

County of Santa Clara

Department of Planning and Development
Planning Office

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STAFF REPORT Zoning Administration January 14, 2020 **Item #1**

Staff Contact: Xue Ling, Associate Planner
(408) 299-5784, xue.ling@pln.sccgov.org

File: PLN20-155 Building Site Approval and Variance Modification to Reduce a Front Yard Setback, Previously Approved At 7'-0" To 6'-1 1/4"

Summary: Modification of the 2016 Building Site Approval and Variance Concurrent Land Use Permit for a 2,200-square foot single-family residence. The Modification request is to reduce the front setback from 7'-0" to 6'-1 1/4" to legalize an encroachment into the front setback that occurred during construction.

Owner: John Lipka
Applicant: John Lipka
Address: 19388 Beardsley Road, Los Gatos
APN: 544-12-061
Supervisory District: 1

Gen. Plan Designation: Hillsides
Zoning: HS
Lot Size: 0.62 acre
Present Land Use: Single-family Residence
HCP: Not in HCP Area

RECOMMENDED ACTIONS

- A. Accept a Categorical Exemption, under Section 15303 of the CEQA Guidelines, Attachment A; and
- B. Grant the proposed Building Site Approval and Variance Approval Modification to reduce the front setback from 7'-0" to 6'-1 1/4".

ATTACHMENTS INCLUDED

Attachment A – Statement of Exemption from the California Environmental Quality Act
Attachment B – Preliminary Conditions of Approval
Attachment C – Plans and Vicinity Map for the Proposed Modification
Attachment D – Planning Commission Approved Building Site Approval and Variance Permit, Conditions of Approval, Plans, and Planning Commission Staff Reports (PLN15-10598-APL1)
Attachment E – Applicant's Variance Statement of Justification
Attachment F – Setback Survey prepared by Swift Engineering
Attachment G – Neighborhood Photos provided by the property owner

PROJECT DESCRIPTION

The proposed project is a Modification of a concurrent land use permit for a Building Site Approval and Variance, previously approved by the Planning Commission on appeal, at a duly noticed public hearing on October 27, 2016 (PLN15-10598-APL1). The 2016 Planning Commission approval granted a front setback reduction from 20'-0" to 7'-0," as measured from the Beardsley Road right-of-way (ROW), for a new 2,200 square-foot single-family residence, with associated improvements including driveways, retaining walls, and widening the private access road (Beardsley Road) (Attachment D). A Building Permit (DEV18-65430) for the above-mentioned development was issued on April 10, 2018. A Grading Permit was determined to not be required to establish the residence, however a Grading Permit (LDE15-10598B) for the Beardsley Road widening was required, and issued on April 3, 2018. The Grading Permit was issued to fulfill Condition Nos. 5 and 13 of the Planning Commission approval for pro rata ROW improvements (Attachment D).

On March 23, 2020, during a grading inspection for the Beardsley Road widening project, County Inspectors requested a permit revision of LDE15-10598B due to a discrepancy between the approved road widening plan and the onsite construction. The property owner subsequently submitted a permit revision application with an 'As-Built' plan. The plan identified the residence was constructed closer to Beardsley Road ROW, encroaching into the approved reduced setback of 7'-0." The information on the 'As-Built' plan prompted the County Inspection staff to request a setback survey/certification of the residence to the ROW. It is important to note that the single-family residence was close to completion at the time, and review of the County's inspection records indicate that the foundation forms and grade beams for the single-family residence were previously signed-off (approved) on February 19, 2019.

As requested by the County Inspector, the property owner provided the requested setback survey/certification prepared by a licensed surveyor, Swift Engineering (Attachment F). The survey identified the residence was constructed with a setback of 6'-1 1/4 ", measured from the ROW to the closest point of the residence, which is not consistent with the Planning Commission-approved reduced setback of 7'-0." The Variance application that is part of this request is to consider further reducing the front setback from 7'-0" to 6'-1 1/4", as measured from Beardsley Road ROW in order to legalize the further encroachment.

Setting/Location Information

The subject property is located within the Lake Canyon area of the Santa Cruz Mountains, west of Lexington Reservoir and Highway 17, within unincorporated Los Gatos and Los Gatos Watershed Area. Created by Lake Canyon Subdivision, the neighborhood is comprised of properties on various sized lots, with the majority of existing residences developed in the 1920s to 40s, ranging in sizes from 650 square feet to 2,300 square feet. Many of the parcels are substandard in size.

As the main access road of the Lake Canyon neighborhood, Beardsley Road traverses the canyon floor along the southern bank of Beardsley Creek. Beardsley Road is a County-maintained road at the western portion, and a private shared access road within the Lake Canyon neighborhood, where the subject property is located. Beardsley Road encompasses the northeasterly portion of the subject lot, with the rear half of the subject lot steeply sloped and forested. The residence is

located on a small, leveled area of the subject property, adjacent to the south side of Beardsley Road.

REASONS FOR RECOMMENDATIONS

A. Environmental Review and Determination (CEQA)

The proposed project's environmental impacts were analyzed, resulting in a Categorical Exemption from CEQA under Section 15303(a) new single-family residence. No new impacts have resulted from the modifications made to the project (See Attachment A).

B. Project/Proposal

1. General Plan: Hillsides

2. Building Site Approval: Per County Ordinance Code Section C12-307, Building Site Approval is required for new single-family or two-family dwellings, including properties within the County's HS zoning district. The original Building Site Approval and Variance concurrent land use permit was granted on October 27, 2016, at a duly noticed Planning Commission Hearing, on appeal. Building Permit number DEV18-65430 issued on April 10, 2018, thereby effectuating the Building Site Approval on the subject parcel.

3. Zoning Standards: Single-family residences are an allowed use in the HS Zoning District. With the exception of the front yard setback, which is the subject of the requested Variance, the proposed project satisfies all other required development standards for a substandard subdivision (Lake Canyon) in an HS Zoning District as summarized below (Zoning Ordinance Sections 2.20.070(A)):

Front Setback:	20-feet*
Side Setback:	11-feet (10% of the lot width)
Rear Setback:	20-feet
Height:	35-feet
Stories:	3-stories

*Note: Front setback for the subject property is reduced to 7'-0" by the previously approved Variance (PLN15-10598-APL1, Attachment D). Modification to further reduce the front setback is a subject of this Modification application. See Variance discussion under Section C below.

C. Findings and Conclusions – Variances Section 5.70.020

A Variance may be considered and justified to enable discretionary relief from the development standards of the Zoning Ordinance where it can be clearly determined that based on the unique circumstances and characteristics of the lot, enforcement of the applicable standards would preclude reasonable use and development of the lot. Furthermore, the unique circumstances involved must be substantial and detrimental, and must relate directly to the characteristics and circumstances of the lot, such that any Variance approved logically and reasonably provides a remedy for a specific hardship(s). In the following discussion, the scope of review findings are identified in **bold** text, and

an explanation of how the project meets or doesn't meet the required finding is followed in plain text.

1. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification; and

The subject lot is 0.62-acres in area, which is considered a severely non-conforming lot size with respect to the minimum 160 acres prescribed by the Zoning Ordinance to create a lot within the County's HS Zoning District if the average slope of the property is greater than 50 percent (Zoning Ordinance Section 2.20.030(A), Table 2.20-3 and Section 2.20.040, Table 2.20-4 and Note 1 of Table 2.20-4). The average slope of the subject lot is over 57%, with over $\frac{3}{4}$ of the property within the southern (rear) portion having slopes in excess of 50%. Additionally, Beardsley Road traverses the lot in the northeastern portion of the property, along Beardsley Creek. The area to the north of Beardsley Road is not suitable for development due to its location within the riparian setback of Beardsley Creek and its limited square footage/area. Furthermore, there is a limited level area adjacent to Beardsley Road's southern ROW line where the new residence was previously approved with a reduced setback (20'-0" to 7'-0") and currently constructed. Aerial photos and site photos confirm that the subject lot is heavily wooded across the rear $\frac{3}{4}$ of the property, thereby limiting the most appropriate areas for the property to be developed with a residence to the flat area closest to Beardsley Road.

The steep topography and limited development area of the lot constitute circumstances that make the subject property relatively unique in its zoning district and neighborhood context. Additionally, the location of a ROW traversing a portion of the flat area of the lot further constitutes circumstances that are unique to the subject lot that limit development. The grant of this Variance is thus not a grant of special privileges inconsistent with the privileges and limitations affecting neighboring properties. The previous Variance was granted approval based on the nature and characteristics of the lot, and the neighborhood development pattern (see Attachment D). Said justifications are still valid for the current Variance Modification request.

It is important to note that the two-story residence was designed to be a partially subterranean structure, with the roof and portions of both sides 'buried' under vegetated slopes, while being constructed with a reduced front yard setback. The design and location of the residence, with a reduced setback, requires minimal grading and prevents significant adverse development and grading impacts on the hillside environment that would otherwise be considered significant impacts if the required 20'-0" setback were enforced.

The current request to further reduce the previously approved Variance setback of 7'-0" to 6'-1 $\frac{1}{4}$ " (10 $\frac{3}{4}$ " difference) continues to meet the requirements of this finding. The steep topography across a majority of the lot, the heavily wooded rear $\frac{3}{4}$ of the

property, and the limited flat, development area of the lot adjacent to south side of Beardsley Road constitute circumstances that make the subject property relatively unique in its zoning district and neighborhood context. As such, Staff is able to make this finding to reduce the setback to 6'-1 ¼" to allow the construction of a single-family residence, which is a use permitted in the HS zoning district.

2. The grant of the variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the zoning district in which the subject property is located.

As noted in the Project Description section of this report, the subject property is located within a neighborhood created by the Lake Canyon Subdivision in 1927 (Attachment F). The Lake Canyon Subdivision is recognized by the County as a substandard subdivision that allows for standard setback reductions (Zoning Ordinance Section 2.20.070). As such, the County recognizes that properties within this subdivision may not meet typical development standard with relation to lot size and setbacks.

It is important to note that the majority of the homes within this neighborhood were built prior to building permit requirements (prior to 1947) and in locations up to and even within Beardsley Road ROW, as shown in the neighborhood photos provided by the property owner (Attachment G). Additionally, based on Staff's research of the County's administrative files, a total of four (4) Building Site Approval (BSA) or Building Site Approval on Slope Over 30 % (BA) were granted on other lots within Lake Canyon neighborhood since 1965, besides a few casualty reconstructions of legal non-confirming houses. Two (2) of the four (4) BSA/BAs were granted with a concurrent Variance Approval to reduce the front setback to 13'-0" and zero (0) feet.

Based on the development history, neighborhood characteristics, acknowledgement of the Lake Canyon subdivision being a substandard subdivision, and other Variances approved within the neighborhood, Staff has determined the subject request to reduce the front yard setback to 6'-1 ¼" does not constitute a special privilege inconsistent with the limitation upon other properties within the vicinity and the HS zoning district. As such, this finding can be made.

In conclusion, based on the unique circumstances and findings of fact described in the body of this report, Staff recommends that the Zoning Administration Hearing Officer grant the requested Modification to the concurrent land use approval for a Building Site Approval and Variance to allow the front setback to be further reduce to 6'-1 ¼". The Variance is reasonably necessary to provide a practical remedy to the substantial and detrimental hardships presented by the lot's characteristics, and conforms to the applicable findings of the Zoning Ordinance.

ADDITIONAL INFORMATION

Compliance Agreement (Ordinance Code Section C1-71)

As the project under construction (DEV18-65430) for the new single-family residence does not meet the Planning Commission-approved plans, with a setback of 7'-0", the subject property is in violation/conflict with the County's Ordinance Code and Zoning Ordinance. Section C1-71 of the County Ordinance Code requires property owners with code violations to enter into a Compliance Agreement before the issuance/approval of *any* permits under Division C, including building permits, grading permits, land use approvals, or revisions/modification of these permit types. The language of Ordinance Code Section C1-71 is below in *italics*:

"Violations or conflicts of laws. – No permit required by this title shall be issued to any applicant, and no final inspection shall be made in connection with any premises or portion thereof upon which there exists a conflict with any County ordinance or state law.

Permits may be issued to applicants in connection with any premises or portion thereof on which there exists a conflict with any County Ordinance or state law if the applicant has executed a compliance agreement and is in the process of completing or has completed the repairs, construction, or reconstruction described in the compliance agreement."

A Compliance Agreement is an agreement between a property owner and the County outlining the required process and steps to abate a code violation. It is important to note that the County and Hearing Officer may not approve a project if a Compliance Agreement has not been signed by the respective parties prior to commencement of the public hearing or a final decision. As of the preparation of this report, a Compliance Agreement had not been finalized or signed.

Therefore, if by the time of the scheduled public hearing, a Compliance Agreement has not been secured, then the Hearing Officer will not be able to approve the project, and the following alternative actions could be taken by the Hearing Officer:

- 1) Deny the Modification request, or
- 2) Continue the project to a date uncertain, with direction to secure a Compliance Agreement before returning to a duly noticed public hearing.

BACKGROUND

In November 2015, the applicant submitted an application for a concurrent land use permit, including a Building Site Approval and Variance. The request was for the construction of a new two-story single-family residence on an undeveloped 0.62-acre lot in the Lake Canyon area of the Santa Cruz Mountains. The Variance portion of the permit sought relief from the required 20-foot front yard setback (see Attachment D for additional Background).

On June 7, 2016, the then Zoning Administrator (ZA) approved the concurrent land use permit at a duly notice public hearing. The ZA approval included a Variance to reduce the front yard

setback to 11'-0," as measured from Beardsley Road ROW. Several neighbors spoke at the public hearing.

On June 22, 2016, a timely appeal was submitted by the neighbor located at 19400 Beardsley Road (Appellant). The appeal was initially heard before the Planning Commission on September 22, 2016. Based on a survey submitted by the Appellant with their appeal, Mr. Lipka (Applicant) submitted a letter to the Planning Commission stating his acceptance of the survey by the Appellant, and Mr. Lipka indicated he would revise his site plan to be consistent with the Appellant's survey. After receiving testimony, the Planning Commission continued the public hearing to a date uncertain.

On October 27, 2016, at a duly noticed public hearing, the Planning Commission considered the revised project and appeal, and granted approval of the concurrent land use entitlement for a Building Site Approval and Variance. The final approval, which included the setbacks based on the Appellant's survey, allowed for a reduced front yard setback from 20'-0" to 7'-0."

On April 10, 2018, a Building Permit (DEV18-65430) was issued to allow the construction of the new single-family residence on the subject property. Construction and inspections ensued, with the foundation forms and grade beams for the residence signed-off (approved) for pouring concrete on February 19, 2019. The poured foundation and slab were approved on April 29, 2019. Additional inspections continued through the construction of the residence. The Building Permit for the residence had a pre-final inspection on May 11, 2020, pending final sign-off from Land Development Engineering, Fire Marshal Office and Geology to obtain final occupancy.

During the same time of the Building inspections, on March 23, 2020, during a grading inspection for the Beardsley Road widening project (LDE15-10598B Grading Permit issued on April 3, 2018), County Inspectors requested a permit revision of LDE15-10598B due to a discrepancy between the approved road widening plan and the onsite construction. The property owner subsequently submitted a permit revision application with an 'As-Built' plan. The plan identified the residence was constructed closer to Beardsley Road ROW, encroaching into the approved reduced setback of 7'-0". The County Inspectors subsequently requested a setback survey/certification be submitted by a licensed surveyor to confirm the reduced setback. In response, the Applicant submitted a survey prepared by a licensed surveyor, Swift Engineering (Attachment F). The survey identified the residence was constructed with a setback of 6'-1 1/4", measured from the ROW to the closest point of the residence, thereby verifying that the construction is not consistent with the Planning Commission-approved reduced setback of 7'-0."

On November 10, 2020, in response to the further reduced setback, the property owner submitted a Modification to the concurrent land use permit (Building Site Approval and Variance) to request approval to reduce the setback from 7'-0" to 6'-1 1/4". On December 10, 2020, the application was deemed incomplete, outlining issues with an existing slope within Beardsley Road ROW and other discrepancies and questions within the plans for the Road Widening Permit (LDE15-10598B-REV1).

The property owner and his engineers worked with the County Land Development Engineering Division on multiple design revisions. The final resubmittal proposed removing the slope within

the road ROW with a new garden wall to be constructed in front of an already constructed garden wall. Both walls are proposed to be located outside of Beardsley Road ROW. The project was subsequently deemed complete for processing on the same day of the resubmittal, December 17, 2020. It is important to note that any changes to the plans received on December 17, 2020 will be required to be reviewed by Planning and Land Development Engineering Divisions, as conditioned, and may require additional Building Site Approval and Variance modification and associated fees.

On January 4, a public notice was mailed to all property owners within a 300 radius on and was also published in the Post Records on January 4, 2021.

STAFF REPORT REVIEW

Prepared by: Xue Ling, Associate Planner



Reviewed by: Leza Mikhail, Principal Planner & Zoning Administrator




Attachment A

Statement of Exemption from the California Environmental Quality Act (CEQA)

Attachment A

STATEMENT OF EXEMPTION

from the California Environmental Quality Act (CEQA)

FILE NUMBER	APN(S)	
PLN20-0155	544-12-061	1/7/2021
PROJECT NAME	APPLICATION TYPE	
Single-Family Residence; 19388 Beardsley Road, Los Gatos, CA, 95033	Building Site Approval and Variance Modification	
OWNER	APPLICANT	
John Lipka	John Lipka	
PROJECT LOCATION		
19388 Beardsley Road, Los Gatos, CA, 95033		
PROJECT DESCRIPTION		
Modification of the 2016 Building Site Approval and Variance Concurrent Land Use Permit for a 2,200-square foot single-family residence. The Modification request is to reduce the front setback from 7'-0" to 6'-1 1/4" to legalize an encroachment into the front setback that occurred during construction.		
All discretionary development permits processed by the County Planning Office must be evaluated for compliance with the California Environmental Quality Act (CEQA) of 1970 (as amended). Projects which meet criteria listed under CEQA may be deemed exempt from environmental review. The project described above has been evaluated by Planning Staff under the provisions of CEQA and has been deemed to be exempt from further environmental review per the provision(s) listed below.		
CEQA (GUIDELINES) EXEMPTION SECTION		
Section 15303 (a): One single-family residence in a residential zone.		
COMMENTS		
The subject property is located a rural area where the immediate neighborhood is comprised of single-family residences. The proposed home is outside Beardsley Creek riparian setback on the north side of the property. Minimal grading is proposed to avoid significant impacts to surrounding hillside environment. No trees have been proposed to be removed, and no special status species or habitats exist on the site.		
APPROVED BY:		
Xue Ling, Associate Planner	 Signature	12/30/2020 Date

Attachment B

Preliminary Variance Conditions of Approval

ATTACHMENT B
PRELIMINARY VARIANCE CONDITIONS OF APPROVAL

Date: January 14, 2020
Owner/Applicant: John Lipka
Location: 19388 Beardsley Road, Los Gatos (APN: 544-12-061)
File Number: PLN20-155
CEQA: Categorically Exempt – Section 15303(a)
Project Description: Modification of the 2016 Building Site Approval and Variance Concurrent Land Use Permit for a 2,200-square foot single-family residence. The Modification request is to reduce the front setback from 7'-0" to 6'-1 1/4" to legalize an encroachment into the front setback that occurred during construction.

If you have any question regarding the following final conditions of approval, call the person whose name is listed below as the contact for that agency. She/he represents a specialty and can provide details about the conditions of approval.

Agency	Name	Phone	E-mail
Planning	Xue Ling	(408) 299- 5784	xue.ling@pln.sccgov.org
Building Inspection		(408) 299- 5700	
Land Development Engineering	Ed Duazo	(408) 299 - 5733	ed.duazo@pln.sccgov.org
Fire Marshal	Alex Goff	(408) 299 – 5763	alex.goff@sccfd.org
Environmental Health	Darrin Lee	(408) 299 – 5748	darrin.lee@cep.sccgov.org
Geology	Jim Baker	(408) 299 - 5774	jim.baker@pln.sccgov.org

STANDARD CONDITIONS OF APPROVAL

Building Inspection

1. For detailed information about the requirements for a building permit, obtain a Building Permit Application Instruction handout from the Building Inspection Office or visit the website at www.sccbuilding.org. [Added on January 14, 2020]

Planning

2. Development must take place in substantial conformance with the approved plans, architectural plans prepare by Terra-Dome Corporation (received November 2015), and revised engineering plans, prepared by ABLE Construction Group Inc, (received on December 17, 2020). Any changes to the proposed project, or modification to the grading or design will be required to be reviewed by Planning and Land Development Engineering Divisions, and may require additional Building Site Approval and Variance modification and associated fees, as may result in additional environmental review, pursuant to the California Environmental Quality Act. [Modified on January 14, 2020]

3. The subject property is located within Lake Canyon neighborhood, created by a County identified substandard subdivision. Setback reduction applies to the subject property per Zoning Ordinance 2.20.070(A). The approval further reduces the front yard setback from 7'-0" as previously approved to 6'-1 1/4". Maintain the following minimum dwelling setbacks:
Front: 6'-1 1/4" Sides: 11'-0" (10% of the lot width) Rear: 20'-0"
The maximum height of dwellings is 35 feet. and shall not exceed three (3) stories. Future additions to the residence require review and approval of the Planning Division, and may require additional permits.
4. The second-story balcony is subject to the limitations of Zoning Ordinance Section 4.20.110(A)(2). Building permit plans shall conform to these provisions, which include limitations on the height and design of safety railing.
5. LANDSCAPING: The requirements of Division B33 of the County Ordinance Code (Water Conservation in Landscaping) shall apply. At a minimum, a landscape water efficiency checklist shall be completed. Depending on the extent and composition of the proposed landscaping, additional plans and supporting documentation may be required.

The landscape ordinance and supporting information can be found on the following web page:

<https://www.sccgov.org/sites/dpd/OrdinancesCodes/Landscape/Pages/welo-background.aspx>

Land Development Engineering

6. Property owner is responsible for the adequacy of any drainage facilities and for the continued maintenance thereof in a manner that will preclude any hazard to life, health, or damage to adjoining property. [Added on January 14, 2020]

Environmental Health

7. All construction activities shall be in conformance with the Santa Clara County Noise Ordinance Section B11-154 and prohibited between the hours of 7:00 p.m. and 7:00 a.m. on weekdays and Saturdays, or at any time on Sundays for the duration of construction.

CONDITIONS OF APPROVAL TO BE COMPLETED PRIOR TO FINAL GRADING AND BUILDING PERMIT ISSUANCE

Building Inspection

8. At the time an application is filed for a building permit, a checklist from either LEED for Home or Build it Green (GreenPoint) will be required. The checklist must demonstrate compliance with the Santa Clara County Green Building Ordinance (C3-50).

Land Development Engineering

9. Obtain a Construction Permit from Land Development Engineering (LDE) prior to beginning any construction activities. Issuance of the construction permit is required prior to LDE clearance of the building permit (building and construction permits may be applied for concurrently). The process for obtaining a construction permit and the forms that are required can be found at the following web page:

10. Final plans shall include a single sheet which contains the County standard notes and certificates as shown on County Standard Cover Sheet. Plans shall be neatly and accurately drawn, at an appropriate scale that will enable ready identification and recognition of submitted information. [Modified on January 14, 2020]
11. Final improvement plans shall be prepared by a licensed civil engineer for review and approval by LDE and the scope of work shall be in substantial conformance with the conditionally approved preliminary plans on file with the Planning Office. Include plan, profile, typical sections, contour grading for all street, road, driveway, structures, and other improvements as appropriate for construction. The final design shall be in conformance with all currently adopted standards and ordinances. The following standards are available on-line:

March 1981 Standards and Policies Manual, Volume 1 (Land Development)
<https://www.sccgov.org/sites/dpd/OrdinancesCodes/LDE/Pages/LDE.aspx>
[Modified on January 14, 2020]
12. Survey monuments shall be shown on the improvement plan to provide sufficient information to locate the proposed improvements and the property lines. Existing monuments must be exposed, verified, and noted on the grading plans. Where existing monuments are below grade, they shall be field verified by the surveyor and the grade shall be restored and a temporary stake shall be placed identifying the location of the found monument. If existing survey monuments are not found, temporary staking delineating the property line may be placed prior to construction and new monuments shall be set prior to final acceptance of the improvements. The permanent survey monuments shall be set pursuant to the State Land Surveyor's Act. The Land Surveyor / Engineer in charge of the boundary survey shall file appropriate records pursuant to Business and Professions Code Section 8762 or 8771 of the Land Surveyors Act with the County Surveyor.
13. The improvement plans shall include an Erosion and Sediment Control Plan that outlines seasonally appropriate erosion and sediment controls during the construction period). Include the County's Standard Best Management Practice Plan Sheets BMP-1 and BMP-2 with the Plan Set. [Modified on January 14, 2020]
14. All applicable easements affecting the parcel(s) with benefactors and recording information shall be shown on the improvement plans.
15. All new on-site utilities, mains and services shall be placed underground and extended to serve the proposed development. All extensions shall be included in the improvement plans. Off-site work should be coordinated with any other undergrounding to serve other properties in the immediate area.

