

Res 25-077

**TOWNSHIP OF LIVINGSTON
ESSEX COUNTY, NEW JERSEY**

**RESOLUTION COMMITTING TO THE DEPARTMENT OF COMMUNITY AFFAIRS'
FOURTH ROUND AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE
NEED NUMBERS AS MODIFIED**

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter "Amended FHA"); and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Township of Livingston's (the "Township") Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 units and a Prospective Need or New Construction Obligation of 461 units; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.3, a municipality's average allocation factor is comprised of the equalized nonresidential factor, income capacity factor, and land capacity factor and shall be averaged to yield the municipality's average allocation factor, and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A 52:27D-311(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, the DCA has released a Geographic Information Systems spatial data representation of the Land Capacity Analysis for P.L. 2024, c.2 containing the Vacant and Developable land information that serves as the basis for calculating the land capacity factor; and

WHEREAS, the Township has reviewed the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development; and

WHEREAS, based on the foregoing, the Township relies on the DCA calculations of the Township's fair share obligations as modified herein to account for the Township's review of the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development, and as further set forth in detail and explained in the attached memo prepared by Topology, the Township's affordable housing planner, and the Township seeks to commit to provide its fair share of 0 units present need and 407 units prospective need, subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, the Township reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Township also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Township reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, the Township Council finds that it is in the best interest of the Township to commit to the modified present need and prospective need Fourth Round affordable housing fair share numbers set forth herein, subject to the reservations set forth herein; and

WHEREAS, in accordance with AOC Directive #14-24 dated December 13, 2024, the Township Council finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of the Township to direct the filing of an action in the form of a declaratory judgment complaint within 48 hours after adoption of the within resolution of fair share obligations, or by February 3, 2025, whichever is sooner;

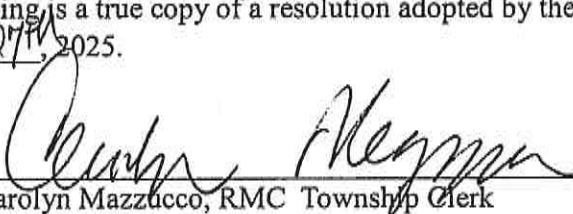
NOW, THEREFORE, BE IT RESOLVED on this 27th day of January, 2025 by the Mayor and the Township Council of the Township of Livingston, County of Essex, State of New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Township hereby commits to DCA's Round 4 Present Need Obligation of 0 units and a modification of the DCA's Round 4 Prospective Need Obligation of 461 units to 407 units, as briefly explained above and in greater detail in the attached memo from Topology, the Township's affordable housing planner, and subject to all reservations of rights set forth above.

3. The Township hereby directs its Township Attorney to file a declaratory judgment complaint in Essex County within 48 hours after adoption of the within resolution and attaching this resolution as an exhibit with the attached memo.
4. The Township authorizes its Township Attorney to submit and/or file the within resolution with attached memo with the Program or any other such entity as may be determined to be appropriate.
5. This resolution shall take effect immediately, according to law.

CERTIFICATION

I, Carolyn Mazzucco, Clerk of the Township of Livingston, County of Essex, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Township Council at a meeting held on January 27th, 2025.



Carolyn Mazzucco, RMC Township Clerk



MEMORANDUM

Date: January 17, 2025
 To: Township of Livingston
 From: Graham Petto, P.P., AICP, Principal

SUBJECT: FOURTH ROUND AFFORDABLE HOUSING ASSESSMENT OF DCA NUMBER

The purpose of this memorandum is to provide an assessment of the non-binding calculations of the Township of Livingston's Prospective Need Obligation for the Fourth Round of Affordable Housing, published by the NJ Department of Community Affairs. The non-binding calculations were published by the DCA on October 20, 2024, with supplemental data releases provided through November 23, 2024, with the publication of the Land Capacity Analysis GIS Composite Layer.

Under the prepared calculations, the DCA has presented a non-binding prospective need obligation for the Township of Livingston of 461 units. The following assessment reviews the component data of the DCA calculation methodology with localized data to either confirm or revise the figures presented by DCA.

Based upon the following analysis, and with consideration given to the DCA Report, in accordance with N.J.S.A. 52:27D-304.1, -304.2 and -304.3 of P.L. 2024, c.2 and the 2018 Decision, Topology recommends the Township of Livingston adopt a binding resolution committing to a Fourth Round Prospective Need Obligation of 407 units before taking into consideration any further credits, bonus credits, and/or adjustments as permitted by law.

I. Land Capacity Factor Assessment

- A. The Land Capacity Factor is calculated pursuant to N.J.S.A. 52:27D-304.3.C.4 and is determined by estimating the area of developable land within the municipality's boundaries, and regional boundaries, which may accommodate development. The DCA conducted the analysis using Land Use / Land Cover data from the NJ DEP, MOD-IV Property Tax Data from the Dept. of Treasury, and construction permit data from the DCA. The DCA calculations of land that may accommodate development exclude lands subject to development limitations, including open space, preserved farmland, category one waterways and wetland buffers, steep slopes and open waters. DCA preserved all areas that remained that were greater than 2,500 SF in size, under the assumption that an area of twenty-five feet by 100 feet may be considered developable.
- B. Under the analysis, the DCA estimates that the Township of Livingston presently has 56.892 acres of land that may accommodate development. The DCA has calculated that Region 2, which is comprised of Essex, Morris, Union and Warren Counties, contains a total of 5,358.48 acres of developable land. As calculated by DCA, the Township of Livingston contains 1.1% of the amount of developable land across the entire Region 2.
- C. To assess the Land Capacity Factor, Topology extracted the resultant Land Capacity Analysis GIS Composite Layer and overlaid the file with the parcels for the Township of Livingston. Each area was further reviewed to ascertain whether land use approvals have been rendered, if the sites contain existing development or utility infrastructure, if the site is located within a flood hazard area, or whether the configuration of developable land within these parcels is in fact practically developable. Based upon this detailed parcel-by-parcel analysis, Topology estimates that 42.684 acres of the 56.892



acres calculated by DCA are not in fact developable. A parcel-by-parcel summary is provided in the table below. Appendix A includes maps of all properties that have been identified as not available for development.

