



CITY OF TONTITOWN PLANNING OFFICE

201 E. Henri de Tonti Blvd.
479-361-2700
planning@tontitownar.gov

Meeting: **May 26, 2022**
Project: **Pozza Commercial Waiver**
Planner: Courtney McNair, Garver

PLANNING COMMISSION AGENDA ITEM

3

WAIVER REQUEST

South of Hwy. 412, to the west of Pozza Lane
Parcel # 830-37669-000

SUMMARY: Pozza Lane Commercial Phase 1 is proposing to construct three (3) buildings that are 11,700 SF each to be located on 12.48 acres south of Hwy. 412 and west of Pozza Lane with associated parking and detention

CURRENT ZONING: C-2 (Commercial, General) & R-3 (Residential 3units/acre) -the proposed development meets the current zoning.

City Ward: 3-Penny Baskin & Tim Burress

FLOODPLAIN: No

INFRASTRUCTURE SERVICE AREAS (not a guarantee of service availability):

Water: Tontitown Water, existing 8" waterline

Electric: Ozarks Electric

Sewer/Septic: Tontitown Sewer

Phone: AT&T

Natural Gas: Black Hills Energy

Cable: Cox Communications

School District: Springdale

PROJECT SYNOPSIS:

Pozza Lane Commercial Phase 1 is proposing to construct three (3) buildings that are 11,700 SF each to be located on 12.48 acres south of Hwy. 412 and west of Pozza Lane with associated parking and detention.

Phase 1 is located on 3.39 acres of the overall 12.48-acre site. This phase is entirely zoned C2, General Commercial. The applicant plans to have small offices and storage/interior parking for businesses within the proposed buildings.

The applicant is requesting three (3) waivers regarding the building articulation and material requirements, sidewalk and trail requirements, and street improvement requirements.

- **Waiver from Chapter 152.151, Large Scale Development Design Standards to allow sides of the proposed buildings that are adjacent to residential uses and public right-of-way to not comply with articulation and material requirements.**
- **Waiver from Chapter 90.900.2, Sidewalks Location and Width, to allow the required trail section along Highway 412, and the required sidewalk along Pozza Lane to not be constructed.**
- **Waiver from Chapter 90.400.4, Cross Sections and Right-of-Way Widths, to allow the required street improvements along Pozza Lane to not be constructed.**

152.026 WAIVERS.

(A) General.

(1) *When, by the strict interpretation of these regulations, an applicant incurs undue restrictions on the physical property to be subdivided, a waiver for such requirements may be granted by the Planning Commission.*

(2) *Under no circumstance should a waiver be granted because of a personal hardship or for personal or emotional reasons. Waivers shall not be granted based strictly on financial hardship.*

(3) *A waiver is determined by the strict interpretation and enforcement of the rules and regulations upon a given piece of property to be subdivided.*

(B) Procedures.

(1) *No waiver shall be granted except upon written petition by the applicant when the application is filed. The petition shall state fully the grounds for the waiver and all the facts upon which the petition is made.*

(2) *In granting the waiver, the Planning Commission shall prescribe any conditions that it deems necessary to or desirable in the public interest.*

(3) *In considering the petition for a waiver, the Planning Commission shall take into account the nature of the proposed use of land involved, existing uses of land in the area, proximity to public utilities, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such waiver upon traffic conditions and upon the public health, safety and general welfare in the vicinity.*

(4) *The findings of the Planning Commission, together with the specific facts upon which findings are based, shall be incorporated into the official minutes of the Planning Commission meetings at which such waiver is granted. Waivers may be granted only when in harmony with the general purpose and intent of these regulations.*

WAIVER #1 REQUEST:

Waiver from Chapter 152.151, Large Scale Development Design Standards to allow sides of the proposed buildings that are adjacent to residential uses and public right-of-way to not comply with articulation and material requirements.

- (a) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

Applicant's Letter: The applicant states that they will install screening along any facades where a deviation from the design standards will face a public right-of-way or adjacent residential.

Staff's Response: No information regarding this proposed screening has been submitted. No additional information was provided by the applicant to explain the special circumstance of this property.

- (a) *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

Staff's Response: All other new commercial buildings are required to comply with the building articulation and materials as required by the Tontitown Code.

(b) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

Staff's Response: Granting this waiver will not be detrimental to the public health, safety, and welfare in the area.

(d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

Staff's Response: Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

STAFF RECOMMENDATION:

Staff recommends **DENIAL** of the applicant's request for deviation of the requirements in Chapter 152.151, Large Scale Development Design Standards as there has been no information submitted showing proposed screening, and no hardship has been detailed by the applicant that is unique to this site.

If the Planning Commission chooses to grant this waiver, staff recommends the following condition:

1. Screening locations and materials shall be required to be approved by the Planning Commission prior to Construction Plan approval.

WAIVER #2 & #3 REQUEST:

Waiver from Chapter 90.900.2, Sidewalks Location and Width, to allow the required trail section along Highway 412, and the required sidewalk along Pozza Lane to not be constructed, and Waiver from Chapter 90.400.4, Cross Sections and Right-of-Way Widths, and Chapter 152.161, Determining Necessity for Improvements, to allow the required street improvements along Pozza Lane to not be constructed.

The applicant's letter states that they are requesting a waiver from Chapter 152.161 (B):

152.161 DETERMINING NECESSITY FOR IMPROVEMENTS.

(A) *Indirect access to substandard streets.* When a proposed subdivision has access to paved streets or roads only by way of substandard or unimproved roads or streets leading from the subdivision to the paved streets or roads, the subdivider shall be responsible for contributing his or her proportionate share of the cost of improving the substandard access roads or streets to existing city standards. The subdivider's proportionate share of the costs shall be determined by the Planning Commission in accordance with the provisions of § [152.160](#).

