



City of Hamtramck Zoning Board of Appeals Meeting

September 19, 2023

6:00 P.M.

City Hall – Council Chamber 2nd Floor

313.800.5233 ext. 332

MINUTES

1. **Call to Order**

Chairperson Habitz called the meeting to order at 6:02pm

2. **Pledge of Allegiance**

3. **Roll Call**

a. Regular Members:

Moammer Alghazali – Present

Tom Habitz – Present

Malek Hussein – Present

Khalid Qsaimi – Present

Gias Talukder – Absent

Asim M. Alshahri – Absent

4. **Approval of Minutes**

a. Regular Meetings: April 18, 2023.

Motion by Tom Habitz and 2nd by Malek Hussein to approve minutes as presented.

Motion passed unopposed.

5. **Public Comment (3 Minutes)**

No public comment present.

6. **New Business**

7. **Public Hearing**

a. 3894 Dorothy –

The subject of the hearing is to consider a variance request to the zoning ordinance section 155.050(E)(5) from applicant Hezam Mohamed Saleh for address 3894 Dorothy in Hamtramck. Parcel 41005140191000. A proposed addition to the house does not meet the minimum required 30 ft. rear setback.

Austin Colson, the Assistant Community and Economic Development Manager, gives and overview of the house and the variance request.

City staff provided a staff report (attached).

City requires a 30-foot rear setback.

An 11-foot variance is requested so that the home can have a 19-foot rear setback.

On April 3rd they were issued a stop work order.

Applicant was approved for a site plan with a 30-foot rear setback. Applicant and builder built a structure that only has a 19-foot rear setback.

Applicant, Hezam Mohamed Saleh, has the architect speak. Architect's name is Abdulrahman Alqadhi from ProArchitect LLC. Architect states that both the city and builder made a mistake. The builder added on extra square footage without the owner's knowledge during construction. In addition, the plans that were submitted had a mistake in terms of the accuracy of the front setback, which therefore misrepresented the location of the home on the site and also impacted the rear setback. Architect stated that the city should verify the dimensions of the plans in person before they approve plans

Board members discussed – Drawing had a mistake. The drawing that was provided to the city did show the correct setbacks, but the house was not in the right location on that site plan.

Architect said the building dimensions did not change; the wrong dimension was listed for the front setback. This affected the amount that was left for the rear setback.

Architect pointed out that a house on Casmere house similar case and was approved.

City Staff stated that the survey is the responsibility of the builder and architect. We review the plans for appropriate setbacks and heights.

Board discussed the reasons that a variance is needed – not self-created. According to the recommendation in the staff report, none of the requirements are met for granting a variance.

Another board member discussed the question of who created the problem? The architect and the builder. The blame is not on the homeowner. Options are to demo the addition and restart. Who created the problem.

Another board member stated that responsibility is still on the homeowner.

A board member pointed out that no one showed up to object.

A board member said the applicant should not have got approved from the beginning to build.

Motion by Tom Habitz to deny the variance based on not meeting criteria of having unique conditions on the lot. Motion seconded by Malek Hussein.

AYES: Moammer Alghazali, Tom Habitz

NAYS: Malek Hussein, Khalid Qsaimi

Vote to deny variance request fails to pass.

Malek Hussein motioned to approved the variance request of 11 feet. Reasoning that this is not a self-created problem and that it is both the architect's fault and the builder's fault. Owner did not create problem for self. Created by the architect and the builder. Motion 2nd by Khalid Qsaimi.

AYES: Moammer Alghazali, Malek Hussein, Khalid Qsaimi

NAYS: Tom Habitz

Motion fails. Four (4) votes are needed to pass a non-use variance.

ZBA discusses the need for more ZBA members to show up to the next meeting so that more are voting on this and other cases. CED will call all the ZBA members personally to attempt to get a full attendance at the next meeting

Tom Habitz - Motion to table the variance request since neither was approval and denial was passed. Motion was 2nd by Malek Hussein. Motion passes unopposed.

City to ask Mayor to appoint another member, as the ZBA is short a regular member and an alternate member.

8. Old Business

9. Commission Announcements

10. Staff Announcements

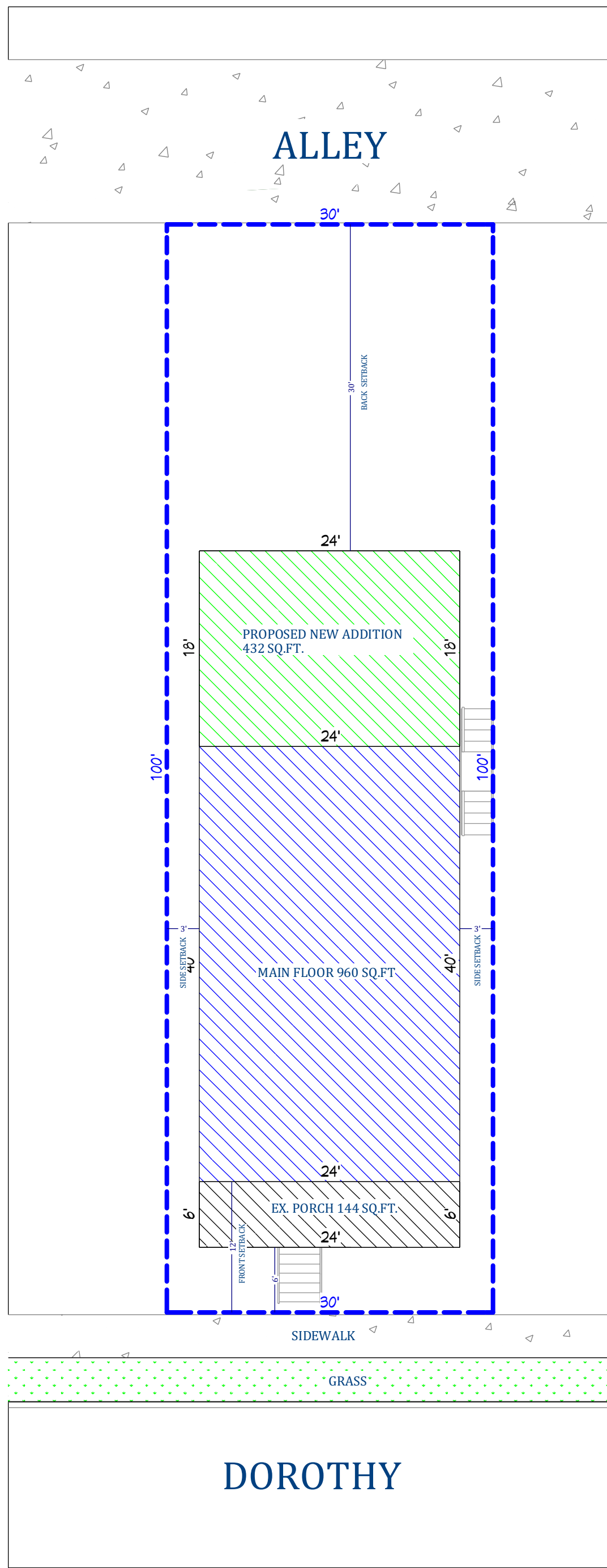
1. Silent Auction of property is happening now (closes October 2 at 10am)
2. City received a 1 million tree planting grant

