



CITY OF
TOPEKA

AGENDA

BOARD OF ZONING APPEALS

Monday, May 11, 2020
5:30 P.M.

VIA VIDEO CONFERENCE

MEMBERS OF THE BOARD

Tim Carkhuff – Chairperson
Walter Schoemaker – Vice Chairperson

Toni Beck
Barbara Boudreaux
Helen Crow
Carole Jordan
Travis Thomas

-
- The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.
 - The following agenda identifies and describes each proposal to be considered by the Board.
 - Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.
 - Individuals wishing to address the Board are requested to state their name and address for the official hearing record.
 - Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.
 - Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.



CITY OF
TOPEKA

BOARD OF ZONING APPEALS

Agenda for Monday, May 11, 2020

A. Call to Order

B. Approval of Minutes from March 9, 2020

C. Declaration of Ex Parte Communications

D. Public Hearings

1. **BZA20V/03 by Nelda Henning**, requesting a variance to exceed the maximum 90 percent building coverage ratio of accessory buildings to principal building as restricted pursuant to section 18.60.010 of the Topeka zoning regulations for the construction of an addition to an existing detached garage at 1610 NW Grove Avenue.
2. **BZA20V/04 by City of Topeka**, requesting variances to the minimum front, side, and rear building setbacks required pursuant to section 18.60.010 of the Topeka zoning regulations for construction of a wastewater pump station, to replace an existing wastewater pump station, at the southeast corner of NE Grant and NE Jefferson streets.

E. Adjournment



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CITY OF TOPEKA BOARD OF ZONING APPEALS

MINUTES

Monday, March 9, 2020

5:30PM - Holliday Building 1st Floor Holliday Conference Room

Members present: Toni Beck, Tim Carkhuff, Helen Crow, Walter Schoemaker (Chair), Travis Thomas (5)

Members Absent: Barbara Boudreaux, Carole Jordan (2)

Staff Present: Mike Hall, Current Planning Manager; Mary Feighny, Deput City Attorney; Kris Wagers, Administrative Officer

Call to Order

The meeting was called to order by Walter Schoemaker, Chair. Roll was taken with 5 members present for a quorum.

Approval of Minutes from September 9, 2019

Motion by Mr. Carkhuff to approve, second by Ms. Crow. **APPROVAL 5-0-0**

Declaration of Ex Parte Communications

Mr. Schoemaker called for declarations of ex parte communications.

Mr. Thomas – none

Ms. Crow – None

Ms. Beck – none

Mr. Schoemaker – none

Mr. Schoemaker called the case, **BZA20A/03 by Don Phillippi and Candi Bryant**, appealing, pursuant to Topeka Municipal Code (TMC) Section 2.45.070, a decision by the Planning & Development Director that the use of the property at 229 SW Edgewood Avenue for the short term rental of guestrooms is a “bed and breakfast inn” as defined by the Topeka Municipal Code 18.55.020 and, as a bed and breakfast inn, a conditional use permit is required per TMC 18.60.010.

Mike Hall, Staff Planner, presented the Appeal Evaluation (staff report) and findings, including staff's recommendation that the Board affirm the decision of the Planning & Development Director.

Mr. Schoemaker asked Mr. Hall if the property in question fits the current definition of a bed and breakfast inn and Mr. Hall stated that it does. Mr. Schoemaker then read the definition out loud and asked Ms. Feighny what, in the rules of statutory construction, does the use of the word “may” do to the statute. Ms. Feighny explained that “may” means it is discretionary as opposed to required. Mr. Schoemaker asked if, for tonight's case, the relevant portion of the definition would then be “‘Bed and breakfast inn’ means a single-family structure or portion thereof that provides not more than 10 guestrooms for overnight paying

guests.” Ms. Feighny stated that in her opinion that is the relevant portion for the case at hand. When asked by Mr. Schoemaker, Mr. Hall stated he agrees with that statement.

Mr. Schoemaker invited the applicant to speak and Don Phillippi came forward. He stated that he and his wife Candi Bryant own 229 Edgewood.

Mr. Phillippi reviewed each word of the phrase “Bed & Breakfast Inn”, e.g. Bed - beds can be found in hotels, motels, “traditional” bed and breakfast inns with “innkeepers”, etc. This word does not describe their establishment because, he said, you have to rent the whole house. Renting a bed or a single room is not an option. Regarding “Breakfast”, he agreed that it may be optional but they don’t provide it. Regarding “Inn” – their establishment doesn’t fit because they don’t have an inn-keeper.

Mr. Phillippi stated that if the only reason the Planning & Development Director doesn’t deem their property a short term rental is because it’s advertised on Airbnb website, they’d be happy to remove it from there and advertise elsewhere. He disagrees with the city’s finding that this is not a second residence for him and his wife because they always have the option of staying there or utilizing the property. He also stated that there are about 300 other operations in a similar situation within the City of Topeka and he wonders if the city is going to require all to seek a Conditional Use Permit (CUP).

Ms. Crow asked Mr. Phillippi if they considered taking their advertising down from other sites and Mr. Phillippi explained that Airbnb calls it a Bed & Breakfast so that’s why they’d consider removing it from that website. They would continue to advertise on other sites that offer short term rentals.

Ms. Crow asked if the owners intend to take advantage of tax deductions offered on an investment property that aren’t available for a second home. Mr. Phillippi stated they purchased the home in 2019 and have not done their 2019 taxes yet.

Ms. Crow asked if the applicant has applied for a CUP and Mr. Phillippi stated they have not because they don’t believe their property is a bed and breakfast inn and a CUP is not required for a single family dwelling.

Ms. Beck asked Mr. Phillippi how they define their home, and he replied it is a single family dwelling detached that is short term renting. Ms. Beck asked Ms. Feighny if single family dwelling means one family or a rotating group of people in and out. Ms. Feighny stated it is one family that doesn’t change, or a group of people who live there long term. Mr. Phillippi disagreed.

Mr. Carkhuff stated that he doesn’t believe the number of families or long vs short term rental is the point. He stated that the difference between the definition of a bed and breakfast inn and a dwelling single family detached is the word “paid” in the bed and breakfast inn definition. The people coming to their home are paying to stay there and that turns the dwelling single family detached into a commercial property. Mr. Phillippi returned to speaking to the semantics of the title “Bed and Breakfast Inn”, saying his home does not fit this.

Mr. Thomas stated that, disregarding the *title* Bed and Breakfast Inn, he’d like to review the definition. He asked Mr. Phillippi if the home is a single family dwelling, and Mr. Phillippi stated it is. Mr. Thomas asked if a portion of it, less than 10 rooms, is somewhere people can stay, and Mr. Phillippi stated it is. Mr. Thomas asked if it’s for overnight paying guests. Mr. Phillippi stated it can be. Mr. Thomas read “food service may be provided” and Mr. Phillippi stated it is not provided. Mr. Thomas asked if any of the rooms in the house contain a bed and Mr. Phillippi responded yes, several do. Mr. Travis thanked Mr. Phillippi and said he had no more questions.

With no more questions for Mr. Phillippi, Mr. Schoemaker invited Ms. Bryant to speak.

Ms. Bryant came forward and explained that she and Mr. Phillippi purchased the home from a friend, did some remodeling, furnished it, and wanted only to rent it short-term. She stated that people can rent the house, use the kitchen, go out in the back yard, etc. She believes the question at issue has to do with how long it is rented for. She said most of their renters come for a week and it is, in her eyes, a short-term rental. She said they have a rental manager and if people have a problem, they get ahold of him. With no questions from BZA members, Ms. Bryant took her seat.

Mr. Schoemaker opened the floor to public comments.

Rich St. Gelais at 118 SW The Drive came forward to speak. He said there is an Air bnb next door to his home; it is owned by the applicants and doesn't have a permit to operate. He feels the permitting process is important and expressed concern that the city doesn't investigate unless there is a formal complaint filed. He believes the businesses should be required to go through a permitting process prior to any rental activity taking place and the neighbors and public should be given a chance to comment prior to a permit being issued.

Linda Elrod came forward to speak and stated she lives next door to the property under consideration. She stated the historic neighborhood has been residential "forever", made up of single family residential properties with single families living there. She explained that it could be a single person, a couple, etc., but it's a "neighbor" and you know one another. She said theirs is a neighborhood, not a commercial district. She believes there should be a permitting process and neighbors should be notified. Routinely having strangers next door changes the tenor of a neighborhood. Ms. Elrod encouraged the city to look at the whole policy behind Air bnbs and overnight rentals in neighborhoods. She is less concerned about rentals of 3-6 or more months at a time because those renters often become a part of the neighborhood.

Ms. Elrod stated she was initially unaware that the house was a bed and breakfast and was surprised when she went to meet what she thought were her new neighbors, only to find that they were only there for a week or so. She said parking is sometimes an issue. Ms. Elrod concluded by stating that she thinks the city will lose something if they fail to protect their neighborhoods

Deborah Bremer of 118 The Drive came forward to speak and stated she lives next to the applicants' other Air bnb house. She said there yet is another Air bnb behind her and still another about 3 blocks down. She said their neighborhood is about 100 years old and has traditionally been made up of families who stay there for some time. She said there have been some small businesses in the neighborhood, such as a small grocery store, but it was always a neighborhood designed and zoned to create stability and peace. She believes the question should be "is this good for the neighborhood" – and sometimes the answer might be yes. Ms. Bremer stated that Ms. Bryant did a beautiful job making the property in question look appealing. She believes neighbors should have an opportunity to provide input. She said the unwillingness of (291?) of these businesses to seek permission to operate really bothers her.

Paul Post came forward to speak, explaining that he lives just around the corner at 2nd & Lindenwood. He stated that for the most part this is an owner-occupied neighborhood. It is not a commercial district, and if someone wants to do something different, they should be going through the proper channels to do what's needed to get the proper application on file for a Conditional Use Permit. Mr. Post stated that he looked the establishment up on brbo.com and found that they charge several fees, including a lodging tax. He stated they're not really being honest when they say they're just a single family residence.

Travis Maurath came forward to speak, explaining that he's the owner of Rental Management Solutions who manages the property in question. He stated that there are a number of times throughout the year when activities are going on in Topeka and almost all the hotel beds are full and people are spreading out

into Air bnbs. He estimates Air bnbs bring in conservatively between \$3-\$4m per year; if they didn't exist people would be staying in Lawrence, Manhattan, etc. and we'd lose money in restaurants, taxes, etc. Mr. Maurath stated that if one of the establishments is required to apply for a CUP then all should be treated the same.

Mr. Maurath stated that with a property operating as a short-term rental or Air bnb, he is able to have more control than if it were a long term rental. If something is going on that is disruptive, he as the property manager can deal with the problem and even kick the people out if necessary. This immediate solution isn't possible with a long-term rental / lease. He also noted that the Air bnbs tend to look much nicer and are better maintained than most long-term rental properties.

Mr. Carkhuff pointed out that the board is not tasked with weighing the pros and cons of allowing Air bnbs or short-term rentals but rather to determine whether the City planning director's determination that the property is a bed and breakfast inn should be upheld. He asked Mr. Maurath how the specific property in question does *not* fit within the definition of a bed and breakfast inn. Mr. Maurath stated it is his belief that the property is a short-term rental, and if a short-term rental fits into that definition then many, many short-term rentals need to apply for CUPs. Mr. Carkhuff stated again that the board is not tasked with looking at other properties but rather to determine whether the planning director's decision should be upheld. Economic impact is beyond the purview of the BZA. Mr. Maurath agreed and stated that if the owners of the property in question have to apply for a CUP, all owners operating under similar circumstances should have to do the same.

Sara Parks of 337 SW Elmwood came forward to speak. She stated she has lived in her home in the neighborhood for 36 years and she is concerned about safety. Ms. Parks referenced an article from the KC Star speaking about fire codes, requirements for commercial insurance, and regulations for short term rentals and believes we need to become more clear in our requirements. She stated it's disappointing to see these changes happening in neighborhoods that are different than the vision the majority of the property owners have for their neighborhood. She understands that other cities are grappling with the same issues.

Mr. Hall stated that he received a letter via email from Becky & Kirk Drager expressing concern not specifically about air bnbs but more about the number and concentration of them in their neighborhood. Business owners are required to have CUPs and the Dragers feel Air bnb owners should also. They are concerned that without oversight, the numbers will increase and erode the character of our neighborhoods.

With no further public comment coming forth, Mr. Schoemaker declared the public comment period closed and asked board members for discussion.

Mr. Thomas stated that several good points had been made and, while as a city we need to review how we're going to proceed with these, that is not the purpose of this evening's meeting. He stated he believes the property meets the definition of a bed and breakfast inn.

Mr. Carkhuff stated he is not opposed to Air bnbs. He noted that the regulations we have in place are not specifically designed for them, but the definitions as they have been written do seem to capture air bnbs within the bed & breakfast inn definition. He believes the property in question clearly falls within the purview of the bed & breakfast inn definition.

Ms. Crow stated she agrees that the property falls within the definition of bed & breakfast inn and therefore requires a CUP. Ms. Crow acknowledged that many other valid points had been raised this evening, but they aren't relevant to the decision the BZA is being asked to make.

Ms. Beck stated that regardless of what it's called, what's important is the definition of bed and breakfast inn and this property does meet that definition. She stated that these titles and definitions are pretty much industry-wide regardless of where you are. Prior approval is required before you move into a neighborhood and set up a business such as this. There may or may not be others operating without approval, but that's beyond the scope of what the BZA is asked to consider this evening. As long as proper channels are followed, these businesses could be a benefit to our city.

Mr. Schoemaker stated that he believes there are a number of issues here, but the only one before the board is, does this property fall into the definition of a bed and breakfast inn, which it does, and so in order to operate on property zoned R2 Single Family Dwelling it requires a CUP.

Motion by Mr. Carkhuff to affirm the decision of the Planning & Development Director and concur with the findings set for in the staff report; **second** by Mr. Thomas. **APPROVAL** (5-0-0)

Election of 2020 Officers

Mr. Schoemaker explained that having served two terms as Chair, according to the By-laws of the BZA he is ineligible to serve a 3rd term. Ms. Crow nominated Mr. Carkhuff to serve as Chair, Mr. Thomas seconded, and Mr. Carkhuff accepted the nomination. Mr. Carkhuff nominated Mr. Schoemaker to serve as Vice-Chair, Ms. Crow seconded, and Mr. Schoemaker accepted the nomination. The role was called and the nominations APPROVED 5/0/0

Review of By-Laws

It was noted that the by-laws have not been reviewed for needed updates for a number of years. Mr. Carkhuff asked that Mary Feighny review and bring suggested updates to the next meeting of the BZA.

The meeting adjourned at 6:58PM

BZA20V/03

by

Nelda Henning

**VARIANCE EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT
FOR
TOPEKA BOARD OF ZONING APPEALS**

Date of BZA Meeting: May 11, 2020

Case No.: BZA20V/03

Applicant Name: Nelda Henning
Address of Property: 1610 NW Grove Avenue
Parcel ID No.: 0972504004005000
Zoning of Property: "R-1" Single-Family Dwelling District

Regulations from which a Variance is Requested: The applicant is requesting a variance to exceed the maximum 90 percent building coverage ratio of accessory buildings to the principal building as restricted by section 18.60.010 of the Topeka zoning regulations. Granting the requested variance will for the construction of an addition to an existing detached garage at 1610 NW Grove Avenue.

