



# CITY OF ELKO

## Planning Department

Website: [www.elkocitynv.gov](http://www.elkocitynv.gov)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

### PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, June 2, 2020 beginning at 5:30 P.M., P.D.S.T. utilizing [GoToMeeting.com](http://GoToMeeting.com)

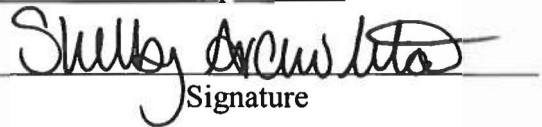
<https://global.gotomeeting.com/join/123367613>

Attached with this notice is the agenda for said meeting of the Commission. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at <http://www.elkocity.com>, the State of Nevada's Public Notice Website at <https://notice.nv.gov>, and in the following locations:

ELKO CITY HALL – 1751 College Avenue, Elko, NV 89801

Date/Time Posted: May 27, 2020 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician  
Name Title

  
Signature

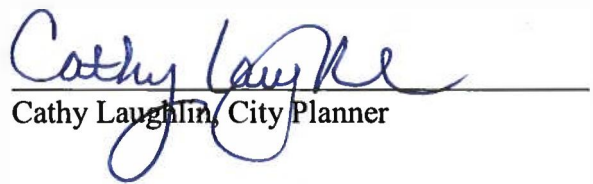
The public may contact Shelby Archuleta by phone at (775) 777-7160 or by email at [sarchuleta@elkocitynv.gov](mailto:sarchuleta@elkocitynv.gov) to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV, or on the City website at <http://www.elkocity.com>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/123367613>. You can also dial in using your phone at **+1 (669) 224-3412**. The **Access Code** for this meeting is **123-367-613**. Members of the public that do not wish to use GoToMeeting may call in at (775) 777-0590. Comments can also be emailed to [cityclerk@elkocitynv.gov](mailto:cityclerk@elkocitynv.gov)

Dated this 27<sup>th</sup> day of May, 2020.

### NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko Planning Department, 1751 College Avenue, Elko, Nevada, 89801 or by calling (775) 777-7160.

  
Cathy Laughlin, City Planner

**CITY OF ELKO**  
**PLANNING COMMISSION**  
**REGULAR MEETING AGENDA**  
**5:30 P.M., P.D.S.T., TUESDAY, JUNE 2, 2020**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**  
**GoToMeeting.com**  
**<https://global.gotomeeting.com/join/123367613>**

**CALL TO ORDER**

The Agenda for this meeting of the Elko City Planning Commission has been properly posted for this date and time in accordance with NRS requirements.

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

**I. NEW BUSINESS**

**A. PUBLIC HEARING**

1. Review, consideration, and possible action of Conditional Use Permit No. 2-20, filed by Scott and Leslie Rangel, which would allow for a professional office within an RO (Residential Office) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the west corner of the intersection of 9<sup>th</sup> Street and Court Street. (902 Court Street - APN 001-281-001)

2. Review, consideration, and possible action on Variance No. 2-20, filed by Scott and Leslie Rangel, for a reduction of the required interior side yard setback from 10' to 2.2', exterior side yard setback from 12' to 9.8', front yard setback from 15' to 11.7' and required off street parking to be located within the interior side yard setback for a professional office in an RO (Residential Office) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the west corner of the intersection of 9<sup>th</sup> Street and Court Street. (902 Court Street - APN 001-281-001)

**B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**

1. Review and consideration of Temporary Use Permit No. 1-20, filed by High Desert Imaging, LLC., on behalf of Silver River Properties, LLC, for the temporary use of a mobile MRI unit located within a C (Commercial) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located on the northeast side of Mountain City Hwy approximately 145' from North Cedar St. (APN 001-131-009) Within A+ Urgent Care at 976 Mountain City Hwy.

2. Review, consideration, and possible recommendation to City Council for Vacation No. 1-20, filed by Brian and Dena Starkey, for the vacation of the southeasterly portion of Juniper Street and northeasterly portion of 6<sup>th</sup> Street, consisting of an area approximately 3,636 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the east corner of the 6th Street and Juniper Street intersection, (698 6th Street- APN 001-231-001)

## **II. REPORTS**

- A. Summary of City Council Actions.
- B. Summary of Redevelopment Agency Actions.
- C. Professional articles, publications, etc.
  - 1. Zoning Bulletin
- D. Miscellaneous Elko County
- E. Training

## **COMMENTS BY THE GENERAL PUBLIC**

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

**NOTE:** The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

## **ADJOURNMENT**

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Cathy Laughlin', with a long horizontal flourish extending to the right.

Cathy Laughlin  
City Planner

**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Conditional Use Permit No. 2-20, filed by Scott and Leslie Rangel, which would allow for a professional office within a RO (Residential Office) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **June 2, 2020**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **A conditional use permit was approved in 2003 for the use and operation of a retail and service establishment. The property has sat vacant since 2014 therefore all legal non-conforming uses are considered abandoned. The applicant has applied for a variance and a conditional use permit for the property to bring the property into conformance with the proposed land use as well as a revocable permit to occupy the public right-of-way for parking.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Move to conditionally approve Conditional Use Permit 2-20 based on the facts, findings and conditions presented in Staff Report dated May 18, 2020.**
9. Findings: **See Staff report dated May 18, 2020.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Scott and Leslie Rangel  
426 Cottonwood Drive  
Elko, NV 89801**

STAFF COMMENT FLOW SHEET  
PLANNING COMMISSION AGENDA DATE: 10/2

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: CUP 2-20

Applicant(s): Scott and Leslie Rangel

Site Location: 902 Court St. (Court St./ 9th St.)

Current Zoning: RO Date Received: 5/11/20 Date Public Notice: \_\_\_\_\_

COMMENT: Proposed Conditional Use Permit to allow a professional office within the Residential Office Zone.

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 5/21/2020

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 5/22/20

No comments/concerns.

CC

Initial



City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7119

## **CITY OF ELKO STAFF REPORT**

**MEMO DATE:** May 18, 2020  
**PLANNING COMMISSION DATE:** June 2, 2020  
**APPLICATION NUMBER:** CUP 2-20  
**AGENDA ITEM:** I.A.1  
**APPLICANT:** Scott and Leslie Rangel  
**PROJECT DESCRIPTION:**

A conditional use permit for the development of a professional office within an (RO) Residential Office zoned property.



### **STAFF RECOMMENDATION:**

RECOMMEND APPROVAL, subject to findings of facts, and conditions as stated in this report.

## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-281-001

**PARCEL SIZE:** 5,000 sq. ft.

**EXISTING ZONING:** (RO) Residential Office

**MASTER PLAN DESIGNATION:** (MU-DTWN) Mixed Use Downtown

**EXISTING LAND USE:** Currently vacant, was previously approved for a CUP for retail services

### **NEIGHBORHOOD CHARACTERISTICS:**

- ) The property is surrounded by:
  - o Northeast: (RO) Residential Office / Developed
  - o Northwest: (R) Single Family and Multiple Family Residential / Developed
  - o Southeast: (C) General Commercial / Developed
  - o Southwest: (C) Commercial / Developed

### **PROPERTY CHARACTERISTICS:**

- ) The property is developed.
- ) The property fronts Court Street and 9<sup>th</sup> Street.
- ) Access to the property for parking is off the alley at the rear of the parcel.

### **MASTER PLAN AND CITY CODE SECTIONS:**

Applicable Master Plans and City Code Sections are:

- ) City of Elko Master Plan – Land Use Component
- ) City of Elko Master Plan – Transportation Component
- ) City of Elko Redevelopment Plan
- ) City of Wellhead Protection Plan
- ) City of Elko Zoning – Section 3-2-3 General Provisions
- ) City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- ) City of Elko Zoning – Section 3-2-5(F) RO – Residential Office District
- ) City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- ) City of Elko Zoning – Section 3-2-18 Conditional Use Permits
- ) City of Elko Zoning – Section 3-8 Flood Plain Management

### **BACKGROUND:**

1. The parcel is identified as APN 001-281-001.
2. The applicant is the property owner.
3. There is an approved Conditional Use Permit 4-03 approved by Planning Commission on June 4, 2003. The approval was for the use and operation of a retail and service establishment.
4. The property was approved a zone amendment application from R to RO on June 18, 1996.
5. The property is located at the intersection of Court Street and 9<sup>th</sup> Street.
6. The area of the parcel is approximately 5,000 square feet.



7. The structure encroaches into the interior and exterior side yard setbacks. The applicant has applied for a variance application 2-20 to be heard in conjunction with this application.
8. The property has been vacant since 2014. Any legal non-conforming uses are considered abandoned.
9. The required off street parking for business uses is provided off the alley and encroaches into the alley. The applicant has applied for a revocable permit to occupy the alley. The application will be heard by City Council on June 9, 2020.

## **MASTER PLAN:**

### **Land use:**

1. The Master Plan Land Use Atlas shows a portion of the area as Mixed Use Downtown.
2. Objective 2: Encourage revitalization and redevelopment of the downtown area to strengthen its role as the cultural center of the community
3. Objective 4: Consider a mixed-use pattern of development for the downtown area, and for major centers and corridors, to ensure the area's adaptability, longevity, and overall sustainability.
4. Downtown Mixed Use: This land use designation includes land uses that are located in or close to the historic downtown area. The area will capitalize on the existing fabric of the downtown and its walkable grid system. Mixed-use allows for a variety of land uses, and configurations. Housing or office use may be located within the same structure, with retail use primarily on the first floor.

The proposed conditional use under the conditionally approved Residential Office district is consistent with the Land Use Component of the Master Plan. The proposed conditional use permit is consistent with existing land uses in the immediate vicinity. The proposed conditional use permit meets Objectives 2 and 4 of the Land Use Component of the Master Plan.

### **Transportation:**

1. The property fronts Court Street and 9<sup>th</sup> Street.
2. Parking will be established at the rear of the property off the alley with the approval of the revocable permit to occupy City of Elko right-of-way.

The proposed conditional use is consistent with the Transportation Component of the Master Plan. The proposed use, intensity of use and limitations of intensity of use will not create any significant cumulative issues on the existing transportation system.

## **ELKO REDEVELOPMENT PLAN:**

1. The property is located within the redevelopment area. The proposed use supports several objectives in the redevelopment plan. The more important objective being repurposing of buildings and/or properties and thereby eliminating blight in the area and increasing economic activity in the area.

The proposed conditional use and repurposing the property and structure conforms to the Redevelopment Plan.

## **ELKO WELLHEAD PROTECTION PLAN:**

1. The property is located within the 5 year capture zone for several City wells.
2. Conformance with the Wellhead Protection Plan is required.

The proposed use of the property and allowed uses under the RO- Residential Office zoning district do not present a hazard to City wells.

### **SECTION 3-2-3 GENERAL PROVISIONS**

- ) Section 3-2-3 (C) 1 of City code specifies use restrictions. The following use restrictions shall apply.
1. Principal Uses: Only those uses and groups of uses specifically designated as “principal uses permitted” in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses
  2. Conditional Uses: Certain specified uses designated as “conditional uses permitted” may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance hereinafter specified in this chapter or imposed by the planning commission or city council.
  3. Accessory Uses: Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.

Other uses may apply under certain conditions with application to the City.

1. Section 3-2-3(C) states that certain specified uses designated as “conditional uses permitted” may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance specified in Chapter 3 or imposed by the Planning Commission or City Council.
2. Section 3-2-3(D) states that “No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify or withdraw the determination of unsuitability.”

The proposed use of the property requires a conditional use permit to conform to Section 3-2-3 of City code.

### **SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS:**

1. Section 3-2-4(B) Required Conformity To District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection.
2. Section 3-2-4(B)(4) stipulates that no yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title. The developed property encroaches into the exterior side yard, interior side yard and front yard setback.
3. The minimum lot area required is 5,000 square for areas of the community platted with 50 foot wide lots.
4. The required lot dimensions for the proposed district in this area of the community would be 50 feet in width by 100 feet in depth as stipulated in Section 3-2-5 of city code.
5. The property is developed and the structure does not meet the setback requirements stipulated in Section 3-2-5 of city code.

As a result of the above referenced non-conformance issues, the applicant has applied for and

will be required approval for variance on the interior and exterior side yard and front yard setback.

**SECTION 3-2-5 (RO) RESIDENTIAL OFFICE:**

1. As noted in the evaluation under Section 3-2-4 the property does not conform to setback requirements stipulated for the zoning district.
2. Variance 2-20 application will be reviewed by the Planning Commission in conjunction with this application.

The proposed conditional use is in conformance with Section 3-2-5(F)(3) RO- Residential Office based on conditional approval of Variance 2-20.

**SECTION 3-2-17 TRAFFIC, ACCESS, PARKING AND LOADING REGULATIONS:**

1. Development of ADA off-street parking is required to conform with this section of code if the property is developed as a conditionally permitted use or more intense use than single family residence.
2. 3-2-17(D)2 states that no required off street parking space shall be located in a required front yard or interior side yard. The applicant is proposing parking off the rear of the property and will encroach into interior and exterior side yards. A variance will be required for the parking to be approved in the interior side yard setback.

The property as developed is in conformance with City Code 3-2-17 for the principal permitted use as a single family residence. The applicant will be required to develop ADA compliant off-street parking to be located at the rear of the property and ingress/egress from the alley way to support the proposed conditional use. A variance for parking in the interior side yard setback will be required to be approved to be in conformance with 3-2-17.

**SECTION 3-2-18 CONDITIONAL USE PERMITS:**

General Regulations:

1. Certain uses of land within designated zoning districts shall be permitted as principal uses only upon issuance of a conditional use permit. Subject to the requirements of this chapter, other applicable chapters, and where applicable to additional standards established by the Planning Commission, or the City Council, a conditional use permit for such uses may be issued.
2. Every conditional use permit issued, including a permit for a mobile home park, shall automatically lapse and be of no effect one (1) year from the date of its issue unless the permit holder is actively engaged in developing the specific property to the use for which the permit was issued.
3. Every conditional use permit issued shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
4. Conditional use permits shall be reviewed from time to time by City personnel. Conditional use permits may be formally reviewed by the Planning Commission. In the event that any or all of the conditions of the permit or this chapter are not adhered to, the conditional use permit will be subject to revocation.

The applicant has conformed to this section of code with the filing of the application.

### **SECTION 3-8**

The parcel is not located in a designated Special Flood Hazard Area (SFHA).

### **FINDINGS**

1. The proposed conditional use, under the conditionally approved Residential Office district is consistent with the Land Use Component of the Master Plan. The proposed conditional use meets Objectives 2 and 4 of the Land Use Component of the Master Plan.
2. The proposed conditional use is consistent with the Transportation Component of the Master Plan. The proposed use, intensity of use and limitations of intensity of use will not create any significant cumulative issues on the existing transportation system.
3. The proposed conditional use and repurposing the property and structure conforms to the Redevelopment Plan.
4. The proposed conditional use is consistent with City of Elko Wellhead Protection Plan. The proposed use of the property and allowed uses under the RO-Residential Office zoning district do not present a hazard to City wells.
5. The proposed use of the property requires a conditional use permit to conform to Section 3-2-3 of City code.
6. The proposed conditional use based on conditional approval of Variance 2-20 conforms to Section 3-2-4 of City code.
7. The proposed conditional use is in conformance with Section 3-2-5(F)(3) RO-Residential Office based on conditional approval of variance 2-20.
8. The property as developed is in conformance with City Code 3-2-17 for the principal permitted use as a single family residence. Additional parking and ADA access is required for conformance under the proposed conditional use. Parking in the interior side yard setback will be required to be approved as part of Variance 2-20.
9. The parcel is not located within a designated Special Flood Hazard Area.
10. Development under the proposed conditional use will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety.
11. The proposed conditional use permit is consistent with existing land uses in the immediate vicinity.

### **STAFF RECOMMENDATION:**

Staff recommends this item be **conditionally approved** with the following conditions:

#### **Planning Department:**

1. CUP 2-20 shall automatically lapse and be of no effect one (1) year from the date of its issue unless the permit holder is actively engaged in developing the specific property to

the use for which the permit was issued.

2. The CUP 2-20 to be recorded with the Elko County Recorder within 90 days after the commencement of the work for the conversion from single family dwelling to professional office.
3. The permit is granted to the applicant Scott and Leslie Rangel for the use of a professional office.
4. The permit shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
5. The conditions of Variance 2-20 be met prior to occupancy of the building.
6. Revocable Permit 2-20 is approved by City Council for the parking encroachment into the public right-of-way.
7. Merge lots 11 and 12 prior to certificate of occupancy to be issued for the building.

COPY 2-20

VAK 2-20

YPNO	legal_name	address1	address2	mcity	mzip	phys_addr
001273005	4AMBICA LLC ) 1 P.C.	1181 IDAHO ST		ELKO, NV	89801-3920	837 IDAHO ST
001273004	4AMBICA LLC	1181 IDAHO ST		ELKO, NV	89801-3920	832 COURT ST
001241008	AGUIRRE THERESA A	965 COURT ST		ELKO, NV	89801-3940	965 COURT ST
001241012	AHLIN JASON & MEGAN	530 N 300 E		SPANISH FORK, UT	84660-1530	550 9TH ST
001241011	BECK STEFAN W TR	PO BOX 1075		ELKO, NV	89803-1070	532 9TH ST
001241033	BLACKMAN DAVID A TR	997 COURT ST		ELKO, NV	89801-3940	997 COURT ST
001281002	BRANSCOMB SUE ANN TR	101 COURT ST		ELKO, NV	89801-3040	910 COURT ST
001281005	BUCKNER EDWARD V TR	784 PALACE PKWY		SPRING CREEK, NV	89815-7430	936 COURT ST
001276004	CHADWICK FOUNDATION INC	C/O NEVADA BANK & TRUST	PO BOX 807	CALIENTE, NV	89008-0800	852 IDAHO ST
001236001	ELKO ASSOC-1 LP	C/O WESTATES PROP MGMT	PO BOX 2688	ELKO, NV	89803-	851 COURT ST
001241007	GILLINS DANIEL & IOLANDA	3533 RIDGECREST DR		ELKO, NV	89801-2450	993 COURT ST
001281003	HILLS HOMES LLC	451 VALLEY BEND DR		SPRING CREEK, NV	89815-5730	916 COURT ST
001284004	KUNZ PROPERTIES LLC	PO BOX 1465		HOLLISTER, CA	95024-1460	910 IDAHO ST
001281007	LAL DIPAK BHAI	411 10TH ST		ELKO, NV	89801-3900	411 10TH ST
001281008	LAUGHLIN PATRICK J & CATALINA F	371 MOUNTAIN CITY HWY UNIT 7		ELKO, NV	89801-9510	927 IDAHO ST
001281009	LOCKIE DAVID B	919 IDAHO ST		ELKO, NV	89801-3910	919 IDAHO ST
001241018	LOSTRA ENTERPRISES LLC	930 COLLEGE AVE		ELKO, NV	89801-3420	960 1/2 COLLEGE AVE
001284003	MCCONNELL INVESTMENTS IDAHO STREET	950 IDAHO ST		ELKO, NV	89801-	950 IDAHO ST
001273003	MONTES DE OCA DANIEL TR	1709 JANIE CT		ELKO, NV	89801-7910	844 COURT ST
001273010	MOWRAY SEAN & JUDITH E	2205 COLONIAL DR		ELKO, NV	89801-4560	832 COURT ST
001284002	NEVADA BANK & TRUST CO	PO BOX 807	Same as Chadwick	CALIENTE, NV	89008-0800	976 IDAHO ST
001281006	PEREZ GUADALUPE	700 LAST CHANCE RD UNIT 3		ELKO, NV	89801-8740	946 COURT ST
001281010	R HANK WOODY LLC	C/O LIPPARELLI, PAUL A	2633 SPEARPOINT DR	RENO, NV	89509-7020	913 IDAHO ST
001281001	RANGEL LESLIE		426 COTTONWOOD DR	ELKO, NV	89801-	902 COURT ST
001241010	THIBAUT ROBERT & ADELINE	901 COURT ST		ELKO, NV	89801-3940	901 COURT ST
001273009	US BANK NATIONAL ASSOCIATION	LAKE0012	2800 E LAKE ST	MINNEAPOLIS, MN	55406-1930	820 COURT ST
001273007	US BANK NATIONAL ASSOCIATION	LAKE0012	2800 E LAKE ST	MINNEAPOLIS, MN	55406-1930	801 IDAHO ST
001281004	WAHRENBROCK JON A	1800 GRISWOLD DR UNIT 1		ELKO, NV	89801-1620	928 COURT ST
001241009	ZELCO LLC SERIES 2 - Same as Thibault	901 COURT ST		ELKO, NV	89801-3940	949 COURT ST

(26)

mailed 5/20/20

NOTICE OF PUBLIC HEARINGS  
ELKO CITY PLANNING COMMISSION

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a series of public hearings on Tuesday, June 2, 2020 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at <https://global.gotomeeting.com/join/123367613>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/123367613> You can also dial in using your phone at **+1 (669) 224-3412**. The **Access Code** for this meeting is **123-367-613**

Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to [cityclerk@elkocitynv.gov](mailto:cityclerk@elkocitynv.gov)

The specific items to be considered under public hearing format are:

- Conditional Use Permit No. 2-20, filed by Scott and Leslie Rangel, which would allow for a professional office within an RO (Residential Office) Zoning District, and matters related thereto. The subject property is located generally on the west corner of the intersection of 9<sup>th</sup> Street and Court Street (902 Court Street, APN 001-281-001).
- Variance No. 2-20, filed by Scott and Leslie Rangel for a reduction of the required front yard setback from 15' to 11.6', the required interior side yard setback from 10' to 2.2', exterior side yard setback from 12' to 9.8', front yard setback from 15' to 11.7' and required off street parking to be located within the interior side yard setback for a professional office in an RO (Residential Office) Zoning District. The subject property is located generally on the west corner of the intersection of 9th Street and Court Street. (902 Court Street. - APN 001-281-001)

Additional information concerning these items may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

ELKO CITY PLANNING COMMISSION



## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801

(775) 777-7160 phone \* (775) 777-7219 fax

### APPLICATION FOR CONDITIONAL USE PERMIT APPROVAL

**APPLICANT(s):** Scott Rangel and Leslie Rangel

(Applicant must be the owner or lessee of the **proposed** structure or use.)

**MAILING ADDRESS:** 426 Cottonwood Drive, Elko, NV. 89801

**PHONE NO. (Home):** 702-271-3942 **(Business):** N/A

**NAME OF PROPERTY OWNER (If different):** N/A

(Property owner's consent in writing must be provided.)

**MAILING ADDRESS:** 426 Cottonwood Drive, Elko, NV. 89801

**LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):**

**ASSESSOR'S PARCEL NO.:** 001-281-001 **Address:** 902 Court Street Elko, NV. 89801

**Lot(s), Block(s), & Subdivision:** Lot 11 and 12, Block 7

**Or Parcel(s) & File No.:** File No. 000001

#### FILING REQUIREMENTS

**Complete Application Form:** In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1<sup>st</sup> Tuesday of every month).

**Fee:** A \$750.00 non-refundable fee.

**Plot Plan:** A plot plan provided by a properly licensed surveyor depicting the proposed conditional use permit site drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information that shows the use will be compliant with Elko City Code.

**Elevation Plan:** Elevation profiles including architectural finishes of all proposed structures or alterations in sufficient detail to explain the nature of the request.

**Note:** One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 ½" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

**Other Information:** The applicant is encouraged to submit other information and documentation to support this conditional use permit application.

RECEIVED



1. Current zoning of the property: RO (Residential Office)
2. Cite the provision of the Zoning Ordinance for which the Conditional Use Permit is required:  
3-2-5 F. 3. Conditional Uses Permitted. Offices, Medical and Professional
3. Explain in detail the type and nature of the use proposed on the property:   
The proposed use is a professional office for mental health counseling.
4. Explain how the use relates with other properties and uses in the immediate area:   
There are other properties on Court street, former houses which have been converted into offices, dental offices, hair salon, insurance offices, law offices, etc.
5. Describe any unique features or characteristics, e.g. lot configuration, storm drainage, soil conditions, erosion susceptibility, or general topography, which may affect the use of the property:   
This property is in an older part of town where the lot dimension and areas do not meet current day codes. There are two existing encroachments into the side yard setback with the existing structure and one proposed side yard set back encroachment for parking. An application for variance has been applied for all of these. Additionally the proposed parking encroaches into the rear alley by 1 foot. Because of this, an application for revocable permit to occupy City of Elko property has been applied for.
6. Describe the general suitability and adequacy of the property to accommodate the proposed use:   
None of these encroachments limit the use or functionality of the proposed use nor do they limit the functionality of the alley or neighboring property. This building will be brought up to all current ADA and city codes for the proposed use.

7. Describe in detail the proposed development in terms of grading, excavation, terracing, drainage, etc.:

The drainage mitigation will remain the same.

8. Describe the amounts and type of traffic likely to be generated by the proposed use:

The proposed use of mental health counseling limits the amount of clients visiting.

No significant increase in vehicle trips is anticipated. The estimated average vehicle trips per day will be approximately 18 vehicle per day. Due to the nature of the use there is no peak hour anticipated.

9. Describe the means and adequacy of off-street parking, loading and unloading provided on the property:

There are three proposed off street parking spaces and one van accessible parking parking space per the attached site plan.

10. Describe the type, dimensions and characteristics of any sign(s) being proposed:

There is an existing sign located on the property that can be used. This sign is non illuminated, free standing, 6.4' high and 3'x5'. While the sign does not meet the requirements of 3-2-5. F. 6. c., the code does allow the Planning Commission to modify such regulations as part of the Conditional Use Permit procedure. If approved this would allow used of the existing sign.

11. Identify any outside storage of goods, materials or equipment on the property:

There is no proposed storage on the property.

12. Identify any accessory buildings or structures associated with the proposed use on the property:

There are no existing or proposed accessory structures.

**(Use additional pages if necessary to address questions 3 through 12)**

**By My Signature below:**

☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.

**Applicant / Agent**

Leslie Rangel

(Please print or type)

**Mailing Address**

426 Cottonwood Drive

Street Address or P.O. Box

Elko, Nevada 89801

City, State, Zip Code

Phone Number:

702-271-3942

Email address:

lrangelcsw@gmail.com

**SIGNATURE:**

*Leslie Rangel*

---

**FOR OFFICE USE ONLY**

File No.: 2-20 Date Filed: 5/11/20 Fee Paid: \$750 CX# 383

---

**RECEIVED**

MAY 11 2020



## Transmittal Letter

Date: May 11, 2020

To: Cathy Laughlin, City Planner  
City of Elko  
1751 College Avenue  
Elko, Nevada 89801

From: Lana L. Carter, P.E.  
Carter Engineering, LLC

Regarding: 902 Court Street - Conditional Use Permit

Description of Attachments:

1. Application
2. Fee \$750.00
3. Plot Plan
4. CUP Site Plan
5. Elevation View and Floor Plan
6. PDF copy of the entire submittal on a jump drive.

Remarks:

Hello Cathy,

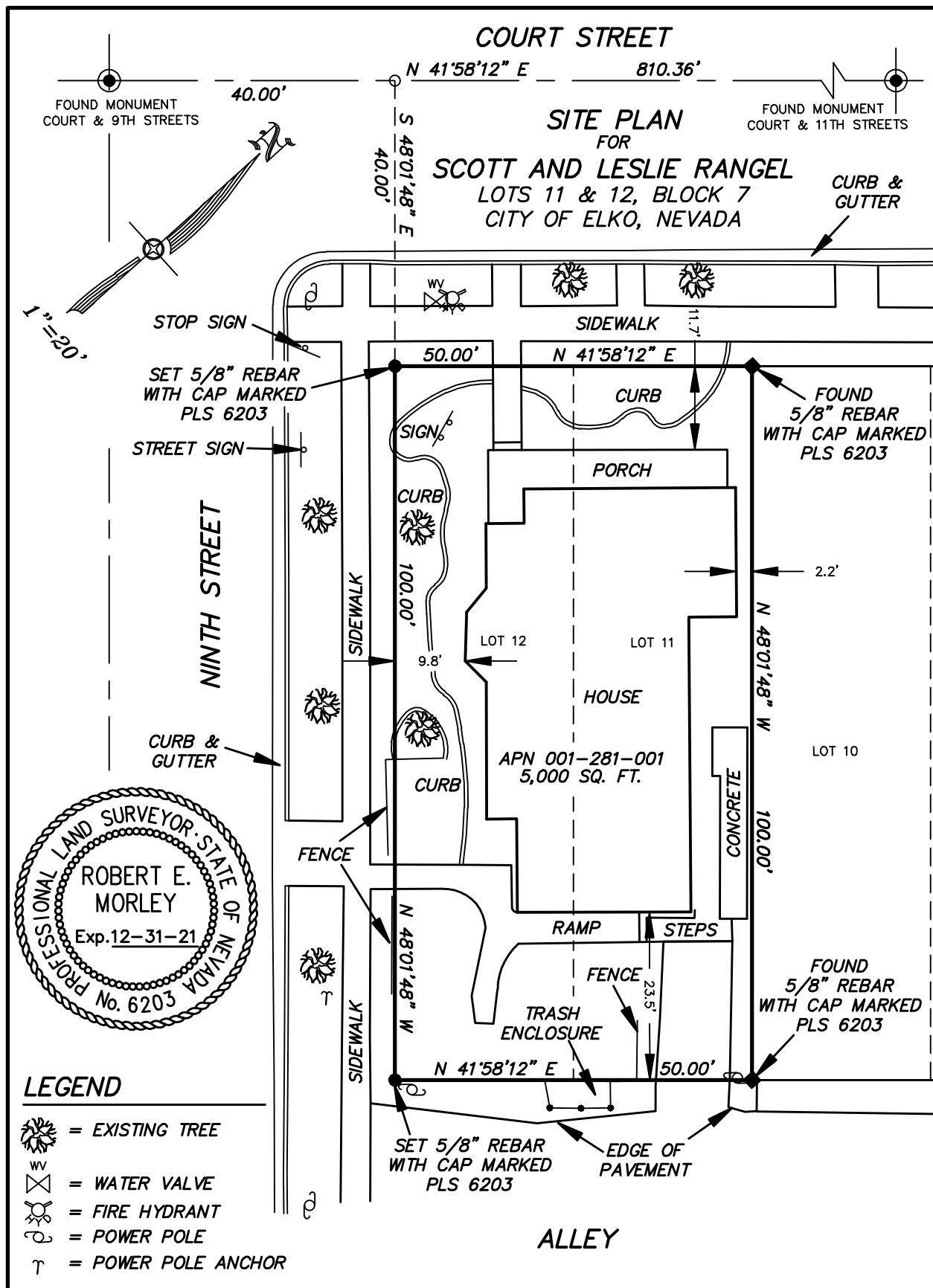
Please accept the attached submittal for 902 Court Street Conditional Use Permit.