16. As a recommendation, include at least one of the following site design measures in the project design: (a) direct hardscape and/or roof runoff onto vegetated areas, (b) collect roof runoff in cisterns or rain barrels for reuse, or (c) construct hardscape (driveway, walkways, patios, etc.) with permeable surfaces. For additional information, please refer to the C.3 Stormwater Handbook (June 2016) available at the following website:

http://scvurppp.org/pdfs/1516/c3_handbook_2016/SCVURPPP_C.3_Technical_Guidance_Handbook_2016_Chapters.pdf

[Modified on January 14, 2020]

17. Provide signed, stamped recommendations from the project geotechnical engineer for the Beardsley Road pavement widening. Specifically, the project geotechnical engineer shall provide structural sections for the pavement widening to support emergency vehicle loading (75,000 lbs.).
18. Submit a plan review letter by the Project Geotechnical Engineer certifying that the improvement plans, specifically, the pro rata road widening, conforms to recommendations from the project geotechnical report/letter.
19. The following offers of easement dedication shall be submitted to LDE. All easement dedications shall include legal descriptions, plats, and corresponding documents to be reviewed and approved by the County Surveyor's Office. 40-foot curvilinear right-of-way dedication to the public and the County for public road purposes.
- a. The southwesterly limits of the 40-foot right-of-way dedication shall be coincident with the southwesterly line of the existing 20-foot Beardsley Road right-of-way, as generally shown in the conditionally approved plans. The last ten feet of ROW leading up to the southeastern property boundary shall curve toward the south, as practicable, to accommodate future ROW tie-in with the adjacent property to the south.
 - b. Offer to dedicate an easement to the public and the County for storm-drainage purposes for those portions of Beardsley Creek that pass drainage through the property.
20. Enter into a deferred improvement agreement for the ultimate County improvement of Beardsley Road.

Environmental Health

21. Plans shall be referred to Lake Canyon Community Service District. Applicant has provided will-serve letters for sewage disposal and potable water.

Fire Marshal

Fire Flow

22. the minimum fire-flow for structures shall be as follows from a standard fire hydrant located no farther than 250 feet from the driveway:
- a. Structures up to 3,600 sq.ft: 1,000 gpm at 20psi for 30 minute duration
 - b. At the time of plan submittal for building permit, provide written verification from the water company that this condition can be satisfied.

General Access Requirements:

23. These are minimum Fire Marshal standards. Should these standards conflict with any other local, state or federal requirement, the most restrictive shall apply.
- a. Construction of access roads and driveways shall use good engineering practice.
 - b. All required access roads, driveways, turnarounds, and turnouts shall be installed, and serviceable **prior to approval of the foundation**, and shall be maintained throughout construction. A stop work order may be placed on the project if required driving surfaces are not installed, accessible, and/or maintained at all times.
24. Roads for fire department access shall be subject to the following standards:
- a. Width: Clear, drivable width of 18 feet, plus a three (3)-foot shoulder on each side.
 - b. Vertical Clearance: Minimum vertical clearance of 15 feet shall be maintained to the building site (trim or remove, tree limbs, electrical wires, structures, and similar improvements).
 - c. Grade: Maximum grade shall not exceed 15%.
 - d. Surface: All driving surfaces shall be all-weather and capable of sustaining 75,000-pound gross vehicle weight.
 - e. Bridges: All bridges shall be capable of sustaining 75,000-pound gross vehicle weight and meet the latest edition of the CalTrans Standard Bridge Design Specifications. Appropriate signage, including but not limited to weight or vertical clearance limitations, or any special conditions shall be provided.

25. Property is located within the Santa Clara County Fire Department response area.

26. This property is located in the Wildland/Urban Interface Fire Area. All of the following conditions shall apply:
- a. A Class "A" roof assembly is required. Detail shall be included in plans submitted for building permit.
 - b. Provide a 1/2 inch spark arrester for the chimney.
 - c. Remove significant combustible vegetation within 30 feet of the structure to minimize risk of wildfire casualty. Maintain appropriate separation of vegetative fuels in areas between 30 and 100 feet from the structure.

Maintenance

27. Fire protection systems and water systems and equipment shall be accessible and maintained in operable condition at all times, and shall be replaced or repaired where defective. Fire protection water shall be made available to the fire department.
28. Fire department access roads, driveways, turnouts and turnarounds shall be maintained free and clear and accessible at all times for fire department use. Gates shall be maintained in

good working order, and shall remain in compliance with Fire Marshal Standard CFMO-A3 at all times.

Geology

29. Submit a conformed copy of an owner-signed and recorded acknowledgment statement of potential geologic hazards (to be prepared by the County Geologist).
30. Submit a geotechnical engineer's plan-review letter that confirms the plans conform with the intent of the recommendations presented in the approved report.

CONDITIONS OF APPROVAL TO BE COMPLETED PRIOR TO OCCUPANCY OR ONE YEAR FROM THE DATE OF THE LAND DEVELOPMENT AGREEMENT, WHICHEVER COMES FIRST.

Land Development Engineering

31. Existing and set permanent survey monuments shall be verified by inspectors prior to final acceptance of the improvements by the County. Any permanent survey monuments damaged or missing shall be reset by a licensed land surveyor or registered civil engineer authorized to practice land surveying and they shall file appropriate records pursuant to Business and Professions Code Section 8762 or 8771 of the Land Surveyors Act with the County Surveyor.
32. Construct the improvements. Construction staking is required and shall be the responsibility of the developer.

Environmental Health

33. Provide proof of garbage service **at the time of final occupancy sign-off**. Garbage service in the unincorporated areas of Santa Clara County is mandatory.

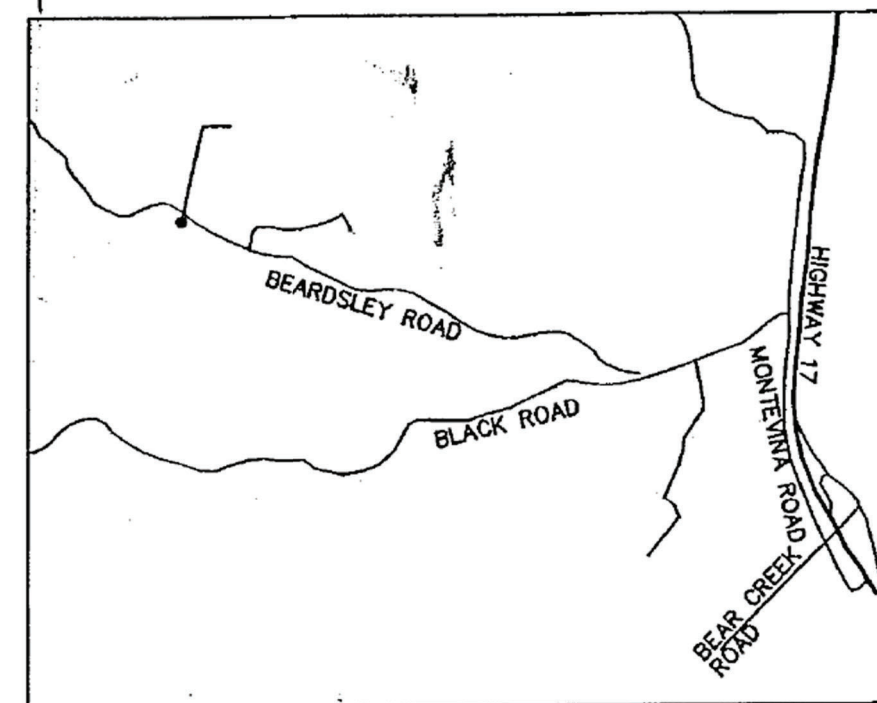
Fire Marshal

34. Fire protection water system shall be installed, functioning, and inspected **prior to approval of the foundation**. System shall be maintained in good working order and accessible throughout construction. A stop-work order may be placed on the project if the required hydrant systems are not installed, accessible and/or functioning.
35. Fire Sprinkler System: An approved residential fire sprinkler system complying with CFMO-SP6 shall be installed throughout the structure.
Note: The fire sprinkler system shall be installed and finalized by this office **prior to occupancy**. A separate permit shall be obtained from this office by a state licensed C-16 contractor prior to installation. Please allow for a minimum of 30 days for plan review of fire sprinkler plans by this office.

Attachment C

Plans and Vicinity Map for the Proposed Modification

FULL PARCEL DIMENSION
APN 544-12-061



VICINITY MAP

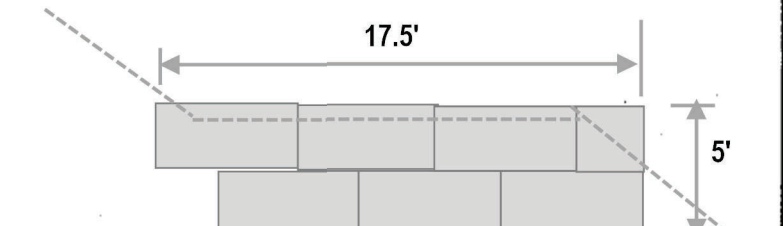
ACCEPTED PK AS ANGLE IN CENTERLINE BEARDSLEY
RD. AND PROPERTY LINE PER ALPHA SURVEYS R.O.S.
(BOOK 902 OF MAPS, PAGE 8)

HARD SURFACE PERMEABILITY

AREA IN QUESTION	PERMEABILITY	POST DEVELOPMENT (SQFT)	PRE DEVELOPMENT (SQFT)	NET INCREASE (SQFT)
HOUSE ROOF(Concrete)	NO	1,092	0	1,092
GARAGE ROOF-REAR	NO	200	0	200
GARAGE ROOF-FRONT	NO	220	0	220
WALKWAY (GRAVEL)	YES	160	0	0
DRIVEWAY (GRAVEL)	YES	240	0	0
ROADWAY	NO	2,070	1,614	456
			TOTAL	1,968

IMPROVEMENT	EARTHWORK QUANTITY (CY)		MAXIMUM DEPTH (FT)	
	CUT	FILL	CUT	FILL
DRIVEWAY	10	0	1	0
BUILDING PAD	430	305	10	10
LANDSCAPING	0	10	0	3
TOTAL	440	315*		

EXCESS TO REMOVE = 125 CY



STACKED BLOCK GRAVITY WALL
FOR PERMIT APPLICATION. NOT
REQUIRED PER RECORD AR20-0385.

INDICATES F.P. IP (NO REF.) EL. = 754.8
(DATUM ASSUMED) AS SHOWN ON:
BOUNDARY AND TOPOGRAPHIC SURVEY
BY SWIFT ENGINEERING (REV. 09/2016)

AS-BUILT BUILDING LINE
DESIGNATES EDGE OF PAVEMENT
AFTER WIDENING

NOTE: 1
GRAVITY WALL LOCATIONS
LANDSCAPE BLOCK WALLS HT. VARIES
AS-BUILT DETENTION TRENCH
LOCATION PER CHANGE LETTER
SEE SECTION X-X THIS SHEET

NOTE: 2
1. LOCATION OF STRUCTURE WAS ESTABLISHED USING THE ACCEPTED
ALPHA SURVEY TO ESTABLISH THE COMMON DIVIDING LINE WITH
ADJACENT PROPERTY TO THE WEST.
2. EXISTING WATER METER HAS BEEN CONNECTED TO
NEW 6" LAKE CANYON MUNICIPAL WATERLINE
INSTALLED IN APRIL 2017, WITH BACKFLOW PROTECTIVE DEVICE.
3. STORM WATER DETENTION HAS BEEN MODIFIED BY CREATION
OF A GRAVEL FILLED TRENCH, RUNNING INSIDE PROPERTY FRONTAGE.
STORM WATER, COLLECTED BY ROOF DRAINS, IS DIRECTED TO THE
TRENCH AND RELEASED BY PERFORATED DRAIN AND PERCOLATED
INTO THE NATIVE SOIL PER CHANGE LETTER DATED, MAY 26, 2020,
BY SUCCESSOR PROJECT ENGINEER OF RECORD, ZEYN B. UZMAN, P.E.

PROJECT BENCH MARK
FOUND BOLT 750.13
(ASSUMED)
PROJECT BENCH MARK
FOUND BOLT IN ASPHALT CONCRETE PAVING
S 37°16'E 50.20 FEET FROM SOUTH EAST PROPERTY
LINE, ELEVATION OF 750.13 (DATUM ASSUMED)

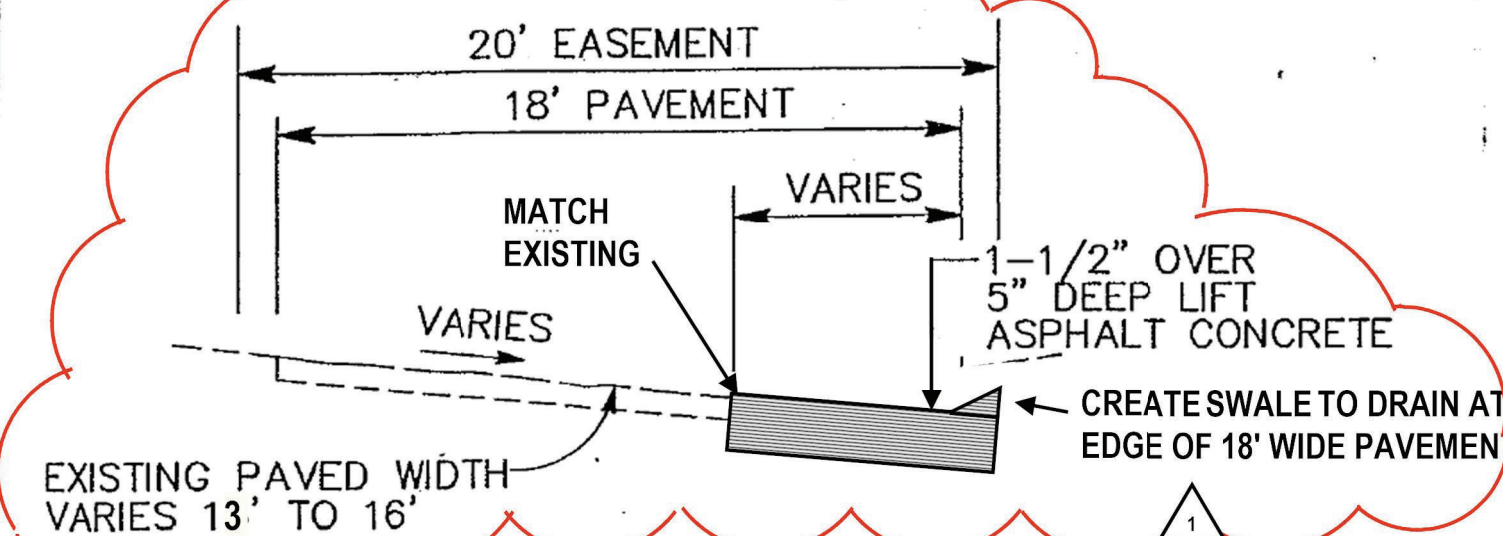
SUCCESSOR ENGINEER OF RECORD:

ENGINEER'S NAME: ZEYN B. UZMAN, P.E.
LIC. NO. 68563
ADDRESS: 116 EAST KING STREET
MALVERN, PA. 19355
PHONE NO. (610) 320-2100
FAX NO. (484) 329-6158

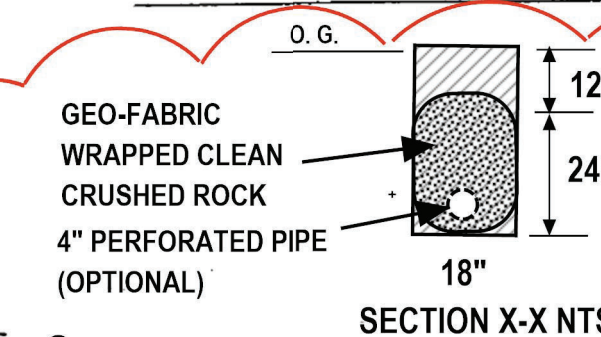
SITE DEVELOPMENT PLAN

AS-BUILT

Revision 1	APN	544-12-061	Sheet	3
Revision 2	Co. File	10598-15B-15V	of	9
Revision 3				



TYPICAL CROSS SECTION



NOTE: 2

- LOCATION OF STRUCTURE WAS ESTABLISHED USING THE ACCEPTED
ALPHA SURVEY TO ESTABLISH THE COMMON DIVIDING LINE WITH
ADJACENT PROPERTY TO THE WEST.
- EXISTING WATER METER HAS BEEN CONNECTED TO
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INTO THE NATIVE SOIL PER CHANGE LETTER DATED, MAY 26, 2020,
BY SUCCESSOR PROJECT ENGINEER OF RECORD, ZEYN B. UZMAN, P.E.

AVERAGE SLOPE CALCULATION

CONTOUR	LENGTH	CONTOUR	LENGTH	CONTOUR	LENGTH
744	25	733	25	822	270
743	44	732	369	821	347
742	52	731	229	820	247
741	58	730	226	819	250
740	63	729	196	818	554
739	68	728	194	817	452
738	73	727	169	816	327
737	84	726	191		
736	133	725	199		
735	126	724	103		
734	31	723	88		

TOTAL LENGTH = 5,213 ft

AVG SLOPE = (CONTOUR INTERVAL) X TOTAL LENGTH (100)
DEVELOPMENT AREA
= $\frac{1 \times 5213}{17,508} (100) = 29.7\%$

DATE: 10-25-2017	SCALE: 1"=10'
DESIGNED: SFN	
DRAWN: WCC	
CHECKED: SFN	
JOB No: AE-16-001	
REVISION	
DESIGN BY	
DATE	
COUNTY	
APPR. DATE	

PLANS FOR DEVELOPMENT OF:
LANDS OF JOHN C. LIPKA
19388 BEARDSLEY ROAD
LOS GATOS CALIFORNIA

ABLE CONSTRUCTION GROUP INC.
GENERAL ENGINEERING CONTRACTOR
LICENSE NO. 979209
1020 RUFF DRIVE
SAN JOSE, CA 95110

APPLICANT: JOHN C. LIPKA

ROAD: BEARDSLEY ROAD

COUNTY FILE NO.: 10598-15B-15V

1020 RUFF DRIVE
SAN JOSE, CA 95110

AE-16-001 CO-1

LANDS OF JOHN LIPKA
19388 BEARDSLEY ROAD
LOS GATOS CALIFORNIA

PROJECT NO:	REVISIONS DATE:	REVISIONS BY:	REVISIONS DESCRIPTION:
DESIGNED BY: SFN			
DRAWN BY: SFN			
CHECKED BY:			
DATE: 12-15-2020			

Contact Person: _____

Company Name: _____

Address: _____

Telephone No.: _____

Fax No.: _____

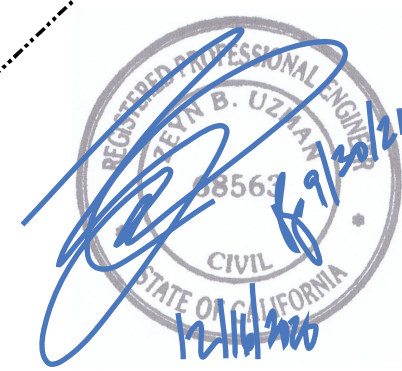
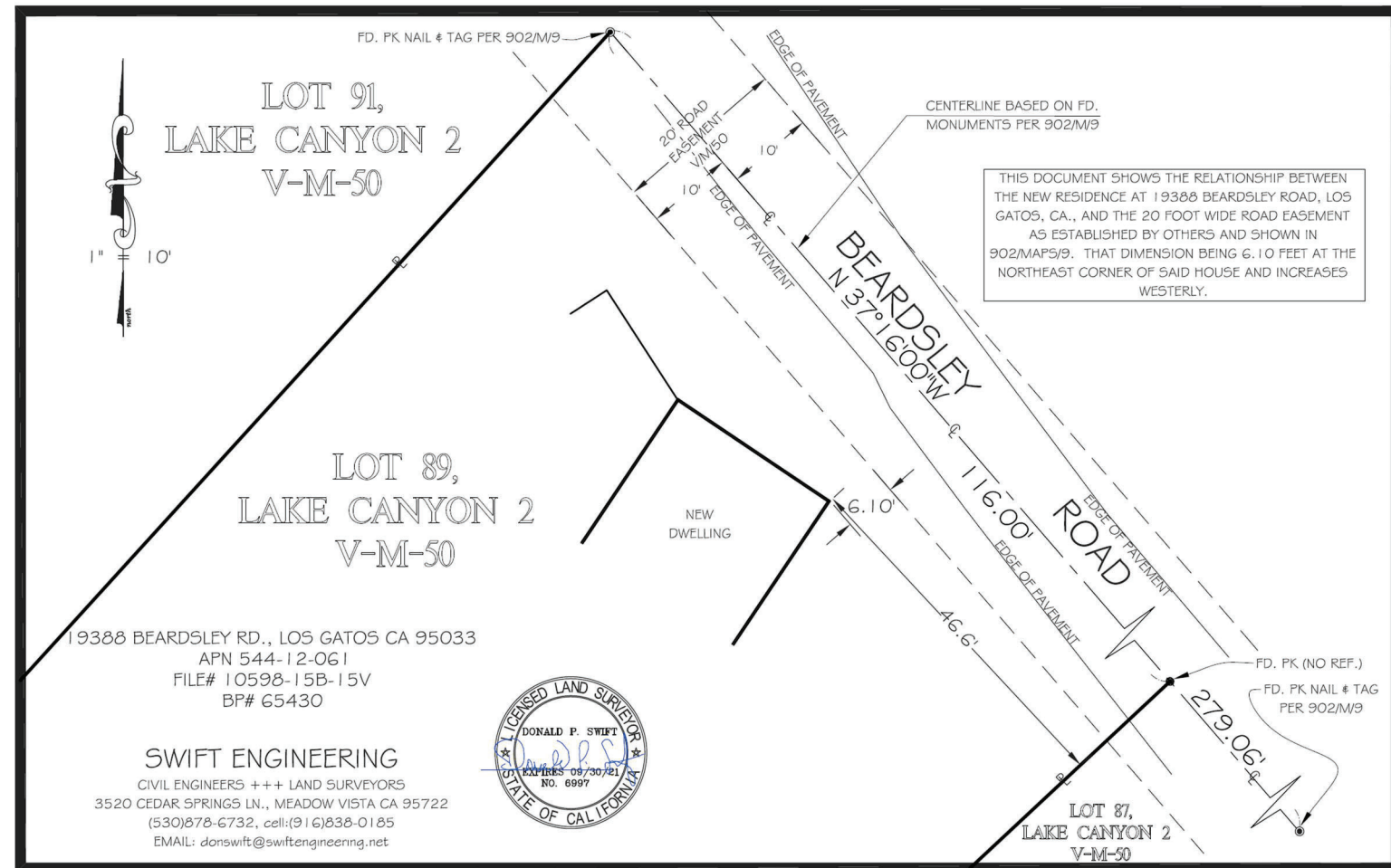
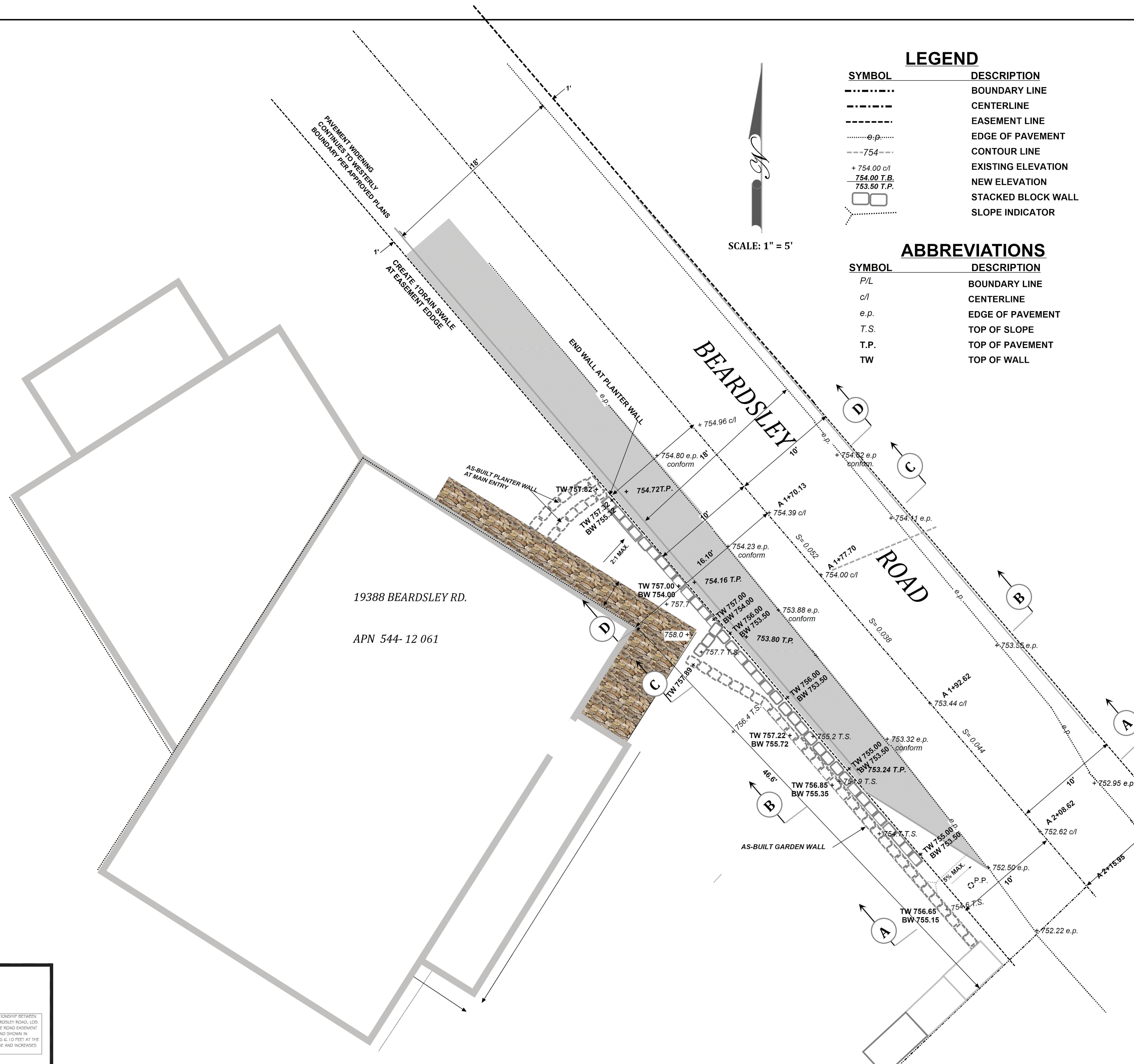
E-mail: _____