The following table describes proposed and required building coverage.

	Coverage Limits per Section 18.60.020	Coverage with Existing Building and No Addition	Coverage with Proposed Addition
% of Principal Building Coverage (sf of detached accessory buildings divided by sf of principal building footprint)	90% maximum	64%	112%
% Building Coverage (sf all building footprints divided by sf of zoning lot)	50% maximum	4.1%	5.4%

Project and Property Data:

(Existing building data by the Shawnee County Appraiser)

Proposed Garage Addition: 1,005 square feet (sf) addition to an existing 400 sf detached garage built in 1926. The garage addition complies with required building setbacks.

Height not indicated on application but will be less than the maximum 15' height allowed for detached accessory buildings under the R-1 zoning classification.

Size of Principal Dwelling: 2,069 sf residence built in 1926

Detached Accessory Dwelling: 528 sf dwelling plus 392 sf garage (total 920 sf). Not a permitted use in the R-1 district and is thus a nonconforming use. Built in 1948.¹

Property Dimensions: 175 feet wide x 496 feet (496 feet is the average depth of the trapezoidal shaped lot.)

Size: 1.88 acres (81,893 sf)

Property Description: S25 , T11 , R15 , BEG 105 FT W OF SW COR LT 1, BLK A, OPPITZ S/D, W 175, N 508(S), SELY 182.72, S 458(S) TO POB (not platted as a subdivision)

Existing Land Use and Property Characteristics:

A relatively large trapezoidal shaped lot containing a single-story, single family residence, a detached accessory dwelling with an attached garage, and detached garage (Shawnee County Appraiser). The property contains a large area behind the two dwellings and slopes downward to the north where it abuts Interstate 70. The site contains many large trees that act to obscure or mitigate the detached garage and accessory dwelling.

Surrounding Land Uses: Detached Single-Family Dwellings on the east, west, and south sides. Interstate 70 on the north side.

Zoning of Property: R-1 Single Family Dwelling District

Zoning of Surrounding Property: R-1 Single Family Dwelling District

Neighborhood: Not in a designated neighborhood but located adjacent to the Potwin Historic District on the south side of Grove Avenue.

Applicant's Stated Grounds for Variances

See page 2 of application attached.

Summary of Analysis:

The proposed 1,005 sf garage addition will have little or no negative impact on surrounding property owners and residents. Because of the conditions of the site and the location of the addition, the garage addition will hardly be visible.

As explained in the Findings section of this report the requested variance meets four of the five findings needed for approval. Given the large size of the garage addition and other parking options, the application does not make a convincing argument to support the finding that the strict application of the 90% coverage limit (denial of the variance) would constitute an unnecessary hardship upon the property owner.

Findings

Pursuant to K.S.A. 12-759, and as set forth in TMC 2.45.110, the Board of Zoning Appeals shall find that **all** of the following conditions are met before a variance may be granted.

- a. **That the variance request arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by action of the property owner or applicant;**

There are at least three unusual aspects of the property that together mean that the garage addition is inconspicuous and benign. The lot has a depth of approximately 500 feet and backs up to Interstate-70. The lot slopes downward from the location of the house and detached garage to the rear property line. There is a drop in elevation of at least 20 feet.

At 1.88 acres, the property is the largest residential lot in the neighborhood.² Staff analyzed residential lot size data for the area shown on the attached map. In this area the median lot size is 7,190 sf (.17 acre), mean lot size is 8,480 sf (.19 acre), and 75% of the lots (third quartile) are 9,214 sf (.21 acre) or less. The adjacent lots on the west and east sides of the property are large in relation to the neighborhood but substantially smaller than the subject property. The largest of these is 1.35 acres (adjacent on the west) and the other three (adjacent on the east) range from .88 to 1 acre each.

The unusual aspects of the property do not create the need for a variance but do set this property apart from residential lots in this neighborhood and in Topeka more generally. Presumably the 90% coverage limit on detached accessory buildings is intended to prevent the negative effects of excessive accessory structures on typical residential lots, with the typical lot in city neighborhoods estimated to be less than

one third of an acre. The unusual conditions of the property cited above provide some justification for the requested variance.

b. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residences;

Granting of the variance will not adversely affect adjacent property owners or residences.

The design of the garage addition is well integrated with the design of the existing garage. Once the addition is completed the entire detached garage will be compatible with the architecture of the primary residence.

The addition to the garage will not be readily visible from Grove Avenue, the adjacent residential lots, or from Interstate 70. The addition is on the north side of the garage. The existing garage is behind the primary residence and is set back 145 feet from the curb on Grove Avenue. The addition is directly east of the detached garage on the adjoining lot to the west. Large trees and other landscaping obscure the garage addition from the residential lot to the east and from Interstate 70.

c. That the strict application of the provisions of this chapter of which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application;

The applicant addresses this finding in the application by stating the need to provide protected parking in compliance with City code and to avoid possible fines associated with non-compliance.

The need to comply with City code is not a valid argument. City regulations require two off-street parking spaces for dwellings having more than 950 square feet of floor area. For residential parking surfaces City regulations require a paved or gravel area or driveway of sufficient size and on a surface thick enough to prevent grass, weeds and dirt from penetrating through the surface. City regulations do not require parking to be in a garage or other shelter.

For the subject property the City code requires three off-street parking spaces as the property contains a single family residence over 950 sf and an accessory dwelling with less than 950 sf of living area. In addition to the existing garage the property contains a long driveway consisting of asphalt and/or gravel and a concrete pad to meet parking requirements.

Nevertheless, the applicant's plan to build an addition to the garage is understandable and reasonable. The current garage appears to be large enough for a single vehicle. While parking can be provided without construction of a garage, shelter is needed to protect vehicles from weather and other natural elements.

On balance, strict application of the 90% coverage ratio and denial of the variance is perhaps "unnecessary." It is more difficult to find that denial of a variance for a 1,005 sf addition – an addition that includes both storage and two additional parking spaces – constitutes a "hardship." Furthermore, Section 2.220.140 (c) of the City

code states that the Board of Zoning Appeals shall not grant a variance unless it is the minimum necessary to relieve the proven hardship.³

d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;

The requested variance and the garage addition it supports have no foreseen adverse effects on the public health, safety, convenience, prosperity, or general welfare. The building addition does not threaten the physical character of the neighborhood since it will be integrated into the design of the existing detached garage and primary residence. The building addition will not be readily visible from outside the subject property.

The garage addition requires a building permit, so City staff will review the building plans for compliance with all applicable codes to determine the building is structurally sound and safe prior to issuing permits. The City will inspect construction to ensure compliance.

e. That granting the variance desired would not be opposed to the general spirit and intent of this chapter.

The property contains a detached accessory dwelling built in 1948. Detached accessory dwellings are not currently allowed in R-1 districts and, therefore, the detached accessory dwelling is a nonconforming use.

The requested variance is opposed to the general spirit and intent of the City's zoning regulations if the garage addition is used to support the nonconforming use such as providing parking or storage for the nonconforming use. If the garage addition is not related to the nonconforming accessory dwelling the variance for the addition does not conflict with the spirit and intent of the zoning regulations.

Chapter 18.220 (Legal Nonconforming Uses) provides restrictions and limitations on the continuance, alteration, and expansion of legal nonconforming uses. The Planning and Development Department is currently researching and preparing for the possibility of an amendment to the zoning code to allow accessory dwellings in the R-1 and R-2 residential districts.

Planning Staff Recommendation

Staff's recommendation is not clear-cut. The above arguments support four of the five findings. The proposed garage addition is reasonable and is not likely to negatively affect neighbors or the general public. However, the finding of "unnecessary hardship" is not clearly made. If the Board of Zoning Appeals concludes that denial of the variance is an unnecessary hardship to the applicant, the Board should approve the variance to allow the proposed garage addition, with the effect that the cumulative footprint of all detached accessory buildings exceeds the maximum 90 percent building coverage ratio of accessory buildings to the principal building.

If the variance is approved staff recommends the following as a condition of approval.

Condition of Variance Approval

1. The garage addition is accessory to the primary residence and is not used for parking, storage, or any other purpose to support the nonconforming accessory dwelling on the property.

Staff Report by: Michael Hall, AICP, Current Planning Manager

Exhibits:

- A. Variance Application
- B. Garage Plans
- C. Zoning Map
- D. Aerial Map
- E. Views of Property (Google Maps Street Views)
- F. Analysis of Lot Size – Map of Area of Analysis

¹ According to the 1949 Topeka zoning regulations for the “A” Single Family Dwelling District a single-family dwelling is a permitted use. A detached accessory building is not expressly permitted nor is it expressly prohibited. “Accessory buildings and uses customarily incidental to the above uses, not involving the conduct of a business, including a private garage” are included in the list of allowed uses. “A” converts to “R-1” Single Family Dwelling District per TMC 18.50.030.

² For the purpose of analysis the “neighborhood” is considered the Auburndale and Potwin neighborhoods and the residential blocks bordering them.

³ **2.220.140 Variances not allowed.**

In exercising its authority, the Board of Zoning Appeals shall not grant a variance that would create any of the following effects:

- (a) The effect of the variance on the specific property would adversely affect the land use pattern as outlined by any City land use plan or policy.*
- (b) The variance would be a material detriment to the public welfare or create injury to the use, enjoyment or value of property in the vicinity.*
- (c) The variance is not the minimum variance that will relieve the proven hardship.*
- (d) The variance would allow a use not allowed in the permitted zoning district in which the parcel is located.*
- (e) The variance will relieve the applicant of conditions or circumstances that are caused by the illegal subdivision of land, which subdivision of land caused the property to be unusable for any reasonable development under the existing regulations.*
- (f) The variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.*
- (g) The variance will modify one or more conditions imposed by the Governing Body as part of a conditional use permit or planned unit development.*



APPLICATION TO THE BOARD OF ZONING APPEALS VARIANCE / EXCEPTION

CITY OF TOPEKA PLANNING DIVISION

620 SE MADISON, 3RD FLOOR (UNIT #11) | TOPEKA, KS 66607-1118
PHONE 785.368.3728 | EMAIL: PLANNING@TOPEKA.ORG

Applicant Information

Name: Nelda Henning

Address: 1610 NW Grove Ave

Phone: 785-224-5235

Email: njhenning@att.net

For Planning & Development Use Only

Case #

RA20v/03

Hearing Date:

5.11.2020

Legal Ad Date:

4.20

Zoning District:

R-1

Building Height:

Number of Stories:

Parcel Size:

Lot Dimensions:

Property Information

Location of property: 1610 NW Grove Ave

Legal description of property: (attach additional sheets if necessary)

S25, T11, R15, BEG 105 FT W OF SW COR LT 1, BLK A, OPPITZ S/D, W 175, N 508(S), SELY 182.72, S 458(S) TO POB

Action Sought:

☒ **A variance** from a provision of the Zoning Ordinance

(Section to be appealed: Chapter 18.60 Density/Dimensional Star)

☐ **An exception** from a provision of the Zoning Ordinance

(Section to be appealed: _____)

Description of Action Sought:

Variance to add 1005 square foot garage to an existing undersized garage. See attached plan/elevation for description of addition.

Applicant offers the following as grounds for this action:

In accordance with Section 2.45.110 of the Topeka Municipal Code, the Board of Zoning Appeals must determine that ALL of the following conditions governing unnecessary hardship have been met before a variance may be granted.

All items must be addressed or the application will be deemed incomplete.

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action of the property owner or applicant (*The problem must relate to the land. Community needs or personal hardships do not qualify as legitimate grounds for issuing a variance.*);
The reason for this request is the lot in question, according to Shawnee County Appraiser, is 1.88 acres, which is not common in this area and would be considered large for a residential lot, R1 zone. The second reason is to provide a safe protected parking area for vehicles that will keep them from needing to be parked in the grass area, per City Code.
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
The proposed addition will extend north of the existing garage which is adjacent to the west property owner's current garage and 200'+ from the east property owner's current garage. The addition will not obscure, change or alter any views from the public right-of-way.
3. That the strict application of the provisions of this chapter of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
Other than not providing safe protected parking in compliance with City code and the possible fines associated with non-compliance, no hardship will occur.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, property, or general welfare;
The proposed addition is in the opposite direction of public view. The addition matches the existing construction as much as possible given current construction standards. The roof height of the addition will not project above the current roof height while the floor level will be lowered to follow existing grade.
5. That granting the variance desired will not be opposed to the general spirit and intent of this chapter.
The general intent of the chapter is to limit the amount of built area on a standard residential lot. The proposed addition of 1005 sq ft is being added to a 1.88 acre R1 lot. While the addition will make the garage area close to the size of the residential unit, with proper construction, it will not adversely jeopardize the value or condition of the property.

Authorization

Property Owner(s):

I/We the undersigned owner(s) of record hereby authorize the filing of this application and declare that all required materials are submitted along with this application and that the information and material is complete and accurate. I/We hereby acknowledge that all appropriate procedures, policies, and regulations have been reviewed and also understood that this application will be processed in sequence with respect to other submittals.

Nelda Henning
Owner Name (print)

Nelda Henning
Owner Signature

Owner Name (print)

Owner Signature

Owner Name (print)

Owner Signature

Authorized Agent:

If the owner(s) of record are to be represented by legal counsel or an authorized agent, please complete the following information so that communications and correspondence pertaining to this application may be forwarded to such individual.

