



**City of Fairhope  
Board of Adjustment and Appeals  
5:00 PM  
City Council Chambers  
November 19, 2018**

Karin Wilson  
*Mayor*

*Council Members*

Kevin G. Boone

Robert A. Brown

Jack Burrell, ACMO

Jimmy Conyers

Jay Robinson

Lisa A. Hanks, MMC  
*City Clerk*

Michael V. Hinson, CPA  
*City Treasurer*

1. Call to Order
2. Approval of the October 15, 2018 minutes
3. Consideration of Agenda Items:
  - A. BOA 18.11 Public hearing to consider the request of Magnolia Church, LLC for a Special Exception to allow parking in the front for property located at 301 Magnolia Avenue.  
**PPIN #: 15164**
4. Old/New Business
5. Adjourn

161 North Section Street

P O. Drawer 429

Fairhope, Alabama 36533

251-928-2136

251-928-6776 Fax

[www.fairhopeal.gov](http://www.fairhopeal.gov)

*Printed on recycled paper*



# City of Fairhope Board of Adjustment

November 19, 2018

Case: BOA 18.11 301 Magnolia Avenue

**Project Name:**

Magnolia Church

**Property Owner / Applicant:**

Magnolia Church, LLC  
(T. Vance McCown)

**General Location:**

NE quadrant of the intersection  
Of Magnolia Avenue and  
Church Street

**Request:**

Parking requirement special  
Exception

**Project Acreage:**

½ acre approximately

**Zoning District:**

B-2 General Business District  
Within the Central Business  
District

**PPIN Number:**

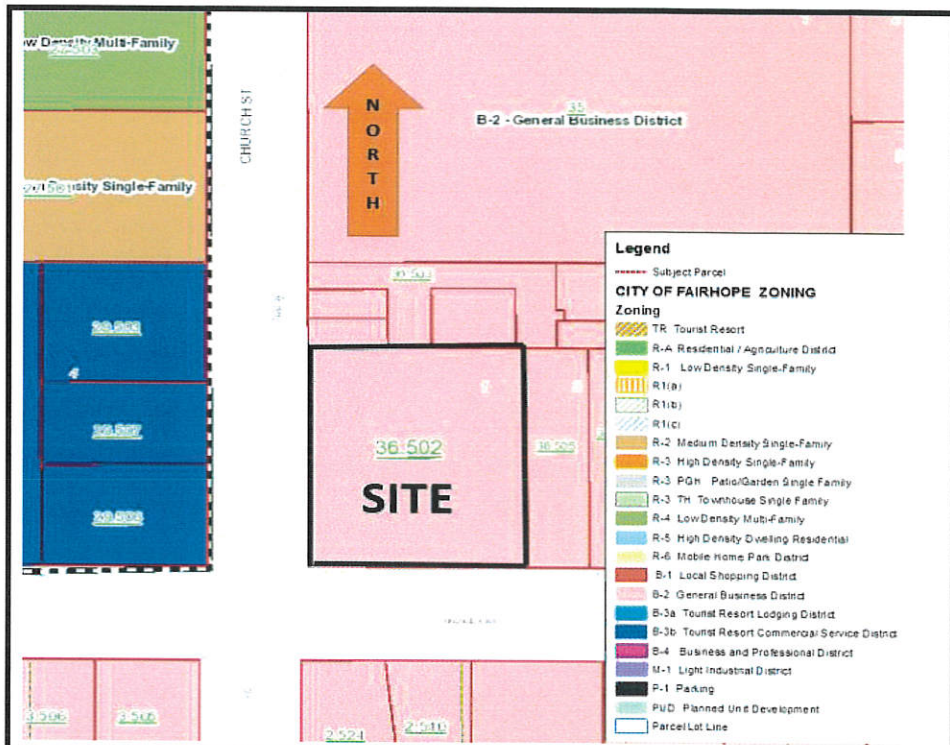
15164

**Report prepared by:**

J. Buford King  
City Planner

**Recommendation:**

Approval

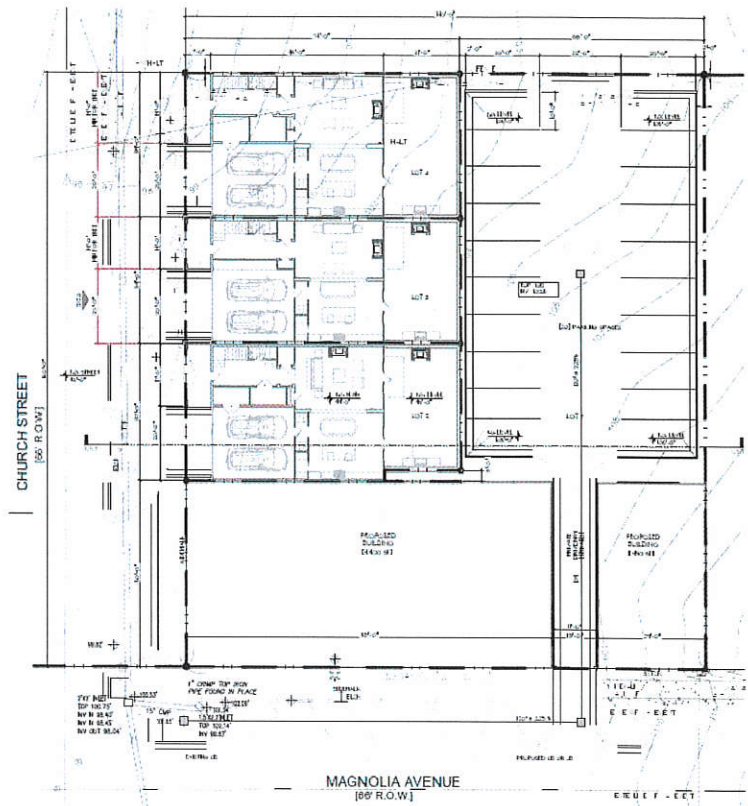




**Summary of Request:**

The applicant is requesting a special exception from the parking requirements of City of Fairhope Zoning Ordinance *Article V, Section B.4.d.(2)* to allow “front screened parking on the Church St. frontage only”. The subject property is zoned B-2 General Business District and is located within the Central Business District.

