



BOARD OF ADJUSTMENTS
July 28, 2022
7:00pm

REGULAR MEETING

LEEPER CENTER – 3800 Wilson Ave.

Individuals wishing to make public comments must attend the meeting in person or may submit comments by sending an email to birdca@wellingtoncolorado.gov. The email must be received by 4:00 p.m. Wednesday, July 27, 2022. The comments will be provided to the Board and added as an addendum to the packet. Emailed comments will not be read during the meeting.

The Zoom information below is for online viewing and listening only.

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/86480316349?pwd=K2QxZVlTUkBOZ0h2bk1lWVE0WGx5QT09>

Passcode: 244300

Webinar ID: 940 4877 4301

Or One tap mobile:

US: +17207072699, 87576162114# or +12532158782, 87576162114# Or Telephone: US:
+1 720 707 2699 or +1 253 215 8782 or +1 346 248 7799

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. ADDITIONS TO OR DELETIONS FROM THE AGENDA**
- 4. PUBLIC FORUM**

Public invited to be heard on non-agenda items (time limit of 3 minutes per person)

5. CONSIDERATION OF MINUTES

5.A. Meeting Minutes

- Regular meeting minutes of February 24, 2022.

6. NEW BUSINESS

- 6.A. Variance Request – Seeking relief from Section 2-14-70(a)(2)b. of the Wellington Municipal Code to allow a reduction of the minimum setback requirement of a retail or medical marijuana store license from a parcel zoned P – Public District from 500 feet to 173 ft. on Lot 7, Wellington Business Center.**

7. ANNOUNCEMENTS

8. ADJOURNMENT



**TOWN OF WELLINGTON
BOARD OF ADJUSTMENTS**

**REGULAR MEETING MINUTES
February 24, 2022**

1. CALL TO ORDER

The Board of Adjustments for the Town of Wellington, Colorado, met on February 24, 2022, at the Wilson Leeper Center at 5:00 p.m.

2. ROLL CALL

Members Present:

Christine Gaiter, Vice-Chair
Kathy Wydallis
Eric Stahl
Stephen Carman
Wyatt Knutson

Members Absent:

John Jerome

Town Staff Present:

Cody Bird, Planning Director
Dan Sapienza, Town Attorney

3. ADDITIONS TO OR DELETIONS FROM THE AGENDA - None

4. PUBLIC FORUM

- Shirrell Tietz, 4525 Ingalls Dr., commented that she does not like the idea of allowing members of the Board of Adjustments to also serve as a member of the Planning Commission that is under consideration by the Board of Trustees.

5. CONSIDERATION OF MINUTES

A. Meeting minutes of June 24, 2021 regular Board meeting

Moved by Member Wydallis to approve the regular meeting minutes of June 24, 2021; Member Carman seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Wydallis, Stahl, Carman

Nays – None

Motion carried 4-0

6. NEW BUSINESS

A. Elect Chair and Vice Chair

Member Wydallis nominated Member Gaiter for Chair, seconded by Member Carman.

Yeas – Gaiter, Wydallis, Stahl, Carman

Nays – None

Approved 4-0

Member Gaiter nominated Member Stahl for Vice Chair, seconded by Member Wydallis.

Yeas – Gaiter, Wydallis, Stahl, Carman

Nays – None

Approved 4-0

Member Knutson arrived, 5:16pm.

B. Presentation – Possible Updates to Board Membership

Dan Sapienza, Town Attorney, presented a draft ordinance the Board of Trustees is considering that includes possible changes to membership on the Board of Adjustments. One of the considerations is to allow a member of the Board of Adjustments to also serve on the Planning Commission at the same time.

Member Carman expressed that there may be some challenges with public perceptions if the overlap is allowed. Internal controls may also be a consideration.

Vice Chair Gaiter asked about the limitations to the number of Town boards or commissions that a resident can serve on simultaneously and asked about Town staff serving on public boards.

Sapienza replied that those considerations are up to the Board of Trustees to define in the membership requirements for each board and commission.

