



BOARD OF ZONING APPEALS APPLICATION

Please reach out to a City of Knoxville Zoning Examiner about your project before submitting a variance application.

APPLICANT INFORMATION	APPLICANT IS:	THIS PROPOSAL PERTAINS TO:
Name (Individual not company) Benjamin C. Mullins obo John Murphy	Owner <input checked="" type="checkbox"/>	New Structure <input checked="" type="checkbox"/>
Street Address 550 West Main Street, Suite 500	Contractor <input type="checkbox"/>	Modification of Existing Structure <input type="checkbox"/>
City, State, Zip Knoxville, TN 37902	Tenant <input type="checkbox"/>	Off Street Parking <input type="checkbox"/>
Phone Number 865-546-9321	Other <input type="checkbox"/>	Signage <input type="checkbox"/>
Applicant Email bmullins@fmsll.com		Other <input type="checkbox"/>

THIS IS A REQUEST FOR:

- Zoning Variance (Building Permit Denied)
 Extension of Non-Conforming Use/or Structure
 Appeal of Administrative Official's Decision
 Map Interpretation

PROPERTY INFORMATION

Street Address 416 Cherokee Blvd City, State, Zip Knoxville, TN 37919
 See KGIS.org for Parcel # 1081D032 City Council District # 2 and Zoning District RN-1

VARIANCE REQUIREMENTS

City of Knoxville Zoning Ordinance Article 16, Section 16.3

The City of Knoxville Board of Zoning Appeals shall have the power and authority to grant variances from terms of this ordinance according to the procedure and under the restrictions set out in this section.

The purpose of the variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property as the zoning ordinance intended.

DESCRIPTION OF APPEAL

Describe your project and why you need variances.

Variance No. 1: Section 10.3.L.1: Increase the maximum wall height in the front and corner side yards from 42" to 120".

Variance No. 2: Sections 11.3.E and 11.7.C: Increase the maximum width of a circular driveway from 18' to 32'.

Describe hardship conditions that apply to this variance.

See attached Letter.

Site plans and any other relevant information associated with the hardship must accompany this application.

APPLICANT AUTHORIZATION

I hereby certify that I am the authorized applicant, representing ALL property owners involved in this request and that all owners have been notified of this request in writing.

APPLICANT'S SIGNATURE

DATE

February 9, 2023

Revised 2-16-23
BCM

File #



BOARD OF ZONING APPEALS APPLICATION

*******OFFICE USE ONLY*******

Is a plat required? Yes No

Small Lot of record?

VARIANCE REQUEST(S) WITH ORDINANCE CITATION(S):

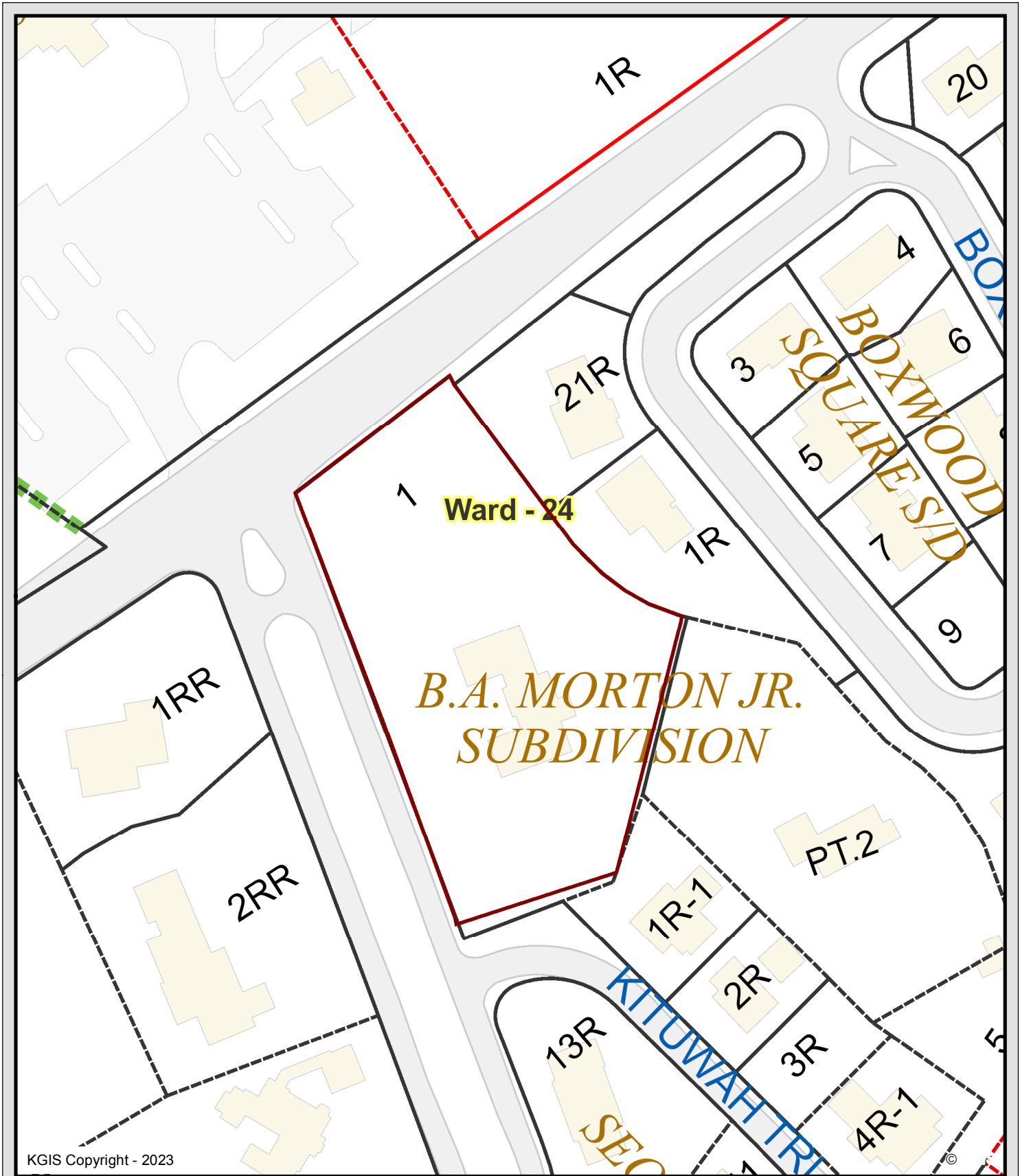
Large empty rectangular area for providing variance request details and ordinance citations.

