



# Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION  
MAY 26, 2022

## 2440 Shattuck Avenue

**Use Permit #ZP2021-0201 to demolish one existing commercial building and construct an eight-story, mixed-use building with 40 dwelling units and 2,160 square feet of ground-floor commercial space.**

### I. Background

#### A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-DMU (Corridor) – Downtown Mixed-Use Commercial District – Corridor Sub-area

#### B. Zoning Permits Required:

- Use Permit under Berkeley Municipal Code (BMC) Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a mixed-use residential development
- Use Permit under BMC Section 23.204.030(B)(1) to construct greater than 10,000 square feet of new gross floor area
- Use Permit under BMC Section 23.204.130(E)(1) to increase the maximum height limit to 75 feet
- Administrative Use Permit under BMC Section 23.304.050(A) to allow architectural features over the maximum height limit

#### C. Concessions and Waivers and Pursuant to State Density Bonus Law (CA Gov't. Code Section 65915)

- Concession to reduce the required commercial off-street parking spaces from four spaces to zero
- Waiver of BMC Section 23.204.130(E)(1) to exceed the maximum 75-foot height limit and permit an 87-foot tall building
- Waiver of BMC Section 23.204.130(E)(3) to reduce the rear setback above 75 feet in height from 15 feet to 5 feet

- Waiver of BMC Section 23.204.130(E)(3) to reduce the street side setback between 21 and 75 feet in height from 5 feet to zero feet, and above 75 feet in height from 15 feet to zero feet
- Waiver from BMC Section 23.204.130(E)(3) to reduce the interior side setback above 75 feet in height from 15 feet to 5 feet
- Waiver of BMC Section 23.204.130(E)(4) to reduce the residential useable open space requirement from 3,200 square feet to 1,150 square feet
- Waiver of BMC Section 23.204.130(E)(4) to reduce the privately-owned public open space requirement for commercial area from 43 square feet to zero

**D. CEQA Recommendation:** It is staff's recommendation that the project is categorically exempt pursuant to Section 15332 of the CEQA Guidelines ("Infill Development"). The determination is made by ZAB.

The project meets all of the requirements of this exemption, as follows:

- The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
- The site can be adequately served by all required utilities and public services.

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

**E. Parties Involved:**

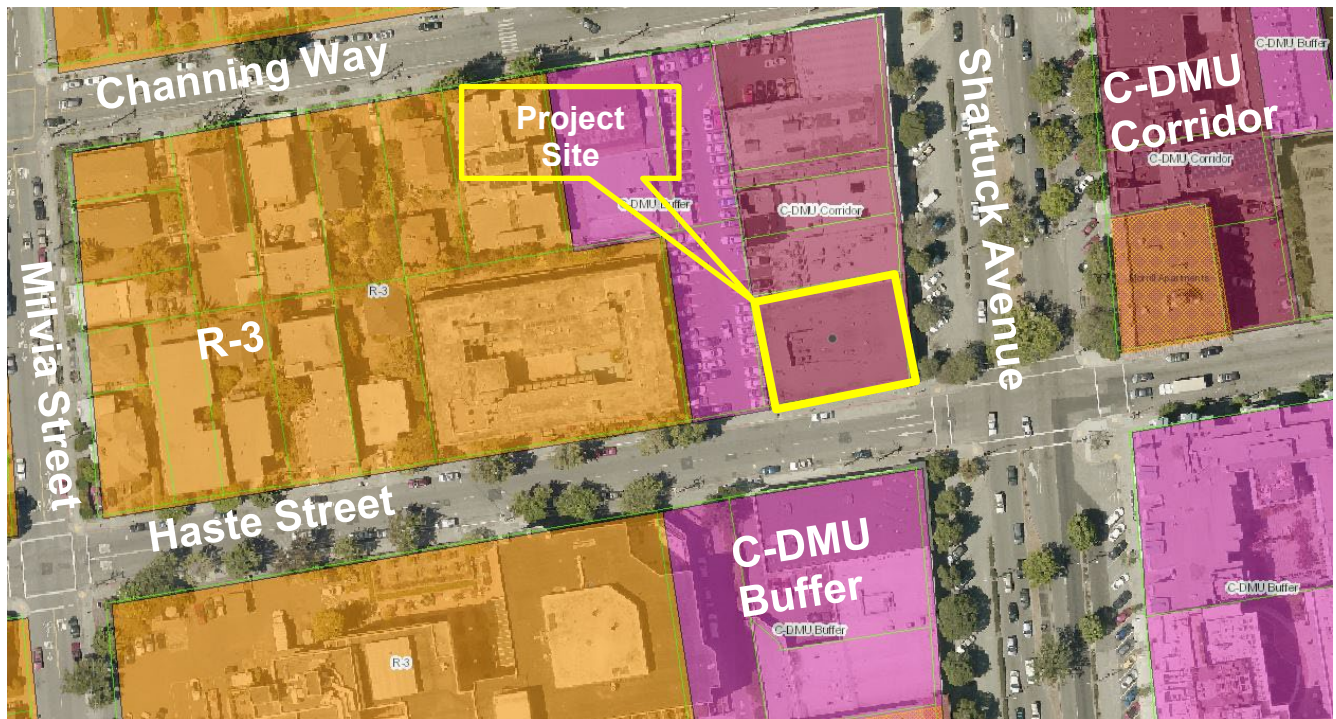
- Applicant Dave Johnson, Johnson Lyman Architects, Walnut Creek
- Property Owner The Austin Group, LLC, Alamo

**F. Application Materials, Staff Reports and Correspondence are available on the Internet:**

<https://aca.cityofberkeley.info/citizenaccess/Default.aspx>

<https://cityofberkeley.info/your-government/boards-commissions/zoning-adjustments-board>

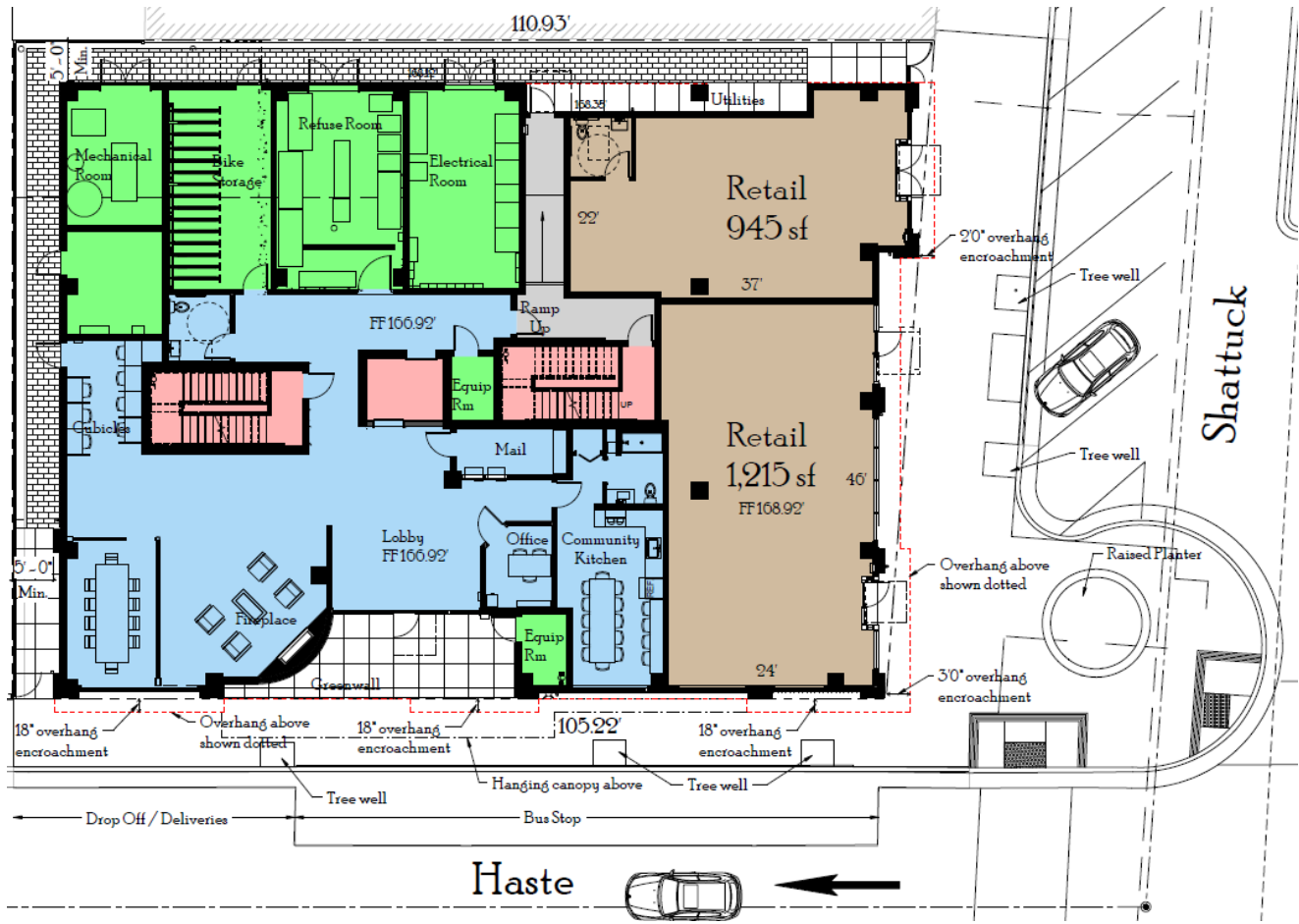
**Figure 1: Vicinity Map and Downtown Area Plan Land Use Map Detail**



C-DMU Corridor: Downtown Mixed-Use Corridor  
C-DMU Buffer: Downtown Mixed-Use Buffer  
R-3: Multiple-Family Residential District



Figure 2: Site Plan/Ground Floor Plan



**Figure 3: Floor Plans**



**Figure 4: Perspective Rendering – view looking southwest from Shattuck Avenue**



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Commercial, Retail (Dollar Store)	C-DMU (Corridor)	Avenue Commercial
Surrounding Properties	North	Commercial, Restaurant (Noodles Fresh)		
	South	Commercial, Retail (Vacant)	C-DMU (Buffer)	
	East	Mixed-Use	C-DMU (Corridor)	
	West	Residential (4-story apartment building)	R-3	High Density Residential (HDR)

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Resolution 66,618-N.S.)	No	The proposed non-residential floor area is less than net new 7,500 sq. ft. and therefore this project is not subject to this resolution.
Affordable Housing Fee for qualifying non-residential projects (Resolution 66,617-N.S.)	No	The proposed non-residential floor area is less than net new 7,500 sq. ft. and therefore this project is not subject to this resolution.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	Project would provide three Below Market Rate (BMR) units at the Very Low-Income (VLI) rate, and pay a fee to satisfy the requirements of BMC Section 22.20.065 (See discussion below).
Creeks	No	The site is not near a mapped creek or a creek culvert.
Density Bonus	Yes	The project qualifies for a 32.5 percent density bonus under State Density Bonus law (See discussion below).
Natural Gas Prohibition (BMC 12.80.020)	Yes	This project is an application for new construction and was submitted after January 1, 2020, and is therefore subject to the Natural Gas Prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City and has not previously been surveyed individually for historical significance under local, state, or federal historic significance criteria. See Section IV.C for additional discussion on the Landmarks review of this property.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The base project complies with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act applies. See Section V.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB330)	Yes	The project is: a mixed-use project with at least two-thirds of the square-footage residential. See Section V.A of this report for additional discussion on the sections of SB330 that apply to the project.
Oak Trees	No	There are no oak trees on the property.

Rent Controlled Units	No	The existing building on the site contains a non-residential (commercial) use, and no rent-controlled units will be demolished.
Residential Preferred Parking (RPP)	No	The site is in RPP area zone "C"; the project would not be eligible for RPP permits per BMC Section 23.322.040(K)(2), which prohibits residents of newly constructed or converted units in the C-DMU Zoning District from eligibly for RPP permits.
Percent for Art (BMC Chapter 23.316)	Yes	The project is subject to the City's Public Art on Private Projects ordinance. Applicants have indicated that they will submit a deposit to the City's Public Art Fund to satisfy this requirement.
Seismic Hazards (SHMA)	No	The site is not located within an area susceptible to liquefaction, fault rupture, or landslides as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites). Per §15300.2 of the CEQA Guidelines, a categorical exemption may be used on sites not listed on the Cortese List.
Transit	Yes	The site is on the corner of Shattuck Avenue and Haste Street. Shattuck Avenue is served by AC Transit lines 800, 18, 36, and F, and there is a bus stop at the southern property line, as well as across Shattuck. In addition, Channing Way and Milvia Street are Bike Boulevards. There is a BayWheels bike share station located one block north at Shattuck and Channing.

**Table 3: Project Chronology**

Date	Action
November 9, 2021	Application submitted
February 23, 2022	Interdepartmental Roundtable Meeting
February 24, 2022	Application deemed complete; level of CEQA review determined by staff – Categorically Exempt
April 7, 2022	LPC Demolition Referral
April 21, 2022	DRC Preliminary Design Review meeting
May 11, 2022	Public hearing notices mailed/posted
May 26, 2022	ZAB hearing
July 25, 2022	CEQA Determination Deadline

**Table 4: Development Standards**

C-DMU Corridor Standards BMC Sections 23.204.130, 23.322.030			Existing	Proposed Total	Permitted/ Required	
Lot Area (sq. ft.)			8,560	8,560	N/A	
Gross Floor Area (sq. ft.)			6,500	58,288	N/A	
Floor Area Ratio			0.76	6.8	N/A	
Dwelling Units	Total		0	40	N/A	
	Affordable		0	3 VLI	N/A	
Building Height	Average (ft.)		23'-6"	87'-0" <sup>1</sup>	40' min/60' max 75' max with Use Permit	
	Maximum (ft.)		23'-6"	87'-0"	N/A	
	Stories		1	8	N/A	
Building Setbacks (ft.)	Front (Shattuck Ave)		0'	0'	0' min. (0' - 75')	
				20'	15' min. (above 75')	
	Rear		0'	5'	0' min. (0' - 20')	
				5'	5' min. (21'-75')	
				5'	15' min. (above 75')	
	Left Street Side (Haste)		0'	0'	0' min. (0' - 20')	
				0'	5' min. (21' - 75')	
				0'	15' min. (above 75')	
	Right Interior Side (North)	0'-65' from lot frontage		0'	5'	0' min. (0'-75')
					5'	5' min. (above 75')
>65' from lot frontage		0'	5'	0' min. (0'-20')		
			5'	5' min. (21'-75')		
			5'	15' min. (above 75')		
Lot Coverage (%)			76	81	N/A	
Usable Open Space (sq. ft.)	Residential		N/A	1,150	80/Unit 3,200 Min.	
	Commercial (Privately-Owned Public Open Space)			0	1/50 sq.ft. 43 min.	
Parking	Commercial		0	0	4 min.	
	Residential		0	0	0 min.	
	Bicycle	Long-term	0	44 Long-term		29 min. Long-term
		Short-term		2 Short-term		2 min. Short-term
<p><sup>1</sup> = Waiver, pursuant to State Density Bonus Law, requested to modify the district standard.</p> <p><sup>2</sup> = Concession, pursuant to State Density Bonus Law, requested to modify the district standard.</p> <p><sup>1</sup> The use permit to allow height up to 75 feet is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Additional height beyond 75' is being requested as a waiver.</p>						

## II. Project Setting

- A. Neighborhood/Area Description:** The project site is located in downtown Berkeley, along the north side of Haste Street at the corner of Shattuck Avenue and Haste Street. The surrounding area consists of commercial, mixed use, residential and medical office buildings ranging from one to five stories in height. One block north between Channing Way and Durant Avenue is the approved Logan Park development – two eight-story buildings totaling 287,872 square feet, including 237 dwelling units and 12,000 square feet of ground-floor commercial space. The Downtown Berkeley BART station is located to the north within a short walking distance from the project site (0.3 miles). In addition, bus service is available via transit lines on Shattuck Avenue.
- B. Site Conditions:** The project site rectangular and generally level, 8,560 square foot corner lot with 79 feet of frontage along Shattuck Avenue and approximately 105 feet of frontage along Haste Street. The site is currently developed with a one-story 6,500 square-foot concrete commercial building, which until recently contained the Dollar Tree. There is a bus stop located at the south property line along Haste Street, including 81 feet of red curb and 70-foot long by 9-foot wide bus stop concrete apron. A curb cut and yellow loading zone occupy the remaining street frontage along Haste Street toward the rear of the property. A concrete bulb out and street trees are located in the sidewalk at the front of the property facing Shattuck Avenue.

## III. Project Description

- A. Proposed Project:** The project would demolish the existing building, remove the existing curb cut and driveway on Haste Street, and construct a new mixed-use building with the following primary components:
- 40 dwelling units (7 one-bedroom, 19 two-bedroom, 14 three-bedroom) for a total of 87 bedrooms;
  - 2,160 square feet of commercial space for two retail tenants on the ground floor at the west side of the property with access from Shattuck Avenue (Note: tenants have not yet been selected for these spaces);
  - A bicycle storage room for 44 bicycles on the ground floor and a total of four on-site short-term bicycle racks located along Shattuck Avenue;
  - A residential lobby with “greenwall” and recessed entry, with access from Haste Street;
  - Residential amenities on the ground floor including community kitchen, office, lounge with fireplace, and space for cubicles and conference room;
  - Three new street trees along Haste Street;
  - Useable open space of 1,150 square feet, located on the eighth-floor terrace fronting Shattuck Avenue;
  - A five-foot setback at the right (interior) and rear property lines to allow for access to the mechanical, bike storage, refuse and electrical rooms at the rear of the building on the first floor.

**B. Base Project and Density Bonus:** The applicant has requested a density bonus under the State Density Bonus Law. Under the City’s density bonus procedures, the “base project”<sup>1</sup> is 30 units and six stories. The Density Bonus calculations are provided in more detail, below:

**Table 5: Density Bonus**

Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units*	Proposed Project Units
30	3 VLI (10% of BP)	32.5%	10 (32.5%x30)	40
*Per Gov’t Code 65915(q), all unit calculations are rounded up to the nearest whole number.				

By providing three Very Low Income (VLI) BMR units on site (10 percent of the 30-unit base density), the project is eligible for a 32.5 percent density bonus, or 10 additional units. Therefore, the applicant proposes 10 additional units above the base density for a total of 40 dwelling units.

To accommodate the additional units, the project would use six waivers/modifications: 1) exceed the height limit of 75 feet and propose 87 feet in height, 2) reduce the required rear setback above 75 feet in height from 15 feet to five, 3) reduce the required left (street) side setback between 21 and 75 feet in height from five feet to zero and above 75 feet in height from 15 feet to zero; 4) reduce the required right (interior) side setback above 75 feet in height more than 65 feet from the lot frontage from 15 to five; 5) decrease the minimum residential useable open space from 3,200 square feet to 1,150 square feet; and 6) decrease the minimum privately-owned public open space for commercial area from 43 square feet to zero. The project is eligible for two concessions, and would use one concession to: 1) decrease the required commercial parking from four spaces to zero spaces.

#### IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting the application to the City, the applicant installed yellow *Proposed Development Project* signs at the project site and invited interested neighborhood organizations, as well as owners and occupants within 300 feet of the project site, to a neighborhood outreach meeting on October 26, 2021 at First Presbyterian Church. Two members of the public attended and asked questions about the size of the project and construction timing.

On May 11, 2022, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and posted notices within

<sup>1</sup> Per the City’s Density Bonus Procedures (DBP), the Base Project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc.), or, the *maximum allowable density* for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the Proposed Project, which is the number of Base Project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, Section 65915(f).

the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.

**B. Design Review Committee:** The project was presented to the Design Review Committee (DRC) on April 21, 2022. The project received a favorable recommendation to the ZAB, with the following direction for Final Design Review (FDR) [MOTION: (Kahn, Mitchell); VOTE (7-0-0-0)]:

### Conditions

- Show more color at FDR, even if an alternate palette proposal.
- Consider integrating the cornice with the trellis design.
- Horizontal trim at the 7<sup>th</sup> floor should remain in the design.
- Consider a stronger base.
- Consider making the bay on the northeast corner a more prominent feature.
- Provide a slide window into commercial storefront area.

### Recommendations

- Recommend coming sooner for FDR since review could affect many building details.
- Building facades need more depth.
- Look carefully at storefront mullion proportions
- Northeast bay - consider different canopy or horizontal trim detail below it, or a smaller green wall statement.
- Consider a stronger relationship between the base and floors above. Now, the only bay that aligns is the northeast corner.
- 7<sup>th</sup> floor trim line is a successful detail.
- Middle bay on Haste may be too thin.
- 2<sup>nd</sup> floor windows look short.
- Supports on entrance canopy could be improved and better balanced with bay above.
- North and west elevations are also very visible. Details should be added to these elevations as well.
- Bird safe glazing is recommended, especially at the green wall and the ground floor storefronts.
- Recommend an alternate color palette with a bolder statement. Add more color. Show option @ FDR.
- Look at slightly lighter shade for dark stucco color.
- Recommend adding a lot of green on the trellis and making a stronger statement. Doesn't need to be steel, but should be green.
- Design should work both with or without the green wall.
- Four (4) street trees are recommended on Haste.

**C. Landmarks Preservation Commission:** The project involves the demolition of an existing commercial building that is over 40 years in age. Per a Historic Resource Evaluation completed by Left Coast Architectural History on October 1, 2021, the building proposed for demolition does not meet the criteria for the California Register

or a City of Berkeley Landmark. Pursuant to BMC Section 23.326.070(C), the proposed demolition was referred to the LPC for review prior to the consideration of the Use Permit. The LPC reviewed the demolition referral on April 7, 2022, and took no action.

## V. Issues and Analysis

**A. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330 (SB 330), seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for, and suspending or eliminating restrictions on, housing development. Housing development is defined as a project that is: all residential, a mixed-use project with at least two-thirds of the square-footage residential, or transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five (5) hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The project application was deemed complete on February 24, 2022. The LPC demolition referral on April 7, 2022 represents the first public hearing. The DRC meeting on April 21, 2022 represents the second public hearing, and the May 26, 2022 ZAB hearing the third for the proposed project since the project was deemed complete. The City can hold up to two additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

As discussed in an historic resource evaluation prepared for the property in October 2021, the property does not appear to be historically significant and therefore is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. The demolition referral occurred at the April 7, 2022 LPC meeting, and no action was taken. Therefore, it was determined the sites are not a historic resource. Further, standard conditions

of approval have been included to halt work in case of any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on February 24, 2022. If the ZAB determines the application is categorically exempt from CEQA at the May 26, 2022 public hearing, the application must be approved or disapproved by July 25, 2022.

**B. Housing Accountability Act Analysis:** The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact<sup>2</sup> on public health or safety unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The Base Project, including the extension of height to 75 feet and rooftop elements above the district height limit, allowed by use permits<sup>3</sup>, complies with applicable, objective general plan and zoning standards. Further, Section 65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduced the density with respect to those units without basing its decision on the written findings under Section 65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. Therefore, Section 65589.5(j) *does apply* to the Proposed Project. All findings discussed below are subject to the requirements of Government Code Section 65589.5.

**C. Demolition of Non-residential Buildings:** BMC Section 23.326.070(D) allows the ZAB to approve a Use Permit for demolition of an existing commercial structure only if the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and makes one of the following

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<sup>2</sup> A “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete”.

<sup>3</sup> The City has determined that the “protections afforded by the HAA and the definition of a base project for density bonus calculations apply to a housing development project up to and including the maximum development allowed with use permits and/or administrative use permits”. Therefore, the use permits to allow height to 75 feet and rooftop elements to exceed height limits are included in the Base Project for the purpose of determining the applicability of Section 65589.5(j).

findings that the demolition of the structure: (1) is required to allow a proposed new building or other proposed new use; (2) will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses; (3) will remove a structure which represents an un-abatable attractive nuisance to the public; or (4) is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority.

The most recent use of the existing building was retail (Dollar Store), which is vacant. The demolition of this building is proposed to allow the development of a new mixed-use residential building that includes 2,160 square feet of commercial area on the ground floor to be used as two retail tenant spaces. In addition, there are several other retail tenant spaces within one block of the project site. As such, existing and new residents in the area would continue to have access to retail tenant spaces even with the demolition of the structures. The demolition of the commercial building and proposed construction of ground floor commercial area within the new mixed-use building would conform to the adjacent uses permitted in the C-DMU District along Shattuck Avenue.

Because the demolition of the non-residential structure is required in order to authorize construction of the proposed new building and new use, staff believes the ZAB can make finding #1 to approve the proposed demolition. As noted in Section IV.C above, the non-residential building is not eligible for the California Register or a City of Berkeley Landmark or Structure of Merit designation, and the LPC considered the referral and took no action. The proposed project includes a mixed-use building which will provide new dwelling units and commercial space in this District, and thus would be compatible with adjacent and nearby commercial and residential uses.

**D. Density Bonus Concessions and Waivers:** The project is entitled to two concessions (or incentives) under Government Code Section 65915(d), and an unlimited number of waivers under Section 65915(e).

Concessions. A concession is a modification of a development standard that reduces the cost of providing affordable housing. The applicant is requesting one concession for the project to decrease the required commercial parking from four spaces to zero spaces. The residential units do not require parking; however, the commercial tenant space requires four spaces, which are the subject of the requested concession.

The City may only deny the concession if it finds that the concession would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the concession would be contrary to State or Federal law. Staff believes such a finding cannot be made.

Waiver. A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus

and concessions. The applicant is requesting six waivers from the following development standards: 1) Height (from 75 feet to 87 feet), 2) Rear Setback above 75 feet in height (from 15 feet to five), 3) Street Side Setback between 21 and 75 feet in height (from 5 feet to zero) and above 75 feet from 15 feet to zero; 4) Interior Side Setback above 75 feet in height more than 65 feet from the lot frontage from 15 to five; 5) Useable Open Space – residential from 3,200 square feet to 1,150 square feet; and 6) Privately-Owned Public Open Space for commercial area - from 43 square feet to zero. The waivers are requested because they are necessary to physically accommodate the additional 10 units as allowed under the density bonus project on the site.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the waiver would be contrary to State or Federal law. Staff believes such a finding cannot be made.<sup>4</sup>

## VI. Other Considerations

The following analyses of conformance with district purposes, use permit findings for non-detriment, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context; they are not required because the proposed project is HAA-compliant.

**A. C-DMU Findings:** As required by BMC Section 23.204.130(I), the Zoning Adjustments Board (ZAB) must find that the proposed structure is compatible with the purposes of the C-DMU Zoning District and compatible with the surrounding uses and buildings. Further, BMC Section 23.406.040(E) requires a finding of general non-detriment for any Use Permits in the C-DMU. Use Permits to exceed the height limit of 60 feet, up to 75 feet, and for the rooftop elements to exceed the district height limits are included in the Base Project for the density bonus, and are subject to the findings in Section 65589.5(j) of the HAA. (See section III.C for discussion on the HAA.)

- 1) Conformance with District Purposes: The Project is a higher-density development in proximity to regional transit, shops and amenities that is compatible with the purposes of the zoning district and the surrounding uses and buildings. The project site is located within the Downtown Mixed-Use District (C-DMU), Corridor Area, as identified in the City's Downtown Area Plan (DAP). It will create 40 dwelling units in a range of sizes from one- to three-bedrooms. Three (3) of the units will be deed restricted as affordable housing units for very-low-income residents.

The proposal also includes 2,160 square feet of commercial space and 44 secure bicycle parking spaces on the ground floor. The Project site is well served by

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<sup>4</sup> See Footnote 5.

public transportation, including a BART station less than half-mile to the north. The surrounding commercial district includes retail sales, restaurants, offices, mixed-use developments, and institutional uses; the Project will add to these commercial uses and add population to support these uses.

- 2) Compatibility with Surroundings: As required by BMC Section 23.204.030(B)(2), construction of more than 10,000 square feet of new gross floor area states that the ZAB must find that the new building is compatible with the visual character and form of the district, and no designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition. The DRC unanimously voted to make a favorable recommendation for this project to the ZAB due to its massing, compatibility with surrounding form and character of the District, and presence on the Shattuck and Haste frontages. Further, the LPC determined there were no designated landmark structures, structures of merit, or historic district in the vicinity that would be adversely affected by the appearance or design of the proposed building.

The neighborhood is a mix of residential and commercial uses, including apartments, offices, food service establishments, retail and personal service establishments. Existing buildings in the immediate neighborhood vary in height from one to five stories, with two recent buildings at eight stories one block north of the project site. The building's proposed massing has a strong street wall presence at the property line on Shattuck Avenue with high ceilings on the ground floor, and on Haste Street with a recessed residential entry with a 'green' wall.

- 3) Non-Detriment: This project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City because of the following reasons:

- i. Shadows: According to the shadow studies submitted for the project (See Attachment 1, Project Plans – Sheets SH1 and SH2), new shadows would affect dwellings in the existing mixed-use buildings directly east and southeast of the site (at the northeast and southeast corners of Shattuck Avenue and Haste Street), casting new shadows in the winter and summer months in the few hours before sunset.

Shadow impact on adjacent dwellings are to be expected, because the subject site is located in the C-DMU district, which allows heights of up to 60 feet, by right. In addition, a use permit to exceed this limit, up to 75 feet, is allowed to be included in the density bonus base project; and a waiver is allowed for height beyond 75' to accommodate the density bonus units (see section V.D for a discussion of waivers), for a proposed building of 87 feet and eight-stories. The additional height above the district limits would cast shadows in the affected directions further than if the project

were limited to the base district height standards. Staff believes that shadow impacts from the project would be reasonable and not detrimental.

- ii. Also, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

**B. Roof-Top Projections:** BMC Section 23.304.050(A) requires an Administrative Use Permit for roof-top projections, such as mechanical penthouses, elevator equipment rooms or stair towers, that would exceed the maximum height limit. Such projections are limited to no more than 15 percent of the average floor area of all of the building's floors, and cannot be used as habitable space or for commercial purposes. The project proposes a staircase/elevator penthouse, totaling 360 square feet that extends eight feet over 87-foot-tall roof height. The penthouses represent 5 percent of the 7,634-square-foot average all the floor areas. The projection is, therefore, permissible.

**C. General Plan Consistency:** The following analysis of conformance with the 2002 General Plan goals and policies is provided for information purposes only.

1. Policy LU-3 – Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy H-33 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City's share of regional housing needs.
3. Policy LU-7 – Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
4. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
5. Policy UD-24 – Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
6. Policy H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
7. Policy T-16 – Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.

8. Policy T-43 – Bicycle Network, Action C: Encourage, and when appropriate, require new multi-family residential developments to provide secure locker space for resident bicycles.
9. Policy UD-17-Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
10. Policy T-16-Access by Proximity: Improve access by increasing proximity of residents to services, goods, and employment centers.

**D. Downtown Area Plan:** The Project is located in Downtown Berkeley, within the C-DMU Downtown Mixed-Use District. The purpose of this district is to implement the vision and goals of the Downtown Area Plan, adopted in 2012, and require that a proposed structure be compatible with the surrounding uses and buildings.

## VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** ZP2021-0201 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, dated March 15, 2022
3. Notice of Public Hearing

**Staff Planner:** Sharon Gong, [sgong@cityofberkeley.info](mailto:sgong@cityofberkeley.info), (510) 981-7429

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

MAY 26, 2022

### 2440 Shattuck Avenue

**Use Permit #ZP2021-0201 to demolish one existing commercial building and construct an eight-story, mixed-use building with 40 dwelling units and 2,160 square feet of ground floor commercial space.**

#### **PERMITS REQUIRED**

- Use Permit under Berkeley Municipal Code (BMC) Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a mixed-use residential development
- Use Permit under BMC Section 23.204.030(B)(1) to construct greater than 10,000 square feet of new gross floor area
- Use Permit under BMC Section 23.204.130(E)(1) to increase the maximum height limit to 75 feet
- Administrative Use Permit under BMC Section 23.304.050(A) to allow architectural features over the maximum height limit

#### **CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918**

- Concession to reduce the required commercial off-street parking spaces from four spaces to zero
- Waiver of BMC Section 23.204.130(E)(1) to exceed the maximum 75-foot height limit and permit an 87-foot tall building
- Waiver from BMC Section 23.204.130(E)(3) to reduce the rear setback above 75 feet in height from 15 feet to 5 feet
- Waiver of BMC Section 23.204.130(E)(3) to reduce the street side setback between 21 and 75 feet in height from 5 feet to zero feet, and above 75 feet in height from 15 feet to zero feet
- Waiver from BMC Section 23.204.130(E)(3) to reduce the interior side setback above 75 feet in height from 15 feet to 5 feet
- Waiver of BMC Section 23.204.130(E)(4) to reduce the residential useable open space requirement from 3,200 square feet to 1,150 square feet
- Waiver of BMC Section 23.204.130(E)(4) to reduce the privately-owned public open space requirement for commercial area from 43 square feet to zero

#### **I. CEQA FINDINGS**

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“Infill Development”). The project meets all of the requirements of this exemption, as follows:
  - A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
  - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
  - C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.

- D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
  - E. The site can be adequately served by all required utilities and public services.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

## **II. DENSITY BONUS FINDINGS**

1. Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:
- A. Under the City's methodology for implementing density bonuses, the "base project" consists of 30 units;
  - B. The project will provide at least three qualifying units in the 30-unit "base project", as more fully set forth in Condition 62;
  - C. The project is entitled to a density increase of 32.5 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element per the requirements of Government Code Section 65915(b) and (f), two concessions or incentives to provide for affordable housing costs, and waivers of development standards to accommodate the bonus units. This equates to a density bonus of 10 units above the base project, for a total of up to 40 units.
2. In accordance with Government Code Section 65915(d) and (k), the Zoning Adjustments Board hereby grants the following concessions in order to provide for affordable housing costs:
- A. Reduction in required commercial off-street parking from four spaces to zero.
3. In accordance with Government Code Section 65915(d), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of the concessions is required to provide for affordable rents, as provided in Government Code Section 65915(d)(1)(A) because 1) approval of the concession would result in identifiable and actual cost reduction; 2) approval of the concession would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the concession would not be contrary to State or Federal law.
4. In accordance with Government Code Section 65915(e), the Zoning Adjustments Board hereby grants the following waivers to accommodate the density bonus units:
- A. Waiver of BMC Section 23.204.130(E)(1) to exceed the maximum 75-foot height limit and permit an 87-foot tall building
  - B. Waiver from BMC Section 23.204.130(E)(3) to reduce the rear setback above 75 feet in height from 15 feet to 5 feet
  - C. Waiver of BMC Section 23.204.130(E)(3) to reduce the street side setback between 21 and 75 feet in height from 5 feet to zero feet, and above 75 feet in height from 15 feet to zero feet
  - D. Waiver from BMC Section 23.204.130(E)(3) to reduce the interior side setback above 75 feet in height from 15 feet to 5 feet

- E. Waiver of BMC Section 23.204.130(E)(4) to reduce the residential useable open space requirement from 3,200 square feet to 1,150 square feet
- F. Waiver of BMC Section 23.204.130(E)(4) to reduce the privately-owned public open space requirement for commercial area from 43 square feet to zero

These waivers are required because State law requires the City to modify development standards as necessary to accommodate the density bonus units, and because the Zoning Adjustments Board hereby finds that the density bonus units can best be accommodated by granting these waivers.

- 5. In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds: 1) approval of the requested waivers is required to construct the proposed project at the density permitted under State law; 2) approval of requested waivers would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers would not be contrary to State or Federal law.

