

**CITY OF BIRMINGHAM  
MEETING OF THE BOARD OF ZONING APPEALS  
TUESDAY, NOVEMBER 14, 2023  
7:30 PM**

The meeting will be held in the City Commission Room at City Hall, 151 Martin St. Birmingham, MI 48009. Should you have any statement regarding any appeals, you are invited to attend the meeting in person or virtually through ZOOM:

**[https://zoom.us/j/963 4319 8370](https://zoom.us/j/96343198370) or dial: 877-853-5247 Toll-Free,  
Meeting Code: 963 4319 8370**

You may also provide a written statement to the Board of Zoning Appeals, City of Birmingham, 151 Martin Street,  
P.O. Box 3001, Birmingham MI, 48012-3001 prior to the hearing

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. ANNOUNCEMENTS**

**4. APPROVAL OF THE MINUTES**

a) October 10, 2023

**5. APPEALS**

	Address	Petitioner	Appeal	Type/Reason
1)	1285 RUFFNER	WILLIAM CURRIER	23-38	DIMENSIONAL
2)	490 BERWYN	RICHARD NAUER	23-40	DIMENSIONAL
3)	34745 WOODWARD	JAX CAR WASH	23-41	REVERSAL

**6. CORRESPONDENCE**

**7. GENERAL BUSINESS**

**8. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

**9. ADJOURNMENT**

**Title VI**

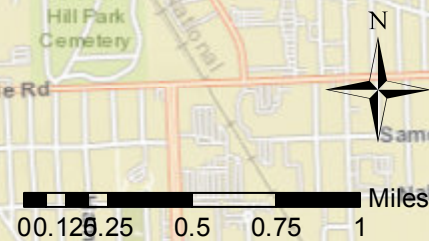
Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

*Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).*

The public entrance during non-business hours is through the police department at the Pierce Street entrance only. Individuals requiring assistance entering the building should request aid via the intercom system at the parking lot entrance gate on Henrietta Street.

La entrada pública durante horas no hábiles es a través del Departamento de policía en la entrada de la calle Pierce solamente. Las personas que requieren asistencia entrando al edificio debe solicitar ayudan a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

A detailed map of Birmingham, Alabama, with three specific locations highlighted by red diamonds and labeled with their addresses. The locations are 490 BERWYN, 34745 WOODWARD, and 1285 RUFFNER. The map shows a network of streets, including major thoroughfares like Woodward Avenue and W Big Beaver Road. It also depicts green spaces such as Springdale Golf Course, Linn Smith Park, and the Birmingham Country Club. A scale bar at the bottom right indicates distances in miles, and a north arrow is positioned next to it.



**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, October 10, 2023**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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**1. Call To Order**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, October 10, 2023. Chair Morganroth convened the meeting at 7:30 p.m.

**2. Rollcall**

**Present:** Chair Erik Morganroth; Board Members Richard Lilley, John Miller, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

**Absent:** Board Member Kevin Hart

**Staff:** Building Official Johnson; Senior Planner Cowan, City Transcriptionist Eichenhorn, Assistant Building Official Morad, Assistant Building Official Zielke

Chair Morganroth welcomed those present and reviewed the meeting's procedures. He noted that the members of the Board of Zoning Appeals are appointed by the City Commission and are volunteers who serve staggered three-year terms. They are a quasi-judicial board and sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. Appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling.

Chair Morganroth took rollcall of the petitioners. All petitioners were in attendance.

**3. Announcements**

Announcements can be found in the evening's agenda packet.

**4. Approval Of The Minutes Of The BZA Meetings Of September 12, 2023**

**T# 10-45-23**

**Motion by Mr. Lilley**

**Seconded by Mr. Reddy to approve the minutes of the BZA meeting of September 12, 2023 as submitted.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**5. Appeals**

**T# 10-46-23**

**1) 680 Fairfax  
Appeal 23-27**

ABO Zielke presented the item, explaining that the owner of the property known as 680 Fairfax was requesting the following variance to replace the existing pool deck and patio:

**A. Chapter 126, Article 2, Section 2.06.1** of the Zoning Ordinance requires that the minimum open space required is 40% (4705.00 SF). The existing is 30.29% (3562.43 SF). The proposed is 33.05% (3888.53 SF). Therefore, a variance of 6.95% (816.47 SF) is being requested.

Staff answered informational questions from the Board.

Todd Grabel, owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board's discussion included the following topics:

- When the minimum open space of a lot was not met, wanting additional surface around an existing pool beyond functional surface did not inherently constitute a practical difficulty;
- Budgetary difficulties could not be used to constitute a practical difficulty;
- There was additional surface around the north side of the pool that could be eliminated to mitigate the variance request; and,
- The lack of dimensions on the plans made the review challenging.

**Motion by Mr. Miller**

**Seconded by Mr. Kona with regard to Appeal 23-27, A. Chapter 126, Article 2, Section 2.06.1 of the Zoning Ordinance requires that the minimum open space required is 40% (4705.00 SF). The existing is 30.29% (3562.43 SF). The proposed is 33.05% (3888.53 SF). Therefore, a variance of 6.95% (816.47 SF) is being requested.**

**Mr. Miller said this appeal was challenging because it was beneficial that the appellant was mitigating a pre-existing non-conforming condition. He noted that without dimensions it was difficult to determine whether the mitigation could be increased. He added that some mitigation on the driveway could also likely occur to increase the open space of the lot, and that not doing so involved self-creation. He said those two aspects informed the fact that he was moving to deny the appeal.**



Mr. Yaldo noted that mitigation had occurred, and that it was difficult to know whether more could be done because of the lack of dimensions on the plans. He noted that the plan to replace the dilapidated structure on the lot would be beneficial.

The Chair noted a few aspects of the plan for the rear yard that could likely yield further open space if changed. He explained that since the Board has to make these decisions for many lots in the City it was important to be consistent in the evaluations. He echoed the fact that the lack of dimensions on the plans made it more difficult to determine whether more mitigation could occur. He noted that the extensive pre-existing non-conforming lot coverage made it difficult to permit further lot coverage. He added that since the area around the pool would be completely repoured starting from a blank slate, that would allow for ways of reducing the variance request.

Mr. Kona echoed his colleagues' statements that the lack of dimensions was a challenge, and added that the lack of topography also made evaluation more difficult. He said he appreciated the proposed mitigation, but that the information provided was not sufficient to indicate that more mitigation could not occur.

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-47-23**

**2) 1395 Northlawn  
Appeal 23-33**

BO Johnson presented the item, explaining that the owner of the property known as 1395 Northlawn was requesting the following variance for a house currently under construction:

**A. Chapter 126, Article 4, Section 4.74(C)** of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of total lot width, whichever is larger. The required is 15.50 feet. The proposed is 14.59 feet on the east side. Therefore, a variance of 0.91 feet is requested.

Ben Templeton, builder, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

Public Comment

In reply to Anurag Newatia, the Chair recommended that Mr. Newatia meet with the builder for 1395 Northlawn.

**Motion by Mr. Reddy**

**Seconded by Mr. Lilley with regard to Appeal 23-33, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of total lot width,**

whichever is larger. The required is 15.50 feet. The proposed is 14.59 feet on the east side. Therefore, a variance of 0.91 feet is requested.

Mr. Reddy moved to grant the variance and tied approval to the plans as submitted. He stated that unusual circumstances existed in this appeal including the City's prior, mistaken approval and the shape of the lot. He said that denying the variance would be substantially unjust.

The Chair noted that the Board was separate from the City administration, and that the Board should not approve a variance solely because the City made an error. While that was the case, he explained that in evaluating this particular appeal, it was clear this property was unique, that a narrow house on a narrow lot was being proposed, and that a practical difficulty was established. He noted that the plans met all the ordinances necessary to be on the lot and that since it neighbored a country club, it would not impact the neighbor.

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-48-23**

**3) 1195 Chapin  
Appeal 23-34**

ABO Zielke presented the item, explaining that the owner of the property known as 1115 Chapin was requesting the following variance to construct a detached garage:

**A. Chapter 126, Article 2, Section 2.10.1** of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 1440.00 SF. The proposed is 32.95% (1581.90 SF). Therefore, a variance of 2.95% (141.90 SF) is being requested.

Frank Colosanti, Jr., owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board's discussion included the following topics:

- A 20x20 ft. garage would be functional for two vehicles, although small;
- The appellant was very close to not needing a variance;
- In the Board's history, many garages have been reduced to their minimum usable and feasible size, which would be smaller than the present request; and,
- There would be a smaller garage that could work for the appellant and would not need a variance.

**Motion by Mr. Miller**

**Seconded by Mr. Kona with regard to Appeal 23-34, A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the**

lot. The required 30% is 1440.00 SF. The proposed is 32.95% (1581.90 SF). Therefore, a variance of 2.95% (141.90 SF) is being requested.

**Mr. Miller moved to deny the appeal. He noted that the ordinance would not preclude a smaller garage than proposed from being built. He said the matter was self-created, and that approval would set a difficult precedent for similar appeals in the future.**

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-49-23**

**4) 321 Lake Park  
Appeal 23-35**

ABO Zielke presented the item, explaining that the owner of the property known as 321 Lake Park was requesting the following variance to construct a circle driveway in the front open space:

**A. Chapter 126, Article 4, Section 4.31(A)1** of the Zoning Ordinance requires that The minimum open space of 65% of the front open space in all single-family Districts shall be free of paved surfaces. The required is 2749.50 SF. The proposed is 54% (2283.00 SF). Therefore, a variance of 11% (466.50 SF) is being requested.

Staff answered informational questions from the Board.

Fritz Carlson, owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board's discussion included the following topics:

- There would be ways that this variance request could be mitigated, even to the extent of not requiring a variance;
- The appellant did not describe a practical difficulty during his presentation; and,
- While the design of the driveway was aesthetically pleasing, it did not comply with the ordinance.

**Motion by Mr. Reddy**

**Seconded by Mr. Kona with regard to Appeal 23-35, A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires that The minimum open space of 65% of the front open space in all single-family Districts shall be free of paved surfaces. The required is 2749.50 SF. The proposed is 54% (2283.00 SF). Therefore, a variance of 11% (466.50 SF) is being requested.**

**Mr. Reddy moved to deny the appeal. He reiterated that the extent of the variance could be mitigated or eliminated entirely without impacting the design concept. He noted that a u-shaped driveway was also not necessary for the house to function.**

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-50-23**

**5) 604 Hanna  
Appeal 23-36**

ABO Zielke presented the item, explaining that the owner of the property known as 604 Hanna was requesting the following variance to construct an attached pergola:

**A. Chapter 126, Article 2, Section 2.08.1** of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 11963.50 SF. The existing is 29.29% (1917.10 SF). The proposed is 32.38% (2119.40 SF). Therefore, a variance of 2.38% (155.90 SF) is being requested.

Staff answered informational questions from the Board.

Matt DeLapp of Singh Homes reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board noted that, as stated during Appeal 23-36, the Board does not automatically grant variances in cases where the City may have made an approval in error.

**Motion by Mr. Miller**

**Seconded by Mr. Reddy with regard to Appeal 23-36, A. Chapter 126, Article 2, Section 2.08.1 of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 11963.50 SF. The existing is 29.29% (1917.10 SF). The proposed is 32.38% (2119.40 SF). Therefore, a variance of 2.38% (155.90 SF) is being requested.**

**Mr. Miller moved to deny the appeal. He noted that while the pergola had received a erroneous approval on the initial plans, the Board was not bound to grant variances based on erroneous approvals. He noted that the Board had even required inappropriately built pergolas to be torn down in the past. He stated that the matter was self-created since it did not stem from a condition of the property itself. He explained that while a pergola would be a nice amenity, its absence would not limit the use of the property. He said the Board had not been presented with a reason to approve the variance request.**

**The Chair voiced support for motion. He noted that while many people would likely appreciate a pergola, many would also not be able to build one due to lot coverage constraints. He noted that if residents thought the ordinance should be changed, they could raise the issue with the City Commission.**



**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-51-23**

**6) 660 Mohegan  
Appeal 23-37**

ABO Zielke presented the item, explaining that the owner of the property known as 660 Mohegan was requesting the following variance to construct an addition to square the rear corner of the home:

**A. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires a minimum rear yard setback of 30.00 feet. The proposed is 28.34 feet. Therefore, a variance of 1.66 feet is being requested.

Staff answered informational questions from the Board.

Glenn DesRosiers, owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board's discussion included the following topics:

- Even with the requested variance, the southwest corner of the garage would be smaller than a standard garage;
- The design of the home was intentional. The lot was a unique shape, and the home filled the building envelope;
- As a result, there were not many options regarding the garage, since the house was designed to maximize its footprint on the lot;
- The request seemed minimal and reasonable given that the garage would not fit a car and that the appellant was permitted to have a garage;
- The southwest portion of the garage could have been intended as a storage area; and,
- The Board would have to consider setting a potential precedent if this variance were to be approved.

**Motion by Mr. Yaldo**

**Seconded by Mr. Lilley with regard to Appeal 23-37, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires a minimum rear yard setback of 30.00 feet. The proposed is 28.34 feet. Therefore, a variance of 1.66 feet is being requested.**

**Mr. Yaldo moved to approve the variance and tied approval to the plans as submitted. He said that while concerns were raised about setting a precedent, the unique structure of the house made that unlikely. He commented that the request was minimal in light of the desire to have a functional three car garage.**

**Mr. Reddy voiced support for the motion. He acknowledged the concerns regarding precedent, and continued that each variance request was evaluated on its own merits. He said the lot was very unique and that the request was minimal.**

**Mr. Miller said that while he was somewhat conflicted about precedent, he would ultimately support the motion as well. He noted that the unique layout of the house would not likely be similar to any other variance request, that there would be a minimal intrusion into the backyard setback, and that the variance would not have a negative impact on the neighbors.**

**The Chair said the original designer of the home focused on designing a unique home while staying within all the setbacks required by the City. He said that to take a conforming home and to create a variance in this case would contradict the charge of the Board. Consequently, the Chair said he would not support the motion.**

**Motion carried, 4-2.**

ROLL CALL VOTE

Yeas: Lilley, Miller, Yaldo, Reddy

Nays: Morganroth, Kona

- 6. Correspondence**
- 7. Open To The Public For Matters Not On The Agenda**
- 8. Adjournment**

No further business being evident, the Board motioned to adjourn at 9:50 p.m.



Bruce R. Johnson, Building Official

Laura Eichenhorn, City Transcriptionist

# **CASE DESCRIPTION**

## **1285 Ruffner (23-38)**

**Hearing date: November 14, 2023**

**Appeal No. 23-38:** The owner of the property known as **1285 Ruffner**, requests the following variance to construct a second floor addition:

A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing is 4.80 feet. The proposed is 4.80 feet. Therefore, a variance of 0.20 feet is being requested.

**Staff Notes:** This applicant is requesting a variance on the existing 1975 home. This is a request to construct a second floor over the existing footprint.

This property is zoned R3 – Single family residential.

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Jeff Zielke, NCIDQ, LEED AP  
Assistant Building Official

# 1285 RUFFNER MAP





**CITY OF BIRMINGHAM**  
**Community Development - Building Department**  
**151 Martin Street, Birmingham, MI 48009**  
Community Development: 248-530-1850  
Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)

**APPLICATION FOR THE BOARD OF ZONING APPEALS**

Received Date: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

Received By: \_\_\_\_\_

Appeal #: \_\_\_\_\_

<b>Type of Variance:</b>	<input checked="" type="checkbox"/> Interpretation	<input type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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**I. PROPERTY INFORMATION:**

Address: <u>1285 Ruffner Ave</u>	Lot Number: <u>367</u>	Sidwell Number: <u>2031301038</u>
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**II. OWNER INFORMATION:**

Name: <u>Matthew Currier</u>			
Address: <u>1285 Ruffner Ave</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: * <u>MJCurrrier@gmail.com</u>		Phone: _____	

**III. PETITIONER INFORMATION:**

Name: <u>William J. Currier</u>		Firm/Company Name: <u>W.J. Constellation LLC</u>	
Address: <u>19670 Beverly Rd.</u>	City: <u>Beverly Hills</u>	State: <u>MI</u>	Zip code: <u>48025</u>
Email: <u>Currierbilly@gmail.com</u>		Phone: <u>248-762-1509</u>	

**IV. GENERAL INFORMATION:**

The Board of Zoning Appeals typically meets the second Tuesday of each month. COMPLETE digital applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

**To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted.** Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

**Variance Chart Example**

Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

**V. REQUIRED INFORMATION CHECKLIST:**

**Please provide the following in your electronic submission:**

- ☐ Completed and signed application
- ☐ Signed letter of practical difficulty and/or hardship
- ☐ Certified survey
- ☐ Building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, provide a copy of the minutes from any previous Planning, HDC, or DRB board meeting

**VI. APPLICANT SIGNATURE**

Owner hereby authorizes the petitioner designated below to act on behalf of the owner.