PROJECT INFORMATION

Date Filed | Fee Amount

Council District | BZA Meeting Date

PLANS REVIEWER | **DATE**



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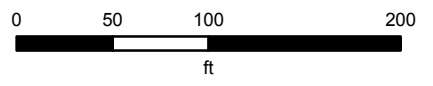
416 CHEROKEE BLVD

3-F-23-VA
BEN MULLINS

Knoxville - Knox County - KUB Geographic Information System



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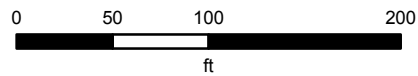
416 CHEROKEE BLVD

3-F-23-VA
BEN MULLINS

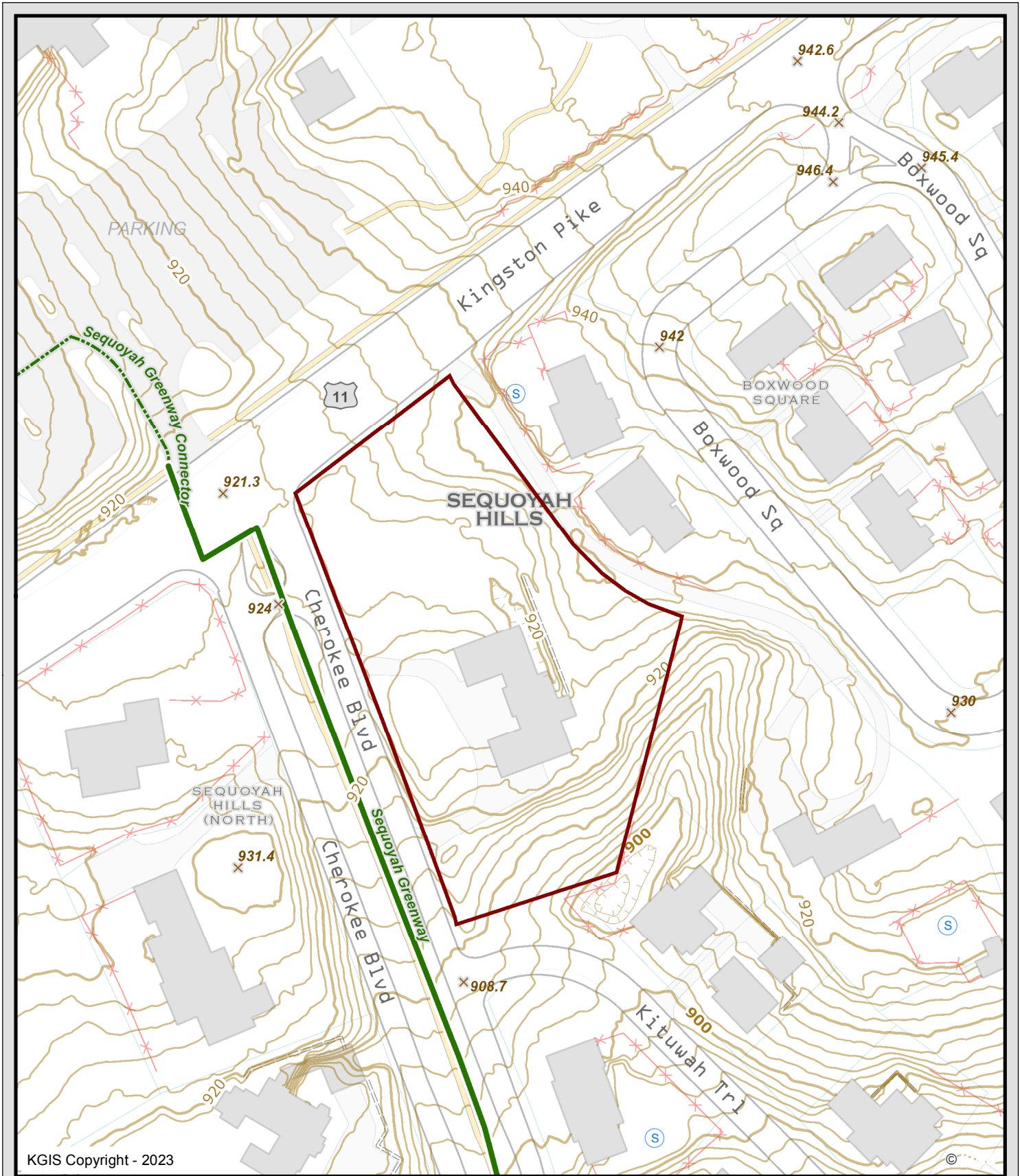
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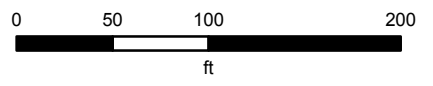
416 CHEROKEE BLVD

3-F-23-VA
BEN MULLINS

Knoxville - Knox County - KUB Geographic Information System



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DONALD D. HOWELL
DEBRA L. FULTON
MICHAEL W. EWELL
JOHN M. LAWHORN
JAMES E. WAGNER
BEVERLY D. NELMS
MARY ELIZABETH MADDOX
BENJAMIN C. MULLINS
RICHARD T. SCRUGHAM, JR.
MATTHEW A. GROSSMAN
KEVIN A. DEAN
SHARON H. KIM
RICHARD E. GRAVES
REBEKAH P. HARBIN
MICHAEL A. C. LEE
NIKOL D. PLUESS



client-centric & committed to success

Email: bmullins@fmsllp.com

Direct Fax: 865-541-4609

February 9, 2023

550 W. Main Street
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Knoxville, Tennessee
37902

phone 865.546.9321

fax 865.637.5249

web fmsllp.com

ARTHUR G. SEYMOUR, JR.
(1945 - 2019)

City of Knoxville Board of Zoning Appeals
City County Building
400 Main Street, Room 475
Knoxville, TN 37902

Re: Variance Application for 416 Cherokee Boulevard, Knoxville, Tennessee 37919
Parcel No. 108 I D 032

Dear BZA Members:

This is an application for two area variances for the residence of Mr. John Murphy (the “**Owner**”) located at 416 Cherokee Boulevard, Knoxville, Tennessee 37919 (Parcel No. 108 I D 032) (the “**Property**”). The first variance is for a proposed wall above the permitted height and is discussed in Section 2.0. The second variance is for a proposed guest receiving area and is discussed in Section 3.0.

1.0 Current Zoning and Development Standards

The Property is currently zoned RN-1 (“Residential Neighborhood.”)