There was additional general discussion about the perception of possible conflicts of interest if members of the Board of Adjustments also served as a member of the Planning Commission.

No action necessary.

C. Discussion – Quasi-Judicial Proceedings

Overview of general guidelines and best practices for quasi-judicial proceedings.

No action necessary.

D. Discussion – Bob's Rules

Overview of the use of "Bob's Rules" as the Town's recognized public meeting procedures manual.

No action necessary.

7. ANNOUNCEMENTS

Bird announced there are no action items scheduled for public hearing for the March meeting.

8. ADJOURNMENT

Vice-chair Gaiter closed the meeting at 6:12pm.

Approved this ____ day of _____, 2022

Recording Secretary

Board of Adjustments Meeting

Agenda Item #6.A.

Meeting Date: July 28, 2022

Submitted By: Cody Bird, Planning Director

Agenda Category: New Business

Subject:

Variance Request – Seeking relief from Section 2-14-70(a)(2)b. of the Wellington Municipal Code to allow a reduction of the minimum setback requirement of a retail or medical marijuana store license from a parcel zoned P – Public District from 500 feet to 173 feet.

Background:

- Applicant, Lacoste, LLC, submitted a request for a variance seeking relief from section 2-14-70(a)(2)b of the Wellington Municipal Code to allow a reduction of the minimum setback required for licensing requirements for a retail or medical marijuana store.
- The applicant is proposing to locate a retail or medical marijuana establishment on Lot 7, Wellington Business Center (location map attached).
- The applicant is proposing to work with the current property owner to lease or purchase one unit of a multiple-tenant building. The attached site plan shows the proposed building footprint with the unit proposed for the marijuana establishment shown in red.
- An ordinance initiated by citizen referendum was referred to the voters on the November 2021 ballot regarding marijuana establishments. The ordinance was passed by the voters and included in the Wellington Municipal Code at Chapter 2, Article 14.
 1. Section 2-14-70 relates to restrictions for applications for marijuana store licenses.
 2. Subsection 2-14-70(a)(2) states that the “Local [Marijuana] Licensing Authority shall not receive or act upon an application for the issuance of a Local [Marijuana] License pursuant to Chapter 2, Article 14” unless certain conditions are satisfied.
 3. The ordinance approved by the voters includes Subsection 2-14-70(a)(2) which amended the Town’s zoning ordinances as follows:
 - Retail and Medical Marijuana Store Licenses shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply:
 - a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and
 - b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store license; and
 - c. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential District), R-2 (Residential District), and/or R-4 (Residential District).

- To satisfy the zoning requirement of the ordinance, the owner of the property has submitted a request to change the zoning of the property from LI – Light Industrial to C-3 – Mixed Use Commercial. The rezone request has been referred for public hearings by the Planning Commission on August 1, 2022 and the Board of Trustees on August 23, 2022. The rezone request can be considered concurrently with other related land use applications.
- The applicant has also requested a variance to reduce the minimum setback requirement of a retail or medical marijuana store license from a parcel zoned P – Public District to 173 feet to apply for a marijuana establishment license. The variance request is also dependent upon the rezone approval.
- A variance provides relief from the strict application of a standard to a specific site that would create an unnecessary hardship or practical difficulties on all reasonable use of the property.
- Variances may be sought for relief from dimensional and numerical standards of the Land Use Code. Variances may not be sought to vary the allowed use on a property.
- Variance requests have findings for approval outlined in the Land Use Code, and are identified in the staff comments section below.
- A request for variance is a quasi-judicial proceeding and requires a public hearing. The Board will need to hear and consider testimony presented at the public hearing.

Staff Comments:

When considering a request for a variance, the Board of Adjustments must review findings for approval as identified in the Town’s land use code. The findings that are to be considered are listed below, and staff’s opinion of each factor follows (*in italics*).