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

\*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: Matthew Currier

Date: 10/3/2023

Signature of Petitioner: William J. Currier

Date: 10/3/2023



**CITY OF BIRMINGHAM  
BOARD OF ZONING APPEALS  
RULES OF PROCEDURE**

**ARTICLE I - Appeals**

- A. Appeals may be filed under the following conditions:
1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
  2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
  3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.
- B. Procedures of the Board of Zoning Appeals (BZA) are as follows:
1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
  2. All applications for appeal shall be submitted to the Community Development Department on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. If the 12<sup>th</sup> falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
  3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
  4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.
  5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.

6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).

C. The order of hearings shall be:

1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
3. Interested parties' comments and view on the appeal.
4. Rebuttal by applicant.
5. The BZA may make a decision on the matter or request additional information.

D. Motions and Voting

1. A motion is made to either grant or deny a petitioner's request
    - a) For a motion to grant or deny a non-use variance request, the motion must receive four (4) affirmative votes to be approved.
    - b) For a motion to grant or deny a use variance request, the motion must receive five (5) affirmative votes to be approved.
    - c) For a motion to grant or deny an appeal of a decision or order by an administrative official or board, the motion must receive four (4) affirmative votes to be approved.
  2. When a motion made is to approve or deny a petitioner's request and if there is a tie vote, then the vote results in no action by the board and the petitioner shall be given an opportunity to have his or her request heard the next regularly scheduled meeting when all the members are present.
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3. When there are less than seven (7) members of the board present for a meeting, then a petitioner requesting a use variance shall be given an opportunity at the beginning of the meeting to elect to have it heard at the next regularly scheduled meeting.
4. When there are less than six (6) members present for a meeting, then all petitioners shall be given an opportunity at the beginning of the meeting to elect to have the request heard at the next regularly scheduled meeting.

## **ARTICLE II - Results of an Appeal**

- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.
- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

## **ARTICLE III - Rehearings**

- A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.
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B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.

*Matthew Currier*

---

Signature of Applicant

Matthew Currier

10/3/2023

1285 Ruffner Ave.

Birmingham, Mi. 48009

To whom it may concern

I am asking for a 4 inch east side yard variance to be able to put a second story addition over existing first floor. My hardship is the existing home of 48 years was built 4 inches to close to side yard property line.

Thank you

Sincerely

A handwritten signature in cursive script that reads "Matthew Currier".

Matthew Currier



## Variance Chart

Required Variance	Required	Existing	Proposed	Variance Amount
Variances East Sideley	5 ft	4 ft 8 in	4 ft 8 in	4 inches



### PROPERTY DESCRIPTION

LOT 367, "LEINBACH-HUMPHREY'S WOODWARD AVENUE SUB." OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, BLOOMFIELD TOWNSHIP (NOW CITY OF BIRMINGHAM) AND PART OF THE NORTHWEST 1/4 OF SECTION 31, TOWN 2 NORTH, RANGE 11 EAST, TROY TOWNSHIP (NOW CITY OF BIRMINGHAM), EXCEPTING THE S.T.R.R. RIGHT OF WAY, OKLAHOMA COUNTY, MICHIGAN, RECORDED IN LIBER 27 OF PLATS, PAGE 5, OKLAHOMA COUNTY RECORDS.

#### GENERAL NOTE:

ALL PROPOSED CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT. THE DRAINAGE PLAN SHALL BE SUBMITTED AS PART OF THE CONSTRUCTION PERMIT APPLICATION. THE DRAINAGE PLAN SHALL BE REVIEWED BY THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT. THE DRAINAGE PLAN SHALL BE REVIEWED BY THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT. THE DRAINAGE PLAN SHALL BE REVIEWED BY THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT.

#### UTILITY NOTE:

ALL NEW UTILITY CONNECTIONS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT. THE UTILITY PLAN SHALL BE SUBMITTED AS PART OF THE CONSTRUCTION PERMIT APPLICATION. THE UTILITY PLAN SHALL BE REVIEWED BY THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT. THE UTILITY PLAN SHALL BE REVIEWED BY THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT.

#### NO NEW UTILITY CONNECTIONS PROPOSED ON THIS PROJECT

#### SOIL EROSION AND SEDIMENTATION CONTROL PLAN NOTES:

1. SOIL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE INSTALLED IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT.
2. SOIL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE INSTALLED IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT.
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10. SOIL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE INSTALLED IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT.

#### SEQUENCE OF EROSION AND SEDIMENTATION CONTROL OPERATIONS

1. PRIOR TO THE START OF CONSTRUCTION, A SEDIMENTATION CONTROL PLAN SHALL BE SUBMITTED TO THE OKLAHOMA COUNTY PUBLIC WORKS DEPARTMENT FOR REVIEW AND APPROVAL.
2. DURING CONSTRUCTION, THE SEDIMENTATION CONTROL PLAN SHALL BE FOLLOWED AT ALL TIMES.
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10. DURING CONSTRUCTION, THE SEDIMENTATION CONTROL PLAN SHALL BE FOLLOWED AT ALL TIMES.

#### SITE BENCHMARK

SANITARY MAN HOLE  
34" EAST OF EAST LOT LINE  
1285 RUFFNER AVE.  
ELEVATION = 749.64 (CITY DATUM)

#### CITY BENCHMARK

BENCHMARK #7  
ELEVATION = 751.11

#### UTILITY NOTE:

NO NEW UTILITY CONNECTIONS  
PROPOSED ON THIS PROJECT

#### LINE TYPE LEGEND

- WATER MAIN
- SANITARY SEWER
- STORM SEWER
- GAS MAIN
- OH-ELECTRIC
- OH-CAT/TELEPHONE

#### ZONING INFORMATION

PROPERTY ZONED R3 (SINGLE FAMILY RES.)  
MIN. LOT AREA 4,500 SQ. FT.  
(10,000 SQ. FT.)  
LOT COVERAGE 1,440 SQ. FT. / 30% (MAX.)  
880 SQ. FT. / 19.3% (PROPOSED)  
IMPERVIOUS COVERAGE 2805 SQ. FT. / 34.3%

#### SETBACKS

FRONT 31.47'  
SIDE 33.81'  
REAR 35.00'  
MIN. SIDE (EAST) 6'  
MIN. SIDE (TOTAL) 10'

#### FRONT SETBACK CALCULATION:

WEST - 10.8'  
F1254 - 23.4'  
F1253 - 23.4'  
F1252 - 23.4'  
F1251 - 1.4'

#### EAST - 20.5'

F1257 - 20.5'  
F1256 - 20.5'  
F1255 - 20.5'  
F1254 - 20.4'

#### INTERIOR, CLOSEST L.V. S.P.C. - 21.47'

#### SCALE 1" = 10' FEET

#### 34" WOOD LATH, 3/4" THICK

34" WOOD LATH, 3/4" THICK  
1.5" x 12" x 2" HARDWOOD STAKE  
12" MIN. LENGTH  
34" WOOD LATH, 3/4" THICK  
1.5" x 12" x 2" HARDWOOD STAKE  
12" MIN. LENGTH