SHEET TITLE

**ENLARGED PLAN VIEW FOR
SETBACK VARIANCE**

DRAWING **3.1 OF 9 EXHIBIT**

SHEET **1** OF **2**



LANDS OF JOHN C. LIPKA
19388 BEARDSLEY ROAD
LOS GATOS, CALIFORNIA 95033

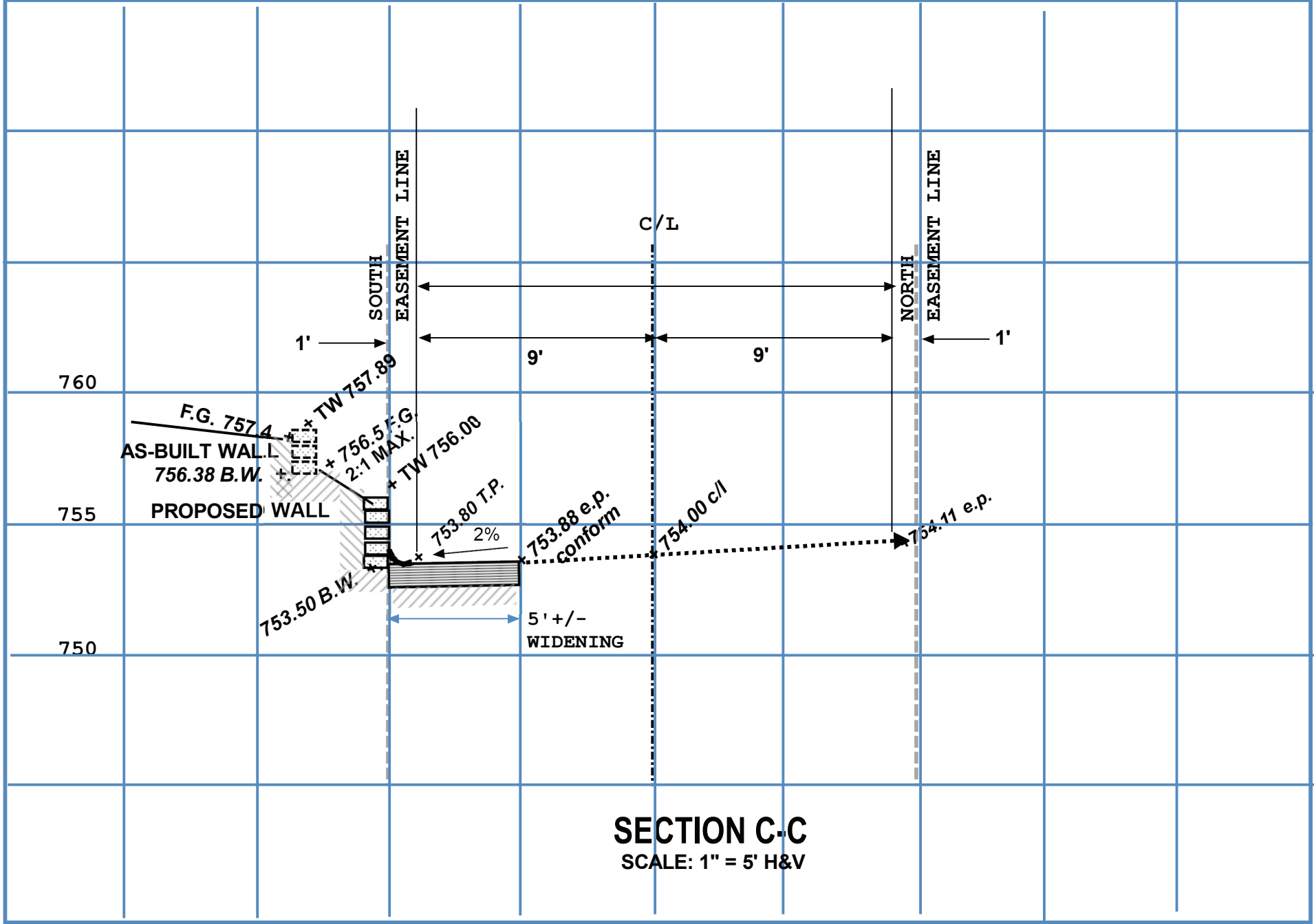
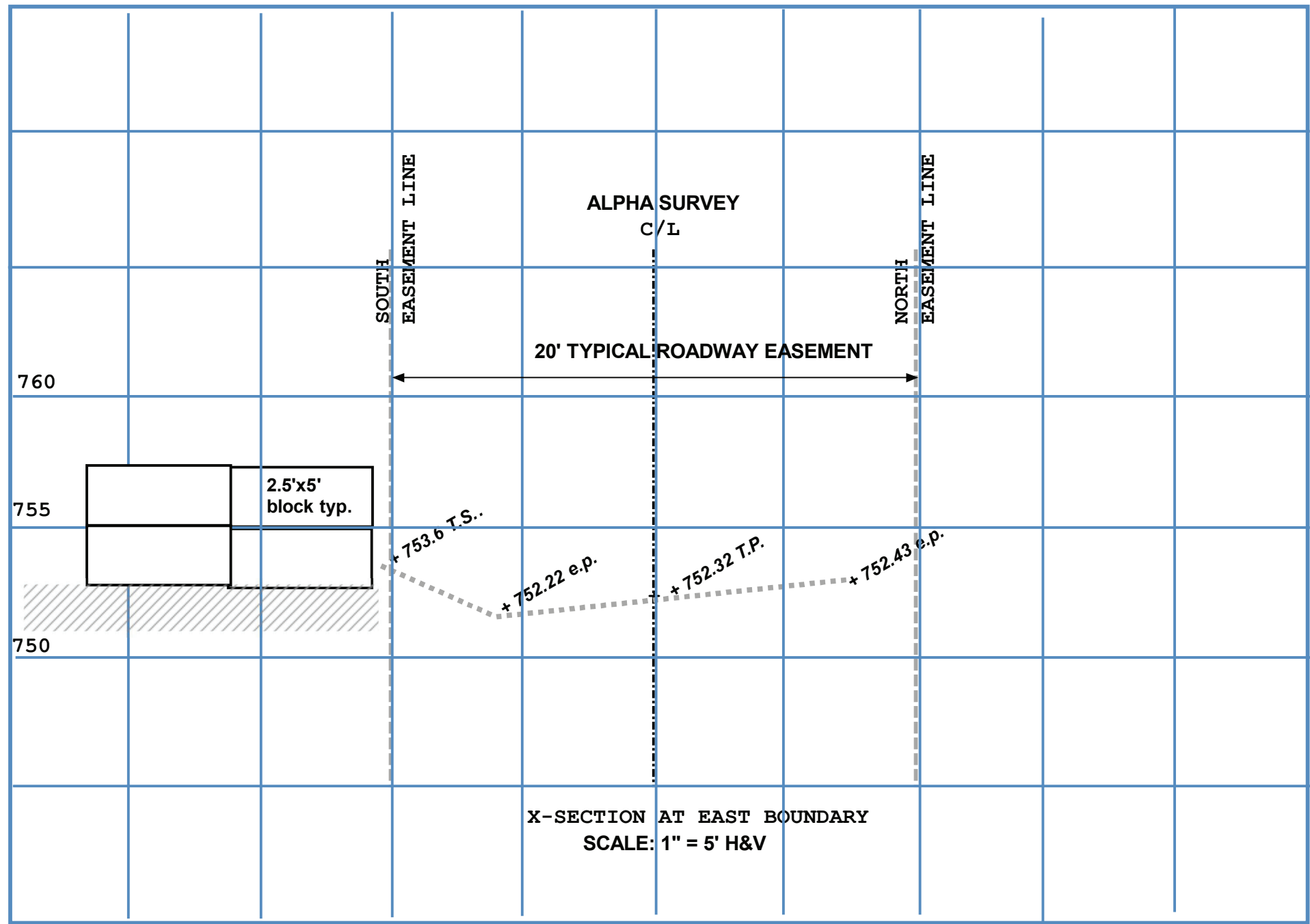
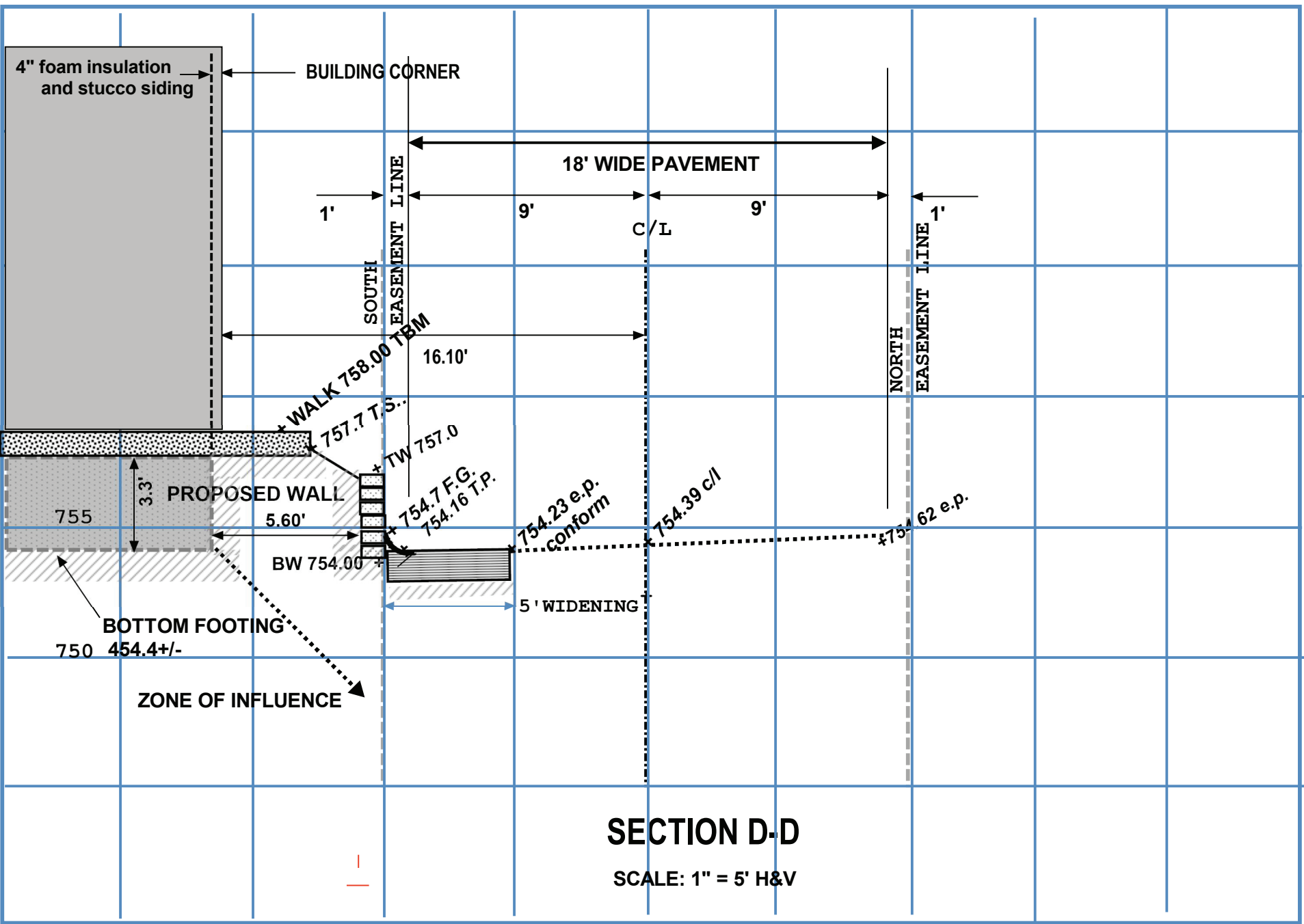
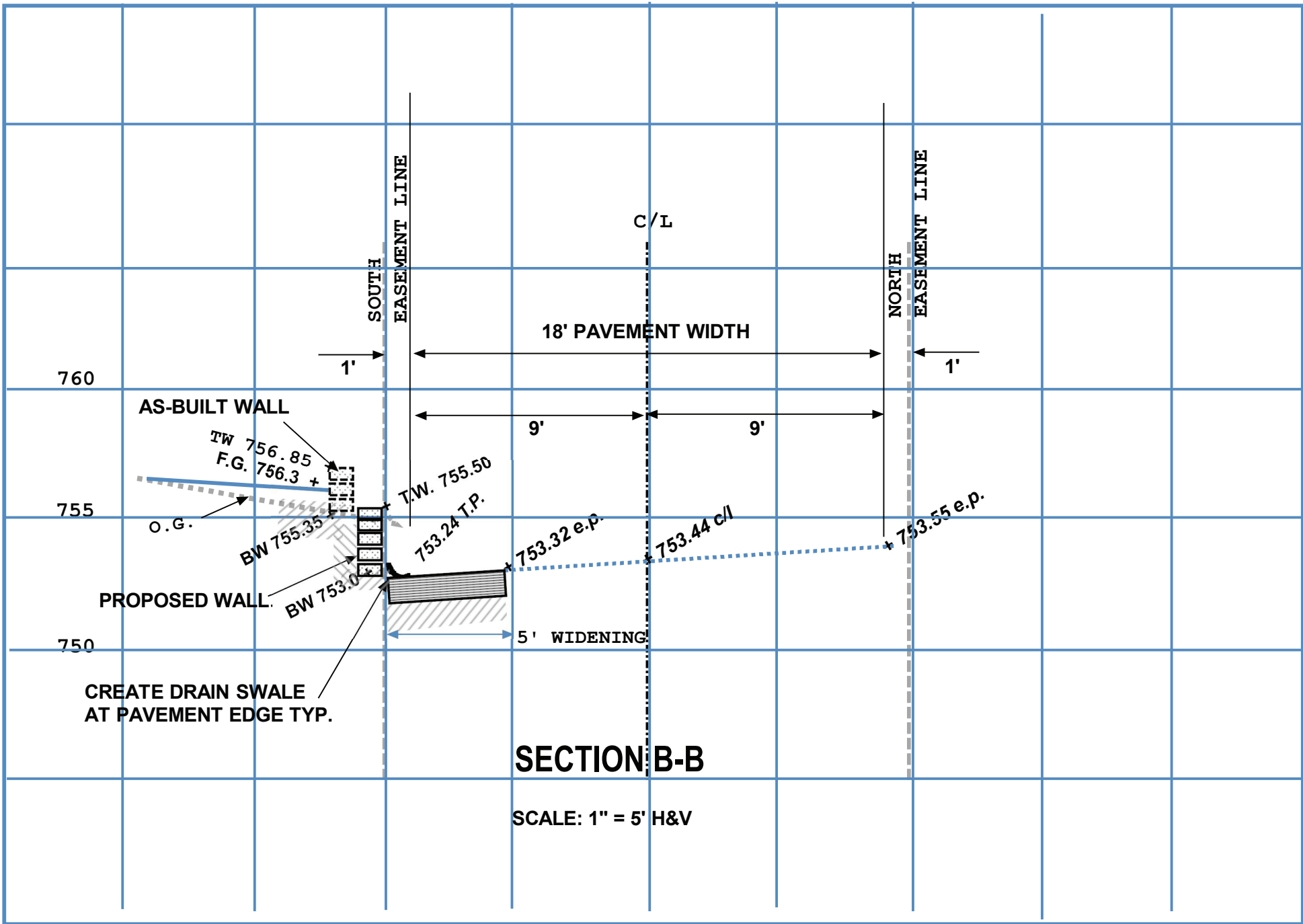
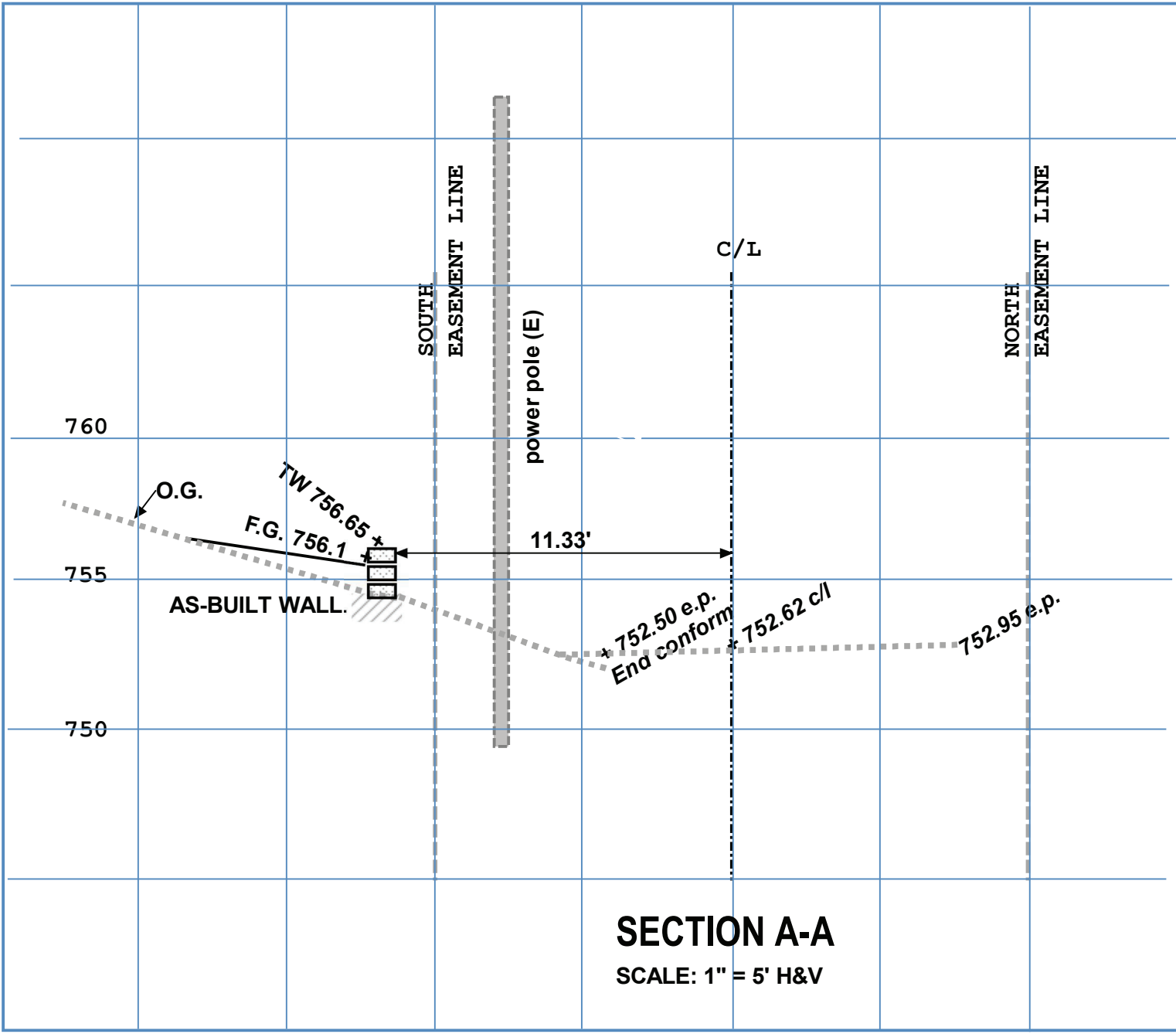
PROJECT NO.	DESIGNED BY:	DRAWN BY:	CHECKED BY:	DATE:	REVISIONS DATE:	REVISIONS BY:	REVISIONS DESCRIPTION:
	SFN	SFN		12-15-2020			
Contact Person: _____							
Company Name: _____							
Address: _____							
Telephone No.: _____							
Fax No.: _____							
E-mail: _____							

SHEET TITLE

CROSS SECTIONS
FOR
SETBACK VARIANCE

DRAWING
3.2 OF 9 EXHIBIT

SHEET 2 OF 2



Attachment D

Planning Commission Approved Building Site Approval and
Variance Permit, Conditions of Approval, Plans, and Planning
Commission Staff Reports (PLN15-10598-APL1)

County of Santa Clara

Department of Planning and Development
Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org



BUILDING SITE APPROVAL, VARIANCE

File No: **10598-15B-15V**

Permittee: **John Lipka**

Site Address: **Beardsley Road, Los Gatos**

Description: BUILDING SITE APPROVAL and VARIANCE for proposed new single-family residence. VARIANCE is to reduce front yard setback from 20 feet to 7 feet.

In accordance with the provisions of Chapter 5.70, Variance, of the County Zoning Ordinance, and Chapter II of Division C12 of the County Ordinance Code, the Planning Commission hereby grants approval for the specified construction subject to the following:

- The date of this decision is **October 27, 2016**. The effective date of this approval is November 15, 2016, provided no appeal has been filed before that date.
- All applicable building permits must be obtained and all conditions of approval (attached) must be completed on or before **November 14, 2020**, or these approvals and permits will expire.

Rob Eastwood, Planning Commission Secretary

Note: Read this permit and attached conditions carefully. If any wording is incorrect or inconsistent with the understood action of the hearing, it must be resolved prior to the effective date. The permit will become effective with the presumption that the applicant fully understands, accepts, and agrees to comply with all conditions.

Any person dissatisfied with this action or any specific conditions may appeal to the Board of Supervisors. Appeals must be filed at the Planning Office within fifteen (15) days of the decision date (see above), and must be accompanied by the current filing fee established by the Board of Supervisors.

Conditions of Approval

10598 – 15B – 15V

BUILDING SITE APPROVAL AND VARIANCE CONDITIONS OF APPROVAL

Owner/Applicant: John Lipka
File Number: 10598 – 15B – 15V
Location: Beardsley Road, Los Gatos vicinity
Project Description: BUILDING SITE APPROVAL and VARIANCE for single-family residence and associated site improvements. Variance to reduce front yard setback from 20 feet to 7 feet (residence).
CEQA: Categorical Exemption

Items marked with one asterisk (*) must be completed prior to building permit issuance.

Items marked with two asterisks (**) must be completed prior to occupancy or final inspection

PLANNING:

Contact JIM REILLY at (408) 299-5799 (or jim.reilly@pln.sccgov.org) for details on the following:

1. Development must take place according to approved architectural plans, prepared by Terra-Dome Corporation (received November 2015), and revised engineering plans, prepared by Able Construction Group (received October 2016). The approval includes a variance to reduce the front-yard setback from 20 feet to 7 feet. Per subsection 2.20.070(A), side yard setbacks for this property are 11 feet, and rear yard setback is 20 feet.
2. The second-story balcony is subject to the limitations of § 4.20.110(A)(2). Building permit plans shall conform to these provisions, which include limitations on the height and design of safety railing.
- 3.* LANDSCAPING: The requirements of Division B33 of the County Ordinance Code (Water Conservation in Landscaping) shall apply. At a minimum, a landscape water efficiency checklist shall be completed. Depending on the extent and composition of the proposed landscaping, additional plans and supporting documentation may be required.