(B) *Direct access to substandard streets.* When a proposed subdivision has direct access to, or fronts on, an existing road or street which is below current standards, the subdivider shall be responsible for contributing his or her proportionate share of the cost of improving the street or road to existing city standards. The Planning Commission shall determine the subdivider's proportionate share of the costs in accordance with the provisions of § [152.160](#).

(C) *Drainage.* Drainage improvements shall be required whenever a proposed subdivision causes the need for such improvements.

(D) If minimum lot size created by preliminary plat exceeds ten acres the Planning Commission may waive certain requirements.

They are requesting this waiver based on the information in Chapter 152.163:

§ 152.163 WAIVERS.

A subdivider may petition the Planning Commission for a waiver of improvement requirements in whole or in part on one or more of the following grounds:

(A) *No plans for upgrading.* The city has no plans for upgrading the substandard street or road on which improvements are proposed to be required by the subdivider.

(B) *Primary access to improved streets.* The proposed subdivision has primary access to improved streets or roads and the portion of the subdivision which fronts on a substandard street or road is so small or remote from anticipated future traffic patterns as to cause an unfair imposition on the subdivider.

(C) *Alternate improvements.* The subdivider proposes alternative improvements which will protect the health, safety and welfare of persons residing in the proposed subdivision and the surrounding area and equally benefit said persons.

The applicant states that “Given this project connects to Spallone Avenue, the developer requests waiving improvements to Pozza Lane and the trail section along Hwy. 412 until Phase 2 of this development is built, when more commercial traffic will use Pozza Lane to access the development and the Hwy. 412 frontage is developed.

Staff will address this request in three parts:

- 1. Street requirements to Pozza Lane.**
- 2. Sidewalk requirements along Pozza Lane.**
- 3. Trail requirement along Hwy. 412.**

(a) That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.

Staff's Response:

- 1. Street requirements to Pozza Lane.** Street improvements along the length of the property being developed are standard and are required when there is a direct connection to the street in question. Staff anticipates that traffic will significantly increase to Pozza Lane as soon as the connection to Spallone, a private drive, not a city street, and this proposed development are created. Pozza is a substandard road.
- 2. Sidewalk requirements along Pozza Lane.** Sidewalk improvements are standard and are required when there is a direct connection to the street in question. Staff anticipates that traffic will significantly increase, including pedestrian traffic, as soon as the connection to Spallone, a private drive, not a city street, and this proposed development is created.
- 3. Trail requirement along Hwy. 412.** Staff agrees that generally if the development is in phases, as this one is proposed to be, that improvements can be delayed until such time that the phase adjacent to the proposed improvements is constructed. As the applicant is proposing for the property adjacent to Hwy. 412 to be developed in a later phase, this is a unique condition affecting this requirement.

(b) That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Staff's Response:

1. Street requirements to Pozza Lane.

All other new commercial buildings are required to provide improvements to streets giving access to the site.

2. Sidewalk requirements along Pozza Lane.

All other new commercial buildings are required to provide sidewalk improvements to streets giving access to the site.

3. Trail requirement along Hwy. 412.

As the applicant is not yet developing the Hwy. 412 frontage, this waiver will be in line with the requirements that the city has typically required of developers.

(c) That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.

Staff's Response:

1. Street requirements to Pozza Lane.

Granting this waiver could cause dangerous conditions that could be detrimental to the public health, safety, and welfare or be injurious to other property in the area.

2. Sidewalk requirements along Pozza Lane.

Granting this waiver could cause dangerous conditions that could be detrimental to the public health, safety, and welfare or be injurious to other property in the area.

3. Trail requirement along Hwy. 412.

Granting this waiver will not be detrimental to the public health, safety, and welfare in the area.

(d) That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.

Staff's Response:

1. Street requirements to Pozza Lane.

Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

2. Sidewalk requirements along Pozza Lane.

Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

3. Trail requirement along Hwy. 412.

Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

STAFF RECOMMENDATION:

1. Street requirements to Pozza Lane.

Staff recommends **DENIAL** of the applicant's request for a waiver of the requirements in Chapter 90.400.4, Cross Sections and Right-of-Way Widths, and Chapter 152.161, Determining Necessity for Improvements, to allow the required street improvements along Pozza Lane to not be constructed until Phase 2 of this project. No unique hardship has been demonstrated for this request and allowing this waiver could cause negative impacts.

