



Planning & Development Division
Planning & Economic Development Department

Room 160
411 West First Street
Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

File Number	PL 22-088	Contact	Kyle Deming, kdeming@duluthmn.gov	
Type	Variance – building height	Planning Commission Date		June 14, 2022
Deadline for Action	Application Date	May 17, 2022	60 Days	July 16, 2022
	Date Extension Letter Mailed	May 23, 2022	120 Days	September 14, 2022
Location of Subject		3731, 3819, 3829, 3867 London Rd.		
Applicant	Stocke Construction	Contact	Ted Stocke	
Agent		Contact		
Legal Description		Lots 13, 14, 23-26, Block 1, London East Division (010-3075-00130, -00140, -00230, -00240, -00250, -00260) and Lots 8 & 9, Block 31, Rearrangement of East Duluth and First Addition to East Duluth (010-1370-05060)		
Site Visit Date	June 1, 2022	Sign Notice Date		June 1, 2022
Neighbor Letter Date	May 26, 2022	Number of Letters Sent		19

Proposal

A variance to allow a one-family dwelling to be constructed at each address listed above that is 40 feet tall instead of the 30 feet maximum building height per UDC Section 50-14.5. The project is within the London East twinhomes development.

Recommended Action: Approve with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Undeveloped	Traditional Neighborhood
North	R-1	Railroad	Traditional Neighborhood
South	MU-N	Apartment buildings	Urban Residential
East	R-1	Undeveloped	Traditional Neighborhood
West	R-1	Twinhomes	Traditional Neighborhood

Summary of Code Requirements

Sec. 50-14.5 – Maximum building height – 30 feet

Sec. 50-37.9.C – General Variance Criteria (paraphrased): Granting of variances of any kind is limited to situations where, due to characteristics of the applicant's property, enforcement of the ordinance would cause the landowner exceptional practical difficulties or undue hardship. The Planning Commission must find the following for a variance to be granted: a) That the landowner is proposing to use the property in a reasonable manner, b) that the need for relief from the normal regulations is due to circumstances unique to the property and not caused by the landowner, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and Comprehensive Plan.

Comprehensive Plan Governing Principles and/or Policies and Current History (if applicable):

Housing Strategy 5 - Foster opportunities for creative housing types and concepts, including tiny houses, townhomes, housing for individuals in Duluth on a temporary basis, and passive energy homes. Project includes twinhomes and homes with unique amenities such as roof terraces.

Applicable UDC Purpose Statements - (a) To provide for more sustainable development within the city by reducing carbon emissions, vehicle miles travelled, energy consumption, and water consumption, and by encouraging production of renewable energy and food production; and (k) To promote, preserve, and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development in wetlands, shorelands and floodplains. This project would allow taller buildings that reduce the footprint of the building allowing more space for pervious surfaces and landscaping to reduce water runoff.

Zoning – Residential-Traditional (R-1) - Established to accommodate traditional neighborhoods of single-family detached residences, duplexes and townhouses on moderately sized lots. This district is intended to be used primarily in established neighborhoods. Many of the dimensional standards in this district require development and redevelopment to be consistent with development patterns, building scale, and building location of nearby areas.

Future Land Use – Traditional Neighborhood - Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Includes many of Duluth 's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas. Residential unit density of 4 -8 units/acre with a mix of housing types (i.e. town homes and 4-plexes) at corners.

History:

1. April 14, 2020 – Variance to reduce rear yard setback by 5 feet (PL 20-016) approved by Planning Commission;
2. April 14, 2020 – Vacate utility easement in former 38th Ave. E. (PL 20-027, Resolution 20-0470R);
3. April 14, 2020 – Preliminary Plat of London East (PL 20-035) approved by Planning Commission.
4. April 29, 2020 – Approval of Wetland Replacement Plan (PL 20-017) by City Land Use Supervisor;
5. June 9, 2020 – Final Plat approval (PL20-058) approved by Planning Commission
6. 2020 through today – 6 twinhomes constructed or are under construction in London East plat.

Review and Discussion Items

Staff finds that:

1. The site is part of the 3.14 ac. London East twinhome development.
2. Applicant is proposing to construct 4 one-family dwellings in the eastern part of the development that would be 40 feet tall instead of the 30 feet allowed in the R-1 district. According to the plans, the portion of the building exceeding the maximum height consists of a 20-foot-wide by 22-foot-deep enclosed space, a 10-foot-wide by 22-foot-deep arbor, and an 18-foot-wide by 22-foot-deep open patio with standard height fall protection walls or railings
3. The applicant states that MN-DOT's access control on London Rd. requires them to build a frontage road to access each individual lot and City rules require it to be sufficiently wide for emergency vehicles and guest parking. Because of site slopes, the applicant needed to incorporate 7 stormwater retention ponds along the front of the site to accommodate drainage. The applicant further states that "All of these factors led to a shrinking of the buildable area for each dwelling unit. In keeping with the it has limited the size of the units and building up has made all the difference in being able to market homes that fit in this neighborhood."
4. The applicant is proposing a reasonable use of the site by developing one and two-family dwelling (twinhomes) which are permitted uses in the R-1 zone district at approximately 7 units per acre, which is consistent with the Comprehensive Plan future land use designation as well as the R-1 zone district.
5. The proposal is consistent with the Comprehensive Plan principles and strategies and UDC intent listed in the section above by facilitating the development of a site that reduces impacts to the environment by shrinking the building footprint while providing a unique housing form with rooftop terraces.
6. The need for a variance is caused by site constraints unique to this site and not caused by the applicant, and includes the need to accommodate vehicle circulation to each lot (due to MN-DOT access restrictions) and storm water

treatment (due to site slope) both in the front part of the site. City wetland rules require preservation of four wetland corridors crossing the site while the existing MN-DOT drainage culverts further restrict options for storm water treatment. Additionally, City zoning requirements limit the area on the rear of the site available for building construction and require space be dedicated to planting replacement trees as well as general landscaping.

7. Granting the variance will not alter the essential character of the area because the proposed 48-foot-wide, 40-foot-tall structures will have a similar bulk to the twin homes on the adjacent lots within the development. Additionally, across London Rd. are three large apartment buildings, one 170 feet long by 3 stories, one 270 feet long by 3 stories, and one 240 feet long by 6 stories tall. The recently completed Zvago condominium building is 4 stories tall and the Ecumen Lakeshore complex includes 3-story buildings of a similar height when including the steeply pitched roofs.
8. The variance, if granted, will not impair an adequate supply of light or air because the buildings are proposed to be set far back from London Rd. as well as 20 feet from the railroad right of way line (65 feet from the railroad). Spacing between buildings in the development will be the same as established in the original plat, which includes extra space due to wetland corridors separating the buildings.
9. The variance, if granted, will not increase congestion on public streets because the number of dwellings allowed on this site will be decreasing by 4 units due to constructing one-family buildings where two-family buildings (twinhomes) were originally platted.
10. The variance, if granted, will not increase fire danger as the Fire Department possesses equipment for fighting fires on structures of this size and larger. Additionally, the project is located in an area already served by police and fire departments and includes an appropriately sized roadway directly in front of the buildings to provide access for emergency vehicles.
11. Granting the variance is not expected to unreasonably diminish established property values in the area because the building height will not impact the view from the northwest compared to the pre-development site condition that consisted of dense tree cover in excess of the proposed building heights. The building locations far back from London Road are not expected to impact the values of property on the lower side of London Road due to the distance and mature vegetation on the properties providing screening.
12. Granting the variance is not expected to impair the health, safety, or public welfare of inhabitants of the city due to factors identified above.
13. No comments from citizens, City staff, or any other entity were received regarding the application.
14. Per UDC Section 50-37.1.N. approved variances lapse if the project or activity authorized by the permit or variance is not begun within one year.

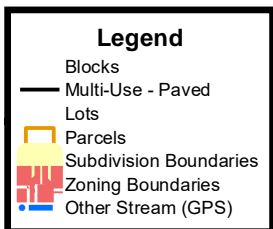
Staff Recommendation:

Based on the above findings, Staff recommends that Planning Commission grant the variance to allow a height of up to 40 feet for the properties listed in the legal description above, with the following conditions:

- 1) The project be limited to, constructed, and maintained based on the plans submitted with the application that shows the portion of the building exceeding the maximum height consisting of a 20-foot-wide by 22-foot-deep enclosed space, a 10-foot-wide by 22-foot-deep arbor, and an 18-foot-wide by 22-foot-deep open patio with standard height fall protection walls or railings.
- 2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.