11. Public Comment (3 Minutes)

- a. None

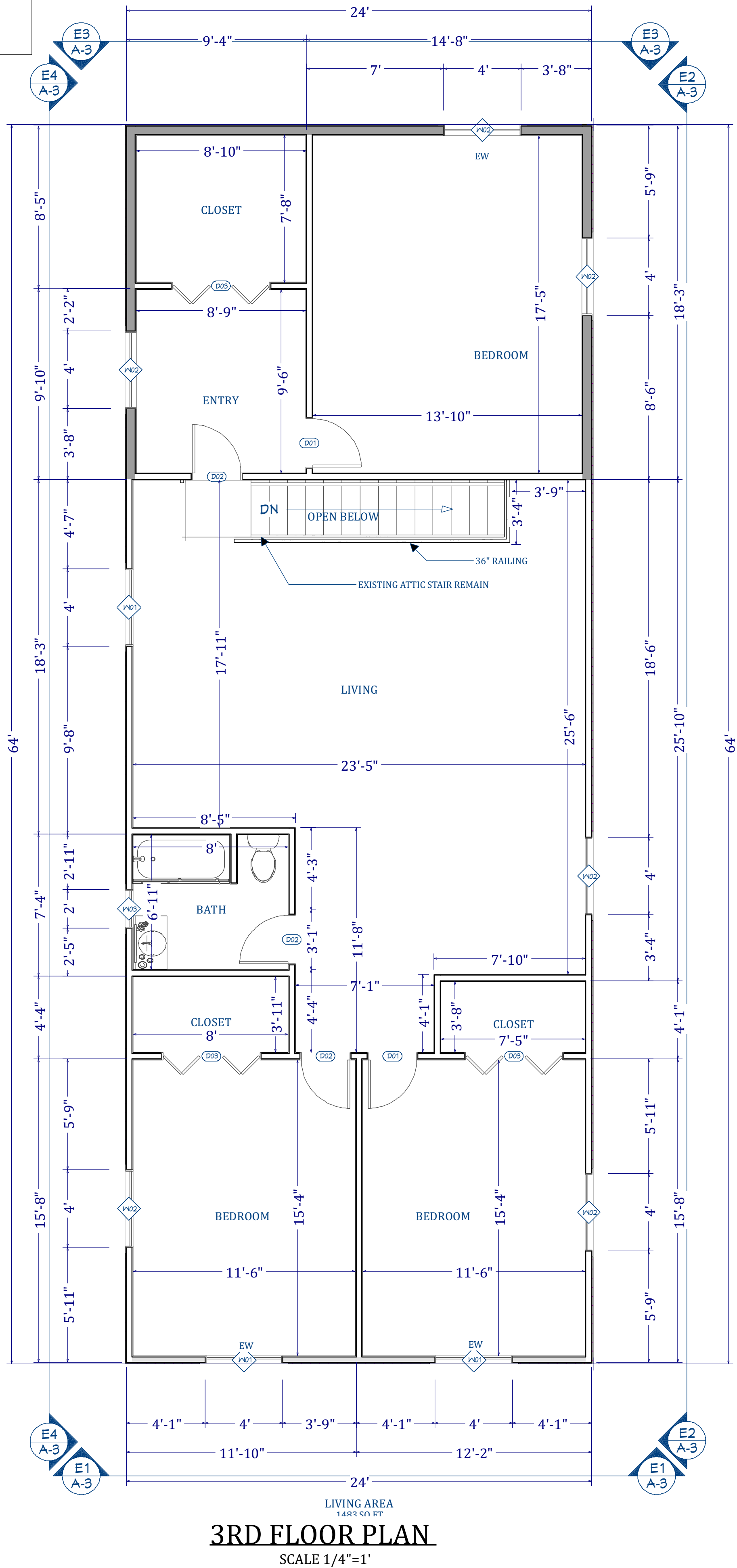
12. Adjournment – 6:48pm Motion by Tom Habitz, Malek Hussein 2nd . Motion carried.

SITE DATA	
ZONING -RESIDENTIAL	SINGLE FAMILY
Total EXISTING Floor Area	1,920 SQ.FT.
EXISTING BASEMENT AREA	960 SQ.FT.
EXISTING MAIN FLOOR	1,392 SQ.FT.
EXISTING 2ND FLOOR	1,392 SQ.FT.
PROPOSED 3RD FLOOR ADDITION	1,536 SQ.FT.
EXISTING FRONT PORCH MAIN FLOOR	144 SQ.FT.
EXISTING FRONT PORCH 2nd FLOOR	144 SQ.FT.
LOT AREA	3000 SQ. FT. 0.069 ac
BUILDING FRONT&BACK HEIGHT	29.2 SQ.FT
Legal Description	
LOT 191 WILSON AND FARLEY'S SUB FRAC SEC 20 T1S R12E L.21 P.2 WCR	



PLOT PLAN
SCALE 1"=10'