At right is an excerpt of a supporting drawing depicting a future development on subject property containing three (3) residential units, two buildings with an unspecified unit count that are likely to be mixed-use commercial/residential, a 20-space onsite parking area, additional on-street parking along North Church Street, and reconfigurations of existing on-street parking along Magnolia Avenue. The residential units along Church Street reflect 20' front building setbacks as required by Table 3-2, Dimension table, and the mixed-use buildings are shown at the right-of-way line as required by Article V, Section B.4.a.



As shown on the site plan above right it appears the intent of the development is to create individual lots for each residential unit, likely in a future subdivision application, as well as construct parking and an unknown number of potential mixed-use units likely in a future Multiple Occupancy Project (MOP) application. The applicant states the indicated conditions of the subject property include a “grade differential across the site (that) is approximately 15’”. The use of retaining walls and terraced building areas makes it difficult to have vehicle access to the rear of the Church St. frontage lots”. The applicant states the indicated conditions preclude reasonable use of the land because the “rear parking as required for residential use presents an extraordinary use of land for circulation”.

City of Fairhope Zoning Ordinance *Article V, Section B.4.d.* states the following regarding parking requirements within the Central Business District (CBD):

*d. Parking -*

- (1) No parking is required for non-residential uses in the CBD. If parking is provided, it shall be located behind the building, screened from public rights-of-way, and have a direct pedestrian connection to the primary building entrance of the public right-of-way.*
- (2) Dwelling units in the CBD shall provide the required parking. It shall be located behind the building, screened from public rights-of-way, and have a direct pedestrian connection to the primary building entrance of the public right-of-way.*
- (3) Residential and office is encouraged on the upper floors of buildings; lower floors are encouraged to be retail or restaurants.*

The 20-space off-street parking area located behind (north) of the two proposed commercial units is not required in the CBD as explained in the zoning ordinance excerpt above, and parking for the residential units is required, also as described above. However, Article IV, Section E.2. states



“businesses in the CBD Overlay are encouraged to provide off-street parking facilities” for commercial uses. It appears the rear (north) parking area satisfies the parking loading of the two proposed mixed-use units based upon the square footage of the commercial units, as if onsite parking was required for those commercial units, and that parking is located behind the mixed-use buildings as required by *Article V, Section B.4.d.(1)* shown above. However, the exact use of the two proposed commercial buildings is not known and therefore the exact parking requirements for this area is not known and pending the necessary development applications needed for the site. Subject application is related to the parking requirements of the Church Street residential units, however the potential hardship related to furnishing the required parking affects the grading of the site.

**Comments:**

The City of Fairhope Zoning Ordinance defines a variance as follows:

***Variances: A modification of the strict terms of the relevant regulations in a district with regard to placement of structures, developmental criteria or provision facilities. Examples would be: allowing smaller yard dimensions because an existing lot of record is of substandard size; waiving a portion of required parking and/or loading space due to some unusual circumstances; allowing fencing and/or plant material buffering different from that required due to some unusual circumstances. Variances are available only on appeal to the Board of Adjustment and subject to satisfaction of the standards specified in this ordinance.***

The Board of Adjustments is authorized to grant variance through Article II.A.d(3) which says the following:

***d. Duties and Powers: The Board shall have the following duties and powers:***

***(2) Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon which the board is required to pass under this ordinance.***

***(3) Variances - To authorize upon appeal in specific cases variance from the terms of this ordinance not contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.***

***Prior to granting a variance, the Board shall find that:***

***(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;***

***(b) The application of this ordinance to the particular piece of property would create an unnecessary hardship;***

***(c) Such conditions are peculiar to the particular piece of property involved; and,***

***(d) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.***

*The applicant requested a variance of the rear parking requirements of the CBD. The correct type of relief for the applicant's request is a special exception as described in item (2) above. In an effort to review the potential hardships of developing subject property, the zoning ordinance variance criteria, as follows is utilized for review purposes:*

Article II.C.3.e.

**Criteria – (1) An application for a variance shall be granted only on the concurring vote of four Board members finding that:**

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;**
- (b) The application of the ordinance to this particular piece of property would create an unnecessary hardship. Personal financial hardship is not a justification for a variance.**
- (c) Such conditions are peculiar to the particular piece of property involved; and**
- (d) Relief, if granted, would not cause substantial detriment to the public good and impair the purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.**

When a variance is granted by the Zoning Board of Adjustment it has the following effect:

Article II.C.3.g.

**Effect of Variance - Any variance granted according to this section and which is not challenged on appeal shall run with the land provided that:**

- (1) The variance is acted upon according to the application and subject to any conditions of approval within 365 days of the granting of the variance or final decision of appeal, whichever is later; and**
- (2) The variance is recorded with the Judge of Probate.**

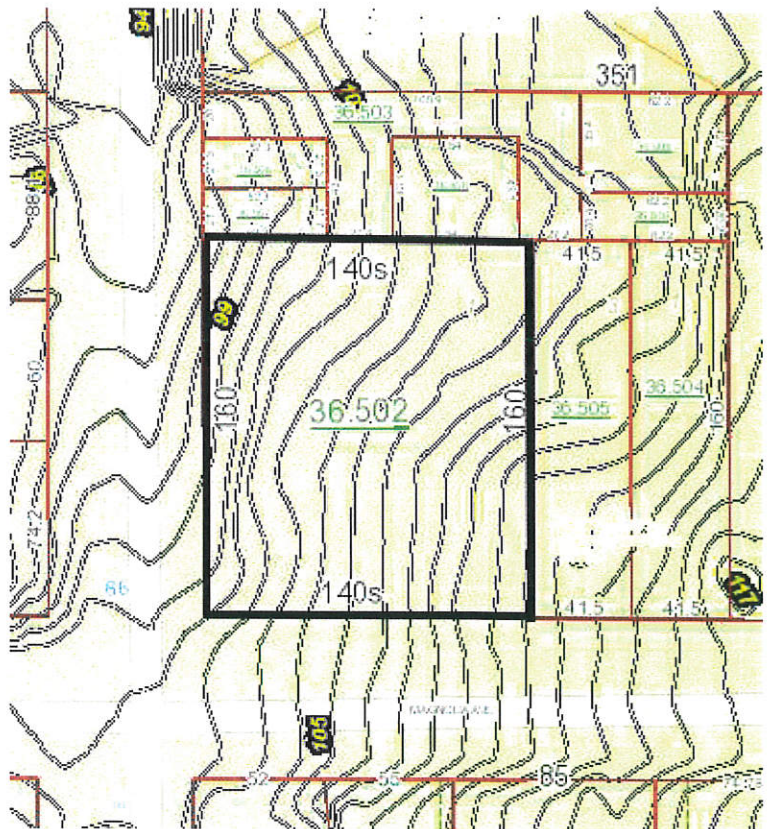
**Analysis and Recommendation:** Variance Criteria