PL22-088
Building Height Variance
3731, 3819, 3829, &
3867 London Rd.
Stocke Construction



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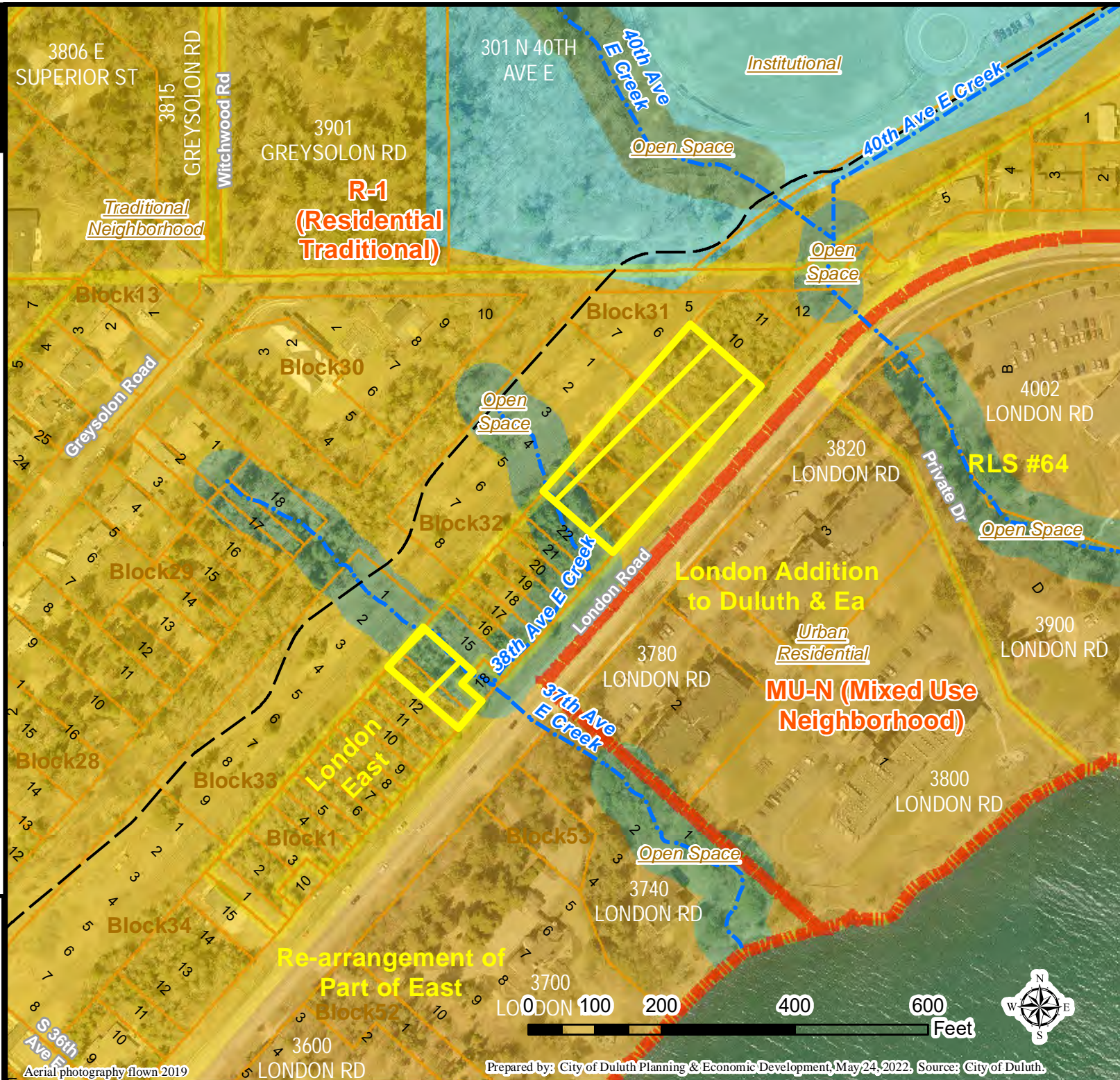


PL22-088
Building Height Variance
3731, 3819, 3829, &
3867 London Rd.
Stocke Construction

Legend

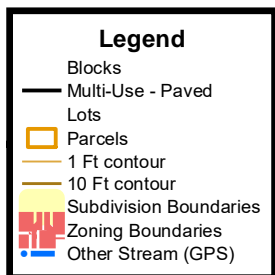
- Blocks
- Multi-Use - Paved
- Lots
- Parcels
- Subdivision Boundaries
- Zoning Boundaries
- Other Stream (GPS)
- Open Space
- Traditional Neighborhood
- Urban Residential
- Institutional

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Aerial photography flown 2019

Prepared by: City of Duluth Planning & Economic Development, May 24, 2022. Source: City of Duluth.