Under Article 10.3.L.1 of the City of Knoxville Code of Ordinances (the “**Code**”), walls are limited to a height of 42” in the front yard and corner side yards.¹

Under Article 11.3.E of the Code, single-family dwellings with a garage are limited to approved parking on “[a] driveway leading to a carport or enclosed garage, not to exceed the maximum width allowed, except for flares adequate to access the carport or garage.”² The maximum width allowed under the ordinance is 25’-00”.³

2.0 Area Variance – Proposed Front and Side Yard Wall

In Exhibits “A” and “B”, we propose a wall not to exceed 10’-00” in height. The proposed wall will run the entire length of the side yard facing Kingston Pike and approximately

¹ KNOXVILLE, TN., Code § 10.3.L.1 (2022).

² KNOXVILLE, TN., Code § 11.3.E (2022).

³ KNOXVILLE, TN., Code § 11.7.C (2022).

133' along the front yard facing Cherokee Boulevard. The wall in the side yard will be setback 24'-00" from Kingston Pike, and the wall in the front yard facing Cherokee Boulevard will be setback 12'-00".

We request an area variance to permit the proposed wall in the front and side yards due to the 42" wall height limitation. Under Article 16.3 of the Code, the purpose of a variance is "to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of the zoning regulations of this Code that create practical difficulties or particular hardships."⁴ Further, the Code specifies standards by which the Board of Zoning Appeals (the "**Board**") may authorize a variance.⁵

First, the Code states that "[v]ariations will be granted only where special circumstances or conditions (such as exceptional narrowness, topography, or siting) [exist and] do not apply generally in the district."⁶

Here, we believe that the Property does have special circumstances related to its siting. The Property is located at the intersection of Kingston Pike and Cherokee Boulevard. Kingston Pike, a major thoroughfare in the city of Knoxville, has significant traffic volume, which averages more than 25,000 cars per day.⁷ As a result of this high traffic volume, the Property is subject to high-decibel noise from passing motorists. Accepted in the landscape architecture profession, the most effective way to ameliorate high-decibel noise is through solid walls and berms.⁸ Here, to preserve trees which would need to be cut down for a berm, we think a wall is the most appropriate way to address the noise issue from the perspective of form and function. While we understand the rationale for limiting walls to a 42" height from an aesthetic and community-design perspective, we think, as applied here, it creates an unnecessary hardship for the Owner. For many adjacent properties zoned RN-1, which do not abut Kingston Pike, the 42" height is acceptable since they are not subject to high decibel sounds from passing motorists. However, since the Property is located on a corner lot and adjacent to Kingston Pike, we believe it falls under the category of "special circumstances or conditions," as discussed in the Code.

Second, the Code states that "[v]ariations will not be granted to allow a use otherwise excluded from the particular district in which requested."⁹ Here, we are asking for an area variance that would modify the aesthetic regulations enacted in the district. We are not asking for a change in the use classification.

⁴ KNOXVILLE, TN., Code § 16.3.A (2022).

⁵ See generally KNOXVILLE, TN., Code § 16.3.E (2022).

⁶ KNOXVILLE, TN., Code § 16.3.E.1 (2022).

⁷ See Tenn. Dep't of Transp., *Transportation Data Management System*, TENN. DEP'T OF TRANSP., <https://tdot.public.ms2soft.com/tcds/tdetail.asp?offset=239> (showing that on Wednesday, February 24, 2021, the volume count on Kingston Pike just east of the Cherokee Blvd. and Kingston Pike intersection was 25,326).

⁸ See Joel Lerner, *A Good Wall, Even if It's Made of Plants, Can Reduce Highway Noise*, WASH. POST (Mar. 12, 2005), <https://www.washingtonpost.com/archive/realestate/2005/03/12/a-good-wall-even-if-its-made-of-plants-can-reduce-highway-noise/07eaa1fe-3397-4d26-a959-1f3d15029b7a/> ("[N]oise control is most effective when a solid barrier is used.").

⁹ KNOXVILLE, TN., Code § 16.3.E.2 (2022).

Third, the Code states that “the strict application of the provisions of this Code would deprive the applicant of any reasonable use of his/her land. Mere loss in value does not justify a variance; there must be a deprivation of beneficial use of land.”¹⁰ Here, we are not seeking a variance due to a reduction in value but rather due to a deprivation of beneficial use. As evidenced by the Owner’s ongoing plans to construct his primary residence on the Property, he is not seeking to build a wall to increase economic value. The Owner is seeking to construct a wall that would allow him and his family to enjoy the beneficial use of the Property without high-decibel sound emanating from Kingston Pike.

Fourth, the Code states that “[a]ny variance granted under the provisions of this section must be the minimum adjustment necessary for the reasonable use of the land.”¹¹ In the professional opinion of Stephen W. Hackney Landscape Architecture, LLC, the proposed 10’-00” wall is the minimum height necessary to ameliorate excessive sound. This expert opinion is further bolstered by literature attesting to height specifications to mitigate noise effectively.¹²

Fifth, the Code states that “[t]he granting of any variance [must be] in harmony with the general purposes and intent of this Code and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the General Plan for development.”¹³ First, the wall will not be injurious to the neighborhood. Along Kingston Pike, there are numerous examples of walls well over 42”, so the proposed wall would not be out of context. Further, the proposed wall is specified to be constructed with stucco and capped with Indiana limestone. Both materials are contextually appropriate for the neighborhood. Finally, the proposed wall will not conflict with the General Plan for development since it is not asking for a change in use.

As a result of these five standards and the requirements comprised in the Code,¹⁴ we feel that it is appropriate for an area variance to be granted for the proposed wall. The proposed wall is the most effective and aesthetically prudent manner to ensure that the Owner is not deprived of the beneficial use of the Property due to noise pollution from Kingston Pike.

3.0 Area Variance – Proposed Guest Receiving Area

In Exhibit “B”, we propose a receiving area for guests that is 52’-00” in length and 32’-00” in width.

We request an area variance to permit the proposed guest receiving area due to the driveway width restriction of 25’-00”.¹⁵ Under Article 16.3 of the Code, the purpose of a variance is “to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of the zoning regulations of this Code that create practical difficulties or

¹⁰ KNOXVILLE, TN., Code § 16.3.E.3 (2022).

¹¹ KNOXVILLE, TN., Code § 16.3.E.4 (2022).

¹² See Center for Environmental Excellence, *Traffic Noise & Transportation: Understanding and addressing traffic noise impacts is a key challenge for transportation agencies and planners*, THE AM. ASS’N OF STATE HIGHWAY AND TRANSP. OFFS., <https://environment.transportation.org/education/environmental-topics/traffic-noise/traffic-noise-overview/>.