Authorized Agent Name (print)

Signature - Authorized Agent

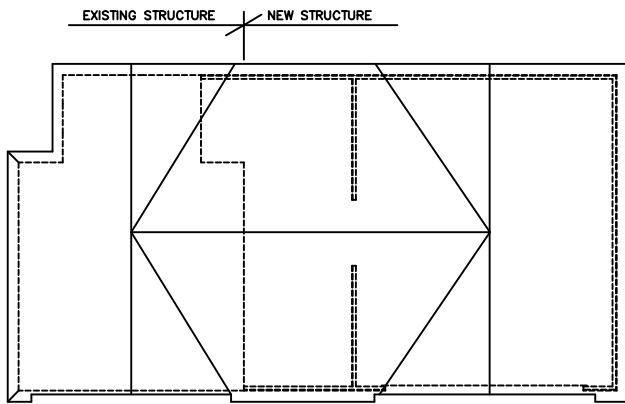
Mailing Address: _____
STREET ADDRESS CITY STATE ZIP

Phone: 785-224-5235 Email: _____

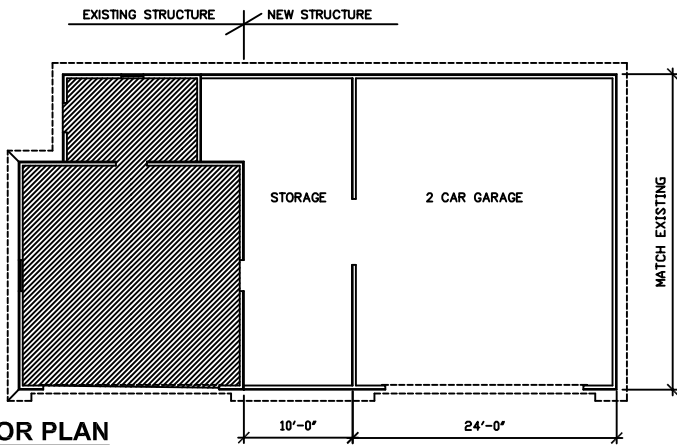
Applicant:

Nelda Henning
Applicant Name (print)

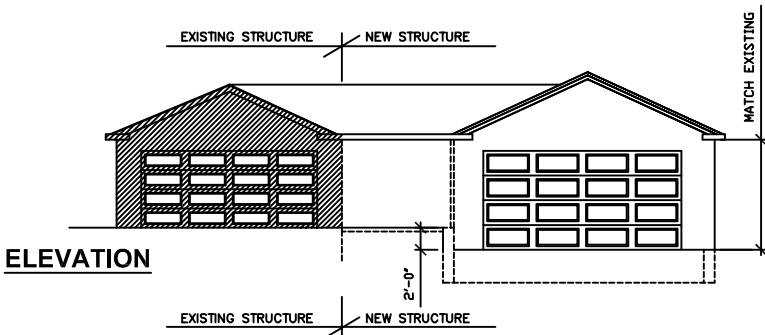
Nelda Henning
Applicant Signature



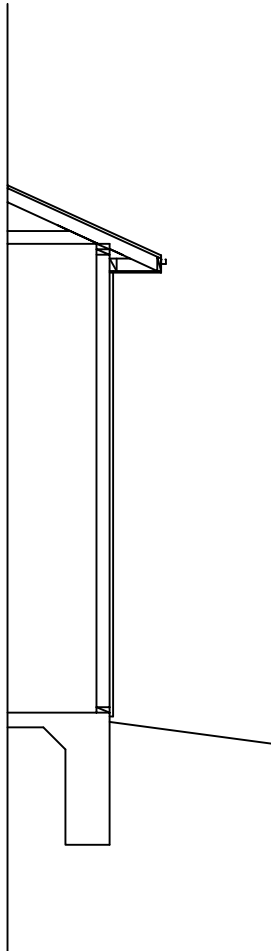
ROOF PLAN



FLOOR PLAN



ELEVATION



TYP WALL SECTION

CONSTRUCTION NOTES :

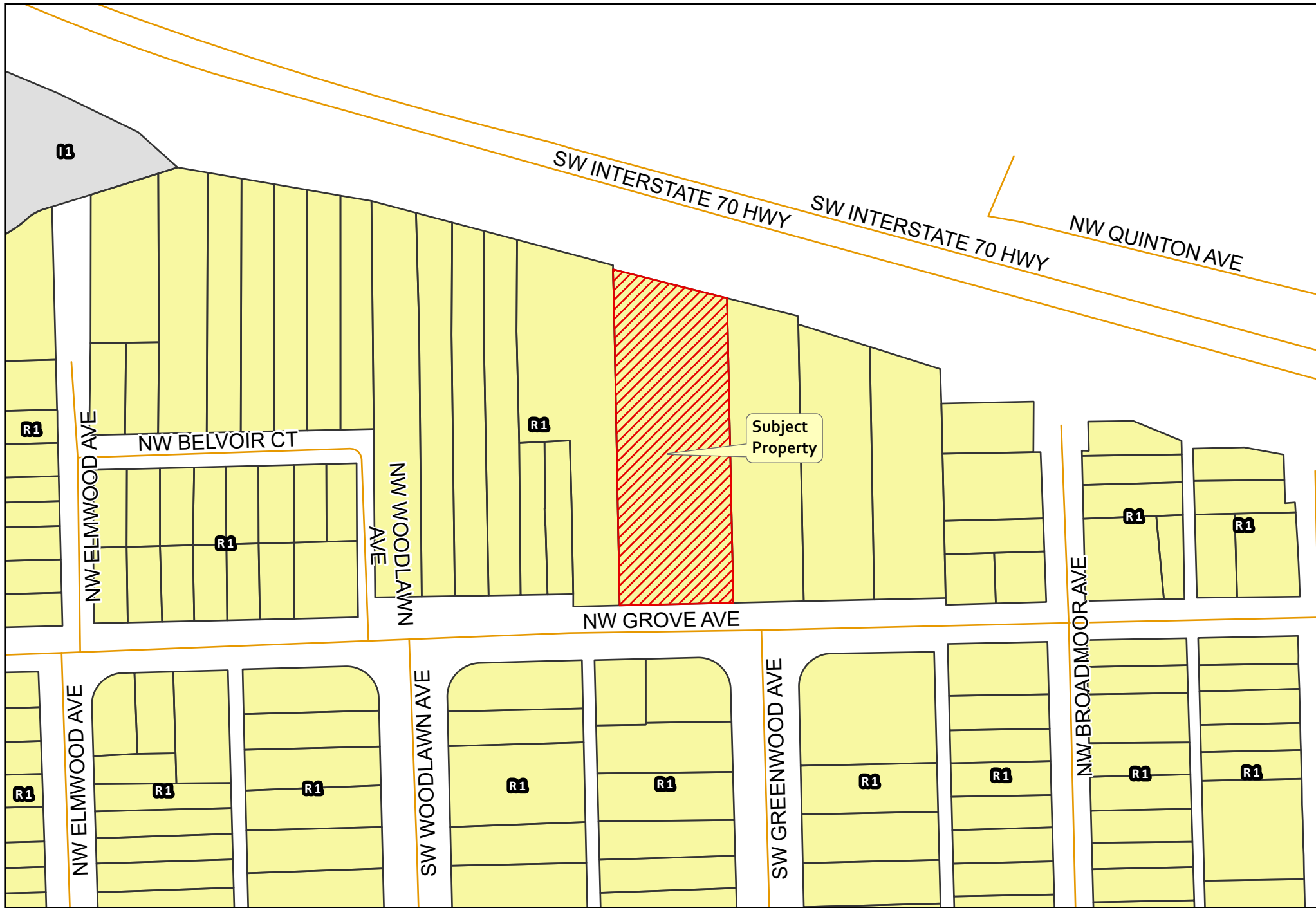
1. DO NOT SCALE DRAWINGS.
2. THE CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS, DIMENSIONS, UNITS AND TYPES OF UNITS INVOLVED IN THIS PROJECT. NOTIFY THE OWNER OF ANY MAJOR DISCREPANCY.
3. NEW ASPHALT SHINGLE ROOF TO MATCH SHINGLES ON ADJACENT HOUSE.
4. NEW ADDITION SHALL TIE INTO EXISTING GARAGE AND MATCH EXISTING CONSTRUCTION AS REASONABLE AS POSSIBLE
5. TYPICAL CONSTRUCTION SHALL BE 2x4 FRAMING 16" OC, BOXED WITH SIDING, FOOTINGS TO BE 12"x 36" WITH 1/2" REBAR AT 2' OC.
6. FLOOR SLAB TO BE 4" CONCRETE WITH WWF OVER COMPACTED GRAVEL BED. NEW STORAGE AREA FLOOR TO BE DOWELED TO EXISTING FLOOR/FOUNDATION AT 2' OC
7. NEW OVERHEAD GARAGE DOOR WITH OPENER TO MATCH EXISTING.
8. NEW ROOF SLOPE TO MATCH EXISTING ROOF SLOPE
9. NEW GUTTERS AND DOWNSPOUTS.



1610 NW GROVE AVE
HENNING GARAGE
TOPEKA, KANSAS

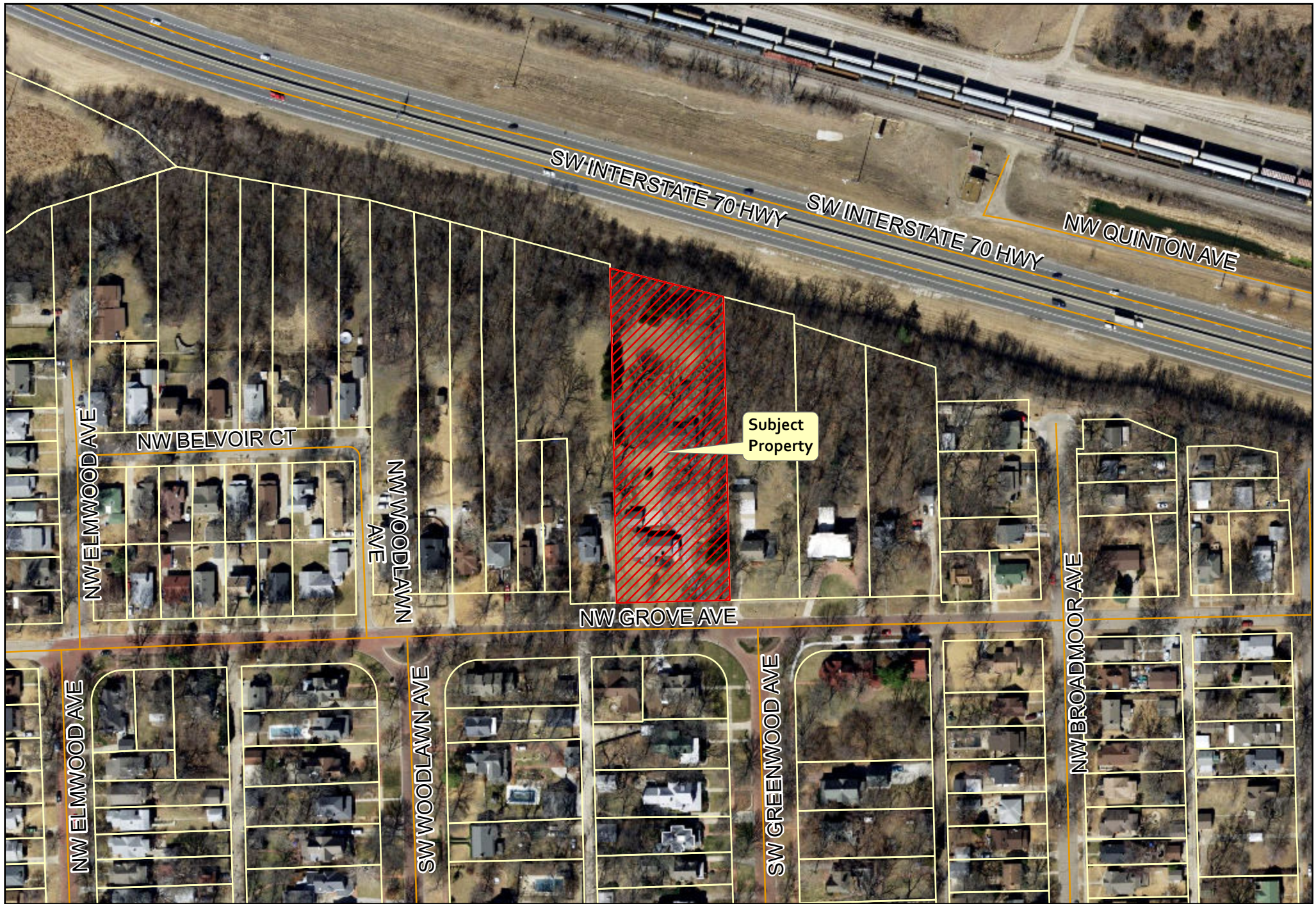
ORIGINAL
CONTRACT
DOCUMENTS

DRAWN NJH
CHECKED NJH
DATE MARCH 2020
3/19
JOB NUMBER
SHEET NUMBER
A-1
SHEET 1 OF 1



BZA20V/03 BY: NELDA HENNING





BZA20V/03 BY: NELDA HENNING



Views of Property by googlemaps.com

Views of Subject Property



View from Southeast



Existing Detached Garage

View from Southwest

Views of Property by googlemaps.com



View from South



View from Interstate 70

Analysis of Residential Lot Size



Area Analyzed for
Residential Lot Size

BZA20V/04

by

City of Topeka Utilities Department

**VARIANCE REPORT
CITY OF TOPEKA PLANNING DEPARTMENT
FOR
TOPEKA BOARD OF ZONING APPEALS**

Date of BZA Meeting: May 11, 2020

Case No.: BZA20V/04

Applicant Name: City of Topeka Utilities Department- Water Pollution Control Division
Owner representative: Michelle Neiswender, Water Pollution Control Engineer
Applicant Representative: Angela Sharp, P.E., Bartlett and West Inc.
Address of Property: Southeast corner of NE Grant and NE Jefferson
Parcel Identification No.: 1092901005001000
Zoning of Property: "R-2" Single-Family Dwelling District

Regulations from which Variances are Requested: The applicant is requesting a variance to the minimum building setbacks required by Section 18.60.020 of the Topeka zoning regulations for the construction of a sanitary sewer pump station. The requested variance applies to the required 25' setback from the front property lines along both NE Grant and NE Jefferson (unbuilt street), and to the required 25' rear setback from the east property line.

The variance application includes "Exhibit 1" (Grounds for Request), "Exhibit 2" (Overall North Topeka Basin Infrastructure Map), and "Exhibit 3" (CUP Site Plan). The proposed and required setbacks are demonstrated on these attached exhibits.

The following table describes proposed and required setbacks.

Location of Setback	Setback Required per Section 18.60.020	Setback Proposed
Northwest corner of building	25' Front Yard (from Jefferson right of way line)	14' from NW corner wall of building to the property line
Northeast corner of building	25' Front Yard (from Grant right of way)	2' (from NE corner wall of building) to property line
East façade of building	25' Rear Yard (from east Union Pacific Railroad right of way)	10' (from east wall of the building) to the rear property line

Project and Property Data:

Proposed Building:	Sanitary Sewer Pump Station (City of Topeka) Height: 20' 8" to top of parapet wall
Architectural Style:	Brick exterior, architectural elements replicating design of the existing pump station constructed in 1927.
Size of Building and Dimensions:	4,250 sf The building is irregular in shape.
Property Dimensions:	115 feet wide x 250 feet long
Size of Property:	21,780 sq. ft.
Existing Land Use and Property Characteristics:	The property is irregular in shape and has historically been undeveloped since it was platted in 1887. The existing pump station was constructed on the NE Grant right-of-way to the north in 1927 and is past the normal lifespan for pump stations. The property is bounded by the Union Pacific Railroad on the east side and lies at the bottom of the Sardou Avenue/Morse Street bridge ramp on the south. A stormwater retention area is provided on the south half of the property. NE Jefferson Street is not constructed to current roadway standards (Most of the segment of the roadway adjacent to the site is less than 18 feet wide.) NE Grant Street adjacent to the property is not built.
Surrounding Land Uses:	West - Detached Single-Family Dwelling and detached manufactured home North – Existing Pump Station (to be removed) South – Vacant 0.18 acre parcel East – Union Pacific Railroad
Zoning of Property:	R-2 Single Family Dwelling District
Zoning of Surrounding Property:	R-2 Single Family Dwelling District
Neighborhood:	Historic North Topeka East Neighborhood Improvement Organization
Neighborhood Health:	In area designated "Outpatient" on <u>2017 Neighborhood Health Map</u>

Applicant's Stated Grounds for Variances

The application received April 8, 2020 addressed the findings as follows. The applicant has included their detailed justification that is attached and titled "Grounds for Request (Exhibit 1)".