D. Properties Not Available for Development – 42.684 Acres

PROPERTY	STATUS	DCA DEVELOPABLE ACRES
Block 100, Lot 12 17 Industrial Parkway	Property is owned by the State of New Jersey as an inspection station, where the small, irregularly shaped area for development is inconducive to development. Located in FEMA Flood Hazard Area	0.152
Block 102, Lot 12 12 Industrial Parkway	Small, irregularly shaped area - inconducive to development.	0.095
Block 107, Lot 8.011 Beaufort Avenue	Small, irregularly shaped parcel without road access for development.	0.061
Block 107, Lot 16 Eisenhower Parkway	Property is a false positive and is currently fully developed with an office building.	0.880
Block 801, Lot 39 N. Hillside Avenue	Municipal water tank, where it is unclear the degree to which development can be achieved with the retention of those facilities on site.	2.488
Block 1101, Lot 30 N. Livingston Avenue	Parcel lacks road access for development.	0.781
Block 1407, Lot 9 Elizabeth Avenue	Municipal well house, where it is unclear the degree to which development can be achieved with the retention of those facilities on site.	0.804
Block 1700, Lot 32 Keyes Road	Parcel lacks road access for development.	0.184
Block 1700, Lot 33 Keyes Road	Parcel lacks road access for development.	0.359
Block 1706, Lot 32 Redwood Road	Parcel lacks road access for development.	0.309
Block 2006, Lot 30 193 E. Mt. Pleasant Avenue	House of Worship – area of Temple Beth Shalom to the rear of the house of worship development is not accessible nor conducive for development. Located in FEMA Flood Hazard Area	0.117
Block 2200, Lot 80 Laurel Avenue	Irregularly shaped area on parcel without road access. Located in FEMA Flood Hazard Area	0.196
Block 2300, Lot 6 222 Laurel Avenue	House of Worship – Narrow portion of West Essex Baptist Church is inconducive for development.	0.239



PROPERTY	STATUS	DCA DEVELOPABLE ACRES
Block 2300, Lot 7 Laurel Avenue	Part of Crestmont Country Club is at the far rear corner of the site. If the area were to be developed, the remainder of the country club would make the area landlocked without road access.	8.148
Block 2300, Lot 7.01 Laurel Avenue	House of Worship – Rear area of S.S. Nicholas, Constantine & Helen Greek Orthodox Church not accessible nor conducive for development.	0.351
Block 2301, Lot 6 Laurel Hills Homeowners Association “Common Area”	An irregularly shaped corner lot with an average width of 45’ within a single-family homeowner’s association community is not conducive to development.	0.242
Block 2301, Lot 51 Laurel Avenue	Location adjacent to high-voltage transmission wires and substation is inconducive for development.	1.204
Block 2400, Lot 45 37 Westmount Drive	Small, irregularly shaped areas are not conducive to development.	0.101
Block 2400, Lot 46 39 Westmount Drive	Small, irregularly shaped areas are not conducive to development.	0.022
Block 2401, Lot 31 E. Mt. Pleasant Avenue	Municipal water tank, where it is unclear the degree to which development can be achieved with the retention of those facilities on site.	0.226
Block 2401, Lot 42 346 E. Mt. Pleasant Avenue	House of Worship – portions of St. Raphael’s Roman Catholic Church, Irregular geometry to the rear of the church development is not accessible nor conducive for development.	1.183
Block 2404, Lot 53 3 Argyle Court	Remainder sliver bisected by property line from area identified on Block 2404, Lot 60.	0.000
Block 2404, Lot 60 Cedar Street	Landlocked parcel without road access.	0.647
Block 2504, Lot 5 Chetwynd Terrace	Municipal water tower, where it is unclear the degree to which development can be achieved with the retention of those facilities on site.	1.272
Block 2504, Lot 23 321 E. Cedar Street	Small, irregularly shaped areas without road access are inconducive to development.	1.431
Block 2603, Lot 2 Victor Avenue	Small, irregularly shaped areas are inconducive to development.	0.159



PROPERTY	STATUS	DCA DEVELOPABLE ACRES
Block 3100, Lot 54 S. Livingston Avenue	House of Worship – small, irregularly shaped portion of property owned by and across from St. Philomena’s Roman Catholic Church. The location of the developable portion at the far rear of the property is inconducive for development and too close to the rear property line with adjacent residences. Located in FEMA Flood Hazard Area	0.177
Block 3100, Lot 55 357 S. Livingston Avenue	Township Hall – irregular, narrow portion at rear of municipal complex. Developable area is located in FEMA Flood Hazard Area	0.143
Block 3202, Lot 44 235 S. Livingston Avenue	Rear of Municipal DPW facility, where it is unclear the degree to which development can be achieved with the retention of those facilities on site. Developable area is located in FEMA Flood Hazard Area.	1.012
Block 3203, Lot 27 Beech Avenue	An irregularly shaped area with a maximum width of 35’ is inconducive for development.	0.099
Block 3903, Lot 108 258 W. Northfield Road	House of Worship – narrow, irregular shaped area at rear of Living Stone Christian Church.	0.127
Block 4400, Lot 30.01 396 S. Livingston Avenue	House of Worship – irregular, narrow areas comprising edge of side and rear yards of St. Philomena’s Roman Catholic Church.	1.488
Block 4400, Lot 30.02 Madonna Drive	Small, irregular sliver portion no more than 2’ wide at rear of municipal open space complex. Remainder sliver bisected by property line from area identified on Block 4400, Lot 30.02.	0.007
Block 4500, Lot 2 210 West Northfield Road	Parsonage of Northfield Baptist Church.	1.464
Block 4500, Lot 17 Manor Road	Small, irregularly shaped areas are inconducive to development. Remainder sliver bisected by property line from area identified on Block 4500, Lots 56 & 57.	0.005
Block 4500, Lots 56 & 57 190-196 W. Northfield Road	House of Worship – portions of Full Gospel Church of Livingston either with restricted access from the house of worship development or of too small, irregular geometry to support development.	0.071
Block 4700, Lot 26 W. Northfield Road	Municipal drainage facility – unclear the degree to which development can be achieved with the retention of those facilities on site.	1.012



