



City of Yamhill
A small taste of Oregon

Planning Commission Packet

8-21-2023

STAFF REPORT

TO: Yamhill Planning Commission

FROM: Walt Wendolowski, Contract City Planner

SUBJECT: Planning File – Gas Station/Convenience Store (DR 23-02)
Continuation of July 19, 2023, Hearing

DATE: August 14, 2023

I. BACKGROUND

- A. **APPLICANT:** Melissa Poland (for property owned by Paul Johal).
- B. **PROPERTY LOCATION:** The property is located on the southwest corner of the intersection of South Maple Street and West First Street. The site address is 210 South Maple Street, and the County Assessor map places the property within Township 3 South; Range 4 West; Section 04BD; Tax Lot 2900.
- C. **PARCEL SIZE:** The subject property contains approximately 18,600 square feet.
- D. **EXISTING DEVELOPMENT:** The vacant subject area fronts two public streets and public services are available to serve the site.
- E. **ZONING:** The property is zoned General Commercial Zone (C-3) and is also located within the identified Central Business District (CBD).
- F. **ADJACENT ZONING AND LAND USE:** All adjacent land is zoned C-3 and contains commercial development primarily located along South Maple Street.
- G. **REQUEST:** The applicant is requesting Development Plan Review approval to establish a service station and convenience store on the subject property.
- H. **DECISION CRITERIA:** Yamhill Municipal Code; Chapter 10.28 (General Commercial Zone) and Chapter 10.46 (Central Business District).
- I. **APPLICATION HISTORY:** The application was originally heard by the Commission on July 19, 2023. The Commission voted to continue the matter until the August 21 meeting to allow the applicant to provide additional information.

II. APPLICATION SUMMARY

- A. The applicant wishes to construct a combination gas station and convenience store on the subject property. The previously submitted layout included the following:

1. A 3,360 square foot store will be located near the northeast corner of the property. The building will include a 0-foot setback on the north and a 15-foot setback along Maple Street. The exterior finish includes a mix of brick veneer and split-faced concrete (CMU) with pre-finished sheet metal cornices and metal awnings. The building is 17-feet in height with a small portion above the main entrance at approximately 20-feet. Each wall will include window treatment with the entrance located on the south side of the building, facing the pump islands.
2. The site includes fourteen parking spaces, five spaces (including a disabled space) located on the west side of the building and nine additional spaces along the west property line. A covered dumpster enclosure is located on the west side, in the approximate center of the nine parking spaces.
3. The three gas pump islands will be located on the south side of the site, running parallel with the building. An approximate 1,850 square foot canopy will cover the pumps. The closest pump island is 30-feet from the Maple Street property line and ~35 feet to the store.
4. There are two points of access, a 40-foot entrance on Maple Street and a 25-foot entrance on First Street. The Maple Street entrance is located on the lower third of the Maple Street property line with the pump islands centered relative to the entrance. The First Street access is in the northwest corner of the site.
5. Traffic flow information indicates both access points are suitable for ingress and egress. The application also includes several delivery and fueling schematics indicating how the layout allows customers to fuel their vehicles, and deliveries made, for a variety of vehicles.
6. There is a landscaping area located between the west property line and adjacent parking and contains approximately 600 square feet. Additional landscaping is located adjacent to the east side of the building, within the setback. Total landscaping is 884 square feet. A chain link fence will be located along the west property line and approximately western one-half of the south property line.
7. An electrical charging station is next to the parking space located adjacent to West 1st Street. The underground tanks run north-south and are located on the west side of the site between the parking spaces. Bike racks are located within the 15-foot setback along Maple Street.
8. The sign plan is like the original proposal but shows a previous structure. Information on an illuminated, digital wall display was included; however, the proposed building location (if any) was not identified.

- B. The applicant submitted additional plans on August 2, meeting the August 4 deadline imposed by the Commission. Additions and revisions are noted below:
1. The applicant reduced the size of the building to 3,037.5 square feet. The northeast corner of the building is angled, creating a 15' x 15' clear-vision triangle. There are zero-foot setbacks along both West 1st Street and Maple Street. A walkway surrounds the building, allowing access from both streets.
 2. The new plans include a revised exterior appearance. The above noted angled corner includes a bank of windows and canopy, both visible from Maple Street. The store now features two points of entrance: one at the southeast corner of the building and fronting Maple Street, and a second on the south side of the building facing the gas pumps. The north side, along 1st Street, includes additional window treatments. The exterior finish of brick and CME is unchanged.
 3. There are two loading spaces located adjacent to the store's south side. This required moving the pump island about one foot to the south. The submitted vehicle turning diagrams were revised per the applicant's civil engineer. Otherwise, the location of the fourteen parking spaces, trash enclosure, charging station, and underground fuel tanks is unchanged.
 4. The 1st Street access increased from 24 to 30 feet. The bike racks and landscaping were moved to the west side of the structure with additional landscaping along the west property boundary.
 5. The sign information did not reflect the new building. A photo of an existing sign in Sheridan was submitted; however, the proposed location as well as sign area information was not provided.
- C. Section 10.28.020(A)(14)(a) allows an automobile service station in the C-3 zone. Further, Section 10.28.020(A)(11) permits retail uses. Based on these two subsections, the C-3 zone allows the proposed development. In addition, per Section 10.28.050(A) in a C-3 zone, a development plan shall be submitted to the Planning Commission for expansion of existing buildings and for new construction.
- D. The July staff report reviews comments from the Oregon Department of Transportation and the Yamhill Department of Public Works. These agencies' comments still apply as there is no fundamental change in the layout.
- E. This is a continuation hearing from the July meeting with the applicant submitting new plans and information. For this reason, the staff report addresses the entire application and not just the revisions. Finally, the property is in the C-3 zone and subject to the Central Business District provisions. This report addresses the (C-3) zone first followed by compliance with the Central Business District rules.

III. CRITERIA AND FINDINGS - GENERAL COMMERCIAL ZONE (C-3)

- A. Section 10.28.050(A) requires the submittal of a design review to the Planning Commission for the construction of a new building. The review is subject to the following provisions:

1. Section 10.28.050(A) - In approving a development plan, the governing body may impose conditions relating to:
 - (1) Size and location of signs;
 - (2) Size, type and location of outdoor lighting;
 - (3) Landscaped area;
 - (4) Screening;
 - (5) Building setbacks;
 - (6) Ingress, parking, vehicle storage, and egress for commercial uses;
 - (7) Drainage and utility service.

Construction shall be in conformance to the plan approved by the Planning Commission to assure compatibility with adjacent zones.

FINDINGS: This subsection provides guidelines for the Commission to consider regarding conditions of development.

2. Section 10.28.050(B) - The uses shall not be objectionable in relationship to surrounding properties because of odor, dust, smoke, cinders, fumes, noise, glare, heat or vibration or similar causes.

FINDINGS: Gas stations have potential for odor and fumes. However, the Department of Environmental Quality (DEQ) regulates storage tank installation and gas vapor emissions. Potential impacts should be minimized provided the site complies with DEQ regulations. Otherwise, dust, smoke, cinders, fumes, heat, and vibration should not be factors.

The City should stipulate that all lighting from the pump islands, the canopy, and the convenience store be directed entirely onto the subject property. Further, lighting may not cast a glare or reflection onto the public rights-of-way. A lighting plan should be required as part of any building permit submittal.

3. Section 10.28.050(C) - Retail or wholesale stores or businesses shall not engage in the manufacturing, processing, or compounding of products other than those which are clearly incidental to the business conducted on the premises and provided that not more than 50% of the floor area of the building is used in the manufacturing, processing, or compounding of products.

FINDINGS: This subsection does not apply as the proposed business is a service station with a retail store and does not engage in the manufacturing, processing, or compounding of products.

4. Section 10.28.050(D) - Compliance with requirements of Chapter 10.52 (Off-Street Parking and Loading).

FINDINGS: The layout includes both a retail store and a service area (gas pump islands). Per Section 10.52.050(J), the retail store requires one space per 400-square feet plus one space per two employees. This would require 7.59 spaces (8 rounded up) based on the store area, and one or two for employees, for a minimum of ten spaces. The Code does not contain specific parking requirements regarding the fuel pump portion of the project. The site plan identifies 14 parking spaces on the west side of the property thereby exceeding the minimum requirements.

Section 10.52.060(A) contains loading requirements for commercial buildings. The language notes: "Commercial retail buildings shall require a minimum loading space size of 12 feet wide, 30 feet long and 14 feet high in the following amounts: for buildings containing up to 2,000 square feet of gross floor area, one space and one additional space for each additional 10,000 square feet of gross floor area, or any portion thereof, or otherwise determined by the Planning Commission." By this accounting, two such loading spaces would be required.

The revised layout identifies two loading spaces located adjacent to the south side of the store. This required moving the pump islands approximately one foot to the south. With this revision, the applicant supplied added information on turning radii, showing how the site can accommodate various vehicles and potential traffic patterns. With the reduction in the number of pumps, a smaller retail store, and additional parking spaces, it appears the layout can safely accommodate needed vehicle movements along with the new loading spaces.

Finally, all improvements must comply with the improvement standards contained in Chapter 10.52.

- B. Section 10.28.060 - Height. No building in the C-3 zone shall exceed a height of two and one-half stories from natural ground level or thirty-five feet from natural ground level.

FINDINGS: Based on the submitted information, the store is approximately 17 feet in height while about one-third of the building facade increases to 20 feet in height. Accordingly, the canopy height is approximately 17-feet. These heights can be confirmed through the building permit process.

- C. Section 10.28.070 - Side and Rear Yards. There shall be no required side or rear yards in a C-3 zone. If a side or rear yard is provided, it shall be not less than three feet in depth, exclusive of any alley.

FINDINGS: Setbacks to the south and west exceed 60-feet, complying with this Section.

- D. Section 10.28.080 - Front Yard. There shall be no front yard required in a C-3 zone.

FINDINGS: The layout complies with this provision.

- E. Section 10.28.090 - Lot Area and Width. There shall be no lot area or width requirements in a C-3 zone.

FINDINGS: The 0.42 parcel complies with this provision.

- F. Section 10.28.100 - Parking Requirements. All new developments shall require off-street parking, which shall be provided in accordance with Chapter 10.52, Off-Street Parking and Loading, including special provisions for development within the Central Business District Overlay Zone.

FINDINGS: This report previously addressed parking.

- G. Section 10.28.110 - Bicycle Requirements. All new developments shall require bicycle parking, which shall be provided in accordance with Chapter 10.56, Bicycle Parking.

FINDINGS: Provisions in this Chapter require one space per ten parking spaces. Since the parking calculation requires ten spaces, one bicycle space is required. The site plan identified a bicycle rack located on the west side of the building. Improvements must comply with Chapter requirements.

- H. Section 10.28.120 - Fence Regulations. All new development shall adhere to the fence regulations, which shall be provided in accordance with Chapter 10.60, Fence and Wall Regulations.

FINDINGS: As adjacent property is also zoned C-3, fences are not required. However, if installed or maintained by the applicant, fences must comply with provisions in this Chapter.

- I. Section 10.28.130 - Clear-Vision Area. All new developments shall adhere to the clear-vision requirements, which shall be provided in accordance with Chapter 10.68, Clear-Vision Area.

FINDINGS: Per 10.68.040(B), the site needs to maintain a clear area at the First/Maple intersection with a distance along each property line of 15-feet. Based on the building site plan, the proposal complies with this requirement.

- J. Section 10.28.140 - Sign Regulations. All signs shall be subject to the provisions of Chapter 10.64, Sign Regulations.

