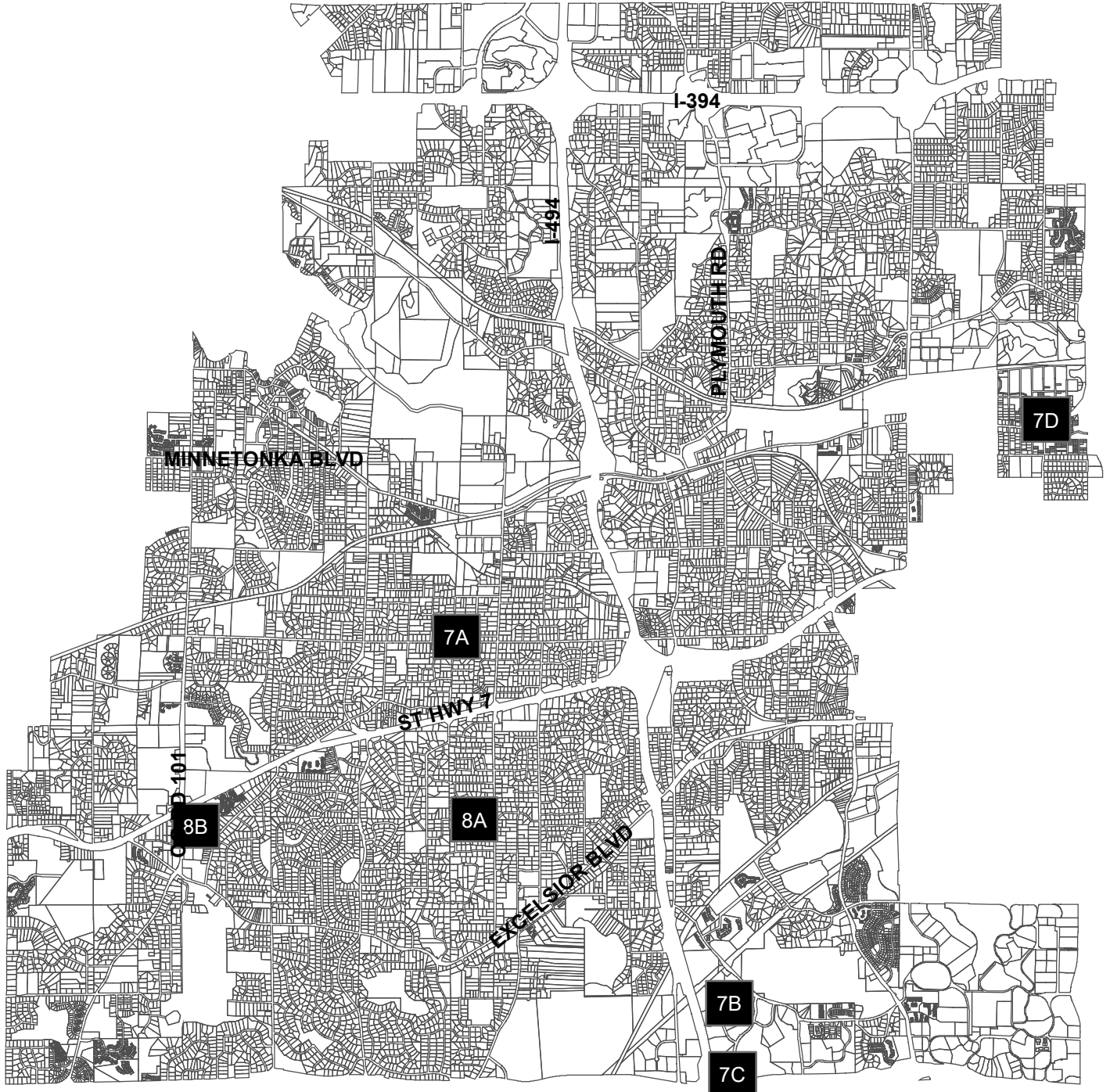




CITY OF
MINNETONKA

CITY OF MINNETONKA
PLANNING COMMISSION
March 30, 2023

14600 Minnetonka Blvd. • Minnetonka, MN 55345
(952) 939-8200 • Fax (952) 939-8244
minnetonkamn.gov





CITY OF
MINNETONKA

Planning Commission Agenda
March 30, 2023
6:30 p.m.

City Council Chambers – Minnetonka Community Center

1. Call to Order

2. Roll Call

3. Approval of Agenda

4. Approval of Minutes: March 16, 2023

5. Report from Staff

6. Report from Planning Commission Members

7. Public Hearings: Consent Agenda

A. Variance for a garage addition at 14920 Belvoir Drive.

Recommendation: Adopt the resolution approving the request (5 votes).

- Final decision subject to appeal
- Project Planner: Bria Raines

B. Amendment to the Minnetonka Corporate Center sign plan as it pertains to the property at 12501/12701 Whitewater Drive.

Recommendation: Adopt the resolution approving the request (5 votes).

- Final decision subject to appeal
- Project Planner: Susan Thomas

C. Items concerning Ovation Orthodontics at 10999 Red Circle Drive.

Recommendation: Recommend the city council adopt the resolution approving the amendment to the existing master development plan and a conditional use permit (4 votes).

- To city council (April 17, 2023)
- Project Planner: Ashley Cauley

Planning Commission Agenda

March 30, 2023

Page 2

D. Conditional use permit and variance for Hoover Perio at 10000 Minnetonka Blvd.

Recommendation: Recommend the city council adopt the resolution approving the permit (5 votes).

- To city council (April 17, 2023)
- Project Planner: Susan Thomas

8. Public Hearings: Non-Consent Agenda Items

A. Expansion permit for an addition at 14755 Wychewood Rd.

Recommendation: Recommend the city council adopt the resolution (4 Votes).

- Final decision subject to appeal
- Project Planner: Bria Raines

B. Items concerning Mega Pickle and Pong at 17585 Hwy 7.

Recommendation: Recommend the city council adopt the resolutions (4 votes).

- To city council (April 17, 2023)
- Project Planner: Ashley Cauley

9. Adjournment

Notices

1. Please call the planning division at (952) 939-8290 to confirm meeting dates as they are tentative and subject to change.
2. There following applications are tentatively schedule for the April 20, 2023 agenda.

| | |
|----------------------------|----------------------|
| Project Description | Greystar Development |
| Project Location | 10701 Bren Rd E |
| Assigned Staff | Ashley Cauley |
| Ward Councilmember | Brian Kirk, Ward 1 |

| | |
|----------------------------|------------------------|
| Project Description | Marsh Run II – Doran |
| Project Location | 11816 Wayzata Blvd |
| Assigned Staff | Bria Raines |
| Ward Councilmember | Rebecca Schack, Ward 2 |

| | |
|----------------------------|-----------------------|
| Project Description | Peterson Residence |
| Project Location | 4813 Williston Road |
| Assigned Staff | Ashley Cauley |
| Ward Councilmember | Kissy Coakley, Ward 4 |

| | |
|----------------------------|--------------------|
| Project Description | MidCountry Bank |
| Project Location | 14617 Hwy 7 |
| Assigned Staff | Bria Raines |
| Ward Councilmember | Brian Kirk, Ward 1 |

**Unapproved
Minnetonka Planning Commission
Minutes**

March 16, 2023

1. Call to Order

Chair Sewall called the meeting to order at 6:30 p.m.

2. Roll Call

Commissioners Waterman, Banks, Hanson, Henry, Maxwell, Powers, and Sewall were present.

Staff members present: City Planner Loren Gordon and Assistant City Planner Susan Thomas.

3. Approval of Agenda: The agenda was approved as submitted.

4. Approval of Minutes: March 2, 2023

Banks moved, second by Waterman, to approve the March 2, 2023 meeting minutes as submitted.

Waterman, Banks, Hanson, Henry, Maxwell, Powers, and Sewall voted yes. Motion carried.

5. Report from Staff

Gordon briefed the commission on the upcoming planning commission meetings scheduled to be held on March 30, 2023, and April 20, 2023.

6. Report from Planning Commission Members: None

7. Public Hearings: Consent Agenda: None

8. Public Hearings

A. Conditional use permit for a restaurant with outdoor seating at 1805 Plymouth Road.

Chair Sewall introduced the proposal and called for the staff report.

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Roger Lenehan of Cambridge Commercial Real Estate, representing the applicant, stated that:

- He talked to a Firestone employee who was amenable to accommodating overflow parking for the anticipated rush expected to occur for the first couple of months of the restaurant opening.
- He anticipates opening 15 new restaurants in the metro area of Minnesota.
- The expected date to open would be July or August of 2023.

The public hearing was opened. No testimony was submitted, and the hearing was closed.

Hanson felt the use would be a good fit for the site. He looks forward to its completion.

Chair Sewall encouraged the applicant to work with the neighboring businesses to accommodate additional parking during the restaurant's initial opening rush.

Powers moved, second by Maxwell, to recommend that the city council adopt the resolution approving a conditional use permit for a restaurant with an outdoor seating area at 1805 Plymouth Road.

Waterman, Banks, Hanson, Henry, Maxwell, Powers, and Sewall. Motion carried.

The city council is scheduled to review this item on April 17, 2023.

9. Adjournment

Waterman moved, second by Henry, to adjourn the meeting at 6:45 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary

Minnetonka Planning Commission Meeting

Agenda Item 7

Public Hearing: Consent Agenda

MINNETONKA PLANNING COMMISSION
March 30, 2023

Brief Description Front yard setback variance for a garage addition at 14920 Belvoir Drive

Recommendation Adopt the resolution approving the request.

Background

The subject property is located north of Lake Street Extension and west of Williston Road. The site is a corner lot improved with a single-family home constructed with a one-stall, attached garage in 1956. This structure predates the adoption of the city's first zoning ordinance.

The current R-1 zoning ordinance requires a 35-foot front yard setback from a neighborhood collector street. In addition, the R-1 zoning ordinance permits corner lots to reduce one front yard setback by ten feet to a 25-foot setback without variance. Since the existing front yard setback along Belvoir Drive is less already than 35 feet, the frontage along Thomas Avenue is required to meet the 35-foot setback.

| Property Line | Existing Setback | Proposed Setback | Required Setback |
|-----------------------|-------------------------|-------------------------|-------------------------|
| South (Belvoir Drive) | 30.8 feet | 30.8 feet | 25 feet |
| West (Thomas Avenue) | 38.8 feet | 29.8 feet | 35 feet |

Proposal

The applicant, Jay Besonen, on behalf of the property owner, James Besonen, is proposing to construct an addition to the existing one-stall garage. This proposal requires a variance from the required 35-foot setback to allow a 29.8-foot setback for a second stall.

Staff Analysis

Staff finds that the applicant's proposal meets the variance permit standards:

- The proposed garage addition is reasonable. The planning commission policy considers a standard two-stall garage, 24-foot by 24-foot, to be a reasonable use. The proposed addition would increase the garage to a two-stall garage.
- The circumstances of the property are unique.
 - ✓ The city code provides a reduced setback for one of the frontages on a corner lot; otherwise subject to a 35-foot setback. This property has an existing non-conforming front yard setback that does not allow the other frontage to utilize that reduced setback. Additionally, the property has an existing garage that can only be added on to the west, towards Thomas Avenue.
 - ✓ While the proposed structure would be within the required setback, it would actually be located over 40 feet from the physical road. Visually, the addition will appear to meet the front yard setback requirement.

- The expansion would not adversely affect or alter the character of the neighborhood.

Staff Recommendation

Adopt the resolution approving a front yard setback variance for a garage addition at 14920 Belvoir Drive.

Originator: Bria Raines, Planner

Through: Loren Gordon, AICP, City Planner

Supporting Information

Project No. 23002.23a

Property 14920 Belvoir Drive

Applicant Jay Besonen

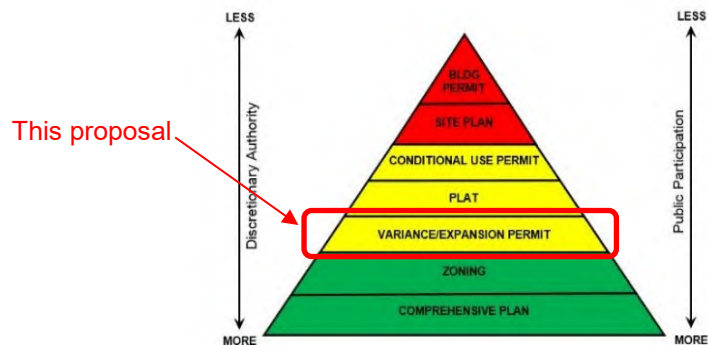
Surrounding Land Uses All surrounding properties are single-household dwellings zoned R-1 and guided for low-density residential uses.

Planning Guide Plan designation: low-density residential
Zoning: R-1, Low-Density Residential District

Variance v. Expansion A variance is required for any alteration that will intrude into one or more setback areas beyond the distance of an existing, non-conforming structure. An expansion permit is required for any alteration that maintains the existing non-conformity. The applicant's proposal requires a variance.

Variance Standard By City Code §300.07 Subd. 1, a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

Pyramid of Discretion



Neighborhood Comments The city sent notices to 42 area property owners and received one comment. That comment has been added below.

- I'm sorry I can't attend the meeting on March 30th, but I wanted to let you know that we support a variance request for Jay Besonen at 14920 Belvoir Drive. Please let me know if you have any questions.

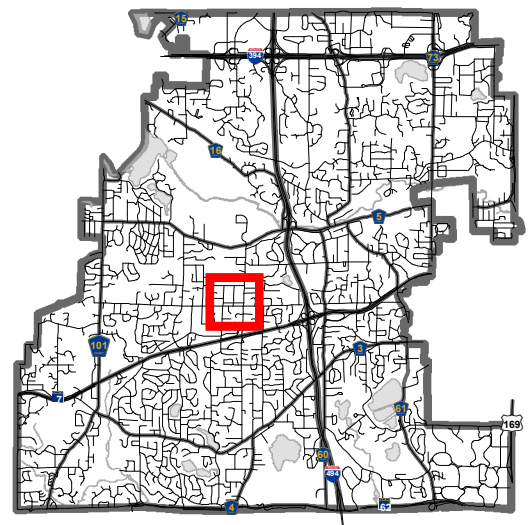
Wendy and Todd Turgeon
15005 Belvoir Drive

- Natural Resources** Best management practices must be followed during the course of site preparation and construction activities. This would include the installation and maintenance of erosion control throughout the course of construction.
- Motion options** The planning commission has the following motion options:
1. Concur with staff's recommendation. In this case, a motion should be made adopting the resolution approving the expansion permit.
 2. Disagree with the staff's recommendation. In this case, a motion should be made denying the request. This motion must include a statement as to why the request is denied.
 3. Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.
- Voting Requirement** The planning commission's action on the applicant's request is final and subject to appeal. Approval requires the affirmative vote of five commissioners.
- Appeals** Any person aggrieved by the planning commission's decision about the requested expansion permit may appeal such a decision to the city council. A written appeal must be submitted to the planning staff within ten days of the decision date.
- Deadline for Decision** June 17, 2023



Location Map

Project: Besonen Residence
Address: 14920 Belvoir Drive



PRACTICAL DIFFICULTIES WORKSHEET

By state law, variances may be granted from the standards of the city's zoning ordinance only if:

- 1) The proposed variance is in harmony with the general purpose and intent of the zoning ordinance;
- 2) The proposed variance is consistent with the comprehensive plan; and
- 3) An applicant establishes that there are practical difficulties in complying with the ordinance standard from which they are requesting a variance. Practical difficulties means:
 - The proposed use is reasonable;
 - The need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and
 - The proposed use would not alter the essential character of the surrounding area.

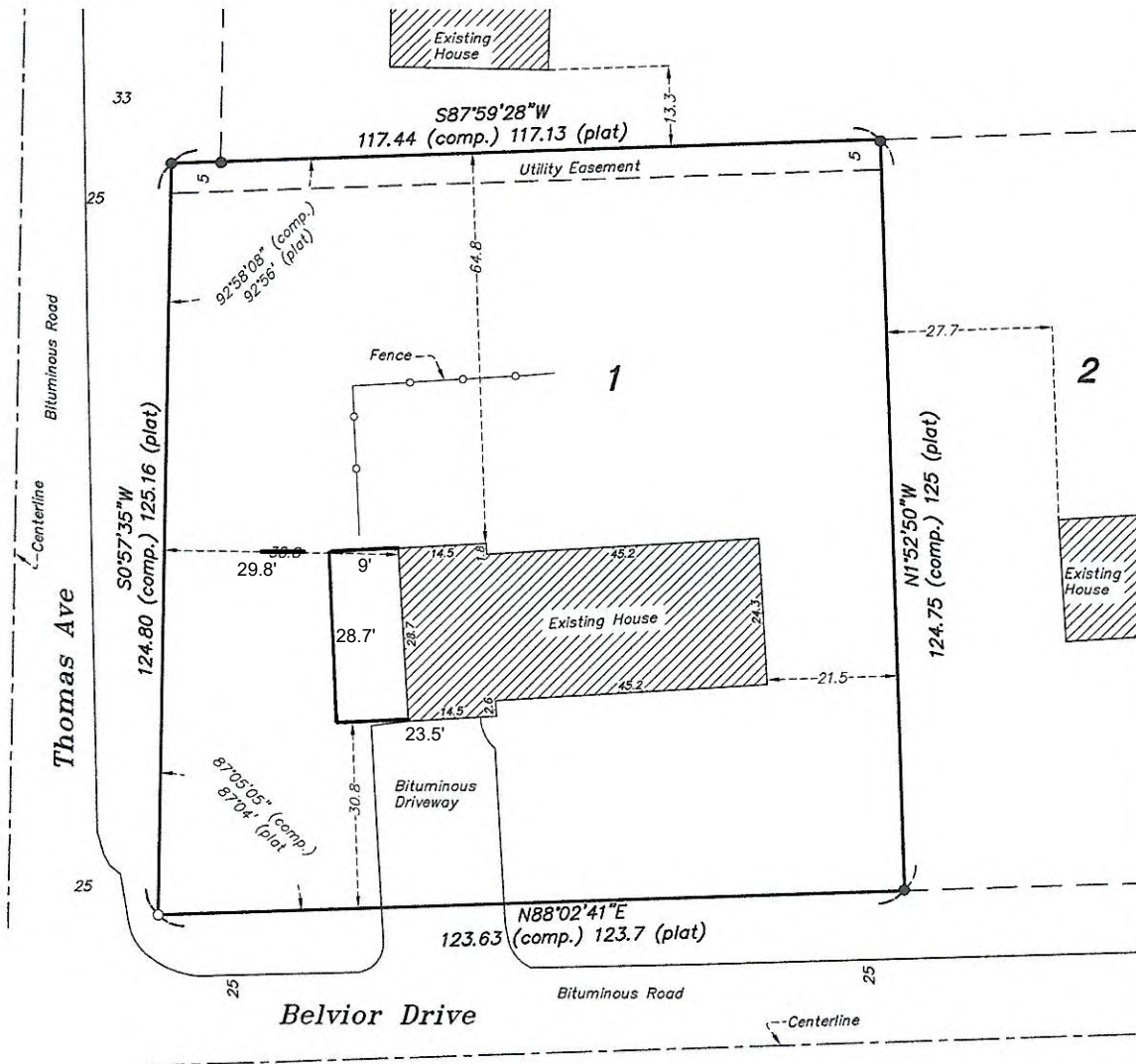
| PRACTICAL DIFFICULTIES | |
|--|--|
| <p>Describe why the proposed use is reasonable</p> | <p>The existing garage is less than 250 sq ft. My truck barely fits in the opening. Would be extending the garage wall to fit a 2 car/vehicle garage opening. More storage room for garbage bins etc.</p> |
| <p>Describe:</p> <ul style="list-style-type: none"> • circumstances unique to the property; • why the need for variance was not caused by the property owner; and • and why the need is not solely based on economic considerations. | <p>Corner lot and new setback rules after completion of original build may have changed.</p> <p>Need for variance is due to proposal of new garage would be impacting the 35' setback and reducing it to a 25' setback. Less than 10% of homes in 2 block radius have single stall garage door. Need is based on my family is a multi vehicle family and existing garage does not meet practical needs. Rest of neighborhood has had several remodels or new builds in last 3 years.</p> |
| <p>Describe why the variance would not alter the essential character of the neighborhood</p> | <p>The design to extend the walls and not alter roof line and shape. Would keep the "look" of the home the same.</p> <p>The neighborhood has seen some updating in the recent years, and I would like to update but keep the same character on the exterior</p> |

VARIANCE APPLICATIONS WILL NOT BE ACCEPTED IF THIS WORKSHEET IS NOT COMPLETE

PROCESS

Building Permit Survey

Prepared for:
Jim Besonen

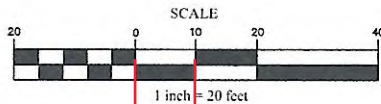


Legend

- Found Iron Monument
- Set Iron Monument (LS 59130)

Site Address:
14920 Belvior Dr
Minnetonka, MN 55345

Boundary Description (supplied by client)
Lot 1, Block 1, BELVIOR PLACE, according to
the recorded plat thereof, Hennepin, Minnesota.
Subject to any and all easements of record.



Bearings based on assumed datum.

**SCHOBORG
LAND SERVICES
INC.**

763-972-3221 8997 Co. Rd. 13 SE
www.SchoborgLand.com Delano, MN 55328

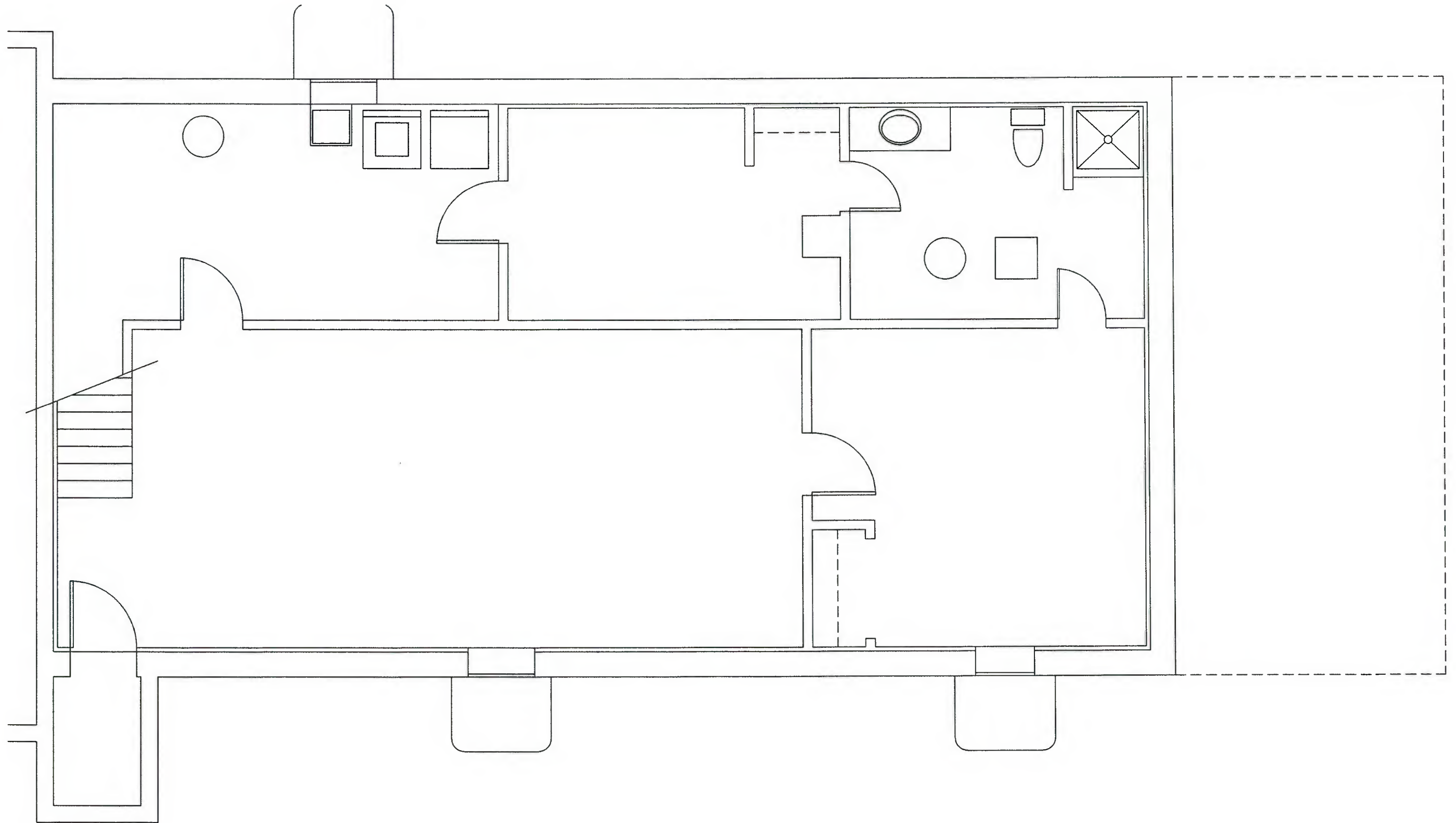
0.31 in

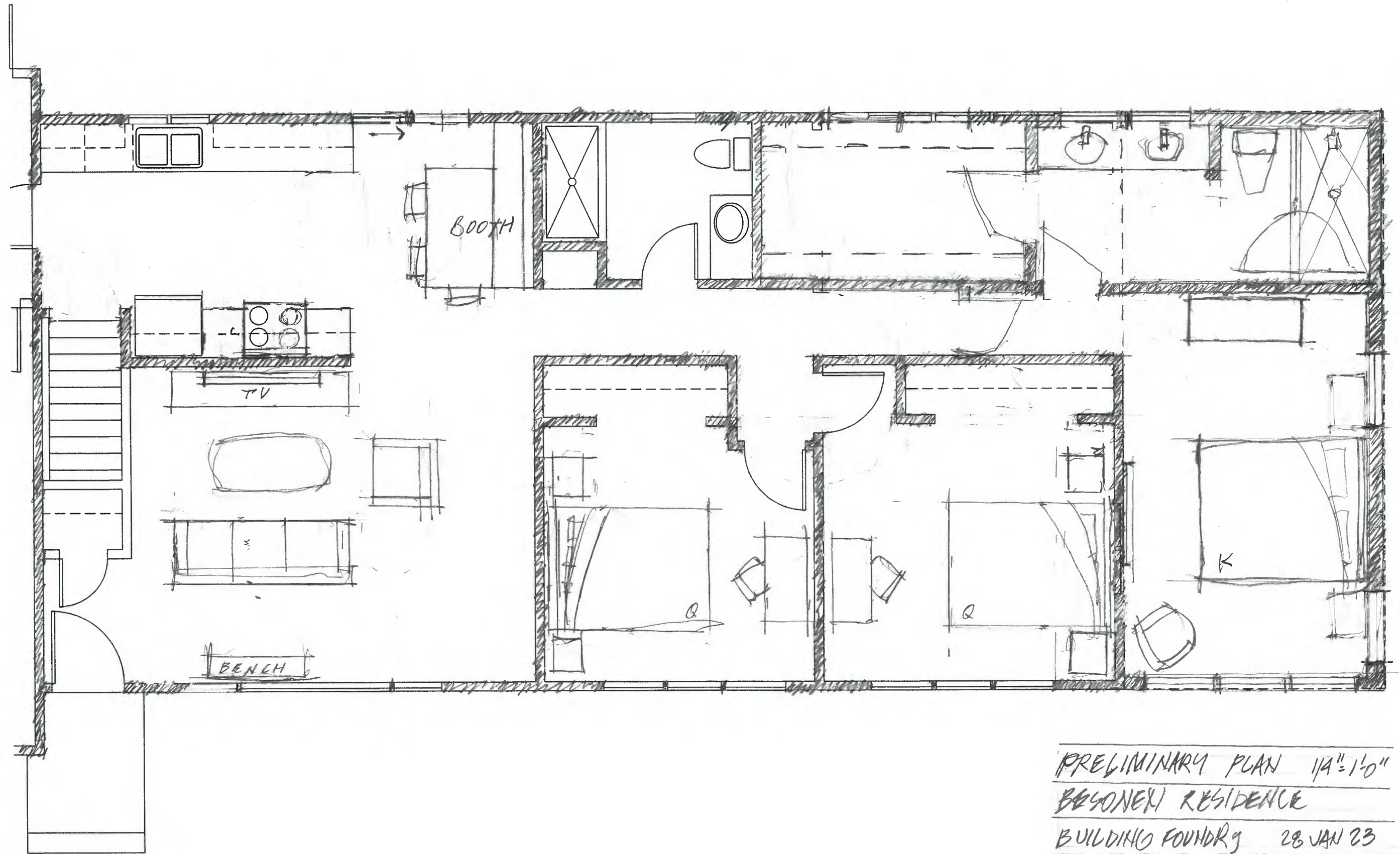
I hereby certify that this certificate of survey was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

Douglas M. Smith
Douglas M. Smith

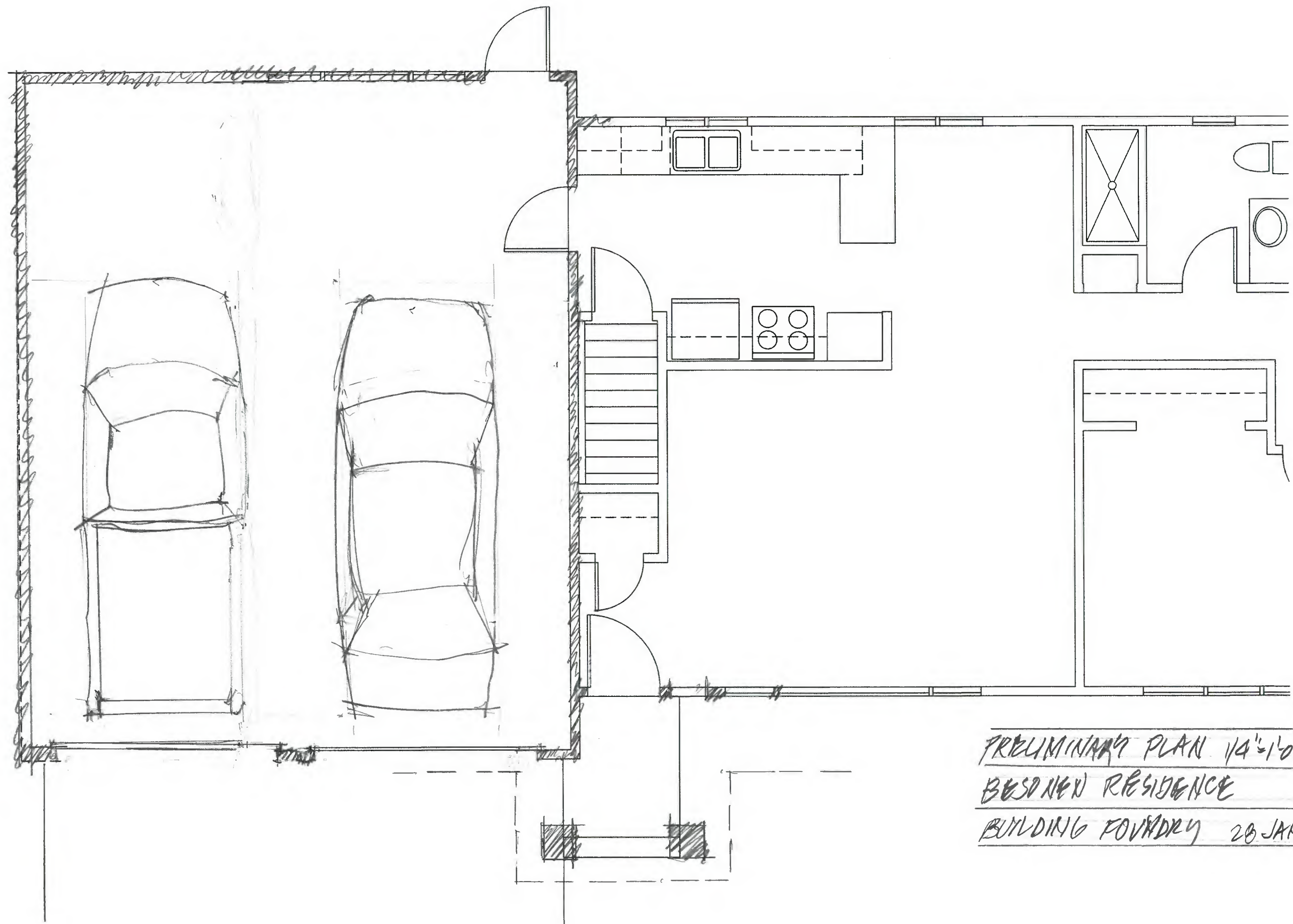
Date: November 10, 2022 Registration No. 59130

| | |
|---------------|------------------|
| Job Number: | 9540 |
| Survey Date: | 11/7/2022 |
| Drawing Name: | 9540 Besonen.dwg |
| Drawn by: | SKH |
| Revisions: | |