¹³ KNOXVILLE, TN., Code § 16.3.E.5 (2022).

¹⁴ KNOXVILLE, TN., Code § 16.3.F.1–5 (2022).

¹⁵ KNOXVILLE, TN., Code § 11.7.C (2022).

particular hardships.”¹⁶ Further, the Code specifies standards by which the Board of Zoning Appeals (the “**Board**”) may authorize a variance.¹⁷

First, the Code states that “[v]ariations will be granted only where special circumstances or conditions (such as exceptional narrowness, topography, or siting) [exist and] do not apply generally in the district.”¹⁸

Here, like in Section 1.0, the Property has special circumstances related to its siting. The Owner plans to host many professional and personal gatherings at the Property upon its completion. Under present regulations, temporary guest parking is limited to a circular driveway and on-street parking. In most sites throughout the neighborhood, we would find this regulation acceptable. However, as applied here, we believe that the combination of guests having to back into the road to turn around or having to park on the street could present a public safety hazard. If the Property were located further down Cherokee Boulevard, this would not present the same level of concern. However, due to the Property’s location at the intersection of Cherokee Boulevard and Kingston Pike, this high-traffic and low-visibility area could result in a higher probability of an automobile accident. To abate this concern, we request a 7’-00” increase in the permitted driveway width in front of the residence. This would allow the Property to internalize these risks and provide safer ingress and egress by guests. Furthermore, temporary parking of this nature is permissible under Section 11.3.D.2 of the Code.

Second, the Code states that “[v]ariations will not be granted to allow a use otherwise excluded from the particular district in which requested.”¹⁹ Here, we are asking for an area variance that would modify the aesthetic regulations enacted in the district. We are not asking for a change in the use classification.

Third, the Code states that “the strict application of the provisions of this Code would deprive the applicant of any reasonable use of his/her land. Mere loss in value does not justify a variance; there must be a deprivation of beneficial use of land.”²⁰ Here, we must concede that denying a variance would not deprive the Owner of the beneficial use of land. However, when weighed against the other four standards governing the granting of a variance, we believe this standard can be overcome by the public safety interests discussed in the first factor.

Fourth, the Code states that “[a]ny variance granted under the provisions of this section must be the minimum adjustment necessary for the reasonable use of the land.”²¹ In the professional opinion of Stephen W. Hackney Landscape Architecture, LLC, the proposed 7’-00” increase in driveway width is the minimum adjustment necessary to abate the ingress/egress concern.

¹⁶ KNOXVILLE, TN., Code § 16.3.A (2022).

¹⁷ See generally KNOXVILLE, TN., Code § 16.3.E (2022).

¹⁸ KNOXVILLE, TN., Code § 16.3.E.1 (2022).

¹⁹ KNOXVILLE, TN., Code § 16.3.E.2 (2022).

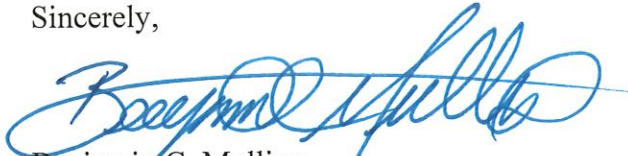
²⁰ KNOXVILLE, TN., Code § 16.3.E.3 (2022).

²¹ KNOXVILLE, TN., Code § 16.3.E.4 (2022).

Fifth, the Code states that “[t]he granting of any variance [must be] in harmony with the general purposes and intent of this Code and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the General Plan for development.”²² Here, the proposed guest receiving area will be located 4’-00” above grade helping to conceal it from the view of motorists and pedestrians on Cherokee Boulevard. Furthermore, Exhibit “B”, specifies 42” tall walls to enclose the guest receiving area, providing additional screening for motorists and pedestrians. Finally, the proposed width increase would be in harmony with the surrounding area, as these guest receiving areas are commonplace throughout the neighborhood.

As a result of these five standards and the requirements comprised in the Code,²³ we feel that it is appropriate for an area variance to be granted for the proposed guest receiving area. The increased driveway width in a localized area is the most effective and aesthetically prudent manner to ensure temporary guest parking does not result in a public safety hazard due to the Property’s location.

Sincerely,



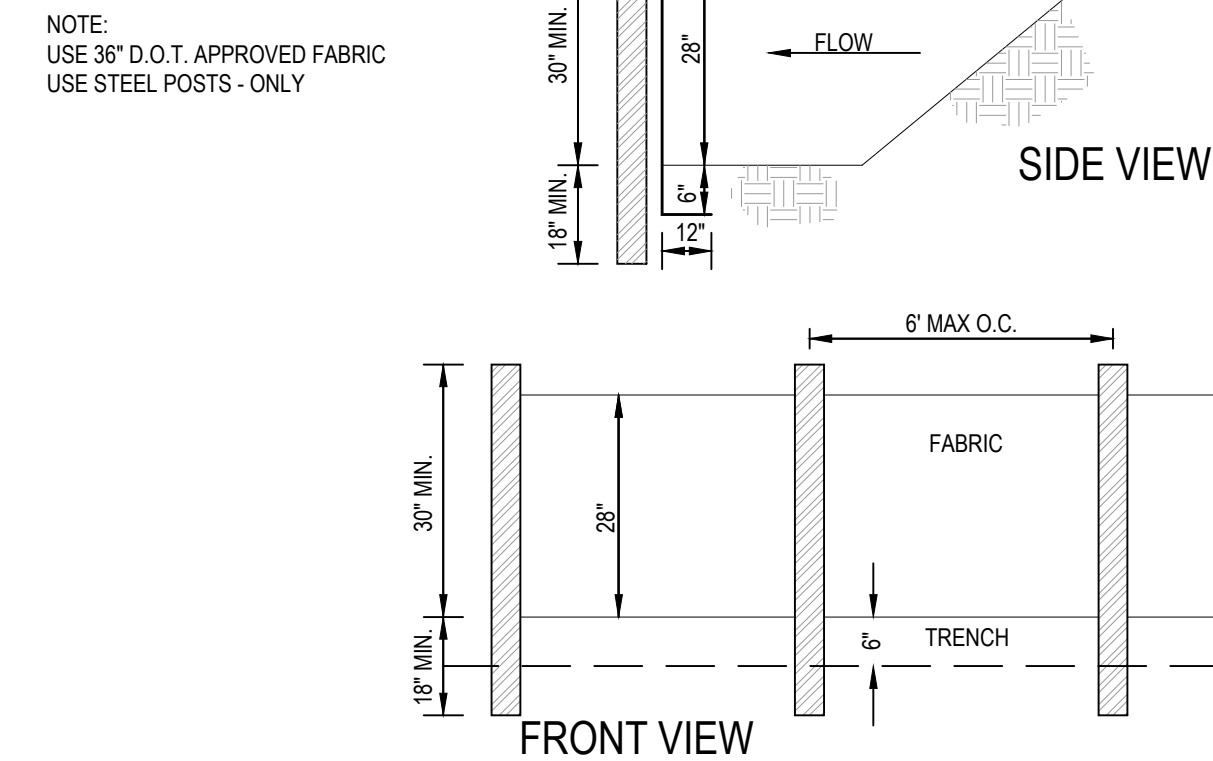
Benjamin C. Mullins
FRANTZ, McCONNELL & SEYMOUR, LLP