#### SILT FENCE DETAIL

NO SCALE  
12" MIN. LENGTH

#### SURVEY INFO LEGEND

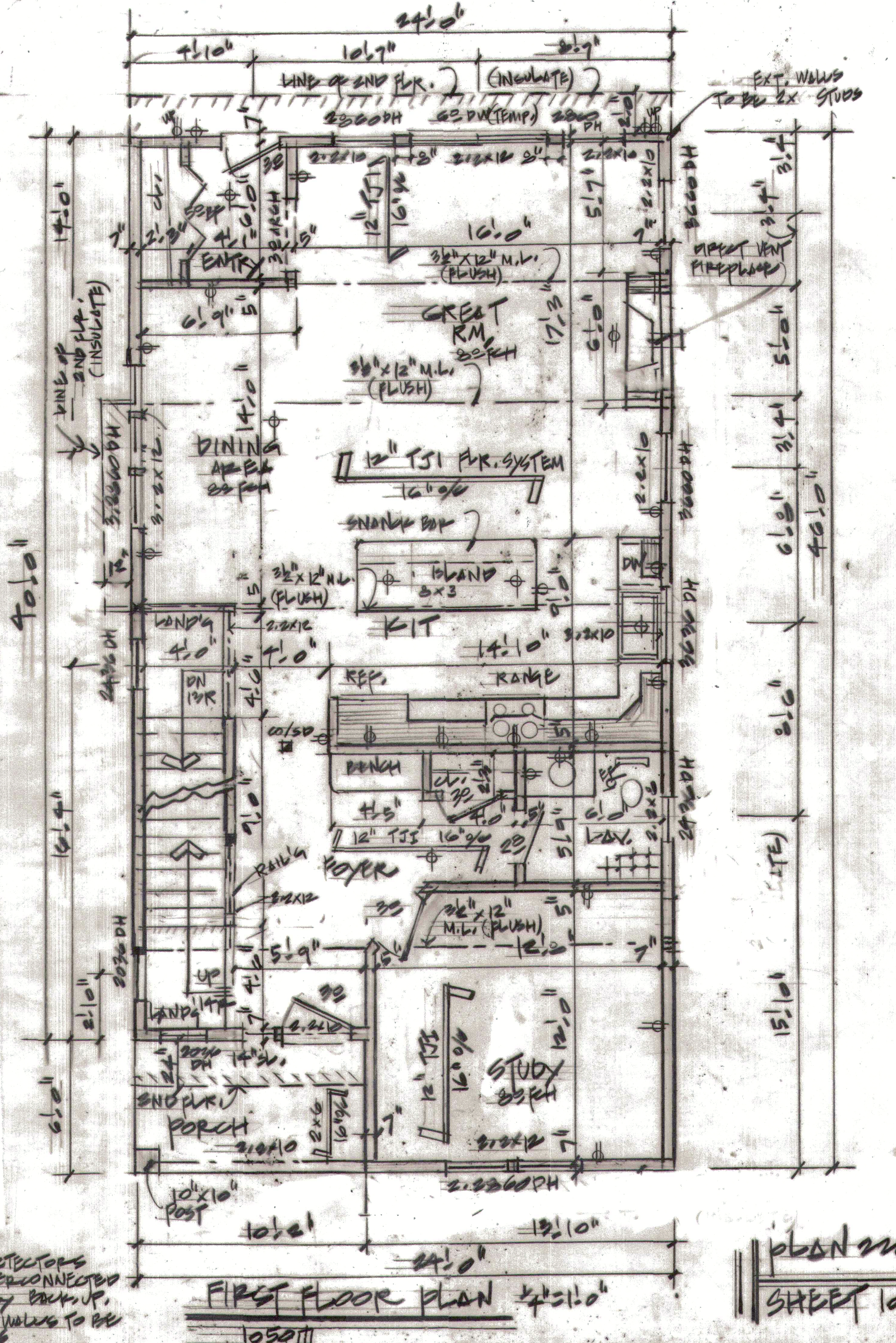
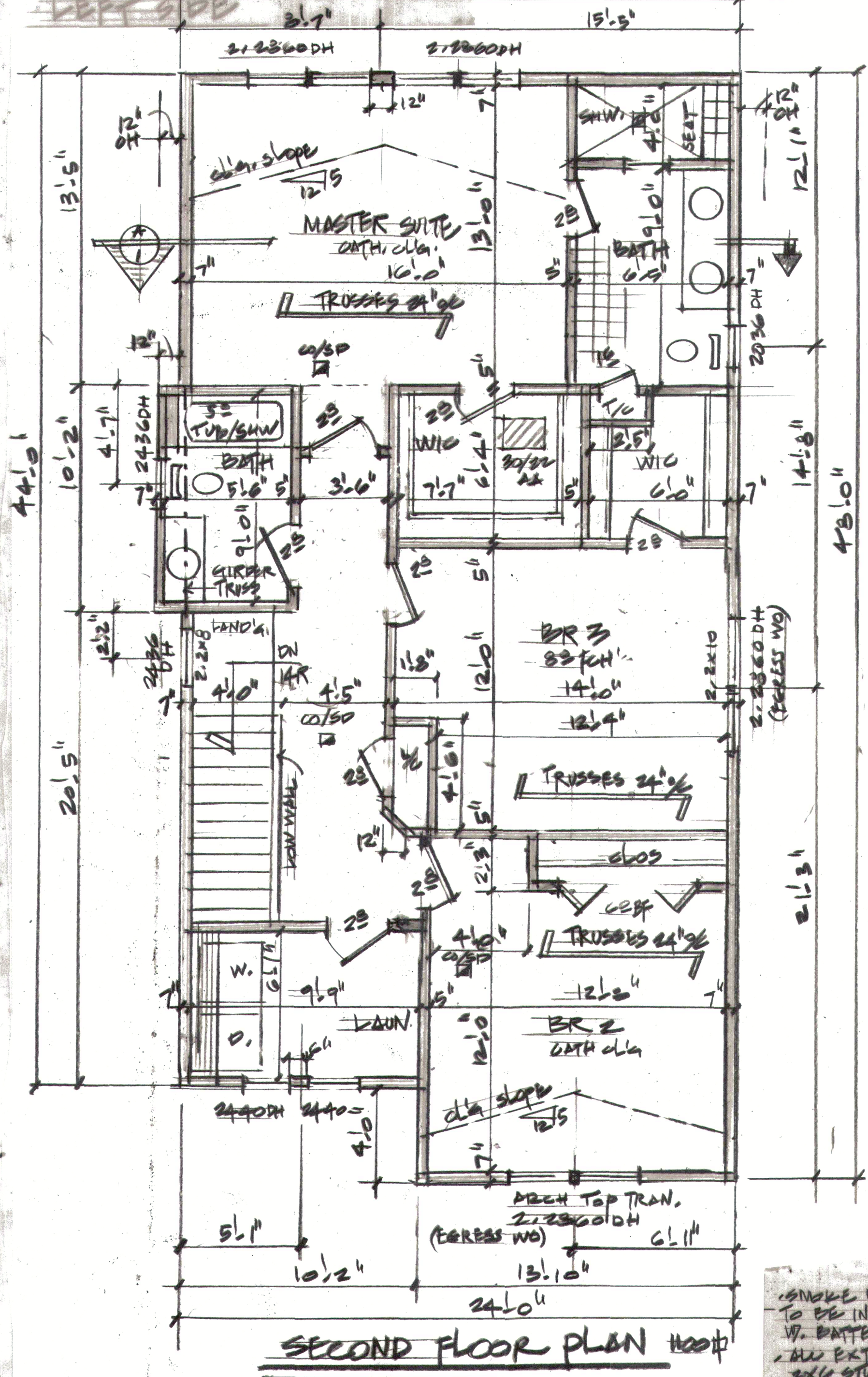
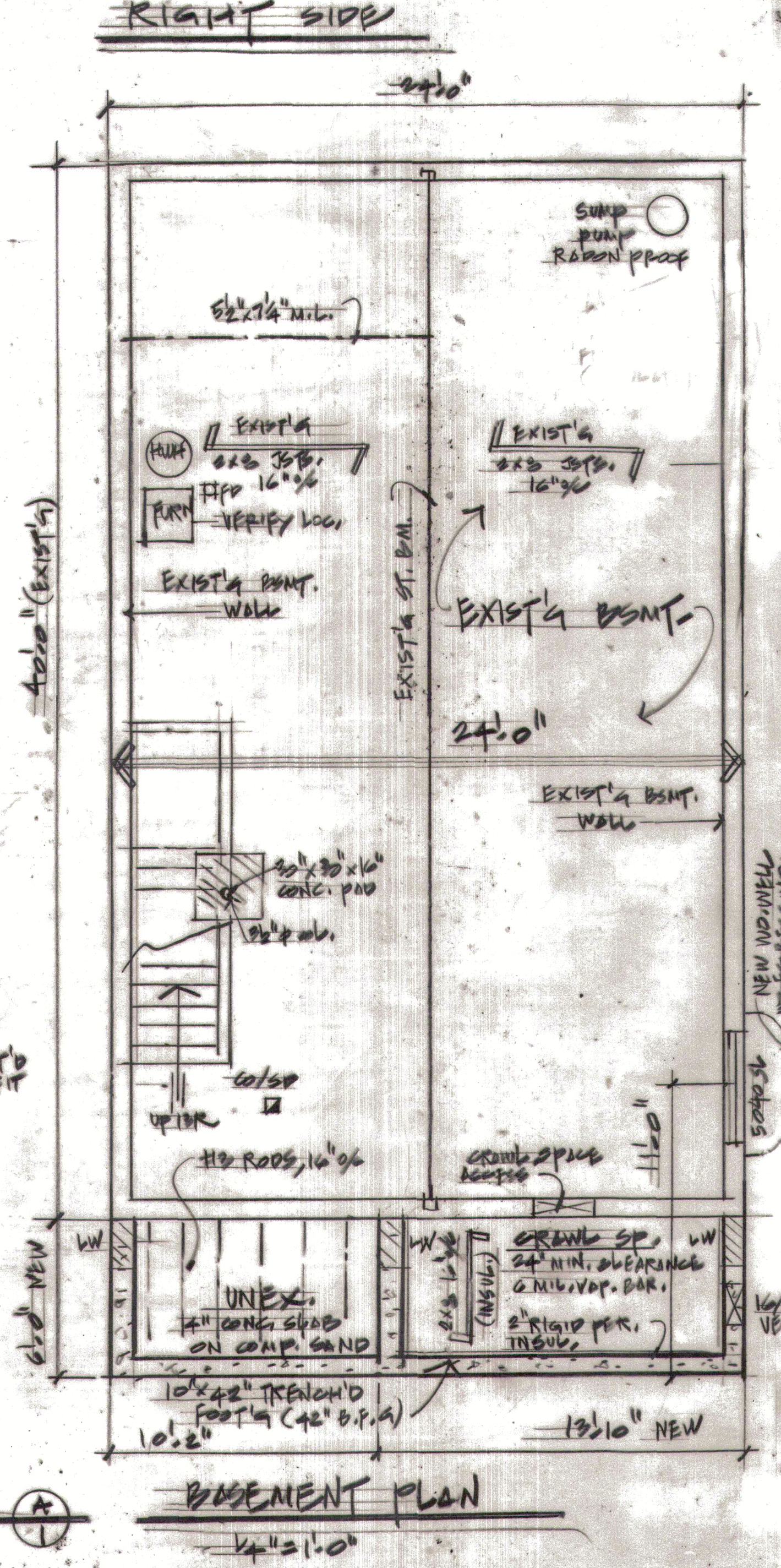
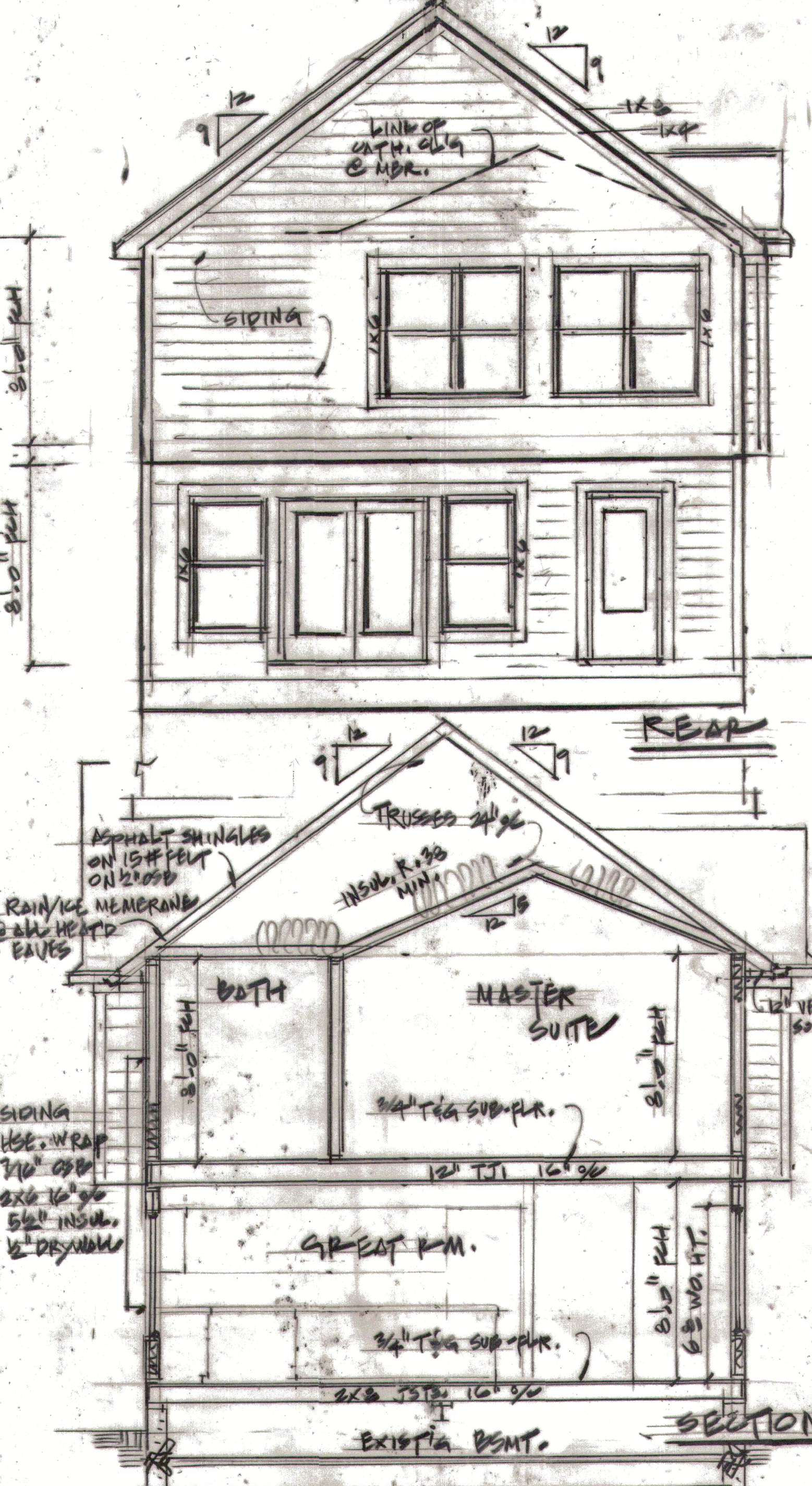
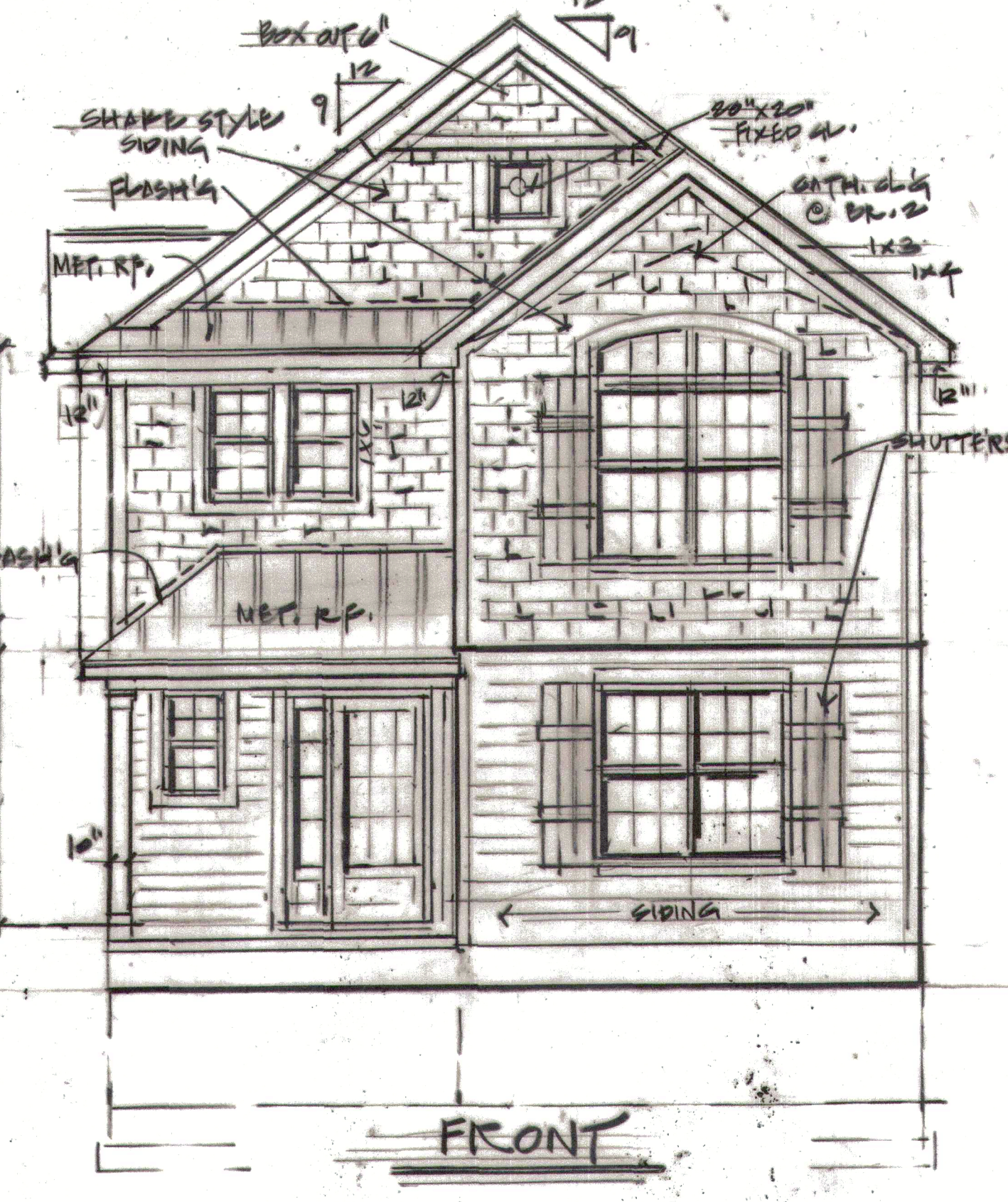
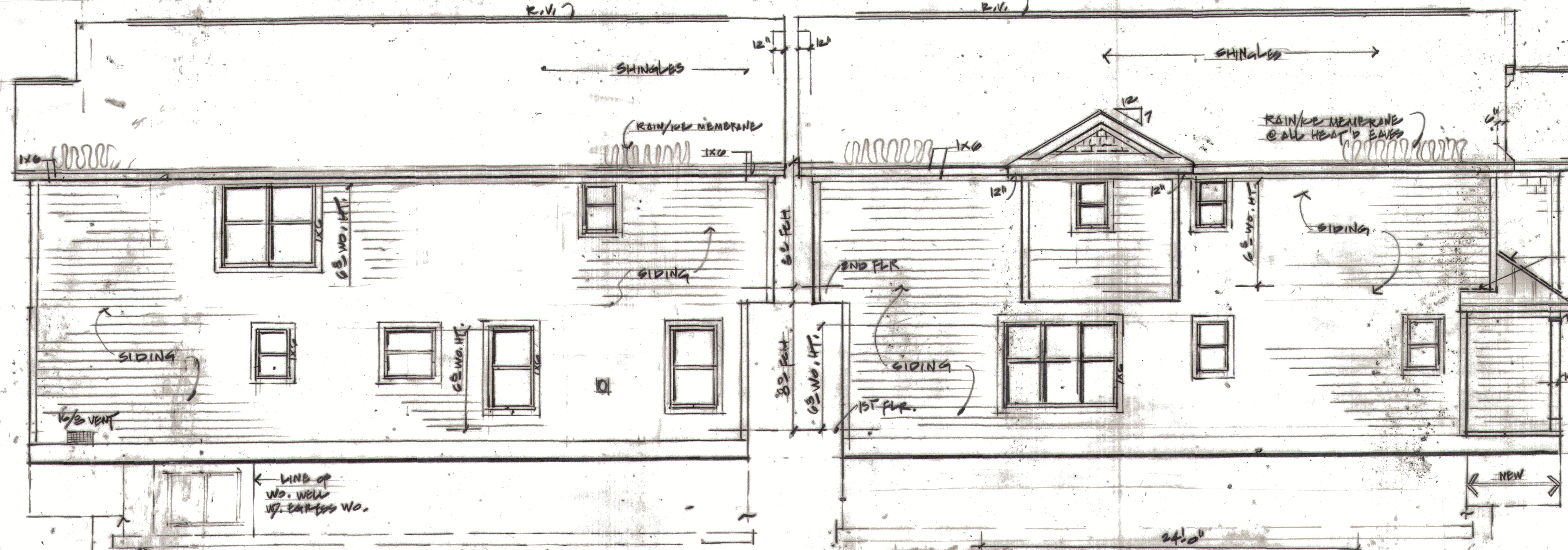
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UNDERGROUND UTILITY INFORMATION AS SHOWN WAS GATHERED IN PART FROM FIELD OBSERVATION AND IN PART FROM RECORDS OF THE VARIOUS UTILITY COMPANIES AND/OR MUNICIPAL RECORDS. NO GUARANTEE IS GIVEN OR IMPLIED AS TO THE ACCURACY AND/OR COMPLETENESS THEREOF.

CALL MISS-DIG (800) 482-3171 OR 811 AT LEAST 72 HOURS BEFORE COMMENCING ANY EXCAVATION

REVISIONS	DATE	COMMENTS
1	01/15/2023	ISSUED FOR PERMIT
2	02/15/2023	REVISED PER CITY COMMENTS
3	03/15/2023	REVISED PER CITY COMMENTS
4	04/15/2023	REVISED PER CITY COMMENTS
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# **CASE DESCRIPTION**

## **490 Berwyn (23-40)**

**Hearing date: November 14, 2023**

**Appeal No. 23-40:** The owner of the property known as **490 Berwyn**, requests the following variance to construct a rear addition:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of total lot width, whichever is larger. The required is 36.53 feet. The proposed is 26.46 feet on the north side. Therefore, a variance of 10.07 feet is being requested.

**Staff Notes:** This applicant is requesting variance for the distance between structures on the adjacent property by constructing an addition in the rear corner of the existing non-conforming home from 1929.

This property is zoned R1 – Single family residential.

---

Jeff Zielke, NCIDQ, LEED AP  
Assistant Building Official

# 490 BERWYN MAP



CITY OF BIRMINGHAM  
Community Development - Building Department  
151 Martin Street, Birmingham, MI 48009  
Community Development: 248-530-1850  
Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)  
**APPLICATION FOR THE BOARD OF ZONING APPEALS**

Received Date: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

Received By: \_\_\_\_\_

Appeal #: \_\_\_\_\_

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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**I. PROPERTY INFORMATION:**

Address: <b>490 BERWYN</b>	Lot Number: <b>278</b>	Sidwell Number: <b>19-35-104-028</b>
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**II. OWNER INFORMATION:**

Name: <b>KATHLEEN AND RICHARD NAUER</b>			
Address: <b>490 BERWYN</b>	City: <b>BIRMINGHAM</b>	State: <b>MI</b>	Zip code: <b>48009</b>
Email: <b>KNAUER@FINONEINC.COM</b>		Phone: <b>248.390.2600</b>	

**III. PETITIONER INFORMATION:**

Name: <b>RITA O'BRIEN</b>	Firm/Company Name: <b>RITA O'BRIEN INTERIORS</b>		
Address: <b>1700 STUTZ DRIVE</b>	City: <b>TROY</b>	State: <b>MI</b>	Zip code: <b>48064</b>
Email: <b>RITA@RITAOBRIEN.COM</b>		Phone: <b>248.761.2357</b>	

**IV. GENERAL INFORMATION:**

The Board of Zoning Appeals typically meets the second Tuesday of each month. COMPLETE digital applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

**To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted.** Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

**Variance Chart Example**

Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

**V. REQUIRED INFORMATION CHECKLIST:**

**Please provide the following in your electronic submission:**

- ☐ Completed and signed application
- ☐ Signed letter of practical difficulty and/or hardship
- ☐ Certified survey
- ☐ Building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, provide a copy of the minutes from any previous Planning, HDC, or DRB board meeting

**VI. APPLICANT SIGNATURE**

Owner hereby authorizes the petitioner designated below to act on behalf of the owner.