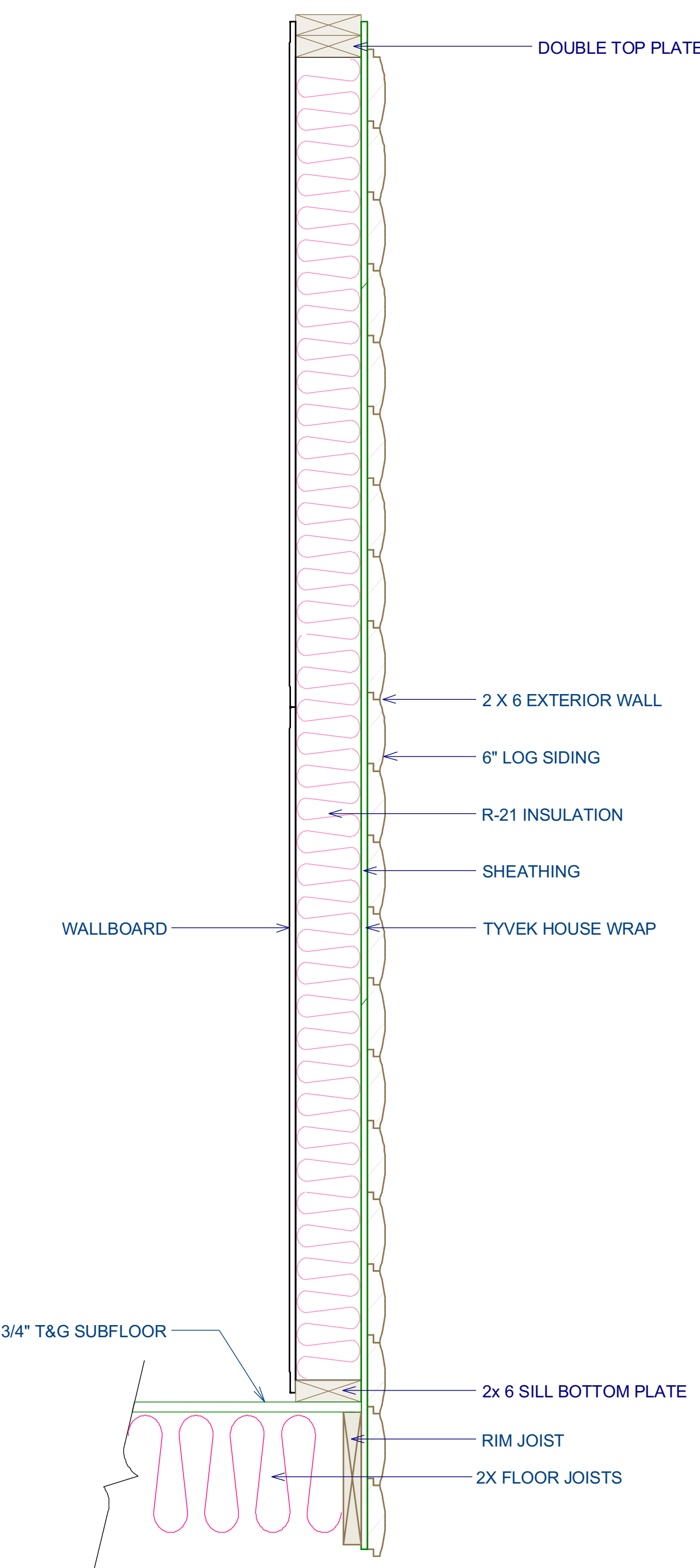
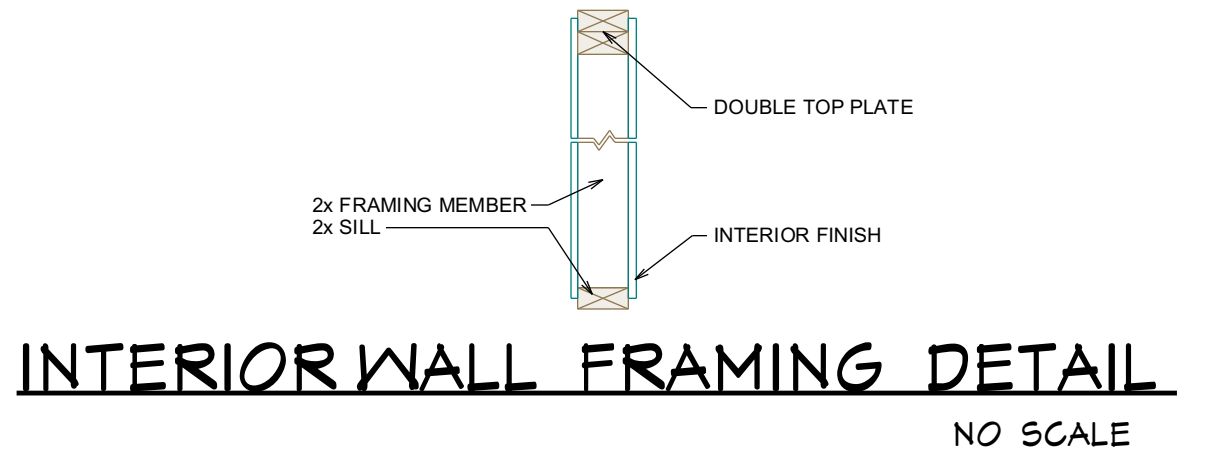
SCOPE OF WORK :	
1- PROPOSED BUILD NEW ADDITION 3RD FLOOR 1536 SQ.FT	
NOTE :	
INSIDE WALLS 2X4 @ 16" O.C.	
EXTERIOR WALLS 2X6 @ 16" O.C.	
WALL INSULATION R-20	
CEILING INSULATION R-49	
1/2" DRYWALL	



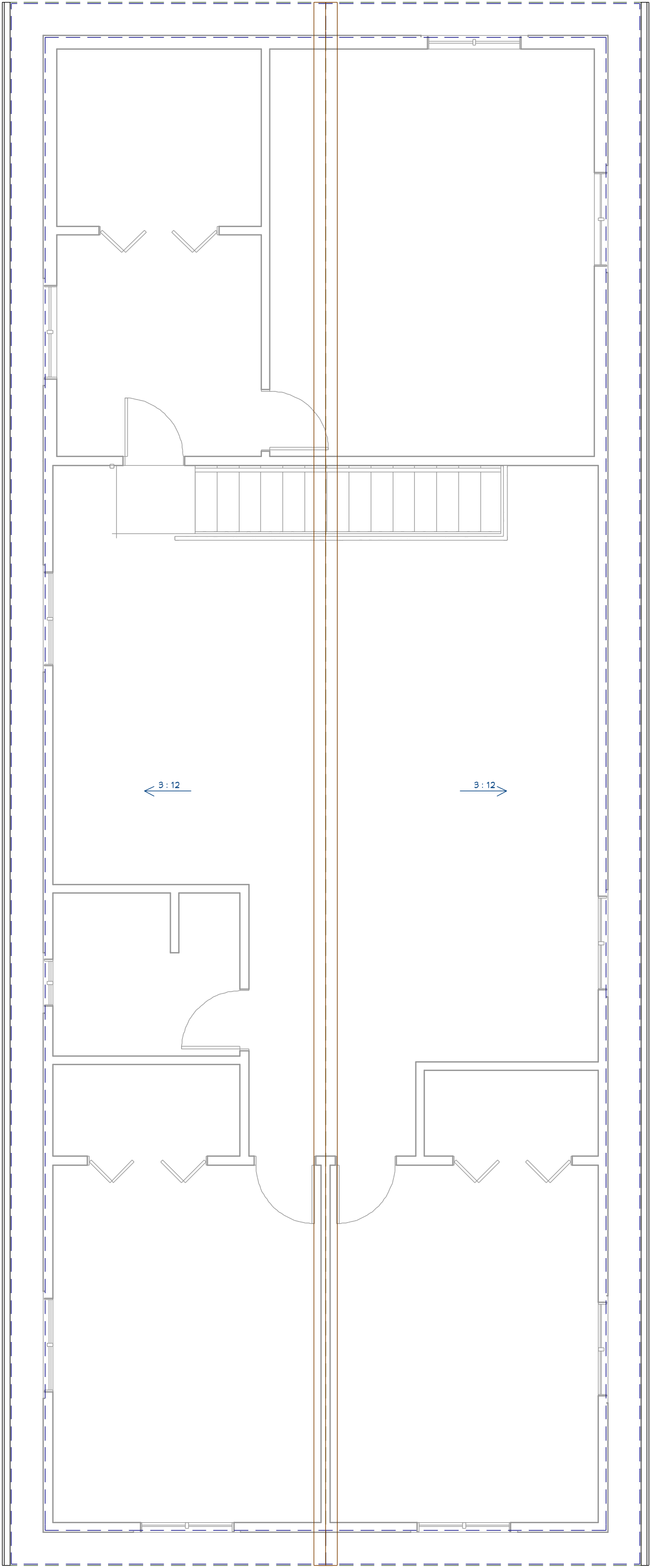
3RD FLOOR PLAN
SCALE 1/4"=1'