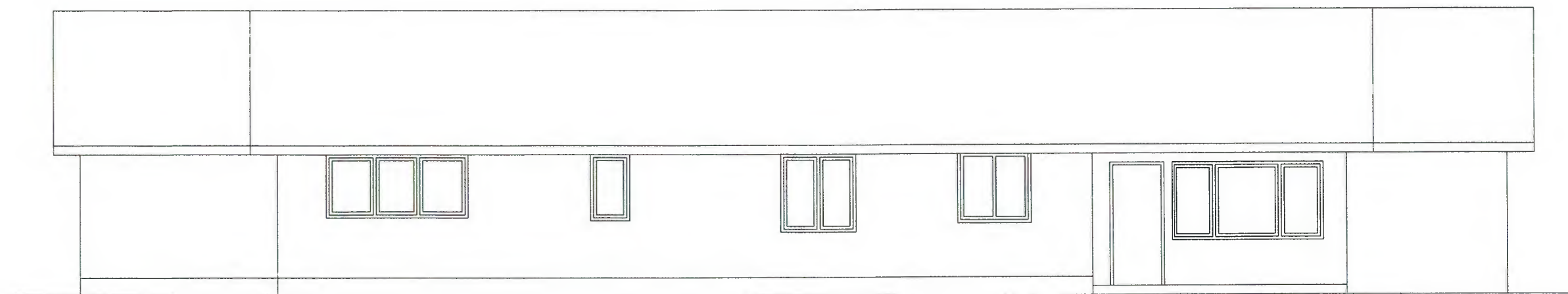
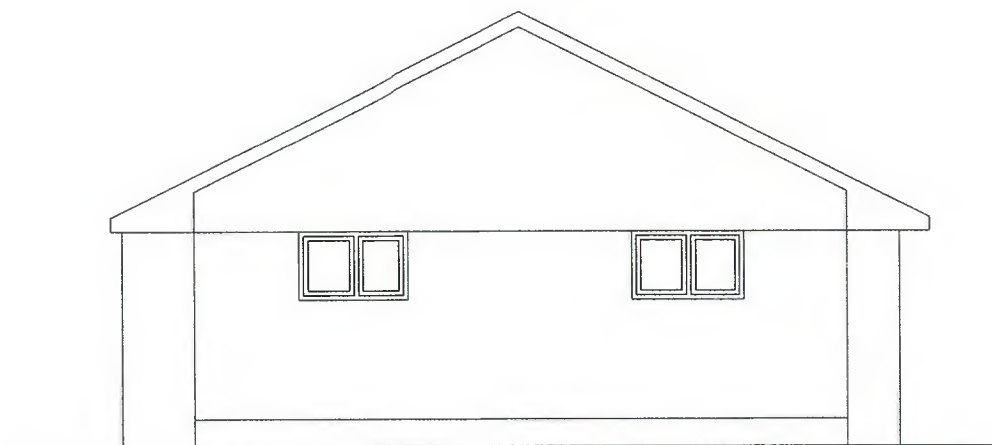
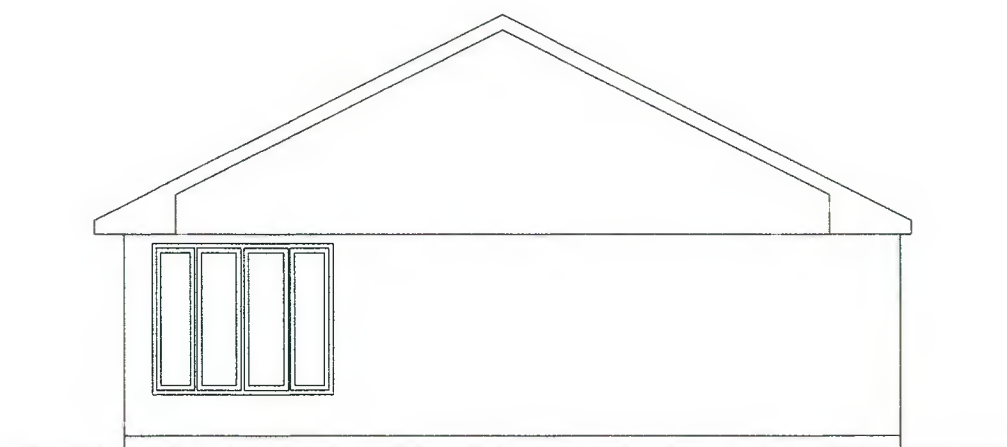
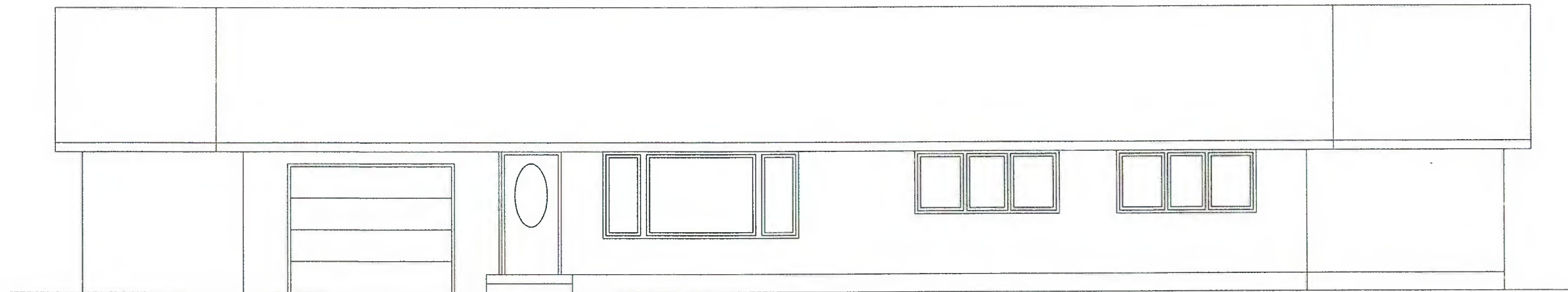


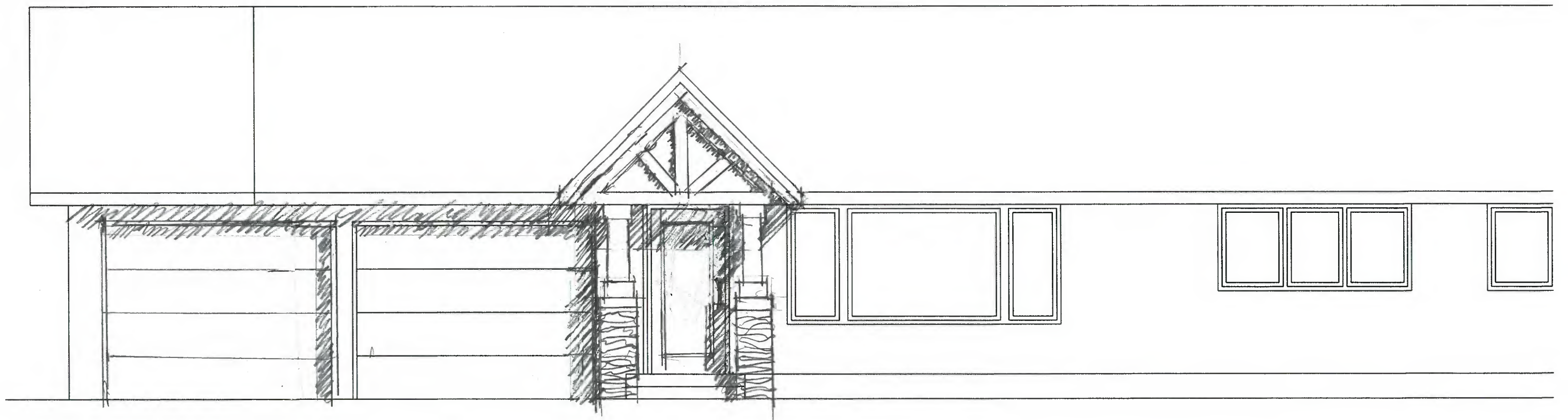


PRELIMINARY PLAN 1/4"=1'-0"
BESONEXI RESIDENCE
BUILDING FOUNDRY 28 JAN 23



PRELIMINARY PLAN 1/4"=1'-0"
BESDNER RESIDENCE
BUILDING FOUNDRY 20 JAN 2023





PRELIMINARY ELEVATION 1/4"=1'-0"
BESONEN RESIDENCE
BUILDING FOUNDATION 28 JAN 2023

Planning Commission Resolution No. 2023-
Resolution approving a front yard setback variance for a garage addition
at 14920 Belvoir Drive

Be it resolved by the Planning Commission of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 The subject property is located at 14920 Belvoir Drive. It is legally described as:

Lot 1, Block 1, Belvoir Place, Hennepin County, Minnesota.

1.02 A home was constructed on the subject property in 1956, prior to the adoption of the city's first zoning ordinance. The R-1 zoning ordinance requires a 35-foot setback from a neighborhood collector, such as Lake Street Extension. The home has a non-conforming front yard setback of 30.8 feet.

1.03 The applicant, Jay Besonen, on behalf of the property owner, James Besonen, is proposing a garage addition to increase from a one-stall garage to a two-stall garage. The proposed addition would have a front yard setback of 30.8 feet. A variance is required.

1.04 On a corner lot, the R-1 zoning ordinance requires one frontage to have a 35-foot setback and the other to have a 25-foot setback without variance. The setback from Belvoir Drive will meet the 25-foot requirement; however, the setback from Thomas Avenue will not meet the 35-foot requirement.

1.05 Minnesota Statute §462.357 Subd. 1(e)(b) allows a municipality, by ordinance, to permit a variance.

1.06 City Code §300.07 Subd. 1 authorizes the planning commission to grant variances.

1.07 City Code §300.29 Subd. 3(g) allows an expansion of a non-conformity only by variance or expansion permit.

Section 2. Standards.

2.01 By City Code §300.07 Subd. 1, a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general

purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

Section 3. Findings.

1.01 The application for the variance permit is reasonable and would meet the required standards outlined in City Code §300.07 Subd. 1:

1. Intent of the Ordinance. The proposal is in harmony with the general purposes and intent of the zoning ordinance. The intent of the front yard setback requirement is to provide consistent building lines within a neighborhood and to provide for adequate separation between homes and roadways. While the proposed structure would be within the required setback, it would actually be located over 40 feet from the physical road. Visually, the addition will appear to meet the front yard setback requirement and, thus, will be in harmony with the general purposes and intent of the zoning ordinance.
2. Comprehensive Plan. The proposed variance is consistent with the comprehensive plan. The guiding principles in the comprehensive guide plan provide for maintaining, preserving, and enhancing existing single-family neighborhoods. The requested variance would preserve the residential character of the neighborhood and would provide an investment into a property to enhance its use.
3. Practical Difficulties.
 - a) Reasonableness. The proposed addition is reasonable, as most homes in Minnetonka have a two-stall garage.
 - b) Unique Circumstance. Given the construction of the principal structure prior to the city's first zoning ordinance, this is a unique circumstance not common to all other similarly zoned properties.
 - c) Character of Neighborhood. The proposed addition would not impact neighborhood character.

Section 4. Planning Commission Action.

4.01 The planning commission approves the above-described variance permit based on the findings outlined in Section 3 of this resolution. Approval is subject to the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, excepted as modified by the conditions below:
 - Survey with the proposed addition, received Feb. 17, 2023
 - Building elevations and floor plans, dated Jan. 28, 2023
2. Prior to issuance of a building permit:
 - a) This resolution must be recorded with Hennepin County.
 - b) If replacing the existing driveway, apply for a driveway permit for the construction of the new driveway. The new driveway must meet city ordinance - a maximum driveway width of 20 feet at the property line – and be widened near the home to match the new garage space.
 - c) Submit the following:
 - 1) Provide a tree mitigation plan. The plan must meet mitigation requirements as outlined in the ordinance. However, at the sole discretion of staff, mitigation may be decreased. Based on the submitted plans, the mitigation requirements would be none.
 - 2) Install a temporary rock driveway, erosion control, tree protection fencing, and any other measures as identified by the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
3. This variance permit will expire on Dec. 31, 2024, unless the city has issued a building permit for the project covered by this resolution or has approved a time extension.

Adopted by the Planning Commission of the City of Minnetonka, Minnesota, on March 30, 2023.

Joshua Sewall, Chairperson

Attest:

Fiona Golden, Deputy City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Planning Commission of the City of Minnetonka, Minnesota, at a duly authorized meeting held on March 30, 2023.

Fiona Golden, Deputy City Clerk

MINNETONKA PLANNING COMMISSION
March 30, 2023

Brief Description Amendment to the Minnetonka Corporate Center sign plan as it pertains to the property at 12501/12701 Whitewater Drive.

Recommendation Adopt the resolution approving the request.

Background

The property at 12501/12701 Whitewater Drive is at the center of the Minnetonka Corporate Center development. The roughly 10-acre property is improved with two three-story office buildings; the buildings are connected via a first-story walkway.

All of the Minnetonka Corporate Center properties are governed by a sign plan approved concurrently with the center’s master development plan in 1984. Unlike other sign plans within the city, which uniformly apply sign standards to a building or series of buildings, the Minnetonka Corporate Center “assigned” the location and type of signs to each of the center’s properties and buildings. The prescribed sign types include monument entry identifiers, wall signs, and address identifiers.

Under the 1984 sign plan, the subject property is allowed three monument signs, as follows:

| Sign Number * | Area | |
|---------------|------------|------------------|
| | Total Sign | Copy and Graphic |
| #8 | 40 sq. ft. | 5 sq. ft. |
| #9 | 28 sq. ft. | 3 sq. ft. |
| #10 | 28 sq. ft. | 5 sq. ft. |

* number assigned in the Mtka Corporate Center sign plan document



Proposal

Spectrum Signs, on behalf of the property owner, is requesting an amendment to the sign plan. As proposed, sign #9 would be eliminated, and signs #8 and #10 would be increased in total size. (Note, all numbers are rounded up to the closest whole number.)

| Sign Number | Existing Sign Plan | | Proposed Sign Plan | | Allowed by sign ordinance* | |
|-------------|--------------------|------------------|--------------------|------------------|----------------------------|------------------|
| | Total | Copy and Graphic | Total | Copy and Graphic | Total | Copy and Graphic |
| #8 | 40 sq. ft. | 5 sq. ft. | 57 sq. ft. | 35 sq. ft. | 72 sq. ft. | 36 sq. ft. |
| #9 | 28 sq. ft. | 3 sq. ft. | - | - | - | - |
| #10 | 28 sq. ft. | 5 sq. ft. | 57 sq. ft. | 35 sq. ft. | 72 sq. ft. | 36 sq. ft. |

Staff Analysis

Staff supports the sign plan amendment as:

- The total number of monument signs would be reduced.
- The proposed signs have been attractively designed.
- The proposed signs would meet the standards of the sign ordinance.

Staff recommendation

Adopt the resolution amending the Minnetonka Corporate Center sign plan as it pertains to the property at 12501/12701 Whitewater Drive.

Originator: Drew Ingvalson, Planner
Through: Loren Gordon, AICP, City Planner

Supporting Information

Subject Property

Zoning: PUD, planned unit development
Guide Plan: mixed-use

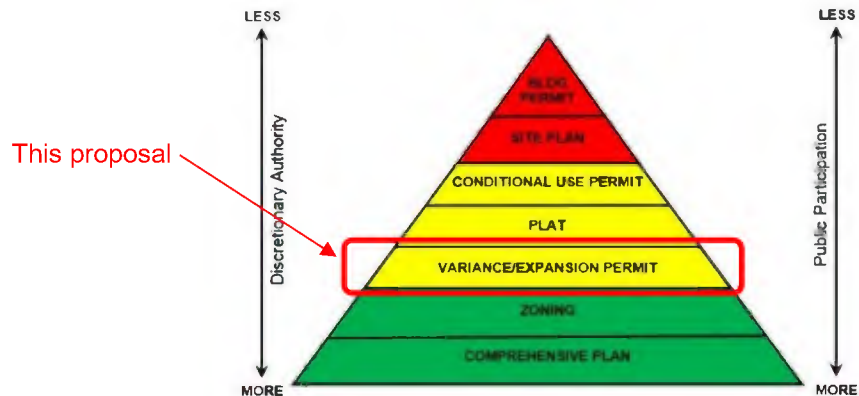
Surrounding Properties

The properties adjacent to the subject property are all zoned PUD and guided for mixed-use development

Additional Signs

In addition to the monument signs on the site, the applicant proposes to replace the existing wall signs and reface existing directional signs. In the area, these signs would be equal to or less than the size of the existing wall and directional signs.

Pyramid of Discretion



Motion options

The planning commission's action on the applicant's request is final and subject to appeal. Approval requires the affirmative vote of five commissioners. The planning commission has the following motion options:

1. Concur with staff's recommendation. In this case, a motion should be made to adopt the resolution approving the amendment.
2. Disagree with staff's recommendation. In this case, a motion should be denying the request. The motion should include findings for denial.
3. Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

Appeals

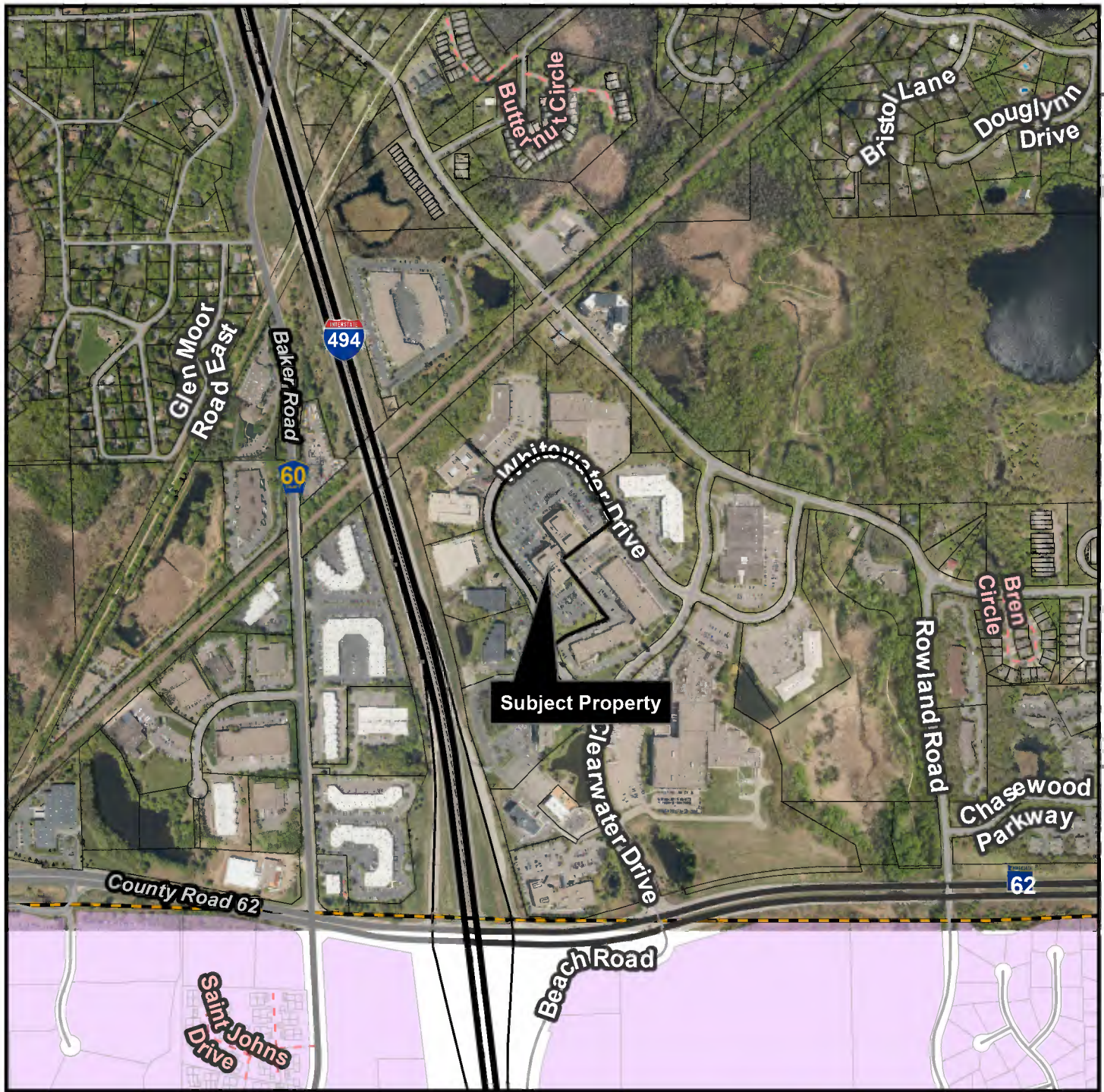
Any person aggrieved by the planning commission's decision about the requested sign plan amendment may appeal such decision to the city council. A written appeal must be submitted to the planning staff within ten days of the date of the decision.

**Neighborhood
Comments**

The city sent notices to 24 area property owners and has received no comments to date.

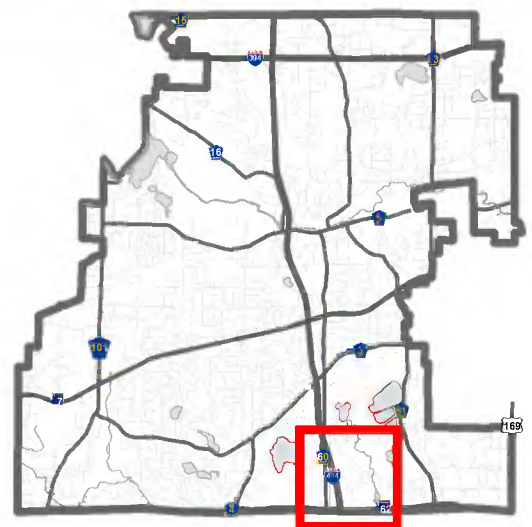
**Deadline for
Decision**

June 5, 2023



Location Map

Project: Whitewater Reserve Building
Address: 12501 & 12701 Whitewater Driv





8786 W. 35W Service Drive NE
Blaine, MN 55449
Phone: (763) 432-7447 / Fax: (763) 208-9159
www.spectrum-signs.com

February 22, 2023

City of Minnetonka
Drew Ingvalson, Associate Planner
14600 Minnetonka Boulevard
Minnetonka, MN 55345

RE: Sign Plan Review Application – Written Statement / Whitewater Reserve Buildings

Dear Mr. Ingvalson:

Spectrum Sign Systems, Inc., as representative for property owner WSP Whitewater LLC c/o Ryan Companies, is requesting a Sign Plan Amendment Review for the Whitewater Reserve Buildings located at 12501 and 12701 Whitewater Drive.

We are proposing to amend the Minnetonka Corporate Center Sign Plan to increase the allowable sign area and copy & graphic area for two monument signs, one for each building. The proposed total monument area per sign would be 52.9 square feet, with copy and graphic area of 35 sq. ft.

The sign plan allows three monument signs for this property with the following sizes:

| Sign # on Sign Plan | Monument Location | Total Area | Copy & Graphic Area |
|---------------------|-------------------|------------|---------------------|
| #8 | NE | 40 sq. ft. | 5 sq. ft. |
| #9 | NW | 28 sq. ft. | 3 sq. ft. |
| #10 | W. Central | 28 sq. ft. | 5 sq. ft. |

We propose to eliminate Sign #9 from the sign plan, while requesting size modifications to monument signs #8 and #10.

As these buildings were previously single-tenant, they are now multi-tenant buildings with multiple building entrances. The sign plan does not provide adequate total sign area or copy & graphic area for the monument signs to accommodate multiple tenants for identifying their businesses. The requested size updates are consistent with current code allowances.

The proposed signs would provide adequate tenant identification and wayfinding for visitors, while replacing outdated signage with aesthetically pleasing signage. The proposed signs will not negatively impact the surrounding area or other businesses or produce sign clutter.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick Ferraro". The signature is fluid and cursive, with a prominent initial "R" and "F".

Rick Ferraro
President

220420

Ryan Companies Whitewater Reserve Minnetonka

Contact

Ryan Companies
Attn: Melanie Peterson
533 South Third Street
Suite 100
Minneapolis, MN 55475

Phone/Email

612-720-7192
Melanie.Peterson@RyanCompanies.com

Jobsite

12501 & 12701 Whitewater Drive
Minnetonka, MN 55343

Designer

PW

Salesperson

RF

Project Manager

JD

Date

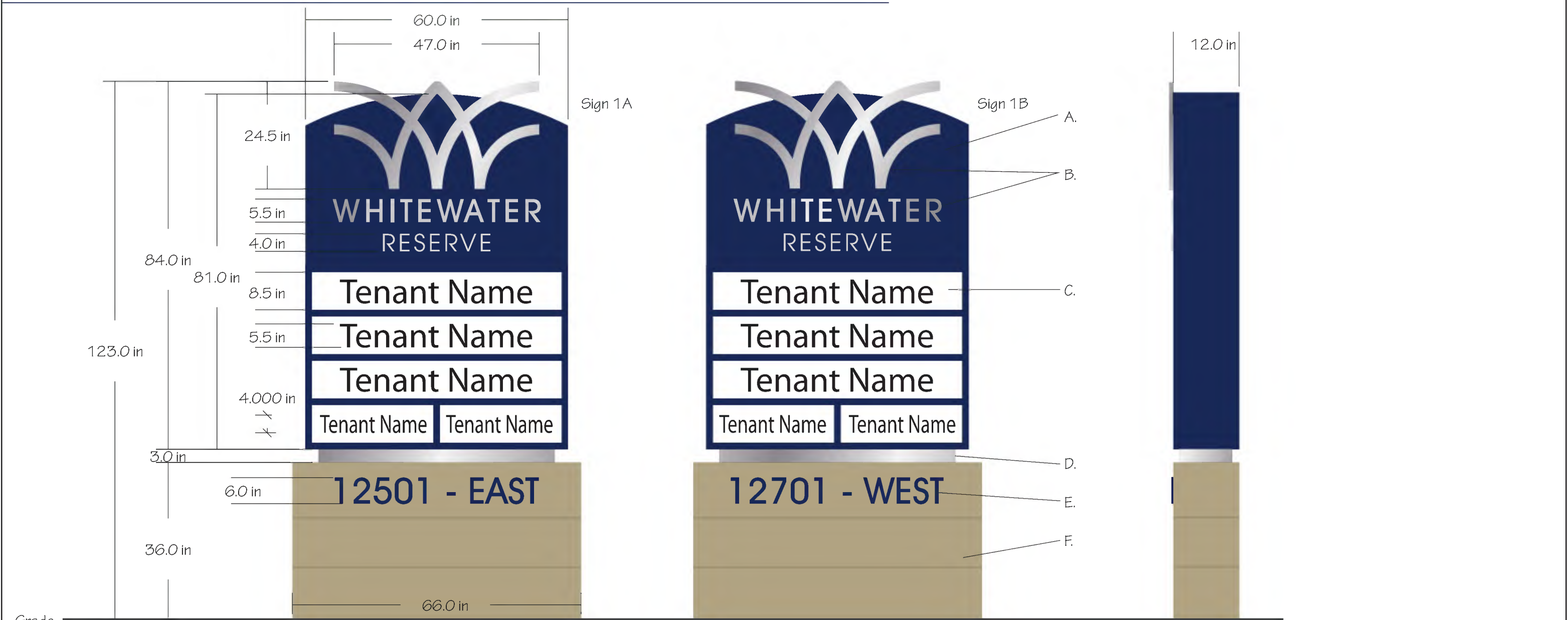
| | |
|----------|----------|
| 6/9/22 | 12-13-22 |
| 8/3/22 | |
| 8/10/22 | |
| 11/29/22 | |
| 12/5/22 | |



8786 W. 35W Service Drive
Blaine, MN 55449

763-432-7447 | www.spectrum-signs.com

220420 - Ryan Companies - Whitewater Reserve - Sign 1 - Option 1



35 Square Foot Graphic Area
52.9 Square Foot Total Sign Area

Furnish and Install (2) 84" x 60" S/F Non-Illuminated Monument Signs

- A. Aluminum Cabinet, Retainer and Divider Bars Painted PMS: #281C
- B. Header Logo: 1" Deep Reverse Channel Aluminum Logo Painted Metallic Silver - Flush Stud Mount to Cabinet
Header Copy: 1/4" Flat Cut Aluminum Letters Painted #8886 Metallic Silver - Flush Stud Mount to Cabinet
- C. Flat White ACM Tenant ID Panels with First Surface Opaque Black Vinyl Graphics
- D. Aluminum Reveal Painted Metallic Silver
- E. 1/4" Flat Cut Aluminum Address Numbers Painted PMS: #281C - Flush Stud mounted to Pole Cover
- F. Aluminum Pole Cover with Sprayed Stucco Finish - Reveal Lines - No Texture - Color TBV

220420 - Ryan Companies - Whitewater Reserve - Sign 1 - Option 1

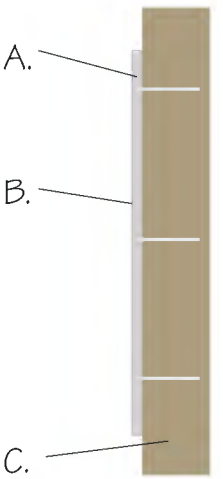


Sign 1A - Proposed 12501 Monument
10'-0" Setback From Right of Way



Sign 1B - Proposed 12701 Monument
10'-0" Setback From Right of Way

220420 - Ryan Companies - Whitewater Reserve - Sign 2



19.5 Square Feet

Furnish and Install (2) 27" x 103.75" Flat Cut Aluminum Letter Sets

- A. 1/4" Flat Cut Aluminum Letters Painted - Color TBV
- B. Flush Stud Mount to Wall Background with Threaded Rod and Silicone Adhesive
- C. Wall Background

220420 - Ryan Companies - Whitewater Reserve - Sign 3



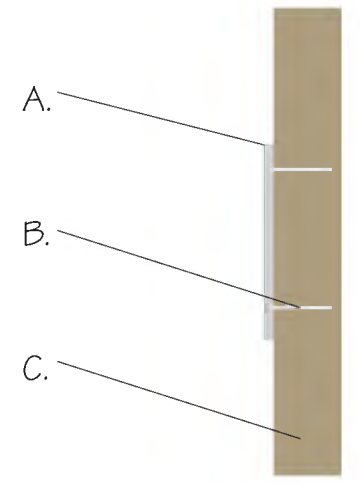
Sign 3A



Sign 3B

Furnish and Install (1) 14" x 125.875" Flat Cut Aluminum Address Number Set and (1) 14" x 126.25" Flat Cut Aluminum Address Number Set

- A. 1/4" Flat Cut Aluminum Numbers Painted - Color TBV
- B. Flush Stud Mount to Wall Background with Threaded Rod and Silicone Adhesive
- C. Wall Background





Proposed 12501 Entrance



Existing 12501 Entrance to be Removed

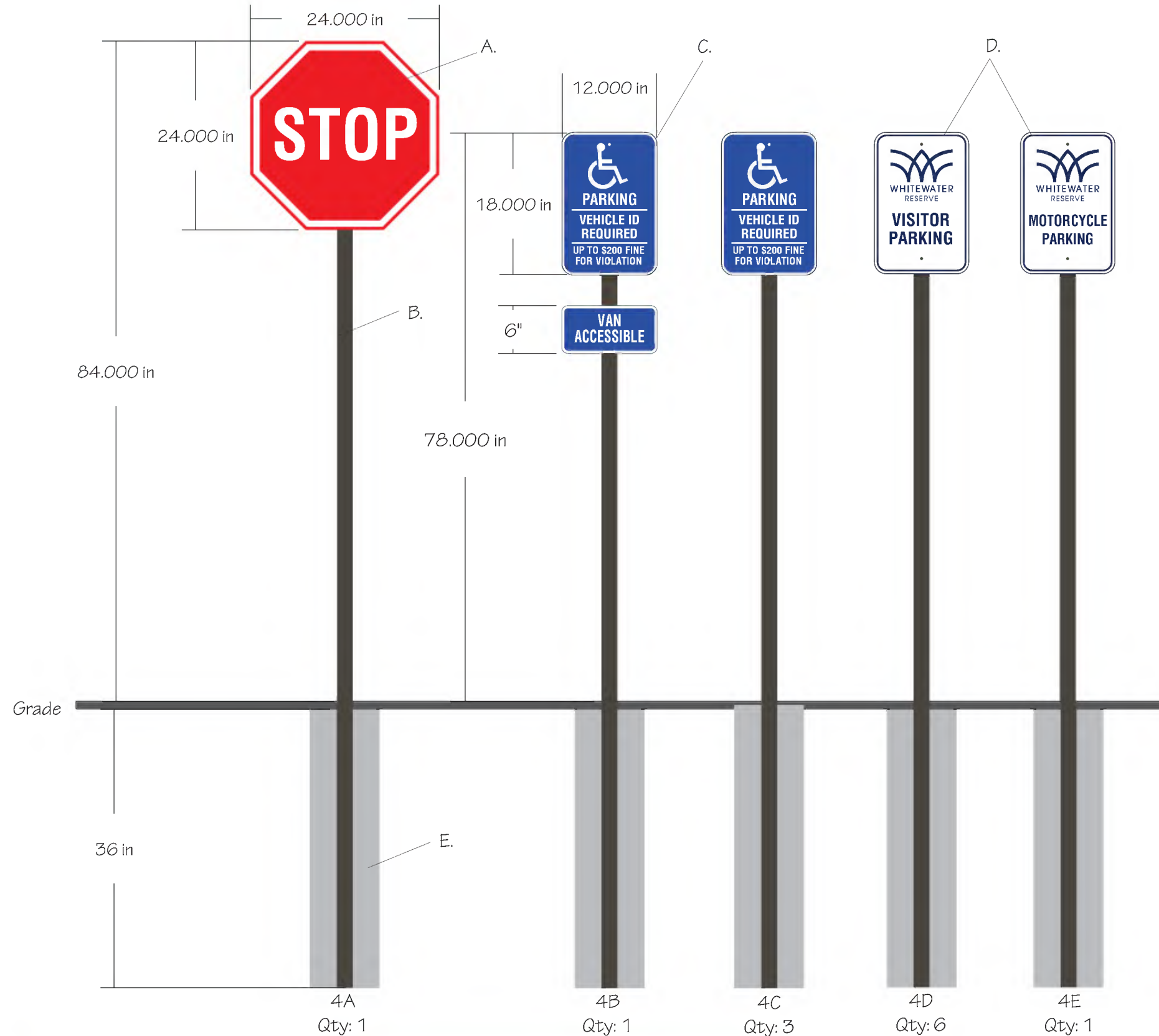


Proposed 12701 Entrance



Existing 12701 Entrance to be Removed

220420 - Ryan Companies - Whitewater Reserve - Sign 4 - 12501 Building



Furnish and Install (1) 24" x 24" Stop Sign, (4) 18" x 12" Handicap Parking Signs, (1) 6" x 12" Van Accessible Sign, (6) 18" x 12" Visitor Parking Signs and (1) 18" x 12" Motorcycle Parking Sign

- A. Standard Stop Sign
- B. 2" x 2" Aluminum Square Tube Painted 4-1 3135P Dark Bronze
- C. Standard MN Handicap Parking Sign
- D. White Aluminum Panel with First Surface Opaque Digitally Printed Graphics
- E. Concrete Footing