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

\*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: \_\_\_\_\_

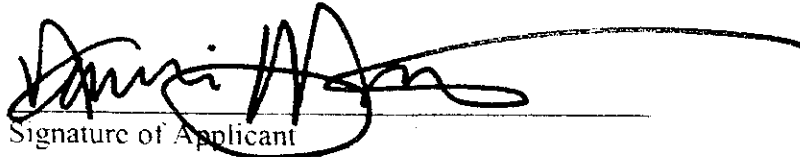
Date: **9/11/23**

Signature of Petitioner: **Rita O'Brien**

Date: **9.11.23**

B Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.


  
Signature of Applicant

OCTOBER 11, 2023

DEAR MEMBERS OF THE BOARD,

THANK YOU FOR YOUR REVIEW OF THE NAUER RESIDENCE VARIANCE REQUEST FOR THE PROPERTY LOCATED AT 490 BERWYN. THE NAUER FAMILY IS PROPOSING AN AUSTERE ADDITION ABOVE THEIR EXISTING SCREECHED PORCH. THE ADDITION OF 212 SQUARE FEET AT THE SECOND FLOOR WOULD HOUSE A NEW MASTER BATHROOM AND TWO SENSIBLY SCALED CLOSETS. THE NEW STRUCTURE WOULD SET ON THE EXISTING WALLS BELOW AND WOULD NOT ENCRoACH FURTHER TO THE RESIDENCE DIRECTLY NORTH OF THE EXISTING PORCH BELOW.

THE EXISTING HOME IS A NON-CONFORMING STRUCTURE, WITH AN ENCRoACHMENT OF 9.54' INTO THE REQUIRED DISTANCE BETWEEN REQUIREMENT OF 36.0'. THE ENCRoACHMENT WAS NOT SELF-CREATED, AS THE HOME WAS BUILT PRIOR TO THE CURRENT ORDINANCE IN 1927. STRICT COMPLIANCE TO THE ORDINANCE WOULD NOT ALLOW THE HOMEOWNERS TO REPAIR OR IMPROVE THEIR HOME. THERE IS NO ADVERSE EFFECT TO NEIGHBORING PROPERTIES AS THE IMPROVEMENT WOULD NOT EXTEND BEYOND THE EXISTING OUTLINES OF THE HOUSE. APPROVING THIS REQUEST PROVIDES SUBSTANTIAL JUSTICE TO THE HOMEOWNER AND TO THE NEIGHBORS. THE NAUER FAMILY RESPECTFULLY REQUESTS RELIEF FROM THE DISTANCE BETWEEN STRUCTURES REQUIREMENT WITH A VARIANCE OF 9.54'.

BEST WISHES, 

GENERAL CONSTRUCTION NOTES

- DO NOT SCALE DRAWINGS, USE PRINTED DIMENSIONS ONLY. IF ANY DISCREPANCY OCCURS NOTIFY THE ARCHITECT IMMEDIATELY FOR DIRECTION.
- CONTRACTOR SHALL VERIFY ALL CONDITIONS, INCLUDING UNDERGROUND UTILITIES AND FIELD MEASUREMENTS AT THE JOB SITE AND REPORT ANY DISCREPANCIES TO THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK.
- ALL POURED CONC. FOOTINGS TO BE A MINIMUM OF 3'-6" BELOW PROPOSED FINISH GRADE, AND SHALL BEAR ON UNDISTURBED SOIL. ADDITIONAL DEPTH MAY BE REQ'D BY SOIL CONDITIONS. ALLOWABLE SOIL BEARING PRESSURE OF 3000 PSF IS ASSUMED FOR FOOTING SIZES BASED ON THE PROPOSED SOIL BEARING PRESSURE OF 3000 PSF IS THE RESPONSIBILITY OF THE CONTRACTOR. QUESTIONABLE CONDITIONS TO BE INVESTIGATED BY A QUALIFIED SOILS ENGINEER.
- PROVIDE NECESSARY SHEATHING, SHORING, BRACING, AND ALL TEMPORARY SUPPORTS AS REQUIRED DURING EXCAVATIONS TO PROPERLY SUPPORT SIDES OF EXCAVATIONS.
- PROTECT ALL EXISTING WORK AND WORK IN PROGRESS.
- COMPLY FULLY WITH REQUIREMENTS OF OSHA AND OTHER REGULATORY AGENCIES FOR ALL SAFETY PROVISIONS.

- ALL CONCRETE TO ACHIEVE COMPRESSIVE STRENGTH OF 3000 PSI AT 28-DAY TEST. EXTERIOR CONCRETE SHALL BE AIR ENTRAINED 5% PLUS OR MINUS 1%.
- CONCRETE WORK AND PLACEMENT SHALL CONFORM TO THE LATEST SPECIFICATIONS OF THE AMERICAN CONCRETE INSTITUTION. PLACE ALL CONCRETE WITHOUT ADDING WATER TO THE TRANSIT MIX CONCRETE. SLUMP + 3" - 4".
- ALL REINFORCING SHALL CONFORM TO ASTM A-615 GRADE 60, FABRICATED AND ERECTED ACCORDING TO ACI STANDARDS.
- WELDED WIRE FABRIC SHALL BE FURNISHED IN FLAT SHEET AND SHALL CONFORM TO ASTM A-185 AND SHALL HAVE A MINIMUM SIDE AND END LAP OF 6".
- THE ROUGH CARPENTRY CONTRACTOR SHALL VERIFY ALL CONDITIONS AND DIMENSIONS PRIOR TO THE START OF FABRICATION OR CONSTRUCTION AND NOTIFY THE ARCHITECT OF ANY DISCREPANCIES.
- ALL LUMBER AND FRAMING TECHNIQUES SHALL CONFORM TO APPLICABLE SECTIONS OF THE LATEST SPECIFICATIONS FOR STRESS GRADE LUMBER AND ITS FASTENERS. ALL WORK SHALL CONFORM WITH THE TRUSS PLATE INSTITUTE, AMERICAN PLYWOOD ASSOCIATION, TRUSS JOIST MANUFACTURER AND THE NATIONAL FOREST PRODUCTS ASSOCIATION.

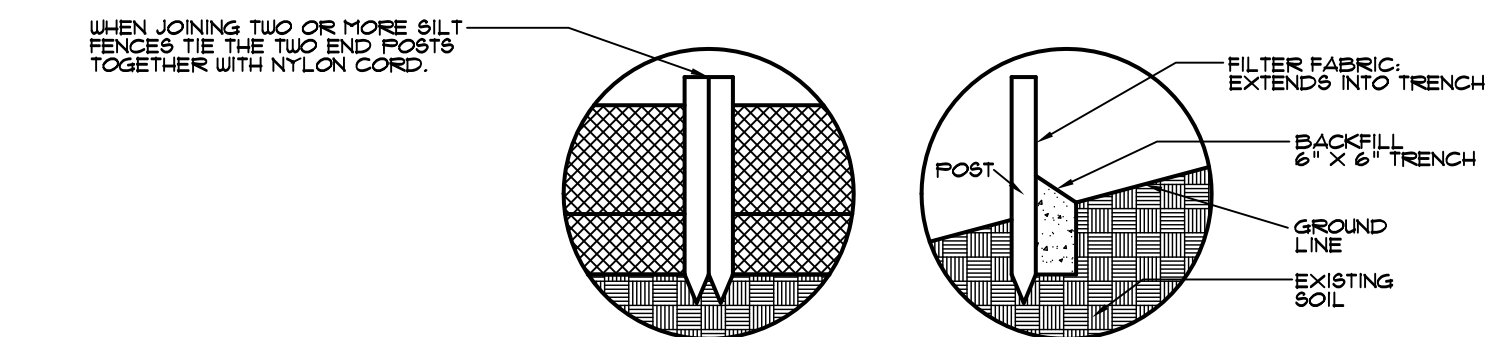
- ALL FLUSH BEAMS AND JOIST CONNECTIONS SHALL BE FASTENED WITH AN APPROPRIATE CAPACITY METAL HANGER OR STRAP (NO JOIST ANGLES) OR EQUIVALENT METAL PRODUCT AS APPROVED BY A STRUCTURAL ENGINEER AND (1) TOE NAIL (16d) FOR EACH 1000 LBS. OR AXIAL LOAD OR EACH SUPPORT STUD. POST BASES AND SUPPORT SHALL PROVIDE SUFFICIENT BEARING WITH AN ENGINEER APPROVED METAL CONNECTOR AND/OR TWO (2) TOE NAILS FOR EACH 1000 LBS. OF AXIAL LOAD OR SUPPORT STUD.
- ALL LUMBER BEARING SHALL PROVIDE SUFFICIENT AREAS SO AS NOT TO EXCEED 430 PSF.
- ALL SHEATHED STUDS SHALL BE LIMITED TO 2250 LBS. OF AXIAL LOAD.
- ALL FLOOR JOISTS, RAFTERS, STUDS, CEILING JOIST, AND BLOCKING TO BE 1" OR BETTER HEM FIR UNLESS OTHERWISE NOTED. FLOOR JOISTS TO HAVE 1" X 3 CROSS BRIDGING 8'-0" ON CENTER.
- ALL BUILT UP WOOD POSTS, BEAMS AND GIRDERS SHALL BE NAILED AND/OR BOLTED PER NDS.
- ROOF TRUSS MANUFACTURER TO SUPPLY THE ARCHITECT WITH TRUSS SHOP DRAWINGS PRIOR TO FABRICATION.

- ROOF TRUSS FRAMING INDICATED ON THE DRAWINGS IS AN ASSUMED LAYOUT. TRUSS MANUFACTURER SHALL REVIEW THE DRAWINGS AND INDICATE TO THE ARCHITECT, PRIOR TO FABRICATION, ANY CHANGE IN BEARING CONDITION THAT WOULD REQUIRE RE-FRAMING THE STRUCTURE TO ACCOMMODATE THE TRUSSES.
- ROOF TRUSS DESIGN SHALL BE BY TRUSS MANUFACTURER AND SHALL CONFORM TO DESIGN LOAD REQUIREMENTS LISTED BELOW. BRACE ALL ROOF TRUSSES PER MANUFACTURER'S SPECIFICATIONS.

ROOF TRUSSES:	TOP CHORD	LIVE LOAD	30 PSF
		DEAD LOAD	15 PSF
BOTTOM CHORD		LIVE LOAD	15 PSF
		DEAD LOAD	15 PSF
		TOTAL	30 PSF
			15 PSF

- NAILING SCHEDULE FOR PLYWOOD SHEATHING: 10d NAILS AT 6" ON CENTER AT DIAPHRAGM BOUNDARY AND ALONG END SUPPORTING MEMBERS, 10d NAILS AT 12" ON CENTER ALONG INTERMEDIATE FRAMING MEMBERS.
- MICRO-LAM BEAMS (LVL'S) SHALL BE BY "TRUSS JOIST MANUFACTURER" OR EQUAL. ALL BEAMS JOINED TOGETHER SHALL BE PER MANUFACTURER'S SPECIFICATIONS. NO SUBSTITUTIONS SHALL BE ACCEPTABLE WITHOUT PRIOR APPROVAL OF THE ARCHITECT.
- INSTALL DOUBLE FLOOR JOISTS UNDER ALL UPPER FLOOR LEVEL. PARALLEL PARTITIONS.
- BUILDER SHALL PROVIDE METAL DIAGONAL CORNER AND WIND BRACING AT CORNERS PER CODE 'X' AND 'K' SHAPED BRACINGS ARE ACCEPTABLE.
- ALL WINDOW NUMBERS REFER TO MANUFACTURER INDICATED ON THE PLANS. IF AN ALTERNATE WINDOW MANUFACTURER IS USED, ALL SHAPES AND SIZES SHALL MATCH IN ALL DIMENSIONS. EVERY SLEEPING RM. SHALL BE PROVIDED WITH AN OPERABLE EGRESS WINDOW. THE SILL HEIGHT SHALL NOT BE MORE THAN 44" ABOVE THE FLOOR. THE WINDOW WHEN OPEN, SHALL HAVE A NET CLEAR OPENING AREA OF 5.7 SQ. FT. THE MINIMUM NET CLEAR OPENING WIDTH SHALL BE AT LEAST 20" AND MINIMUM NET CLEAR OPENING HEIGHT OF AT LEAST 24" PER THE CURRENT MICHIGAN RESIDENTIAL BUILDING CODE.
- ALL MASONRY VENEER WALLS TO BE PROVIDED WITH WALL TIES AND WEEP HOLES PER CURRENT CODE, AS OUTLINED IN THE CURRENT MICHIGAN RESIDENTIAL BUILDING CODE.
- ALL STAIRWAYS, STAIRWAY GUARDS, HANDRAILS, BALUSTERS, HEADROOM DIMENSIONS, RISERS AND TREADS SHALL COMPLY WITH ALL CODE REQUIREMENTS, AS OUTLINED IN THE CURRENT MICHIGAN RESIDENTIAL BUILDING CODE.
- PROPERLY VENTILATE ROOF SO THERE IS A CROSS-VENTILATION WITH ROOF VENTS AND SOFFIT VENTS PER THE CURRENT MICHIGAN BUILDING CODE. CONTINUOUS ROOF BRIDGE VENT SHALL BE BY MID-AMERICA BUILDING PRODUCTS, PLYMOUTH, MICHIGAN (800) 521-8416. PROVIDE AN UNDERLAYMENT OF 1/4" FELT UNDER ASPHALT SHINGLES AND A LAYER OF GRACE ICE AND WATER SHIELD FROM EAVE TO ENTIRE LENGTH OF ROOF (100% OF ROOF ENTIRELY). SEE WALL SECTION FOR ICE SHIELD DETAIL. INSULATION IS TO BE PROVIDED WITH A VAPOR BARRIER ON THE WARM SIDE SURFACE. NET FREE VENTILATION AREA REQUIRED IS 1/300th OF THE AREA BEING VENTILATED. 95% OF THAT AREA SHALL BE IN THE UPPER PORTION OF THAT SPACE. THE REMAINDER VENTILATION IS TO BE PROVIDED BY CONTINUOUS SOFFIT VENTS, EAVE VENTS AND CROSS VENTS.
- ALL CONCRETE FLAT WORK SHALL BE PLACED ON 4" OF COMPACTED SAND.
- PROVIDE ALL NECESSARY UNDERPINNING AND BRACING AS REQUIRED TO PROPERLY INSTALL NEW FOOTINGS.
- PROVIDE WATERPROOFING ASPHALTIC PARKING COATING BELOW GRADE IF REQUIRED.
- THE CONTRACTOR SHALL PROVIDE WRITTEN CHANGE ORDERS DOCUMENTING ADDITIONAL WORK, OR DELETION OF WORK, PRIOR TO THE CHANGE EFFORT ON THE JOB.
- LOTS AND STREET SHALL BE MAINTAINED FREE OF DIRT AND DEBRIS DURING CONSTRUCTION.
- PLASTER AND TAR ALL BRICK BELOW GRADE.
- PROPERLY VENT CRAWL SPACES PER STATE MECHANICAL CODE.
- BATH FANS TO BE VENTED TO EXTERIOR.
- HANDRAIL GRIP SIZE SHALL NOT EXCEED A MAXIMUM HORIZONTAL CROSS-SECTIONAL DIMENSION OF 2 5/8" PER THE CURRENT MICHIGAN RESIDENTIAL BUILDING CODE.
- BALCONY GUARDS SHALL BE BALUSTERS SPACED NO FARTHER THAN 4" APART PER THE REQUIREMENTS OF THE CURRENT MICHIGAN RESIDENTIAL BUILDING CODE.
- PROVIDE 2X10 DOUBLE HEADER AT ALL INTERIOR DOOR OPENINGS AND 2X10 TRIPLE HEADER AT ALL EXTERIOR DOOR AND WINDOW OPENINGS (UNLESS OTHERWISE SPECIFIED)
- PROVIDE METAL STRAPPED UNDERBRACING AT EACH END OF EXTERIOR WALLS (TYPICAL)
- PROVIDE ELECTRICALLY POWERED SMOKE DETECTORS ON EACH LEVEL, IN EACH BEDROOM, AND BEDROOM HALLWAYS. UNITS ARE TO BE WIRED 60 IF ONE SOUNDS, THEY ALL SOUND. ALL SHALL HAVE BATTERY BACK UP PER THE CURRENT MICHIGAN RESIDENTIAL BUILDING CODE SECTION R611.
- ALL WORK SHALL CONFORM TO THE REQUIREMENTS OF THE CURRENT MICHIGAN RESIDENTIAL BUILDING CODE.
- FIRESTOP ALL DROPS + CHASES, ELECTRICAL, PLUMBING + HEATING, APPROVED FIRESTOP MATERIAL REQUIRED FOR ALL DROPS + FLOOR OR CEILING PENETRATIONS AS OUTLINED IN THE CURRENT MICHIGAN RESIDENTIAL BUILDING CODE.
- DESIGN LOADS:
  - ROOF LIVE LOAD = 25 PSF.
  - ROOF DEAD LOAD = 15 PSF.
  - FLOOR LIVE LOAD = 40 PSF.
  - FLOOR DEAD LOAD = 15 PSF.
  - WIND LOAD = 20 PSF.
- INSULATION 'R' VALUES SHALL COMPLY WITH TABLE N1021, OF THE 2015 MICHIGAN RESIDENTIAL CODE, UNLESS OTHERWISE NOTED.
- PROVIDE ON-SITE DUMPSTER THROUGHOUT THE DURATION OF THE WORK.
- PROVIDE ON-SITE PORTABLE "PORT-A-JOHN" THROUGHOUT THE DURATION OF THE WORK.
- PAINT ENTIRE INTERIOR AND EXTERIOR OF HOME. EXTERIOR SIDING AND TRIM TO BE PAINTED WITH ONE COAT PRIMER AND TWO COATS FINISH WITH BENJAMIN MOORE PREMIUM PAINT OR OWNER'S EQUAL. SPECIFICATION SHOULD INCLUDE THREE COLORS AND COMPLETE CAULKING BOTH EXTERIOR AND INTERIOR. INTERIOR CEILING TO BE FLAT FINISH, WALLS IN EGG SHELL AND ALL TRIMS AND CABINETS IN HIGH GLOSS "PEARL" FINISH.
- ALL ENGINEERED WOOD PRODUCT DOCUMENTATION I.E. TRUSSES, I-JOIST ETC., WILL BE REQUIRED TO BE SUBMITTED PRIOR TO OR AT THE ROUGH FRAME INSPECTION.
- AN INSULATION CERTIFICATE IS REQUIRED TO BE SUBMITTED PRIOR TO THE CERTIFICATE OF OCCUPANCY INCLUDING ANY BLOWN IN PRODUCT.