DOOR SCHEDULE							
NUMBER	LABEL	QTY	FLOOR	SIZE	R/O	DESCRIPTION	HEADER
D01	2668	2	3	2668 R IN	32"X82 1/2"	HINGED-DOOR P04	2X6X35" (2)
D02	2668	3	3	2668 L IN	32"X82 1/2"	HINGED-DOOR P04	2X6X35" (2)
D03	5068	3	3	5068 L/R	62"X82 1/2"	4 DR. BIFOLD-LOUVERED	2X6X65" (2)

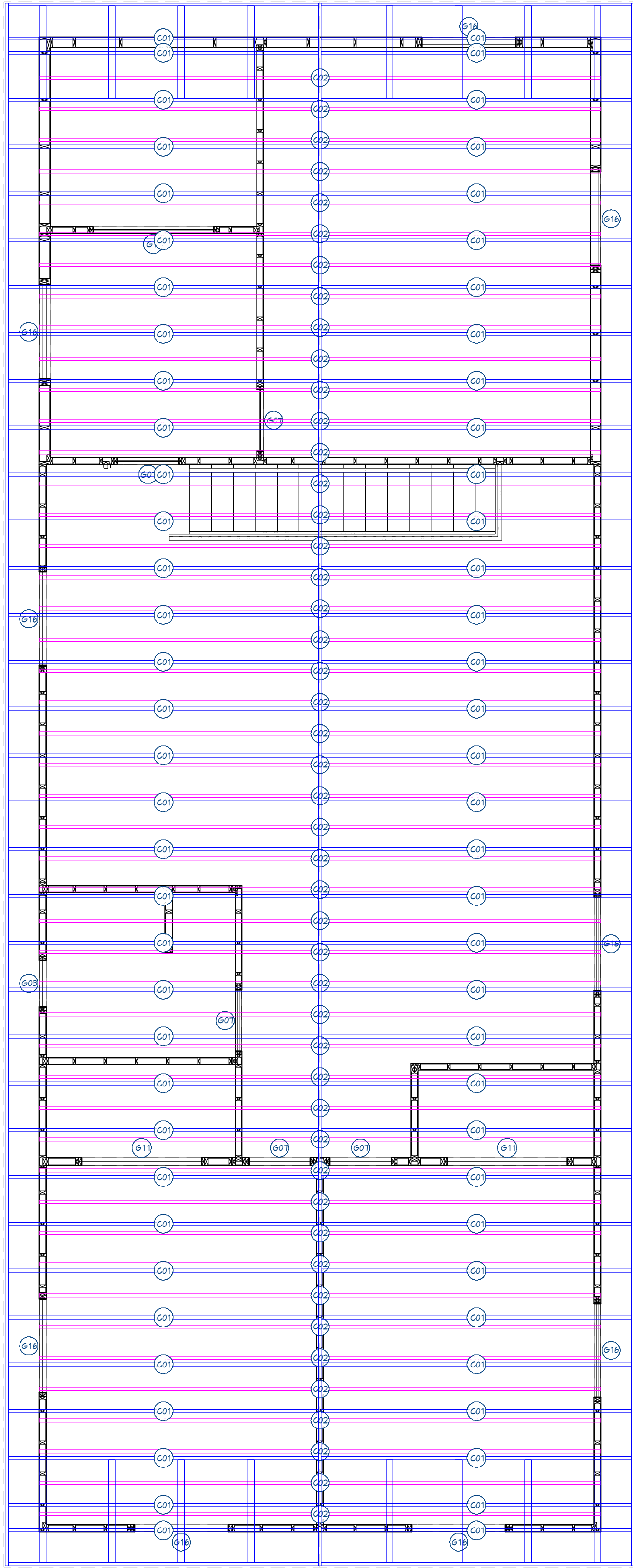
WINDOW SCHEDULE									
NUMBER	LABEL	QTY	FLOOR	SIZE	R/O	EGRESS	DESCRIPTION	HEADER	U-FACTOR
W01	4040DC	3	3	4040DC	49"X49"	YES	DOUBLE CASEMENT-LHL/RHL	2X6X52" (2)	0.3
W02	4040DC	6	3	4040DC	49"X49"		DOUBLE CASEMENT-LHL/RHL	2X6X52" (2)	0.3
W03	2020DC	1	3	2020DC	25"X25"		DOUBLE CASEMENT-LHL/RHL	2X6X28" (2)	0.3