BCM:avl

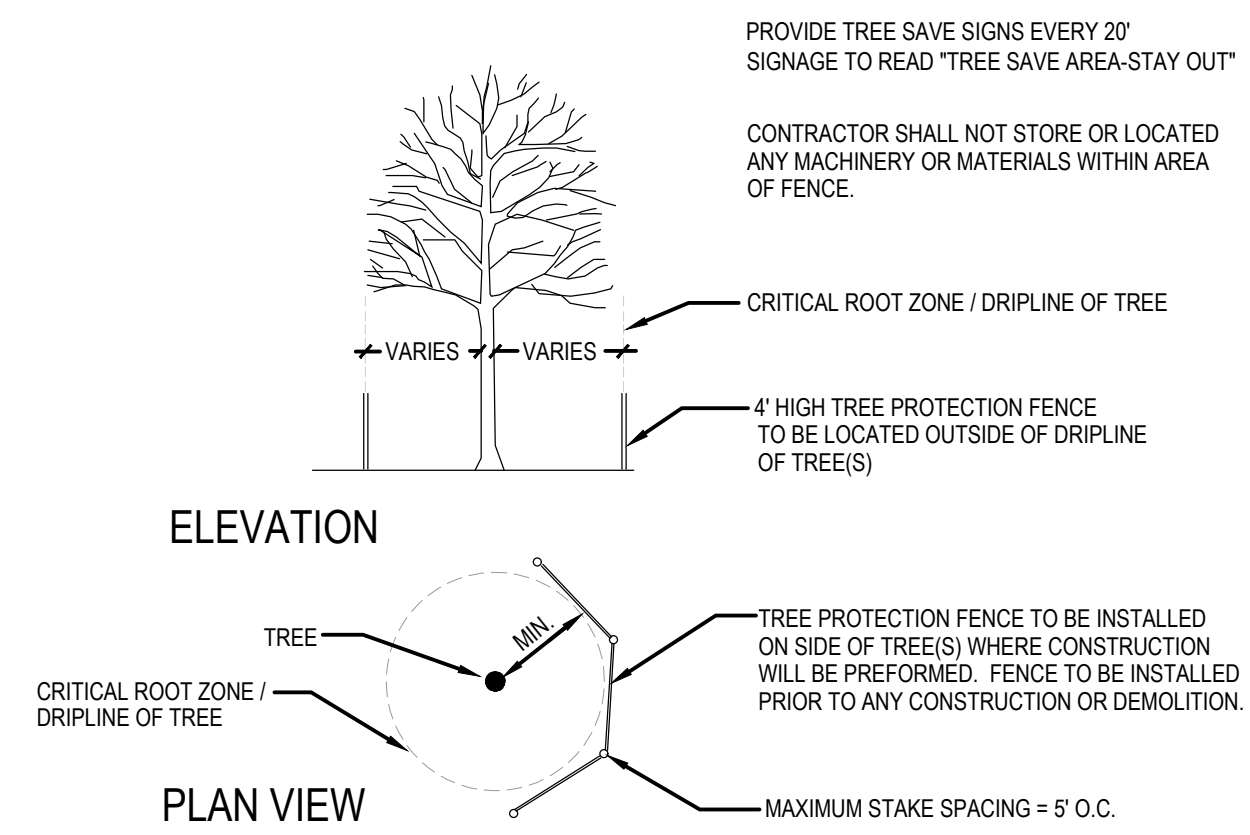
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²² KNOXVILLE, TN., Code § 16.3.E.5 (2022).

²³ KNOXVILLE, TN., Code § 16.3.F.1–5 (2022).