Thanks - Lana L Carter

Cc: Leslie Rangel, Owner  
Chris Fausi, Braemar Construction, LLC

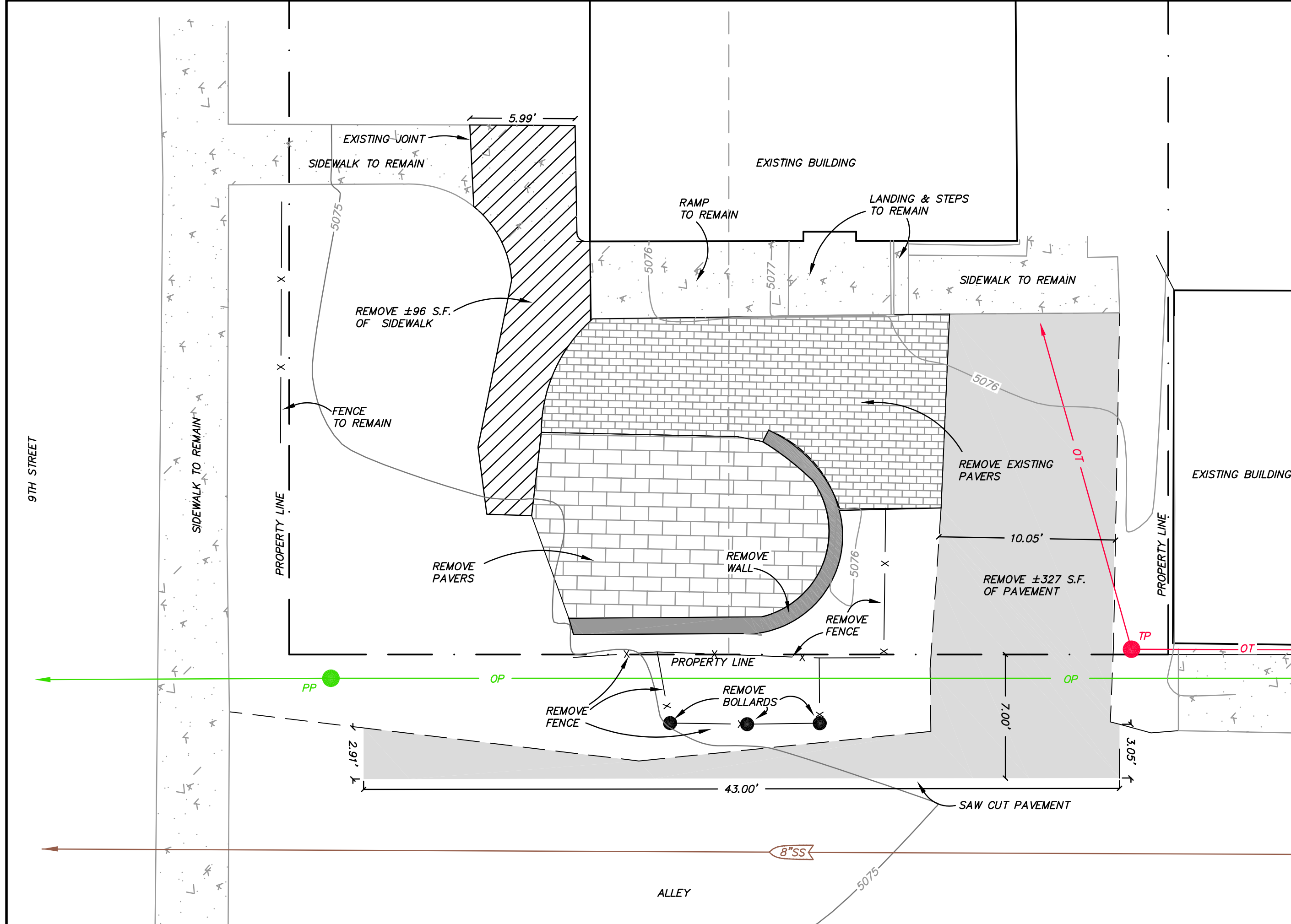
**RECEIVED**

MAY 11 2020

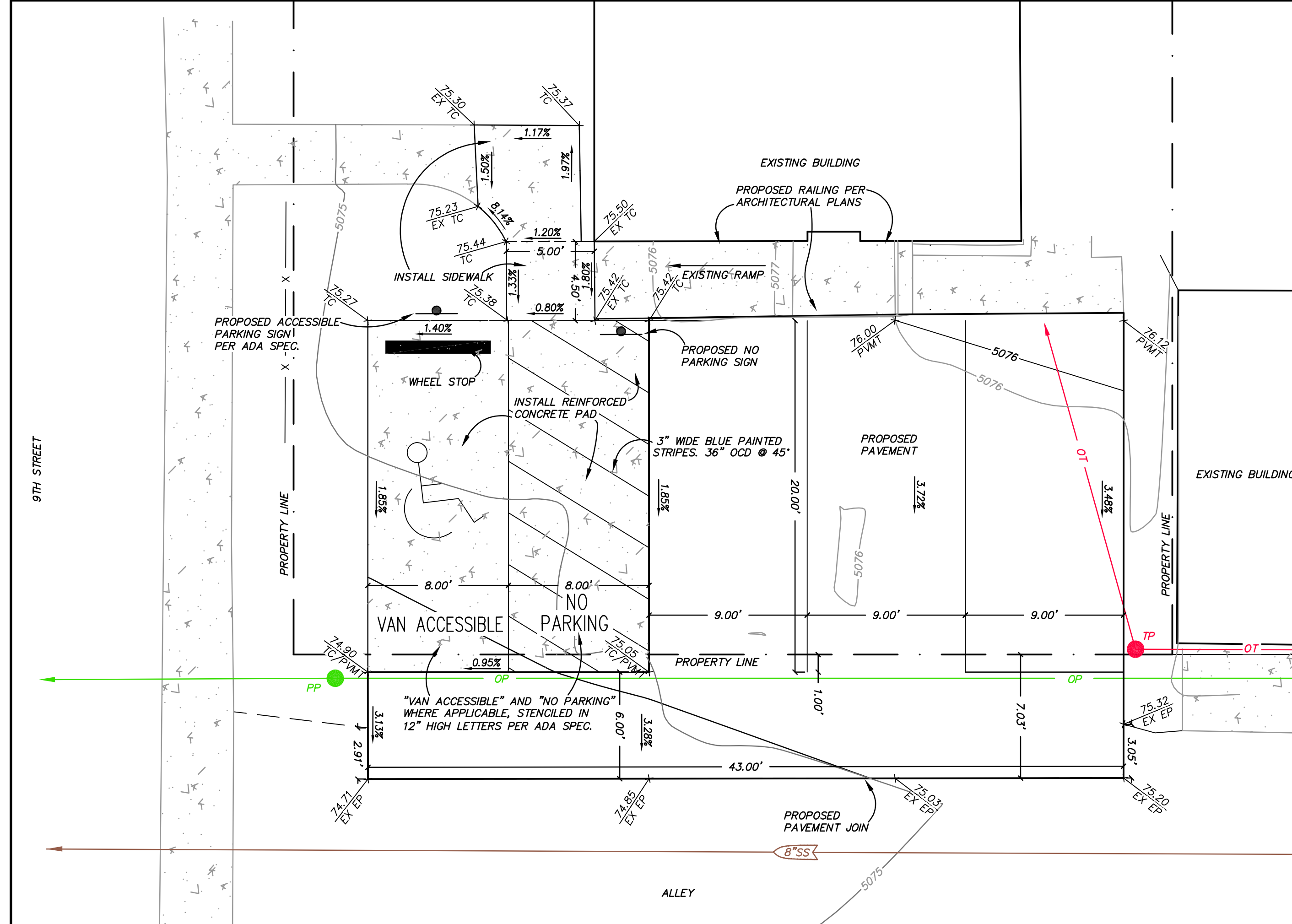




# DEMOLITION



# SITE AND GRADING



## LEGEND

EXISTING SANITARY SEWER: 8" SS  
 EXISTING OVERHEAD TELEPHONE: OT  
 EXISTING TELEPHONE POLE: TP  
 EXISTING OVERHEAD POWER LINE: OP  
 EXISTING POWER POLE: PP  
 PROPOSED CONCRETE: [Hatched rectangle symbol]  
 DEMO. PAVEMENT - DEMOLITION PLAN: [Solid grey rectangle symbol]  
 PROPOSED PAVEMENT - SITE & GRADING PLAN: [Solid grey rectangle symbol]  
 EXISTING GROUND CONTOUR: [Wavy line symbol]  
 FINISH GRADE CONTOUR: [Straight line symbol]  
 SPOT ELEVATION: [Cross symbol]  
 PERCENT OF SLOPE: 2.00%

## GRADING NOTES:

1. THE ESTIMATED EARTHWORK QUANTITIES ARE AS FOLLOWS:  
  
UNCLASSIFIED EXCAVATION = 24 CY CUT  
UNCLASSIFIED EMBANKMENT = 0 CY FILL  
  
THE ABOVE QUANTITIES ARE BANK CUBIC YARDS WITH A 3" GRUB TO EXISTING GRADE.  
SHRINK OR SWELL HAS NOT BEEN CONSIDERED.
2. ADD 5000 FEET TO SPOT ELEVATIONS.
3. THE EXISTING GROUND TOPOGRAPHY SHOWN ON THIS PLAN IS FROM A SURVEY BY  
HIGH DESERT ENGINEERING ON MARCH 27TH, 2020.

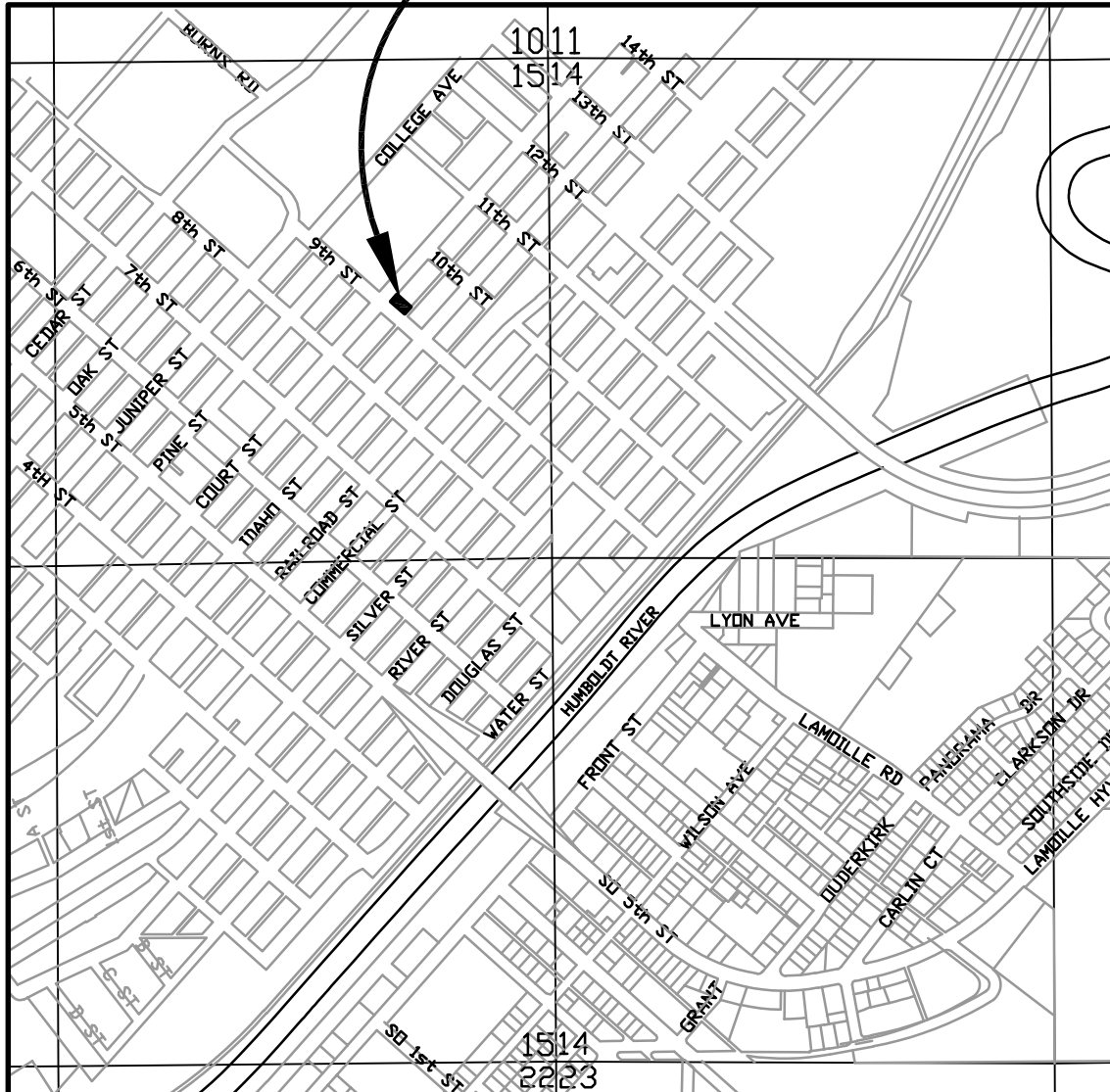
## ABBREVIATIONS FOR SPOT ELEVATIONS

EP	EDGE OF PAVEMENT
EX	EXISTING
PVMT	FINISH GRADE PAVEMENT
TC	TOP OF CONCRETE

## SITE NOTES:

1. ALL C.C.P.C. CURB, GUTTER, SIDEWALK, REINFORCED CONCRETE PAD AND CONCRETE RETAINING SHALL BE A MINIMUM OF 6 SACK OF CEMENT PER CUBIC YARD OF CONCRETE (4000 P.S.I.), 4.5% - 7.5% AIR, MAXIMUM SLUMP OF 4" AND WATER/CEMENT RATIO OF 0.45.
2. ALL CONCRETE CURB & GUTTER SHALL HAVE WEAKENED PLANE JOINTS EVERY 10' AND SIDEWALK SHALL HAVE WEAKENED PLANE JOINTS EVERY 5'.
3. EXPANSION JOINTS 1/2" WIDE SHALL BE LOCATED IN CURBS & GUTTERS AT EACH SIDE OF STRUCTURES, AT ENDS OF ALL CURB RETURNS, ABUTTING HARDENED IN-PLACE CURB & GUTTER AND EVERY 90'.
4. EXPANSION JOINTS IN SIDEWALKS SHALL BE PLACED AT ALL TANGENT POINTS, CURB RETURNS AND AT EVERY 30 FEET.
5. AGGREGATE BASE UNDER CONCRETE AND PAVEMENT SHALL CONFORM TO THE SPECIFICATIONS FOR TYPE 2, CLASS B AGGREGATE BASE AND COMPACTED TO A MINIMUM 95% MAXIMUM DRY DENSITY IN ACCORDANCE WITH ASTM D 1557.
6. SUBGRADE SHALL BE COMPACTED TO A RELATIVE COMPACTION OF NOT LESS THAN 90% FOR A MINIMUM DEPTH OF 6" IN ACCORDANCE WITH TEST PROCEDURES SET FORTH IN ASTM D 1557. SUBGRADE UNDER PAVEMENT AND CONCRETE SHALL BE COMPACTED TO A RELATIVE COMPACTION OF NOT LESS THAN 95% FOR A MINIMUM DEPTH OF 6" IN ACCORDANCE WITH TEST PROCEDURES SET FORTH IN ASTM D 1557.
7. ALL SIGNAGE SHALL CONFORM TO THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES AND ADA SPECIFICATIONS.
8. ALL PAVEMENT MARKING SHALL MEET STANDARD PLANS AND SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 2016 EDITION, SECTIONS 214 AND 324.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING 811 USA NORTH AT LEAST 48 HOURS PRIOR TO CONSTRUCTION.
10. IN THE DESIGNATED DEMOLITION AREAS THE EXISTING CONCRETE OR PAVEMENT AND AGGREGATE BASE SHALL BE REMOVED TO SUBGRADE FOR THE INSTALLATION OF THE PROPOSED IMPROVEMENTS.
11. ALL DEMOLITION SHALL BE PER SECTION 300 AND 301 OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 2016 EDITION.
12. SEE SHEET C3 FOR DETAILS ON SIDEWALKS, ACCESSIBLE CONCRETE PARKING PAD, ACCESSIBLE SIGNAGE, WHEEL STOPS, PAVEMENT SECTION AND SAWCUT.

## PROJECT LOCATION



SECTION 14, TOWNSHIP 34 NORTH, RANGE 55 EAST

VICINITY MAP

## LANDSCAPING

TOTAL LANDSCAPE AREA PROVIDED = ±2000 S.F. ON SITE AND ROW

## PROJECT CONTACTS

**OWNER**

SCOTT AND LESLIE RANGEL  
426 COTTONWOOD DRIVE  
ELKO, NEVADA 89801  
CONTACT: LESLIE RANGEL  
(702) 271-3942  
EMAIL: [irangellcsw@gmail.com](mailto:irangellcsw@gmail.com)

## CONTRACTOR

**BRAEMER CONSTRUCTION, LLC**  
717 WEST IDAHO STREET  
ELKO, NEVADA 89801  
CONTACT: CHRIS FAUSI  
(775) 777-2949  
EMAIL: [chris@braemar.com](mailto:chris@braemar.com)

# LAND SURVEYOR

HIGH DESERT ENGINEERING, LLC  
640 IDAHO STREET  
ELKO, NEVADA 89801  
CONTACT: ROBERT MORLEY, P.L.S.  
(775) 738-4053  
EMAIL: [remorley@frontiernet.net](mailto:remorley@frontiernet.net)

# CIVIL ENGINEER

CARTER ENGINEERING, LLC  
P.O. BOX 794  
ELKO, NEVADA 89801  
CONTACT: LANA L. CARTER, P.E.  
(775) 397-2531  
EMAIL: [lanalcarter@live.com](mailto:lanalcarter@live.com)

# ARCHITECT

J.D. LONG, ARCHITECT  
960 IDAHO STREET  
ELKO, NEVADA 89801  
CONTACT: J.D. LONG  
(775) 738-4735  
EMAIL: [jdlong@frontiernet.net](mailto:jdlong@frontiernet.net)

## PARKING TABLE

### PARKING REQUIREMENTS PER CITY OF ELKO CODE 3-2-17 I. EXEMPTIONS

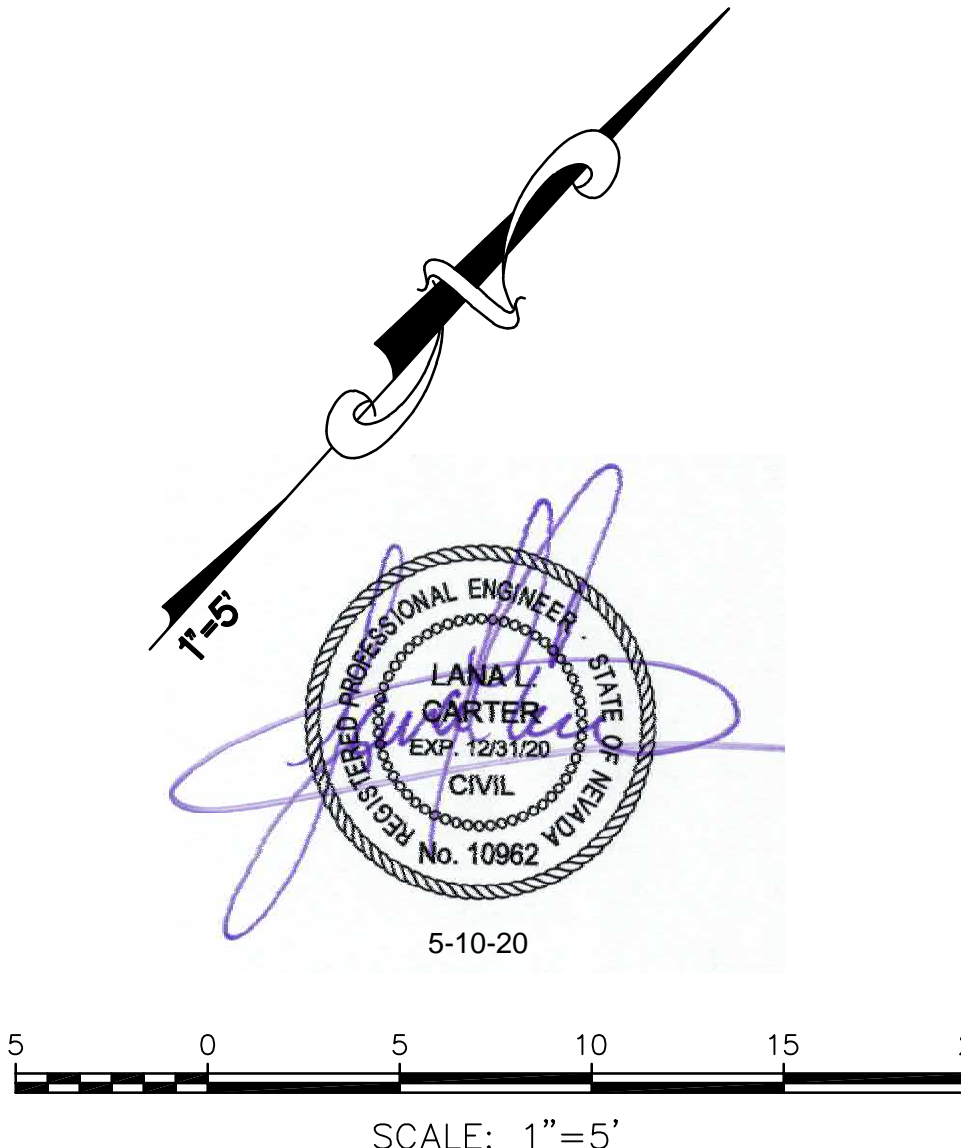
2. ALL PRINCIPAL PERMITTED USES OCCUPYING BASEMENT FLOOR AREA, GROUND LEVEL OR FIRST STORY FLOOR AREA OR SECOND STORY FLOOR AREA, OR ANY COMBINATION THEREOF, AND WHICH ARE SITUATED ON PROPERTY LOCATED WITHIN FOUR HUNDRED FEET (400') OF THE CENTRAL BUSINESS DISTRICT (CBD) PUBLIC PARKING CORRIDOR, ARE EXEMPTED FROM PROVIDING REQUIRED OFF STREET PARKING. RESIDENTIAL USES SHALL PROVIDE REQUIRED OFF STREET PARKING IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER.

TOTAL STANDARD SPACES REQUIRED = 0 SPACES  
TOTAL SITE STANDARD SPACES PROVIDED = 3 SPACES

TOTAL ACCESSIBLE SPACES REQUIRED = 1 SPACE  
TOTAL ACCESSIBLE SPACES PROVIDED = 1 SPACE (VAN ACCESSIBLE)

## PROJECT INFORMATION

1. RO - RESIDENTIAL OFFICE DISTRICT.
2. APN = 001-281-001
3. LEGAL DESCRIPTION = LOTS 11 AND 12 OF BLOCK 7, FILE NUMBER 000001, IN THE OFFICE OF THE ELKO COUNTY RECORDER.
4. TOTAL AREA PARCEL AREA IS 5000 SF OR 0.115 ACRES.
5. THIS PROPERTY IS LOCATED IN ZONE X (AREA OF MINIMAL FLOOD HAZARD) PER FEMA FORM MAP 32007C5609E EFFECTIVE 9-4-13.
6. ADDRESS = 902 COURT STREET, ELKO, NEVADA 89801.
7. THIS PLAN IS BASED ON A SURVEY PERFORMED BY HIGH DESERT ENGINEERING ON MARCH 30TH, 2020.



**Carter Engineering, LLC**  
**Civil Engineering**  
P. O. Box 794  
Elko, Nevada 89803  
775-397-2531

902 COURT ST. TENANT IMP.  
CONDITIONAL USE PERMIT SITE PLAN

DESIGN BY:	LLC
DRAWN BY:	LLC
CHECKED BY:	LLC
DATE:	5-10-20
JOB NO:	05-2020
DWG NO:	2020-08

SCALE  
HORIZ: 1"=5'  
VERT: N/A

SHEET  
1  
OF 1





J.D. Long, Architect

NCARB

960 Idaho street, elko, nevada 89801

ph. (775) - 738-4735 fax. (775) - 738-7319

TENANT IMPROVEMENT  
902 COURT STREET  
ELKO NEVADA

revised

date 03/18/20

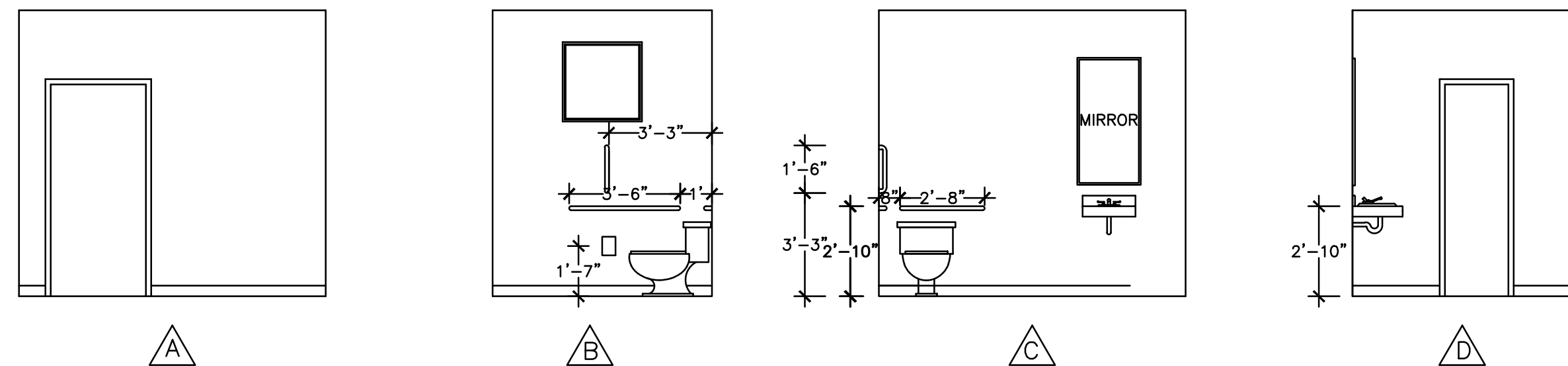
drawn J.D.L.

checked

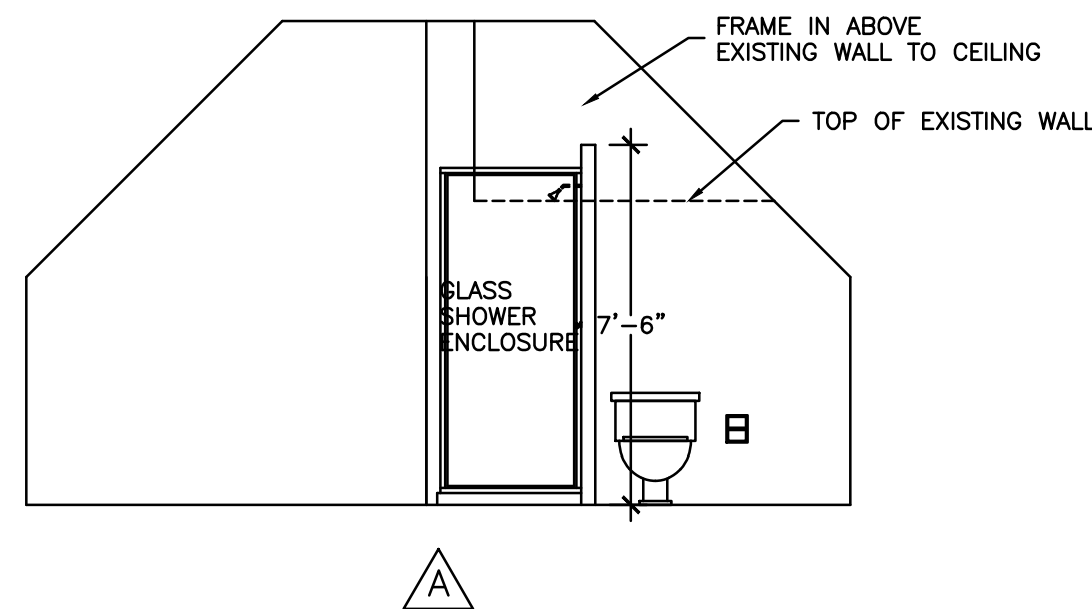
proj. no. 2002-E

A1.1

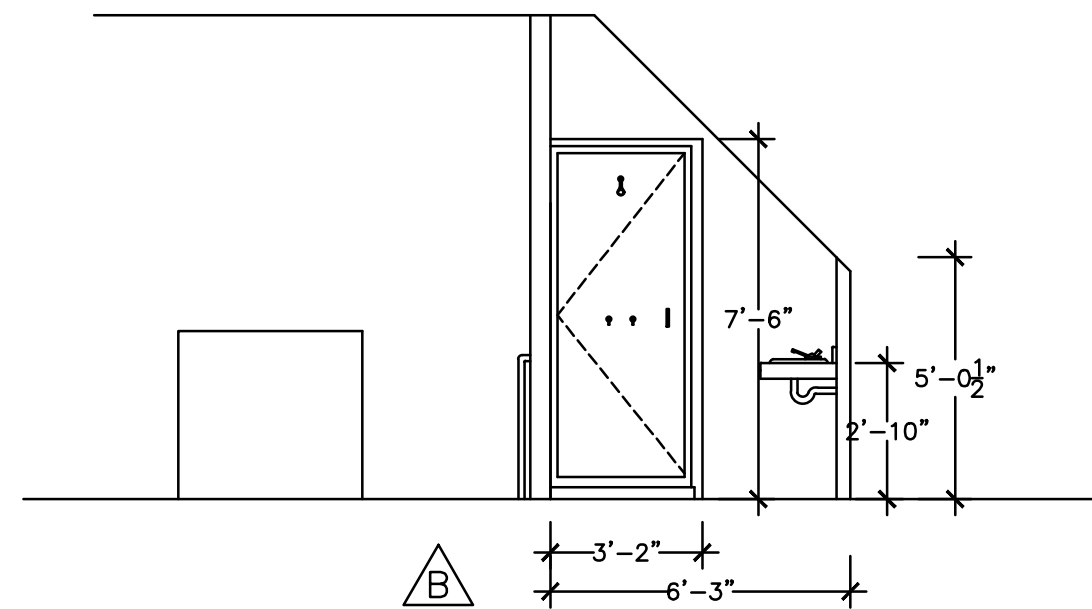
sheet



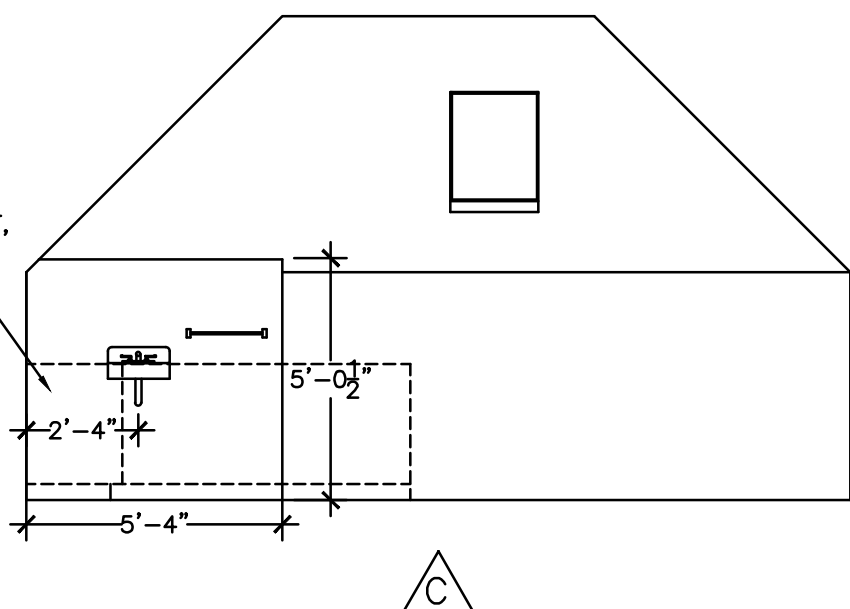
BATH ROOM  
1/4" = 1'-0"



