

APPLICATION NUMBER

5612 / 3972

A REQUEST FOR

**USE AND PARKING RATIO VARIANCES TO ALLOW A
2,864 SQUARE-FOOT PROFESSIONAL OFFICE
BUILDING IN AN R-1, SINGLE-FAMILY RESIDENTIAL
DISTRICT WITH 8 PARKING SPACES; THE ZONING
ORDINANCE REQUIRES A MINIMUM B-1, BUFFER
BUSINESS DISTRICT FOR PROFESSIONAL OFFICES,
AND 10 PARKING SPACES FOR A 2,864 SQUARE-FOOT
OFFICE BUILDING.**

LOCATED AT

2655 AIRPORT BOULEVARD

(Southeast corner of Airport Boulevard and Grant Street)

APPLICANT

JOSEPH PAYNE

BOARD OF ZONING ADJUSTMENT

MAY 2010

The applicant is requesting Use and Parking Ratio Variances to allow a 2,864 square-foot professional office building in an R-1, Single-Family Residential District with 8 parking spaces; the Zoning Ordinance requires a minimum B-1, Buffer Business District for professional offices, and 10 parking spaces for a 2,864 square-foot office building.

This site has been the subject two applications previously, once with the Board of Adjustment, and once with the Planning Commission.

In March 1984, a use variance application was submitted to the Board of Zoning Adjustments to allow doctor's, insurance, and/or real estate offices (the same uses as being requested in this application). The staff report from the era states that while the property is "perhaps not ideally situated for single-family residential use, there is no aspect unique to this property that creates a hardship so severe such that the property could not reasonably be used for residential purposes such that a use variance is justified for relief." Further, significant negative feedback was received including a letter of opposition signed by all three members of the City Commission. The application was ultimately withdrawn by the applicant and no decision was rendered by the Board.

More recently, in November, 2008, the Mobile City Planning Commission received a rezoning application to rezone the property to R-B, Residence Business District. The application was later changed by the applicant to request T-B, Transitional Business District zoning. The Planning Commission ultimately made a recommendation to the City Council to rezone the property to B-1, Buffer Business District. Councilman Copeland, who represents the district in which this property is located, spoke at the Planning Commission meeting in opposition to the application. The City Council heard the request on September 29, 2009, and voted unanimously to deny the rezoning request.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant is essentially now requesting approval from the Board of Adjustment to develop the property in almost exactly the same manner as has already been denied by the City Council.

The applicant states that “the property cannot be used for its current R1 zoning because of its location and surroundings of commercial property that face a major intersection.” The applicant also states that property to the West is already zoned commercially and that the property is surrounded by street right-of-way. The applicant however fails to mention that the properties to the West are separated from this property by a major street (Grant Street – the proposed Florida Street Extension), and that properties to the East and South of the site are zoned and developed as single-family residences. It should also be noted that the residential properties to the East and South are separated only by an unopened right-of-way, making the properties de facto adjacent to the proposed commercial development. Further, to the North, across Airport Boulevard (a major street), the properties are zoned and developed as single-family residential.

The applicant also submitted an affidavit from a real estate appraiser in support of the use variance. Firstly, a factual error in the real estate appraiser’s affidavit needs to be corrected. The affidavit states that “various reviews by the City of Mobile Planning Commission or Board of Adjustment staff have recommended a use variance or re-zoning [SIC], as early as 1984.” Firstly, staff has never recommended approval of a use variance or rezoning, as evidenced by the staff reports for those cases. In fact, as stated earlier, the 1984 Use Variance staff report states that “there is no aspect unique to this property that creates a hardship so severe such that the property could not reasonably be used for residential purposes such that a use variance is justified for relief.”

Further, the affidavit states that “changes in circumstances of the area” and “commercial development of the surrounding area” warrant the use variance. While the appraiser may be correct in the assertion there have been changes in the circumstances of the area, there is no reason inherent to the property to preclude development of the site as a single-family residential property. In fact, taking the assertions of the real estate appraiser into account, the applicant seems to be making a case for rezoning, not a use variance. Unfortunately, the applicant’s request for rezoning has already been denied by the City Council.