FINDINGS: As the site is in the Central Business District, Section IV, below, reviews the specific sign requirements in Section 10.46.60.

- K. Section 10.28.150 - Conditions Imposed Where C-3 Zone Abuts Residential Zone. In any C-3 zone where the property abuts upon a residential zone, or abuts upon a street or alley which would be the boundary line between the proposed C-3 zone and the residential zone, conditions to preserve neighborhood qualities may be imposed by the governing body relating to:
- i. Size and location of signs;
 - ii. Size, type and location of outdoor lighting;
 - iii. Landscaped areas;
 - iv. Screening;
 - v. Building setbacks;
 - vi. Ingress, parking, vehicle storage, and egress for commercial uses;
 - vii. Drainage and utility service.

FINDINGS: This subsection does not apply as the subject property does not abut residential zoned property. Staff previously provided recommendations regarding lighting impacts.

IV. CRITERIA AND FINDINGS - CENTRAL BUSINESS DISTRICT

- A. Chapter 10.46 contains specific requirements for development within the Central Business District Overlay (CBD). The purpose of the Central Business District Overlay Zone is to establish development requirements which are specifically designed to address the unique challenges of the City's downtown. This area includes all C-3 zone land south of Azalea Street, which includes the subject property. Uses permitted in the C-3 zone, including the proposed gas station and convenience store, are also allowed in the CBD (Section 10.46.030).
- B. Land within the CBD is subject to additional requirements beyond those contained in Chapter 10.28 (C-3 Zone), which were previously reviewed. These are listed here:
1. Section 10.46.040 Landscaping. - Those areas not containing building or parking improvements, including access driveways, and loading areas, shall be landscaped.

FINDINGS: Structures, parking, and driveways dominate the site. Landscaping includes a strip along the west property line and an area on the west side, totaling approximately 500 square feet.

2. Section 10.46.050 Building Standards. New buildings, and the redevelopment of existing buildings that include exterior modifications, shall comply with the following standards:

- a. Section 10.46.050(A) Setbacks. The maximum building setback from a street-side property line shall be 20 feet. No parking is allowed between the building and the street. Other than areas used for driveways, the street-side setback area shall be landscaped. Otherwise, there shall be no minimum nor maximum building setbacks.

FINDINGS: This provision allows 0-foot setbacks. The building setback is zero-feet along each street.

- b. Section 10.46.050(B) Building Height. New buildings shall be within 25% of the average height of existing buildings located on the same street side.

FINDINGS: The applicant previously submitted elevation drawings of adjacent structures. The proposed convenience store is at a general level with other commercial buildings and certainly within 25% of the mean.

- c. Section 10.46.050(C) Orientation. The main entrance to a building shall face a public street or be perpendicular to a public street facing an internal parking lot with the main entrance door no more than 50 feet from the public sidewalk.

FINDINGS: There are two entrances: one on the southeast corner of the building and a second on the south side of the building, facing the fuel pumps. Based on the point of sales location, the southeast corner entrance would qualify as the main entrance, and it does face a public street. In addition, the second entrance is perpendicular to the street and still within 50-feet of the Maple Street sidewalk.

- d. Section 10.46.050(D) Building Façade. Building façades visible from a public street shall provide a brick, masonry, or wood appearance.

FINDINGS: The structure complies with this Section, as the façade combines brick veneers and split-faced CMU to create a masonry finish.

- e. Section 10.46.050(E) Special Design Requirements. For property located on either side of Maple Street, the following additional design standards shall apply:
 - (1) Setbacks. The maximum building setback from a street-side property line shall be zero feet.
 - (2) Building Height. Buildings shall be within 10% of the average height of existing buildings within the block.
 - (3) Building Design. Buildings shall be similar in character and design with existing structures.

FINDINGS: As noted, the building complies with the 0-foot setback requirement on Maple Street along with the clear vision provisions of the Code. Within the block, previous elevation plans show the roof line is approximately equal to the commercial structures to the south. Buildings along Maple Street have their main entrance facing the street with window treatments on either side of the entrance. In contrast, the revised store plan shows a Maple Street entrance, but with window treatment on the angled wall to the north. The issue remains whether the applicant's proposed Maple Street entrance is similar in character to other entrances along Maple Street.

- f. Section 10.46.050(F) Drive-Up and Drive-In Windows. Buildings constructed or reconstructed to include retail sale drive-up or drive-in windows shall be designed and constructed so the internal driveways access the public street(s) in a manner minimizing the potential for vehicle conflicts and congestion and minimizing the potential for pedestrian conflicts. Requirements that may be included in any permit approval may include limiting the number and location of driveways, design of pedestrian access or other appropriate and related safety measures. Internal driveways shall not be located in required landscape areas except to cross them as necessary to access the public street.

FINDINGS: This subsection does not apply as the subject property does not include drive-up/drive-in window.

- 3. Section 10.46.060 Signs. Signs shall comply with the following standards:

- a. Section 10.46.060(A) Permitted Sign Types. Signs shall be limited to wall signs or projecting signs. The edge of a projecting sign nearest the wall shall not extend more than 18 inches from a wall.

FINDINGS: The submitted site plan includes one sign on the canopy and one sign above the entrance to the convenience store. The revised material includes a schematic for a digital wall sign, location unknown.

- b. Section 10.46.060(B) Maximum Allowable Area. The maximum allowable sign area shall be computed as follows: one square foot of sign area for each one foot of building street-side frontage. This maximum area shall apply to all signs located on the building.

FINDINGS: The structure fronts on two streets, Maple and West First. The longest of the two frontages is 60-feet along West First. Therefore, the maximum allowable sign area is 60 square feet. As noted, the site plans identify location but are not specific as to dimensions. Further, the sign identified in the submitted photograph does not match the sign area identified on the south wall. The only sign with dimensions is the digital sign at 7.8 square feet of area.

- c. Section 10.46.060(C) Number. There shall be no limit to the number of signs, provided the total sign area for all signs does not exceed the maximum allowable area for the building.

FINDINGS: The site plan shows two signs, one on the canopy and one on the wall facing the fuel pumps. The location of the electronic sign was not identified.

- d. Section 10.46.060 (D) Illumination. Direct or indirect illumination shall be permitted, provided all illumination is directed away from adjacent property.

FINDINGS: Staff previously provided recommendations regarding lighting impacts.

- e. Section 10.46.060(E) Prohibited Sign Types. Signs extending above the roof line, balloon/tethered signs, blinking or flashing lights, and freestanding signs shall be prohibited.

FINDINGS: The proposed signage does not include prohibited signs.

- f. Section 10.46.060(F) Exempt Signs. Window signs shall be exempt from the maximum allowable sign area requirements. Portable signs shall also be exempt provided they do not exceed sixteen square feet in area (all sides).

FINDINGS: This is an on-going requirement.

- g. Section 10.46.060(G) Electronic Message Center Signs. Electronic message center signs shall be subject to provisions in Section 10.64.030 (L) and shall also require approval of a Sign Variance per Section 10.64.220.

FINDINGS: Electronic message center regulations require counting the EMC sign area at a rate two times that of a non-EMC sign, in this case, 15.6 square feet. The maximum allowable area in the zone is twenty-four square feet, so the sign area is acceptable. The remainder of the site is limited to 44.4 square feet of sign area. Signs placed within a window are exempt from the area requirements; however, there is no exemption from the conditional use and sign variance approval requirements to establish the sign.

- h. Section 10.46.060(H) State Highway Requirements. Applicants are advised to contact the State Highway Division of the Oregon Department of Transportation regarding other possible sign regulations along Maple Street.

FINDINGS: This is an administrative requirement that can be placed as a condition of approval.

V. SUMMARY COMMENTS

- A. Buildings along the Maple Street block have their main entrance onto Maple along with significant window treatment bordering the entrance. In contrast, the building's Maple Street improvements show an entrance on the southeast corner of building with window primarily located on the angled wall to the north. The Commission must consider whether this design is “. . . similar in character and design with existing structures.” If the answer is yes, then the building complies with the design provisions Section 10.46.050(E).
- B. However, if the Commission finds it is not similar in character, then the Commission must consider whether a modification is warranted. Modification of the design elements – in this case the Maple Street entrance - is subject to provisions in Section 10.46.070. This Section states the Commission may allow modifications to the site design requirements in the Central Business District when both of the following criteria are satisfied:
 - 1. 10.46.070(A). The modification is necessary to provide design flexibility where:
 - (1) Conditions unique to the site require such modification; or
 - (2) Parcel shape or configuration precludes compliance with provisions; or
 - (3) A modification is necessary to preserve trees, other natural features, or visual amenities determined by the Planning Commission to be significant to the aesthetic character of the area.
 - 2. 10.46.070 (B). Modification of the standards in this chapter shall only be approved if the Planning Commission finds that the specific design proposed is substantially in compliance with the intent and purpose of the Central Business District design provisions.

FINDINGS: Regarding subsection (A), staff cannot identify unique conditions at the site [(A)(1)] and there are no trees, natural features or visual amenities requiring preservation [(A)(3)]. The only potential circumstance may be the shape, size (or location) of the lot [(A)(2)]. This gets into dangerous territory. The use may be right for the applicant's goals but inappropriate for the size and location of the parcel. It does not appear the application can comply with the decision criteria in Section 10.46.070(A).

Regarding subsection (B), judging design is, at best, subjective. Unlike prior designs, there is now an entrance on Maple Street and significantly more window treatment. While it does provide a street entrance and some type of window treatment, it does not look like other frontages on adjacent buildings.

VI. RECOMMENDATION AND CONDITIONS OF APPROVAL

The proposal complies with a significant number of development requirements, such as building height, use, parking, loading areas and so forth. The only issue is whether the proposed Maple Street frontage meets the design criteria. If the Commission finds the frontage is similar in character to other buildings, then addressing the modification criteria in Section 10.46.070 is not required. However, if the Commission finds it is not similar in character, then the modification provisions in Section 10.46.070 apply. Again, compliance with both items (A) and (B) of this Section is required, and as noted, it may be difficult to support compliance with item (A).

Staff cannot make subjective judgements; this is left to the Commission to discuss as part of their deliberations. Unless the subjective design judgement meets with the Commissioners' approval, the application does not meet the Code requirements. However, if the Planning Commission finds the proposal complies with the applicable criteria and approves the application, staff recommends the following Conditions:

- A. The applicant shall submit an engineering plan for the entire development to the Yamhill Department of Public Works for review and approval. The engineering plan shall include information concerning water, sanitary sewer, storm water, street improvements along West 1st Street, easements, and other information as necessary to indicate conformance with City standards. Engineering plans shall comply with the provisions in Condition "F.", below.
- B. The applicant shall contact the Oregon Department of Transportation (ODOT) to determine what improvements are required along Maple Street. If required, the applicant shall submit the necessary engineering plans for improvements to ODOT for their review and approval.
- C. The developer shall submit a building permit for construction of the building and improvements, conforming to the applicable building code requirements. Building cannot proceed until engineering plans are approved. The plans shall substantially

conform to the submitted layout and include the following improvements:

1. The building exterior shall conform to the submitted architectural plans.
2. The site shall contain a minimum of 14 vehicle parking spaces conforming to requirements in Chapter 10.52.
3. The site shall contain a minimum of two bicycle parking spaces conforming to provisions in Chapter 10.60.
4. The building plan shall include a lighting plan ensuring lighting for the facility shall be directed entirely onto the subject property and may not extend beyond the property boundaries; and shall not cast a glare or reflection onto the public rights-of-way.