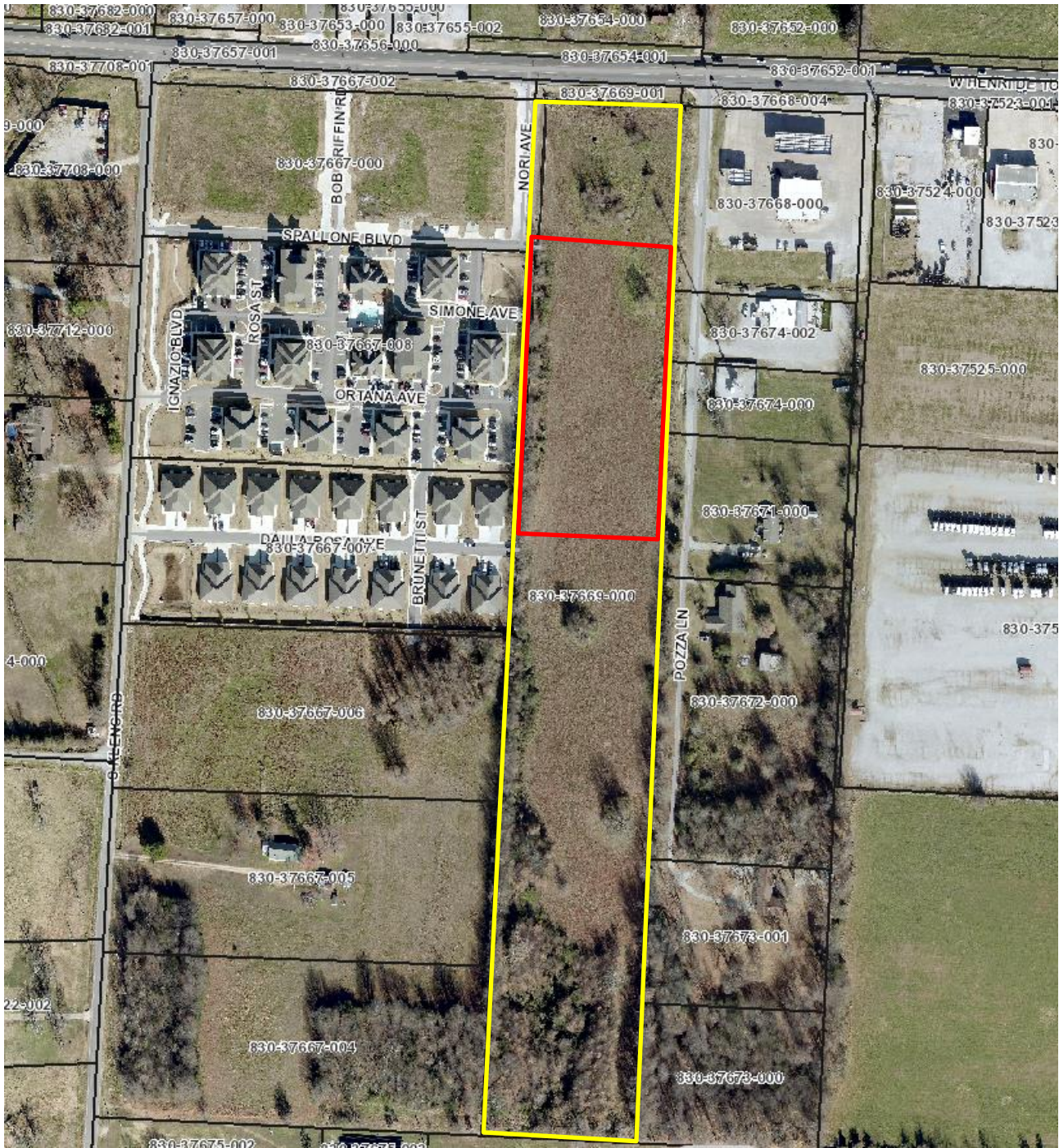
2. Sidewalk requirements along Pozza Lane.

Staff recommends **DENIAL** of the applicant's request for a waiver of the requirements in Chapter 90.900.2, Sidewalks Location and Width, for the required sidewalk along Pozza Lane to not be constructed until Phase 2 of this project. No unique hardship has been demonstrated for this request and allowing this waiver could cause negative impacts.

3. Trail requirement along Hwy. 412.

Staff recommends **APPROVAL** of the applicant's request for a waiver of the requirements in **Chapter** 90.900.2, Sidewalks Location and Width, to allow the required trail section along Highway 412, to not be constructed until Phase 2 of this project. This portion of the project will not be constructed until Phase 2, and that is a unique situation, even though the overall site fronts Hwy. 412.

Site location:



May 17, 2022

Maegan Thomas
Tontitown City Administration Building & City Hall
235 E Henri de Tonti Blvd – PO Box 305
Tontitown, AR 72762

Re: Waiver Requests – Pozza Commercial, Phase I
Henri de Tonti Boulevard (US 412) & Pozza Lane
Tontitown, AR

Maegan:

On behalf of our client, we hereby request consideration for waivers from requirements in the *Tontitown Code of Ordinances* for the referenced project. Specifically, we are requesting two waivers:

§ 152.151 *Design Standards for Large Scale Developments*

The Developer requests a waiver from § 152.151 and will install screening along any façades where a deviation from the design standards will face a public right-of-way or adjacent residential use.

§ 152.161(B) *Determining Necessity for Improvements*

Along US Highway 412 (Henri de Tonti Boulevard) and Pozza Lane, the Developer requests a waiver from § 152.161(B) per § 152.163. As the code states, “A subdivider may petition the Planning Commission for a waiver of improvement requirements in whole or in part on one or more of the following grounds: ... (B) The proposed subdivision has primary access to improved streets or roads and the portion of the subdivision which fronts on a substandard street or road is so small or remote from anticipated future traffic patterns as to cause an unfair imposition on the subdivider.” Given this project connects to Spallone Avenue, the Developer requests waiving improvements to Pozza Lane and the trail section along US 412 until Phase II of this development is built, when more commercial traffic will use Pozza Lane to access the Development and the US 412 frontage is developed.