The applicant’s argument that high traffic counts and commercial property in the vicinity make the property unsuitable for single-family residential development are misleading. Several large and established single-family residential neighborhoods can be readily identified on roadways with high traffic counts (such as Airport Boulevard, Dauphin Street, and Cottage Hill Road), and that have commercial development in the immediate vicinity. The fact remains that there is no physical reason that a single-family residence could not be constructed on the property, the applicant simply wishes to effect a de facto rezoning of the property. Because of this, the use variance should be denied.

Regarding the parking ratio variance, the site in question is simply too small for the size building that the applicant is proposing. The applicant states that if parking in excess of whatever is proposed is needed, then that parking would be obtained by vacating the unopened Grant Street right-of-way. If the vacation of the unopened Grant Street right-of-way is an option, then the applicant should pursue that vacation with the City Council

before requesting relief from the Board. The Board should only entertain a parking ratio variance once all other avenues of relief are exhausted.

It should be noted that, in the application's narrative, the applicant states on several occasions that a reason for the use variance is that the site is surrounded by right-of-way. If the applicant can so readily have the unopened Grant Street right-of-way vacated, then that negates part of the argument.

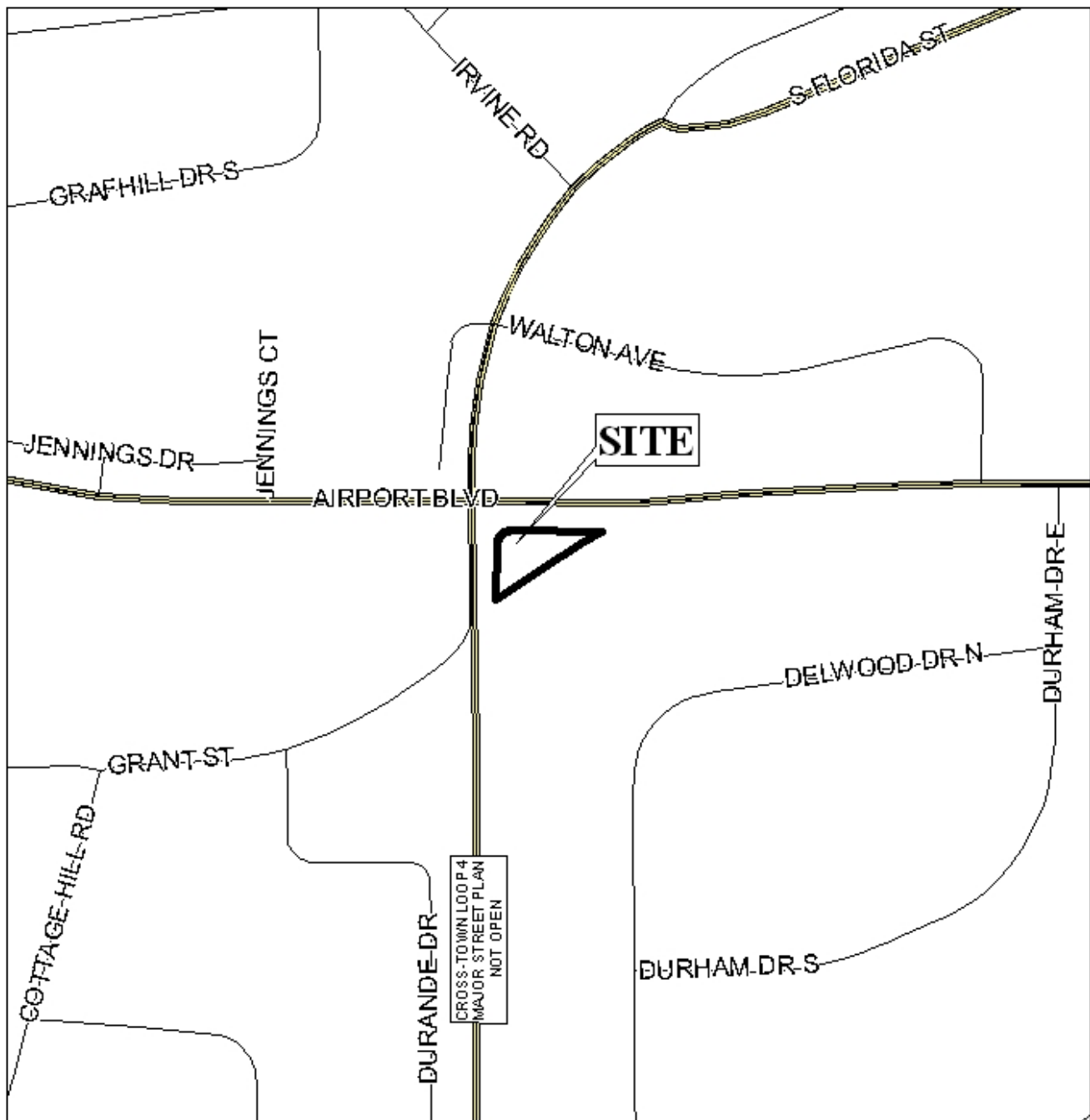
Further, as the applicant does not have space available on the site for all the parking that is required, then the argument could be made that the site is proposed to be overdeveloped. In that case, the need for a parking ratio variance would be the result of a design issue, and not inherent to the site. As such, it would be a self-imposed hardship, and granting the variance would not be appropriate.