### III. FINDINGS FOR APPROVAL

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- 1. The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:
  - a. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and
  - b. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

The project includes construction of 40 dwelling units. Because the base project would comply with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff.

- 2. As required by Section 23.326.070(D) of the BMC, the Zoning Adjustments Board finds that the proposed demolition of the existing building at 2440 Shattuck Avenue will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition of the structure: (1) is required to allow a proposed new building or other proposed new use; (2) will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses; (3) will remove a structure which represents an un-abatable attractive nuisance to the public; or (4) is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority.

The most recent use of the existing building is retail (Dollar Store), which is vacant. The demolition of this building allows for the development of a new mixed-use residential building that includes 2,160 square feet of commercial area on the ground floor to be used as two retail tenant spaces. In addition, there are several other retail tenant spaces within one block of the project site. As such, existing and new residents in the area have access to retail tenant spaces

even with the demolition of the structures. The demolition of the commercial building and proposed construction of ground floor commercial area within the new mixed-use building conform to the adjacent uses permitted in the C-DMU District along Shattuck Avenue.

Because the demolition of the non-residential structure is required in order to authorize construction of the proposed new building and new use, the ZAB finds the proposed demolition satisfies BMC Section 23.326.070(D)(2)(a). Further, the non-residential building is not eligible for the California Register or a City of Berkeley Landmark or Structure of Merit designation, and the LPC considered the referral and took no action. The proposed project includes a mixed-use building which provides new dwelling units and commercial space in this District, and thus is compatible with adjacent and nearby commercial and residential uses.

#### **IV. OTHER FINDINGS FOR APPROVAL**

1. As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, is not detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use nor is detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - A. The Project is a higher-density development in proximity to regional transit, shops and amenities that is compatible with the purposes of the zoning district and the surrounding uses and buildings. The project site is located within the Downtown Mixed-Use District (C-DMU), Corridor Area, as identified in the City's Downtown Area Plan (DAP). The project provides 40 new dwelling units in a range of sizes from one- to three-bedrooms. Three of the units are deed restricted as affordable housing units for very-low-income residents. The proposal also includes 2,160 square feet of commercial space and 44 secure bicycle parking spaces on the ground floor. The Project site is well served by public transportation, including a BART station less than half-mile to the north. The surrounding commercial district includes retail sales, restaurants, offices, mixed-use developments, and institutional uses; the Project adds to these commercial uses and adds population to support these uses.
  - B. The neighborhood is a mix of residential and commercial uses, including apartments, offices, food service establishments, retail, and personal service establishments. Existing buildings in the immediate neighborhood vary in height from one to five stories, with two recent buildings at eight stories one block north of the project site. The building's proposed massing has a strong street wall presence at the property line on Shattuck Avenue with high ceilings on the ground floor, and on Haste Street with a recessed residential entry with a 'green' wall. The Design Review Committee has recommended approval of the project because the mass, articulation, materials and details are compatible with the form and character of the District.
  - C. Shadow impact on adjacent dwellings to the east and southeast, are to be expected, because the subject site is located in C-DMU district, which allows heights of up to 60 feet, by right. In addition, a use permit to exceed this limit, up to 75 feet, is allowed to be included in the density bonus base project; and a waiver is allowed for height beyond 75' to accommodate the density bonus units, for a proposed building of 87 feet and eight-stories. Staff believes that shadow impacts from the project would be reasonable and not detrimental.

- D. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
- E. The applicant has indicated that the building will attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC) or the equivalent as determined by the Zoning Officer, and will be in compliance with Title 24 of California's Building Standards Code. The project's sustainability features include: solar panels, drought-tolerant landscaping, and facilities to encourage bicycle use. The project is consistent with the City's Climate Action Plan and General Plan Implementation Strategies.
2. As required by Section 23.204.130(I) of the BMC, the Zoning Adjustments Board finds that the proposed structure is compatible with the purposes of the C-DMU Zoning District and compatible with the surrounding uses and buildings, as it is a new, mixed-use building, containing 2,160 square feet of commercial square footage fronting Shattuck Avenue, and 40 dwelling units, bringing new housing of a wide range of unit types to the Downtown in a high intensity of development close to transit, as well as provides a retail use that supports meeting commercial needs on foot, a stated purpose of the Downtown Area Plan.
3. As required by Section 23.204.030(B)(2) of the BMC, the Zoning Adjustments Board finds that the creation of over 10,000 square feet of new floor area is permissible because the new building is compatible with the visual character and form of the C-DMU District. Further, the Landmarks Preservation Commission determined there were no designated landmark structures, structures of merit, or historic district in the vicinity that are adversely affected by the appearance or design of the proposed building.
4. As required by Section 23.304.050(A) of the BMC, the Zoning Adjustments Board finds that the proposed rooftop equipment, which exceeds the district height limit (75 feet), does not exceed 15 percent the average floor area of the building's floors. None of the equipment structures are used as habitable or commercial space.
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## **STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS**

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

### **1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

### **2. Compliance Required (BMC Section 23.102.050)**

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

### **3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060(B)(1) and (2))**

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

### **4. Conformance to Approved Plans (BMC Section 23.404.060(B)(4))**

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

### **5. Exercise and Expiration of Permits (BMC Section 23.404.060(C))**

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

### **6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060(D))**

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

**9. Pay Transparency Acknowledgement (BMC Section 13.104.030)**

Prior to the issuance of a building permit for any Project subject to this Chapter:

- A. A Responsible Representative of the Permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.
- B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

**10. Pay Transparency Attestations Following Project Completion (BMC Section 13.104.040)**

Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

**11. Posting of Ordinance (BMC Section 13.104.050)**

Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

**12. Conditions of Approval (BMC Section 13.104.060)**

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

**13. Indemnification Agreement**

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

**14. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

**Project Liaison** \_\_\_\_\_  
Name Phone #

**15. Final Design Review.** The Project requires approval of a Final Design Review application by the Design Review Committee.

**16. Address Assignment.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned in accordance with

BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection.

- 17. Construction Noise Reduction Program.** The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
- A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
  - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
  - C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
  - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
  - E. Prohibit unnecessary idling of internal combustion engines.
  - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
  - G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
  - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
  - I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.
- 18. Damage Due to Construction Vibration.** The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall

undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall

- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and
- include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

19. Compliance with Conditions and Environmental Mitigations. The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

#### **Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)**

20. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
21. Construction Phases. The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.

- 22. Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
- 23. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
- 24. Toxics.** The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
- A. Environmental Site Assessments:
- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old\*) shall be submitted to TMD for developments for:
    - All new commercial, industrial and mixed-use developments and all large improvement projects.
    - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
    - EMA is available online at: [http://www.cityofberkeley.info/uploadedFiles/IT/Level 3 - General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
  - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
  - 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
  - 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
  - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- C. Building Materials Survey:
- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include,

but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

**Prior to Issuance of Any Building (Construction) Permit**

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25. Percent for Public Art: Consistent with BMC §23.316, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
26. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, and fee resolution applicable to this project, the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee.
27. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
28. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
29. Streets and Open Space Improvement Plan: Street Frontage Improvements. Streets and Open Space Improvement Plan: Street Frontage Improvements. Consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP) (or subsequent iterations as adopted by the City), the developer shall construct improvements along University Avenue and Milvia Street to the centerline. Such improvements shall be included with the building permit submittal, designed and constructed as directed by the Public Works and Fire Departments, and

constructed prior to certificate of occupancy. (Optional language – check with Public Works) At the discretion of the City Engineer, the developer may be required to pay a fee in lieu of certain improvements as specified.

- 30. Streets and Open Space Improvement Plan: Impact Fee:** As required by BMC Section 23.204.130(F), the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP) per the fee schedule adopted by the Council by resolution. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to pay for the design and construction of the SOSIP Major Projects. The fee shall apply to the project's "Gross Floor Area" as defined in BMC Section 23.106.030, less any existing Gross Floor Area removed as part of the project.

At the City's discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a \$1 to \$1 ratio, as a credit for constructing all or a portion of a Major SOSIP Improvement Project beyond the frontage improvements already required by this Permit. The first half of this fee shall be paid prior to issuance of a building permit, and the second half shall be paid prior to issuance of a certificate of occupancy.

- 31. SOSIP Improvements:** At the discretion of the City Engineer, the developer shall make an in-lieu payment for roadway improvements which are not constructed as part of the project, with a maximum payment to be determined by the Public Works Department for expected improvements. Maximum payment amount shall be increased annually (if applicable) based on the Engineering News Record's construction prices for the San Francisco Bay Area. The first half of these payments shall be made prior to issuance of a building permit, and the second half shall be made prior to issuance of a certificate of occupancy.

- 32. Green Building Certification.** The applicant shall submit documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation shall include proof of payment of the registration/application fee to the organization administering the green building certification system (e.g. USGBC/GBCI for LEED, Build It Green for GreenPoint Rated, etc.), a copy of the updated green building checklist that reflects anticipated points, and a statement from the appropriate project team professional (e.g. LEED Accredited Professional, GreenPoint Rater, etc.) verifying that the project is on track for certification at the required level or above. The submitted green building checklist must be a type that is appropriate for the project and a version that is being accepted by the organization granting the green building certification at the time of building permit application. Whenever applicable, measures from the green building checklist shall be incorporated and noted on site plans.

- 33. Solar Photovoltaic (Solar PV).** A solar PV system, on the solar zone specified in Section 110.10 of the 2019 Energy Code, shall be installed (subject to the exceptions in Section 110.10) as specified by the Berkeley Energy Code (BMC Chapter 19.36). Location of the solar PV system shall be noted on the construction plans.

- 34. Natural Gas Prohibition.** The project shall comply with the Natural Gas Prohibition pursuant to BMC Chapter 12.80.

35. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET<sub>o</sub>) for Berkeley is 41.8.
36. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
37. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

**Prior to Demolition or Start of Construction:**

38. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

**During Construction:**

39. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
40. Construction Hours- Exceptions. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.
41. Project Construction Website. The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
  - Contact information (i.e. "hotline" phone number, and email address) for the project construction manager;
  - Calendar and schedule of daily/weekly/monthly construction activities; and
  - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.

- 42. Public Works - Implement BAAQMD-Recommended Measures during Construction.** For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
  - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- 43. Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:
- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
  - B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material

breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

44. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.
45. Low-Carbon Concrete. The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
46. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
  - Storage of building materials, dumpsters, debris anywhere in the public ROW;
  - Provision of exclusive contractor parking on-street; or
  - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

47. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the

MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

48. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
  - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
  - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
  - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
  - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
49. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
50. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction,

excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

51. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
52. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
  - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
  - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
  - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
  - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.

- F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
  - G. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
  - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - I. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
  - J. Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject to the review, approval and conditions of the waste water treatment plant receiving the discharge.
  - K. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - L. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 53. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 54. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 55. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into

the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

56. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
57. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
58. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

59. Compliance with Conditions and Environmental Mitigations. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.
60. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **March 15, 2022**, except as modified by conditions of approval.
61. Green Building Certification. The applicant shall submit updated documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation expected at this stage includes proof of submission of the final application materials and payment of the certification fee. If this submission has not yet occurred, a detailed explanation and timeline indicating when it will happen must be submitted to the Zoning Officer for review and approval. Once awarded by the organization administering the green building certification system, the applicant shall forward a copy of the certification award to the Zoning Officer.

**BELOW MARKET RATE UNITS**

62. Number of Below Market Rate Units. The project shall provide three below market rate rental dwelling units ("BMR Units"), which are required to comply with the State Density Bonus Law (Government Code Section 65915) and the Affordable Housing Mitigation Fee to comply with BMC Section 22.20.065.D. The BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City.

**63. Regulatory Agreement.** Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915 and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. If the BMR units are occupied by very low-income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development. The applicant shall submit the Regulatory Agreement to the Housing and Community Services Department (HHCS) via email to [affordablehousing@cityofberkeley.info](mailto:affordablehousing@cityofberkeley.info) for review and approval.

- 64.** In addition, the following provisions shall apply:
- A. Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).
  - B. Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
  - C. BMR units will be provided for the life of the project under Section 22.20.065.

- 65. Determination of Area Median Income (AMI).**
- The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.
  - The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

<b>Unit Size</b>	<b>AMI Standard</b>
Studio unit	AMI for a one-person household
One-bedroom unit	AMI for a two-person household
Two-bedroom unit	AMI for a three-person household
Three-bedroom unit	AMI for a four-person household

**66.** Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.

**67. Transportation Demand Management.** A Parking and Transportation Demand Management (PTDM) compliance report shall be submitted to the Transportation Division prior to occupancy,

and on an annual basis thereafter, which demonstrates that the project is in compliance with the applicable requirements in BMC Section 23.322.060:

- A. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
- B. For new structures or additions over 20,000 square feet, the property owner shall provide transportation benefits at no cost to every employee, residential unit, and/or group living accommodation resident, a pass for unlimited local bus transit service; or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass, to be approved by the Zoning Officer in consultation with the Transportation Division. A notice describing these transportation benefits shall be posted in a location or locations visible to all employee and residents.

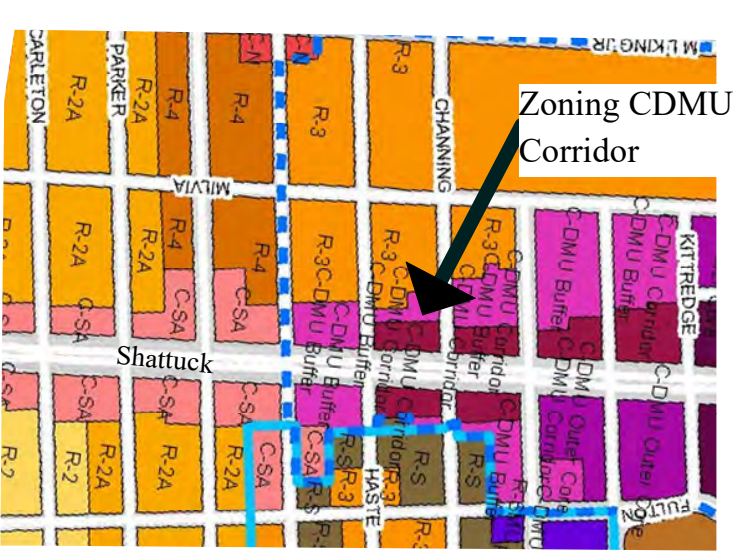


**At All Times:**

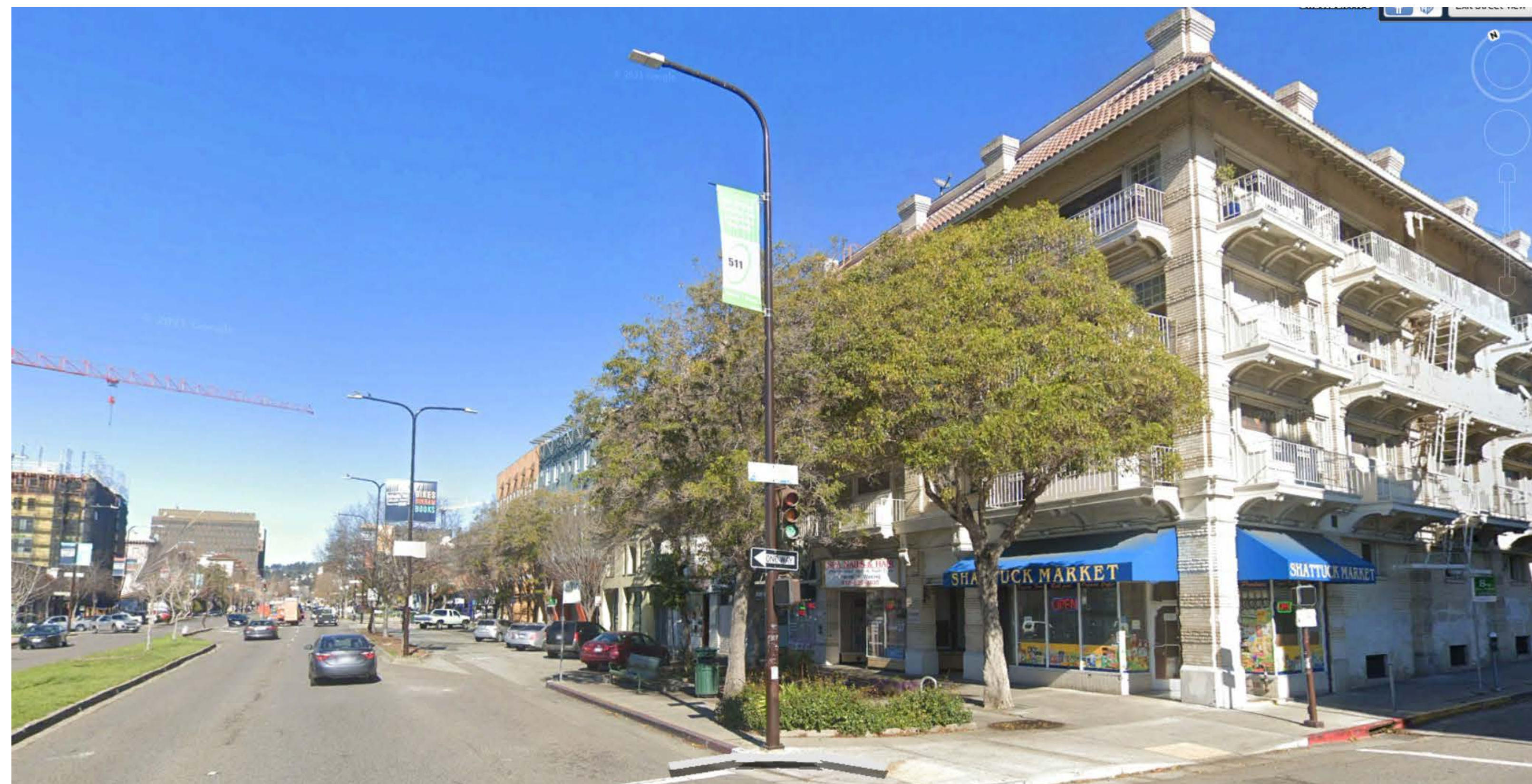
- 68. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 69. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
- 70. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
- 71. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
- 72. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
- 73. Loading. All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
- 74. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
- 75. Bike Parking. Secure and on-site bike parking for at least 44 bicycles shall be provided for the life of the building.

- 76. Tenant Notification.** The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
- 77. Transit Subsidy Condition.** The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
- 78. Subject to Review.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
-



## The Lair ~ 2440 Shattuck Avenue

Vicinity Map APN#055-1896-005-00	Project Summary	Residential Summary	Tabulation Form	Project Team	Sheet Index																																																																																																																																																																																								
<p>Site Area = 8,560 sf</p>   <p><b>Site</b></p> 	<p><b>Ground Floor</b> Gross Area = 6,916 sf</p> <p><b>Second Floor</b> Gross Area = 7,634 sf</p> <p><b>Third Floor</b> Gross Area = 7,634 sf</p> <p><b>Fourth Floor</b> Gross Area = 7,634 sf</p> <p><b>Fifth Floor</b> Gross Area = 7,634 sf</p> <p><b>Sixth Floor</b> Gross Area = 7,634 sf</p> <p><b>Seventh Floor</b> Gross Area = 7,634 sf</p> <p><b>Eighth Floor</b> Gross Area = 5,568 sf</p> <p><b>Total Gross Area = 58,288 sf</b></p>	<p><b>(7 levels)</b> 7 One Bdrm 19 Two Bdrm 14 Three Bdrm Total = 40 units (87 Bedrooms)</p> <p><b>Open Space</b> Open Space @ 80 sf/unit = 3,200 sf Required Open Space Provided = 1,150 sf</p> <p><b>Parking</b> 2,700 sf Retail @ 2 cars/1,000 sf = 6 cars Required Residential Parking = 0 cars Required Total cars required = 6 cars Total cars provided = 0 cars</p> <p><b>Bike Parking</b> Long Term - 1 Bike/3 Bedrooms = 29 Long Term Bikes Required Total Long Term Bikes Provided = 44 Bikes Short Term - 1 Bike/40 Bedrooms = 2 Short Term Bikes Required Commercial 1 Bike/2,000 sf = 2 Short Term Bikes Required Total Short Term Bikes Required = 4 Bikes Total Short Term Bikes Provided = 4 Bikes</p>	<p>Project Address: <b>2440 Shattuck Ave</b> Date: <b>11.22</b></p> <p>Applicant's Name: <b>Dave Johnson / Johnson Lyman Architects</b></p> <p>Zoning District: <b>C-DMU Corridor</b></p> <p>Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:</p> <table border="1"> <thead> <tr> <th></th> <th>Existing</th> <th>Proposed</th> <th>Permitted/Required<sup>1</sup></th> </tr> </thead> <tbody> <tr> <td><b>Units, Parking Spaces &amp; 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Assoc Rick Stover 1629 North Main Walnut Creek, CA 94596 925.933.2583</p>	<table border="1"> <thead> <tr> <th>Sheet</th> <th>Description</th> <th>Sheet</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>A0</td> <td>Cover Sheet</td> <td>A33</td> <td>Sections/Details</td> </tr> <tr> <td>PH1</td> <td>Photo Context</td> <td>A34</td> <td>Sections/Details</td> </tr> <tr> <td>P1</td> <td>Rendering</td> <td>SH1</td> <td>Sun Study</td> </tr> <tr> <td>P2</td> <td>Rendering</td> <td>SH2</td> <td>Sun Study</td> </tr> <tr> <td>P2A</td> <td>Rendering</td> <td>L1</td> <td>Landscape Plan</td> </tr> <tr> <td>P2B</td> <td>Rendering</td> <td>L2</td> <td>Landscape Details</td> </tr> <tr> <td>P3</td> <td>Rendering</td> <td>C01</td> <td>Preliminary Grading Plan</td> </tr> <tr> <td>P4</td> <td>Photo Montage</td> <td>C02</td> <td>Preliminary Utility Plan</td> </tr> <tr> <td>P5</td> <td>Photo Montage</td> <td>C03</td> <td>Boundary/Topographic Survey</td> </tr> <tr> <td>A11</td> <td>Ground Plan</td> <td>EXH-1</td> <td>Bus Stop Exhibit</td> </tr> <tr> <td>A12</td> <td>Upper Plans</td> <td>DB1</td> <td>Density Bonus Base Plans</td> </tr> <tr> <td>A13</td> <td>Roof Plans</td> <td>DB2</td> <td>Density Bonus Calculation</td> </tr> <tr> <td>A14</td> <td>Floor Plans</td> <td></td> <td></td> </tr> <tr> <td>A21</td> <td>Overall Elevations</td> <td></td> <td></td> </tr> <tr> <td>A22</td> <td>North Elevation</td> <td></td> <td></td> </tr> <tr> <td>A23</td> <td>East Elevation</td> <td></td> <td></td> </tr> <tr> <td>A24</td> <td>West Elevation</td> <td></td> <td></td> </tr> <tr> <td>A25</td> <td>South Elevation</td> <td></td> <td></td> </tr> <tr> <td>CB</td> <td>Color/Materials</td> <td></td> <td></td> </tr> <tr> <td>A31</td> <td>Sections/Details</td> <td></td> <td></td> </tr> <tr> <td>A32</td> <td>Sections/Details</td> <td></td> <td></td> </tr> </tbody> </table>	Sheet	Description	Sheet	Description	A0	Cover Sheet	A33	Sections/Details	PH1	Photo Context	A34	Sections/Details	P1	Rendering	SH1	Sun Study	P2	Rendering	SH2	Sun Study	P2A	Rendering	L1	Landscape Plan	P2B	Rendering	L2	Landscape Details	P3	Rendering	C01	Preliminary Grading Plan	P4	Photo Montage	C02	Preliminary Utility Plan	P5	Photo Montage	C03	Boundary/Topographic Survey	A11	Ground Plan	EXH-1	Bus Stop Exhibit	A12	Upper Plans	DB1	Density Bonus Base Plans	A13	Roof Plans	DB2	Density Bonus Calculation	A14	Floor Plans			A21	Overall Elevations			A22	North Elevation			A23	East Elevation			A24	West Elevation			A25	South Elevation			CB	Color/Materials			A31	Sections/Details			A32	Sections/Details		
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View from Shattuck Avenue looking Northeast



View from Shattuck Avenue looking Northwest

# The Lair @ Haste



View to Lobby

# The Lair @ Haste



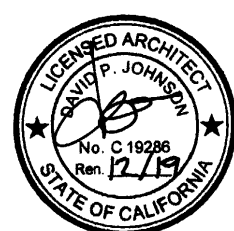
View from Shattuck Avenue

# The Lair @ Haste



JOHNSON  
LYMAN  
ARCHITECTS

1375 Locust Street, #202, Walnut Creek, CA 94596  
925.930.9690 930.9039 fax



# P2

5.15.22



View from Shattuck Avenue looking southwest



Terrace View



View of Lobby/Conference Area



View Looking East from Haste



Existing View



View Looking South West from Shattuck Avenue



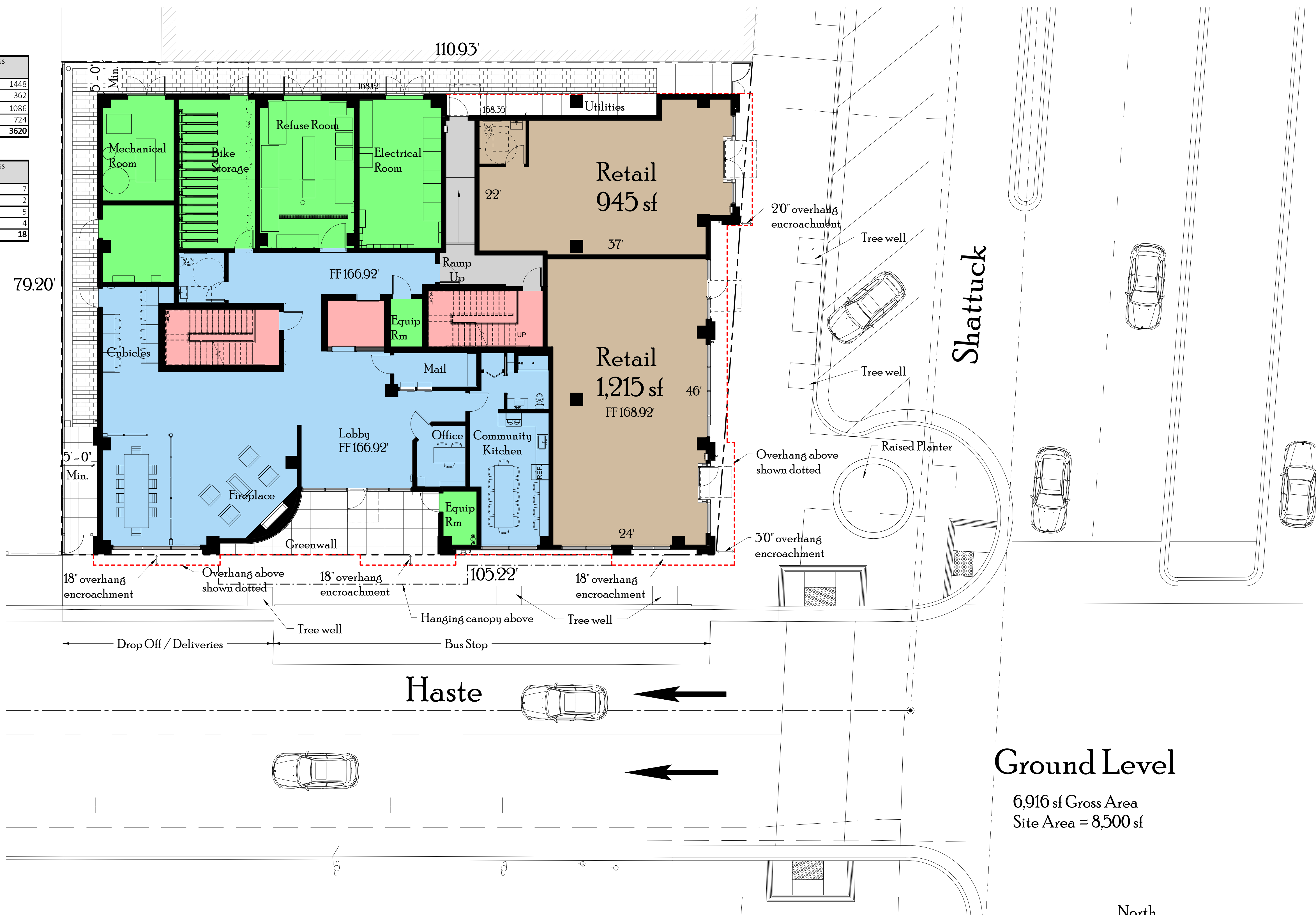
Existing View

# Refuse Calculation

Enter Total # Residents: **181**

Estimated Capacity Required (in Gallons)	Minimum Capacity	20% Excess Capacity
Refuse Estimate 40% (gal):	1207	1448
Container Recycling Estimate 10% (gal):	302	362
Cardboard/Paper Recycling Estimate 30% (gal):	905	1086
Compost/Organics Estimate 20% (gal):	603	724
<b>Total Waste Volume Estimate (gal):</b>	<b>3017</b>	<b>3620</b>

Estimated Capacity Required (in Cubic Yards)	Minimum Capacity	20% Excess Capacity
Refuse Estimate 40% (cubic yards):	6	7
Container Recycling Estimate 10% (cubic yards):	2	2
Cardboard/Paper Recycling Estimate 30% (cubic yards):	5	5
Compost/Organics Estimate 20% (cubic yards):	3	4
<b>Total Waste Volume Estimate (cubic yards):</b>	<b>15</b>	<b>18</b>



## Ground Level

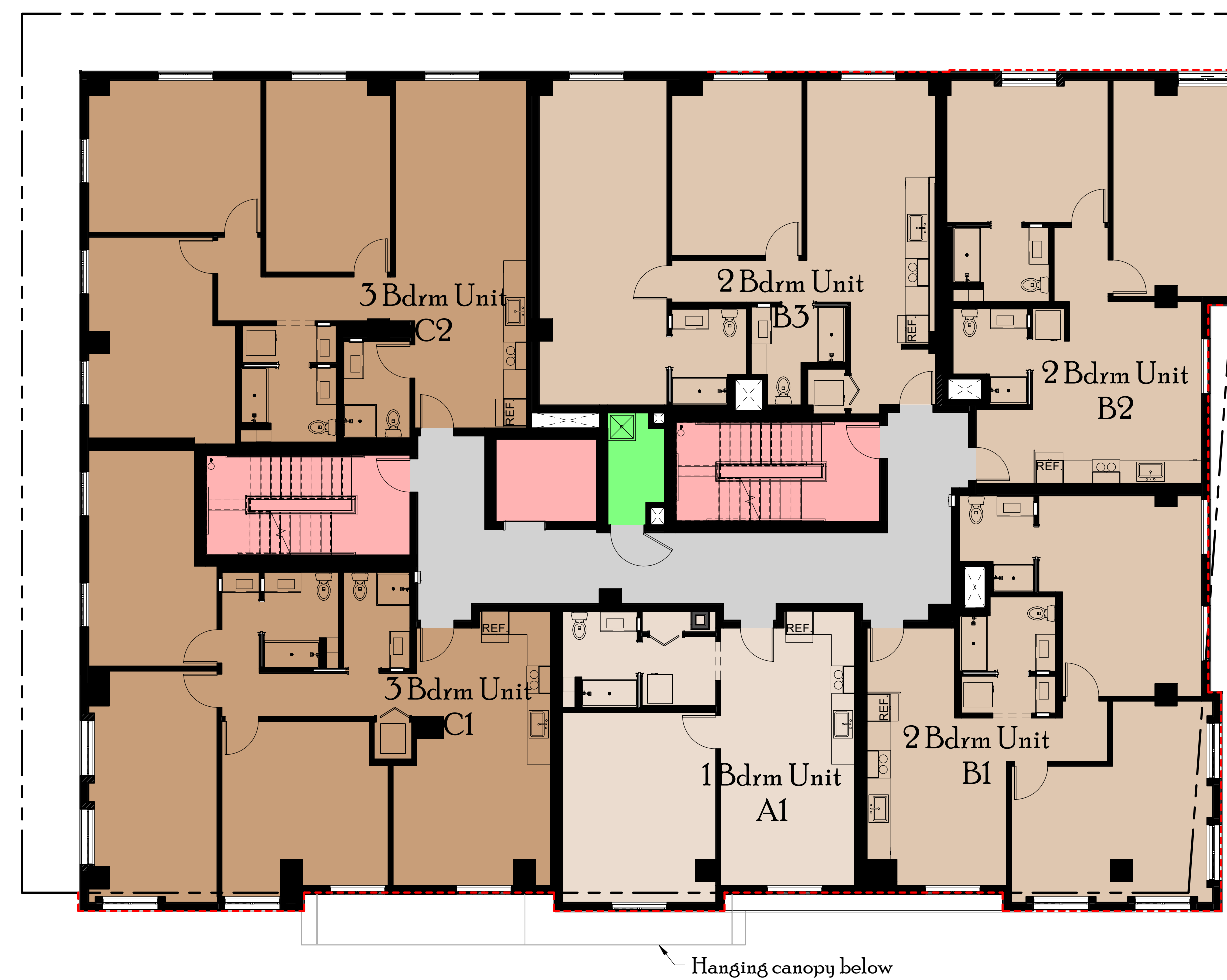
6,916 sf Gross Area  
Site Area = 8,500 sf



### 8th Level

4 units Gross Area = 5,568 sf

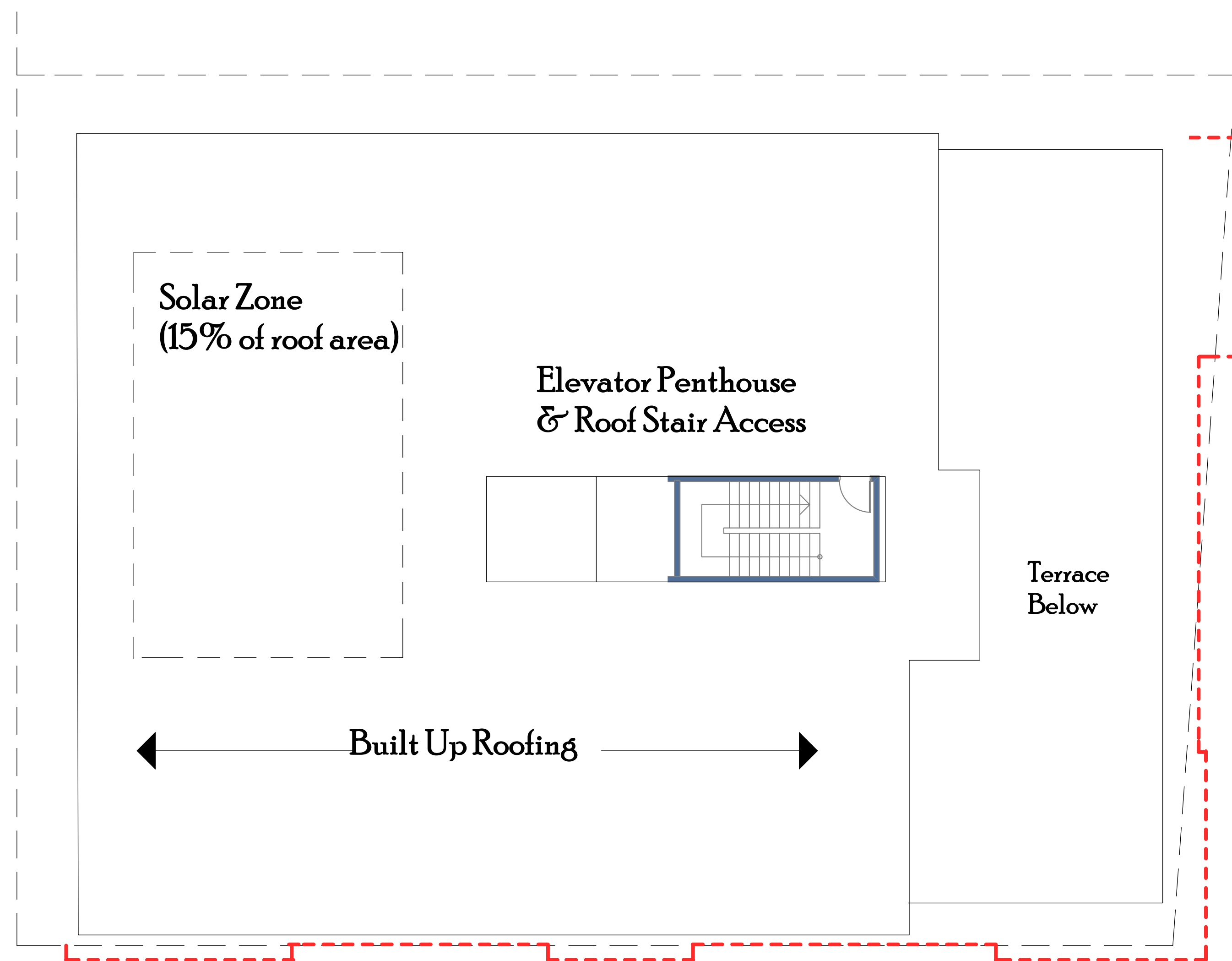
- Metal Column (typ)
- Decorative pavers
- Decorative Metal Rail
- Planter (typ)