PROPERTY	STATUS	DCA DEVELOPABLE ACRES
Block 5301, Lot 16 290 W. Hobart Gap Road	Small, undeveloped rear of existing lot, which would become landlocked as part of any subdivision to develop the area.	0.165
Block 5500, Lot 1 Relkin Road	Landlocked parcel with irregular, small geometry inconducive to development.	0.100
Block 5500, Lot 5 271 W. Northfield Road	House of Worship – rear of Presbyterian Church of Livingston parcel.	1.600
Block 5500, Lot 14 204 Hillside Avenue	Municipal Facility – edge portions of Livingston Office of Vital Statistics property	0.649
Block 5500, Lot 30 244 Hillside Avenue	Landlocked parcel with irregular, small geometry inconducive to development. Remainder sliver bisected by property line from area identified on Block 5500, Lot 19.	0.007
Block 5700, Lot 2 375 W. Northfield Road	Property is identified on the Township’s ROSI and also is adjacent to a municipal firehouse on the same parcel.	1.293
Block 5800, Lot 9 153 Walnut Street	Parcel of limited size wedged in between Eisenhower Parkway (a limited-access roadway) and high-voltage transmission lines. Location is inconducive to sound site plan.	0.722
Block 6001, Lot 48 200 S. Orange Avenue	Roughly half the site is encumbered by 100- and 500-year floodplains, which trisect the site and render it infeasible for development.	1.034
Block 6001, Lots 103 & 132-134 Walnut Street & Baker Road	Conserved Lands – New Jersey American Water Reservoir, where identified portions do not have road access and/or are too small and irregular in shape to support development.	3.746
Block 6001, Lot 135 91 S. Orange Avenue	School Property – Newark Academy. Identified areas are either inaccessible to the rear of the school or are too small to provide for feasible development.	1.733
Block 7001, Lot 1.01 650 S. Orange Avenue	House of Worship Property – Chabat at Short Hills. Limited, irregularly shaped areas are infeasible for development.	0.193
Block 7001, Lot 2.01 652 S. Orange Avenue	Inaccessible – rear yard of a developed property.	0.118



PROPERTY	STATUS	DCA DEVELOPABLE ACRES
Block 7300, Lots 1, 3, & 85 E. Northfield Road	House of Worship Property – Temple B’nai Abraham. Wooded, undeveloped portions of property are unlikely for development given land configuration around the house of worship and restricted access to those identified portions.	4.824

E. Given the constraints of these existing properties, Topology estimates that the amount of developable land within the Township of Livingston should be revised to from 56.892 acres to 14.208 Acres. This would also reduce the total developable land within Region 2 from 5,358.48 acres to 5,315.796 acres. Thus, the Land Capacity Factor for the Township of Livingston would be modified from 1.1% as calculated by DCA to 0.27%.

II. Equalized Nonresidential Valuation Assessment

A. The Equalized Nonresidential Valuation Factor is calculated pursuant N.J.S.A. 52:27D-304.3.C.2 and is determined by calculating the changes in nonresidential property valuations in the municipality, since the beginning of the gap period in 1999. The change in the municipality’s nonresidential valuations is divided by the regional total change in nonresidential valuations to determine the municipality’s share of the regional total change, which is the resulting factor. Data to be used is from the Division of Local Government Services in the DCA, which aggregates local assessment information from all municipalities.

B. Under the DCA calculation, the Township of Livingston experienced an equalized nonresidential valuation growth of \$693,417,456 between 1999 and 2023. This represents 2.69% of all growth experienced during this period across Region 2.

C. Topology recommends the Township accept the Nonresidential Valuation Factor as calculated by the DCA, as Topology has reviewed and concluded that no further revisions can be made.

III. Income Capacity Factor

A. The Income Capacity Factor is calculated pursuant to N.J.S.A. 52:27D-304.3.C.3 and is determined by averaging the municipal share of the regional sum of differences between median household income and the same calculation but weighted by number of households within the municipality. To calculate this value, the DCA used the 2018-2022 5-year Estimates published by the Census Bureau’s American Community Survey program.

B. Since the publication of the Fair Share Housing Obligations for 2025-2035 by the DCA in October 2024, the U.S. Census Bureau has released the 2019-2023 5-year estimates from the American Community Survey.

C. Topology has prepared an update of the Income Capacity Factor for Region 2, and the Township of Livingston based upon this newly available data. In review of the new data, Topology has found no change to the Income Capacity Factor for the Township of Livingston because of the newly released data.



IV. Recalculated Fourth Round Obligation Number

Given the revisions detailed above, Topology recommends the Township of Livingston's allocation factors and prospective need obligations may be revised as follows below.

ALLOCATION FACTOR/PROSPECTIVE NEED	DCA CALCULATION	TOPOLOGY PROPOSED REVISION
Land Capacity Factor	1.06 Factor (56.892 Acres of 5,358.48 Region 2 Acres)	0.27 Factor (14.208 Acres of 5,315.796 Region 2 Acres)
Nonresidential Factor	2.69 Factor (\$693,417,456)	Accept DCA Calculation
Income Capacity Factor	3.00 Factor	Accept DCA Calculation
Average Allocation Factor	2.25 Factor	2.01 Factor
Prospective Need Obligation	461 Units	407 Units