RECOMMENDATION 5612 3972

Date: May 3, 2010

The variance requests are recommended for denial.

LOCATOR MAP



APPLICATION NUMBER 5612/3972 DATE May 3, 2010

APPLICANT Joseph Payne

REQUEST Use, Parking Ratio Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Single-family residential units are located to the north, south, and east of the site. Offices are located to the west of the site

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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2

N
NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Single-family residential units are located to the north, south, and east of the site. Offices are located to the west of the site

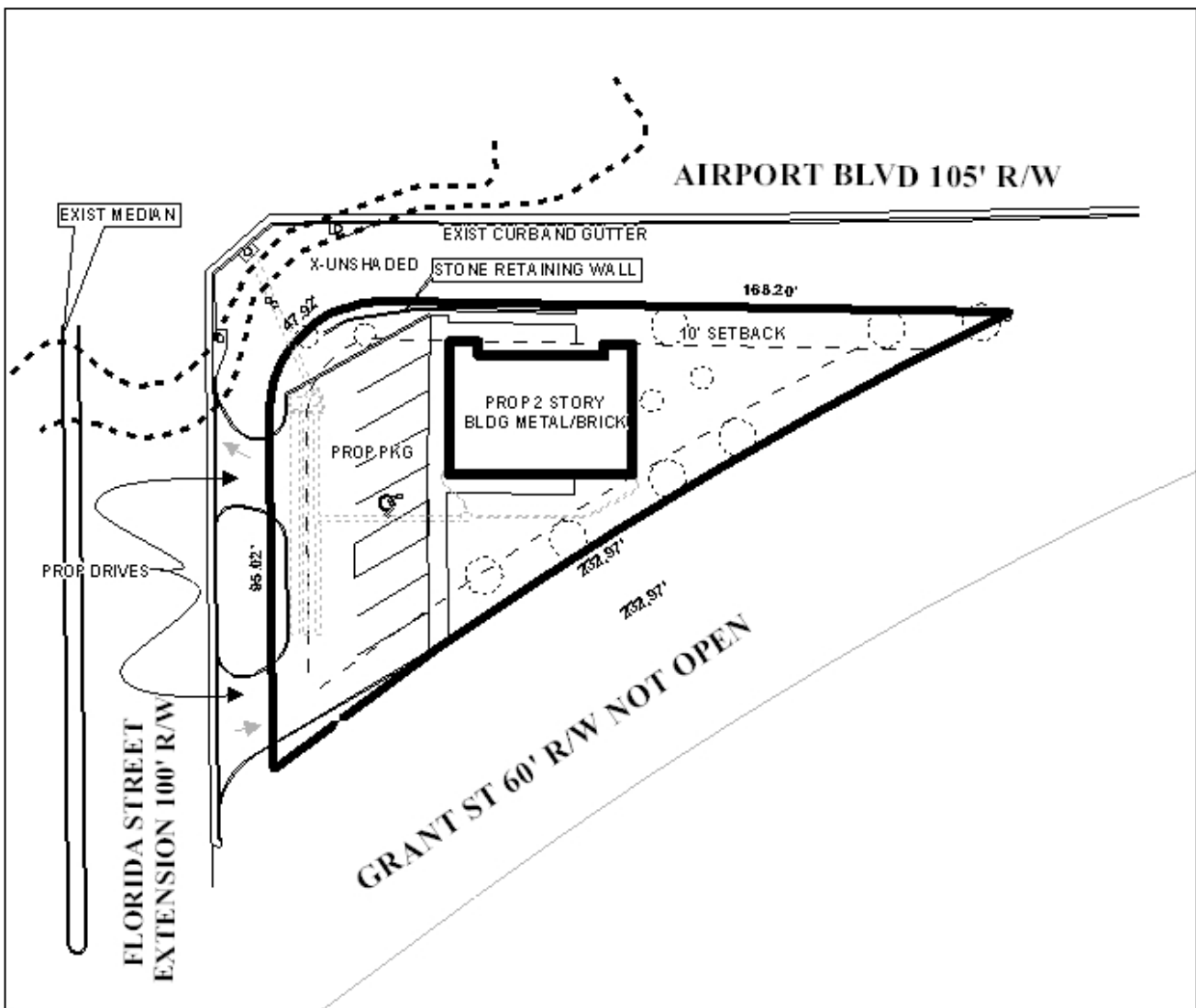
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SITE PLAN



The site plan illustrates the proposed development

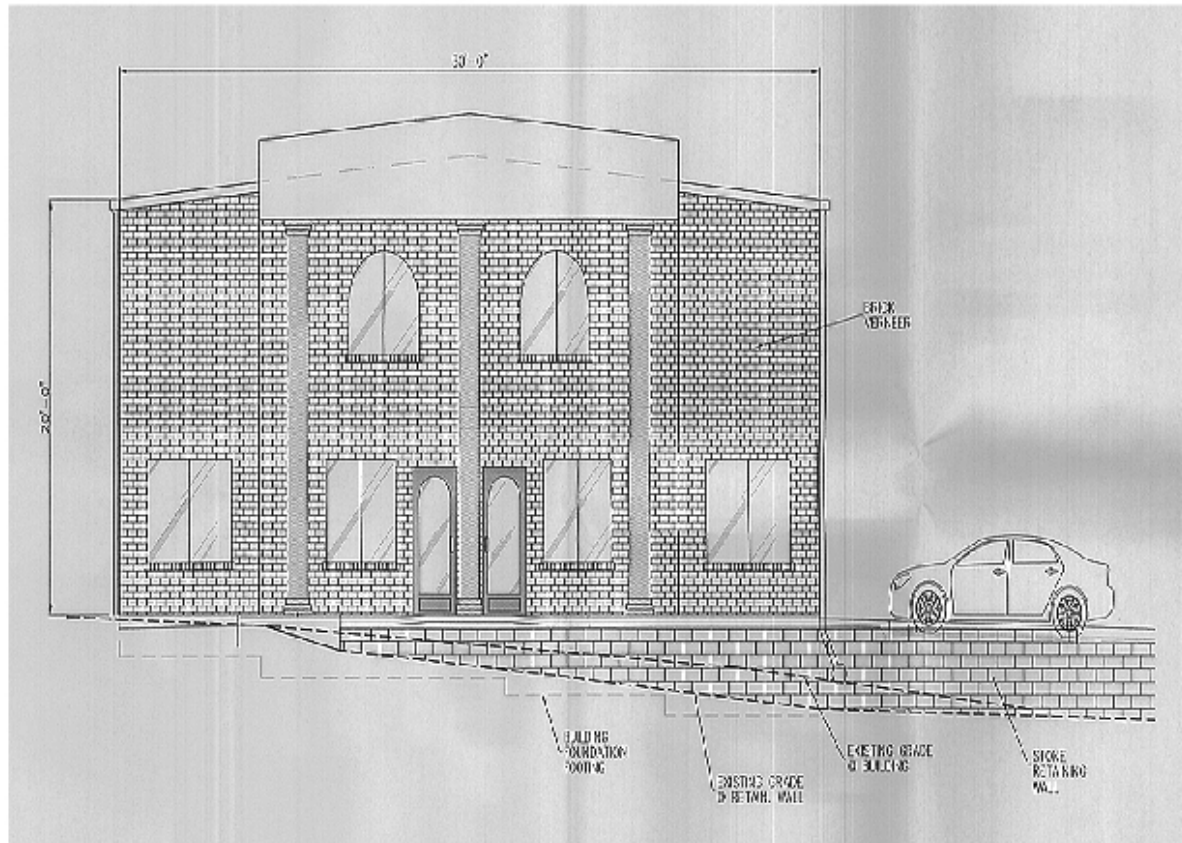
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NORTH ELEVATION DETAIL