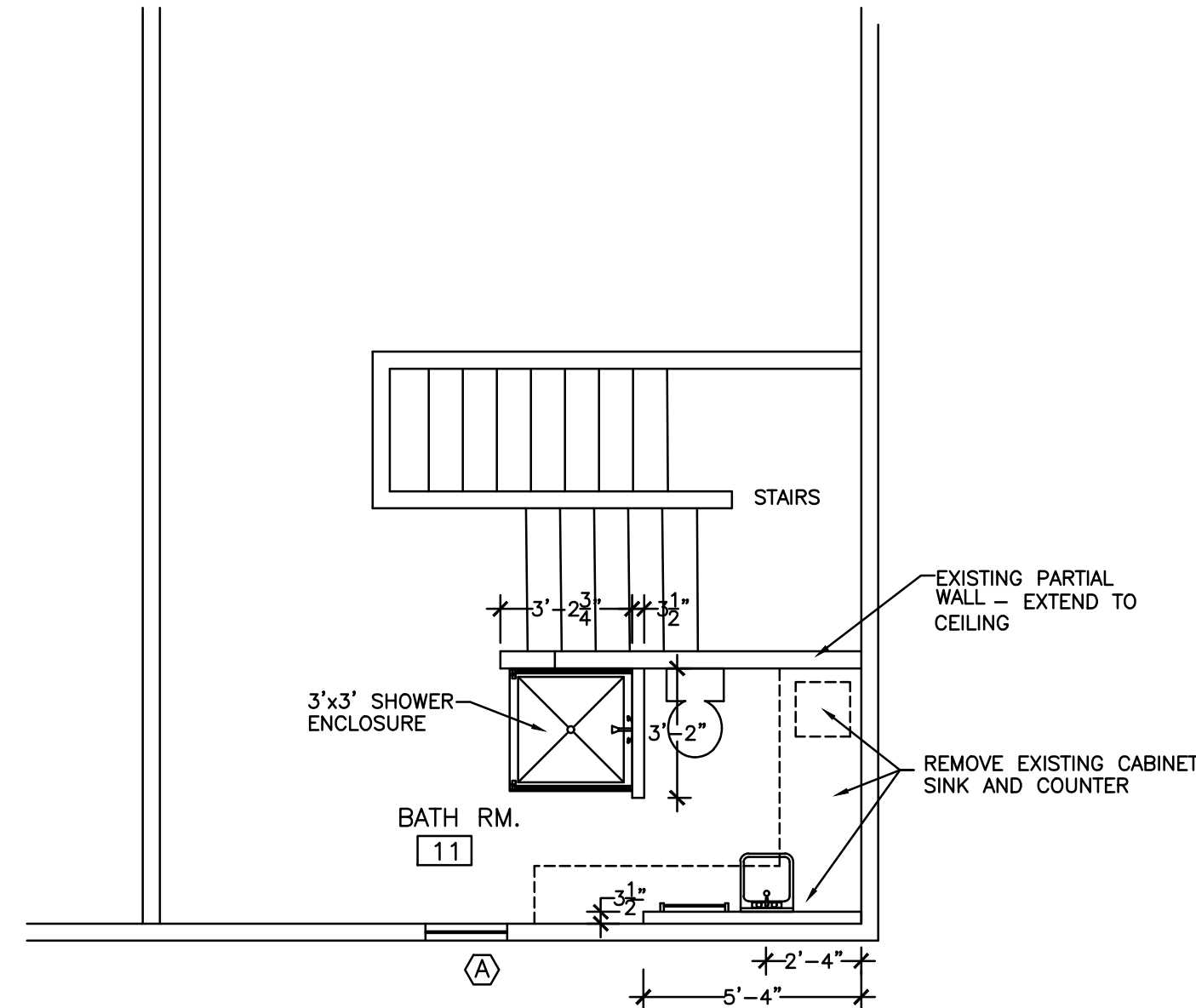
BATH ROOM  
1/4" = 1'-0"



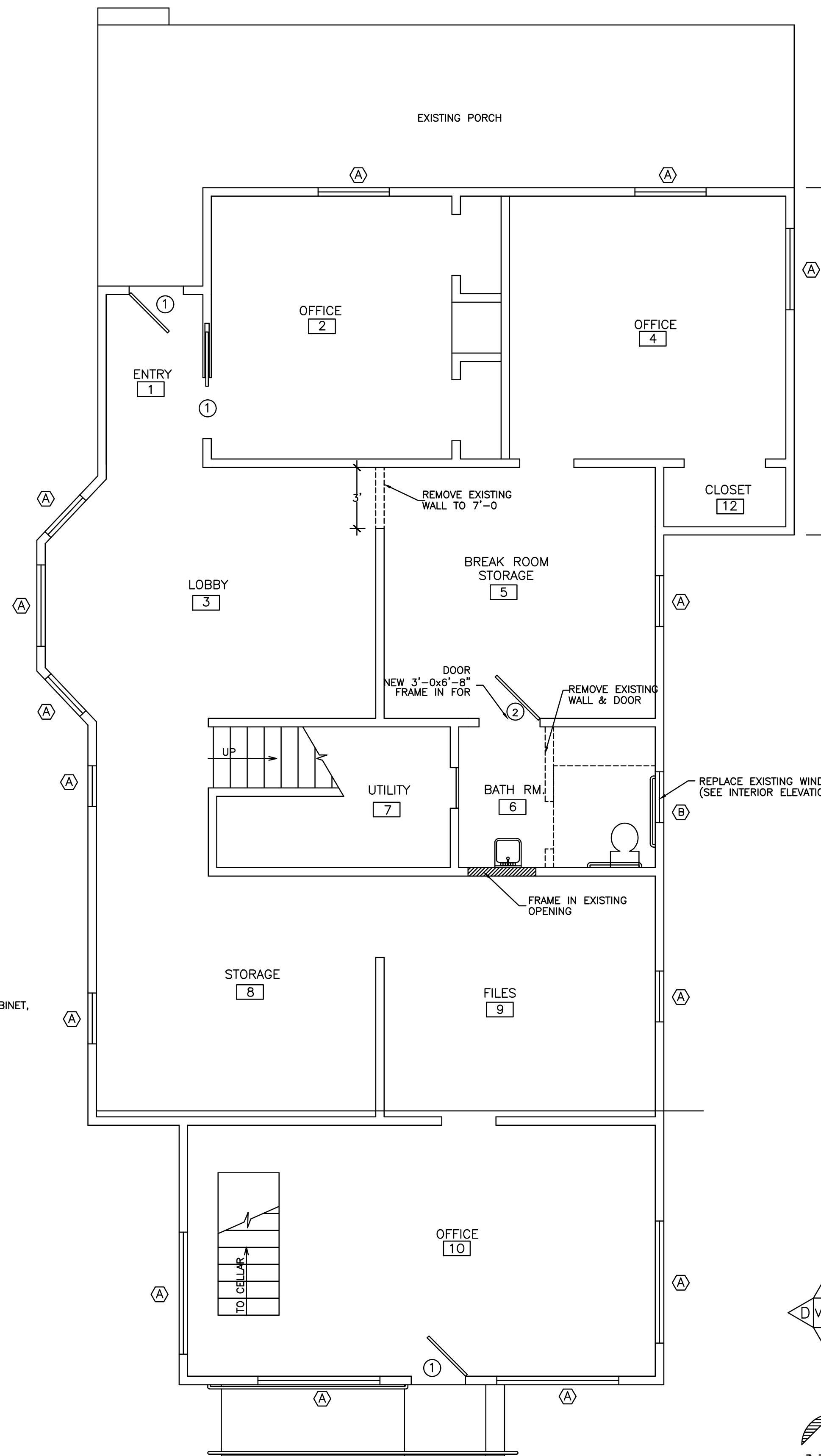
REMOVE EXISTING CABINET,  
SINK AND COUNTER



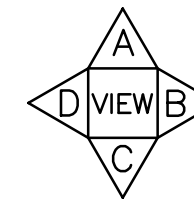
11



PARTIAL 2ND FLOOR PLAN  
1/4" = 1'-0"

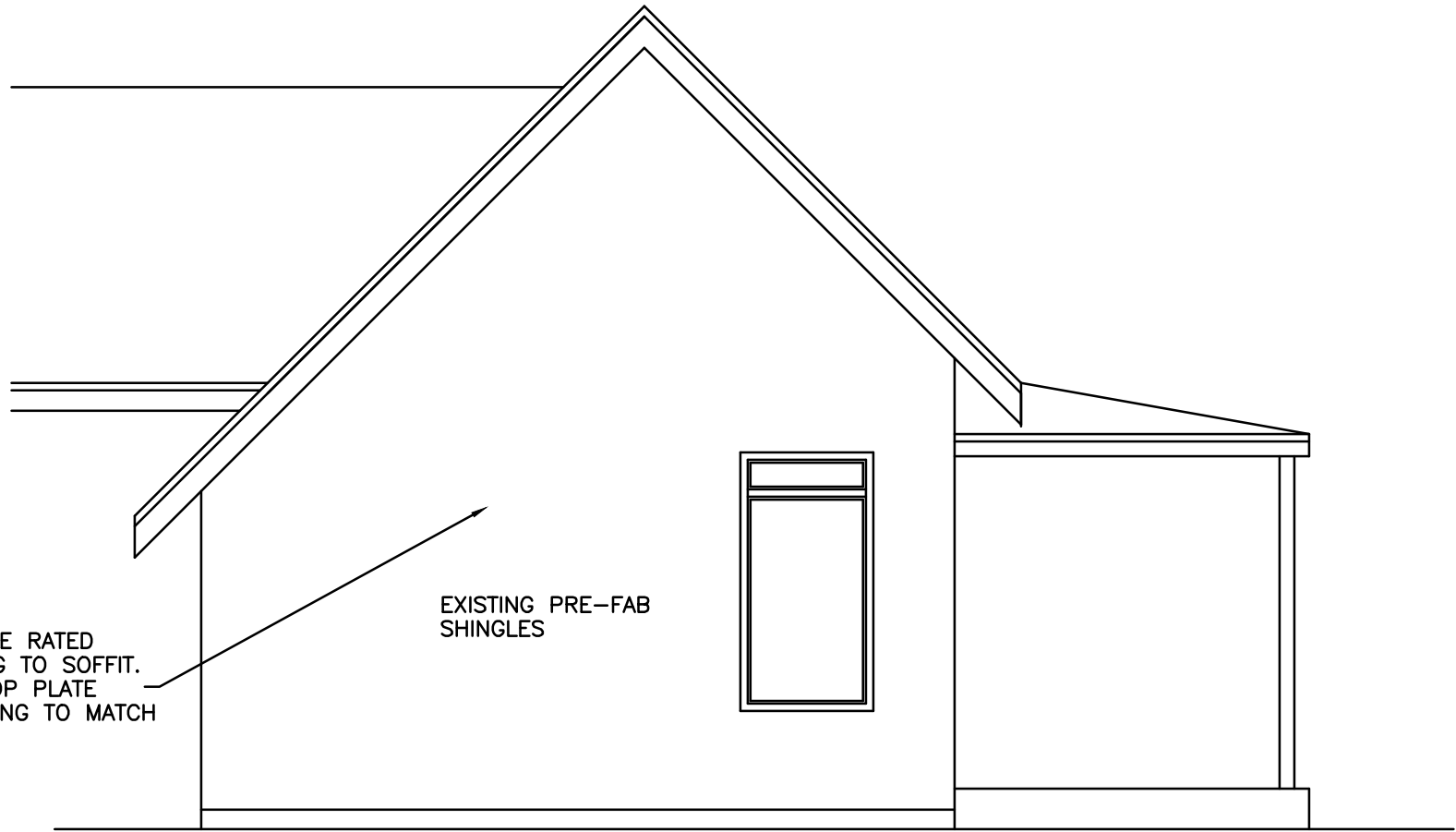


EXISTING FLOOR PLAN  
1/4" = 1'-0"





SOUTH ELEVATION  
1/4"=1'-0"



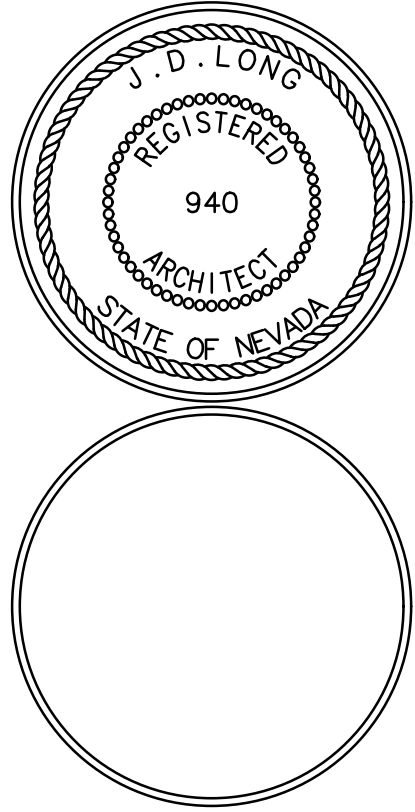
REMOVE EXISTING SIDING--APPLY 5/8" FIRE RATED GYPSUM BOARD OVER EXISTING SHEATHING TO SOFFIT. PROVIDE 2x SOLID BLOCKING BETWEEN TOP PLATE AND ROOF SHEATHING. REPLACE NEW SIDING TO MATCH EXISTING

EAST ELEVATION (PARTIAL ELEVATION)  
1/4"=1'-0"

ROOM FINISH SCHEDULE													
NO.	ROOM NAME	FLOOR	FIN.	BASE	WALLS								REMARKS
					A	FIN.	B	FIN.	C	FIN.	D	FIN.	
1	ENTRY	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
2	ROOM	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
3	LOBBY	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
4	OFFICE	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
5	OFFICE	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
6	BATH RM.	SHEET VINYL		COVED	5/8" GYP.BD.		5/8" GYP.BD.		5/8" GYP.BD.		5/8" GYP.BD.		
7	UTILITY	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
8	ROOM	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
9	ROOM	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
10	ROOM	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
11	BATH RM.	SHEET VINYL		COVED	5/8" GYP.BD.		5/8" GYP.BD.				5/8" GYP.BD.		
12													

DOOR SCHEDULE							
NO.	SIZE	THICKNESS	TYPE	MATERIAL	THRESHOLD	HDWR.	REMARKS
1	EXISTING	—					—
2	3'0 x 6'8"	1 1/2"	SOLID CORE	WOOD	—		

WINDOW SCHEDULE						
NO.	SIZE	TYPE	MATERIAL	GLASS	FINISH	REMARKS
A	EXISTING					—
B	2'0 x2'0	FIXED	ALUMINUM	OBSCURE	ANODIZED BRONZE	



J.D. Long, Architect

NCARB

960 Idaho street, elko, nevada 89801

ph. (775) - 738-4735 fax. (775) - 738-7319

TENANT IMPROVEMENT

902 COURT STREET

ELKO NEVADA

revised

date 03/18/20

drawn J.D.L.

checked

proj. no. 2002-E

A1.2

sheet



**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Variance No. 2-20, filed by Scott and Leslie Rangel, for a reduction of the required interior side yard setback from 10' to 2.2', exterior side yard setback from 12' to 9.8', front yard setback from 15' to 11.7' and required off street parking to be located within the interior side yard setback for a professional office in an RO (Residential Office) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **June 2, 2020**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **The property has been vacant since 2014 and therefore all non-conforming uses are considered abandoned. The property encroaches into three of the four yard setbacks.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Move to conditionally approve Variance 2-20 based on the facts, findings and conditions presented in Staff Report dated May 18, 2020.**
9. Findings: **See Staff report dated May 18, 2020.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Scott and Leslie Rangel  
426 Cottonwood Drive  
Elko, NV 89801**

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 6/2**  
\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: VAR 2-20

Applicant(s): Scott and Leslie Rangel

Site Location: 902 Court St. (Court St/9th St.)

Current Zoning: RO Date Received: 5/11/20 Date Public Notice: \_\_\_\_\_

COMMENT: Proposed Variance to reduce the interior side setbacks from 5.5 feet to 2.2 feet, the exterior side setbacks from 15 feet to 9.8 feet, and deviate from other development standards as described in the staff report.  
\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 5/21/2020

Recommend approval as presented by Staff

SAW

Initial

City Manager: Date: 5/22/20

No comments/concerns.

CC

Initial



City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7219

## **CITY OF ELKO STAFF REPORT**

<b>MEMO DATE:</b>	<b>May 18, 2020</b>
<b>PLANNING COMMISSION DATE:</b>	<b>June 2, 2020</b>
<b>AGENDA ITEM NUMBER:</b>	<b>I.A.2</b>
<b>APPLICATION NUMBER:</b>	<b>Variance 2-20</b>
<b>APPLICANT:</b>	<b>Scott and Leslie Rangel</b>
<b>PROJECT DESCRIPTION:</b>	<b>902 Court Street</b>
<b>RELATED APPLICATIONS:</b>	<b>CUP 2-20 &amp; REV 2-20</b>

A variance request from provisions under Section 3-2-5 and 3-2-17, requiring minimum yard setbacks in a RO- Residential Office Zoning District and off street parking requirements.



### **STAFF RECOMMENDATION:**

RECOMMEND APPROVAL, subject to findings of fact, and conditions as stated in this report.

## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-281-001

**PARCEL SIZE:** 5,000 sq. ft.

**EXISTING ZONING:** (RO) Residential Office

**MASTER PLAN DESIGNATION:** (MU-DTWN) Mixed Use Downtown

**EXISTING LAND USE:** Currently vacant, was previously approved for a CUP for retail services

### **NEIGHBORHOOD CHARACTERISTICS:**

- } The property is surrounded by:
  - o Northeast: (RO) Residential Office / Developed
  - o Northwest: (R) Single Family and Multiple Family Residential / Developed
  - o Southeast: (C) General Commercial / Developed
  - o Southwest: (C) Commercial / Developed

### **PROPERTY CHARACTERISTICS:**

- } The property is developed.
- } The property fronts Court Street and 9<sup>th</sup> Street.
- } Access to the property for parking is off the alley at the rear of the parcel.

### **MASTER PLAN AND CITY CODE SECTIONS:**

Applicable Master Plan Sections, Coordinating Plans and City Code Sections are:

- } City of Elko Master Plan – Land Use Component
- } City of Elko Master Plan – Transportation Component
- } City of Elko Redevelopment Plan
- } City of Elko Zoning – Section 3-2-5 Residential Zoning District
- } City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- } City of Elko Zoning – Section 3-2-22 Variances

### **BACKGROUND:**

1. The parcel is identified as APN 001-281-001.
2. The applicant is the property owner.
3. There is an approved Conditional Use Permit 4-03 approved by Planning Commission on June 4, 2003. The approval was for the use and operation of a retail and service establishment. The applicant has applied for a new CUP 2-20 for a proposed use as a professional office which the application will be heard concurrent with this application.
4. The property was approved a zone amendment application from R to RO on June 18, 1996.
5. The property is located at the intersection of Court Street and 9<sup>th</sup> Street.
6. The area of the parcel is approximately 5,000 square feet.
7. The existing structure encroaches into the interior, exterior side yard and front yard setbacks.
8. The property has been vacant since 2014. Any legal non-conforming uses are considered

abandoned.

9. The required off street parking for business uses is provided off the alley and encroaches into the alley. The applicant has applied for a revocable permit to occupy the alley. The application will be heard by City Council on June 9, 2020.

### **MASTER PLAN:**

#### **Land use:**

1. The Master Plan Land Use Atlas shows a portion of the area as Mixed Use Downtown.
2. Objective 2: Encourage revitalization and redevelopment of the downtown area to strengthen its role as the cultural center of the community
3. Objective 4: Consider a mixed-use pattern of development for the downtown area, and for major centers and corridors, to ensure the area's adaptability, longevity, and overall sustainability.
4. Downtown Mixed Use: This land use designation includes land uses that are located in or close to the historic downtown area. The area will capitalize on the existing fabric of the downtown and its walkable grid system. Mixed-use allows for a variety of land uses, and configurations. Housing or office use may be located within the same structure, with retail use primarily on the first floor.

The proposed variance under the conditionally approved Residential Office district is consistent with the Land Use Component of the Master Plan. The proposed variance meets Objectives 2 and 4 of the Land Use Component of the Master Plan.

### **ELKO REDEVELOPMENT PLAN:**

1. The property is located within the redevelopment area. The proposed use supports several objectives in the redevelopment plan. The more important objective being repurposing of buildings and/or properties and thereby eliminating blight in the area and increasing economic activity in the area.

The proposed variance and repurposing the property and structure conforms to the Redevelopment Plan.

### **SECTION 3-2-5 RESIDENTIAL ZONING DISTRICT:**

1. Under the property development standards for permitted principal uses:
  - a. Lot Area: For existing platted subdivisions characterized by twenty five foot (25') wide lots and situated within a residential zoning district, any lot or parcel reconfiguration or resubdivision shall adhere to a minimum lot area of five thousand (5,000) square feet.
  - b. Lot Width: 50 ft.
  - c. Lot Depth: 100 ft.
  - d. Front yard Setback: 15 feet
  - e. Rear yard setback: 20 feet
  - f. Interior side yard setback: 10 feet
  - g. Exterior side yard setback: 12 feet

The property meets all requirements with the exception of the interior side yard, exterior side yard and front yard setback.

Approval of Variance 2-20 will bring the property into conformance with Section 3-2-5 of City Code.

**SECTION 3-2-17 TRAFFIC, ACCESS, PARKING AND LOADING REGULATIONS:**

1. Development of ADA off-street parking is required to conform with this section of code if the property is developed as a conditionally permitted use or more intense use than single family residence.
2. 3-2-17(D)2 states that no required off street parking space shall be located in a required front yard or interior side yard. The applicant is proposing parking off the rear of the property and will encroach into interior and exterior side yards. A variance will be required for the parking to be approved in the interior side yard setback.

For the proposed use as a professional office, a variance for parking in the interior side yard setback will be required to be approved to be in conformance with Elko City Code 3-2-17.

**SECTION 3-2-22 VARIANCES:**

B. Procedure: Any person requesting a variance by the planning commission shall include:

Application Requirements

1. There are special circumstances or features, i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions applying to the property under consideration.
  - ) The applicant has stated that this property is in an older part of town where the lot dimensions and areas do not meet current day code requirements.
2. The special circumstance or extraordinary situation or condition results in exceptional practical difficulties or exceptional undue hardships, and where the strict application of the provision or requirement constitutes an abridgment of property right and deprives the property owner of reasonable use of property.
  - ) The applicant has stated that the structure is an existing structure that is encroaching into the current day set back requirements
  - ) The applicant has stated that since the structure is existing the variance is needed to make use of the structure.
3. Such special circumstances or conditions do not apply generally to other properties in the same zoning district.
  - ) The applicant stated the parcel is 50 feet by 100 feet which is smaller than the minimum lot size.
4. The granting of the variance will not result in material damage or prejudice to other properties in the vicinity, nor be detrimental to the public interest, health, safety and general welfare.
  - ) The applicant stated a fire rated sheathing under the siding is proposed for the interior side yard encroachment. Other properties in the area have variances for setbacks.
5. The granting of the variance will not substantially impair the intent or purpose of the zoning ordinance or effect a change of land use or zoning classification.

- ) The applicant stated the variance does not change either of these. The requested variance is for interior and exterior yard setback which have little impact on either of these.
- 6. The granting of the variance will not substantially impair affected natural resources.
  - ) The applicant stated that granting of the variance will not impair natural resources.

## **FINDINGS**

1. The variance approval is in conformance with the Land Use Component of the Master Plan.
2. The property is located within the Redevelopment Area The proposed variance and repurposing the property and structure conforms to the Redevelopment Plan.
3. The property does not conform to Section 3-2-4 of City Code. Approval of the variance application is required to bring the property into conformance.
4. The proposed variance is not in conformance with Section 3-2-5(R) Residential Office, Approval of the variance application is required to bring the property into conformance.
5. Approval of Variance 2-20 will bring the property into conformance with Section 3-2-17 of City Code.
6. It does not appear that granting of the variance will result in material damage or prejudice to other properties in the vicinity, nor will granting of the variance be detrimental to the interest, health, safety and general welfare of the public.
7. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance.
8. Granting of the variance will not impair natural resources.
9. The proposed variance is consistent with surrounding land uses.

## **STAFF RECOMMENDATION:**

Staff recommends this item be **conditionally approved** with the following conditions:

1. The variance is granted for the principal structure and parking within the interior side yard setback. No new structures or accessory structures to be constructed within the required setbacks.
2. Commencement within one year and completion within eighteen (18) months.

After 5 days, return to

CITY OF ELKO  
PLANNING DEPARTMENT  
1751 College Avenue  
Elko, Nevada 89801

Return Service Requested



Correct Per Elko County  
Assessor's Website.

AHLIN JASON & MEGAN  
530 N 300 E  
SPANISH FORK, UT 84660-1530

RETURN TO SENDER 1 51910000/20/20  
AHLIN  
149 WYOMING COUNTY UT 84660  
RETURN TO SENDER  
|||

846603450010000

UP 2-20 + Var 2-20



CUP 2-20 E VAR 2-20

YPNO	legal_name	address1	address2	mcity	mzip	phys_addr
001273005	4AMBICA LLC	1181 IDAHO ST		ELKO, NV	89801-3920	837 IDAHO ST
001273004	4AMBICA LLC	1181 IDAHO ST		ELKO, NV	89801-3920	832 COURT ST
001241008	AGUIRRE THERESA A	965 COURT ST		ELKO, NV	89801-3940	965 COURT ST
001241012	AHLIN JASON & MEGAN	530 N 300 E		SPANISH FORK, UT	84660-1530	550 9TH ST
001241011	BECK STEFAN W TR	PO BOX 1075		ELKO, NV	89803-1070	532 9TH ST
001241033	BLACKMAN DAVID A TR	997 COURT ST		ELKO, NV	89801-3940	997 COURT ST
001281002	BRANSCOMB SUE ANN TR	101 COURT ST		ELKO, NV	89801-3040	910 COURT ST
001281005	BUCKNER EDWARD V TR	784 PALACE PKWY		SPRING CREEK, NV	89815-7430	936 COURT ST
001276004	CHADWICK FOUNDATION INC	C/O NEVADA BANK & TRUST	PO BOX 807	CALIENTE, NV	89008-0800	852 IDAHO ST
001236001	ELKO ASSOC-1 LP	C/O WESTATES PROP MGMT	PO BOX 2688	ELKO, NV	89803-	851 COURT ST
001241007	GILLINS DANIEL & IOLANDA	3533 RIDGECREST DR		ELKO, NV	89801-2450	993 COURT ST
001281003	HILLS HOMES LLC	451 VALLEY BEND DR		SPRING CREEK, NV	89815-5730	916 COURT ST
001284004	KUNZ PROPERTIES LLC	PO BOX 1465		HOLLISTER, CA	95024-1460	910 IDAHO ST
001281007	LAL DIPAK BHAI	411 10TH ST		ELKO, NV	89801-3900	411 10TH ST
001281008	LAUGHLIN PATRICK J & CATALINA F	371 MOUNTAIN CITY HWY UNIT 7		ELKO, NV	89801-9510	927 IDAHO ST
001281009	LOCKIE DAVID B	919 IDAHO ST		ELKO, NV	89801-3910	919 IDAHO ST
001241018	LOSTRA ENTERPRISES LLC	930 COLLEGE AVE		ELKO, NV	89801-3420	960 1/2 COLLEGE AVE
001284003	MCCONNELL INVESTMENTS IDAHO STREET	950 IDAHO ST		ELKO, NV	89801-	950 IDAHO ST
001273003	MONTES DE OCA DANIEL TR	1709 JANIE CT		ELKO, NV	89801-7910	844 COURT ST
001273010	MOWRAY SEAN & JUDITH E	2205 COLONIAL DR		ELKO, NV	89801-4560	832 COURT ST
001284002	NEVADA BANK & TRUST CO	PO BOX 807	Same as Chadwick	CALIENTE, NV	89008-0800	976 IDAHO ST
001281006	PEREZ GUADALUPE	700 LAST CHANCE RD UNIT 3		ELKO, NV	89801-8740	946 COURT ST
001281010	R HANK WOODY LLC	C/O LIPPARELLI, PAUL A	2633 SPEARPOINT DR	RENO, NV	89509-7020	913 IDAHO ST
001281001	RANGEL LESLIE		426 COTTONWOOD DR	ELKO, NV	89801-	902 COURT ST
001241010	THIBAUT ROBERT & ADELINE	901 COURT ST		ELKO, NV	89801-3940	901 COURT ST
001273009	US BANK NATIONAL ASSOCIATION	LAKE0012	2800 E LAKE ST	MINNEAPOLIS, MN	55406-1930	820 COURT ST
001273007	US BANK NATIONAL ASSOCIATION	LAKE0012	2800 E LAKE ST	MINNEAPOLIS, MN	55406-1930	801 IDAHO ST
001281004	WAHRENBROCK JON A	1800 GRISWOLD DR UNIT 1		ELKO, NV	89801-1620	928 COURT ST
001241009	ZELCO LLC SERIES 2 - Same as Thibault	901 COURT ST		ELKO, NV	89801-3940	949 COURT ST

26

mailed 5/20/20

NOTICE OF PUBLIC HEARINGS  
ELKO CITY PLANNING COMMISSION

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a series of public hearings on Tuesday, June 2, 2020 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at <https://global.gotomeeting.com/join/123367613>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/123367613> You can also dial in using your phone at **+1 (669) 224-3412**. The **Access Code** for this meeting is **123-367-613**

Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to [cityclerk@elkocitynv.gov](mailto:cityclerk@elkocitynv.gov)

The specific items to be considered under public hearing format are:

- Conditional Use Permit No. 2-20, filed by Scott and Leslie Rangel, which would allow for a professional office within an RO (Residential Office) Zoning District, and matters related thereto. The subject property is located generally on the west corner of the intersection of 9<sup>th</sup> Street and Court Street (902 Court Street, APN 001-281-001).
- Variance No. 2-20, filed by Scott and Leslie Rangel for a reduction of the required front yard setback from 15' to 11.6', the required interior side yard setback from 10' to 2.2', exterior side yard setback from 12' to 9.8', front yard setback from 15' to 11.7' and required off street parking to be located within the interior side yard setback for a professional office in an RO (Residential Office) Zoning District. The subject property is located generally on the west corner of the intersection of 9th Street and Court Street. (902 Court Street. - APN 001-281-001)

Additional information concerning these items may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

ELKO CITY PLANNING COMMISSION



## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801

(775) 777-7160 \* (775) 777-7219 fax

### APPLICATION FOR VARIANCE

**APPLICANT(s):** Scott Rangel and Leslie Rangel

**MAILING ADDRESS:** 426 Cottonwood Drive, Elko Nevada 89801

**PHONE NO (Home)** 702-271-3942 **(Business)** N/A

**NAME OF PROPERTY OWNER (If different):** Same

*(Property owner's consent in writing must be provided.)*

**MAILING ADDRESS:** Same as above

**LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):**

**ASSESSOR'S PARCEL NO.:** 001-281-001 **Address** 902 Court Street, Elko, NV 89801

**Lot(s), Block(s), & Subdivision** Lot 11 and Lot 12, Block 7

**Or Parcel(s) & File No.** File No. 000001

#### FILING REQUIREMENTS:

**Complete Application Form:** In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1<sup>st</sup> Tuesday of every month).

