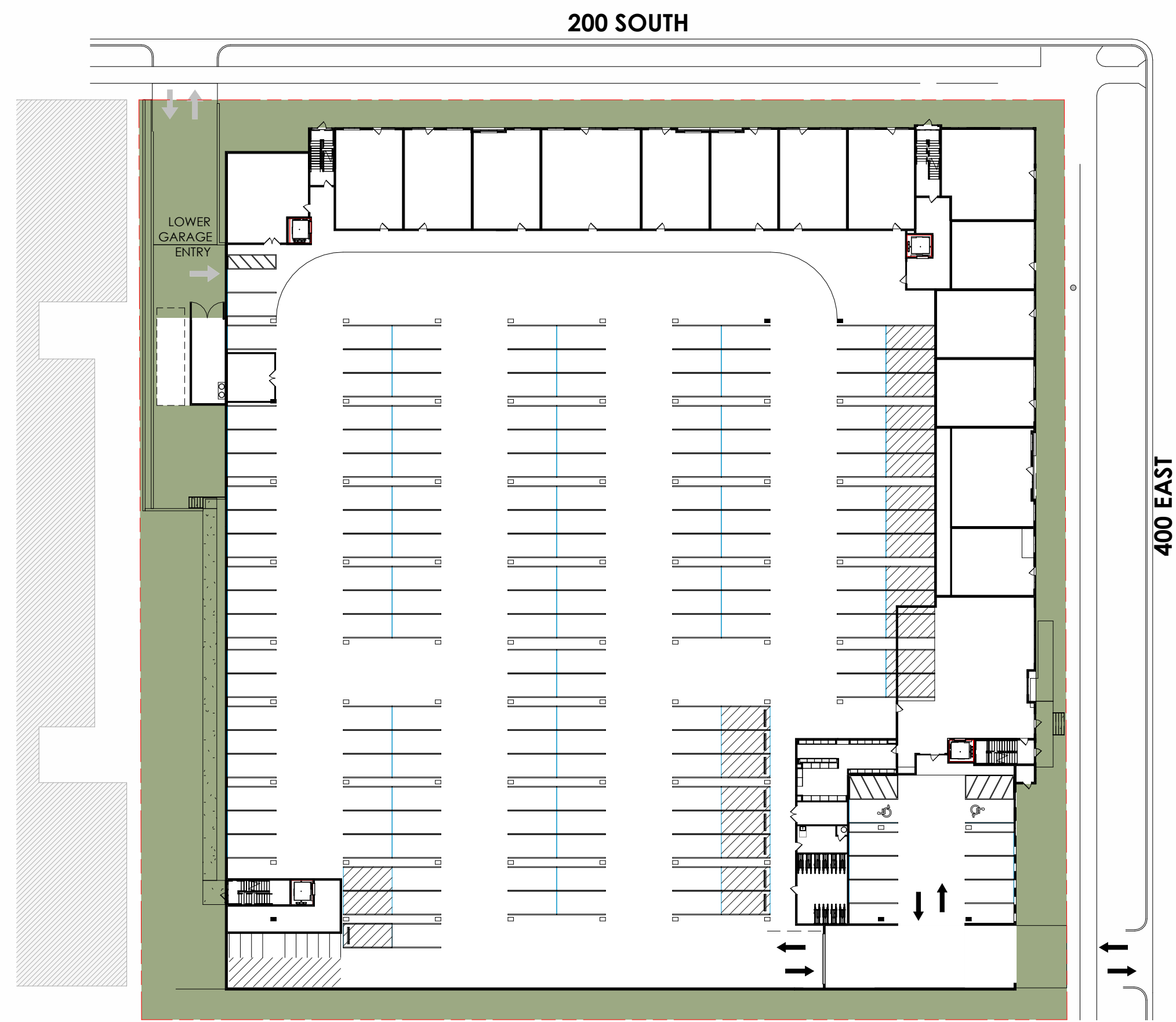
It is worth noting that under Design Review, the developer was trying to meet Public Space requirements as well as Open Space requirements. The Planning Commission had some discussion about whether these rooftop areas should count toward these 'Public Space' areas. The point here is that staff took the position that these areas counted toward the Open Space requirement. In fact, the building went on to construction without Planned Development process and staff accepted the Open Space on the roof top to count towards 21A.24.170.G.



Another project in the RMU zone that has a very similar scenario that is currently under construction is the Citizen apartments at 515 S 400 E. The project has a total of 6% Open Area on street level. The project uses elevated courtyards and rooftop amenities toward their Open Space calculation. These are great landscaped areas that comply with the Open Space intent and language of the code. There is also not record of this project going through Planned Development.



In summary, we believe the interpretation of the Open Space requirements under 1A.24.170.G. is clear. Landscaped yards, plazas and courtyards can all count toward the Open Space calculation if they are free and unobstructed from parking areas and buildings. There is no discussion in the RMU zone that mentions the elevation (level) that these areas need to be at. The function of an interior courtyard, whether at street-level or podium level, is the exact same. It is still only accessible to the users of the building.