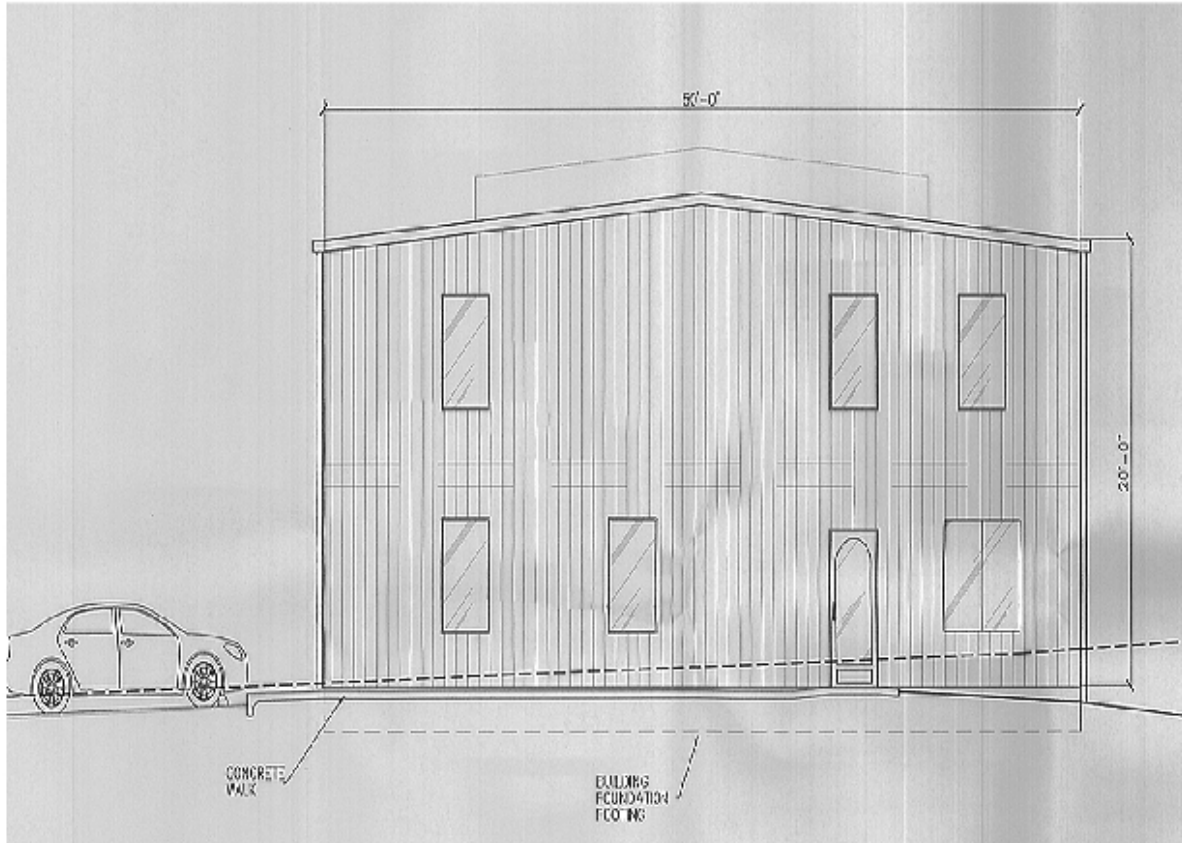
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SOUTH ELEVATION DETAIL