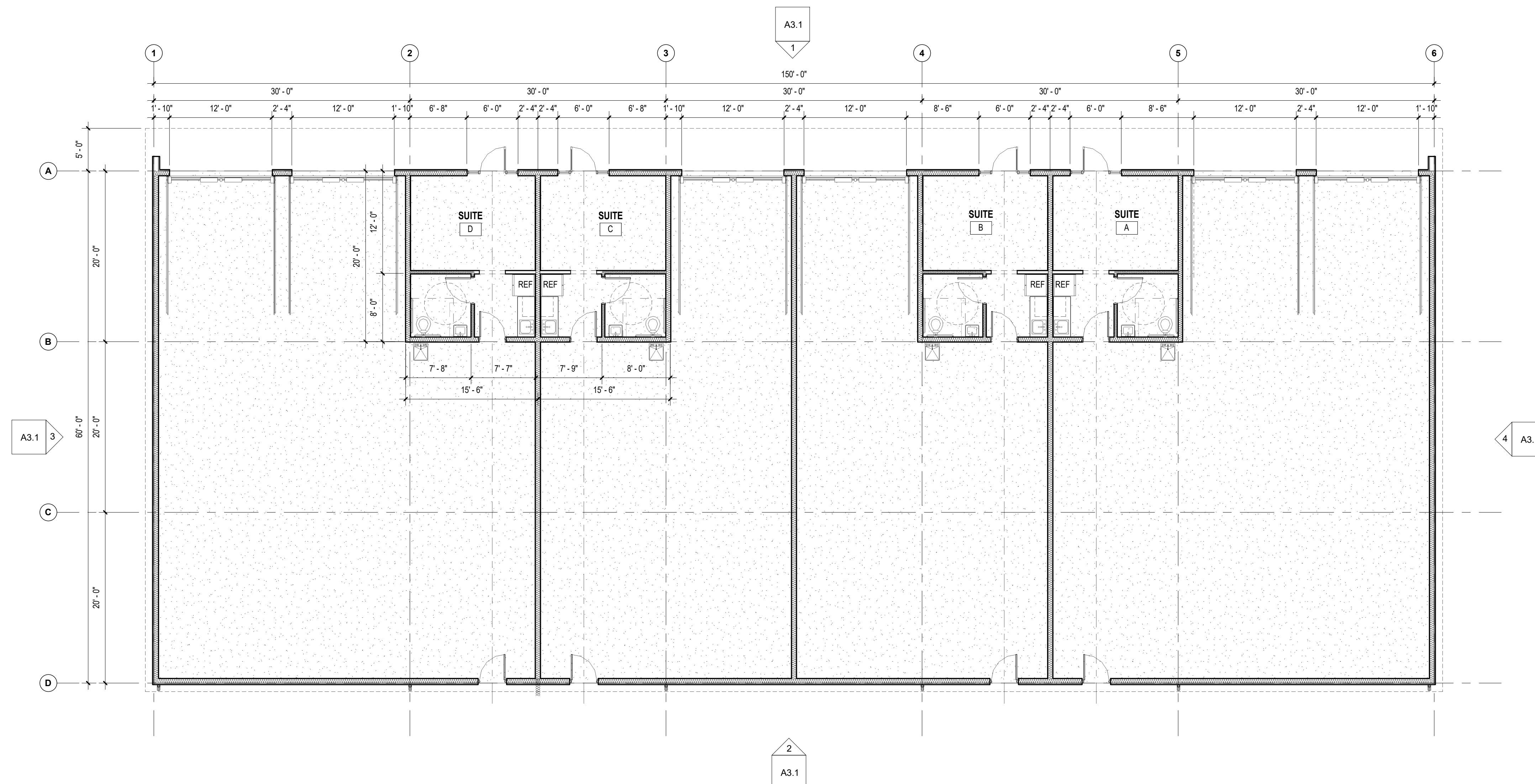
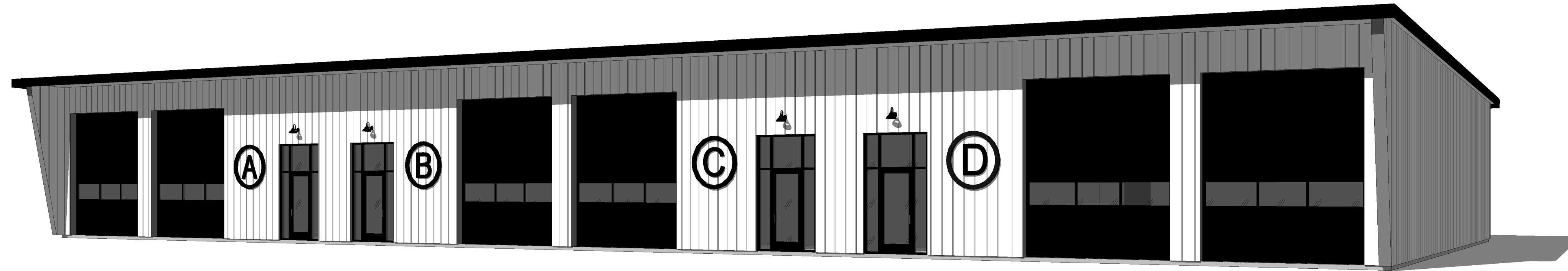
We request these waiver requests be heard at the next Planning Board meeting in conjunction with the large-scale development. Thank you for your consideration.

Very truly yours,



Jason Appel, P.E.
Secretary / Treasurer

Z:\Engineers\00 - Engineer Projects\22923 Graham Commercial\03 Pre-Construction Plan Submittals\2022-05-17 Submittal #2\2022-05-17 Revised Waiver Request.docx