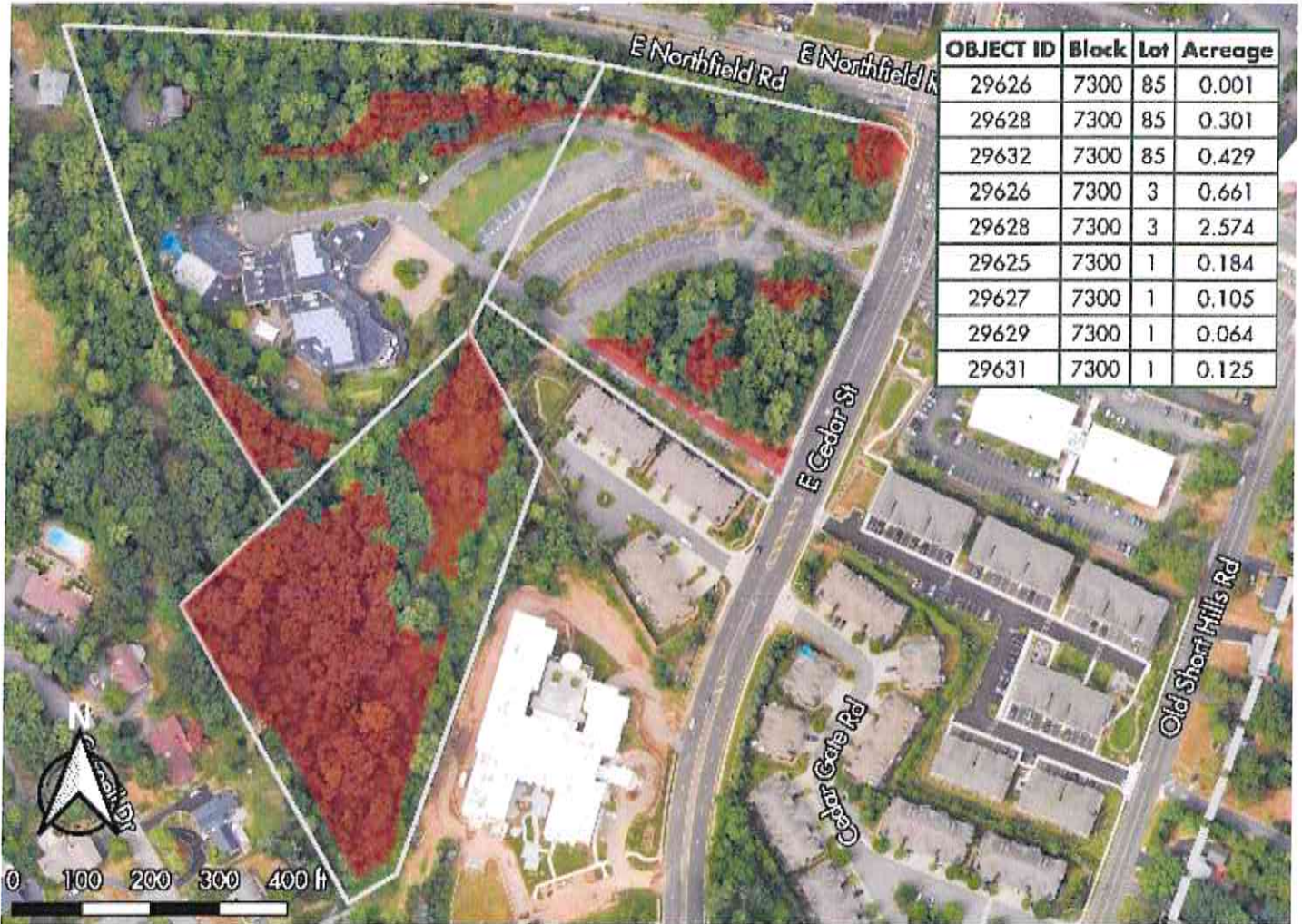
Appendix A - Parcel Maps of Excluded Developable Areas