**(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

Response: The subject property is rectangular in shape and approximately 22,400 sf, or slightly more than ½ acre in size. The shape of the lot is not uncommon, and no minimum lot size is required for B-2 zoning. The extraordinary or exceptional topographical conditions are not immediately noticeable visually, however the applicant illuminates the grade differential on the lot is 15' and the effect of the grade differential on the site's development is explained herein. This grade differential may be seen in the map excerpt on the next page from the Baldwin County Parcel viewer with subject property outlined in **black**.



The applicant states the hardship created by the topography of the subject property affects the grading necessary to develop the site. Specifically, the applicant asserts the proposed 20-space parking area will have a finished elevation of approximately 10' higher than the finished floor elevation of the residential units fronting Church Street, complicating the drainage design of both areas. Staff understands the conceptual need to allow front, screened parking for the residential units along Church Street and does not necessarily object to the screened parking. Staff believes the applicant has a reasonable request for a relief from the zoning ordinance due to extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, and more specifically its topography as mentioned above and more fully-described below. As



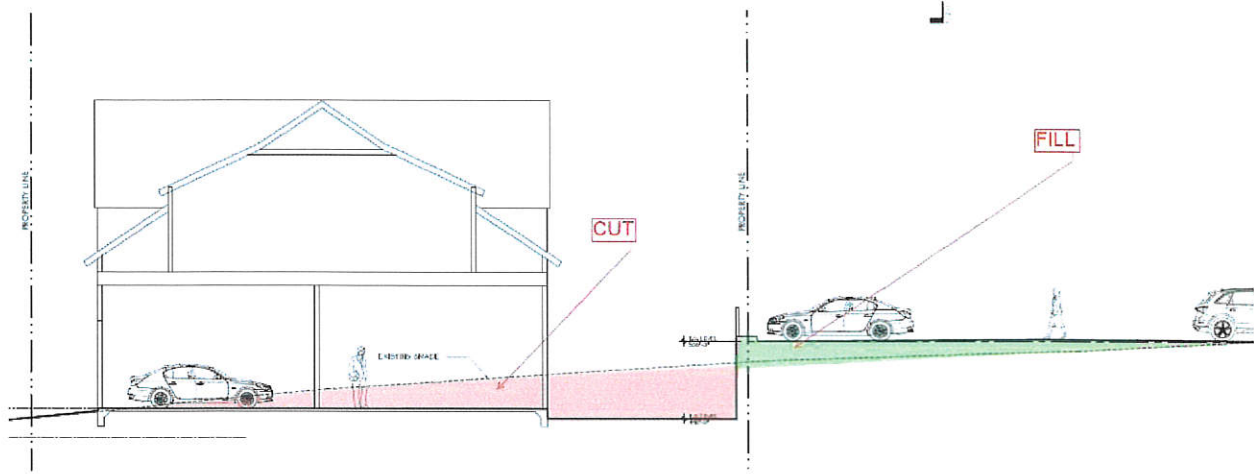
described previously, the applicant requested a variance in their application, but the type of relief requested is actually a request for special exception. This review will consider the applicant's request for a variance and review the criteria for a variance as a means of evaluating the application, but the staff recommendation will be in terms of a *special exception*.

***(b) The application of the ordinance to this particular piece of property would create an unnecessary hardship. Personal financial hardship is not a justification for a variance.***

Response: The requested special exception is in relation to the residential uses to be constructed on subject property, with each unit likely located on its own lot to be created by a future subdivision request. The dimensions of the property do not appear to prevent the reasonable use of the property for residential purposes. The applicant's proposed method of developing the subject property involves cutting and filling of the site as shown in the drawing excerpt seen on the next page. The drawing excerpt indicates a section elevation view of the proposed residential units in relation to the proposed parking area to be included on the site. The applicant wishes to construct the residential units at the lower elevation along Church Street, with street access from Church Street rather than the CBD requirement for rear loading. The applicant further states the intended development desires to use the cut material from the area shown in red below to fill the area shown in green to "build up" the proposed parking area so that the parking area will have the required elevation to drain from the parking area and connect to an existing drain inlet at the intersection of Magnolia Ave and N. Church Street. Staff requested the applicant clarify the various alternatives that would not require approval of a variance from the parking requirements within the CBD and construct the proposed development with the required rear parking. The applicant indicated reducing the elevation of the proposed parking area and raising the finished floor elevation (FFE) of the proposed residential units is possible and would allow rear access to the residential units by traversing