- A. The relief requested is consistent with the Comprehensive Plan and the intent stated in the Land Use Code.
 - *Lot 7, Wellington Business Center is identified as “Commercial” on the Future Land Use Map component of the Comprehensive Plan.*
 - *The “Commercial” designation is identified as being located in concentrated areas and along I-25 and SH 1. Areas are intended to include a variety of businesses that provide employment opportunities and support the retail and service needs of the community.*
 - *Potential uses identified in the “Commercial” areas include various retail and services ranging from shopping areas, to gyms, hospitality, lodging, entertainment, medical and social services.*
 - *The proposed variance request to reduce the setback of a retail or medical marijuana store from a parcel zoned P – Public could potentially allow a retail business to locate along I-25. The use proposed is consistent with the future land uses identified for areas along I-25.*
 - *There are not any specific goals or strategies in the Comprehensive Plan directly related to the variance request. “Thriving Economy” Goal 4 – Develop a Supportive Business Environment that Aids in Creating a Thriving Local Economy includes strategy TE 4.1 that indirectly relates to promoting commercial land uses and promoting local job opportunities and needed services for residents.*

- *The Land Use Code identifies retail and medical marijuana stores as a permitted use in the C-3 Mixed Use Commercial District. If the Planning Commission and Board of Trustees approve the rezone application submitted by the owner, the proposed use will be an allowed use within the C-3 zone district.*
 - *In accordance with the ordinance referred to the voters on the November 2021 ballot regarding marijuana establishments, Chapter 2, Article 14 includes specific provisions for creating separation and setbacks between a retail or medical marijuana store and certain protected land uses.*
 - *The intent of the separation and setbacks is to prevent marijuana stores from locating within certain distances of properties that are frequented by school-aged children (schools, parks, childcare facilities), public-owned property, (parks, library, senior center, other municipal buildings) and residences (residential zone districts).*
 - *The applicant suggests that the property adjacent to Lot 7, Wellington Business Center (Tract F, Columbine Estates) may not be consistent with other types of municipally-owned properties and therefore, the variance could be supported.*
 - *Tract F is an approximately 12.5-acre parcel that is owned by the Town. The parcel is zoned P – Public. It contains a stormwater detention facility that serves private properties and public roadways within the area. The stormwater detention facility is unlikely to be redeveloped for commercial or residential uses.*
 - *Public access to Tract F is currently limited. Public trail or sidewalk access along Tract F is a future consideration that will need to be evaluated with future development proposals.*
- B. *Strict application of the regulation will result in an unnecessary hardship and practical difficulties on all reasonable use of the land intended by the existing zoning, as opposed to convenience or benefit of the applicant or a specific application.*
- *Strict interpretation of the code does not allow a retail or medical marijuana store to be located within defined setback buffers of protected land uses.*
 - *Strict application of the 2,000 foot setback from a parcel containing a school (Rice Elementary) and the 500 foot setback from a parcel zoned P – Public District would prevent all portions of Lot 7, Wellington Business Center from having a location that would allow a retail or medical marijuana license.*
 - *Strict application of the setback distances does not prevent all uses allowed within the requested C-3 – Mixed Use Commercial zoning district if the concurrent request for rezoning is approved.*
 - *The existing zoning of LI – Light Industrial also allows other land uses that are not impacted by the requested variance.*
- C. *The need for the variance is due to specific and unique physical conditions on the site that do not exist on similarly situated land in the area.*
- *Lot 7, Wellington Business Center is a large lot (approximately 6.9 acres), originally platted for commercial uses.*
 - *The property is currently vacant, and has access to public utilities and services. The lot has been rough graded at the time the subdivision*

development was started. The topography is flat with adequate drainage for a vacant lot. Adequate access to public roads is available to the site with some improvements anticipated.

- *The proximity to the parcel zoned P – Public (Tract F, Columbine Estates, immediately south of the property) is an approximately 12.5-acre stormwater detention facility with limited public access. Limited access and limited possibility of redevelopment of the stormwater detention facility creates a large open space.*
- *The proximity to the large open space with limited public access may be considered unique to this area that other commercially zoned properties in town do not have adjacent.*

D. The manner in which strict application of the regulation deprives the applicant of reasonable use of the land compared to other similarly situated land in the area.