GEOTEXTILE SILT FENCE



NOTE:  
THIS PLOT PLAN WAS PREPARED BASED ON INFORMATION PROVIDED BY THE OWNER, CONTRACTOR AND OR CIVIL ENGINEER, AND IS SCHEMATIC ONLY. FOR DEFINITIVE INFORMATION SEE CIVIL DRAWINGS (BY OTHER).

NOTE:  
KEVIN HART AND ASSOCIATES ASSUMES NO RESPONSIBILITY FOR ANY CHANGES MADE TO THIS DRAWING IN THE FIELD.

NOTE:  
THIS DRAWING IS NOT INTENDED OR REPRESENTED TO BE A LAND OR PROPERTY LINE SURVEY. THIS DRAWING IS NOT TO BE USED FOR THE ESTABLISHMENT OF ANY PROPERTY LINES OR OTHER IMPROVEMENTS.

NOTE:  
THIS PLOT PLAN WAS PREPARED IN THE OFFICE. FIELD WORK WAS PERFORMED. APPROVAL OF THIS PLOT PLAN DOES NOT RELIEVE THE OWNER/BUILDER OF COMPLIANCE WITH ALL APPLICABLE CODES AND OR ORDINANCES.

NOTE:  
TYPE OF PERMANENT VEGETATIVE RESTORATION WILL BE SEED/MULCH PER BUILDER UNLESS SPECIFIED OTHERWISE.

SOIL EROSION AND SEDIMENTATION CONTROL PLAN NOTES:

- SOIL EROSION AND SEDIMENT CONTROL WORK SHALL CONFORM TO THE CURRENT STANDARDS AND SPECIFICATIONS OF THE STATE AND COUNTY BUILDING OFFICIALS.
- DAILY INSPECTIONS SHALL BE MADE BY THE CONTRACTOR TO DETERMINE EFFECTIVENESS OF EROSION AND SEDIMENTATION CONTROL MEASURES, AND NECESSARY REPAIRS SHALL BE PERFORMED WITHOUT DELAY.
- EROSION AND SEDIMENTATION FROM WORK ON THIS SITE SHALL BE CONTAINED ON THE SITE AND NOT ALLOWED TO COLLECT ON OFF-SITE AREAS OR IN WATERWAYS. WATERWAYS SHALL MEAN BOTH NATURAL AND MAN-MADE OPEN DITCHES, STREAMS, STORM SEWER DRAINS, LAKES, PONDS, AND WETLANDS.
- EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE PLACED PRIOR TO OR AS THE FIRST STEP IN CONSTRUCTION. SEDIMENTATION CONTROL MEASURES SHALL BE PROVIDED AS A DEFENSE AGAINST TRANSPORTING OF SILT OFF THE SITE.
- CONTRACTOR SHALL APPLY FOR TEMPORARY EROSION AND SEDIMENTATION CONTROL MEASURES AS REQUIRED AND AS DIRECTED ON THESE PLANS. CONTRACTOR SHALL REMOVE TEMPORARY MEASURES AS SOON AS PERMANENT STABILIZATION OF SLOPES, DITCHES, AND OTHER EARTH CHANGES HAVE BEEN ACCOMPLISHED.
- PERMANENT SOIL EROSION CONTROL MEASURES FOR SLOPE, CHANNELS, DITCHES OR DISTURBED LAND AREAS SHALL BE COMPLETED WITHIN 5 CALENDAR DAYS AFTER FINAL GRADING OF THE FINAL EARTH CHANGES HAVE BEEN COMPLETED. WHEN IT IS NOT POSSIBLE TO PERMANENTLY STABILIZE A DISTURBED AREA AFTER AN EARTH CHANGE HAS BEEN COMPLETED OR WHEN SIGNIFICANT EARTH CHANGE ACTIVITY CEASES, TEMPORARY SOIL EROSION CONTROL MEASURES SHALL BE MAINTAINED UNTIL PERMANENT SOIL EROSION CONTROL MEASURES ARE IMPLEMENTED. PERMANENT SOIL EROSION CONTROL MEASURES SHALL BE IMPLEMENTED AND ESTABLISHED BEFORE A CERTIFICATE OF COMPLIANCE IS ISSUED.
- MUD/DIRT TRACKED ONTO EXISTING TOWNSHIP/COUNTY ROADS FROM THIS SITE, DUE TO CONSTRUCTION, SHALL BE PROMPTLY REMOVED BY THE CONTRACTOR.
- MUD /DIRT TRACKED OR SPILLED ON PAVED ROADS/SURFACES WITHIN THIS SITE SHALL BE PROMPTLY REMOVED BY THE CONTRACTOR.
- VEGETATION MUST BE ACCEPTABLY ESTABLISHED PRIOR TO FINAL RELEASE OF THE CONSTRUCTION DEPOSIT BY THE CITY AND BY THE COUNTY IF APPLICABLE.
- SOIL BORING REPORTS ARE TO ACCOMPANY THIS APPLICATION FOR SOIL EROSION SEDIMENTATION CONTROL PERMIT.

NOTE:  
TYPE OF PERMANENT VEGETATIVE RESTORATION WILL BE SEED/MULCH PER BUILDER UNLESS SPECIFIED OTHERWISE.

NOTE:  
SOIL EROSION CONTROL MEASURES WILL BE INSTALLED BY BUILDER AND MAINTAINED ON A WEEKLY BASIS AND AFTER EACH STORM EVENT

SEQUENCE OF EROSION AND SEDIMENTATION CONTROL OPERATIONS

- PRIOR TO OR AS THE FIRST STEP IN CONSTRUCTION, A DEFENSE AGAINST EROSION AND SEDIMENTATION SHALL BE INSTALLED AS INDICATED ON DRAWINGS. DEFENSE SHALL CONSIST OF STONE FILTERS OR SILT FENCE AS SHOWN. AFTER TREE REMOVAL ADDITIONAL SILT FENCE SHALL BE INSTALLED IF REQUIRED, AS DIRECTED BY THE MUNICIPALITY.
- DURING CONSTRUCTION OF THE STORM SEWER SYSTEM, THE END OF OPEN-END PIPES SHALL BE PROTECTED WITH STORM FILTERS, SILT FENCE OR OTHER APPROVED METHOD.
- PROMPTLY UPON BACKFILLING OF STORM STRUCTURES, INLET FILTERS SHALL BE REPLACED AROUND THE STRUCTURE PER DETAIL.
- WHEN INLET FILTERS ARE REMOVED FROM AROUND PAVEMENT CATCH BASINS TO ALLOW FOR STRIPPING, GRADING AND PAVING, STORM SEWER STRUCTURES SHALL BE PROTECTED FROM ERODING EARTH AND SEDIMENT AT ALL TIMES.
- WITHIN 30 DAYS AFTER COMPLETION OF PAVING GAS ELECTRICAL TELEPHONE AND SANITARY SEWER INSTALLATION, A 15 FOOT STRIP AROUND PAVED AREAS SHALL BE PROTECTED FROM EROSION BY AN APPROVED METHOD CONSISTENT WITH THE GROWING SEASON.
  - 50% PERENNIAL RYE
  - 5% KENTUCKY BLUEGRASS
  - 35% CREEPING RED PEGUE
- EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SEQUENCE OF CONSTRUCTION:
  - A. INSTALL SILT FENCE AS SHOWN ON PLANS.
  - B. STRIP AND STOCKPILE TOPSOIL AND GRADE SITE.
  - C. INSTALL STORM SEWERS.
  - D. INSTALL PAVEMENT, REPAIR STORM FILTERS AS REQUIRED.
  - E. INSTALL PUBLIC UTILITIES (GAS, TELEPHONE, ELECTRICAL).
  - F. FINISH GRADE, REDISTRIBUTE TOP SOIL, ESTABLISH VEGETATION + LANDSCAPE.
  - G. CLEAN PAVEMENT, CULVERTS, DITCHES, WATERCOURSES, AND STORM SEWER SYSTEMS OF ACCUMULATED SEDIMENT IN CONSTRUCTION WITH REMOVAL OF TEMPORARY DEVICES.
- PERMANENT STABILIZATION OF THE SITE IS TO BE ACCOMPLISHED WITHIN (5) DAYS OF FINAL GRADING.

SETBACKS: (R-1)

FRONT SETBACK: 32.92' (200' Avg.)

SIDE SETBACKS:

NORTH SIDE = 14.4'  
SOUTH SIDE = 216'

REAR SETBACK: 30.0'

ZONE: R-1

USE GROUP: R-3

CONSTRUCTION TYPE: 5B COMBUSTIBLE UNPROTECTED

LOT COVERAGES:

\* LOT AREA = 19,382 SQ. FT. LOT

\* BUILDING COVERAGE

\* 4,030 SQ. FT. PROVIDED OR 21.10% OVERALL  
\* 4,030 SQ. FT. PROPOSED OR 21.10% OVERALL

\* OPEN AREA = 19,382 SQ. FT. LOT

\* 15,292 SQ. FT. PROVIDED OR 78.92% OVERALL  
\* 15,292 SQ. FT. PROPOSED OR 78.92% OVERALL

VARIANCE CHART:

REQUESTED VARIANCE	REQUIRED	EXISTING	PROPOSED	VARIANCE AMOUNT
DISTANCE BETWEEN HOUSES SETBACK	36.53'	26.46'	26.46'	10.07'

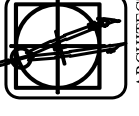
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Use figured dimensions only do not scale drawings

ISSUED FOR:  
6-1-23  
6-13-23  
9-28-23  
10-11-23  
10-24-23

NAUER RESIDENCE  
490 BERWYN  
BIRMINGHAM, MICHIGAN

CLIENT:  
RITA O'BRIEN  
1700 STUTZ DRIVE  
TROY, MI 48064  
248-161-2357  
KATHY NAUER: 248-390-2600

KEVIN D. HART, AIA



PLANNING DESIGN & ENGINEERING  
TELEPHONE: 248-425-9427  
405 SOUTH LEXINGTON STREET, BIRMINGHAM, MI 35203

SHEET NO.  
A-1

SITE PLAN  
SCALE: 1" = 20'-0"