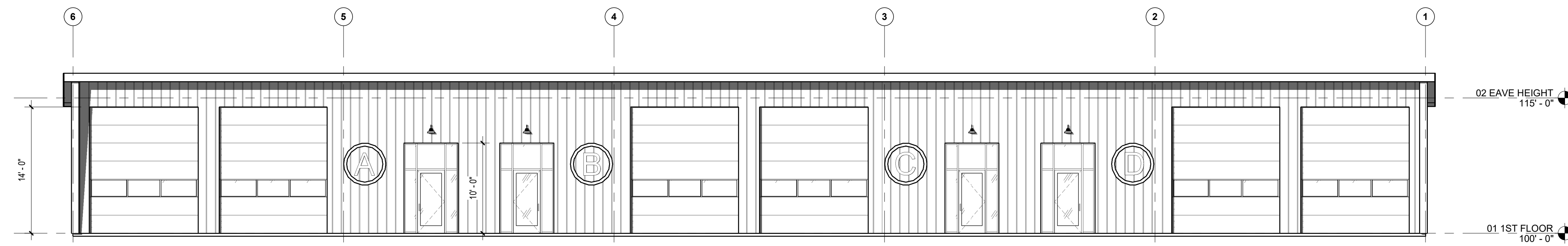
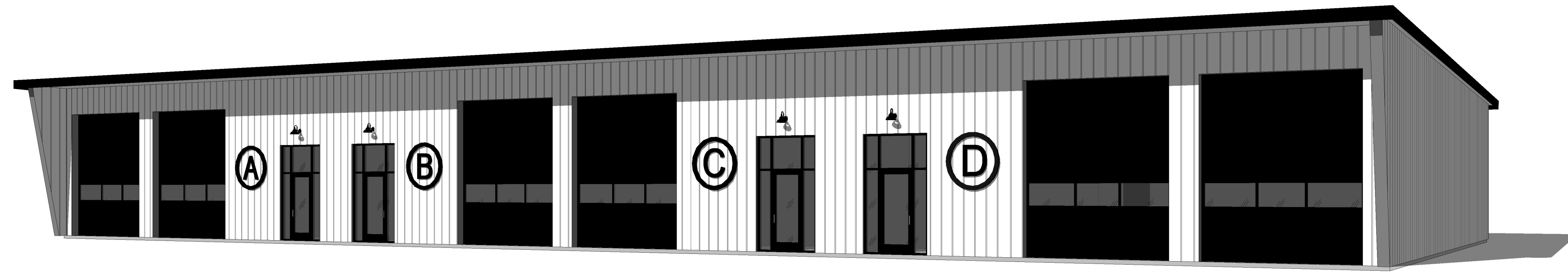


1 FLOOR PLAN
1/8" = 1'-0"

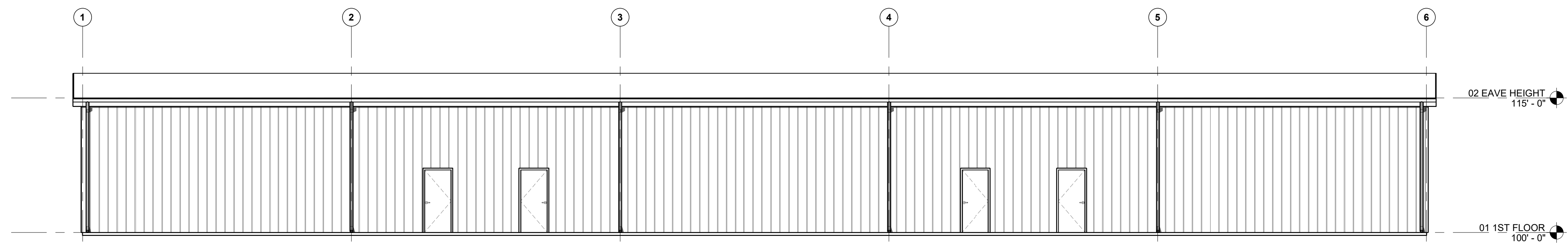
POZZA MIXED USE



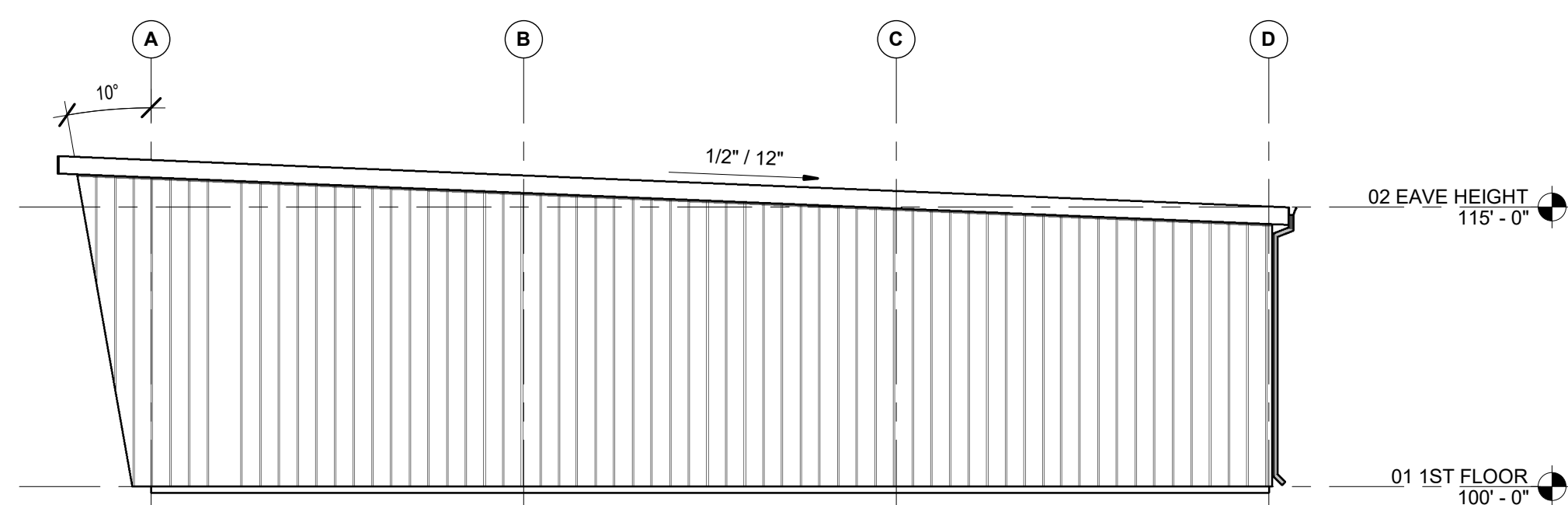
DATE: 03.09.2022
DRAWING: A2.1 FLOOR PLAN