Conditions Unique to the Property, etc. (finding a): *The existing pump station was constructed in 1927 to pump flow from a combined wastewater and stormwater system to the old North Topeka Wastewater Plant. The new pump station will pump flow to an 18" force main to the east under the riverbed to the Oakland Treatment Plant. Conditions of the site and capacity limits require it be replaced, but cannot be taken out of service until the new one is constructed. The site sits at a low point in the North Topeka Basin and flow and elevations of the piping system in the basin control the location of the pump station since it must be at the lowest point of the basin.*

Effect of the Variances on Adjacent Property Owners (finding b): *There will be no negative impact on surrounding owners. The proximity of the pump station to the adjoining neighbors has existed for nearly 100 years with no negative impacts. The new pump station will be improved in appearance and have a positive impact on the adjacent property owners.*

Application of Zoning Requirements Constitute an Unnecessary Hardship (finding c): *The site location adjacent to the existing pump station and gravity interceptor makes it impossible to reconfigure the design in order to provide pump capacity necessary to serve the basin. This location next to the existing pump station is the only physically feasible location and the City purchased the property for this reason and would cause an undue hardship on the owner if a new site had to be identified and acquired.*

Potential for Adverse Effect on the Public Health, Safety, Morals, Order, Convenience, Property, and General Welfare (finding d): *It will improve capacity for this north Topeka area as the existing pump station is past its useful life since it was constructed in 1927 to serve the old treatment plan and the combined sewer and stormwater system.*

Variances is not in Conflict with the General Spirit and Intent of the Regulations (finding e): *The building setbacks along Grant (not constructed) and the Union Pacific Railroad are inconsequential.*

Summary of Analysis:

The requested variances meet all of the findings necessary for approval by the Board of Zoning Appeals. The property is unique and the ability for any project to comply with setback requirements is constrained by its irregular shape and location at the intersection of two platted streets.

The City purchased the property because it is the only location in the North Topeka Basin physically suitable for the placement of the pump station, which must be re-built to meet capacity requirements and serve the area. The pump station cannot be built in its current location in the right of way because the existing pump station needs to continue to operate while the new pump station is being built.

Rebuilding the existing pump station is not financially or physically feasible. The new pump station as designed is necessary to serve the North Topeka sanitary sewer basin. It must be built in this location because of the elevations of the surrounding infrastructure and how this flow goes to the treatment plan. Furthermore, moving the pump station to satisfy the building setbacks is not feasible because of how it connects to the existing 18" force main that carries sewage to the Oakland Treatment Plant on the other side of the Kansas River.

Findings

Pursuant to K.S.A. 12-759, and as set forth in TMC 2.45.110, the Board of Zoning Appeals shall find that **all** of the following conditions are met before a variance may be granted.

- a. That the variance request arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by action of the property owner or applicant;**

The variance arises from circumstances not under the control by the property owner and not ordinarily found in the "R-2" District. The location of the pump station and the setbacks of the pump station are determined by the elevation of the pipes in the wastewater system and the location of the force main that is connected to this pump station. The elevation of these pipes control where this pump station is placed on the site in a manner it will be able to provide adequate capacity for the basin and have the ability to pump into a force main that runs to the north of the proposed building, which then flows to the Oakland Treatment Plant under the river bed. The pump station cannot be rebuilt in the public right-of-way since the existing pump station cannot be removed from service until the new one is placed into operation.

The irregular shape of the property was created by platting in 1887 and is a unique characteristic due to the angle of the existing railroad is also an inhibitor to development of this site as zoned for single-family dwellings. The depth of the property at the north property line (measuring in a line from west to east) is 107' of depth and narrows to 73' at the south property line, giving the parcel a much shallower depth than other lots in the neighborhood. The typical lot has a depth of over 160 feet. The irregular shape has likely contributed to the property remaining undeveloped for single family uses as it has remained vacant.

Additionally, the property's three 25' yard requirements and unbuilt road right-of-way (NE Grant) is not commonly found in the "R-2" zoning district. The location of the setbacks are adjacent to property where a variance will have little or no impact on the future development of vacant land.

In conclusion, the restrictive distance between the fronts and rear and the unique nature of surrounding properties are unique conditions of the site and provide support for the variances that are being requested.

b. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residences;

The granting of the variance will not adversely affect the right of adjacent property owners or residential properties. The existing pump station was constructed in this specific location to serve this part of North Topeka in 1927 before the adjacent residential dwellings on Jefferson were constructed. Since that time, surrounding residential properties have become accustomed to the pump station as it has existed in its current location prior to the homes being constructed. The pump station is a necessary and vital component to surrounding infrastructure.

The property has remained vacant since it was platted in 1887. The location adjacent to the railroad and a dead-end unbuilt road provides assurances the setback variance will not harm the rights of adjacent property owners. The street within the Grant right-of-way was never built and will remain as such since it contains waste water infrastructure and the right of way terminates at the railroad right of way. The pump station is being re-built in a manner to replicate the design of the existing pump station. This new construction as an improvement to the area since the current pump station is 90 years old.

In conclusion, no adverse effects on adjacent property owners are anticipated as a result of a variance to the front and rear yard setbacks.

c. That the strict application of the provisions of this chapter of which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application;

The strict application of the provisions of this chapter will present an unnecessary hardship upon the property owner (City) and Topeka residents. The lots have been platted in this manner since 1887 and have remained undeveloped for single family dwellings since that time. The City of Topeka acquired the property because of the need to rebuild the pump station in this exact location because of elevations and flow. Other sites are not available that meet the necessary requirements. The current pump station sits at the lowest elevation in the North Topeka Basin and is the only suitable site for the new pump station, which must be constructed directly adjacent to the current pump station for it to serve North Topeka in the most cost effective manner. In conclusion, denial of a variance to the setbacks constitutes an unnecessary hardship for the owner because a new site will need to be found and purchased. It is not even clear whether there is a similar and appropriate site available.

d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;

Granting relief from required setbacks is warranted as it will allow the owner to re-construct and re-locate the sanitary sewer pump station currently located directly to

the north of the subject site within public street right-of-way. The current pump station cannot be removed until the new one is constructed and put into operation.

The benefit that accrues to the property owner is also a positive outcome for the neighborhood, community, and City because it directly benefits the public health, safety, and welfare by providing the increased waste water capacity needed for this basin and North Topeka.

e. That granting the variance desired would not be opposed to the general spirit and intent of this chapter.

Granting a variance to the required setback is not opposed to the general spirit and intent of the City's variance provisions in Chapter 2.45 nor does such a variance conflict with the spirit and intent of the zoning regulations in Title 18 of the city code. The unique conditions of the property are documented herein and, therefore, approval of the variances requested does not set a precedent for future administration and enforcement of setback standards.

Planning Staff Recommendation

Based on the above findings staff recommends the Board of Zoning Appeals **APPROVE** the variances as requested and in accordance with the attached site plan and building plans.

Staff Report by: Annie Driver, AICP, Senior Planner

Exhibits:

- A. Grounds for Request (Exhibit 1)
- B. Overall North Topeka Basin Infrastructure Map (Exhibit 2)
- C. Annotated Conditional Use Permit Site Plan (Exhibit 3)
- D. Building Plans (Exhibit 4)
- E. Variance Application
- F. Zoning Map
- G. Aerial Map
- H. Photos of Site

EXHIBIT 1

City of Topeka - Grant Jefferson Pump Station Board of Zoning Appeals – Variance Request Grounds for Request

1. *That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action of the property owner or applicant:*

The subject property was platted in 1880 and the existing City of Topeka wastewater pump station was built in its existing location within the NE Grant Street right of way in 1927 to pump flow from the combined wastewater and storm water system to the old North Topeka wastewater treatment plant. In 1962, a forcemain was added and flow was then pumped to the existing Oakland wastewater treatment plant. The existing pump station currently serves the North Topeka Basin which encompasses approximately 6 square miles of urban area. Flow comes to the pump station via a 36" diameter gravity interceptor sewer from the west and is pumped out from the station in an 18" force main to the east under the riverbed to the Oakland Wastewater Treatment Plant. The locations and elevations of these large diameter pipe systems control the location of the pump station in that it must be at the low point of the gravity system for the basin it serves. The wastewater infrastructure for the overall North Topeka Basin is shown on the attached Exhibit 2. This exhibit demonstrates the extensive piping network that connects to the singular existing 36" gravity sewer interceptor that enters the existing pump station to be conveyed via the singular 18" force main to the plant for treatment.

The condition and capacity limitations of the existing pump station require that it be replaced, but it cannot be taken out of service until the replacement pump station is operational. The new pump station will be much larger than the existing due to many factors including additional and larger pumps to provide capacity and redundancy, space for additional equipment and controls now required by current regulations and codes as well as clear space around said equipment in accordance with safety protocols, space for an emergency generator and fuel tank to ensure operation during power outages and a restroom for operator personnel use. The proposed pump station is sited as close as possible to the existing pump station to facilitate construction while maintaining operation of the existing station. This proximity also minimizes the length and associated elevation changes associated with the incoming gravity interceptor sewer. See Exhibit 3 for the proposed layout that shows these connections.

The only vacant property near the existing pump station to site the proposed station is the subject parcel that lies immediately south of the NE Grant Street right of way. The overall shape of the subject parcel converges in width as it extends south, creating a somewhat triangular shape. The original plat included this lot configuration due to the angle of the mainline railroad that existed at that time and still operates on the property directly adjacent to the east of the subject property. The fact that historical aerial photos and permitting history show that the subject property has never been developed are most probably due in large part to the shape of the property and the immediate proximity to the active railroad. The subject property is bounded on the west and north by 60' wide City of Topeka road rights of way and on the east by approximately 200' of Union Pacific Railroad right of way, which then abuts City of Topeka road right of way for NE Porubsky Drive and City of Topeka property upon which the Kansas River

levee lies. The NE Grant Street road right of way to the north is currently unimproved for road purposes due to the pump station building and the dead end created by the railroad, levee and river. The proposed pump station access drive will be located within the existing road right of way, which will prevent construction of future buildings. The five sets of railroad tracks within the railroad right of way, the road right of way, levee, the Kansas River and the levee on the east side of the river prevent any buildings from being built within a minimum of 2,800 feet to the east.

For reasons such as those listed above, the City Council concluded in Ordinance No. 20188 that it was necessary to condemn the subject property to be appropriated for the construction of the Grant-Jefferson Pump Station, Project No. T-291061.00.

The proposed use of the subject property is unique in that it is a public utility that cannot be sited anywhere else. Due to the shape of the property and the required equipment configuration it is not possible to construct the building in such a way as to adhere to the existing building setback requirements. The undeveloped road right of way to the north and the physical constraints to the east provide perpetual buffers to adjacent properties.

2. *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents:*

As mentioned above, the existing pump station was constructed in 1927, so it has been a neighbor to the adjacent owners and residents since that time.

The proposed pump station building will have a brick exterior that includes replicas of the historic arch elements that are present in the existing pump station building. The architectural features of the building will convey a historic residential character.

The existing home adjacent on the west side of NE Jefferson Street currently has a direct line of sight to the east of the active Union Pacific rail lines. The view of the architecturally pleasing proposed pump station building will replace the current view of the industrial rail property.

The garage for the existing home adjacent on the north side of the NE Grant Street right of way is the closest portion of the home to the pump station site and currently lies approximately 100 feet from the existing pump station building. The closest portion of the proposed pump station building will lie approximately 140 feet away and will be a new building with the same architectural character as the existing.

The reduction in the west and north building setback requirements would not have any other impacts on the rights of these adjacent owners.

As is mentioned above, the adjacent property owner to the east is the Union Pacific Railroad operating five tracks within an approximately 200-foot wide right of way. Railroad regulations for clear space from their tracks to their own right of way lines would render building setback lines on adjacent properties inconsequential to the railroad use and operations on their property.

3. *That the strict application of the provisions of this chapter of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application:*

As shown on the attached Exhibit 2, the pump station and associated piping are configured similarly to the hub and spokes on a wheel, with the pump station being the hub and the pipes being the spokes. The pipes from the North Topeka Basin come to the pump station from

various angles to the west and the force main leaves the same point to the east. The unique location directly adjacent to the existing pump station with its associated gravity interceptor sewer and force main is the only physically feasible site for the new pump station. The hardship upon the property owner should the strict application of the provisions of the chapter of which the variance is requested be applied would be that the replacement pump station could not be constructed in an appropriate manner and configuration that would provide the pumping capacities and personnel and public safety that are required to serve the wastewater needs of this 6 square mile portion of the City of Topeka. The hardship would be extended to the taxpayers of the City of Topeka due to the fact that if any other site could be identified for the new pump station, it would come at a cost of many tens of millions of dollars in relocation and future maintenance costs associated with the additional interceptor sewers and force main that would be required. All of these factors were taken into account as the City of Topeka staff prepared the condemnation case for City Council consideration and subsequent approval of the condemnation of the subject property for the proposed use. There is not another viable option for the siting of the wastewater pump station.

4. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, property, or general welfare:*

All of the parameters above will be adversely affected if the desired variance is not granted. The existing pump station is the oldest operating wastewater pump station in the City of Topeka as it has been in operation for over 90 years. It is not physically or financially feasible to rehabilitate it. Replacement is required.

The existing pump station requires personnel to use confined space entry safety apparatus for maintenance activities due to the space constraints and depth of the pumps. The proposed station will be configured to eliminate this need.

The existing station has a 28-foot deep wet well that is exterior to the building and protected from the general public by a mesh grate and handrail. The proposed station will have all equipment and appurtenances interior to the building with safety measures that meet all current code requirements.

Should power be interrupted to the existing pump station, personnel would be required to bring a truck mounted generator to the pump station site and manually make connection to provide power to the station until the public power supply is returned. The proposed station will have an emergency generator and fuel tank installed within the enclosed building that will automatically energize the station should the public electrical power supply be interrupted.

The proposed station would be sized appropriately for the required capacities and include redundancies in pumping capabilities should system failures occur. The existing station does not have those redundancies and although they have been well maintained, the pumps are past their expected useful life. The improvements associated with the new pump station will provide greater protection to the public health and safety by reducing the likelihood of a Sanitary Sewer Overflow (SSO) and mitigating the occurrence of Combined Sewer Overflows (CSO's).