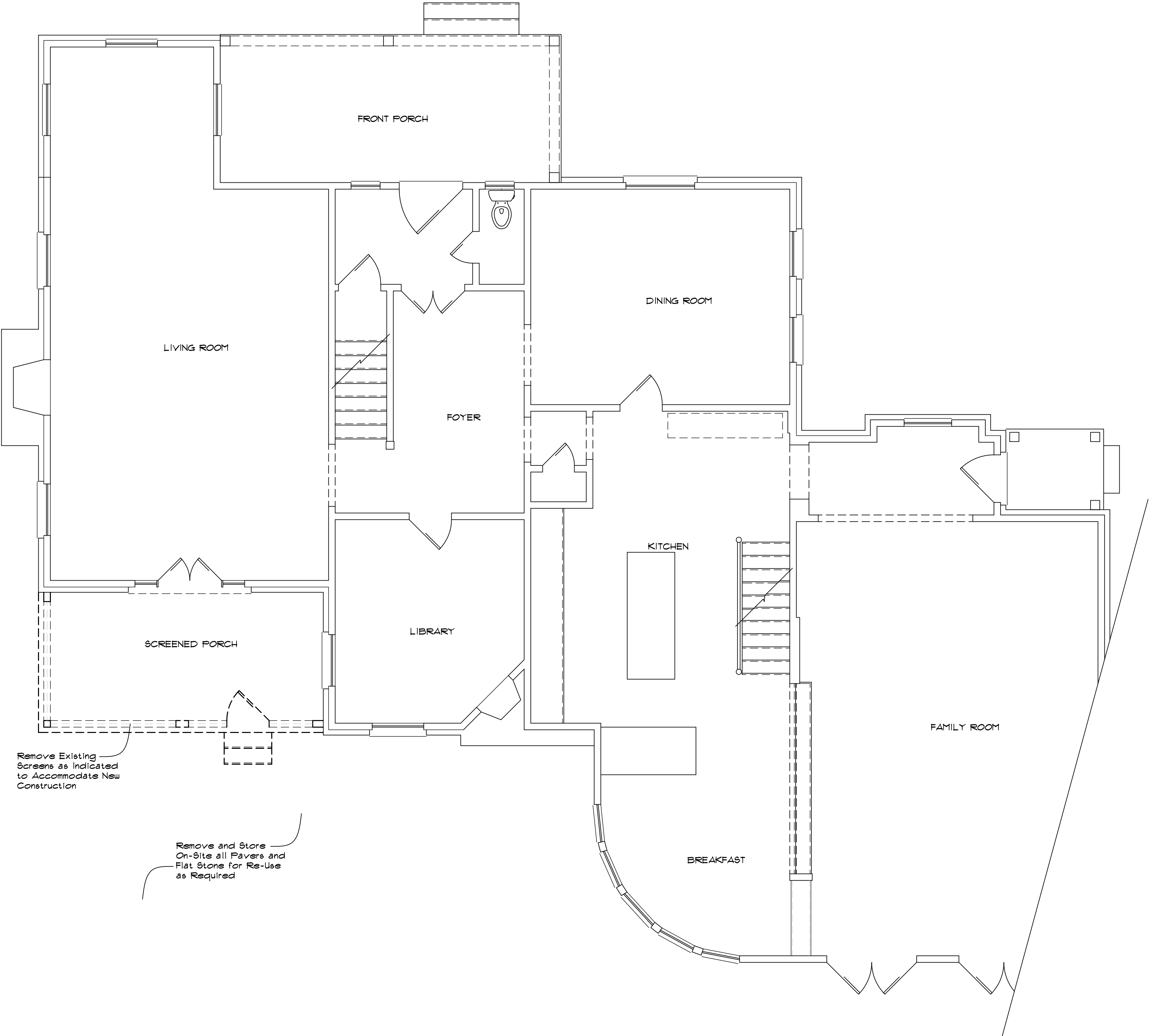
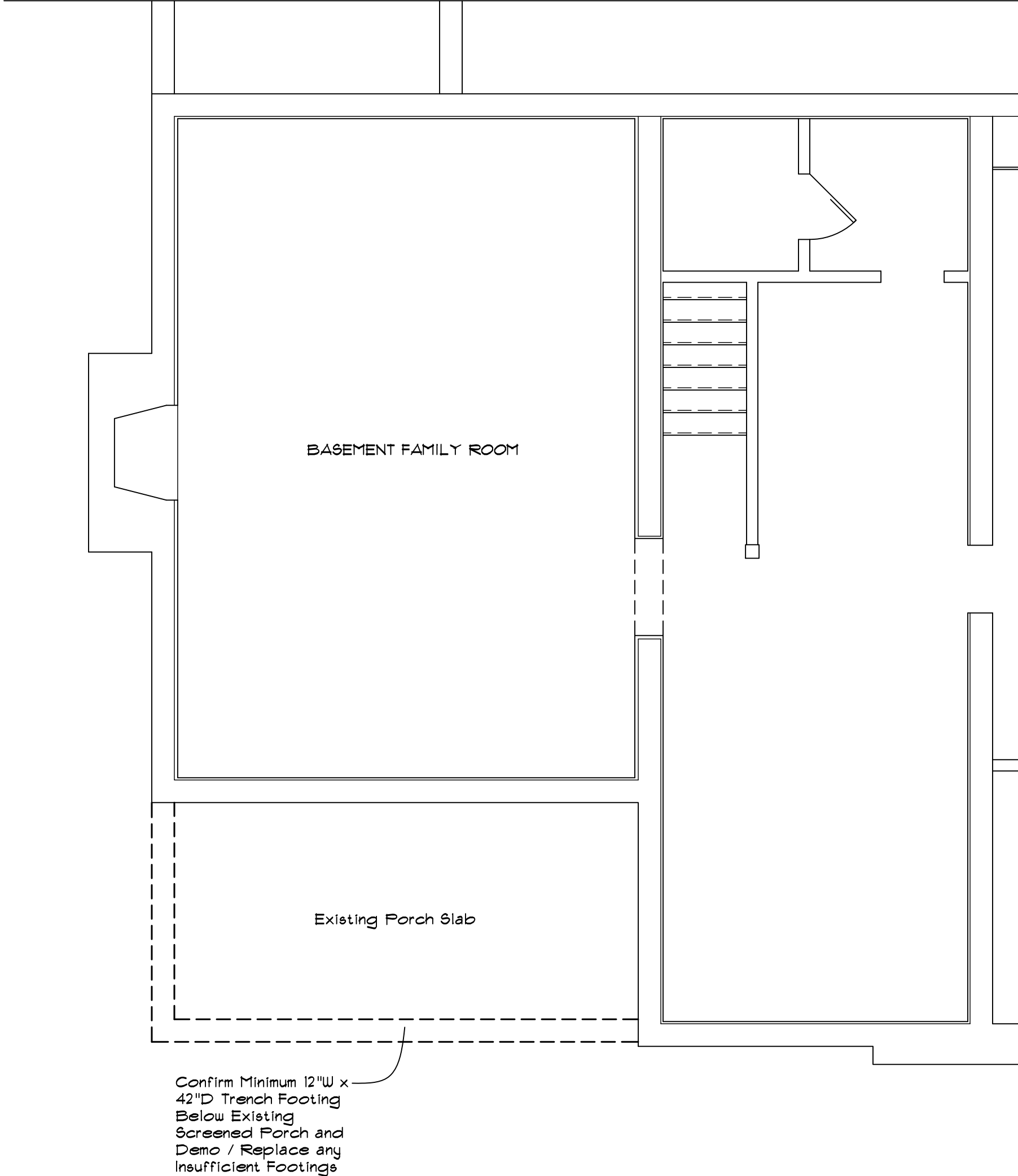
LOCATION  
N.T.S.





DEMOLITION NOTES:

- 1. PROVIDE ALL NECESSARY TEMPORARY BRACING AND SHORING AND BACKFILLING AS REQUIRED TO IMPLEMENT THE NEW DESIGN.
- 2. PROVIDE WEATHER PROTECTION FOR ALL NEW AND EXISTING WORK THROUGHOUT THE DURATION OF THE JOB.
- 3. MAINTAIN SECURITY FOR THE JOB SITE AT THE END OF EACH WORK DAY THROUGHOUT THE DURATION OF THE JOB.
- 4. MAINTAIN A CLEAN AND ORDERLY JOB SITE THROUGHOUT THE DURATION OF THE JOB. PROVIDE AN ON-SITE DUMPSTER FOR THE ENTIRE LENGTH OF THE WORK.
- 5. PROVIDE PORT-A-JOHN ON THE SITE THROUGHOUT THE DURATION OF THE JOB. SET PORT-A-JOHN IN REAR YARD THROUGHOUT THE DURATION OF THE JOB.
- 6. REMOVE ALL FLOORING AND RELATED MATERIALS IN ORDER TO ACCOMMODATE NEW LAY-OUT.
- 7. REMOVE ALL FLOOR REGISTERS AND RELATED MATERIALS IN ORDER TO ACCOMMODATE NEW HVAC LAY-OUT.
- 8. SEE A-3 FOR SECOND FLOOR DEMO PLAN.
- 9. IT IS IMPERATIVE THAT ALL CONTRACTORS WORKING AT THIS SITE MAINTAIN A CLEAN AND ORDERLY ENVIRONMENT IN THE YARD, IN THE STREET, AND WITHIN THE HOUSE ON A DAILY BASIS.



PLEASE DO NOT SCALE DRAWINGS

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ISSUED FOR:

4-4-23

6-1-23

6-13-23

10-11-23

CLIENT:

RITA O'BRIEN

1700 STUTZ DRIVE

TROY, MI 48064

248-161-2351

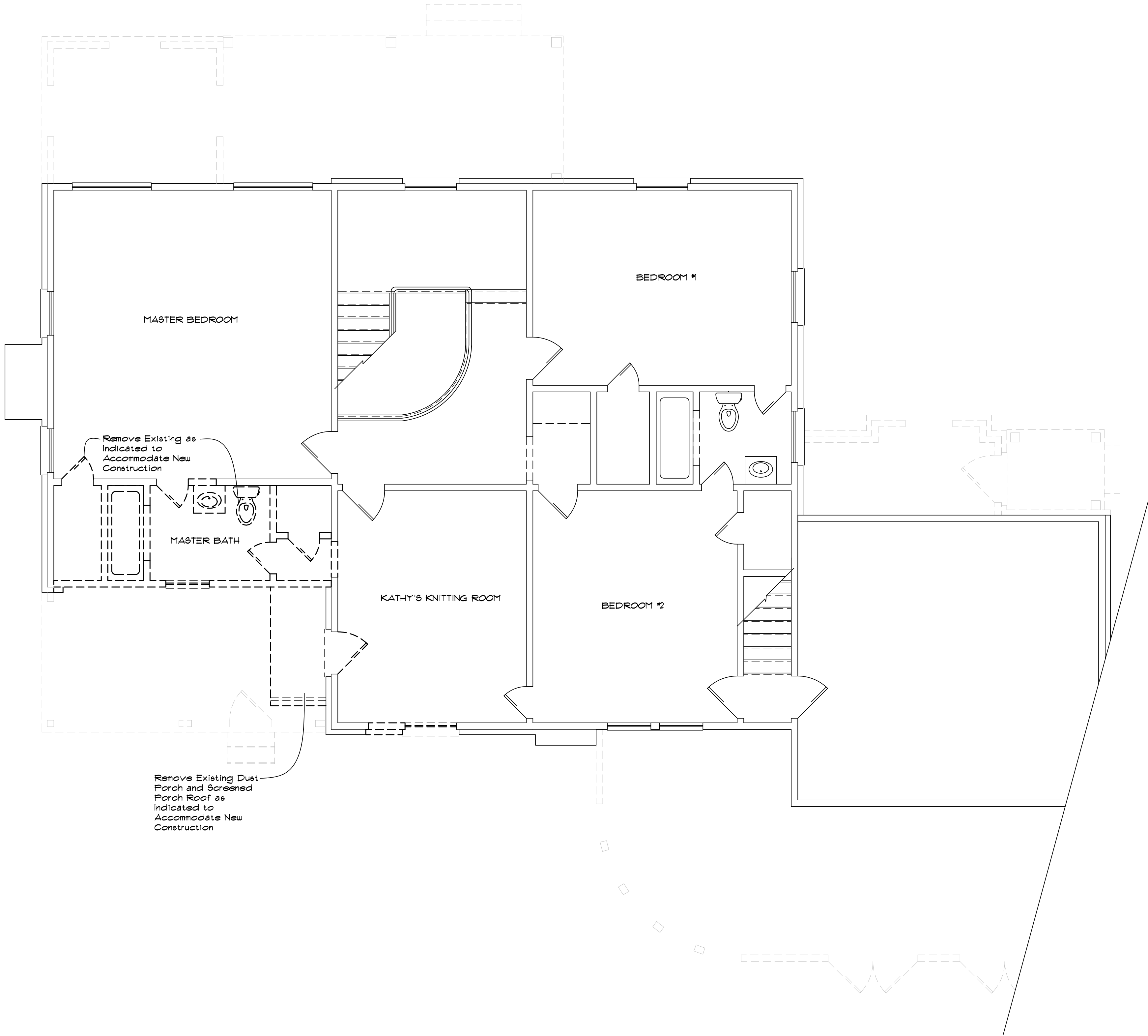
SHEET NO.

A-2



DEMOLITION NOTES:

1. PROVIDE ALL NECESSARY TEMPORARY BRACING AND SHORING AND BACKFILLING AS REQUIRED TO IMPLEMENT THE NEW DESIGN.
2. PROVIDE WEATHER PROTECTION FOR ALL NEW AND EXISTING WORK THROUGHOUT THE DURATION OF THE JOB.
3. MAINTAIN SECURITY FOR THE JOB SITE AT THE END OF EACH WORK DAY THROUGHOUT THE DURATION OF THE JOB.
4. MAINTAIN A CLEAN AND ORDERLY JOB SITE THROUGHOUT THE DURATION OF THE JOB. PROVIDE AN ON-SITE DUMPSTER FOR THE ENTIRE LENGTH OF THE WORK.
5. PROVIDE PORT-A-JOHN ON THE SITE THROUGHOUT THE DURATION OF THE JOB. SET PORT-A-JOHN IN REAR YARD THROUGHOUT THE DURATION OF THE JOB.
6. REMOVE ALL FLOORING AND RELATED MATERIALS IN ORDER TO ACCOMMODATE NEW LAY-OUT.
7. REMOVE ALL FLOOR REGISTERS AND RELATED MATERIALS IN ORDER TO ACCOMMODATE NEW HYAC LAY-OUT.
8. SEE A-3 FOR SECOND FLOOR DEMO PLAN.
9. IT IS IMPERATIVE THAT ALL CONTRACTORS WORKING AT THIS SITE MAINTAIN A CLEAN AND ORDERLY ENVIRONMENT IN THE YARD, IN THE STREET, AND WITHIN THE HOUSE ON A DAILY BASIS.



EXISTING SECOND FLOOR PLAN  
SCALE: 1/4" = 1'-0"



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ISSUED FOR:

4-4-23  
6-1-23  
6-13-23  
10-11-23

CLIENT:  
RITA O'BRIEN  
1700 STUTZ DRIVE  
TROY, MI 48064  
248-161-2351

SHEET NO.

A-3

NAUER RESIDENCE  
490 BERWYN  
BIRMINGHAM, MICHIGAN

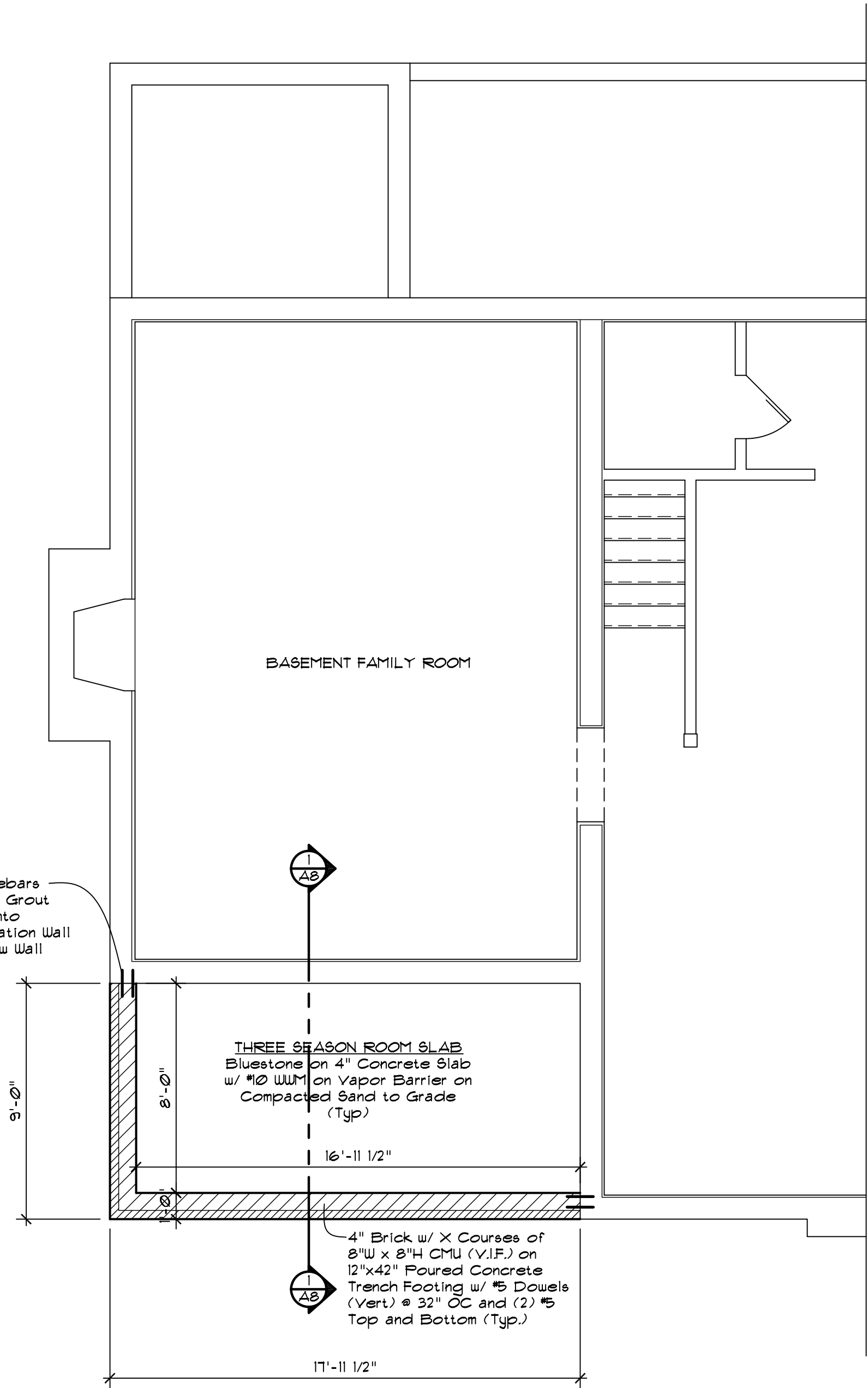


WEST ELEVATION



NORTH ELEVATION

Dowel No. 5 Rebars  
@ 12" OC Set in Grout  
Extending 4" into  
Existing Foundation Wall  
and 6" into New Wall  
(Typical)