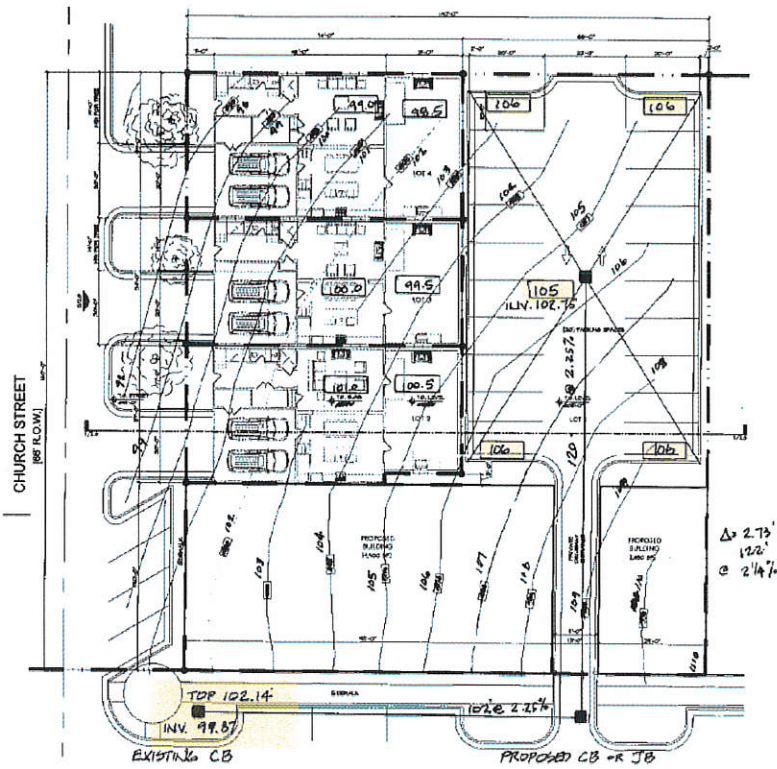
the parking area and reducing the number of parking spots in the parking area. However, reducing the elevation of the parking area would reduce the elevation of the drain inlet to the parking area to an elevation where gravity flow drainage from the parking area's drain inlet to the existing conveyance system would not be possible. Further, deep (4' approximately) excavation would occur immediately adjacent to the existing residential property north of subject property, with possible undercutting and stabilization of the adjacent property occurring as a result.



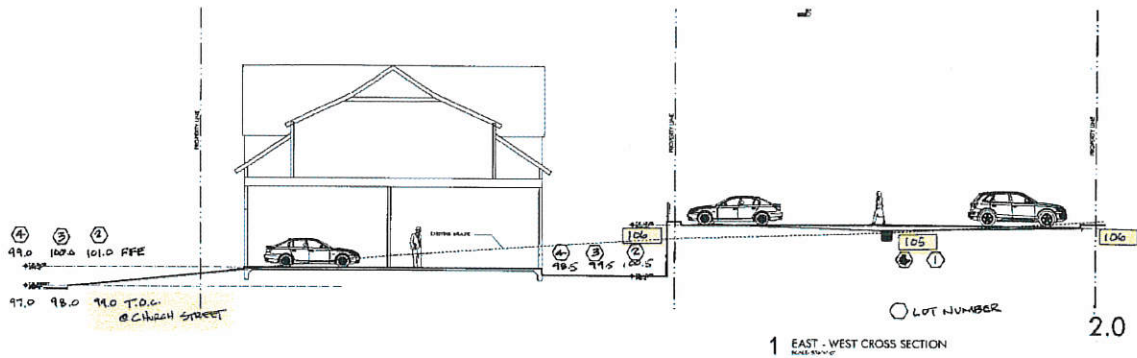
***(c) Such conditions are peculiar to the particular piece of property involved.***

Response: As stated in section (b) above, staff understands the conceptual need for and does not necessarily object to the requested screened front parking. The application provided additional clarification, shown in the drawing excerpt below, indicating the drain inlet for the parking area with an elevation of 105'. If the parking area is constructed with this drain inlet at 105', the parking lot will adequately drain to the existing drain inlet at an elevation of 102' as seen in the drawing excerpts on the next page.

Staff met with the applicant multiple times to gain a better understanding of the request and the conditions of the existing site. Though it is possible the northernmost residential unit could be moved southward to allow a drainage easement for connection of the parking area's drainage to N. Church Street, the deep excavation needed to allow rear parking to the residential units would still be required, occurring along the border with PPIN 64928 et al. In addition to the plan view shown on the next page, the "cut-fill" drawing seen above is shown again on the next page, with critical elevations indicated in light yellow color.



The drawing at left is a plan view of the proposed development with critical elevations show in **light yellow**. The spot elevations in each corner of the parking area are 106', with the throat of the drain inlet at 105'. The drain inlet drains into drainage pipe that runs south to a junction box, and then west connecting to an existing drain inlet at 102.14' with an invert elevation of 99.87'. This drainage system is possible if the elevation of the proposed parking area is constructed as shown. The "cut-fill" drawing shown earlier in red and green colors is replicated below left with the critical elevations shown in **light yellow**.



**(d) Relief, if granted, would not cause substantial detriment to the public good and impair the purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.**

Response: This is a complicated case. Many of the existing residences on the west side of N. Church Street, which are outside of the CBD, contain front loaded parking with driveways not unlike those requested by this request for variance (special exception), and as a result staff understands the potential compatibility the proposed front loaded parking of the proposed residences provides if they were not located within the CBD. The proposed development depicted in this case requires substantial cutting and filling of soil and construction of retaining wall systems regardless of the type of construction system utilized, and therefore believes the applicant has not necessarily submitted subject application to avoid financial hardship. Staff believes the hardship caused by the site's topography is the ability to construct an adequate drainage system while also avoiding deep excavation immediately adjacent to existing residences, which is a possible detriment to the public



good. As a result, the staff recommendation for subject application will be for approval, and staff believes no relief is recommended to be granted that would cause substantial detriment to the public good and impair the purpose and intent of the zoning ordinance.

**Staff Recommendation:**

Staff recommends this request for special exception be **APPROVED**.

Prepared by:  
J. Buford King  
City Planner

**Site Photos**



Looking east toward subject property  
From west side of church street



Looking North from Magnolia Ave  
52 North Section Street development  
beyond



Looking northeast toward subject property  
from west side of church street



Looking northwest toward subject  
property from adjacent property along  
Magnolia Ave



**APPLICATION FOR BOARD OF ADJUSTMENTS**

Application Type:  Administrative Appeal  Special Exception  Variance

**Property Owner / Leaseholder Information**

Name: Magnolia Church LLC Phone Number: 251-478-4202, Ext 106  
 Street Address: 301 Magnolia Ave  
 City: Fairhope State: AL Zip: 36532

**Applicant / Agent Information**

If different from above.  
 Notarized letter from property owner is required if an agent is used for representation.