D. The following additional requirements shall apply:

1. All signs must comply with provisions in Section 10.46.060.
2. Prior to installation of any signs, the developer shall submit evidence of approval from the Oregon Department of Transportation.
3. The applicant shall comply, and continually comply, with any State or Federal regulations regarding the operations of a gas station.
4. The electronic message center sign shall require approval of a conditional use application and sign variance before installation.

E. Prior to building occupancy, the developer shall complete the following:

1. Install on-site parking improvements, consistent with approved building and engineering plans.
2. Improve West 1st Street, and if applicable Maple Street, consistent with approved engineering plans.

F. Engineering and Public Works improvements shall conform with the following:

1. All public improvements shall be constructed in accordance with the City of Yamhill Municipal Code. Where the City Municipal Code is silent, improvements shall meet the 2021 Oregon Standard Specifications for Construction and ODOT design standards.
2. Design drawings showing the sanitary sewer connection shall be submitted and approved by the City prior to development. ODOT permits will be required for working in the ODOT right-of-way.
3. Design drawings showing the water service connection shall be submitted and approved by the City prior to development.
4. Design drawings showing the stormwater design shall be submitted and approved by the City prior to development.
5. A stormwater report to document that the project will not create or exacerbate any downstream deficiency shall be submitted and approved by the City prior to development.
6. The applicant shall install standard curb and gutter and 8-foot-wide sidewalk along the West First Street frontage.
7. The West First Street access driveway shall be placed so that the nearest edge of the driveway is a minimum of 60 feet from the western edge of South Maple Street curb, aligning with the drive aisle west of the fuel pumps.

8. Any street cuts into the new pavement on West First Street will require a minimum half-street 2-inch mill and inlay extending 25 feet on each side of the transverse cut.
 9. Submit documentation of ODOT access permit for the driveway access to South Maple Street.
 10. The applicant shall replace the mountable curb along South Maple Street, south of West First Street, with a standard curb to meet ODOT standards.
 11. The applicant shall replace the curb ramp at the southwest corner of the West First/South Maple intersection to meet 2011 PROWAG guidelines and ODOT standards.
 12. Design drawings showing the street design shall be submitted and approved by the City prior to development.
 13. The developer will directly reimburse the City for consulting fees incurred during the review of engineering submittals. Payment will be due upon issuance of the public works permit.
 14. The City will provide inspection of all public infrastructure constructed within public right-of-way. The developer shall pay a deposit equal to 2.5 percent of the engineer's estimate of public improvements.
 15. The developer shall submit a performance bond in the amount of 110 percent of the engineer's estimate for improvements within existing public rights-of-way and improvements to existing City infrastructure. The bond shall be in place prior to breaking ground for the development.
- G. Approval shall be limited to the proposed convenience store and service station as submitted. The applicant is advised subsequent modification or a change in use may be subject to additional land use applications and review.
- H. Compliance with the Conditions of Approval, Oregon Department of Transportation, Oregon Department of Environmental Quality, Public Works Standards, Oregon Uniform Fire Code as administered by the appropriate agency, adopted Building Code, and applicable Municipal Code provisions shall be the sole responsibility of the applicant.

VII. PLANNING COMMISSION ACTION

- A. The Planning Commission has the following options:
1. Approve the application, adopting findings and conditions contained in the staff report; or
 2. Approve the application, adopting modified findings and/or conditions; or
 3. Deny the application, establishing findings as to why the application fails to comply with the decision criteria.
- B. Staff will prepare an Order for the Chair's signature.

Cascadia Planning + Development Services

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**MEMORANDUM**

DATE: August 2, 2023

TO: Planning Commission
City of Yamhill

FROM: Steve Kay
Cascadia Planning + Development Services

RE: Additional Submittal Materials for
Proposed Automobile Service Station
File Number DR 23-02

The following narrative summarizes the applicant's response to comments provided by citizens and the Planning Commission at the July 19, 2023 public hearing:

ITEM**APPLICANT'S RESPONSE****Building Setback Along
Maple Street Frontage**

In compliance with Section 10.46.050(E)(1) standards, the applicant has revised the attached site plan to provide a zero-ft. setback along the Maple Street/Hwy. 47 frontage. The proposed layout also maintains a zero-ft. setback along the W 1st Street frontage. As demonstrated by the revised site plan and revised building floor plan, the proposed structure now includes an angled corner at the intersection of the two streets to provide a 15-ft. clear vision area to meet Chapter 10.68 standards.

**Façade Elements Along
Maple Street Frontage**

To meet Section 10.46.050(E)(3) standards, the applicant has revised the attached building floor plan and elevations so that the building is similar in character and design with existing structures along Maple Street. The revised plans indicate that the 16-ft. 10-in. angled corner of the structure includes a large bank of windows and a canopy that are visible from Maple Street. In the southeast corner of the structure, a new building entrance with a canopy provides a direct pedestrian connection to Maple Street. The submitted plans also indicate that additional windows were included along the W 1st Street frontage. The revised building elevations demonstrate that the proposed brick façade design, and the new design elements, ensure that the character of the proposed structure is consistent with other buildings in the Central Business District.

**Other Improvements to the
Proposed Project**

In addition to the entrance fronting Maple Street, the revised site plan also includes a new pedestrian connection to the sidewalk along W 1st Street. With the revised site layout, a 5-ft. walkway, 4-ft. landscape strip, and the required bicycle parking space are located along the west side of the structure. The revised site plan also indicates that the drive aisle connecting to W 1st Street has been widened to 30-ft., enhancing vehicle circulation through the site. The submitted site plan and vehicle turning diagrams have been revised to include project civil engineer contact information. The attached engineering plans have been printed to scale on 11"x17" sheets.

Included with this memorandum are 2 copies of revised plans for the proposed automobile service station. An electronic copy of the submitted materials has also been emailed to City staff. I look forward to reviewing these materials with the Planning Commission and members of the public at our meeting on August 21st.

PLAN NOTES:

- 1 PRE-FINISHED SHEET METAL CORNICE, COLOR AS SELECTED
- 2 CMU, SPRT FACE, PAINTED
- 3 BRICK VENEER, COLOR AND PATTERN AS SELECTED
- 4 HOLLOW METAL DOOR AND FRAME, PAINT, COLOR AS SELECTED
- 5 ALUMINUM STOREFRONT ASSEMBLY, NATURAL FINISH AS SELECTED
- 6 PRE MANUFACTURED AWNING, METAL PANELS ON STEEL FRAME, DESIGN BY OTHERS, PROVIDE SOLID BLOCKING FOR INSTALLATION, COLOR AS SELECTED
- 7 LIGHT FIXTURE, WALL MOUNT
- 8 SUPPER AND DOWN SPOUT, PREFINISHED, COLOR AS SELECTED
- 9 METAL FLASHING PANELS AT EXPOSED BACK SIDE OF WALL
- 10 WRAP BRICK VENEER AROUND COLUMN AT ELEVATED PORTION
- 11 NOT USED
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- 13 CMU, SMOOTH FACE, PAINTED

1 FRONT ELEVATION

0' 2' 4' 8' 16' 24' 1/8" = 1'-0" @ 22 x 34

2 REAR ELEVATION

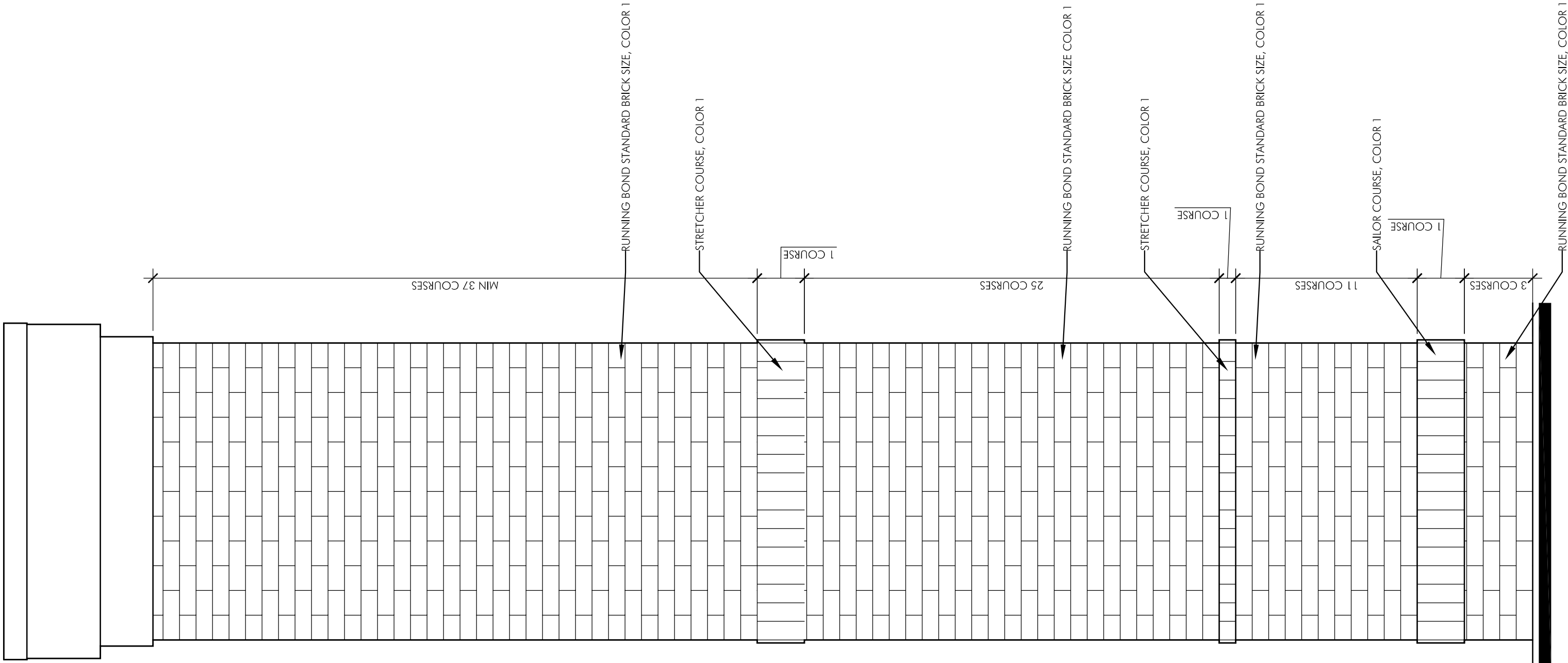
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5 BRICK PATTERNS

0' 4' 8' 1'-0" 2'-0" 4'-0" 3/4" = 1'-0"

NEW BUILDING FOR
CONVENIENCE STORE
SW CORNER OF WEST 1ST ST AND MAPLE ST, YAMHILL, OREGON

SHEET

A3.1

IN THE EVENT CONFLICTS ARE DISCOVERED
BETWEEN THE ORIGINAL SIGNED AND SEALED
DRAWINGS AND ANY REVISED DRAWINGS, THE
DRAWINGS SHALL BE CONSIDERED VOID AND
ANY OTHER CONSULTANTS, AND ANY COPY OF
THE DOCUMENTS TRANSMITTED BY MAIL, FAX,
ELECTRONIC MEANS, OR ANY OTHER MEANS,
SIGNED AND SEALED DOCUMENTS SHALL GOVERN.