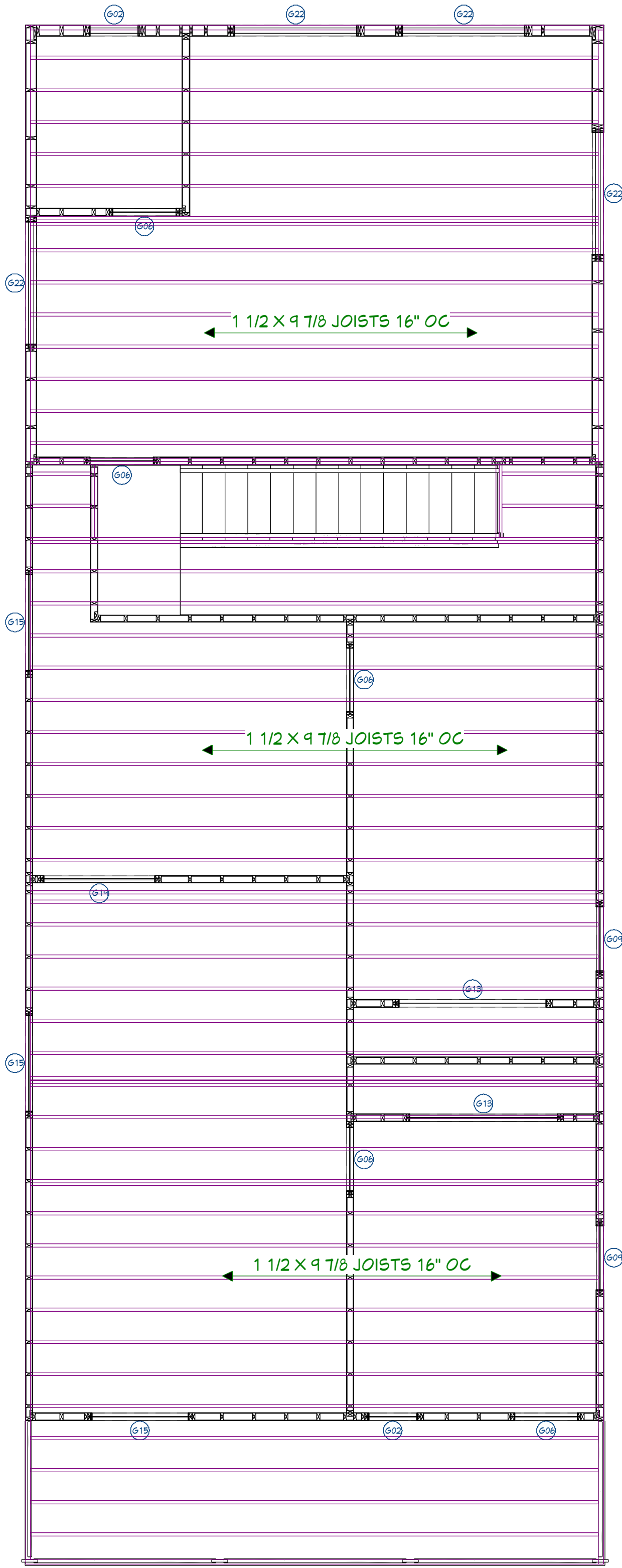
97 1/8" 2 x 6 WALL W/6" LOG SIDING
Scale:



ROOF PLAN
SCALE 1/4"=1'

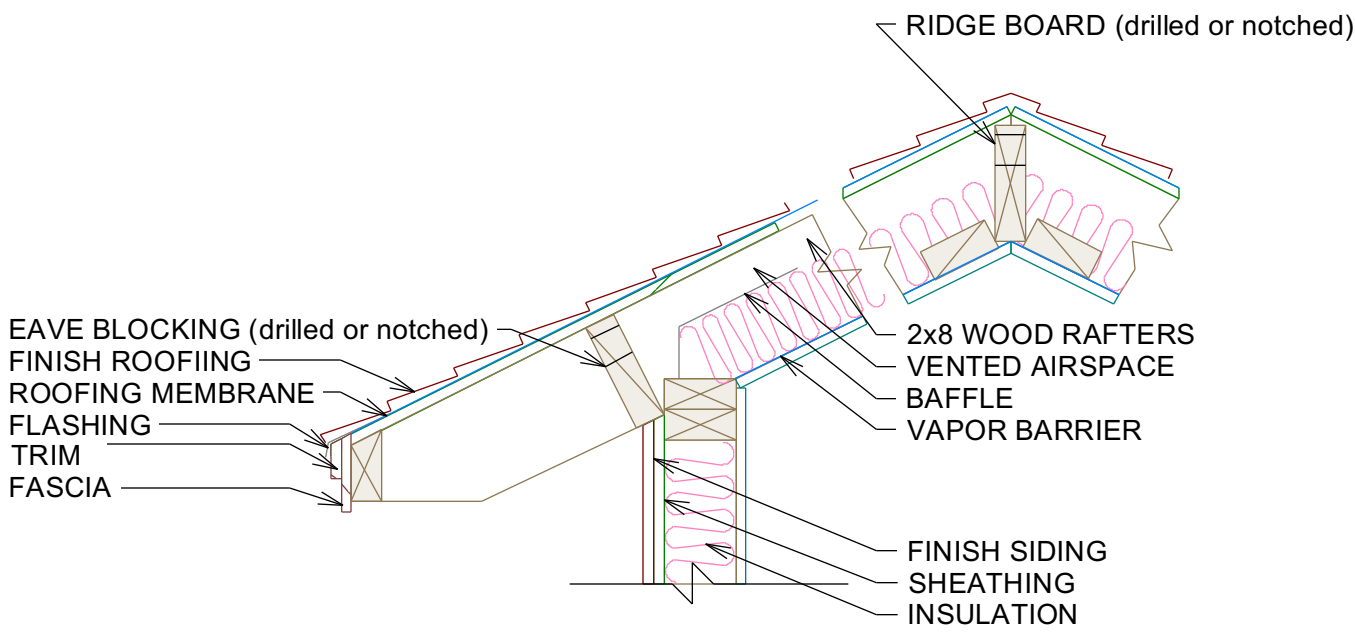


ROOF FRAMING PLAN
SCALE 1/4"=1'