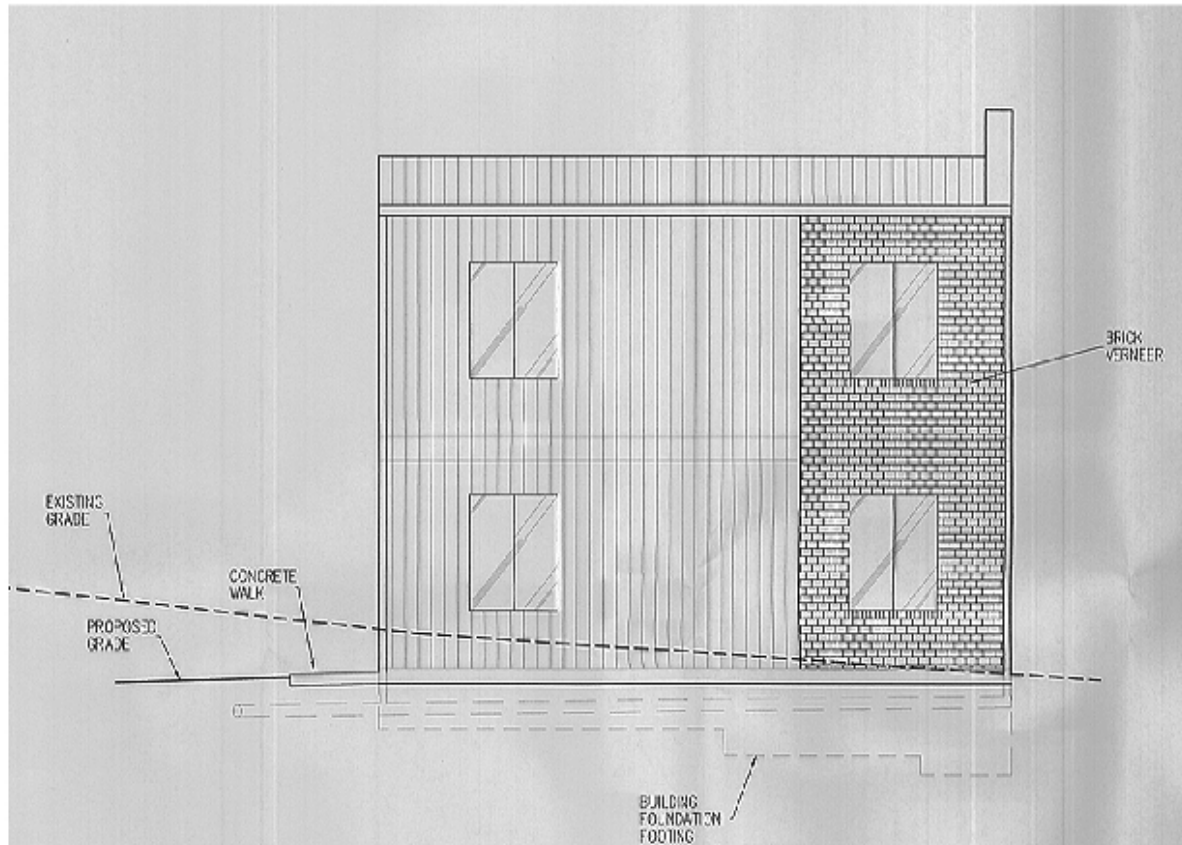
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EAST ELEVATION DETAIL