**Fee:** A \$500.00 non-refundable fee must be paid. If in conjunction with a Rezone Application a \$250.00 non-refundable fee must be paid.

**Plot Plan:** A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, parking and loading areas, driveways and other pertinent information must be provided.

**Elevation Plan:** Elevation profile of all proposed buildings or alterations in sufficient detail to explain the nature of the request must be provided.

**Note:** One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

**Other Information:** The applicant is encouraged to submit other information and documentation to support this Variance application.

RECEIVED

The APPLICANT requests the following variance from the following section of the zoning ordinance:

3-2-5 Residential Zoning Districts G. 1. Table of Area Requirements (RO)

---

1. The existing zoning classification of the property RO Residential Office

---

2. The applicant shall present **adequate** evidence demonstrating the following criteria which are necessary for the Planning Commission to grant a variance:

- a) Identify any special circumstances, features or conditions applying to the property under consideration. i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions

This property is in an older part of town where the lot dimensions and areas  
do not meet the current day code requirements for area and set backs.

- b) Identify how such circumstances, features or conditions result in practical difficulty or undue hardship and deprive the property owner of reasonable use of property.

The structure is an existing structure that is encroaching into  
the current day set back requirements.

- c) Indicate how the granting of the variance is necessary for the applicant or owner to make reasonable use of the property.

Since the structure is existing the variance is needed to make  
use make use of the structure.

- d) Identify how such circumstances, features or conditions do not apply generally to other properties in the same Land Use District.

The parcel is 50 feet by 100 feet which is smaller than the minimum lot size.

- e) Indicate how the granting of the variance will not result in material damage or prejudice to other properties in the vicinity nor be detrimental to the public health, safety and general welfare.

A fire rated sheathing under the siding is proposed for the interior side yard encroachment. Other properties in the area have variances for set backs.

- f) Indicate how the variance will not be in conflict with the purpose or intent of the Code.

The set back encroachment is existing and does not meet current day code requirements but is also not detrimental to the adjacent property.

- g) Indicate how the granting of the variance will not result in a change of land use or zoning classification.

The variance does not change either of these. The requested variance is for interior and exterior yard set back which have little impact on either of these.

- h) Indicate how granting of the variance will not substantially impair affected natural resources.

The variance is for an existing set back which has no impact on natural resources.

3. Describe your ability (i.e. sufficient funds or a loan pre-approval letter on hand) and intent to construct within one year as all variance approvals **must** commence construction within one year and complete construction within 18 months per City Code Section 3-2-22 F.1.: \_\_\_\_\_

There is an approved loan per the attached loan details for this project.

Braemar Construction has been contracted to perform this work. Construction plans have been submitted to the City of Elko for much of this work.

**(Use additional pages if necessary to address questions 2a through h)**

**This area intentionally left blank**

**By My Signature below:**

☒ I consent to having the City of Elko Staff enter on my property only for the sole purpose of inspecting said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.

**Applicant / Agent** Leslie Rangel  
(Please print or type)

**Mailing Address** 426 Cottonwood Drive  
Street Address or P.O. Box

Elko Nevada 89801  
City, State, Zip Code

Phone Number: 702-271-3942

Email address: irangelcsw@gmail.com

**SIGNATURE:** Leslie M. Rangel

---

**FOR OFFICE USE ONLY**

**File No.:** 2-20 **Date Filed:** 3/11/20 **Fee Paid:** \$500.00 CL# 334

**RECEIVED**

MAY 11 2020

**Carter Engineering, LLC**  
**Civil Engineering**

P. O. Box 794  
Elko, Nevada 89803  
775-397-2531



## Transmittal Letter

Date: May 11, 2020

To: Cathy Laughlin, City Planner  
City of Elko  
1751 College Avenue  
Elko, Nevada 89801

From: Lana L. Carter, P.E.  
Carter Engineering, LLC

Regarding: 902 Court Street - Variance

Description of Attachments:

1. Application
2. Fee \$500.00
3. Plot Plan
4. Site Plan
5. Elevation View and Floor Plan
6. PDF copy of the entire submittal on a jump drive.

Remarks:

Hello Cathy,

Please accept the attached submittal for 902 Court Street Application for Variance Permit.

Thanks - Lana L Carter

Cc: Leslie Rangel, Owner  
Chris Fausi, Braemar Construction, LLC

**RECEIVED**

MAY 11 2020

May 8, 2020


City of Elko  
1751 College Avenue  
Elko, Nevada 89801

To whom it may concern

This letter grants authorization to Lana L. Carter, P.E., Carter Engineering, LLC, to submit for the applications for Conditional Use Permit, Variance and Revocable Permit to Occupy City of Elko Property on my behalf.

Should you have any questions or need additional information please do not hesitate to call.

Sincerely,

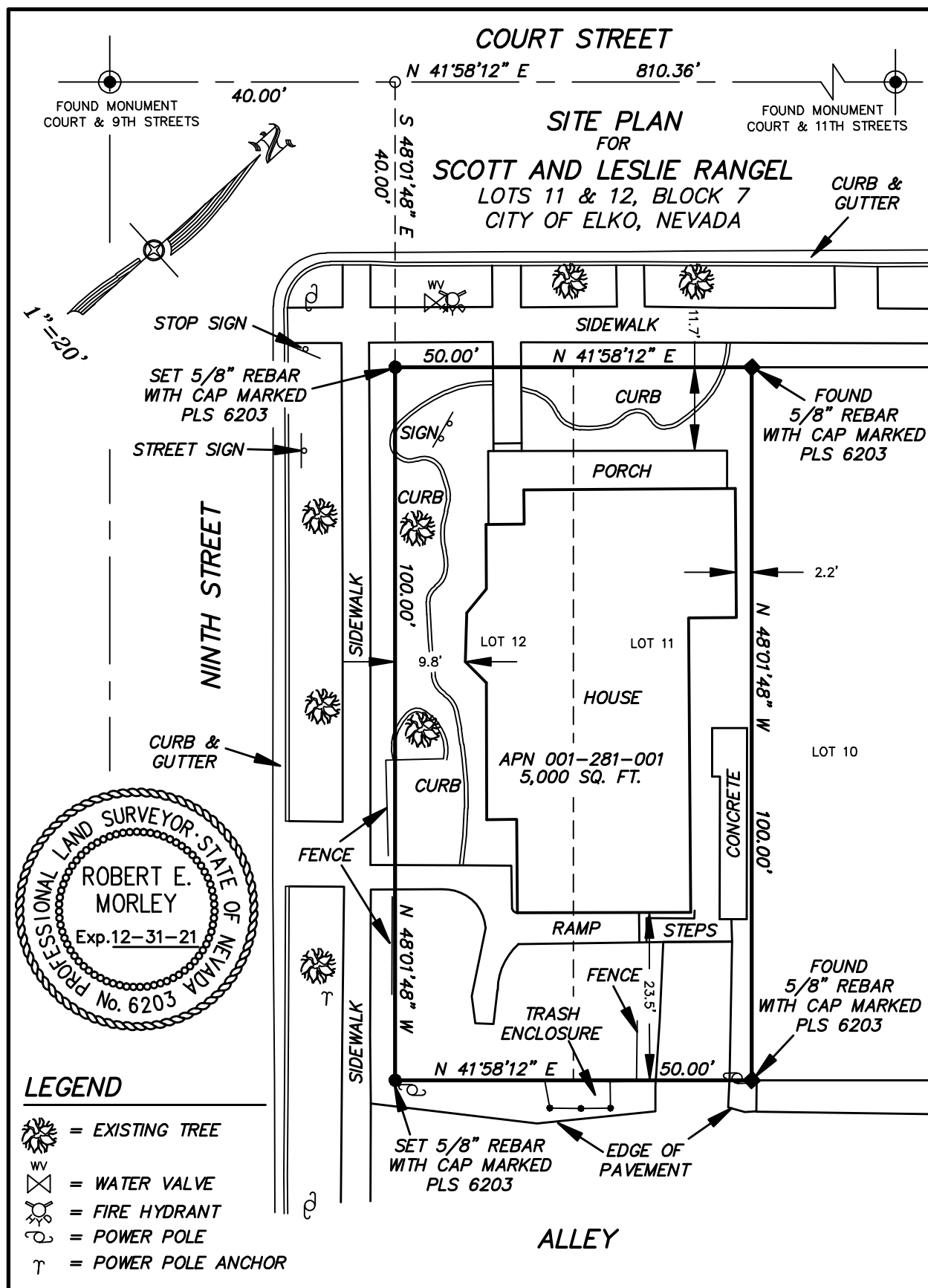
  
Leslie Rangel  
426 Cottonwood Drive  
Elko, Nevada 89801  
702 -271-3942  
lrangellcsw@gmail.com

**RECEIVED**

MAY 11 2020

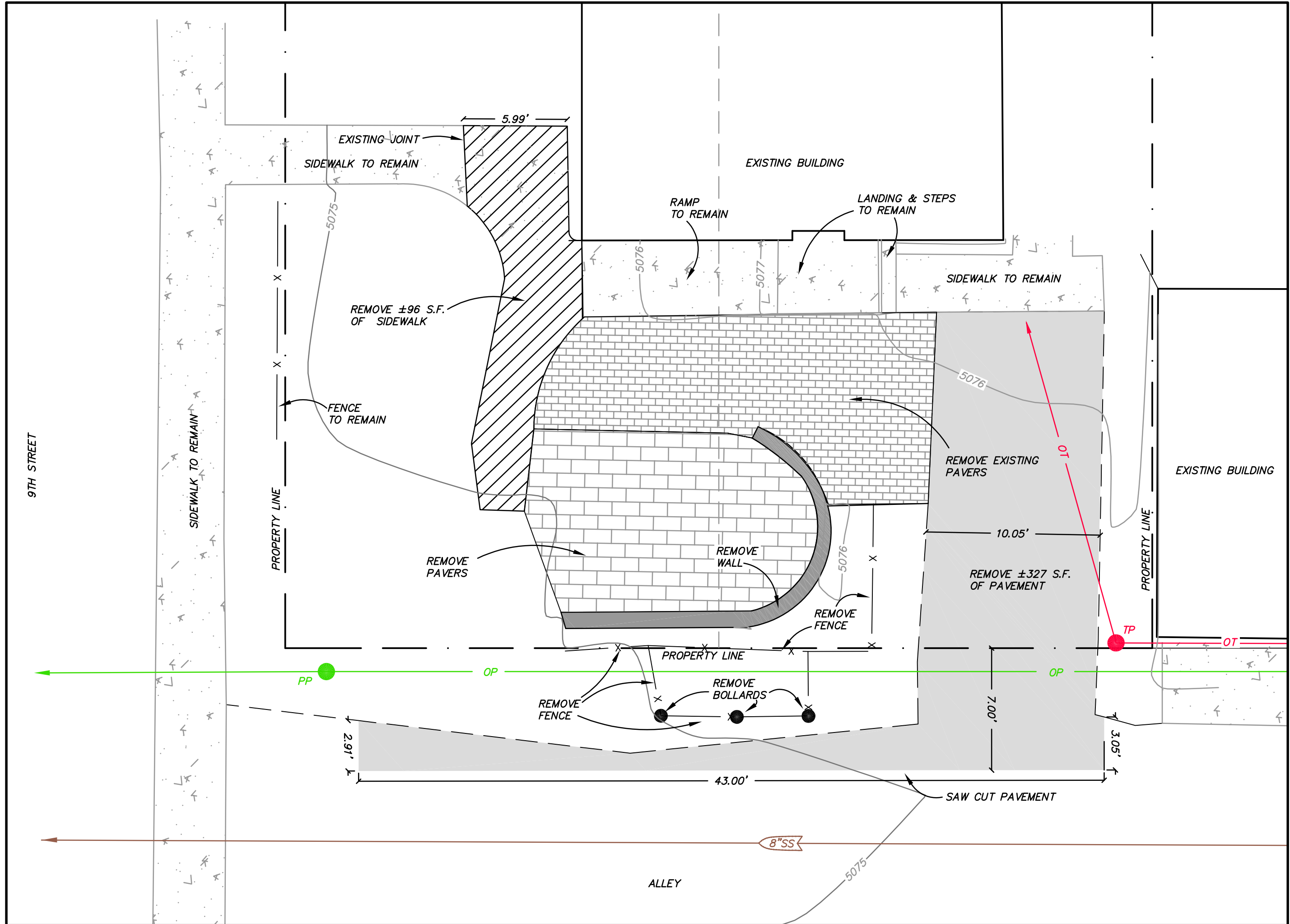
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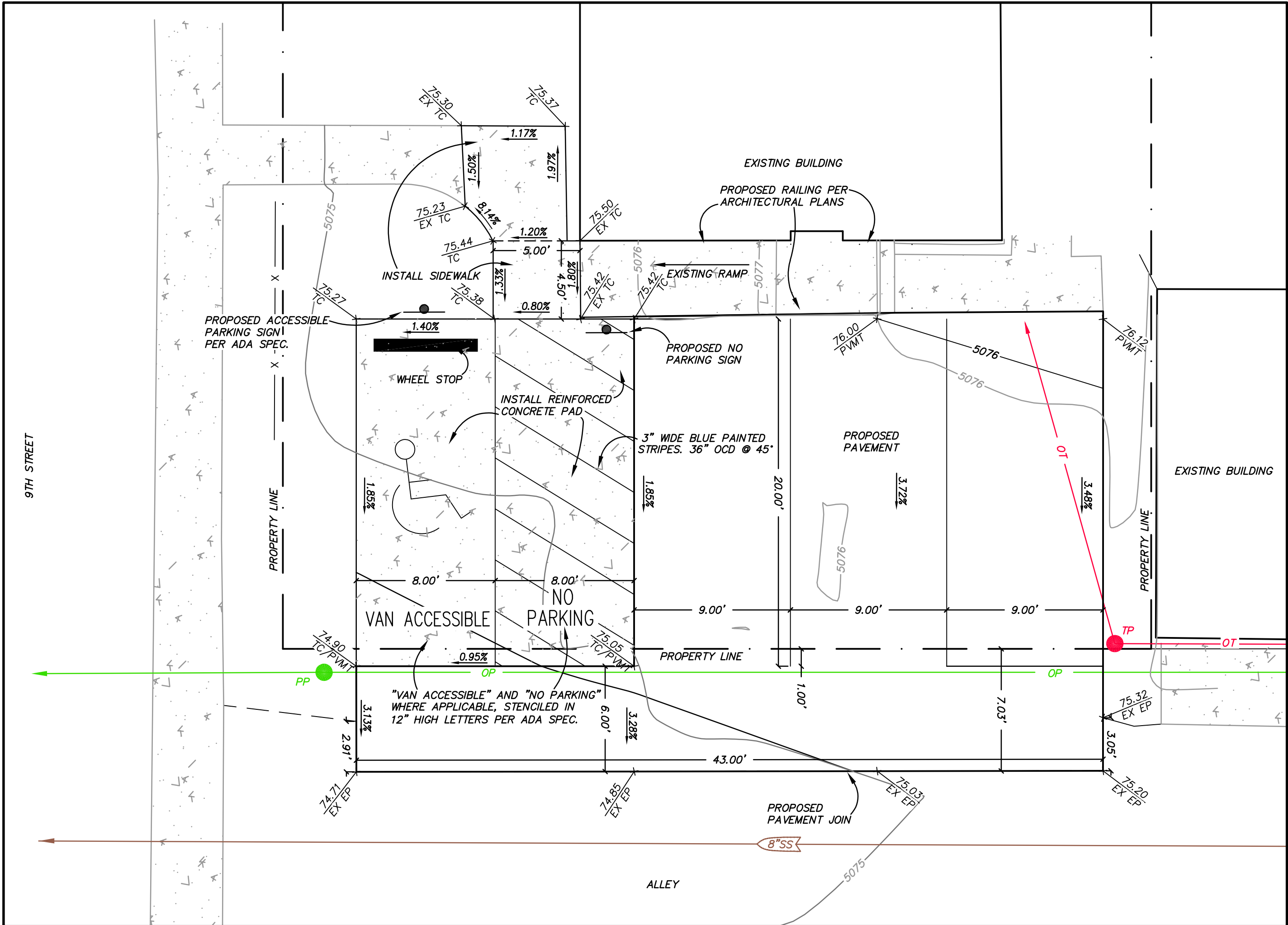




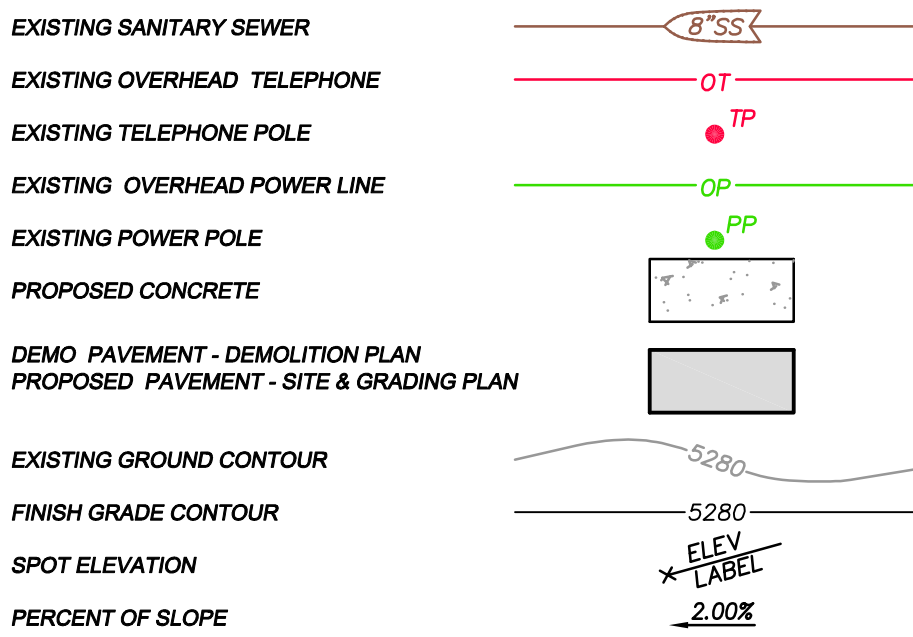
# DEMOLITION



# SITE AND GRADING



## LEGEND



## GRADING NOTES:

- THE ESTIMATED EARTHWORK QUANTITIES ARE AS FOLLOWS:  
UNCLASSIFIED EXCAVATION = 24 CY CUT  
UNCLASSIFIED EMBANKMENT = 0 CY FILL  
THE ABOVE QUANTITIES ARE BANK CUBIC YARDS WITH A 3" GRUB TO EXISTING GRADE. SHRINK OR SWELL HAS NOT BEEN CONSIDERED.
- ADD 5000 FEET TO SPOT ELEVATIONS.
- THE EXISTING GROUND TOPOGRAPHY SHOWN ON THIS PLAN IS FROM A SURVEY BY HIGH DESERT ENGINEERING ON MARCH 27TH, 2020.

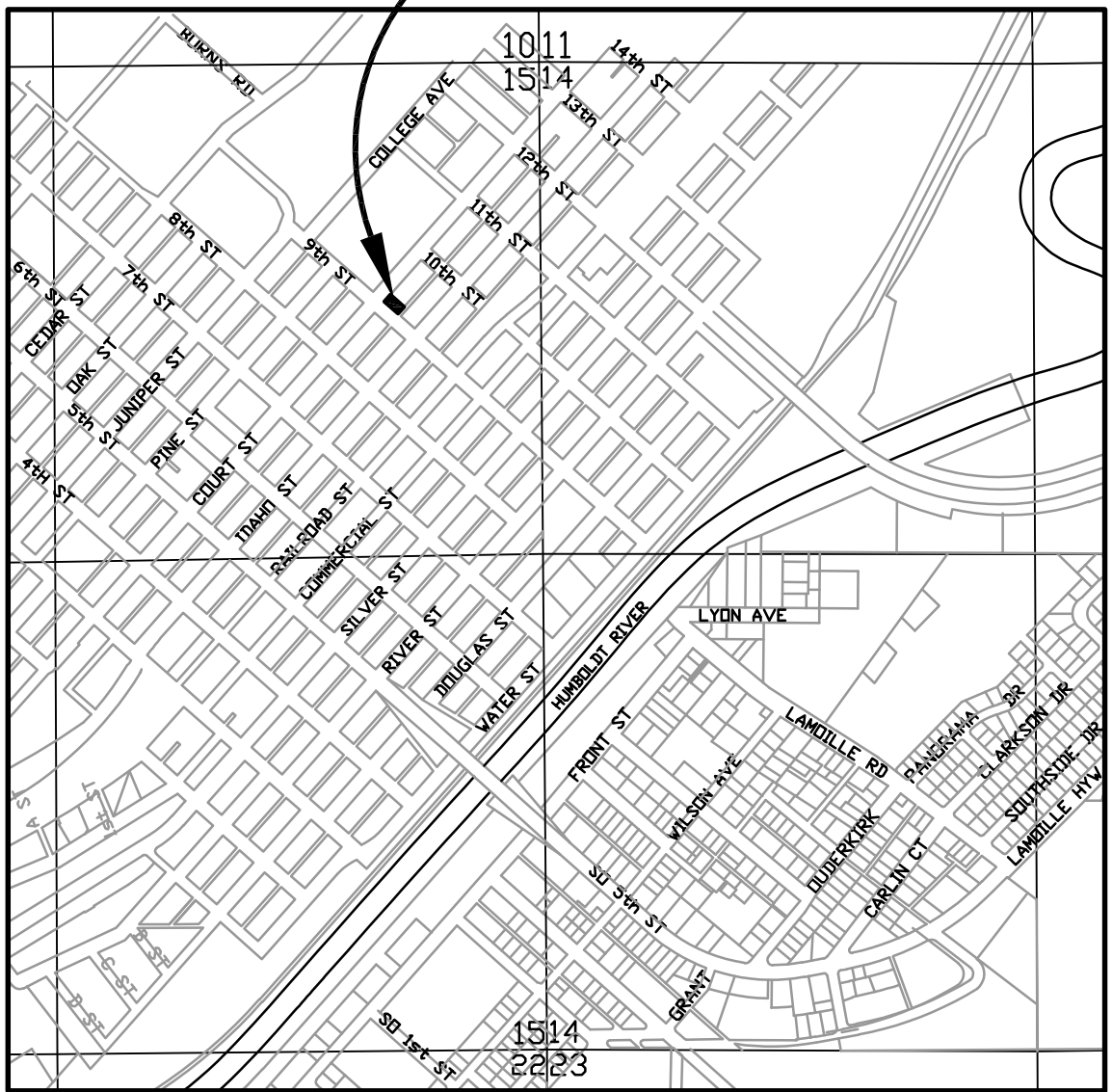
### ABBREVIATIONS FOR SPOT ELEVATIONS

EP	EDGE OF PAVEMENT
EX	EXISTING
PVMT	FINISH GRADE PAVEMENT
TC	TOP OF CONCRETE

## SITE NOTES:

- ALL P.C.C. CURB, GUTTER, SIDEWALK, REINFORCED CONCRETE PAD AND CONCRETE RETAINING SHALL BE A MINIMUM OF 6 SACK OF CEMENT PER CUBIC YARD OF CONCRETE (4000 P.S.I.), 4.5% - 7.5% AIR, MAXIMUM SLUMP OF 4" AND WATER/CEMENT RATIO OF 0.45.
- ALL CONCRETE CURB & GUTTER SHALL HAVE WEAKENED PLANE JOINTS EVERY 10' AND SIDEWALK SHALL HAVE WEAKENED PLANE JOINTS EVERY 5'.
- EXPANSION JOINTS 1/2" WIDE SHALL BE LOCATED IN CURBS & GUTTERS AT EACH SIDE OF STRUCTURES, AT ENDS OF ALL CURB RETURNS, ABUTTING HARDENED IN-PLACE CURB & GUTTER AND EVERY 90'.
- EXPANSION JOINTS IN SIDEWALKS SHALL BE PLACED AT ALL TANGENT POINTS, CURB RETURNS AND AT EVERY 30 FEET.
- AGGREGATE BASE UNDER CONCRETE AND PAVEMENT SHALL CONFORM TO THE SPECIFICATIONS FOR TYPE 2, CLASS B AGGREGATE BASE AND COMPACTED TO A MINIMUM 95% MAXIMUM DRY DENSITY IN ACCORDANCE WITH ASTM D 1557.
- SUBGRADE SHALL BE COMPACTED TO A RELATIVE COMPACTION OF NOT LESS THAN 90% FOR A MINIMUM DEPTH OF 6" IN ACCORDANCE WITH TEST PROCEDURES SET FORTH IN ASTM D 1557. SUBGRADE UNDER PAVEMENT AND CONCRETE SHALL BE COMPACTED TO A RELATIVE COMPACTION OF NOT LESS THAN 95% FOR A MINIMUM DEPTH OF 6" IN ACCORDANCE WITH TEST PROCEDURES SET FORTH IN ASTM D 1557.
- ALL SIGNAGE SHALL CONFORM TO THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES AND ADA SPECIFICATIONS.
- ALL PAVEMENT MARKING SHALL MEET STANDARD PLANS AND SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 2016 EDITION, SECTIONS 214 AND 324.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING 811 USA NORTH AT LEAST 48 HOURS PRIOR TO CONSTRUCTION.
- IN THE DESIGNATED DEMOLITION AREAS THE EXISTING CONCRETE OR PAVEMENT AND AGGREGATE BASE SHALL BE REMOVED TO SUBGRADE FOR THE INSTALLATION OF THE PROPOSED IMPROVEMENTS.
- ALL DEMOLITION SHALL BE PER SECTION 300 AND 301 OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 2016 EDITION.
- SEE SHEET C3 FOR DETAILS ON SIDEWALKS, ACCESSIBLE CONCRETE PARKING PAD, ACCESSIBLE SIGNAGE, WHEEL STOPS, PAVEMENT SECTION AND SAWCUT.

## PROJECT LOCATION



SECTION 14, TOWNSHIP 34 NORTH, RANGE 55 EAST

## VICINITY MAP

### LANDSCAPING

TOTAL LANDSCAPE AREA PROVIDED = ±2000 S.F. ON SITE AND ROW

## PROJECT CONTACTS

### OWNER

SCOTT AND LESLIE RANGEL  
426 COTTONWOOD DRIVE  
ELKO, NEVADA 89801  
CONTACT: LESLIE RANGEL  
(702) 271-3942  
EMAIL: lrangellicsw@gmail.com

### CONTRACTOR

BRAEMER CONSTRUCTION, LLC  
717 WEST IDAHO STREET  
ELKO, NEVADA 89801  
CONTACT: CHRIS FAUSI  
(775) 777-2949  
EMAIL: chris@braemar.com

### LAND SURVEYOR

HIGH DESERT ENGINEERING, LLC  
640 IDAHO STREET  
ELKO, NEVADA 89801  
CONTACT: ROBERT MORLEY, P.L.S.  
(775) 738-4053  
EMAIL: remorley@frontiernet.net

### CIVIL ENGINEER

CARTER ENGINEERING, LLC  
P.O. BOX 794  
ELKO, NEVADA 89801  
CONTACT: LANA L. CARTER, P.E.  
(775) 397-2531  
EMAIL: lanalcarter@live.com

### ARCHITECT

J.D. LONG, ARCHITECT  
960 IDAHO STREET  
ELKO, NEVADA 89801  
CONTACT: J.D. LONG  
(775) 738-4735  
EMAIL: jdlong@frontiernet.net

## PARKING TABLE

PARKING REQUIREMENTS PER CITY OF ELKO CODE 3-2-17 I. EXEMPTIONS

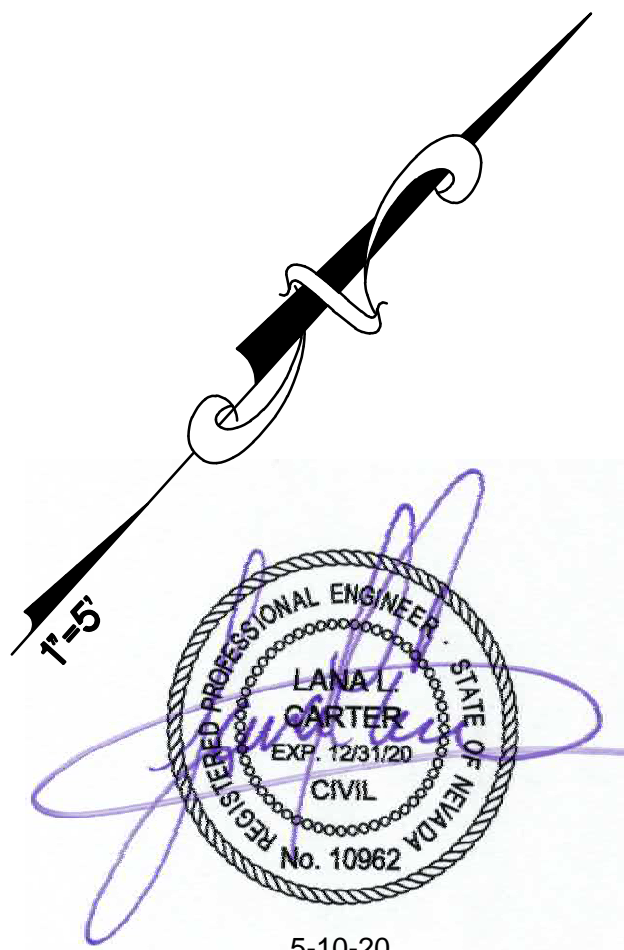
- ALL PRINCIPAL PERMITTED USES OCCUPYING BASEMENT FLOOR AREA, GROUND LEVEL OR FIRST STORY FLOOR AREA OR SECOND STORY FLOOR AREA, OR ANY COMBINATION THEREOF, AND WHICH ARE SITUATED ON PROPERTY LOCATED WITHIN FOUR HUNDRED FEET (400') OF THE CENTRAL BUSINESS DISTRICT (CBD) PUBLIC PARKING CORRIDOR, ARE EXEMPTED FROM PROVIDING REQUIRED OFF STREET PARKING. RESIDENTIAL USES SHALL PROVIDE REQUIRED OFF STREET PARKING IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER.