### 2nd Level (3rd-7th Level similar)

6 units Gross Area = 7,634 sf

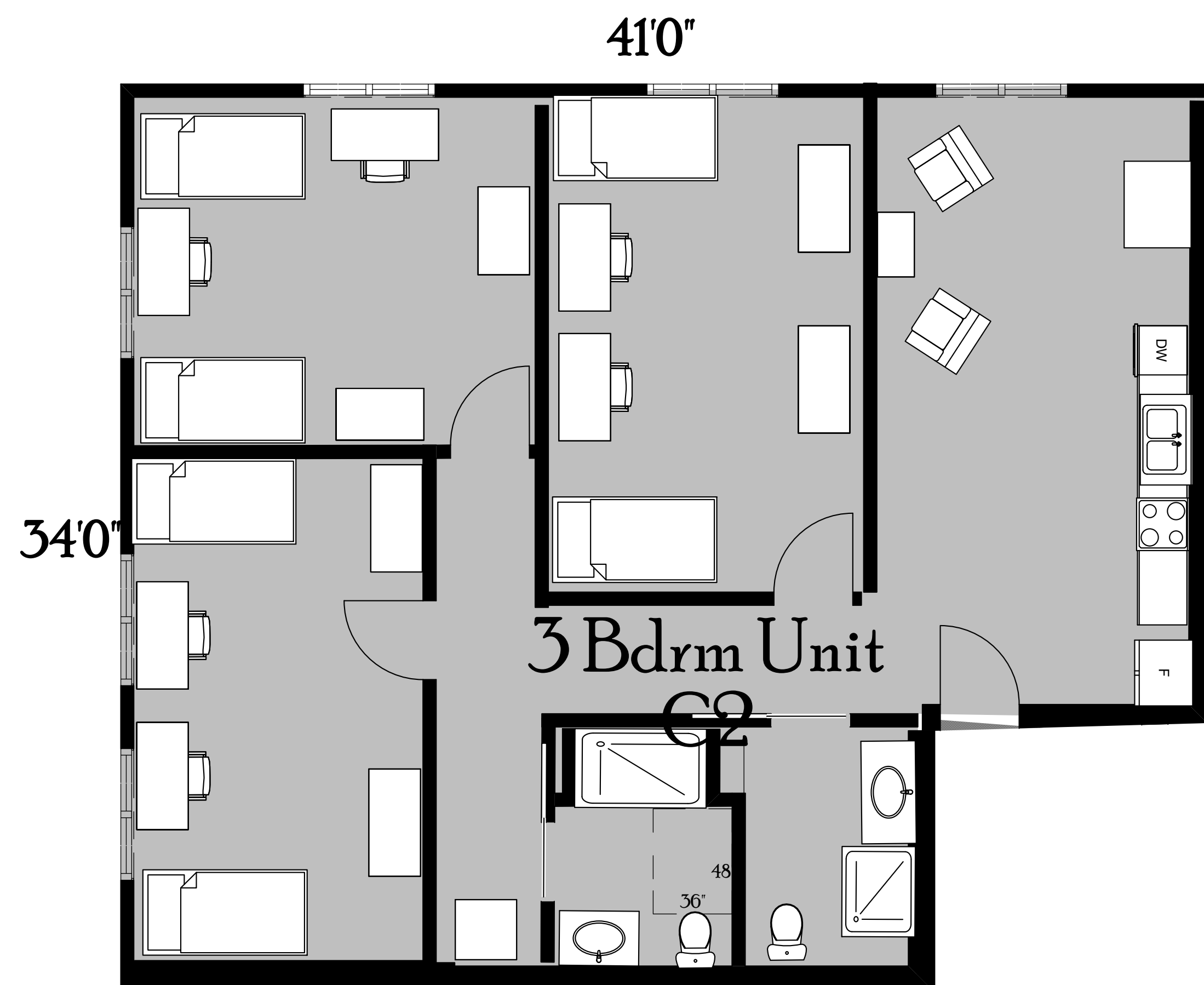
- (1) One Bdrm
- (3) Two Bdrm
- (2) Three Bdrm



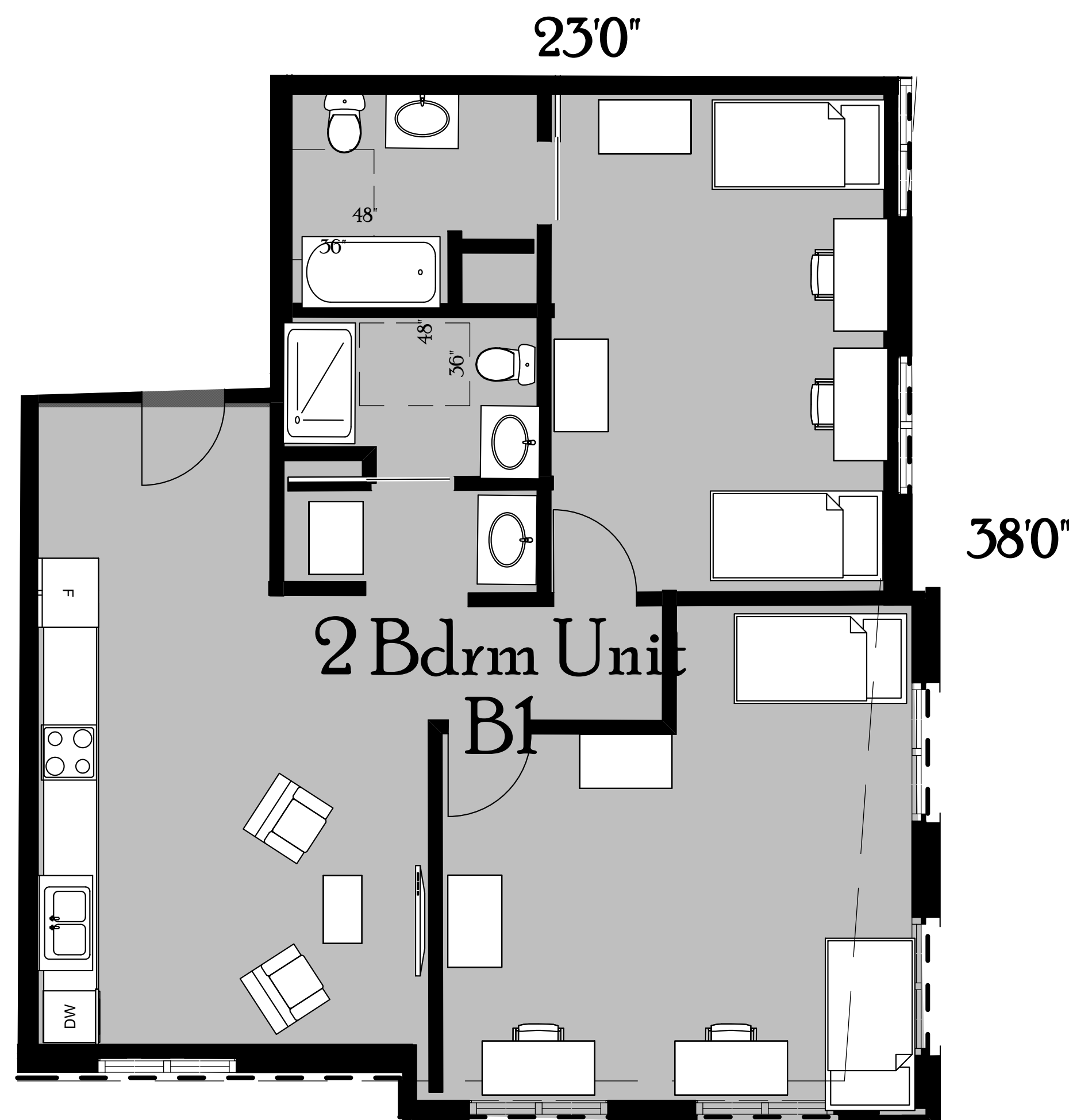
Average Area of all Floors = 7,634 sf  
Area of stair and elevator projection above roof = 360 sf  
Percentage of projection = 5% < 15%

Roof Plan

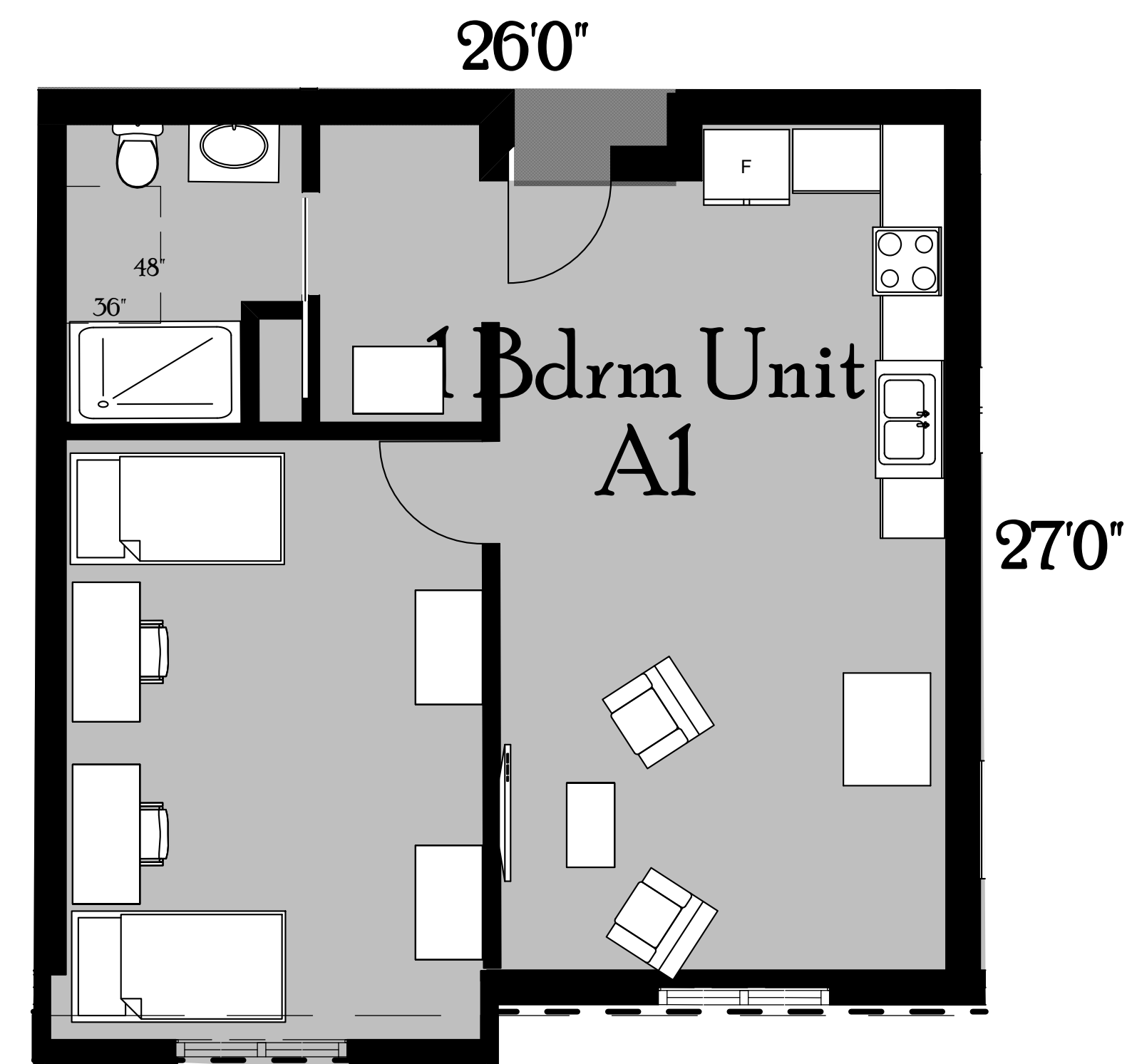
# The Lair @ Haste



**Three Bedroom**  
1,270 sf Gross Area



**Two Bedroom**  
1,050 sf Gross Area



**One Bedroom**  
710 sf Gross Area

## Typical Floor Plans

# The Lair @ Haste



# South Elevation

View from Haste Street

1" = 16'



# East Elevation

View from Shattuck Avenue

1" = 16'

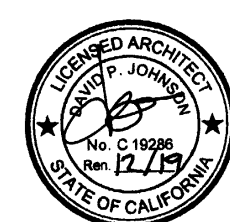


# North Elevation

3/16" = 10"



# The Lair @ Haste





# East Elevation

View from Shattuck Avenue

3/16" = 10"

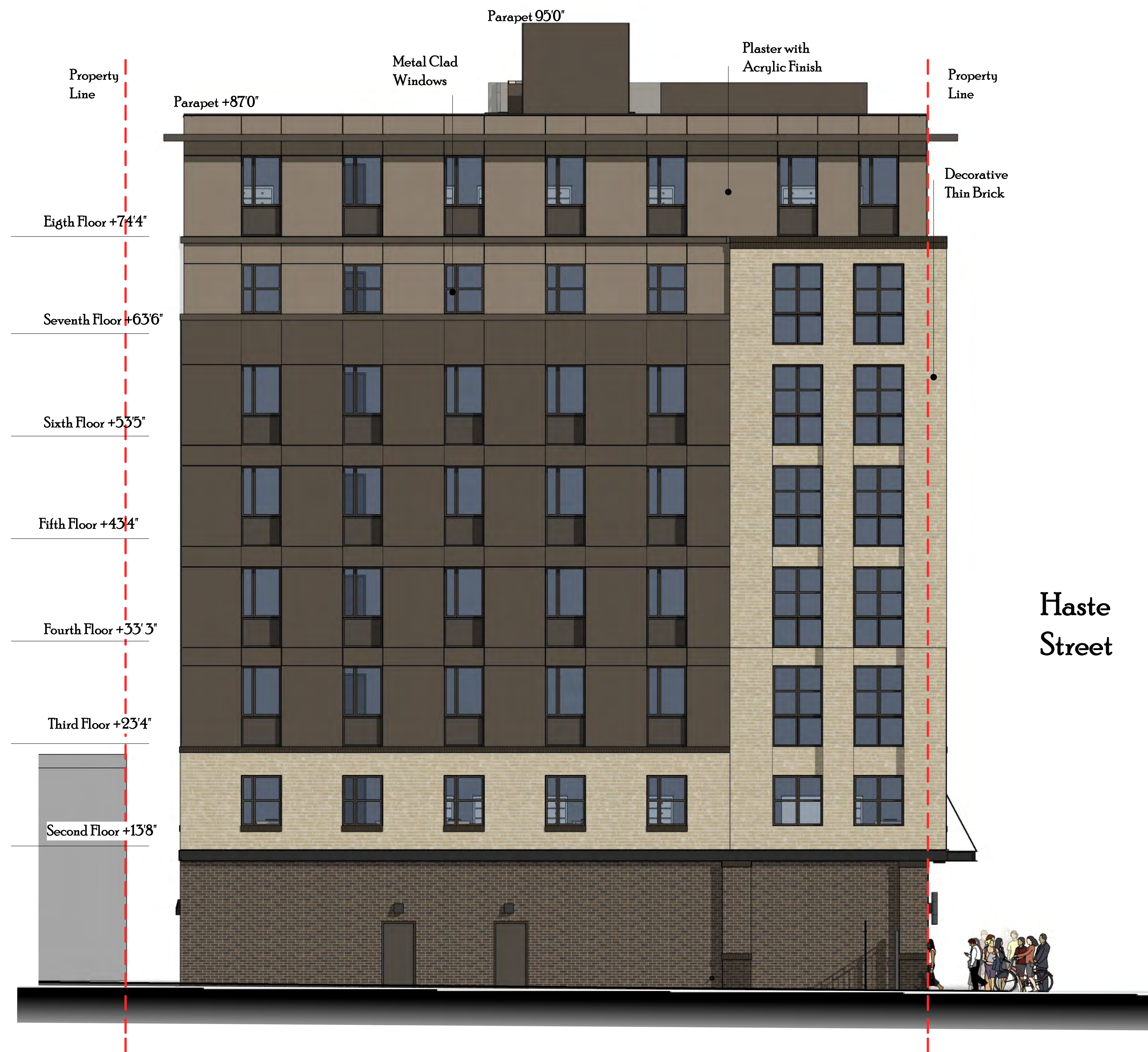
# The Lair @ Haste



# A2.3

5.15.22





# West Elevation

3/16" = 10"

# The Lair @ Haste



# A2.4

5.15.22

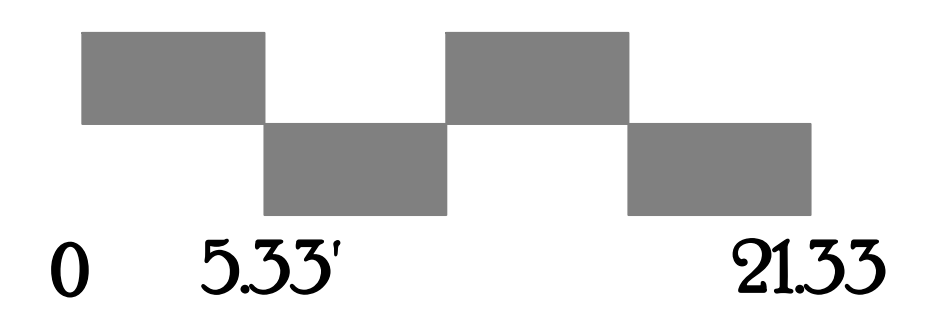


# South Elevation

View from Haste

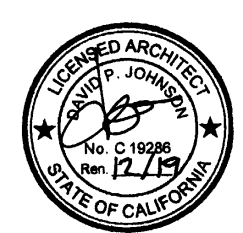
# The Lair @ Haste

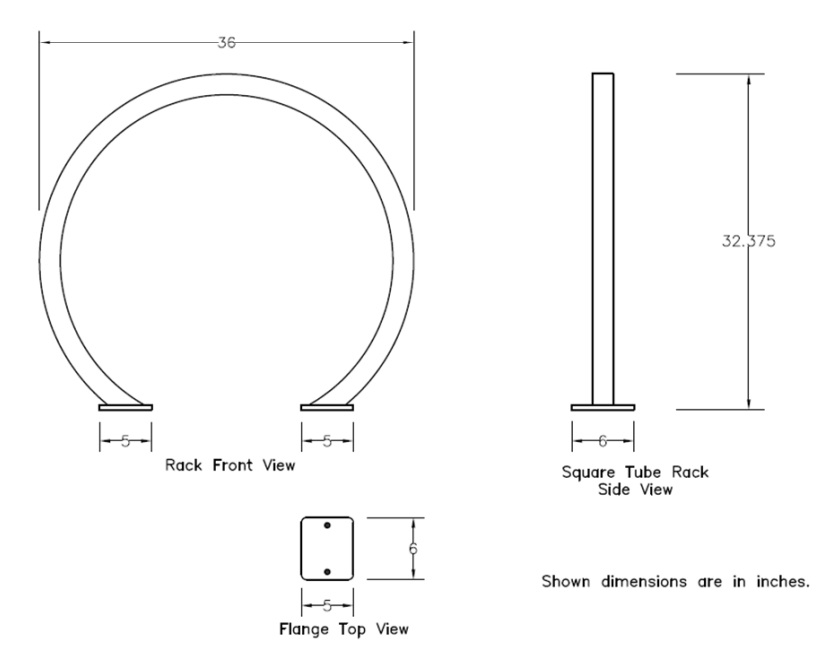
3/16" = 10"



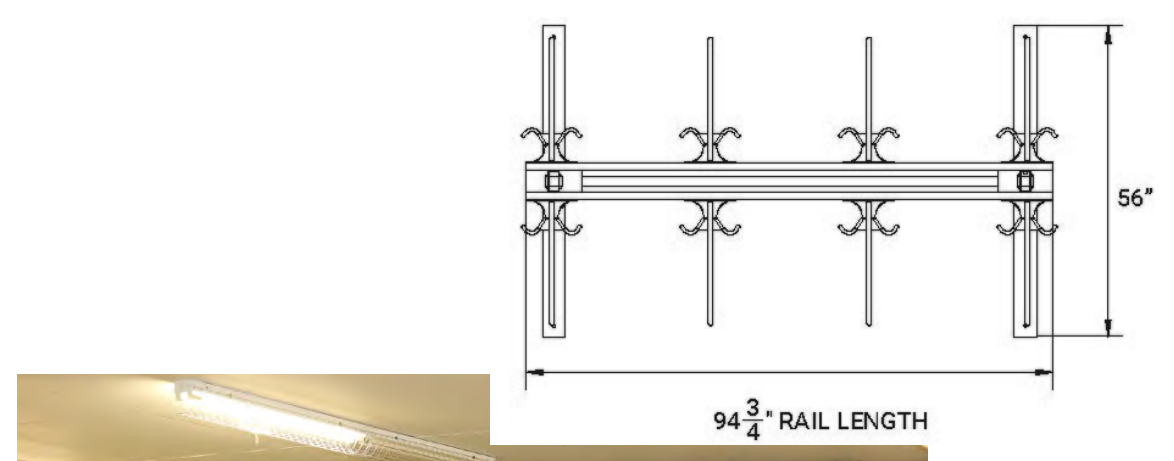
# A2.5

5.15.22

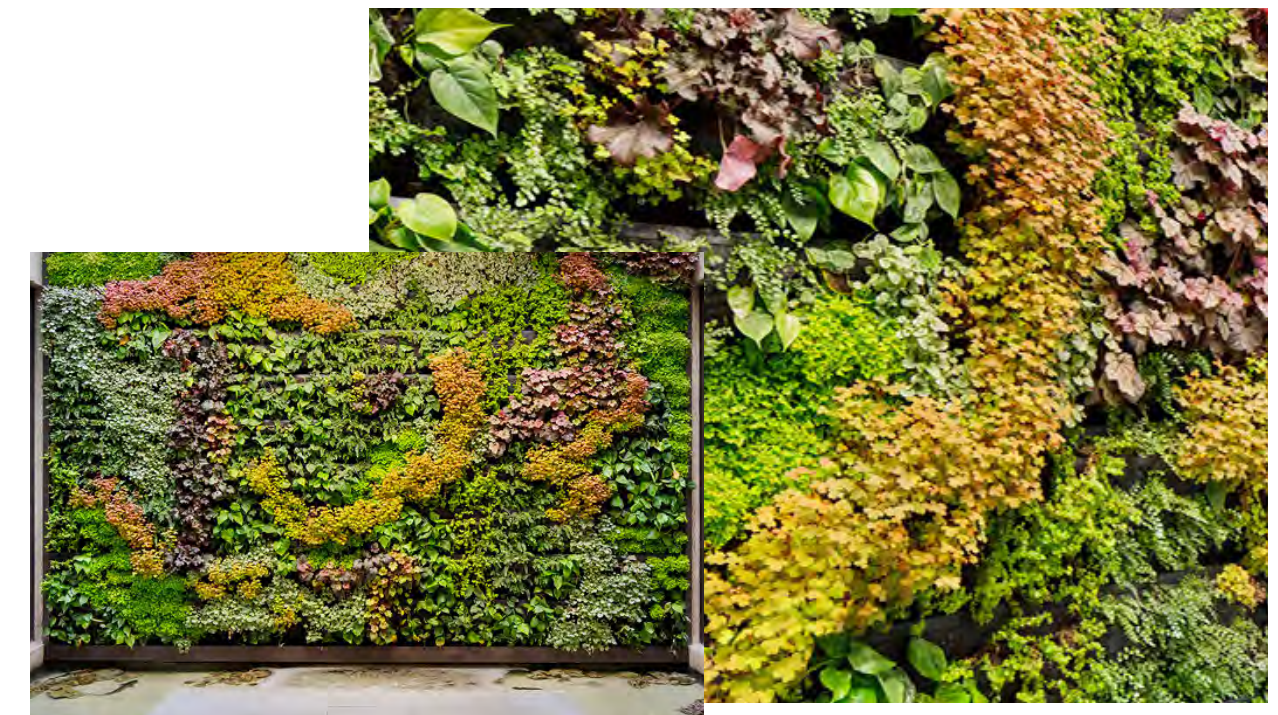




Bike rack



Bike Storage  
Park A Bike



Lobby Entry Green Wall  
Habitat Horticulture



Wall Sconce  
Progress Light 5675



Old Myford (Field Color)  
McNear Brick



Smooth Plaster  
SW Downing Earth 2820



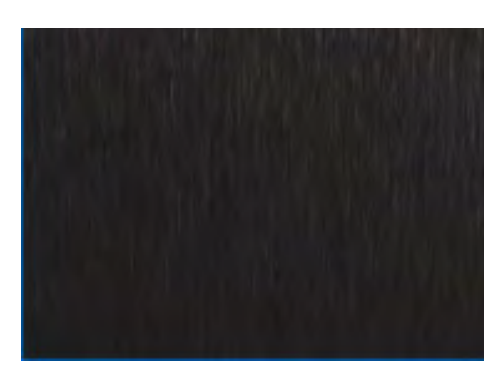
Old Myford Dark Blend (Base Color)  
McNear Brick



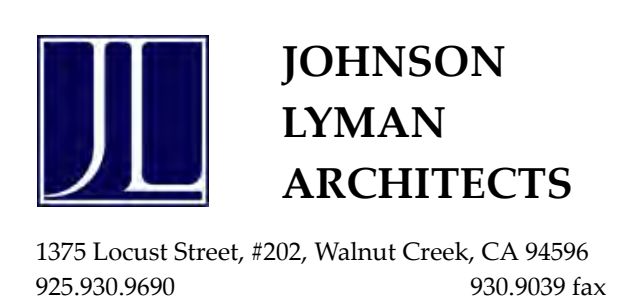
Smooth Plaster  
SW Turkish Coffee 6076



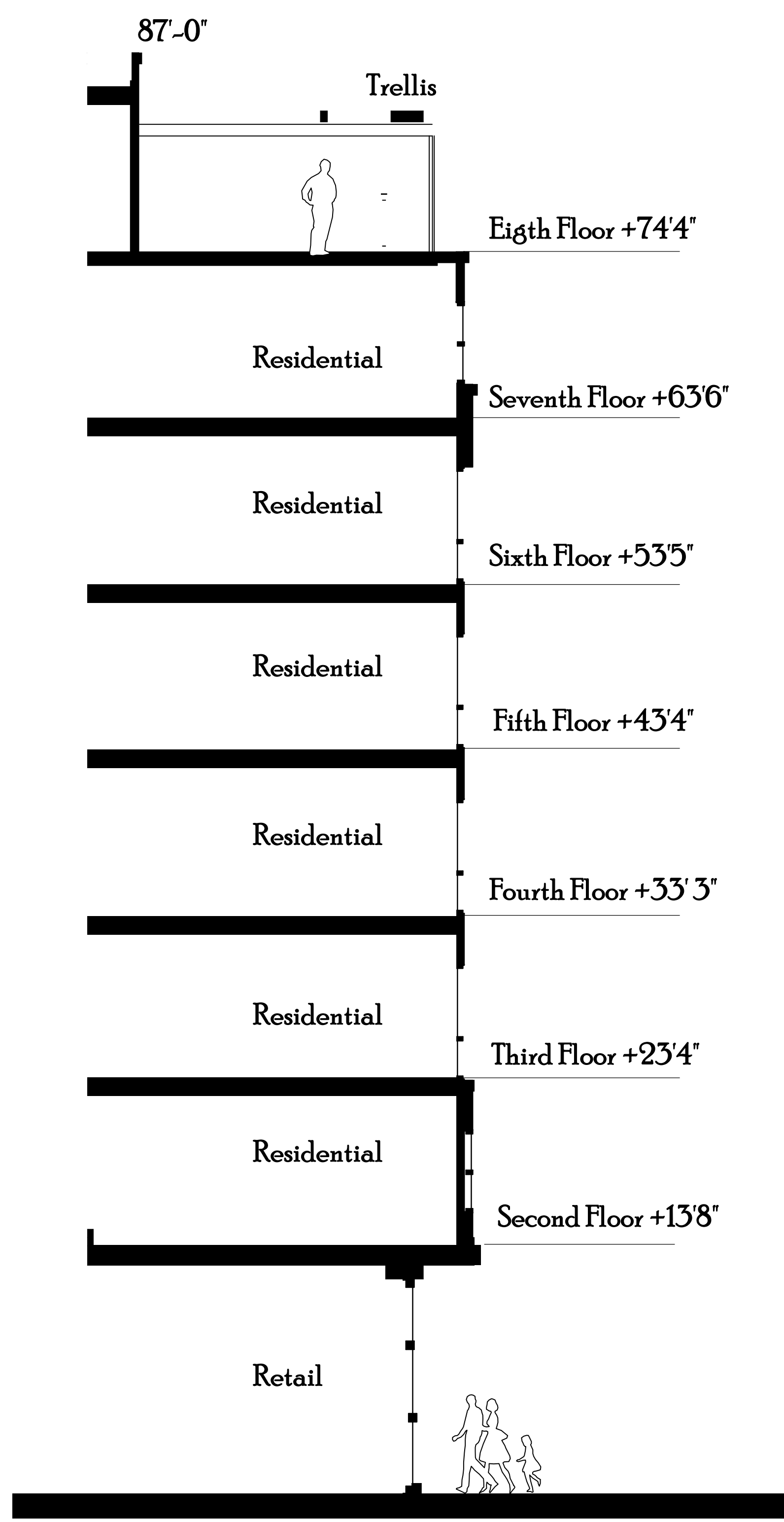
Beige  
McNear Brick



Black Anodized  
Window Frame



Materials



Section A-A

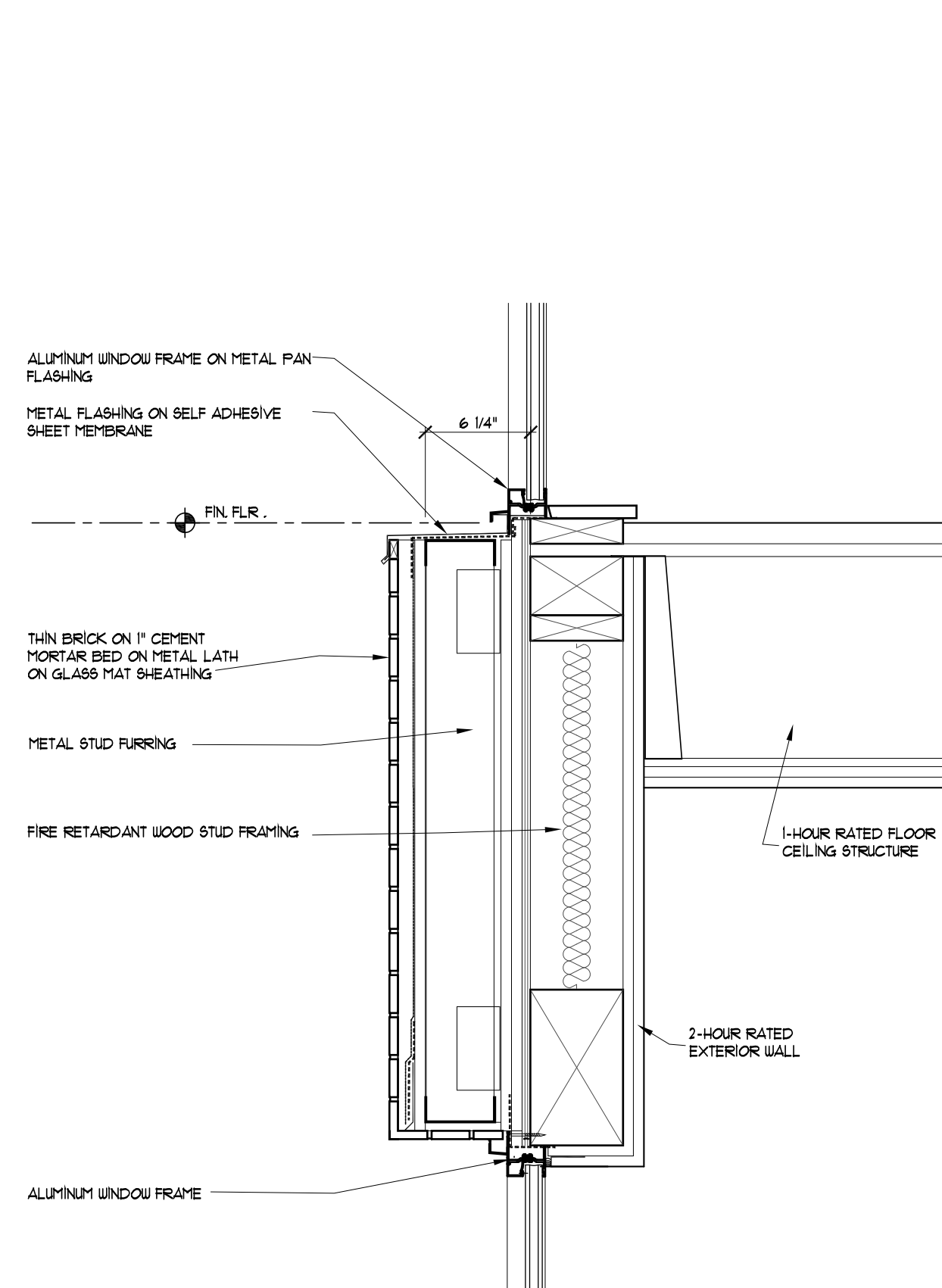
The Lair @ Haste



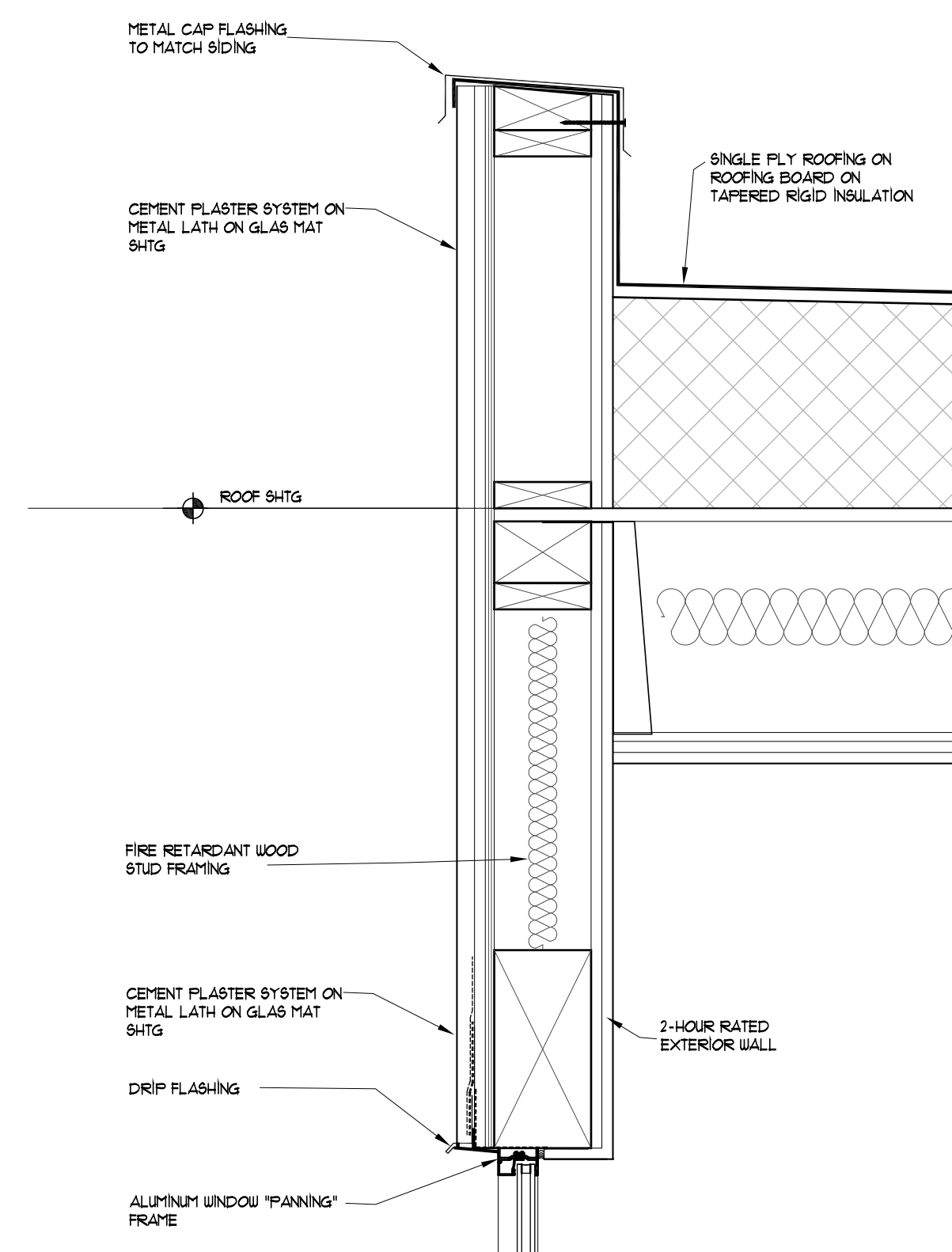
Brick (Base Color) Brick (Field Color) Metal Canopy  
Enlarged Elevation  
3/16" = 10"  
Section A