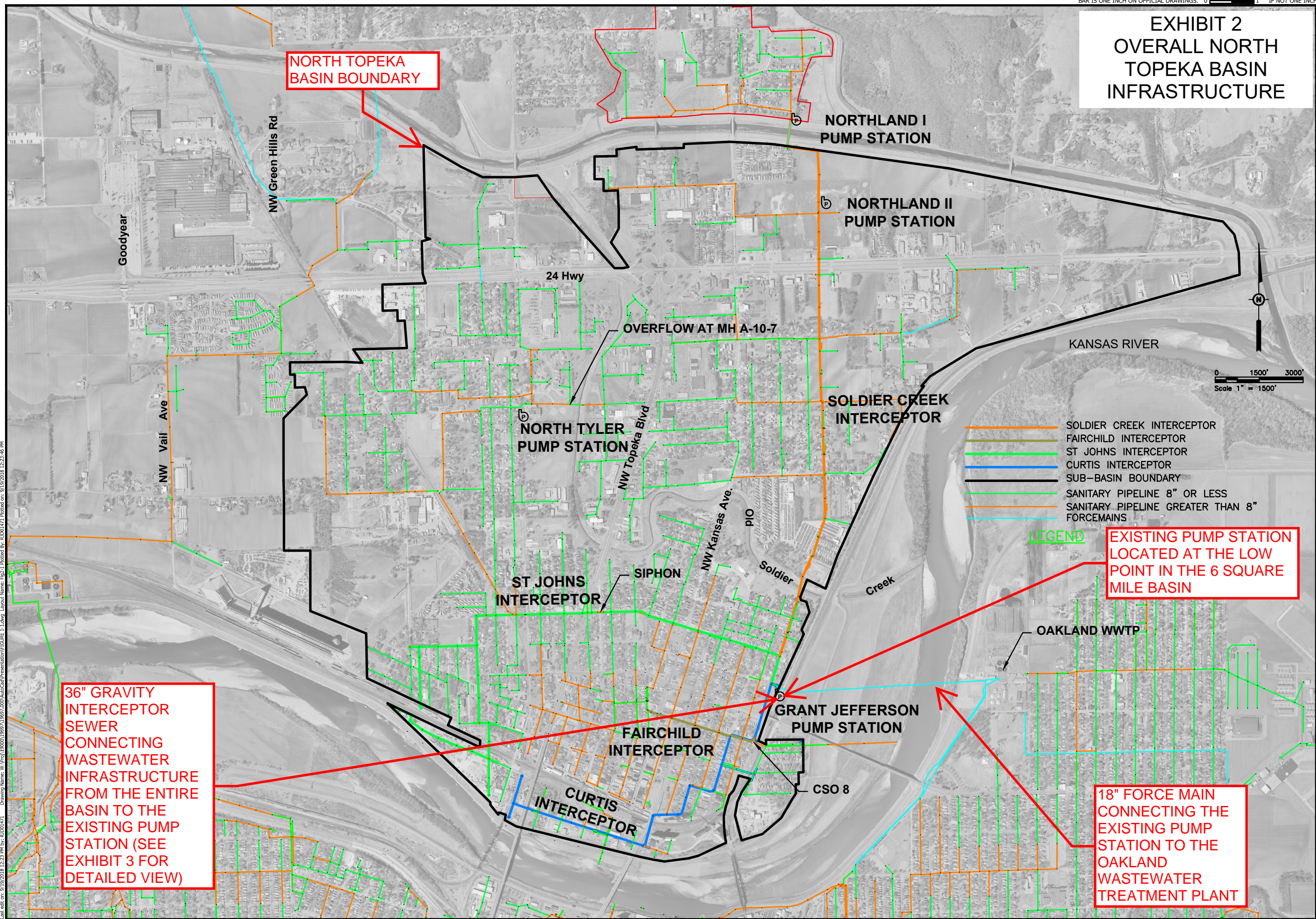
The access for the existing pump station is a narrow gravel drive without a gated entry. The proposed station will include a concrete access drive on each side of the building for all weather access for required maintenance vehicles as well as a perimeter security fence and gates.

The existing station has an exterior wet well with no odor control measures. The proposed station will include a wet well interior to the building that includes provisions for odor control.

5. *That granting the variance desired will not be opposed to the general spirit and intent of this chapter:*

Granting a variance to the required setbacks as requested is not opposed to the general spirit and intent of the City's variance provisions in Chapter 2.45 nor does such a variance conflict with the spirit and intent of the zoning regulations in Title 18 of the city code. The unique conditions of the property are documented herein and, therefore, approval of the variances requested does not set a precedent for future administration and enforcement of setback standards.

EXHIBIT 2
OVERALL NORTH
TOPEKA BASIN
INFRASTRUCTURE



- LEGEND**
- SOLDIER CREEK INTERCEPTOR
 - FAIRCHILD INTERCEPTOR
 - ST JOHNS INTERCEPTOR
 - CURTIS INTERCEPTOR
 - SUB-BASIN BOUNDARY
 - SANITARY PIPELINE 8" OR LESS
 - SANITARY PIPELINE GREATER THAN 8"
 - FORCEMAINS

36" GRAVITY
INTERCEPTOR
SEWER
CONNECTING
WASTEWATER
INFRASTRUCTURE
FROM THE ENTIRE
BASIN TO THE
EXISTING PUMP
STATION (SEE
EXHIBIT 3 FOR
DETAILED VIEW)

EXISTING PUMP STATION
LOCATED AT THE LOW
POINT IN THE 6 SQUARE
MILE BASIN

18" FORCE MAIN
CONNECTING THE
EXISTING PUMP
STATION TO THE
OAKLAND
WASTEWATER
TREATMENT PLANT

FIGURE 1-1
NORTH TOPEKA BASIN

GRANT JEFFERSON PS IMPROVEMENTS
TOPEKA, KANSAS

PRELIMINARY

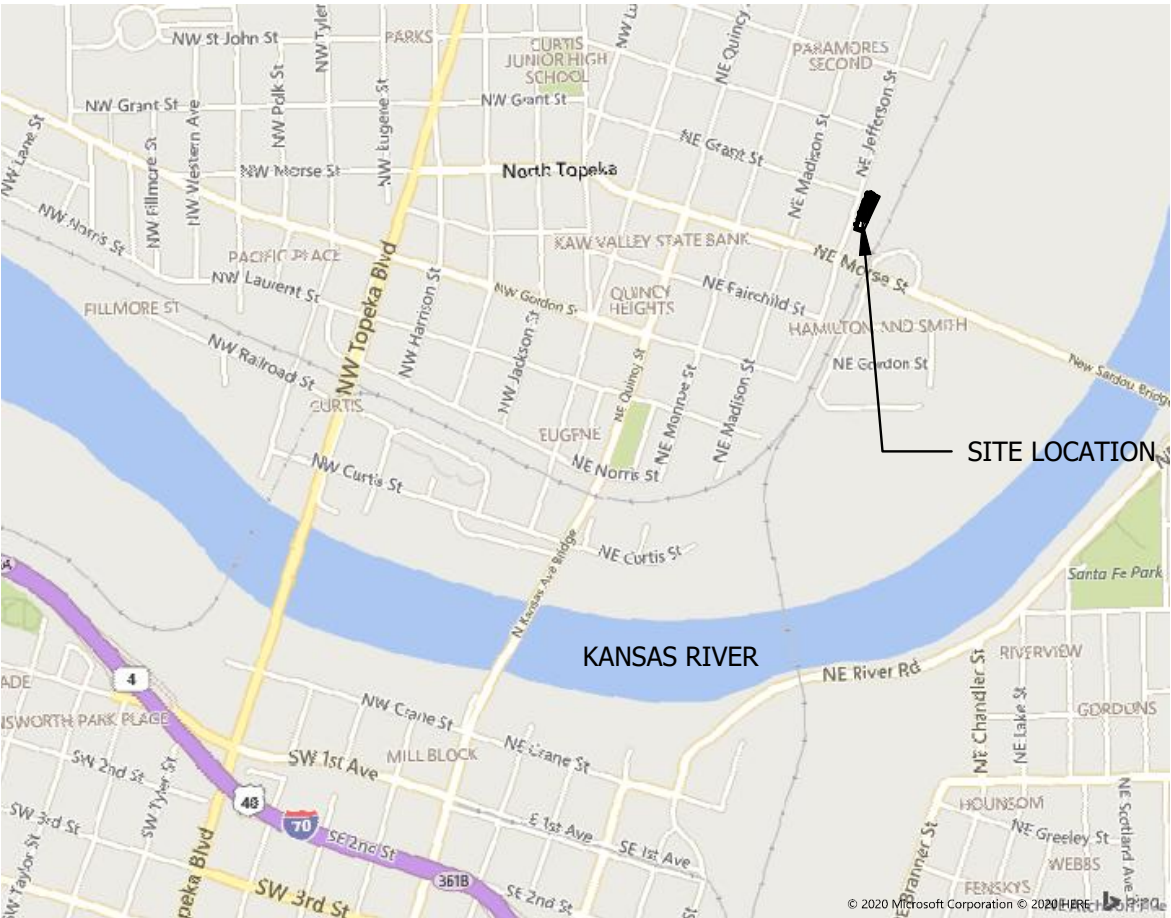
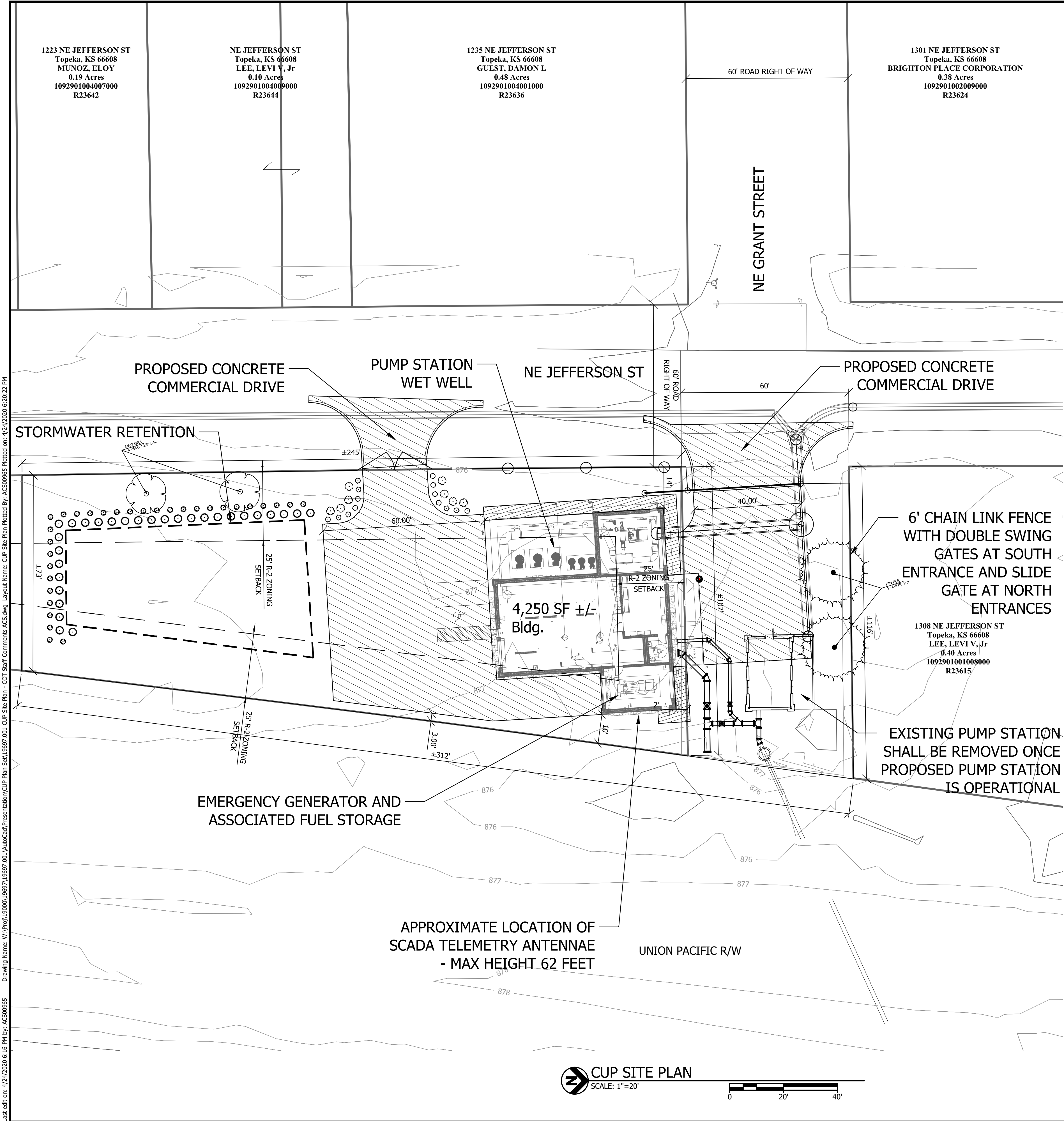
DESIGNED BY:	GJM
DRAWN BY:	GJM
APPROVED BY:	ADW
DESIGN PROJ:	19697.000
CONST PROJ:	19697.000
SCALE:	AS NOTED
DATE:	SEPTEMBER

FIG 1-1

Bartlett & West

1200 SW EXECUTIVE DR., TOPEKA, KS 66616
PHONE: 785.272.2252 - FAX 785.273.8735
CERTIFICATE OF AUTHORITY NO. 000167
www.bartlettwest.com

Last edit on: 4/24/2020 6:16 PM by: ACS00965
Drawing Name: W:\Proj\19000\19697\001\AutoCadPresentation\CUP Plan Set\19697.001 CUP Site Plan - COT Staff Comments ACS.dwg Layout Name: CUP Site Plan Plotted on: 4/24/2020 6:20:22 PM



VICINITY MAP

STATEMENT OF OPERATIONS

- Existing Zoning: R1 - Residential
No changes in zoning are proposed.
- Property Description:
Lots 190, 192, 194, 196, 198, 200, 202, 204, 206, and 208 on Jefferson Street in Fairchild's Addition to the City of Topeka, Shawnee County, Kansas.
- Parcel Size: 0.51 acres (22,190 Square Feet)
Maximum Building Footprint: 4,500 Square Feet
Maximum Building Height: One Story
- Owner:
City of Topeka
215 SE 7th Street
Topeka, Kansas 66603
- Civil Engineer & Plan Preparer:
Bartlett & West, Inc.
1200 SW Executive Dr.
Topeka, KS 66451
- Current Use:
Vacant residential lot.
Proposed Use:
Public Utility Facility (Wastewater Pump Station)
City of Topeka - Grant Jefferson Pump Station
- Personnel and vehicular access is limited to periodic maintenance and operations visits that may occur once per week.
- Boundary information taken from survey performed by Bartlett & West, October, 2019 and February, 2020.
- Proposed site paving to be concrete. Driveway approach paving shall be concrete in accordance with City of Topeka standards and specifications.
- Parking Information:
Required Parking = 1 Stall
Proposed Parking Provided = 1 regular stall and 1 accessible stall
- One wall sign shall be permitted not to exceed a maximum of 12 sq. ft. Free standing signage shall comply with 'R-2' zoning sign standards for incidental free standing signs. Separate sign permit applications are required from the City of Topeka Development Services Division except where exempted from permit requirements by code.
- The owner will coordinate the use of a Knox Box, Key or Code with the Fire Department so that they may have access all times.
- Signage shall be limited to a building mounted wall sign identifying the purpose of the facility.
- Any fencing proposed for the site shall require a fence permit from the City of Topeka.
- The intensity of any parking lot lighting shall be no more than three foot-candles as measured at the property line. The source of illumination shall not be visible from public rights-of-way or adjacent residential properties.
- Ongoing operation of the pump station will generate no sound greater than 55 decibels measured at the property line. The sound limit on ongoing operation does not apply to vehicles for occasional facility and grounds maintenance, use of an emergency generator, temporary station malfunction, or other temporary sources of noise.
- Maximum height of telemetry antennae is 62 feet.
- Building setbacks not meeting the setbacks required by the City of Topeka zoning regulations TMC 18.60 require approval of variances from the Topeka Board of Zoning Appeals. Variances approved by the Board of Zoning Appeals shall be recorded with the Office of the Shawnee County Register of Deeds.