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

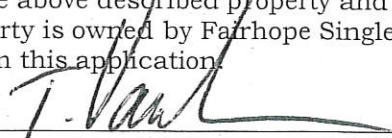
Site Plan with Existing Conditions Attached:  YES  NO  
 Site Plan with Proposed Conditions Attached:  YES  NO  
 Variance Request Information Complete:  YES  NO  
 Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached:  YES  NO

**Applications for Administrative Appeal or Special Exception:**

Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Magnolia Church, LLC  
 Property Owner/Leaseholder Printed Name  
06-09-2018  
 Date

  
 Signature  
 \_\_\_\_\_  
 Fairhope Single Tax Corp. (If Applicable)





**VARIANCE REQUEST INFORMATION**

What characteristics of the property prevent / preclude its development?:

- |                                      |   |  |
|--------------------------------------|---|--|
| <input type="checkbox"/> Too Narrow  | <input checked="" type="checkbox"/> Elevation | <input type="checkbox"/> Soil            |
| <input type="checkbox"/> Too Small   | <input checked="" type="checkbox"/> Slope     | <input type="checkbox"/> Subsurface      |
| <input type="checkbox"/> Too Shallow | <input checked="" type="checkbox"/> Shape     | <input type="checkbox"/> Other (specify) |

Describe the indicated conditions: The grade differential across the site is approximately 15'. The use of retaining walls & terraced building areas makes it difficult to have vehicle access to the rear of the Church St frontage lots. (see attached site plan, elevation & topo)

How do the above indicated characteristics preclude reasonable use of your land?  
Rear parking as required for residential use presents an extraordinary use of land for circulation.

What type of variance are you requesting (be as specific as possible)?  
Front screened parking is requested. We are asking for this on the Church St frontage only. This is compatible with the existing parking across Church St (see attached photos)

Hardship (taken from Code of Alabama 1975 Section 11-52-80):

"To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

BOA Fee Calculation:		
	Residential	Commercial
Filing Fee:	\$100	\$500
Publication:	\$20	\$20
<b>TOTAL: \$</b>		<b>\$ 520.00</b>

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

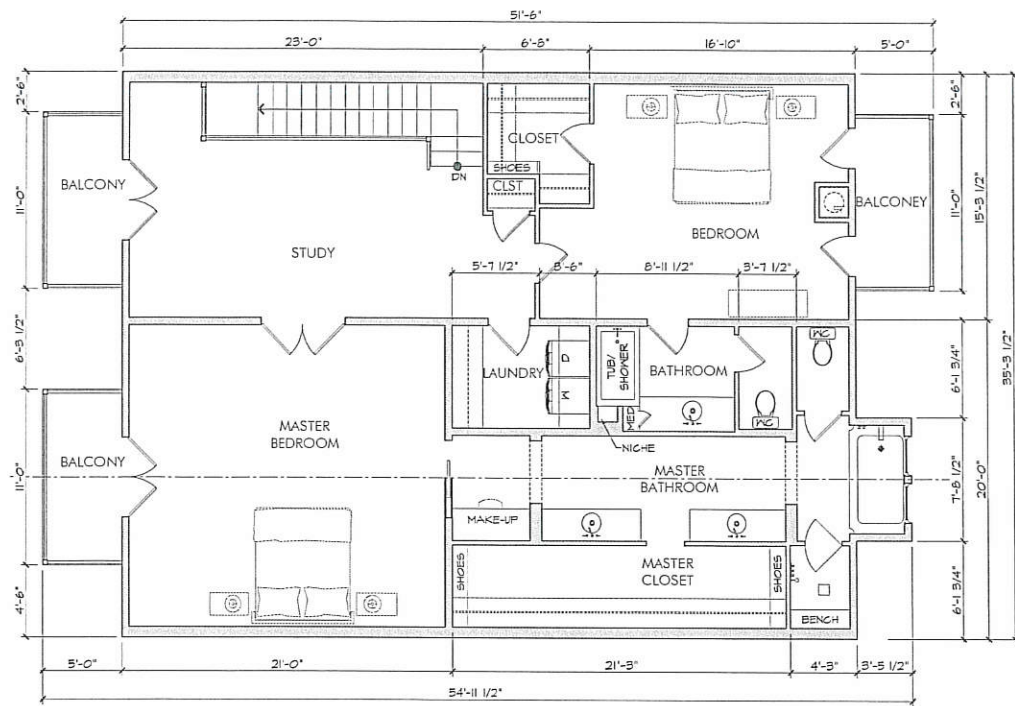
Magnolia Church, LLC  
 Property Owner/Leaseholder Printed Name