Area in Red is DCA proposed Developable Area



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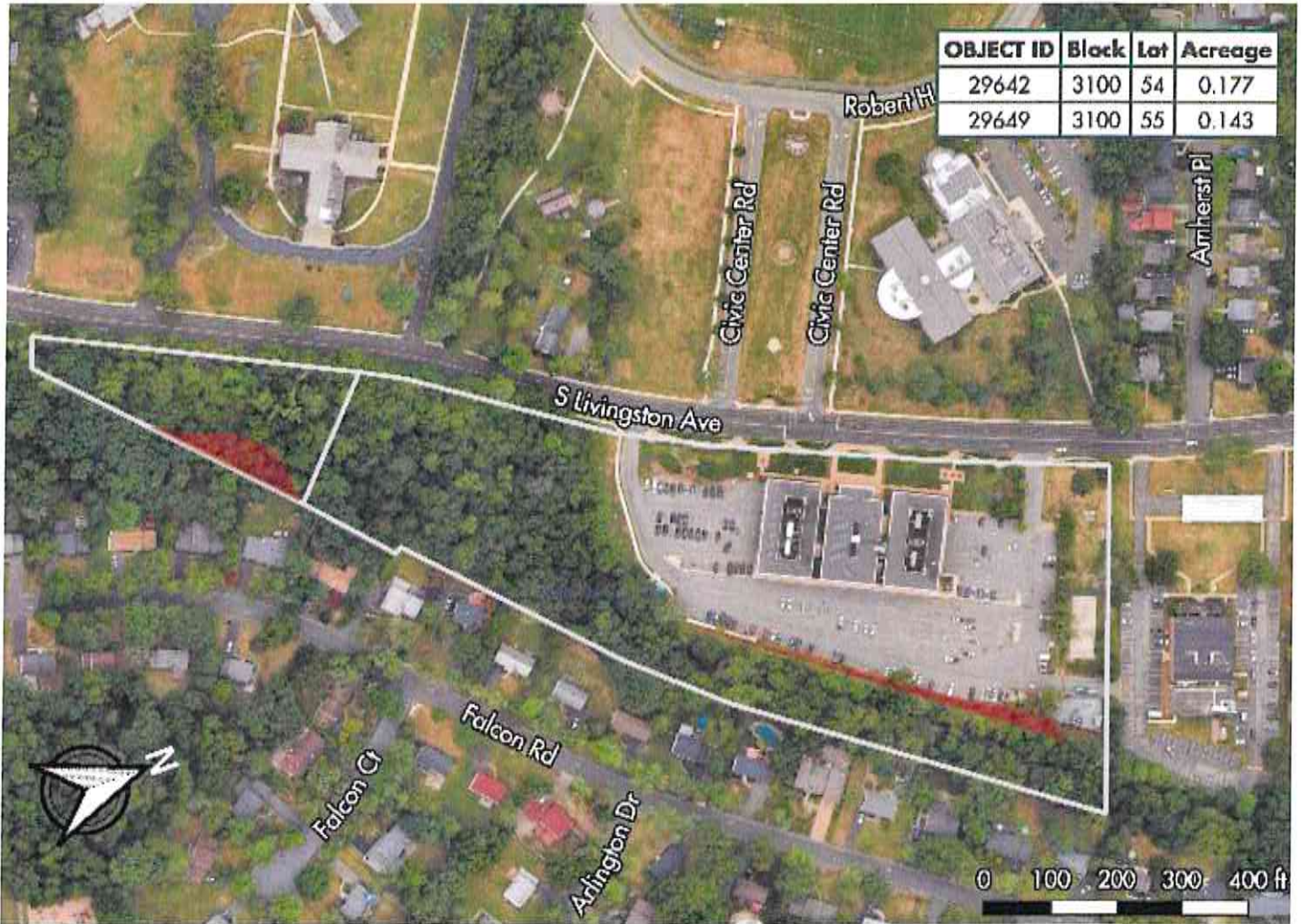
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