The landscape ordinance and supporting information can be found on the following web page:

LAND DEVELOPMENT ENGINEERING:

Contact ED DUAZO at (408) 299-5733 (or ed.duazo@pln.sccgov.org) for details on the following:

- 4.* PLAN REVIEW: Obtain a construction permit from Land Development Engineering (LDE) for the Beardsley Road pro rata road improvements prior to beginning any construction activities. Issuance of the construction permit is required prior to LDE clearance of the building permit (building and construction permits can be applied for concurrently). The process for obtaining a construction permit and the forms that are required are the same as a grading permit and can be found at the following web page:

www.sccplanning.org > I Want to.. > Apply for a Permit > Grading Permit

Expect four (4) to six (6) weeks for plan review and plan check comments. Please contact LDE at (408 299-5734) for additional information and timelines.

- 5.* The owner shall post a performance bond for the pro rata improvements. The bond amount shall be based on the County's estimate of probable construction cost. The performance bond may be in the form of cash deposit, assignment of a savings account or CD, a surety from an insurance company, or a letter of credit.

- 6.* IMPROVEMENT PLANS: Preliminary plans prepared by Able Engineering and received May 2016 have been reviewed. Submit final improvement plans prepared by a registered civil engineer for review and approval by LDE. Final plans shall include a single sheet which contains the County standard notes and certificates as shown on County Standard Cover Sheet. Plans shall be neatly and accurately drawn, at an appropriate scale that will enable ready identification and recognition of submitted information.

Include plan, profile, typical sections, contour grading for the driveway, structures and other improvements as appropriate for construction. The final design shall be consistent with the following standards, as appropriate. The final design shall be in conformance with all currently adopted standards and ordinances. Beardsley Road shall be improved per modified County Standard Detail SD2 along the property's frontage, as generally shown in the conditionally approved plans. The following standards are available on-line;

- March 1981 Standards and Policies Manual, Volume 1 (Land Development)
www.sccplanning.org > Plans & Ordinances > Land Development Standards and Policies
- 2007 Santa Clara County Drainage Manual
www.sccplanning.org > Plans & Ordinances > Grading and Drainage Ordinance

Final improvement plans shall include the following:

EROSION CONTROL: Include details of erosion/sediment control measures, focusing on seasonally appropriate erosion and sediment controls during construction.

- a. *Erosion and Sediment Control:* soil binders, geotextiles, mats, creek and hillside stabilization, hydroseeding, silt fence, sediment basin, check dams, fiber rolls, gravel bags, drainage inlet protection, construction entrance/exit, street sweeping requirements, perimeter controls, etc.
- b. *Good Site Management:* containment, spill prevention, material storage/protection, sanitary waste management, etc.
- c. *Non-Stormwater Management:* dewatering operations, paving operations, concrete washouts, vehicles and equipment storage and refueling, etc.
- d. *BMP Plan Sheets:* the County's standard best management practices plan sheets (BMP-1 and BMP-2).

DRAINAGE: Final plans shall reflect the following:

- e. Property owner is responsible for the adequacy of any drainage facilities, and for the continued maintenance thereof in a manner that will preclude any hazard to life, health or damage to adjoining property.

EASEMENTS: Include the following on improvement plans and provide additional documentation as appropriate.

- f. Show all applicable easements affecting the parcel(s), noting benefactors and recording information on the improvement plans.
- g. The following offers of easement dedication shall be submitted to

LDE and included on the final improvement plans. All easement dedications shall include legal descriptions, plats, and corresponding documents to be reviewed and approved by the County Surveyor's Office.

- i. Forty (40)-foot curvilinear right-of-way dedication to the public and the County for public road purposes. The southwesterly limits of the 40-foot right-of-way dedication shall be coincident with the southwesterly line of the existing 20-foot Beardsley Road right-of-way, as generally shown in the conditionally approved plans. The last ten feet of ROW leading up to the southeastern property boundary shall curve toward the south, as practicable, to accommodate future ROW tie-in with the adjacent property to the south.
- ii. Offer to dedicate an easement to the public and the County for storm-drainage purposes for those portions of Beardsley Creek that pass drainage through the property.

STORM WATER TREATMENT: It is recommended and encouraged to include site design measures in the project design. Site design measures include: (a) directing hardscape and/or roof runoff onto vegetated areas, (b) collecting roof runoff in cisterns or rain barrels for reuse, or (c) constructing hardscape (driveway, walkways, patios, etc.) with permeable surfaces. For additional information, please refer to the C.3 Stormwater Handbook (April 2012) available at the following website:

www.scvurppp.org > Resources > reports and work products > New Development and Redevelopment > C.3 Stormwater Handbook (April 2012)

7. **UTILITIES:** All new on-site utilities, mains and services shall be placed underground and extended to serve the proposed residence. All extensions shall be included in the improvement plans submitted to LDE for review. Off-site work should be coordinated with any other undergrounding to serve other properties in the immediate area.
- 8.* **SOILS AND GEOLOGY:** Provide signed, stamped recommendations from the project geotechnical engineer for the Beardsley Road pavement widening. Specifically, the project geotechnical engineer shall provide structural sections for the pavement widening to support emergency vehicle loading (75,000 lbs.)

- 9.* Submit a plan-review letter by the project geotechnical engineer certifying that the improvement plans, specifically, the pro rata road widening, conform to recommendations from the project geotechnical report/ letter.
- 10.* **SURVEY MONUMENTS:** Survey monuments shall be shown on the improvement plan to provide sufficient information to locate the proposed improvements and the property lines. Existing monuments must be exposed, verified and noted on the grading plans. Where existing monuments are below grade, they shall be field verified by the surveyor and the grade shall be restored and a temporary stake shall be placed identifying the location of the found monument. If existing survey monuments are not found, temporary staking delineating the property line may be placed prior to construction and new monuments shall be set prior to final acceptance of the improvements.

The permanent survey monuments shall be set pursuant to the State Land Surveyor's Act. The land surveyor / engineer in charge of the boundary survey shall file appropriate records pursuant to Business and Professions Code Section 8762 or 8771 of the Land Surveyors Act with the County Surveyor.

- 11.** Existing and set permanent survey monuments shall be verified by inspectors prior to final acceptance of the improvements by the County. Any permanent survey monuments damaged or missing shall be reset by a licensed land surveyor or registered civil engineer authorized to practice land surveying and they shall file appropriate records pursuant to Business and Professions Code Section 8762 or 8771 of the Land Surveyors Act with the County Surveyor.
- 12.* **AGREEMENTS:** Enter into a land development improvement agreement with the County. Submit an engineer's estimate of probable construction cost prepared by a registered civil engineer with the all stages of work clearly identified for all improvements and grading as proposed in this application. Post financial assurances based upon the estimate, sign the development agreement and pay necessary inspection and plan check fees, and provide County with a certificate of worker's compensation insurance. (C12-206)
- 13.* Enter into a deferred improvement agreement for possible future improvements associated with ultimate road widening and storm drainage adjacent to Beardsley Creek.
- 14.** **CONSTRUCTION AND STAKING:** Construct all of the aforementioned improvements on site and within the ROW adjacent to the project site.

Construction staking is required and shall be the responsibility of the developer.

15. The proposed project appears to meet the grading and drainage exemption requirements as provided in the County Grading Ordinance.

If any building plan revisions or construction field changes occur that alter the existing drainage pattern, alter a drainage course, increase the proposed impervious area greater than 2,000 square feet, and/ or result in earthwork that is in excess of the minor project exemption limits as outlined the County's Grading Ordinance starting at C12-400, then a grading permit or drainage permit will be required. To obtain a grading permit, apply to the Planning Office for grading approval, once the Planning Office authorized the grading approval, apply and obtain a grading permit from LDE. To obtain a drainage permit, submit drainage plans and calculations to LDE. Penalties and rigid abatement procedures are required by ordinance for correction of any grading violation.

16. Provide one copy of the improvement plans to the Lake Canyon Mutual Water Company Board of Directors. Mailing address is PO Box 866; Los Gatos, CA 95031.

ENVIRONMENTAL HEALTH:

Contact DARRIN LEE at (408) 299-5748 or (or darrin.lee@deh.sccgov.org) for details on the following conditions:

- 15.* Plans shall be referred to Lake Canyon Community Service District. Applicant has provided will-serve letters for sewage disposal and potable water.
16. All construction activities shall be in conformance with the Santa Clara County Noise Ordinance Section B11-154 and prohibited between the hours of 7:00 p.m. and 7:00 a.m. on weekdays and Saturdays, or at any time on Sundays for the duration of construction.
- 17.* Provide proof of garbage service at the time of final occupancy sign-off. Garbage service in the unincorporated areas of Santa Clara County is mandatory.

FIRE MARSHAL:

Contact MAC BALA at (408) 299-5763 or (or mac.bala@pln.sccgov.org) for details on the following conditions:

- 18.* Fire protection water system shall be installed, functioning and inspected prior to approval of the foundation. System shall be maintained in good working order and accessible throughout construction. A stop-work order may be placed on the project if the required hydrant systems are not installed, accessible and/or functioning.
- 19.* FIRE-FLOW: The minimum fire-flow for structures shall be as follows from a standard fire hydrant located no farther than 250 feet from the driveway:
 - a. Structures up to 3,600 sq. ft: 1,000 gpm at 20 psi for 30 minute duration
 - b. At the time of plan submittal for building permit, provide written verification from the water company that this condition can be satisfied.
20. FIRE SPRINKLER SYSTEM: An approved residential fire sprinkler system complying with CFMO-SP6 shall be installed throughout the structure.

NOTE: The fire sprinkler system shall be installed and finalized by this office (FMO) prior to occupancy. A separate permit shall be obtained from this office by a state licensed C-16 contractor prior to installation. Please allow for a minimum of 30 days for plan review of fire sprinkler plans by this office.
21. GENERAL ACCESS REQUIREMENTS: These are minimum Fire Marshal standards. Should these standards conflict with any other local, state or federal requirement, the most restrictive shall apply.
 - a. Construction of access roads and driveways shall use good engineering practice.
 - b. All required access roads, driveways, turnarounds, and turnouts shall be installed, and serviceable prior to approval of the foundation, and shall be maintained throughout construction. A stop-work order may be placed on the project if required driving surfaces are not installed, accessible, and/or maintained at all times.
22. Roads for fire department access shall be subject to the following standards:
 - a. *Width:* Clear, drivable width of 18 feet, plus a three (3) foot shoulder on each side.

- b. *Vertical Clearance:* Minimum vertical clearance of 15 feet shall be maintained to building site (trim or remove, tree limbs, electrical wires, structures, and similar improvements).
 - c. *Grade:* Maximum grade shall not exceed 15%.
 - d. *Surface:* All driving surfaces shall be all-weather and capable of sustaining 75,000-pound gross vehicle weight.
 - e. *Gates:* All bridges shall be capable of sustaining 75,000 pound gross vehicle weight and meet the latest edition of the CalTrans Standard Bridge Design Specifications. Appropriate signage, including but not limited to weight or vertical clearance limitations, or any special conditions shall be provided.
23. Property is located within the Santa Clara County Fire Department response area.
24. This property is located in the *wildland/ urban interface* fire area. All of the following conditions shall apply:
- a. A Class "A" roof assembly is required. Detail shall be included in plans submitted for building permit.
 - b. Provide a ½-inch spark arrester for the chimney.
 - c. Remove significant combustible vegetation within 30 feet of the structure to minimize risk of wildfire casualty. Maintain appropriate separation of vegetative fuels in areas between 30 and 100 feet from the structure.
25. MAINTENANCE: Fire protection water systems and equipment shall be accessible and maintained in operable condition at all times, and shall be replaced or repaired where defective. Fire protection water shall be made available to the fire department.
26. Fire department access roads, driveways, turnouts and turnarounds shall be maintained free and clear and accessible at all times for fire department use. Gates shall be maintained in good working order, and shall remain in compliance with Fire Marshal Standard CFMO-A3 at all times.

GEOLOGY:

Contact JIM BAKER at (408) 299-5774 or (or jim.baker@pln.sccgov.org) for details on the following conditions:

- 27.* Submit a conformed copy of an owner-signed and recorded acknowledgment statement of potential geologic hazards (to be prepared by the County Geologist)
- 28.* Submit a geotechnical engineer's plan-review letter that confirms the plans conform with the intent of the recommendations presented in the approved report.

BUILDING INSPECTION:

Contact BUILDING INSPECTION OFFICE at (408) 299-5700 for details on the following conditions:

- 29. At the time an application is filed for a building permit, a checklist from either LEED for Homes or Build it Green (GreenPoint) will be required. The checklist must demonstrate compliance with the Santa Clara County Green Building Ordinance (§ C3-50).



83622

DATE: October 27, 2016

TO: Planning Commission

FROM: Jim Reilly, Senior Planner

SUBJECT: Appeal: Variance for Single-Family Residence (Continued)

RECOMMENDED ACTION

Public Hearing, continued from September 22, 2016, to consider an appeal of the zoning administrator's action on June 7, 2016 regarding variance to reduce front yard setback from 20 feet to 11 feet for proposed single-family residence. The project has since been modified following a property boundary discrepancy such that the setback reduction would be from 20 feet to 7 feet. File: 10598-15B-15V; Appellant: Kenji and Juliet Morita; Owner/Applicant: John Lipka; Property Address/Location: 19400 Beardsley Road, Los Gatos; Zoning: HS; Supervisorial District: 1; Assessor Parcel No.:544-12-060.

Possible action:

- a. Accept or deny Categorical Exemption, Class 3(a), under CEQA.

AND

- b. Deny appeal and grant the variance and building site approval.

OR

- c. Grant appeal and deny the variance and building site approval.

PROJECT DESCRIPTION

The project under consideration is a proposed two-story single-family residence, approximately 2,200 square feet in area, to be constructed on a presently undeveloped lot. The 0.62-acre lot is traversed by a private road (Beardsley Road), and is steeply sloping and forested, with the exception of a limited level area in the front of the lot adjacent to Beardsley Road.

Development of the lot required building site approval, and the applicant requested a variance to reduce the front yard setback from 20 feet to 11 feet, citing the lot's exceptionally steep

topography as the primary rationale. This variance was approved on June 7, 2016 by the Zoning Administrator. The approval action was appealed on June 26, 2016 by neighbors Kenji and Juliet Morita, who disputed the accuracy of the property boundary survey provided by the applicant.

The Planning Commission considered the appeal at the September 22, 2016 public hearing. Applicant John Lipka requested that the hearing be continued, stating his intent to modify his site plan to comport with the appellant's survey. The Planning Office received revised survey document and site plan the following week. This realignment of property boundaries as shown on the revised documents (Attachment D) requires a variance to reduce the front yard setback from 20 feet to 7 feet (not 11 feet) for the proposed residence.

REASONS FOR RECOMMENDATION

The appeal process is intended to provide a forum for re-review of the project, considering the merits of the cases made by the appellants and the applicants.- Per § 5.30.050, the Commission may consider the entire scope of the application under consideration, including proceedings and conclusions of the original decision-maker.

Appeal Summary

The appellant statement (Attachment A) indicates that the primary objection to the granting of the variance is a need to conclusively determine the location of property lines, including the Beardsley Road right-of-way, from which the front yard setback is measured. The applicant (John Lipka) had provided a property line survey prepared by Donald P. Swift, a California-licensed land surveyor. This survey information had been deemed sufficient for the application to proceed to hearing and for an action to be taken on the variance.

The appellants (Kenji and Juliet Morita) subsequently engaged Alpha Land Surveys to locate the property boundaries. While the Alpha plat document (June 2016) shows a discrepancy in the location of the property corners, the County cannot confirm that the Alpha plat document is more true or correct than the Swift survey.

The appellants have not voiced any objection to the topography as being a valid basis for granting a variance; only that a revised determination regarding the location of property lines and right-of-way could have the effect of nullifying the variance authorizing an 11-foot front yard setback.

Following the September 22, 2016 Planning Commission hearing, the property owner provided a revised survey document (Attachment D) that comports with the survey provided by the appellant, effectively resolving the property boundary dispute that prompted the appeal.

Variance Findings, Analysis and Decision

Since the applicant has submitted a revised site plan, -staff recommendations to the Planning Commission include actions related to -a variance to reduce the front yard setback from 20 feet to seven (7) feet based on the change in the property line locations.

The basis of the approved variance (and the recommendation) is the lot's exceptionally steep topography, which effectively precludes alternate house locations that might conform to the applicable front yard setback. -Applicant John Lipka described the conditions in his application documents and plans (Attachment B), and the topographic conditions were confirmed using GIS topographic data and two site visits by Planning staff.

The property is situated within a canyon that flanks Beardsley Creek. The lot is characterized by a relatively flat area adjacent to Beardsley Road that extends 15 to 35 feet from the edge of right-of-way. The lot abruptly slopes upward from there and is steeply sloping (45% to 65% slope) and forested over the remaining area of the lot.

The house design is a two-story structure imbedded into the hillside, and includes a "green" earthen/ vegetated roof (Attachment E).

Planning staff also observed via air photos and site visits that many homes in the immediate vicinity do not conform to the currently applicable 20-foot front yard setback. Some such homes predate current zoning and building requirements, and some are evidently constrained by topography, lot size/ shape, creek setbacks, and right-of-way/ roadway configuration.

Per Section 5.70.020 of the County Zoning Ordinance:

A variance may not be granted unless both of the following findings can be made:

- A. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification; and
- B. The grant of the variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the zoning district in which the subject property is located.

Although the site plan has been modified to show the property boundary in a different location, these findings will still apply to the revised variance as analyzed below.

Special circumstances applicable to the subject property:

- The parcel is zoned HS, Hillsides, and is severely non-conforming is size, at 0.62 acres.

- The private right-of-way for Beardsley Road transects the northeasterly portion of the property along Beardsley Creek.
- Average slope of the property is over 57%, with over three-fourths of the property having slope in excess of 50%. The limited area of minimal slope where access and residential construction are feasible are adjacent to the road right-of-way.
- The lot is heavily wooded.
- The area consists predominantly of homes built prior to building permit requirements and in locations up to and within the private road right-of-way, due to the narrowness of the canyon floor.
- The Department is not aware of properties in the vicinity or elsewhere in the HS zoning district where a property owner was denied a setback variance where equivalent or similar property characteristics exist. The proposed residence is of a reasonable size and is comparable to other residences in the vicinity.

Response to Appeal

The Department of Planning and Development (Department) believes that the special circumstances justifying the variance, including the one approved previously (from 20 feet to 11 feet) and the proposed (from 20 feet to 7 feet), are substantial, and that the analysis of findings is sound. The applicant, John Lipka, has accepted the appellant's plat (Alpha), and has provided a revised survey document and corresponding site plan (Attachment D) to show the revised property line locations. The location of the proposed house remains the same, relative to the existing topography and features on site. The appellants, Kenji and Juliet Morita, have filed a record of survey with the County Surveyor's Office based on the information on the Alpha plat document. The property boundary discrepancy discussed at the prior Planning Commission hearing has thus been resolved to the satisfaction of the Department.

Clarification of Allowance for Second Story Deck

Following the action to grant the variance and building site approval, Planning staff discovered that portions of the second story balcony encroached into the approved 11-foot front yard setback. Limited encroachment of balconies is accommodated by § 4.20.110(A)(2), and the balcony as designed largely conforms to the ordinance provisions (Attachment G). However, a limitation on the height of an allowed safety railing would necessitate a minor redesign, such that the Department is requesting that the Commission add the following (or similar) condition language:

##. *The second-story balcony is subject to the limitations of § 4.20.110(A)(2). Building*

permit plans shall conform to these provisions, which include limitations on the height and design of safety railing.

BACKGROUND

In November 2015, following some preliminary discussion with Planning staff, applicant John Lipka and his engineer submitted an application for building site approval and variance to construct a two-story single-family residence on a presently undeveloped 0.62-acre lot in the Lake Canyon area of the Santa Cruz Mountains. The variance would seek relief from the required 20-foot front yard setback, as the lot's topography presented challenges to house location and design.

Following two rounds of initial application review, the application was deemed "complete" on May 10, 2016. A public hearing to consider the project was scheduled for June 7, 2016.

The project was discussed at the noticed June 7, 2016 hearing. The project applicant made a compelling case that the two-story house would not be incompatible with the neighborhood, and the site's topographic challenges were evident and significant. Several neighbors, including the appellants, spoke at the hearing. Zoning administrator Bill Shoe closed the hearing and granted the variance and building site approval.

On June 22, 2016, appellant Kenji Morita filed a timely appeal application. The appellant's statement is included as Attachment A.

The Planning Commission considered the item at the noticed September 22, 2016 public hearing. Mr. Lipka provided the Commissioners a letter stating his acceptance of the alternate (Alpha) survey provided by Mr. Morita, and indicated he would revise his survey and site plan to comport with the Alpha survey. After receiving testimony, the Commission acted to continue the item to a date uncertain.

On October 3, 2016, the Department received a revised survey document and site plan (Attachment D) from Mr Lipka's engineer that comports with the survey provided by the appellant, effectively resolving the property boundary dispute that prompted the appeal.

STAFF REPORT REVIEW

Reviewed by: Manira Sandhir, Principal Planner, AICP

Approved by: Rob Eastwood, Planning Manager, AICP

LINKS:

- References: 83068 : Public hearing to consider appeal of a decision of the zoning administrator to grant a Variance to reduce the front-yard setback from 20 feet to 11

feet, and to grant Building Site Approval, for a new single-family residence. The zoning administrator's decision took place on June 7, 2016. File: 10598-15B-15V
Appellant: Kenji and Juliet Morita. Owner /Applicant: John Lipka. Property
Address/Location: 19400 Beardsley Road, Los Gatos

ATTACHMENTS:

- Attachment A: Appellant's Statement (PDF)
- Attachment B: Project Conditions (PDF)
- Attachment C: Statement of Variance Justification by Applicant(PDF)
- Attachment D: Revised Boundary Survey (Swift) and Site Plan (PDF)
- Attachment E: House Elevations (PDF)
- Attachment F: Air Photo (PDF)
- Attachment G: Balcony Provisions, Section 4.20.110(A)(2) (PDF)



83068

DATE: September 22, 2016
TO: Planning Commission
FROM: Jim Reilly, Senior Planner
SUBJECT: Appeal: Variance, Building Site Approval for New Residence

POSSIBLE ACTIONS

Public hearing to consider appeal of a decision of the zoning administrator to grant a Variance to reduce the front-yard setback from 20 feet to 11 feet, and to grant Building Site Approval, for a new single-family residence. The zoning administrator's decision took place on June 7, 2016. File: 10598-15B-15V Appellant: Kenji and Juliet Morita. Owner /Applicant: John Lipka. Property Address/Location: 19400 Beardsley Road, Los Gatos.

Possible Actions:

- (a) Approve/Deny Categorical Exemption, Class 3(a) under CEQA;
- AND
- (b) Grant appeal and deny the decision of the Zoning Administrator to approve the variance and building site approval.
- OR
- (c) Deny appeal and uphold the decision of the Zoning Administrator to approve the variance and building site approval.

STAFF RECOMENDATION

Staff recommends that the Planning Commission:

- (a) Accept the Categorical Exemption Class 3(a) under CEQA; and,
- (a) Deny the appeal and uphold the decision of the Zoning Administrator to approve a Variance and Building Site Approval, and modify conditions of approval, adding:
 - ##. *Prior to issuance of any construction permits, a record of survey shall be filed for and obtained from the County Surveyor.*
 - ##. *The second-story balcony is subject to the limitations of § 4.20.110(A)(2). Building permit plans shall conform to these provisions, particularly the*

limitations on the height of safety railing.

PROJECT DESCRIPTION

The project under consideration is a proposed two-story single-family residence, approximately 2,200 square feet in area, to be constructed on an undeveloped lot. The 0.62-acre lot is traversed by a private road (Beardsley Road), and is steeply sloping and forested, with the exception of a limited area in the front of the lot adjacent to Beardsley Road that has flatter topography. The project is located in the Lake Canyon community in the Santa Cruz Mountains, approximately four miles southwest of downtown Los Gatos.

Development of the lot requires Building Site Approval, and the applicant had requested a Variance to reduce the front yard setback from 20 feet to 11 feet, citing the lot's exceptionally steep topography as the primary rationale. The application was originally submitted on November 12, 2015, with a resubmittal on March 28, 2016. The approvals were granted at the Zoning Administration public hearing of June 7, 2016. An appeal of the Variance was filed on June 22, 2016 by appellants Kenji and Juliet Morita (See Attachment A, Appellant Statement and Attachment B Approved Permit and Conditions). The appellants had no specific objection to the related action to grant Building Site Approval.

REASONS FOR RECOMMENDATION

The appeal hearing is *de novo*, and the Planning Commission may consider the entire scope of the application under consideration, including proceedings and conclusions of the original decision-maker, and considering the merits of the cases made by the appellants and the applicants.

Appeal Summary

The appellant statement (Attachment A) indicates that the primary objection to the Variance is a need to conclusively determine the location of property lines, including the Beardsley Road right-of-way, from which the front yard setback is measured. The applicant (John Lipka) had provided a property line survey prepared by Donald P. Swift ("Swift"), a California-licensed land surveyor (see Attachment D)., This survey information was deemed sufficient by County Planning and Development staff to depict the property boundaries for the purpose of granting Building Site Approval and a Variance for the project.