T. Van  
 Signature

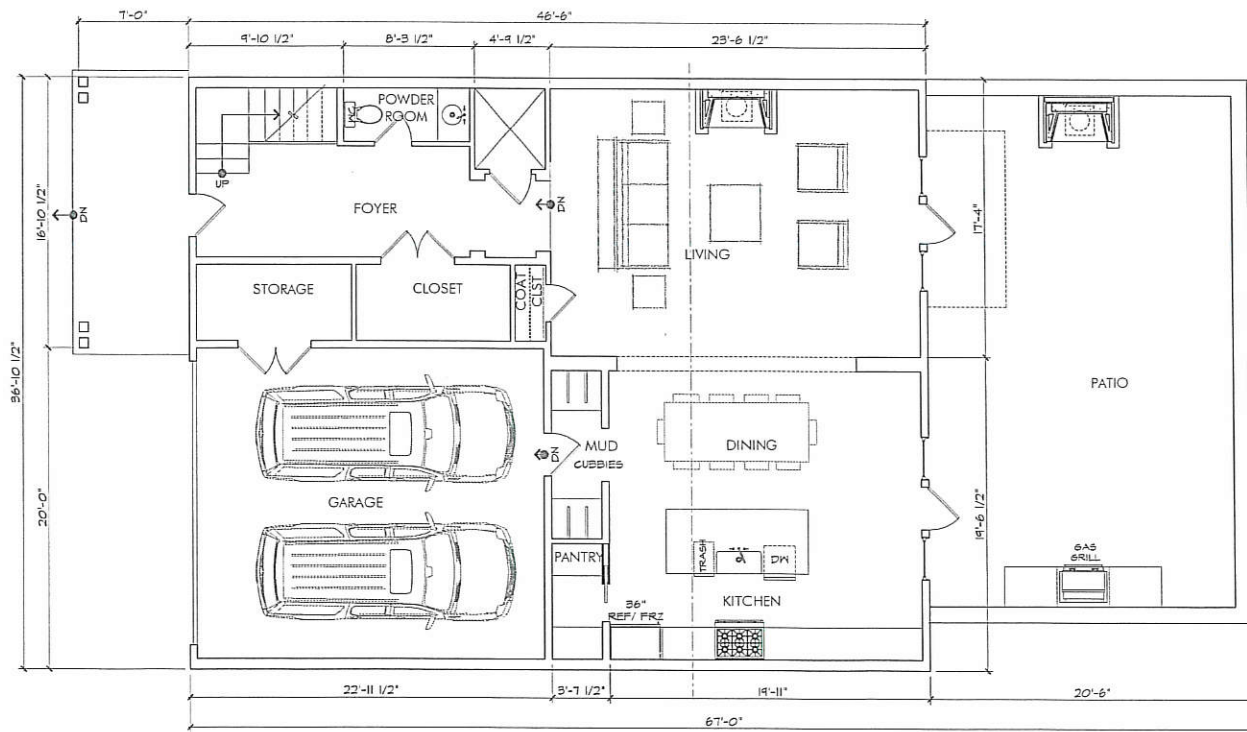
06-09-2018  
 Date

Fairhope Single Tax Corp. (If Applicable)



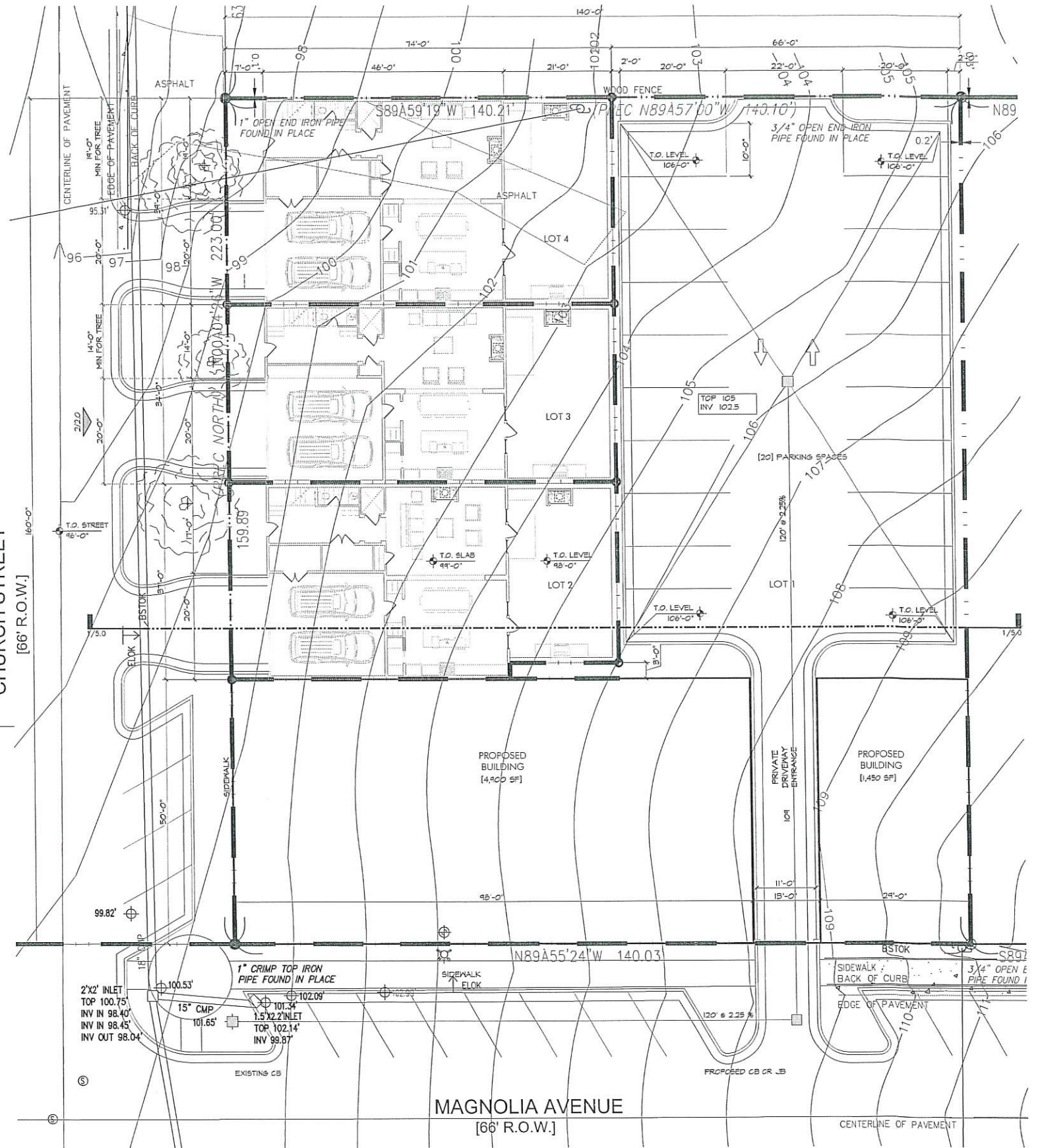


**3** 2nd FLOOR PLAN  
SCALE: 3/16"=1'-0"



**2** 1st FLOOR PLAN  
SCALE: 3/16"=1'-0"

CHURCH STREET  
[66' R.O.W.]