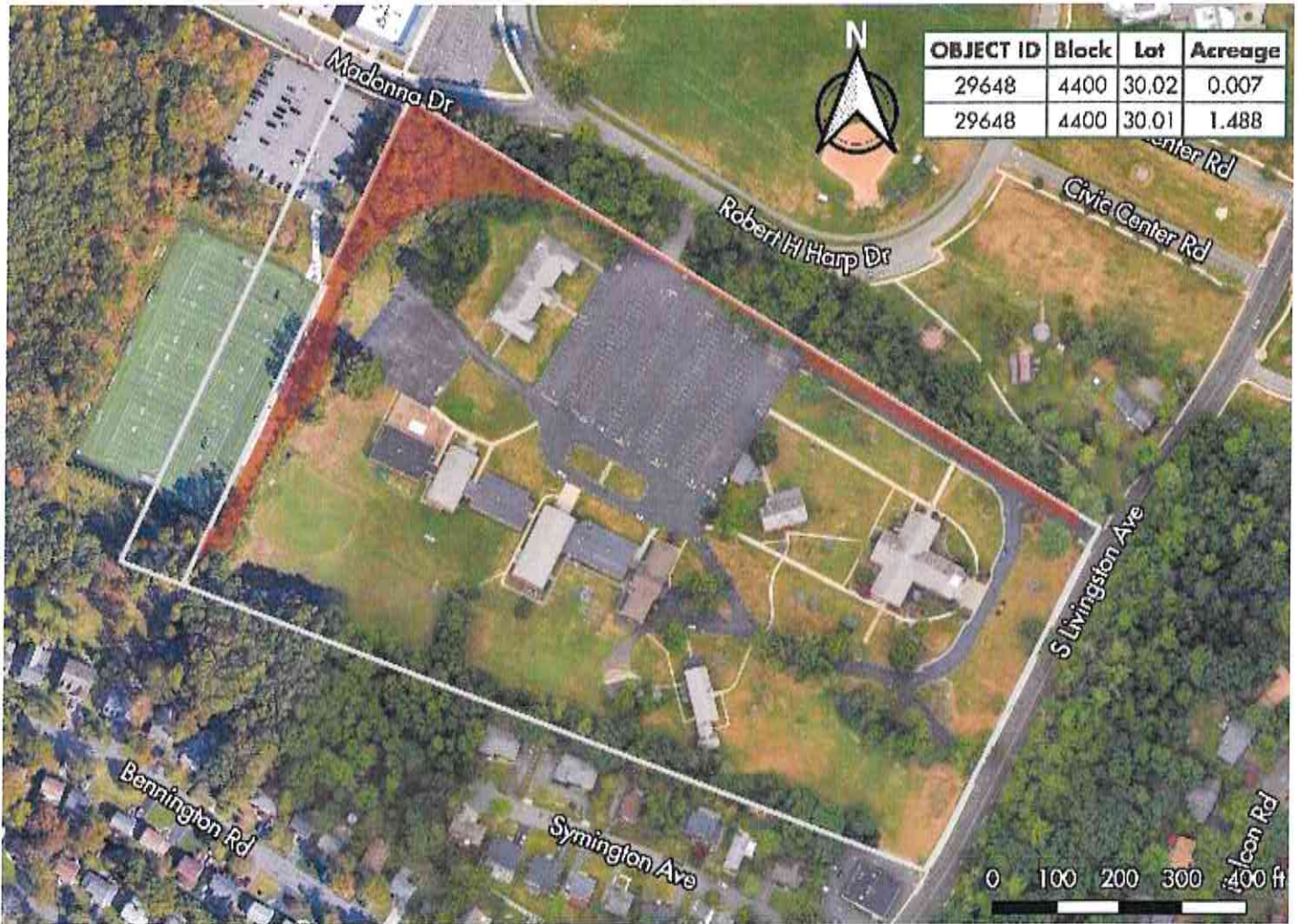
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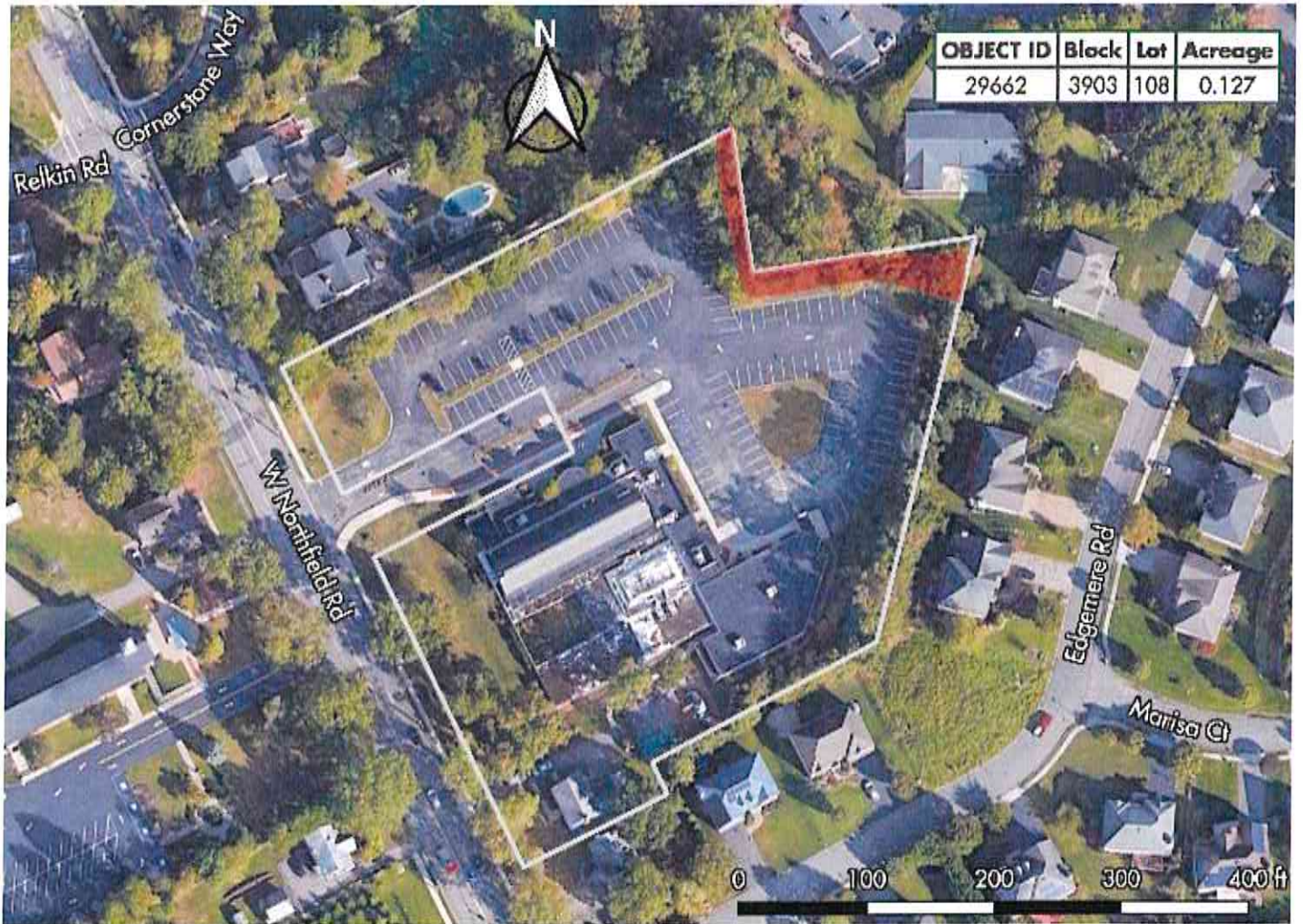
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