The appellants (Kenji and Juliet Morita) submitted a plat document (June 2016) prepared by Alpha Land Surveys that shows a discrepancy in the location of the property corners as depicted by the property line survey prepared by Swift.

The Appeal does not list any objection specific to the findings required to grant a Variance, such as the topography as being a valid basis for granting a variance. The Appeal requests that a revised determination regarding the location of property lines and right-of-way could nullify the Variance authorizing an 11-foot front yard setback.

Variance Findings, Analysis and Decision

Section 5.70.020 of the County Zoning Ordinance states:

A variance may not be granted unless both of the following findings can be made:

- A. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification; and
- B. The grant of the variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the zoning district in which the subject property is located.

These findings are consistent with the variance provisions of Section 65906 of the California Government Code.

As described in the Zoning Administrator's statement of findings (Attachment B), the basis for approving the Variance is the exceptionally steep topography of the property, which effectively precludes alternate house locations that might conform to the applicable front yard setback. Applicant John Lipka described the conditions in his application documents and plans (Attachment C), and the topographic conditions were confirmed using GIS topographic data and two site visits by Planning staff.

The property is situated within a canyon that flanks Beardsley Creek. The lot is characterized by a relatively flat area adjacent to Beardsley Road that extends 15 to 35 feet from the edge of right-of-way. The lot abruptly slopes upward from there and is steeply sloping (45% to 65% slope) and forested over the remaining area of the lot.

The County discourages development on slopes exceeding 30%, per § C12-350.2. The proposed developed area of the project is 29.7%, and the house site was purposefully situated as far back from Beardsley Road as possible without exceeding the 30% threshold. The house design is a two-story structure embedded into the hillside, and includes a "green" earthen/ vegetated roof (Attachment E).

Special circumstances applicable to the subject property (Variance Finding A, above), which support the Variance findings include:

- The parcel is zoned HS, Hillside, and is non-conforming in size, at 0.62 acres. Minimum lot size in HS districts is 20-160 acres, depending on average slope.
- The private right-of-way for Beardsley Road transects the northeasterly portion of the property along Beardsley Creek.
- Average slope of the property is over 57%, with over three-fourths of the property having slope in excess of 50%. The limited area of minimal slope where access and residential construction are feasible are adjacent to the road right-of-way.
- The lot is heavily wooded.

The grant of the variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity (Variance Finding B, above):

- Properties in the vicinity are subject to the same property development standards as the Lipka property, when constructing or modifying a single-family residence. The proposed residence is of a reasonable size and comparable with other residences in the vicinity and zoning district, and the variance is not being granted to allow a larger residential footprint on the property. Therefore, the grant of the variance does not constitute a grant of special privileges.

Response to Appeal

Staff has provided three responses below to the appeal to substantiate why the issues listed in the appellant statement, which concern the property boundary, do not invalidate the ability of the Planning Commission to uphold the Zoning Administrator's decision to approve a Variance.

- A. *The survey information submitted by Mr. Lipka with the Variance application meets County site plan requirements necessary to review and approve a Variance / BSA.*

The applicant, John Lipka, submitted a sufficient property boundary survey, which was signed and stamped by a certified surveyor (Donald Swift) in conformance with application submittal requirements for variances. The appellant's plat (Alpha), disputing the validity of the Swift survey, does not establish a more credible or valid determination of property line location or right-of-way location in its present form. In addition, Conditions 10 and 11 of the approved variance and building site approval (Attachment C) address the need for proper determination of property boundary location prior to any construction permit issuance. Together, the conditions require existing (and new) survey monuments to be verified prior to final acceptance of the improvements by the County. New permanent survey monuments must be set pursuant to the State Land Surveyor's Act.

- B. *The means of determining the correct property boundary shall occur through the filing of a record of survey with the County Surveyor, as required under the recommended conditions of approval.*

Discrepancies between surveys may be rare, but they do happen, and more likely to occur in mountainous areas affected by geologic ground movement, or areas having old or sparse monuments used for surveying. Per discussions with the County Surveyor, a record of survey is not ordinarily required for the issuance of a building permit. However, if property corners need to be set, County Land Development and Engineering staff may require a corner record or a record of survey be filed with the County Recorder prior to construction. The County's Ordinance Code (Section C12-327) authorizes the preparation and submission for recording of a record of survey when a survey is performed to establish points or lines of ownership. These

circumstances exist with respect to the property in question.

As such, staff recommends that the Planning Commission add the following condition of approval requiring a record of survey prior to building permit issuance:

##. Prior to issuance of any construction permits, a record of survey shall be filed for and obtained from the County Surveyor.

If two different records of survey are filed with the County Surveyor showing conflicting property line boundaries or location of monuments, the County Surveyor may request that the two land surveyors review the surveys and come to agreement on the property lines. However, the land surveyors are not required to come to agreement. If there are two competing record of surveys recorded, the respective owners can resolve the discrepancies through the legal process.

C. *The appeal grounds submitted by the Appellant do not question the findings required to approve a Variance per 5.70.020 of the County Zoning Ordinance*

As substantiated in the Zoning Administrator's statement of findings, the Department believes that the property circumstances justifying the variance are substantial, and that the analysis of findings is sound. In addition, the Planning Department followed existing procedures and met all local and statutory requirements during the review process for this application. Therefore, there is no basis to deny the appeal based on the plat submitted by the Appellant.

Clarification of Allowance for Second Story Deck

The submitted plans show a second story balcony that could encroach into the setback based on its specific design. Subsection 4.20.110(A)(2) of the Zoning Ordinance allows encroachment of such balconies subject to limitations on distance, area and design (see Attachment G). Planning Staff has notified the applicant who has verbally confirmed his understanding that the final design of the balcony (to be shown on Building Permit plans) must conform to § 4.20.110(A)(2). Staff recommends the condition be added to ensure the final balcony design meet this standard:

##. The second-story balcony is subject to the limitations of § 4.20.110(A)(2). Building permit plans shall conform to these provisions, particularly the limitations on the height of safety railing.

BACKGROUND

In November 2015, following some preliminary discussion with Planning staff, applicant John Lipka and his engineer submitted an application for building site approval and variance to construct a two-story single-family residence on a presently undeveloped 0.62-acre lot in the Lake Canyon area of the Santa Cruz Mountains. The variance would seek relief from the required 20-foot front yard setback, as the lot's topography presented challenges to house

location and design.

Following two rounds of initial application review, the application was deemed “complete” on May 10, 2016. A public hearing to consider the project was scheduled for June 7.

In advance of the hearing, several neighbors expressed some concern regarding the project. In particular, the configuration and accessibility of the road during and after construction was a concern expressed by several Lake Canyon residents. Mr. Lipka and his engineer were able to address this concern to the satisfaction of Planning staff and Land Development Engineering staff, by detailing anticipated construction logistics.

The project was discussed at the noticed June 7 hearing. The project applicant made a compelling case that the two-story house would not be incompatible with the neighborhood, and the site’s topographic challenges were evident and significant. Several neighbors, including the appellants, spoke at the hearing. Zoning administrator Bill Shoe closed the hearing and granted the variance and building site approval.

On June 22, 2016, appellant Kenji Morita filed a timely appeal application. The appellant’s statement is included as Exhibit A.

(Zoning: HS) (Supervisory District: 1) (APN: 544-12-060)

STAFF REPORT REVIEW

Reviewed by: Manira Sandhir, Principal Planner

Approved by: Rob Eastwood, Planning Manager

ATTACHMENTS:

- [Attachment A: Appellant Statement](#) (PDF)
- [Attachment B: Approved Permit and Conditions](#) (PDF)
- [Attachment C: Statement of Variance Justification by Applicant](#) (PDF)
- [Attachment D: Boundary Survey, Swift Engineering](#) (PDF)
- [Attachment E: House Elevations](#) (PDF)
- [Attachment F: Air Photo](#) (PDF)
- [Attachment G: Balcony Provisions, Section 4.20.110\(A\)\(2\)](#) (PDF)

BOUNDARY AND TOPOGRAPHIC SURVEY

19400 BEARDSLEY RD., LOS GATOS CA 950030-9503

APN 544-12-061 (REV 09/2016)

ACCEPTED PK AS ANGLE IN CENTERLINE BEARDSLEY —
RD. AND PROPERTY LINE PER ALPHA SURVEYS R.O.S.
(SUBMITTED BUT UNRECORDED)

FD. GEARS (ON LINE)

BEARDSLEY RD.
115756

20' R.O.W.

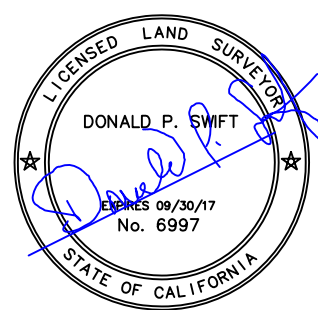
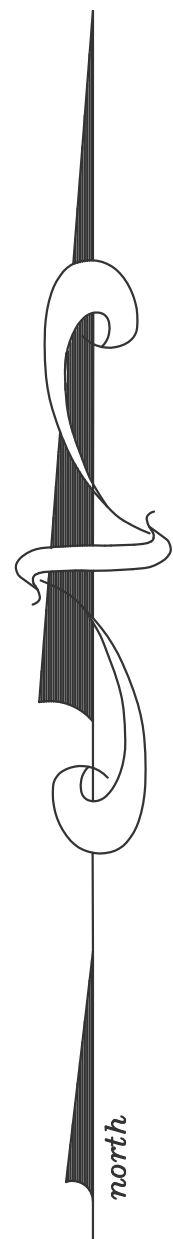
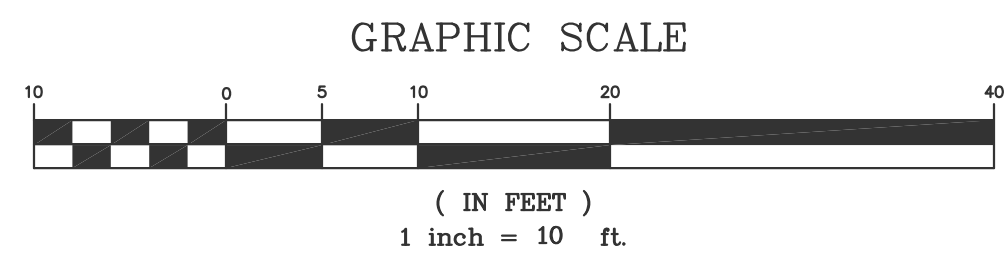
SWIFT ENGINEERING

CIVIL ENGINEERS +++ LAND SURVEYORS

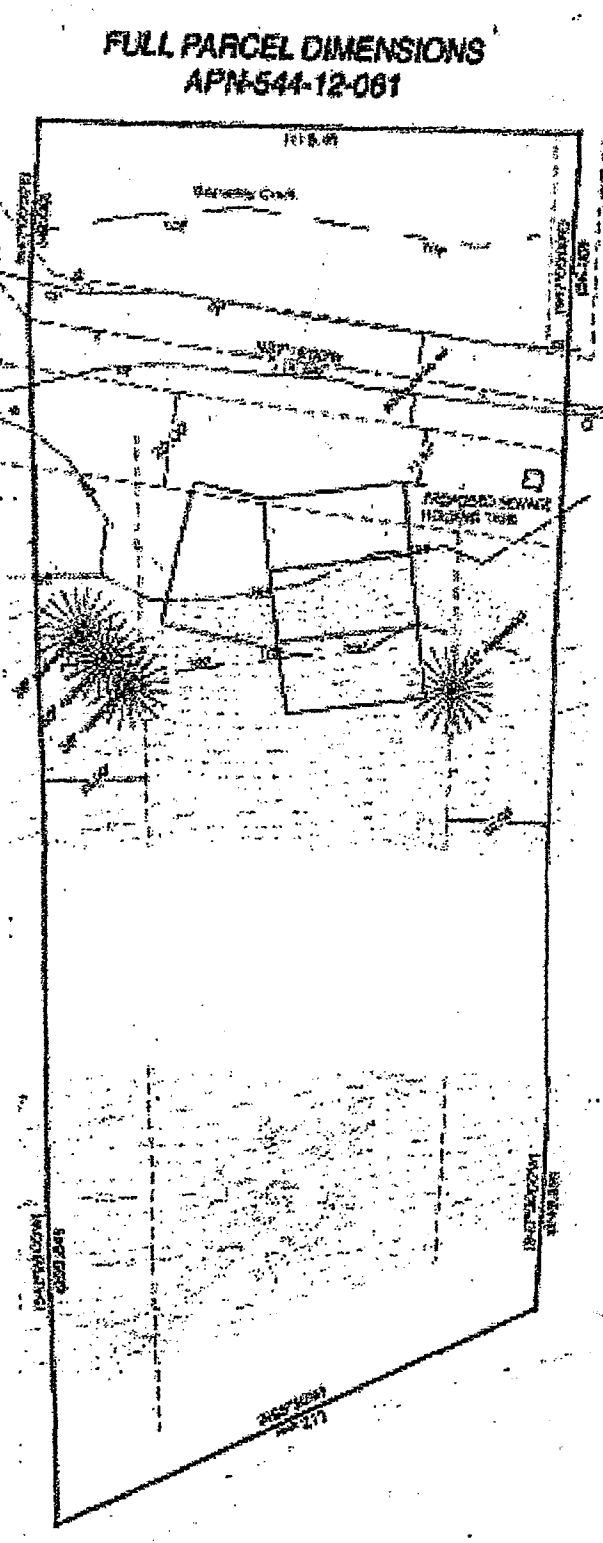
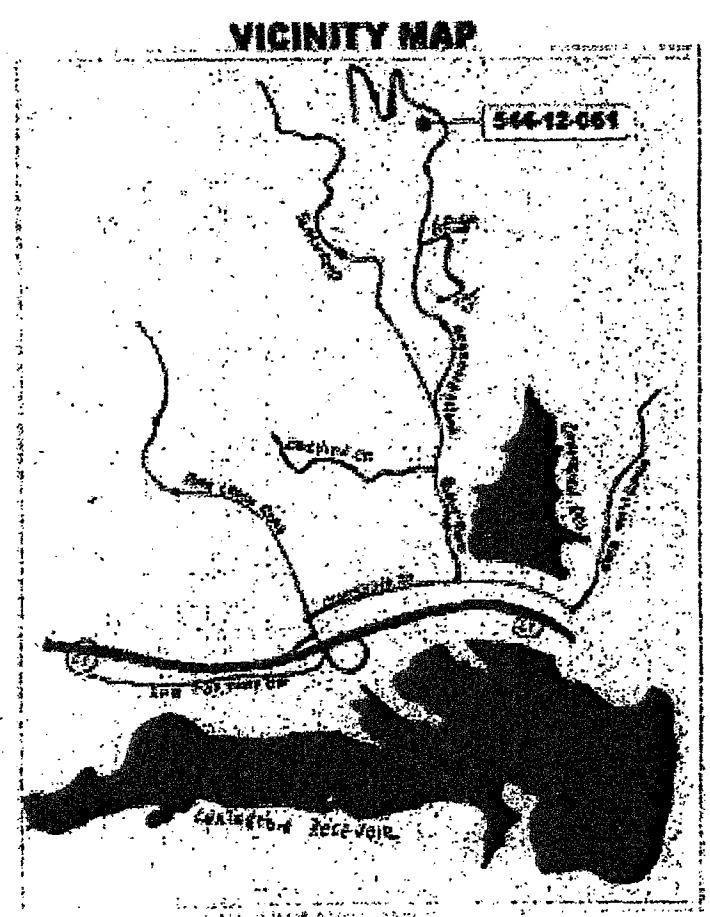
3520 CEDAR SPRINGS LN., MEADOW VISTA CA 95722

(530)878-6732, cell:(916)838-0185

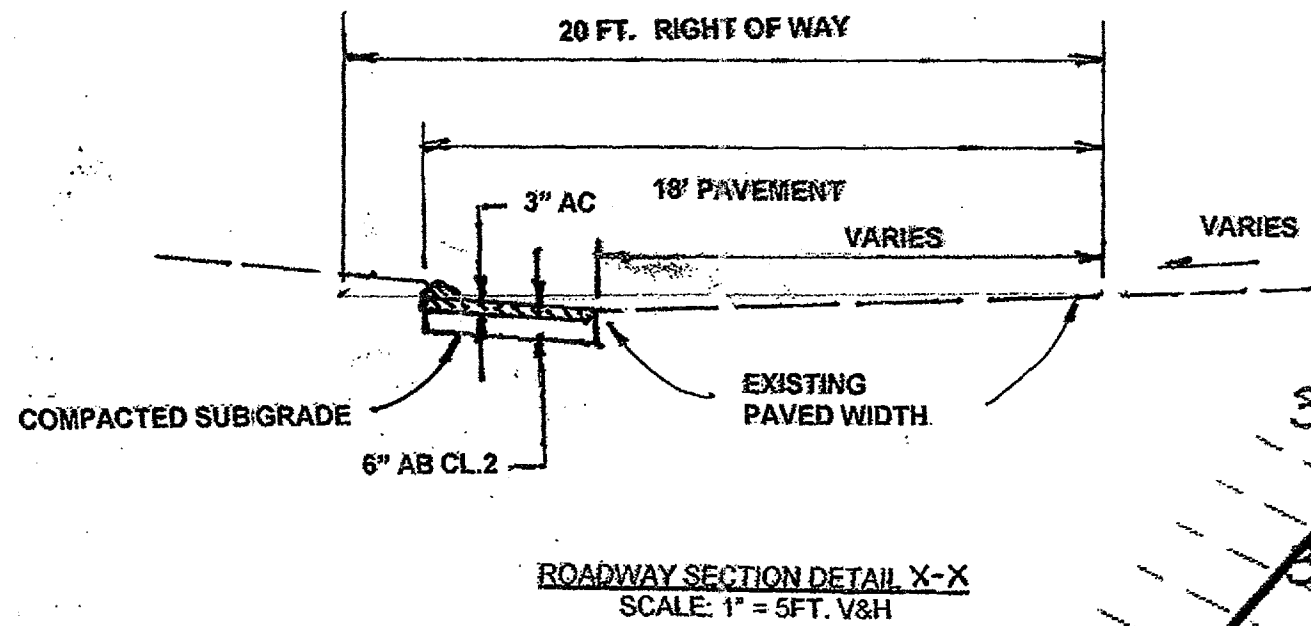
EMAIL: donswift@swiftengineering.net



AVERAGE GRADE CALCULATION					
STATION	LENGTH	GRADE	AREA	PERCENT	REMARKS
100+00	100	2.50	2500	100	EXISTING
100+10	10	2.40	240	10	EXISTING
100+20	10	2.30	230	10	EXISTING
100+30	10	2.20	220	10	EXISTING
100+40	10	2.10	210	10	EXISTING
100+50	10	2.00	200	10	EXISTING
100+60	10	1.90	190	10	EXISTING
100+70	10	1.80	180	10	EXISTING
100+80	10	1.70	170	10	EXISTING
100+90	10	1.60	160	10	EXISTING
101+00	100	1.50	1500	100	EXISTING
101+10	10	1.40	140	10	EXISTING
101+20	10	1.30	130	10	EXISTING
101+30	10	1.20	120	10	EXISTING
101+40	10	1.10	110	10	EXISTING
101+50	10	1.00	100	10	EXISTING
101+60	10	0.90	90	10	EXISTING
101+70	10	0.80	80	10	EXISTING
101+80	10	0.70	70	10	EXISTING
101+90	10	0.60	60	10	EXISTING
102+00	100	0.50	500	100	EXISTING
102+10	10	0.40	40	10	EXISTING
102+20	10	0.30	30	10	EXISTING
102+30	10	0.20	20	10	EXISTING
102+40	10	0.10	10	10	EXISTING
102+50	10	0.00	0	10	EXISTING
102+60	10	-0.10	-10	10	EXISTING
102+70	10	-0.20	-20	10	EXISTING
102+80	10	-0.30	-30	10	EXISTING
102+90	10	-0.40	-40	10	EXISTING
103+00	100	-0.50	-500	100	EXISTING
103+10	10	-0.60	-60	10	EXISTING
103+20	10	-0.70	-70	10	EXISTING
103+30	10	-0.80	-80	10	EXISTING
103+40	10	-0.90	-90	10	EXISTING
103+50	10	-1.00	-100	10	EXISTING
103+60	10	-1.10	-110	10	EXISTING
103+70	10	-1.20	-120	10	EXISTING
103+80	10	-1.30	-130	10	EXISTING
103+90	10	-1.40	-140	10	EXISTING
104+00	100	-1.50	-1500	100	EXISTING
104+10	10	-1.60	-160	10	EXISTING
104+20	10	-1.70	-170	10	EXISTING
104+30	10	-1.80	-180	10	EXISTING
104+40	10	-1.90	-190	10	EXISTING
104+50	10	-2.00	-200	10	EXISTING
104+60	10	-2.10	-210	10	EXISTING
104+70	10	-2.20	-220	10	EXISTING
104+80	10	-2.30	-230	10	EXISTING
104+90	10	-2.40	-240	10	EXISTING
105+00	100	-2.50	-2500	100	EXISTING
105+10	10	-2.60	-260	10	EXISTING
105+20	10	-2.70	-270	10	EXISTING
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105+90	10	-3.40	-340	10	EXISTING
106+00	100	-3.50	-3500	100	EXISTING
106+10	10	-3.60	-360	10	EXISTING
106+20	10	-3.70	-370	10	EXISTING
106+30	10	-3.80	-380	10	EXISTING
106+40	10	-3.90	-390	10	EXISTING
106+50	10	-4.00	-400	10	EXISTING
106+60	10	-4.10	-410	10	EXISTING
106+70	10	-4.20	-420	10	EXISTING
106+80	10	-4.30	-430	10	EXISTING
106+90	10	-4.40	-440	10	EXISTING
107+00	100	-4.50	-4500	100	EXISTING
107+10	10	-4.60	-460	10	EXISTING
107+20	10	-4.70	-470	10	EXISTING
107+30	10	-4.80	-480	10	EXISTING
107+40	10	-4.90	-490	10	EXISTING
107+50	10	-5.00	-500	10	EXISTING
107+60	10	-5.10	-510	10	EXISTING
107+70	10	-5.20	-520	10	EXISTING
107+80	10	-5.30	-530	10	EXISTING
107+90	10	-5.40	-540	10	EXISTING
108+00	100	-5.50	-5500	100	EXISTING
108+10	10	-5.60	-560	10	EXISTING
108+20	10	-5.70	-570	10	EXISTING
108+30	10	-5.80	-580	10	EXISTING
108+40	10	-5.90	-590	10	EXISTING
108+50	10	-6.00	-600	10	EXISTING
108+60	10	-6.10	-610	10	EXISTING
108+70	10	-6.20	-620	10	EXISTING
108+80	10	-6.30	-630	10	EXISTING
108+90	10	-6.40	-640	10	EXISTING
109+00	100	-6.50	-6500	100	EXISTING
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109+20	10	-6.70	-670	10	EXISTING
109+30	10	-6.80	-680	10	EXISTING
109+40	10	-6.90	-690	10	EXISTING
109+50	10	-7.00	-700	10	EXISTING
109+60	10	-7.10	-710	10	EXISTING
109+70	10	-7.20	-720	10	EXISTING
109+80	10	-7.30	-730	10	EXISTING
109+90	10	-7.40	-740	10	EXISTING
110+00	100	-7.50	-7500	100	EXISTING
110+10	10	-7.60	-760	10	EXISTING
110+20	10	-7.70	-770	10	EXISTING
110+30	10	-7.80	-780	10	EXISTING
110+40	10	-7.90	-790	10	EXISTING
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110+60	10	-8.10	-810	10	EXISTING
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110+80	10	-8.30	-830	10	EXISTING
110+90	10	-8.40	-840	10	EXISTING
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116+90	10	-14.40	-1440	10	EXISTING
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121+40	10	-18.90	-1890	10	EXISTING
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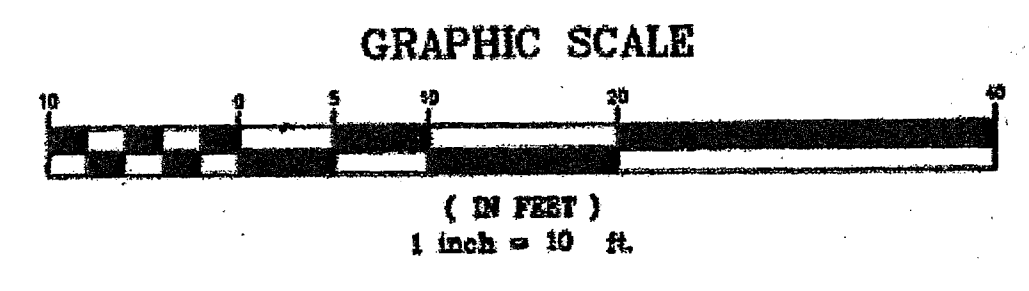