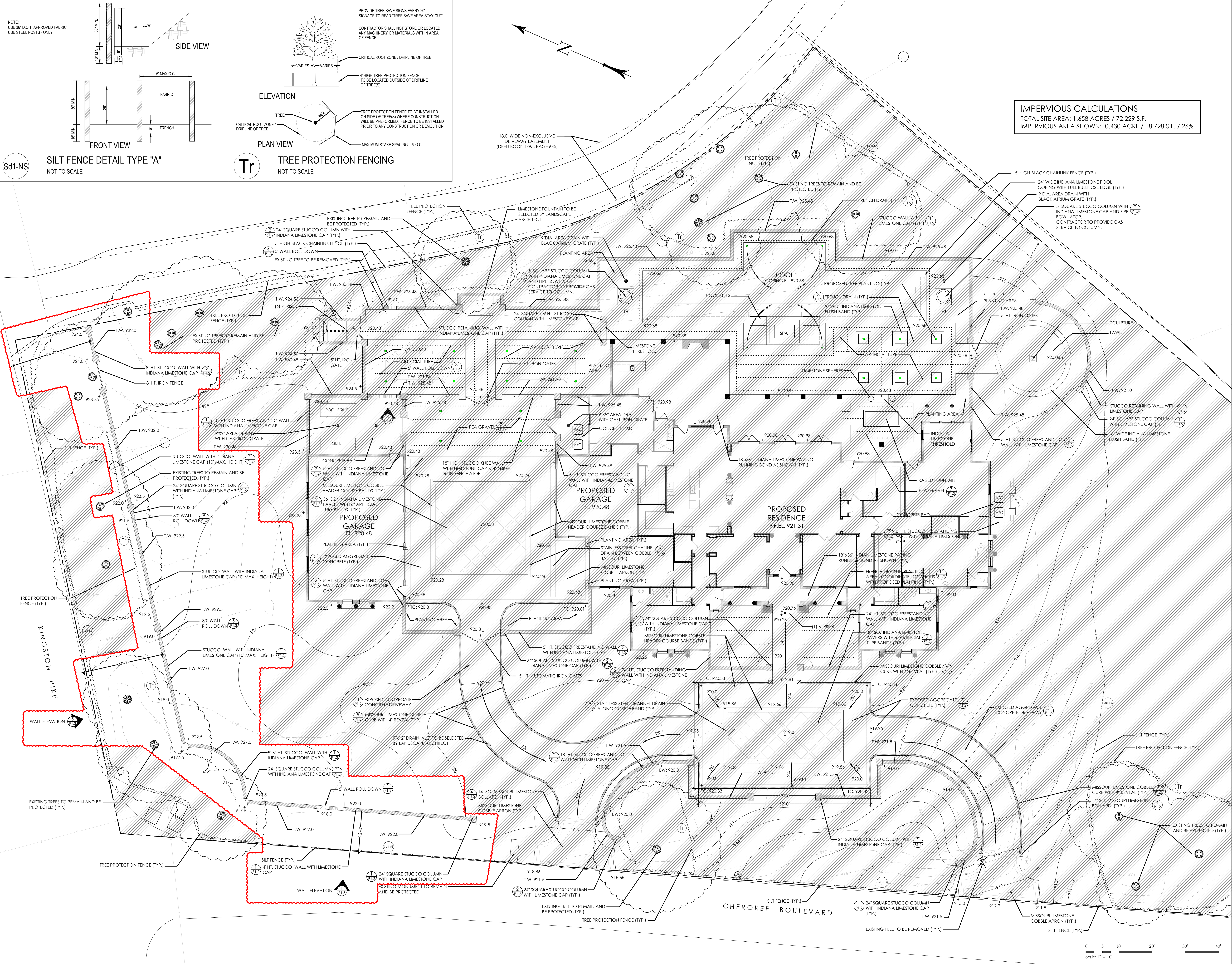


Sd1-NS SILT FENCE DETAIL TYPE "A"
NOT TO SCALE



Tr TREE PROTECTION FENCING
NOT TO SCALE

IMPERVIOUS CALCULATIONS
TOTAL SITE AREA: 1.658 ACRES / 72,229 S.F.
IMPERVIOUS AREA SHOWN: 0.430 ACRE / 18,728 S.F. / 26%



MURPHY RESIDENCE
416 CHEROKEE BOULEVARD • KNOXVILLE, TENNESSEE

REVISIONS

NO.	DATE	DESCRIPTION
1		
2		
3		
4		
5		

PRELIMINARY, NOT FOR CONSTRUCTION
RELEASED FOR CONSTRUCTION

DATE OF ISSUE: FEBRUARY 07, 2023
DRAWN BY: KJN

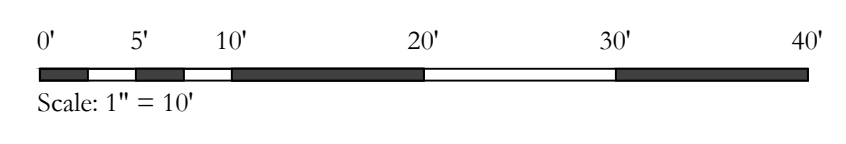
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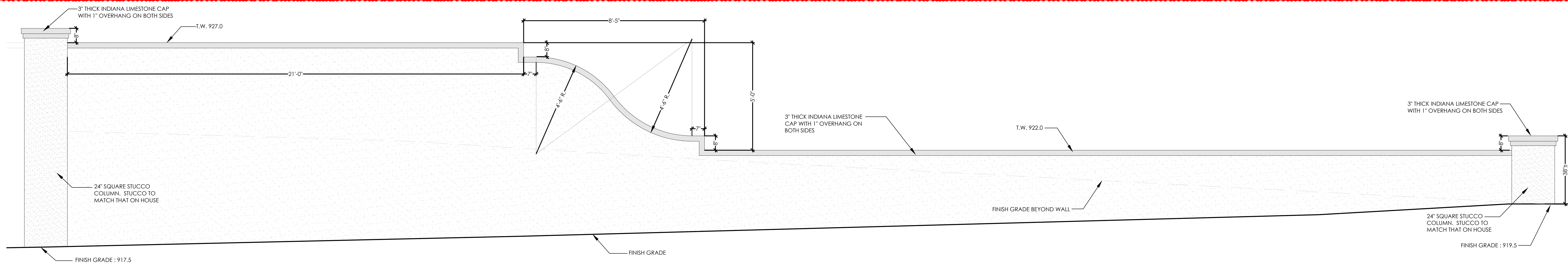
1. OWNER OR CONTRACTOR MUST VERIFY ALL DIMENSIONS PRIOR TO PROCEEDING WITH CONSTRUCTION.
2. CONTRACTOR MUST VERIFY COMPLIANCE WITH ALL LOCAL BUILDING AND ZONING CODES IN THE AREA WHERE THE ELEMENTS ARE TO BE CONSTRUCTED.

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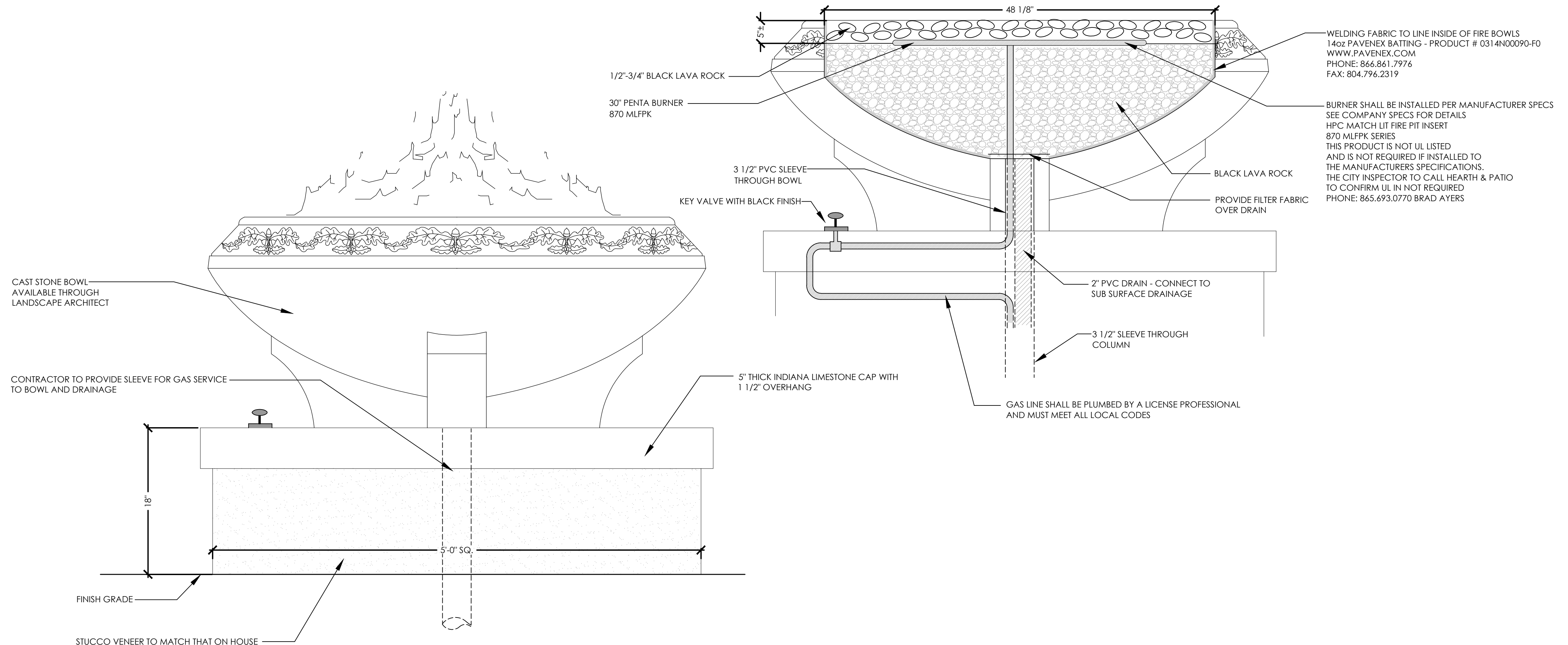
VARIANCE SUBMITTAL