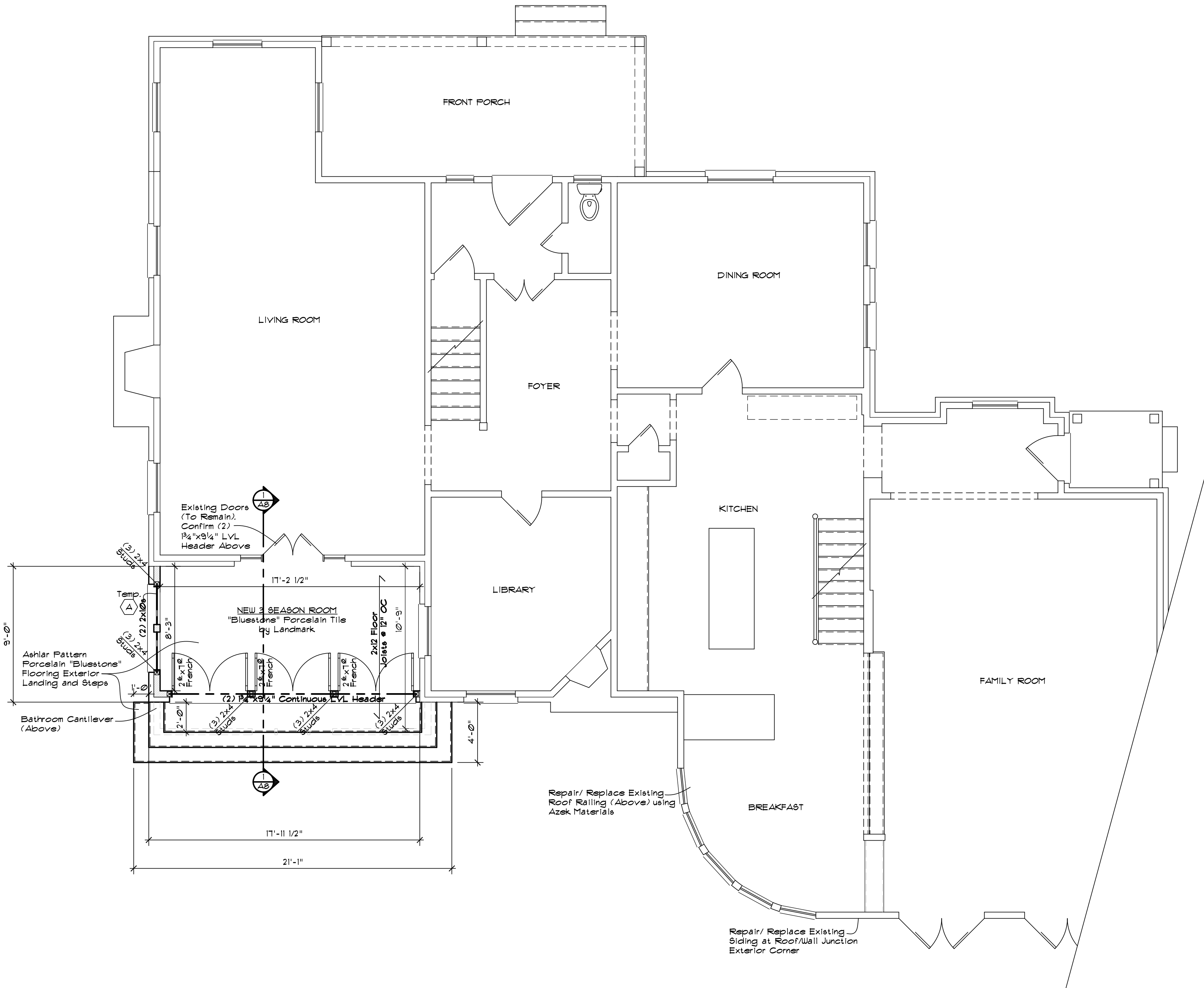


PROPOSED FOUNDATION PLAN

SCALE: 1/4" = 1'-0"



NORTH



PROPOSED FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"



NORTH

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6-13-23  
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NAUER RESIDENCE  
490 BERWYN  
BIRMINGHAM, MICHIGAN

CLIENT:  
RITA O'BRIEN  
1700 STUTZ DRIVE  
TROY, MI 48064  
248-161-2351  
KATHY NAUER: 248-390-2600

SHEET NO.

A-5

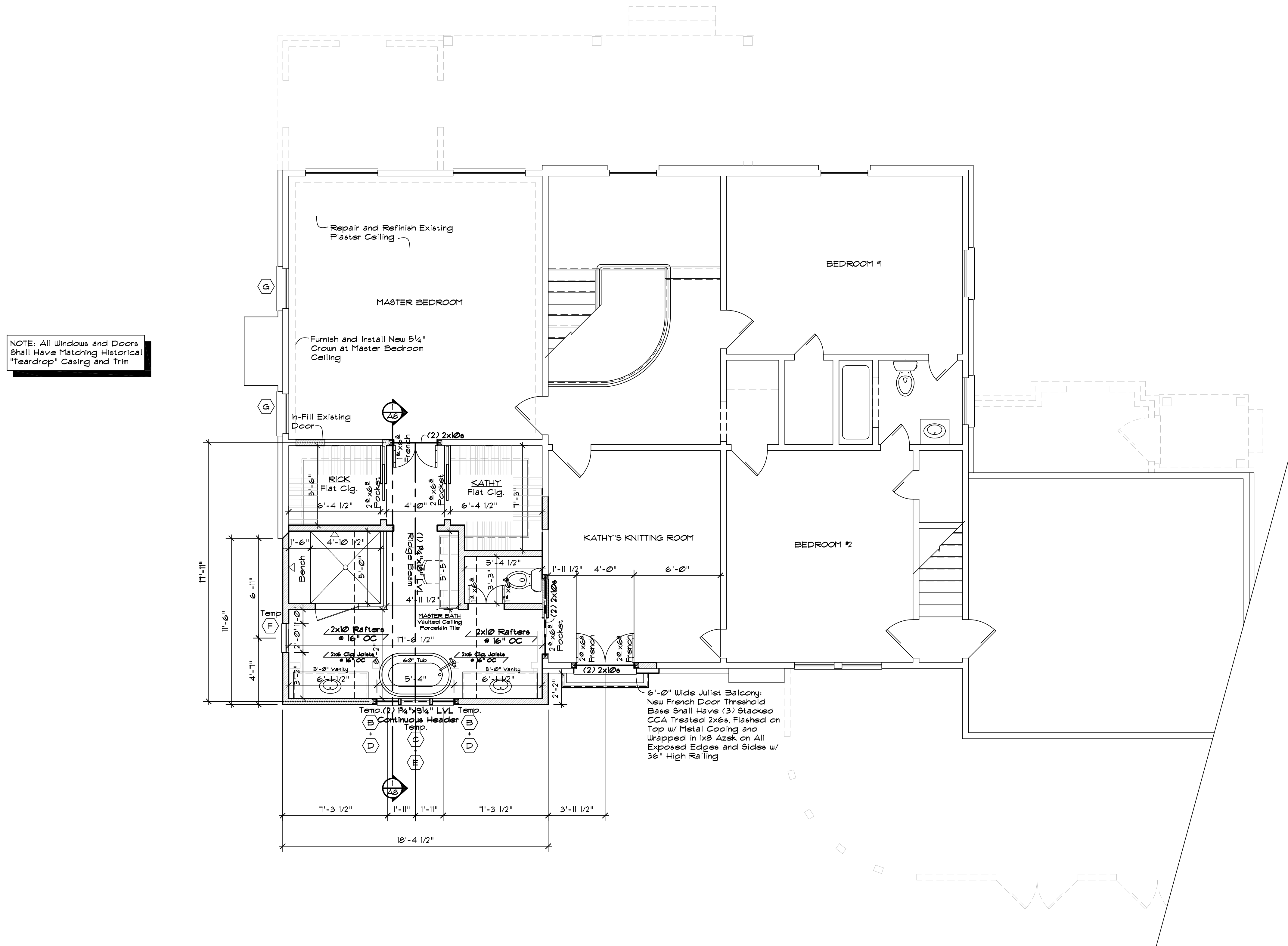
ISSUED FOR:  
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5-25-23  
6-1-23  
6-13-23  
6-14-23  
10-11-23

NAUER RESIDENCE  
490 BERWYN  
BIRMINGHAM, MICHIGAN

CLIENT: RITA O'BRIEN  
1700 STUTZ DRIVE  
TROY, MI 48064  
248-761-2351  
KATHY NAUER: 248-390-2600

SHEET NO.

A-6



PROPOSED SECOND FLOOR PLAN  
SCALE: 1/4" = 1'-0" ADDITION: 212 SQ. FT.



NORTH

WINDOW SCHEDULE						
TYPE	NO.	SIZE R.O.	WINDOW NO.	TYPE	MANUFACTURER	REMARKS
A	1	(2) 2'-6" x 6'-8"	UDHRT-XXXX	ALUMINUM CLAD WOOD CUSTOM DOUBLE HUNG	MARVIN ULTIMATE SERIES	
B	2	1'-6" x 5'-6"	WUCA-1656	ALUMINUM CLAD WOOD CASEMENT		MULLED TO "C"
C	1	2'-0" x 5'-6"	WUCA-2056	ALUMINUM CLAD WOOD CASEMENT		MULLED BETWEEN "B"
D	2	1'-6" x 1'-6"	WUCAP-1616	ALUMINUM CLAD WOOD CASEMENT PICTURE		(1) TEMPERED
E	1	2'-0" x 1'-6"	WUCAP-2016	ALUMINUM CLAD WOOD CASEMENT PICTURE		
F	1	2'-0" x 4'-0"	UDHG2-2040	ALUMINUM CLAD WOOD DOUBLE HUNG		
G	2	2'-9" x 4'-0"	UDHG2-2040	ALUMINUM CLAD WOOD DOUBLE HUNG		

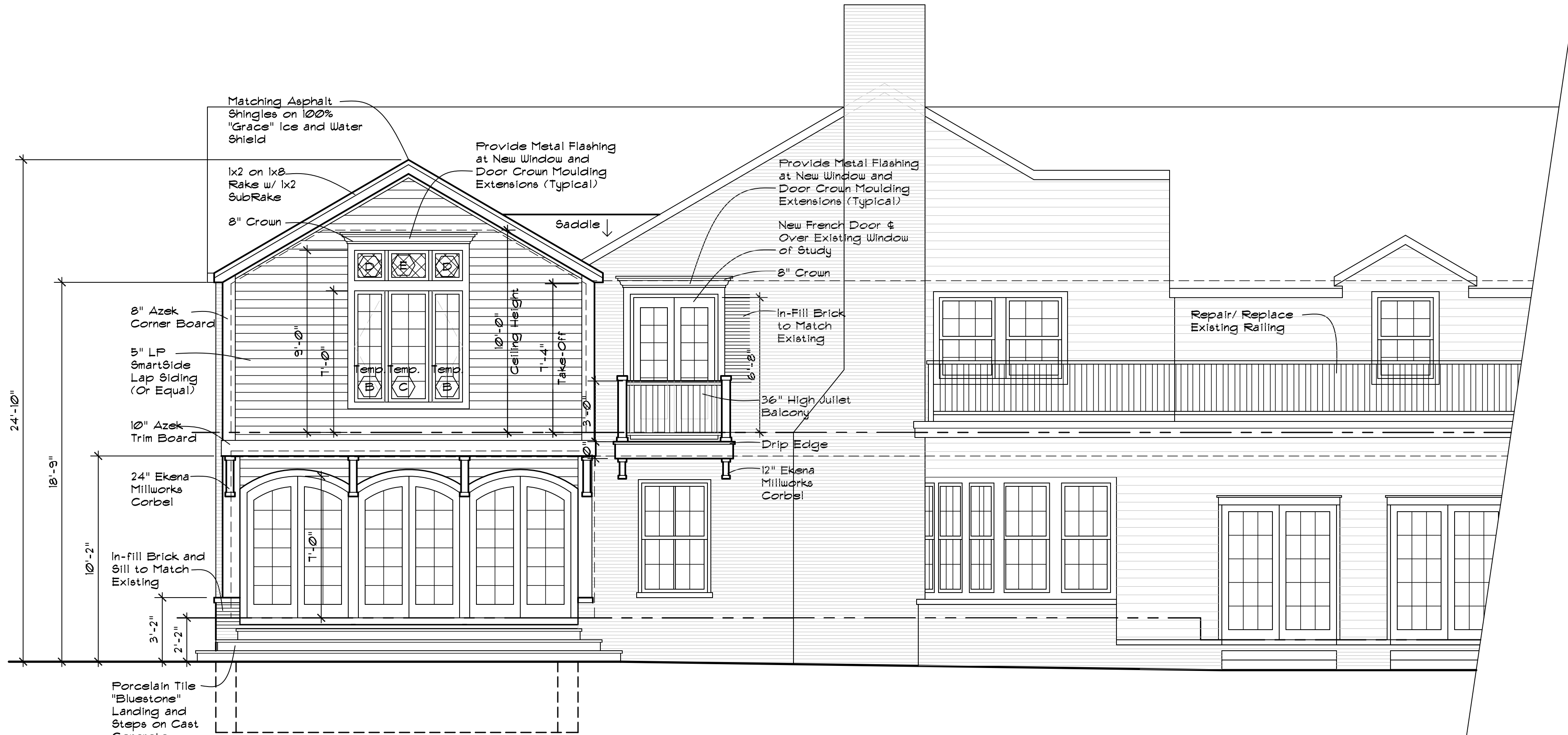
CONTACT: ROB HUNTER  
313-900-5181  
ROB.HUNTER@MARVIN.COM



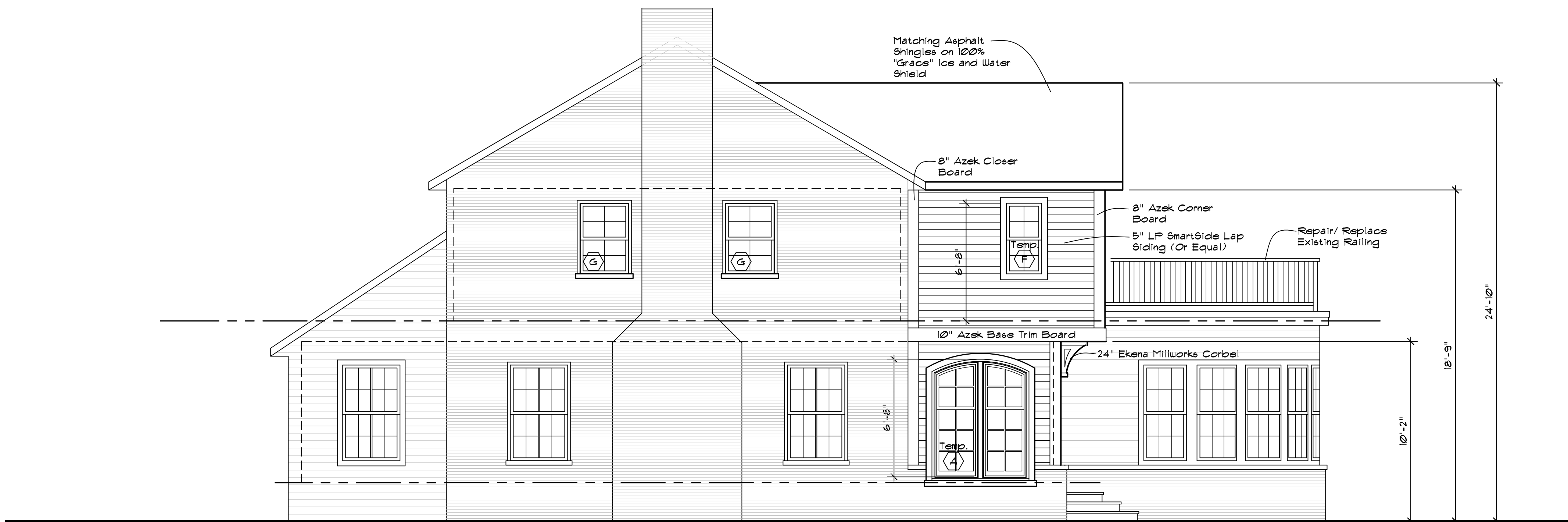
WEST ELEVATION- Option B



WEST ELEVATION- Option C



WEST ELEVATION



NORTH ELEVATION

PROPOSED ELEVATIONS  
SCALE: 1/4" = 1'-0"

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ISSUED FOR:

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4-19-23  
5-3-23  
5-25-23  
6-1-23  
6-13-23  
7-5-23  
8-1-23  
10-11-23

NAUER RESIDENCE  
490 BERWYN  
BIRMINGHAM, MICHIGAN

CLIENT:  
RITA O'BRIEN  
1700 STUTZ DRIVE  
TROY, MI 48064  
248-161-2351

SHEET NO.  
A-7

# **CASE DESCRIPTION**

**34745 Woodward Ave (23-41)**

**Hearing date: November 14, 2023**

**Appeal No. 23-41:** The Honorable Kwame Rowe of the Circuit Court for the County of Oakland has ordered that the City of Birmingham's Board of Zoning Appeals' December 13, 2022 decision finding that Jax' proposed site plan constitutes a "parking facility" within the meaning of Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances is REVERSED;

It is further ordered that the City of Birmingham's Board of Zoning Appeals' requirement that a screening wall be installed pursuant to Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances is therefore REVERSED;

It is further ordered that this matter is remanded to the City of Birmingham's Board of Zoning Appeals for entry of a decision on the proposed site plan, within 60 days of the Opinion and Order (September 14<sup>th</sup>, 2023), that comports with this Court's rulings herein.