- *Strict application of the regulation does not deprive all uses of the land for the existing zoning or the requested zoning.*
- *For retail or medical marijuana stores that may be located within the area:*
 - *All commercial zoned properties in the area are impacted by one or more of the setback distances required at Chapter 2, Article 14.*
 - *The 2,000-foot setback from a parcel containing a school (Rice Elementary), impacts all commercial properties surrounding Lot 7, Wellington Business Center.*
 - *The unique parcel shape of the Rice Elementary School property has a large portion of the property that is open space and drainage that extends south to near the pedestrian underpass crossing I-25. The southernmost portion of the school parcel is approximately 850 feet from the fenced playground area.*
 - *Lot 7, Wellington Business Center is the only commercial property in the area that could meet the 2,000-foot setback from the Rice Elementary School parcel (the northern portion of the property is impacted by the school setback).*
 - *Lot 7, Wellington Business Center is the only commercial property in the area that is also impacted by the 500-foot setback from a parcel zoned P – Public (the southern portion of the property is impacted by the P – Public parcel setback).*

E. The circumstances warranting the variance are not the result of actions by the applicant, or could not be reasonably avoided by actions of the applicant.

- *The constraints on the property for retail or medical marijuana stores to meet the required setbacks are not conditions created by an action or actions of the applicant.*
- *The location, size and configuration of parcels zoned P – Public and containing a school are unique to the area and were not created by an action or actions of the applicant.*
- *The setback requirements from parcels zoned P – Public and containing schools were adopted by ordinance approved by Wellington voters in 2021. The regulations creating the setback requirements are new regulations not in*

place at the time Lot 7, Wellington Business Center was originally contemplated for commercial development.

- *The circumstances under which the variance to reduce the setback from a parcel zoned P – Public could not be reasonably avoided for the proposed use of a retail or medical marijuana store on Lot 7, Wellington Business Center. There is not another code path to bring the property into compliance with the setbacks for the requested use.*

F. Granting the variance will not harm the public health, safety and welfare or the purposes and intent of the regulations.

- *Granting the requested variance does not guarantee or require other applicable approvals for a retail or medical marijuana store.*
- *If the requested variance is approved by the Board of Adjustments and other approvals are also granted by other Boards, Commissions and Authorities, it could be possible to locate a retail or medical marijuana store on Lot 7, Wellington Business Center.*
- *If a retail or medical marijuana store is located on Lot 7, Wellington Business Center, the proposed location would satisfy the minimum setback requirement from a parcel containing a school (Rice Elementary).*
- *The public health, safety and welfare would be preserved by meeting applicable setbacks from schools, residences, public facilities and other marijuana stores.*
- *The purpose and intent of the regulations is to create separation between marijuana stores and protected uses. Tract F, Columbine Estates is zoned P – Public but does not contain any public facilities that would be expected to attract residents, visitors or the public.*
- *Granting of the variance could be determined that the purpose and intent of the code is not harmed.*

G. The relief requested is the minimum necessary to alleviate the hardship and practical difficulties.

- *The variance requested is to reduce the required setback of 500 feet to 173 feet.*
- *The site plan showing the setback from the parcel containing a school (Rice Elementary) is shown to be 2,083 feet.*
 - *The minimum required setback is 2,000 feet.*
 - *The site plan showing building footprints indicates that storefronts are proposed to be 30 feet wide. It appears to be possible that the unit could be shifted 60 feet north to increase the setback from a parcel zoned P – Public to 233 feet.*
 - *The site plan could possibly be adjusted further to meet the minimum 2,000 foot setback from a parcel containing a school, therefore providing a setback from the parcel zoned P – Public of approximately 250 feet.*
- *The Board may consider if the variance should be limited to being reduced to 250 feet rather than the 173 feet requested in the application.*

H. The relief requested is consistent with any other prior approvals and official plans and policies created under the guidance of that plan for these areas (e.g., the Comprehensive Plan, specific area plans like a Downtown Corridor Study, etc.).