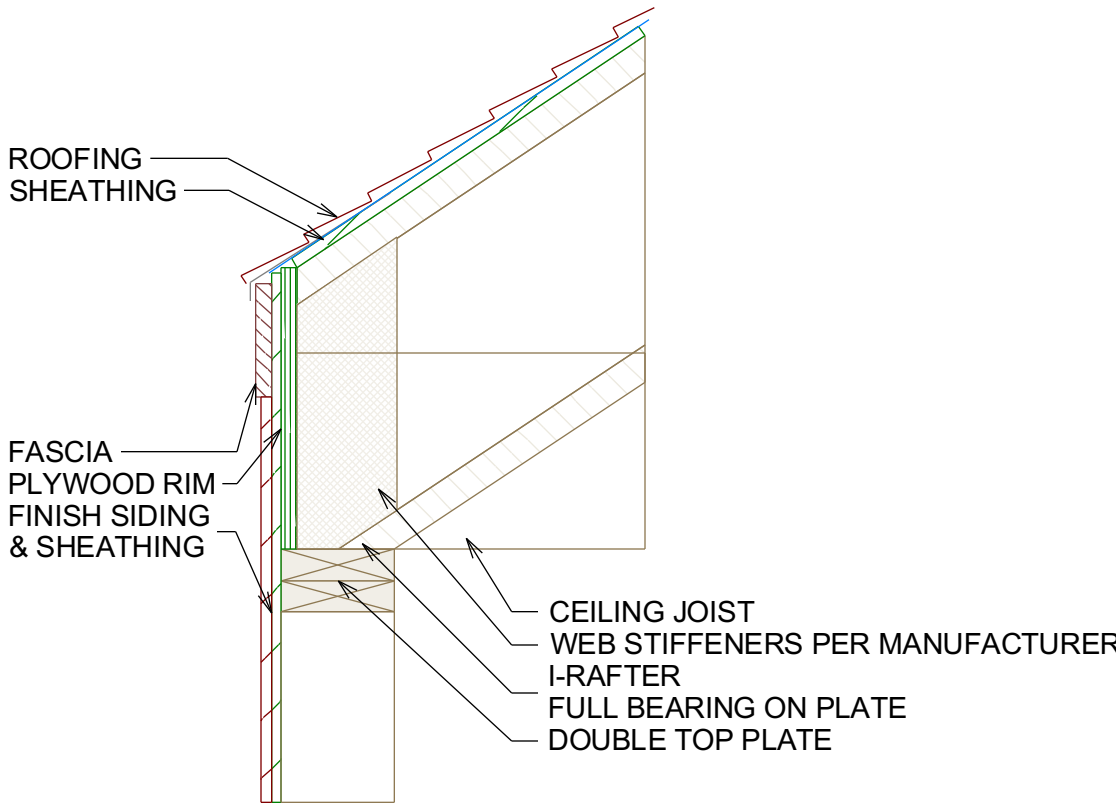


3RD FLOOR FRAMING PLAN
SCALE 1/4"=1'

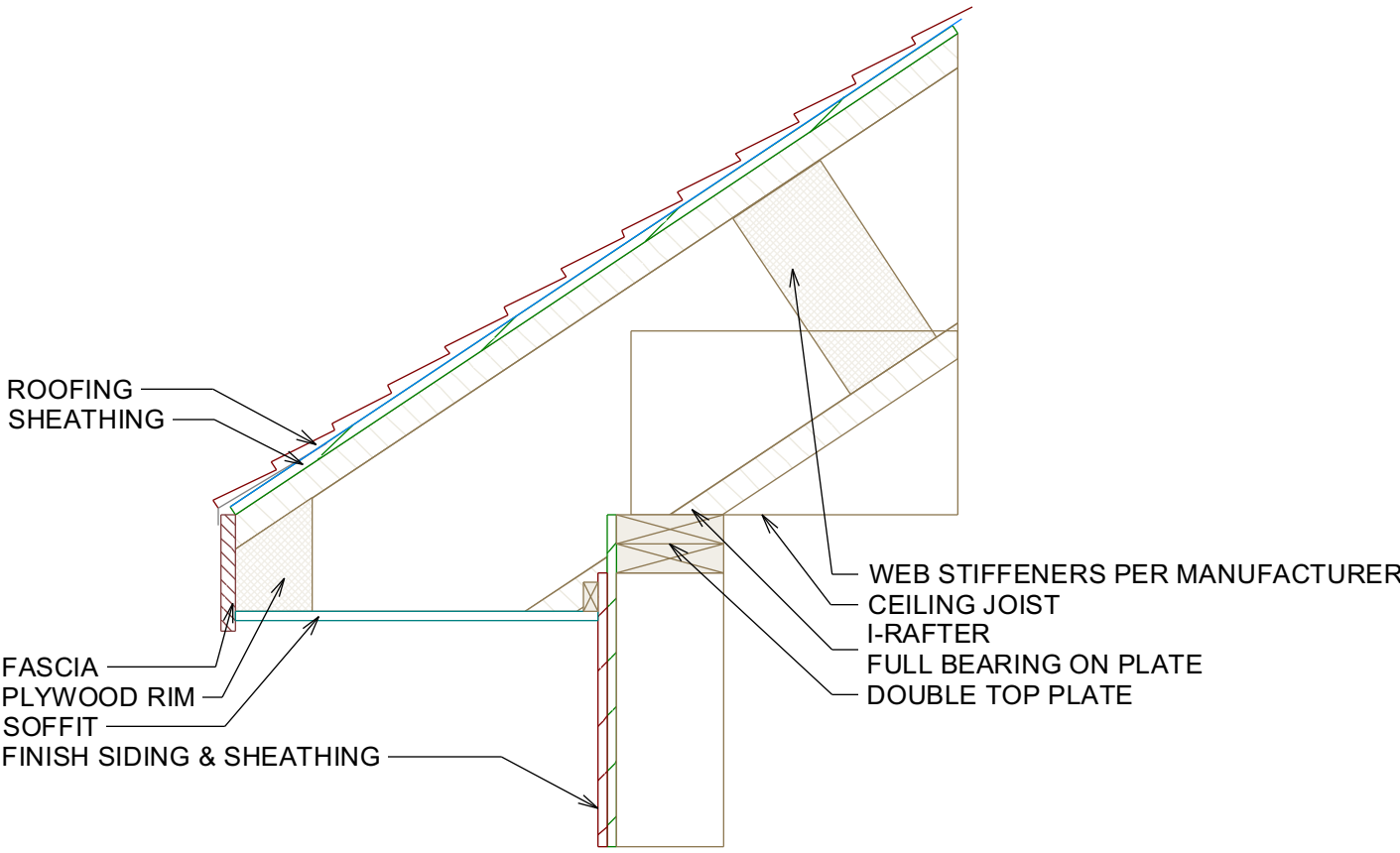
RAFTER AND CEILING JOIST SCHEDULE						
NUMBER	LABEL	QTY	FLOOR	DESCRIPTION	DIMENSIONS	FLOOR
C01		68	3	RAFTERS - LUMBER	1 1/2X9 1/4X166 3/16"	3
C02		47	3	CEILING JOISTS - LUMBER	1 1/2X5 1/2X288"	3



Exposed Rafters
(print at 1"=1')



I-Rafter: Abbreviated Eave
(print at 1"=1')