PROJECT # 2022-109
DATE: 25 JULY 2022

REVISIONS

1 5 JUNE 2023
2 25 JULY 2023

PREPARED BY:
**YAMHILL LAND DEVELOPMENT
SERVICES LLC**
PO BOX 1042
NEWBERG, OR 97132
DJD.YLDS@GMAIL.COM 503-476-7702

PREPARED FOR:
E&M REMODELING LLC

PROJECT:
**YAMHILL
GAS STATION
AND
STORE**
210 S. MAPLE STREET
YAMHILL OREGON
97148 - 7601

TAX LOT: R3404BD02900

SEAL

REGISTERED PROFESSIONAL
ENGINEER
1777
PRELIMINARY
FOR
CONSTRUCTION
J. DAMIC
OREGON

EXPIRES: 12/31/2023

REVISIONS

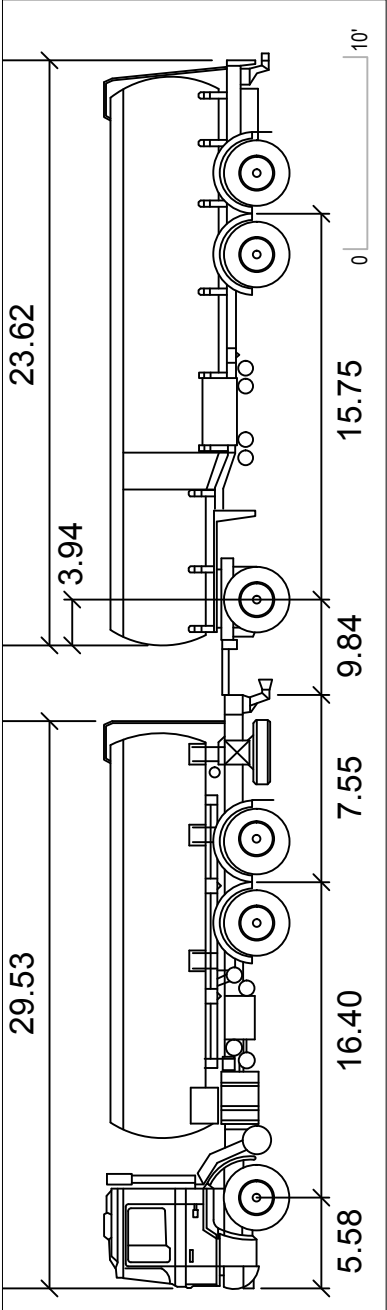
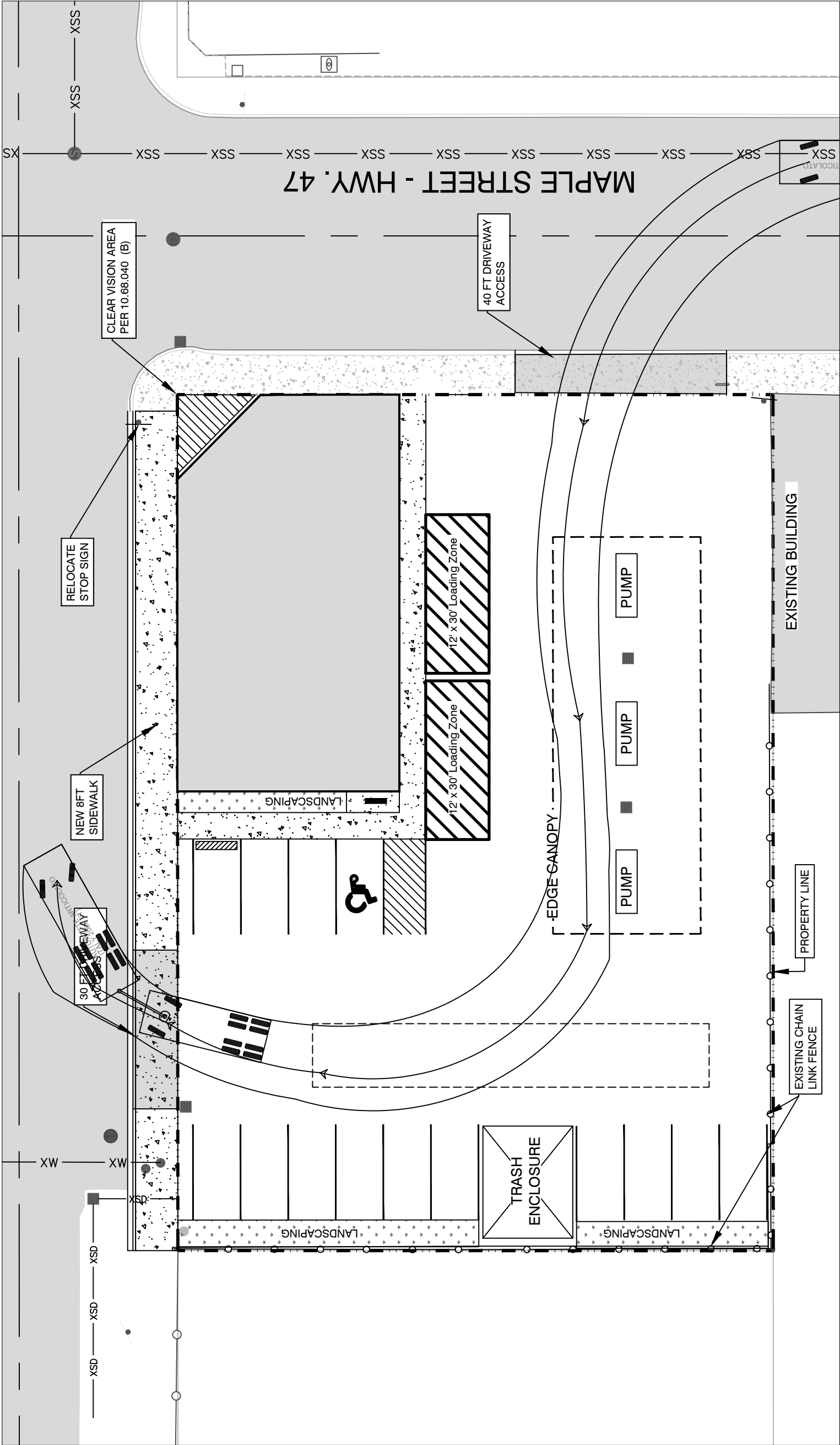
DATE

PRELIMINARY SUBMITTAL
07/27/23

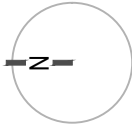
TITLE:

SHEET:

C-2.0



TANKER TRUCK TURNING MOVEMENT



0 10' 20'

PREPARED BY:
**YAMHILL LAND DEVELOPMENT
SERVICES LLC**
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DJD.YLDS@GMAIL.COM 503-476-7702

PREPARED FOR:
E&M REMODELING LLC

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AND
STORE**
210 S. MAPLE STREET
YAMHILL OREGON
97148 - 7601

TAX LOT: R3404BD02900

SEAL

REGISTERED PROFESSIONAL
ENGINEER
17773
PRELIMINARY
CONSTRUCTION
FOR
DAMIC
J. DAMIC
ENGINEERING, INC.
17773
PRELIMINARY
CONSTRUCTION
FOR
DAMIC
J. DAMIC
ENGINEERING, INC.

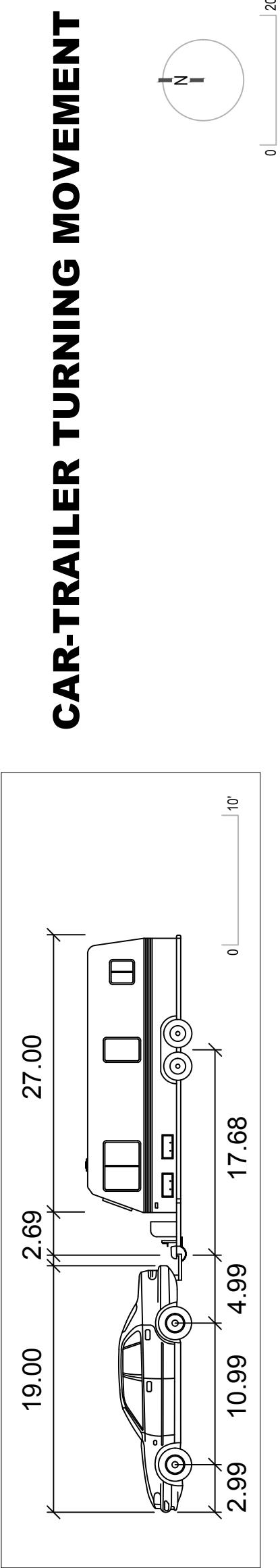
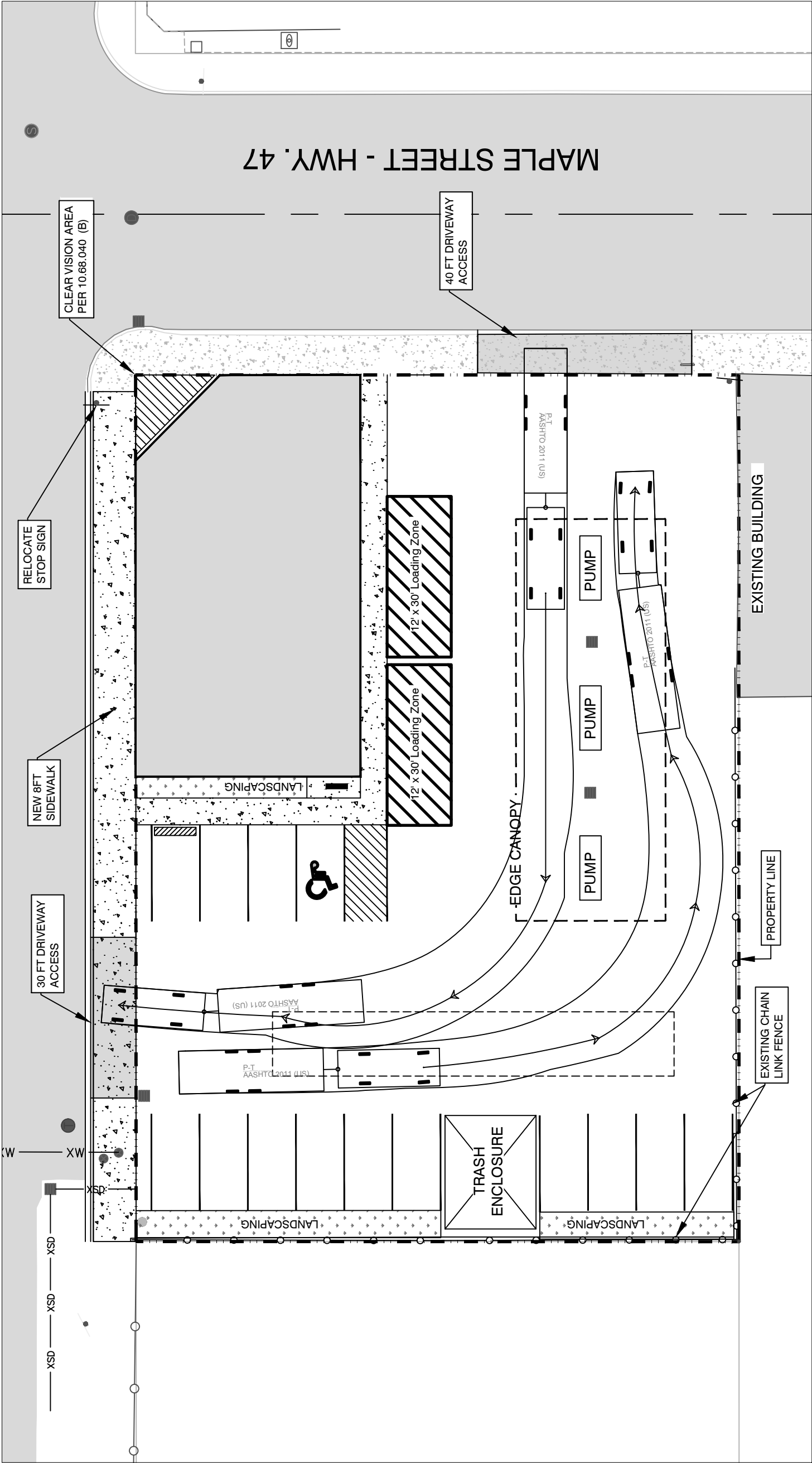
EXPIRES: 12/31/2023