Sections/Materials

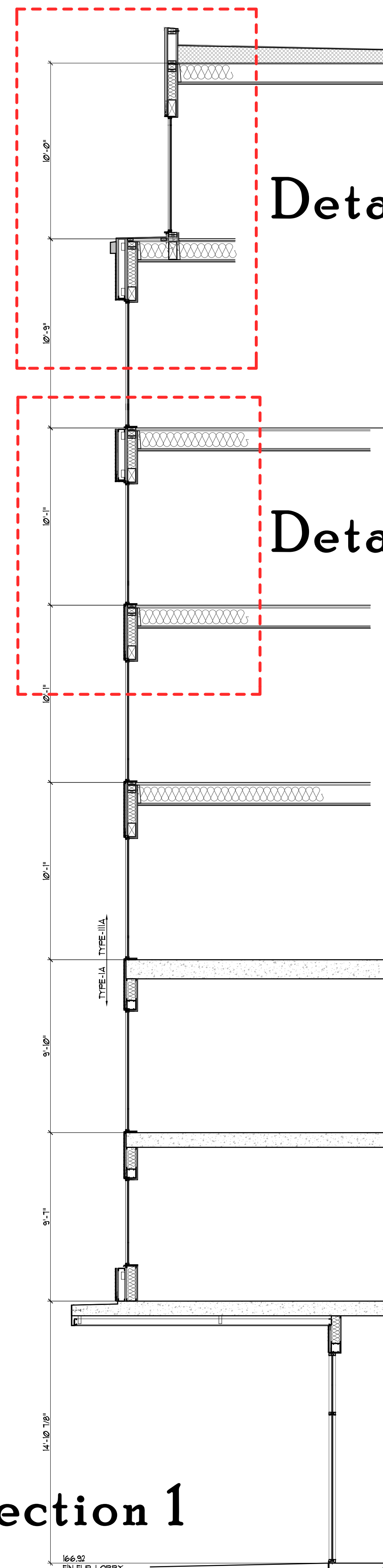
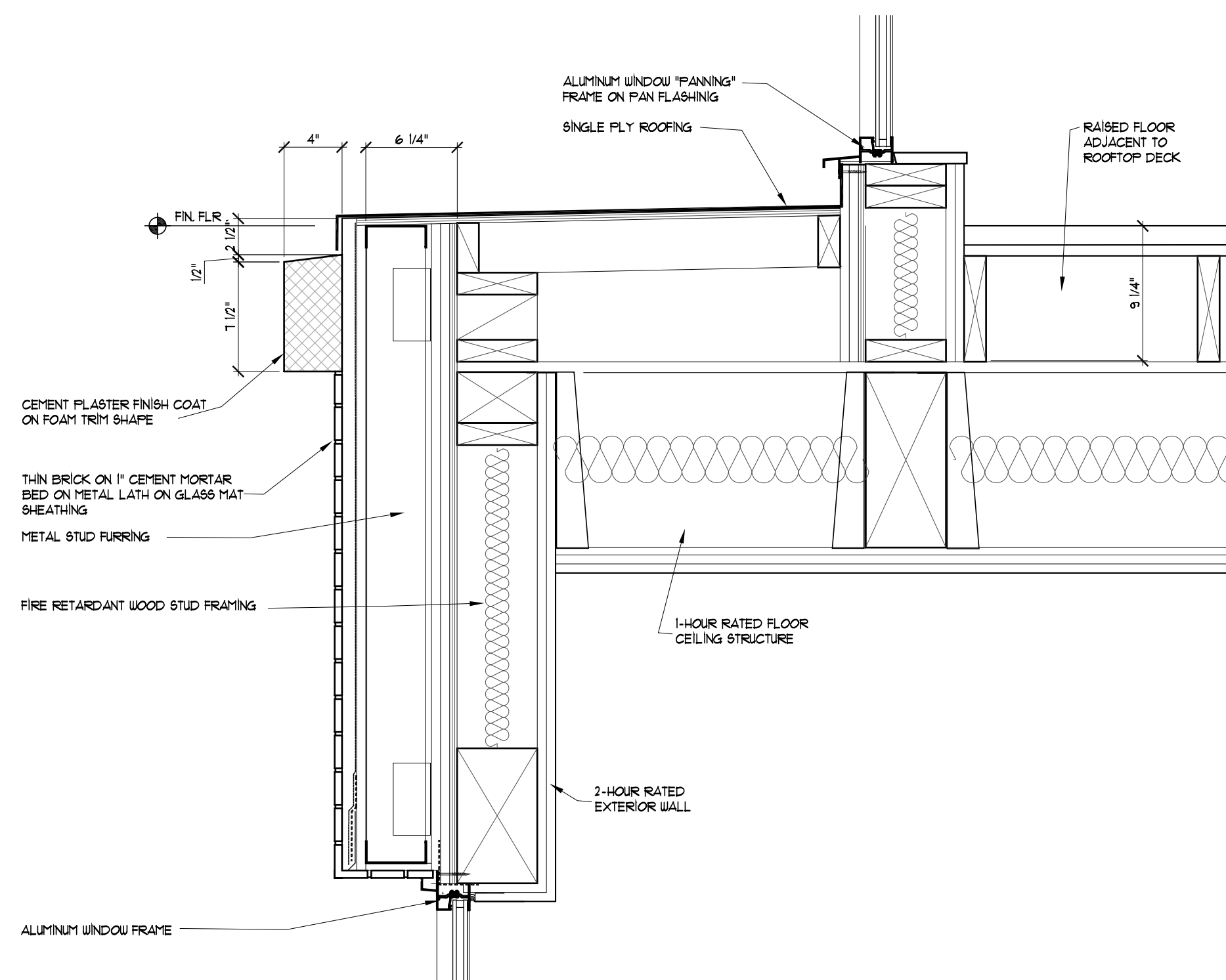
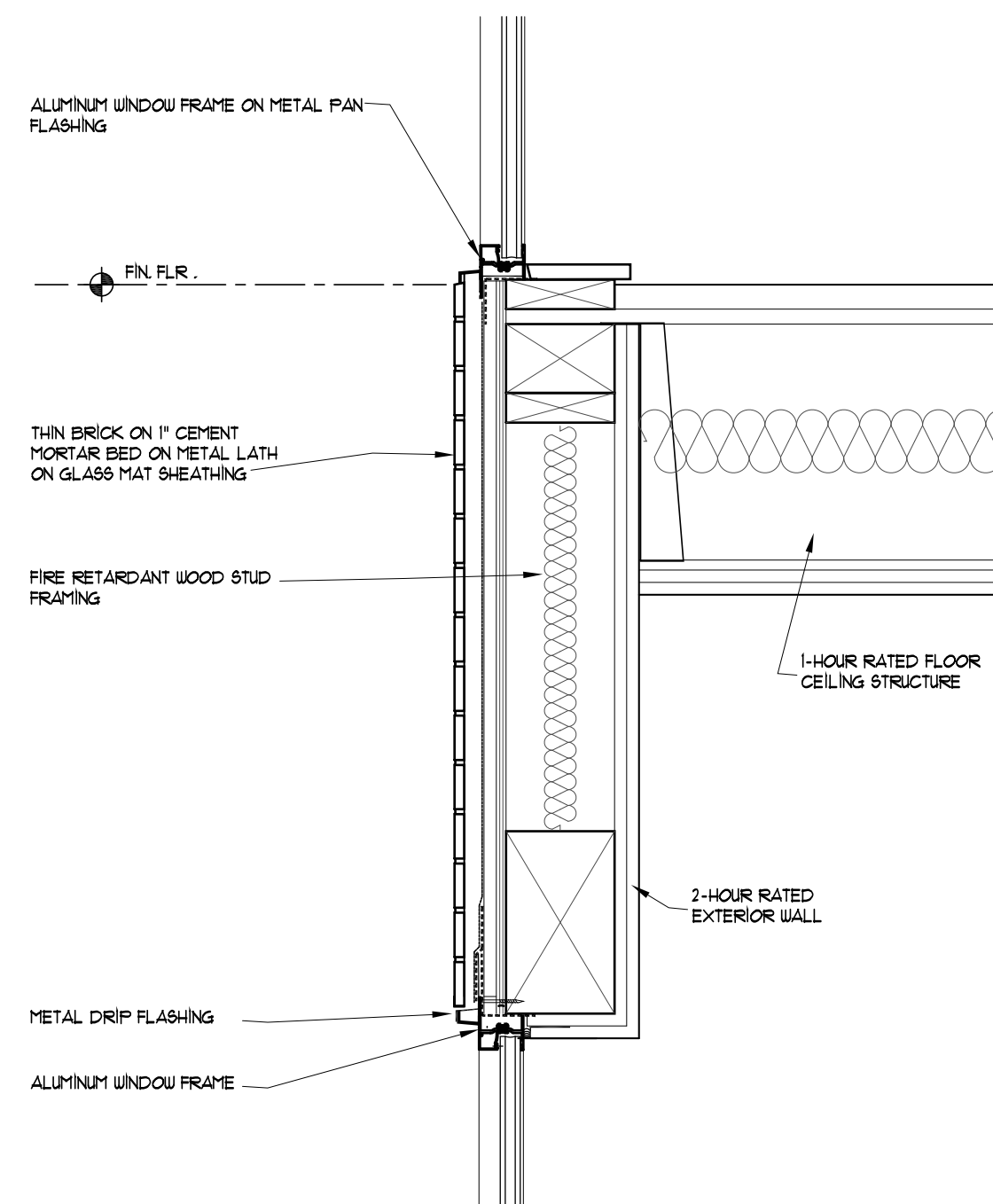




Detail B



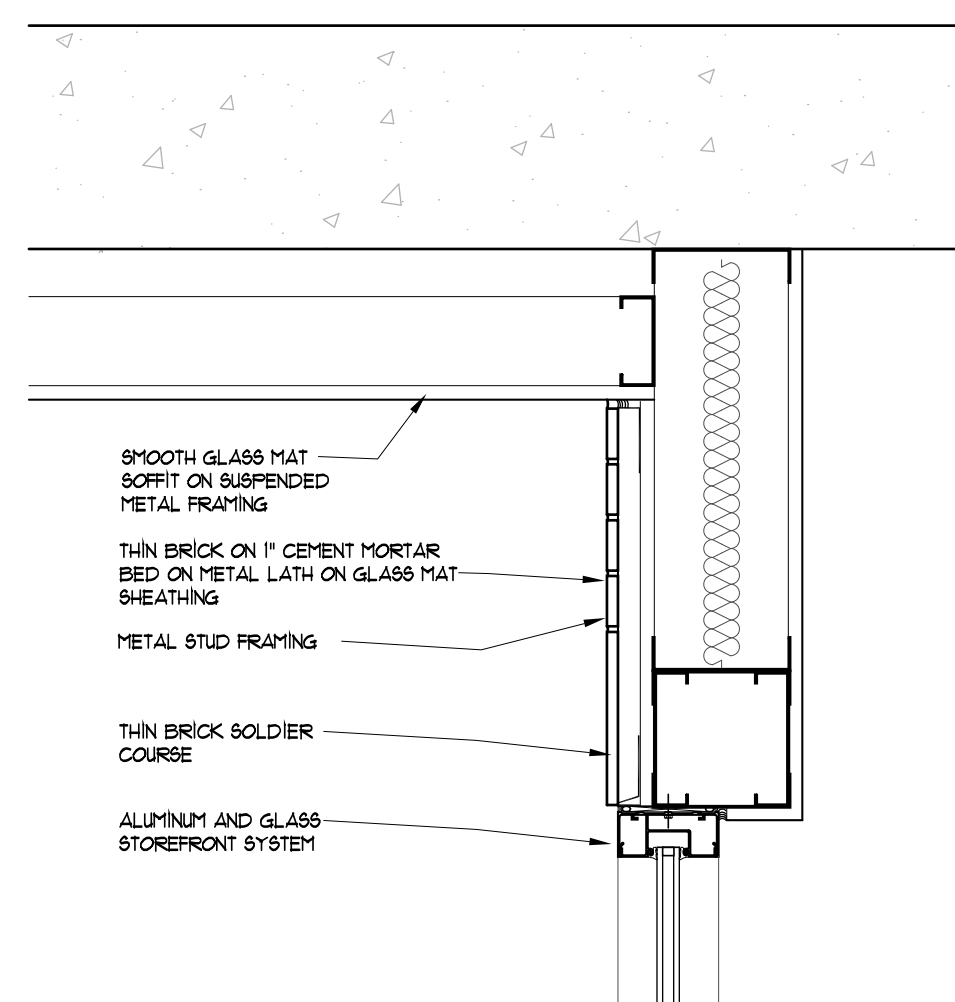
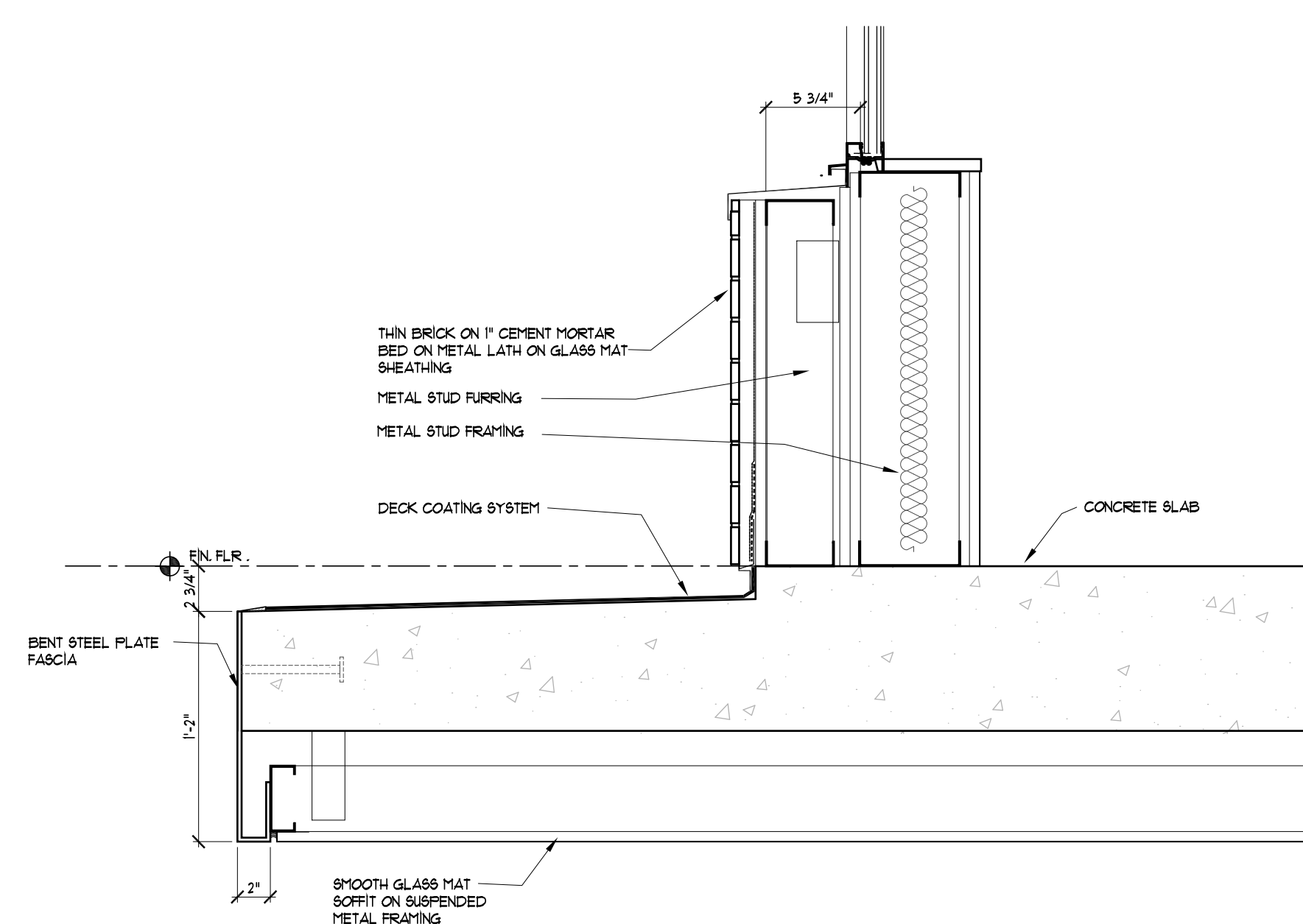
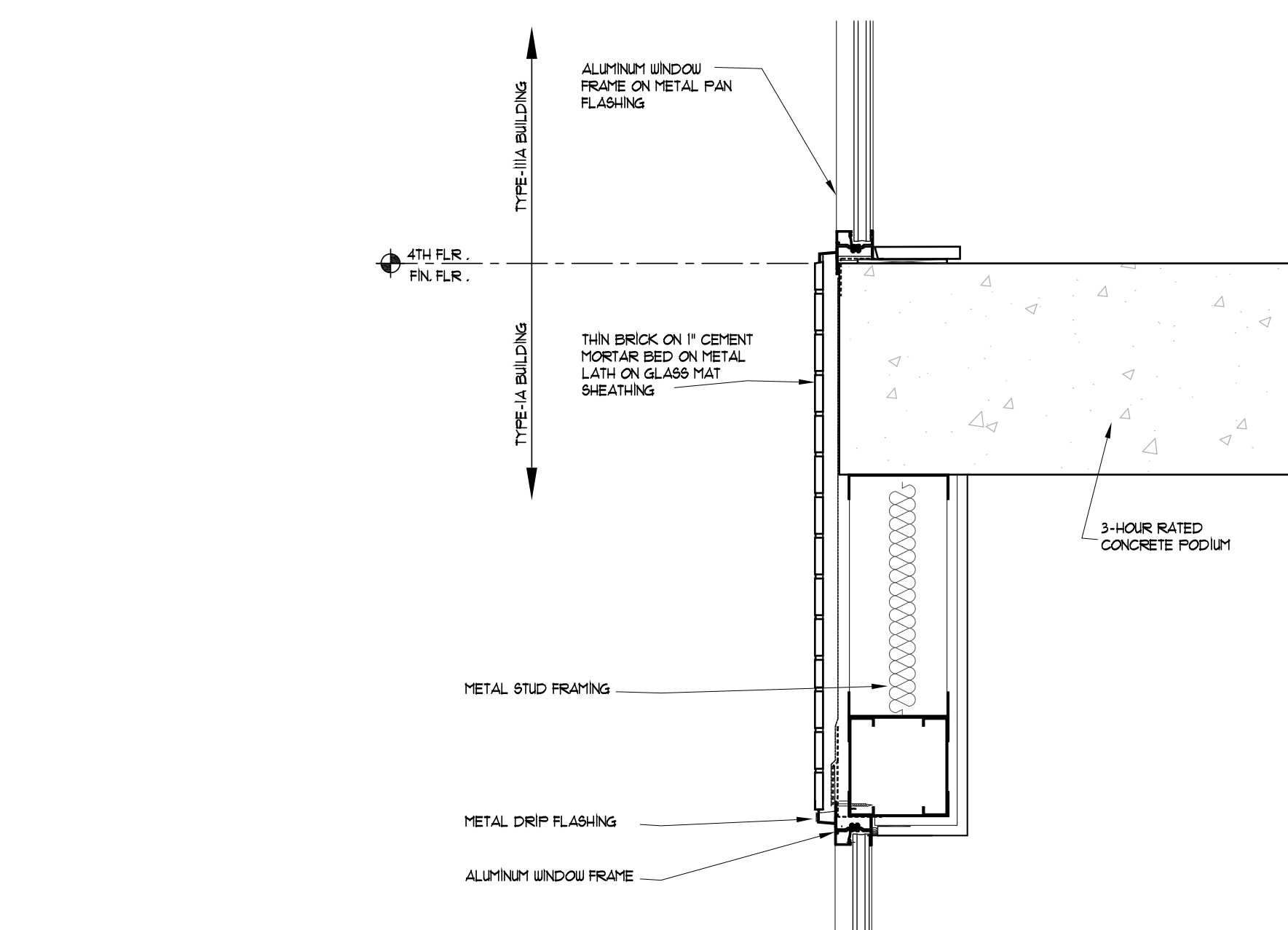
Detail A



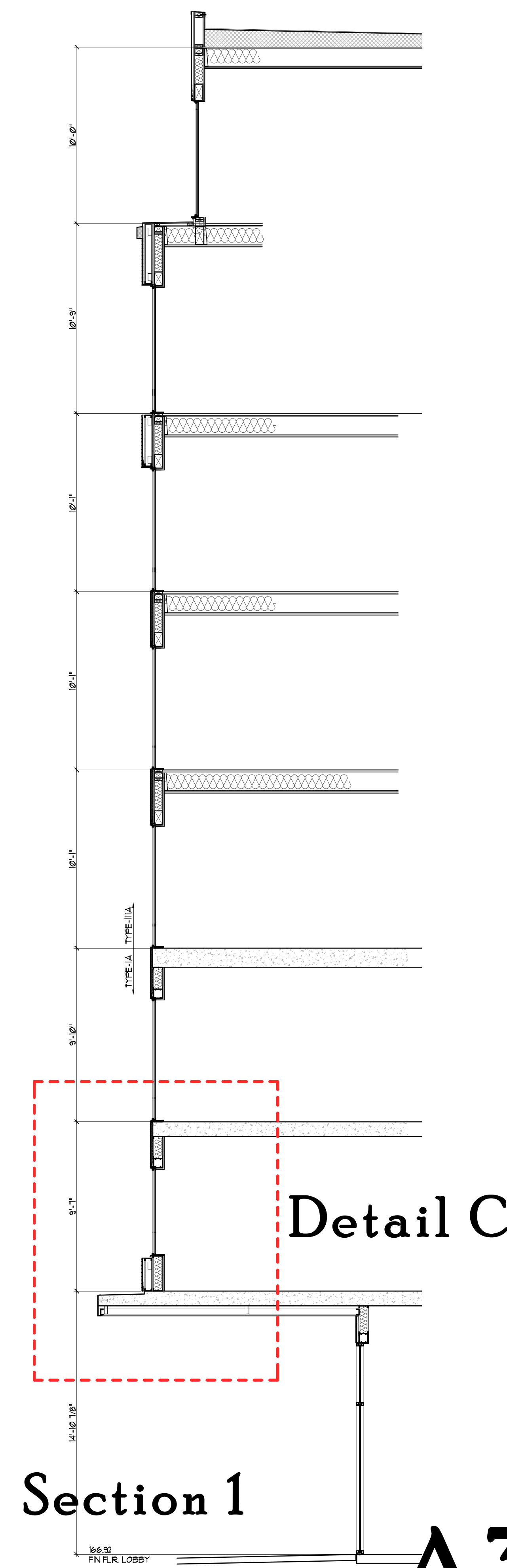
Detail A

Detail B

Section 1

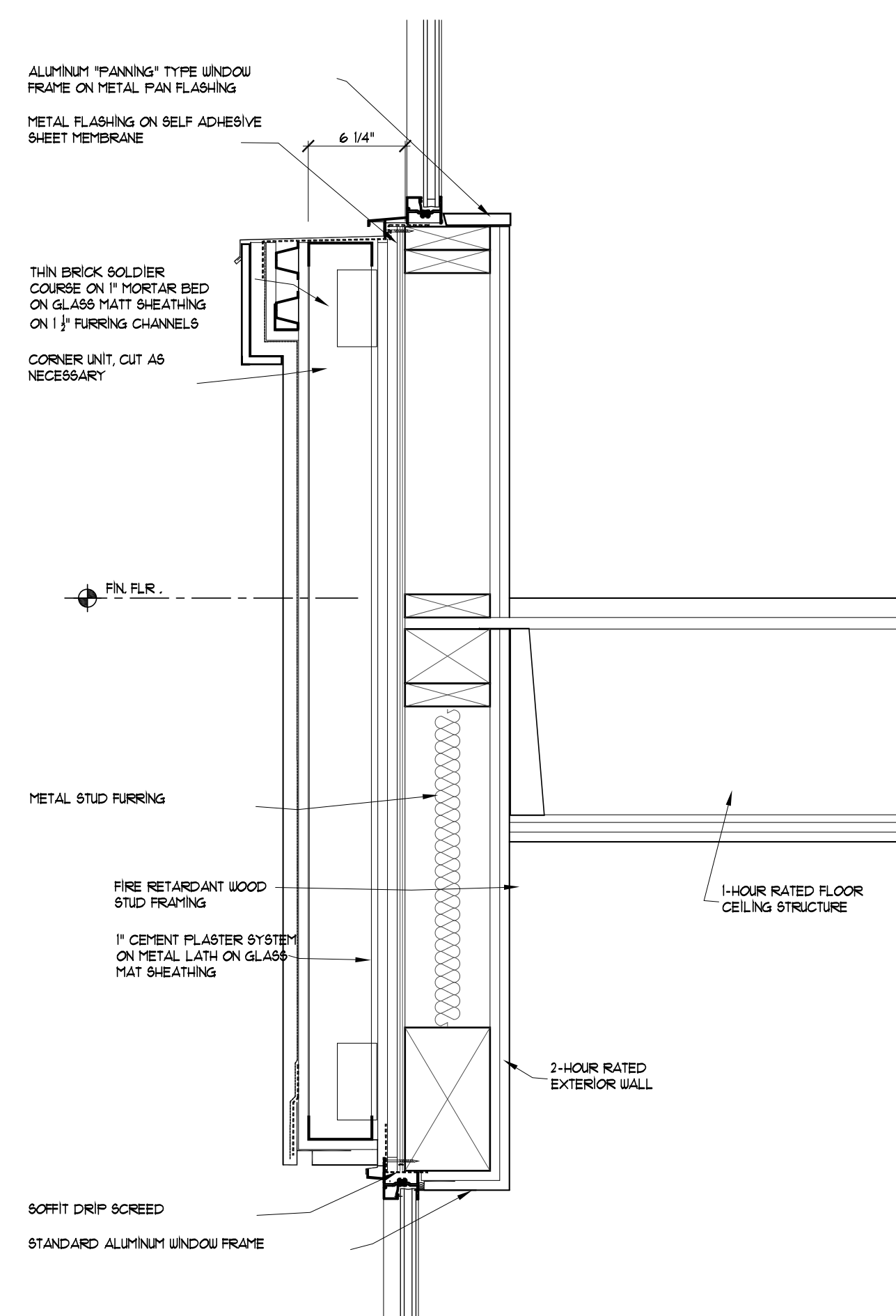
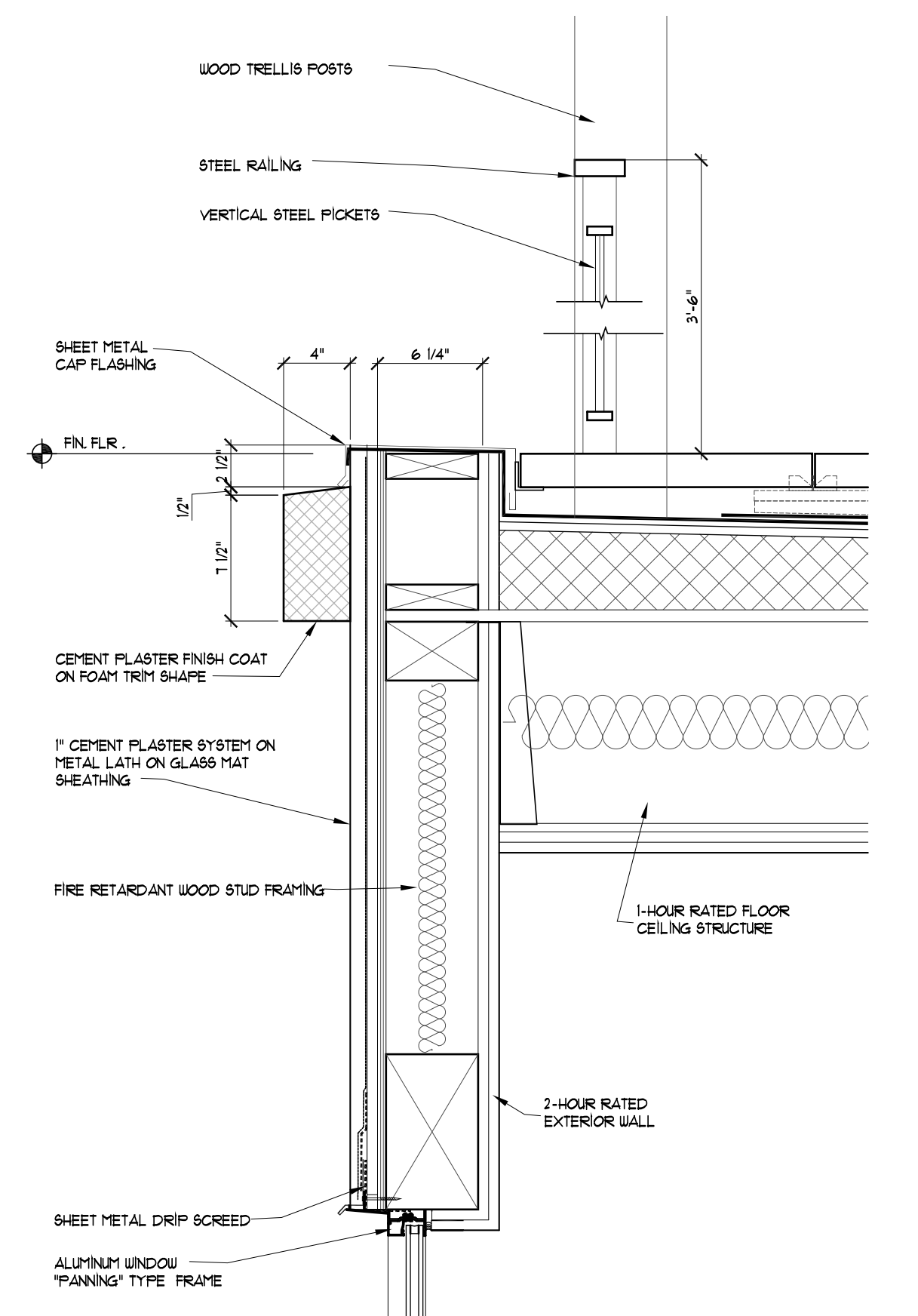