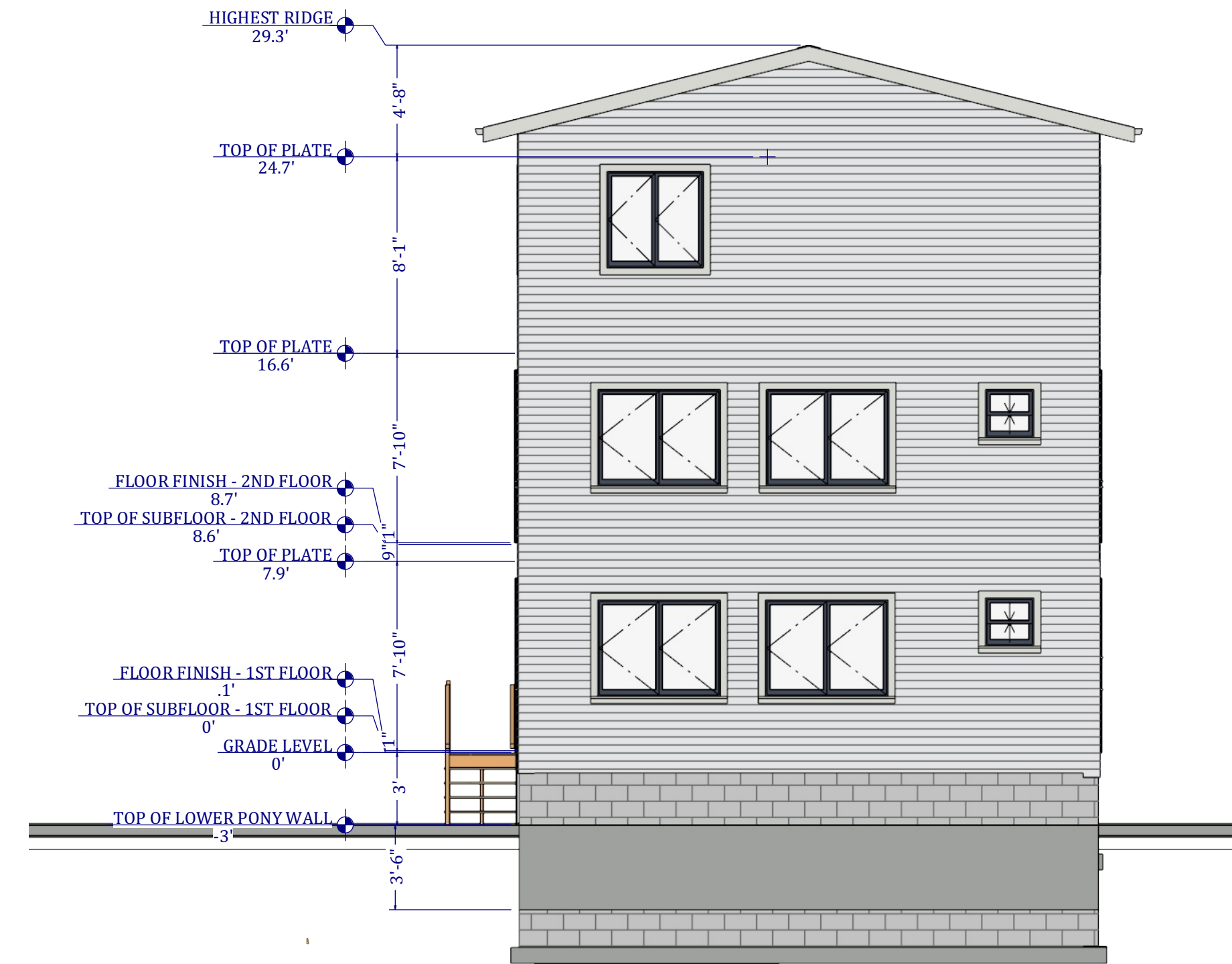
I-Rafter: Soffited Eave
(print at 1"=1')



E-1
P-3 SECTION
SCALE 3/16"=1'



E-2
P-3 SECTION
SCALE 3/16"=1'



E-3
P-3 SECTION
SCALE 3/16"=1'



E-4
P-3 SECTION
SCALE 3/16"=1'

EXTERIOR ELEVATION

3894 DOROTHY
HAMTRAMCK, MI 48212

DRAWINGS PROVIDED BY:
ABDULRAHMAN ALQADHI
20824 WHITLOCK DR
DEARBORN HEIGHTS MI 48127
313-707-8414

DATE:

1/17/2023

SCALE:

24x36

SHEET:

A-3

Notice of Public Hearing – City of Hamtramck

Zoning Board of Appeals

NOTICE is hereby given that the city of Hamtramck Zoning Board of Appeals will conduct a public hearing in the 2nd Floor Council Chambers of Hamtramck City Hall (3401 Evaline, Hamtramck, MI 48212) on September 19, 2023, at 6:00 p.m. Public comments will be limited to three minutes per speaker. Public comments may also be heard by submitting a written comment to Assistant CED Manager at AColson@hamtramckcity.com.

The subject of the hearing is to consider a variance request to the zoning ordinance section 155.050(E)(5) from applicant Hezam Mohamed Saleh for address 3894 Dorothy in Hamtramck. Parcel 41005140191000. An addition to the house does not meet the minimum required 30 ft. rear setback.

The City of Hamtramck will provide necessary and reasonable auxiliary aids, and services for individuals with disabilities at the public hearing upon advance notice by writing or calling the Clerk's Office at (313) 800-5233 x343. Please contact the Clerk's office at least 10 days in advance.



MCKENNA

September 11, 2023

Zoning Board of Appeals
City of Hamtramck
3401 Evaline Street
Hamtramck, Michigan 48212

Subject: **Request for Rear Setback Dimensional Variance**

Location: **3894 Dorothy St. – Parcel ID# 41-005-14-0191-000** (Located on the south side of Dorothy St, east of Conant St.)

Zoning: **R, Residential**

Dear Members of the ZBA:

We have reviewed the above referenced variance application submitted by Hezam Mohamedbsaleh the property owner of the site. The applicant is requesting a dimensional variance for the site. We offer the following comments based on a review of the criteria and sound planning principles.

EXISTING CONDITIONS, PROPOSED USE AND PREVIOUS APPROVALS

The lot at 3894 Dorothy St is 30 feet (ft) wide by 1000 feet deep totaling 3,000 square feet (SF) in area. Prior to construction, the site was occupied by a two-story 1,940 principal residence. The applicant originally submitted plans for a rear addition to the original structure in December 2022. A revised plan dated 01-17-2023 for a third floor addition along with a 432 SF footprint rear addition was submitted by the applicant and a building permit for these plans was issued on 02-01-2023. The resulting residential structure on the approved plans would have had a six (6) ft front yard setback, three (3) ft side yard setbacks and a 30 ft rear yard setback. All these dimensions are in compliance with zoning ordinance standards and would result in a legally compliant structure.



HEADQUARTERS
235 East Main Street
Suite 105
Northville, Michigan 48167

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F 248.596.0930
MCKA.COM

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However, building inspections of the site and structure conducted in March/April 2023 revealed that construction was done in violation of the approved plans. Multiple improvements were installed inconsistent with the approved plans including windows in the wrong location, a new third story balcony and additional floor area on the rear of the structure. We have also been informed that multiple building code violations have been found that are structurally unsound and impact the overall safety of the building. While the building is still in compliance with the front and side yard setbacks, the construction activity has resulted in the structure now being located 19 feet from the rear lot line. The applicant is now requesting a variance due to construction inconsistent with the approved plans.