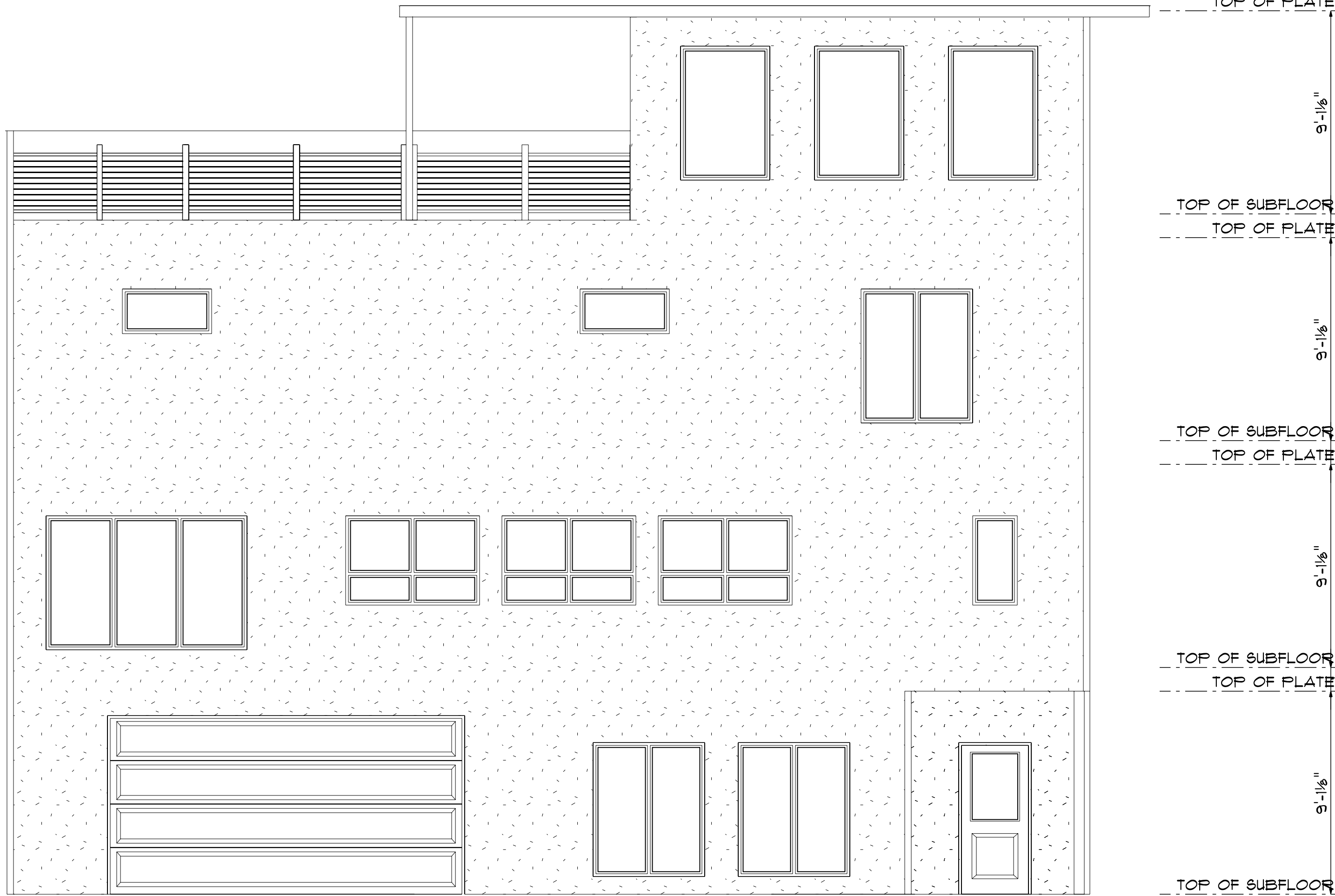


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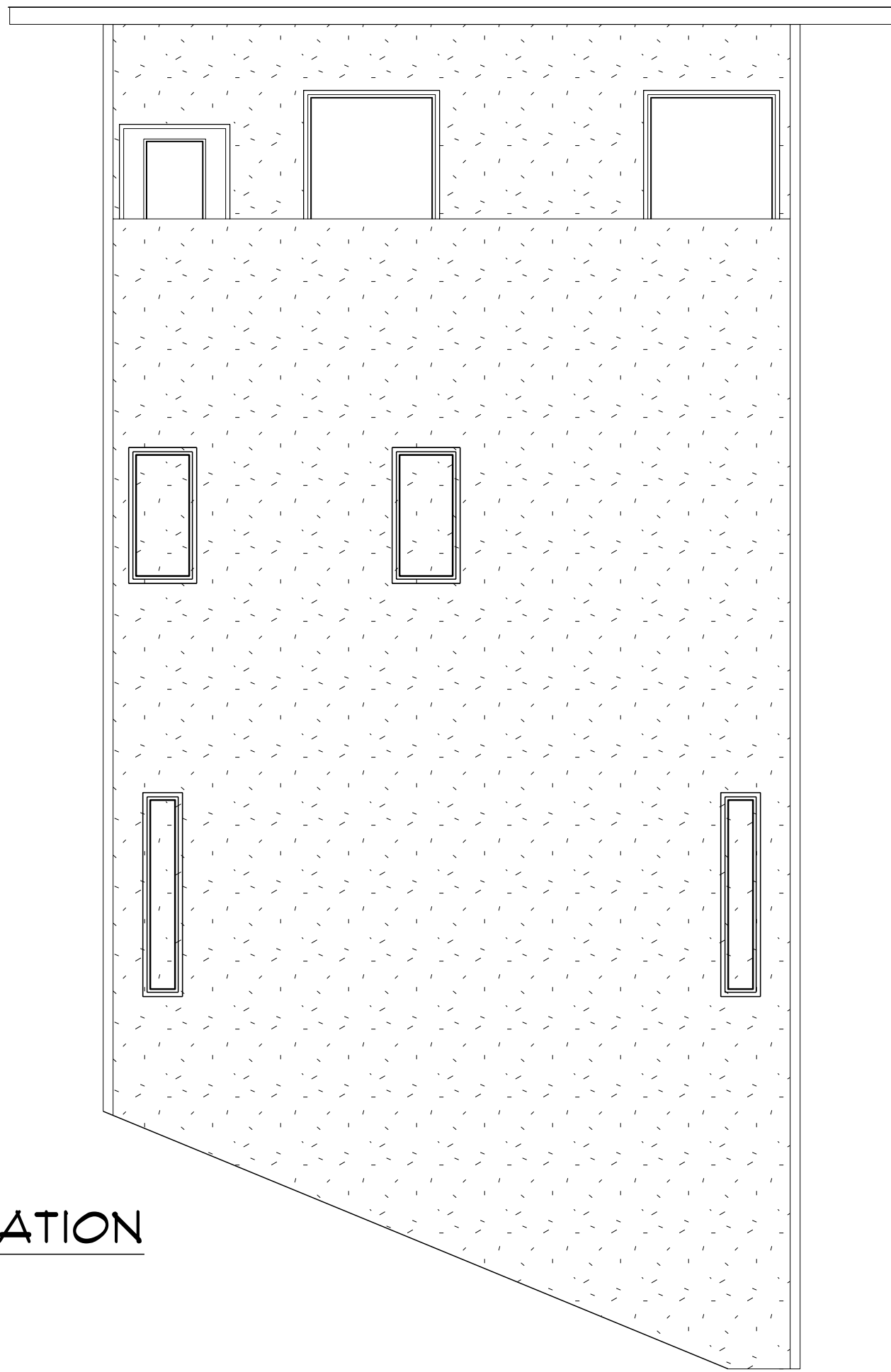




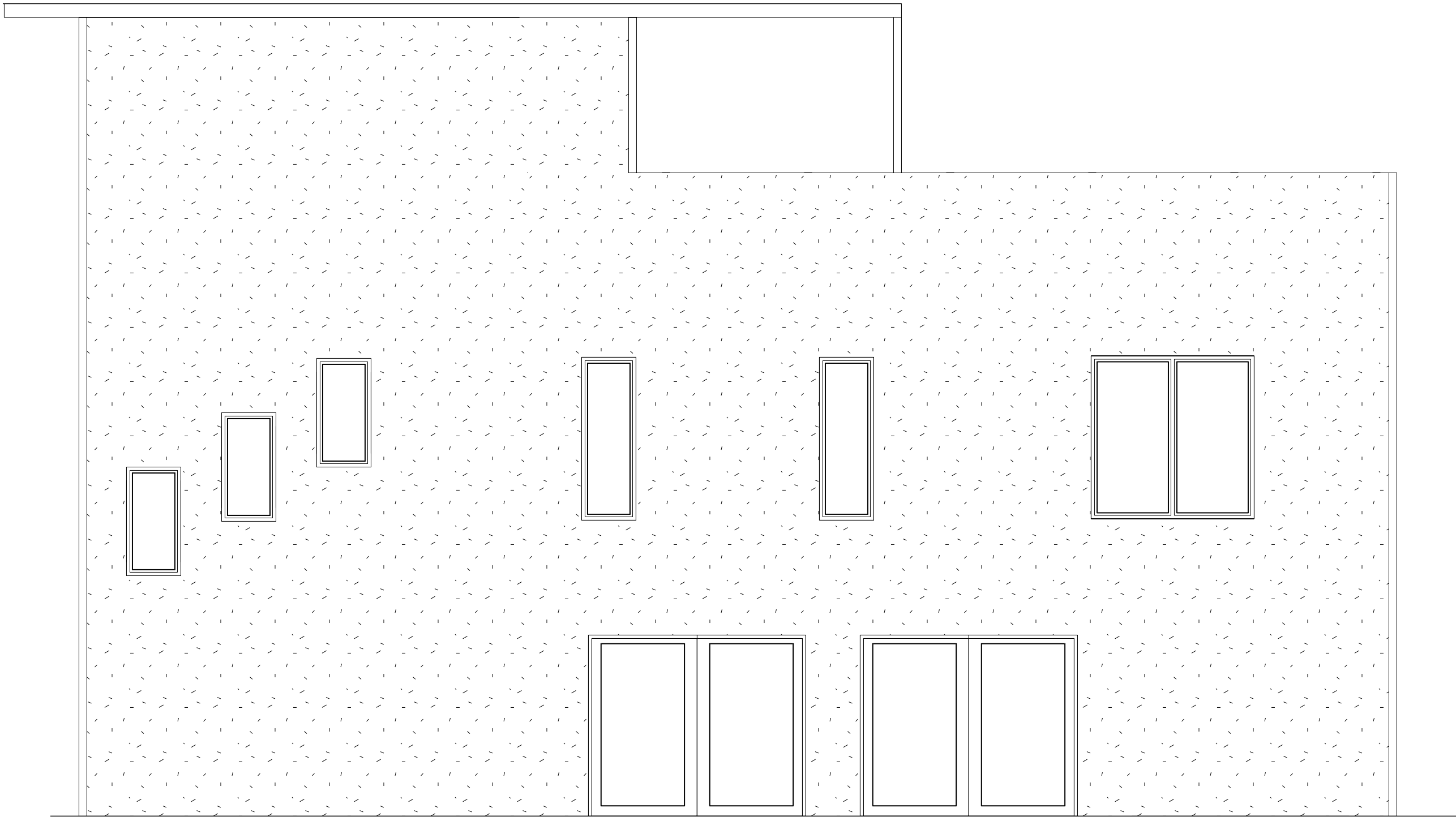
Proposed building concept at 40 feet tall