- *The Comprehensive Plan does not have recommendations or elements directly related to this unique request.*
- *There are not currently any specific area plans or corridor plans for the commercial areas surrounding Lot 7, Wellington Business Center.*
- *The 2015 Parks and Trails Master Plan identifies Tract F, Columbine Estates as an undeveloped open space. There no current plans to make changes to Tract F. An update of the Parks and Trails Master Plan is contemplated to be undertaken in fiscal years 2022-2023.*
- *There are no other similar prior approvals relating to this specific request involving reducing setbacks for a retail or medical marijuana store license.*
- *The Marijuana Licensing Authority has sole discretion on the issuance of a license under the terms of Chapter 2, Article 14.*

Recommendation:

- In considering a variance, the Board of Adjustments has the authority to grant the variance, grant the variance with conditions, or deny the variance.
- If a variance is approved, the approval should be contingent upon all of the following:
 1. Planning Commission and Board of Trustees approval of the request to rezone the property to C-3 – Mixed Use Commercial;
 2. Planning Commission approval of a site plan;
 3. Town approval of a building permit for construction;
 4. Marijuana Licensing Authority approval of a retail or medical marijuana store license.
- If any of the above conditions are not satisfied, approval of a variance, if any, shall become void and of no force and effect.
- A variance, if approved, does not guarantee approval by any other applicable Board, Commission or approval Authority of the Town.
- A variance, if approved by the Board of Adjustments, does not require any other Board, Commission or approval Authority of the Town to approve subsequent or related applications.
- Below are possible motion options for the Board of Adjustments to consider. Staff will also be available to assist in crafting alternative motions if desired by the Board.
 1. Move to grant a variance to vary the minimum setback requirement of a retail or medical marijuana store license from a parcel zoned P – Public District to reduce the setback distance for Lot 7, Wellington Business Center to 173 feet, subject to conditions, including (condition 1) , (condition 2) , [...] and (condition #) .

2. Move to grant a variance to vary the minimum setback requirement of a retail or medical marijuana store license from a parcel zoned P – Public District to reduce the setback distance for Lot 7, Wellington Business Center to 173 feet, with no conditions.
3. Move to deny the request for a variance of the minimum setback requirement of a retail or medical marijuana store license from a parcel zoned P – Public District.

Attachments

- Location Map
- Applicant Narrative
- Site Plan with Buffer Setbacks
- Site Plan with Building Footprint and Dimensions

LOCATION MAP
Lot 7, Wellington Business Center



Applicant Narrative

1. The applicant must submit a statement in writing that addresses or supports the below considerations:

a. There exist exceptional or extraordinary physical circumstances of the subject property that are not generally applicable to other properties in Town;

The subject property physically abutts a detention pond owned by the City of Wellington which is Zoned P, and can't be accessed by the public.

b. A literal interpretation of the provisions of the code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land-use code (a hardship);

The intent of P zoning was not to apply to detention ponds, but rather properties that are commonly understood to be accessible by the public. Examples include properties such as parks, pools,...ect that generally enjoy public access. Any other zoning similar to the subject property would generally have public access and would be able to utilize their property with out any such restrictions.

. The exceptional circumstance or hardship does not result solely from an action or actions of the applicant

Having the detention pond next to the property was not a circumstance created by the applicant, and the requested variance is more consistent with the original goals of P zoning.

d. The variance, if granted, will not violate the spirit and intent of the code;