Detail C

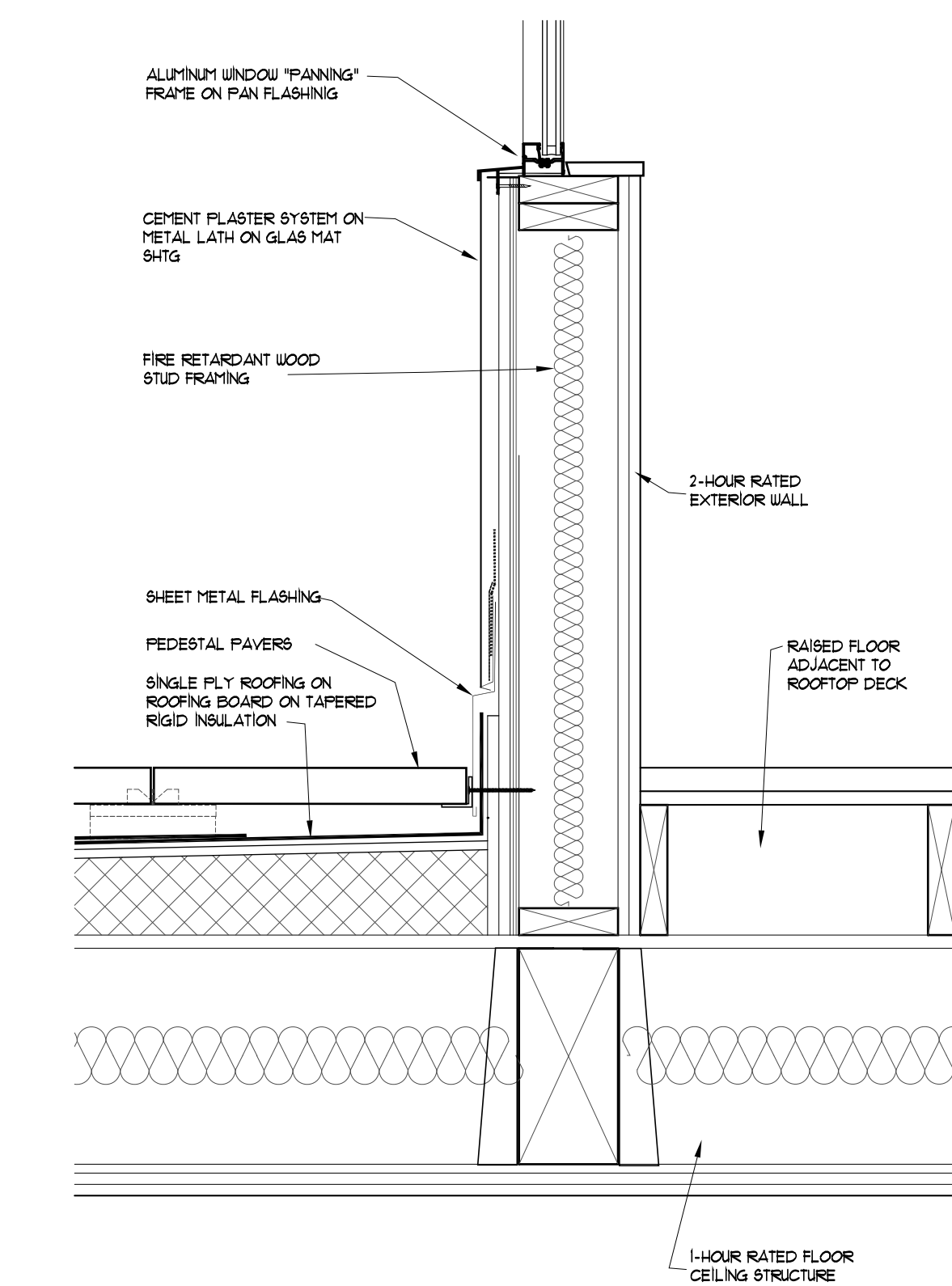
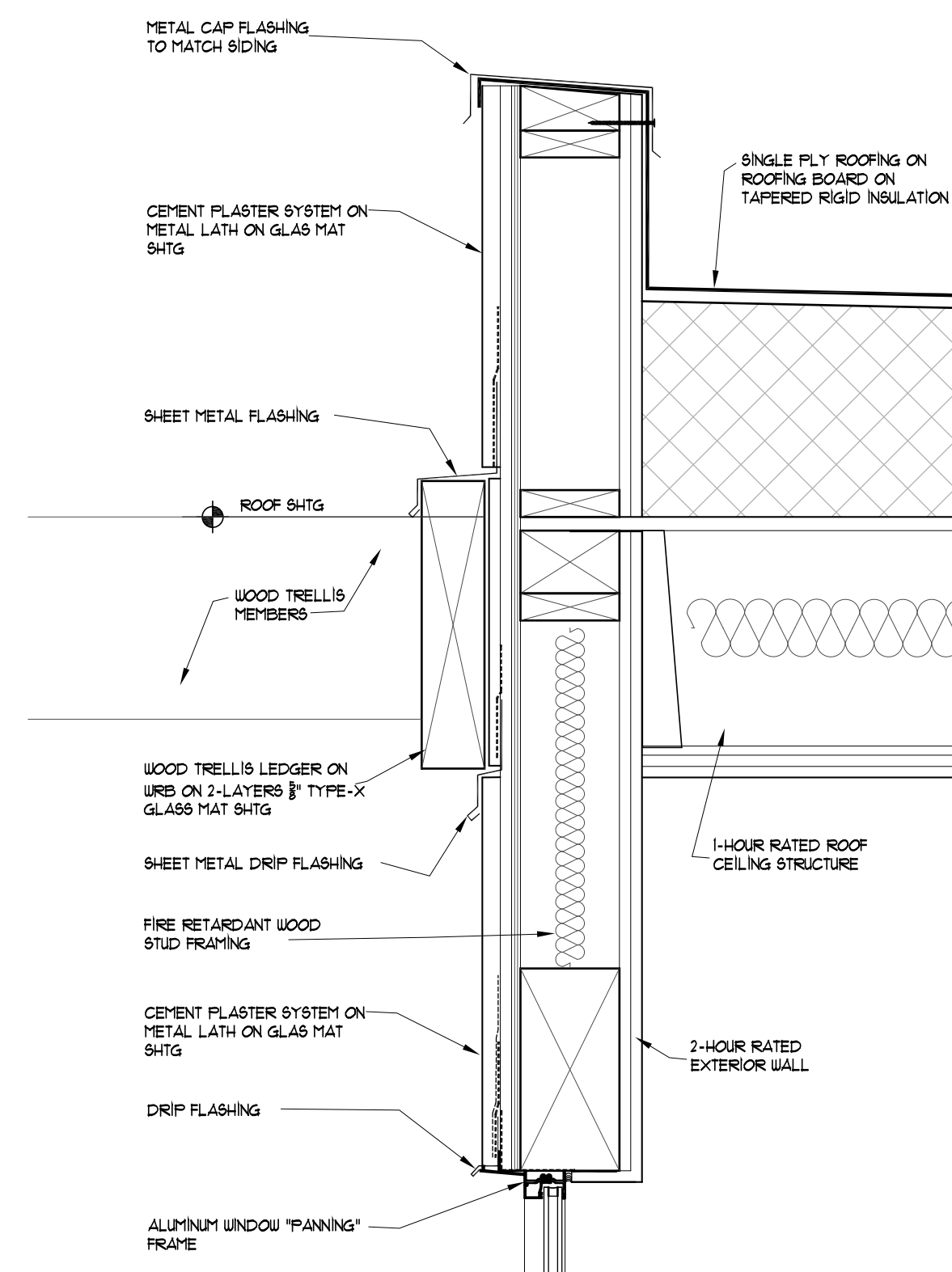