LANDSCAPE REQUIREMENTS

- Square footage of developed area: 22,190 sq ft
Points required = 89 points
- Parking points= 1.5 per parking stall
2 stalls x 1.5 = 3 points
- Total points required = 92
- Existing tree credits claimed = 0
- Existing irrigation credits claimed = 0
- Residential buffer required? No

POINTS PROVIDED

Native Grasses: 1 pt/plant = 60
Shrubs: 1 pt/plant = 22
Trees: 8 pts/tree = 32

TOTAL POINTS PROVIDED= 114

PLANT SCHEDULE

SHRUBS	BOTANICAL / COMMON NAME	SIZE	QTY
CAR STR	Carex stricta / Tussock Sedge	3 gal	50
PHL GDE	Phlox paniculata 'Glamour Girl' / Glamour Girl Garden Phlox	3 gal	8
RUD HIR	Rudbeckia hirta / Black-eyed Susan	3 gal	14
SCH LIT	Schizachyrium scoparium / Little Bluestem Grass	3 gal	48
TREES	BOTANICAL / COMMON NAME	SIZE	QTY
MAG GR5	Magnolia virginiana 'Green Mile'/Green Mile Sweet Bay Magnolia	B&B 1.25" CAL	2
PIN FLE	Pinus flexilis 'Vanderwolf's Pyramid'/Vanderwolf's Pyramid Pine	B&B 1.25" CAL	2

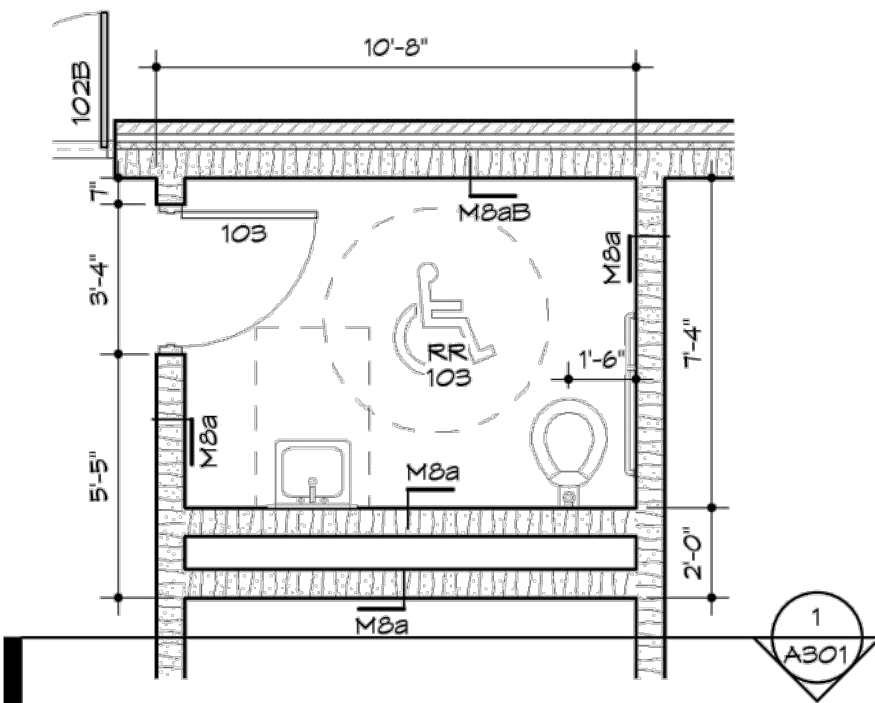
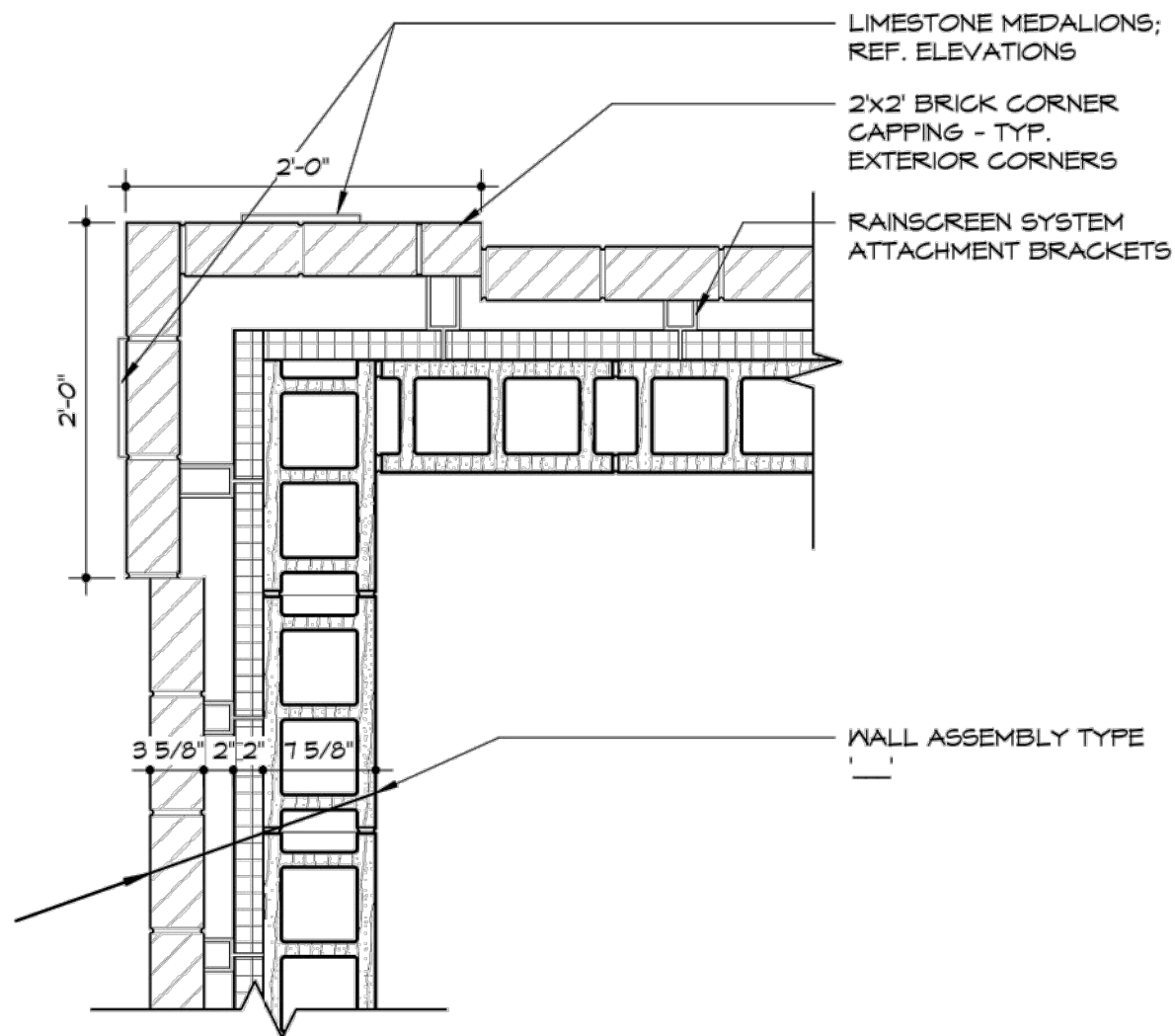
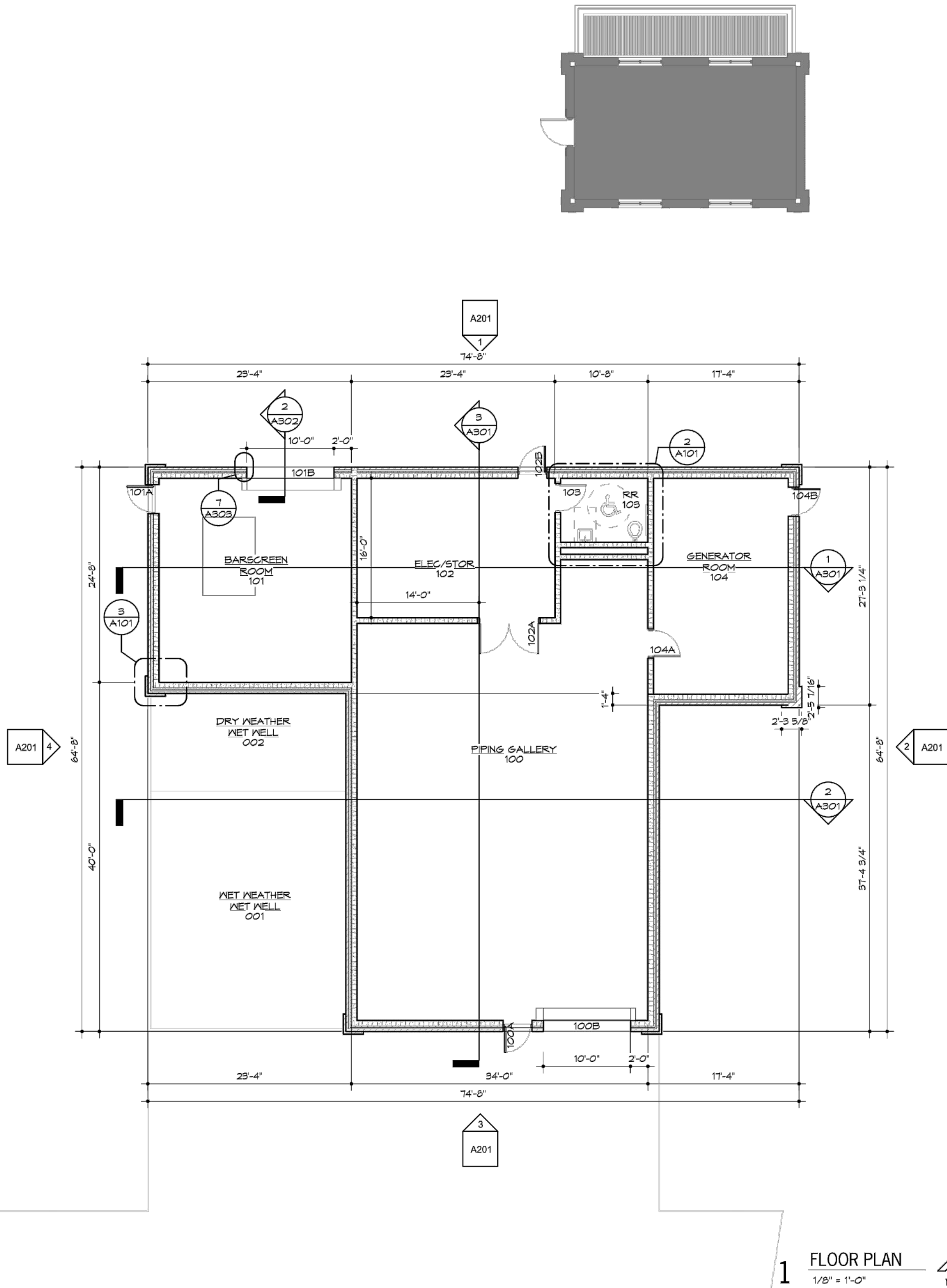
Bartlett & West

**GENERAL LAYOUT
CUP SITE PLAN**

**GRANT JEFFERSON
PUMPSTATION IMPROVEMENTS CONDITIONAL USE PERMIT
TOPEKA, KS**

DESIGNED BY: NWH
DRAWN BY: NWH
APPROVED BY: ACS
DESIGN PROJ: 19697.001
CONST PROJ: ----
SCALE: AS NOTED
DATE: MARCH 2020
DRAWING NO:
CU20/01
SHEET NO:

Last edit on: 3/20/2020 10:55 AM by: NWH-0638 Drawing Name: W:\Proj\190001\19697\001\AutoCad\presentation\CLIP Plan Set\11667.001 CLIP ARCH PLANS.dwg Layout Name: A101 Plotted By: NWH-0638 Plotted on: 3/20/2020 11:27:06 AM



REFERENCE NOTES:

GENERAL NOTES:

FEEDER SCHEDULE:

Bartlett & West

1200 SW EXECUTIVE DRIVE - TOPEKA KS 66615-3850
PHONE 785.272.2252 - FAX 785.273.8735
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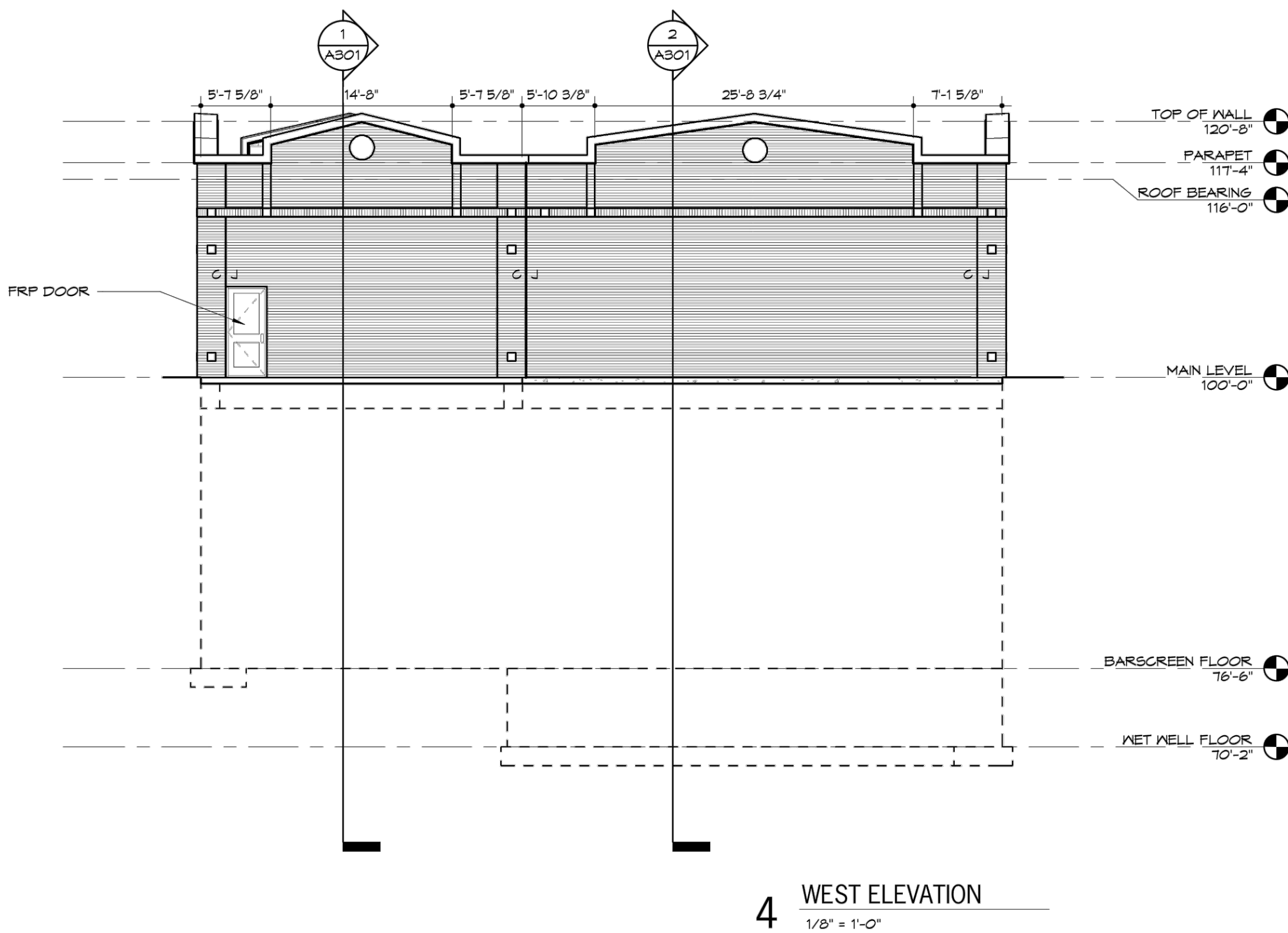
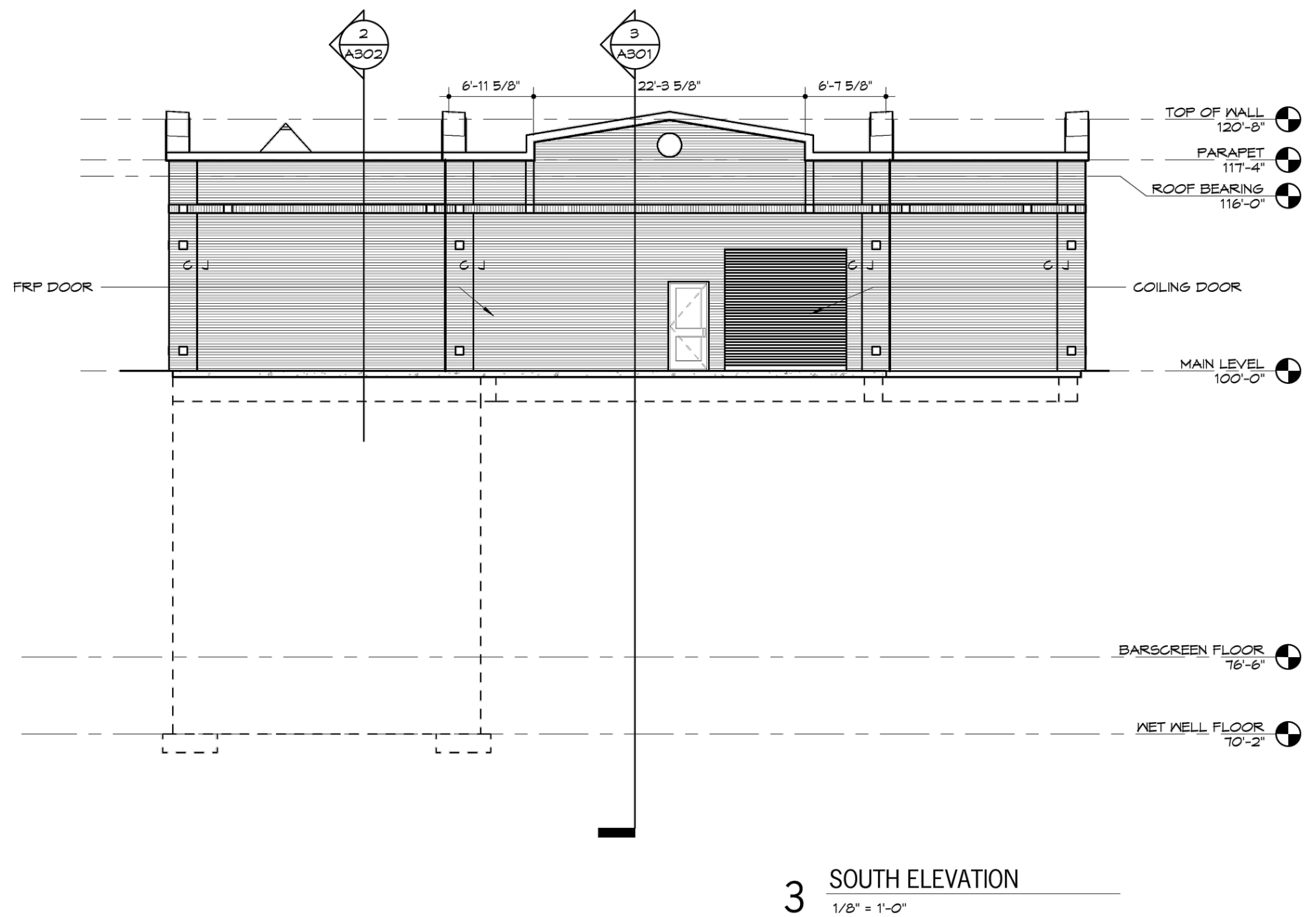
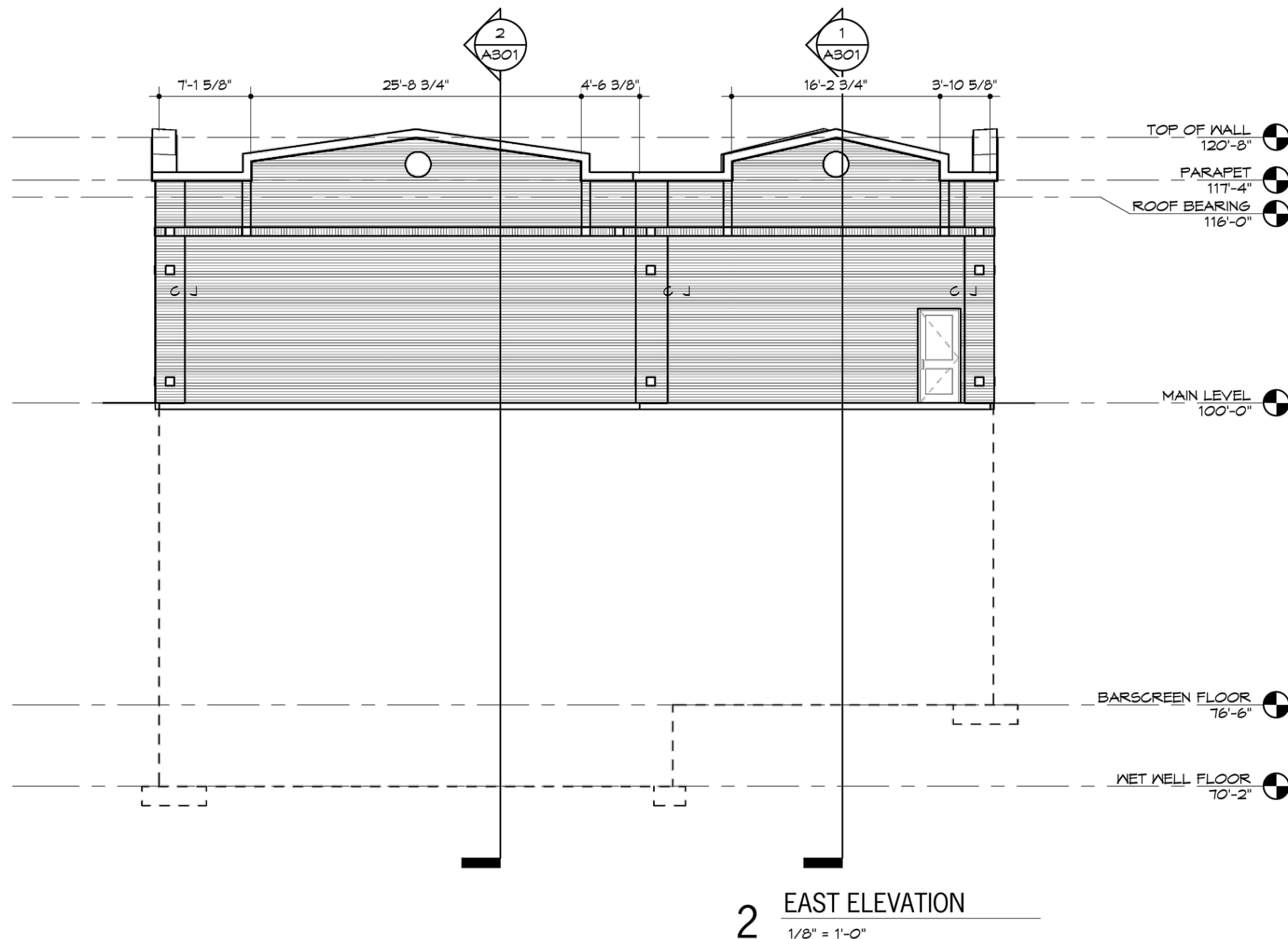
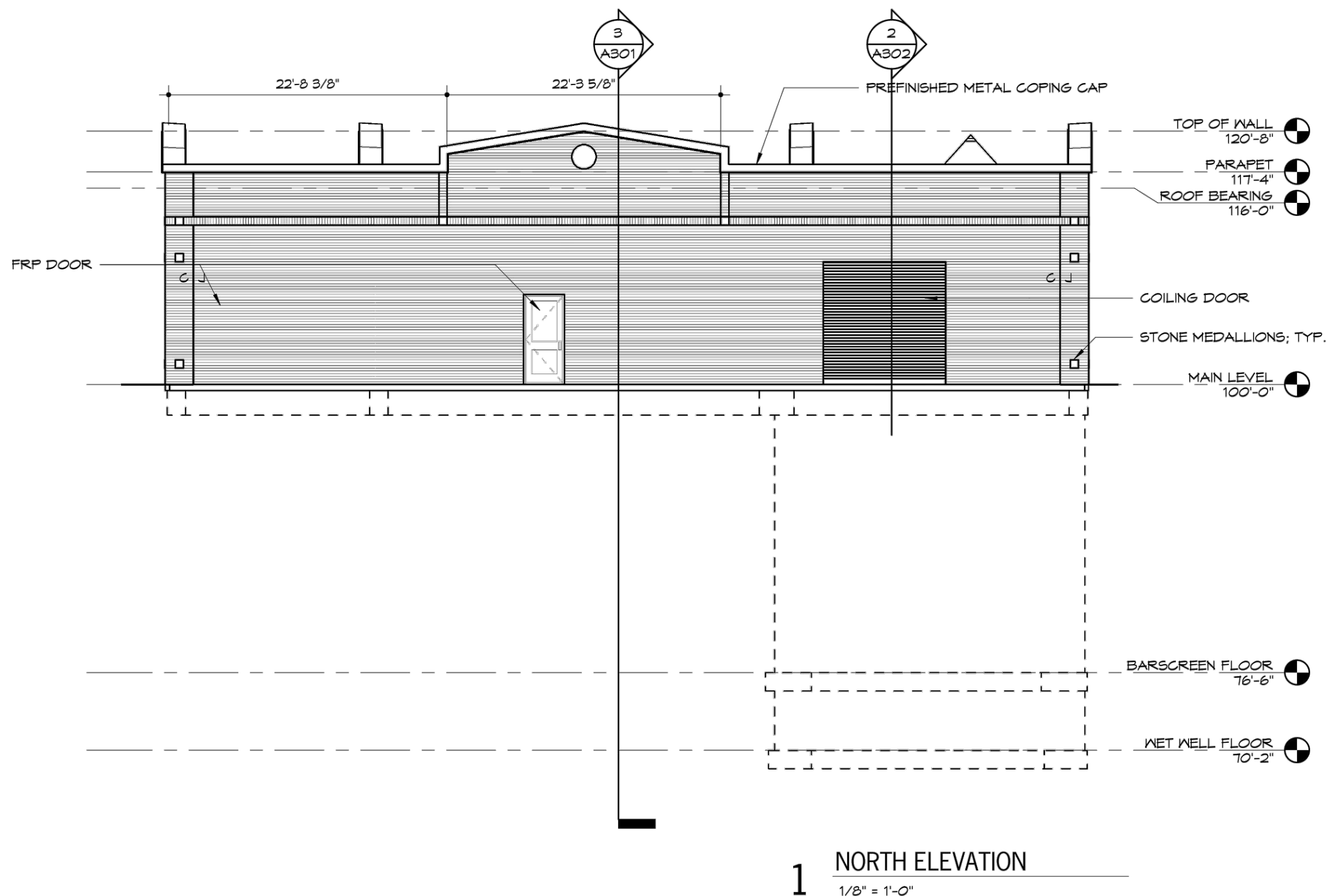
ARCHITECTURAL PLAN AND DETAILS

GRANT JEFFERSON
PUMPSTATION IMPROVEMENTS CONDITIONAL USE PERMIT
TOPEKA, KS

DESIGNED BY:	NWH
DRAWN BY:	NWH
APPROVED BY:	ACS
DESIGN PROJ:	19697.001
CONST PROJ:	----
SCALE:	AS NOTED
DATE:	MARCH 2020
DRAWING NO:	CU20/XX
SHEET NO:	2 of 4

Last edit on: 3/20/2020 10:55 AM by: NWH01638 Drawing Name: W:\Proj\19000\19697\19697.001\AutoCad\Presentation\CUP Plan Set\19697.001 CUP ARCH PLANS.dwg Layout Name: A201 Plotted by: NWH01638 Plotted on: 3/20/2020 11:27:11 AM

BAR IS ONE INCH ON OFFICIAL DRAWINGS. 0 1" IF NOT ONE INCH, ADJUST SCALE ACCORDINGLY.