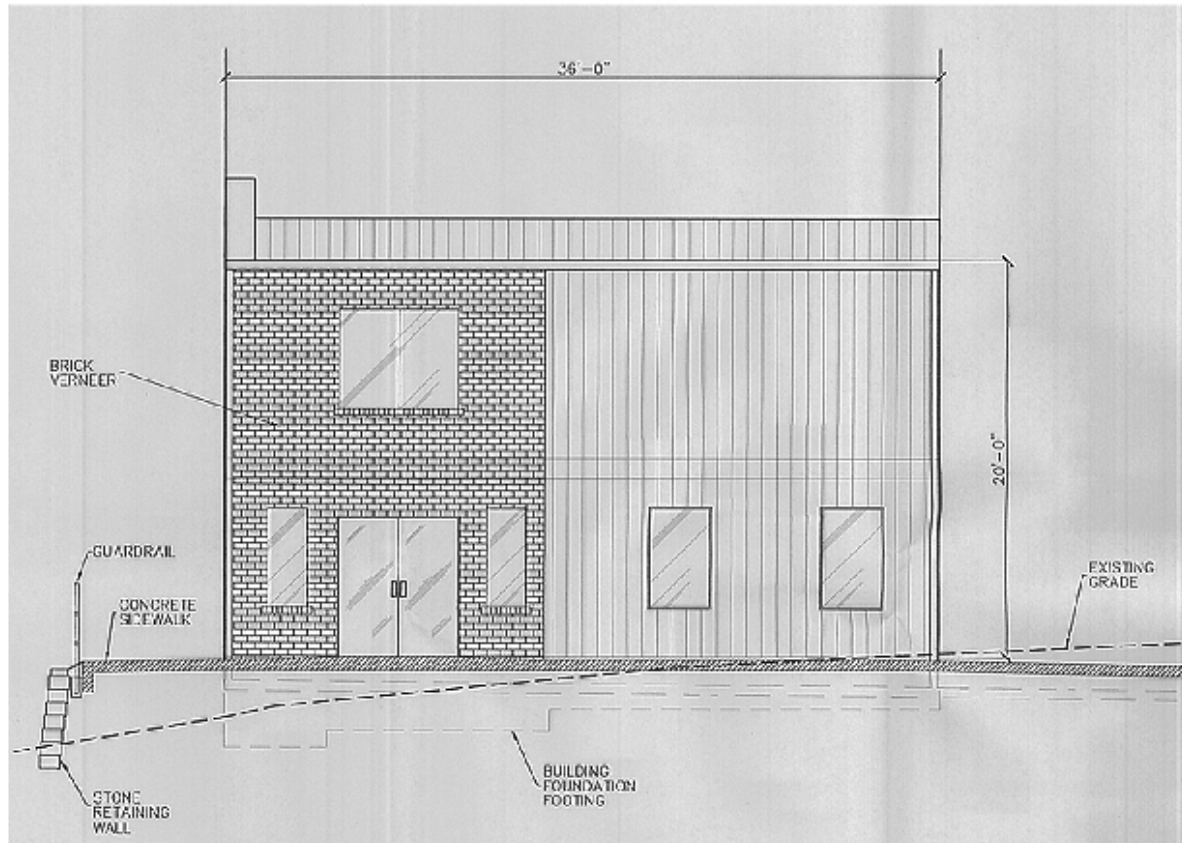
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WEST ELEVATION DETAIL



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