220420 - Ryan Companies - Whitewater Reserve - Sign 4 - 12501 Building



(1) Existing Directional Sign to be Removed



(4) Existing Handicap Parking Signs to be Removed



(2) Existing Motorcycle Parking Signs to be Removed



(2) Existing Reserved Signs to be Removed

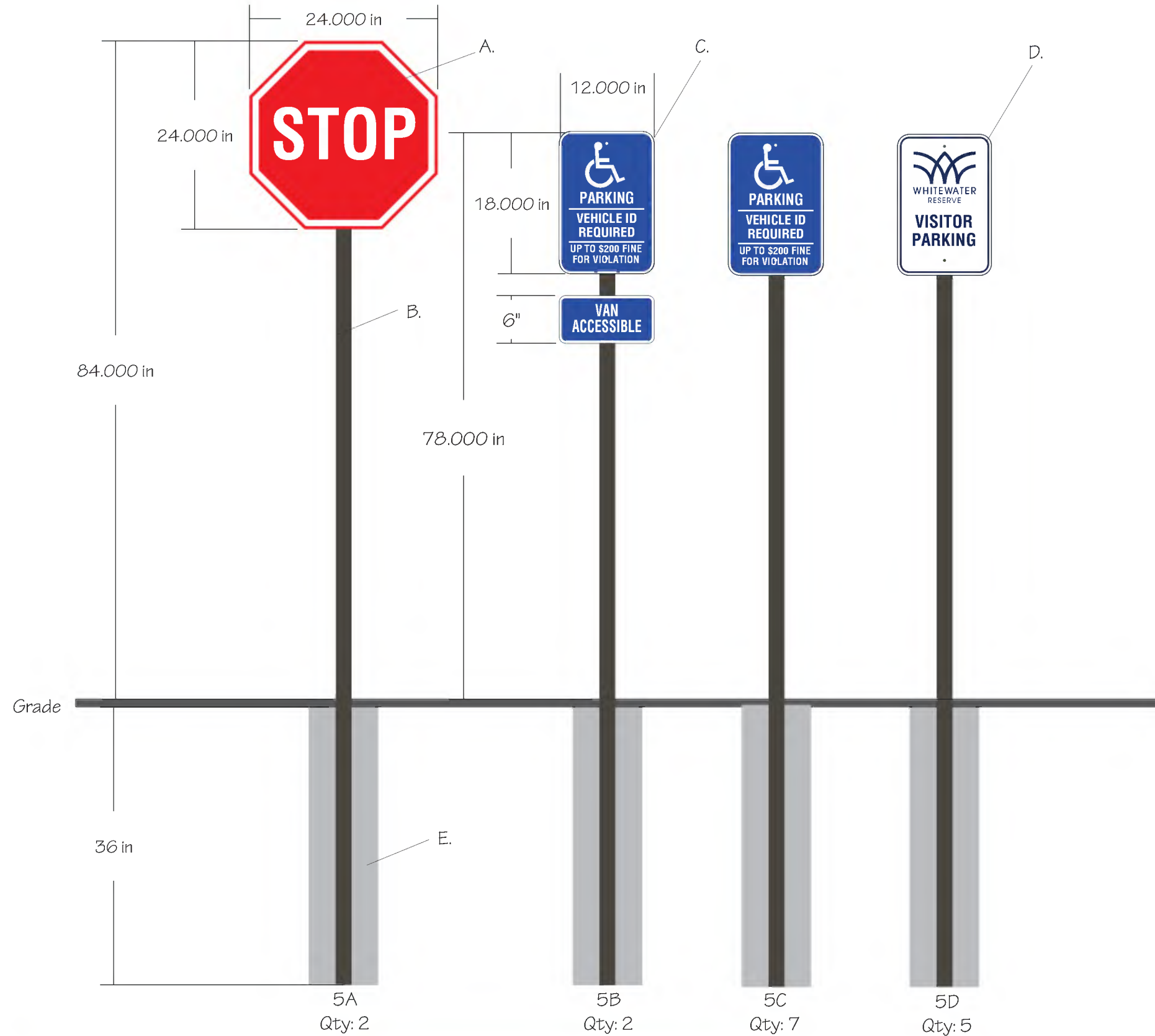


(1) Existing Stop Sign to be Removed



(6) Existing Visitor Parking Signs to be Removed

220420 - Ryan Companies - Whitewater Reserve - Sign 5 - 12701 Building



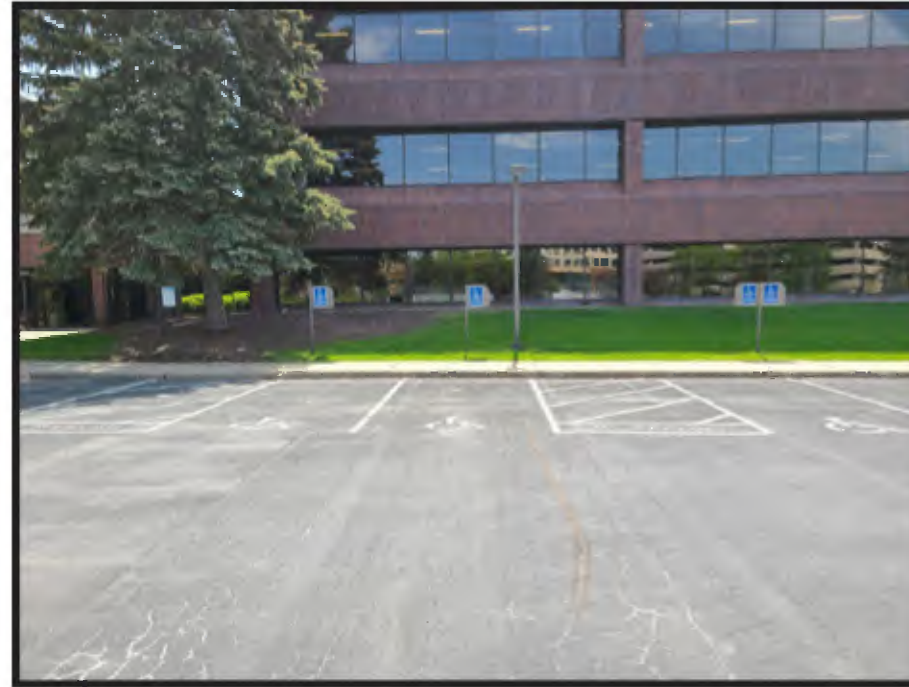
Furnish and Install (2) 24" x 24" Stop Signs, (9) 18" x 12" Handicap Parking Signs, (2) 6" x 12" Van Accessible Signs and (5) 18" x 12" Visitor Parking Signs

- A. Standard Stop Sign
- B. 2" x 2" Aluminum Square Tube Painted 41 3135P Dark Bronze
- C. Standard MN Handicap Parking Sign
- D. White Aluminum Panel with First Surface Opaque Digitally Printed Graphics
- E. Concrete Footing

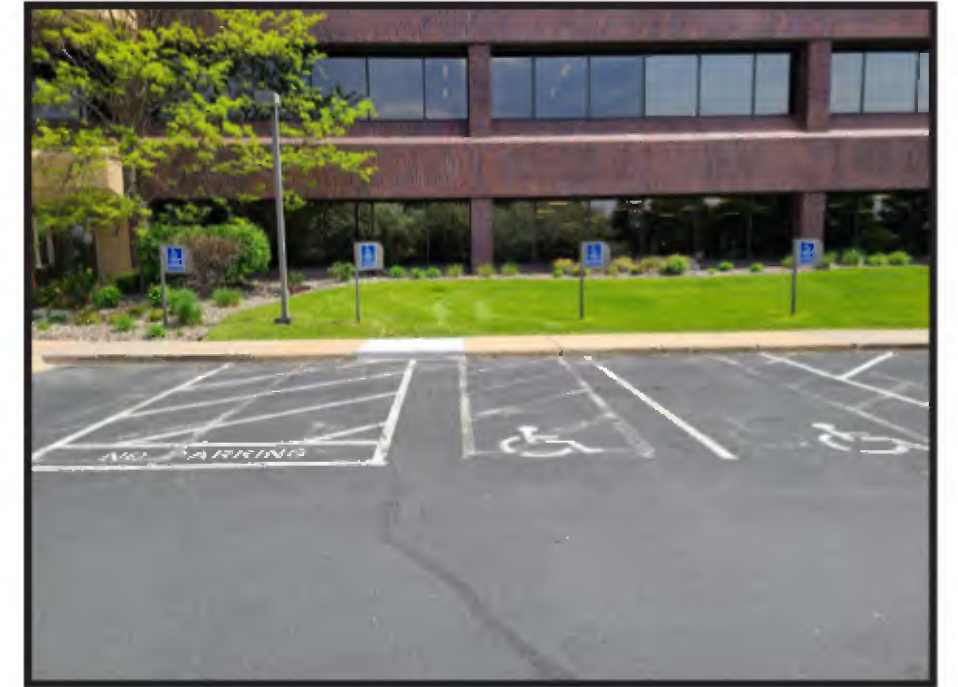
220420 - Ryan Companies - Whitewater Reserve - Sign 5 - 12701 Building



(2) Existing Stop Signs to be Removed



(4) Existing Handicap Parking Signs to be Removed - West Side

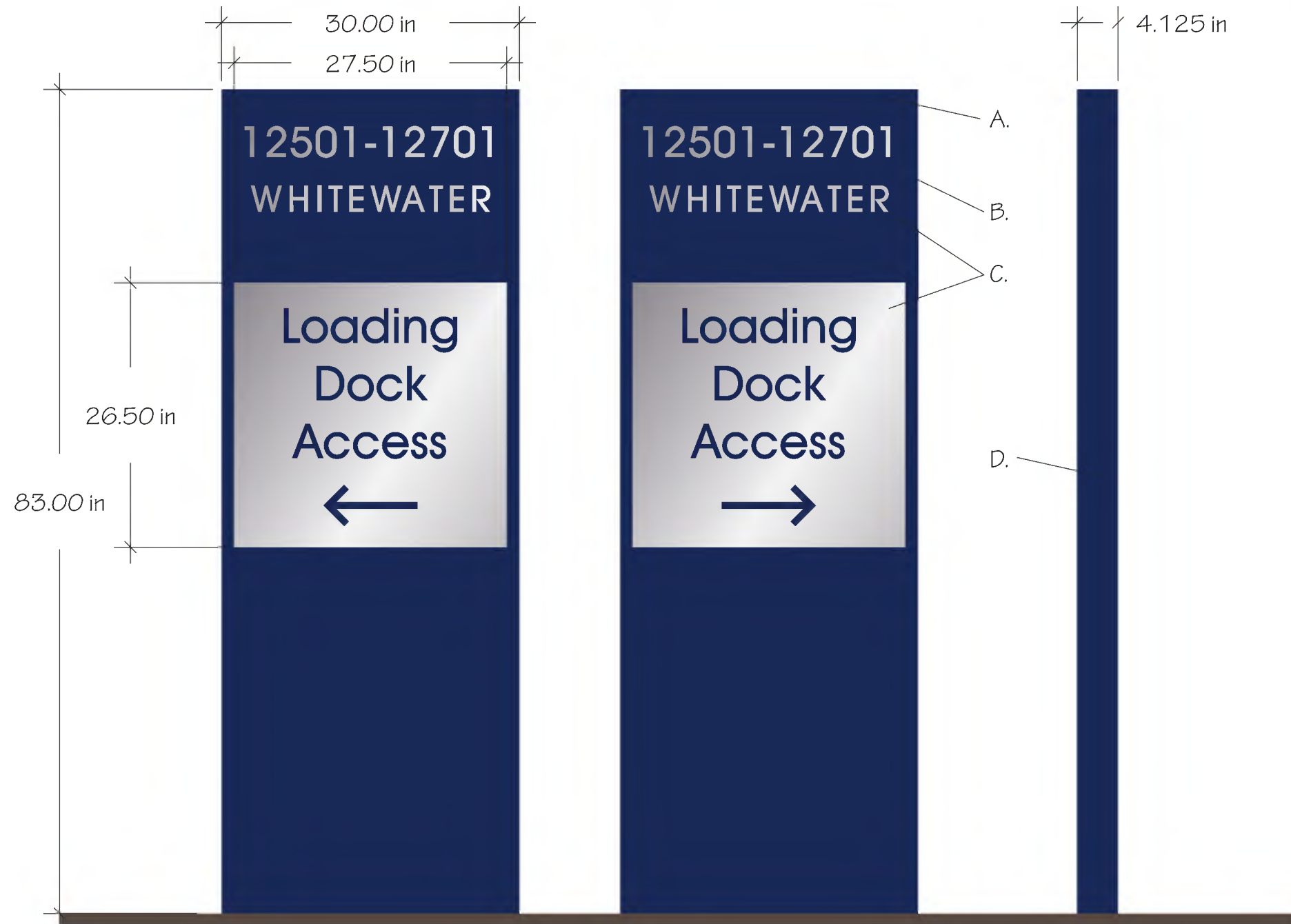


(4) Existing Handicap Parking Signs to be Removed - Main Entrance



(5) Existing Visitor Parking Signs to be Removed

220420 - Ryan Companies - Whitewater Reserve - Sign 6



Reface and Repaint (1) 83" x 30" D/F Non-Illuminated Directional Sign

- A. .125" Aluminum Overlay Panel Painted Dark Blue and Metallic Silver - Color TBV
- B. Attached with Countersunk Screws Around Perimeter of Panel
- C. First Surface Metallic Silver Vinyl and Dark Blue Vinyl - Color TBV
- D. Sand, Prime and Repaint Existing Cabinet Dark Blue - Color TBV



Proposed Directional Sign



Existing Directional Sign

220420 - Ryan Companies - Whitewater Reserve - Site Map



Planning Commission Resolution No. 2023-

**Resolution amending the Minnetonka Corporate Center
sign plan as it pertains to the property at 12501/12701 Whitewater Drive**

Be it resolved by the Planning Commission of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 The subject property is located at 12501/12701 Whitewater Drive, within the Minnetonka Corporate Center. The property is legally described as follows:

Lot 2, Block 1, Minnetonka Corporate Center, Hennepin County, Minnesota.

Torrens Certificate No. 1537557

1.02 Signs within the Minnetonka Corporate Center are governed by a sign plan that was approved by the city council on Aug. 6, 1984. The subject property is allowed three monument signs labeled #8, #9, and #10 in the sign plan.

1.03 Spectrum Signs, on behalf of the property owner, is requesting an amendment to the sign plan as it pertains to this subject property. The proposed amendment is outlined below.

| Sign Number | Existing Sign Plan | | Proposed Sign Plan Amendment | |
|-------------|--------------------|------------------|------------------------------|------------------|
| | Total | Copy and Graphic | Total | Copy and Graphic |
| #8 | 40 sq. ft. | 5 sq. ft. | 57 sq. ft. | 34 sq. ft. |
| #9 | 28 sq. ft. | 3 sq. ft. | To be removed | |
| #10 | 28 sq. ft. | 5 sq. ft. | 57 sq. ft. | 34 sq. ft. |

Section 2. FINDINGS.

2.01 The proposed amendment is reasonable:

1. The total number of monument signs would be reduced.
2. The proposed signs have been attractively designed.
3. The proposed signs would meet the standards of the sign ordinance.

Section 3. Planning Commission Action.

3.01 The Minnetonka Corporate Center sign plan as it pertains to 12701 Whitewater Drive is amended as described in section 1.03 of this resolution. The amendment is subject to the following conditions:

1. Sign permits are required for each of the proposed monument signs.
2. The signs must be installed prior to Dec. 31, 2023, unless the planning commission grants a time extension.
3. Any changes to the sign plan may require an amendment to this approval.

Adopted by the Planning Commission of the City of Minnetonka, Minnesota, on March 30, 2023.

Josh Sewall, Chairperson

Attest:

Fiona Golden, Deputy City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Planning Commission of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Mar. 30, 2023.

Fiona Golden, Deputy City Clerk

MINNETONKA PLANNING COMMISSION
March 30, 2023

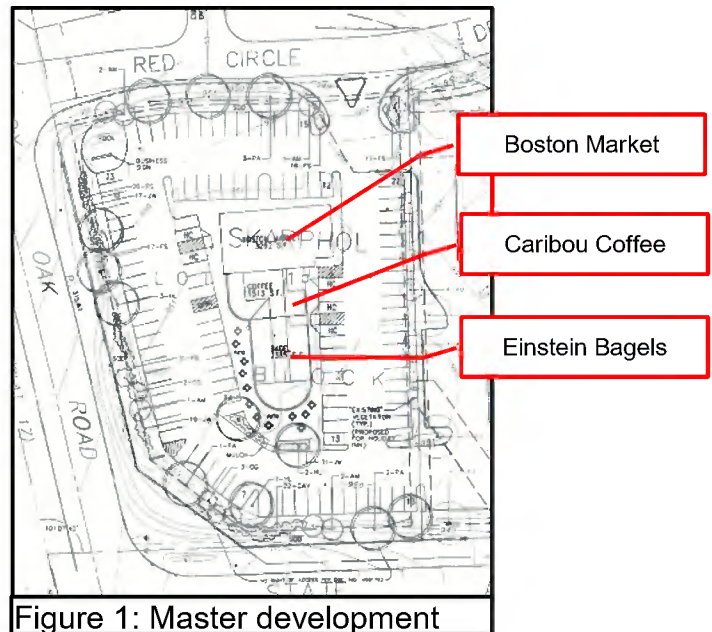
Brief Description Resolution approving a minor amendment to the existing master development plan and a conditional use permit for Ovation Orthodontics at 10999 Red Circle Drive.

Recommendation Recommend the city council approve the request.

Background

In 1997, the city council approved a master development plan, site and building plans, and conditional use permits to allow the construction of three restaurants – Boston Market, Caribou Coffee, and Einstein Bagels – on the properties at 10995 and 10999 Red Circle Drive. The plan indicated three restaurants with a “lively” appearance. The southern portion of the building – Caribou and Einstein – was constructed in 1997, but Boston Market was never constructed on the northern pad.

In 2019, the city approved several items, including an amendment to the master development plan and a parking variance, to allow the construction of Chipotle on the northern pad. The parking variance reduced the required parking from 126 to 88 stalls.



Proposal

Ovation Orthodontics has operated within the southwest metro for over 40 years and within the Children’s West Building at 6060 Clearwater Drive for over 20 years. Dr. Mike Lee and Dr. Michael Hoxie, on behalf of Ovation Orthodontics, are proposing to relocate their office into the former Einstein Bagels location at 10999 Red Circle Drive.

The clinic would generally:

- Operate 7:30 a.m. – 5 p.m.
- Have six to eight employees to serve 40-60 patients daily.

The interior of the former restaurant would be remodeled to accommodate the office, treatment, waiting, storage, and equipment areas. No exterior remodeling is proposed.

Staff Analysis

A land use proposal is comprised of many details. In evaluating a proposal, staff first reviews these details and then aggregates them into a few primary questions or issues. The following outlines the primary questions associated with the applicant’s request and the staff’s findings:

• **Is the minor amendment to the existing master development plan appropriate?**

Yes. The approved master development plan is for three restaurants and an outdoor patio on the southwest corner of the building. The requested amendment within space previously identified for restaurant use. While a parking variance was previously approved for the site, the clinic would lower the parking demand of the site and would allow a use that is complementary to the site and area.

• **Is the requested conditional use permit appropriate?**

Yes. Medical clinics are conditionally permitted uses. The proposed clinic would meet the conditional use permit standards outlined in City Code Sec. 300.21 Subd. 3e as:

1. The use is not adjacent to low-density residential areas;
2. The site accesses onto Red Circle Drive, which has direct access to Shady Oak Road.
3. It is not anticipated that the proposed use would increase the number of emergency vehicles accessing the site.

• **Can the anticipated parking demands of the clinic be accommodated on-site?**

Yes. A parking variance was approved to reduce the amount of required parking on-site from 126 stalls to 88 stalls in 2019.

The proposed clinic would lower the amount of parking required from the site, as shown below:

| Tenant | Tenant size * | Existing Parking Ordinance | | Proposed Parking Ordinance | |
|-----------------|---------------|-----------------------------------|-----------------|------------------------------|-----------------|
| | | Rate * | Required stalls | Rate * | Required stalls |
| Chipotle | 2,400 | 1 /50 | 49 | 11.25 per 1,000 sq. ft. | 27 |
| MyBurger | 1,830 | | 30 | | 21 |
| Einstein Bagels | 2,790 | | 47 | | 34 |
| Ovation Ortho | 2,790 | 1 per 175. with min. of 20 stalls | 20 | 3 per 1,000 with a min. of 5 | 9 |
| Total | 7,060 | - | 126 99 stalls | - | 79-57 stalls |

* measured in sq. ft.

A parking variance is not required because one has already been approved for the site.

Staff Recommendation

Recommend the city council adopt the resolution approving an amendment to the existing master development plan and a conditional use permit for Ovation Orthodontics at 10999 Red Circle Drive.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner

Supporting Information

**Surrounding
Land Uses**

Northerly: restaurants and retail, zoned PUD
Easterly: Hotel, zoned PUD
Southerly: Eden Prairie
Westerly: Outlot, zoned PUD

Planning

Guide Plan designation: Mixed Use Development
Zoning: PUD, Planned Unit Development

MDP Amendment

The request does not require a major master development plan amendment as it does not:

- 1) substantially alter the location of buildings, parking areas, or roads;
- 2) increase or decrease the number of residential dwelling units by more than 5 percent;
- 3) increase the gross floor area of non-residential buildings by more than 5 percent or increases the gross floor area of any individual building by more than 10 percent;
- 4) increase the number of stories of any building;
- 5) increase the square footage of grading on any individual lot by more than 1,000 square feet;
- 6) decrease the amount of open space by more than 5 percent or alters it in such a way as to change its original design or intended use; or
- 7) create non-compliance with any special condition attached to the master development plan.

By code, an amendment that is not considered a major amendment may be made through review and approval by a majority vote of the planning commission.

CUP Standards

The proposal would meet the general conditional use permit standards as outlined in City Code §300.21 Subd.2:

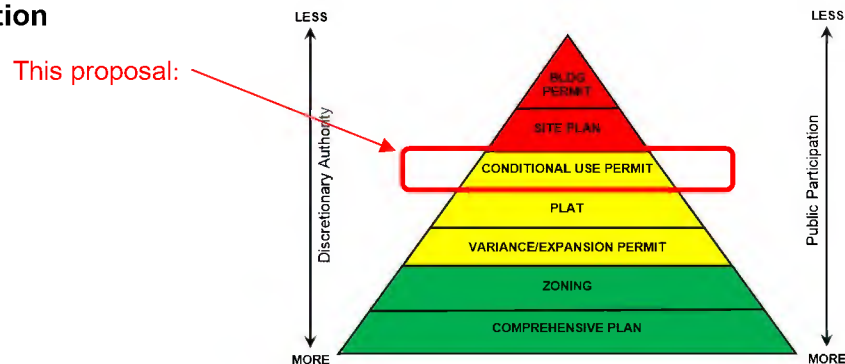
1. The use is consistent with the intent of this ordinance;
2. The use is consistent with the goals, policies, and objectives of the comprehensive plan;
3. The use does not have an undue adverse impact on governmental facilities, utilities, services, or existing or proposed improvements;

4. The use is consistent with the city's water resources management plan;
5. The use is in compliance with the performance standards specified in section 300.28 of this ordinance; and
6. The use does not have an undue adverse impact on public health, safety, or welfare.

The proposal would meet the specific CUP standards for hospitals and medical clinics on property designated for office, retail, or service commercial uses, as outlined in City Code §300.21 Subd. 3(e):

1. Shall not be adjacent to low-density residential areas;
2. Shall have direct access from the site to a collector or arterial street as defined in the comprehensive plan;
3. Shall not have emergency vehicle access adjacent to or located across a street from any residential use; and

Pyramid of Discretion



Voting Requirement

The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of a simple majority. The city council's approval requires an affirmative vote of four members.

Motion Options

The planning commission has three options:

1. Concur with the staff recommendation. In this case, a motion should be made recommending the city council adopt the resolution approving the request.
2. Disagree with staff's recommendation. In this case, a motion should be made recommending the city council deny the request. This motion must include a statement as to why denial is recommended.

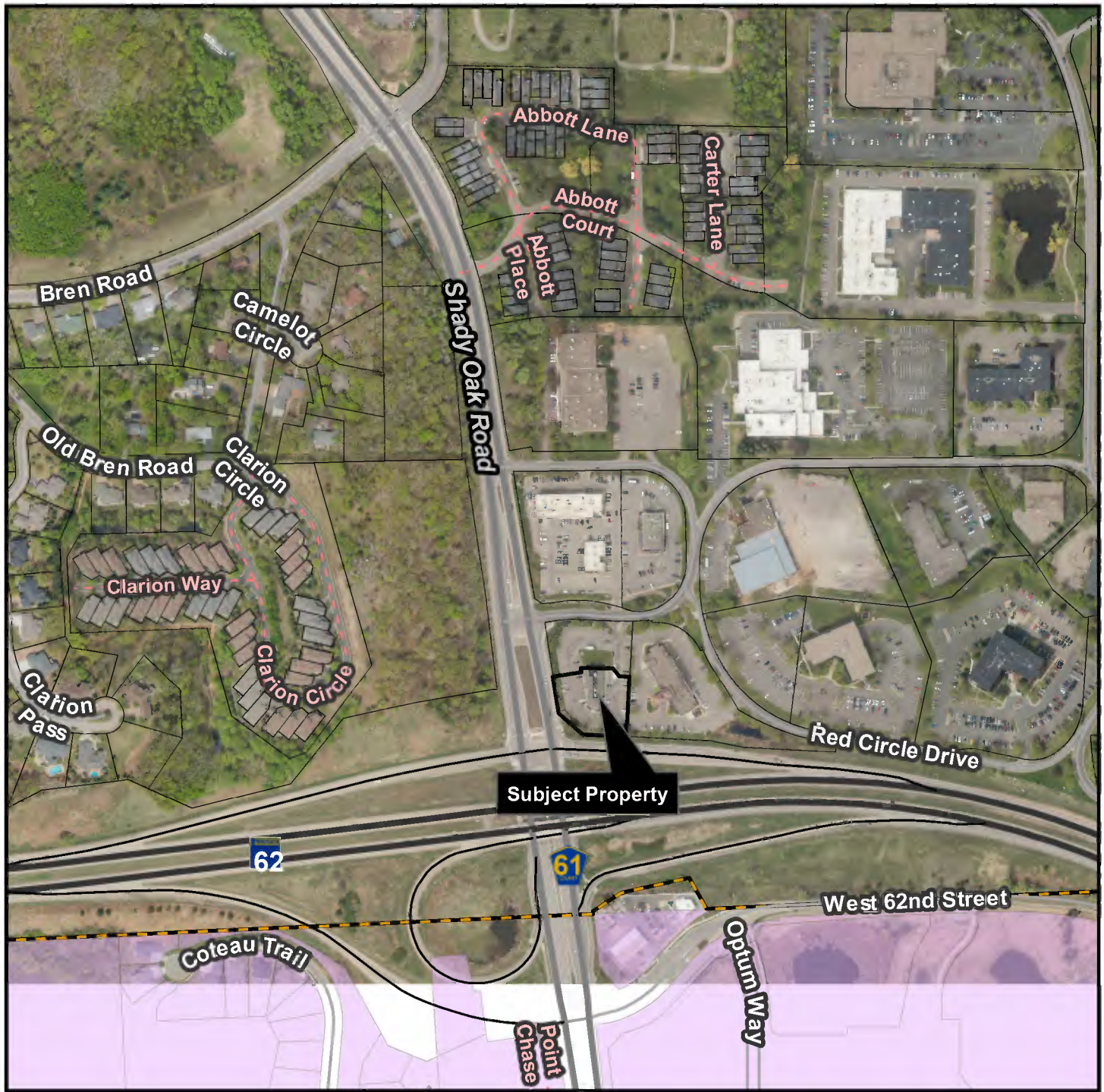
3. Table the requests. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

**Neighborhood
Comments**

The city sent notices to 21 area property owners and received no comments.

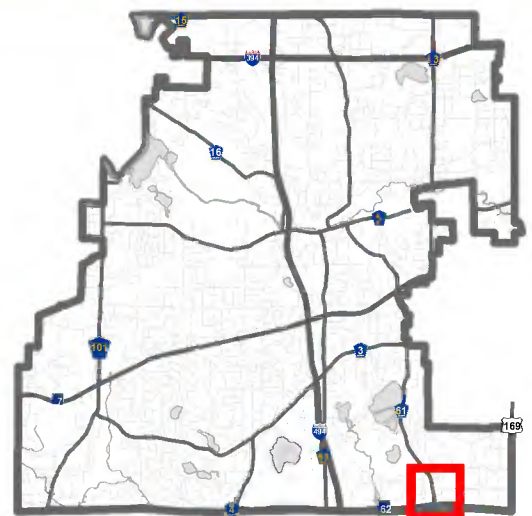
**Deadline for
Decision**

June 21, 2023



Location Map

Project: Ovation Orthodontics
Address: 10999 Red Circle Drive



Larkin Hoffman

Larkin Hoffman

8300 Norman Center Drive
Suite 1000
Minneapolis, MN 55437-1060

General: 952-835-3800
Fax: 952-896-3333
Web: www.larkinhoffman.com

February 17, 2023

Ms. Ashley Cauley
Senior Planner
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55435

Re: Application for a Conditional Use Permit on behalf of Ovation Orthodontics

Dear Ms. Cauley:

We represent Ovation Orthodontics (“Ovation”). Ovation is seeking a conditional use permit (“CUP”) to operate a medical clinic located at 10999 Red Circle Drive (the “Property”) in the city of Minnetonka (the “City”).

I. Project Summary

Ovation Orthodontics has been serving the southwest Metro for over 40 years. With a passion for patient experience and a commitment to innovation, Ovation has built a reputation for excellent patient care within the community. The proposed new location for its clinic is resulting from an end of lease at the nearby Children’s West Building at 6060 Clearwater Drive. Ovation has been practicing at the Children’s West location in Minnetonka for over 2 decades.

Ovation proposes to relocate its Minnetonka clinic to the Property where it will improve the existing 2,500 square foot endcap space within Shady Oak Center (the “Clinic”). The Clinic will operate within the existing building footprint. No exterior modifications to the building are sought by the Property Owner or Ovation at this time. A typical day would involve six to eight employees at this location. Practice hours are 7:30am - 5:00pm. Between 40 and 60 patients are served per working day. Ovation has modern equipment, digital platforms, and extensive training programs for employees, following best practices for OSHA, HIPPA, and state/federal dental practice guidelines. Ovation’s orthodontic clinics produce minimal refuse and virtually no noise or emissions.

The Property is zoned Planned Unit Development (“PUD”). All uses allowed pursuant to a CUP within the City’s business districts are subject to CUP approval within approved PUD’s. Ovation is committed to improving the space at Shady Oak Center so that it can continue to provide the best care experience for its community of patients.

II. General CUP Standards

The Clinic meets the required findings for issuance of a CUP pursuant to City Code Section 300.21.

1. The Clinic use is consistent with the intent of the zoning ordinance

The City's zoning ordinance establishes general and specific criteria for medical clinics to ensure that their location, size, and design are consistent with the standards of the zoning ordinance and comprehensive plan. The Property is strategically positioned adjacent to other medical providers, retail, and commercial uses. The proposed Clinic will be constructed within an existing footprint, served by ample parking with easy access to Shady Oak Road and Highway 62. The Clinic use is consistent with the intent of the zoning ordinance.

2. The Clinic use is consistent with the goals, policies, and objectives of the comprehensive plan

The Property is guided Mixed Use. The Mixed-Use land use category is designed to allow for multiple uses within a planned multibuilding area. The Property is located within the Opus Business Park. The Opus Business Park master plan was initially approved in the 1970's and focused on office, manufacturing, and housing uses. Redevelopment of this area and associated land use approvals reflect increased intensity and density of development. The Clinic is well suited to serve as an additional amenity for the evolving commercial and residential uses located within the overall plan area. The Clinic use is consistent with the goals, policies, and objectives of the 2040 Comprehensive Plan.

3. The Clinic use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.

The Clinic will fit within the existing building footprint and will use the current infrastructure—including access and parking provided on the Property. No additional or improved utilities or services will be required for the Clinic use. The proposed build out of the existing 2,500 square foot commercial space will not have an undue or adverse impact on facilities, utilities, services or existing or proposed improvements.

4. The Clinic use is consistent with the city's water resources management plan

The City contains abundant physical and water resources, including more than 800 wetlands, several large recreational lakes and numerous wooded areas, parks and recreational lands. Adopted in 2021, the City's water resources management plan is designed to protect, preserve, and utilize Minnetonka's natural surface and ground water systems. The proposed Clinic use will not create new impacts on the existing stormwater systems serving the Property. Ovation looks forward to continued participation with the City's water management and illicit discharge training programs. The proposed Clinic use is consistent with the City's water resources management plan.

5. *The Clinic complies with the performance standards specified in section 300.28 of the zoning ordinance.*

| <i>Code Requirement</i> | <i>Operational Conditions Demonstrating Compliance</i> | |
|--------------------------------|---|---|
| Exterior Lighting | No changes proposed to existing code compliant exterior lighting. | ☑ |
| Noise and Vibration | Clinic use will not cause additional noise or vibration, any noise or vibration will be easily contained within the building. | ☑ |
| Smoke and Particulate Matter | The Clinic use will not produce smoke, dust or particulate matter exceeding MPCA regulations. | ☑ |
| Odor | The Clinic use will not produce odors impacting surrounding properties. | ☑ |
| Toxic or Noxious Matter | The Clinic use does not produce toxic or noxious matter as defined by the MPCA. | ☑ |
| Radiation | Clinic operations will be conducted in conjunction with professional licensing requirements and Minnesota Department of Health standards. | ☑ |
| Heat and Humidity | The Clinic use will not produce increased heat or humidity. | ☑ |
| Electromagnetic Interference | The Clinic use will not interfere with normal radio or television reception. If any electromagnetic energy is produced by regular equipment traditionally used within an orthodontic practice, it will comply with federal and state standards. | ☑ |
| Fire and Explosive Hazards | The proposed Clinic use does not present a heightened fire risk, all operations will be conducted in compliance with the fire prevention code. | ☑ |
| Liquid or Solid Waste | Any waste discharge related to the Clinic use will comply with the metropolitan waste control commission regulations, waste controls in City ordinance, and the water resources management plan. | ☑ |

6. *The Clinic use will not have an undue adverse impact on the public health, safety or welfare.*

Ovation has served the west metro community for over 40 years. Operation of a long-standing orthodontics practice in a 2,500 square foot office within an existing commercial building well

served by parking, transit and arterial roadways will not have an undue adverse impact on the public health, safety or welfare of residents of the City.

III. *Use-specific Performance Standards*

The proposed Clinic meets the use-specific standards for medical clinics in City Code Section 300.21 3(e)(1) through (3). The Property is not adjacent to low density residential areas- the surrounding parcels are commercial, retail, restaurant and office uses. The Property has direct access to Shady Oak Road, an arterial roadway as defined by the 2040 Comprehensive Plan. Lastly, no emergency vehicle access is planned for this Clinic. It should be noted that while the Property is within Opus Overlay District, it is located within Traffic Analysis District Number 4 and is not subject to P.M. trip limitations.

Based on the findings above and the enclosed materials, the Clinic meets all applicable required findings necessary for a medical clinic CUP.

Please do not hesitate to contact me if any additional information is required. Ovation looks forward to continued investment in the City and broader community.