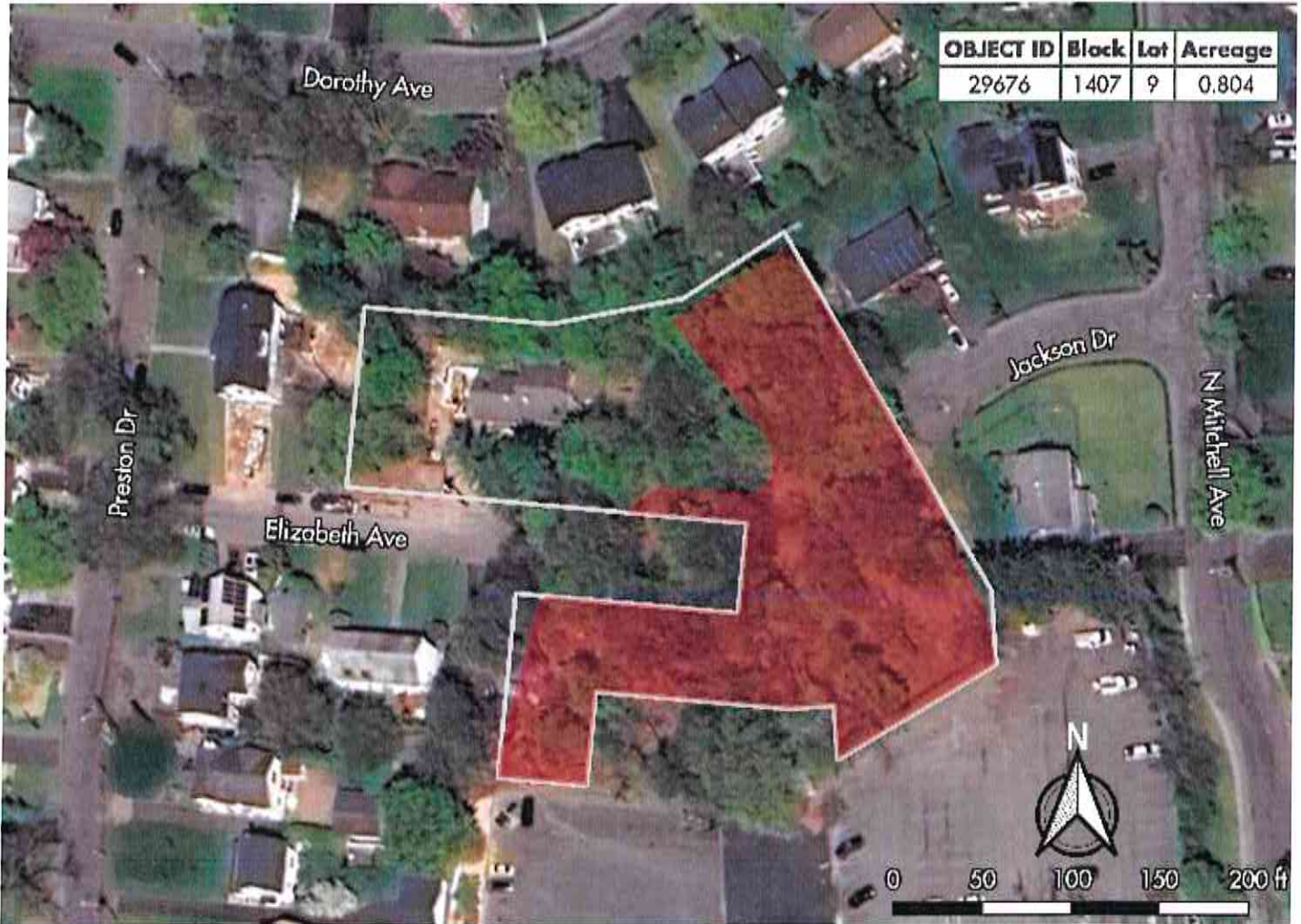
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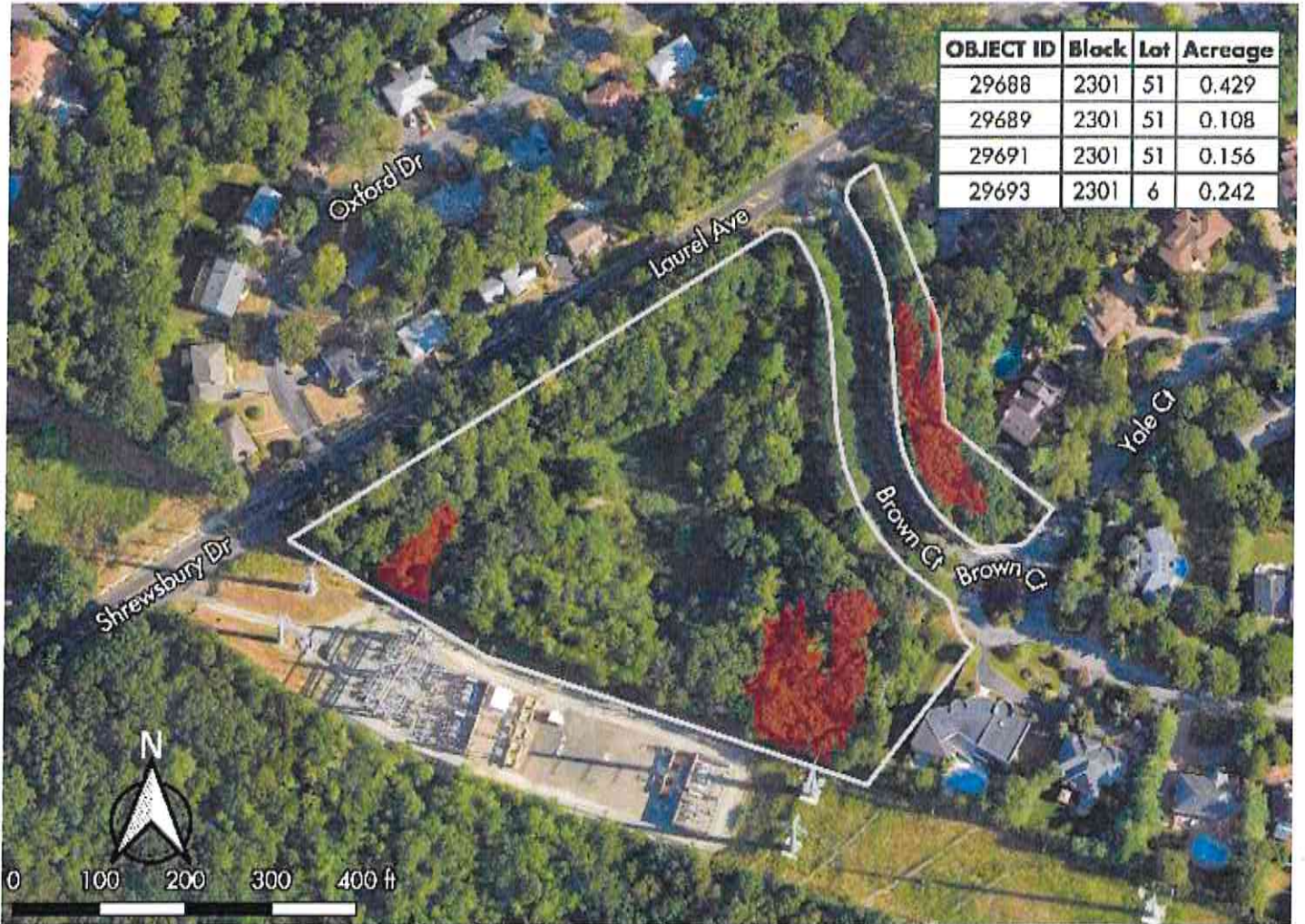
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