Section 1

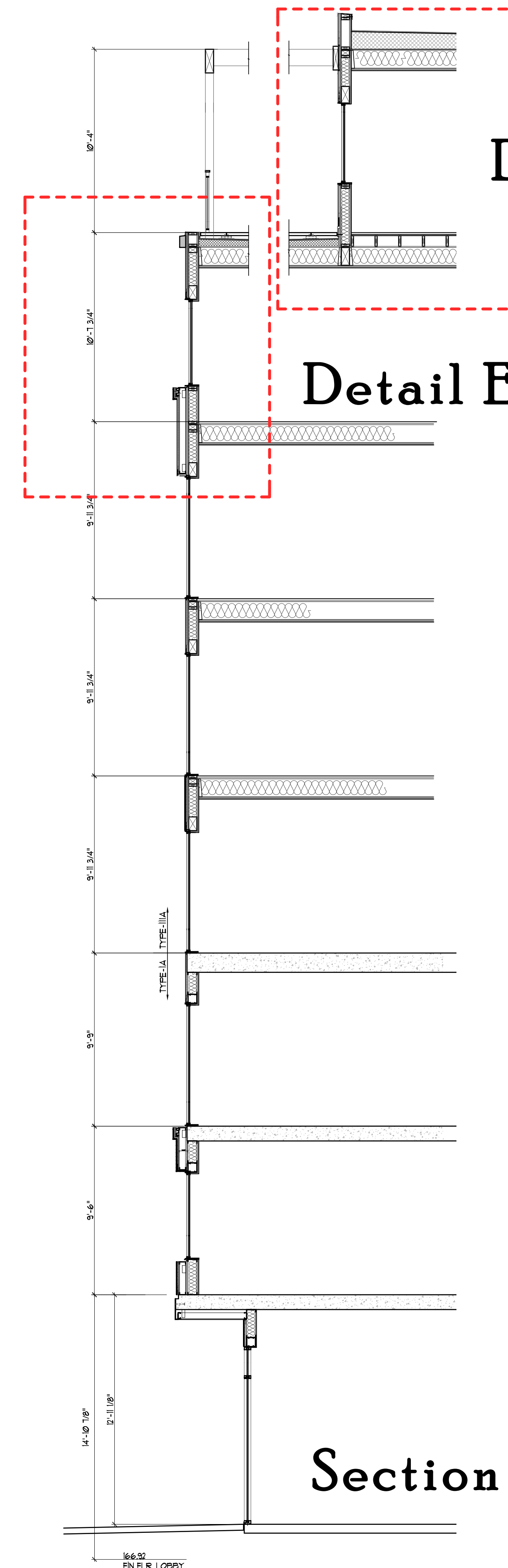
Detail C



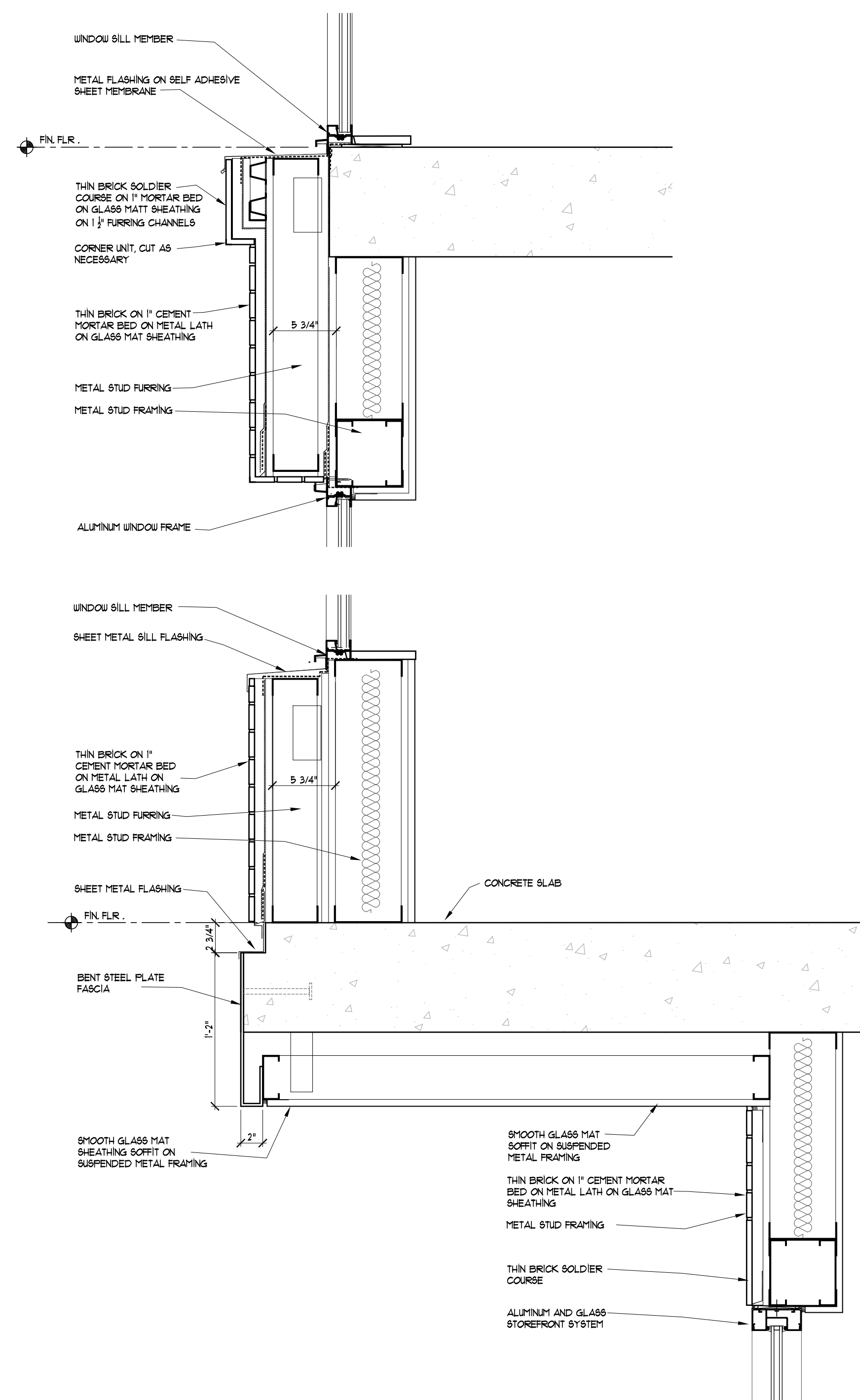
Detail E



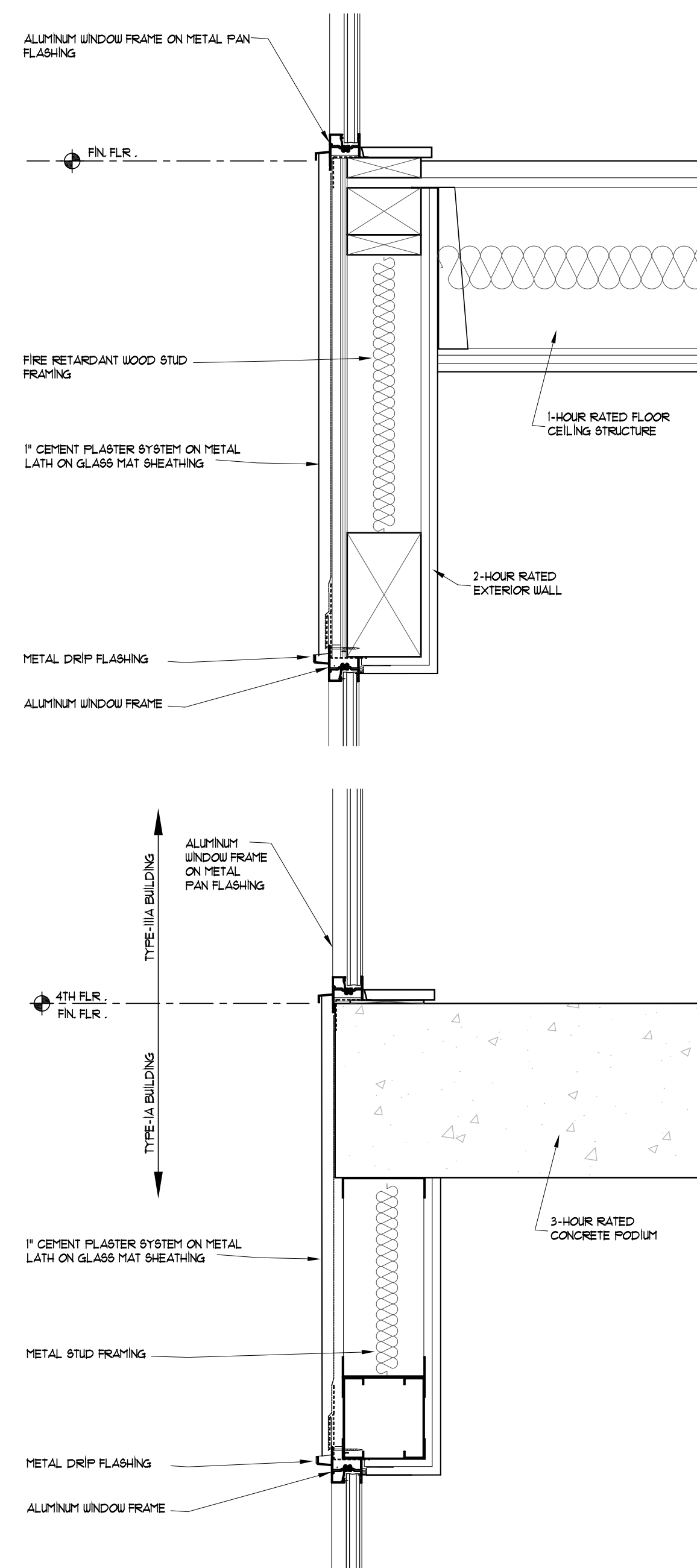
Detail D



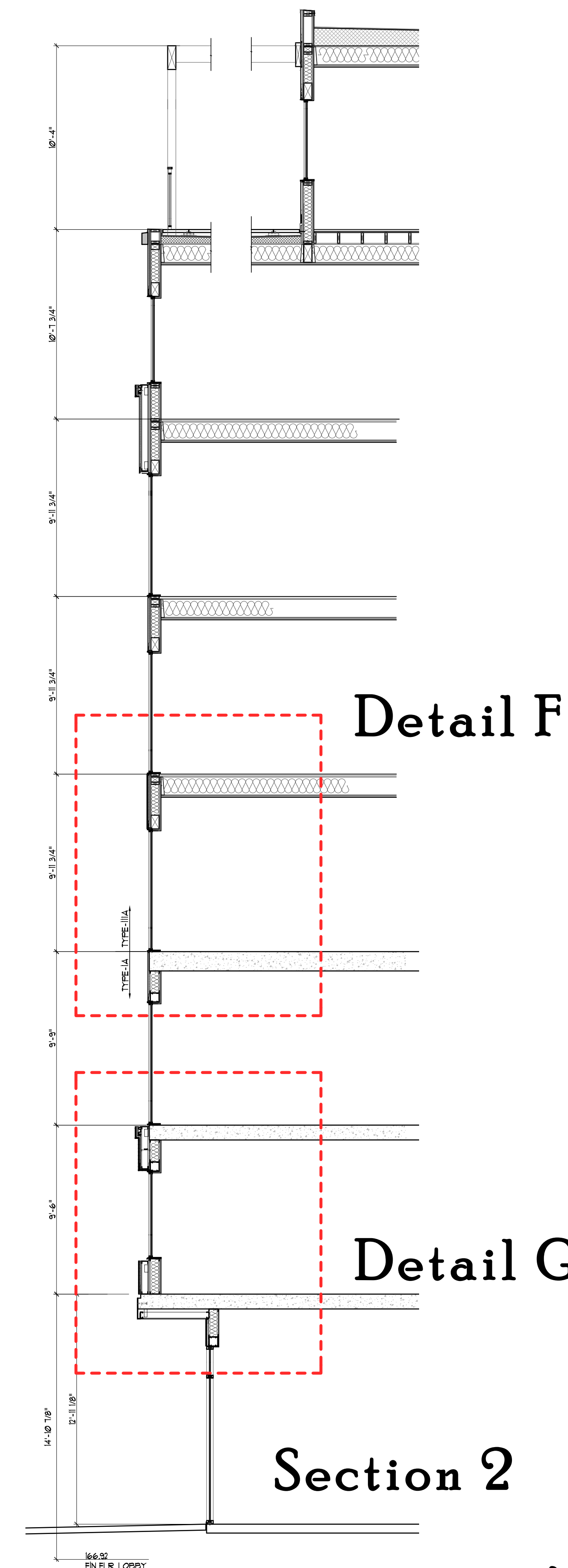
Section 2



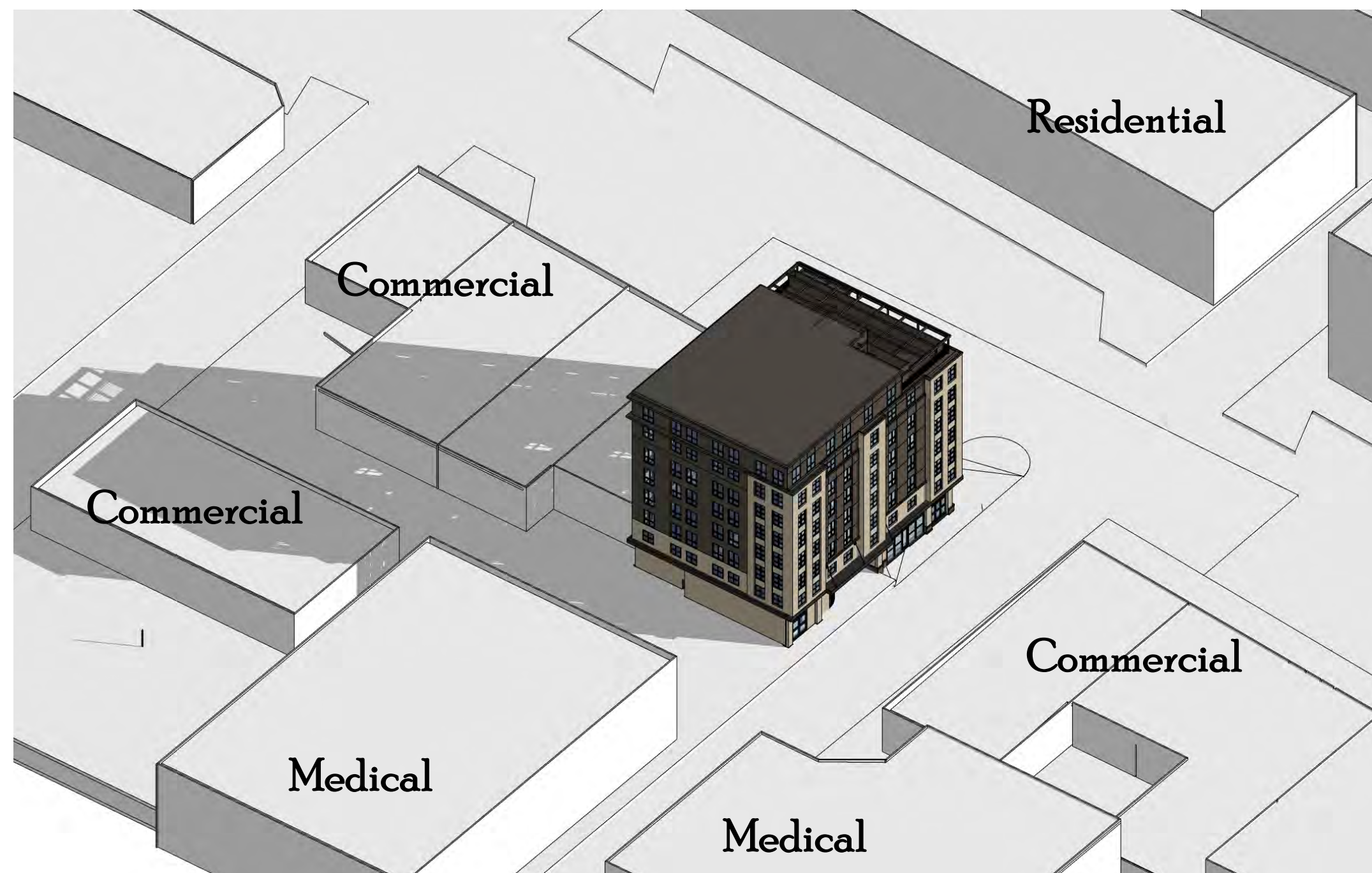
Detail G



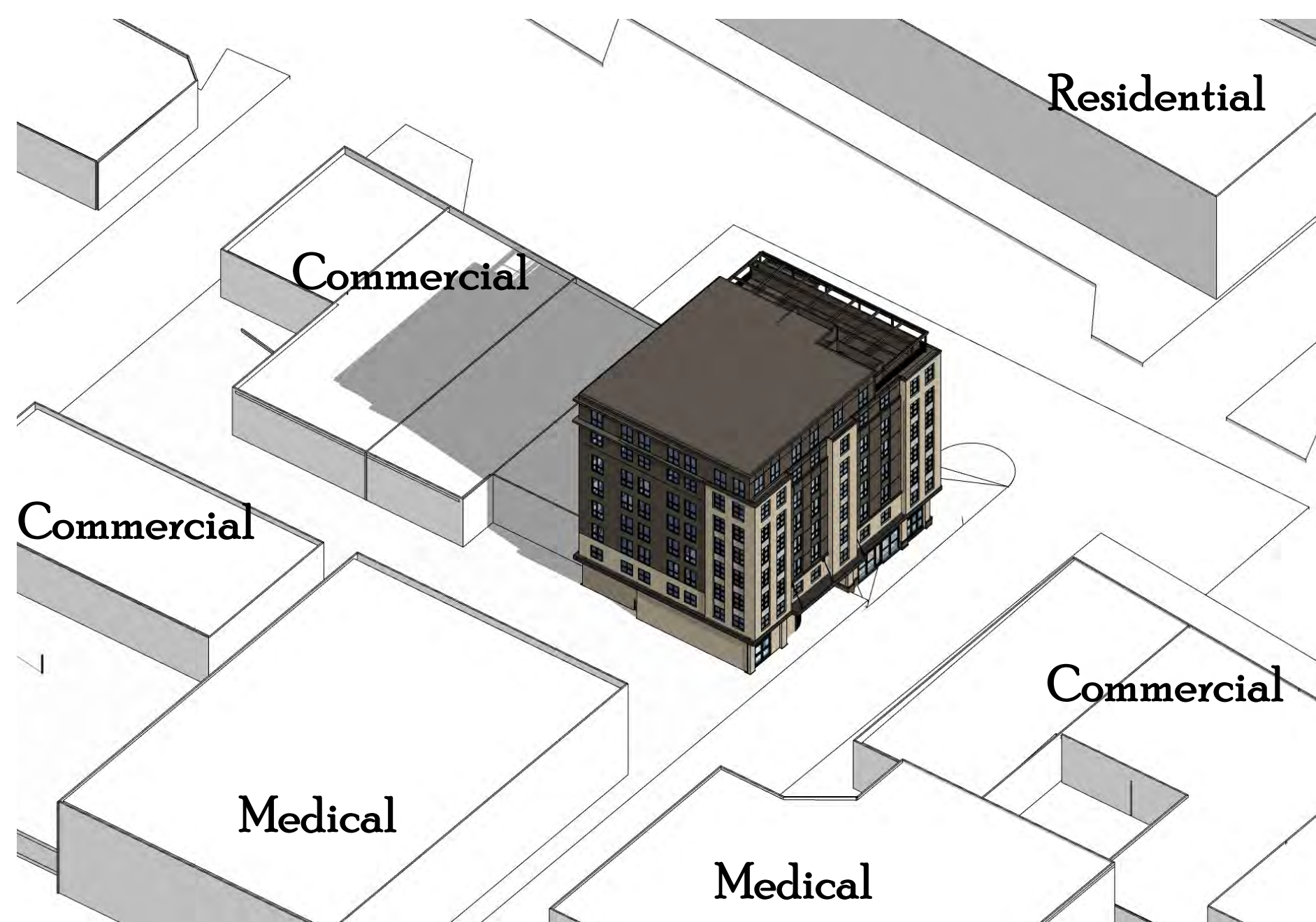
Detail F



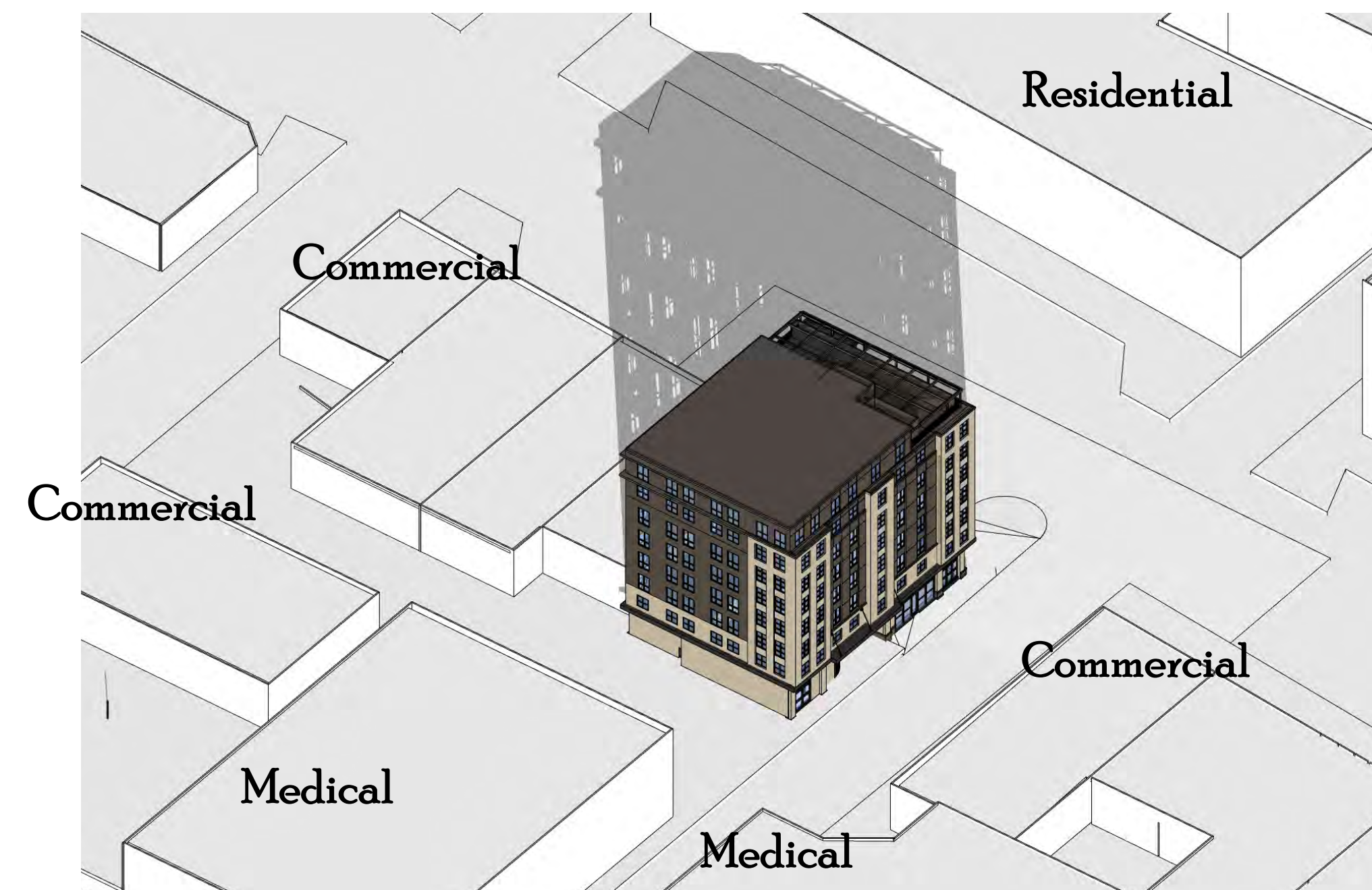
Section 2



December 21 - 9:21am  
Two Hours after Sunrise

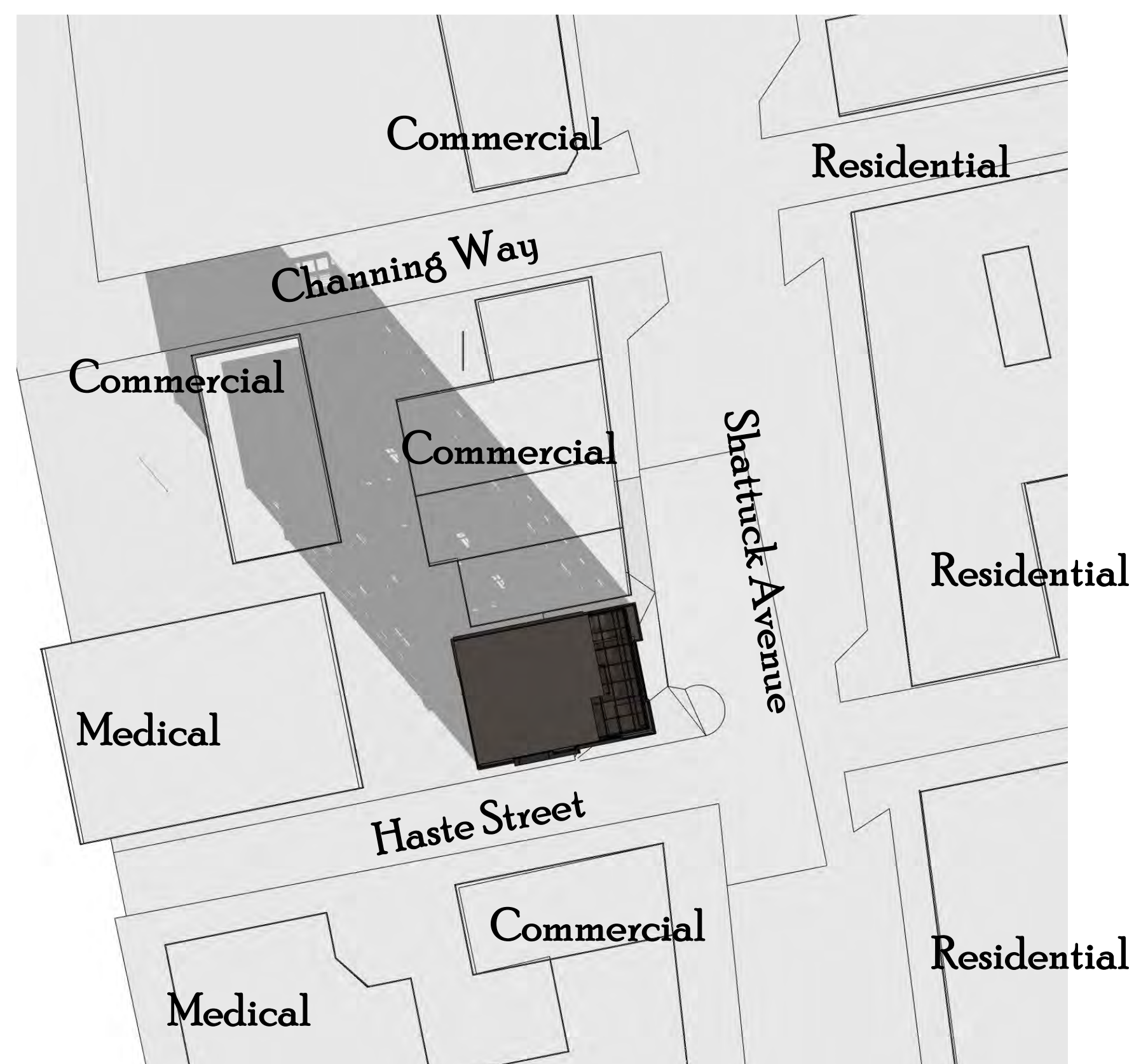


December 21 - 12pm

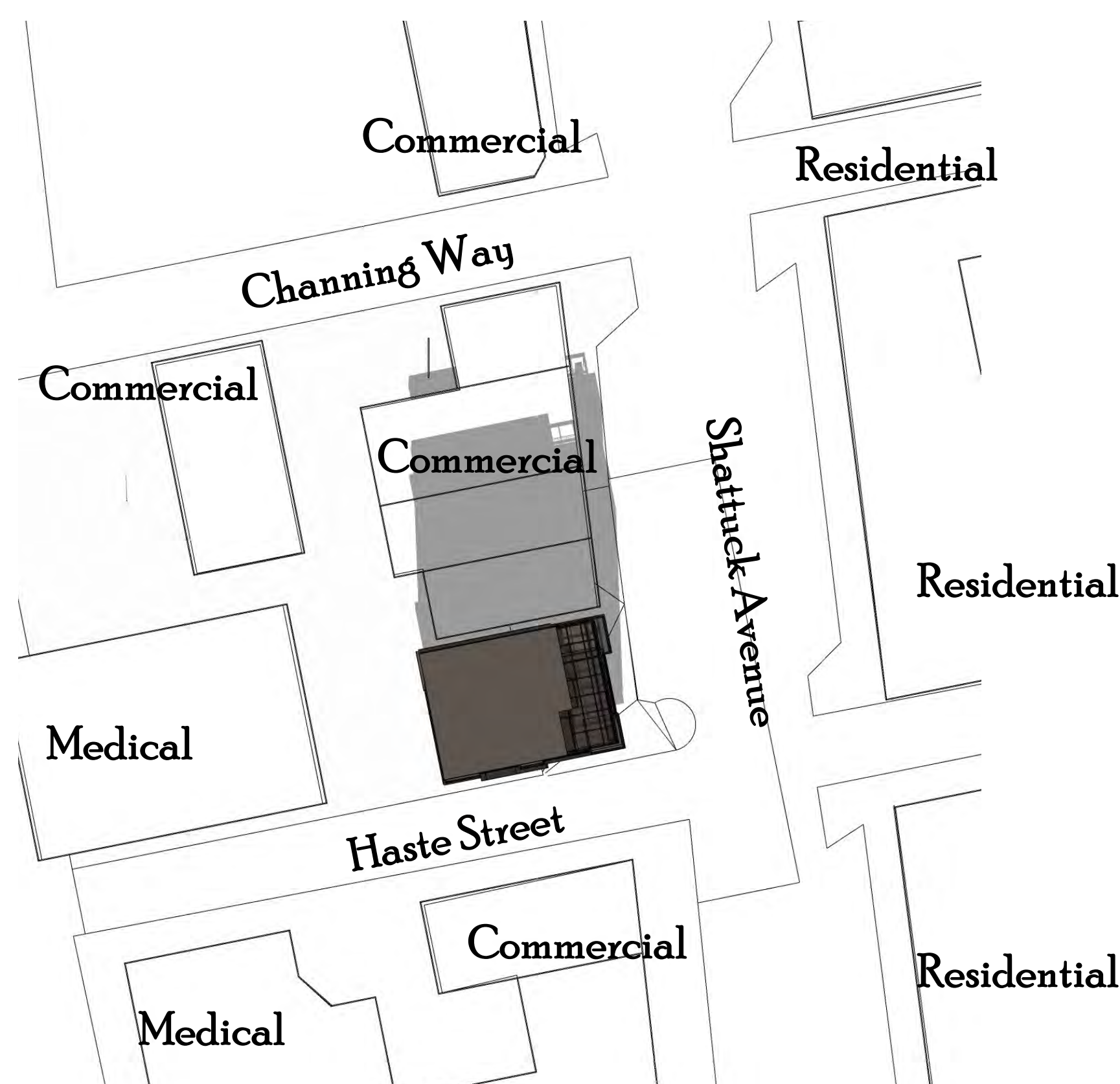


December 21 - 2:54pm  
Two Hours before Sunset

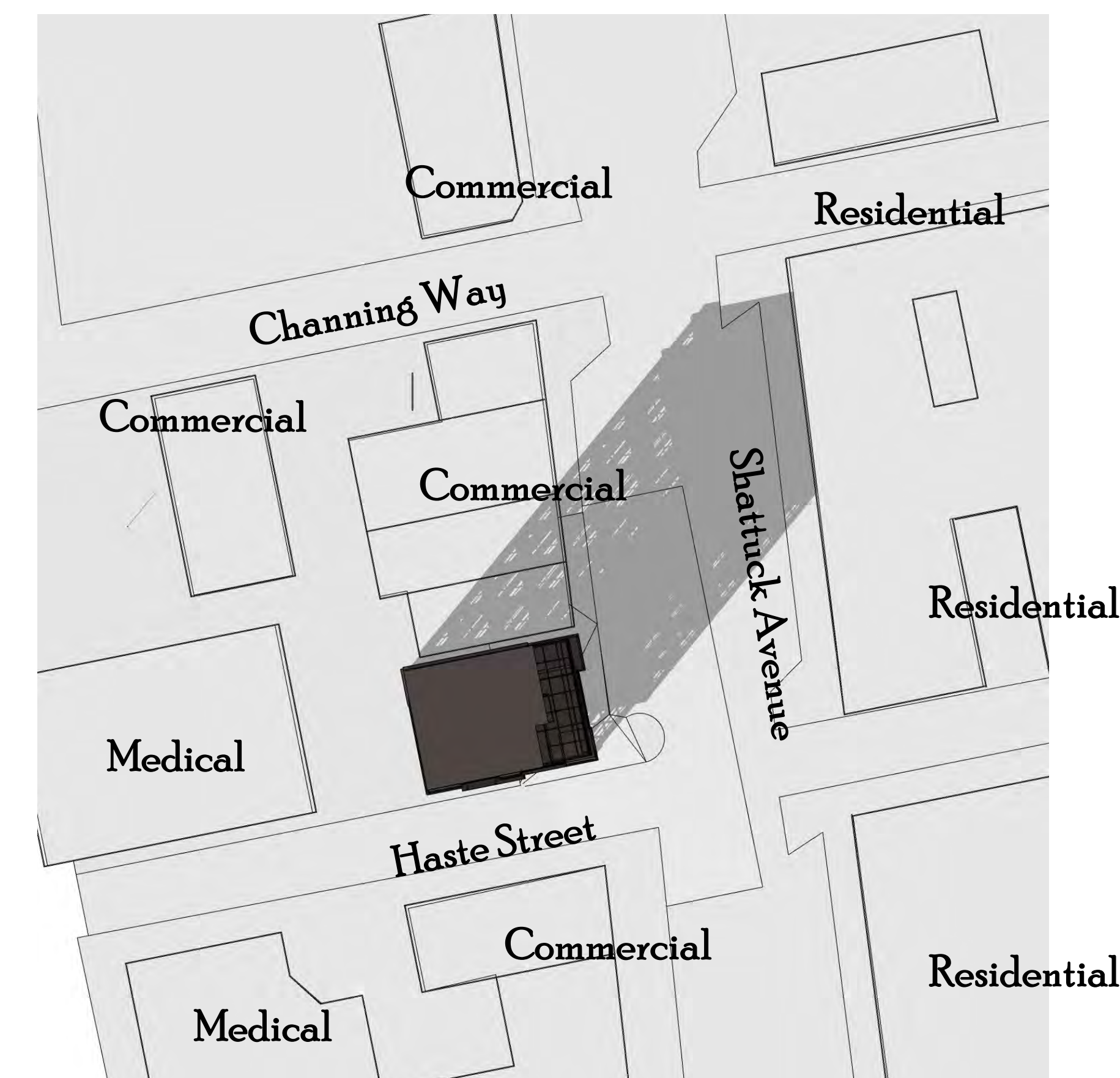
## Aerial Views



December 21 - 9:21am  
Two Hours after Sunrise



December 21 - 12pm



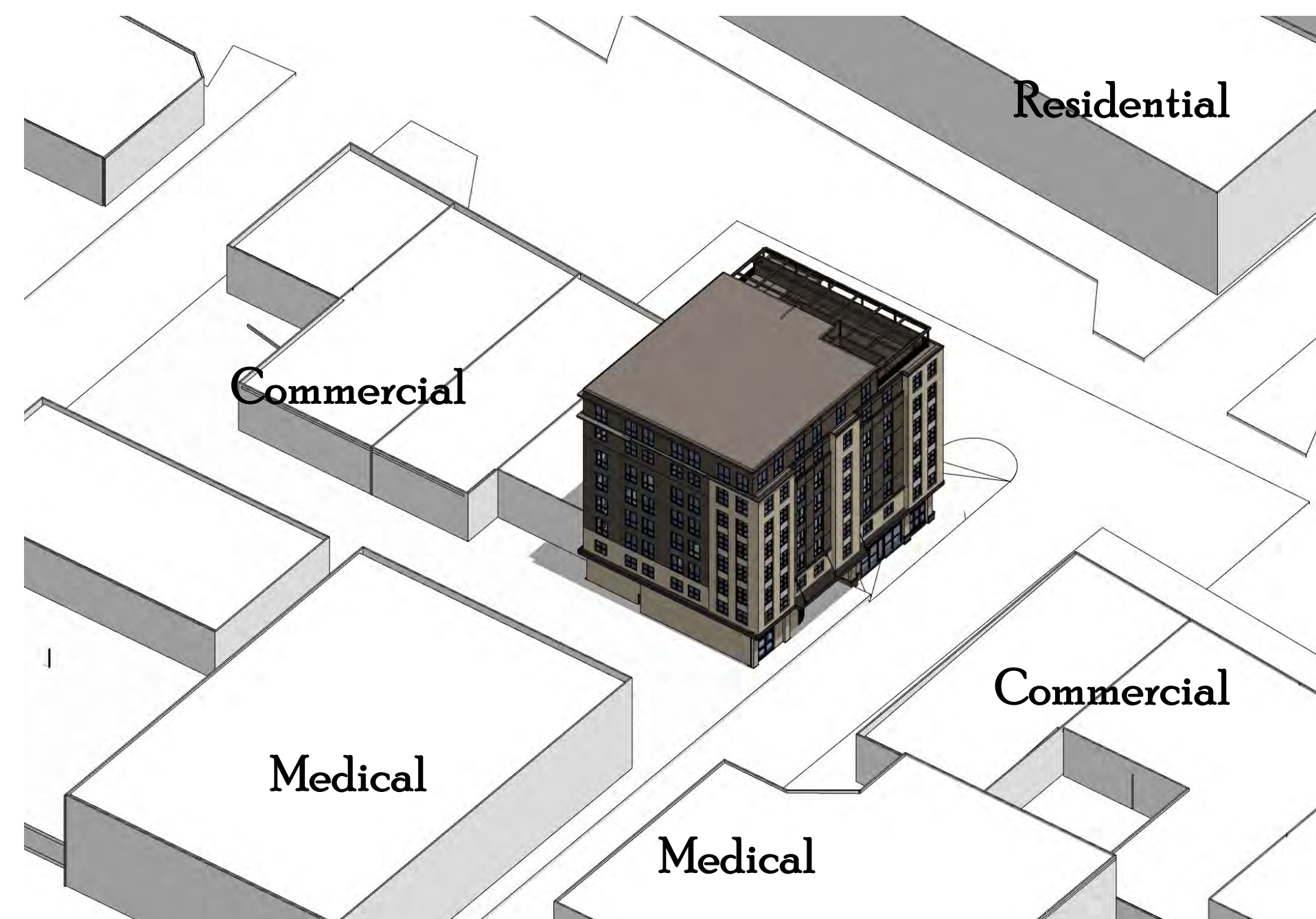
December 21 - 2:54pm  
Two Hours before Sunset

## Plan Views

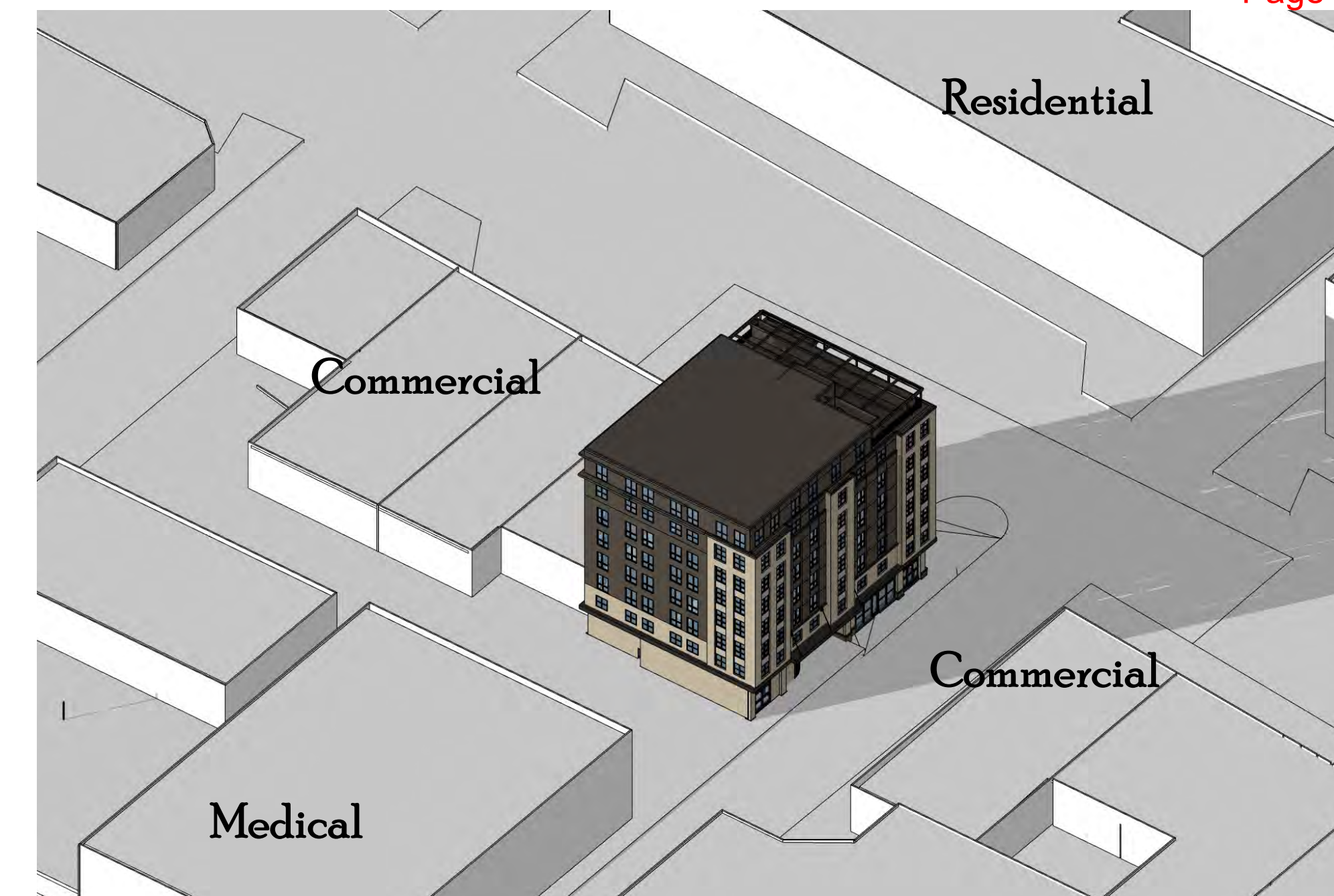
# The Lair @ Haste



June 21 - 7:48am  
 Two Hours after Sunrise

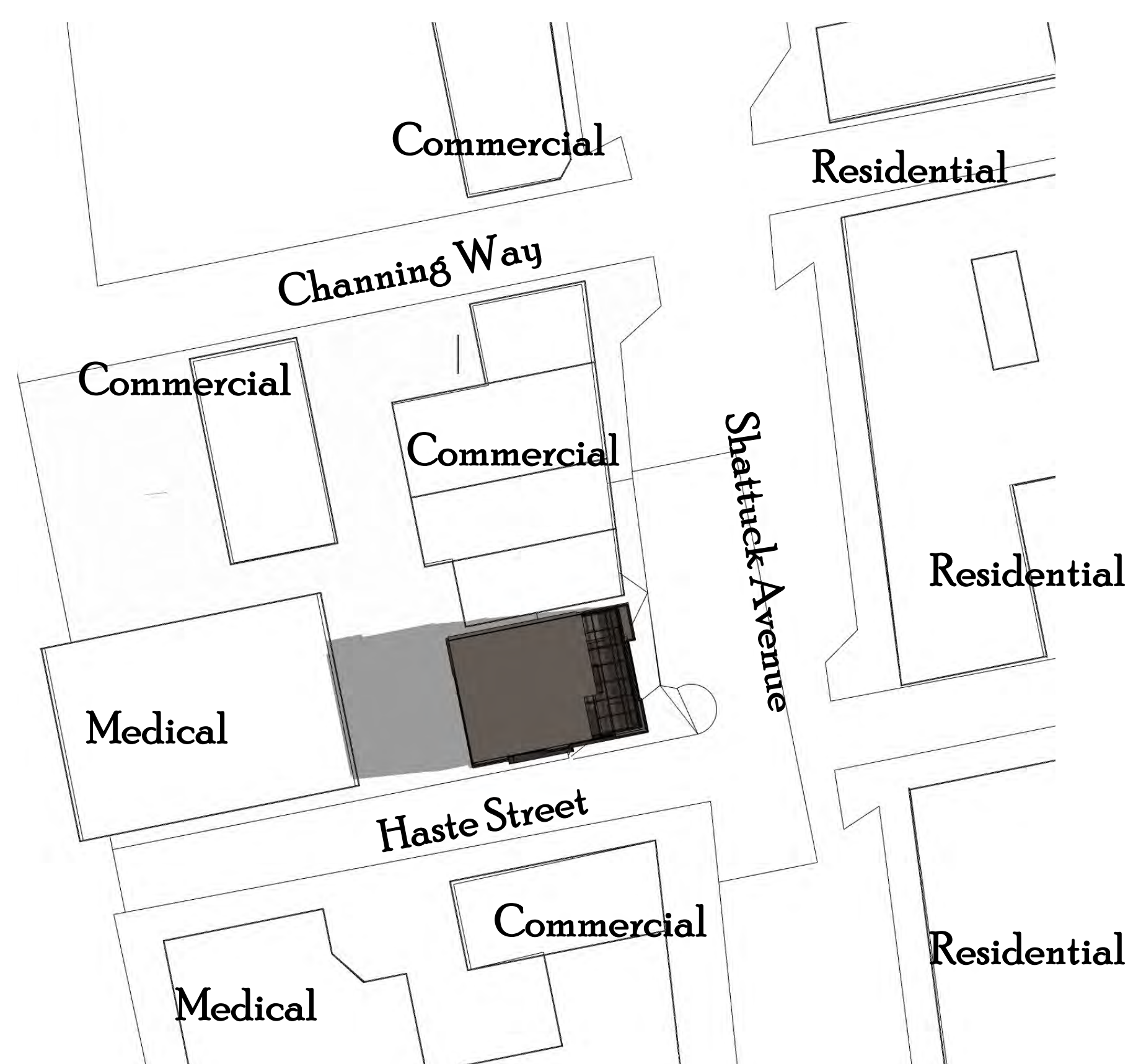


June 21 - 12pm

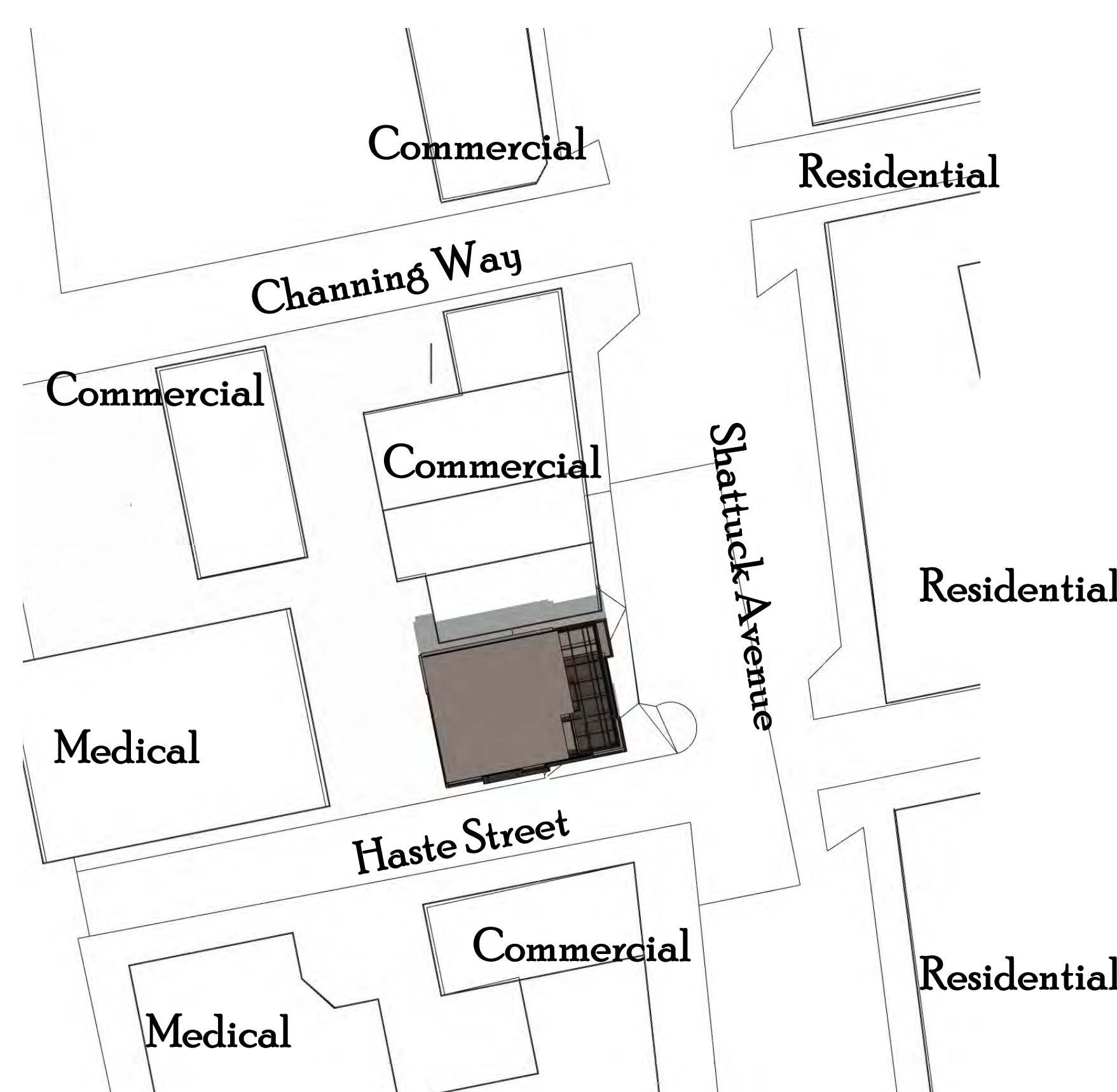


June 21 - 6:34pm  
 Two Hours before Sunset

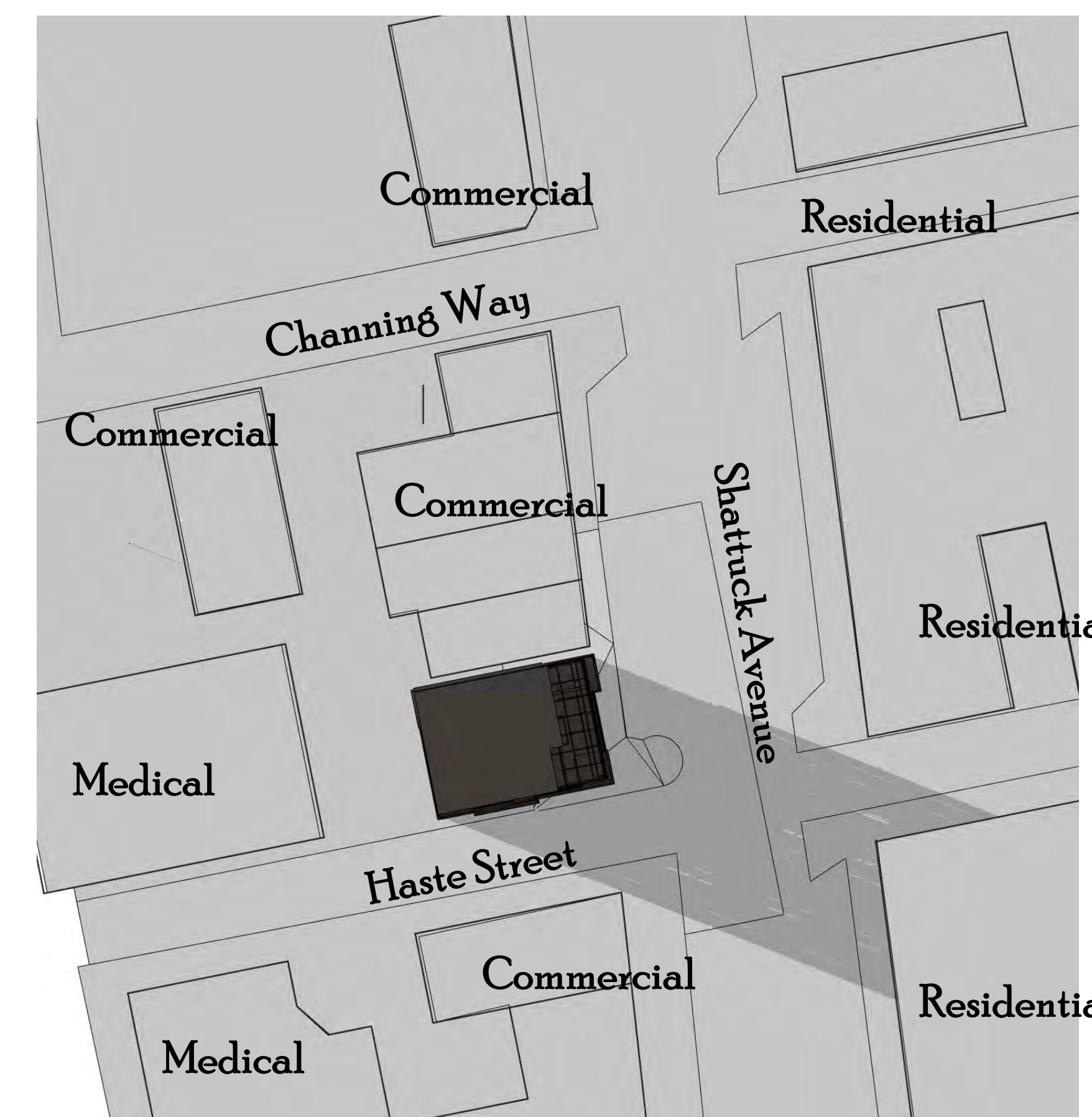
## Aerial Views



June 21 - 7:48am  
 Two Hours after Sunrise



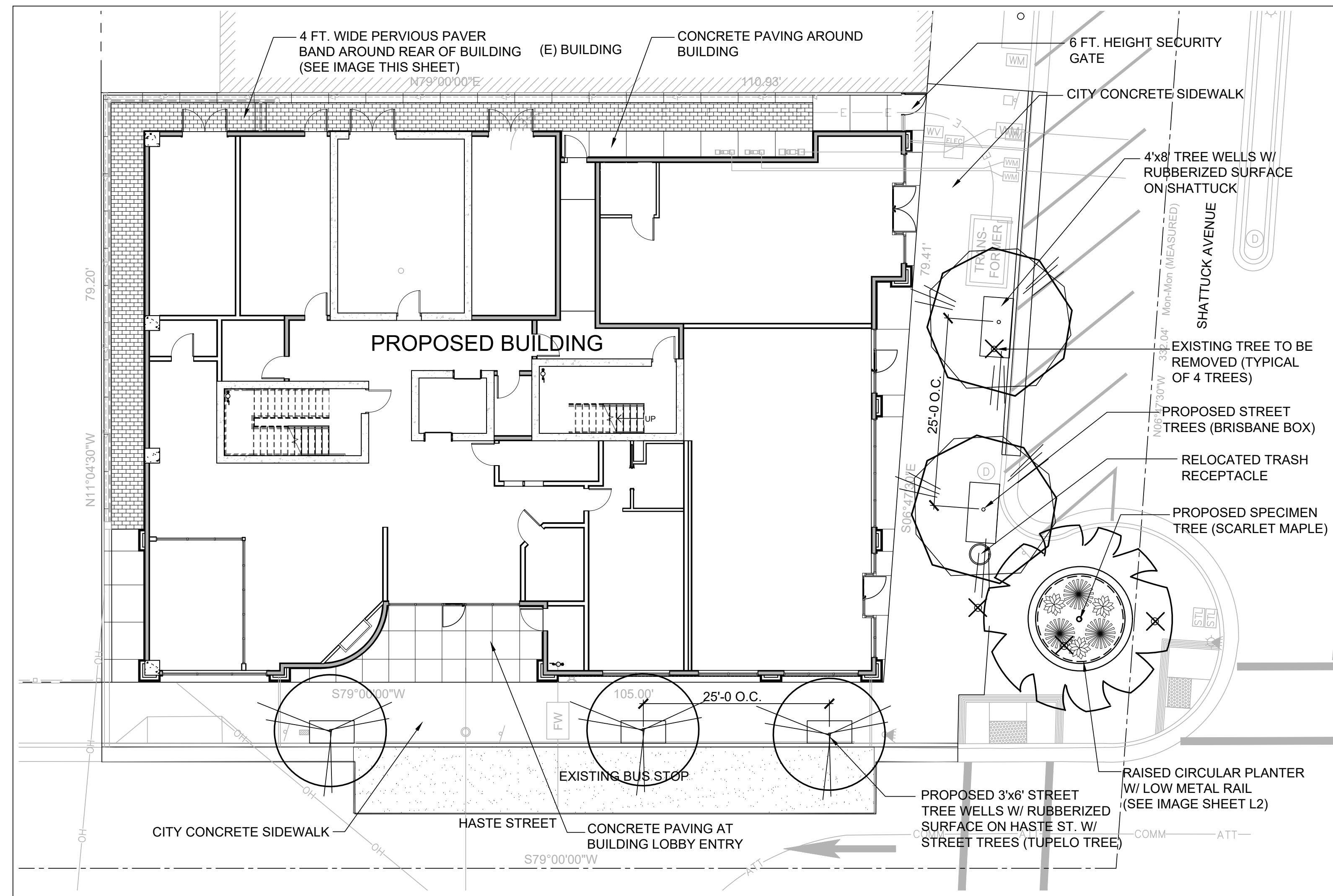
June 21 - 12pm



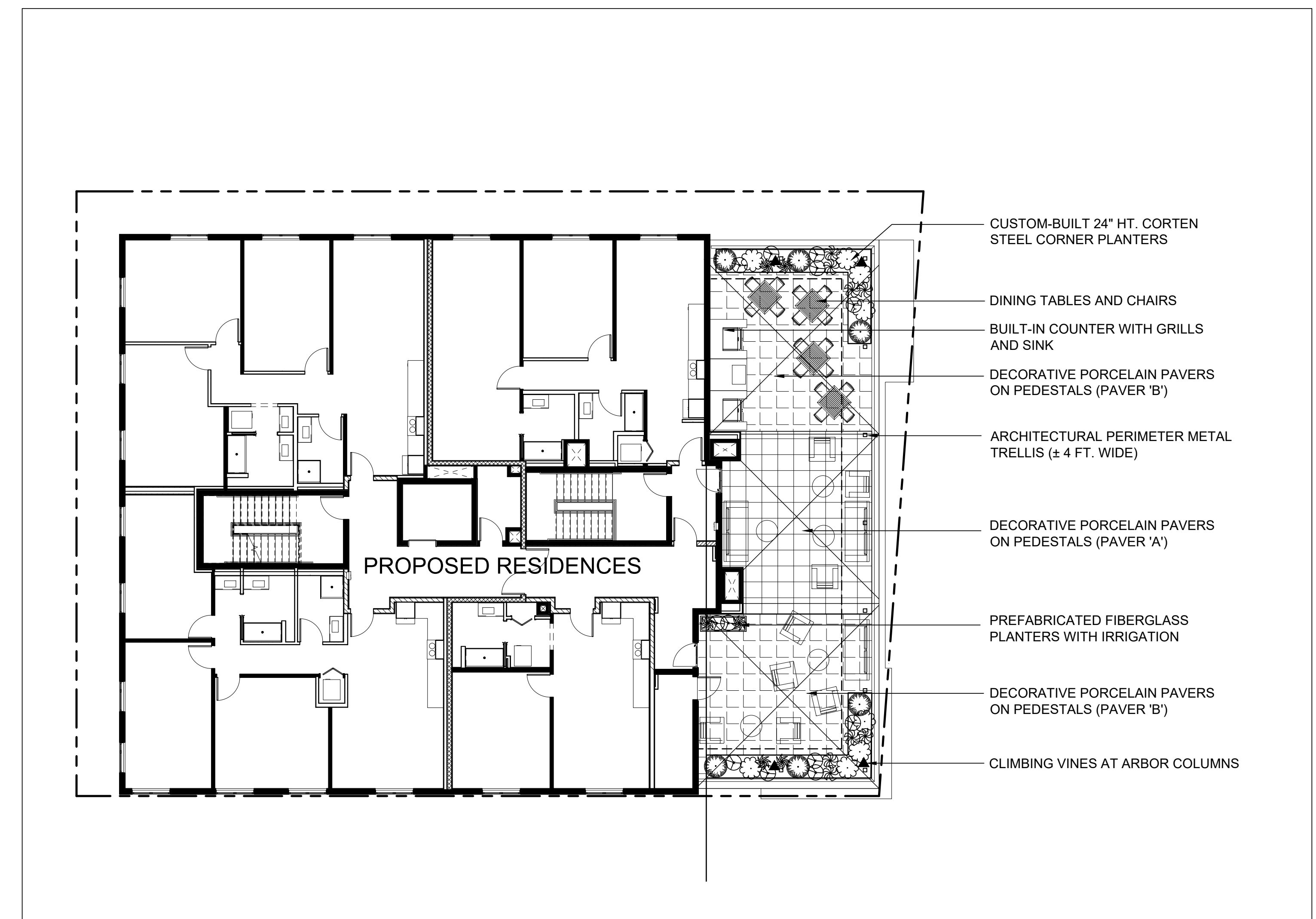
June 21 - 6:34pm  
 Two Hours before Sunset

## Plan Views

# The Lair @ Haste

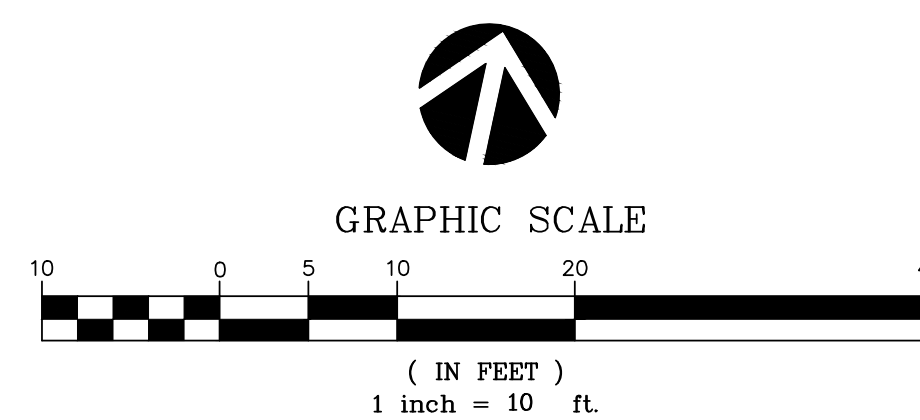


Ground Level



Roof Plan

WATER EFFICIENT IRRIGATED LANDSCAPE WORKSHEET						
REFERENCE EVAPOTRANSPIRATION (ETo): 41.8						
HYDROZONE / PLANTING DESCRIPTION	PLANT FACTOR (PF)	IRRIGATION METHOD	IRRIGATION EFFICIENCY (IE)	ETAF (PF / IE)	LANDSCAPE AREA (sq. ft.)	ESTIMATED TOTAL WATER USE (ETWU)
<b>REGULAR LANDSCAPE AREAS:</b>						
LOW WATER USE	0.2	BUBBLER	0.81	0.2469135	248	1587.0
MEDIUM WATER USE	0.5	BUBBLER	0.81	0.6172839	45	719.9
					<b>TOTALS:</b>	<b>89</b>
<b>SPECIAL LANDSCAPE AREAS:</b>						
REC. AREA				0	0	0
WATER FEATURE 1				0	0	0
WATER FEATURE 2				0	0	0
					<b>TOTALS:</b>	<b>0</b>
						<b>ETWU TOTAL:</b> 2,307
						<b>MAXIMUM ALLOWED WATER ALLOWANCE (MAWA):</b> 3,417
<b>ETAF CALCULATIONS:</b>						
<b>REGULAR LANDSCAPE AREAS:</b>						
TOTAL ETAF x AREA						89
TOTAL LANDSCAPE AREA						293
AVERAGE ETAF						0.30
<b>ALL LANDSCAPE AREAS:</b>						
TOTAL ETAF x AREA						89
TOTAL LANDSCAPE AREA						293
SITEWIDE ETAF						0.30



GENERAL NOTES

1. ALL PLANTING AREAS, EXCEPT STORMWATER PLANTERS, SHALL RECEIVE A 3" MINIMUM DEEP LAYER OF FIR BARK DRESSING.

2. ALL PLANTING SHALL BE WATERED BY FULLY AUTOMATIC, WATER-CONSERVING IRRIGATION SYSTEM WITH WEATHER-BASED CONTROLLER OPERATION.