Sincerely,



Megan C. Rogers, for
Larkin Hoffman

Direct Dial: (952) 896-3395

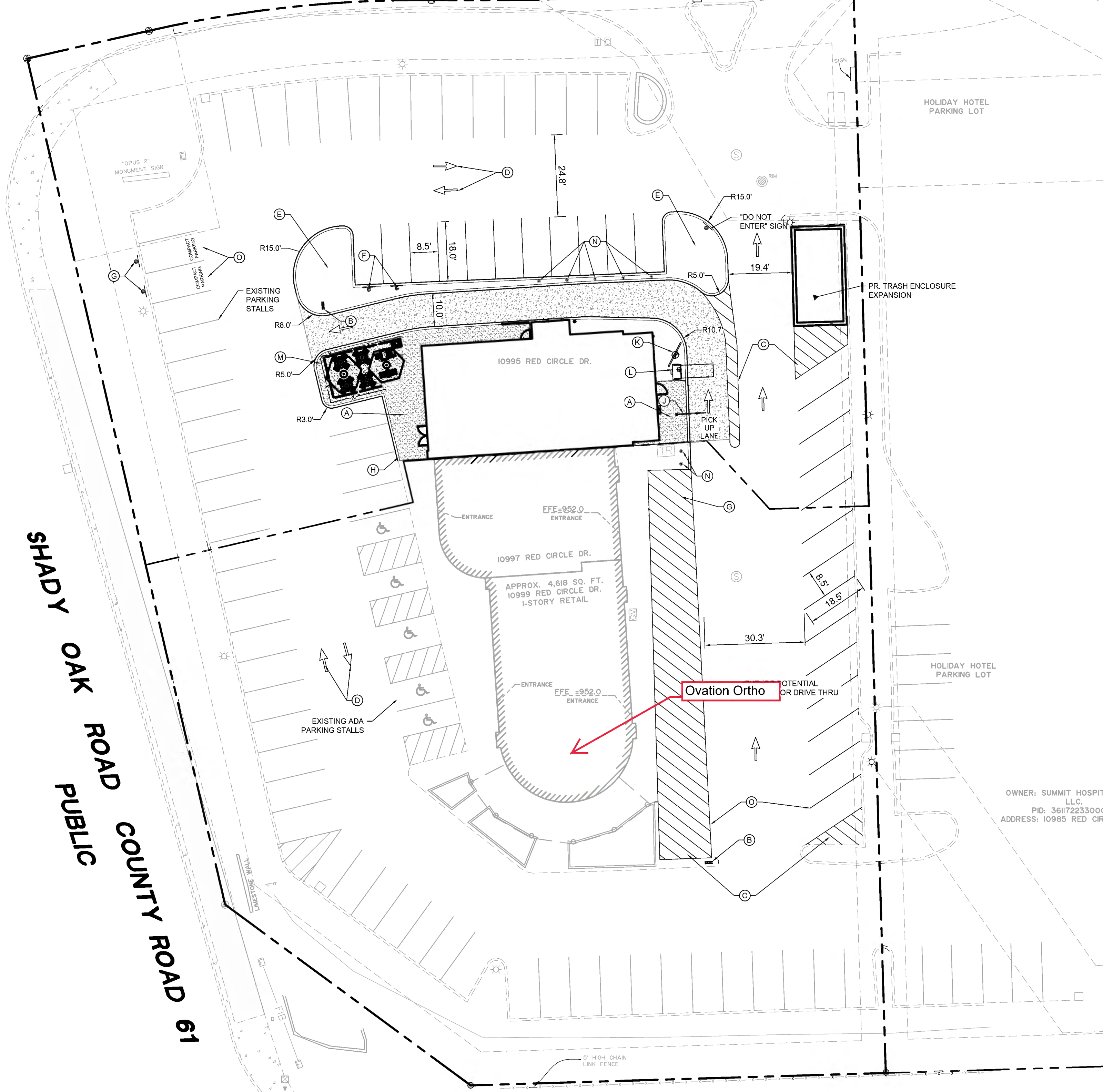
Direct Fax: (952) 842-1847

Email: mrogers@larkinhoffman.com

Attachments

Existing Master Development Plan

RED CIRCLE DRIVE PUBLIC



OWNER: SUMMIT HOSPITAL, LLC
 PID: 361172233000
 ADDRESS: 10985 RED CIRCLE DRIVE

SITE PLAN NOTES

- ALL WORK AND MATERIALS SHALL COMPLY WITH ALL CITY/COUNTY REGULATIONS AND CODES AND O.S.H.A. STANDARDS.
- CONTRACTOR SHALL REFER TO THE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF VESTIBULES, SLOPE PAVING, SIDEWALKS, EXIT PORCHES, TRUCK DOCKS, PRECISE BUILDING DIMENSIONS AND EXACT BUILDING UTILITY ENTRANCE LOCATIONS.
- ALL DIMENSIONS AND RADII ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.
- EXISTING STRUCTURES WITHIN CONSTRUCTION LIMITS ARE TO BE ABANDONED, REMOVED OR RELOCATED AS NECESSARY. ALL COST SHALL BE INCLUDED IN BASE BID.
- CONTRACTOR SHALL BE RESPONSIBLE FOR ALL RELOCATIONS, (UNLESS OTHERWISE NOTED ON PLANS) INCLUDING BUT NOT LIMITED TO, ALL UTILITIES, STORM DRAINAGE, SIGNS, TRAFFIC SIGNALS & POLES, ETC. AS REQUIRED. ALL WORK SHALL BE IN ACCORDANCE WITH GOVERNING AUTHORITIES REQUIREMENTS AND PROJECT SITE WORK SPECIFICATIONS AND SHALL BE APPROVED BY SUCH. ALL COST SHALL BE INCLUDED IN BASE BID.
- SITE BOUNDARY, TOPOGRAPHY, UTILITY AND ROAD INFORMATION TAKEN FROM A SURVEY BY INTERTEK PSI, DATED APRIL 5, 2019.
 KIMLEY-HORN ASSUMES NO LIABILITY FOR ANY ERRORS, INACCURACIES, OR OMISSIONS CONTAINED THEREIN.
- TOTAL LAND AREA IS 1.60 ACRES.
- PYLON / MONUMENT SIGNS SHALL BE CONSTRUCTED BY OTHERS. SIGNS ARE SHOWN FOR GRAPHICAL & INFORMATIONAL PURPOSES ONLY. CONTRACTOR TO VERIFY SIZE, LOCATION AND ANY REQUIRED PERMITS NECESSARY FOR THE CONSTRUCTION OF THE PYLON / MONUMENT SIGN.
- CONTRACTOR SHALL REFERENCE ARCH / MEP PLANS FOR SITE LIGHTING AND ELECTRICAL PLAN.
- NO PROPOSED LANDSCAPING SUCH AS TREES OR SHRUBS, ABOVE AND UNDERGROUND STRUCTURES, OR OTHER OBSTRUCTIONS SHALL BE LOCATED WITHIN EXISTING OR PROPOSED UTILITY EASEMENTS AND RIGHTS OF WAY UNLESS SPECIFICALLY NOTED ON PLANS OTHERWISE.
- REFERENCE ARCHITECTURAL PLANS FOR DUMPSTER ENCLOSURE DETAILS.
- REFER TO FINAL PLAT OR ALTA SURVEY FOR EXACT LOT AND PROPERTY BOUNDARY DIMENSIONS.

LEGEND

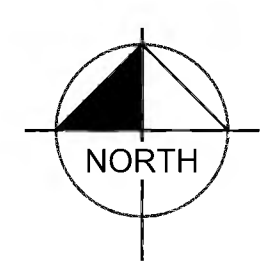
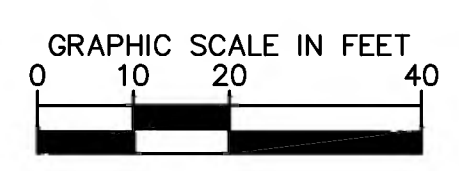
- PROPERTY LINE
- SETBACK LINE
- PROPOSED CURB AND GUTTER
- PROPOSED CONCRETE PAVEMENT
- PROPOSED CONCRETE SIDEWALK

| PROPERTY SUMMARY | |
|-----------------------|---------|
| CHIPOLTE - MINNETONKA | |
| TOTAL PROPERTY AREA | 1.60 AC |
| ZONING SUMMARY | |
| EXISTING ZONING | PUD |
| PROPOSED ZONING | PUD |

| BUILDING DATA SUMMARY | |
|-----------------------------|--------------------------------------|
| AREAS | |
| OVERALL PROPERTY | 69843 SF (1.60 AC) |
| OVERALL BUILDING AREA | 7058 SF (10% OF TOTAL PROPERTY AREA) |
| PARKING | |
| REQUIRED PARKING | 118 SPACES @ 1 SPACE/60 SF |
| PROPOSED PARKING | 98 SPACES @ 1 SPACE/72 SF |
| ADA STALLS REQ'D / PROVIDED | 4 STALLS / 5 STALLS |

KEYNOTE LEGEND

- (A) CONCRETE SIDEWALK
- (B) DIRECTIONAL SIGNAGE (PER ARCHITECTURAL PLANS)
- (C) AREA STRIPED WITH 4" SYSL @ 45° 2' O.C. (TYP.)
- (D) DIRECTIONAL PAVEMENT MARKINGS
- (E) LANDSCAPE AREA - SEE LANDSCAPE PLANS
- (F) "TAKE OUT" PARKING SIGN (PER ARCHITECTURAL PLANS)
- (G) PULL OFF PARKING SIGN
- (H) TRANSITION CURB
- (I) FLAT CURB
- (J) NEW FAST LANE HEIGHT BAR (PER ARCHITECTURAL PLANS)
- (K) NEW FAST LANE SPEAKER POST (PER ARCHITECTURAL PLANS)
- (L) NEW FAST LANE MENU BOARD (PER ARCHITECTURAL PLANS)
- (M) PATIO RAILING (PER ARCHITECTURAL PLANS)
- (N) PIPE BOLLARD
- (O) STRIPING / PAINT NUMBERING- 36" TALL, COLOR WHITE, CENTERED IN SPACE 12" FROM THE TOP OF THE SPACE



PRELIMINARY - NOT FOR CONSTRUCTION

CHIPOLTE - MINNETONKA
 PREPARED FOR
WILKUS ARCHITECTS
 MINNETONKA, MN

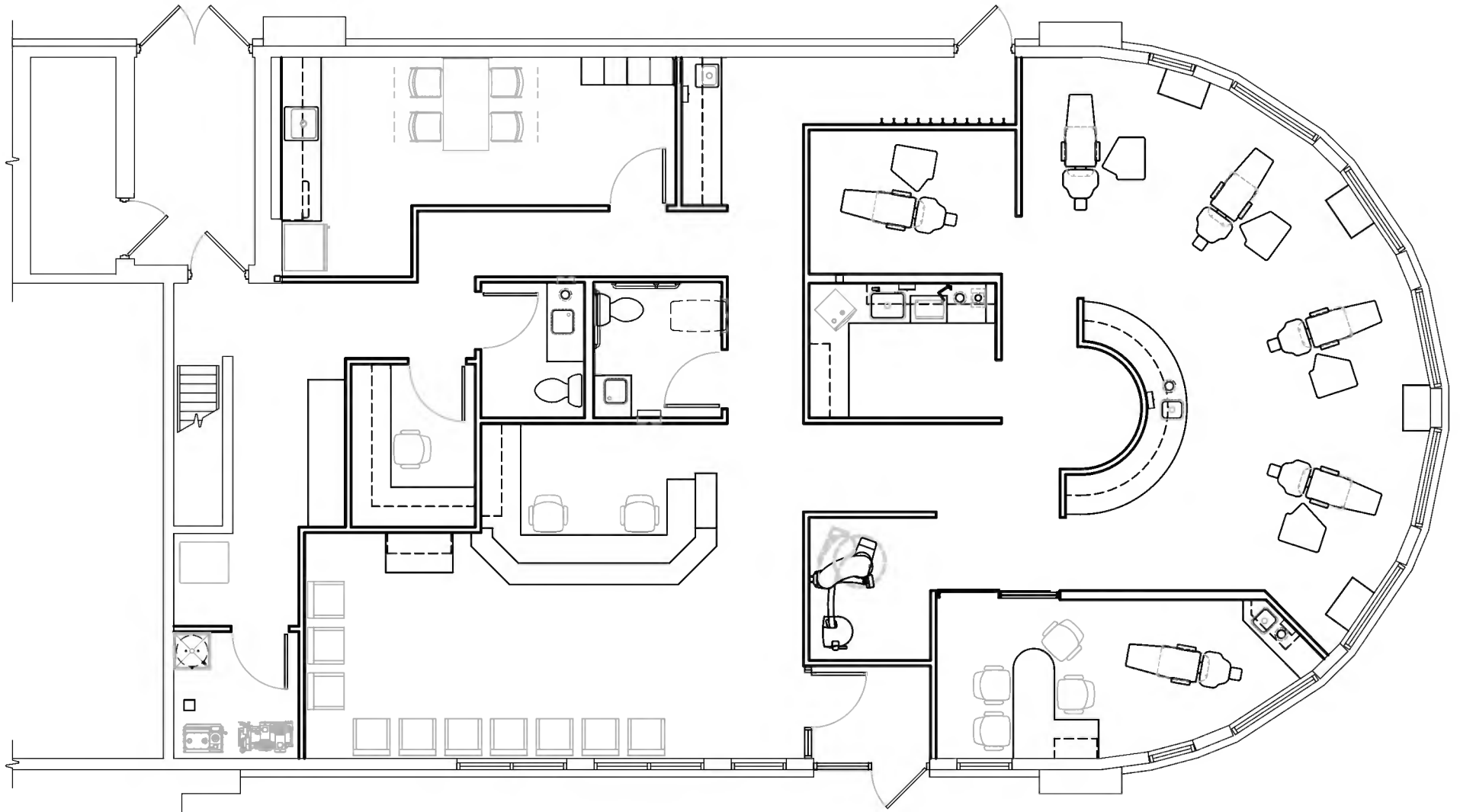
Kimley»Horn
 © 2018 KIMLEY-HORN AND ASSOCIATES, INC.
 767 EULSTIS STREET, SUITE 100, ST. PAUL, MN 55114
 PHONE: 651-445-4197
 WWW.KIMLEY-HORN.COM

SITE PLAN

| No. | REVISIONS | DATE | BY |
|-----|-----------|------|----|
| | | | |

K:\TWC_LDEV\Wilkus Architects\Chipotle - Minnetonka\3 Design\CAD\PlanSheets\C4-SITE PLAN.dwg May 14, 2019 - 1:13pm

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



A1
FLOOR PLAN
A-101 1/8" = 1'-0"

NORTH



Sjoquist Architects, Inc
 3020 University Avenue SE, Suite 100
 Minneapolis, Minnesota 55414
 612.379.9233

0000
 PROJECT NUMBER
 2023.01.24
 DATE
 DRAWN BY _____ CHECKED BY _____
 REVISION DATE _____

OYATION ORTHODONTICS
 MINNETONKA, MINNESOTA

A-101

Resolution No. 2023-

Resolution amending the existing master development plan and a conditional use permit for Ovation Orthodontics, a medical clinic at 10999 Red Circle Drive

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 On March 31, 1997, the city approved the master development plan and site and building plans for three restaurants. As approved, these included Boston Market at 10995 Red Circle Drive and Caribou Coffee and Einstein Bagels at 10999 Red Circle Drive. A building permit was obtained for Boston Market, but it was never built.

1.02 On July 8, 2019, the city approved a minor amendment to the master development plan, final site and building plans, and a parking variance to allow the construction of Chipotle, a restaurant with an outdoor seating area. The parking variance reduced the number of required parking stalls from 126 to 88 available onsite.

1.03 The property is located at 10995 Red Circle Drive. It is legally described as:

Lot 1, Block 1, SKARPHOL ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, lying Northerly of the following described line:

Commencing at the northwesterly corner of said Lot 1: thence South 13 degrees 09 minutes 43 seconds East, assumed bearing along the westerly line of said Lot 1, a distance of 157.17 feet to the point of the beginning of the line to be described; thence North 76 degrees 50 minutes 17 seconds East, a distance of 83.00 feet; thence North 13 degrees 09 minutes 43 seconds West, a distance of 12.76 feet; thence North 86 degrees 08 minutes 33 seconds East, a distance of 91.85 feet; thence South 42 degrees 42 minutes 37 seconds East, a distance of 28.03 feet; thence North 88 degrees 17 minutes 30 seconds East, a distance of 30.00 feet to the Easterly line of said Lot 1 and said line there terminating.

Hennepin County, Minnesota
Abstract Property

1.04 Dr. Mike Lee and Dr. Michael Hoxie, on behalf of Ovation Orthodontics, are proposing to relocate their office into the former Einstein Bagels location. The

proposal requires: (1) a minor amendment to the existing master development plan to allow a medical use on a site previously approved for a restaurant use is required; and (2) a conditional use permit.

1.05 On March 30, 2023 the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the requests.

Section 2. Standards.

2.01 City Code Sec. 300.22 Subd. 9, requires amendments to the master development plans.

2.02 City Code Sec. 300.22 Subd. 3 outlines that all uses allowed by a conditional use permit within any other district are allowed by a conditional use permit. Medical uses are considered conditionally permitted uses within the business districts.

2.03 City Code Sec. 300.21 Subd.2 outlines the general standards that must be met for granting a conditional use permit. These standards are incorporated into this resolution by reference.

2.04 City Code Sec. 300.21 Subd. 3(e) outlines the following specific standards that must be met for granting a conditional use permit for a medical clinic.

Section 3. Findings.

3.01 The proposed amendment to the existing master development plan is reasonable as:

1. No exterior modifications to the site or building are proposed.
2. The medical clinic would be complementary to existing uses onsite and in the area.

3.02 The proposal meets the general conditional use permit standards outlined in City Code Sec. 300.21 Subd. 2.

3.03 The proposal would meet the specific conditional use permit standards as outlined in City Code Sec. 300.21 Subd. 3(e) as:

1. The use is not adjacent to low-density residential areas;
2. The site accesses onto Red Circle Drive, which has direct access onto Shady Oak Road.
3. It is not anticipated that the proposed clinic would increase the number of emergency vehicles accessing the site.

Section 4. City Council Action.

4.01 The above-described proposal is approved subject to the following conditions:

1. This resolution must be recorded with Hennepin County.
2. A building permit is required.
3. A sign permit is required for exterior signage.
4. The city council may reasonably add or revise conditions to address any future unforeseen problems.
5. Any change to the approved use that results in a significant increase in a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 17, 2023.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on April 17, 2023.

Becky Koosman, City Clerk

MINNETONKA PLANNING COMMISSION
March 30, 2023

| | |
|--------------------------|--|
| Brief Description | A conditional use permit, with location variance, for Hoover Perio at 10000 Minnetonka Blvd. |
| Recommendation | Recommend the city council adopt the resolution approving the request. |

Background

The roughly 12,000 sq.ft. subject property is located at the intersection of Minnetonka Blvd and E Street; it is zoned B-3, general business. City records indicate a gas station was constructed on the site before 1958 and continued to operate for 30 years. In 1988, the station was demolished and underground fuel tanks were removed. In 1997, the city approved construction of the 3,000 square foot office building that currently occupies the site.



Proposal

Hoover Perio is proposing to operate a periodontal and implant dentistry office within the existing 10000 Minnetonka Blvd building. Under the B-3 ordinance, clinics are conditionally-permitted uses. The ordinance contains four conditional use permit (CUP) standards. One of the standards notes that clinics “may not be located adjacent to low-density residential areas.” The property immediately to the north of the existing office site is zoned and guided for low-density development; as such, the proposed clinic also requires a variance to this standard.



Staff Analysis

A land-use proposal is comprised of many details. These details are reviewed by members of the city’s economic development, engineering, fire, legal, natural resources, planning, and public works departments and divisions. These details are then aggregated into a few primary questions or issues. The analysis and recommendations outlined in the following section of this report are based on the collaborative efforts of this larger staff review team.

- **Is the proposed use appropriate?**

Yes. The subject property has been occupied by commercial and office uses for over 60 years. The proposed clinic use would be similar to the most recent office use of the site and much less intense than the previous gas station use. But for its location adjacent to a residential property, the clinic would meet all conditional use permit standards. The standards are outlined in the “Supporting Information” section of this report.

- **Is the location variance reasonable?**

Yes. The variance is reasonable due to both the intensity and separation of existing land uses.

- ✓ **Intensity of Use.** The zoning ordinance does not differentiate between hospitals and clinics; the same conditional use permit standards apply to both types of healthcare uses. Staff believes the intent of the location standards is to restrict hospitals – which could be high-intensity uses, with 24-hour traffic, staffing, and frequent emergency vehicle trips – from operating adjacent to residential areas. Conversely, staff would not consider medical or dental clinics high-intensity uses. The operating characteristics of Hoover Perio clinic would not be more intense than the previous office use of the site.

- ✓ **Separation of Uses.** The house located north of the subject property was constructed in 1940. The subject property was occupied by a commercial use in the 1950s. A 50-foot wide parcel was located between these residential and commercial uses; this parcel was zoned B-3, general commercial. In 1993, the parcel was sold to the residential owner immediately to the north. In 1997, following construction of the office building to the south, the parcel was rezoned from B-3 to R-1, combined with the residential lot, and a detached garage was constructed. This action “moved” the residential occupancy closer to the existing commercial activity.¹ This series of events presents a unique circumstance not common to other commercially-zoned properties.



- **Would parking demand be accommodated?**

Yes. Unlike a more typical commercial use, where parking demand is driven by consumers, a clinic can essentially control parking demand. Business decisions about staffing levels and procedure appointments determine how many parking stalls would be necessary at any given time. Further, under the new parking ordinance, nine parking stalls would be required. The property contains 12 parking stalls. (For more information regarding clinic operations, see the “Supporting Information” section of this report.)

Staff Recommendation

Recommend that the city council adopt the resolution approving a conditional use permit, with location variance, for Hoover Perio at 10000 Minnetonka Blvd.

Originator: Susan Thomas, AICP, Assistant City Planner
Through: Loren Gordon, AICP, City Planner

¹ The current owners of the residential property are the same owners who went through the rezoning process and constructed the garage in 1997. To date, the city has received no comments from the owners regarding the proposed clinic.

Supporting Information

| | |
|-------------------------------|---|
| Subject Property | Zoning: B-3 Guide Plan: Commercial |
| Surrounding Properties | Northerly: Single-household dwelling, zoned R-1 Easterly: E Street and Minnehaha Creek beyond Southerly: Minnetonka Blvd and commercial building beyond, zoned B-2 Westerly: Commercial building, zoned B-2 |
| Clinic Operation | <p>Hoover Perio is a periodontal clinic, specializing in the treatment of gum disease and surgical placement of dental implants. Dr. Hoover currently has clinics operating in St. Louis Park and Chanhassen. The St. Louis Park location would be relocated to the Minnetonka site.</p> <p>The Minnetonka clinic would be open Monday through Thursday from 8 a.m. to 5 p.m. It would typically be staffed by six to seven medical professionals, though the applicant indicates that staffing would be significantly less during the opening stages.</p> <p>The submitted floor plan illustrates seven surgical suites/rooms and one consultation room. These rooms would never all be occupied by patients at the same time. Rather, two of the rooms would be occupied by patients, two rooms would be undergoing cleaning/sterilization following patient procedures, and staff would be prepping two rooms for their next patients.</p> |
| CUP Standards | <p>The proposed clinic would meet the general conditional use permit standards as outlined in City Code §300.21 Subd.2:</p> <ol style="list-style-type: none">1. The use is consistent with the intent of this ordinance;2. The use is consistent with the goals, policies and objectives of the comprehensive plan;3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;4. The use is consistent with the city's water resources management plan;5. The use is in compliance with the performance standards specified in section 300.28 of this ordinance; and6. The use does not have an undue adverse impact on the public health, safety or welfare. |

The proposed clinic would meet the specific CUP standards as outlined in City Code §300.31 Subd. 3(e):

1. Shall not be adjacent to low-density residential areas;

Finding: The property is located adjacent to a residential use; a variance is required. The proposal would meet the variance standard.

2. Shall have direct access from the site to a collector or arterial street as defined in the comprehensive plan;

Finding: Minnetonka Blvd. is classified as an A-minor arterial street.

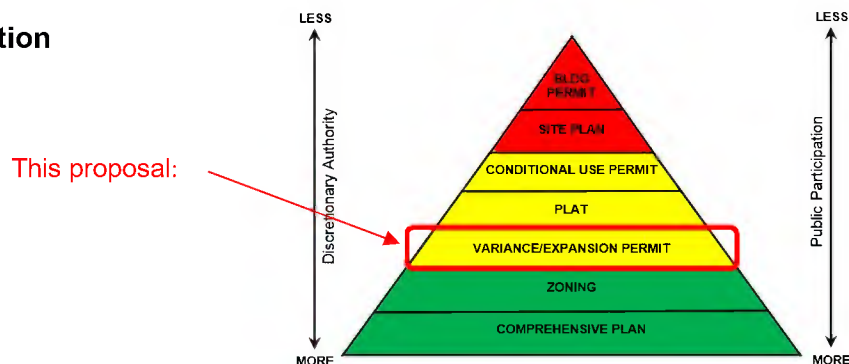
3. Shall not have emergency vehicle access adjacent to or located across a street from any residential use; and

Finding: The proposed use is not anticipated to generate emergency vehicle traffic at a rate higher than any permitted commercial occupant of the existing building.

Variance Standard

A variance may be granted from the requirements of the zoning ordinance when: (1) it is in harmony with the general purposes and intent of the ordinance; (2) it is consistent with the comprehensive plan; and (3) when an applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean that the applicant proposes to use a property in a reasonable manner not permitted by the ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance if granted, would not alter the essential character of the locality. (City Code §300.07)

Pyramid of Discretion



Voting Requirement

The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of a simple majority. The city council's approval requires an affirmative vote of five members due to the location variance. The planning commission has three options:

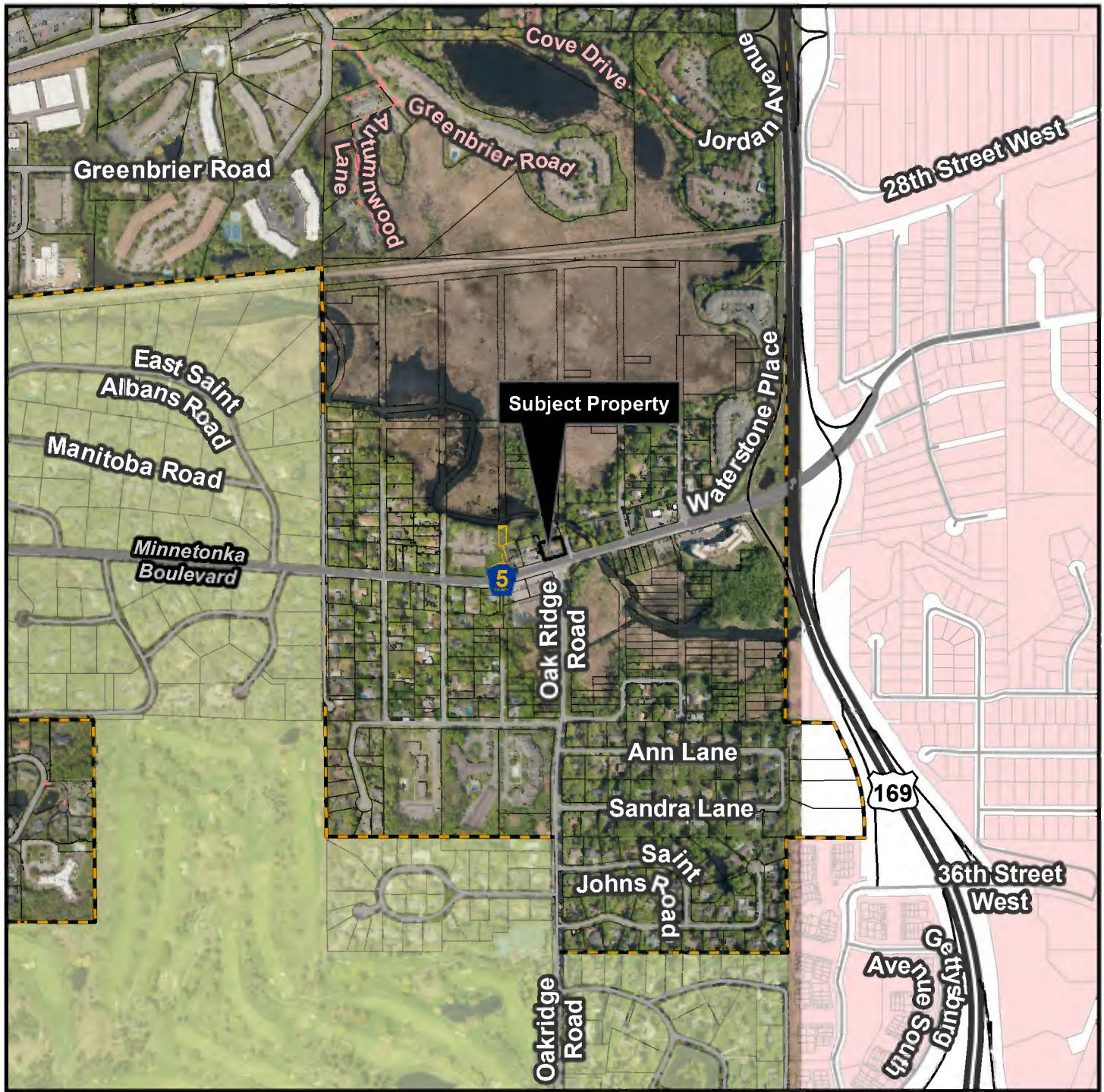
1. Concur with the staff recommendation. In this case, a motion should be made recommending the city council adopt the resolution approving the request.
2. Disagree with staff's recommendation. In this case, a motion should be made recommending the city council deny the request. This motion must include a statement as to why denial is recommended.
3. Table the requests. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

**Neighborhood
Comments**

The city sent notices to 17 area property owners and has received no comments to date.

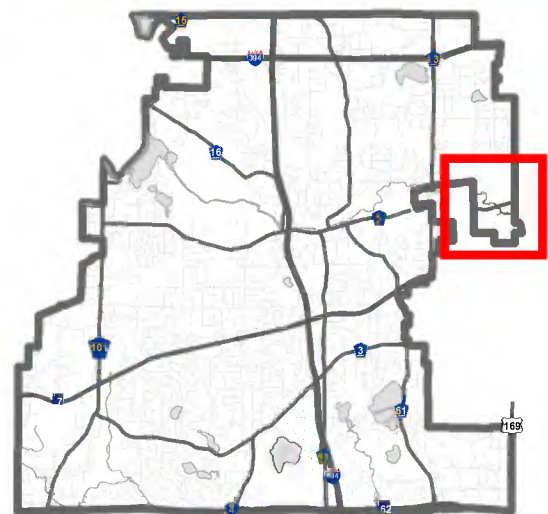
Deadline for Action

July 17, 2023



Location Map

Project: Hoover Perio
 Address: 10000 Minnetonka Blvd.



Larkin Hoffman

Larkin Hoffman

8300 Norman Center Drive
Suite 1000
Minneapolis, MN 55437-1060

General: 952-835-3800

Fax: 952-896-3333

Web: www.larkinhoffman.com

February 21, 2023

Ms. Ashley Cauley
Senior Planner
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55435

Re: Application for a Conditional Use Permit and Variance on behalf of Hoover Perio

Dear Ms. Cauley:

We represent Dr. Tom Hoover and Thomas Hoover Perio (“Hoover Perio”). Hoover Perio is seeking a conditional use permit (“CUP”) and a variance to operate a medical clinic located at 10000 Minnetonka Boulevard (the “Property”) in the city of Minnetonka (the “City”).

I. Project Summary

Hoover Perio specializes in prevention, diagnosis, and treatment of periodontal disease and in the placement of dental impacts. Dr. Hoover received his Doctorate of Dental Surgery from the University of Minnesota in 2002. Upon graduation he served in the United States Navy as a dental officer providing dental services to sailors and marines. Dr. Hoover completed a three-year advanced education in Periodontology at the University of Minnesota with honors and is a diplomate of the American Board of Periodontology.

Hoover Perio proposes to relocate its St. Louis Park clinic to the Property where it will improve the existing 3,000 square foot building (the “Clinic”). The Clinic will operate within the existing building footprint. No exterior expansions are sought by Hoover Perio at this time. Practice hours are 8:00am - 5:00pm, Monday through Thursday. Hoover Perio produces minimal refuse and virtually no noise or emissions.

The Property is zoned B-3 General Business District (“B-3”). The purpose of the B-3 is to provide for general commercial development in areas so designated by the comprehensive plan. The intensity of development within the B-3 is determined by the nature of the site, impacts of the building plan, and the ability of a project to mitigate off site impacts of commercial uses. Medical clinics are allowed within the B-3 subject to approval of a CUP.

II. General CUP Standards

The Clinic meets the required findings for issuance of a CUP pursuant to City Code Section 300.21.

1. The Clinic use is consistent with the intent of the zoning ordinance

The City's zoning ordinance establishes general and specific criteria for medical clinics to ensure that their location, size, and design are consistent with the standards of the zoning ordinance and comprehensive plan. The purpose of the B-3 district is to provide for general commercial development. The Property has long served a variety of commercial uses, most recently a client focused financial services office. Use of the Property as a medical office, operating during regular business hours, seeing patients will not cause broader impacts to the surrounding properties, overburden roadways, or be inconsistent with the historical use of the Property. The Property is strategically positioned adjacent to other medical providers, retail, and even industrial uses. The proposed Clinic will be constructed within an existing building footprint, served by ample parking with direct access to Minnetonka Boulevard. The Clinic use is consistent with the intent of the zoning ordinance.

2. The Clinic use is consistent with the goals, policies, and objectives of the comprehensive plan

The Property is guided Commercial. The Commercial land use district is broad and includes retail, entertainment, service, and office uses. Reuse of the existing building for a low impact medical office is consistent with the 2040 Comprehensive Plan goal of providing opportunities for the continued vitality of existing office development in an increasingly competitive regional market. Issuance of a CUP for the Property allows the City to recruit a needed medical provider to the market. The Clinic is well suited to serve as an additional amenity for the evolving commercial development along Minnetonka Boulevard. The Clinic use is consistent with the goals, policies, and objectives of the 2040 Comprehensive Plan.

3. The Clinic use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.

The Clinic will fit within the existing building footprint and will use the current infrastructure including access and parking provided on the Property. No additional or improved utilities or services will be required for the Clinic use. The proposed build out of the approximately 3,000 square foot commercial space will not have an undue or adverse impact on facilities, utilities, services or existing or proposed improvements.

4. The Clinic use is consistent with the city's water resources management plan

The City contains abundant physical and water resources, including more than 800 wetlands, several large recreational lakes and numerous wooded areas, parks and recreational lands. Adopted in 2021, the City's water resources management plan is designed to protect, preserve,

and utilize Minnetonka’s natural surface and ground water systems. The proposed Clinic use will not create new impacts on the existing stormwater systems serving the Property. The proposed Clinic use is consistent with the City’s water resources management plan.