REVISIONS	DATE
PRELIMINARY SUBMITTAL	07/27/23

TITLE:

SHEET:

C-3.0



PREPARED BY:
**YAMHILL LAND DEVELOPMENT
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DJD.YLDS@GMAIL.COM 503-476-7702

PREPARED FOR:
E&M REMODELING LLC

PROJECT:
**YAMHILL
GAS STATION
AND
STORE**
210 S. MAPLE STREET
YAMHILL OREGON
97148 - 7601

TAX LOT: R3404BD02900

SEAL

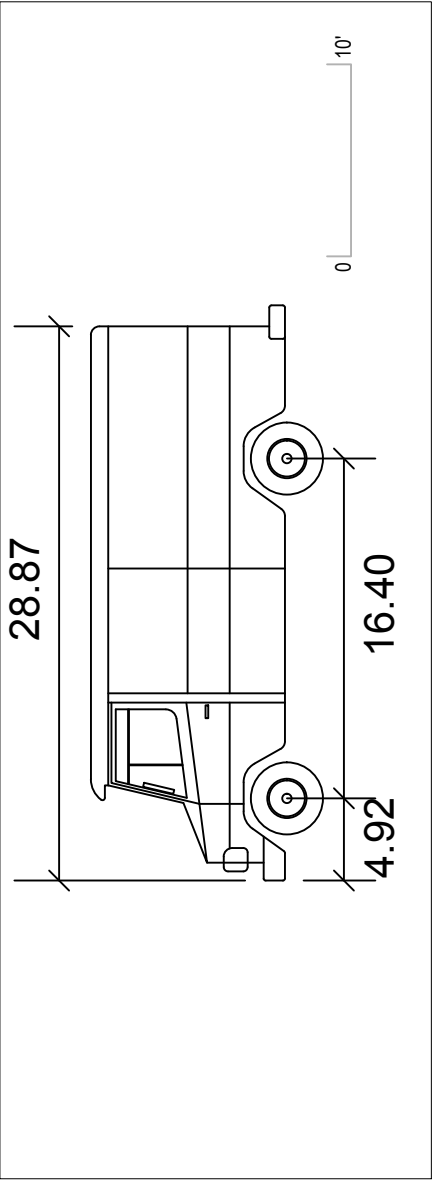
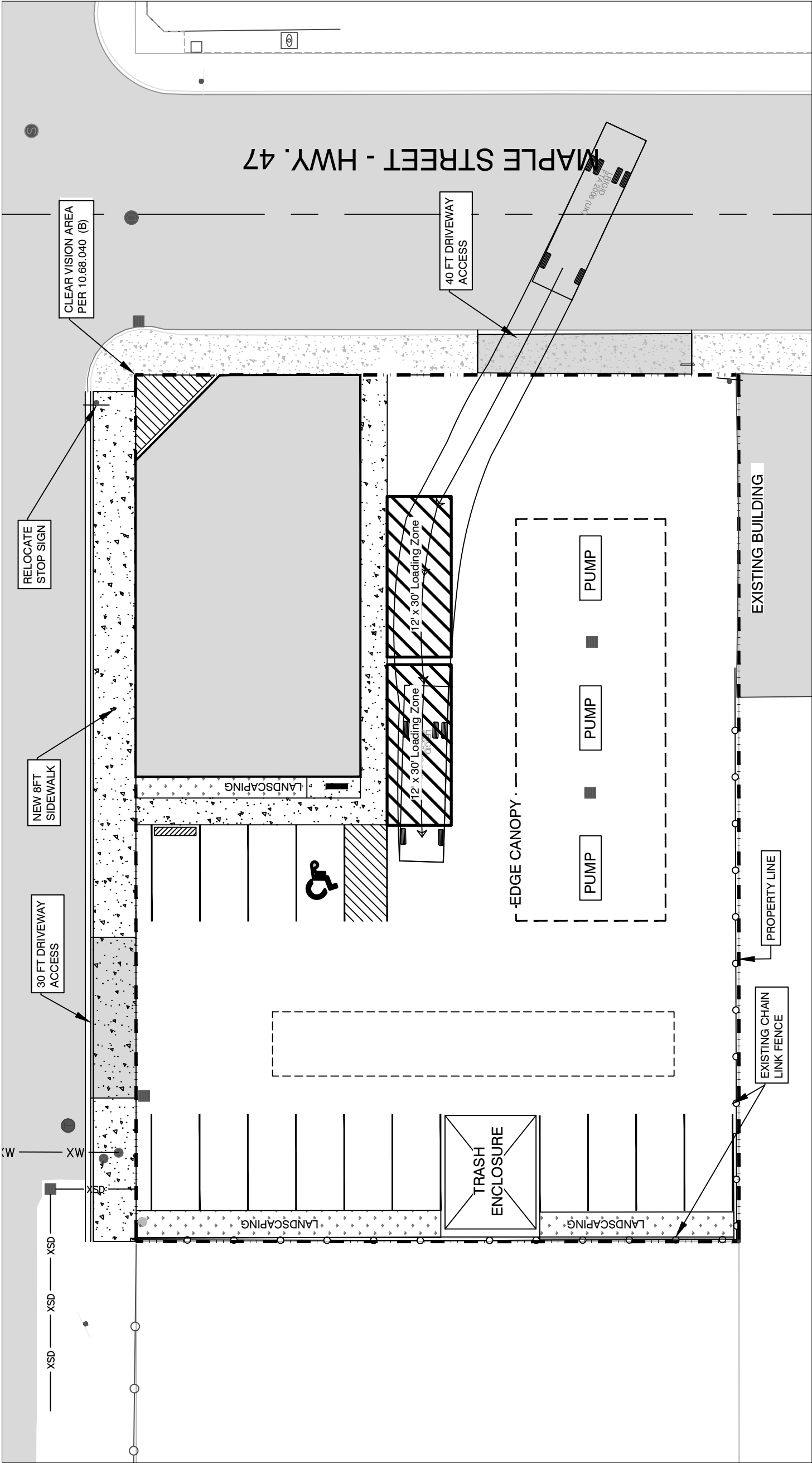
REGISTERED PROFESSIONAL
ENGINEER
17773
PRELIMINARY
NOT FOR
CONSTRUCTION
DANIEL J. DAMIC
CLATSOP COUNTY
OREGON

EXPIRES: 12/31/2023

REVISIONS	DATE
PRELIMINARY SUBMITTAL	07/27/23

TITLE:

SHEET:
C-4.0



DELIVERY VEHICLE ACCESS

PREPARED BY:
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PREPARED FOR:
E&M REMODELING LLC

PROJECT:
**YAMHILL
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AND
STORE**
210 S. MAPLE STREET
YAMHILL OREGON
97148 - 7601

TAX LOT: R3404BD02900

SEAL

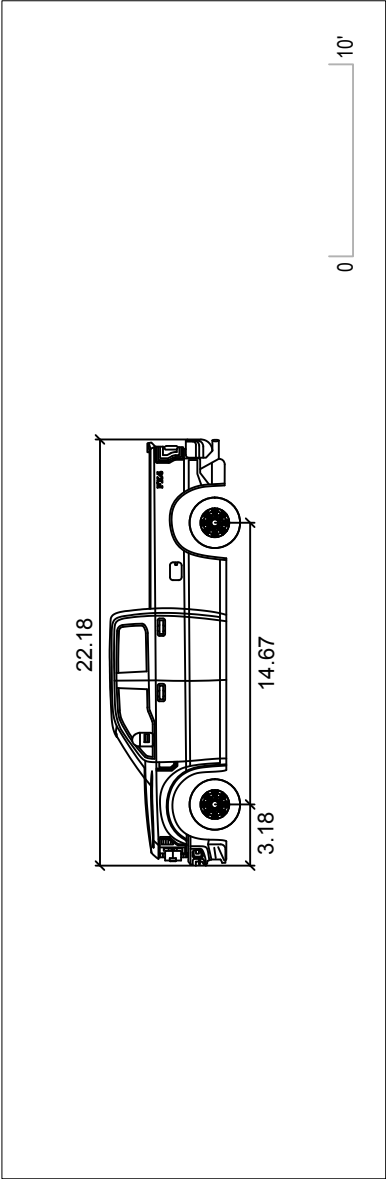
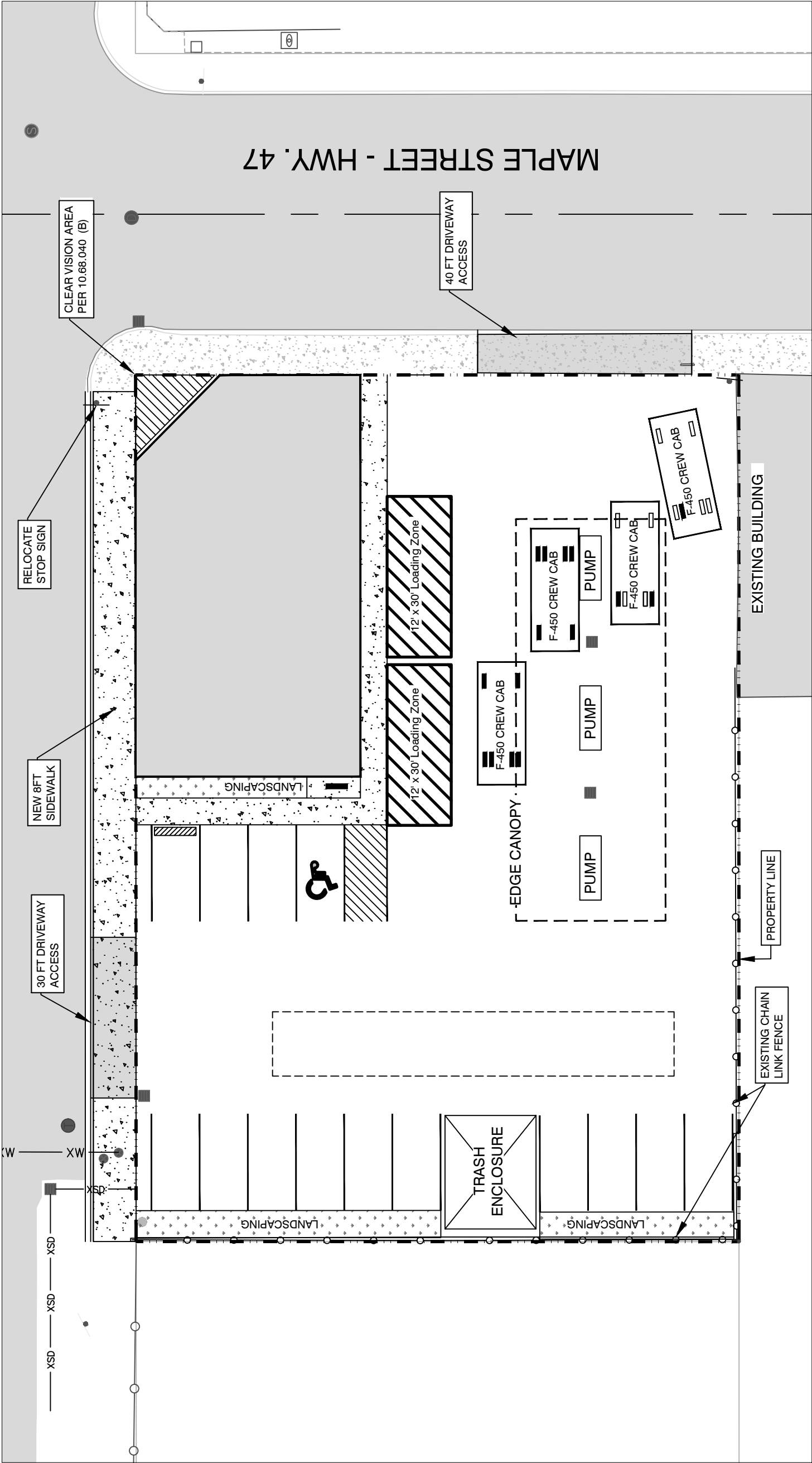
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17773
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NOT FOR
CONSTRUCTION
J. DAMIC
OREGON