TOTAL STANDARD SPACES REQUIRED = 0 SPACES  
TOTAL SITE STANDARD SPACES PROVIDED = 3 SPACES

TOTAL ACCESSIBLE SPACES REQUIRED = 1 SPACE  
TOTAL ACCESSIBLE SPACES PROVIDED = 1 SPACE (VAN ACCESSIBLE)

## PROJECT INFORMATION

- RO - RESIDENTIAL OFFICE DISTRICT.
- APN = 001-281-001
- LEGAL DESCRIPTION = LOTS 11 AND 12 OF BLOCK 7, FILE NUMBER 000001, IN THE OFFICE OF THE ELKO COUNTY RECORDER.
- TOTAL AREA PARCEL AREA IS 5000 SF OR 0.115 ACRES.
- THIS PROPERTY IS LOCATED IN ZONE X (AREA OF MINIMAL FLOOD HAZARD) PER FEMA FIRM MAP 32007C5609E EFFECTIVE 9-4-13.
- ADDRESS = 902 COURT STREET, ELKO, NEVADA 89801.
- THIS PLAN IS BASE ON A SURVEY PERFORMED BY HIGH DESERT ENGINEERING ON MARCH 30TH, 2020.



Carter Engineering, LLC  
Civil Engineering  
P.O. Box 794  
Elko, Nevada 89801  
775-397-2531

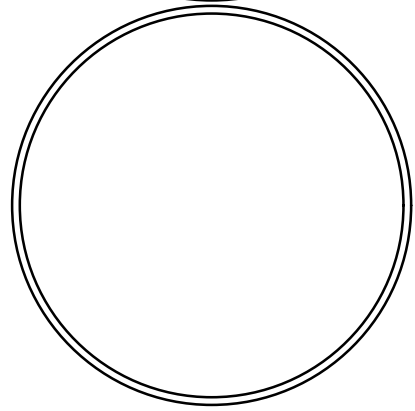
902 COURT ST. TENANT IMP.  
CONDITIONAL USE PERMIT SITE PLAN  
ELKO, NEVADA

DESIGN BY:	LLC
DRAWN BY:	LLC
CHECKED BY:	LLC
DATE:	5-10-20
JOB NO:	05-2020
DWG NO:	2020-08

SCALE  
HORIZ: 1"=5'  
VERT: N/A

SHEET  
1  
OF 1





J.D. Long, Architect

NCARB

960 Idaho street, elko, nevada 89801

ph. (775) - 738-4735 fax. (775) - 738-7319

TENANT IMPROVEMENT  
902 COURT STREET  
ELKO NEVADA

revised

date 03/18/20

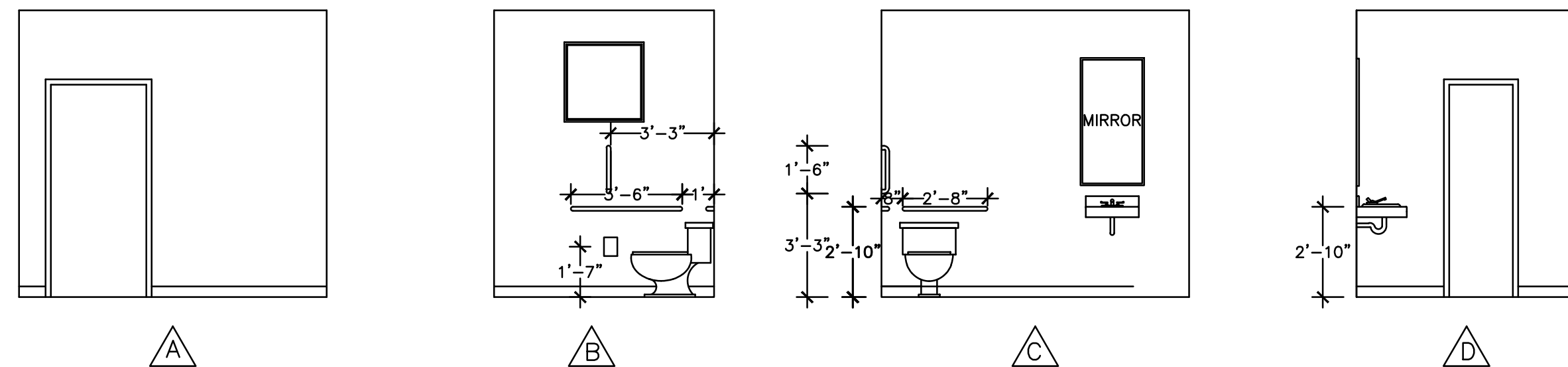
drawn J.D.L.

checked

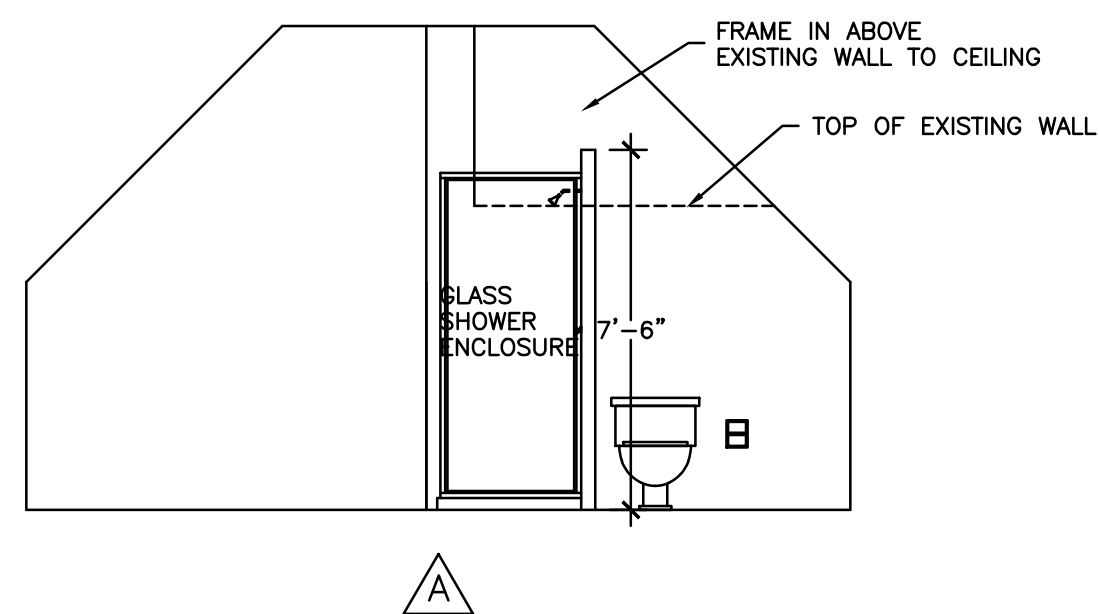
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A1.1

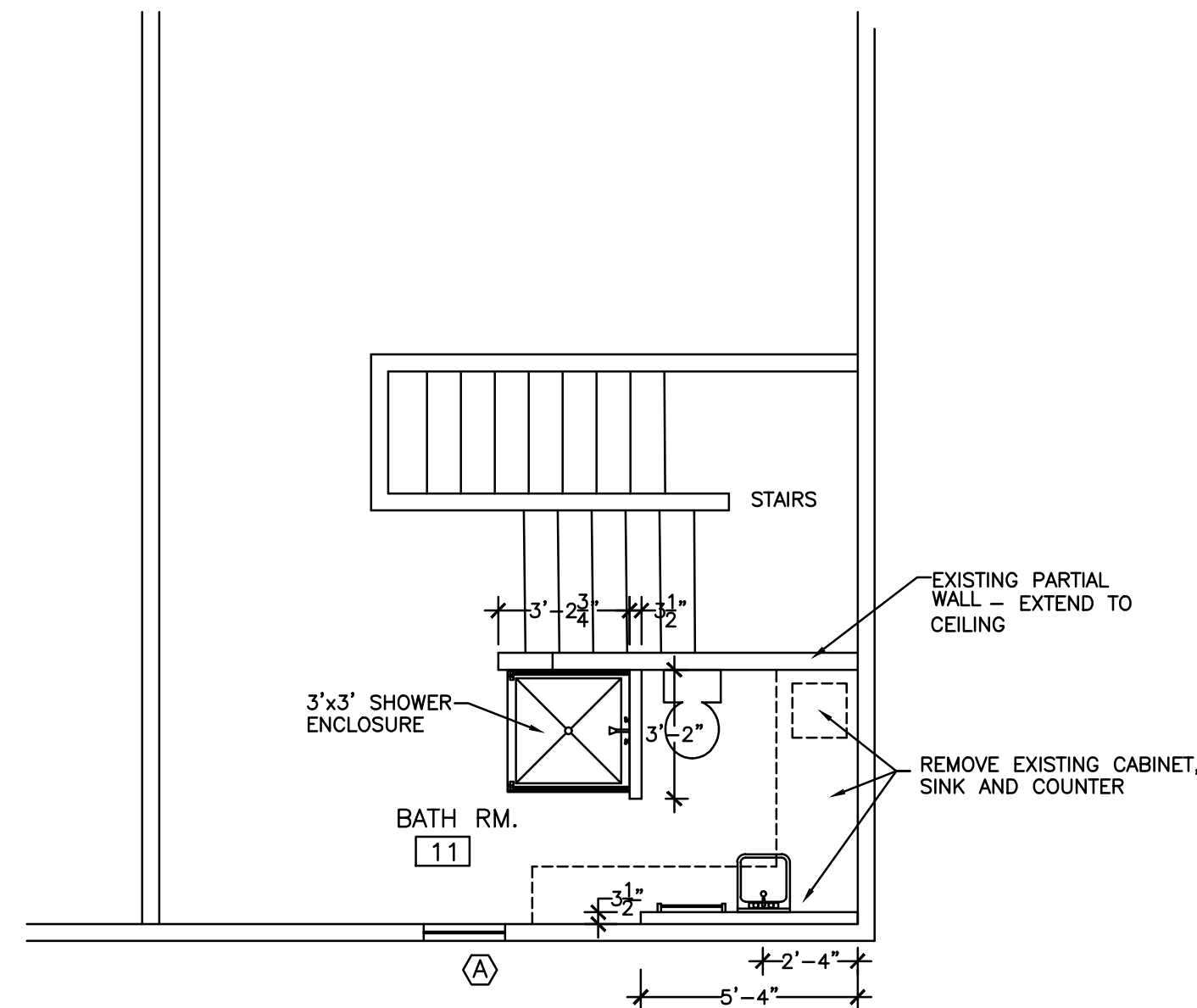
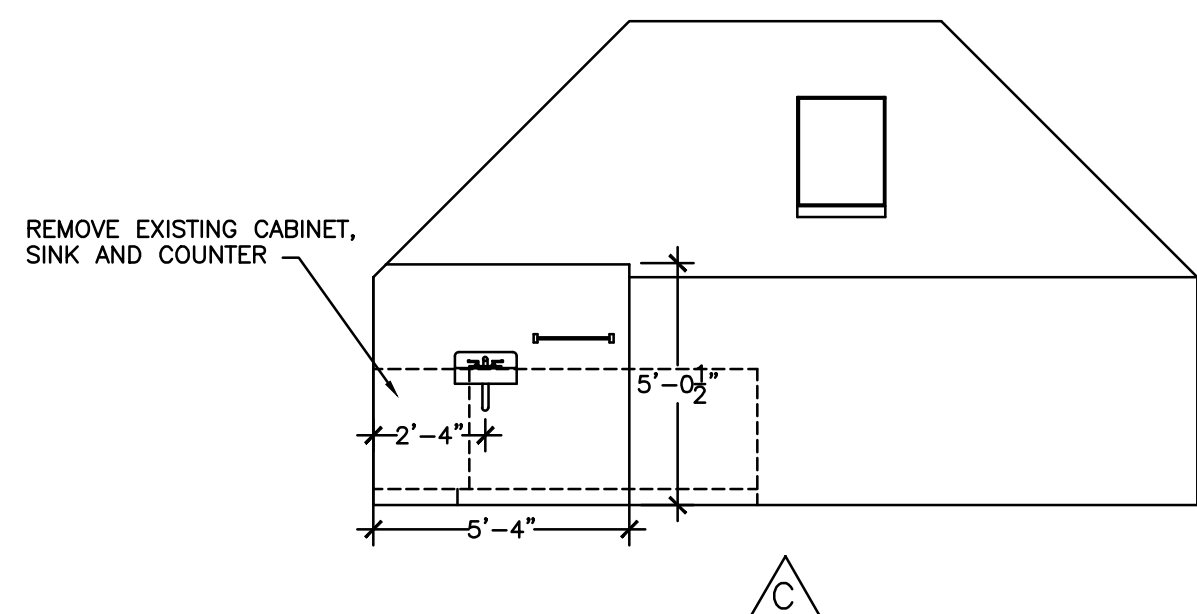
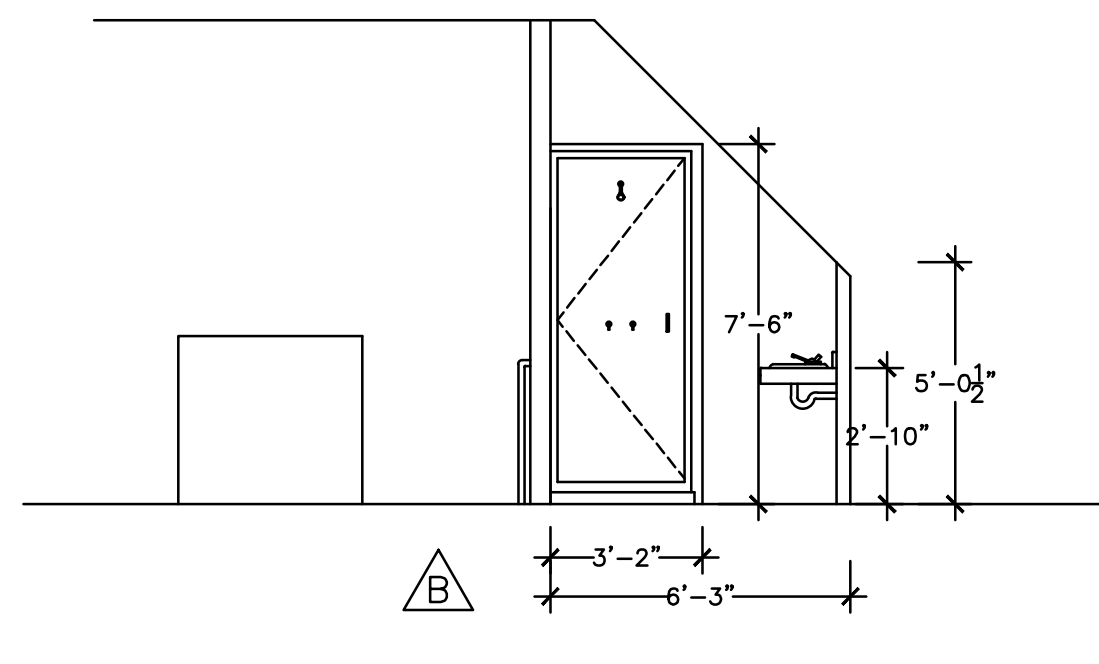
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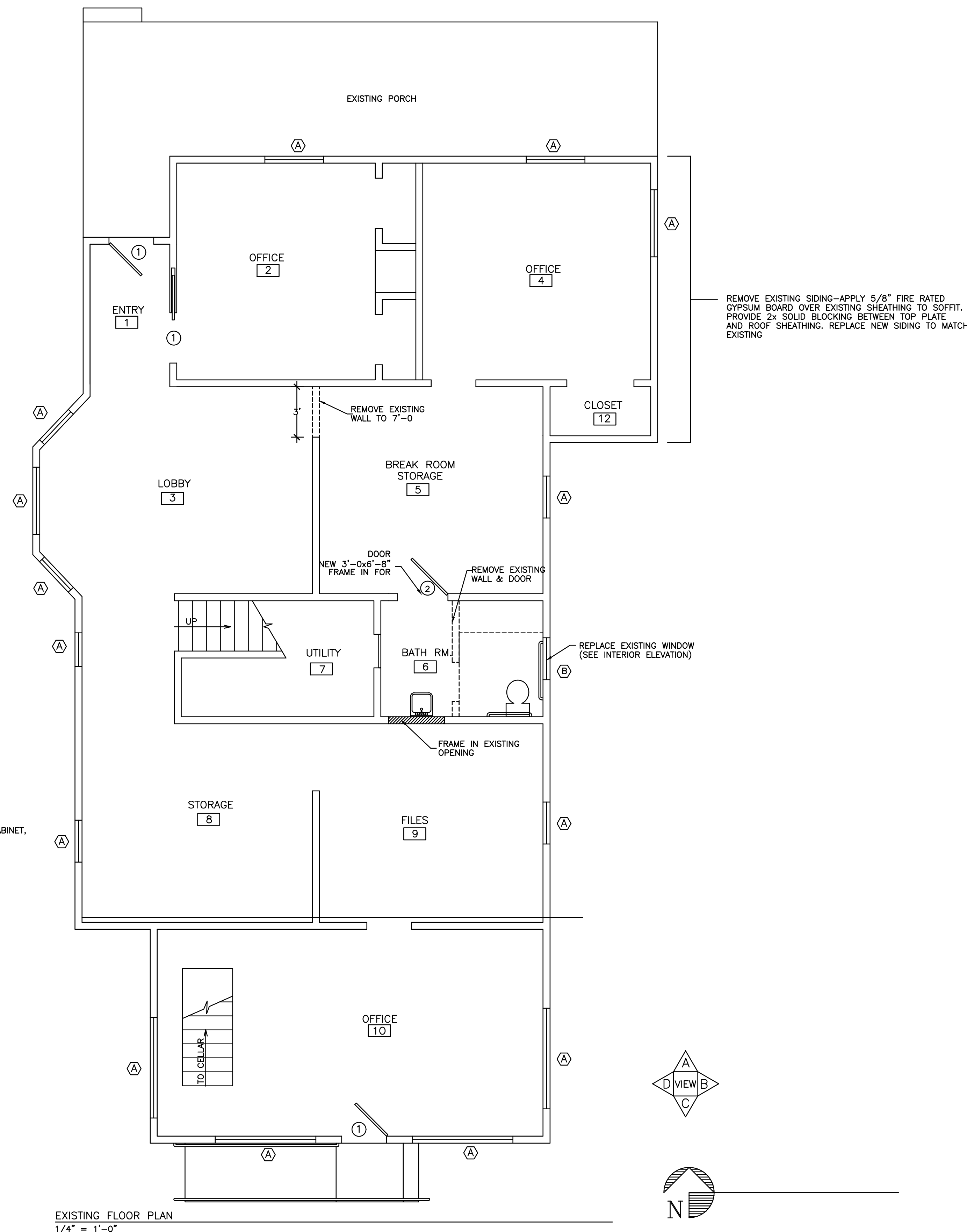
BATH ROOM  
1/4" = 1'-0"



BATH ROOM  
1/4" = 1'-0"



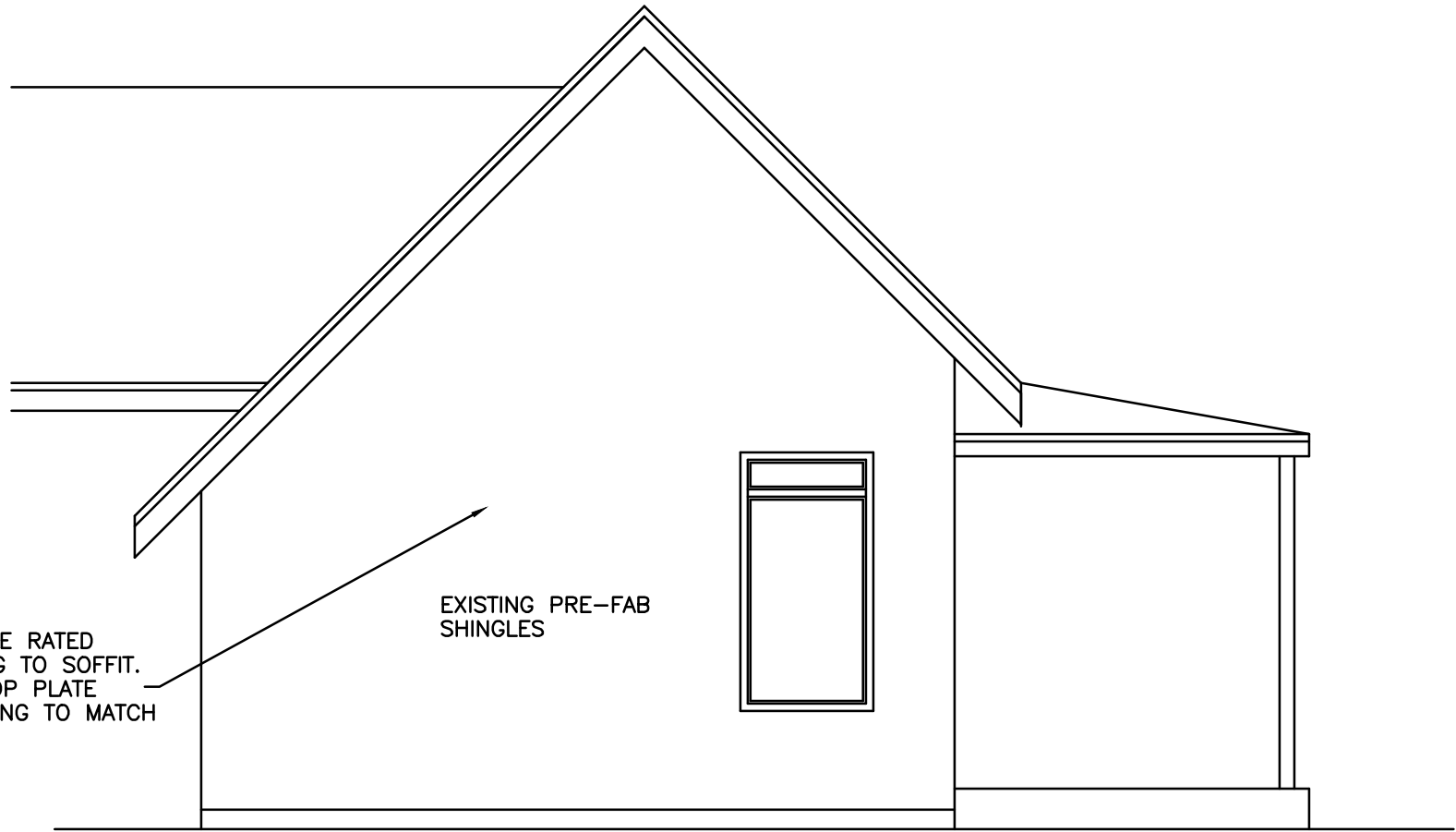
PARTIAL 2ND FLOOR PLAN  
1/4" = 1'-0"



EXISTING FLOOR PLAN  
1/4" = 1'-0"



SOUTH ELEVATION  
1/4"=1'-0"

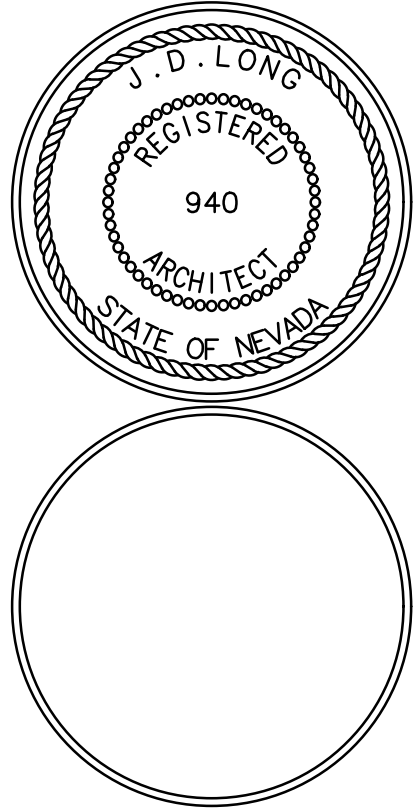


EAST ELEVATION (PARTIAL ELEVATION)  
1/4"=1'-0"

ROOM FINISH SCHEDULE													
NO.	ROOM NAME	FLOOR	FIN.	BASE	WALLS								REMARKS
					A	FIN.	B	FIN.	C	FIN.	D	FIN.	
1	ENTRY	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
2	ROOM	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
3	LOBBY	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
4	OFFICE	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
5	OFFICE	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
6	BATH RM.	SHEET VINYL		COVED	5/8" GYP.BD.		5/8" GYP.BD.		5/8" GYP.BD.		5/8" GYP.BD.		
7	UTILITY	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
8	ROOM	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
9	ROOM	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
10	ROOM	EXISTING		EXISTING	EXISTING		EXISTING		EXISTING		EXISTING		
11	BATH RM.	SHEET VINYL		COVED	5/8" GYP.BD.		5/8" GYP.BD.				5/8" GYP.BD.		
12													

DOOR SCHEDULE							
NO.	SIZE	THICKNESS	TYPE	MATERIAL	THRESHOLD	HDWR.	REMARKS
1	EXISTING	—					—
2	3'0 x 6'8"	1 1/2"	SOLID CORE	WOOD	—		

WINDOW SCHEDULE						
NO.	SIZE	TYPE	MATERIAL	GLASS	FINISH	REMARKS
A	EXISTING					—
B	2'0 x2'0	FIXED	ALUMINUM	OBSCURE	ANODIZED BRONZE	



J.D. Long, Architect

NCARB

960 Idaho street, elko, nevada 89801

ph. (775) - 738-4735 fax. (775) - 738-7319

TENANT IMPROVEMENT

902 COURT STREET

ELKO NEVADA

revised

date 03/18/20

drawn J.D.L.

checked

proj. no. 2002-E

A1.2

sheet

**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Temporary Use Permit No. 1-20, filed by High Desert Imaging LLC. on behalf of Silver River Properties, LLC, for the temporary use of a mobile MRI unit within a C (General Commercial) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **June 2, 2020**
3. Agenda Category: **NEW BUSINESS, MISCELLANEOUS ITEMS**
4. Time Required: **15 Minutes**
5. Background Information: **TUP 3-16 was approved on July 13, 2016 for a term of four years expiring July 13, 2020. High Desert Imaging would like an extension of the TUP in order to allow them enough time to find a permanent location for the MRI.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Move to conditionally approve Temporary Use Permit 1-20 based on facts, findings and conditions as presented in the Staff Report dated May 18, 2020.**
9. Findings: **See Staff Report dated May 18, 2020**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **High Desert Imaging, LLC  
976 Mountain City Hwy. Ste 100  
Elko, NV 89801**

Steve Mims  
[smims@pbswest.com](mailto:smims@pbswest.com)

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE:** 6/2  
\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: TUP 1-20

Applicant(s): High Desert Imaging, LLC

Site Location: 976 Mtn. City Hwy.

Current Zoning: C Date Received: 5/12/20 Date Public Notice: N/A

COMMENT: Proposed Temporary Use Permit for modular MRI building adjacent to the north side of an existing medical office building.

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 5/21/2020

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 5/22/20

No comments/concerns.

CC

Initial



City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7119

## **CITY OF ELKO STAFF REPORT**

<b>MEMO DATE:</b>	<b>May 18, 2020</b>
<b>PLANNING COMMISSION DATE:</b>	<b>June 2, 2020</b>
<b>AGENDA ITEM NUMBER:</b>	<b>I.B.1</b>
<b>APPLICATION NUMBER:</b>	<b>Temporary Use Permit 1-20</b>
<b>APPLICANT:</b>	<b>High Desert Imaging, LLC</b>
<b>PROJECT DESCRIPTION:</b>	<b>976 Mountain City Highway</b>
<b>ADDITIONAL APPLICATIONS:</b>	<b>N/A</b>

**A Temporary Use Permit to allow a mobile MRI trailer for patients**



**STAFF RECOMMENDATION:**

RECOMMEND APPROVAL, subject to findings of fact, conditions as stated in this report.

## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-131-009

**PROPERTY SIZE:** .671 Acres

**EXISTING ZONING:** C (General Commercial District)

**MASTER PLAN DESIGNATION:** Commercial General

**EXISTING LAND USE:** Commercial

### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:  
North (R1) Residential / Developed & (C) Commercial / Developed  
East: (C) Commercial / Developed  
South: (PQP) Public Quasi-Public / Developed Airport  
West: (C) Commercial / Developed

### **PROPERTY CHARACTERISTICS:**

The building is currently being used as a medical office building

### **BACKGROUND:**

1. Building was repurposed into a medical office space in 2014. There are currently three different medical suites within the building, one of those is High Desert Imaging. The property owner was previously approved a Temporary Use Permit 3-16 on July 13, 2016 for a mobile MRI unit to be located adjacent to the building on the northerly corner. The approval was for 4 years and is due to expire July 13, 2020.

### **APPLICABLE MASTER PLANS AND CITY CODE SECTIONS:**

- ) City of Elko Master Plan – Land Use Component
- ) City of Elko Master Plan – Transportation Component
- ) City of Elko Zoning – Section 3-2-3 (C) (5) Temporary Use Permit
- ) City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- ) City of Elko Zoning – Section 3-8 Flood Plain Management

### **MASTER PLAN:**

#### **Land Use:**

1. The Master Plan identifies the area as Commercial General



The proposed TUP is in conformance with the Land Use Component of the Master Plan.

**Transportation:**

1. The property is accessed off of Mountain City Highway.
  - a. Mountain City Highway is classified as a Principal Arterial
2. A traffic study is not required for this application.

The proposed TUP is in conformance with the Transportation Component of the Master Plan

**SECTION 3-2-3(C)(5)**

1. Section 3-2-3(C)(5) of City code specifies temporary uses. The following use restrictions shall apply:

Temporary Uses: Certain temporary uses such as interim administrative and sales offices, sales offices for mobile and manufactured homes, model home sales complex for residential subdivisions, materials storage, mixing, assembly, manufacturing of a portable nature and similar uses determined to be functionally comparable, and, as specified in this subsection C5, temporary emergency shelters, temporary camping and temporary campgrounds may be permitted by temporary use permit.

The proposed TUP is in conformance with Elko City Code 3-2-3(C)(5).

**SECTION 3-2-17**

1. Mountain City Highway is classified as a Principal Arterial
2. Parking Requirement: There is sufficient off street parking provided and the area where the mobile MRI is located is not within existing required parking stalls.