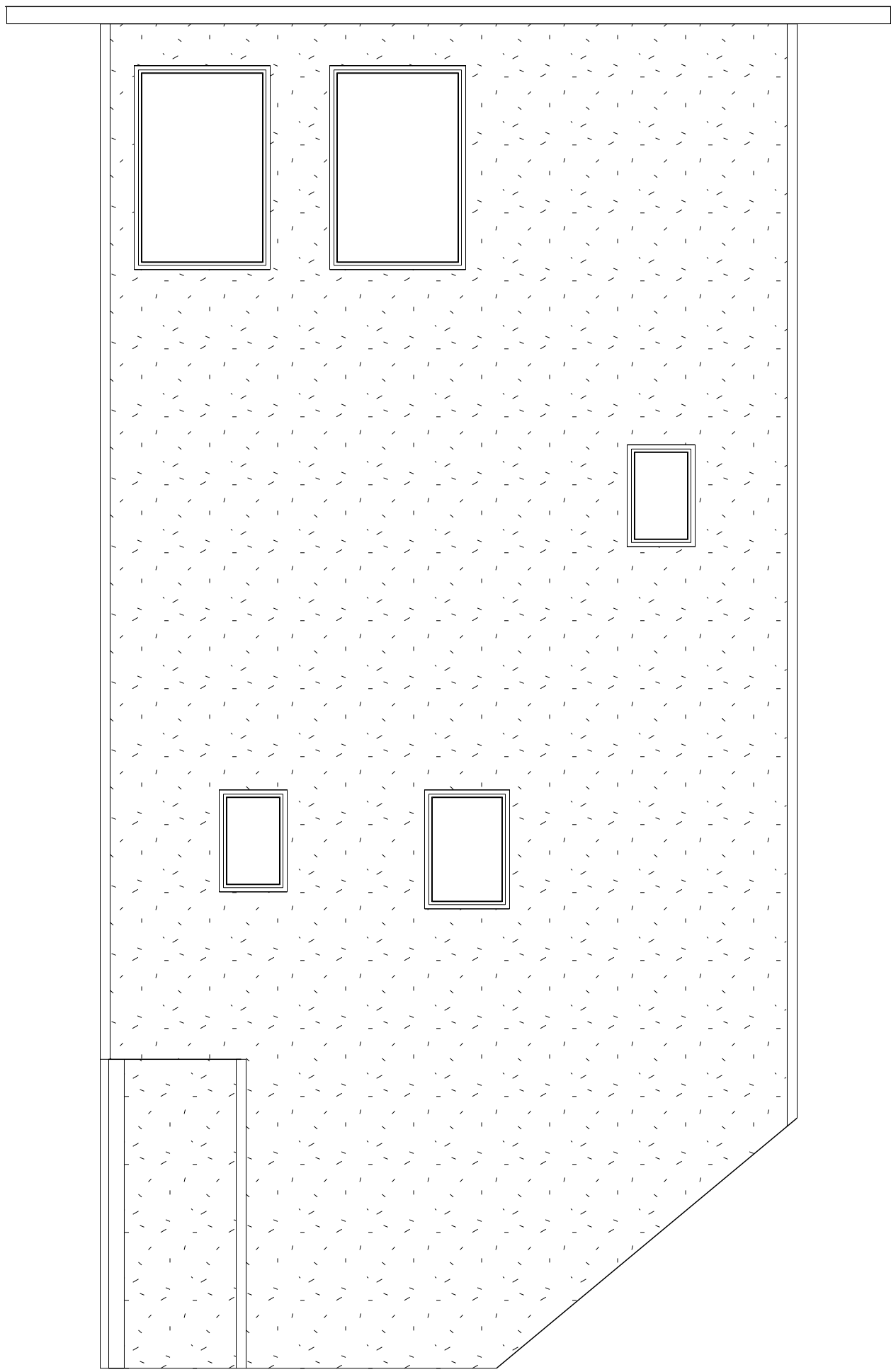
FRONT ELEVATION
SCALE: 1/4" = 1'-0"



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



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



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

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STOCKE CONSTRUCTION -
3731 LONDON RD
ELEVATIONS

DATE: 11/15/2021
REVISED: 2/1/2022
DRAWING: 1 OF 4

PASSIVE SUB-SLAB DEPRESSURIZATION RADON CONTROL SYSTEM

NOTES:

1. ALL CONCRETE SLABS THAT COME IN CONTACT WITH THE GROUND SHALL BE LAID OVER A GAS PERMEABLE MATERIAL MADE UP OF EITHER A MINIMUM 4" THICK UNIFORM LAYER OF CLEAN AGGREGATE, OR A MINIMUM 4" THICK UNIFORM LAYER OF SAND, OVERLAIN BY A LAYER OR STRIPS OF MANUFACTURED MATTING DESIGNED TO ALLOW THE LATERAL FLOW OF SOIL GASES.

2. ALL CONCRETE FLOOR SLABS SHALL BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH LOCAL BUILDING CODES.

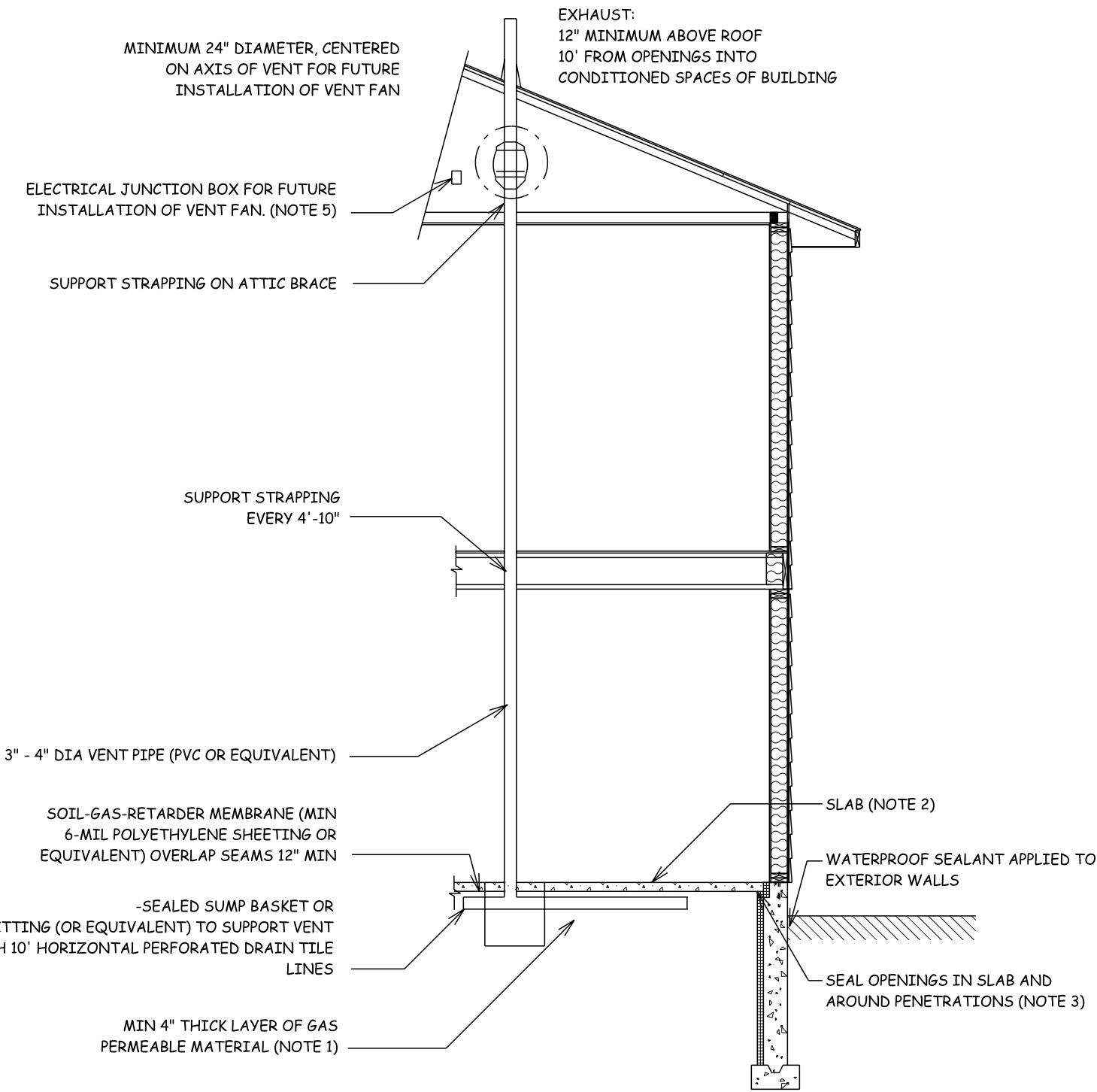
3. ALL OPENINGS, GAPS AND JOINTS IN FLOOR AND WALL ASSEMBLIES IN CONTACT SOIL OR GAPS AROUND PIPES, TOILETS, BATHTUBS OR DRAINS PENETRATING THESE ASSEMBLIES SHALL BE FILLED WITH NON-SHRINK MORTAR, GROUTS OR EXPANDING FOAM MATERIALS AND SMALLER GAPS WITH WITH AN ELSTOMERIC JOINT SEALANT, AS DEFINED IN ASTM C920-87.