PROJECT PRIVATE USABLE LANDSCAPE OPEN SPACE		
	TOTAL AREA	LANDSCAPE AREA
• ROOF LEVEL	1,444 SF	450 SF (INCLUDES ARBOR)

CITY REQUIREMENT: 40% OF COMMON AREA IS TO BE LANDSCAPE. LANDSCAPE AREA IS 31% OF USABLE COMMON AREA OPEN SPACE.

RECOMMENDED PLANT LIST:						
BOTANICAL NAME	COMMON NAME	QUANTITY	SIZE	WUCOLS	NATIVE	WATER USE
<b>TREES:</b>						
ACER RUBURM	SCARLET MAPLE	1	36" BOX	MED	NO	
LOPHOSTEMON CONFERTUS	BRISBANE BOX	2	24" BOX	MED	NO	
NYSSA SYLVATICA 'WILDFIRE'	TUPELO TREE	3	24" BOX	MED	NO	
<b>SHRUBS/PERENNIALS:</b>						
AGAVE ATTENUATA	FOXTAIL AGAVE	3	5 GA	LOW	NO	
CORDYLINE 'ELECTRIC PINK'	CORDYLINE	3	5 GA	LOW	NO	
DICENTRA SPECTABILIS	BLEEDING HEART	6	5 GA	MED	YES	
GALVESIA SPECIOSA	ISLAND SNAPDRAGON	12	5 GA	MED	YES	
IRIS DOUGLASII	PACIFIC COAST IRIS	4	5 GA	LOW	YES	
PENSTEMON SPECTABILIS	BEARD TONGUE	8	5 GA	LOW	YES	
SALVIA CLEVELANDII 'COMPACTA'	CLEVELAND SAGE	8	5 GA	LOW	YES	
<b>VINE:</b>						
GELSEMIUM SEMPERVIRENS	CAROLINA JESSAMINE	4	5 GA	LOW	NO	



ACER RUBRUM  
(SCARLET MAPLE)



LOPHOSTEMON CONFERTUS  
(BRISBANE BOX)



NYSSA SYLVATICA  
(TUPELO)



AGAVE ATTENUATA  
(FOXTAIL AGAVE)



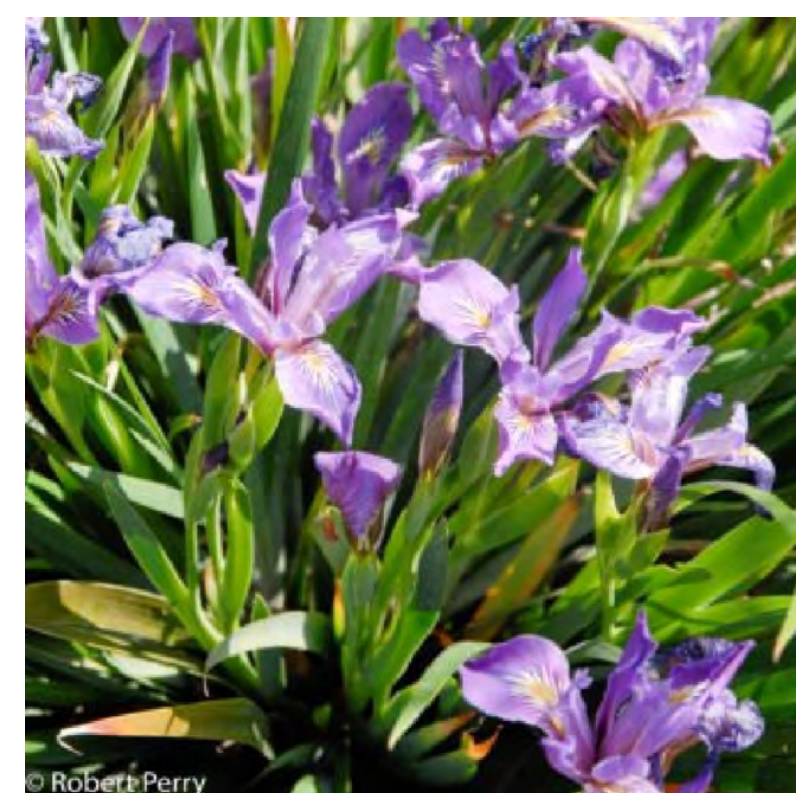
CORDYLIN 'ELECTRIC PINK'  
(CORDYLIN)



DICENTRA SPECTABILIS  
(BLEEDING HEART)



GALVIA SPECIOSA  
(ISLAND SNAPDRAGON)



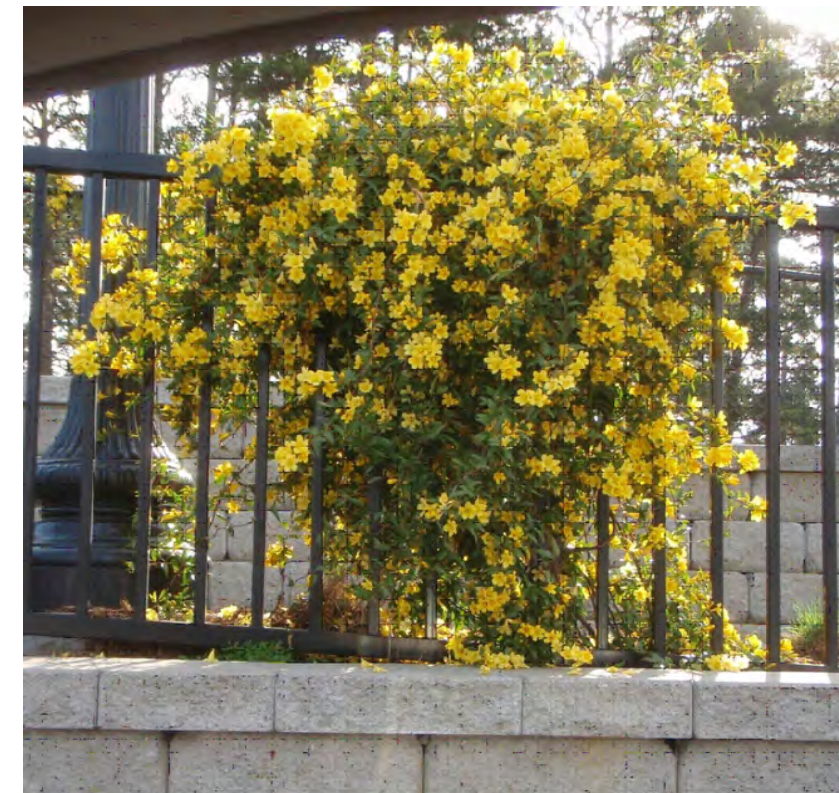
IRIS DOUGLASIANA  
(PACIFIC COAST IRIS)



PENSTEMON SPECTABILIS  
(BEARD TONGUE)



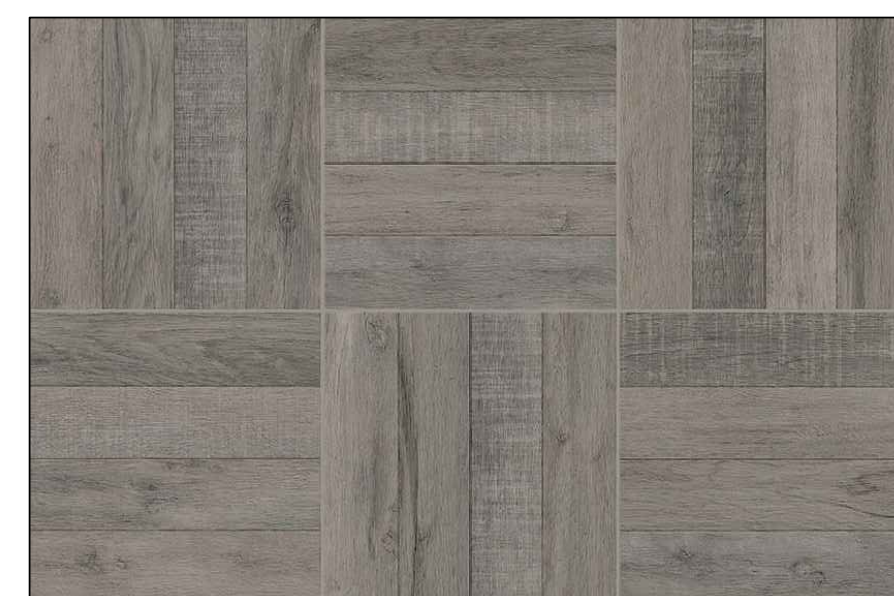
SALVIA CLEVELANDII 'COMPACTA'  
(CLEVELAND SAGE)



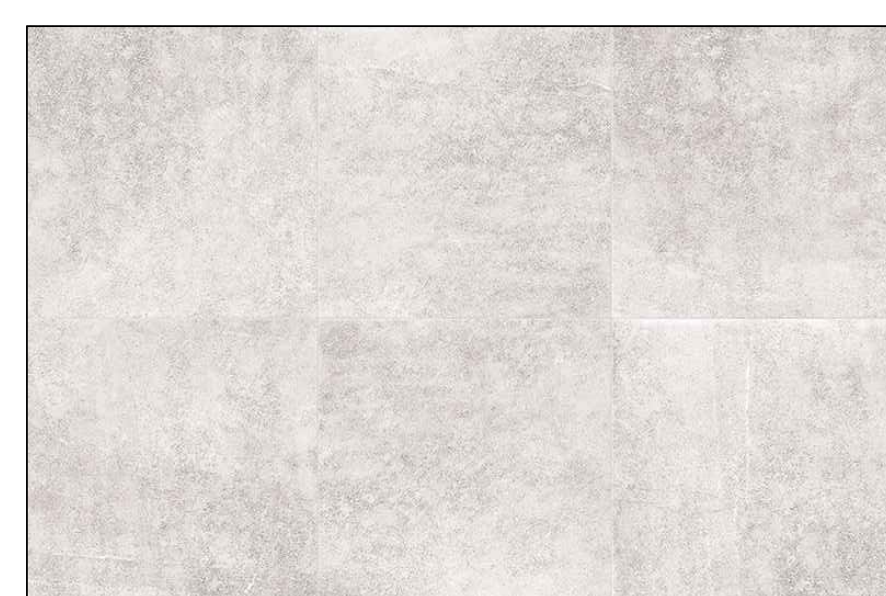
GELSEMIUM SEMPERVIRENS  
(CAROLINA JESSAMINE)



FIBERGLASS PRE-FABRICATED PLANTERS:  
TOURNESOL SITEWORKS 'WILSHIRE' SERIES  
PLANTERS WITH A METAL BRONZE FINISH



DECORATIVE PAVER 'A' AT ROOF:  
LANDMARK OUTDOOR 'FRONTIER 20'  
24" SQ. PAVER W/ PEPPER WOOD GRAIN  
APPEARANCE



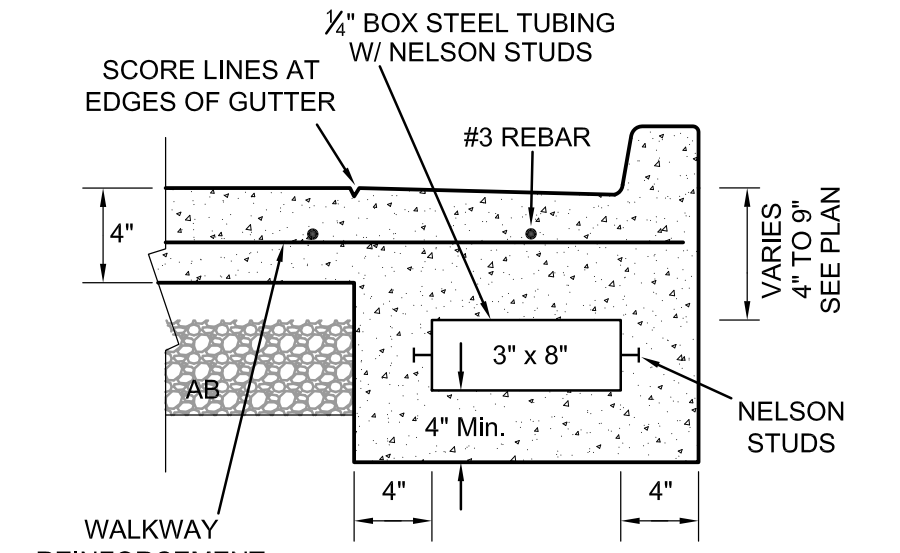
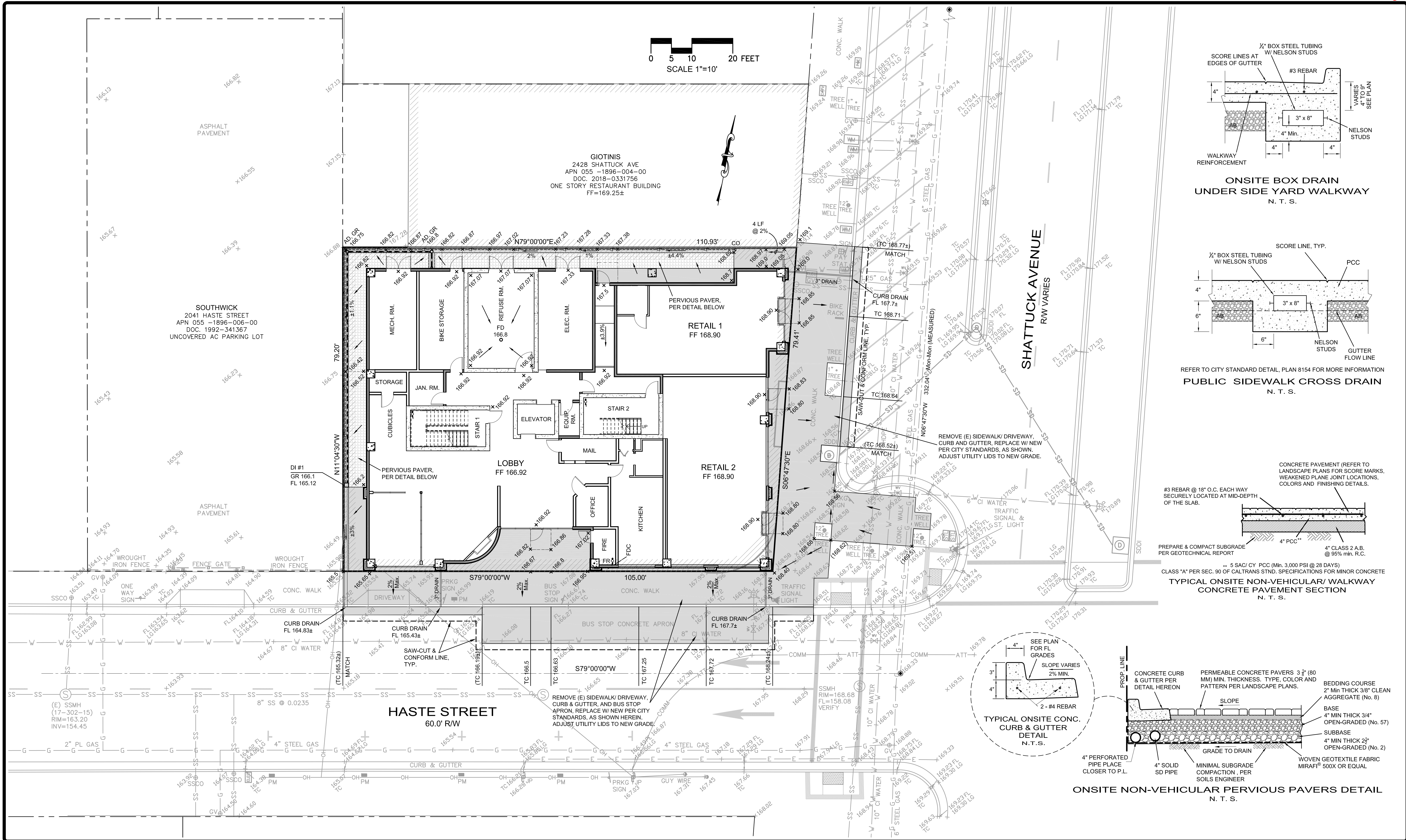
DECORATIVE PAVER 'B' AT ROOF:  
LANDMARK OUTDOOR 'FRONTIER 20'  
24" SQ. PAVER W/ NATURAL IVORY  
STONE APPEARANCE



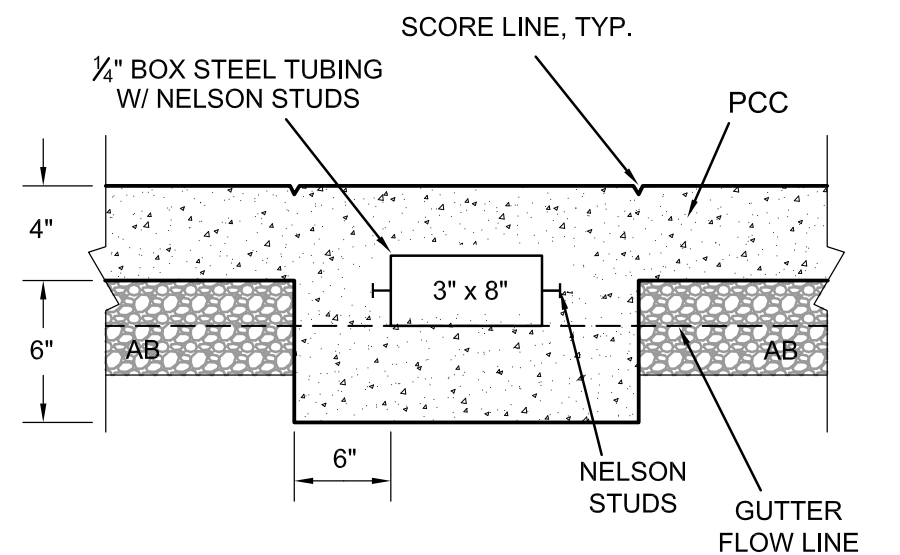
PERMEABLE PAVER AT GROUND LEVEL:  
BELGARD 'AQUALINE' 80mm (4-1/2 x 9 x 3-1/8)  
MODULE, VICTORIAN COLOR BLEND (SHOWN)



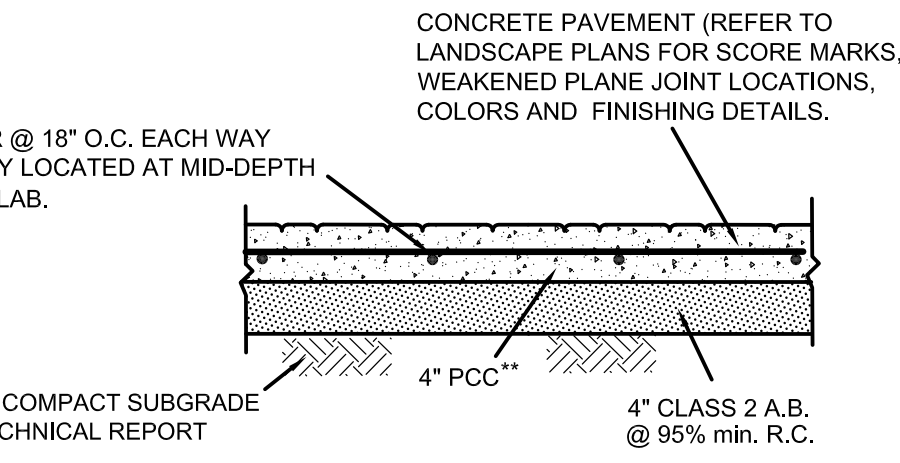
EXAMPLE IMAGE: 2450 SHATTUCK AVENUE  
RAISED CIRCULAR PLANTER WITH LOW METAL RAILING



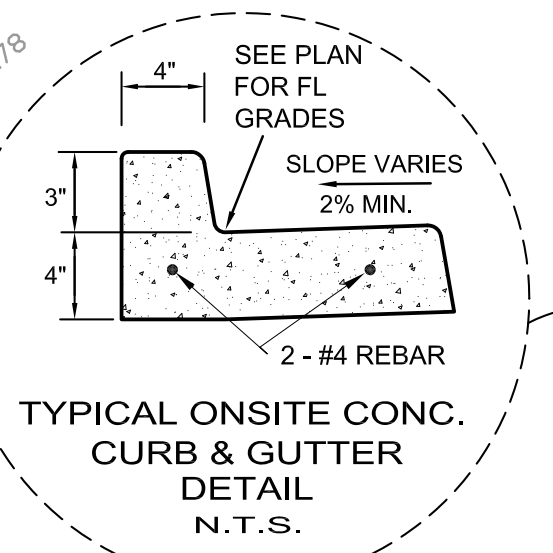
**ONSITE BOX DRAIN UNDER SIDE YARD WALKWAY**  
N. T. S.



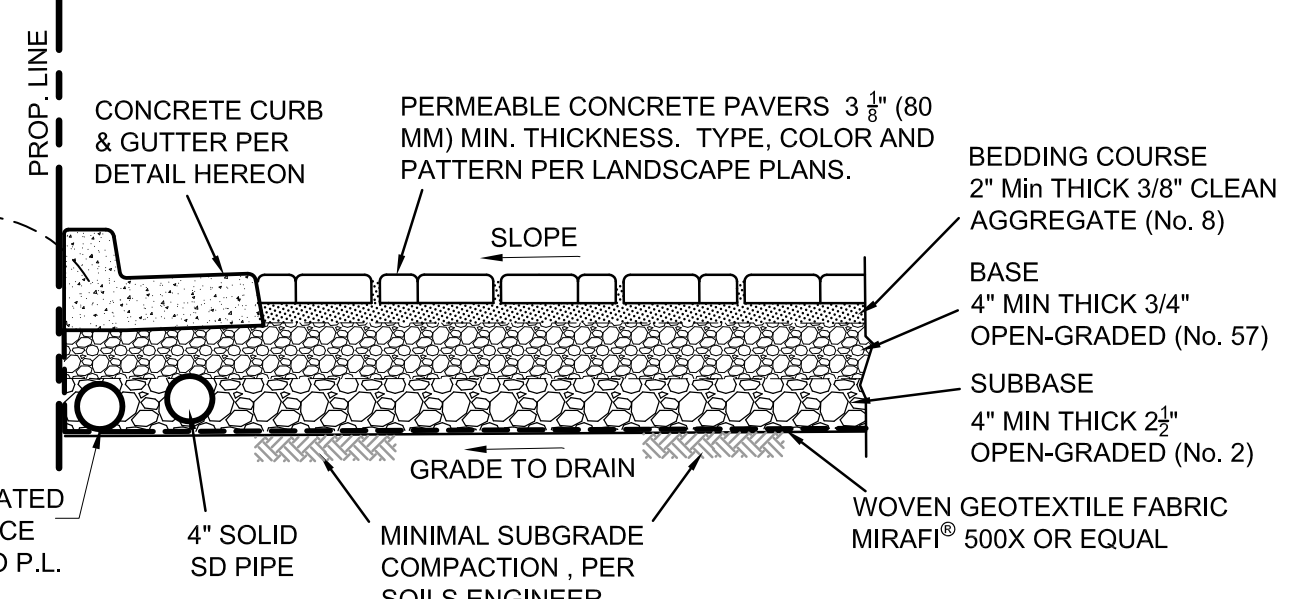
REFER TO CITY STANDARD DETAIL, PLAN 8154 FOR MORE INFORMATION  
**PUBLIC SIDEWALK CROSS DRAIN**  
N. T. S.



PREPARE & COMPACT SUBGRADE PER GEOTECHNICAL REPORT  
CLASS "A" PER SEC. 90 OF CALTRANS STND. SPECIFICATIONS FOR MINOR CONCRETE  
**TYPICAL ONSITE NON-VEHICULAR/ WALKWAY CONCRETE PAVEMENT SECTION**  
N. T. S.



**TYPICAL ONSITE CONC. CURB & GUTTER DETAIL**  
N. T. S.



**ONSITE NON-VEHICULAR PERVIOUS PAVERS DETAIL**  
N. T. S.

NO.	DATE	BY	REVISIONS

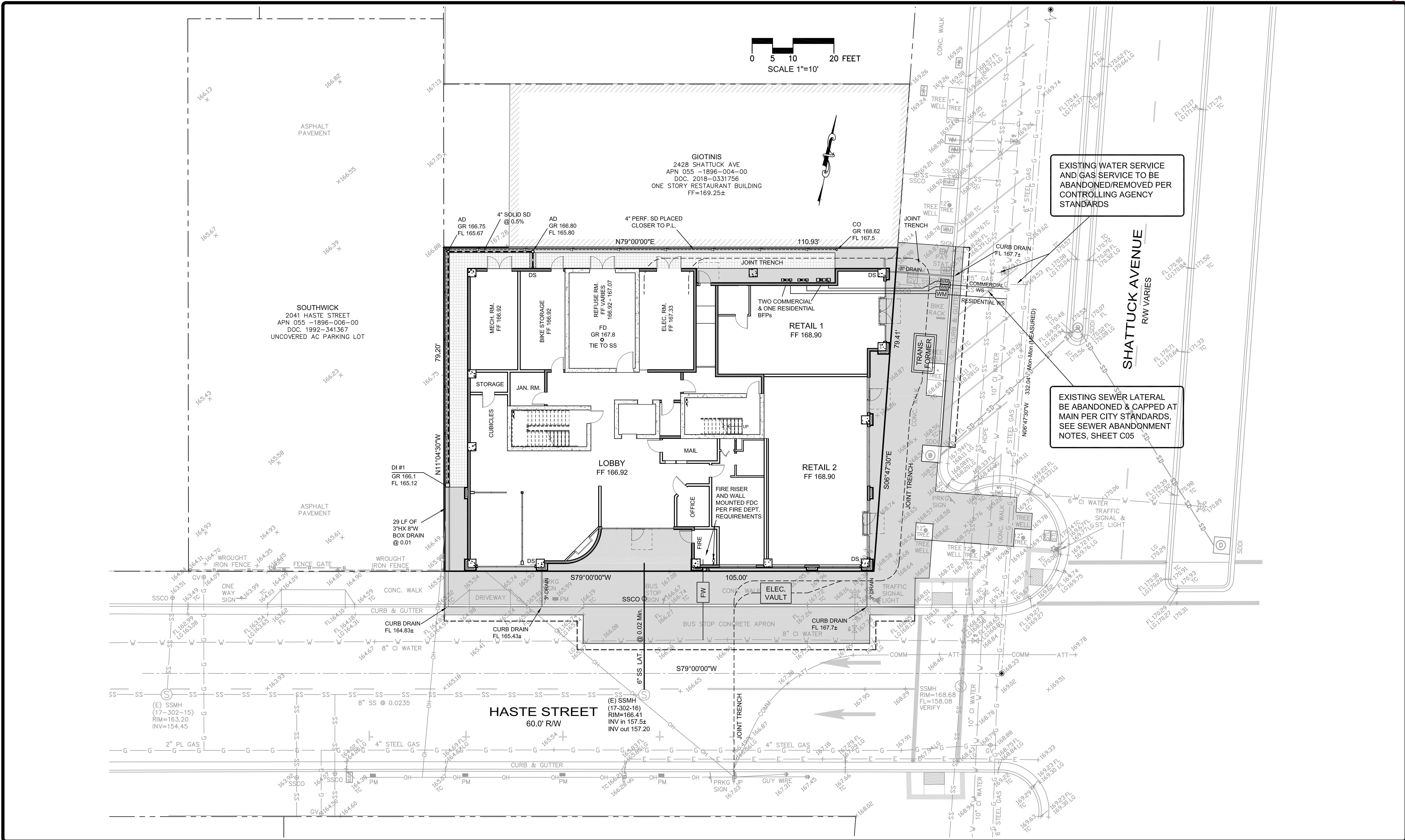
SCALE	1"=10'
DATE	03/01/2022
ENGINEER	H.N.
JOB NO.	21-127

REGISTERED PROFESSIONAL ENGINEER  
No. 29528  
M. H. WASHKEL  
CIVIL ENGINEER  
STATE OF CALIFORNIA  
IZZATIS, NASHASHIBI R.C.E. 29528

**PRELIMINARY GRADING AND DRAINAGE PLAN**  
FOR  
**THE LAIR**  
2440 SHATTUCK AVENUE  
APN 055 -1896-005-00  
BERKELEY CALIFORNIA

**HUMANN COMPANY INC.**  
ENGINEERING - SURVEYING  
1021 BROWN AVE. LAFAYETTE, CA 94549  
PH (925)283-5000 FAX (925)283-3578

SHEET **C01**  
OF 3 SHEETS  
JOB NO. 21-127



NO.	DATE	BY	REVISIONS

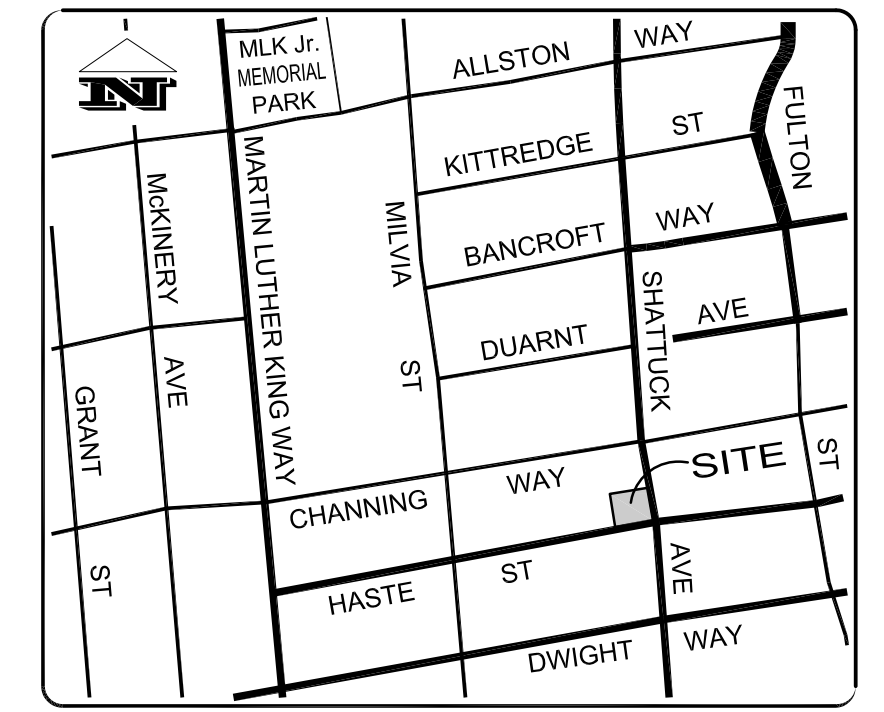
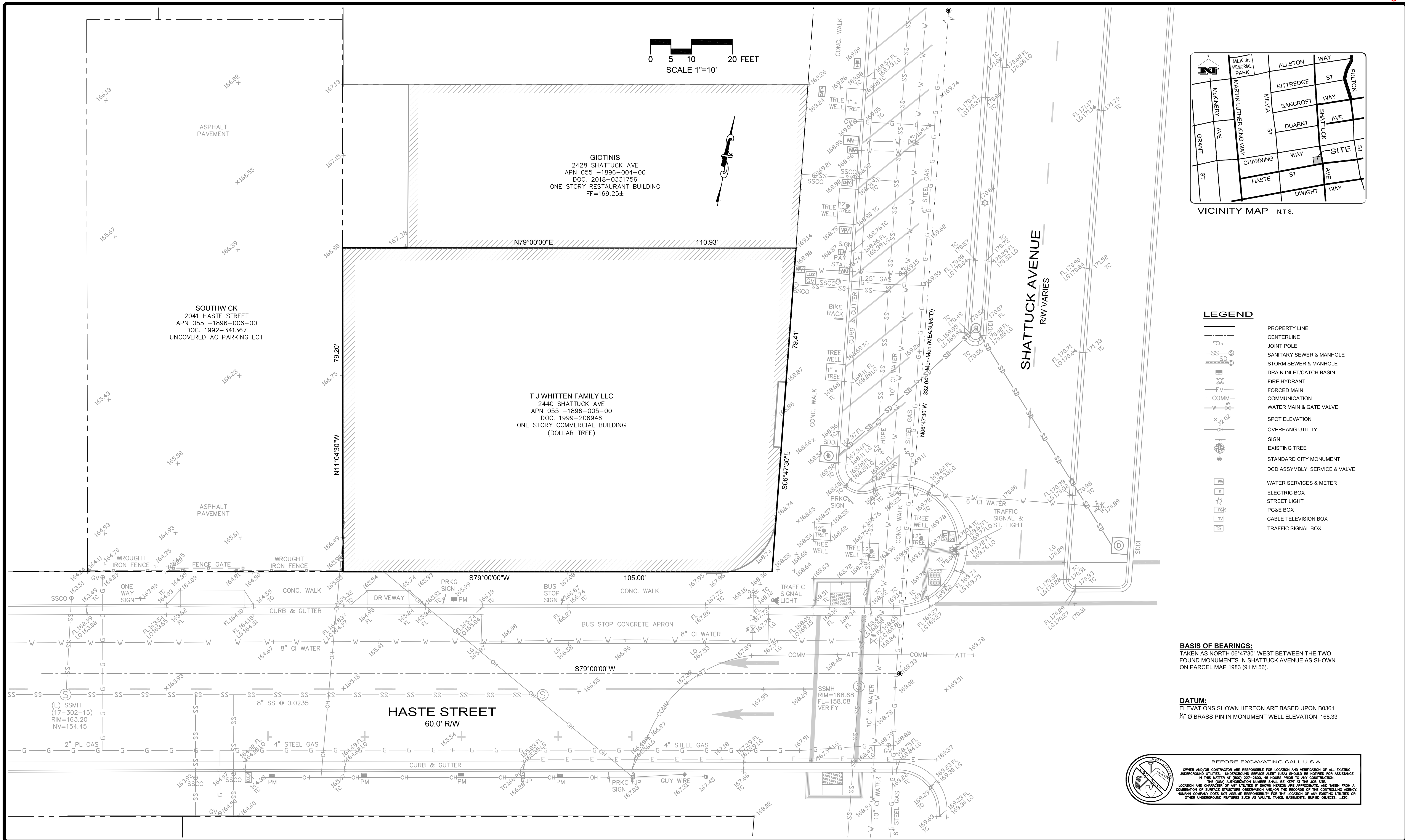
SCALE	1"=10'
DATE	03/01/2022
ENGINEER	H.N.
JOB NO.	21-127

H.N. IZZATIS, NASHASHIBI  
 R.C.E. 29528

**PRELIMINARY UTILITY PLAN**  
 FOR  
**THE LAIR**  
 2440 SHATTUCK AVENUE  
 APN 055 -1896-005-00  
 BERKELEY CALIFORNIA

**HUMANN COMPANY INC.**  
 ENGINEERING - SURVEYING  
 1021 BROWN AVE. LAFAYETTE, CA 94549  
 PH (925)283-5000 FAX (925)283-3578

SHEET **C02**  
 OF 3 SHEETS  
 JOB NO. 21-127



VICINITY MAP N.T.S.