PROPOSED SITE PLAN

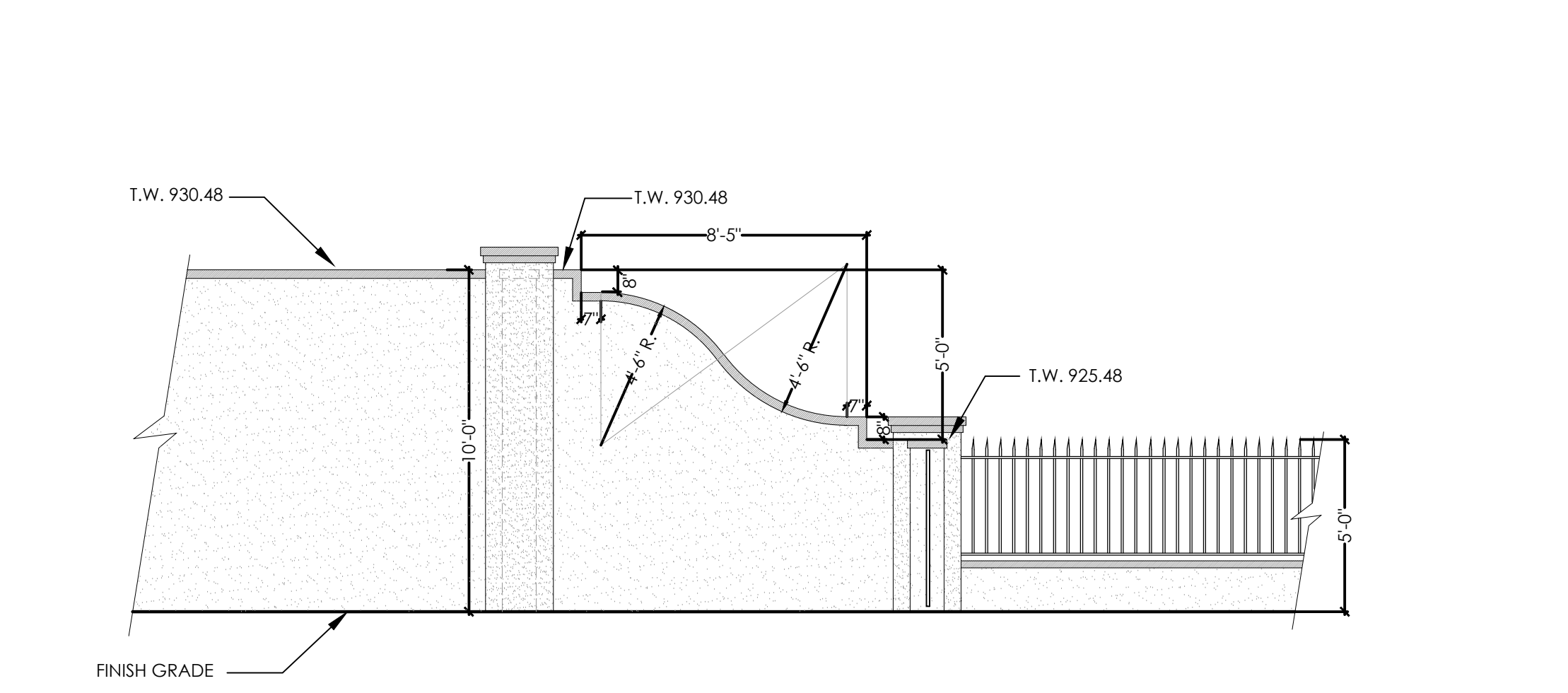




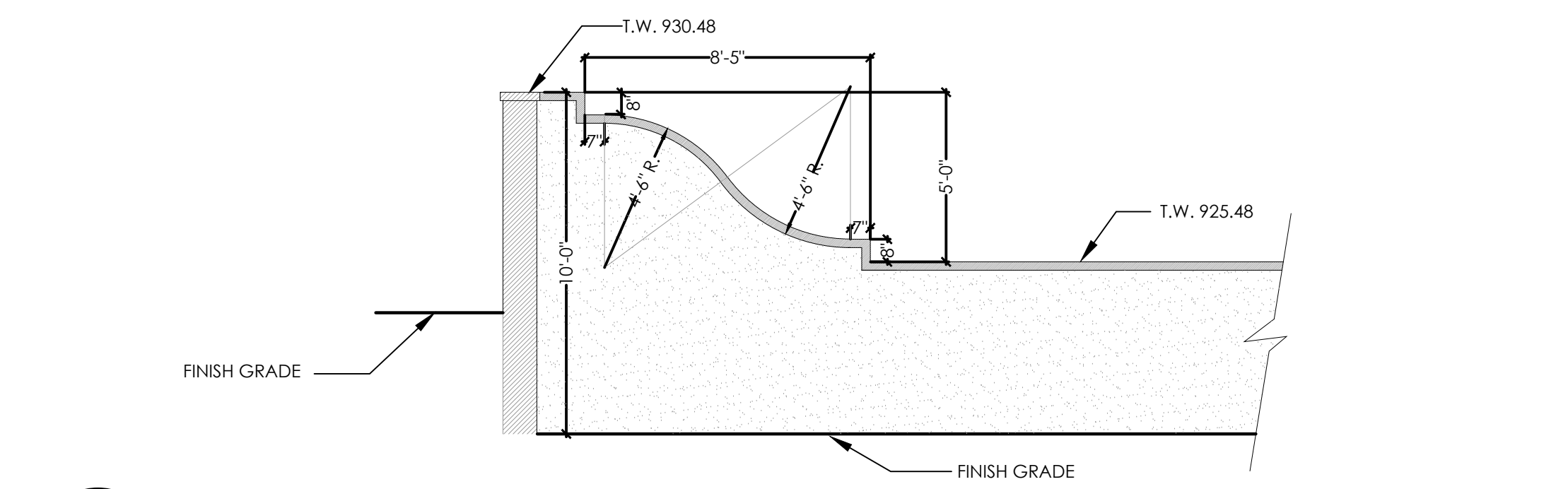
1 WALL ELEVATION ALONG CHEROKEE BOULEVARD
 SCALE: 1/2" = 1'-0"