4. VENT PIPES SHALL BE INSTALLED SO THAT ANY RAINWATER OR CONDENSATION DRAINS DOWNWARD INTO THE GROUND BENEATH THE SLAB OR SOIL-GAS-RETARDER MEMBRANE.

5. CIRCUITS SHOULD BE A MINIMUM 15 AMP, 115 VOLT.

6. ANY HORIZONTAL PIPING SHALL SLOPE DOWNWARD TOWARD STACK.

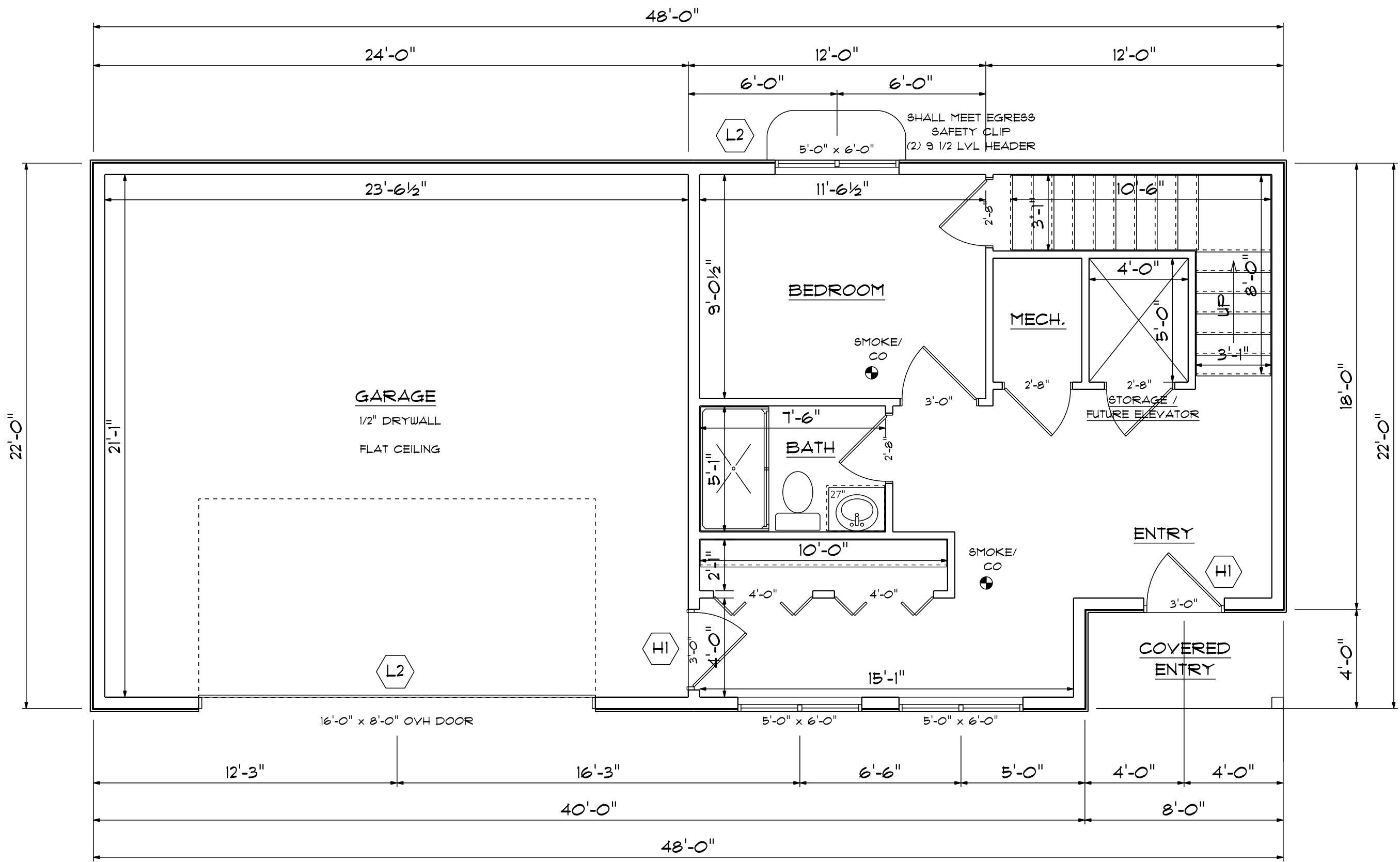
7. ALL VENT PIPES SHALL BE VISIBLY LABELED "RADON".



RADON SYSTEM

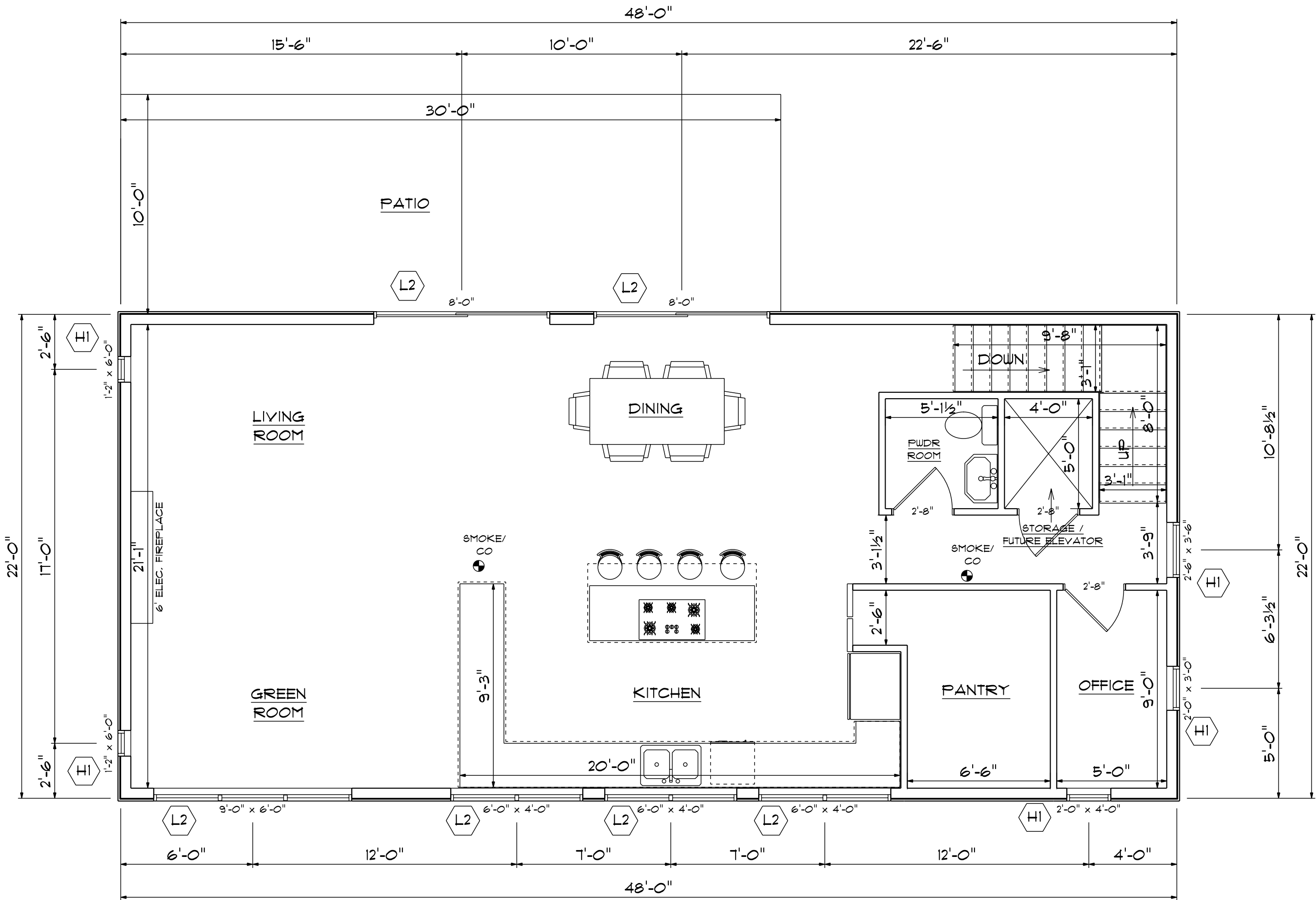
DIMENSIONS ARE TO OUTSIDE OF 2X6 WALL. ADJUST FOR WALL SHEATHING.