**Staff Notes:** On October 13<sup>th</sup>, 2021, The Planning Board motioned to approve the proposed site plan for Jax Karwash at 34745 Woodward Ave with the condition that the applicant provide sufficient screening to satisfy the screening requirements of Article 4, Section 4.54 of the Zoning Ordinance.

On December 14<sup>th</sup>, 2021, the applicant appealed the decision of the Planning Board to the Board of Zoning Appeals. The applicant claimed that the area on the north side of the property where patrons park their vehicles to vacuum their cars and receive servicing does not count as a "parking facility" and therefore is not subject to screening requirements. A motion to approve the applicant's appeal was made, citing that the Planning Board had erred as a matter of law in their interpretation of "parking facility". The motion was denied by a vote of 4-3. Thus, the Board of Zoning Appeals determined that the Planning Board had not acted in an arbitrary or capricious manner and that there was no abuse of discretion.

The applicant appealed the decision of the Board of Zoning Appeals to the Oakland County Circuit Court. The Circuit Court rendered an opinion remanding the matter back to the Board of Zoning Appeals for a new hearing. The Court ordered that the Board of Zoning Appeals must conduct a "de novo" review of the Planning Board's decision and explain its own interpretation of Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance and specifically the interpretation of the term "parking facility" and explain if and why that provision of the ordinance applies to the Jax proposed site plan.



On December 13<sup>th</sup>, 2023, the Board of Zoning Appeals held a “de novo” hearing as directed by the Oakland County Circuit Court. The Board created it’s own definition of parking facility and motioned to deny the applicant’s appeal on the grounds that the subject area classifies as a parking facility. The motion to deny the appeal was approved 4-3, hence the applicant’s request for a variance from the screenwall requirements was denied.

The applicant appealed the decision of the Board of Zoning Appeals to the Oakland County Circuit Court once again. Upon review, the Honorable Judge Kwame Rowe determined that the Board of Zoning Appeals erred in its decision, thus the Oakland County Circuit Court has ordered the BZA to reverse its decision on Jax Karwash from December 13<sup>th</sup>, 2022.

**Suggested language**

Move to reverse the Board of Zoning Appeals’ December 13, 2022 decision finding that Jax’ proposed site plan constitutes a “parking facility” within the meaning of Chapter 126, Article 4, Section 4.54(C)(3) of the City’s ordinances;

AND

Move to reverse the City of Birmingham’s Board of Zoning Appeals’ requirement that a screening wall be installed pursuant to Chapter 126, Article 4, Section 4.54(C)(3) of the City’s ordinances.

---

Brooks Cowan  
City Planner

## 34745 WOODWARD MAP



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BMW KAR WASH, LLC,

Appellant,

Case No. 2023-198541-AA

-vs-

Hon. Kwamé Rowe

CITY OF BIRMINGHAM,

Appellee.

**OPINION AND ORDER RE: CLAIM OF APPEAL**

At a session of said Court held in the  
Courthouse, City of Pontiac, Oakland County,  
Michigan, on September 14, 2023.

**PRESENT: THE HONORABLE KWAMÉ ROWE, CIRCUIT COURT JUDGE**

This matter is before the Court on Appellant BMW Kar Wash LLC d/b/a Jax Kar Wash's ("Jax") Claim of Appeal of the City of Birmingham's ("the City") Board of Zoning Appeals' ("BZA") December 13, 2022 decision upholding the City Planning Board's decision that Jax's proposed site plan requires a screening wall to be erected along Woodward Avenue. The Court has reviewed Jax's Brief on Appeal, the City's Brief on Appeal, and Jax's Reply Brief. The Court conducted oral argument on July 19, 2023 and finds as follows.

I. Statement of Facts and Procedural History

Jax operates a car wash at 34745 Woodward Avenue in Birmingham, Michigan ("the Property"). In an effort to improve and renovate the Property, Jax submitted a proposed site plan to the City's Planning Board. Relevant to this appeal is the site plan's alteration to the traffic flow of the Property such that cars would no longer exit onto Woodward Avenue, but rather be directed

away from Woodward toward an area where cars would stop to get dried and vacuumed for three to four minutes, before then being directed back out onto Brown Street. On October 13, 2021, the Planning Board approved the proposed site plan with the condition that a screening wall be installed on the Property along Woodward Avenue, as the Planning Board found the drying/vacuuming area, where cars would remain parked for three to four minutes, to be a “parking facility” within the meaning of the relevant ordinances. This decision was specifically predicated upon City ordinance Chapter 126, Article 4, Section 4.54(C)(3) (“the Screening Ordinance”), which states that

3. Along the front or side of any parking facility that abuts a street, alley, passage or mixed passage...

d. When the property being utilized for a parking facility is zoned to a business or industrial district, and abuts business or industrial district, the screenwall shall be placed along the setback line; however, upon review of the Site Plan, the Planning Board may approve an alternate location for the screenwall in order to maximize the screening effect of the parking facility, or may modify the screenwall requirement by approving an evergreen screen in its place.

On December 14, 2021, Appellant appealed the Planning Board’s decision concerning the screening wall to the BZA, which upheld the decision. Jax then appealed to this Court, and on October 21, 2022, this Court issued an Opinion and Order finding that the BZA applied the wrong standard of review to the Planning Board’s decision. Therefore, this Court reversed the decision and remanded this matter to the BZA for a de novo review of the Planning Board’s decision. Specifically, this Court directed the BZA to explain its interpretation of the Screening Ordinance and, particularly, its interpretation of the term “parking facility”, and also to decide whether that interpretation applies to the site plan at issue.

On December 13, 2022, in accordance with this Court’s instructions, the BZA conducted a de novo review and interpreted “parking facility” to mean “[a]n area, designated for a specific



purpose, where you leave your car – put it in park – even if it is for a temporary period of time in a designated location.” The BZA also noted that the terms “open parking station”, “parking lots”, and “parking facility” are used interchangeably in the City’s ordinances and mean the same thing. The BZA held that the proposed site plan was therefore a “parking facility” and therefore Chapter 126, Article 4, Section 4.54(C)(3) of the City’s ordinances applied, requiring screening.

Jax then filed the instant, second appeal with this Court, arguing that the BZA’s definition of “parking facility” is contrary to law and not supported by evidence. Jax asks this Court to reverse the finding of the BZA and hold that its proposed site plan does not constitute a “parking facility” within the meaning of the Screening Ordinance.

## II. Standard of Review

The parties disagree, to an extent, as to the appropriate standard of review. There appears to be no dispute that factual determinations of the BZA are reviewed under the criteria set forth by MCL 125.3606, which states, in part, that this Court must ensure the BZA’s decision “[c]omplies with the constitution and laws of the state” and “[i]s supported by competent, material, and substantial evidence on the record.” MCL 125.3606(1)(a), (c). However, the parties dispute the appropriate standard of review to apply to a BZA’s interpretation of a municipal ordinance, with the City holding fast to the standard of MCL 125.3606 on that issue as well, and Jax claiming that the Court reviews such an interpretation de novo.

Jax cites *Great Lakes Soc v Georgetown Charter Tp*, 281 Mich App 396; 761 NW2d 371 (2008), in which the Court of Appeals held that “[o]rdinances are treated as statutes for the purposes of interpretation and review...[h]ence, the interpretation and application of a municipal ordinance presents a question of law, which this Court reviews de novo.” *Id.* at 407.

“Generally, courts review a decision of a zoning board to determine whether it complies

with the constitution and the laws of the state, is based on proper procedure, is supported by competent, material, and substantial evidence on the record, and represents the reasonable exercise of the board's discretion." *Id.* at 408. BZA decisions concerning factual matters "are entitled to deference." *Id.* "However, the manner in which the zoning ordinance applies to those facts...is a question of law, for this Court to decide as a matter of review de novo." *Id.*

The City disputes Jax's assessment but does not provide any authority to thwart the applicability of *Great Lakes Soc*, supra, to this matter. Therefore, the Court finds that it must review interpretations of an ordinance de novo. As such, the BZA's interpretation and application of the term "parking facility" is subject to a de novo review, but the BZA's findings of fact as to the proposed site plan are reviewed under the standard set forth by MCL 125.3606.

### III. Analysis

"The goal of statutory construction, and thus of construction and interpretation of an ordinance, is to discern and give effect to the intent of the legislative body." *Great Lakes Soc*, 281 Mich App at 407-08. "Terms used in an ordinance must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions." *Id.* at 408.

As such, the Court must determine the plain and ordinary meaning of "parking facility." The BZA held that a "parking facility" is "[a]n area, designated for a specific purpose, where you leave your car – put it in park – even if it is for a temporary period of time in a designated location." The BZA also held that "open parking station," "parking lots," and "parking facility" are all used interchangeably and so should all be defined the same way.

However, "[w]hen the Legislature uses different words, the words are generally intended to connote different meanings." *United States Fidelity & Guar Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009). "If the Legislature had intended the same

meaning in both statutory provisions, it would have used the same word.” *Id.* Therefore, the Court cannot read “open parking station,” “parking lots,” and “parking facility” in the same way, because if the legislative body had wished them to mean the same thing, it would have used only one term. Therefore, “parking facility” must mean something different from “open parking station” and “parking lots”.

Furthermore, “[w]hen a statute specifically defines a given term, that definition alone controls.” *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). Chapter 126, Article 9, Section 9.02 of the City’s ordinances defines “parking” as “[a]n area used for the parking of motor vehicles.” And so, the analysis becomes, in what way does the BZA’s definition of “parking facility” differentiate itself from the definition of “parking”?

Again, the BZA defined “parking facility” as “[a]n area, designated for a specific purpose, where you leave your car – put it in park – even if it is for a temporary period of time in a designated location.” To break this definition down, something is a “parking facility” if it is (1) designated for a specific purpose, (2) one leaves their car there, (3) the car is put into “park”, and (4) the car is left in that location for a temporary period of time. The Court does not understand anything in this definition to add to, subtract from, or alter the definition of “parking” at all. In other words, the only additions—that the area is used for a “specific purpose”, which is completely vague, and the car is parked “for a temporary period of time”—add nothing, because what would fall outside of this definition? A parking space that is purposeless and houses a car permanently? In other words, “parking facility” (as defined by the BZA) and “parking” mean the same thing, and under basic canons of statutory construction, they cannot. If the legislative body intended a screening wall next to any area of “parking”, it would have said that. But it only intended a screening wall next to a “parking facility”, which must mean something different from “parking”. Because the

BZA's definition contravenes these basic principles of statutory construction, the Court hereby reverses it.

In its place, the Court will not define "parking facility" for all time because this Court does not find it appropriate to act as the legislative body or to extend its holding beyond what is necessary to adjudicate the case at bar. However, the Court notes that, at the very least, a "parking facility" must at least mean an area where individuals leave their cars for a certain amount of time, and based on the record evidence, the drying/vacuuming area is an area where, while cars are put into park, it does not appear that drivers step away from their vehicles in any meaningful way. It appears they simply step outside into the vehicle's immediate proximity for the purpose of vacuuming the inside of the vehicle, and then get back into the car and drive away. Because this area is meant for cars whose drivers do not leave the cars unattended, at least on the evidence before the Court, the Court holds that Jax's proposed site plan does not constitute a "parking facility" within the meaning of the Screening Ordinance and so reverses the BZA's December 13, 2022 decision that the subject site plan falls within the ambit of the Screening Ordinance.

The Court therefore reverses the decision of the BZA on these grounds alone.

Furthermore, even if this Court were to accept the BZA's definition of "parking facility", the BZA's factual finding that Jax's proposed site plan constitutes a "parking facility" is still not supported by competent, material, or substantial evidence.<sup>1</sup> The BZA's own definition states that it applies to areas "where you leave your car". (Emphasis added.) The Court has been directed to no record evidence that individuals leave their cars as they are being dried and vacuumed. The Court understands that individuals exit their cars, but exiting the vehicle and leaving the vehicle are two different things. An individual may step outside of their vehicle to dry and/or vacuum it,

---

<sup>1</sup> The Court notes therefore that, in the alternative, its holding would be the same even under the City's proposed standard of review.

but at no point does this Court understand an individual to cause their vehicle to be unattended, which would be the case if an individual left the vehicle and went somewhere else. Therefore, the Court finds that the BZA's application of its own definition of "parking facility" to the instant matter was not supported by material, competent, or substantial evidence, since there is no material, competent, or substantial evidence that people would "leave" their cars at the Jax drying/vacuuming site for any amount of time.

Moreover, the BZA's application of its definition to the instant facts is not supported by competent, material, or substantial evidence when the BZA has failed to apply the Screening Ordinance to parking areas that arguably fall more within the ambit of its definition of "parking facility" than the subject site plan (an argument in response to which the City was silent).

For instance, the City is quick to point out that the instant situation is different from that of a drive-thru where, despite potentially remaining in the same place for an extended period, motor vehicles are not put in "park" and their drivers do not exit the vehicle. But Jax makes an excellent point: what about gas stations? At gas stations, drivers put their cars in "park", turn their vehicles off, and exit the vehicles for the purposes of dispensing gasoline. This usually takes a few minutes, and drivers will often leave their vehicles alone to head into the gas station, making a gas station more of a parking facility than Jax's proposed site plan, where there is no allegation that drivers, despite stepping out of their vehicles, will be walking from and leaving their vehicles for a few minutes. What meaningful distinction is drawn between Jax's proposed site plan and gas stations such that gas stations are not "parking facilities"? The City is silent on this point.

Furthermore, what about street parking? Street parking is also "[a]n area, designated for a specific purpose, where you leave your car – put it in park – even if it is for a temporary period of time in a designated location." And unlike the proposed site plan, individuals leave their cars in



street parking spaces, completely unattended, for hours. Is a screening wall required around every street parking space? The City is silent on this issue as well.

Therefore, it appears that the BZA's application of its own definition is not supported by competent, material, and substantial record evidence in this case, as there is no evidence that individuals "leave" their car under the proposed site plan, and also because the BZA has deemed the drying/vacuuming area to be a "parking facility" when long-term street parking and gas stations (both of which involve people parking their cars for at least as long and often leaving their vehicles) are not parking facilities, which is clearly nonsensical.

For all of these reasons, the Court reverses the BZA's December 13, 2022 decision finding that the proposed site plan constitutes a "parking facility" within the meaning of the Screening Ordinance. The proposed site plan is not a "parking facility" and therefore does not require a screening wall.

**WHEREFORE, IT IS HEREBY ORDERED** that the City of Birmingham's Board of Zoning Appeals' December 13, 2022 decision finding that Jax's proposed site plan constitutes a "parking facility" within the meaning of Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances is **REVERSED**;

IT IS FURTHER ORDERED that the City of Birmingham's Board of Zoning Appeals' requirement that a screening wall be installed pursuant to Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances is therefore **REVERSED**;


IT IS FURTHER ORDERED that this matter is **REMANDED** to the City of Birmingham's Board of Zoning Appeals for entry of a decision on the proposed site plan, within 60 days of the date of this Opinion and Order, that comports with this Court's rulings herein.

**IT IS SO ORDERED.**

**THIS IS A FINAL ORDER THAT RESOLVES THE LAST PENDING CLAIM OR  
OTHERWISE CLOSES THE CASE.**

Dated: \_\_\_\_\_

9/14/2023

  
\_\_\_\_\_  
Hon. Kwamé Rowe, Circuit Judge

**Proof of Service**

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by **EFILING** it to their addresses as disclosed by the pleadings of record on the 14th day of September, 2023.

/s/ James Boufides