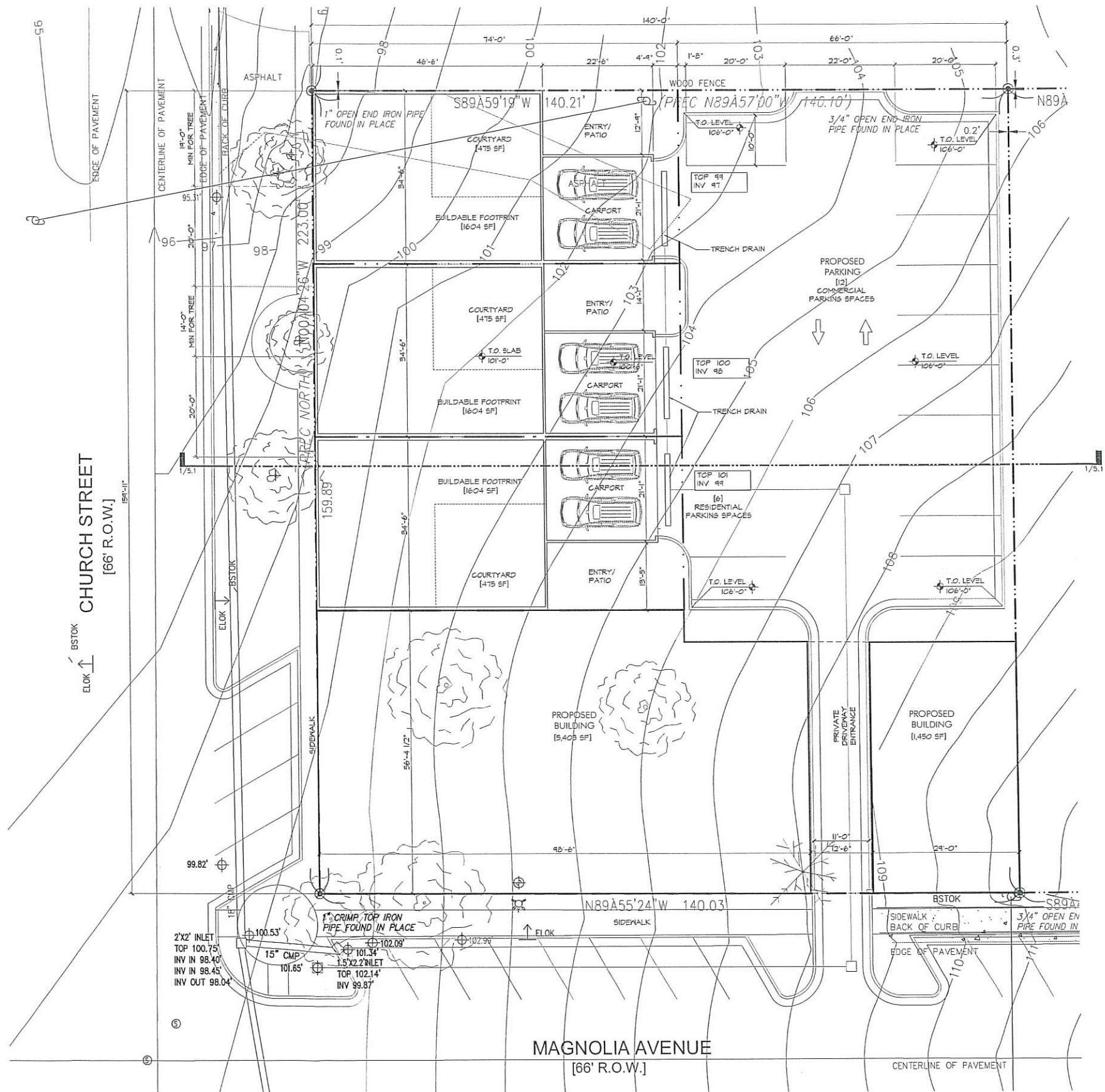


**1** CHURCH ST. FRONT PARKING SITE PLAN  
SCALE: 3/32"=1'-0"

	EXISTING	PROPOSED
MAGNOLIA AVE	5	11
CHURCH STREET	0	4
RESIDENTIAL	0	4
COMMERCIAL	0	20
TOTAL	5	44

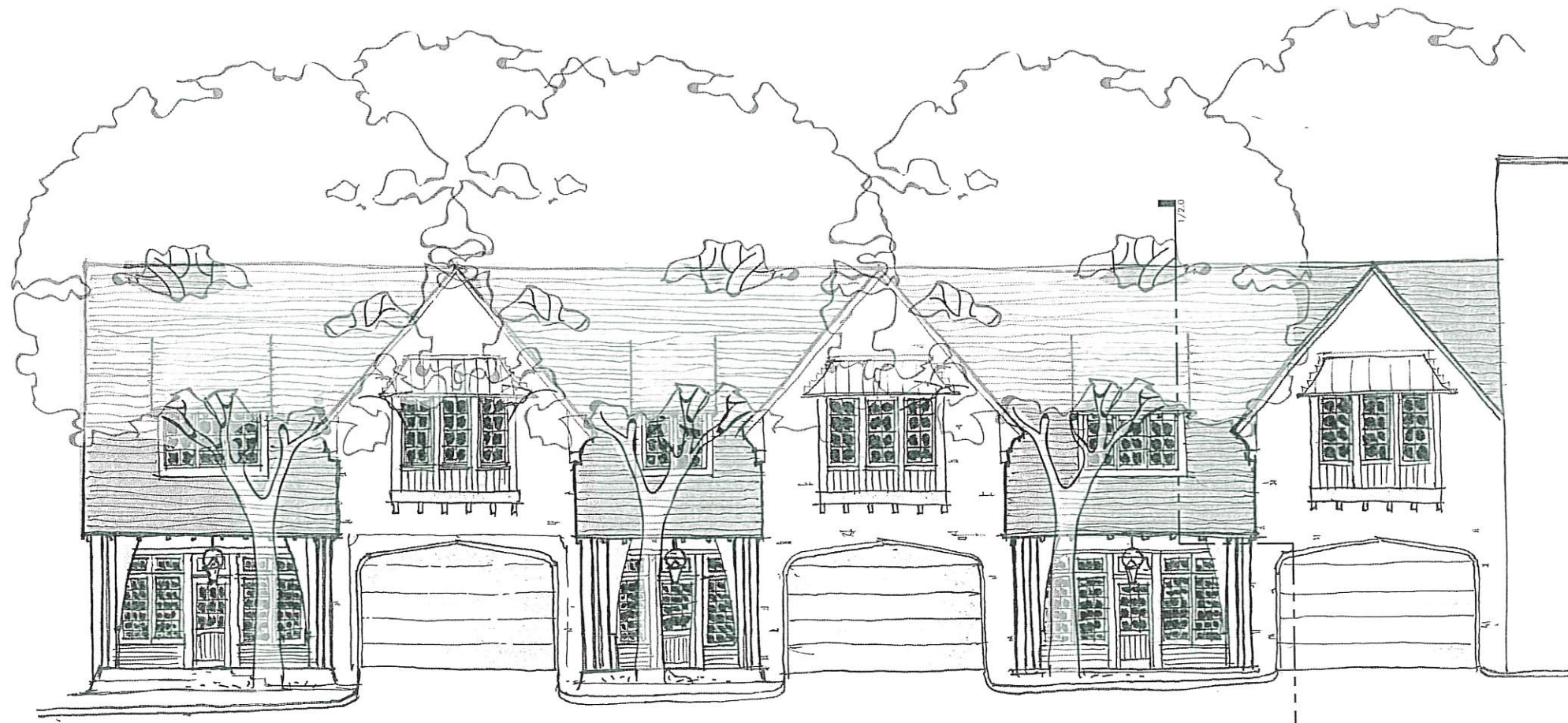
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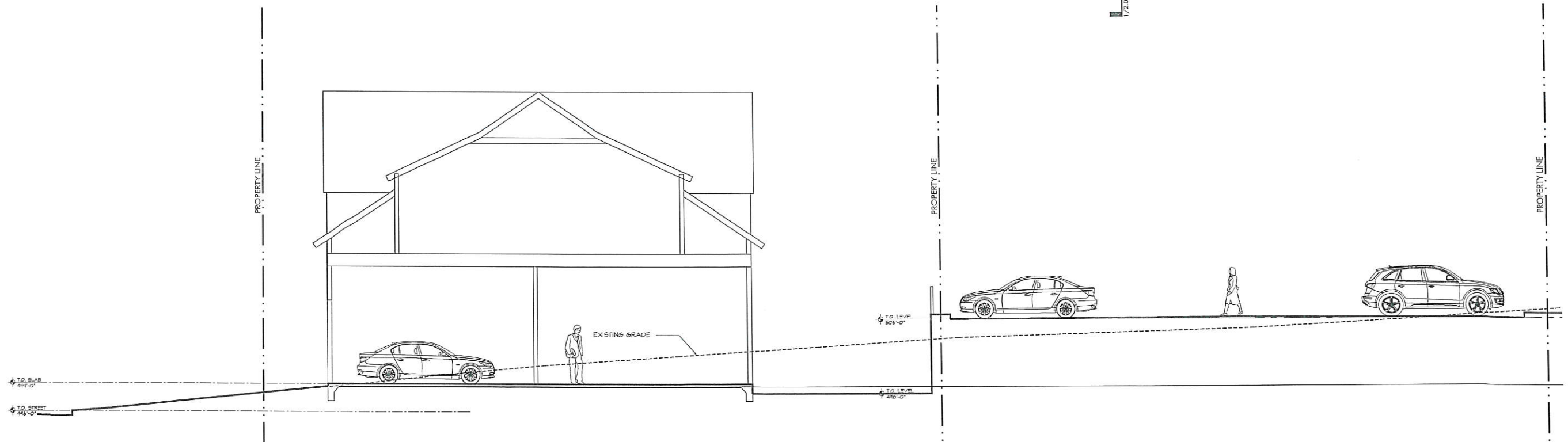