WINDOW RO'S TO BE PROVIDED BY WINDOW MANUF. U FACTOR IS 0.3 WINDOWS SIZES LISTED ARE GENERAL SIZES. CAULK AND SEAL ALL DOORS AND WINDOWS AS PER CODE



FIRST FLOOR

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



SECOND FLOOR

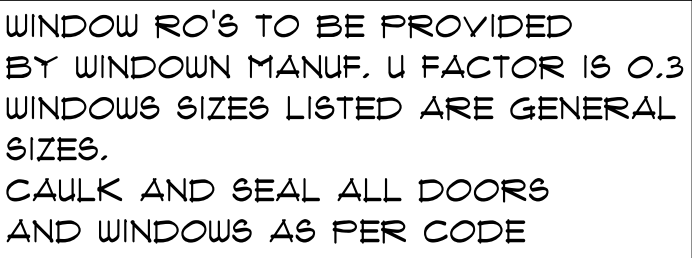
SCALE: 1/4" = 1'-0"

HEADER / BEAM SCHEDULE	
LABEL	DESCRIPTION
L1	2-PLY 9 1/4" LVL HEADER
L2	2-PLY 11 1/8" LVL HEADER
H1	2-PLY 2X10 HEADER; NO.2 OR BETTER
H2	2-PLY 2X12 HEADER; NO.2 OR BETTER

SM/CO SMOKE/CARBON MONOXIDE ALARM

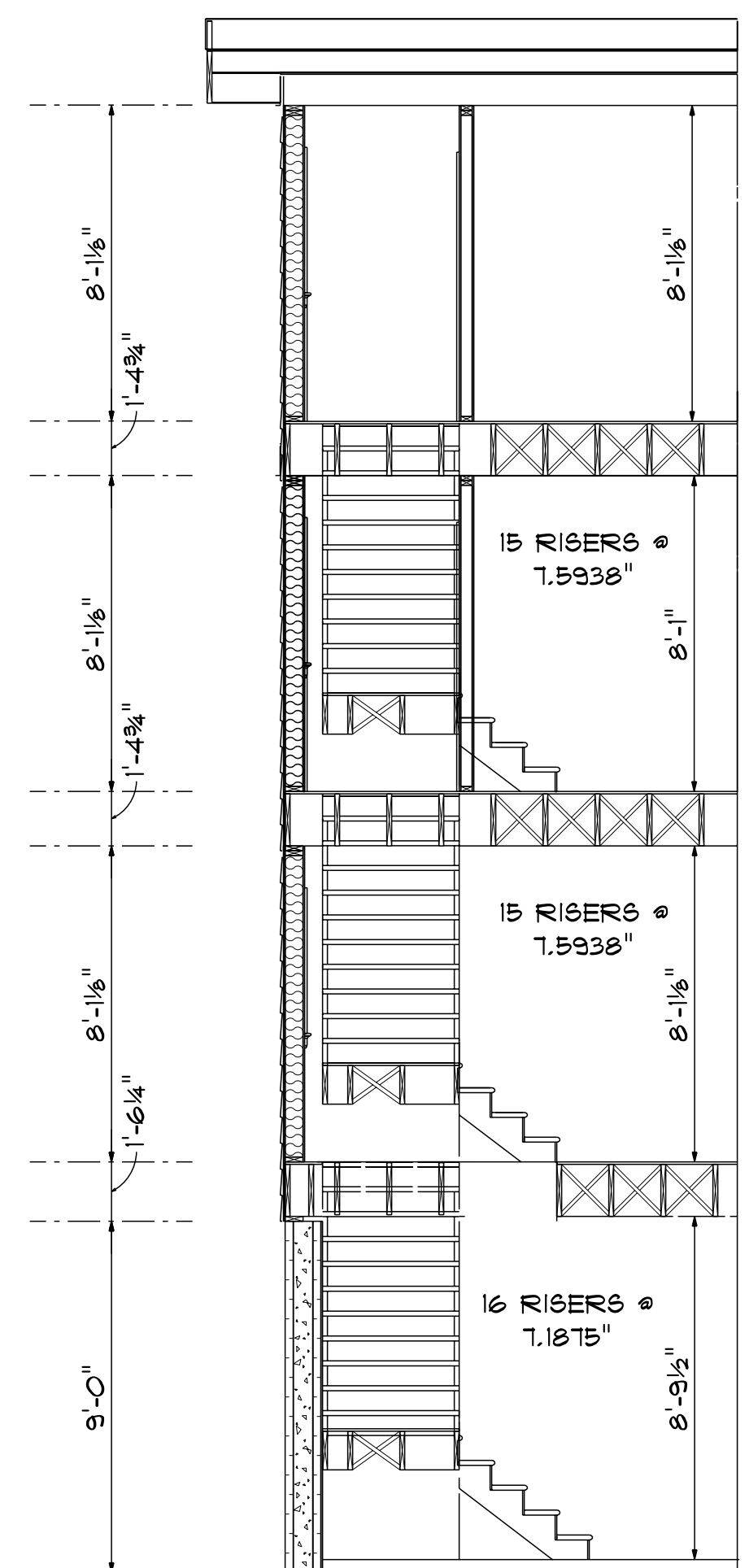
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SM/CO SMOKE/CARBON MONOXIDE ALARM



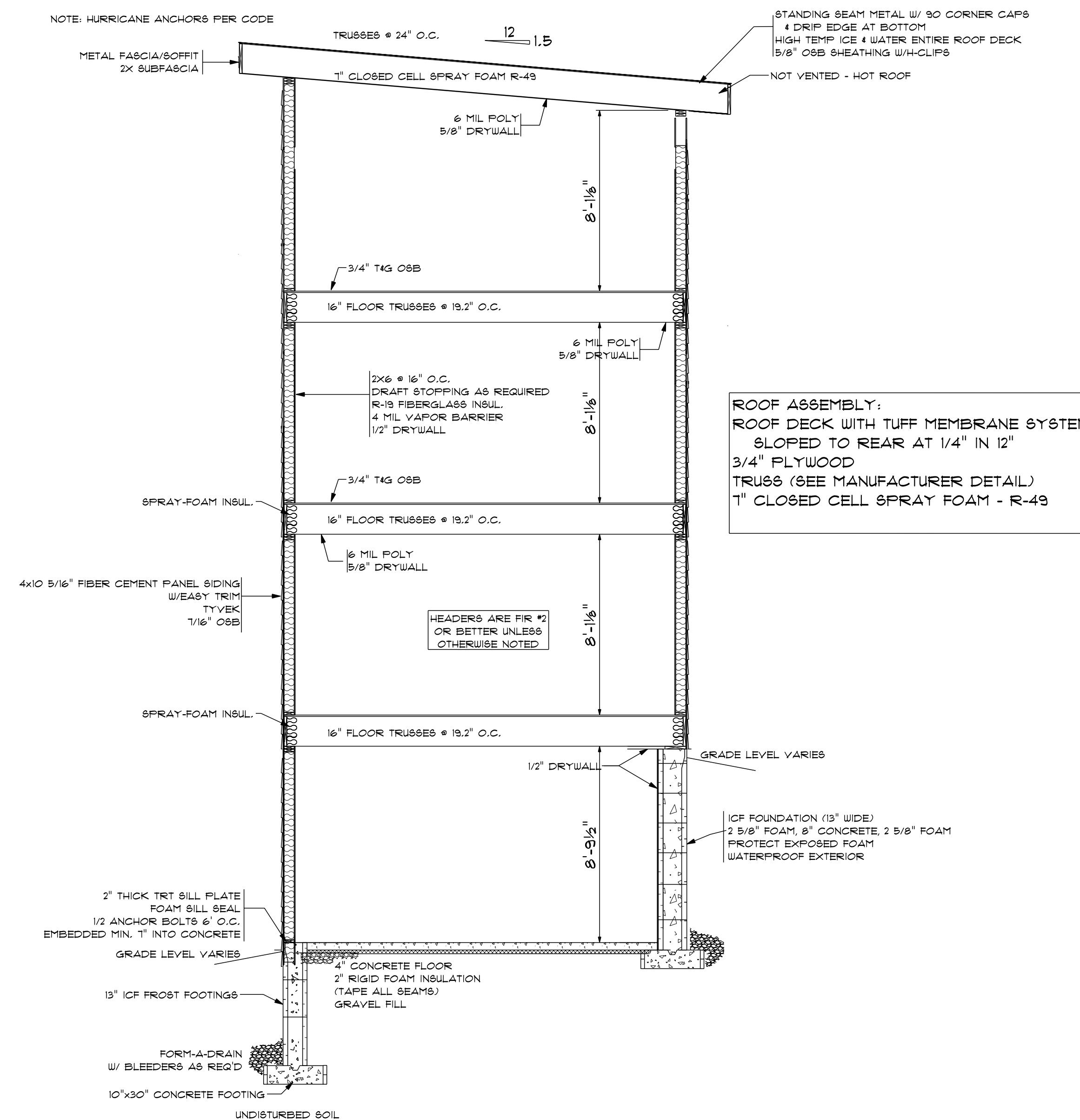
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UPPER FLOOR
SCALE: 1/4" = 1'-0"