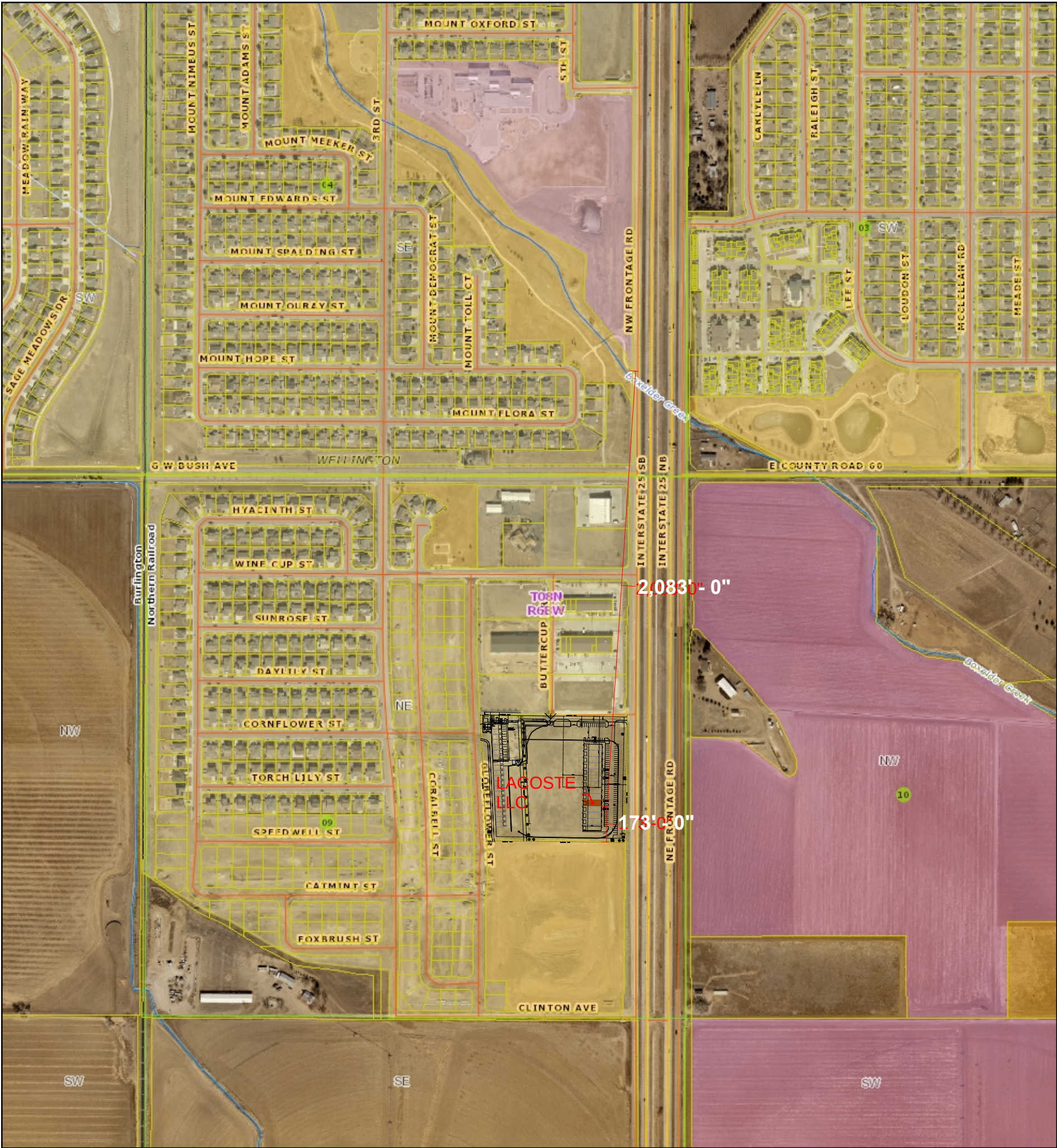
Granting a variance for this property is consistent with why variances are permitted. The spirit and intent of the code is fulfilled when a property requires measure to be able to operate a business next to a property that is to inaccessible the public.

e. The variance, if granted, does not adversely affect the public health, safety, and welfare, in fairness to the applicant, substantial justice is done.

The granting of this variance will not adversely affect public health, safety and welfare since the public has no access to the detention pond. Substantial justice will be done by granting this variance, and the granting of this variance fulfills the overall spirt and intent of the code.

Thanks for your consideration.