EXPIRES: 12/31/2023

REVISIONS	DATE
PRELIMINARY SUBMITTAL	07/27/23

TITLE: _____

SHEET: _____ **C-5.0**



VEHICLE AT PUMP MOVEMENT

EQUIPMENT SCHEDULE:

QTY	DESCRIPTION	TENANT PROVIDED INFORMATION	SUPPLIER	COMMENTS
A 1	DISPLAY COOLER	0 x 0 amp 0 PHASE	OWNER	REQUIRES INDIRECT DRAIN
B 1	COLD BREW COUNTER TOP	0 x 0 amp 0 PHASE	OWNER	REQUIRES WATER SOURCE
C 1	CAPPICINO 5 HEAD	0 x 0 amp 0 PHASE	OWNER	REQUIRES WATER SOURCE
D 2	DISPLAY RACK		OWNER	
E 1	CREAMER DISPENSER	0 x 0 amp 0 PHASE	OWNER	
F 1	DUAL 1.5 GALLON BREWER	0 x 0 amp 0 PHASE	OWNER	REQUIRES WATER SOURCE
G 3	SODA DISPENSER	0 x 0 amp 0 PHASE	OWNER	REQUIRES WATER SOURCE AND INDIRECT DRAIN
H 1	3 COMP SS SINK		OWNER	REQUIRES INDIRECT DRAIN AND WATER SOURCE
J 1	ICE MAKER	0 x 0 amp 0 PHASE	OWNER	REQUIRES WATER SOURCE AND INDIRECT DRAIN
L 1	2 DOOR STAND UP FRIDGE		OWNER	
M 1	2 DOOR STAND UP FREEZER	0 x 0 amp 0 PHASE	OWNER	
N 2	FRYER		OWNER	VERIFY POWER OR GAS
O 1	OVEN		OWNER	VERIFY POWER OR GAS
P 2	POINT OF SERVICE		TENANT	PROVIDE POWER AND LOW VOLT
Q 1	WALK IN COOLER		TENANT	REQUIRES FLOOR DRAIN
R 1	WALK IN FREEZER		TENANT	REQUIRES FLOOR DRAIN

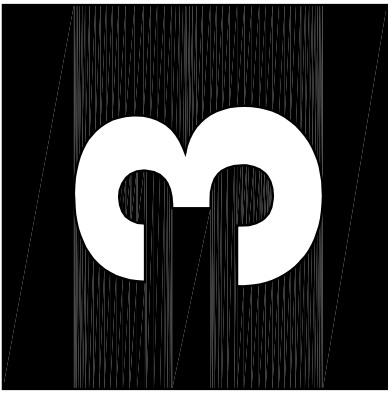
PLAN NOTES:

- 1
- MERCHANDISE DISPLAY UNITS PROVIDED BY TENANT INSTALLED BY GC
- 2
- MOP SINK WITH MOP RACK, LINE WALLS WITH FRP, PLACE 50 GALLON WATER HEATER AT 4'-6" F.F.E. ABOVE
- 3
- WALL MOUNTED HAND SINK, PROVIDE FRP FINISH AND SOLID BLOCKING FOR SOAP AND PAPER TOWEL DISPENSER
- 4
- GREASE EXHAUST HOOD VENTED THROUGH ROOF ABOVE (1) (AB.2)
- 5
- 3 COMPARTMENT SINK, DRAIN TO FLOOR SINK, COORDINATE WITH OWNER ON SINK SIZE
- 6
- PROVIDE POWER OUTLETS AT CEILINGS ABOVE CHECKOUT, COORDINATE WITH TENANT
- 7
- VERIFY WITH OWNER, OVER HEAD SODA CONDUIT, MIN 8", VERIFY
- 8
- PROVIDE PLYWOOD BACKER BOARD AT OFFICE WALLS, VERIFY LOCATIONS AND EXTENT WITH TENANT
- 9
- ELECTRICAL PANELS, COORDINATE WITH ELECTRICAL
- 10
- PROVIDE SIGN ABOVE DOOR THIS DOOR TO REMAIN UNLOCKED DURING BUSINESS HOURS*
- 11
- SHELVING UNITS, COORDINATE WITH OWNER
- 12
- VERIFY WITH OWNER, UNDERGROUND SODA CONDUIT, MIN 8", VERIFY
- 13
- ACCESS LADDER TO ROOF TOP (8) (AB.1)
- 14
- HATCH INDICATES R-12 RIGID INSULATION UNDER SLAB WHERE FREEZER OCCURS ABOVE, VERIFY SIZES WITH OWNER

PLAN LEGEND:

- NEW EXTERIOR WALL 2 x 4 WOOD STUDS WITH R-21 BATT INSULATION, ½" GYPSUM BOARD AT INTERIOR EXTERIOR PLYWOOD SHEATHING, WEATHER BARRIER WITH EXTERIOR FINISHES PER ELEVATIONS
- NEW WOOD STUD WALL @16" o.c. WITH ½" GYPSUM BOARD
- FLOOR SINK, VERIFY LOCATION WITH OWNER, LOCATIONS ARE EQUIPMENT SPECIFIC, DRAIN TO GREASE INTERCEPTOR
- FLOOR DRAIN, DRAIN TO GREASE INTERCEPTOR
- FIRE EXTINGUISHER, WALL MOUNT
- HOSE BIB
- CORNER GUARD FROM ABOVE BASE TO 48" ABOVE BASE
- L CG

STUDIO



ARCHITECTURE
INCORPORATED
275 COURT ST. NE
SALEM, OR 97301
503.390.6500
www.studio3architecture.com

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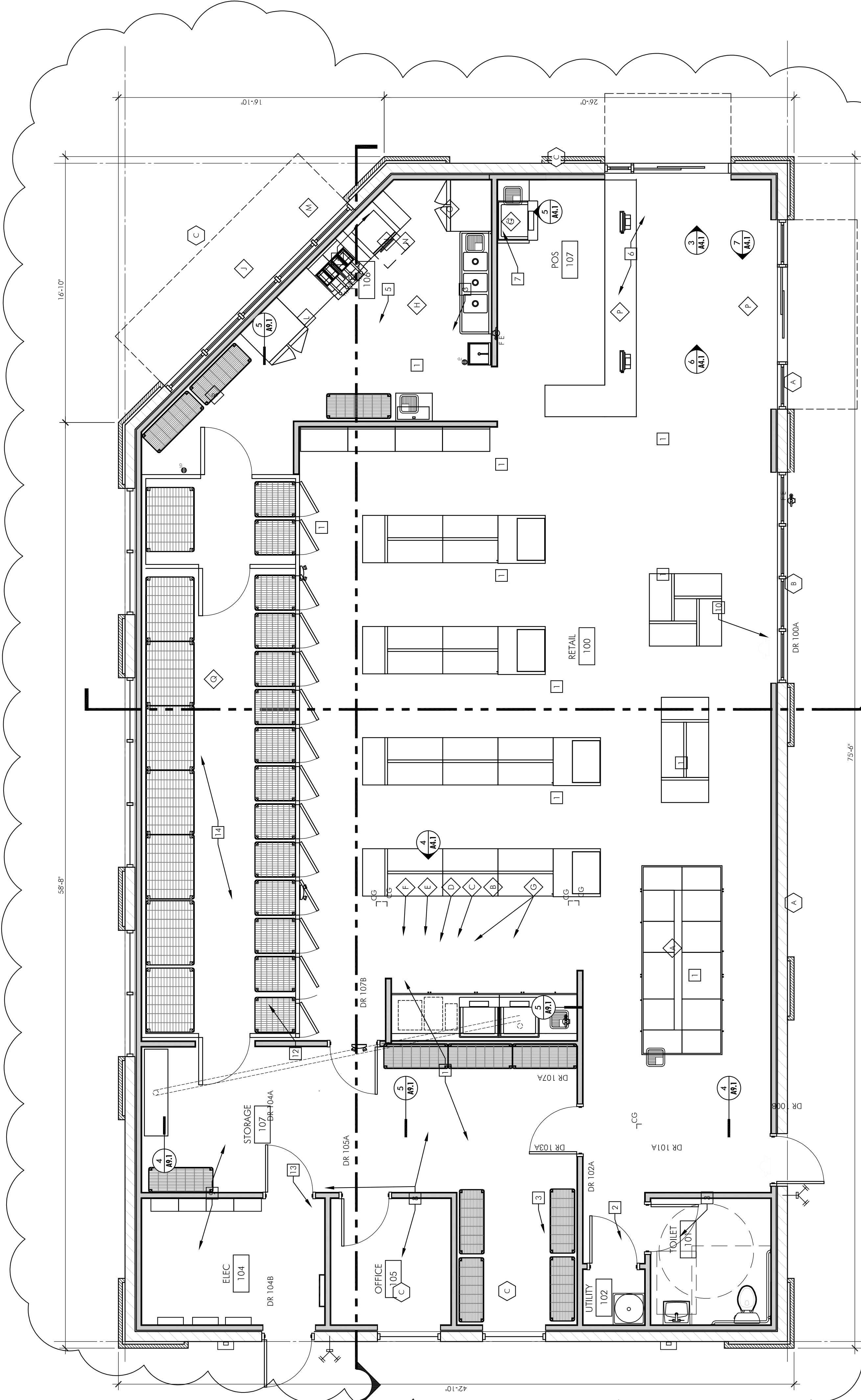
PROJECT # 2022-109
DATE: 25 JULY 2022

REVISIONS
1
2
DATE: 5 JUNE 2023
DATE: 25 JULY 2023
REVISIONS: REDUCE STORE SIZE
ADJUST EXTERIOR ELEVATIONS

NEW BUILDING FOR
CONVENIENCE STORE
SW CORNER OF WEST 1ST ST AND MAPLE ST, YAMHILL, OREGON

SHEET

A2.1



1 FLOOR PLAN

0' 1' 2' 4' 8' 12' 1/4" = 1'-0" @ 22 x 34

PLAN NOTES:

- 1 PRE-FINISHED SHEET METAL CORNICE, COLOR AS SELECTED
- 2 CMU, SPRT FACE, PAINTED
- 3 BRICK VENEER, COLOR AND PATTERN AS SELECTED
- 4 HOLLOW METAL DOOR AND FRAME, PAINT, COLOR AS SELECTED
- 5 ALUMINUM STOREFRONT ASSEMBLY, NATURAL FINISH AS SELECTED
- 6 PRE MANUFACTURED AWNING, METAL PANELS ON STEEL FRAME, DESIGN BY OTHERS, PROVIDE SOLID BLOCKING FOR INSTALLATION, COLOR AS SELECTED
- 7 LIGHT FIXTURE, WALL MOUNT
- 8 SUPPER AND DOWN SPOUT, PREFINISHED, COLOR AS SELECTED
- 9 METAL FLASHING PANELS AT EXPOSED BACK SIDE OF WALL
- 10 WRAP BRICK VENEER AROUND COLUMN AT ELEVATED PORTION
- 11 NOT USED
- 12 GUARD RAIL AT ROOF ADJACENT TO ROOF ACCESS HATCH, 1 1/2" PIPE RAIL, 42" HIGH WITH 3 EQUAL HORIZONTAL RAILS AND VERTICAL RAILS AT 48" o.c. BRACE THROUGH TO STRUCTURE BELOW
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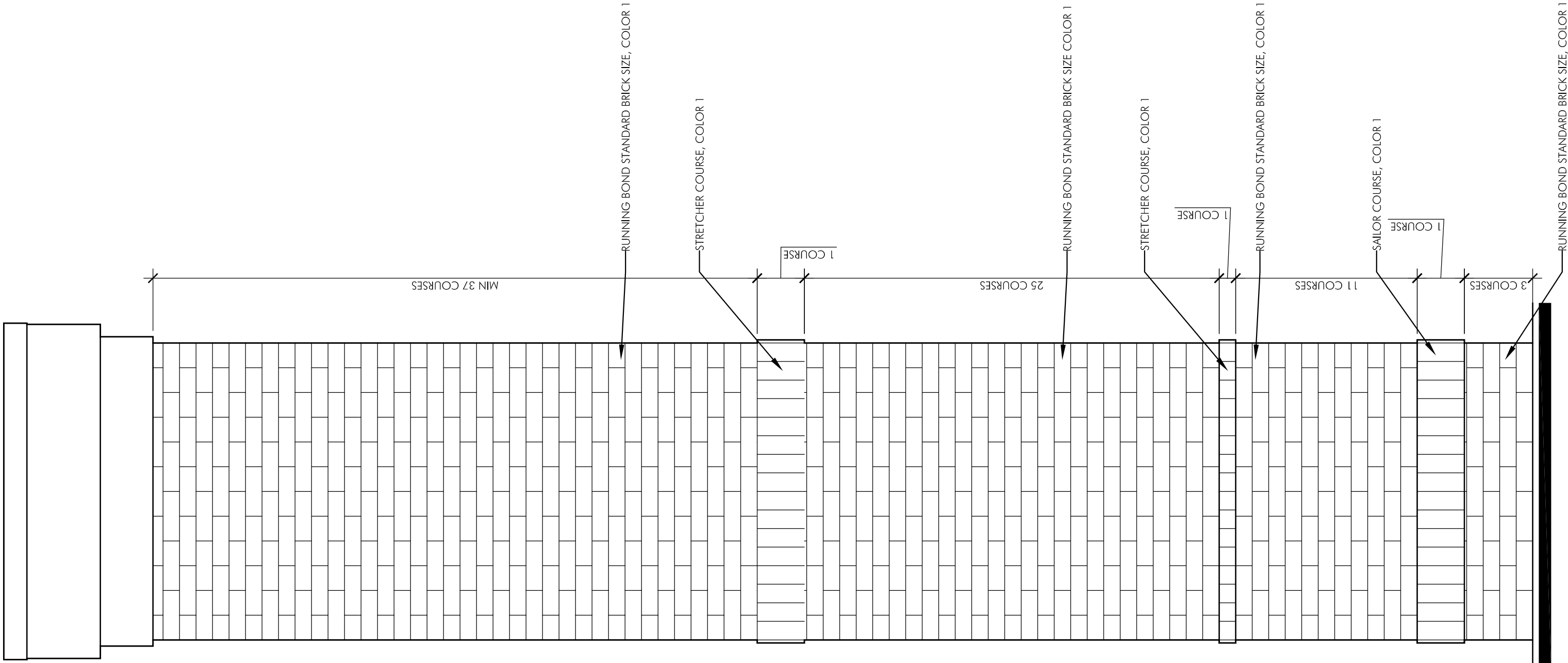
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0' 4" 8" 1'-0" 2'-0" 4'-0" 3/4" = 1'-0"

NEW BUILDING FOR
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SW CORNER OF WEST 1ST ST AND MAPLE ST, YAMHILL, OREGON

SHEET

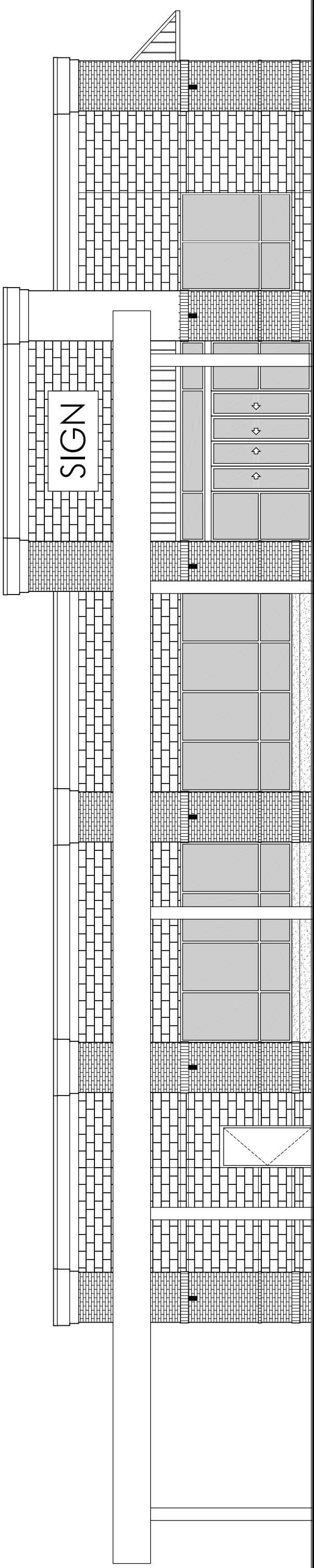
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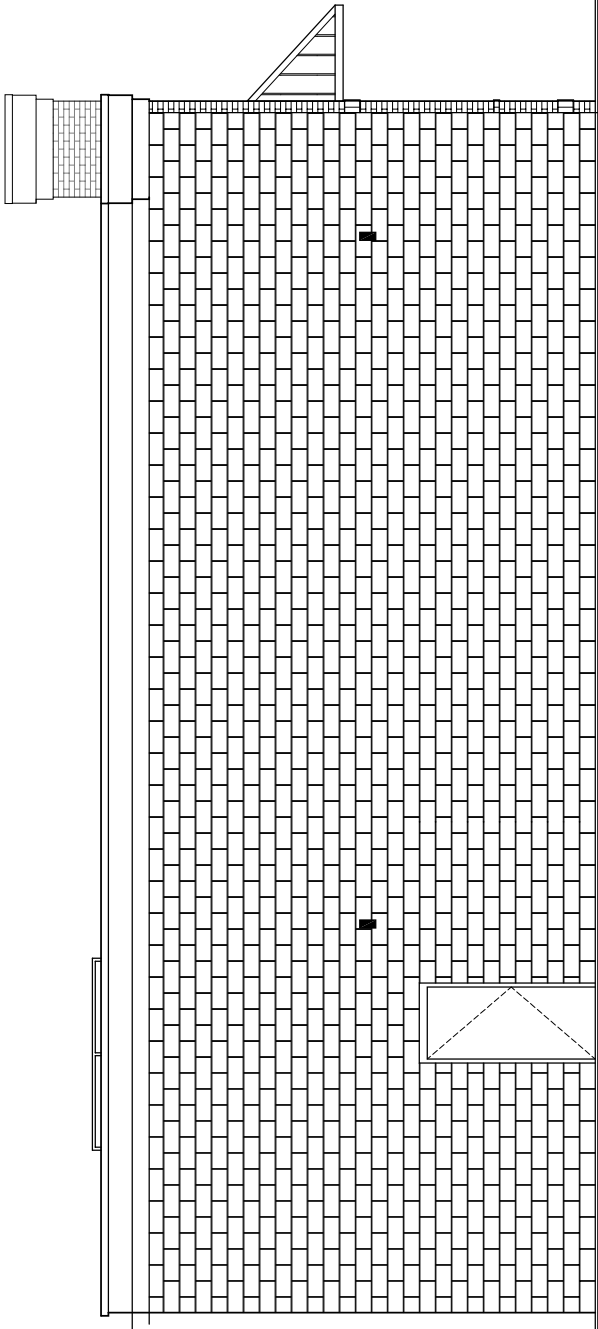
PROJECT # 2022-109
DATE: 25 JULY 2022

REVISIONS

1 5 JUNE 2023
2 25 JULY 2023



SOUTH FACING ELEVATION



WEST FACING ELEVATION



Google

Image capture: Dec 2022 Images may be subject to copyright. United

STAFF MEMORANDUM

TO: Yamhill Planning Commission

FROM: Walt Wendolowski, Consulting City Planner

SUBJECT: Short-Term Rental Regulations - Update

DATE: August 14, 2023

I. BACKGROUND

At the July meeting, City staff reviewed a potential short-term rental ordinance. The material was limited to the basic regulations and did not delve into the enforcement. Subsequently, it was brought to my attention the proposed language may be overreaching and beyond what the community requires. As an alternative, it was suggested the City consider Carlton's regulations.

II. DISCUSSION

Attached to this memo are the Carlton regulations. Overall, compared to last month's material, these are more to the point and less regulatory regarding such issues as building inspections. Note, it is not the intent of this memo to summarize the attached material. It is straight-forward and easy to understand. The issue for the Commission is what is the next step.

The Carlton short-term rental regulations are separate from land use regulations. This recognizes this is as much of a taxing program as it is a regulatory one. Therefore, before I spend additional time and resources on this project, I strongly suggest the Commission communicate with the Council and request some direction on how to proceed. The Carlton material could be a good start, but as a tax program the Council has the sole authority.

Chapter 3.16 TRANSIENT LODGING TAX¹

3.16.010 Definitions.

The following definitions apply in this chapter.

"Transient lodging provider" means a person that furnishes transient lodging.

"Transient lodging intermediary" means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

- (1) Charges for occupancy of the transient lodging;
- (2) Collects the consideration charged for occupancy of the transient lodging; or
- (3) Receives a fee or commission and requires the transient lodging provider to use a specified third-party entity to collect the consideration charged for occupancy of the transient lodging.

"Transient lodging tax collector" means a transient lodging provider or transient lodging intermediary.

"Occupancy" means the right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than thirty (30) days.

"Occupant" means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

"Person" means any individual, firm, partnership, joint venture, limited liability company, corporation, limited liability partnership, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Rent" means the consideration paid or payable by an occupant for the occupancy of space in transient lodging valued in money, goods, labor, credits, property, or other consideration. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent.

"Short-term rental" means a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents a guest bedroom or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-term rental is zoned residential or has a building occupancy that only allows for residential use.

"Short-term rental hosting platform" means a business or other person that facilitates the retail sale of transient lodging by connecting occupants with transient lodging providers, either online or in any other manner. Short-term rental hosting platforms are transient lodging intermediaries.

"Tax administrator" means the tax administrator of the City of Carlton, or its designee, which may include the Oregon Department of Revenue. If the city utilizes the Oregon Department of Revenue as its tax administrator, it will comply with ORS 305.620 in that it will follow the rules adopted by the Department of Revenue regarding the administration, collection, enforcement and distribution of transient lodging taxes.

"Transient lodging" or "transient lodging facilities" means:

- (1) Hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy;
- (2) Spaces used for overnight parking of recreational vehicles or placement of tents during periods of human occupancy; or
- (3) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

"TLT" or tax means the transient lodging tax.