**LEGEND**

	PROPERTY LINE
	CENTERLINE
	JOINT POLE
	SANITARY SEWER & MANHOLE
	STORM SEWER & MANHOLE
	DRAIN INLET/CATCH BASIN
	FIRE HYDRANT
	FORCED MAIN
	COMMUNICATION
	WATER MAIN & GATE VALVE
	SPOT ELEVATION
	OVERHANG UTILITY
	SIGN
	EXISTING TREE
	STANDARD CITY MONUMENT
	DCD ASSEMBLY, SERVICE & VALVE
	WATER SERVICES & METER
	ELECTRIC BOX
	STREET LIGHT
	PG&E BOX
	CABLE TELEVISION BOX
	TRAFFIC SIGNAL BOX

**BASIS OF BEARINGS:**  
TAKEN AS NORTH 06°47'30" WEST BETWEEN THE TWO FOUND MONUMENTS IN SHATTUCK AVENUE AS SHOWN ON PARCEL MAP 1983 (81 M 56).

**DATUM:**  
ELEVATIONS SHOWN HEREON ARE BASED UPON B0361  
1/4" Ø BRASS PIN IN MONUMENT WELL ELEVATION: 168.33'

BEFORE EXCAVATING CALL U.S.A.  
OWNER AND/OR CONTRACTOR ARE RESPONSIBLE FOR LOCATION AND VERIFICATION OF ALL EXISTING UNDERGROUND UTILITIES. UNDERGROUND SERVICE ALERT (USA) SHOULD BE NOTIFIED FOR ASSISTANCE IN THE MATTER AT (800) 227-2600, 48 HOURS PRIOR TO ANY CONSTRUCTION.  
THE (USA) AUTHORIZATION NUMBER SHALL BE KEPT AT THE JOB SITE.  
LOCATION AND CHARACTER OF ANY UTILITIES IF SHOWN HEREON ARE APPROXIMATE AND TAKEN FROM A COMBINATION OF SURFACE STRUCTURE OBSERVATION AND/OR THE RECORDS OF THE CONTROLLING AGENCY. HUMANN COMPANY DOES NOT ASSUME RESPONSIBILITY FOR THE LOCATION OF ANY EXISTING UTILITIES OR OTHER UNDERGROUND FEATURES SUCH AS WALLS, TANKS, BASEMENTS, BURIED OBJECTS, ETC.

NO.	DATE	BY	REVISIONS

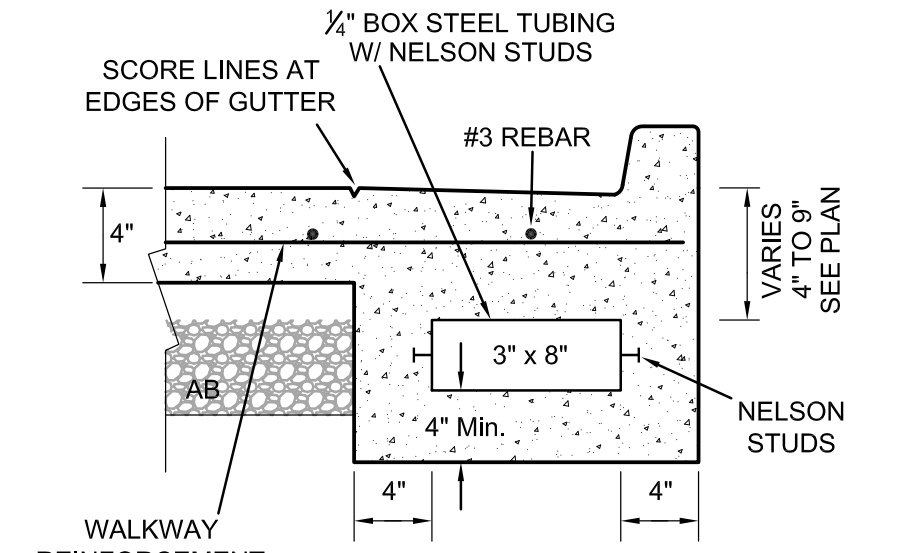
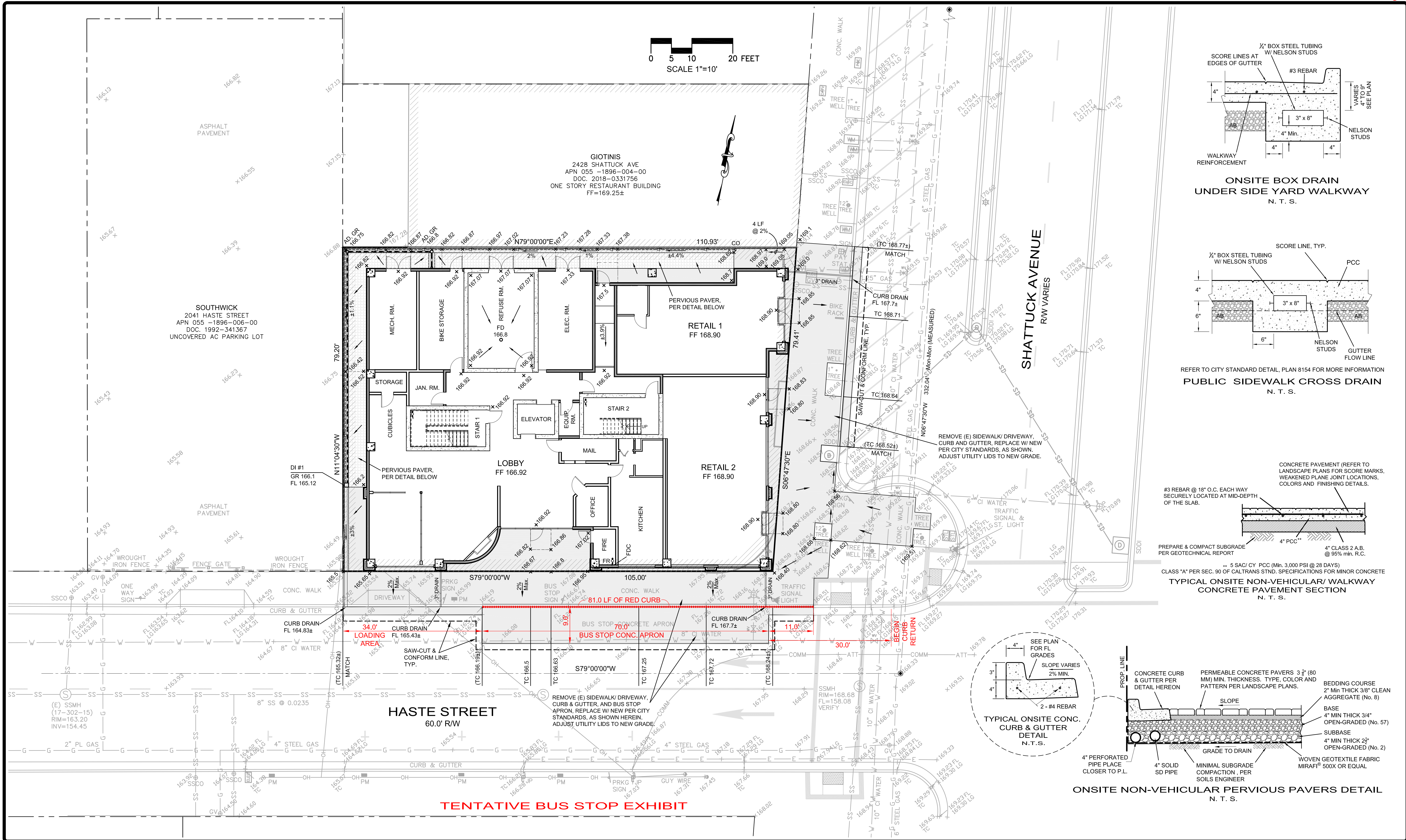
SCALE 1"=10'  
DATE 07/20/2021  
ENGINEER EK/HN  
JOB NO. 21-127

ERIC (RICK) HUMANN P.L.S. 5452

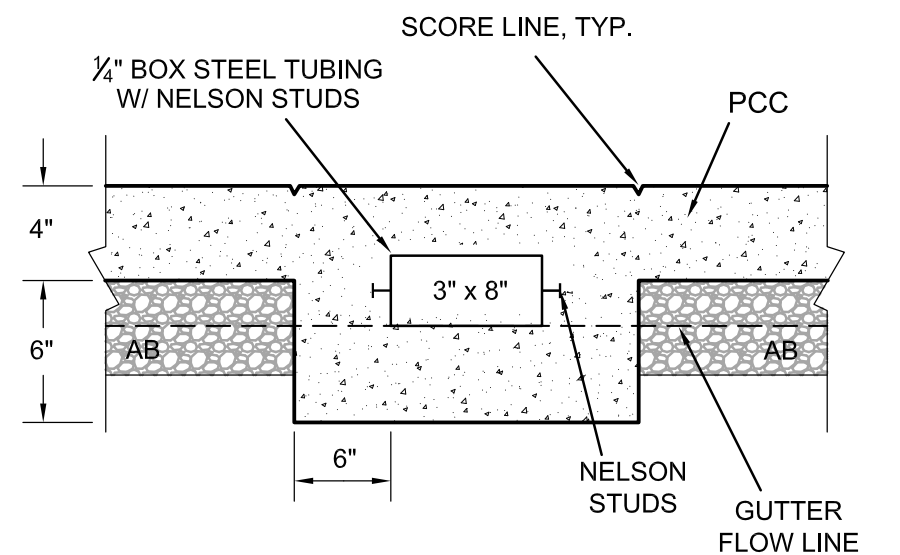
**BOUNDARY AND TOPOGRAPHIC SURVEY**  
FOR  
**T. J. WHITTEN FAMILY LLC**  
2440 SHATTUCK AVENUE  
APN 055 -1896-005-00  
BERKELEY CALIFORNIA

**HUMANN COMPANY INC.**  
ENGINEERING - SURVEYING  
1021 BROWN AVE. LAFAYETTE, CA 94549  
PH (925)283-5000 FAX (925)283-3578

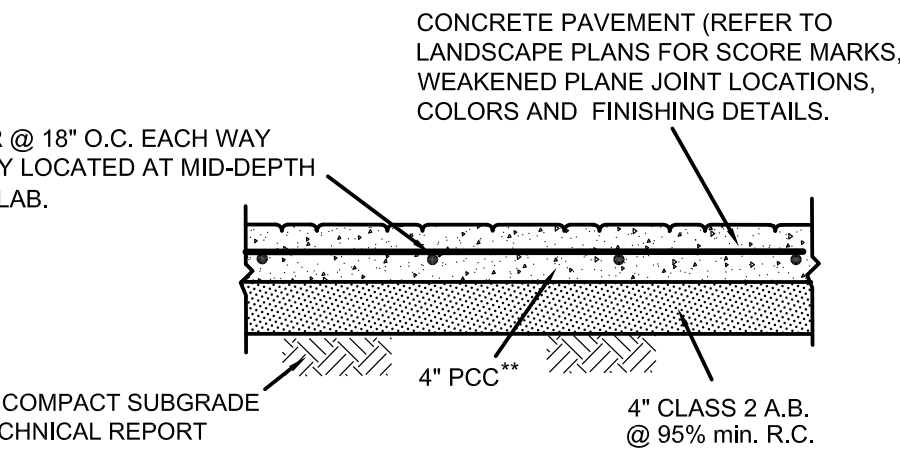
SHEET C03  
OF 3 SHEETS  
JOB NO. 21-127



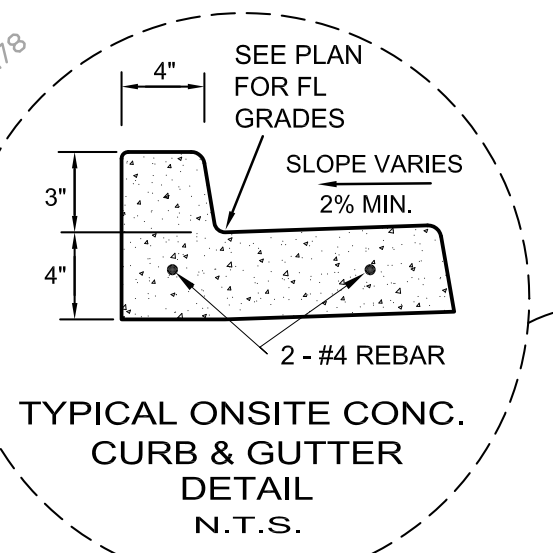
ONSITE BOX DRAIN  
UNDER SIDE YARD WALKWAY  
N. T. S.



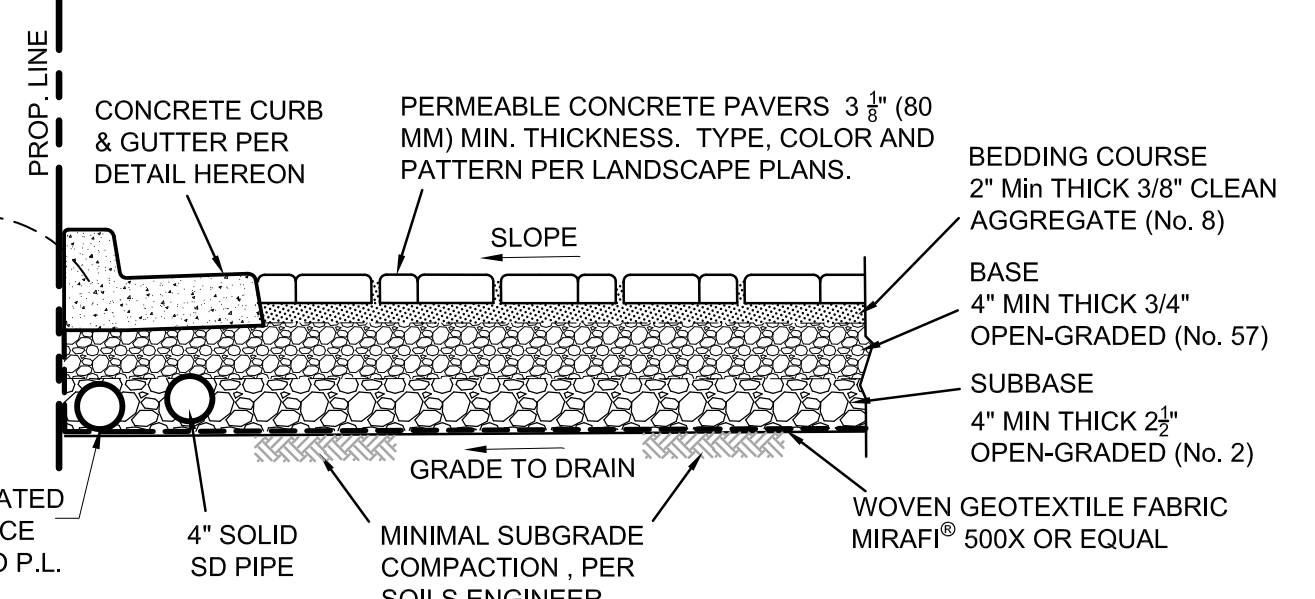
REFER TO CITY STANDARD DETAIL, PLAN 8154 FOR MORE INFORMATION  
PUBLIC SIDEWALK CROSS DRAIN  
N. T. S.



TYPICAL ONSITE NON-VEHICULAR/ WALKWAY  
CONCRETE PAVEMENT SECTION  
N. T. S.



TYPICAL ONSITE CONC.  
CURB & GUTTER  
DETAIL  
N. T. S.



ONSITE NON-VEHICULAR PERVIOUS PAVERS DETAIL  
N. T. S.

NO.	DATE	BY	REVISIONS

SCALE 1"=10'

DATE 03/01/2022

ENGINEER H.N.

JOB NO. 21-127

REGISTERED PROFESSIONAL ENGINEER  
No. 29528  
STATE OF CALIFORNIA  
M. H. IZZATIS, NASHASHIBI  
R.C.E. 29528

TENTATIVE BUS STOP EXHIBIT  
FOR  
THE LAIR  
2440 SHATTUCK AVENUE  
APN 055 -1896-005-00  
BERKELEY CALIFORNIA

HUMANN COMPANY INC.  
ENGINEERING - SURVEYING  
1021 BROWN AVE. LAFAYETTE, CA 94549  
PH (925)283-5000 FAX (925)283-3578

SHEET EXH.1  
OF 1 SHEETS  
JOB NO. 21-127

# Base Project Summary

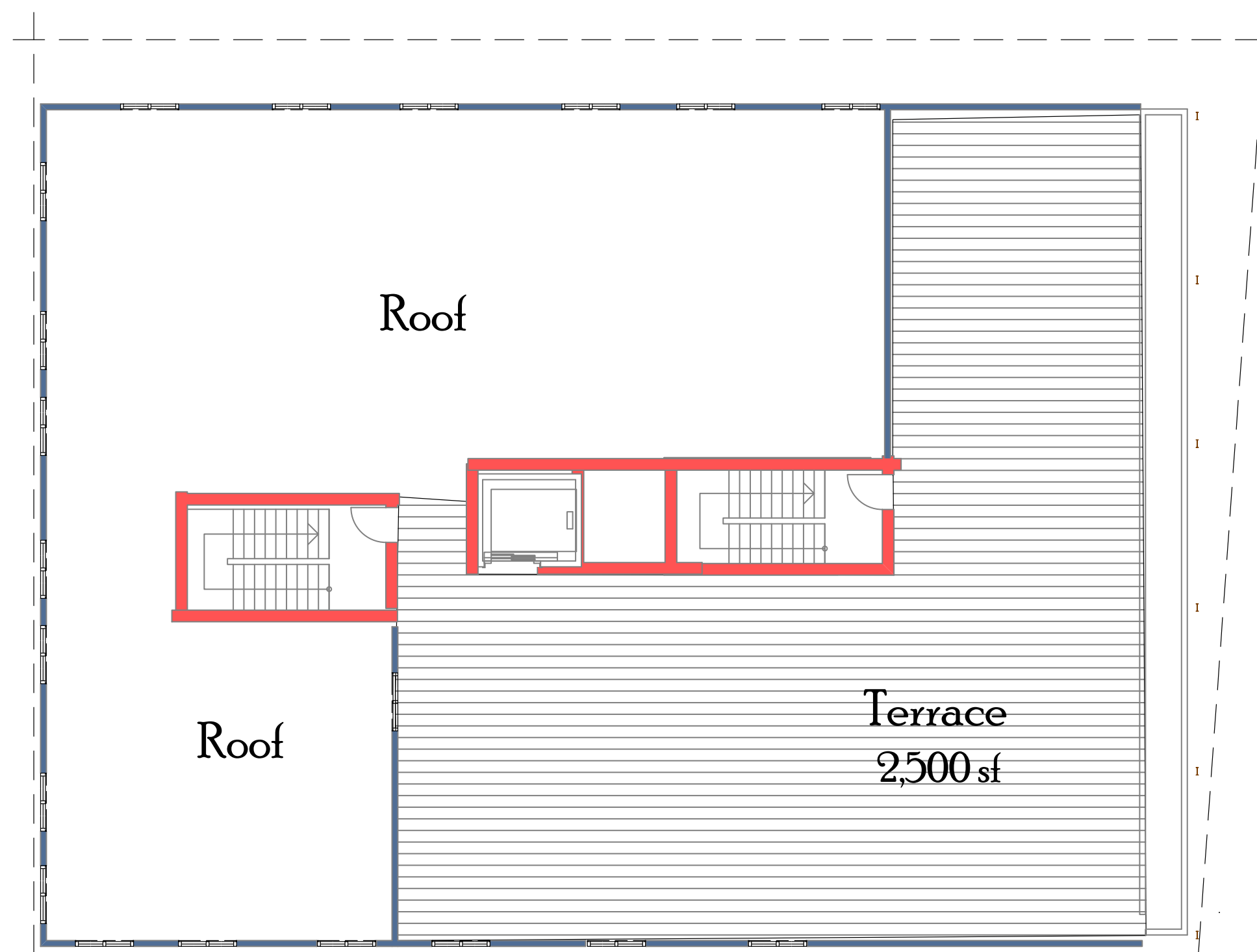
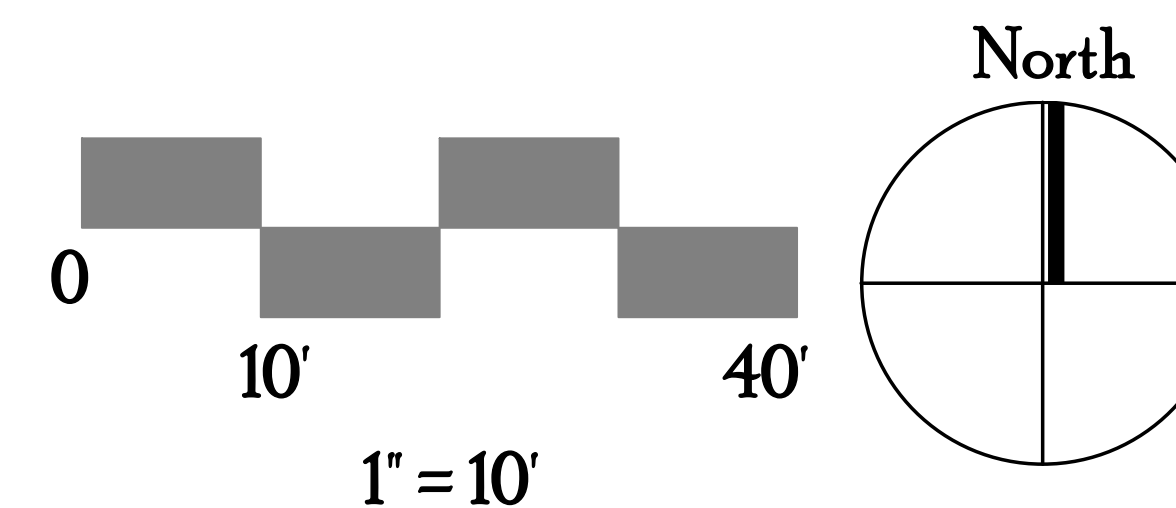
<b>Ground Floor</b> Gross Building Area 6,916 sf	<b>Fifth Floor</b> Gross Area= 7,634 sf
<b>Second Floor</b> Gross Area= 7,634 sf	<b>Sixth Floor</b> Gross Area= 7,634 sf
<b>Third Floor</b> Gross Area= 7,634 sf	<b>Total Gross Area = 45,085 sf</b>
<b>Fourth Floor</b> Gross Area= 7,634 sf	

**Open Space**  
Open Space @80 sf/unit =2,400sf Required  
Open Space Provided = 2,500 sf

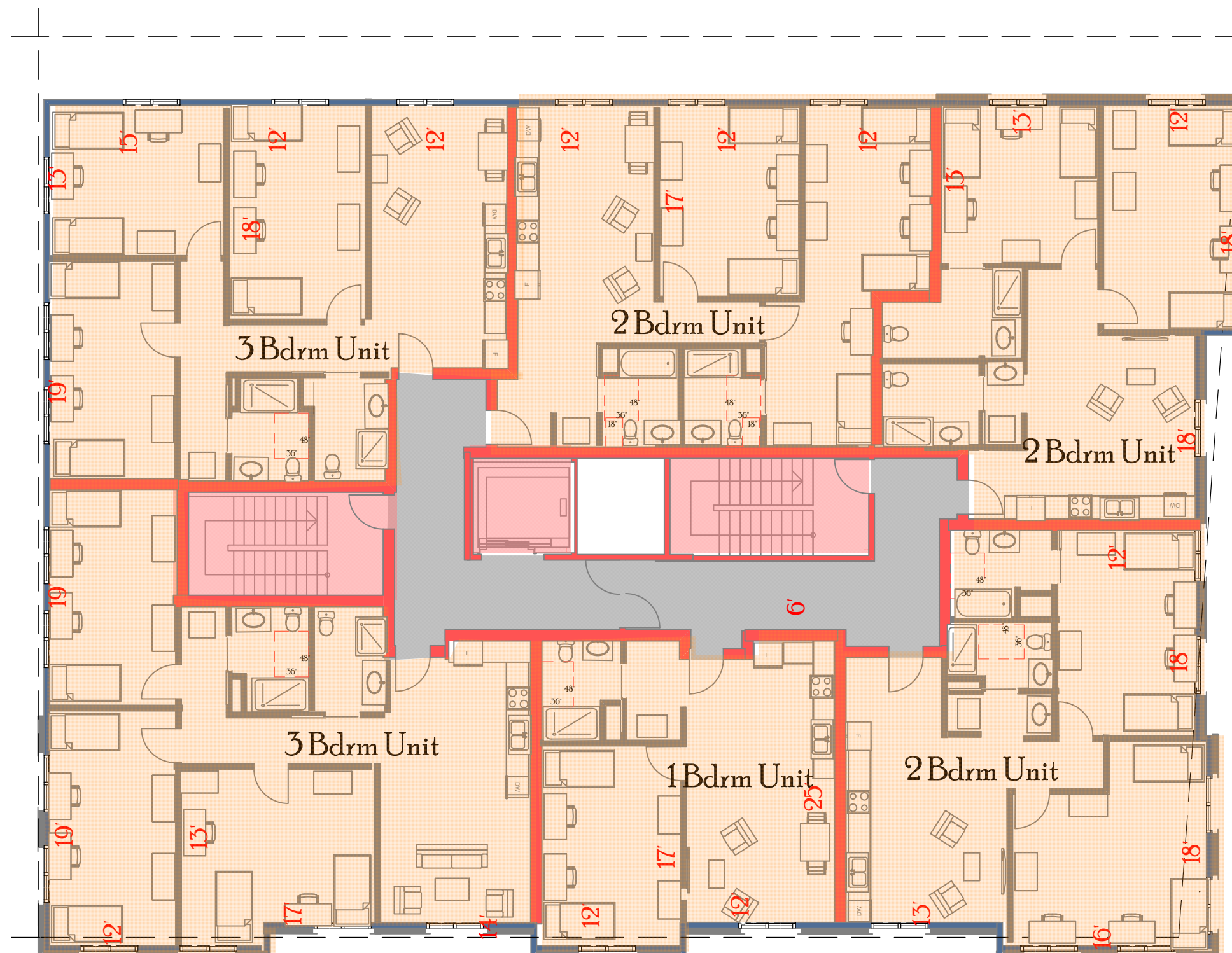
**Parking**  
Retail 2700/667 = 5 cars Required  
Total cars provided = 5 cars in Basement

**Bike Parking**  
1 Bike/3 Bedrooms = 10 Bikes Required  
Total Bikes Provided =16 Bikes

**Residential Breakdown**  
(5 levels)  
5 One Bdrm  
15 Two Bdrm  
10 Three Bdrm  
  
Total = 30 units (65 Bedrooms)



Roof Level



2nd Level (3rd-6th Level Similar)  
6 Units

- Residential Area = 6,647 sf  
(Included in Base Area)
- Corridor Area = 573 sf  
(Included in Base Area)
- Stairs/Elevators = 414 sf  
(Not included in Base Area)

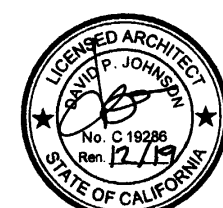
Gross Area 7,634sf  
Base Area=7,220 sf

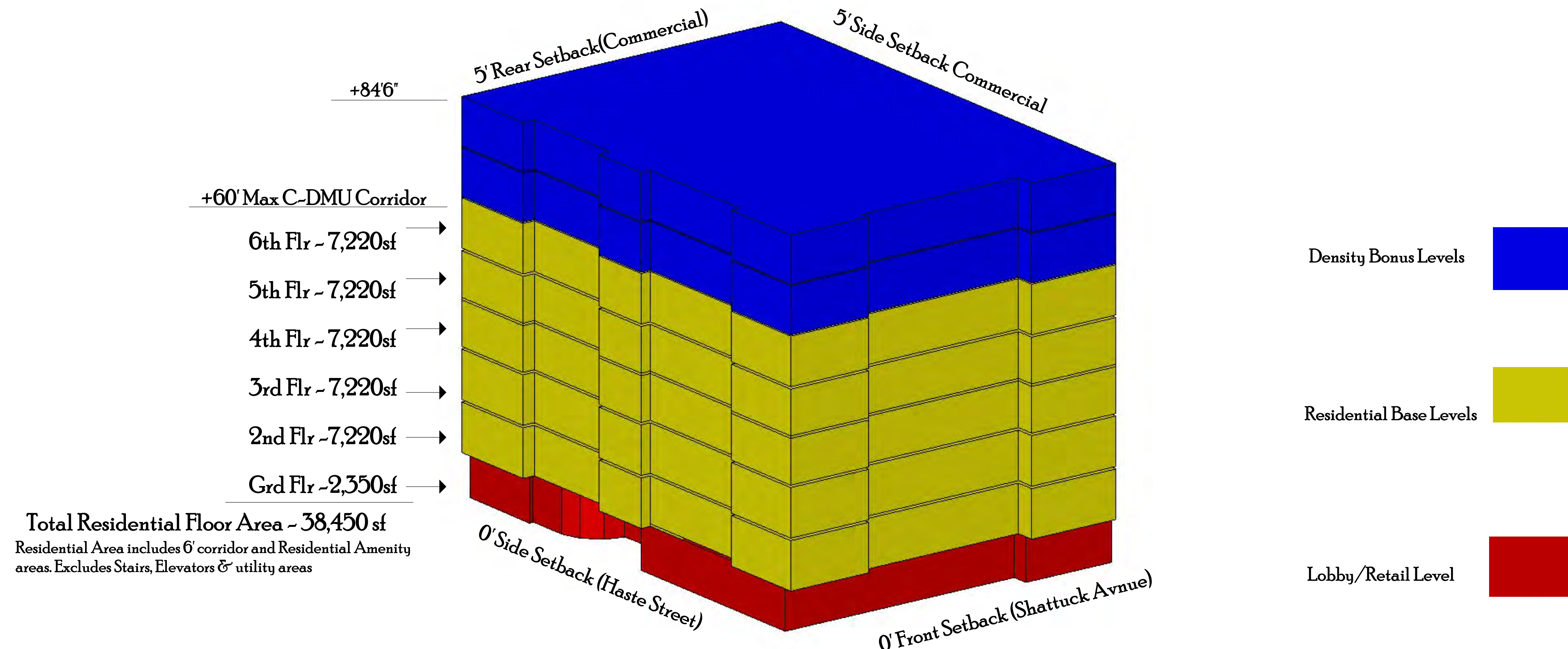


Ground Level

- Retail Area =2,700 sf  
(Not included in Base Area)
- Utility Area =834 sf  
(Not included in Base Area)
- Lobby=1,785 sf  
(Included in Base Area)
- Stairs/Elevators = 414 sf  
(Included in Base Area)
- Corridor Area =151 sf  
(Included in Base Area)

Gross Area = 6,916 sf  
Base Area=2,350 sf





Total Residential Floor Area ~ 38,450 sf  
Residential Area includes 6' corridor and Residential Amenity areas. Excludes Stairs, Elevators & utility areas

## Base Plan Model

Base Project	Base # Units	Base # Units	% VLI units	# VLI Units	#VLI Units	Bonus %	# DB Units	# DB Units	Total Units
sq. ft. - see calculation below	base project/avg. unit size	Base Units/Max. Residential Density (rounded up)	VLI = Very Low Income <50 AMI	% VLI x Base # Units			%Bonus x Base # Units (rounded up)	%Bonus x Base # Units (rounded up)	base unit + DB Units (rounded up)
38,450	29.97	30.00	10%	3.00	3.00	32.50%	9.75	10.00	40

Base Project Square Footage (a,b)	Floor	Residential Sq. Footage Proposed (a)	Number of Units Proposed
2,350	first	2,852	0
7,220	second	7,220	6
7,220	third	7,220	6
7,220	fourth	7,220	6
7,220	fifth	7,220	6
7,220	sixth	7,220	6
	seventh	7,220	6
	eighth	5,154	4
<b>38,450</b>	<b>TOTAL</b>	<b>51,326</b>	<b>40</b>

	%VLI	%DB
<b>Total Square Footage:</b> 51,326	5%	20.0%
<b>Proposed Units:</b> 40	6%	22.5%
<b>Average Unit Size:</b> 1,283	7%	25.0%
	8%	27.5%
	9%	30.0%
	10%	32.5%
	11%	35.0%
	12%	38.75%
	13%	42.50%
	14%	46.25%
	15%	50.0%

## Base Plan Calculation Lair

## Density Bonus Calculation

# DB2



Z O N I N G  
A D J U S T M E N T S  
B O A R D

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NOTICE OF PUBLIC HEARING

## 2440 Shattuck Avenue

**Use Permit #ZP2021-0201 to demolish one existing commercial building and construct an eight-story, mixed-use building with 40 dwelling units and 2,700 square feet of ground-floor commercial space.**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.406.040.D, on May 26, 2022, **conducted via Zoom, see the Agenda for details at:**

[https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-05-26\\_ZAB\\_Agenda.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-05-26_ZAB_Agenda.pdf) The meeting starts at 7:00 p.m.

**PUBLIC ADVISORY:** Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

### A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-DMU (Corridor) – Downtown Mixed-Use Commercial District – Corridor Sub-area

### B. Zoning Permits Required:

- Use Permit under Berkeley Municipal Code (BMC) Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a mixed-use residential development
- Use Permit under BMC Section 23.204.030(B)(1) to construct greater than 10,000 square feet of new gross floor area
- Administrative Use Permit under BMC Section 23.304.050(A) to allow architectural features over the maximum height limit

### C. Concessions and Waivers and Pursuant to State Density Bonus Law:

- Concession from BMC Section 23.322.030(B) to reduce the required commercial off-street parking spaces from six spaces to zero
- Waiver of BMC Section 23.204.130(E)(1) to exceed the maximum 75-foot height limit and permit an 87-foot tall building

- Waiver of BMC Section 23.204.130(E)(3) to reduce the rear setback above 75 feet in height from 15 feet to 5 feet
- Waiver of BMC Section 23.204.130(E)(3) to reduce the street side setback between 21 and 75 feet in height from 5 feet to zero feet, and above 75 feet in height from 15 feet to zero feet
- Waiver from BMC Section 23.204.130(E)(3) to reduce the interior side setback above 75 feet in height from 15 feet to 5 feet
- Waiver of BMC Section 23.204.130(E)(4) to reduce the residential useable open space requirement from 3,200 square feet to 1,150 square feet
- Waiver of BMC Section 23.204.130(E)(4) to reduce the commercial useable open space requirement from 54 square feet to zero

**C. CEQA Recommendation:** Categorically exempt pursuant to §15332 (“In-Fill Development Projects”) of the CEQA Guidelines.

**D. Parties Involved:**

- Applicant                      Dave Johnson, Johnson Lyman Architects, Walnut Creek
- Property Owner              The Austin Group, LLC, Alamo

**Further Information:**

All application materials are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Sharon Gong, at (510) 981-7429 or [sgong@berkeleyca.gov](mailto:sgong@berkeleyca.gov).

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@berkeleyca.gov](mailto:zab@berkeleyca.gov).

**Communication Disclaimer:**

Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

**Communications and Reports:**

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: [zab@berkeleyca.gov](mailto:zab@berkeleyca.gov). All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

**Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.



**Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

**SB 343 Disclaimer:**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division ([zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)) to request hard-copies or electronic copies.

**Notice Concerning Your Legal Rights:**

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of

Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
  5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
    - A. That this belief is a basis of your appeal.
    - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
    - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
-