Buffer Setback Exhibit



1 AERIAL VIEW
SP-1 APPROX SCALE 1" = 500'



SP1

VICINITY
MAP

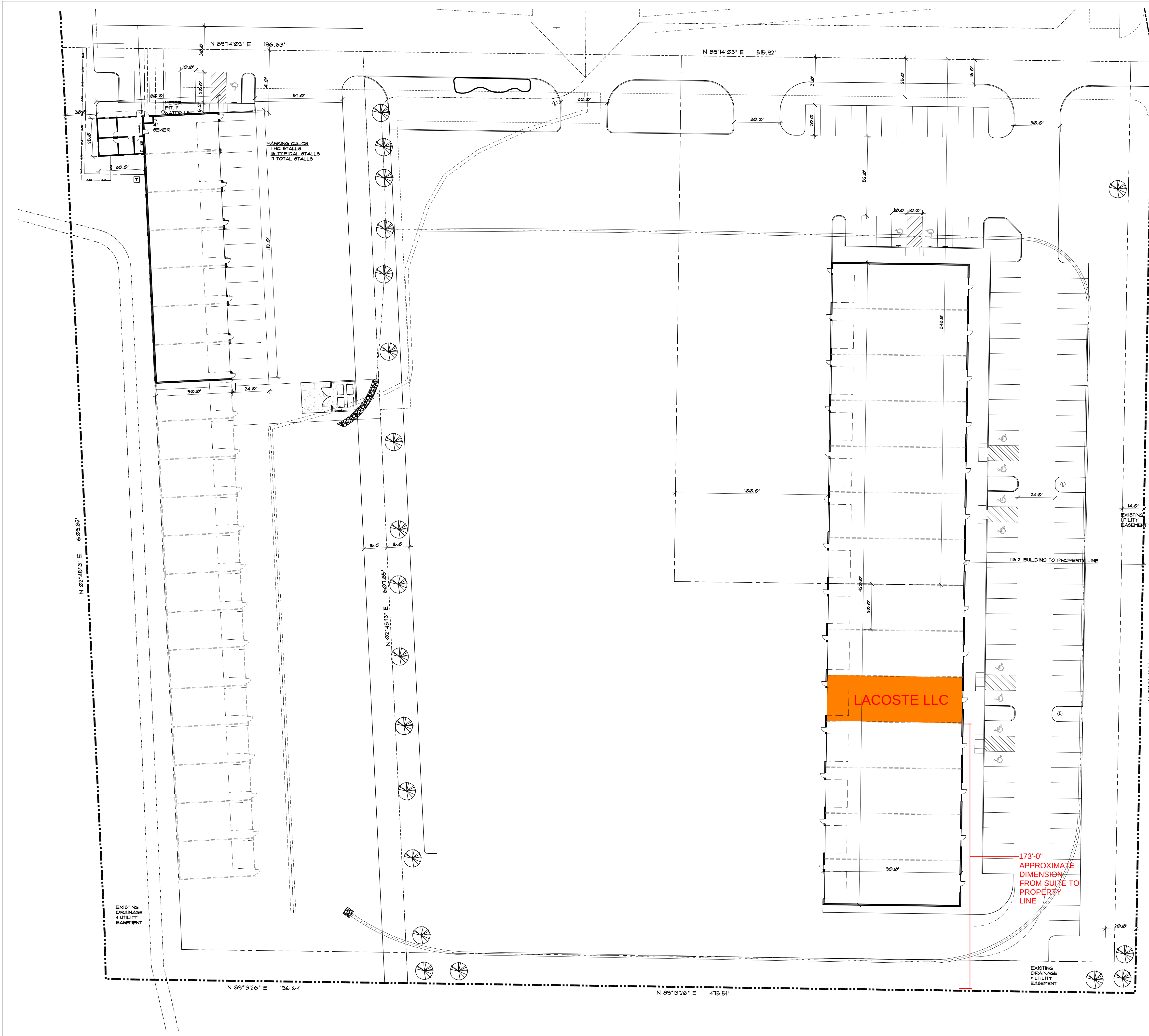
3997 WATER LILY DRIVE
WELLINGTON, CO 80549

No.	Description	Date

Project # :TBD
Date:
Drawn by:
Checked by:

1520 E. MULBERRY ST., SUITE 200
FORT COLLINS, CO 80524
PHONE: 970.224.9200
FAX: 970.224.2062
WWW.THUNDERPUP.COM

thunderpup
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Serving Fort Collins Since 1979