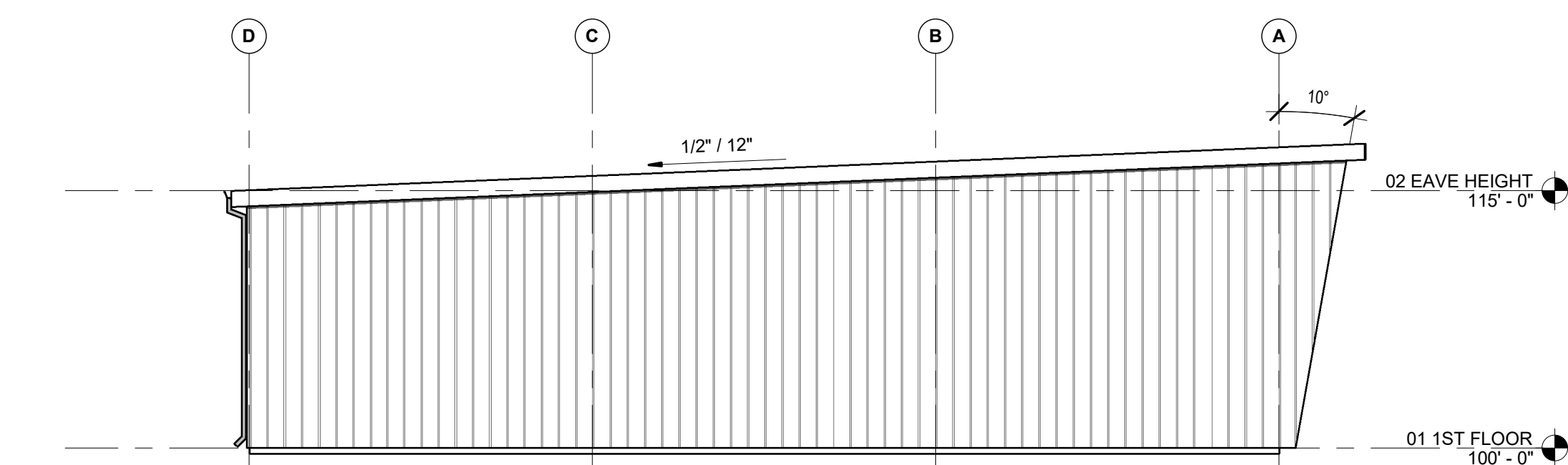
1 FRONT ELEVATION
1/8" = 1'-0"



2 BACK ELEVATION
1/8" = 1'-0"



3 LEFT ELEVATION
1/8" = 1'-0"

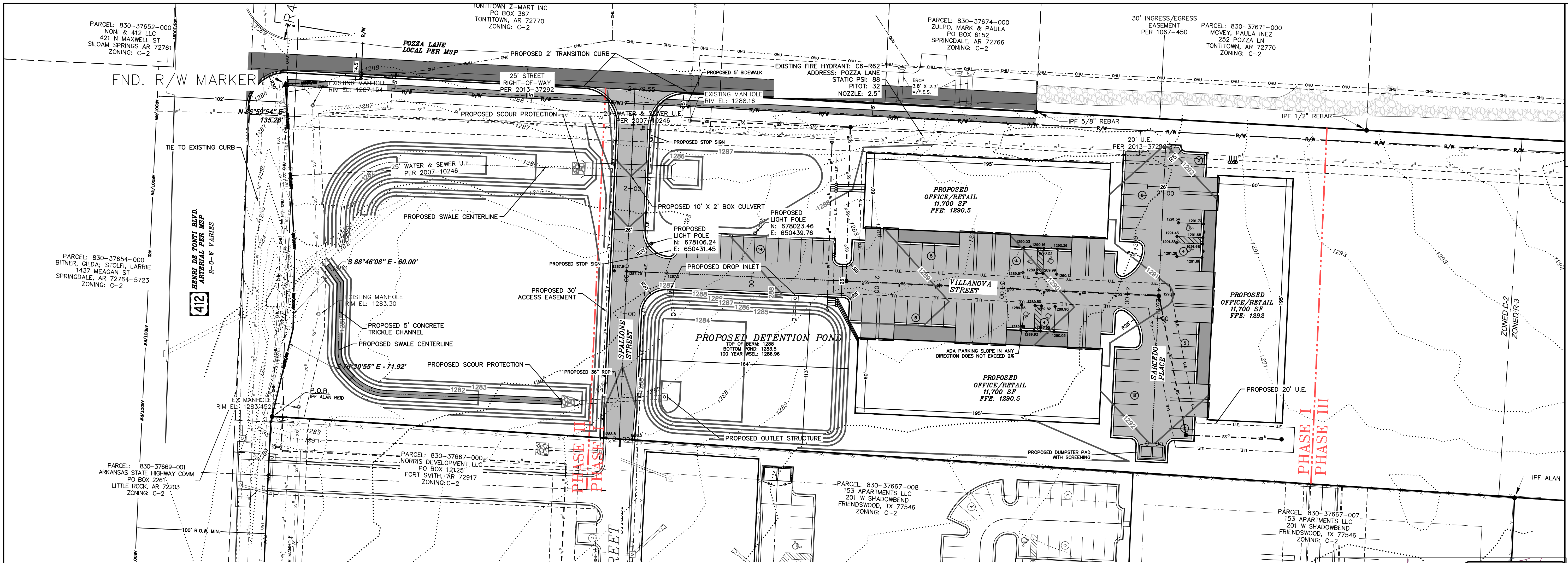


4 RIGHT ELEVATION
1/8" = 1'-0"

POZZA MIXED USE

BA
DESIGN WORKS

DATE:
03.09.2022
DRAWING:
A3.1
EXTERIOR BUILDING ELEVATION(S)