3.16.020 Tax imposed.

- A. Effective September 7, 2021, each occupant shall pay a TLT in the amount of seven percent of the rent. The occupant shall pay the TLT with the rent to the transient lodging tax collector. TLT amounts shall be rounded down to the nearest cent. The transient lodging tax collector shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the transient lodging tax collector with each installment unless the occupant pays the entire amount with the first payment.
- B. Bills, receipts or invoices provided to occupants shall list the TLT separately and must accurately state the amount of tax. All amounts listed as TLT on invoices, bills or receipts must be reported as TLT and, after collection, must be turned over to the city, less the five percent administrative charge.

3.16.030 Collection of tax by transient lodging tax collector.

- A. Every transient lodging tax collector shall collect the TLT at the time rent is paid, unless an exemption applies. If payment is by credit card, for purposes of this section, payment is made at the time credit card information is provided to the transient lodging tax collector, not when the transient lodging tax collector ultimately receives credit for the transaction. While holding the payment in trust for the city, a transient lodging tax collector may commingle the tax proceeds with the transient lodging tax collector's funds, but the transient lodging tax collector is not the owner of tax proceeds, except that, when a return is filed, the transient lodging tax collector becomes the owner of the administrative fee authorized to be retained. Transient lodging tax collectors may choose to file returns and remit payment based on amounts accrued but not yet collected. The transient lodging tax collector is liable for any TLT that should have been collected from the occupant, except in cases of nonpayment of rent by the occupant.
- B. Upon request of the city, transient lodging tax collectors must provide all physical addresses of transient lodging facilities within the city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, host or other responsible person for the location.

3.16.040 Short-term rental hosting platform fees.

A hosting platform for short-term rentals may collect a fee for booking services in connection with short-term rentals only when those short-term rentals are lawfully registered as operators with the city and possess a certificate of authority at the time the short-term rental is occupied.

3.16.050 Liability for tax.

Transient lodging providers who receive any portion of the rent for transient lodging and transient lodging intermediaries that provide booking service are both transient lodging tax collectors and are jointly and severally liable for the tax.

3.16.060 Exemptions.

No TLT shall be imposed upon:

- A. A dwelling unit in a hospital, health care facility, long-term care facility or any other residential facility that is licensed, registered or certified by the Oregon Department of Human Services or the Oregon Health Authority;

-
- B. A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;
 - C. A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than thirty (30) days per year;
 - D. A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;
 - E. A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or
 - F. A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of thirty (30) days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:
 - (1) All dwelling units occupied are within the same facility; and
 - (2) The person paying consideration for the transient lodging is the same person throughout the consecutive period.

3.16.070 Registration of transient lodging provider—Form and contents—Execution— Certification of authority.

- A. Every person engaging or about to engage in business as a transient lodging provider shall provide a completed registration form to the tax administrator within fifteen (15) calendar days after commencing business. The registration form shall require the transient lodging provider to provide the name of the business, any separate business addresses, and other information as the tax administrator may require to implement this chapter. Transient lodging providers who own or operate transient lodging facilities in City of Carlton shall provide the address of the lodging facility. The registration form shall be signed by the transient lodging provider. The tax administrator shall, within fifteen (15) days after registration, issue without charge a certificate of authority to collect the TLT. The transient lodging provider's obligation to collect the TLT is imposed once rent for transient lodging is paid, even if the registration form has not been filed or if the certificate has not been issued. If the rent transaction is facilitated online, the certificate of authority must be able to be viewed by the occupant by clicking on a link to the certificate of authority at a reasonable place during the payment transaction.
- B. Certificates shall be non-assignable and non-transferable and shall be surrendered to the tax administrator when the business is sold or transferred or when a transient lodging facility ceases to operate at the location specified in the registration form. Each certificate issued to a transient lodging provider for a specific lodging facility shall be prominently displayed at the lodging facility and include:
 - (1) The name of the transient lodging provider;
 - (2) The address of the transient lodging facility;
 - (3) The date the certificate was issued; and
 - (4) The certificate number as assigned by the tax administrator.

3.16.080 Remittances and returns.

- A. Transient lodging tax collectors must submit a completed tax return form to the tax administrator on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a five percent administration fee. The return shall be filed in such form as the tax administrator may prescribe. The tax administrator if they

deem it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in any individual case, may require returns and payment of the amount of taxes on other than monthly periods.

- B. The transient lodging tax collector is entitled to the administration fee. If a transient lodging facility has multiple owners, they are not entitled to retain additional fees.
- C. Remittances are delinquent if not made by the last day of the month in which they are due.
- D. Returns shall show the gross rents collected, taxable rents, the total amount of TLT collected and the amount of the administrative fee retained by the transient lodging tax collector. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.
- E. The person required to file the return shall deliver the return, together with payment of the amount of the tax due, to the tax administrator, to the appropriate office, either by personal delivery, by mail, or by electronic tax return filed through a reporting and payment portal furnished by the tax administrator, or its designee. If the return is mailed, the postmark shall be considered the date of delivery.
- F. The tax administrator may extend the time for making any return or remittance of the tax by up to thirty (30) days. No further extension shall be granted, except by the city council. Any transient lodging tax collector to whom an extension is granted shall pay interest at the rate of five percent per month on the amount of the remittance due without proration for a fraction of a month. If a return is not filed, and the remittance and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties.

3.16.090 Penalties and interest.

- A. Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the tax administrator was originally required to be filed to the time of payment.
- B. If a transient lodging tax collector fails to file a return or pay the tax as required, a penalty shall be imposed in the same manner and amount provided under ORS 314.400.
- C. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid and remitted to the tax administrator.
- D. Taxes, interest, and penalties paid to the tax administrator under this section shall be distributed to the city's transient lodging tax fund.

3.16.100 Deficiency determination—Fraud, evasion, local tax trustee delay.

- A. Deficiency Determination. The tax administrator may review tax returns and adjust the amount due based on the information in the return, on information obtained during a review or audit of records, or on the basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the transient lodging tax collector, who shall remit deficiencies within ten (10) business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail.
 - (1) In reviewing and adjusting tax returns, the tax administrator shall offset any amount received in excess of the remittances due against any shortages in remittances.
 - (2) Except in the case of fraud or intent to evade the TLT, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.
 - (3) The time to remit deficient payment amounts under this section shall be extended if the local tax trustee timely requests a redetermination.

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- B. **Fraud Refusal to Collect—Evasion.** If any transient lodging tax collector fails to collect, report or remit the tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the transient lodging tax collector for tax remittance, interest and penalties and provide notice to the transient lodging tax collector of the assessment. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and shall become final ten (10) business days after the date notice was delivered if no petition for redetermination is filed.

3.16.110 Redeterminations.

- A. Any person affected by a deficiency determination may file a petition for redetermination with the tax administrator within ten (10) business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed.
- B. If a petition for redetermination is filed within the allowable period, the tax administrator shall reconsider the determination and grant an oral hearing if requested. The petitioner shall be allowed at least twenty (20) business days to prepare for the hearing.
- C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and mail the decision to the petitioner. During the redetermination process, the tax administrator may agree to a compromise of the amount due if there is a good faith dispute over the amount owing.
- D. The decision of the tax administrator on redetermination becomes final and payment is due ten (10) business days after the decision is mailed unless the petitioner files an appeal to the city council within that time. The appeal shall be filed with the tax administrator. The city council's decision shall be final when reduced to writing and mailed to the petitioner and all amounts due must be paid within ten (10) business days of mailing of the city council decision.

3.16.120 Collections.

- A. The city may bring legal action to collect on any amounts owed to the city under this chapter within three years after remittance is due to the city or within three years after any determination becomes final.
- B. The city is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the city under this chapter.

3.16.130 Liens.

The city may record a lien in the city's lien docket against any real property owned by a transient lodging provider who receives any portion of the rent from a transient lodging facility located within the city as to any delinquent remittances by the transient lodging provider.

3.16.140 Refunds.

- A. **Refunds by City to Transient Lodging Tax Collector.** If the transient lodging tax collector remits more tax, penalty or interest than is due, the transient lodging tax collector may file a claim in writing stating the facts relating to the claim, within three years from the date of remittance. If the claim is approved by the tax administrator, the excess amount shall be either refunded or credited on any amount due from the transient lodging tax collector.

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- B. Refunds by City to Occupant. A transient lodging tax collector may file a claim for refund by filing a claim in writing within three years of payment providing the facts relating to the claim for refund. If the tax administrator determines that the tax was collected and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund to the occupant.
 - C. Refunds by Transient Lodging Tax Collector to Occupant. If an occupant has paid tax to a transient lodging tax collector but stays a total of thirty (30) or more consecutive days in the same transient lodging facility, the transient lodging tax collector shall refund to the occupant any tax collected for any portion of the continuous stay. The transient lodging tax collector shall account for the collection and refund to the tax administrator. If the transient lodging tax collector has remitted the tax prior to the refund or credit to the occupant, the transient lodging tax collector shall be entitled to a corresponding refund or offset if the claim for refund is filed within three years from the date of collection.
 - D. Burden of Proof. The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

3.16.150 Administration.

- A. Use of TLT Funds. Seventy percent of the revenue from the tax rate of seven percent shall be used for tourism promotion and tourism-related facilities. Thirty (30) percent of the revenue of the seven percent shall be used for city services.
- B. Records Required from Local Tax Trustee. Every local tax trustee shall keep records of each transaction involving rent and/or collection of TLT. All records shall be retained for at least three years and six months.
- C. Examination of Records—Investigations. The tax administrator or agent may examine all records of a local tax trustee relating to receipt of rent and TLT and remittance of tax during normal business hours and may obtain copies of the records to audit returns.
- D. Authority of Tax Administrator. The tax administrator shall have the power to enforce this chapter, conduct audits, and to adopt rules, regulations and forms consistent with this chapter. Rules and regulations of general application shall be mailed to all registered transient lodging providers. The tax administrator may also issue written interpretations on request of a transient lodging tax collector. As to the transient lodging tax collector to whom the interpretation is issued, the city will act consistently with the interpretation until it is withdrawn, and the city shall provide thirty (30) days' written notice of withdrawal of an interpretation.
- E. Confidential Character of Information Obtained—Disclosure Unlawful. The city shall maintain the confidentiality of information provided by transient lodging tax collector. Nothing in this subsection shall be construed to prevent:
 - (1) The disclosure to, or the examination of records and equipment by, another city official, employee or agent for collection of taxes for the purpose of administering or enforcing any provisions of this chapter or collecting city business license fees.
 - (2) Disclosure of information to the transient lodging tax collector and the transient lodging tax collector's agents.
 - (3) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.
 - (4) The disclosure of general statistics regarding taxes collected or business done in the city.
 - (5) Disclosures required by ORS Chapter 192.
 - (6) Disclosures required by ORS Chapter 297.

3.16.160 Appeals to city council.

Any person aggrieved by any decision of the tax administrator may appeal to the city council by filing a written appeal with the tax administrator within ten (10) business days of the serving or mailing of the decision being appealed. The city manager shall schedule the hearing on a city council agenda and provide the appellant notice of the hearing at least ten (10) business days before the hearing. The city council may agree to a compromise of the amount of tax remittance if there is a good faith dispute over the amount owing. Any person may appeal the issuance of a rule or regulation issued by the tax administrator to the city council by filing a written appeal within ten (10) business days of the mailing of the notice of the regulation.

3.16.170 Penalty.

A violation of this chapter shall upon conviction thereof be punished by a fine of not more than three hundred (\$300.00). Such fine for conviction shall be in addition to any and all administrative penalties assessed under CMC Chapter 3.16.090. Each day that a violation remains uncured is a separate infraction.