IMPROVEMENT	EARTHWORK QUANTITY (CUBIC YARDS)		MAXIMUM DEPTH (FEET)	
	CUT	FILL	CUT	FILL
Driveway	10yds	10yds	12"	12"
Building Pad	140yds	140yds	8'	8'
Landscaping	none			
Other Improvements	none			
TOTAL	150yds	150yds		



HARD SURFACE PERMEABILITY		
AREA IN QUESTION	SOFT PERMEABLE	
House Roof	1176	Yes
Garage Roof-rear	220	Yes
Garage Roof-front	252	No
Walkway	160	Yes
Driveway	240	Yes

IMPORTANT NOTE REGARDING ROOF PERMEABILITY:
This is the first "earth-roof" structure in Santa Clara County. It is a steel and cement structure, intended to be covered over with natural earth and to blend in with the natural surroundings. The rooftop of this structure should be considered fully permeable. More information about this type of construction can be found at www.terra-dome.com



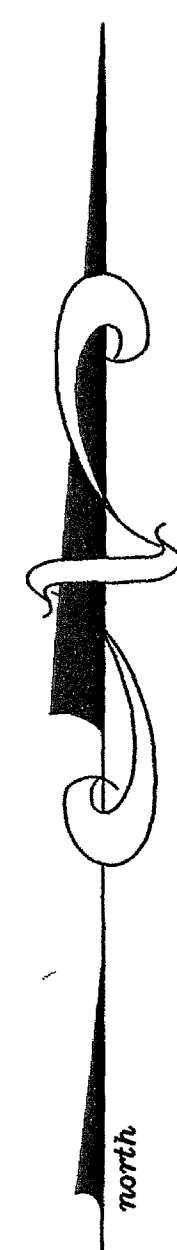
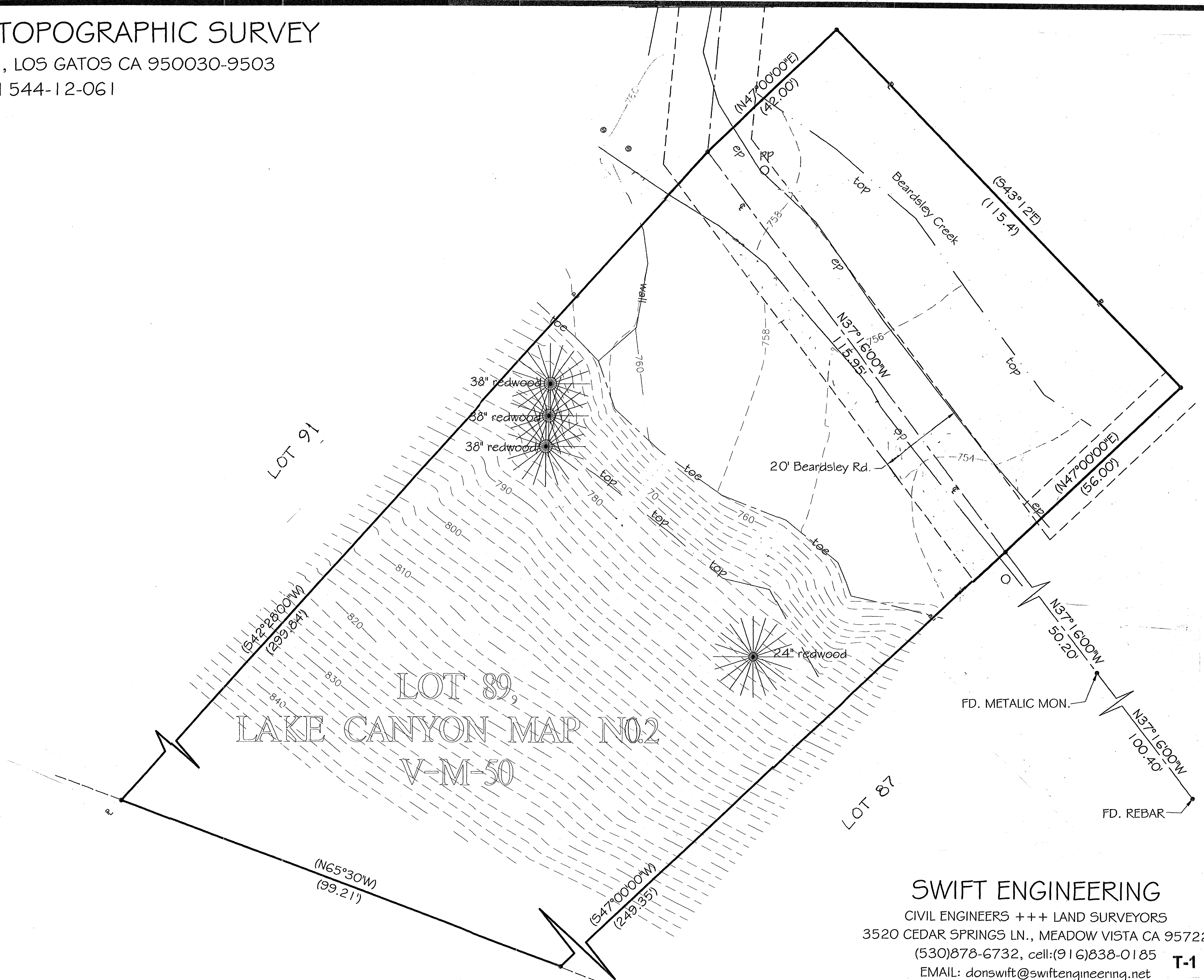
REV.	DESCRIPTION	DATE

AVERAGE SLOPE CALCULATION					
CUT/CONTOUR	LENGTH	CONTOUR	LENGTH	CUT/CONTOUR	LENGTH
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742	55	751	25	750	275
741	55	750	25	749	275
740	55	749	25	748	275
739	55	748	25	747	275
738	55	747	25	746	275
737	55	746	25	745	275
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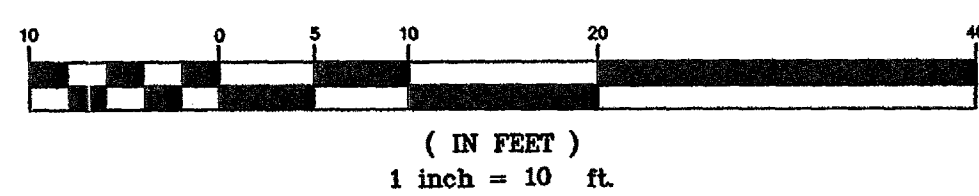
BOUNDARY AND TOPOGRAPHIC SURVEY

19400 BEARDSLEY RD., LOS GATOS CA 950030-9503

APN 544-12-061



GRAPHIC SCALE



SWIFT ENGINEERING

CIVIL ENGINEERS +++ LAND SURVEYORS
3520 CEDAR SPRINGS LN., MEADOW VISTA CA 95722

(530)878-6732, cell:(916)838-0185

EMAIL: donswift@swiftengineering.net

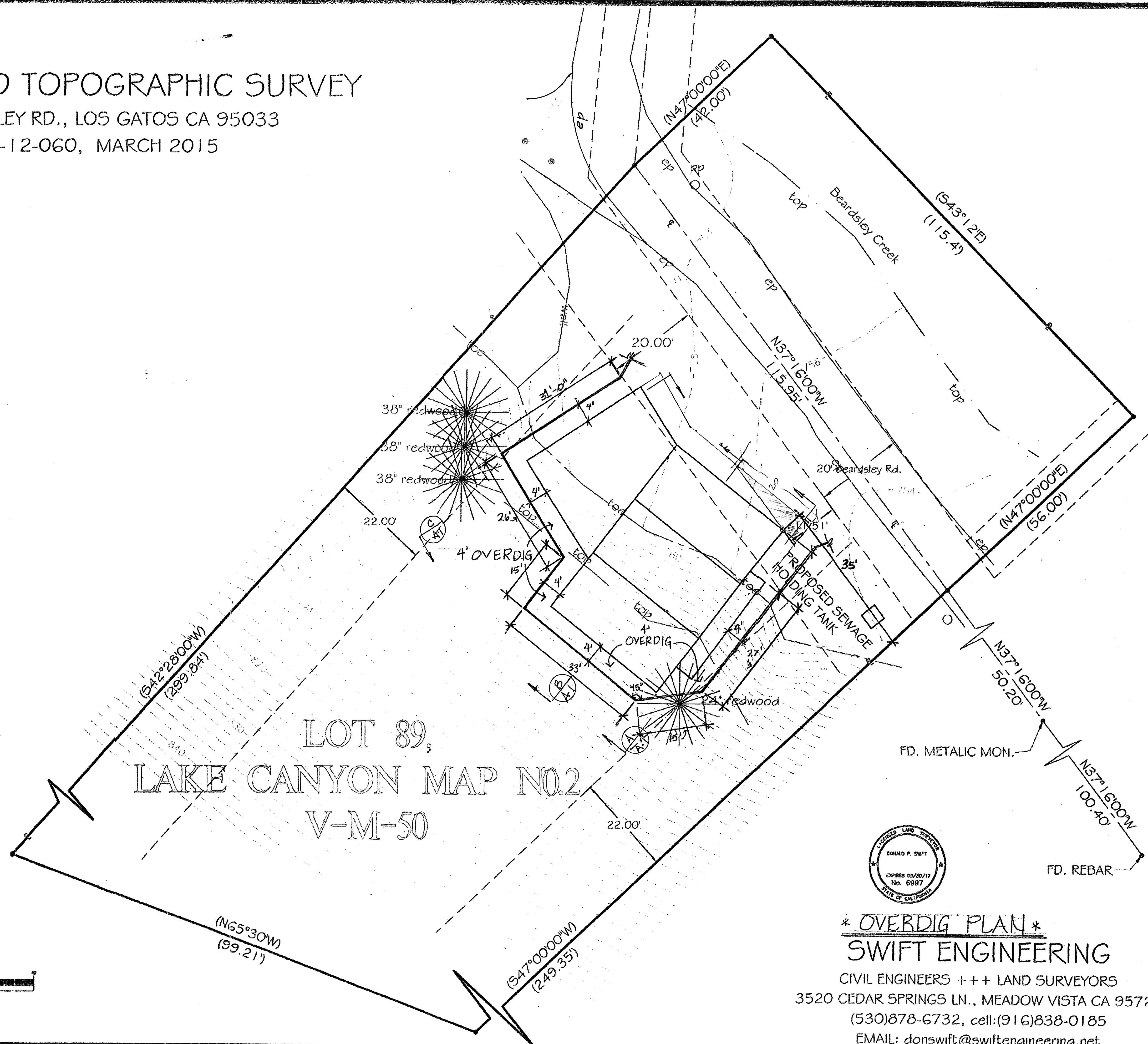
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OF 6 SHEETS

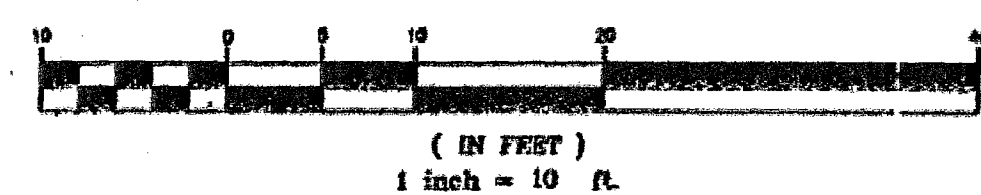
BOUNDARY AND TOPOGRAPHIC SURVEY

19400 BEARDSLEY RD., LOS GATOS CA 95033

APN 544-12-060, MARCH 2015



GRAPHIC SCALE



(IN FEET)
1 inch = 10 ft.

* OVERDIG PLAN *

SWIFT ENGINEERING

CIVIL ENGINEERS +++ LAND SURVEYORS
3520 CEDAR SPRINGS LN., MEADOW VISTA CA 95722

(530)878-6732, cell:(916)838-0185

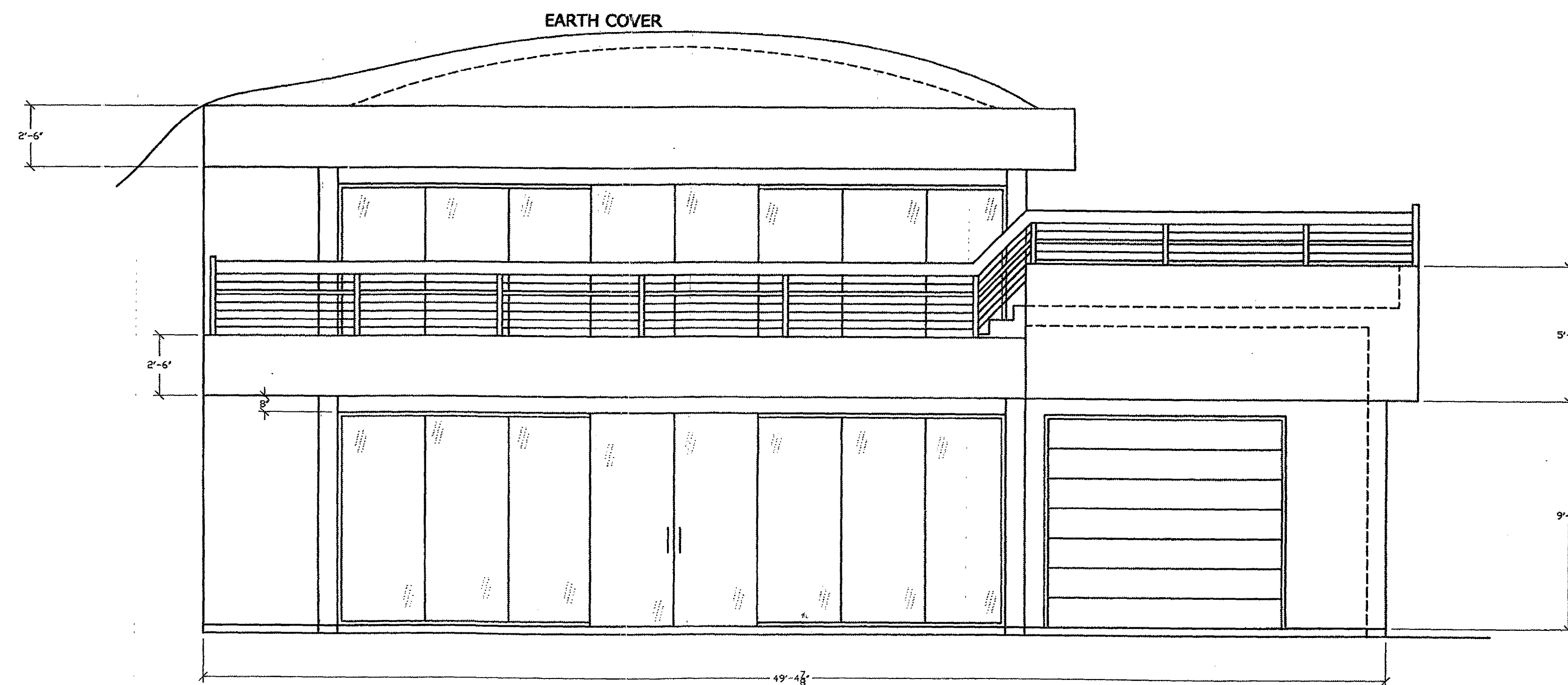
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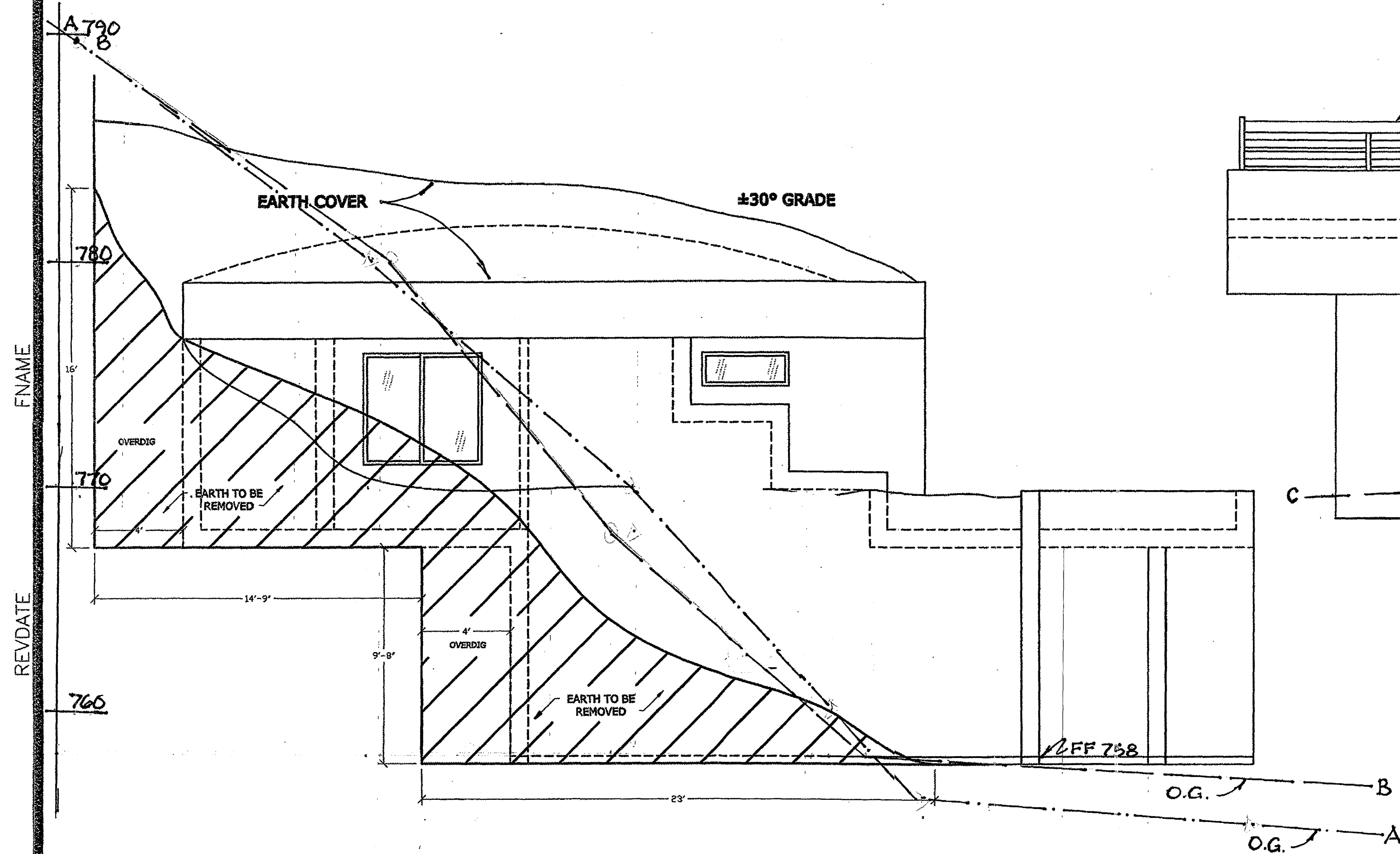
FIG SHEETS

EXCAVATION PLAN

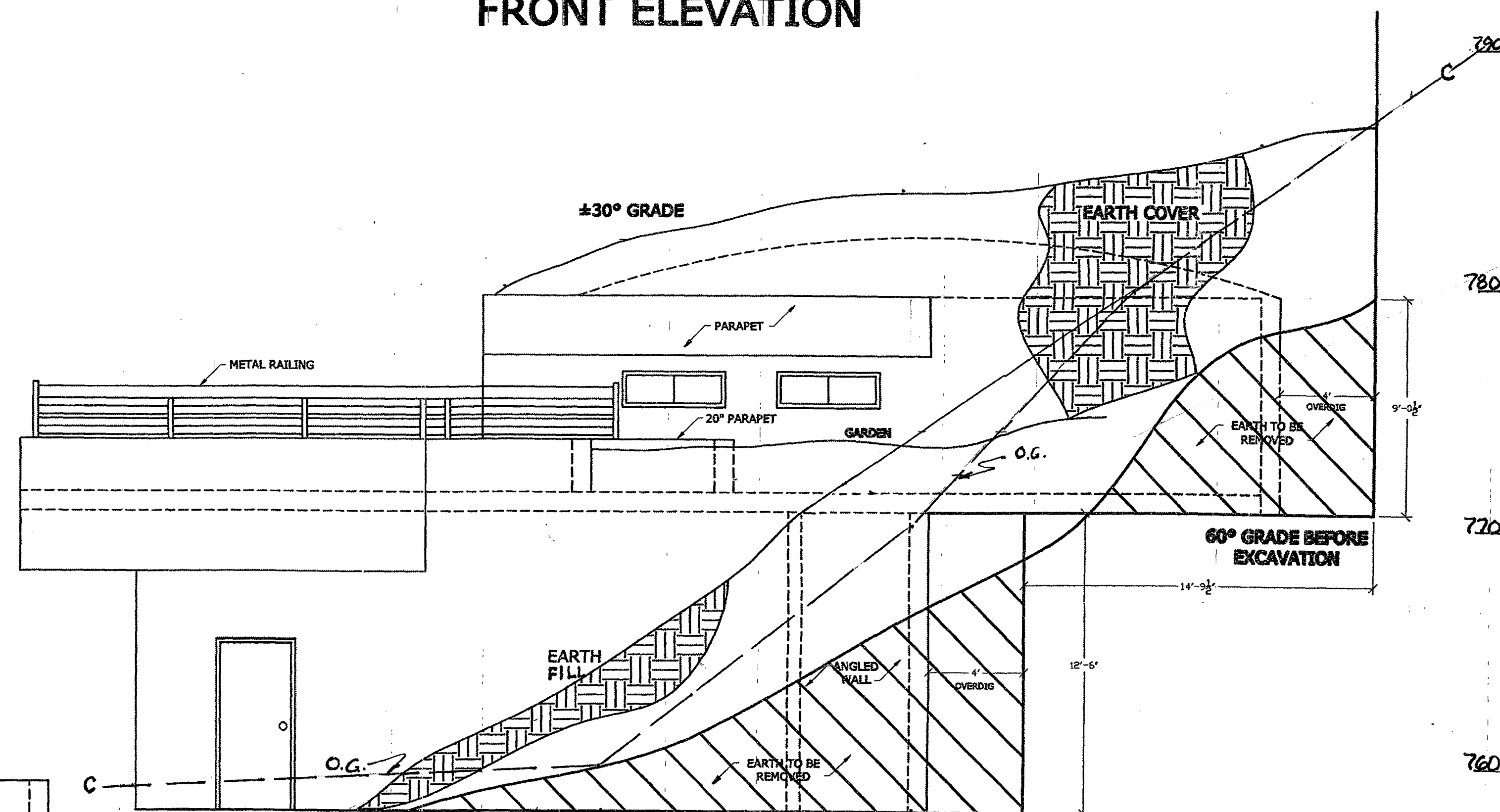
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SCALE = 1/4" = 1'



FRONT ELEVATION



LEFT ELEVATION



RIGHT ELEVATION

General Notes

CONTACTS:
PHONE:
CELL:

REVISIONS

No.	Revision/Issue	Date

Firm Name and Address

TERRA-DOME CORPORATION

8908 S. SHROUT RD.
GRAIN VALLEY, MO 64029
PHONE: (816) 229-6000

Project Name and Address

LIPKA RESIDENCE

Project

Date 09-04-2015

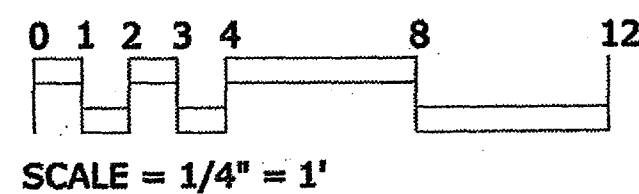
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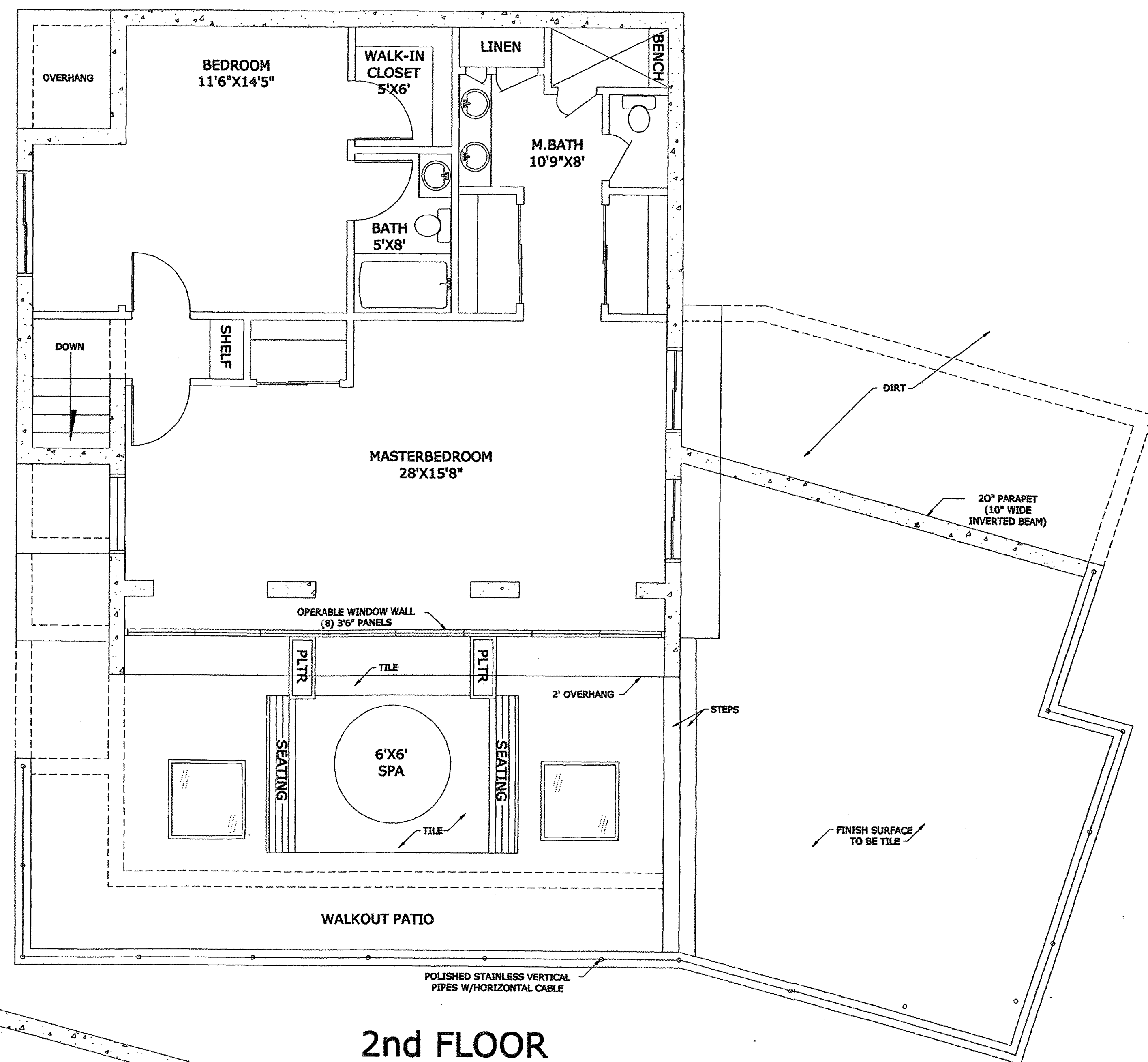
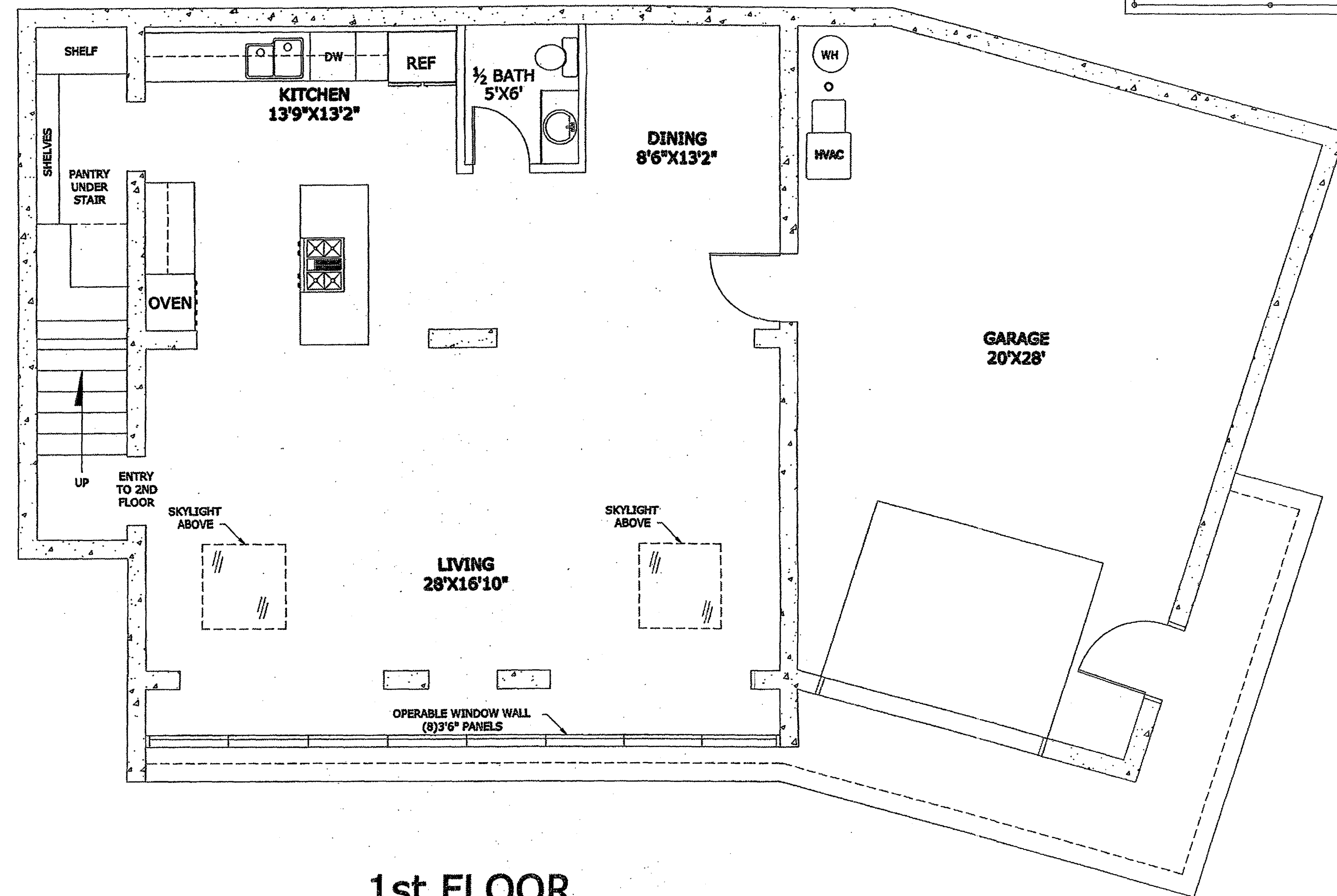
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OF 6 SHEETS

FLOOR PLAN



GENERAL NOTES: FLOORPLAN
 1. ALL DIMENSIONS AND CONDITIONS ARE APPROXIMATE. IT IS CONTRACTOR'S RESPONSIBILITY TO FIELD VERIFY ALL DIMENSIONS AND CONDITIONS GIVEN ON THIS PLAN.
 2. FOR DOOR & WINDOW TYPES CONSULT WITH HOME OWNER.



General Notes

CONTACTS:
 PHONE:
 CELL:

REVISIONS

No.	Revision/Issue	Date
-----	----------------	------

Firm Name and Address
TERRA-DOME CORPORATION
 8908 S. SHROUT RD.
 GRAIN VALLEY, MO 64029
 PHONE: (816) 229-6000

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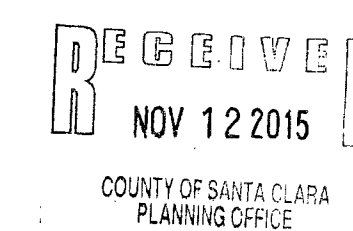
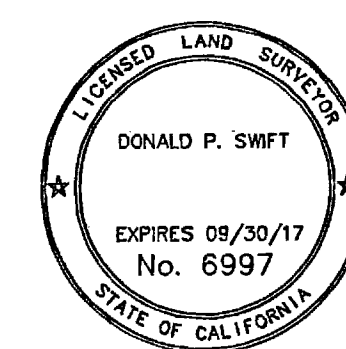
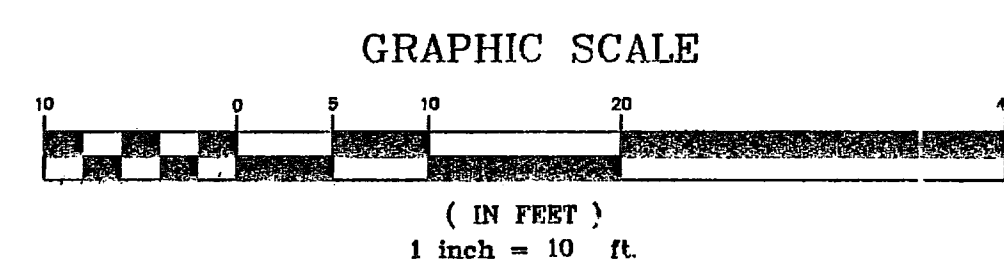
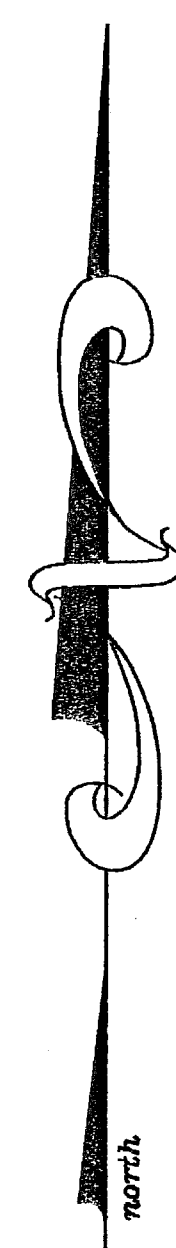
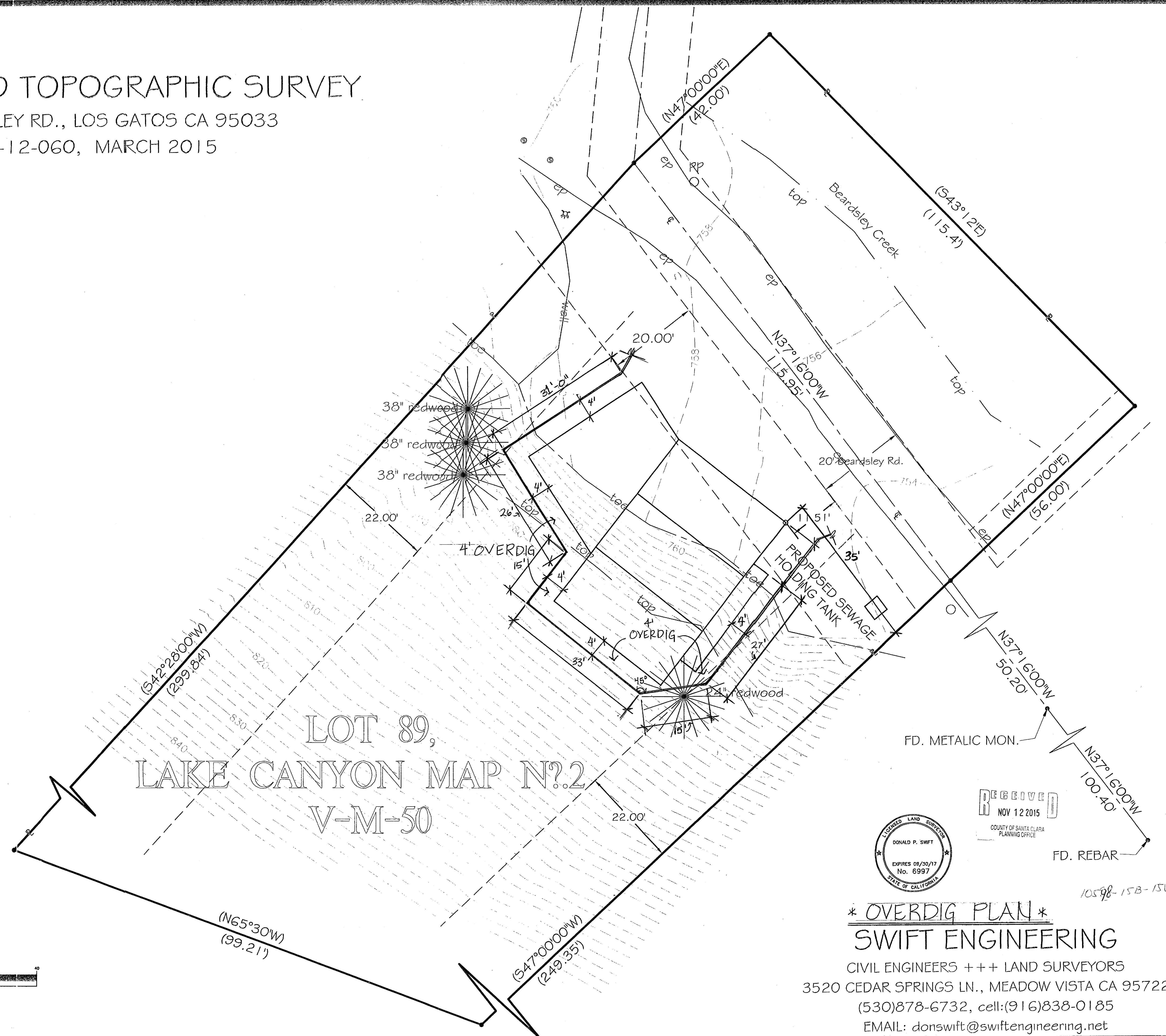
Project
 Date: 09-04-2015
 Scale: 1/4" = 1'-0"

Sheet
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 OF 6 SHEETS

BOUNDARY AND TOPOGRAPHIC SURVEY

19400 BEARDSLEY RD., LOS GATOS CA 95033

APN 544-12-060, MARCH 2015

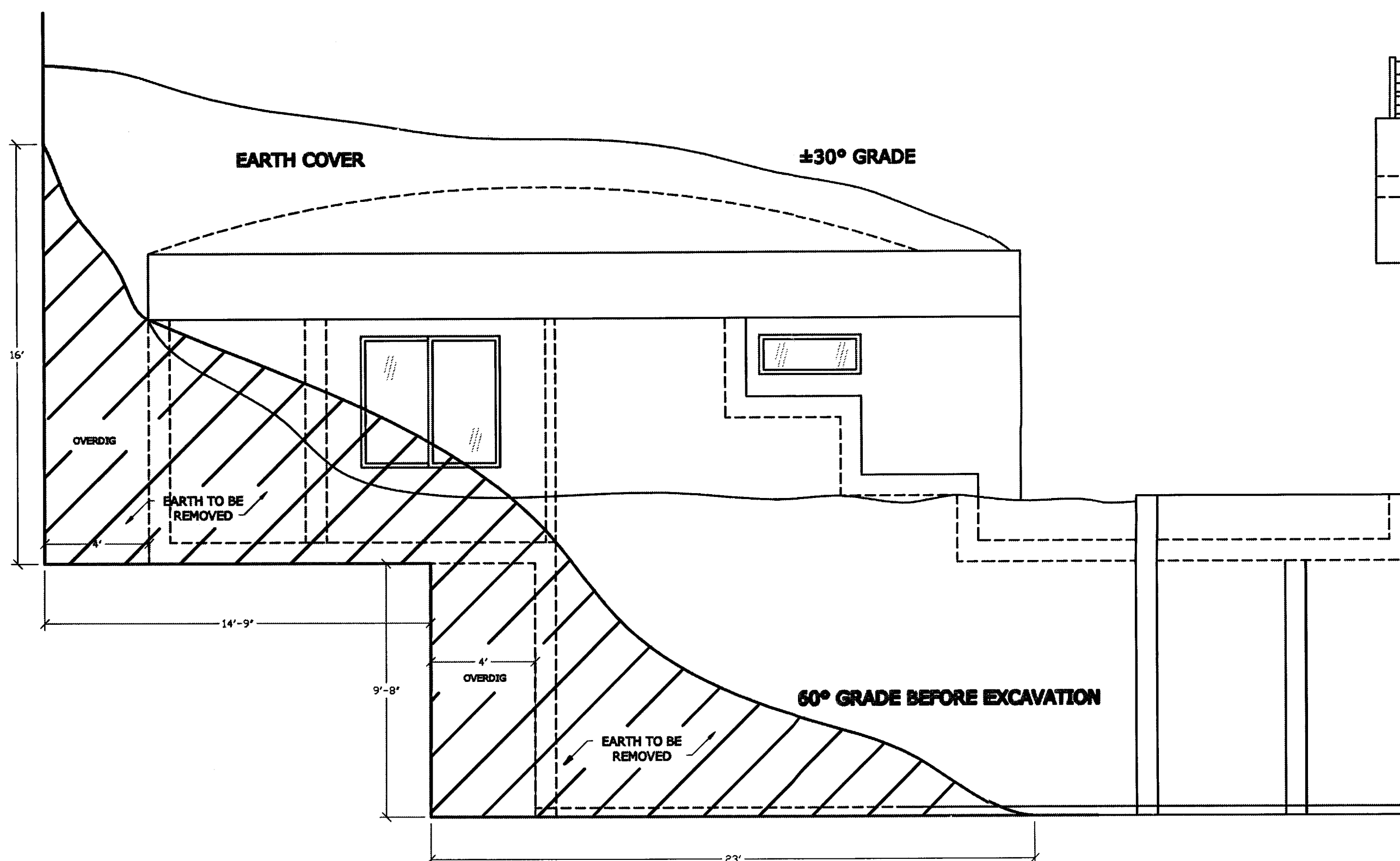
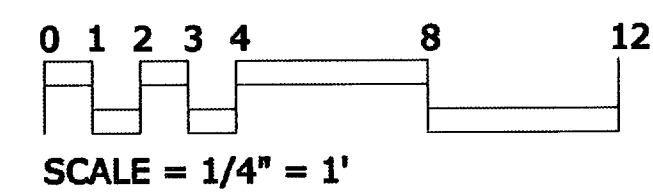


* OVERDIG PLAN *
SWIFT ENGINEERING

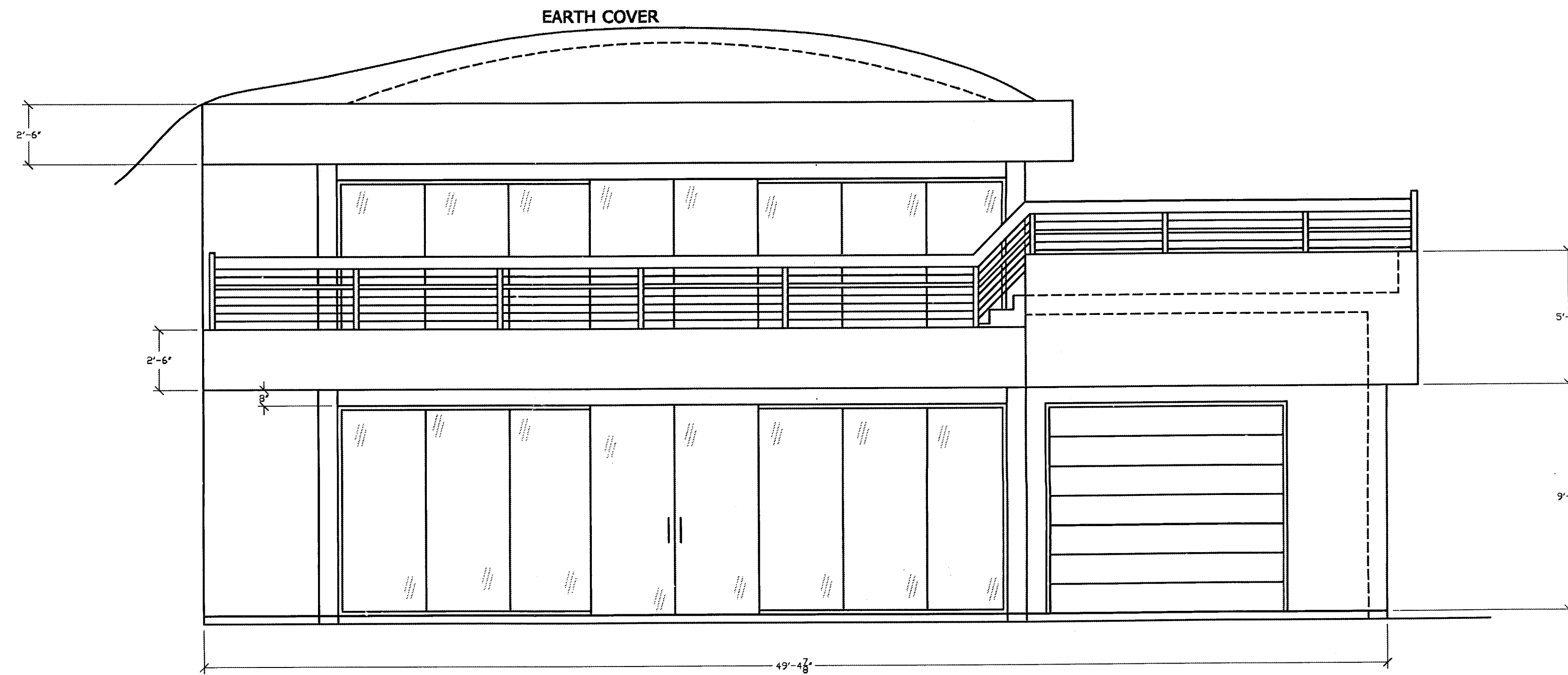
CIVIL ENGINEERS +++ LAND SURVEYORS
3520 CEDAR SPRINGS LN., MEADOW VISTA CA 95722
(530)878-6732, cell:(916)838-0185
EMAIL: donswift@swiftengineering.net

USER
REVDATE
FNAME

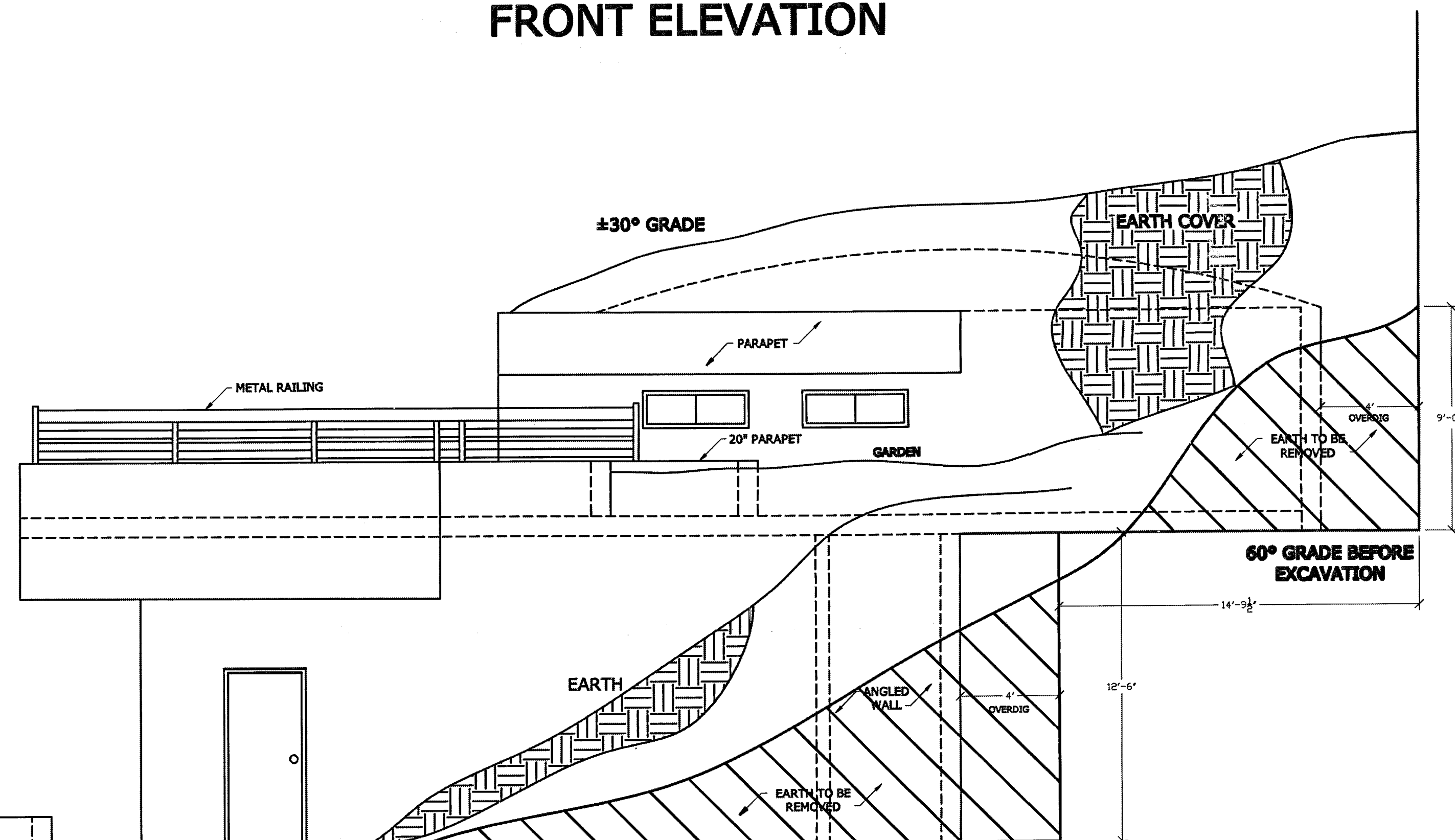
EXCAVATION PLAN



LEFT ELEVATION



FRONT ELEVATION



RIGHT ELEVATION

General Notes

CONTACTS:
PHONE:
CELL:

REVISIONS

No.	Revision/Issue	Date
-----	----------------	------

Firm Name and Address
TERRA-DOME CORPORATION
8908 S. SHROUT RD.
GRAIN VALLEY, MO 64029
PHONE: (816) 229-6000

Project Name and Address
LIPKA RESIDENCE

Project
Date **09-04-2015**
Scale **1/4"=1'-0"**

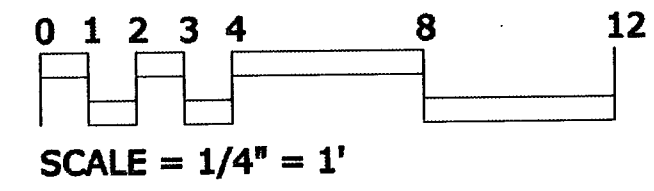
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FNAME

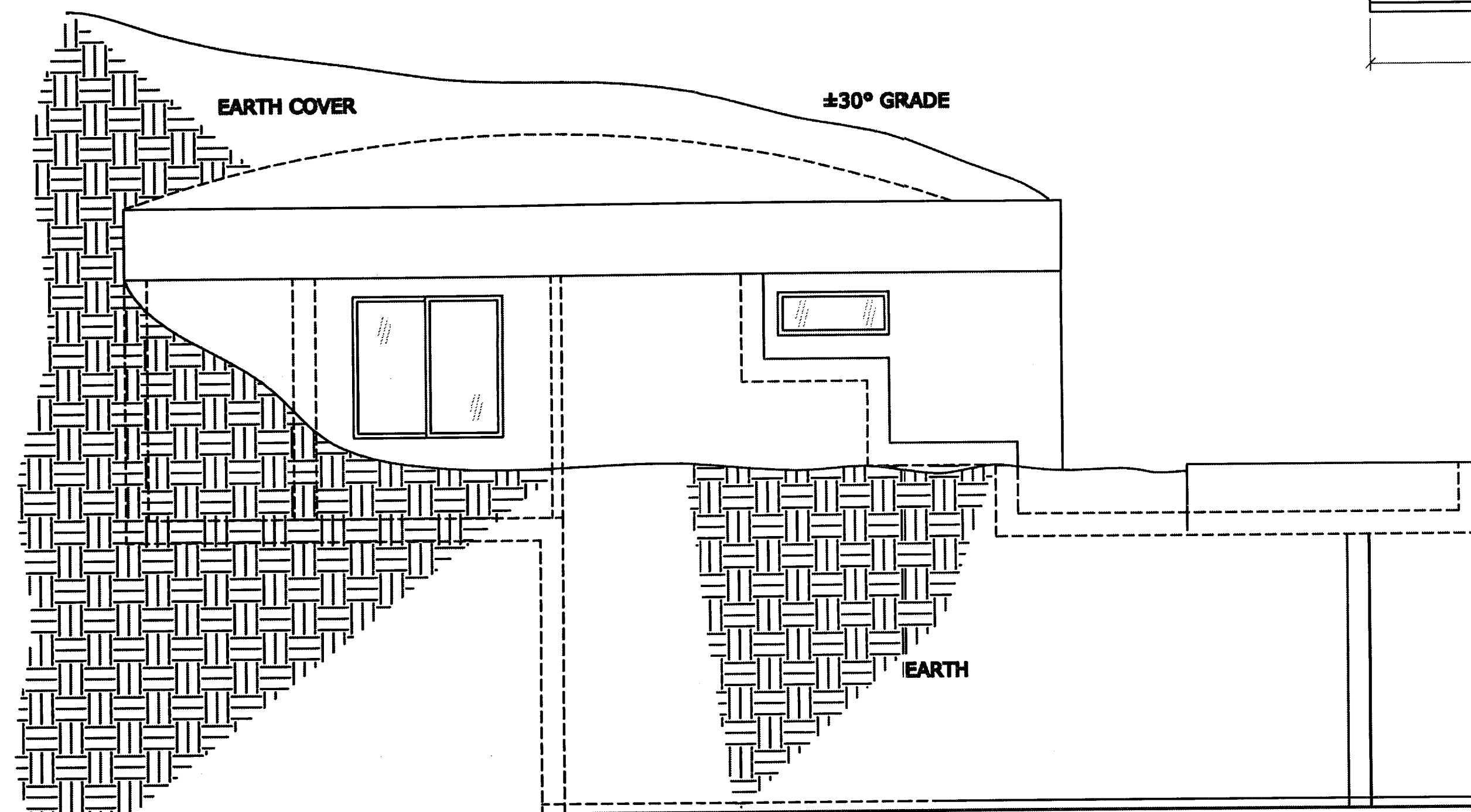
REVDATE

USER

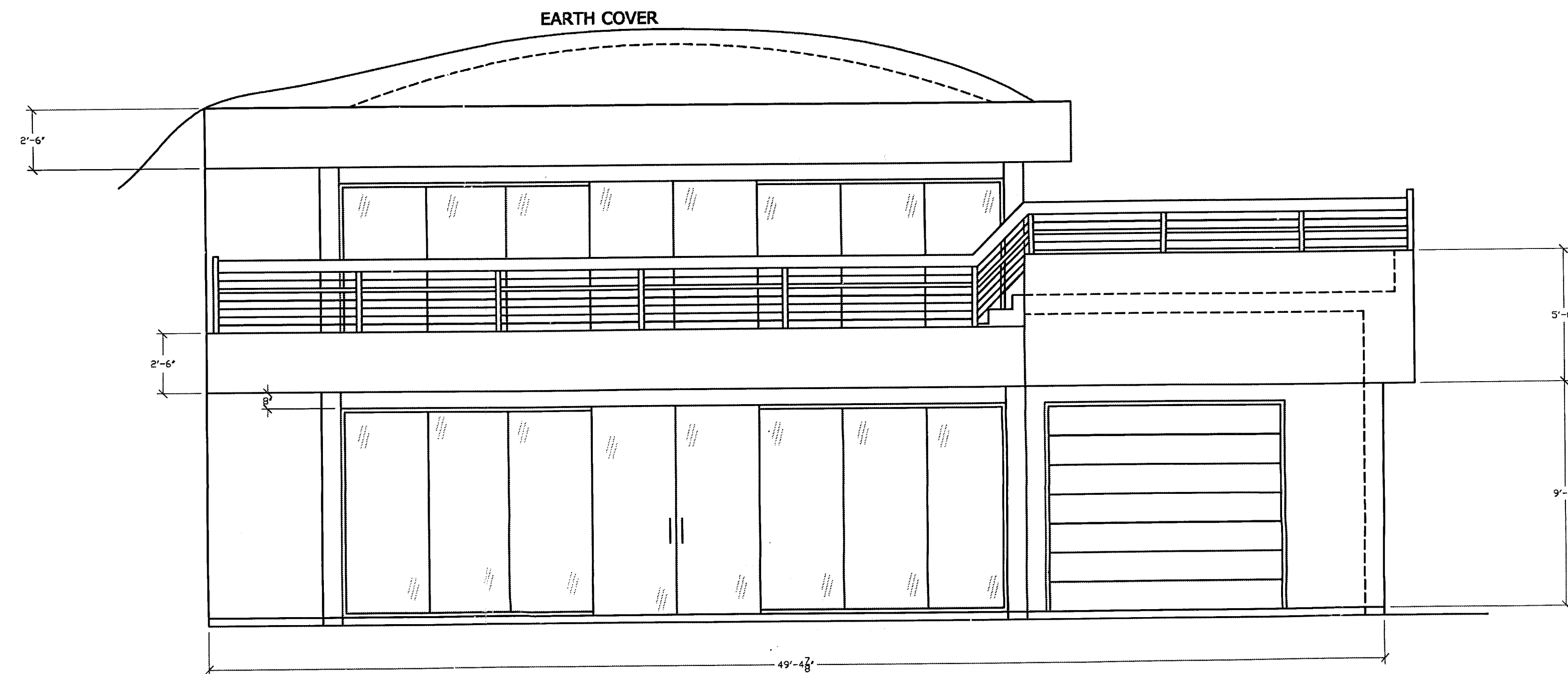
ELEVATION PLAN



GENERAL NOTES: ELEVATIONS
1. ALL WINDOW OPENINGS MUST COMPLY WITH SEC. 1707 OF THE UNIFORM BUILDING CODE.
2. ALL EXTERIOR DOORS ARE SOLID CORE WITH DOUBE GLAZE WINDOW-TEMPERED GLASS.



LEFT ELEVATION



FRONT ELEVATION

NOTE:
REFER TO DIMENSION
PLAN FOR LOCATION
OF DOORS & WINDOWS

General Notes

CONTACTS:
PHONE:
CELL:

REVISIONS

No.	Revision/Issue	Date

Firm Name and Address

**TERRA-DOME
CORPORATION**

8908 S. SHROUT RD.
GRAIN VALLEY, MO 64029
PHONE: (816) 229-6000

Project Name and Address

**LIPKA
RESIDENCE**

Project

Date 09-04-2015

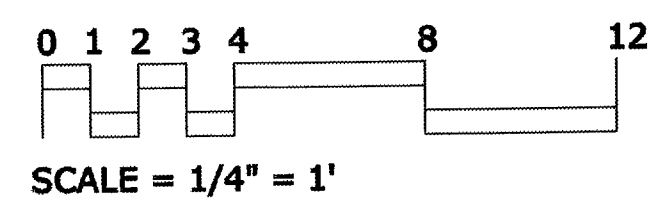
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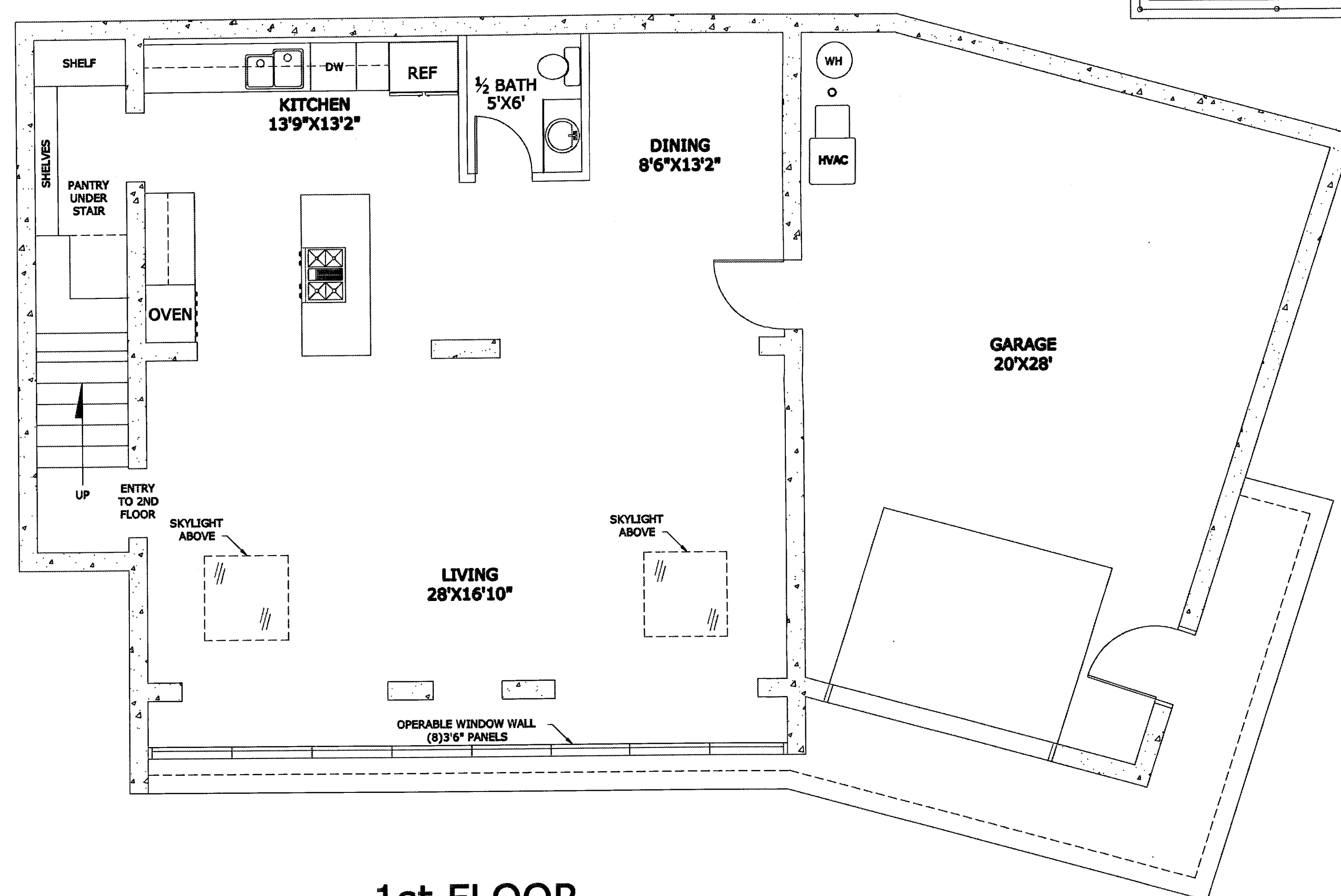
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USER REVDATE ENAME

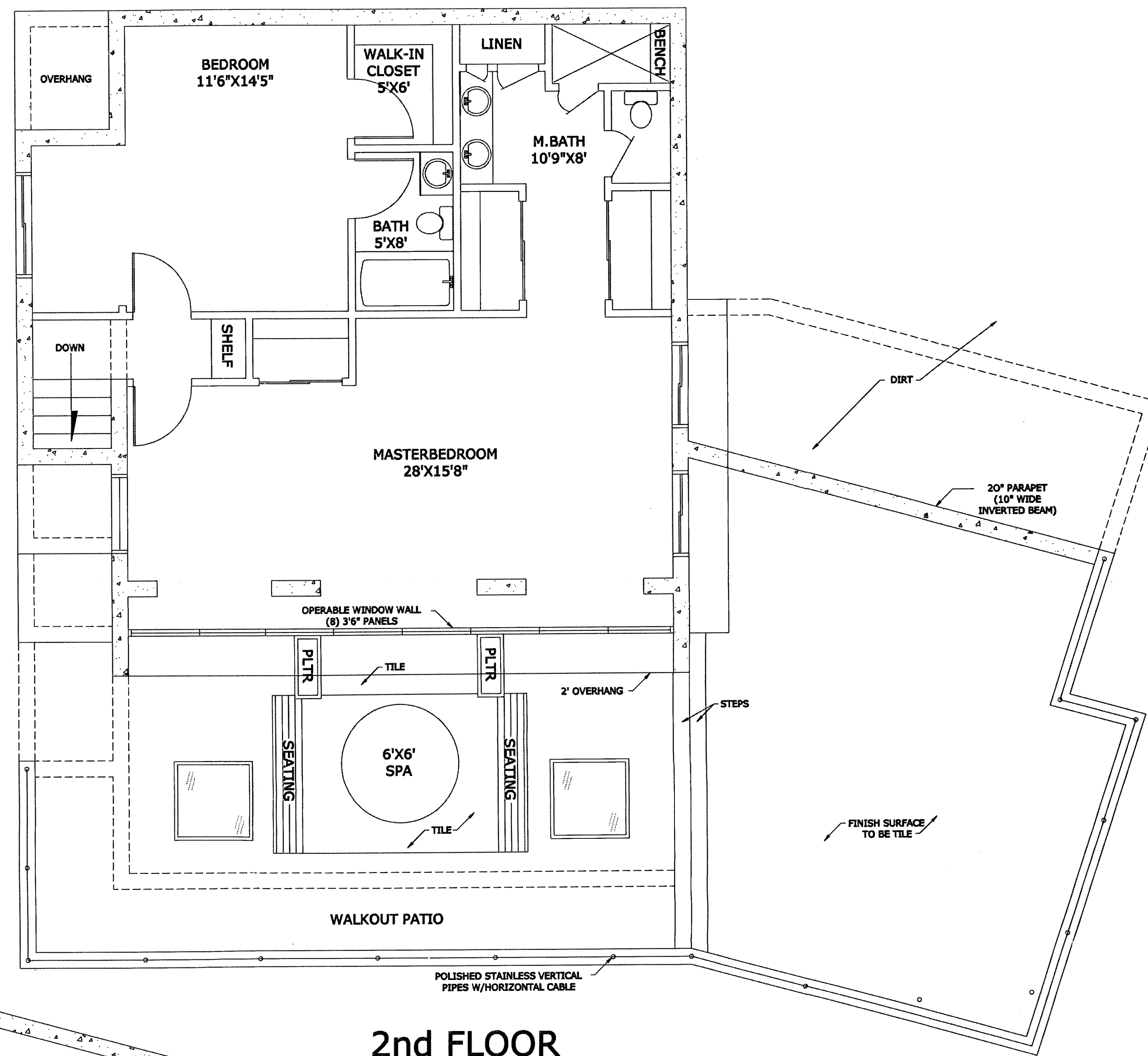
FLOOR PLAN



GENERAL NOTES: FLOORPLAN
1. ALL DIMENSIONS AND CONDITIONS ARE APPROXIMATE. IT IS CONTRACTOR'S RESPONSIBILITY TO FIELD VERIFY ALL DIMENSIONS AND CONDITIONS GIVEN ON THIS PLAN.
2. FOR DOOR & WINDOW TYPES CONSULT WITH HOME OWNER.



1st FLOOR



2nd FLOOR

General Notes

CONTACTS:
PHONE:
CELL:

REVISIONS

No.	Revision/Issue	Date

Firm Name and Address
TERRA-DOME CORPORATION
8908 S. SHROUT RD.
GRAIN VALLEY, MO 64029
PHONE: (816) 229-6000

Project Name and Address
LIPKA RESIDENCE

Project
Date **09-04-2015**
Scale **1/4"=1'-0"**

Sheet
A2

Attachment E

Applicant's Variance Statement of Justification

Statement of Circumstances/Justification For Variance Application

John Lipka

19388 Beardsley Road

Los Gatos, CA 95033

APN#544-12-061

Item #1

The project is a completed, solid concrete single family home in the Lake Canyon community that currently has an approved variance of 7ft on the Northeast corner of the foundation. The property has a ROW, which bisects the property. Prior to construction, no survey work to ascertain the location of the center of the ROW easement was requested by the County of Santa Clara and none was available from the easement holder, Lake Canyon Mutual Water Company, as they had not surveyed the road since the formulation of the original subdivision map in 1928. As a result, throughout the site approval and planning stages, the center of the existing pavement was used, and approved by the County Surveyor at that time, Bill Slepnikoff. Unfortunately, Bill has passed away and is no longer available to substantiate his position.

This lack of clarity on the exact location of the access easement is a serious problem for the entire Lake Canyon Community. Within 300ft of my property, there are four different surveys that disagree as to the exact location of the easement, and even the original 1928 subdivision map has large inaccuracies. Subdivision lot dimensions do not "close" when using this recorded information. Dozens of other incongruities exist up and down the 55 home community. The Lake Canyon Mutual Water Company is aware of the problem, but has not, as of yet, allocated the funding necessary to resurvey their easement. For these reasons, Santa Clara County approved my site plan using the center of the existing pavement location, and it was considered adequate at that time. Based upon this approval, construction was accomplished using the centerline of the existing pavement as a reference point to determine the location of the easement. Using the centerline as a reference point, the structure is slightly more than 7ft from the edge of the easement, in compliance with the approved 7ft front setback.

Using this approach, the foundation of this structure was excavated and the contractor laid out spikes and strings at the appropriate locations. The county was then called for inspection, and the layout of the foundation and the setback measurements were approved and signed off on the permit card. We moved forward and began building based upon the approval of the site plan and the approval of the foundation position and setback approvals.

During the construction project, Lake Canyon Mutual Water Company made the decision to install 1000ft of 6" pipeline, a replacement of the existing 2" water line that served this community. The road was dug up, pipe was installed, and the entire road was repaved and widened by as much as two feet in some locations. They did not commemorate the location of any existing survey monuments in this process as required by law. At the end

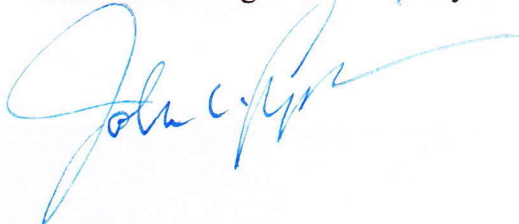
of construction, when County required road improvement work was to commence, I contacted the water company, who manages the private road in this community, to insure that the location where we intended to do our roadwork met with their approval. The new supervisors of the board of the water company was informed at this time that the company had paved over the existing pins which previously showed the middle of the road to be at the center of the previously existing pavement, as we had used for our project. Lake Canyon Mutual Water Company chose to have "advisory" survey work accomplished and installed pins in locations that were never there prior to the completion of my project as an answer to my complaints regarding the failure to commemorate the monuments in their pipeline project. This new survey work moved the actual center of the ROW easement 10" closer to the completed structure, putting the structure 6.1 feet from the easement rather than 7 feet from the easement as previously approved. This survey is not recorded and was merely extrapolated from one of the neighbor surveys because he offered to pay for it. No pin existed at the time of construction. The same neighbor then sent a letter through his attorney to the planning department suggesting that he felt my house placement was incorrect based upon this new information. No accurate measurements proving his theory were included in this letter, however Santa Clara County Planning Department has put the burden of disproving his claim on me. After considerable effort on the part of my personal surveyor, and due to the roadwork done by the water company and subsequent paving work they accomplished without the required commemoration of monuments, we were unable to submit qualifiable documentation to disprove this theory, although we, (myself and my surveyor) feel confident that the survey information supplied by the new survey is incorrect. We base this assumption on the reality that when using the currently surveyed points extrapolated beyond my property, a concrete bridge which has been there since 1937 no longer fits within the easement.

Despite the fact that I built my residence and improvements according to the approved site plan, I removed all improvements from the new supposed easement at great cost. However, the solid concrete residence cannot be relocated as it has been fully constructed, and I am now requesting a variance to resolve this disputed 10" deficit.

The original site plan has been adhered to, but this variance adjusts it to the new information presented after the fact. No miscalculation of the property line location has occurred, as the information presented did not exist at the time of site plan approval, at setback inspection and approval or at completion of construction.

To resolve these issues, I am requesting a modification of the original Northeast corner of my foundation's variance from 7ft to 6ft to legally compensate for the discrepancy.

Documentation for all statements made in this Statement of Justification are available or attainable through the file history.

A handwritten signature in blue ink, appearing to read "John C. [unclear]", is written over the bottom of the text.

Attachment F

Setback Survey prepared by Swift Engineering

LOT 91,
LAKE CANYON 2
V-M-50



FD. PK NAIL & TAG PER 902/M/9

20' ROAD
EASEMENT
V-M-50

CENTERLINE BASED ON FD.
MONUMENTS PER 902/M/9

THIS DOCUMENT SHOWS THE RELATIONSHIP BETWEEN
THE NEW RESIDENCE AT 19388 BEARDSLEY ROAD, LOS
GATOS, CA., AND THE 20 FOOT WIDE ROAD EASEMENT
AS ESTABLISHED BY OTHERS AND SHOWN IN
902/MAPS/9. THAT DIMENSION BEING 6.10 FEET AT THE
NORTHEAST CORNER OF SAID HOUSE AND INCREASES
WESTERLY.

BEARDSLEY
N 37° 16' 00" W

LOT 89,
LAKE CANYON 2
V-M-50

NEW
DWELLING

19388 BEARDSLEY RD., LOS GATOS CA 95033

APN 544-12-061

FILE# 10598-15B-15V

BP# 65430

SWIFT ENGINEERING

CIVIL ENGINEERS +++ LAND SURVEYORS

3520 CEDAR SPRINGS LN., MEADOW VISTA CA 95722

(530)878-6732, cell:(916)838-0185

EMAIL: donswift@swiftengineering.net



ROAD

FD. PK (NO REF.)

FD. PK NAIL & TAG
PER 902/M/9

LOT 87,
LAKE CANYON 2
V-M-50

Attachment G

Neighborhood Photos provided by the property owner



19091 Beardsley Road | zero setback Beardsley examples | ZERO SETBACK



19141 Beardsley Road | zero setback Beardsley examples | <ZERO SETBACK



19150 Beardsley Road | zero setback Beardsley examples | ZERO SETBACK





19221 Beardsley Road | zero setback Beardsley examples | ZERO SETBACK



19220 Beardsley Road | zero setback Beardsley examples | ZERO SETBACK



19255 Beardsley Road | zero setback Beardsley examples | ZERO SETBACK