**LARGE SCALE DEVELOPMENT
POZZA COMMERCIAL - PHASE I
TONTITOWN, ARKANSAS**

NOTES:

- 1) ANY COST OF ADJUSTMENTS, RELOCATION OR DAMAGE OF EXISTING UTILITIES WILL BE THE RESPONSIBILITY OF THE OWNERS/DEVELOPERS.
- 2) ALL PROPOSED UTILITY WIRES, LINES, AND/OR CABLE UTILIZED BY ELECTRIC AND/OR TELECOMMUNICATIONS COMPANIES SHALL BE PLACED UNDERGROUND, EXCLUDING 12KV AND ABOVE.
- 3) OUTDOOR STORAGE, TRASH COLLECTION, AND LOADING AREAS MUST BE LANDSCAPED, SO THAT THEIR FUNCTIONS ARE FULLY CONTAINED AND OUT OF VIEW OF THE ADJACENT PROPERTY AND THE PUBLIC RIGHT-OF-WAY.
- 4) EXTERIOR GROUND-MOUNTED OR BUILDING-MOUNTED EQUIPMENT INCLUDING, BUT NOT LIMITED TO, MECHANICAL EQUIPMENT, UTILITIES AND BANKS OF METER SHALL BE SCREENED FROM PUBLIC VIEW WITH LANDSCAPING OR WITH AN ARCHITECTURAL TREATMENT COMPATIBLE WITH THE BUILDING ARCHITECTURE.
- 5) ALL ROOFTOP EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW WITH AN ARCHITECTURAL TREATMENT THAT IS COMPATIBLE WITH THE BUILDING ARCHITECTURE.
- 6) THE GLOBAL POSITIONING SYSTEM (GPS) AND CONVENTIONAL TERRESTRIAL SURVEYING EQUIPMENT PROVIDED THE RELATIVE POSITIONING FOR THE TOPOGRAPHIC, PLANIMETRIC AND BOUNDARY LOCATIONS SHOWN HEREON.
- 7) THE MAP PROJECTION IS REFERENCED TO THE HORIZONTAL CONTROL DATUM OF NAD83 (NORTH AMERICAN DATUM OF 1983), STATE PLANE COORDINATE SYSTEM, ARKANSAS NORTH ZONE (0301). THE BASIS OF BEARINGS FOR THIS PLAN ARE STATE PLANE GRID BEARING. THE VERTICAL DATUM IS REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88). TWO TEMPORARY BENCHMARKS UTILIZING THIS DATUM ARE SHOWN HEREON.
- 8) ALL NEW SIGNAGE REQUESTED WILL REQUIRE SEPARATE PERMIT.
- 9) MODIFIED CURB REQUIRED ON ALL DRIVES.
- 10) PRIOR TO CONSTRUCTION, A PRE-CONSTRUCTION MEETING WITH ALL FRANCHISE UTILITIES WILL BE REQUIRED.
- 11) ALL FINISHED FLOOR ELEVATIONS MUST BE 12" MIN. ABOVE MAX. ADJACENT STREET GUTTER LINE.

OWNER: STOLFI ET. AL
P.O. BOX 429
BENTON, KANSAS 67017

DEVELOPER: TIM GRAHAM
PO BOX 955
TONTITOWN, ARKANSAS 72770

ENGINEER: ENGINEERING SERVICES, INC.
1207 S. OLD MISSOURI ROAD
P.O. BOX 282
SPRINGDALE, AR 72762

CITY ZONING: C-2 (GENERAL COMMERCIAL)
R-3 (SINGLE FAMILY RESIDENTIAL)

BUILDING SETBACKS:
FOR C-2:
FRONT SETBACK - 25'
STREET SIDE SETBACK - 25'
INTERIOR SIDE SETBACK - 10', AGAINST RES. - 14'
REAR SETBACK - 25'

FOR R-3:
FRONT - 30'
STREET SIDE - 25'
INTERIOR SIDE - 7'
REAR - 25'

GROSS SITE AREA: 12.48 ACRES (PARCEL SIZE)

NET SITE AREA: 3.39 ACRES (PHASE I)

PARKING REQUIRED: 1 PARKING SPACE/1,000 SF OF GROSS FLOOR AREA
35,100 SF / 1,000 SF = 36 PARKING SPOTS (INCL. 3 ADA)

PARKING PROVIDED: 61 PARKING SPOTS (INCLUDING 6 ADA)

FEMA FLOODPLAIN ZONE: THIS PROPERTY IS NOT WITHIN A 100 YEAR FLOODPLAIN ZONE AS SHOWN ON THE F.I.R.M. MAP #05143C0065F, WASHINGTON COUNTY, ARKANSAS & INCORPORATED AREAS. EFFECTIVE DATE: DECEMBER 1, 2008.