5. *The Clinic complies with the performance standards specified in section 300.28 of the zoning ordinance.*

| Code Requirement | Operational Conditions Demonstrating Compliance | |
|------------------------------|---|---|
| Exterior Lighting | No changes proposed to existing code compliant exterior lighting. | ☑ |
| Noise and Vibration | Clinic use will not cause additional noise or vibration, any noise or vibration will be easily contained within the building. | ☑ |
| Smoke and Particulate Matter | The Clinic use will not produce smoke, dust or particulate matter exceeding MPCA regulations. | ☑ |
| Odor | The Clinic use will not produce odors impacting surrounding properties. | ☑ |
| Toxic or Noxious Matter | The Clinic use does not produce toxic or noxious matter as defined by the MPCA. | ☑ |
| Radiation | Clinic operations will be conducted in conjunction with professional licensing requirements and Minnesota Department of Health standards. | ☑ |
| Heat and Humidity | The Clinic use will not produce increased heat or humidity. | ☑ |
| Electromagnetic Interference | The Clinic use will not interfere with normal radio or television reception. If any electromagnetic energy is produced by regular equipment traditionally used within an orthodontic practice, it will comply with federal and state standards. | ☑ |
| Fire and Explosive Hazards | The proposed Clinic use does not present a heightened fire risk, all operations will be conducted in compliance with the fire prevention code. | ☑ |
| Liquid or Solid Waste | Any waste discharge related to the Clinic use will comply with the metropolitan waste control commission regulations, waste controls in City ordinance, and the water resources management plan. | ☑ |

6. *The Clinic use will not have an undue adverse impact on the public health, safety or welfare.*

Issuance of a CUP for operation of a periodontal clinic on the Property will not have an undue adverse impact on the public health, safety, or welfare of the surrounding property owners or the City as a whole. Hoover Perio seeks to provide essential services to patients within an existing commercial building. The proposed clinic use is not substantially different in practice from the long-standing financial services firm that has operated out of the Property for years- both serve daily clients, have limited hours, and have minimal noise, waste or traffic impacts. Approval of the CUP will not have an undue adverse impact on the public health, safety or welfare of residents of the City.

III. *Use-specific Performance Standards*

The proposed Clinic meets two of the three use-specific standards for medical clinics in City Code Section 300.21 3(e)(1) through (3). The Property has direct access to Minnetonka Boulevard, an arterial roadway as defined by the 2040 Comprehensive Plan. No emergency vehicle service is planned for this Clinic. While the Property is surrounded by industrial, medical and other commercial users to the south, west and east, the property adjacent to the Property's north lot line is single family residential.

IV. *Variance Standards*

A variance may be granted when the variance is consistent with the general purpose and intent of this ordinance and the comprehensive plan. The proposed Clinic is adjacent to a single-family home, but use of the Property as a periodontal clinic is consistent with the purpose and intent of the ordinance and the findings required by the City zoning ordinance and state law.

1. *Hoover Perio proposes to use the Property in a reasonable manner not permitted by the zoning ordinance.*

The use specific performance standards in City Code Section 300.21 3(e)1-3 apply to any hospital, urgent care, medical clinic or dentist office throughout the City's commercial districts. The impact that a hospital or 24-hour care clinic would have on adjacent residential properties is clear- ambulance noise, traffic, overnight operations are generally inconsistent with residential zoning and are real issues the zoning ordinance seeks to regulate through use specific performance standards. But the Clinic will not create noise, increased traffic, or have overnight operations. Any Clinic impacts of concern can be sufficiently mitigated through CUP conditions. Hoover Perio operates during normal business hours- akin to the current financial services tenant. Patients will not arrive or depart by ambulance. Use of the Property as a dental clinic is reasonable.

- 2. The plight of the Property owner is due to circumstance unique to the Property not created by the landowner.*

The Property is a longstanding commercial building guided, used, and zoned for commercial services since at least the 2030 Comprehensive Plan. Review of Hennepin County's historic aerial overlays shows that the Property has been used for commercial purposes since at least the 1960's. Hoover Perio is not seeking to change the underlying use of the building or the Property, rather this is a longstanding commercial property that has always been adjacent to a single residential property. The plight of the Property owner is due to circumstances unique to the Property not created by Hoover Perio.

- 3. Use of the Property by Hoover Perio will not alter the essential character of the locality.*

Minnetonka Boulevard is one of the City's main commercial corridors. Use of the Property as a dental clinic alongside an autobody repair shop, contractors' office and across the street from a veterinary clinic is consistent with the commercial character of Minnetonka Boulevard. Moreover, the single-family home to the north of the Property shares a lot line with not only the Property but the adjacent parcels to the west as well all of which are commercial uses. While the residential property is technically zoned R-1 to significantly restrict the reasonable use of the Property along a dedicated commercial corridor is not consistent with the purpose and intent of the zoning ordinance or the 2040 Comprehensive Plan. Use of the Property as a periodontal clinic will not alter the essential character of the locality.

- 4. Use of the Property as a dental clinic is consistent with the B-3 zoning district*

The purpose of the B-3 is to provide for general commercial development. The Property has long served a variety of commercial uses and was developed to accommodate client facing services- with an accessible building with parking along the roadway. Use of the Property as a dental clinic, operating during regular business hours will not cause broader impacts to the surrounding properties, overburden roadways, or be inconsistent with the historical use of the Property. Use of the Property as a dental clinic is consistent with the purpose and intent of the zoning ordinance and the B-3 district.

- 5. Use of the Property as dental clinic is consistent with the 2040 Comprehensive Plan.*

The Property has been guided Commercial since at least the 2030 comprehensive plan. As described above reuse of an existing building for a low impact medical office is consistent with the 2040 Comprehensive Plan goal of providing opportunities for the continued vitality of existing office development in an increasingly competitive regional market. Use of the Property as a clinic is consistent with 2040 Comprehensive Plan.

Any impacts to the residential property to the north of the proposed Clinic may be mitigated through appropriate conditions to the CUP. Based on the findings above and the enclosed materials, we respectfully request the City grant Hoover Perio a conditional use permit with a variance to operate a periodontal clinic at the Property.

Please do not hesitate to contact me if any additional information is required.

Sincerely,

A handwritten signature in blue ink that reads "Megan C. Rogers" with a long horizontal flourish extending to the right.

Megan C. Rogers, for
Larkin Hoffman

Direct Dial: (952) 896-3395

Direct Fax: (952) 842-1847

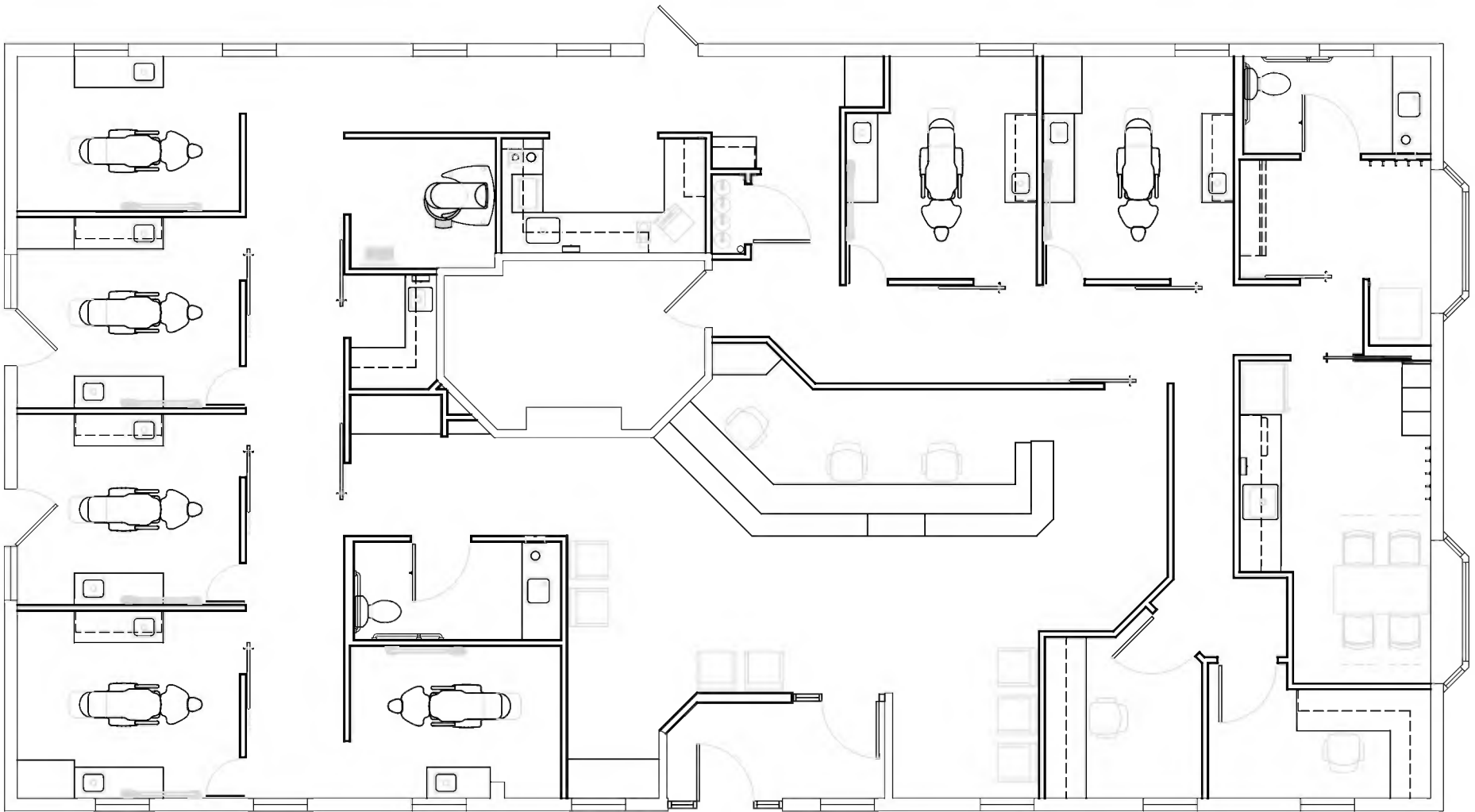
Email: mrogers@larkinhoffman.com

Attachments



10000 Minnetonka Blvd

**NOT AN ACCURATE SURVEY
For illustrative purposes only.
1 inch = approx. 20 ft**



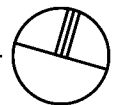
AI
A-101

FLOOR PLAN

1/8" = 1'-0"

2,889 USF

NORTH



Sjoquist Architects, Inc
 3020 University Avenue SE, Suite 100
 Minneapolis, Minnesota 55414
 612.379.9233

2316
 PROJECT NUMBER
 2023.03.02
 DATE
 DRAWN BY _____ CHECKED BY _____
 REVISION DATE _____

THOMAS HOOVER DDS
 MINNETONKA, MINNESOTA

A-101

Resolution No. 2023-

**Resolution approving a conditional use permit, with location variance,
for Hoover Perio at 10000 Minnetonka Blvd.**

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 The subject property is located at 10000 Minnetonka Blvd. It is legally described as:

The Southerly 100 feet of Lots 18 and 19, Block 10, Lyon's 2nd Addition

And

The South 100 feet of the East 35 feet of Lot 20, Block 10, Lyon's 2nd Addition

Torrens Certificate No. 858193

1.02 The property is zoned B-3, general business, and is guided for commercial uses in the 2040 Comprehensive Guide Plan. A property zoned and guided for low-density residential development is located immediately to the north.

1.03 Hoover Perio is proposing to operate a periodontal and implant dentistry office within the existing 3,000 sq. ft. office building located on the site.

1.04 By City Code §300.19 Subd. 4(k), hospitals and medical clinics are conditionally-permitted uses on B-3 property.

1.05 By City Code §300.21 Subd. 3(e), hospitals and medical clinics "shall not be adjacent to low-density residential areas."

1.06 The proposal requires a conditional use permit with location variance.

1.07 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorizes the city to grant variances.

1.08 On March 30, 2023, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission opened a public hearing and considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the

conditional use permit with variance.

Section 2. Standards.

2.01 City Code §300.21 Subd.2 outlines the following general standards for conditionally-permitted uses in commercial zoning districts:

1. The use is consistent with the intent of this ordinance;
2. The use is consistent with the goals, policies, and objectives of the comprehensive plan;
3. The use does not have an undue adverse impact on governmental facilities, utilities, services, or existing or proposed improvements;
4. The use is consistent with the city's water resources management plan;
5. The use is in compliance with the performance standards specified in section 300.28 of this ordinance; and
6. The use does not have an undue adverse impact on public health, safety, or welfare.

2.02 City Code §300.21 Subd. 3(e) outlines the following specific standards for hospitals and medical clinics.

1. Shall not be adjacent to low-density residential areas;
2. The site shall have direct access to a collector or arterial street as defined in the comprehensive plans; and
3. Emergency vehicle access shall not be adjacent to or located across a street from any residential use.

2.03 By City Code §300.07 Subd. 1, a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

Section 3. Findings.

3.01 The proposal would meet the general conditional use permit standards outlined in City Code §300.21 Subd. 2

- 3.02 Apart from the location, the proposal would meet f the specific conditional use permit standards outlined in City Code §300.21 Subd. 3(e):
1. The property is located adjacent to residential use; a variance is required. The proposal would meet the variance standard.
 2. Minnetonka Blvd is classified as an A-minor arterial street.
 3. The proposed use is not anticipated to generate emergency vehicle traffic at a rate higher than any permitted commercial occupant of the existing building.
- 3.03 The proposal would meet the variance standard as outlined in City Code §300.07 Subd. 1(a):
1. Intent of Ordinance. The zoning ordinance does not differentiate between hospitals and clinics; the same conditional use permit standards apply to both types of healthcare uses. The intent of the location standards is to restrict hospitals – which could be high-intensity uses, with 24-hour traffic, staffing, and frequent emergency vehicle trips – from operating adjacent to residential areas. Conversely, medical and dental clinics are generally not considered high-intensity uses
 2. Comprehensive Plan. The subject property is guided for commercial use; with this designation, hospitals, and medical clinics are allowed as conditionally-permitted uses.
 3. Practical Difficulties. There are practical difficulties in complying with the ordinance:
 - a) Reasonableness. The zoning ordinance does not differentiate between hospitals and clinics; the same conditional use permit standards apply to both types of healthcare uses. The intent of the locational standards is to restrict hospitals – which could be high-intensity uses, with 24-hour traffic, staffing, and frequent emergency vehicle trips – from operating adjacent to residential areas. Conversely, medical and dental clinics are generally not considered high-intensity uses.
 - b) Unique Circumstance. The house located north of the subject property was constructed in 1940. The subject property was occupied by a commercial use in the 1950s. A 50-foot wide parcel was located between these residential and commercial uses; this parcel was zoned B-3, general commercial. In 1993, the parcel was sold to the residential owner immediately to the north. In 1997, following the construction of the office building to the south, the parcel was rezoned from B-3 to R-1, combined with the residential lot, and a detached garage was constructed. This action "moved" the residential occupancy closer to the existing

commercial activity. This series of events presents a unique circumstance not common to other commercially-zoned properties.

- c) Neighborhood Character. The clinic occupancy of the existing office building would result in no exterior changes to the building or the site. As such, it would not impact the character of the adjacent area.

Section 4. City Council Action.

4.01 The above-described conditional use permit is approved, subject to the following conditions:

1. Subject to staff approval, the property must be developed and maintained in substantial conformance with the following documents:
 - Floor Plan, dated March 2, 2023
2. Prior to the issuance of a building permit, this resolution must be recorded with Hennepin County.
3. Prior to final inspection and occupancy, the parking lot must be restriped to accommodate 11 standard parking stalls and one accessible stall.
4. Sign permits are required for any exterior signs.
5. The city council may reasonably add or revise conditions to address any future unforeseen problems.
6. Any change to the approved use that results in a significant increase in traffic, parking, or a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 17, 2023.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on April 17, 2023.

Becky Koosman, City Clerk

Minnetonka Planning Commission Meeting

Agenda Item 8

Public Hearing: Non-Consent Agenda

expansion permit is required. (Note, Second-story additions are not subject to floodplain setback requirements.)

Staff Analysis

Staff finds that the proposed addition would meet the expansion permit standard outlined in the city code:

- **Reasonableness.** The addition will not intrude further into the existing setback. The proposed addition would expand vertically upon the existing nonconforming rear yard setback.
- **Unique Circumstance.** The subject property contains an existing nonconforming structure. The existing structure abuts the floodplain elevation and encroaches on the current city code rear yard and floodplain setbacks. No addition could be made to the structure without some type of variance.
- **Neighborhood Character.** The proposed addition would not negatively impact the existing character of the neighborhood. The proposed addition is for a second floor which would not increase the nonconformity of the property or the potential for flood damage. Several properties on Wychewood have reduced setbacks due to existing floodplain nonconformities.

Staff Recommendation

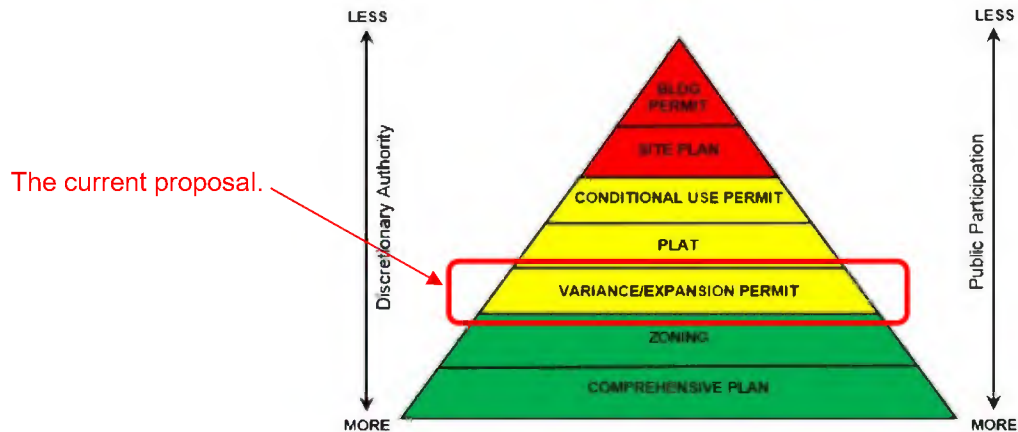
Adopt the resolution approving an expansion permit for a living space addition at 14755 Wychewood Road.

Originator: Bria Raines, Planner
Through: Loren Gordon, AICP, City Planner

Supporting Information

| | |
|-------------------------------------|--|
| Surrounding Land Uses | North: Single-family home, zoned R-1; wetland and floodplain South: Single-family home, zoned R-1 East: Single-family home, zoned R-1 West: Single-family home, zoned R-1 |
| Planning | Guide Plan designation: Low-density residential Zoning: R-1 |
| Variance v. Expansion Permit | A variance is required for any alteration that will intrude into one or more setback areas beyond the distance of the existing, nonconforming structure. An expansion permit is required for any alteration that maintains the existing nonconformity. |
| Burden of Proof | <p>By city code, an expansion permit for a nonconforming use may be granted but is not mandated when an applicant meets the burden of proving that:</p> <ol style="list-style-type: none">1. The proposed expansion is a reasonable use of the property, considering such things as:<ul style="list-style-type: none">• Functional and aesthetic justifications for the expansions;• Adequacy of off-street parking for the expansion;• Absence of adverse off-site impacts from such things as traffic, noise, dust odors, and parking;• Improvement to the appearance and stability of the property and neighborhood.2. The circumstances justifying the expansion are unique to the property, are not caused by the landowner, are not solely for the landowner's convenience, and are not solely because of economic considerations; and3. The expansion would not adversely affect or alter the essential character of the neighborhood. |
| Natural Resources | Best management practices must be followed during the course of site preparation and construction activities. This would include the installation and maintenance of erosion control fencing. |
| Neighborhood Comments | The city sent notices to 38 area property owners and received no comments to date. |

Pyramid of Discretion



Motion Options

The planning commission's action on the applicant's request is final and subject to appeal. Approval requires the affirmative vote of four commissioners. The planning commission has the following motion options:

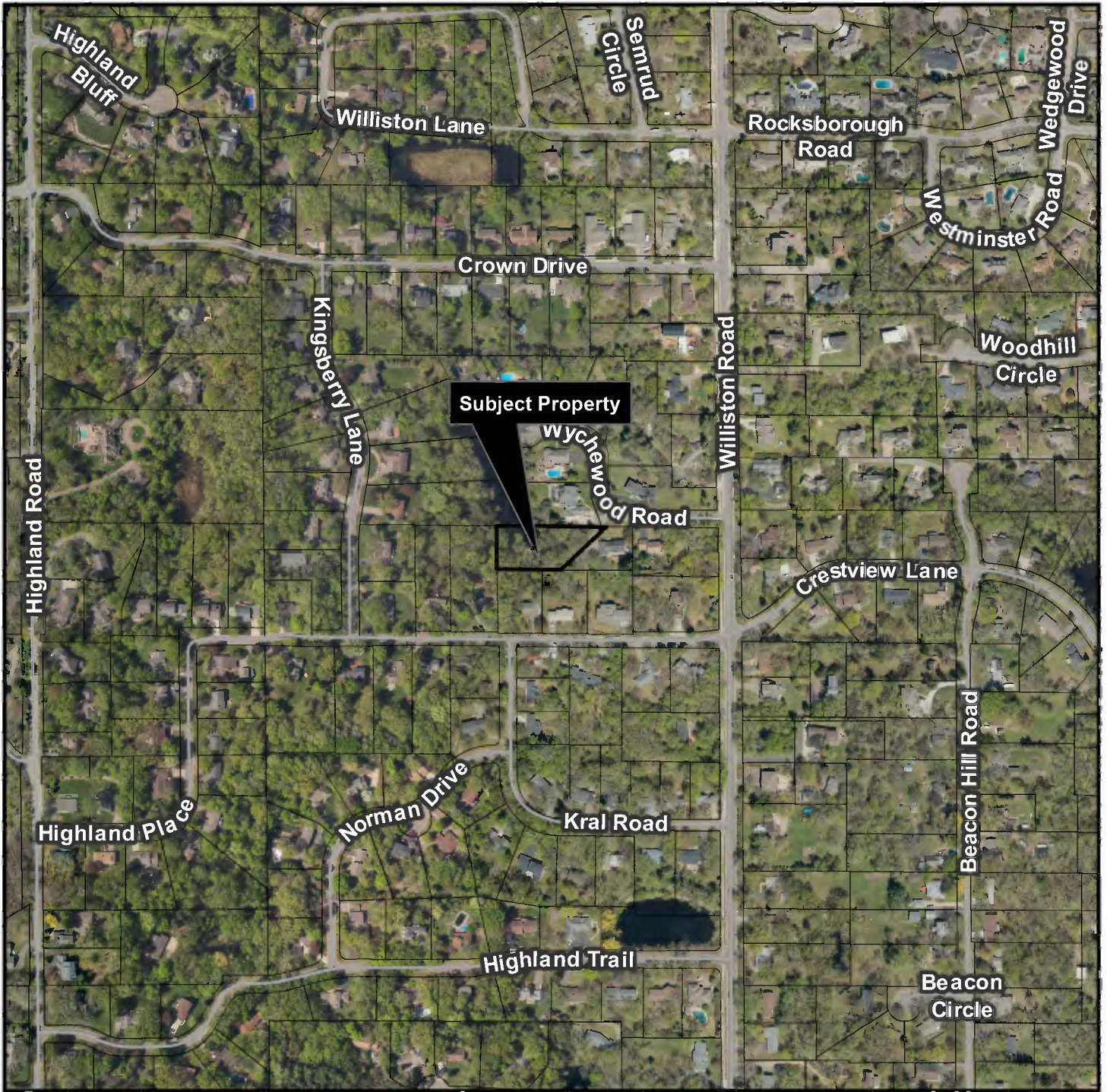
1. Concur with the staff recommendation. In this case, a motion should be made to adopt the resolution approving the request.
2. Disagree with the staff's recommendation. In this case, a motion should be made to deny the request. This motion must include a statement as to why the request is denied.
3. Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

Appeals

Any person aggrieved by the planning commission's decision about the request may appeal such a decision to the city council. A written appeal must be submitted to the planning staff within ten days of the date of the decision.

Deadline for Action

June 22, 2023

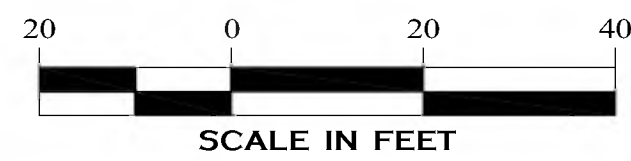


Location Map

Project: JCJ Construction
Address: 14755 Wychewood Rd

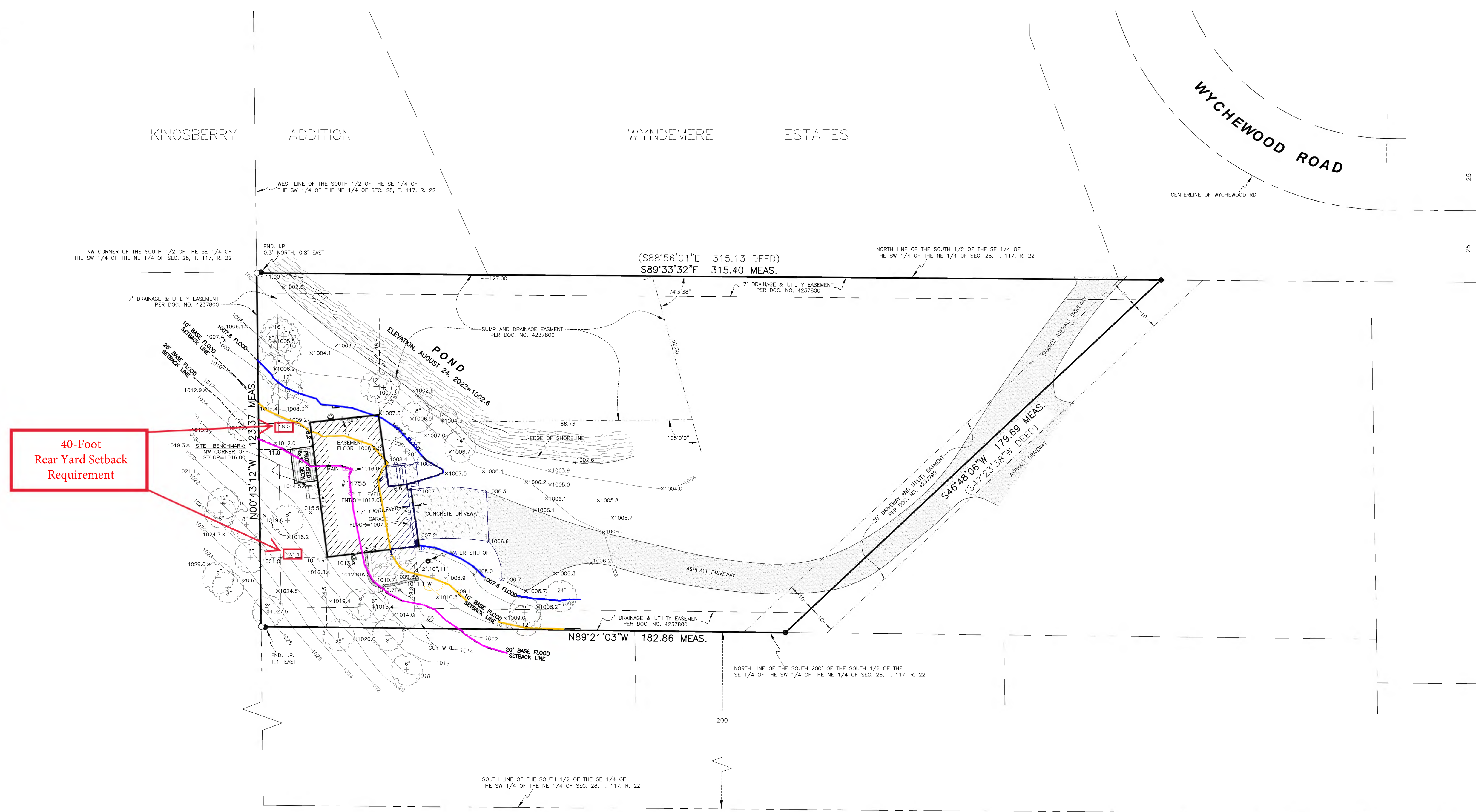


SITE PLAN FOR: JCJ CONSTRUCTION



LEGEND

- Fence
- Stone Retaining Wall
- Electric Meter
- Gas Meter
- Power Pole
- Water Shutoff
- Existing Elevation
- Top of Wall Elevation
- Existing Contour
- Found Iron Monument
- Set Iron Monument
- Inscribed R.L.S. 15230



40-Foot
Rear Yard Setback
Requirement

LOT AREA CALCULATION

| |
|-------------------------------------|
| Lot Area = 30,833 SF |
| EXISTING IMPERVIOUS SURFACE: |
| House w/ Cantilever = 1,316 SF |
| Greenhouse = 140 SF |
| Driveway and Stoops = 3,328 SF |
| Total = 4,784 SF |
| Existing Impervious Surface = 15.5% |
| PROPOSED IMPERVIOUS SURFACE: |
| House w/ Cantilever = 1,316 SF |
| Demo Greenhouse = 0 SF |
| Driveway and Stoops = 3,328 SF |
| Proposed 8'x12' Deck = 196 SF |
| Total = 4,840 SF |
| Proposed Impervious Surface = 15.7% |

PROPERTY DESCRIPTION:

That part of the South 1/2 of the Southeast 1/4 of the Southwest 1/4 of the Northeast 1/4 of Section 28, Township 117, Range 22, lying North of the South 200 feet thereof and lying Westerly of a line bearing South 47 degrees 23 minutes 39 seconds West from a point in the North line of said South 1/2 of the Southeast 1/4 of the Southwest 1/4 of the Northeast 1/4, distant 315.13 feet Easterly (measured along said North line) from the Northwest corner thereof. For purposes of this description, said North line is assumed to bear South 88 degrees 56 minutes 01 seconds East, Hennepin County, Minnesota.

NOTE:

The Sump and Drainage Easement description per Document No. 4237800 is poorly written and is shown on this survey as a best interpretation as to the original intent.

GENERAL NOTES:

- Existing building dimensions are measured to siding and not building foundation.
- No title commitment was provided and no research was performed for any easements not shown on this survey.
- Location of utilities shown are from observed evidence in the field and/or plans furnished by others and are considered approximate. Gopher State One Call or a private utility locator should be contacted to locate utilities on site before excavation.

| | | |
|------------------------------|----------------------------|--|
| JOB NO. 1-23 | SCALE 1" = 20' | SITE ADDRESS 1455 Wychewood Rd Minnetonka, MN 55345 |
| BOOK/PAGE 184/8 | DRAWN CME | SITE BENCHMARK Northwest corner of rear stoop Elevation = 1016.00 |
| SHEET 1 of 1 24x36 | REFERENCE 369-22 | |

| REVISIONS | |
|------------|--|
| DATE | REMARKS |
| 10-10-2022 | Add easements per Doc. Nos. 4237799 and 4237800. |
| 10-31-2022 | Add Floodplain Contour (1007.6) |
| 11-09-2022 | Revise proposed floor elevations. |
| 11-10-2022 | Add 1007.6 Base Flood setback lines. |
| 01-03-2023 | Revise per new plans, add new proposed deck. |

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly registered Land Surveyor under the laws of the State of Minnesota.