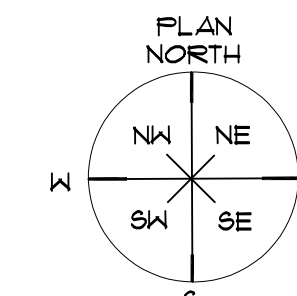
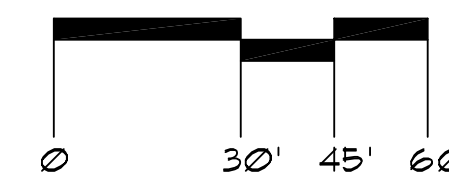
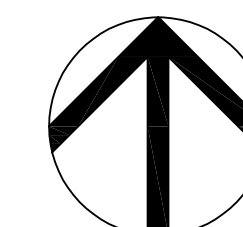


SITE NOTES

1. ALL SURFACE WATER SHALL DRAIN AWAY FROM THE STRUCTURE AS REQUIRED BY LOCAL STANDARDS TO AN APPROVED RECEPTOR OR EQ.
2. CONTRACTOR TO VERIFY HORIZONTAL PLACEMENT AND FINISH FLOOR ELEVATIONS WITH OWNER AND ARCHITECT PRIOR TO EXCAVATIONS.
3. CONTRACTOR TO VERIFY ALL FIELD CONDITIONS, EASEMENTS, PROPERTY LINES, ETC. PRIOR TO STARTING WORK. SHOULD ANY DISCREPANCIES, OMISSIONS, OR ERRORS OCCUR, NOTIFY THE ARCHITECT IMMEDIATELY.
4. WHERE DRAINS OCCUR THE DRAIN SHALL BE RUN TO DAYLIGHT WITH A SLOPE OF AT LEAST 1/4" PLF. AS AN ALTERNATIVE, THE DRAIN MAY BE RUN TO A PUMP, THEN PUMPED AWAY FROM THE FOUNDATION.
5. SITE PLAN DRAWING IS BASED UPON NORTHERN ENGINEERING AND DATED 10/21/2015
6. ALL MATERIALS TO BE DISPOSED OF OFF-SITE ARE TO BE DISPOSED OF IN A LAWFUL LANDFILL AND IN ACCORDANCE WITH GOVERNMENT REQUIREMENTS.
7. THE CONTRACTOR IS RESPONSIBLE FOR LOCATING UTILITIES PRIOR TO BEGINNING CONSTRUCTION.
8. ALL PROPOSED PAVING & IMPROVEMENTS SHALL MEET AND MATCH EXISTING PAVING.

LEGAL DISCRIPTION

SEE COVER SHEET A1.0



1 SITE PLAN
1" = 30'-0"

© 2020 Kenney Lee architecture group inc.

date 05-21-2022
 drawn KVL/BJD
 checked KVL
 job no.

SITE PLAN

sheet

A2.0B

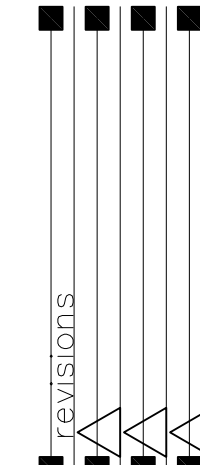
New Building for:
FRS ENTERPRISES
LOTS 7 & 8

WELLINGTON

COLORADO

(970) 663-0548

Kenney Lee
 architecture group, inc.



THIS SITE PLAN IS A PRELIMINARY DESIGN. IT IS NOT TO BE USED FOR CONSTRUCTION. THE ARCHITECT ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS. THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE BUILDING. THE ARCHITECT DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION PROVIDED. THE ARCHITECT'S DESIGN IS BASED ON THE INFORMATION PROVIDED. THE ARCHITECT DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION PROVIDED. THE ARCHITECT'S DESIGN IS BASED ON THE INFORMATION PROVIDED. THE ARCHITECT DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION PROVIDED.