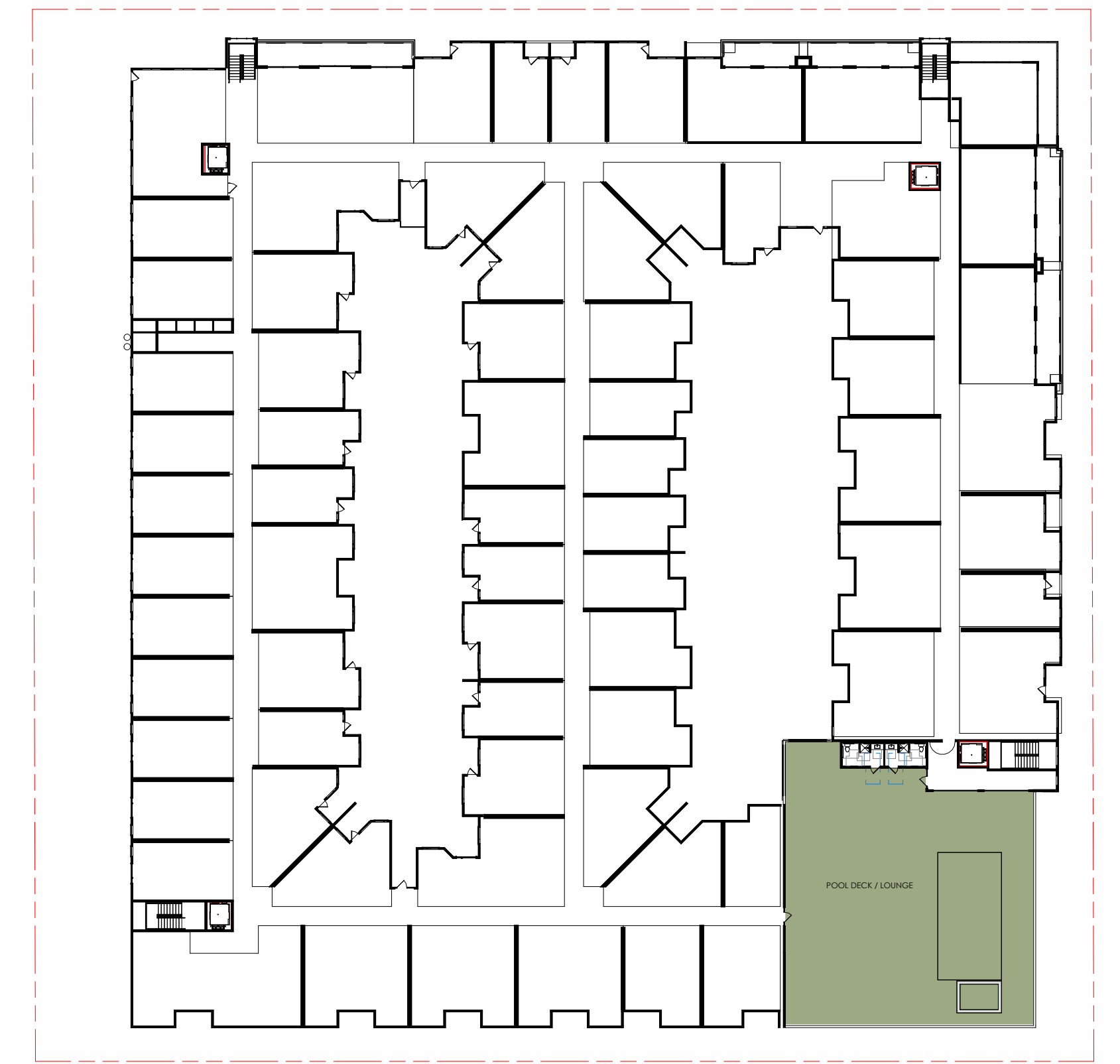
OPEN SPACE AT STREET LEVEL: 19,587 SF (17.8%)

1 LEVEL 1 - STREET - OPEN SPACE
1" = 40'-0"



OPEN SPACE AT PODIUM LEVEL: 13,831 SF (12.6%)

2 LEVEL 2 - COURTYARDS
1" = 40'-0"



OPEN SPACE AT LEVEL 6: 6,585 SF (6%)

3 LEVEL 6 - POOL - OPEN SPACE
1" = 40'-0"

FREE AND UNOBSTRUCTED FROM ANY STRUCTURE OR PARKING AREAS.

21A.24.170:

G. MINIMUM OPEN SPACE AREA: FOR RESIDENTIAL USES AND MIXED USES CONTAINING RESIDENTIAL USE, NOT LESS THAN TWENTY PERCENT (20%) OF THE LOT AREA SHALL BE MAINTAINED AS AN OPEN SPACE AREA. THIS OPEN SPACE AREA MAY TAKE THE FORM OF **LANDSCAPE YARDS** OR **PLAZAS** AND **COURTYARDS**. SUBJECT TO SITE PLAN REVIEW APPROVAL.

COURTYARD: An open space that is surrounded completely or partly by a building or group of buildings. (Merriam-Webster Dictionary)

OPEN SPACE AREA: Any area of a lot which is completely free and unobstructed from any structure or parking areas. Landscaping, walkways, uncovered patio areas, light poles and other ornamental features shall not be considered as obstructions for purposes of this definition. Driveways that provide access to parking lots shall not be considered as an obstruction subject to the driveways not exceeding twenty percent (20%) of any required yard area that they provide access through. (Salt Lake City Code)



4 OPEN SPACE SECTION
1" = 40'-0"

| | |
|--------------------------|---------------------------|
| LOT SIZE: | 109,648.53 SF (2.5 ACRES) |
| OPEN SPACE REQUIRED: | 21,929.70 SF (20%) |
| STREET LEVEL: | 19,587 SF |
| PODIUM LEVEL: | 13,831 SF |
| LEVEL 6: | 6,585 SF |
| TOTAL OPEN SPACE: | 40,003 SF (36.4%) |



5 AERIAL VIEW OF OPEN SPACE
1" = 60'-0"