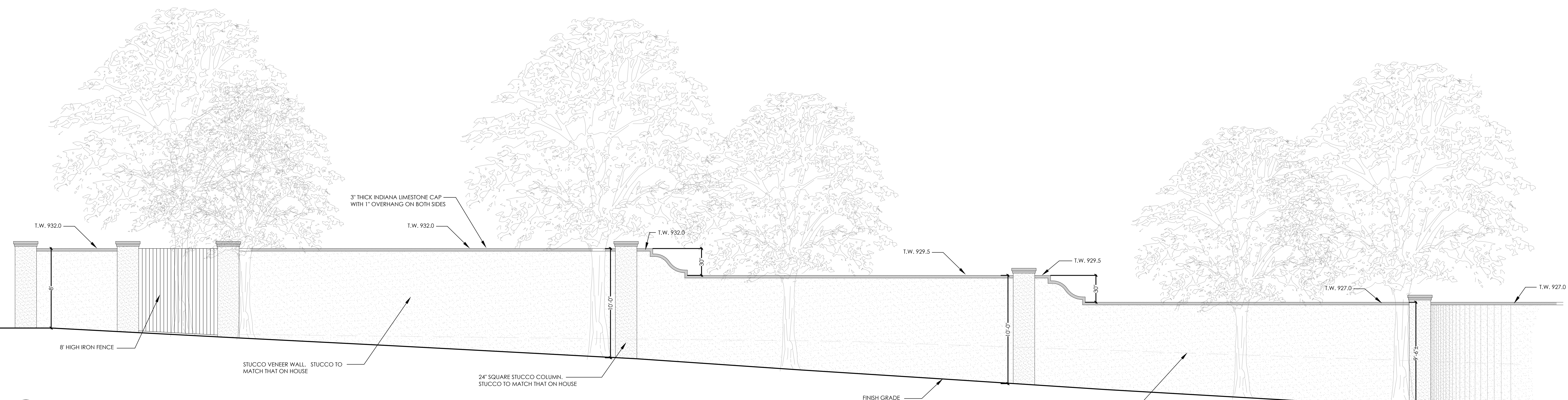
2 5' SQUARE STUCCO COLUMN WITH FIRE BOWL
 SCALE: 1-1/2" = 1'-0"



3 5' WALL ROLL DOWN @ POOL EQUIPMENT ENCLOSURE
 SCALE: 1/4" = 1'-0"



4 5' WALL ROLL DOWN @ GARDEN WALL
 SCALE: 1/4" = 1'-0"



5 WALL ELEVATION ALONG KINGSTON PIKE
 SCALE: 1/4" = 1'-0"

NO.	REVISIONS	DATE
1		
2		
3		
4		
5		

PRELIMINARY, NOT FOR CONSTRUCTION
 RELEASED FOR CONSTRUCTION

DATE OF ISSUE: FEBRUARY 07, 2023
 DRAWN BY: KDN

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 1. BUILDER OR CONTRACTOR MUST VERIFY ALL DIMENSIONS PRIOR TO PROCEEDING WITH CONSTRUCTION.
 2. CONTRACTOR MUST VERIFY COMPLIANCE WITH ALL LOCAL BUILDING AND ZONING CODES IN THE AREA WHERE THE ELEMENTS ARE TO BE CONSTRUCTED.

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VARIANCE SUBMITTAL

SCHEMATIC CONSTRUCTION DETAILS

From: [Steve Borden](#)
To: [Jennifer Scobee](#)
Subject: RE: March BZA Applications
Date: Monday, March 6, 2023 11:40:44 AM
Attachments: [image001.png](#)

Jennifer,

Please see our comments below.

3-A-23-VA 6800 Deane Hill Dr.: Operations has no comment.
3-B-23-VA 5450 Millertown Pk: Operations has no comment.
3-C-23-VA 206 Cedar Ln: Operations has no comment.
3-D-23-VA 1113 & 1115 Phillips Ave: Operations has no comment.
3-E-23-VA 0 Division St: Operations has no comment.
3-F-23-VA 416 Cherokee Blvd: Operations has no comment.
3-G-23-VA 2439 E. Magnolia Ave: Operations has no comment.
3-H-23-VA 2424 Washington Ave: Operations has no comment.

Thank you,



Steven M. Borden, P.E. | Director/Assistant Chief Engineer
TDOT – Region 1
7345 Region Lane
Knoxville, TN 37914
(865) 594-2400
Steve.Borden@tn.gov
tn.gov/tdot



March 8, 2023

Mr. Bryan Berry, Deputy Director
Board of Zoning Appeals
Room 475, City-County Building
P. O. Box 1631
Knoxville, Tennessee 37901

Dear Mr. Berry:

Re: Variance Requests 3-A-23-VA, 3-B-23-VA, 3-C-23-VA, 3-D-23-VA, 3-E-23-VA, 3-F-23-VA, 3-G-23-VA, and 3-H-23-VA

We have reviewed our records and, as far as we have been able to determine, KUB has no existing utility facilities located within the variance areas and we have no objection to the requested variances. However, KUB does not release and hereby retains all easements and rights for existing facilities, whether or not identified in our research.

If you have any questions regarding this matter, please call me at (865) 558-2483.

Sincerely,

A handwritten signature in black ink, appearing to read "Christian Wiberley". The signature is written in a cursive style.

Christian Wiberley, P.E.
Engineering

CGW

VARIANCE
APPLICANT
[Illegible]
[Illegible]