The proposed TUP is in conformance with Elko City Code 3-2-17.

**SECTION 3-8:**

1. The parcel is not located in a designated flood zone.

**FINDINGS:**

1. The proposed TUP is in conformance with the Land Use Component of the Master Plan.
2. The proposed TUP is in conformance with the Transportation Component of the Master Plan.
3. The proposed TUP is in conformance with Elko City Code 3-2-3(C)(5).
4. The proposed TUP is in conformance with Elko City Code 3-2-17.
5. The parcel is not located in a designated flood zone.

**STAFF RECOMMENDATION:**

City Staff recommends **APPROVAL** of TUP 1-20 as submitted subject to the following conditions.

**CONDITIONS:**

Planning Department:

1. The use is permitted for a period of 4 years
2. The temporary use applies to APN 001-131-009
3. The applicant shall maintain fire access around the MRI trailer.
4. All items/materials stored must be inert.

## Cathy Laughlin

---

**From:** Steve Mims <smims@pbswest.com>  
**Sent:** Friday, May 15, 2020 2:26 PM  
**To:** Cathy Laughlin  
**Subject:** RE: Tup

Hi Cathy,

This email is regarding my request for the renewal of High Desert Imaging's Temporary Use Permit and our plan for the MRI.

Our goal is to eventually move the MRI inside a building. During the last two-years, I have explored several options and at this point, they have all proven to be prohibitive for various reasons. I have inquired about leasing additional space in our current building; however, it would require an existing tenant to find a new space. I explored the space in the JC Penney shopping center, but that project appears to be on hold at this time. I toured the building where Elko Diagnostic Imaging previously resided, which we cannot afford given the asking price and cost to move the equipment.

Our ideal situation is having our imaging center located in a separate building with plenty of parking. As you are aware, the goal of our company is to provide high quality, affordable medical imaging that allows our community to stay local for their services. If we increase our operating costs by relocating to a more expensive physical plant, it would most likely impact the affordability of our services. That being said, I continue to look for reasonable options that would allow us to move our MRI.

I appreciate your consideration.

Kind Regards,

Steve

**Steve Mims** | *Administrator*  
**High Desert Imaging**  
976 Mountain City Hwy, Ste. 100  
Elko NV 89801  
**775.745.1194** | Fax 775.621.5801  
[mims@hdielko.com](mailto:mims@hdielko.com)



## Cathy Laughlin

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**From:** Don Hewitt <drhdunn@hotmail.com>  
**Sent:** Tuesday, May 12, 2020 4:10 PM  
**To:** Cathy Laughlin  
**Subject:** Fwd: Temporary Use Permit Application  
**Attachments:** image001.png; ATT00001.htm; 2020-05-12\_152053.pdf; ATT00002.htm

Hi Cathy - Silver River Properties gives permission for HDI to apply for an extension of the temporary use permit. If you have any questions, please feel free to call me.

Thank you.

Don Hewitt  
Managing Partner

Sent from my iPad

Begin forwarded message:

**From:** Lori Ayala <lori@a-plusurgentcare.com>  
**Date:** May 12, 2020 at 3:58:34 PM PDT  
**To:** Don & Maria Hewitt <drhdunn@hotmail.com>  
**Subject:** Fwd: Temporary Use Permit Application

Please send an ok to Cathy Laughlin @ CLAUGHLIN@ELKOCITYNV.GOV to renew the temporary use permit! Thank you as always!

Lori Ayala

Begin forwarded message:

**From:** Steve Mims HDI <mims@hdielko.com>  
**Date:** May 12, 2020 at 3:54:17 PM PDT  
**To:** "loria@plumblinc.com" <loria@plumblinc.com>, "lori@a-plusurgentcare.com" <lori@a-plusurgentcare.com>  
**Subject:** FW: Temporary Use Permit Application

---

**From:** Steve Mims HDI  
**Sent:** Tuesday, May 12, 2020 3:24 PM  
**To:** CLAUGHLIN@ELKOCITYNV.GOV  
**Subject:** Temporary Use Permit Application

Hi Cathy,



## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801

(775) 777-7160 phone \* (775) 777-7119 fax

# APPLICATION FOR TEMPORARY USE PERMIT

### FILING REQUIREMENTS:

An application for a Temporary Use Permit (TUP) must be complete and signed. Please check off the following additional items to ensure you have a complete application. Any missing information or plans will result in your application being tabled or denied.

**Note:** Ten (10) sets of plans, preferably pre-folded, must accompany the application along with one (1) set of reproducible plans either 8 1/2" x 11" in size or 11" x 17" in size. A completed application must be received by the City Planning Department at least twenty-one (21) days prior to the next scheduled meeting of the Elko City Planning Commission.

**X** Fee: A <sup>300.00</sup>~~200.00~~ non-refundable filing fee.

☐ **Plot Plan:** A plot plan of the proposed temporary use permit site DRAWN TO SCALE showing property lines, existing and proposed buildings, building setbacks, parking and loading areas, driveways and other pertinent information that shows the use will be compliant with Elko City Code.

**Other Information:** The applicant is encouraged to submit other information and documentation to support the request.

**APPLICANT(s):** HIGH DESERT IMAGING, LLC

(If the applicant is different from the property owner, property owner's consent in writing must be provided.)

**MAILING ADDRESS:** 976 MOUNTAIN CITY HWY, STE 100, ELKO, NV 89801

**PHONE NO. (Home)** (775) 745-1194 **(Business)** (775) 621-5800

**NAME OF PROPERTY OWNER (If different):** TINO AND LORI AYALA

**ADDRESS:** 976 MOUNTAIN CITY HWY, ELKO, NV 89801

**LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):**

**ASSESSOR PARCEL NUMBER:** \_\_\_\_\_

**Lots** \_\_\_\_\_ **Block** \_\_\_\_\_

**SUBDIVISION** \_\_\_\_\_ **ADDRESS** \_\_\_\_\_

1. Identify the zoning of the property: COMMERCIAL

2. **Explain in detail the type and nature of the use proposed on the property:** \_\_\_\_\_  
THIS IS A REQUEST FOR RENEWING OUR TEMPORARY USE PERMIT THAT  
WILL EXPIRE IN JULY OF 2020. WE CONTINUE TO GROW AS A BUSINESS;  
HOWEVER, IT IS NOT FEASIBLE FOR US TO MOVE THE MRI INSIDE THE BUILDING  
AT THIS TIME. IN ADDITION, IT IS NOT FEASIBLE FOR US TO RELOCATE. WE  
CONTINUE TO INVEST IN OUR COMMUNITY AND PROVIDE A SIGNIFICANT  
NEED OF AFFORDABLE HEALTHCARE SERVICES. WE ARE REQUESTING  
A RENEWAL OF AT LEAST FIVE-YEARS AND PREFERABLY LONGER.

3. **Describe the type of vehicles and traffic likely to be associated with the proposed temporary use:** \_\_\_\_\_

4. **Identify any outside storage of goods, materials or equipment on the property:** \_\_\_\_\_

5. **Describe the projected time frame associated with the temporary use:** WE ARE  
REQUESTING A RENEWAL OF AT LEAST FIVE YEARS AND PREFERABLY LONGER.

6. **Describe any long term plans for permanent buildings or structures on the property:** \_

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**Use additional pages if necessary to address questions)**

**By My Signature below:**

**X** I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

**X** I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

**X** I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.


**X** I have carefully read and completed all questions contained within this application to the best of my ability.

**Applicant / Agent** STEVE MIMS\_  
(Please print or type)

**Mailing Address** 976 MOUNTAIN CITY HWY, STE 100  
Street Address or P.O. Box

ELKO, NV 89801  
City, State, Zip Code

Phone Number: (775) 621-5800

**SIGNATURE:** 

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**FOR OFFICE USE ONLY**

**File No.:** 1-20 **Date Filed:** 5/12/20 **Fee Paid:** cc

Revised 08/01/12

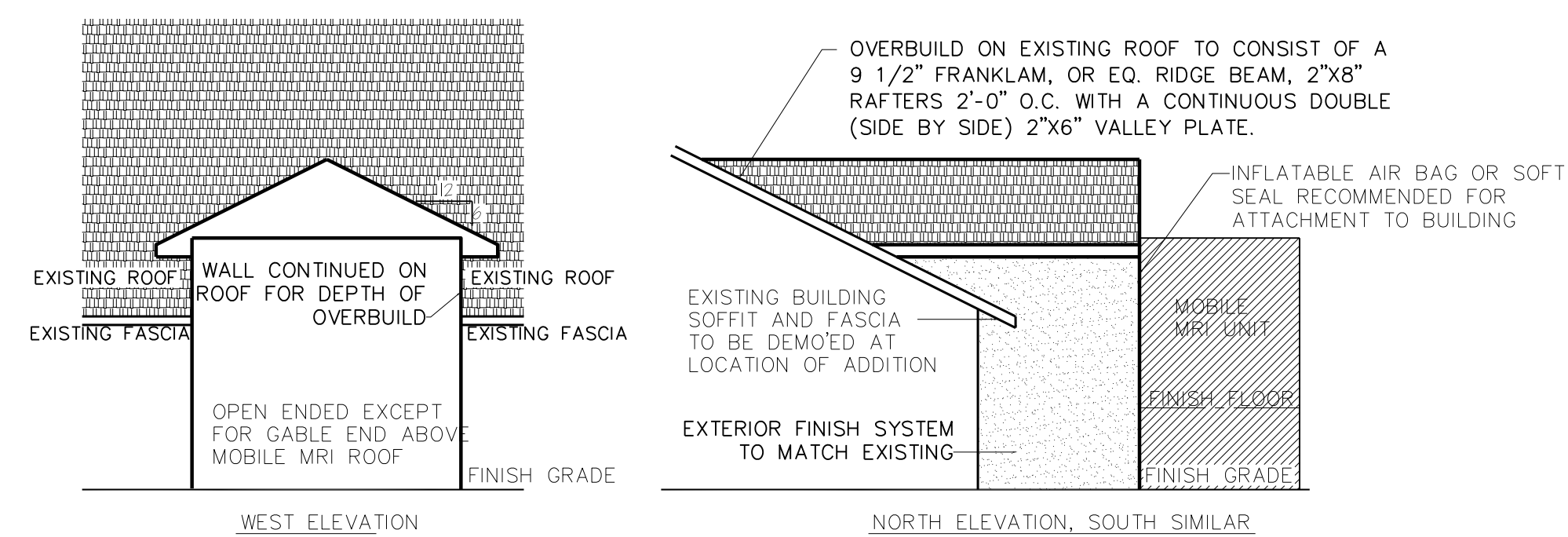
**RECEIVED**

Page 3

MAY 12 2020

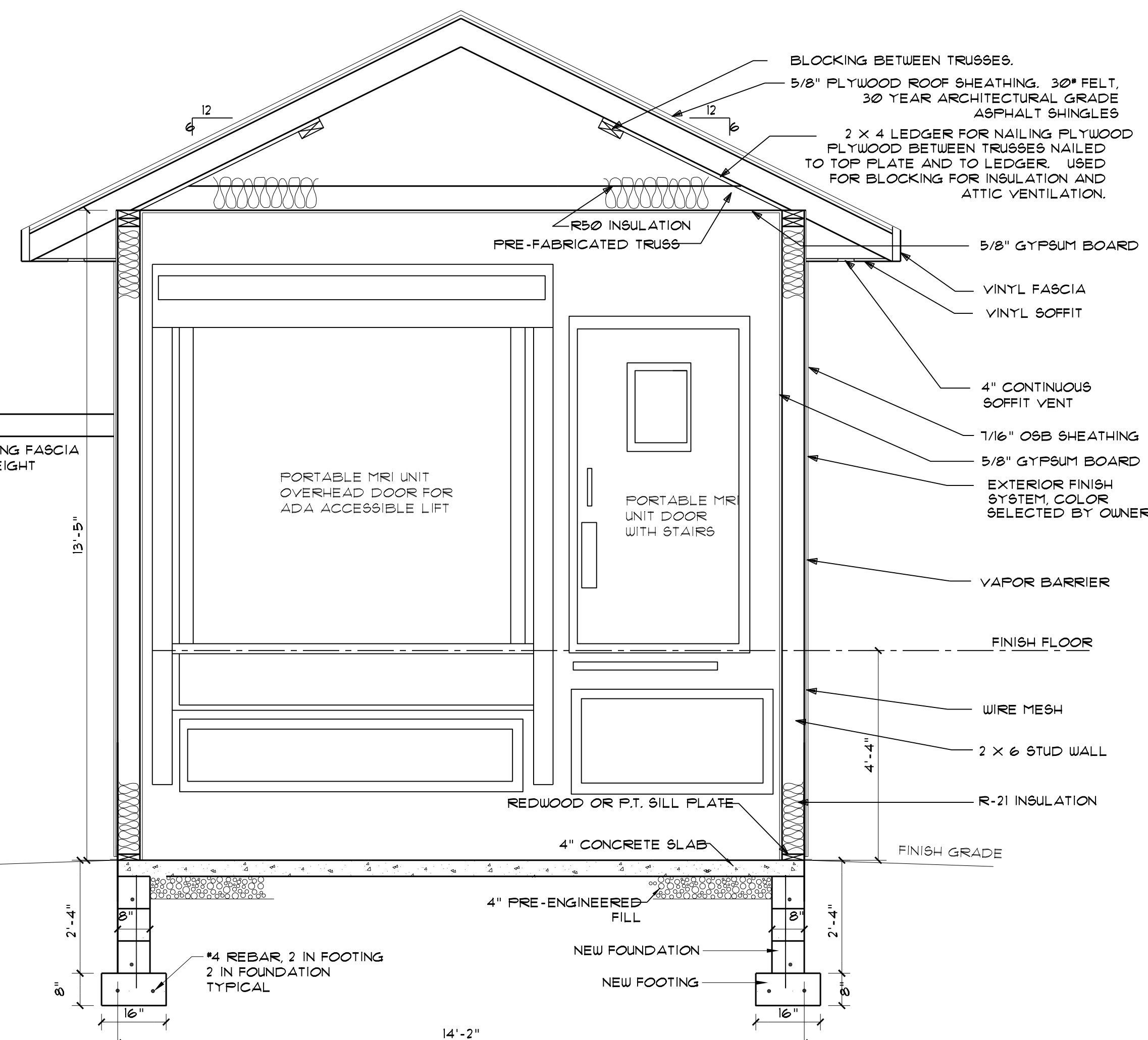




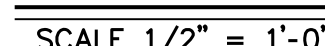


SCALE 1/8" = 1'-0"

SCALE 1/2" = 1'-0"



SCALE 1/4" = 1'-0"



SCALE 3/16" = 1'-0"

## WALL SECTION

DUSTY SHIPP - BRAEMAR CONSTRUCTION LLC  
LICENSE #026853A CLASSIFICATION - B2 \$1 MILLION LIMIT

**TAHOE CARSON RADIOLOGY**

---

**TENANT IMPROVEMENT**

ELKO \_\_\_\_\_ NEVADA \_\_\_\_\_

---

**DETAILS / WALL SECTIONS**

975 BENTI WAY ELKO, NV 89801  
(775)777-2949 PHONE  
NEVADA CONTRACTOR LICENSE #0268553A



**BRAEMAR**  
CONSTRUCTION

DRAWN

CHECKER

DATE \_\_\_\_\_

### SCALE

**JOB NO**

**SHEET**

## A2.1

OF 6 SHEETS

COPYRIGHT 2016  
BRAEMAR CONSTRUCTION  
All rights reserved. Reproduction or  
use in any form or by any means -  
graphic, electronic, mechanical, etc.  
-- without written permission of  
BRAEMAR CONSTRUCTION is unlawful  
and subject to criminal prosecution.

**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible recommendation to City Council for Vacation No. 1-20, filed by Brian and Dena Starkey, for the vacation of the southeasterly portion of Juniper Street and northeasterly portion of 6<sup>th</sup> Street, consisting of an area approximately 3,636 sq. ft., and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **June 2, 2020**
3. Agenda Category: **NEW BUSINESS, MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **15 Minutes**
5. Background Information: **The property owner has requested to vacate a portion of each street which has been utilized by the previous property owners. The applicant will be required to install curb, gutter and sidewalk as part of the conditional approval on both 6<sup>th</sup> Street and Juniper Street. City Council accepted the petition for the vacation on May 12, 2020. CL**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Memo**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 1-20 based on facts, findings and conditions as presented in the Staff Report dated May 18, 2020.**
9. Findings: **See Staff Report dated May 18, 2020.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Brian and Dena Starkey  
435 Jiggs Hwy #4  
Spring Creek, NV 89815  
[bstarkey@cowboysrest.org](mailto:bstarkey@cowboysrest.org)**

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 6/2**

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: VAC 1-20

Applicant(s): Brian and Dena Starkey

Site Location: 698 6<sup>th</sup> Street (6<sup>th</sup> St/Juniper St.)

Current Zoning: R Date Received: 2/5/20 Date Public Notice: N/A

COMMENT: Proposed vacation of 10-foot strip of right-of-way  
along 6<sup>th</sup> Street and 35-foot strip of right-of-way  
along Juniper Street.

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 5/21/2020

Recommend approval as presented by  
Staff

SAW

Initial

City Manager: Date: 5/22/20

No comments/concerns.

CC

Initial



City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7119

## **CITY OF ELKO STAFF REPORT**

<b>MEMO DATE:</b>	<b>May 18, 2020</b>
<b>PLANNING COMMISSION DATE:</b>	<b>June 2, 2020</b>
<b>APPLICATION NUMBER:</b>	<b>Vacation 1-20</b>
<b>APPLICANT:</b>	<b>Brian and Dena Starkey</b>
<b>PROJECT DESCRIPTION:</b>	<b>APN 001-231-001</b>

**Vacation of the Juniper Street and 6<sup>th</sup> Street right-of-way**



### **STAFF RECOMMENDATION:**

RECOMMEND to APPROVE subject to findings of fact and conditions stated in this report.

## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-231-001

**EXISTING ZONING:** R- Single Family and Multiple Family Residential

**MASTER PLAN DESIGNATION:** Medium Density Residential

**EXISTING LAND USE:** Developed, Residential adjacent to area to be vacated

### **BACKGROUND:**

1. The property has been developed as residential land use.
2. The area proposed to be vacated is approximately 3,636 sq. ft.
3. The City of Elko issued a license agreement to a previous property owner in 1987 and another in 1999 for the use of the property for a fee.
4. City Council accepted the petition for vacation at their meeting May 12, 2020 and referred the matter to Planning Commission for their review.

### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:  
North: R-Residential / Developed  
East: R-Residential / Developed  
South: R- Residential / Developed  
West: R-Residential / Developed

### **PROPERTY CHARACTERISTICS:**

The property is currently developed.  
The property has moderate slope on the Juniper Street side.  
There is no sidewalk along Juniper Street or 6<sup>th</sup> Street along the area proposed to be vacated or along 6<sup>th</sup> Street on the applicant's property adjacent to the area requested to be vacated.

### **MASTER PLAN AND CITY CODES:**

Applicable Master Plans and City Code Sections are:

NRS 278.479 to 278.480, inclusive  
City of Elko Master Plan – Land Use Component  
City of Elko Master Plan – Transportation Component  
City of Elko Redevelopment Plan  
City of Elko Code – Section 8-7 Street Vacation Procedures

### **MASTER PLAN – Land Use:**

1. The Master Plan Land Use Atlas shows the area as Medium Density Residential.
2. R- Single Family and Multiple Family Residential is a corresponding zoning district for Medium Density Residential.

The proposed vacation is in conformance with the Master Plan Land Use component.

**MASTER PLAN - Transportation:**

1. The area is accessed from 6th Street.
2. 6th Street is classified as a Residential local.
3. There is no access off Juniper Street.
4. The property lacks pedestrian connectivity but will be conditioned for the completion the public improvements upon approval.

The proposed vacation is in conformance with the Master Plan Transportation Component.

**REDEVELOPMENT PLAN**

- ) The area is located inside the Redevelopment Area.

The proposed vacation is in conformance with the Redevelopment Plan.

**ELKO CITY CODE SECTION 8-7 STREET VACATION PROCEDURES**

1. If it is determined by a majority vote of the city council that it is in the best interest of the city and that no person will be materially injured thereby, the city council, by motion, may propose the realignment, change, vacation, adjustment or abandonment of any street or any portion thereof. In addition, any abutting owner desiring the vacation of any street or easement or portion thereof shall file a petition in writing with the city council and the city council shall consider said petition as set forth above.

- ) The City Council accepted the petition at their meeting on May 12, 2020 and referred the matter to the Planning Commission for further consideration.

2. Except for a petition for the vacation or abandonment of an easement for a public utility owned or controlled by the city, the petition or motion shall be referred to the planning commission, which shall report its findings and recommendations thereon to the city council. The petitioner shall, prior to the consideration of the petition by the planning commission, pay a filing fee to the city in an amount established by resolution of the city council and included in the appendix to this code.

- ) The filing fee was paid by the applicant.

3. Whenever any street, easement or portion thereof is proposed to be vacated or abandoned, the city council shall notify by certified mail each owner of property abutting the proposed vacation or abandonment and cause a notice to be published at least once in a newspaper of general circulation in the city setting forth the extent of the proposed vacation or abandonment and setting a date for public hearing, which date may be not less than ten (10) days and not more than forty (40) days subsequent to the date the notice is first published.
4. Order of City Council: Except as provided in subsection E of this section, if, upon public hearing, the City Council is satisfied that the public will not be materially injured by the proposed vacation or abandonment, and that it is in the best interest of the city, it shall

order the street vacated or abandoned. The city council may make the order conditional, and the order shall become effective only upon the fulfillment of the conditions prescribed.

The proposed vacation with the recommended conditions is in conformance with Section 8-7 of City code.

### **FINDINGS**

- ) The proposed vacation is in conformance with the City of Elko Master Plan Land Use Component
- ) The proposed vacation is in conformance with the City of Elko Master Plan Transportation component
- ) The proposed vacation is in conformance with the Redevelopment Plan.
- ) The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive.
- ) The proposed vacation is in conformance with City Code 3-2-5(E) and 8-7

### **STAFF RECOMMENDATION:**

Staff recommends the Planning Commission forward a recommendation to City Council to adopt a resolution which conditionally APPROVES the proposed vacation with the following conditions:

1. Approved conditions are to be included in the Resolution.
2. The applicant is responsible for all costs associated with the recordation of the vacation.
3. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.
4. Required public improvements be completed within one (1) year from date of approval by the City Council of vacation 1-20.
5. The vacation will not be recorded until public improvements have been completed and accepted by City of Elko staff.



## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801 \*

(775) 777-7160 \* (775) 777-7119 fax

### APPLICATION FOR VACATION OF CITY STREET, EASEMENT OR OTHER PUBLIC RIGHT-OF-WAY

**APPLICANT(s):** BRIAN & DENA STARKEY

**MAILING ADDRESS:** 435 JIGGS HWY #4, SPRING CREEK, NV 89815

**PHONE NO (Home)** 775-397-0241

**(Business)** N/A

**NAME OF PROPERTY OWNER (If different):** \_\_\_\_\_

*(Property owner's consent in writing must be provided.)*

**MAILING ADDRESS:** \_\_\_\_\_

**LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):**

**ASSESSOR'S PARCEL NO.:** 001-231-001 **Address** 698 6TH STREET, ELKO, NV 89801

**Lot(s), Block(s), & Subdivision** NORTHERLY 33' OF LOTS 9,10,11 & 12, OF BLOCK 30, TOWN OF ELKO

**Or Parcel(s) & File No.** \_\_\_\_\_

#### FILING REQUIREMENTS:

**Complete Application Form:** In order to begin processing the application, an application form must be complete and signed. Applications go before the City Council, Planning Commission, and back to City Council twice.

**Fee:** A \$600.00 non-refundable fee.

**Plot Plan:** A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, parking and loading areas, driveways and other pertinent information must be provided.

**Legal Description:** A complete legal description of the area proposed for vacation along with an exhibit depicting the area for vacation.

**Note:** One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

**Other Information:** The applicant is encouraged to submit other information and documentation to support the request.

RECEIVED



OWNER(S) OF THE PROPERTY ABUTTING THE AREA BEING REQUESTED FOR VACATION:

BRIAN & DENA STARKEY, 435 JIGGS HWY #4, SPRING CREEK, NV 89815

(Name)

(Address)

OWNER(S) OF THE PROPERTY ABUTTING THE AREA BEING REQUESTED FOR VACATION:

(Name)

(Address)

1. Describe the nature of the request: PROPOSED VACATION OF 10' STRIP ALONG SIXTH STREET AND 35' STRIP ALONG JUNIPER STREET. NONE OF THE AREA OF VACATION IS CURRENTLY NOR ANTICIPATED TO BE USED FOR PUBLIC INFRASTRUTURE. PROPOSED VACATION IS IN ACCORDANCE WITH OTHER RECORDED VACATIONS WITHIN THIS BLOCK. THE TERRAIN OF JUNIPER STREET PROHIBITS FUTURE WIDENING OF IMPROVEMENTSWITHIN THE AREA OF THE PROPOSED VACATION.
2. Describe any utilities currently located in the area proposed for vacation, and if any are present how they will be addressed: \_\_\_\_\_

EXISTING GAS LINE, TO REMAIN, NEAR DRIVEWAY WHICH SERVES 698 6TH STREET. ANY OTHER UTILIES THAT MAY EXIST WITHIN THE AREA OF VACATION ARE TO REMAIN. NOTE THE FIRE HYDRANT IS NOT WITHIN THE AREA PROPOSED TO BE VACATED.

**Use additional pages if necessary**

**This area intentionally left blank**

**By My Signature below:**

☒ I consent to having the City of Elko Staff enter on my property only for the sole purpose of inspection said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not effect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.

**Applicant / Agent** BRIAN & DENA STARKEY

(Please print or type)

**Mailing Address** 435 JIGGS HWY #4

Street Address or P.O. Box

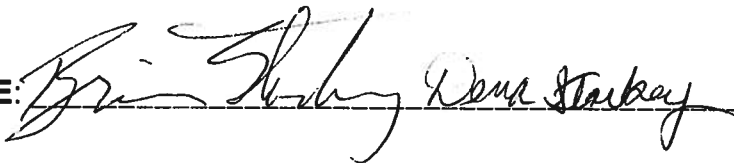
SPRING CREEK, NV 89815

City, State, Zip Code

Phone Number: 775-397-0241

Email address: bstarkey@cowboyrest.org

**SIGNATURE:**



---

**FOR OFFICE USE ONLY**

**File No.:** 1-20 **Date Filed:** 2/5/20 **Fee Paid:** \$600 **CK #** 2328

---

EXHIBIT "A"  
LEGAL DESCRIPTION  
PORTION OF JUNIPER STREET & SIXTH STREET  
ADJACENT TO APN 001-231-001

A parcel of land located in the Northeast Quarter of Section 15, Township 34 North, Range 55 East, MDM, being more particularly described as follows:

**Commencing** at the monument at the centerline intersection of Juniper Street and Seventh Street;

thence along the centerline of said Seventh Street, South 48°11'00" East a distance of 40.00 feet;

thence departing said centerline, South 41°49'00" West a distance of 40.00 feet to a point being the most northerly corner of Block 30 of the Map of the Town of Elko, according to the official map thereof, filed in the office of the County Recorder of Elko County, Nevada;

thence along the original Southeasterly line of said Juniper Street, South 41°49'00" West a distance of 200.00 feet to the Southerly corner of Parcel 2 of Quitclaim Deed, Book 1090, Page 236, File No.441849, recorded March 5, 1999, also being the **Point of Beginning**;

thence continuing along said Southeasterly line, South 41°49'00" West a distance of 100.00 feet to the Westerly corner of said Block 30;

thence departing said Southeasterly line and along the original Northeasterly line of Sixth Street, South 48°11'00" East a distance of 33.00 feet to the southerly corner of the parcel described in Grant, Bargain, Sale Deed Document No. 750024, recorded December 28, 2018, Official Records;

thence departing said Northeasterly line, South 41°49'00" West a distance of 10.00 feet;

thence North 48°11'00" West a distance of 49.00 feet;

thence North 41°49'00" East a distance of 3.68 feet;

thence from a tangent which bears North 47°27'55" West, along a circular curve to the right with a radius of 10.00 feet and a central angle of 26°38'07" an arc length of 4.65 feet;

thence North 20°49'48" West a distance of 5.47 feet;

thence along a tangent circular curve to the right with a radius of 10.50 feet and a central angle of  $62^{\circ}38'48''$  an arc length of 11.48 feet;

thence North  $41^{\circ}49'00''$  East a distance of 93.36 feet to the Westerly corner of said Parcel 2;

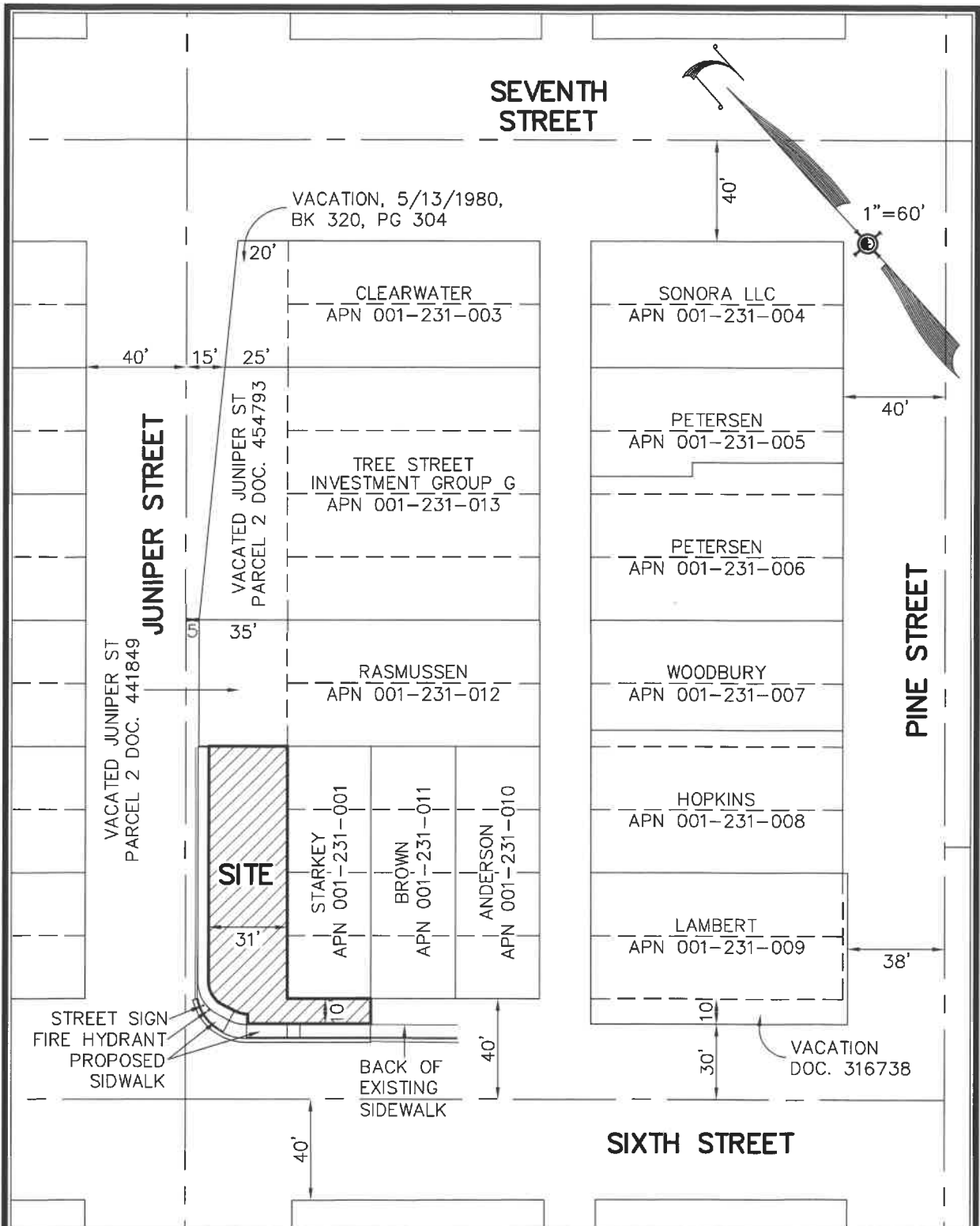
thence along the Southwesterly line of said Parcel 2, South  $48^{\circ}11'00''$  East a distance of 31.00 feet to the **Point of Beginning**.