W. BROWN LAND SURVEYING, INC.

Woodrow A. Brown DATED: 01-03-2023
WOODROW A. BROWN, R.L.S. MN REG 15230

W. BROWN LAND SURVEYING, INC.
8030 OLD CEDAR AVENUE SO., SUITE 228
BLOOMINGTON, MN 55425
PH: (952) 854-4055
WBROWNLANDSURVEYING.COM
EMAIL: INFO@WBROWNLANDSURVEYING.COM

**CHRIS JOHNSON RESIDENCE
14755 WYCHEWOOD ROAD - MINNETONKA, MN 55345**



DESIGN FIRM

Montage Design
20 Second Street NE Suite 2804
Minneapolis, MN 55413
Contact :
Mumtaz Anwar
612.227.9293
mumtaz@montagedesign.com

CLIENT

Chris Johnson
2200 Winfield Ave.
Golden Valley, MN 55422
612.310.4276
jjconstruction@q.com

CONTRACTOR

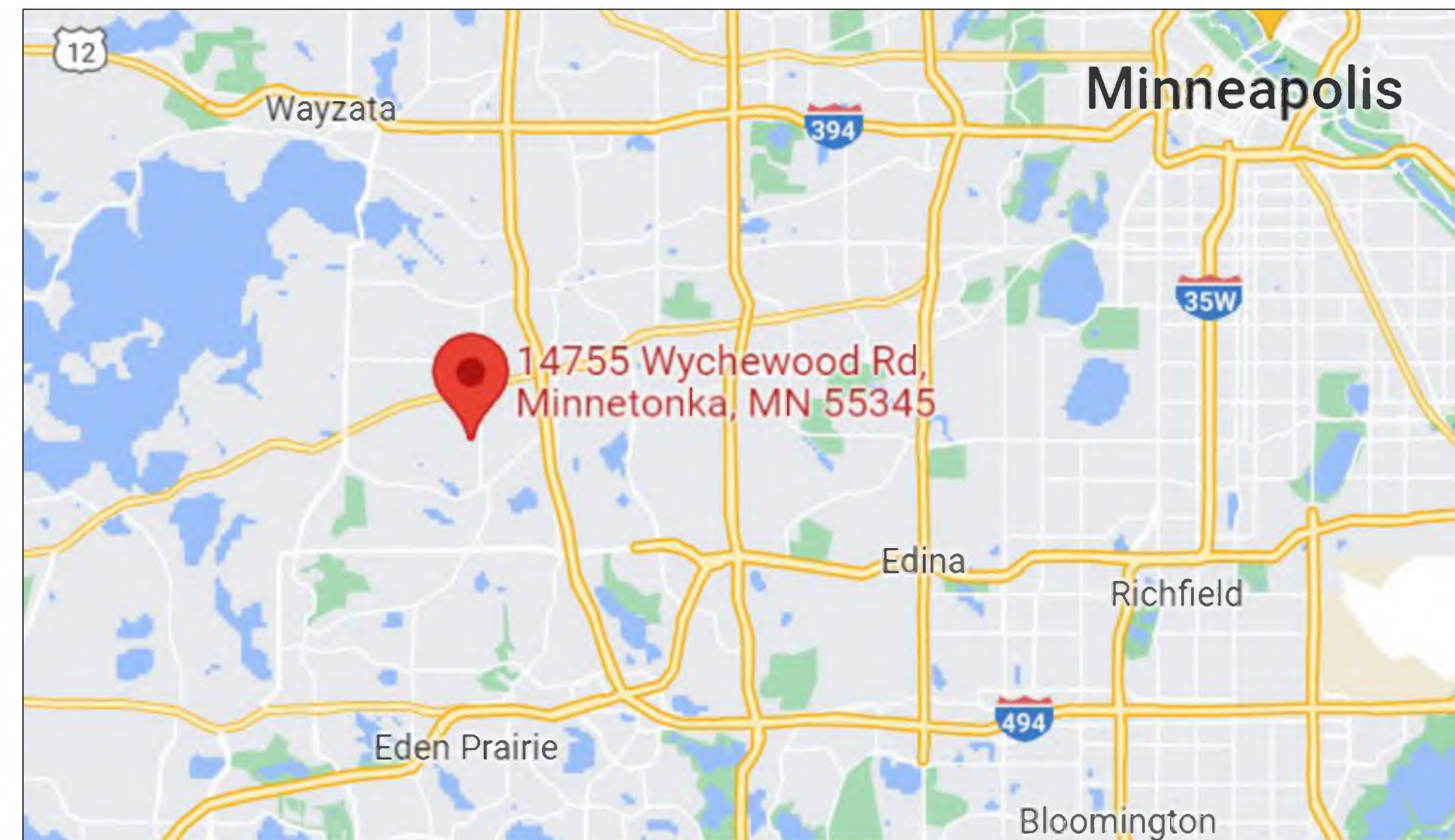
JCI Construction
2200 Winfield Ave.
Golden Valley, MN 55422
Contact:
Chris Johnson
612.310.4276
jjconstruction@q.com

STRUCTURE

PRIEVE ENGINEERING
Contact : NATE E. PRIEVE
612.203.2745

PROJECT SCOPE

TOTAL GUT OF ENTIRE HOUSE. 9'-0"X30'-0" 2ND STORY ADDITION ON WEST SIDE OF THE HOUSE AND ADD 8'-0"X 24'-0" DECK AT UPPER LEVEL ON EAST SIDE OF THE HOUSE. REPLACE ALL WINDOWS. UPDATE MECHANICAL, ELECTRICAL AND PLUMBING TO BRING UP TO CURRENT CODES



**LOCATION PLAN
FOM GOOGLE MAP**

CITY STAMP:



PROJECT DESIGNER

mumtaz anwar
assoc.ala + leed ap
principal
612.227.9293
mumtaz@montagedesign.com

ARCHITECT OF RECORD

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF STATE OF MINNESOTA

Name:

Signature:

Lic. #: 23018

Date

ENGINEER OF RECORD

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND THAT I AM A DULY LICENSED ENGINEER UNDER THE LAWS OF STATE OF MINNESOTA

Name: XXXX

Signature:

Lic. #: 23018

Date

Client

CHRIS JOHNSON
2200 WINFIELD AVENUE
GOLDEN VALLEY, MN 55422
612.310.4276
jjconstruction@q.com

Project Name:

CHRIS JOHNSON RESIDENCE

14755 WYCHEWOOD ROAD
MINNETONKA ROAD, MN 55345

Project

**INTERIOR REMODEL &
2ND STORY ADDITION**

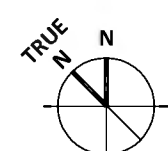
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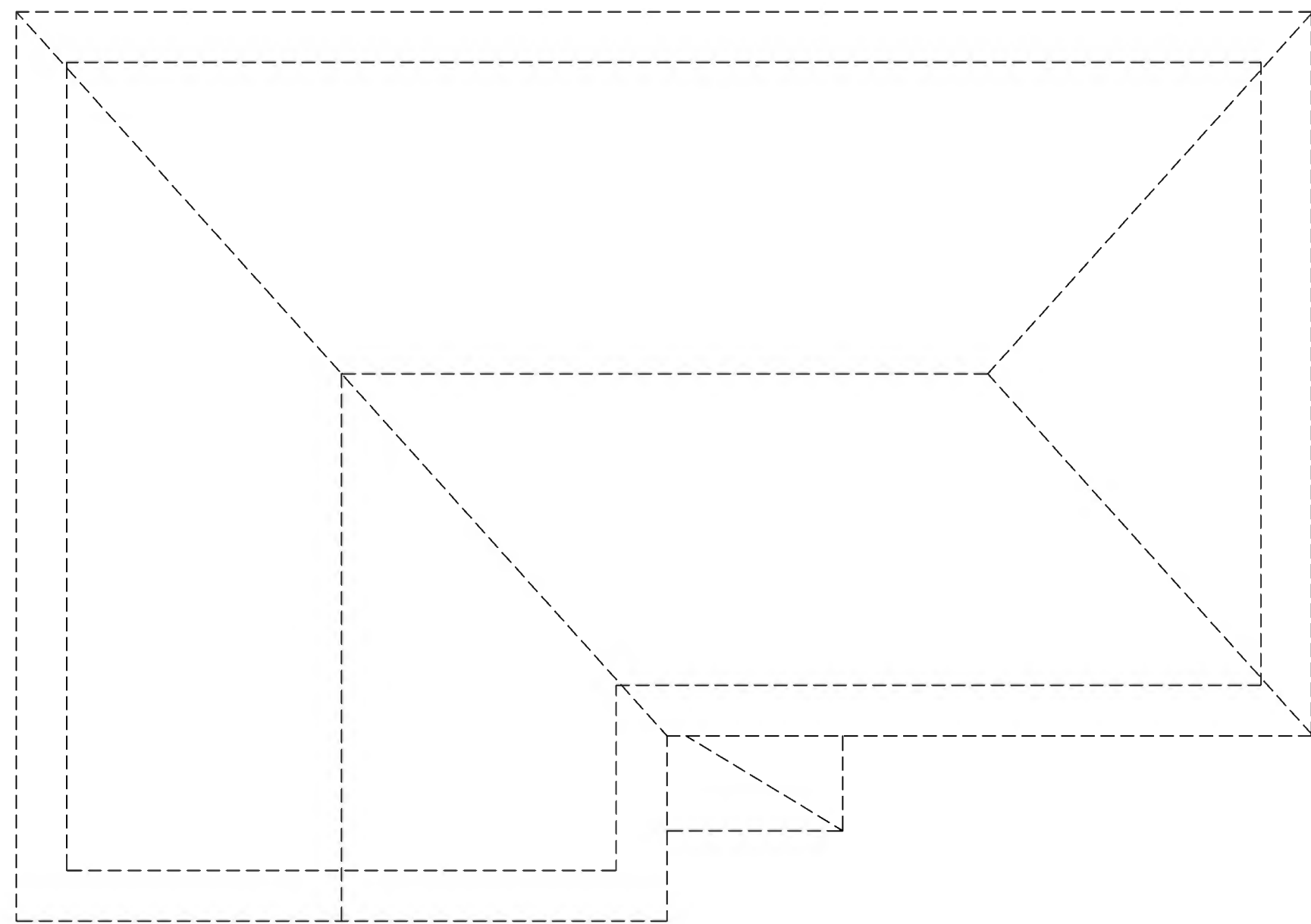
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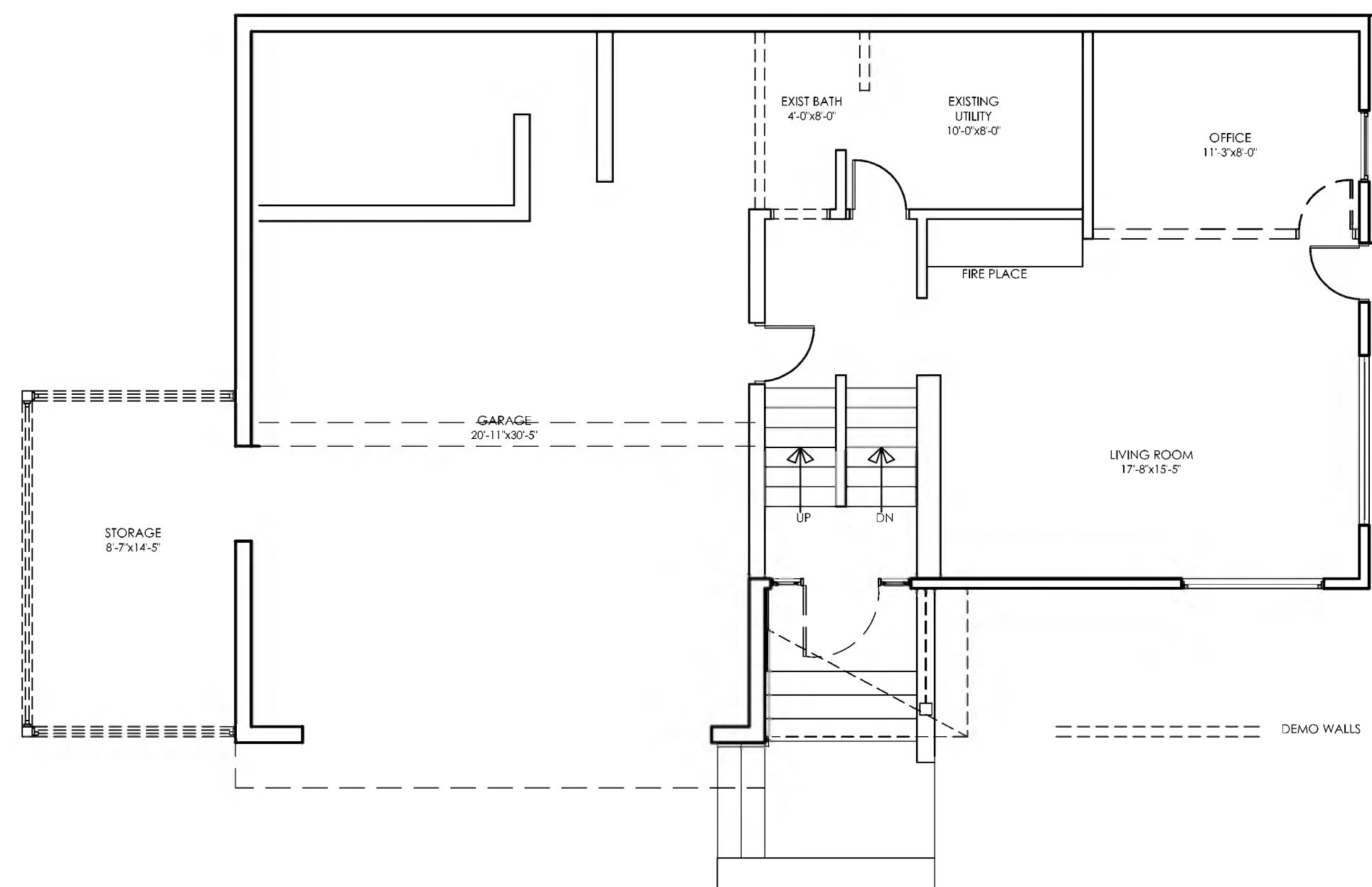
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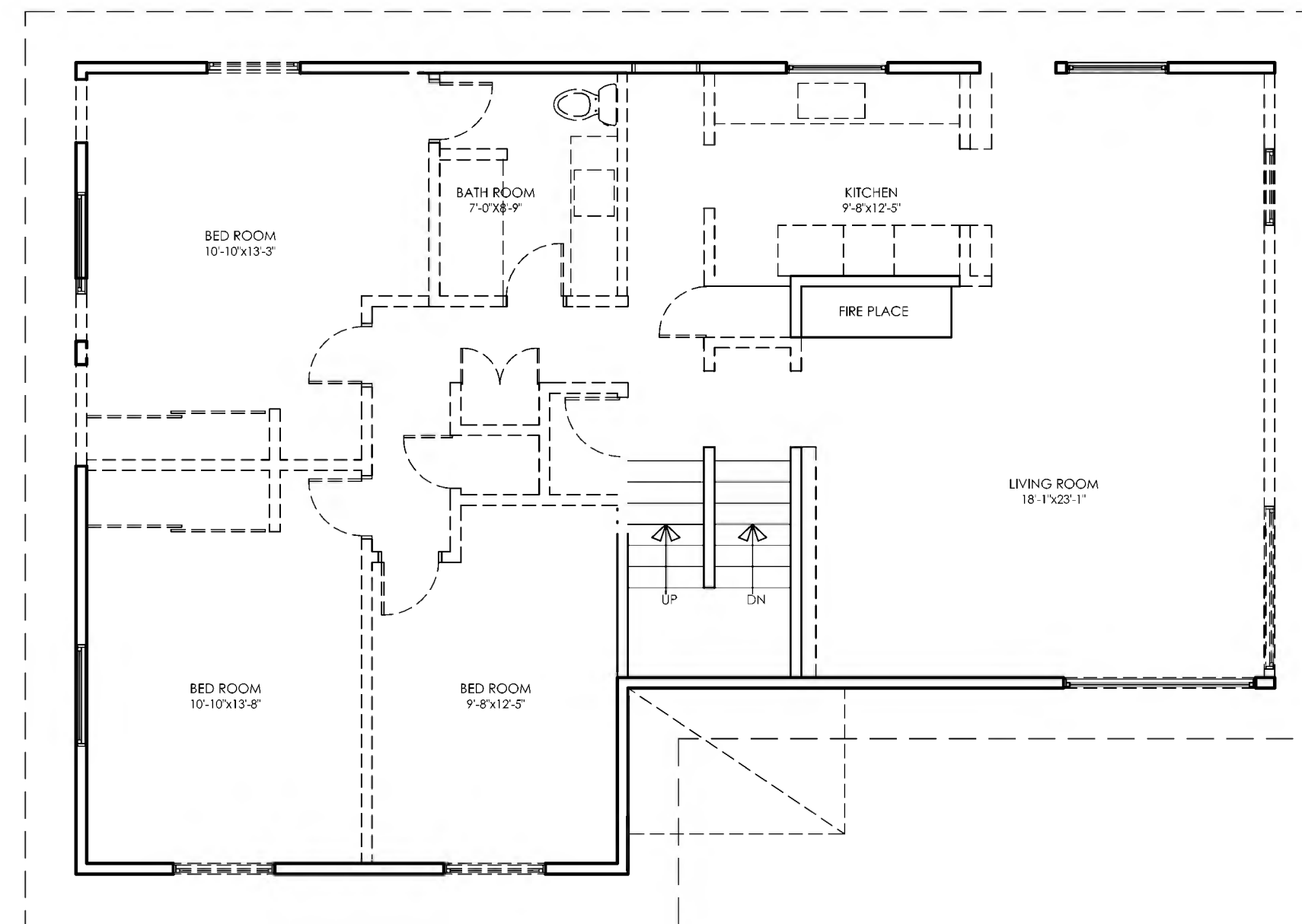
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DEMOS
DEMO ROOF PLAN
 SCALE: 1'-0"=3/16"



DEMOS
EXISTING & DEMO PLAN - LOWER LEVEL
 SCALE: 1'-0"=3/16"



DEMOS
EXISTING & DEMO PLAN - UPPER LEVEL
 SCALE: 1'-0"=3/16"

CITY STAMP:

Montage design
 sustainable architecture + interiors
 mdzinc.com
 mpls.mn.usa
 612.227.9293

PROJECT DESIGNER

mumtaz anwar
 assoc. aia + leed ap
 principal
 612.227.9293
 mumtaz@montagedesign.com

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 612.310.4276
 jcnconstruction@q.com

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INTERIOR REMODEL & 2ND STORY ADDITION

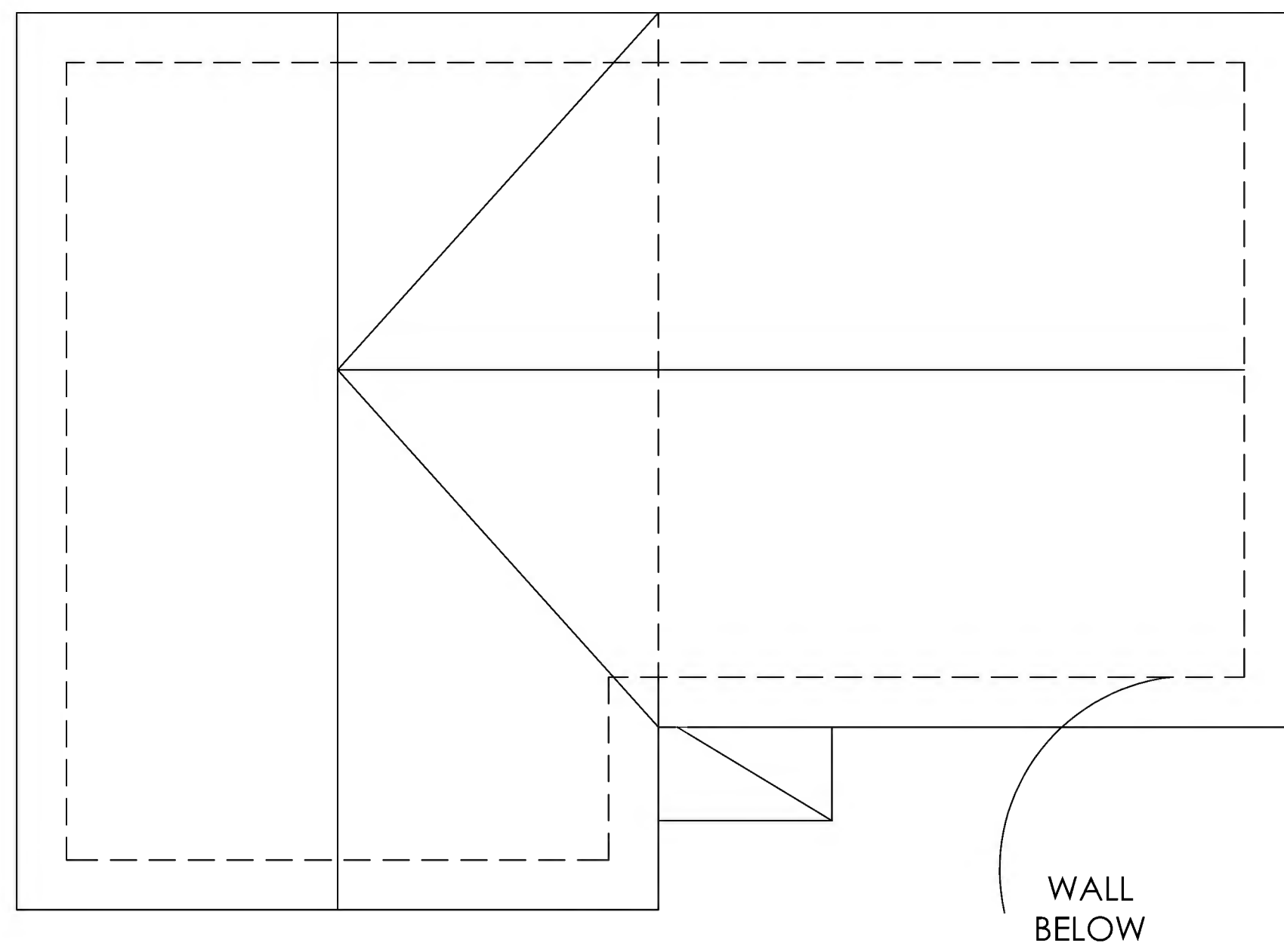
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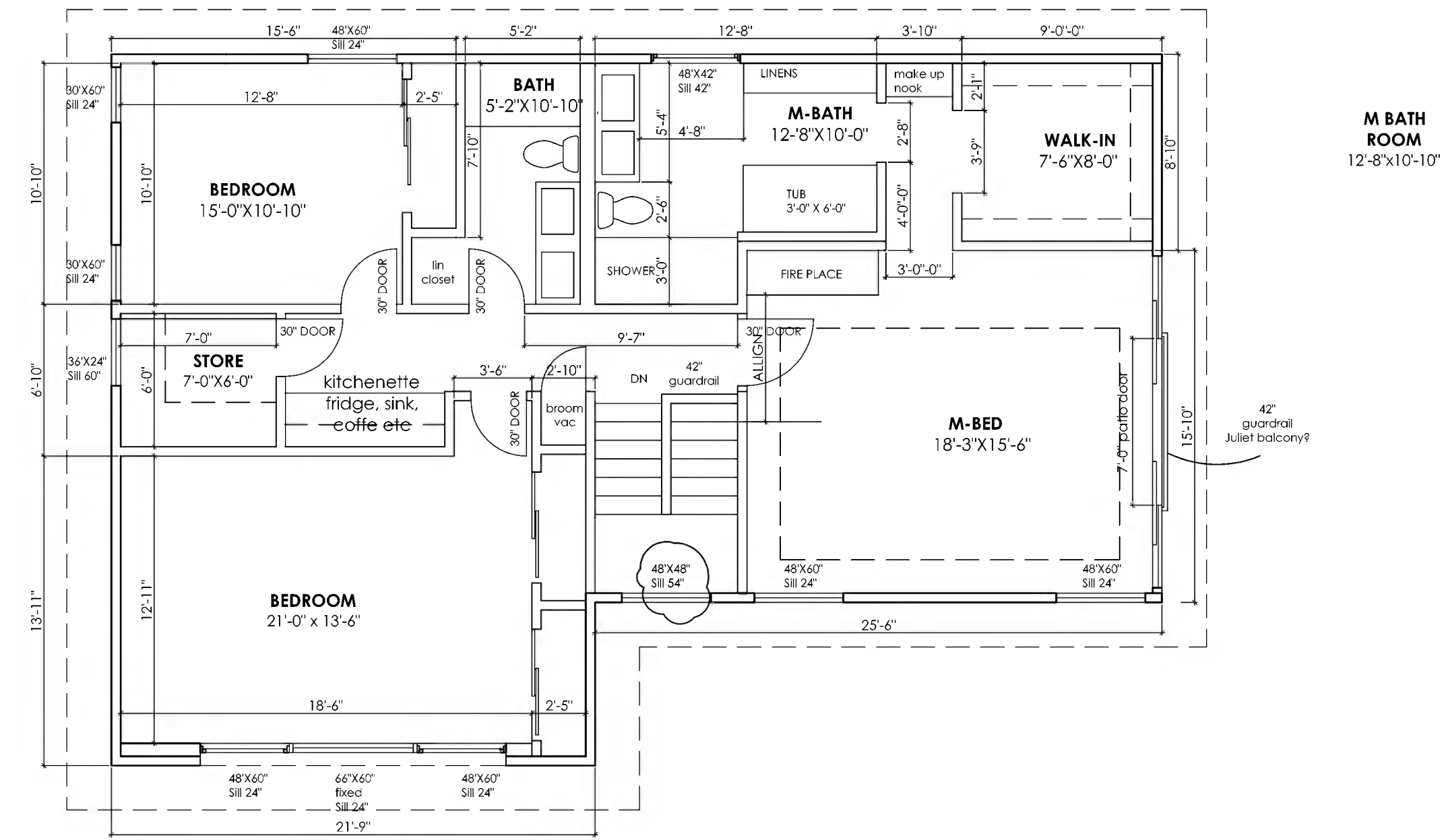
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**EXISTING & DEMO PLANS
 LOWER & UPPER LEVELS**

KEY PLAN:

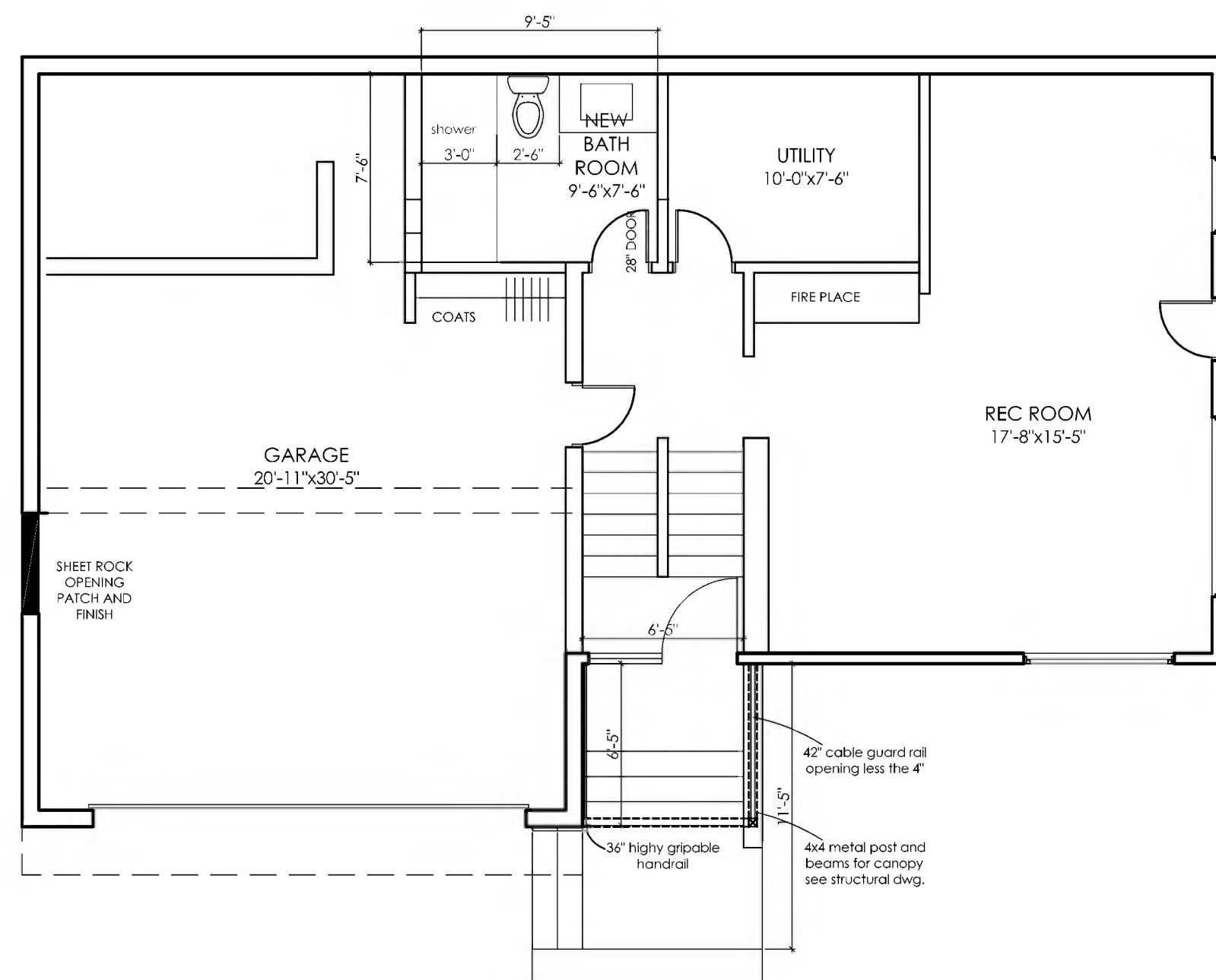




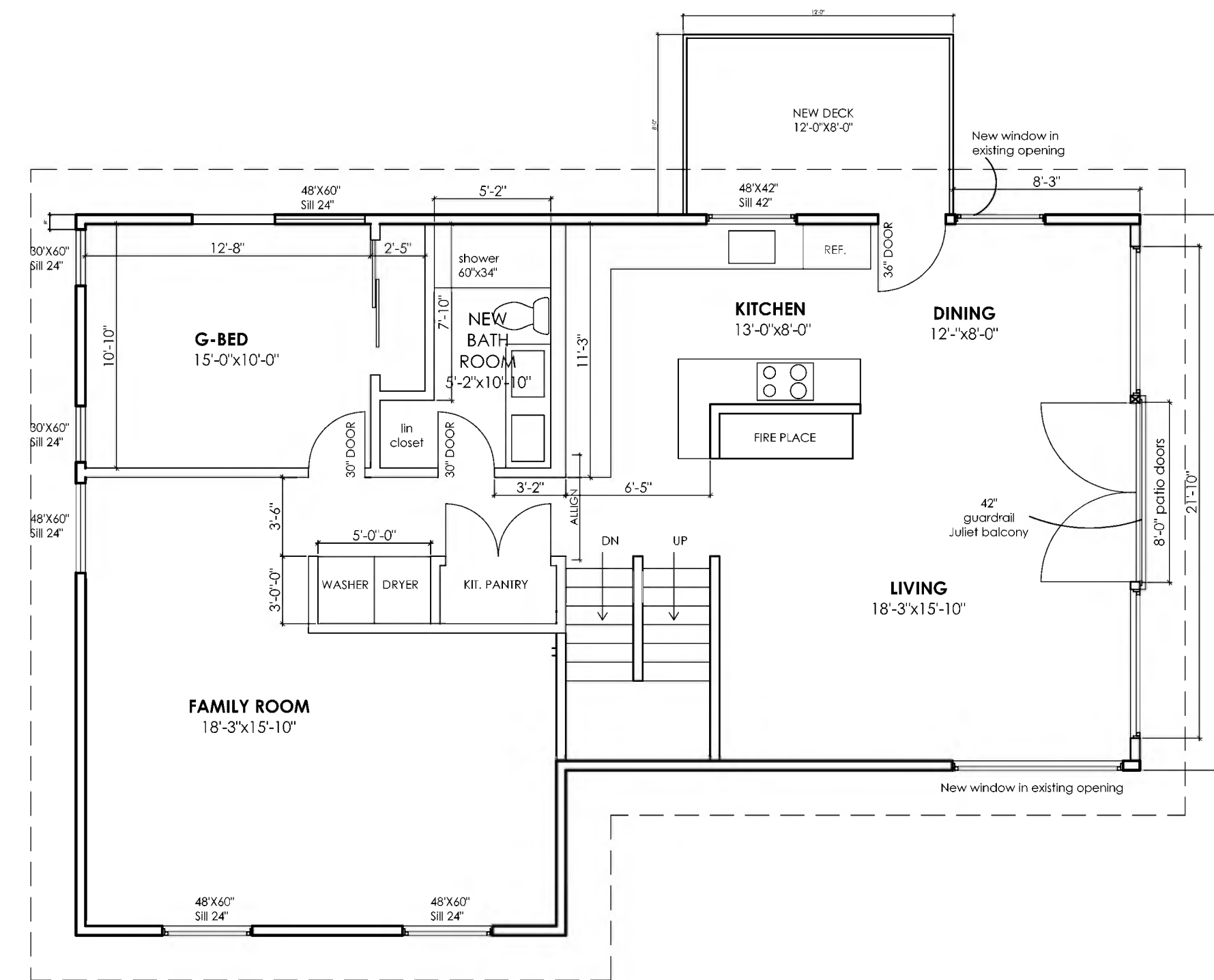
WALL BELOW



PROPOSED 2ND FLOOR PLAN
SCALE: 1'-0"=3/16"



PROPOSED PLAN - LOWER LEVEL
SCALE: 1'-0"=3/16"



PROPOSED PLAN - UPPER LEVEL
SCALE: 1'-0"=3/16"

CITY STAMP:

Montage Design
sustainable architecture + interiors
mdzinc.com
mpls.mn.usa
612.227.9293

PROJECT DESIGNER

mumtaz anwar
assoc. aia + leed ap
principal
612.227.9293
mumtaz@montagedesign.com

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jjconstruction@e.com

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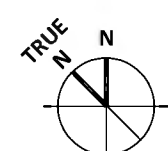
INTERIOR REMODEL & 2ND STORY ADDITION

| DATE | ISSUED / REVISIONS |
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Date:

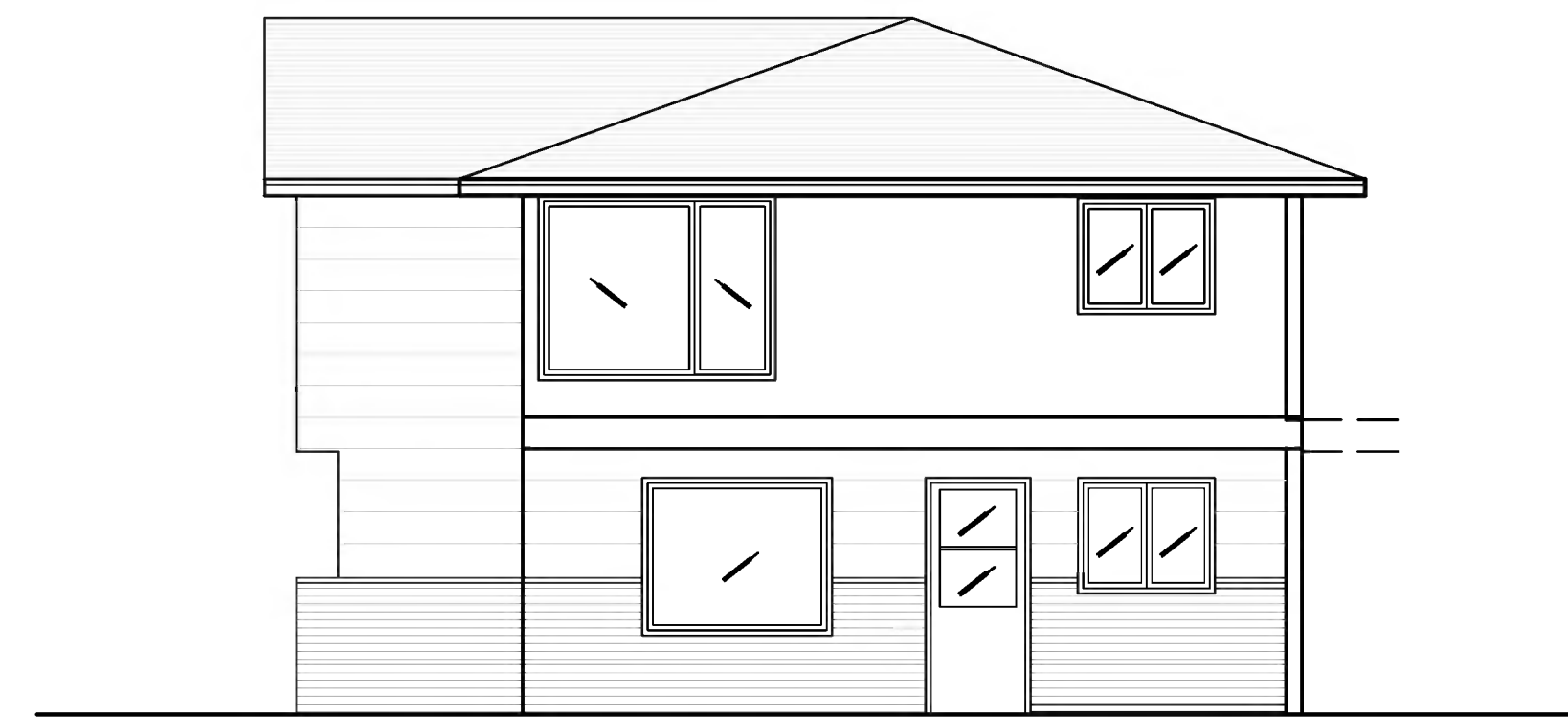
SHEET TITLE:
**PROPOSED PLANS
LOWER & UPPER LEVELS**

KEY PLAN:





EXISTING REAR ELEVATION
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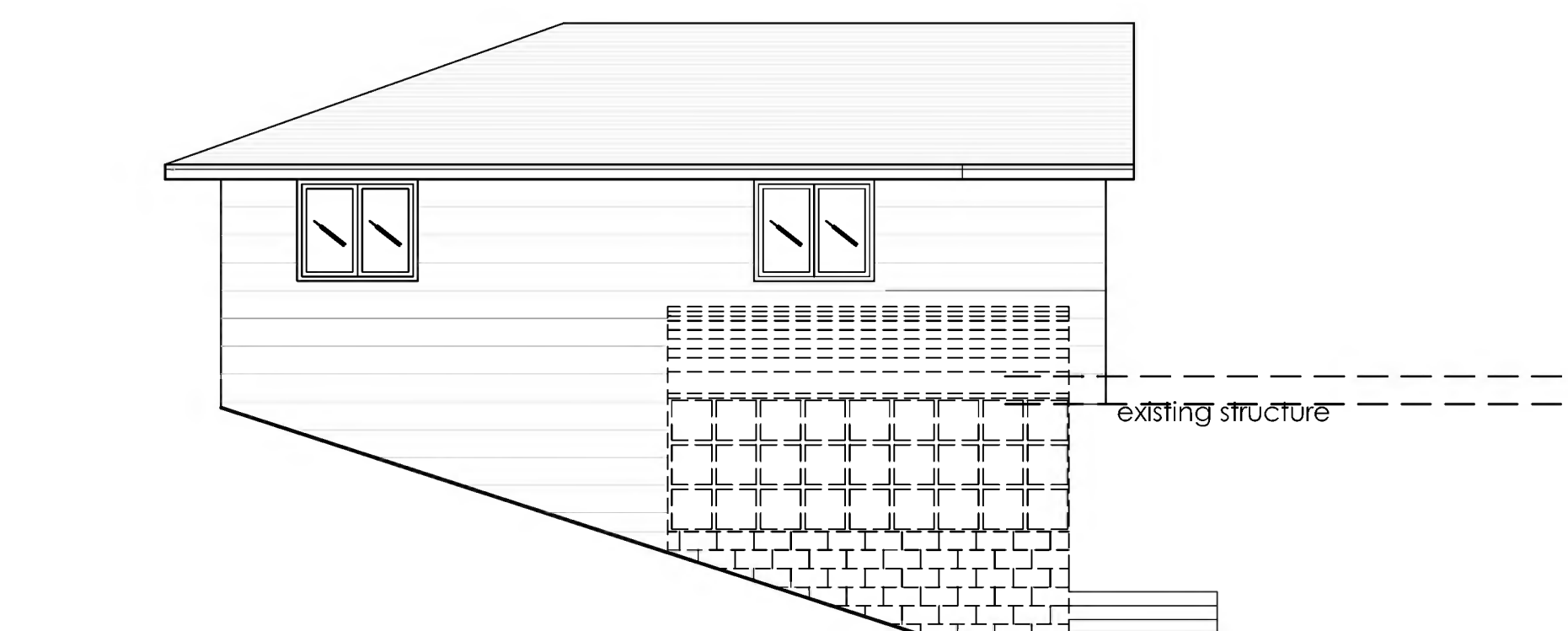


EXISTING RIGHT SIDE ELEVATION
SCALE: 1'-0"=3/16"

----- DEMO WALLS



EXISTING FRONT ELEVATION
SCALE: 1'-0"=3/16"



EXISTING LEFT SIDE ELEVATION
SCALE: 1'-0"=3/16"

CITY STAMP:

Montage Design
sustainable architecture + interiors
mdzinc.com
mpls.mn.usa
612.727.9293

PROJECT DESIGNER

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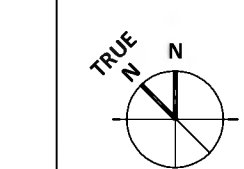
INTERIOR REMODEL & 2ND STORY ADDITION

| DATE | ISSUED / REVISIONS |
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| 12.12.2022 | |
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Date:

SHEET TITLE:
EXISTING ELEVATIONS

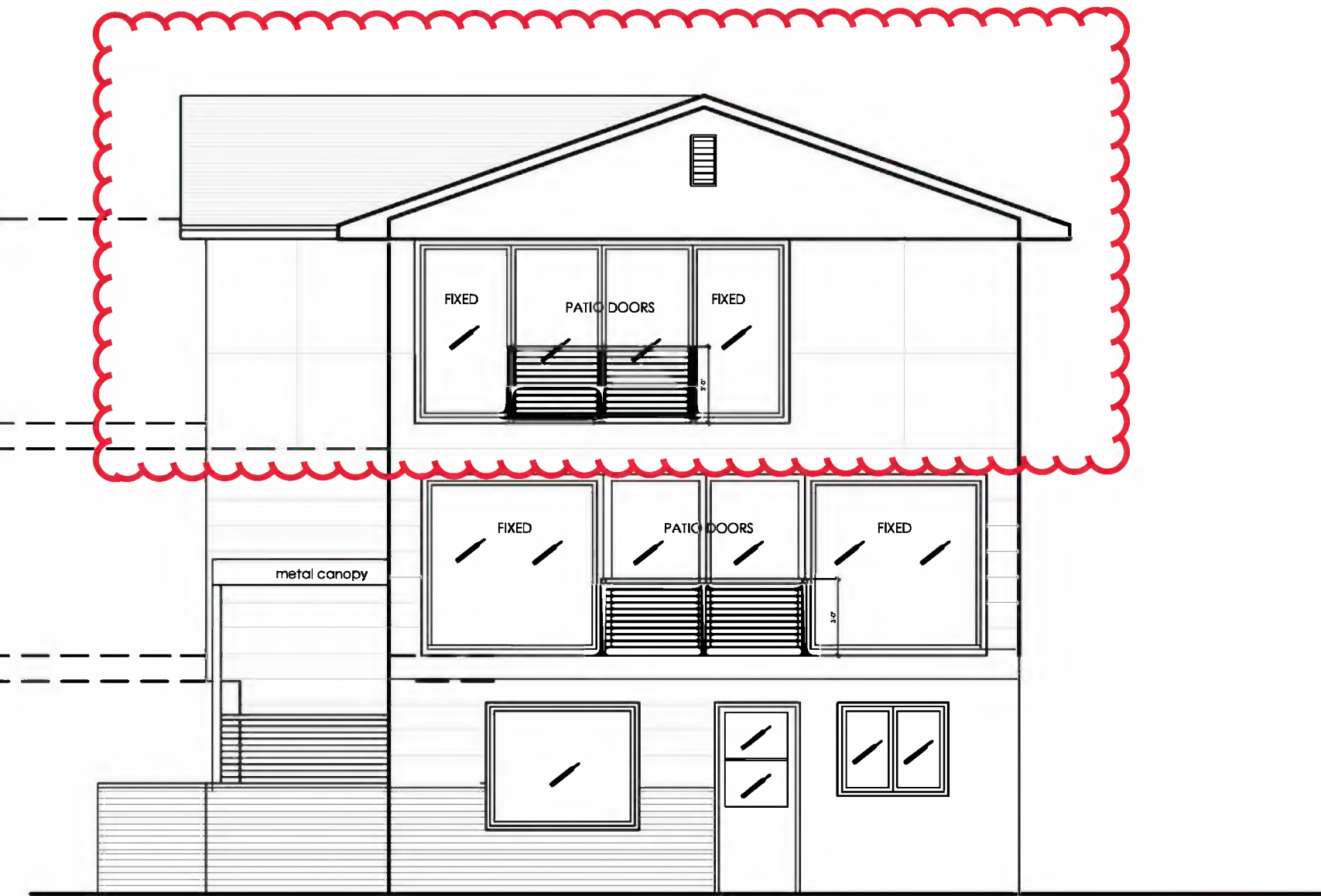
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Proposed Addition



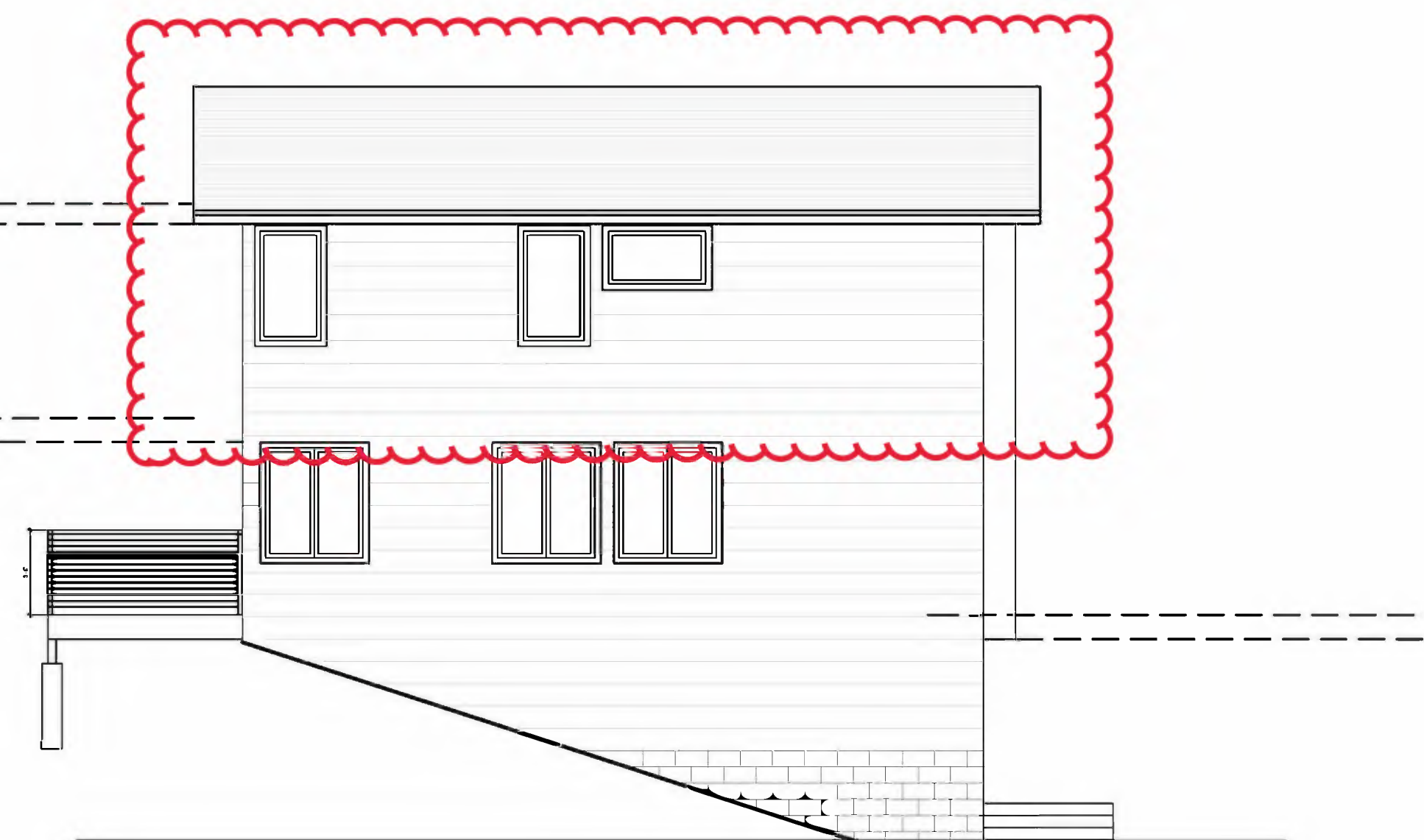
PROPOSED FRONT ELEVATION
SCALE: 1'-0"=3/16"



PROPOSED RIGHT SIDE ELEVATION
SCALE: 1'-0"=3/16"



PROPOSED REAR ELEVATION
SCALE: 1'-0"=3/16"



PROPOSED LEFT SIDE ELEVATION
SCALE: 1'-0"=3/16"

CITY STAMP:

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2200 WINFIELD AVENUE
GOLDEN VALLEY, MN 55422
612.310.4276
jcconstruction@q.com

Project Name:

CHRIS JOHNSON RESIDENCE

14755 WYCHEWOOD ROAD
MINNETONKA ROAD, MN 55345

Project

INTERIOR REMODEL &
2ND STORY ADDITION

| DATE | ISSUED / REVISIONS |
|------------|--------------------|
| 12.12.2022 | |
| | |
| | |

Date:

SHEET TITLE:

PROPOSED ELEVATIONS

KEY PLAN:



Planning Commission Resolution No. 2023-

**Resolution approving an expansion permit for a living space addition
at 14755 Wychewood Road**

Be it resolved by the Planning Commission of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 The subject property is located at 14755 Wychewood Road. It is legally described as:

That part of the South 1/2 of the Southeast 1/4 of the Southwest 1/4 of the Northeast 1/4 of Section 28, Township 117, Range 22, lying North of the South 200 feet thereof and lying Westerly of a line bearing South 47 degrees 23 minutes 38 seconds West from a point in the distant 315.13 feet Easterly (measured along said North line) from the Northwest corner thereof. For purposes of this description, said North line is assumed to bear South 88 degrees 56 minutes 01 seconds East, Hennepin County, Minnesota.

1.02 The subject property was improved with a single-family residence in 1961, prior to the adoption of the city's zoning and floodplain ordinances. The principal structure is nonconforming, as it encroaches into the currently required rear yard and floodplain setbacks.

| | | REQUIRED | EXISTING |
|-------------------|------------|-----------------|-----------------|
| HOUSE | Front Yard | 35 ft. | 120+ ft. |
| | Side Yard | 10 ft. | 24.5 ft. |
| | Rear Yard | 40 ft. | 18 ft. |
| Floodplain | Setback | 20 ft. | 0 ft. |

1.03 The property is subject to City Code §300.24 Subd. 13 regarding nonconforming uses in the floodplain district. Under this ordinance, any change to the nonconforming may not increase in nonconformity, increase the flood damage potential, and, over the life of the structure, any structural alterations and additions may not exceed 50 percent of the current market value of the structure. The structure is currently valued at \$152,000; 50 percent of this value is \$76,000.

- 1.04 The property owner, Chris Johnson, is proposing a roughly 1,300-square-foot living space addition to the home. The addition would create a second level over the existing footprint of the house. The addition would maintain the existing nonconforming rear yard setback.
- 1.05 Minnesota Statute §462.357 Subd.1(e)(b) allows a municipality, by ordinance, to permit an expansion of nonconformities.
- 1.06 City Code §300.29 Subd.3(g) allows expansion of a nonconformity only by variance or expansion permit.
- 1.07 City Code §300.29 Subd.7(c) authorizes the planning commission to grant expansion permits.

Section 2. Standards.

- 2.01 City Code §300.29 Subd.7(c) states that an expansion permit may be granted but is not mandated when an applicant meets the burden of proving that:
 - 1. The proposed expansion is a reasonable use of the property, considering such things as functional and aesthetic justifications for the expansion; adequacy of off-site parking for the expansion; absence of adverse off-site impacts from such things as traffic, noise, dust, odors, and parking; and improvement to the appearance and stability of the property and neighborhood.
 - 2. The circumstances justifying the expansion are unique to the property, are not caused by the landowner, are not solely for the landowner's convenience, and are not solely because of economic considerations; and
 - 3. The expansion would not adversely affect or alter the essential character of the neighborhood.

Section 3. Findings.

- 3.01 The proposal meets the expansion permit standards outlined in City Code:
 - 1. Reasonableness: The addition would not intrude further into the existing setback. The proposed addition would expand vertically upon the existing nonconforming rear yard setback.
 - 2. Unique Circumstance: The subject property contains an existing nonconforming structure. The existing structure abuts the floodplain elevation and encroaches on the current city code rear yard and floodplain setbacks. No addition could be made to the structure without some type of variance.

3. Neighborhood Character: The proposed addition would not negatively impact the existing character of the neighborhood. The proposed addition is for a second floor which would not increase the nonconformity of the property or the potential for flood damage. Several properties on Wychewood have reduced setbacks due to existing floodplain nonconformities.

Section 4. Planning Commission Action.

4.01 The planning commission approves the above-described expansion permit based on the findings outlined in Section 3 of this resolution. Approval is subject to the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
 - The survey, latest revision, dated Jan. 3, 2023
 - The building plans and elevations, dated Dec. 12, 2022
2. Prior to issuance of a building permit:
 - a) A copy of this resolution must be recorded with Hennepin County.
 - b) The applicant must provide a valuation of the work, as required on the building permit application. The valuation must not exceed \$76,000.
 - c) The applicant must confirm the low floor elevation of the addition. The minimum low floor elevation is 1009.1'.
 - d) Submit a cash escrow in an amount to be determined by city staff. At the time of this approval, the amount is \$1,000. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document, the builder and property owner will acknowledge the following:
 - The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
 - If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
 - e) The applicant must confirm any proposed tree removals. A tree mitigation plan may be required.

- f) Install a temporary rock driveway, erosion control, tree, and wetland protection fencing, and any other measured as identified by the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
- 3. This expansion permit will end on Dec. 31, 2024, unless the city has issued a building permit for the project covered by this variance or has approved a time extension.

Adopted by the Planning Commission of the City of Minnetonka, Minnesota, on March 30, 2023.

Josh Sewall, Chairperson

Attest:

Fiona Golden, Deputy City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Planning Commission of the City of Minnetonka, Minnesota, at a duly authorized meeting held on March 30, 2023.

Fiona Golden, Deputy City Clerk

MINNETONKA PLANNING COMMISSION
March 30, 2023

| | |
|--------------------------|---|
| Brief Description | Items concerning Mega Pickle and Pong at 17585 Hwy 7: <ul style="list-style-type: none">• Conditional use permit for a restaurant;• Conditional use permit, with a variance, for an outdoor eating area;• Interim use permit for outdoor entertainment; and• Site and building plan review |
| Recommendation | Recommend the city council approve the request. |

Background

The subject property is located at the southeast corner of the County Road 101 and Hwy 7 intersection. The 12-acre site is occupied by a roughly 120,000-square-foot commercial building and associated parking lot.

In 2012, the city approved several items for The Big Thrill Factory – a multi-purpose entertainment facility – to occupy roughly 39,000 square feet of the commercial building. The use included a number of year-round activities within the building and several outdoor seasonal activities on the south side of the building. The use required: conditional use permits for the restaurant use and outdoor eating areas; (2) setback variance for the outdoor patio from residential properties; (3) an interim use permit for the outdoor entertainment within a commercial zoning district; and (4) final site and building plan.¹

The Big Thrill Factory received subsequent approvals to reconfigure the outdoor area and to extend the hours of the outdoor attractions to 11 p.m. on Fridays and Saturdays. As ultimately approved, the interim use permit would expire when the property is redeveloped, and any changes to the outdoor attractions would require review and approval by the city council. The Big Thrill Factory closed in 2020; all land use approvals have expired while the space has remained vacant.

¹ By Section 300.05, Subd. 1 an interim use permit is a temporary use of a property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. The purposes of interim uses are:

1. To allow a use for a temporary period of time until a permanent location is obtained or while a permanent location is under construction;
2. To allow a use that is presently judged acceptable by the City Council but with anticipated development or redevelopment will not be acceptable in the future or will be replaced in the future by a permitted or conditional use allowed within the respective district.
3. To allow a use that is seasonal in nature; or
4. To allow a use for a limited period of time that reasonably uses the property where it is not reasonable to use in a manner otherwise provided in the zoning ordinance or comprehensive plan.

Proposal

Mega Pickle and Pong Minnetonka, LLC is proposing to occupy the former Big Thrill Factory space. The interior would be remodeled to accommodate ten fenced indoor pickleball courts, a kitchen, a concession stand, and seating areas. The outdoor area would be reconfigured to accommodate a fire pit, lawn games, pickleball courts, and seating areas. Minor changes to the exterior façade are proposed to blend into the existing mall and remove the “gears” associated with the former tenant.

The proposal requires the following:

1. Conditional use permit for a restaurant;
2. Conditional use permit for an outdoor eating area, with a variance to reduce the outdoor seating setback from surrounding residential properties;
3. Interim use permit for outdoor entertainment uses within commercial zoning districts; and
4. Site plan review for the outdoor area.

Primary Questions and Analysis

A land use proposal is comprised of many details. In evaluating a proposal, staff first reviews these details and then aggregates them into a few primary questions or issues. The following outlines both the primary questions associated with the proposal and the staff's findings:

- **Is the restaurant's use appropriate for the site?**

Yes. The new restaurant and concession stand would replace the previous restaurant and would have seating for 60 people. The restaurant would meet the general and specific conditional use permit standards for restaurants outlined in the city code. It is not anticipated that the proposed restaurant would increase the parking demand of the site, as it is not considered a “destination” but rather would serve pickleball players/existing site visitors.

- **Is the outdoor seating area and variance reasonable?**

Yes. But for the setback variance, the outdoor seating area would meet the general and specific conditional use permit standards for outdoor eating areas as it would be:

1. Located adjacent to a building entrance and within a cordoned area as required by the requested liquor license and allowed by building codes;
2. Located to not interfere with site circulation and parking areas;
3. Required to have litter pick-ups; and
4. Not allowed speakers or audio equipment audible from adjacent residential parcels.

The outdoor eating area would be located 195 feet from the adjacent residential property line, where 200 is required. Staff finds the setback request reasonable, as an additional 250 feet of vegetation, topography, and Purgatory Creek would provide additional buffering to the nearest residential structure. A full list of standards and staff's findings for both the conditional use permit and variance are included in the "Supporting Information" section of this report.

- **Is the interim use permit and the site plans for the outdoor area appropriate for the site?**

Yes. The plans indicate that the fenced area south of the building, formerly used for outdoor attractions, would be reconfigured to accommodate lawn games, fire pits, two outdoor pickleball courts, and seating.

Generally, the outdoor area would be:

1. Located more than 100 feet away from the nearest residential property line;
2. Located so as not to interfere with pedestrian or vehicular circulation;
3. Located in an area that was previously occupied by outdoor entertainment; and
4. Required to conform to nuisance provisions of the ordinance, including the noise and lighting regulations.

A full list of interim use permit and site plan standards and findings can be found in this report's "Supporting Information" section.

Staff Recommendation

Recommend that the city council adopt the following at 17585 Hwy 7:

1. Resolution approving a conditional use permit for a restaurant with intoxicating liquor and an outdoor eating area, with setback variance from 200 feet to 195 feet.
2. Resolution approving an interim use permit and site plans for an outdoor entertainment area.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner

Supporting Information

Planning

| SURROUNDING LAND USES | | | |
|------------------------------|----------------------------|---------------|-------------------------------------|
| | Land Use | Zoning | Guided by the 2030 comp plan |
| North | Restaurant and Hwy 7 | B-2 | Mixed-use |
| East | Single household dwellings | R-1 | Low density residential |
| South | Office and Kelly Park | B-1 and R-1 | Office and open space |
| West | Cty Rd 101 and retail | B-2 | Mixed-use |
| SUBJECT PROPERTY | | | |
| | Retail | B-2 | Mixed-use |

CUP Standards

The proposal would meet the general conditional use permit standards as outlined in City Code §300.16 Subd.2:

1. The use is consistent with the intent of this ordinance;
2. The use is consistent with the goals, policies, and objectives of the comprehensive plan;
3. The use does not have an undue adverse impact on governmental facilities, utilities, services, or existing or proposed improvements; and
4. The use does not have an undue adverse impact on public health, safety, or welfare.

The proposed restaurant having on-sale intoxicating liquor would meet the general conditional use permit standards as outlined in City Code §300.21 Subd. 4(i):

- 1) Parking shall be in compliance with the requirements of section 300.28 of this ordinance;

Finding: The existing parking can accommodate the proposed restaurant use.

- 2) Shall only be permitted when it can be demonstrated that operation will not significantly lower the existing level of service as defined by the Institute of Traffic Engineers on streets and intersections; and

Finding: The proposed restaurant is not intended to be a "destination," but rather, it would accommodate and serve pickleball players and existing site visitors. Staff does not anticipate that the restaurant area itself would not generate an increase in traffic.

- 3) Shall not be located within 100 feet of any low-density residential parcel or adjacent to medium or high-density residential parcels. The city may reduce separation requirements if the following are provided:

- a. landscaping and berming to shield the restaurant use;
- b. parking lots not located in proximity to residential uses; and
- c. lighting plans which are unobtrusive to surrounding uses.

Finding: The restaurant space would be located within an existing and enclosed building. The building is located 80 feet from the adjacent residential property, and the restaurant space within the building would be 120 feet from the residential property line.

The proposed outdoor eating area would meet the general conditional use permit standards as outlined in City Code §300.21 Subd. 4(p):

- 1) Shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required, and the enclosure shall not be interrupted; access shall be only through the principal building;

Finding: The applicant is also applying for a liquor license. As a condition of approval, the outdoor area must be enclosed as required by the license and subject to the building code.

- 2) Shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other method of screening acceptable to the city;

Finding: A variance to reduce the setback to 195 feet is required. The findings to support the variance follow this section.

- 3) Shall be located and designed so as not to interfere with pedestrian and vehicular circulation;

Finding: The outdoor eating area would not interfere with pedestrian and vehicular circulation.

- 4) Shall not be located to obstruct parking spaces. Parking spaces may be removed for the use only if parking requirements specified in section 300.28 are met;

Finding: The outdoor eating area would not result in the loss of any parking space, as it would be located within an area previously occupied by an outdoor eating area.

- 5) Shall be located adjacent to an entrance to the principal use;

Finding: The outdoor area would have access via two entrances from the south side of the building.

- 6) Shall be equipped with refuse containers and periodically patrolled for litter pick-up;

Finding: This has been added as a condition of approval.

- 7) Shall not have speakers or audio equipment which is audible from adjacent parcels; and

Finding: This has been added as a condition of approval.

- 8) Shall be located in compliance with building setback requirements.

Finding: The outdoor area is setback more than 35 feet.

Setback Variance

By City Code Sec. 300.07, Subd. 1, a variance may be granted from the requirements of this ordinance:

- 1) A variance is only permitted when it is in harmony with the general purposes and intent of the ordinance and when the variance is consistent with the comprehensive plan.

Finding: The variance would be in general harmony with the intent of the zoning ordinance and comprehensive plan. The intent of the setback is to ensure that the outdoor eating area would not have negative impacts on adjacent residential properties. The setback is for a five-foot reduction in setback; further, existing vegetation, pedestrian trail, and Purgatory Creek would provide additional screening of the area.

- 2) A variance may be granted when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean that the property owner proposes to use the property in a reasonable manner not permitted by this ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance is granted would not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

Finding: The proposal is:

Reasonable: The area has previously been used as an outdoor eating area by The Big Thrill Factory and as an outdoor sales area by Kmart. The outdoor seating area would be smaller than the

previous area and would be reasonably screened from adjacent properties by a public trail, Purgatory Creek, fencing, nearly 100 feet of existing vegetation, and landscaping.

Circumstance unique to the property: While having a commercial property abutting a residential property is not unique, the amount of separation between the uses by existing features between the uses is.

Character of the locality: The requested variance would not alter the character of the commercial/residential character of the area. The five-foot intrusion into the setback would not be apparent.

IUP standards

The proposal would comply with the general interim use permit standards in City Code Sec. 300.05, Subd. 5:

- a) The general performance standards in section 300.16, subd. 2 will be met;
- b) The use will not delay anticipated development or redevelopment of the site;
- c) The use will not be in conflict with any provisions of the city code on an ongoing basis;
- d) The use will not adversely affect the adjacent property, the surrounding neighborhood, or other uses on the property where the use will be located;
- e) The property on which the use will be located is currently in compliance with all applicable city code standards;
- f) The use is allowed as an interim use in the applicable zoning district;
- g) The date or event that will terminate the use can be identified with certainty;
- h) The use will not impose additional unreasonable costs on the public; and
- i) The applicant agrees in writing to any conditions that the city council deems appropriate for the use, including a requirement for a financial security to ensure the removal of all evidence of the use upon termination.

Finding: The outdoor area would meet the general interim use permit standards, would not delay the redevelopment of the site, would replace an area previously used for outdoor entertainment, is an

allowed use within the zoning district, and would comply with all the applicable codes.

The proposal would comply with the specific interim use permit standards outlined in City Code Sec. 300.18, Subd. 7 for outdoor entertainment:

1. Must be located:

- a) At least 100 feet from any residential property as measured from the closest property lines of the properties. The city may modify this distance based on the physical characteristics of the commercial and residential properties, such as existing sight lines, existing or proposed physical barriers, existing natural resources, and proposed landscaping;

Finding: The outdoor seating area is more than 100 feet from the residential property line. The area used for the outdoor pickleball courts, lawn games, and fire pit is beyond that. Additionally, existing physical characteristics would separate the area and the nearest residential structure.

- b) In proximity to a collector or arterial roadway as identified in the comprehensive plan or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

Finding: The property is in the southeast intersection of Hwy 7, a principal arterial, and County Road 101, a minor arterial expander.

- c) In a controlled or cordoned area; and

Finding: The proposal includes a fence around the outdoor area. Nonetheless, this has been included as a condition of approval.

- d) To not interfere with pedestrian or vehicular circulation;

Finding: The area would not interfere with pedestrian or vehicular circulation.

2. Must not use public address systems, speakers, or other audio equipment which is audible anywhere on a residential lot that is within 400 feet, and must not create noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity anywhere on a residential lot that is within 400 feet. The distance will be measured from the property lines of the source and receiving properties that are closest to each other. Whether the sound is unreasonably disturbing to a reasonable person will be determined under section 850.005;

Finding: This has been added as a condition of approval.

3. Must not occur between the hours of 10:00 p.m. and 7:00 a.m.;
and

Finding: This has been added as a condition of approval.

4. Must be in compliance with applicable health, public safety, and building code regulations as imposed by the city or other pertinent agency.

Finding: This has been added as a condition of approval.

SBP Standards

The proposal would comply with all site and building standards as outlined in City Code 300.27 Subd.5

1. Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;

Finding: The project has been reviewed by the city's planning, building, engineering, natural resources, fire, and public works staff. Staff finds it generally consistent with the city's development guides.

2. Consistency with this ordinance;

Finding: But for the requested variance, the proposal is consistent with the ordinance.

3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;

Finding: The proposal would reconfigure an area previously occupied by an outdoor entertainment area. No other changes to the site are proposed.

4. Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

Finding: The proposal would change the relationship between buildings and open spaces onsite.

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:

- a) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors, and the general community;

- b) the amount and location of open space and landscaping;
- c) materials, textures, colors, and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and
- d) vehicular and pedestrian circulation, including walkways, interior drives, and parking in terms of location and number of access points to the public streets, the width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement and amount of parking.

Finding: While landscaping would not be required as part of the project, the proposal would not significantly change site order, amount of open space, or circulation.

- 6. Promotion of energy conservation through design, location, orientation, and elevation of structures; the use and location of the glass in structures and the use of landscape materials and site grading; and

Finding: A building permit would be required, and features would need to comply with the energy code.

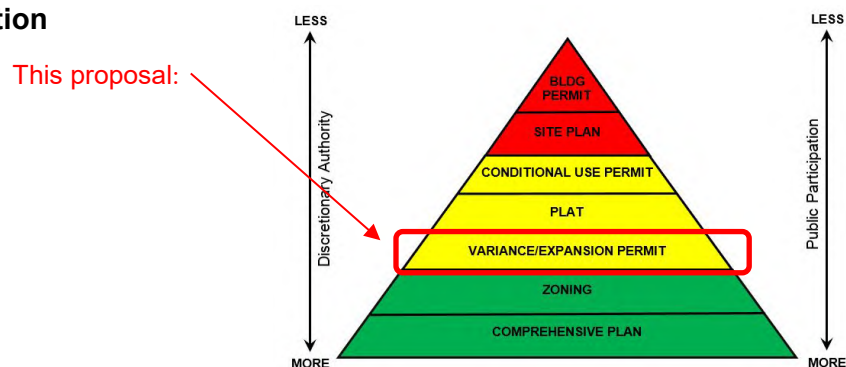
- 7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light, and air, and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Finding: Distance, vegetation, topography, and Purgatory Creek would screen the outdoor area from the adjacent residential properties.

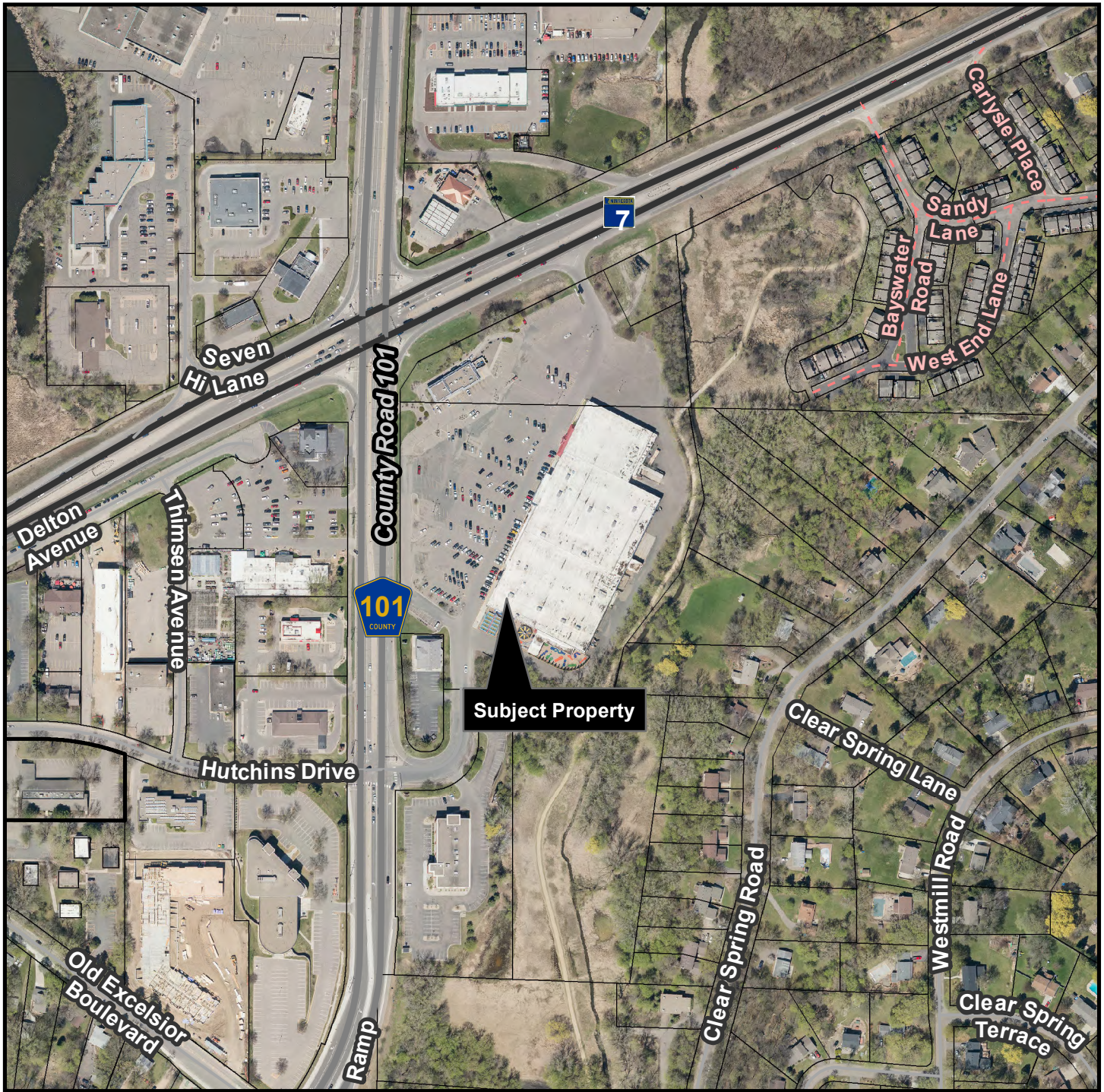
Natural Resources

Best management practices must be followed during the course of site preparation and construction activities. This would include the installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval, the applicant must submit a construction management plan detailing these management practices.