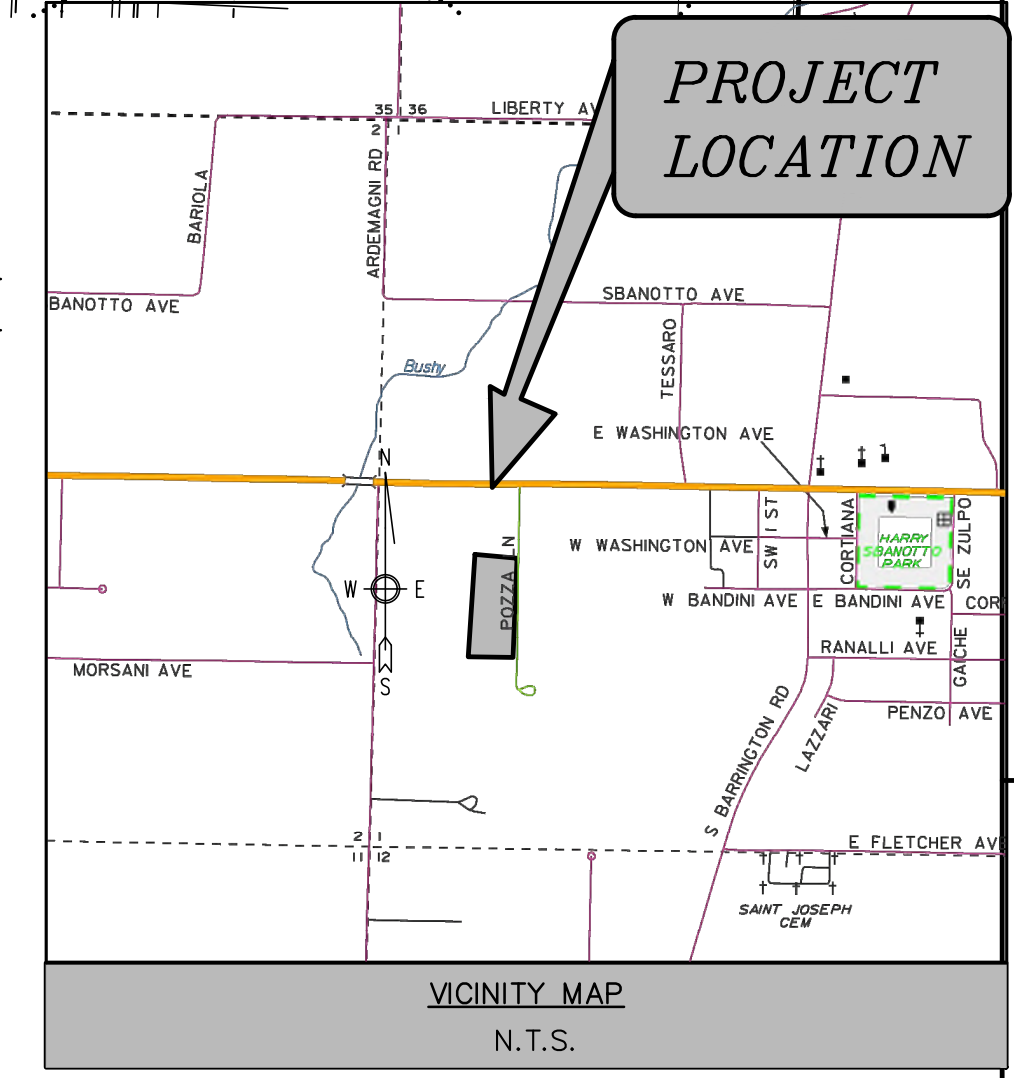
PARCEL: 830-37669-000

PROPOSED USE: OFFICE/INCIDENTAL WAREHOUSE

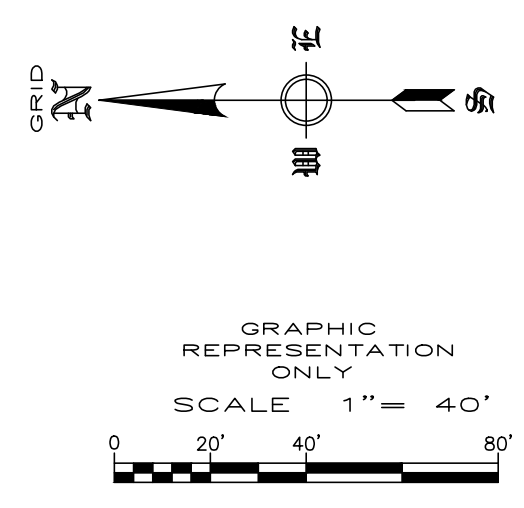
CERTIFICATE OF PRELIMINARY ENGINEERING ACCURACY. EACH SET OF STREET AND DRAINAGE PLANS MUST BE SUBMITTED IN ACCORDANCE WITH APPLICABLE STATE STATUTES AND ANY PLANS AND SPECIFICATIONS REQUIRED.

I, _____, HEREBY CERTIFY THAT THIS PLAN CORRECTLY REPRESENTS A PLAN MADE UNDER MY DIRECTION AND ENGINEERING REQUIREMENTS OF THE TONTITOWN SUBDIVISION REGULATIONS HAVE BEEN COMPLIED WITH.

DATE OF EXECUTION: _____ REGISTERED ENGINEER
STATE OF ARKANSAS REGISTRATION NO. _____



CERTIFICATE OF PRELIMINARY PLAT APPROVAL
THIS PLAT HAS BEEN GIVEN PRELIMINARY PLAT APPROVAL ONLY AND HAS NOT BEEN APPROVED FOR RECORDING PURPOSES AS A PUBLIC RECORD. THIS CERTIFICATE SHALL EXPIRE ON _____ (DATE).
DATE OF EXECUTION: _____ CHAIRMAN, CITY OF TONTITOWN PLANNING COMMISSION



REVISION	DATE	DESCRIPTION

SCALE: 1" = 40'
DATE: May 16, 2022
DRAWN BY: JFA
W.O. #: 22923