**1 CHURCH ST. REAR PARKING SITE PLAN**  
 SCALE: 3/32"=1'-0"  
 NORTH

	EXISTING	PROPOSED
MAGNOLIA AVE	5	11
CHURCH STREET	0	4
COMMERCIAL	0	12
TOTAL	5	27



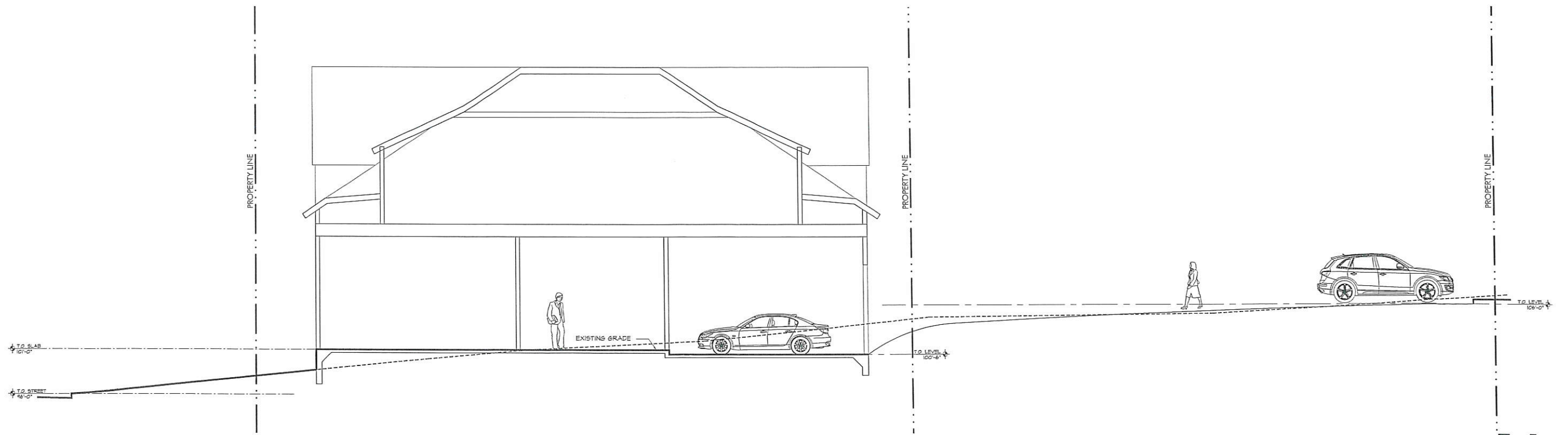
2 WEST ELEVATION  
SCALE: 3/16"=1'-0"



1 EAST - WEST CROSS SECTION  
SCALE: 3/16"=1'-0"

5.0





**1** EAST - WEST CROSS SECTION  
 SCALE: 3/16"=1'-0"