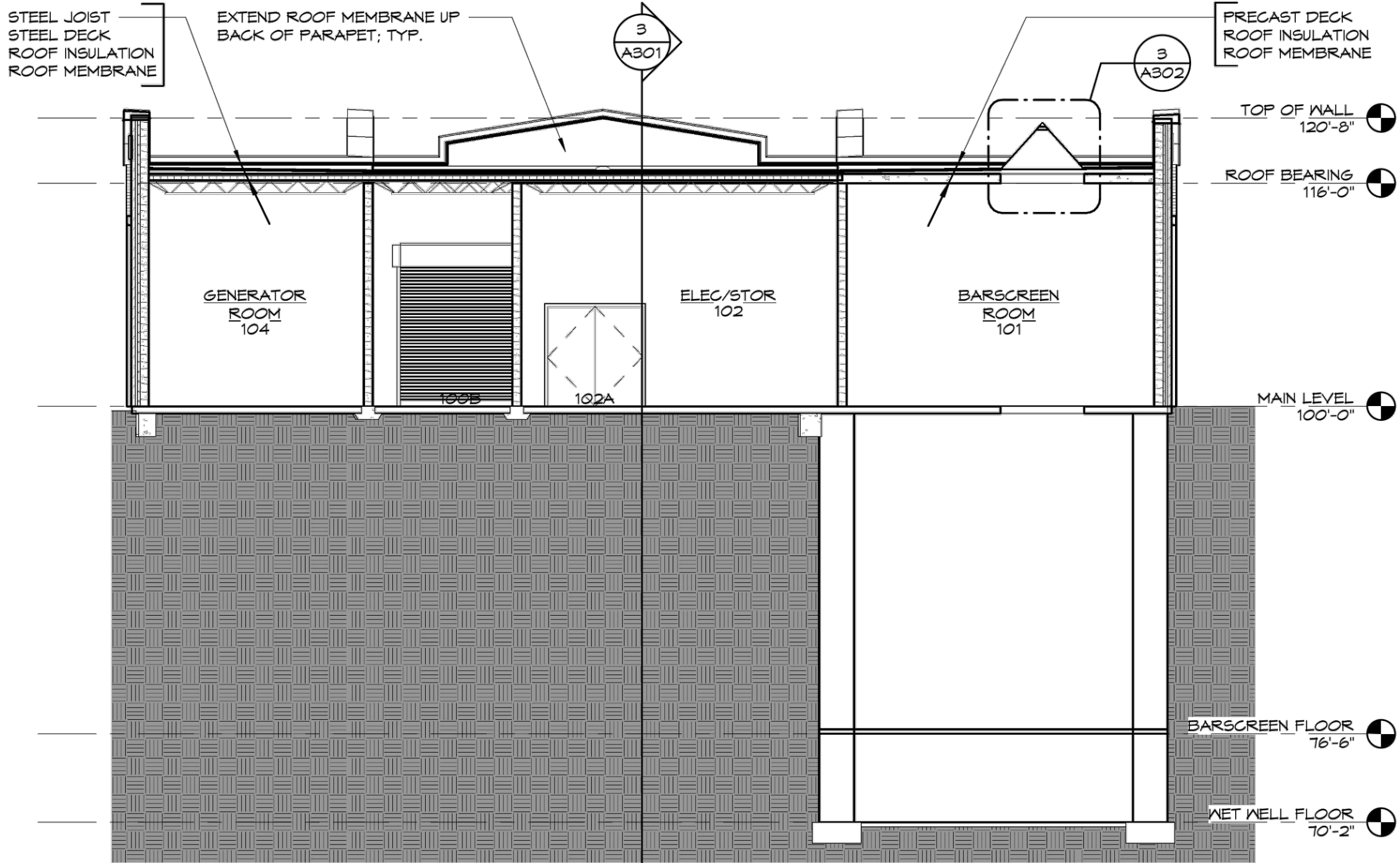
ARCHITECTURAL PLAN AND DETAILS

Bartlett & West

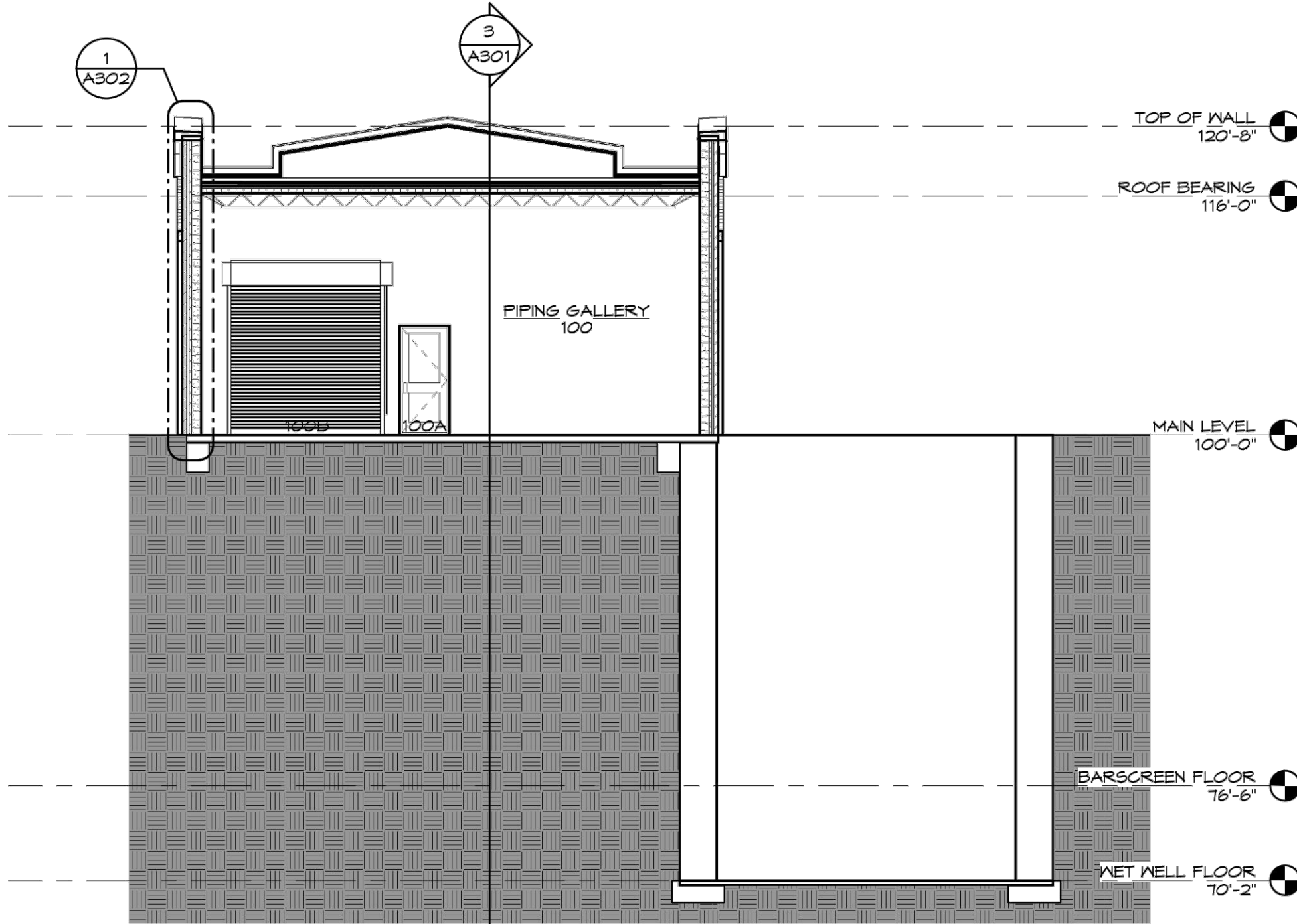
1200 SW EXECUTIVE DRIVE - TOPEKA KS 66615-3850
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GRANT JEFFERSON
PUMPSTATION IMPROVEMENTS CONDITIONAL USE PERMIT
TOPEKA, KS

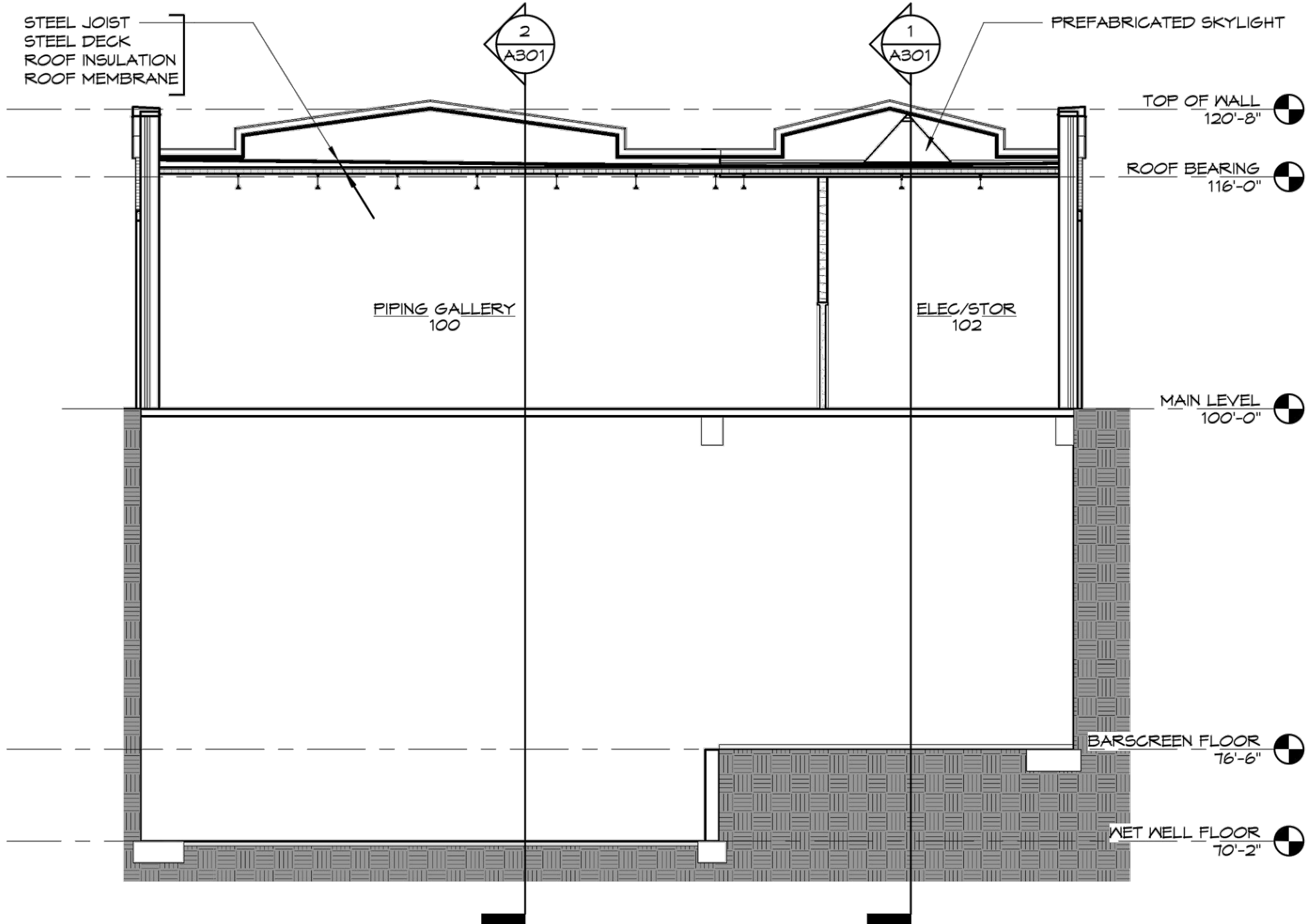
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APPROVED BY:	ACS
DESIGN PROJ:	19697.001
CONST PROJ:	----
SCALE:	AS NOTED
DATE:	MARCH 2020
DRAWING NO:	CU20/XX
SHEET NO:	3 of 4



1 NS Bars
1/8" = 1'-0"



2 NS Pipe
1/8" = 1'-0"



3 EW Pipe
1/8" = 1'-0"

REFERENCE NOTES:

GENERAL NOTES:

FEEDER SCHEDULE:

[illegible]

Bartlett & West

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CU20/XX	
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APPLICATION TO THE BOARD OF ZONING APPEALS VARIANCE / EXCEPTION

CITY OF TOPEKA PLANNING DIVISION
620 SE MADISON, 3RD FLOOR (UNIT #11) | TOPEKA, KS 66607-1118
PHONE 785.368.3728 | EMAIL: PLANNING@TOPEKA.ORG

Applicant Information

Name: City of Topeka
Address: 215 SE 7th Street Topeka KS 66603
Phone: 785-368-4251 Email: mneiswender@topeka.org

Property Information

Location of property: The NE corner of SE Jefferson Street and NE Grant Street
Legal description of property: (attach additional sheets if necessary)
Lots 190-208, Even, Jefferson Street, Fairchild's Addition to the City of Topeka, Shawnee County, Kansas

Action Sought:

☒ A variance from a provision of the Zoning Ordinance
(Section to be appealed: TMC 18.60.020 (R-2 District))

☐ An exception from a provision of the Zoning Ordinance
(Section to be appealed: _____)

Description of Action Sought:

Variance to the front, side and rear building setback requirements:
Front (West - NE Jefferson Street): 25' Required, 14' Requested
Side (North - NE Grant Street): 25' Required, 2' Requested
Rear (East - Union Pacific Railroad): 25' Required, 10' Requested

For Planning & Development Use Only

Case # BZA20V/04

Hearing Date: 5.11.20

Legal Ad Date: 4.20.20

Zoning District: R-2

Building Height: _____

Number of Stories: _____

Parcel Size: _____

Lot Dimensions: _____

Applicant offers the following as grounds for this action:

In accordance with Section 2.45.110 of the Topeka Municipal Code, the Board of Zoning Appeals must determine that ALL of the following conditions governing unnecessary hardship have been met before a variance may be granted.

All items must be addressed or the application will be deemed incomplete.

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action of the property owner or applicant (*The problem must relate to the land. Community needs or personal hardships do not qualify as legitimate grounds for issuing a variance.*);
See Attached Exhibit 1

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
See Attached Exhibit 1

3. That the strict application of the provisions of this chapter of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
See Attached Exhibit 1

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, property, or general welfare;
See Attached Exhibit 1

5. That granting the variance desired will not be opposed to the general spirit and intent of this chapter.
See Attached Exhibit 1

Authorization

Property Owner(s):

I/We the undersigned owner(s) of record hereby authorize the filing of this application and declare that all required materials are submitted along with this application and that the information and material is complete and accurate. I/We hereby acknowledge that all appropriate procedures, policies, and regulations have been reviewed and also understood that this application will be processed in sequence with respect to other submittals.

City of Topeka, Michelle Neiswender,
Project Manager

Owner Name (print)

Owner Signature

Owner Name (print)

Owner Signature

Owner Name (print)

Owner Signature

Authorized Agent:

If the owner(s) of record are to be represented by legal counsel or an authorized agent, please complete the following information so that communications and correspondence pertaining to this application may be forwarded to such individual.

Bartlett & West
Angela Sharp, PE

Authorized Agent Name (print)

Signature – Authorized Agent

Mailing Address: 1200 SW Executive Drive
STREET ADDRESS

Topeka KS 66615
CITY STATE ZIP

Phone: 785-272-2252

Email: angela.sharp@bartwest.com

Applicant:

City of Topeka, Michelle Neiswender,
Project Manager

Applicant Name (print)

Applicant Signature



BZA20V/04 - BY: CITY OF TOPEKA UTILITIES- WATER POLLUTION CONTROL





**BZA20V/04 - BY: CITY OF TOPEKA UTILITIES- WATER
POLLUTION CONTROL**





Photo of Subject Site: NE Jefferson is to the west



Photo of Subject site with railway and Sardou Bridge to east and south



Current Pump Station, built in 1927



Adjacent retirement home at corner of Jefferson and Grant, diagonally across from the subject property



Manufactured home on property directly west of subject site