CROSS SECTION

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



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

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STOCKE CONSTRUCTION -

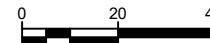
3731 LONDON RD
DETAILS

DETAILS

DATE: 11/15/2021

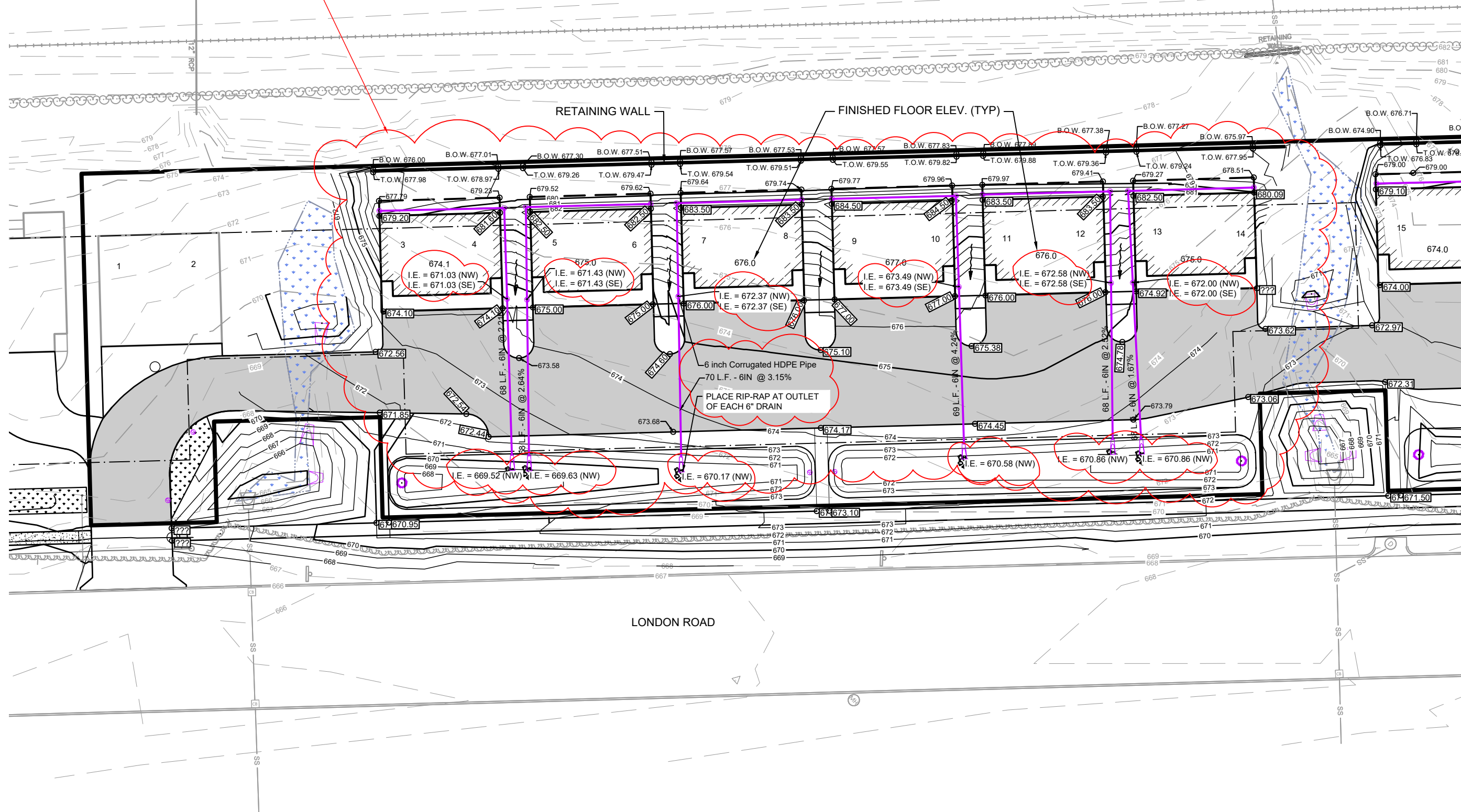
REVISÉ: 2/1/2022

DRAWING#: 4 OF 4



PLAN UPDATE
1.27.22

REVISION 3



- CONSTRUCTION NOTES:
1. CONTRACTOR TO GRADE BETWEEN BUILDINGS SO WATER FLOWS FROM THE BACK YARDS TO THE ROAD/STORMWATER SWALES.
 2. CONTRACTOR TO GRADE SIDEWALK CROSSING DRIVEWAY TO APPLICABLE ADA REQUIREMENTS.

PROJECT DATE: 02/17/20	DRAWN BY: EDC	NO. 1	DATE 8.2.2021	REVISION REGRADED BACK OF HOUSED, BOULEVARD, & SIDEWALK	BY SFS
	DESIGNED BY: EDC	2	11.5.2021	ALIGNMENT CHANGES, REGRADING OF PAVED AREAS	JAS
	CHECKED BY: JJJ	3	11.18.21	UNDERDRAIN AND REGRADING BACK OF LOTS	DAL

PLOT DATE: 4/21/2022 9:01 AM, P:\5300e\5330e\5331\05331006\CADD\Construction Drawings\05331006 Grading Plan.dwg

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JON M. LOYE		



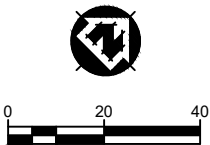
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FUNDING | PLANNING | ENVIRONMENTAL
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(218) 722-3915 www.msa-ps.com
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LONDON ROAD UTILITY EXTENSIONS
37TH TO 39TH AVENUE EAST
DULUTH, MN