VARIANCE REQUESTED

The applicant is requesting the following variance from the Zoning Ordinance:

1. RESIDENTIAL ZONES, Section 155.050 Residential District (R), Paragraph E, Area, height and bulk requirements, subparagraph (5):

Rear Yard Setback – Minimum Required:	30 feet
Original Setback:	48 feet
Proposed Setback:	19 feet
Variance Requested:	11 feet

REVIEW COMMENTS

In accordance with Sec. 155.024(F)(11)(a) the Board shall approve a dimensional variance from the standards of the zoning ordinance when a property owner demonstrates a practical difficulty. A practical difficulty exists when there is something physically unique about the geographical or topographical characteristics of the subject piece of property that prevents compliance with the ordinance standards. Such physical characteristics include the presence of significant streams or rivers, or steep slopes with significant change in the grade. Lot line configurations that are not typically found in the rest of a platted subdivision that results in narrow or pie shaped lots can also sometimes meet the criteria for a practical difficulty. Subparagraphs a to d outlines the criteria that should be reviewed by the ZBA in determining whether a practical difficulty exists.



1. **Strict compliance with the area, setbacks, frontage, height, bulk, or density requirements of this chapter would unreasonably prevent the property owner from using property for some lawful permitted purpose or would render conformity unnecessarily burdensome in the particular case.**

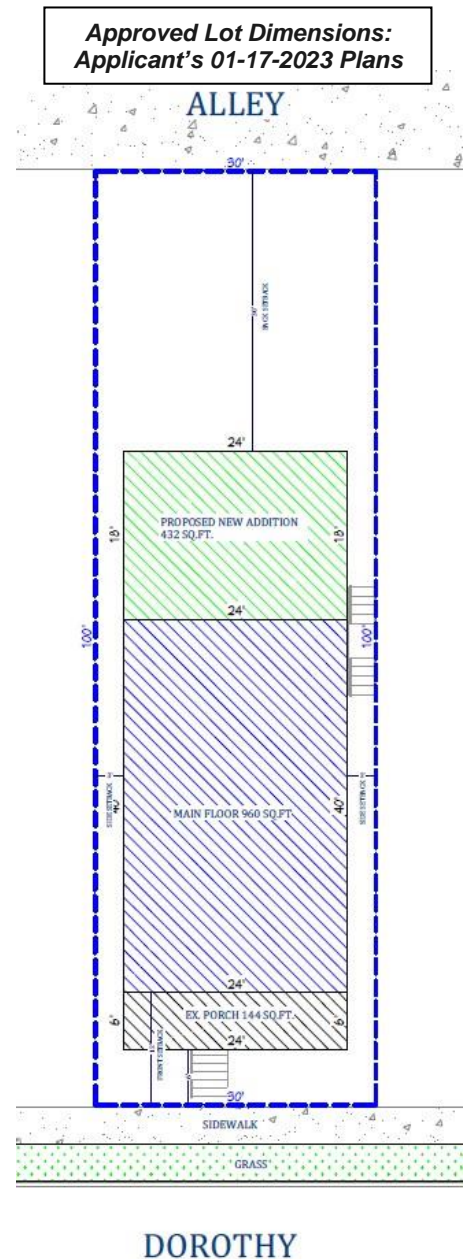
The approved building addition plans would have resulted in an addition with a 432 SF footprint. Combined with the third floor addition, the overall new square footage in the approved residences would have been 2,400 SF. Strict compliance with the 30 ft rear yard setback as shown on the approved plans would provide over 125% of additional floor area for the applicant. Such an increase allows for the continued permitted residential use of the site for a large family or multiple families. Strict compliance with the rear setback could not genuinely be perceived as being burdensome because strict compliance allows for a residence with 4,320 SF of internal living space. The site can be used for the permitted purpose of a residence. Strict compliance with the required rear setback will not unreasonably prevent the owner from using the property.

When permitted residences no longer accommodate the needs of a family as they grow, those families move on to other homes that fit their needs. The City has other homes that have more square footage and are in strict compliance with the ordinance standards.

2. **A variance shall do substantial justice to both the property owner and neighboring property owners in the district or that a lesser requirement would give substantial relief and be more consistent with justice to others.**

Granting the variance would not provide substantial justice to the neighboring property owners because they have residences which have been developed in compliance with the rear yard setback. When adjacent property owners were in need of additional living space they would construct additions in compliance with the ordinance requirements or move to other residences in the City that have the floor area they desire. While granting the property owner a variance for the illegal addition would achieve their want for more square footage, substantial justice will not be granted to all the adjacent property owners which have complied with the regulations.

We also note that the new addition will severely limit the amount of light that the property owner to the east will have in their rear yard. The primary reason for a rear setback is to create an open space for residents to enjoy their own private outdoor area that has access to sunlight and fresh air. When all structures comply with the rear setback requirement, all property owners and residents have an equal amount of sunlight in their rear private yards. The illegally constructed rear addition will block sunlight in the late afternoon and evening hours. The property owner to the east will be negatively impacted.





A lesser variance would not be consistent with any relief granted to other adjacent property owners because all adjacent properties on Dorothy St and the immediate area are in full compliance with the rear setback.

3. The plight of the property owner is due to unique circumstances on the property.

The lot has a flat grade with very minimal slope and has no steep slopes or significant grade changes. There are no creeks, drains or other water features on the site. The lot is a typical urban residential lot with the same physical characteristics as the other platted lots in this immediate adjacent area of the City. The lot is a rectangular shape and has the same dimensions as the residential lots found on Oliver, Dorothy and Miller Streets. All except for two of these developed rectangular lots have been constructed with residences in compliance with all the setback standards including the rear setback requirement. The subject property does not have any unique characteristics or circumstances that would prevent compliance with the rear yard setback.

4. The problem of the property owner is not self-created.

The problem resulting in the need for the variance is based on construction down on the site in violation of the approved permits. The permits were issued under the property owner's name and to the property owner. No contractor was listed. If a contractor was listed on the building permit, then it could be concluded that a contractor bears some responsibility for the resulting construction activities. But the property owner is listed as the only responsible party on the approved permit. The resulting location of the addition within the required rear setback is self-created.

RECOMMENDATION AND FINDINGS

Subject to any additional information presented and discussed by the applicant, ZBA members, and/or the public during the public hearing and incorporated into the record prior to any findings being made, we recommend that the Zoning Board of Appeals deny the requested variance for the property located at 3894 Dorothy St based on the findings of fact below:

1. *The property owner will still have a significant addition to the existing structure and will be able to use the property as a residence when strictly complying with the 30 ft. required rear setback.*
2. *The vast majority of adjacent property owners have complied with the rear yard setback regulations. The adjacent property owners will be denied substantial justice by the variance.*
3. *An addition 19 ft from the rear property line will block sunlight in the late afternoon and evening hours. The property owner to the east will be negatively impacted.*
4. *The need for the variance is self-created.*

If you have any questions, please do not hesitate to contact me. Thank you!

Respectfully submitted,

McKENNA

Mario A. Ortega, AICP
Principal Planner