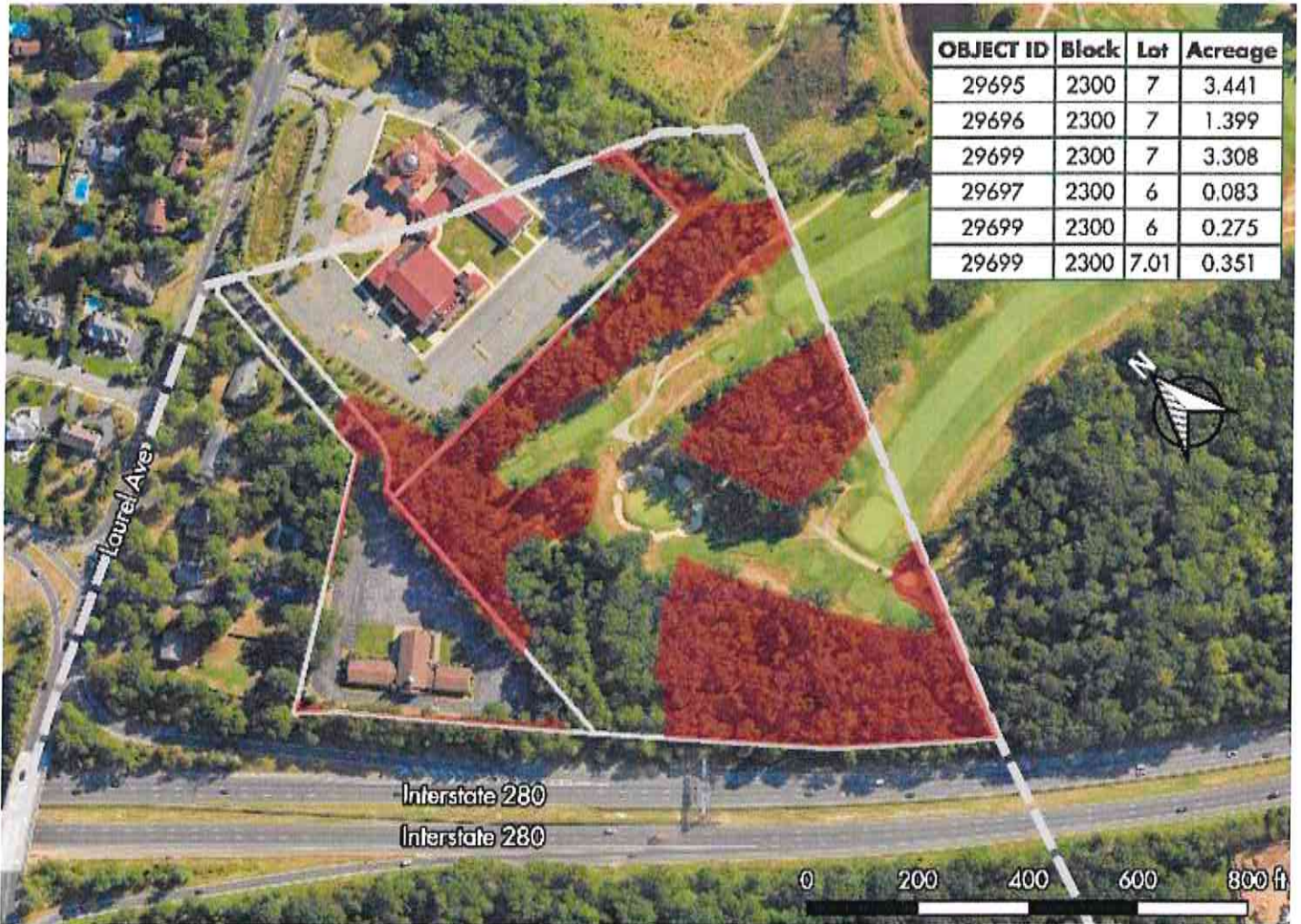
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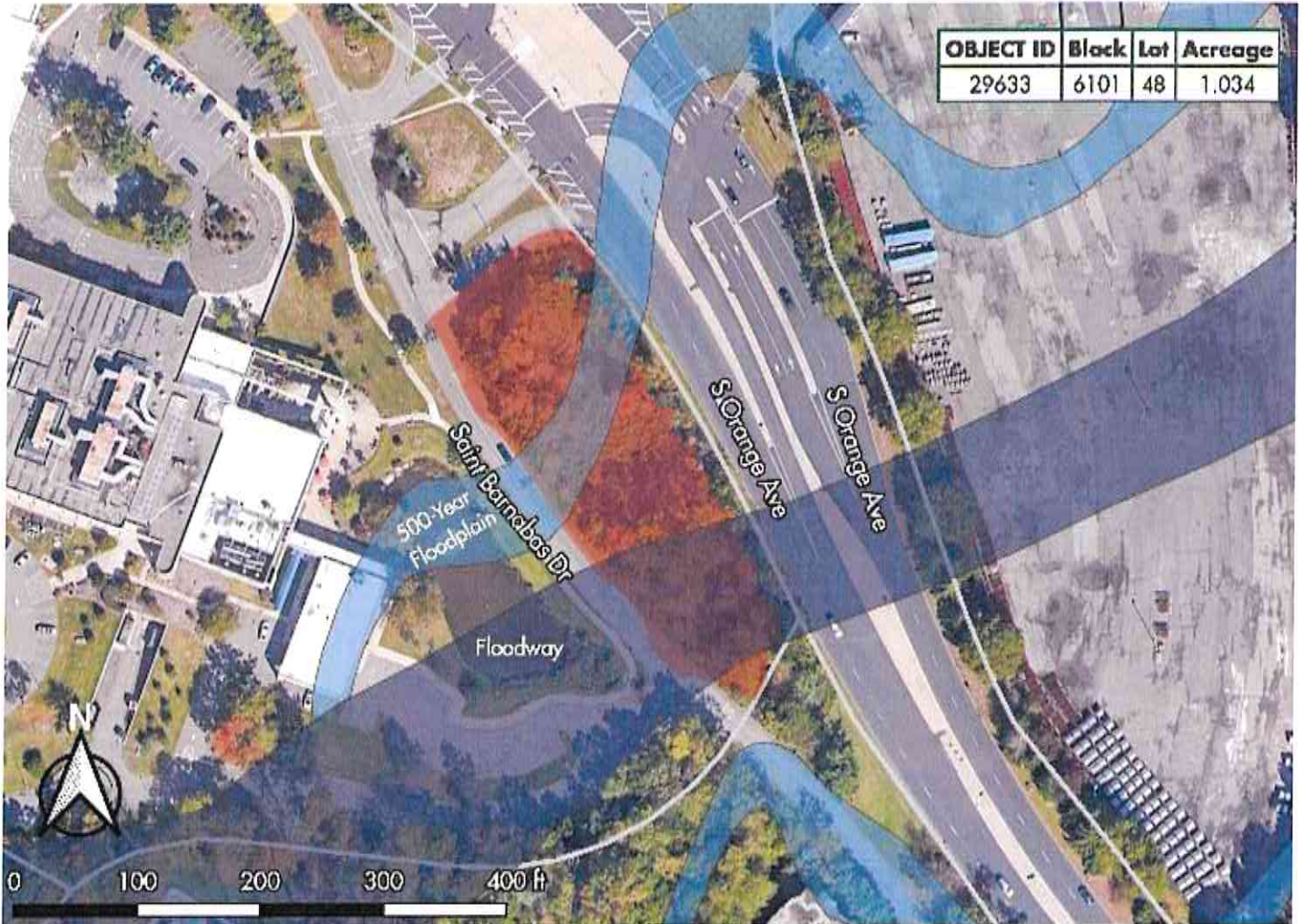
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