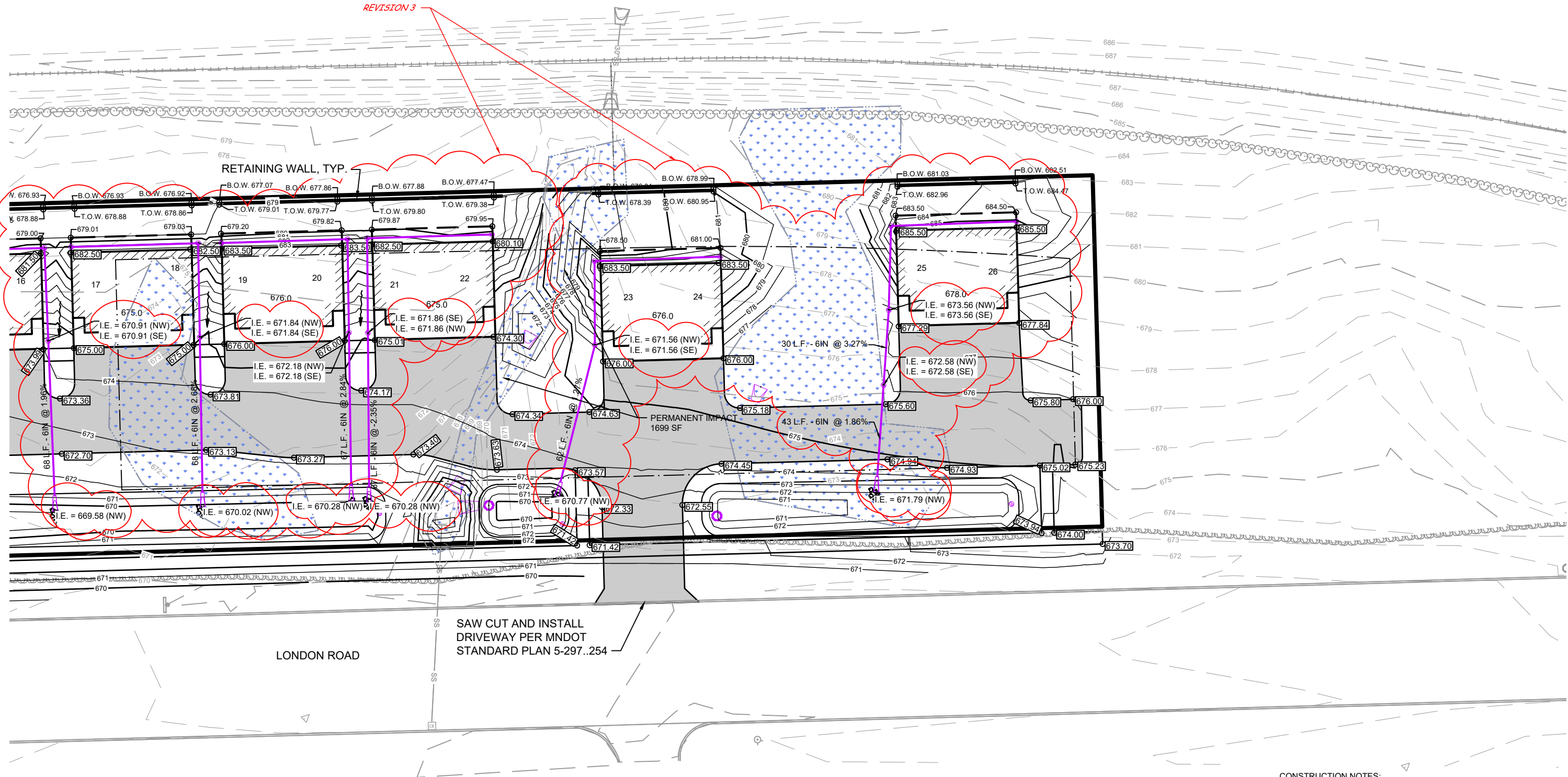
GRADING PLAN 1

PROJECT NO.
05331006
SHEET
S-5

PLAN UPDATE
1.27.22



REVISION 3



- CONSTRUCTION NOTES:
1. CONTRACTOR TO GRADE BETWEEN BUILDINGS SO WATER FLOWS FROM THE BACK YARDS TO THE ROAD/STORMWATER SWALES.
 2. CONTRACTOR TO GRADE SIDEWALK CROSSING DRIVEWAY TO APPLICABLE ADA REQUIREMENTS.

PROJECT DATE:	DRAWN BY:	NO.	DATE	REVISION	BY
02/17/20	EDC	1	8/2/2021	REGRADED BACK OF HOUSES, BOULEVARD, & SIDEWALK	SFS
	EDC	2	11.5.2021	ALIGNMENT CHANGES, REGRADED OF PAVED AREAS	JAS
	JJJ	3	11.18.21	UNDERDRAIN AND REGRADED BACK OF LOTS	DAL

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JON M. LOYE		

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LONDON ROAD UTILITY EXTENSIONS
37TH TO 39TH AVENUE EAST
DULUTH, MN

PROJECT NO. 05331006	SHEET S-6
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Twinhome buildings under construction on the site

Variance Application
London East
Height Restrictions

1. Please explain how the exceptional narrowness, shallowness or shape of the property, or exceptional topographic or other conditions related to the property, would result in practical difficulties under strict application of the requirements of the UDC:

This project has 28 lots on 3.14 acres along London Road. Being that London Road is state owned & operated, we were only allowed 2 ingress/egress curb cuts. We therefore needed to build a service road to access each individual lot. Further, we were requested to build a wider road than the normal to accommodate for emergency vehicles. We also needed to widen the road to accommodate additional guest parking for guests. Additionally, a sidewalk was required to accommodate pedestrian traffic. We also needed to incorporate 7 stormwater retention ponds to accommodate drainage.

All of these factors led to a shrinking of the buildable area for each dwelling unit. In keeping with the it has limited the size of the units and building up has made all the difference in being able to market homes that fit in this neighborhood. (This references Imagine Duluth 2035 plan: policy number 1, S4)

2. Please explain how the special circumstances or conditions that create the need for relief is due to circumstances unique to the property, and were NOT created by the property owner or the property owners' predecessors-in-interest:

Being on a state highway with only two curb cuts being allowed created the need to build the service road. Being at the lowest point of the hill that is Duluth created the need for the large retention ponds.

3. Please explain the special circumstances or conditions applying to the building or land in question are peculiar to this property or immediately adjoining properties, and do not apply generally to other land or buildings in the vicinity:

The neighborhood is comprised of several mansions, an apartment complex, an assisted living facility, and East High School. The character and feel is for larger structures. We feel these attributes of the neighboring properties are in line with our request.

Also, these proposed Scenery Lofts on the single family homes will have the same width as the adjacent townhomes, keeping a similar style and symmetry to the project.

4. Please explain how the application proposes to use the property in a reasonable manner, which would not be permitted by this code except for a variance:

As the buildable footprints in this site are small, the only method to design in the square footage necessary to meet the demand for this area is to go up. The views of Lake Superior are at a premium. This use would allow for Scenic Lofts, which are a permitted exception to the height restriction in the code. Also, keeping the footprints to a minimum minimizes the need for excavation on each site.

5. Please explain how that if the variance is granted it will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety or public welfare of the inhabitants of the city:

The additional height, if granted, will not affect any surrounding properties as one side is London Road and the other is the railroad. The height variance would not affect the traffic on London Road. The variance requested will not impair safety, as the backyard is similar to any 2 story structure and does not impose an undue safety concern. The height would not impair the established property values. Due to the unique characteristics of the variance, it would help to increase property values.

6 Please explain how, if the variance is granted, it will not substantially impair the intent of zoning code and the official zoning map, and will not alter the essential character of the neighborhood:

If the intent of the code is to follow the Imagine Duluth 2035 Forward Together outline; Section 8, Housing, each item in Policy #1 fits with our request:

Policy #1 – Increase density in and around the designated Core Investment Areas

- Promote infill development with a mix of densities appropriate to the context of the surrounding neighborhood.
 - This is an infill site, with the requested variance allowing for a fit with the neighboring properties
- Encourage and incentivize live/work opportunities.
 - With the variance, we are allowing for the space necessary for a home office
- Explore opportunities to increase amenities to create livable and walkable neighborhoods.
 - The sidewalk being added into this project increased the walkability of the neighborhood, but inhibited the horizontal footprint of the structures, necessitating a vertical build to accommodate the square footage necessary to maintain the character of the Congdon neighborhood.
- Focus on creative housing options of a non-traditional neighborhood design, such as homeownership through dense attached or detached single-family housing development fronting a pedestrianized street.

- The variance requested is a creative design approach to overcoming the site's given parameters and helps to keep the character of the Congdon neighborhood.
- Create walk-to-work incentives for employers to support housing near employment centers.
 - This site incentivises walk-to-work for downtown employers. The requested variance adds the square footage that is being demanded of these residents of our city, and also helps to keep the character of the neighborhood.

Further, There is a provision in the code for Exceptions to Height Restrictions; 50-21.3 Exceptions and encroachments for Scenery Lofts and Elevator Penthouses. There are no descriptions in the code under Article 6: Definitions depicting what Scenery Lofts or Elevator Penthouses are. We felt that this variance request fell into this parameter.

Does your variance request need to meet any of the specific criteria in UDC Section 50-37.9, subsections D through M (E. Unsewered Areas, F. Two Family Dwellings in R-1, G. Parking Regulations, H. Reduce Setbacks, I. MU-C District, J. Airport Overlay, K. Flood Plain Regulations, L. Shorelands, or M. Non-Conforming Buildings)? Yes No

- No