Said parcel contains an area of approximately 3,636 square feet.

Basis of Bearings: The line between centerline monuments at 3<sup>rd</sup> and Juniper Streets and 3<sup>rd</sup> and Cedar Streets as North  $48^{\circ}11'00''$  West.

Descriptions Prepared By:  
Ryan G. Cook, PLS 15224  
Summit Engineering Corporation  
5405 Mae Anne Ave.  
Reno, NV 89523  
775-747-8550





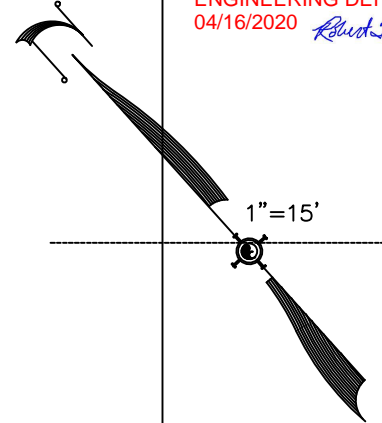
**EXHIBIT "B"**  
**DISPLAY TO ACCOMPANY**  
**LEGAL DESCRIPTION**

SCALE 1" = 60'  
 JUNIPER & SIXTH  
 VACATION BENEFITTING  
 APN 001-231-001



SHEET  
 1  
 OF  
 1

**APPROVED**  
ENGINEERING DEPARTMENT  
04/16/2020 *Robert Hulbert*



JUNIPER STREET

CONST 4' WIDE  
SIDEWALK W/  
BASE 450 SF.

PROPOSED AREA OF VACATION  
AREA = ±3,636

EX. HOUSE

EXISTING WALL  
TO REMAIN,  
PROTECT IN PLACE  
VERIFY

CONST 4' WIDE  
SIDEWALK W/  
BASE

EX. SIGN TO REMAIN  
FIELD VERIFY

EX. FIRE HYDRANT  
TO REMAIN  
FIELD VERIFY

NEATLINE SAWCUT EX AC  
PAVEMENT FOR REMOVAL  
AND DISPOSAL, APPROX  
325 SQ. FT.

CONST ADA  
ACCESSIBLE RAMP  
W/ BASE  
SAWCUT LINE

CONST 6" THICK  
DRIVEWAY RAMP W/ BASE

CONST TYPE 1  
CURB & GUTTER  
70 LF.

CONST 5' WIDE  
SIDEWALK W/  
BASE 290 SF.

SAWCUT EX. WALK  
AND MATCH ELEV.

REGRADE AREA BEHIND  
DRIVEWAY AS NEEDED TO  
ACHIEVE DESIRED GRADE

# STARKEY SITE SIDEWALK DESIGN GRADING PLAN

BHAKTA  
job# 82504  
APN 001-231-001  
March 19, 2020



SHEET  
1  
OF  
1



# Zoning Bulletin

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## Business Permits

Registered marijuana dispensary challenges ordinance that would make it wait to acquire permit for recreational sales

Citation: *Revolutionary Clinics II, Inc. v. City of Cambridge*, 2020 WL 956300 (Mass. Super. Ct. 2020)

Revolutionary Clinics II Inc. (RC) was a registered marijuana dispensary (RMD) that had been lawfully selling medical marijuana in Cambridge, Massachusetts since September 4, 2018. It filed suit challenging the validity of a Cannabis Business Permitting Ordinance (CBPO), which the city of Cambridge enacted.

RC wanted to convert its medical marijuana businesses to “Colocated Marijuana Operations” (CMOs) that sold recreational, adult-use marijuana in the city. It asserted that the CBPO, which imposed a two-year moratorium on non-economic empowerment applicants receiving cannabis business permits from the city violated “the Home Rule Amendment” to the Massachusetts Constitution.

Before the Superior Court of Massachusetts was RC’s request for a preliminary injunction to enjoin the city from implementing the CBPO and from taking any action to further delay the conversion of RC’s businesses to CMOs.

### DECISION: Request for preliminary injunction granted.

The criteria justifying the granting of a preliminary injunction had been met.

**Likelihood of success on the merits**—This was the first factor the court considered. RC had the burden of showing a likelihood that it would prevail on the merits.

RC contended that the CBPO was unconstitutional under the Home Rule Amendment. “The Home Rule Amendment authorizes a municipality or bylaw to exercise any power or function which the general Court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight of the Home Rule Amendment,” the court explained.

“In determining whether a local ordinance or bylaw is inconsistent with a [s]tate statute, the question [wa]s not whether the Legislature intended to grant authority to municipalities to act, but rather whether the Legislature intended to deny a municipality the right to legislate on the subject in question,” the court explained.

The court noted that cities had “considerable latitude in this regard.” “There must be a sharp conflict between the ordinance or bylaw and the statute before a local law is invalidated. Such a conflict appear[ed] when either the legislative intent to preclude local action [wa]s clear, or, absent plain expression of such intent, the purpose of the statute c[ould not] be achieved in the face of the local by-law,” it added.





The court ruled that RC had “a likelihood of succeeding on its claim that the [CBPO] and its two-year moratorium denying RMDs/MTCs the opportunity to obtain a permit to operate as CMOs in the regulations promulgated” under state law. Here, the CBPO “appears to exceed the limited power [the applicable section of state law—chapter 94G] granted to municipalities to regulate adult-use marijuana businesses and to conflict with the CCC [r]egulations’ method for giving priority review to EE applicants and MTC applicants.”

*Here, the CBPO “appears to exceed the limited power [the applicable section of state law—chapter 94G] granted to municipalities to regulate adult-use marijuana businesses*

#### Contributors

Corey E. Burnham-Howard

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*and to conflict with the CCC [r]egulations’ method for giving priority review to EE applicants and MTC applicants.”*

A specific section of chapter 94G (section 3) prohibited the city “from adopting ordinances or by-laws regulating marijuana establishments that ‘conflict[ed] with th[at] chapter or with regulations made [under that] chapter.’”

Also, the CBPO was “in direct conflict with the CCC’s priority applicant scheme, which provide[d] that the CCC ‘shall review applications from Priority Applicants on an alternating basis, beginning with the first-in-time-application received from either an MTC Priority Applicant or Economic Empowerment Priority Applicant.’”

The bottom line on this issue: “By allowing only EE [a]pplicants to obtain the local permitting necessary to submit a license application to the CCC, the [CBPO] circumvented the CCC [r]egulations’ requirement that the applications of EE applicants and MTC priority applicants be reviewed on an alternating basis.”

**Balancing of harms**—Could RC demonstrate irreparable harm? That was the key question for the court to address.

The city contended that the two-year moratorium on converting to an adult-use cannabis business or co-located cannabis business did not threaten RC’s existence.

RC’s CEO outlined the harm that the business would suffer from under the CBPO, including that:

- the company had invested “substantial sums to open two of the three CMOs it [wa]s entitled to operate under state law in the [c]ity and that, before the [c]ity enacted its [CBPO] on September 23, 2019, it entered into leases for two locations at two to three times market rates because of the planned cannabis use”;
- the company wasn’t able to use those locations as CMOs because of the CBPO, so RC had to bear the cost of the investment and lost profits; and
- the company would be left to compete with adult-use retailers and CMOs locally.

“The court accepts the assertion in [the CEO’s] affidavit that ‘medical marijuana-only establishments in states that have legalized cannabis for adult-use have struggled to survive,’ ” the court wrote. “It seems only natural that a business permitted to sell a product to only customers who qualify for and go through the process of obtaining medical approval to buy the product would suffer substantially if other businesses are able to sell that same product to any of-age customer who walks through its doors,” it added.

Additionally, if the injunction was not granted, RC wouldn’t have “an adequate remedy at law because there appear[ed] to be no cause of action available that would permit it to recovery money damages for the financial losses it would likely suffer due to the [c]ity blocking its entry into the adult-use market for two years,” the court found.

Therefore, the irreparable harm RC would suffer if it was denied the injunction outweighed any harm the city might suffer if it was granted.

The bottom line: The city hadn't identified any harm it would have suffered beyond its argument that by issuing the injunction EE applicants within its borders would not "get the benefit of the super-priority given to them by the [CBPO], something the [c]ity believe[d] to be in the public interest." The court didn't find this argument persuasive.

---

*The irreparable harm RC would suffer if it was denied the injunction outweighed any harm the city might suffer if it was granted.*

---

**Public interest**—There was "a clear public interest in enforcing statutory law and the declared policy of the [l]egislature, and in invalidating conflicting local ordinances," the court explained. In this case the court had already found that RC was likely to succeed on the merits of its claim that the CBPO violates the Home Rule Amendment.

## Land Use

Real estate owner claims township and its officials acted in fraudulent manner concerning others' zoning applications

Citation: *Casser v. Township of Knowlton*, 2020 WL 1027667 (3d Cir. 2020)

*The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.*

Claudia Casser owned real estate in Knowlton, New Jersey. In 2010, she filed a complaint in state court against the township, its mayor, and its planning board. She contended that the defendants had violated her civil rights, municipal land use rules, and state constitutional taking requirements.

The court dismissed Casser's claims. She appealed, and the case was returned to the lower court to dispose of another claim for fraudulent concealment.

The lower court denied Casser's request to amend her complaint. The court then granted the defendants request for judgment without a trial and denied Casser's request for reconsideration. She appealed.

While this was all going on, Casser filed another lawsuit in state court in 2013, which essentially restated her claims asserted in the first case, except that she named landowners who she claimed had been wrongfully granted zoning approvals as defendants. The court dismissed her case because of the pending appeal in the first case, and she appealed that decision.

The appeals court affirmed the lower court's disposal of the 2010 lawsuit. It ruled her claims were moot because she asserted that a 2003 ordinance was unlawful but that ordinance had been amended in 2013.

The appeals court also agreed with the lower court that the 2013 state lawsuit should be dismissed "without prejudice," meaning Casser could potentially revisit the issue in another filing. Casser asked the state's highest court to review the matter, but the court did not certify the case for review.

Then, Casser took her case to federal court in 2017. The lower court dismissed the claims "with prejudice," meaning Casser would be barred from pursuing the same claims against the named defendants. Casser asked to amend her complaint, but the court denied that request, so she appealed.

**DECISION: Affirmed.**

The court rejected Casser's attempt to re-litigate issues.

Casser's claims fell into two categories, the Third U.S. Circuit Court of Appeals noted: claims for takings and for being denied access to the courts based on the defendants' misrepresentations, acts of fraudulent concealment and "other misconduct."

---

*It was clear that the allegations in the 2013 lawsuit "relate[d] to issues [and claims] already decided in [the 2010 State Lawsuit] and thus may not be relitigated."*

---

What was detrimental to Casser's case was that the lower court had relied on the testimony of an expert who concluded Casser had been treated similarly to others with respect to the land-use and zoning issues in this case.

The expert had "reviewed and analyzed each of the land use applications in which [Casser] claimed other landowners were treated more favorably," the court explained. The expert asserted that, prior to Casser's allegation, "in all but two or three cases the applicants in fact set aside large amounts of their land for agricultural preservation."

The bottom line: Casser sought to "re-litigate" the claims from her prior state-based lawsuit. And, it was clear that the allegations in the 2013 lawsuit "relate[d] to issues [and claims] already decided in [the 2010 State Lawsuit] and thus may not be relitigated."

---

*Case Note:*

*Casser alleged that the defendant had hidden records concerning land-use and zoning application and acted fraudulently to cover up their unlawful conduct.*

---

## Accessory Dwelling Unit

Petitioner claims he should be allowed to build an ADU

Citation: *Kamps-Hughes v. City of Eugene, Land Use Board of Appeals for the State of Oregon*, 2020 WL 1100468 (2020)

Nicholas Kamps-Hughes wanted to build an additional, detached dwelling on his property. The applicable state law defined an accessory dwelling unit (ADU) as “an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.”

The subject property, which was about 5,663 square feet with dimensions of 72.9 by 80 feet, was located in Eugene, Oregon’s Fairmount neighborhood. The property was zoned R-1 and accessed only via an alleyway.

There was a 1,680-square-foot, two-story, four-bedroom single-family dwelling on the property used as a rental unit. And, Nicholas Kamps-Hughes wanted to verify whether a detached accessory dwelling unit would be allowed on his property.

The R-1 zone allowed detached, single-family dwellings and what the Eugene Code (EC) had previously referred to as “secondary dwellings.” The city recognized that state law required it to allow accessory dwelling units (ADUs) in the R-1 zone, and the city treated ADUs as subject to the EC’s secondary dwelling regulations.

The city determined that the proposed ADU was not a permitted use in the R-1 zone based on an owner-occupancy requirement in the EC. Nicholas Kamps-Hughes challenged that finding.

#### **DECISION: Case sent back for further proceedings.**

The city erred in how it considered several factors.

**Occupancy limits**—The city code mandated occupancy limits in three city zones which included the Fairmount neighborhood. These were intended to limit the total number of occupants of a property with a primary dwelling and an ADU to a maximum of three occupants in the ADU, which was calculated based on the number of bedrooms in the primary dwelling.

Here, the “city found the provision [wa]s related to siting and design, mainly because it [wa]s intended to assure that the ADU remain[d] an accessory use to the primary existing single-family dwelling,” the court explained. Nicholas Kamps-Hughes argued that the occupancy limits didn’t relate to the location of the dwelling on the property or its design. “[W]e agree,” the court found.

“The city’s concern about assuring that ADU uses remain[ed] accessory to the primary dwelling [wa]s unrelated to the location of the ADU on the property or its design,” the court found.

**Alley access lot**—The subject property was accessible via an alleyway only. The EC barred “new ADUs on alley access lots, and if applied to a proposal to build an ADU on Kamps-Hughes’ property, would prohibit approval,” the court explained.

The city had found that the alley-access lot prohibition on ADUs was a “reasonable local regulation relating to siting and design.” But, the court agreed with Kamps-Hughes that the EC wasn’t “a regulation ‘relating to siting and design.’” “Nothing in the provision regulate[d] the location of a building on a particular piece of property. Additional traffic and increased density [we]re not relevant to the ‘siting’ of a building on a particular property. . . . Additional

traffic and increased density [we]re also not related to the design of the ADU,” the court found.

**Lot dimension**—The EC required boundaries of the subject property be able to “fully encompass an area with minimum dimensions of 45 feet by 45 feet.” “We agree with [Kamps-Hughes] that [the EC] is not a regulation related to siting and design. For the same reasons we rejected the city’s conclusion regarding minimum lot sizes, we reject the city’s conclusion regarding minimum lot dimensions. The shape of a lot is not related to the location of a building on a particular property.”

**Minimum lot size**—The EC “required a 7,500 square-foot minimum lot size for an ADU in the Fairmount neighborhood where [Kamps-Hughes’] property [wa]s located, as well as two other neighborhoods in the city,” the court explained. The city had found that the minimum-lot size regulation was a reasonable regulation related to siting and design and that it was “intended to preserve large lots with yards and parking, consistent with existing neighborhood development.”

The court agreed with Kamps-Hughes that the EC wasn’t a regulation “‘relating to siting and design’ because it d[id] not regulate the location of an ADU on a property or the ADU’s physical attributes.” The “preservation of existing and adjacent large lots, yards, and parking [we]re not relevant to the location of a building on a particular piece of property.”

#### **A CLOSER LOOK**

The court rejected the city’s reliance on a statewide urbanization planning goal to justify its decision. “Goal 14 [wa]s a statewide planning goal, or standard, that may be varied by legislative action. The legislative decision in adopting the applicable section of the state code [wa]s that more housing, and more ADUs, should be developed.”

---

*The court rejected the city’s reliance on a statewide urbanization planning goal to justify its decision.*

---



---

The court also found that while the purpose of Goal 14 was “to provide for livable communities,” the city ha[d] not explained why allowing an ADU on an alley access lot (or, . . . on a lot of a particular size or dimension) result[ed] in a lack of a “livable community.”

---

#### **Practically Speaking:**

*The court did not believe that allowing an ADU on an alley access lot (or . . . on a lot of a particular size or dimension) result[ed] in a lack of a “livable community.”*

---

## Mixed Use Zones

### Lawsuit calls into question city's findings as to mixed use of a property

Citation: *Mumper v. City of Salem, Land Use Board of Appeals for the State of Oregon*, 2020 WL 1100453 (Or Luba) (2020)

In 2003, the Salem (Oregon) City Council (SCC) added a mixed-use (MU) comprehensive plan designation to the Salem Area Comprehensive Plan (the comprehensive plan). It also amended the city's code to establish the "Fairview Mixed Use" (FMU) zone.

The SCC applied these designations to a 275-acre property formerly known as the Fairview Training Center (FTC). It explained the purpose of the FMU zone like this: "[T]o implement the mixed-use designation of the Salem Area Comprehensive Plan by establishing a master planning process through which allowed uses [we]re identified and development standards [we]are established."

For instance, it sought to:

- "[e]ncourage innovative planning resulting in mixed-use development, improved protection of open spaces and natural features, and greater housing and transportation options";
- "[e]ncourage the innovative integration of park and school uses";
- "[e]ncourage developments that recognize the relationship between buildings, their use, open space, and infrastructure; providing varied opportunities for innovative and diversified living environments in line with the principles of sustainable development and sustainable business practices";
- "[s]upport affordable housing options and mixed-income neighborhoods"; and
- "[f]acilitate the resourceful use of land through the arrangement of land uses, buildings, circulation systems, open space, and infrastructure."

The city code described a master plan as "a comprehensive long-range plan intended to guide the growth and development of a region [that] include[d] analysis, recommendations, and proposals for the region's population, economy, housing transportation, community facilities, natural resources and land use."

In 2005, city council adopted the Fairview Master Plan (FMP) into the comprehensive plan, establishing goals and policies for the redevelopment of the FTC. The city code did not require the redevelopment of the entire 275-acres of the FTC at one time; instead, it required adoption of detailed regulatory plans consistent with the FMP (refinement plans) for areas of 40 acres in size or greater.

The subject property was located in the FMU zone on 14 acres of land. There were two groves of mature trees, and the property was labeled "The Woods" in the FMP. The Woods was bordered by the Fairview Addition West refinement plan area, which was approved in 2014, on three sides.

The FMP that was adopted in 2005 applied a Mixed

Intensity (MI) zoning overlay to 10.75 acres of The Woods and a Low Intensity (LI) zoning overlay to the remaining 3.31 acres. The SRC described the MI area as comprising "primarily residential uses, along with a mix of small-scale neighborhood commercial, employment, and public services uses. Buildings will be a mix of one-story to three-story detached, attached, or stacked housing types sited on smaller individually owned lots with private yards and street and/or alley access, or larger lots under multiple or separate ownership with shared street and/or alley access. Townhouse development is appropriate at the higher density range."

The SRC also described the LI overlay area as characterized by "single family activities in detached housing types sited on separate lots with private yards and street and/or alley access. Nonresidential uses, except for a few limited exceptions, are prohibited." The code also stated that single family uses and accessory dwelling units (ADUs), parks and open space were permitted uses in the MI and LI zones.

Olsen Design & Development, Inc. (Olsen) requested to subdivide The Woods into 16 lots and open space. The 16 lots ranged in size from approximately one third of an acre to an acre in size. Olsen also filed a request for approval for a refinement plan for The Woods. And, because the FMP required that implementing refinement plans be applied to areas at least 40 acres in size, the party sought a "class 2 adjustment" authorizing the reduced refinement plan area size of 14 acres.

The planning commission approved Olsen's application, and that decision was appealed. The city council voted to deny an appeal of that order and approved the application.

The city then adopted the planning commission findings of fact and conclusions of law. And, that ruling was appealed.

#### DECISION: Reversed.

The proposed refinement plan was not consistent with the FMP; and an amendment to the FMP was required.

The court would reverse a land use decision when the decision "violate[d] a provision of applicable law and is prohibited as a matter of law." It would send the case back for further review when the decision "improperly construe[d] the applicable law, but is not prohibited as a matter of law."

Here, the court found, reversal was appropriate because:

- "Compliance with the FMP 'Respect the Landscape' and 'Walk Every Day' principles and the FMP language that elaborates on those principles w[ould] require, at a minimum, more than insignificant changes to the existing application"; and
- "an amendment to the FMP w[ould] be required . . . for the city council to approve a refinement plan that propose[d] a reduction in residential density of more than 20 percent, [so] the city's approval of [Olsen's] refinement plan without a prior or concurrent approved FMP amendment to allow a reduction in residential density of more than 20 percent [wa]s prohibited as a matter of law."

## Conflict of Interest

### Can the only commercial real estate appraiser in the county serve as zoning board of appeals member?

That's the gist of a question posed to the Office of the Attorney General for the State of Ohio recently.

The issue concerned an appraiser who was, by the letter's account, the only one on the county auditor's staff qualified to appraise commercial properties. And, the question concerned whether the appraiser could also be appointed to the board of zoning appeals for the township where he lived, which was located in the same county he served (Licking County).

#### **DECISION: The answer was no.**

A conflict of interest could arise under the circumstances presented.

The Office of the Attorney General explained that "[a] person who serve[d] as a real estate appraiser in the unclassified service with the county auditor's office, and who, pursuant to the person's job duties, [wa]s not able to abstain from appraising certain property within the county, [could] not serve simultaneously as a member of the board of zoning appeals for a township within the same county," the opinion stated.

"If a member of the township board of zoning appeals were also the appraiser who compiled the appraisal for the county auditor, then he would be called upon to pass judgment on the quality of his work as an appraiser. He would effectively be serving as both a judge and witness. Such a situation would deprive the parties of a neutral arbitrator, and creates a clear conflict of interest," the opinion added.

That's not to say that an instance may arise when an appraiser would abstain from appraising property within the township. "So long as the appraiser does not appraise property that is subject to a hearing by the board of zoning appeals, the conflict can be avoided," the opinion stated. But, under the facts outlined in this particular question, "the appraiser [wa]s the only commercial property appraiser on the county auditor's staff, [so] it [wa]s not possible for the appraiser to abstain from appraising all property within his township. Therefore, in this particular instance, the conflict may not be avoided and the two positions [we]re incompatible," the opinion stated.

## Zoning News from Around the Nation

### California

State senator's bill would essentially resurrect SB 50

Senate Bill 50, which would have forced California cities to end single-family zoning, was voted down recently. But, Sen. Scott Wiener isn't giving up.

Wiener is a proponent of this type of legislation because

he believes it's the only way for the Golden State to deal with its housing shortage. And, in March 2020, he introduced Senate Bill 902, which would automatically zone for two, three or four units per parcel depending on a city's size, his office stated in a press release. The bill would also provide a new streamlined process to rezone for up to 10 units per parcel, it stated.

"By allowing cities to increase density in a sensible and streamlined way, SB 902 will help ease California's housing crisis, spurred by a statewide shortage of 3.5 million homes and California ranking 49 out of 50 states in homes per capita," his office stated.

"To tackle California's severe housing shortage, we must all pitch in. By authorizing two, three and four units per parcel statewide, and by giving cities a powerful new tool to increase density even more, SB 902 recognizes that we're all in this together and makes it easier for cities to do the right thing," said Wiener.

Here are some additional highlights on what SB 902 seeks to do:

- **Help alleviate the state's severe housing shortage with light density increases**—"By legalizing up to four units of housing per parcel as-of-right, guaranteeing ministerial, non-discretionary approvals and protecting projects from delays or appeals, SB 902 will by allowing cities to avoid an unending, expensive, and sometimes impossible rezoning process to effectuate this change," his office stated.
- **Strengthen renter protections**—"Affordable housing and rent-controlled properties cannot be demolished for an SB 902 project. Additionally, if a renter has lived at a property at any point in the past seven years, or if an Ellis Act eviction has occurred in the past 15 years, the property may not be demolished for an SB 902 project."
- **Make "meaningful changes to California's zoning laws and allow . . . for more housing density where it is most needed in collaboration with local governments"**—"SB 902 offers modest but SB 902 provides baseline zoning reform—allowing up to four units per parcel—and then lets cities to easily and quickly go beyond that baseline zoning in order to meet housing goals," his office said.

Source: [sd11.senate.ca.gov](http://sd11.senate.ca.gov)

### Colorado

Fort Collins considers inclusionary zoning and linkage fees to address affordable housing needs

Affordable housing impact fees, also known as inclusionary zoning and linkage fees, are a way to help local governments combat affordable housing shortages. According to an article by the *Coloradoan*, Fort Collins, Colorado is considering a requirement under which housing developers would have to construct a certain percentage of affordable homes. Also, money would be set aside in a fund to aid in the future construction of affordable housing in the city, the news outlet reported.

By 2035, city officials hope to make 15% of the city's housing inventory affordable, the news outlet reported. But,

many housing developers and real estate professionals are opposed to it.

According to the Department of Housing & Urban Development, affordable home ownership is present when 38% or less of the homeowner's gross monthly income goes to the mortgage, home insurance, utilities, and real estate taxes and interest, the *Coloradoan* noted.

Source: [coloradoan.com](https://www.coloradoan.com)

### Illinois

Cannabis dispensary gets zoning approval for "River North" neighborhood of Chicago

The Chicago Zoning Board of Appeals (ZBA) has granted Cresco Labs (Cresco), one of the largest multistate cannabis operators nationwide, a special use permit for a marijuana dispensary located at 436 N. Clark St. in the city's River North neighborhood. "The [d]ispensary is one of the two licenses Cresco won in the Central District in Chicago's lottery, . . . and one of the only two city-approved adult-use dispensaries in downtown Chicago to date," according to a press release.

This new dispensary will be Cresco's sixth locally. "Cresco has licenses to open an additional four dispensaries and has so far announced its intention to open locations in the Gold Coast neighborhood of Chicago" as well as in Danville and South Beloit, Illinois, the press release stated.

"Cresco has a long history of being first to market in new jurisdictions. Our ability to execute quickly and efficiently in a highly regulated, complex industry has always been a core strength of the Company," Cresco CEO and Founder Charlie Bachtell said.

While there are currently a limited number of dispensaries open across Illinois and ongoing supply shortages, the press release stated, "the Illinois adult-use market is proving to be as robust as forecasted with \$74 million in sales during the first two months."

With the special use permit granted, Cresco will enter the final phase of the approval process: inspection by the State of Illinois Department of Financial and Professional Regulation and being awarded an adult use dispensing organization license.

Source: [businesswire.com](https://www.businesswire.com)

### New Mexico

Plan afoot to convert former senior living facility to hotel

Following an agreement with the Roswell, New Mexico Planning and Zoning Commission and the Quail Village Homeowners Association (QVHA), United Partners LLC's Marendra Mistry told the *Roswell Daily Record* a new hotel will likely replace a former facility being used as an assisted living facility.

The news came after a withdrawal of an appeal in a zoning case. And, Mistry said the facility will have a seven-foot wall to delineate between the hotel and neighboring Quail Village residences, the news outlet reported.

In addition to installing a wall at the south side of the property, stipulations have been made so that Mistry will plant a large tree to provide neighboring residents with more privacy. Also, there won't be any onsite parking for

semi-trucks. And, the QVHA and Mistry agreed to meet each year to discuss and resolve similar issues that may arise.

Source: <https://www.rdrnews.com>

### New York

Developer seeks work-around to obtaining public approval on Lenox Terrace redevelopment project

The Olnick Organization has been in a dispute over the redevelopment of Lenox Terrace, a six-building site built in 1958 that's located on Lenox Avenue between 132nd and 135th streets in New York's Harlem neighborhood, *Harlem World Magazine* reported recently. As of print time, the city council was likely to reject its proposal to add five buildings to the site, which would be 28 stories high and create 1,600 mixed income rental units, a quarter of which would be below-market-rate units.

This isn't the first time the Olnick Organization sought to do a project like this either, the news outlet noted. It unsuccessfully pitched a similar proposal in 2003.

With the same fate likely in this case, the developer reportedly said it will move forward regardless of how the city council votes on the issue. Specifically, if the rezoning proposal does not go through, the developer will seek to move forward with construction that's permitted under the currently zoning for the site, the news outlet reported. This would include four 20-story buildings that would not include affordable housing units, current unit remodels or public amenities, such as roof decks, playrooms, yoga studios, and several acres of green space.

Source: [harlemworldmagazine.com](https://www.harlemworldmagazine.com)

### New Jersey

Attorney wins NJBA's Affordable Housing Award

Shelter industry trade association the New Jersey Builders Association (NJBA) has awarded Irina Elgart, an attorney with Fox Rothschild, its Affordable Housing Award (AHA), the law firm explained in a recent press release. "This award is presented annually to an individual who has been successful in supporting the production of affordable housing," the press release stated.

"I am truly honored to have received this recognition. My team played a crucial role in several landmark affordable housing cases over the last decade," said Elgart. "These court rulings helped define the law for developers and individuals on compliance issues that were delaying affordable housing projects throughout the state," she added.

Elgart of Fox Rothschild's Real Estate Department and Zoning & Land Use Practice often works on affordable housing, real estate contracts, redevelopment and eminent domain issues impacting developers and property owners. She was previously recognized by the Legal Services of New Jersey as an Equal Justice Medal Award recipient for providing pro bono legal guidance to low-income residents facing housing displacement.

Source: [foxrothschild.com](https://www.foxrothschild.com)

### Washington

Single-family zoning ban being considered

Senate Bill 6536 would require local governments to

permit duplex building in municipalities with 10,000 or more residents, *KATU* reported recently. If a city has more than 15,000 residents, duplexes, triplexes, quadplexes, sixplexes, stacked flats, townhouses, and courtyard apartments would all be permitted in single-family residential zoned areas, the news outlet explained.