Pyramid of Discretion

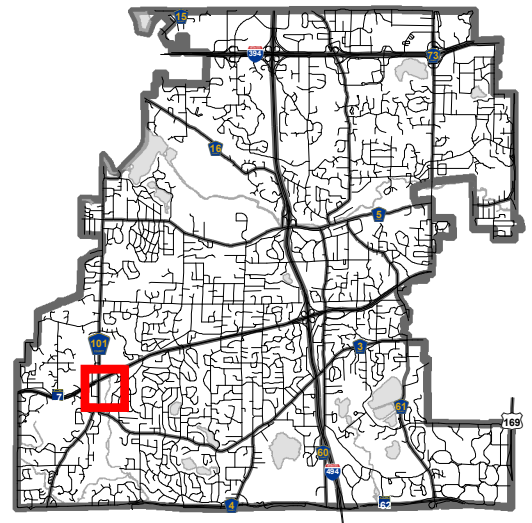


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| Voting Requirement | The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of a simple majority. The city council's approval requires an affirmative vote of five members, due to the setback variance. |
| Motion Options | The planning commission has three options: <ol style="list-style-type: none">1. Concur with the staff recommendation. In this case, a motion should be made recommending the city council adopt the resolution approving the request.2. Disagree with staff's recommendation. In this case, a motion should be made recommending the city council deny the request. This motion must include a statement as to why denial is recommended.3. Table the requests. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both. |
| Neighborhood Comments | The city sent notices to 48 area property owners and received no comments. |
| Deadline for Decision | June 8, 2023 |



Location Map

Project: Mega Pickle and Pong
Address: 17585 Hwy 7



Written Statement

We intend to use the inside of the facility as an indoor pickleball facility. Some of the services we will offer include recreational play, tournaments, private and group lessons, clinics, and private events. To increase revenue, we also intend to have a small retail pro shop and serve wine/beer and have a limited food service.

Outside the premises, we will have seating for socialization. During warmer months, we will also host lawn games for our patrons.

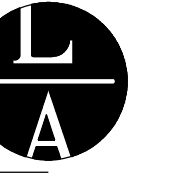
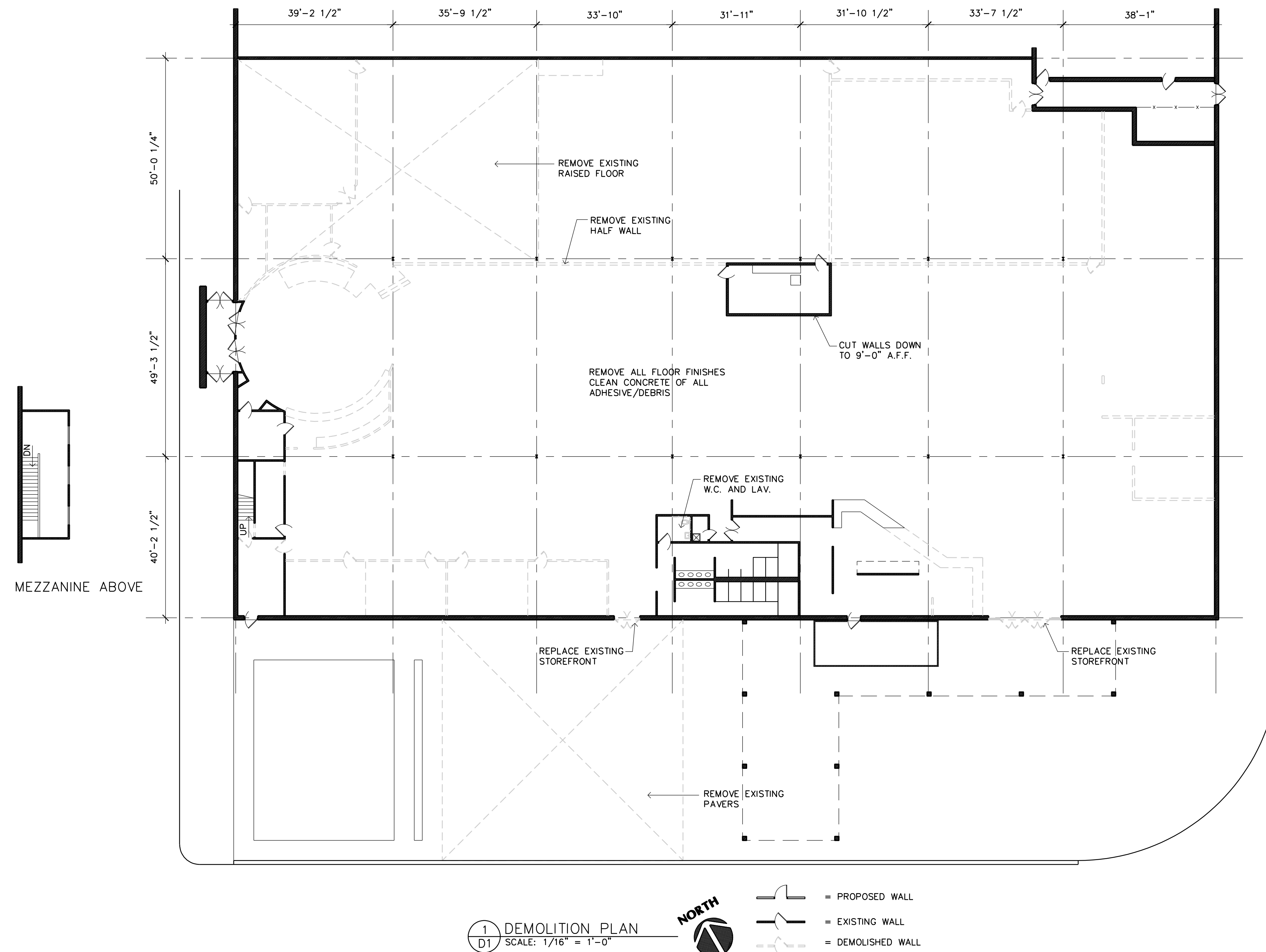
Pickleball is the fastest growing sport in America and popular among all ages. Pickleball is also a very social sport, easy to learn, and fun to play. We strongly believe that our business will be a positive addition to the Minnetonka community.

Please let me know if you need any additional information.

Rick Gray

Owner

Mega Pickle & Pong



LAMPERT ARCHITECTS

420 Summit Avenue
St. Paul, MN 55102
Phone: 763.755.1211 Fax: 763.757.2849
lampert@lampert-arch.com

ARCHITECT CERTIFICATION:
I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.

PRELIMINARY
NOT FOR CONSTRUCTION



6550 York Ave S, Suite 202
Edina, MN 55435
Ph: 612-655-7450

MEGA PICKLE AND PONG
17501 Highway 7, Minnetonka, MN

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Leonard Lampert Architects Inc.

Project Designer: JAMES B

Drawn By: JRB

Checked By: LL

Revisions

1/30/23 PRELIMINARY

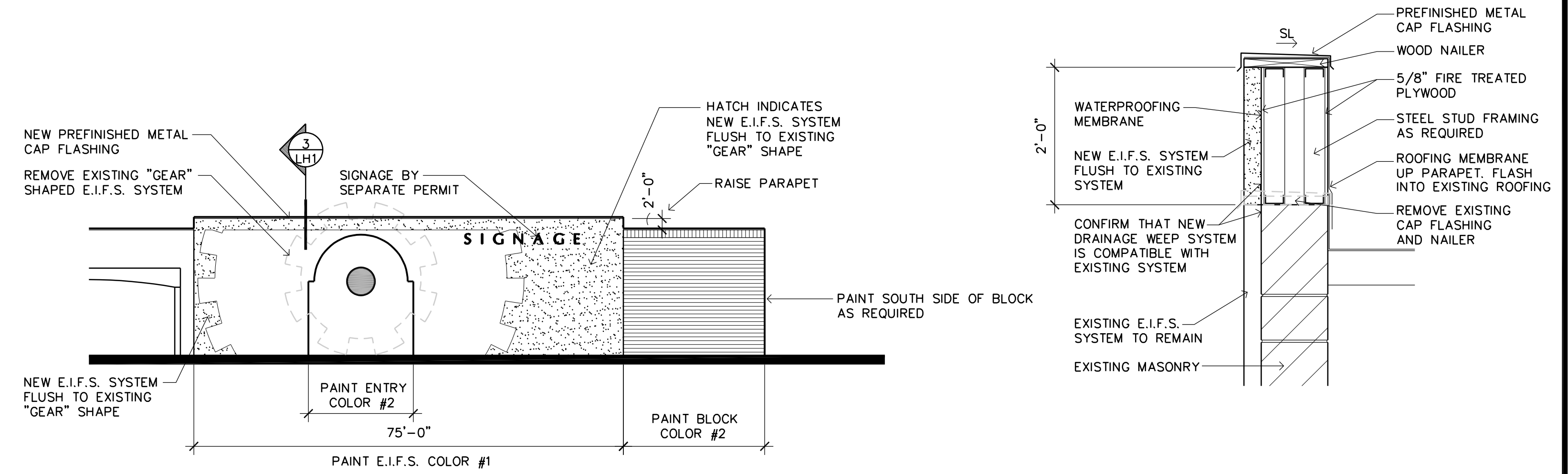
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DEMOLITION PLAN

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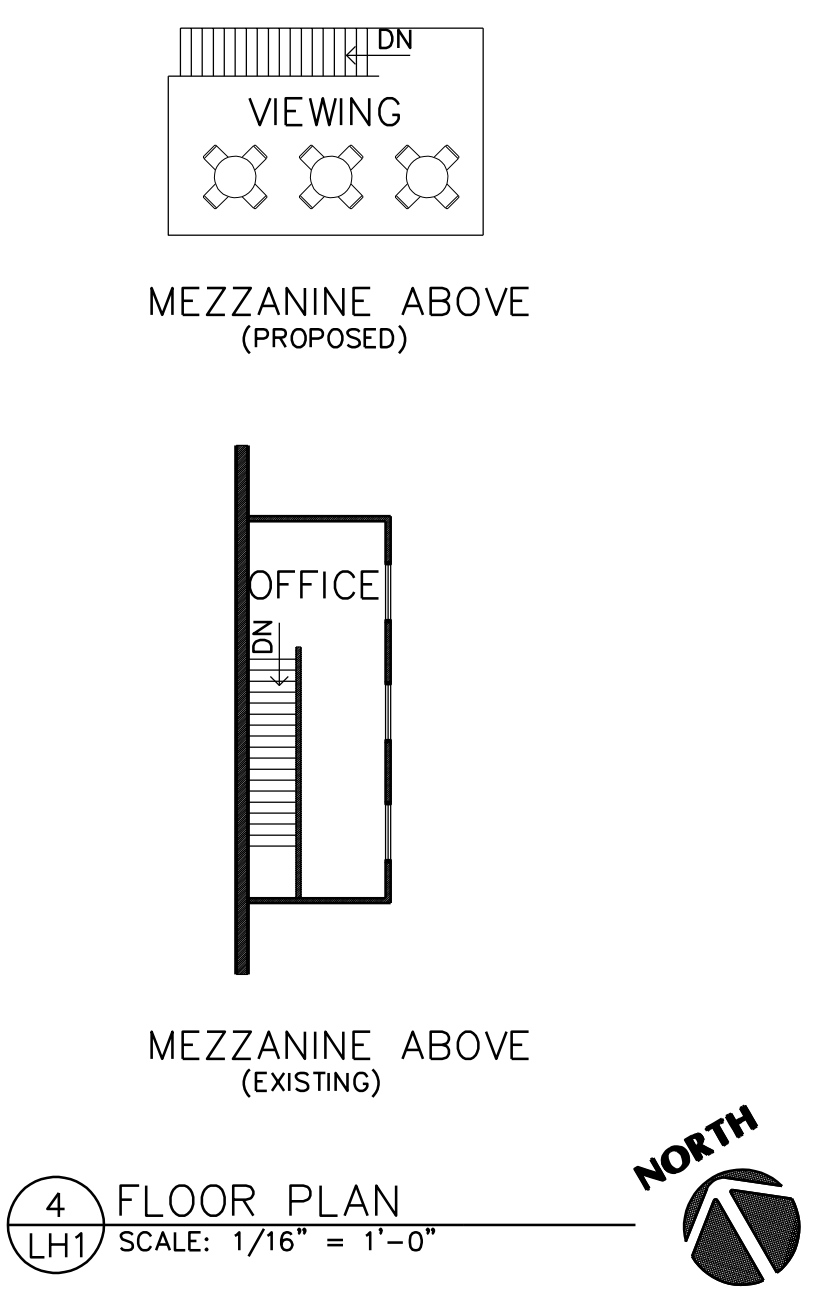
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Project No. 221215-5

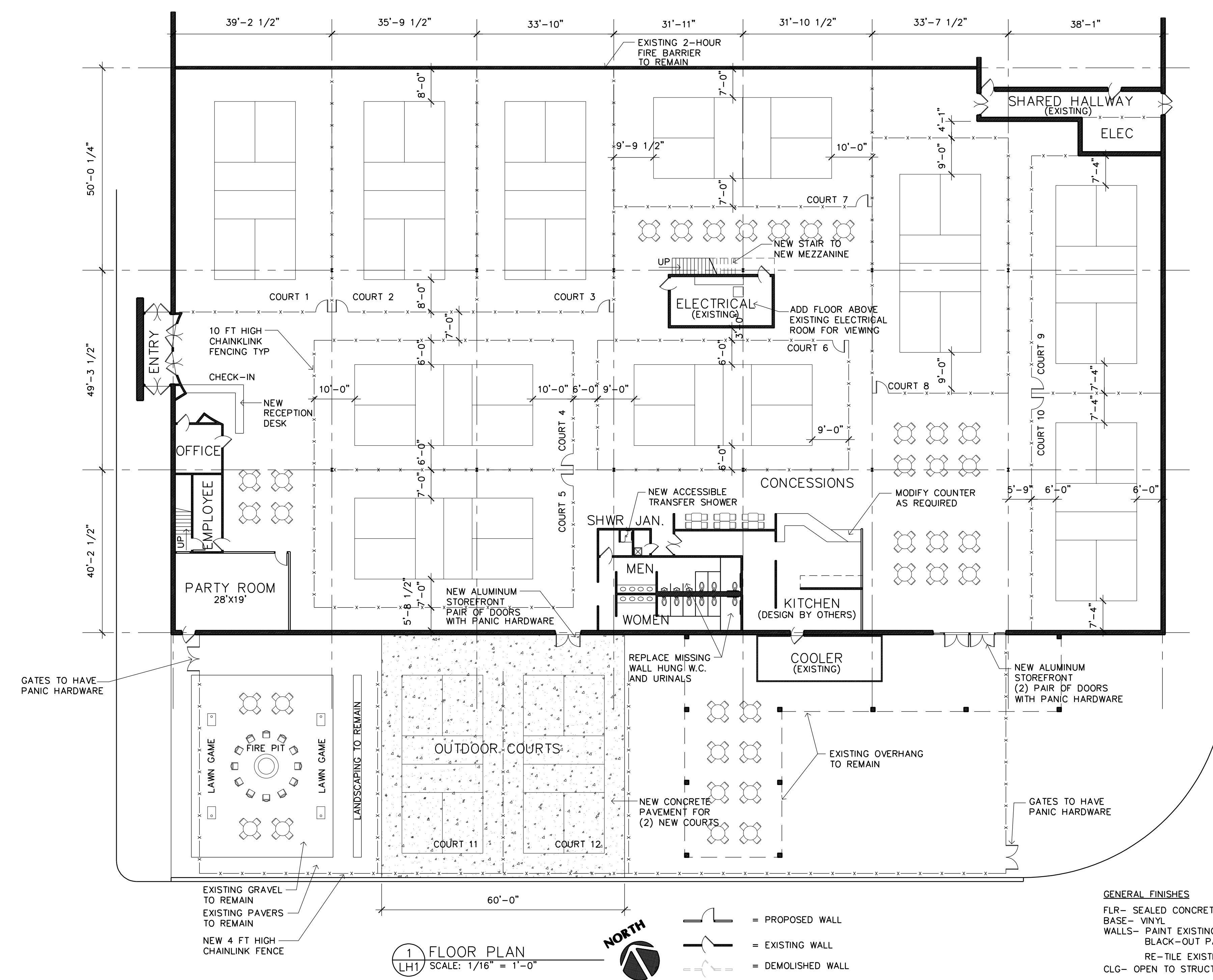


2 WEST ELEVATION
LH1 SCALE: 1/16" = 1'-0"

3 PARAPET SECTION
LH1 SCALE: 3/4" = 1'-0"



4 FLOOR PLAN
LH1 SCALE: 1/16" = 1'-0"



1 FLOOR PLAN
LH1 SCALE: 1/16" = 1'-0"

GENERAL FINISHES
 FLR- SEALED CONCRETE
 BASE- VINYL
 WALLS- PAINT EXISTING UP TO BLACK-OUT PAINT
 RE- TILE EXISTING RESTROOM WALLS
 CLG- OPEN TO STRUCTURE

LAMPERT ARCHITECTS
 420 Summit Avenue
 St. Paul, MN 55102
 Phone: 763.755.1211 Fax: 763.757.2849
 lampert@lampert-arch.com

ARCHITECT CERTIFICATION:
 I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.

PRELIMINARY NOT FOR CONSTRUCTION

SHERBURNE SLATER CONSTRUCTION
 6550 York Ave S, Suite 202
 Edina, MN 55435
 Ph: 612-655-7450

MEGA PICKLE AND PONG
 17501 Highway 7, Minnetonka, MN

Copyright 2022
 Leonard Lampert Architects Inc.
 Project Designer: JAMES B
 Drawn By: JRB
 Checked By: LL

Revisions

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| 1/30/23 | PRELIMINARY |
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FLOOR PLAN

Sheet Number

LH1

Project No. 221215-5

Resolution No. 2023-

Resolution approving conditional use permits for a restaurant and an outdoor eating area, with a setback variance, for Mega Pickle and Pong at 17585 Hwy 7

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

- 1.01 The property is located at 17585 Hwy 7. It is legally described in Exhibit A of this resolution.
- 1.02 In 2012, the city approved conditional use permits for a restaurant and outdoor seating area for The Big Thrill Factory. That facility closed in 2020, and the permits have since expired.
- 1.03 Mega Pickle and Pong Minnetonka, LLC has requested conditional use permits for a restaurant and outdoor eating area on the south side of the building.
- 1.04 By City Code Sec. 300.18, Subd. 4(i) restaurants having on-sale intoxicating liquor or dance hall licenses are conditionally permitted uses within the B-2, limited business district.
- 1.05 By City Code Sec. 300.18, Subd. 4(p) accessory sidewalk cafes and outdoor seating areas are conditionally-permitted uses within the B-2, limited business district.
- 1.06 By City Code Sec. 300.21, Subd. 4(p) accessory sidewalks, cafes, and outdoor eating areas shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other methods of screening acceptable to the city. The outdoor seating area would be set back 195 feet from the residential property line.
- 1.07 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorizes the planning commission to grant variances.
- 1.08 On March 30, 2023 the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the permits, with setback variance.

Section 2. Standards.

- 2.01 City Code §300.16 Subd. 2 outlines the general standards that must be met for granting a conditional use permit. These standards are incorporated into this resolution by reference.
- 2.02 City Code §300.21 Subd. 4(i) outlines the following specific standards that must be met for granting a conditional use permit for restaurants having on-sale intoxicating liquor or dance hall license:
1. Parking shall be in compliance with the requirements of section 300.28 of this ordinance;
 2. Shall only be permitted when it can be demonstrated that operation will not significantly lower the existing level of service as defined by the Institute of Traffic Engineers on streets and intersections; and
 3. Shall not be located within 100 feet of any low-density residential parcel or adjacent to medium or high-density residential parcels. The city may reduce separation requirements if the following are provided:
 - a) landscaping and berming to shield the restaurant use;
 - b) parking lots not located in proximity to residential uses; and
 - c) lighting plans which are unobtrusive to surrounding uses.
- 2.03 City Code §300.21 Subd. 4(p) outlines the following specific standards that must be met for accessory sidewalk cafes and outdoor eating areas:
1. Shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required, and the enclosure shall not be interrupted; access shall be only through the principal building;
 2. Shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other methods of screening acceptable to the city;
 3. Shall be located and designed so as not to interfere with pedestrian and vehicular circulation;
 4. Shall not be located to obstruct parking spaces. Parking spaces may be removed for the use only if parking requirements specified in section 300.28 are met;
 5. Shall be located adjacent to an entrance to the principal use;
 6. Shall be equipped with refuse containers and periodically patrolled for

litter pick-up;

7. Shall not have speakers or audio equipment which is audible from adjacent parcels; and
8. Shall be located in compliance with building setback requirements.

2.04 By City Code §300.07 Subd. 1, a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

Section 3. Findings.

3.01 The proposal meets the general conditional use permit standards outlined in City Code §300.16 Subd.2.

3.02 The proposal meets the specific conditional use permit standards outlined in City Code §300.21 Subd. 4(i) for restaurants:

1. The existing parking can accommodate the proposed restaurant use.
2. The proposed restaurant is not intended to be a “destination” but rather to accommodate and serve pickleball players and existing site visitors. The city does not anticipate that the restaurant area itself would generate an increase in traffic.
3. The restaurant space would be located within an existing and enclosed building. The building is located 80 feet from the adjacent residential property, and the restaurant space within the building would be 120 feet from the residential property line.

3.03 The proposal meets the specific conditional use permit standards outlined in City Code §300.21 Subd. 4(p) for outdoor eating areas:

1. The applicant is also applying for a liquor license. As a condition of this resolution, the outdoor area be enclosed as required by the license and subject to building code.
2. A variance to reduce the setback to 195 is also requested. The findings supporting the variance are outlined in section 3.04 of this resolution.
3. The outdoor eating area would not interfere with pedestrian and vehicular circulation.

4. The outdoor eating area would not result in the loss of any parking space as it would be located within an area previously occupied by an outdoor eating area.
5. The outdoor area would have access via two entrances from the south side of the building.
6. As a condition of this resolution, the area must be equipped with refuse containers and periodically patrolled for litter pick-up.
7. As a condition of this resolution, speakers or audio equipment which is audible from adjacent parcels are not allowed.
8. The outdoor area is set back more than 35 feet.

3.04 The proposal meets the variance standard outlined in City Code §300.07 Subd. 1(a):

1. Purpose and Intent of the Ordinance: The intent of the setback requirement is to provide adequate separation between commercial and residential uses. The proposed outdoor eating area would be separated from the nearest residential structure by over 350 feet, a pedestrian trail, existing vegetation, fencing, Purgatory Creek, and topography. These existing features will provide adequate separation between the two uses.
2. Consistent with Comprehensive Plan: The comprehensive plan references the Hwy 7 and 101 village center study to guide development at the intersection. The plan calls for the integration of eating areas into the intersection as a way to promote place-making. The plan also identifies the area of the proposed outdoor eating area as an ideal location for a patio seating area.
3. Practical Difficulties: There are practical difficulties in complying with the ordinance:
 - a) Reasonableness: The outdoor eating area would be located generally within an area previously occupied by an outdoor eating area. The proposed outdoor eating area would be smaller and be setback further than the previous area. The five-foot encroachment into the setback would not be visibly apparent.
 - b) Unique Circumstance: Existing features would provide a natural separation between land uses. The features include (1) a public trail; (2) fencing; (3) Purgatory Creek; (4) topography; and (5) vegetation. This provides a circumstance not unique to every commercial/ residential area in the community.

- c) Character of Locality: The requested variance would not alter the character of the commercial/ residential character of the area. The five-foot intrusion into the setback would not be visibly apparent.

Section 4. City Council Action.

4.01 The above-described conditional use permit is approved, subject to the following conditions:

1. This resolution must be recorded with Hennepin County.
2. A building permit is required.
3. An enclosure around the outdoor eating area, accessible from the principal building, is required, subject to conditions of the building code and liquor license.
4. The outdoor eating area must be equipped with refuse containers and periodically patrolled for litter pick-up.
5. Outdoor speakers or audio equipment must not be audible from adjacent parcels. Additionally, the use must not create noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity anywhere on adjacent residential parcels. Whether the sound is disturbing to a reasonable person will be determined under section 850.005 of the city code.
6. Must be in compliance with applicable health, public safety, and building code regulations as imposed by the city or pertinent agency.
7. The city council may reasonably add or revise conditions to address any future unforeseen problems.
8. Any change to the approved use that results in a significant increase in a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 17, 2023.

Brad Wiersum, Mayor

Attest:

Becky Kosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on April 17, 2023.

Becky Koosman, City Clerk

Exhibit A

Par 2: That part of the North 1/2 of the Northwest Quarter of the Southwest Quarter of Section 29, Township 117, Range 22, lying West of a line described as follows: Commencing at a point on the North line of said North 1/2 of the Northwest Quarter of the Southwest Quarter, 743 feet East of the Northwest corner thereof; thence running South 12 degrees and 3 minutes East 213 feet; thence South 16 degrees and 40 minutes West 182.7 feet; thence South 35 degrees and 23 minutes West 208.1 feet; thence South 10 degrees and 37 minutes West 107.9 feet to the Southline of said North 1/2 of the Northwest Quarter of the Southwest Quarter of said Section 29, except the South 125.00 feet of the West 183.00 feet of the North Half of the Northwest Quarter of the Southwest Quarter of said Section 29.

Torrens Certificate No. 755936

Resolution No. 2023-

Resolution approving an interim use permit and final site plan for outdoor entertainment at 17585 Hwy 7

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

- 1.01 The property is located at 17585 Hwy 7. It is legally described in Exhibit A.
- 1.02 On Oct. 8, 2012, the city council approved an interim use permit for outdoor entertainment at The Big Thrill Factory.
- 1.03 The Big Thrill Factory operated until 2020; the space has remained vacant since its closure.
- 1.04 Mega Pickle and Pong Minnetonka, LLC has requested an interim use permit and site plan review for an outdoor fire pit, pickleball courts, and lawn games.
- 1.05 By City Code §300.18, Subd. 7(d) outdoor entertainment is an interim use within the B-2, limited business district.
- 1.06 On March 30, 2023, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the planning commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended approval of the permit and site and building plans.

Section 2. General Standards.

- 2.01 City Code §300.05, Subd. 5, lists the following general standards that must be met for granting of the permit:
 - 1. The general performance standards in section 300.16, Subd. 2 will be met;
 - 2. The use will not delay the anticipated development or redevelopment of the site;
 - 3. The use will not be in conflict with any provisions of the city code on an ongoing basis;

4. The use will not adversely affect the adjacent property, the surrounding neighborhood, or other uses on the property where the use will be located;
5. The property on which the use will be located is currently in compliance with all applicable city code standards;
6. The use is allowed as an interim use in the applicable zoning district;
7. The date or event that will terminate the use can be identified with certainty;
8. The use will not impose additional unreasonable costs on the public; and
9. The applicant agrees in writing to any conditions that the city council deems appropriate for the use, including a requirement for a financial security to ensure the removal of all evidence of the use upon termination.

2.02

City Code §300.18, Subd. 17 lists the following as specific standards that must be met for granting the permit:

1. Must be located:
 - a) At least 100 feet from any residential property as measured from the closest property lines of the properties. The city may modify this distance based on the physical characteristics of the commercial and residential properties, such as existing sight lines, existing or proposed physical barriers, existing natural resources, and proposed landscaping;
 - b) In proximity to a collector or arterial roadway as identified in the comprehensive plan or otherwise located so that access can be provided without conducting significant traffic on local residential streets;
 - c) In a controlled or cordoned area; and
 - d) To not interfere with pedestrian or vehicular circulation;
2. Must not use public address systems, speakers, or other audio equipment which is audible anywhere on a residential lot that is within 400 feet, and must not create noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity anywhere on a residential lot that is within 400 feet. The distance will be measured from the property lines of the source and receiving properties that are closest to each other. Whether the sound is unreasonably disturbing to a reasonable person will be determined under section 850.005;
3. Must not occur between the hours of 10:00 p.m. and 7:00 a.m.; and
4. Must be in compliance with applicable health, public safety, and building

code regulations as imposed by the city or other pertinent agency.

2.03 City Code §300.27, Subd. 5, states that in evaluating a site and building plan, the city will consider its compliance with the following:

1. Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;
2. Consistency with the ordinance;
3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;
4. Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;
5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:
 - a) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors, and the general community;
 - b) the amount and location of open space and landscaping;
 - c) materials, textures, colors, and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and
 - d) vehicular and pedestrian circulation, including walkways, interior drives, and parking in terms of location and number of access points to the public streets, the width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement and amount of parking.
6. Promotion of energy conservation through design, location, orientation, and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and
7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light, and air, and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Section 3. Findings.

- 3.01 The proposal would comply with the general interim use permit standards outlined in City Code §300.05, Subd. 5. The area would not delay the redevelopment of the site, would replace an area previously used for outdoor entertainment, is an allowed use within the applicable zoning district, and would comply with all the applicable codes.
- 3.02 The proposal would comply with the specific interim use permit standards outlined in City Code §300.18, Subd. 7 for outdoor entertainment:
1. The outdoor area would be:
 - a) Located more than 100 feet from the residential property line. The area used for the outdoor pickleball courts, lawn games, and fire pit is beyond that. Additionally, physical characteristics would separate the area and the nearest residential structure.
 - b) The property is in the southeast intersection of Hwy 7, a principal arterial, and County Road 101, a minor arterial expander.
 - c) Located within a fence around the outdoor area. Nonetheless, this has been included as a condition of approval.
 - d) The area would not interfere with pedestrian or vehicular circulation.
 2. As a condition of this resolution, public address systems, speakers, or other audio equipment which is audible anywhere on a residential lot that is within 400 feet are not allowed. The use must not create noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity anywhere on a residential lot that is within 400 feet.
 3. As a condition of this resolution, use of the outdoor area is not allowed between the hours of 10:00 p.m. and 7:00 a.m.; and
 4. As a condition of this resolution, the area must be in compliance with applicable health, public safety, and building code regulations as imposed by the city or other pertinent agencies.
- 3.03 The proposal would meet site and building plan standards outlined in the City Code §300.27, Subd. 5.
1. The project has been reviewed by the city's planning, building, engineering, natural resources, fire, and public works staff. Staff finds it generally consistent with the city's development guides.
 2. But for the requested variance, the proposal is consistent with the ordinance.

3. The proposal would reconfigure an area previously occupied by an outdoor entertainment area. No other changes to the site are proposed.
4. The proposal would change the relationship between buildings and open spaces onsite.
5. While landscaping would be required as part of the project, the proposal would not significantly change site order, amount of open space, or circulation.
6. A building permit would be required, and features would need to comply with the energy code.
7. Distance, vegetation, topography, and Purgatory Creek would screen the outdoor area from the adjacent residential properties.

Section 4. City Council Action.

4.01 The above-described conditional use permit is approved, subject to the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the site plan dated Jan. 30, 2023.
2. A building permit is required. Prior to the issuance of a building permit:
 - a) Submit material board and color palate with detailed exterior elevations.
 - b) Submit a final landscaping plan. This plan must meet minimum landscaping and mitigation requirements as outlined in the ordinance. Note, only small shrubs, perennials, and grasses may be located in public easements. This plan must also include pollinator-friendly species.
 - c) Submit a tree preservation plan. This plan must include mitigation requirements as outlined in the ordinance. However, at the sole discretion of staff, mitigation may be decreased. Based on the submitted plans, the mitigation requirements would be unclear based upon submitted plans.
 - d) Submit an illumination plan.
 - e) Install a temporary rock driveway, erosion control, tree, and wetland protection fencing, and any other measures as identified as the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
3. A grading permit and stormwater management are required if exposing

soil in an area encompassing at least 5,000 square feet or results in the movement of at least 50 cubic yards of material.

4. Install address numbers prior to the final fire inspection. These address numbers must be a minimum of 6 inches in height.
5. Any new rooftop and ground-mounted mechanical equipment and exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure, subject to staff approval. Low-profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
6. Public address systems, speakers, or other audio equipment which are audible anywhere on a residential lot within 400 feet is prohibited.
7. The outdoor entertainment area must create noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity anywhere on a residential lot that is within 400 feet. The distance will be measured from the property lines of the source and receiving properties that are closest to each other. Whether the sound is unreasonably disturbing to a reasonable person will be determined under section 850.005.
8. No outdoor entertainment use is allowed from 10:00 p.m. and 7:00 a.m.
9. The business owner and the property owner are responsible for replacing any landscaping that dies.
10. City staff may conduct an annual review of complaints regarding the outdoor entertainment use. If staff finds that excessive complaints have been received, excessive public safety responses have been made, or that the outdoor entertainment has imposed unreasonable costs to the public in money or time, staff may require that the interim use permit be reviewed by the city council. Based on its review, the city council may impose additional conditions or revoke part or all of the interim use permit.
11. This interim use permit is valid until such time that redevelopment of the subject property occurs. For purposes of this permit, redevelopment means razing of more than 50 percent of the existing building.
12. The council may reasonably add or revise conditions to address any unforeseen problems.
13. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised interim use permit.
14. Construction must begin by April 17, 2024, unless the planning commission grants a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 17, 2023.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

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Becky Koosman, City Clerk

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Torrens Certificate No. 755936