Dealing with a gap in “middle housing” is something bill supporter Sen. Mona Das said is important to ensure that there are more affordable housing options near existing infrastructure and amenities, the news outlet reported. She mentioned that due to land costs these types of units can be more affordable than single-family residences.

This isn’t the first piece of legislation like this: Last year, neighboring Oregon passed similar legislation. By the end of 2020, local governments there must devise their plans to implement the new law, the news outlet reported.

For more on SB 6536, visit [lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/Senate/6536%20SBA%20HSA%2020.pdf?q=20200213100317](http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/Senate/6536%20SBA%20HSA%2020.pdf?q=20200213100317). For more on Oregon’s Housing Choices law (HB 2001), visit [oregon.gov/lcd/UP/Pages/Housing-Choices.aspx](http://oregon.gov/lcd/UP/Pages/Housing-Choices.aspx) where you’ll find information about technical assistance for local governments, siting and design requirements, and more.

Source: [katu.com](http://katu.com)

### Virginia

#### Middle housing study underway in Arlington

Middle housing is term used to define housing clusters to meet housing demand and, arguably, deliver more affordable housing options to those who otherwise could not af-

ford single-family homes. Middle housing can be comprised of structures like duplexes, fourplexes, townhouses, etc. The idea is that where land value accounts for a good portion of a single-family home’s value, by permitting multiple residents to live on the same parcel, their cost to own may be less than it would have been if the property was a single-family dwelling.

Many states are considering legislation requiring urban areas to do away with single-family zoning in favor of laws that would require metropolitan areas to go the middle-housing zoning route.

Currently, Arlington County, Virginia, is in the process of studying the impact middle housing zoning could have on the area, *ARL Now* reported recently.

According to Arlington’s officials, close to 75% of the residential land-use is zoned for single family housing. The study will focus on housing supply increase, diversification of housing-type options, understanding the housing problems the area faces, policy and regulatory changes that will provide new housing types, and identify issues for future study.

For more on Arlington’s Missing Middle Housing Study Framework, visit [https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/15/2019/12/HousingArlington\\_MissingMiddleHousingStudy\\_Framework.pdf](https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/15/2019/12/HousingArlington_MissingMiddleHousingStudy_Framework.pdf) where you’ll find explanations on rationale, purpose, outcomes, key considerations, and next steps. Also, check out [housing.arlingtonva.us/missingmiddle/documents/](http://housing.arlingtonva.us/missingmiddle/documents/) for the scope of work regarding the study, a webinar, a comment and response matrix, and more.

Sources: [arlnow.com](http://arlnow.com); [housing.arlingtonva.us](http://housing.arlingtonva.us)



# Zoning Bulletin

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## Temporary Land Use Permit

Recovery residence asserts county's actions resulted in disparate treatment against protected individuals

Citation: *His House Recovery Residence, Inc. v. Cobb County, Georgia*, 2020 WL 1487226 (11th Cir. 2020)

*The Eleventh U.S. Circuit has jurisdiction over Alabama, Florida, and Georgia.*

His House Recovery Residence Inc. (HHRR) operated sober-living residences. Its clients voluntarily chose to participate in a substance-free, communal-living environment.

At least one sober-living facility in the county was zoned for single-family, residential use—a classification that includes “group home” as a permitted use.

Under the county code, a group home was defined as “a dwelling unit . . . shared by four or fewer persons, excluding resident staff, who live[d] together as a single housekeeping unit and in a long term, family-like environment in which staff persons provide[d] care, education and participation in community activities, under a structured and scheduled plan [had to be] provided to the county, for the residents with the primary goal of enabling the residents to live as independently as possible . . . to reach their maximum potential under the direction and guidance of a designated managing caregiver, designated as such by the affiliate organization, who must be a resident of the group home and available by telephone on a 24-hour basis in case of complaints.”

The house rules had to be provided to the county if applicable “as evidence of active enforcement under the Georgia Association of Recovery Residence (GARR) standards.” And, its schedule of activities could be verified via periodic inspection by community development staff. Also, a group home was not permitted to allow use of the dwelling as a home for individuals on parole, probation, or convicted and released from incarceration but it could include a home for the disabled.

Prior to 2010, recovery residences were considered halfway houses and could not qualify as group homes. But under an ordinance passed in 2010, recovery residences qualified as group homes where the relevant conditions of the county’s zoning ordinance were met.

### REASONABLE ACCOMMODATION

Through a temporary land use permit process, a property owner could seek a reasonable accommodation to permit the use of a property otherwise prohibited under the county’s zoning ordinance. For example, for HHRC to house more residents than the ordinance allowed, it would need to seek a Temporary Land Use Permit (TLUP).

In 2013, HHRC started housing residents at 1793 Miller Drive. In 2014, the





county cited it for illegally occupying a single-family dwelling because it had exceeded the number of allowed residents.

In January of 2015, the county issued a criminal citation to HHRC's owner for violating the ordinance. HHRC then applied for a TLUP to request that it be permitted to exceed the number of allowed residents.

County staff recommended that the request be denied because "[h]aving a multitude of people living on a property [would] start to erode the low intensity character of a residential neighborhood and could have a negative effect on the property values."

In June 2015, the county planning commission (CPC) held a hearing on the TLUP application. It recommended that the request should be denied, but the final decision on that rested with the county's board of commissioners (BOC).

After the CPC hearing but before HHRC's hearing with the BOC, the county's code enforcement manager sent the county commissioner an email stating that he wanted to make the commissioner "aware of some of [his] concerns about" the TLUP application." The manager had documented HHRC violations at a separate location at another local property on Latimer Lane. He expressed concern that HHRC "[wa]s starting off the same way [it] did at 19 Latimer Lane" and that "based on [its] past performance this w[ould] become an issue for the neighborhoods surrounding this property."

Weeks later, the BOC considered TLUP's application. Some citizens opposed the application, citing Miller Drive's proximity to a school and playgrounds and the effect of a group home on property values. They presented a petition signed by 60 residents and expressed concern over a recent spike in vandalism and drug paraphernalia in the neighborhood.

Ultimately, the BOC denied HHRC's application. It gave HHRC 30 days to reduce the number of residents at the Miller Drive property. Following that denial, HHRC reduced the number of residents, but code enforcement continued to monitor and cite it for unrelated issues occurring at the property.

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#### THE LAWSUIT

HHRC filed suit against the county alleging it violated the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA). The lower court denied HHRC's request for judgment without a trial and granted judgment in part to the county. HHRC appealed.

#### DECISION: Affirmed.

There wasn't direct or circumstantial evidence to show that the county ordinance was not facially neutral.

HHRC claimed that the ordinance was discriminatory because it:

- limited group homes to four or fewer residents;
- demanded that group homes had an in-resident caregiver available on a 24-hour basis;
- required "active enforcement of the [GARR] rules";
- prescribed "periodic inspections by [c]ounty enforcement staff"; and
- barred individuals on parole or probation who were also in recovery from living in the group home.

"The effect of these criteria, {HHRC} suggest[ed], [wa]s to single out disabled individuals and 'limit . . . recovering individuals' ability to obtain and maintain housing," the court explained. "We disagree," it concluded.

For HHRC to survive judgment without a trial, the ordinance would have had to—on its face—"discriminate against people with disabilities." "But the [o]rdinance, d[id] not, on its face, treat recovering individuals any differently than non-recovering individuals," the court explained. "None of [its] provisions distinguish[ed] based on the presence of disability."

In addition, the "limitation on the number of residents applie[d] to all group homes, as d[id] the requirement that

group homes ha[d] a resident caregiver, the provision allowing review of the schedule of activities by periodic inspections, and the prohibition against persons on parole or on probation.”

### A CLOSER LOOK

HHRC also contended the lower court had erred in finding it hadn’t sufficiently established a disparate treatment claim because it had failed to provide evidence of non-recovering people being treated differently.

A disparate treatment claim required a showing that an individual had “actually been treated differently than similarly situated non-handicapped people.” And, it could be demonstrated by direct or circumstantial evidence under a burden-shifting analysis.

HHRC claimed that it had presented direct and circumstantial evidence. The court did not agree as to direct evidence and examined its claim under the burden-shifting circumstantial evidence framework.

HHRC argued that the county’s prior actions with respect to Latimer Lane and its alleged departure from its normal code enforcement efforts, as well as other factors, such as ill motives by neighbors, supported its discrimination claim.

“We disagree because [HHRC] fail[ed] to provide sufficient evidence that the [c]ounty treated them differently from similarly situated non-disabled citizens.”

The ordinance had been amended in 2010 based on a complaint by an advocacy group. That alone didn’t “prove that [HHRC] has been treated differently than similarly situated non-recovering people or that there was discriminatory intent behind the amendment.”

Also, the fact that the county cited what had happened at the Latimer Lane residence wasn’t unpersuasive “for the same reason.” HHRC didn’t “offer evidence that the [c]ounty unevenly enforced the [o]rdinance. The record [wa]s also bereft of evidence that the [c]ounty[had] departed from its normal code enforcement procedures when it cited [HHRC’s] residence at Miller Drive,” the court wrote.

Even if neighbors and city officials had a bias against recovering substance abusers, that wasn’t relevant unless there was “some indication that the recoverers were treated differently than non-recoverers.” “There is no such evidence here,” the court wrote. “And regardless, [HHRC] still fail[ed] to provide evidence that the ‘members of the [board] were aware of the motivations of the private citizens’ or that, despite these motivations, the [b]oard was not justified in denying the TLUP.”

## Special-Use Permit

Did property owners have standing to challenge special-use permit for arts-learning center?

Citation: *Davis v. Rockdale Art Farm, Inc.*, 2020 WL 1059784 (Ga. Ct. App. 2020)

Property owners filed an action challenging the Rockdale County Board of Commissioners’ (BOC) decision to approve Rockdale Art Farm Inc.’s (Rockdale) special-use permit application to operate an arts-learning center.

Rockdale owned three parcels of land in Stockbridge, Georgia, which were zoned A-R (agricultural-residential) under the Rockdale County Uniform Development Ordinance (Rockdale UDO). It sought authorization for a creative arts learning center, or “art farm,” at which lodging would be offered for artists and art program attendees.

The BOC, following public hearings, approved the application subject to certain conditions covering:

- restrictions on the time of day of outdoor activities;
- on the number of consecutive nights lodgers could stay;
- parking and driving; and
- the use of outdoor amplified noise.

The property owners in this case were situated about three-tenths of a mile from Rockdale’s property. They claimed the approved use of the parcel would cause “special damages,” which included “commercial activity noise due to outside speakers, commercial activity light pollution due to the lighting, and increased traffic.”

The property owners also alleged they would “suffer discomfort, loss of peace of mind, unhappiness and annoyance[,] and diminished property values[.]” And, since their property was located at a higher elevation than Rockdale’s, they would be “uniquely affected by commercial light pollution.”

Rockdale sought to get the property owners’ petition dismissed. The court agreed, and the property owners appealed.

### DECISION: Affirmed.

The lower court didn’t err in finding that the owners had not established standing.

To establish standing the property owners had to “have a substantial interest” and had to “suffer substantial damage by reason of the contested zoning change.” Unless the lower court’s had committed “clear error,” the decision would stand.

Here, property owners claimed that the lower court shouldn’t have dismissed their petition because Rockdale had waived the issue of standing by not bringing it up in the administrative proceedings.

The approval of the application for the special use permit in this case was a “zoning decision or legislative action.” It “authorized a type of land use—a recreational and vacation camp, or art farm—that was potentially incompatible with the agricultural-residential uses allowed in the zoning district. Further, issuance of the permit was based on a discretionary determination by the Board as to whether the application satisfied certain criteria or conditions. Thus, the [Rockdale wasn’t] required to raise the issue of standing before the [BOC] . . . to raise the issue in superior court.”

Also, the lower court hadn’t “clearly err[ed] in finding that [Rockdale had] raised standing at the first available opportunity.” “The Rockdale UDO sets forth procedural

requirements ‘for any matter concerning the issuance of a special use permit or other matter on the agenda that requires a public hearing and a vote of the board of commissioners.’ ”

---

*Here, the property owners “only generally alleged that the art farm would create noise, light, and traffic, and that it would decrease property values, without alleging how these effects would harm them differently than other property owners in the area.”*

---

The property owners claimed the BOC violated its own provision by not providing them with equal time to Rockdale and other proponents of the art center. But, “the standing of neighbors to enjoin rezoning granted a property owner and the standing of neighbors to be heard by a governing authority when considering a proposed zoning change [we]re two separate and distinct things.”

#### SUBSTANTIAL INTEREST TEST

A “substantial-interest-aggrieved citizen” test existed and consisted of two parts:

- the aggrieved individual had to “have a substantial interest in the zoning decision”; and
- that interest had to “be in danger of suffering some special damage or injury not common to all property owners similarly situated.”

To satisfy standing requirements, both of these factors had to be met, the court explained.

Here, the property owners “only generally alleged that the art farm would create noise, light, and traffic, and that it would decrease property values, without alleging how these effects would harm them differently than other property owners in the area.” They asserted that “they would be uniquely affected by commercial light pollution because their property was located at a higher elevation than the [subject] [p]roperty, [but] [they had] not shown that other nearby properties would not also be affected by the lighting.”

#### Case Note:

*The applicants didn’t have to raise the issue of the owners’ standing with the BOC to raise that issue before the court, the appeals court explained.*

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## Marijuana Dispensary

Marijuana dispensary challenges decision to grant registration certificate to another provider

Citation: *Premium Leaf, Inc. v. Arizona Department of*

*Health Services, 2019 WL 6769663 (Ariz. Ct. App. Div. I 2019)*

Premium Leaf Inc. (Premium) contended that the Arizona Department of Health Services and its director, Dr. Cara Christ, (collectively, ADHS) awarded a medical marijuana dispensary registration certificate to Buds & Roses Inc. (B&R). It also alleged that B&R’s proposed dispensary location did not comply with local zoning restrictions at the time B&R had submitted its registration certificate application. In addition, it asserted that ADHS’ actions in awarding the certificate frustrated the purpose of the Arizona Medical Marijuana Act (AMMA) and created two classes of applicants subjected to inconsistent application.

The lower court granted ADHS judgment for failure to state a claim on which relief could be granted. Premium appealed.

#### DECISION: Affirmed.

Premium didn’t state a claim on which relief could be granted.

According to Premium, ADHS’ actions “were arbitrary and capricious because it was aware or should have been aware that B&R’s proposed dispensary location was not in compliance with local zoning restrictions at the time B&R submitted its application, as shown by the inclusion of qualifying language on B&R’s county zoning form,” the court explained. It also alleged that the ADHS knew or should have known that B&R had falsely claimed its proposed location was compliant with all local zoning restrictions.

#### THE ZONING FORM AT ISSUE

The question was “whether the completed county zoning form—with its supplemental language—was sufficient to show B&R’s location was in compliance with local zoning restrictions,” the court explained. Previously the court had considered the difference in zoning requirements concerning the dispensary registration process.

In *Compassionate Care Dispensary, Inc. v. Arizona Department of Health Services*, the court explained that “[T]he application for a certificate—step one—require[d] documentation from the local jurisdiction that ‘[t]he dispensary’s location [wa]s in compliance with any local zoning restrictions.’ ” “The application to operate—step two—require[d] documentation from the local jurisdiction ‘authorizing occupancy of the building.’ ”

“Here, the county zoning form, as submitted, was sufficient to show the proposed location complied, generally, with the local zoning requirements,” the court ruled. Here’s why:

- “The option marked on the form was: ‘The location of the proposed dispensary is in compliance with local zoning restrictions related to where a dispensary may be located.’ ”;
- while that “option was marked with an asterisk, the supplemental language added below reiterated: ‘this location is correctly zoned’ and ‘zoning is C-2’ (the appropriate zoning classification for a medical marijuana dispensary)”;

- there was “[a]dditional qualifying language focused on the proposed dispensary’s ability to obtain approval to operate, noting: ‘[A]ny existing medical marijuana facility currently operating at this location would need to vacate the location before this applicant *would be permitted to operate* there so that two dispensaries do not operate that . . . the same location.’ ”

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*“Here, the county zoning form, as submitted, was sufficient to show the proposed location complied, generally, with the local zoning requirements,” the court ruled.*

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The court explained that “[i]ssues with a proposed dispensary’s potential ability to operate . . . d[id] not require rejection of the application [the first step].” So, since the regulations pertaining to step 1 only required an applicant “to provide documentation from the local jurisdiction that its proposed location complies, generally, with local zoning restrictions, and because B&R provided such documentation, Premium’s argument fail[ed] as a matter of law.”

#### DID THE QUALIFYING LANGUAGE MATTER?

Premium also asserted that B&R’s county zoning form may have been sufficient to “satisfy the requirements of the administrative completeness review within Step 1,” but that “the Department should have found the form insufficient during the substantive review of Step 1 based on the form’s qualifying language.”

The court disagreed, writing that “during the administrative and substantive review stages of Step 1, the [d]epartment merely verifie[d] the application includes facially-valid documentation that the location complies, generally, with local zoning restrictions.”

The department hadn’t “act[ed] arbitrarily or capriciously in relying on the county zoning form’s assurance that the location complied with local zoning restrictions,” the court added.

## Special Condition

### Plans for under-21 club stalled

Citation: *South Allegheny Pittsburgh Restaurant Enterprises, LLC v. City of Pittsburgh*, 2020 WL 1490724 (3d Cir. 2020)

*The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.*

South Allegheny Pittsburgh Restaurant Enterprises LLC (SAPRE) wanted to open an under-21 club called Mother Fletcher’s. The venue was to have dancing and a DJ. It didn’t serve alcohol or food other than snacks.

SAPRE had inherited the previous property owner’s 1986 Certificate of Occupancy (CO), which classified the

premises as a “Restaurant” under the City of Pittsburgh Zoning Code. The CO contained a special condition that allowed the first floor and basement to be operated as a restaurant and bar without live entertainment. Prior to its official opening, the Department of Permits, Licenses and Inspections (DPLI) visited Mother Fletcher’s premises and recommended how to comply with city ordinances. It also reviewed architectural renderings for the permit-approval process.

Mother Fletcher’s opened the night of September 3, 2016. Flyers advertised its opening night as “the biggest [u]nder-21 party in the Tri-State area” with the “craziest crowds in Pittsburgh.” Based on these advertisements, DPLI Director Maura Kennedy and other officials inspected the premises to determine if it should be closed down to any dangerous safety issues.

After midnight on September 4, one of the DPLI officials observed 28 police officers in the area. He entered the premises to tell SAPRE’s owner that he was shutting down the place down for not operating as a restaurant as the CO required. He also issued a stop work/cease operations order, which shut Mother Fletcher’s down that night and permanently.

The city contended that it issued the order in accordance with its zoning code, which included two provisions for how to respond to violations. For instance, under section 924.05.A, the chief of the Bureau of Building Inspection or the appropriate official would give written notice of any violation to the owner if the violation did not involve an emergency. The owner would then have 30 days to correct the noticed violation before the city took any further enforcement action.

If it was an emergency, section 924.05.B permitted the city to use its enforcement powers and remedies without prior notice.

Following the shutdown, SAPRE sought a temporary restraining order and preliminary injunction. The court found that SAPRE’s claims were not mature because it had not appealed the cease order to the Zoning Board. Accordingly, it dismissed SAPRE’s requests.

SAPRE then filed an appeal with the zoning board, which held a hearing. City regulations stayed enforcement proceedings pending appeal unless the officer involved certifies that “a stay would cause imminent danger to life or property.” Here, no city official filed a certification to override the stay. And, the city declined to allow Mother Fletcher’s to operate while its appeal was pending.

The zoning board didn’t rule within the 45-day window it had to do so by law. SAPRE rejected its request for additional time, which resulted in “a deemed denial of the appeal.”

Then, SAPRE appealed to a state court. The board then released its findings that the property had not been used as a “[r]estaurant,” and thus contended the cease order had been properly issued.

The court didn’t see it that way, and found the city lacked evidence of an emergency and set aside the cease order.

Then SAPRE filed suit alleging the city had violated its Fourteenth Amendment rights to procedural due process,

substantive due process, and equal protection. The city asked the court to dismiss the action for failure to state a claim on which relief can be granted.

The lower court granted the request, and SAPRE appealed.

**DECISION: Affirmed in part; reversed in part.**

The lower court had properly dismissed SAPRE's substantive due process and equal protection claim since the city's actions didn't constitute constitutional harms; however, the city denied SAPRE constitutionally required pre-deprivation process by arbitrarily invoking its emergency powers without evidence of exigent circumstances.

**THE PROCEDURAL DUE PROCESS CLAIM**

"SAPRE's post-deprivation process was drawn out and highly frustrating in light of the [z]oning [c]ode's requirement that decisions be issued within 45 days of a hearing," the court noted. But, the board's "delay here was not a Fourteenth Amendment violation."

That's because "substantially equivalent delays in administrative proceedings d[id] not violate due process" the court explained. "SAPRE's successful appeal of the [c]ease [o]rder . . . also demonstrate[d] the adequacy of the [c]ity and [s]tate's post-deprivation procedures."

The bottom line: The lower court had "correctly ruled that SAPRE's right to a 'sufficiently prompt' post-deprivation hearing was not a constitutional violation."

**PRE-DEPRIVATION HEARING**

SAPRE claimed that its procedural due process rights were violated when the city didn't:

- provide a pre-deprivation hearing;
- stay the cease order according to the zoning code's procedures; and
- provide a "sufficiently prompt" post-deprivation hearing.

"Procedural due process claims face[d] a two-part gateway inquiry: '(1) whether the plaintiff has a property interest protected by procedural due process, and (2) what procedures constitute due process of law,'" the court explained.

Here, the lower court concluded that SAPRE had a protected property interest in its business. "[W]e agree," the court wrote. "[A] business [wa]s an established property right entitled to protection under the Fourteenth Amendment," it added.

And, when a party had a property interest in need of protection, the court would "review the procedures (. . . the process) constitutionally needed to assure protection and whether they were provided." Therefore, the question for the court was what process was due to SAPRE. Then, the court would ask whether it had taken place.

The bottom line: It was "plausible that the [c]ity's decision to shutter Mother Fletcher's was not a random [and constituted an] unauthorized act by [c]ity employees, SAPRE's deprivation occurred at a predictable point in the government's process—when a decision [wa]s made

whether to invoke the [c]ode's standard or emergency procedures to address a violation (keeping in mind here there was no confirmed violation, but at most the suspicion of a possible violation)."

There wasn't any "competent evidence of exigent circumstances. Thus, pre-deprivation process was possible. In this context—the lack of exigent circumstances, and the [c]ode's established pre-deprivation procedures for non-emergency violations—SAPRE me[t] the criteria for establishing pre-deprivation process was required."

*Practically Speaking:*

*There was any "competent evidence" that the city official who shut Mother Fletcher's "undertook a random, unauthorized act or reasonably believed that an emergency was underway."*

## Zoning News from Around the Nation

### Idaho

Multi-year project to focus on revamping city code in Boise

Last year, the City of Boise assembled an advisory committee to study its zoning code. A recent article detailed the process that took place concerning that:

- the comprehensive planning manager (CPM) along with his staff selected 14 citizens;
- those citizens had familiarity with zoning and were existing ordinance users; and
- the members, whose economic dependency were tied to real estate and growth, had varied backgrounds, expertise, and community interests, [Boisedev.com](http://Boisedev.com) reported.

While the CPM initially had considered having citizens submit applications to serve on the committee, he opted to hand pick the group given that they would be working on a technical ordinance, not a truly-forward looking plan. In his view, having a group that already understood the zoning code made the most sense, the news outlet reported.

Source: [boisedev.com](http://boisedev.com)

### Massachusetts

SJC rules on case alleging lot-width zoning requirement wasn't met

The Massachusetts Supreme Judicial Court (SJC) has reversed an appeals court ruling concerning a zoning appeal related to property owners' request to build a home on a three-acre, vacant plot of land. A dispute arose after neighbors to the property claimed that the owners were violating a lot-width zoning requirement.

The local zoning board upheld the decision to grant the owners' foundation permit request. The neighbors appealed that decision to the land court, which dismissed the case and found that the neighbors didn't have standing to bring the lawsuit.

The appeals court reversed, finding that the land court had erred in finding the neighbors didn't have standing. The SJC reversed, finding that the neighbors didn't have standing to appeal the foundation permit.

The case cited is *Murchison v. Zoning Board of Appeals of Sherborn*, 96 Mass. App. Ct. 158, 132 N.E.3d 1081 (2019), review denied, 483 Mass. 1107, 137 N.E.3d 1068 (2019).

### Missouri

**Developer files lawsuit over alleged improper zoning changes**

A real estate developer has filed suit alleging that Stone County improperly changed the zoning requirements on land he was planning to build on, [KY3.com](http://KY3.com) reported recently. According to the news outlet, Tinytown Living Creation LLC's owner David Fliflet intended to construct five homes, which owners could then use as vacation rentals. It's the rental part of his plan that seems to be falling apart since the county and its director of planning and zoning incorrectly zoned the land, making it impossible for him to develop it as intended, the news outlet reported.

Fliflet told the news outlet that the parcel went from an R-3 (residential, which would allow vacation rentals) and later to an A-1 (agricultural) designation. His question: How did this happen without him knowing about it?

According to the court filings, Fliflet had applied for records of meetings and votes about the zoning changes that impacted his property but the county did not furnish those as requested. In his view, the county has violated state law, the news outlet reported.

In another case, a judge ruled the properties should be zoned per the 2009 maps (which showed an R-3 designation).

Source: [ky3.com](http://ky3.com)

### New York

**Big Apple feeling COVID-19's impact on zoning and land use**

The COVID-19 pandemic is taking a toll on New York City's zoning and land-use operations, [Mondaq.com](http://Mondaq.com) reported recently. The legal alert explained that a temporary suspension had been put in place for land-use determination processes and timelines. This impacted public hearings and city council, the news outlet explained.

However, revised or new applications were still being accepted by the Board of Standards and Appeals, the news outlet reported.

Source: [mondaq.com](http://mondaq.com)

### Pennsylvania

**Plans for asphalt plant flattened**

The Township of East Rockhill, Pennsylvania, has won a zoning case against Richard E. Pierson Materials Corp., which wanted to reactivate the township's Rockhill Quarry as an asphalt plant, despite adamant public opposition, the *Montgomery News* reported.

Since the 1980s, the site at North Rockhill Road has largely been untouched after being in operation for previous decades.

The ruling came a year after a federal judge ruled the property could be used as a quarry. That court, however, sent the case back to a Buck County court to determine if an asphalt plant would be permitted, the news outlet reported.

Source: [montgomerynews.com](http://montgomerynews.com)

### Texas

**Court rules at hearing on plaintiffs' request to nullify Austin City Council's approval for zoning changes**

In March 2020, attorneys for the city of Austin and local property owners attended the first hearing in a case calling into question the city's Land Development Code (LDC) Revision, the *Austin Chronicle* reported recently.

The plaintiffs in the case are seeking to nullify a city council vote to approve the LDC, the news outlet noted. They contend that the city hadn't met requirements under state law to make zoning changes. Specifically, they allege they weren't given individual notice, which would have given about 14,000 property owners time to organize official protests.

The city's position is that the LDC is new so it's not subject to a protest requirement. So, the question in the case is whether state law that regulates city zoning processes applies when a substantial revision happens to the whole map and the code, the news outlet reported.

At the recent hearing, the judge asked the city's attorney to explain the rationale for why the city would give notice and protest rights concerning "minimal" land use rule changes but not for something that could impact "hundreds of thousands" of property owners, the news outlet reported.

Then, the court ruled in the property owners' favor, finding they had a legal right to protest citywide zoning revisions impacting their land, [KUT.org](http://KUT.org) reported.

In other news out of Austin, on March 17, 2020, the mayor issued an order that halted deadlines in the city code until May 1, the *Austin Monitor* reported recently.

The practical impact was that this resulted in a suspension of conventional rules that apply to zoning cases. This included applications for appearing before the land-use commission within 180 days of the application submission, the news outlet reported. However, provisions of House Bill 3167, the "shot clock bill" that took effect in September 2019 and speeds up subdivision-review timelines, was still in effect.

Sources: [austinchronicle.com](http://austinchronicle.com); [austinmonitor.com](http://austinmonitor.com); [kut.org](http://kut.org)

### Utah

**Townhome project in Salt Lake City's Liberty Wells neighborhood seeks zoning changes**

At the corner of 400 East and 1430 South Cleveland Court in Salt Lake City, a local townhome project developer is seeking zoning changes for the Liberty Wells neighborhood, *Building Salt Lake* reported recently.

In 2017, the site, which is less about a third of an acre, had been approved for a five-unit development. The applicable RMF-35 (Moderate Density Multi-Family Residential) zoning required it to have 13 parking stalls and

setbacks which would have a big impact on how much of the property could be developed.

Sentry Financial bought the property, the news outlet reported, and with a developer working with it is seeking a change to the Central Community Master Plan (low-density residential) and a change in the current RMF-35 zoning designation to FB-UNI (Form-Based Urban Neighborhood) zoning, the news outlet reported.

Source: [buildingsaltlake.com](http://buildingsaltlake.com)

#### Washington, D.C.

HUD is revising its "Affirmatively Furthering Fair Housing" rule

The Affirmatively Furthering Fair Housing (AFFH) rule, an Obama-era rule that took effect in 2015, is being revised, the Department of Housing and Urban Development (HUD) recently announced. This will provide "clearer guidance to states and local governments to help them improve affordable housing choices in their community," HUD stated.

"HUD's commitment to Fair Housing remains as steadfast as ever before, and this improved rule reaffirms our mission of giving people more affordable housing options in communities across the country," said HUD Secretary Ben Carson. "By fixing the old Affirmatively Furthering Fair Housing rule, localities now have the flexibility to devise housing plans that fit their unique needs and provide families with more housing choices within their reach," he added.

"Mayors know their communities best, so we are empowering them to make housing decisions that meet their unique needs, not a mandate from the federal government," continued Carson. "Having said that, if a community fails to improve housing choice, HUD stands ready to enforce the Fair Housing Act and pursue action against any party that violates the law," he added.

The final rule from 2015 was designed "to provide HUD program participants with a revised planning approach to assist them in meeting their legal obligation to affirmatively further fair housing," HUD explained. "Since then, HUD found that in contrast to its stated goals, the AFFH rule proved ineffective, highly prescriptive, and effectively discouraged the production of affordable housing." It added.

In 2018, HUD suspended the obligation of local governments to file plans under the regulation and withdrew a computer assessment tool local governments in preparing those plans were required to use.

According to HUD, "rather than assisting local governments in formulating acceptable fair housing assessments, the 'Local Government Assessment Tool' was confusing, difficult to use, contained errors, and frequently produced unacceptable assessments. Litigation challenging HUD's actions was dismissed," HUD noted.

To read the proposed revisions to the AFFH, visit [hudexchange.info/programs/affh/](http://hudexchange.info/programs/affh/).

Source: [hudexchange.info](http://hudexchange.info)