

SEYMOUR H. MANDELL

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CITY OF NOVI

August 2, 2010

Honorable Zoning Board of Appeals

45175 West Ten Mile Road,

Novi, MI 48375

248-347-0456

Re: **Zoning Board of Appeals – Application** for David and Maria Dismondy and Mrs. Geri Dismondy, Owners of adjacent LOTS located at 1181 West Lake Drive (being LOT 003) and 1185 West Lake Drive (Being LOT 005), respectively, Novi, MI 48377 (1-248-302-1800)

TO THE HONORABLE ZONING BOARD OF APPEALS

Please be advised that I am writing as representative of David and Maria Dismondy and Mrs. Geri Dismondy who are the Owners of the adjacent Parcels of Land identified above. As Mother and Son and Daughter-in-law, and as neighbors, they have jointly decided that the best use of their property in dealing with "on-site" car storage and car parking on a very complicated Site, would be to share the use of a common Garage.

There is an old and misaligned garage existing on the 1185 Parcel that presently detracts from the value of the property and is inadequate for the mutual needs of both Parcel Owners. In order to alleviate the problems of the unique character of the land and the extreme hardships that must be currently endured it should be noted that:

1. There is a common existing Easement for Roadway and Utilities which cut across the center of both Lots, thus dividing the Lots into two areas at their approximate mid-point.
2. Both Lots front on Walled Lake at both the East and West sides (being the front and back of the property).
3. The DTE, Phone and Cable Utilities that service the Home to the North of these two Parcels also traverse over and under the Property at the center area of both Lots and thus create a serious and detrimental ability to use the property in a normal and/or traditional manner. (The DTE Poles are under consideration to be removed by having all of the above grade wires removed and relocated underground...which is a beautification effort made for the benefit of all those who use the lake and now have to look at ugly poles and wires.
4. The hardships in being able to maintain cars and at the same time create a "safe" and habitable rear yard for play and normal lawn uses is distinct for these two Owners.

In order to solve the existing problems not of either Owner's creation, would be to remove the existing two car garage which only serves one Lot and build one new Three Car Garage which would benefit both parcels of land. In order to accomplish this feat and not destroy the yard area for each of the individual homes, *which would in and of itself be a new kind of hardship, the two Owners have created a new EASEMENT AGREEMENT, (See Attached).*

The apparent problem that this solution creates is one dealing with the Zoning Ordinance which requires a minimum of 4'-0" more or less side yard separation for Ancillary Structures such as Garages which are built on Individual Lot locations. In this regard you should note that the City Building Department was presented with this Condition (and was presented with the EASEMENT which had been prepared by me to alleviate any zoning side yard conflicts) and they (The Building Official) arbitrarily determined that my clients could not proceed with the submitted ZBA Application in the ordinary course of business. This then raises three points about the Zoning Ordinance, which would allow such Application and the Constitutional rights of my client who are being denied equal protection and procedural due process under the 14th Amendment of the United States as well as comparable provisions under our State Constitution.

1. *The Petitioner with this Application Requests an "interpretation" of the Zoning Ordinance which would establish the fact that the Zoning Board of Appeals has the right to determine the "0" side yard separation waiver necessary to build a Garage which can service both property owners located on each side of the Property Line where "0" separation is requested; and,*
2. *Whether there is demonstrated of hardship to permit the Garage to be built with a "0" separation at the property line.*
3. *Whether there is an issue of health, safety and/or welfare where a 2'-0" serves any useful purpose under the unique conditions of this property and therefore should not be a reasonable requirement as established by the Zoning Ordinance that may have established a standard that is arbitrary when considering the facts of this case.*

There are several rational and reasonable arguments to support the Owners' Variance request:

- a. The minor separation mandated by the code was intended to provide some right of an adjacent property owner to not have to have an imposing structure created on the fence line of their property where such is a property owners right, etc. In this case two property owners desire that they not have that separation because it would actually interfere with their mutual desire to utilize every square foot of area available for meaningful landscape Plantings, Lawn Area and utilitarian Rear Yard Area, which is very much needed because of the small size of the Lots.

- b. With regard to the above, one of the Lots is not a rectangular configuration and by joining the Garage as one structure at the approximate center of both Parcels, each Parcel can have a chance to have an equal sized "backyard area".
- c. If there was any interest of the community in having the Garage separation at the property line, it is negated by the fact that there is already an "easement roadway" running across the front of the Garage location which can be fully utilized by the fire department, police department or any other public agency.
- d. The long standing and existing Easement Roadway also prevents any manner of "fencing off" the individual Lots. In this location there are very few fenced yards and driveway and vehicular access to the Residence to the North cannot be interfered with.
- e. In terms of beautification and landscaping, creating an eight (8') foot "hole" or funnel between two garages creates a space that is virtually without sunlight, is un-maintainable being a place where debris can collect, etc., making that strip essentially worthless for the Owners rear yard use.
- f. In terms of land value and maintenance, one structure with character would enhance the view of the property from the Lake in lieu of having two almost touching structures in the same location. In this regard, the entire community will derive benefit and joy from having the single garage structure constructed with the design matching the new and beautiful home that was recently completed by David and Maria Dismondy.
- g. In addition to all of the above, the Petitioners are amenable to amended anything in the NEW EASEMENT AGREEMENT, (Copy attached), that would be of interest to protecting the best interests of the community. In this regard, it should be noted that:
 - (1.) The interest of the City and the adjoining neighbors interests are covered in the Easement with regard to necessary enforcement of all legal requirements.
 - (2.) The interest of the Property Owners requires that they both participate in the upkeep and maintenance of the property and enforcement of any City Code and/or Ordinance requirements as would otherwise apply to everyone else in the community.


(3) The granting of the variance would not adversely affect any other property Owners interest rights and interests in their property because but for the "jointer of use of these two property Owners", there could be two separate garages built of greater size and length than is being requested in this Appeal.

(4) The granting of the variance would actually be an enhancement of the property values of not only the two parcels engaged in this appeal, but would also assist in upgrading and possibly inducing by way of example what other neighbors can accomplish by upgrading their properties as well.

(5) By granting this Appeal everyone wins and nobody loses.

Further, information and presentation shall be made at the time of our Appearance before the Zoning Board of appeals.

Respectfully submitted


SEYMOUR H. MANDELL,
Attorney for the Applicants

ENCLOSURES: APPLICATION TO THE ZBA; ARCHITECTURAL PLANS AND ELEVATIONS; Copy of the Proposed "NEW EASEMENT"

cc: Dismondy Family

EASEMENT AGREEMENT

EASEMENT AGREEMENT entered into this 30th day of April, 2010, between DAVID D. DISMONDY and MARIA DISMONDY, his wife, Owners of Residentially Zoned property located at 1181 West Lake Drive, Novi, MI, 48337 and herein referred to as PARCEL-A OWNERS (See PARCEL-A legal Description, Attached hereto as EXHIBIT-A); and, GERI DISMONDY, whose address is 1185 West Lake Drive, Novi, MI 48337 and herein referred to as PARCEL-B OWNER, (See PARCEL-B legal Description Attached hereto as EXHIBIT-B).

RECITALS and CONDITIONS:

1.The Parties hereto desire to participate in the Construction of a new residential garage structure to house their individually owned domestic automobiles. The Structure is to be centered on the mutual property line located between the two described parcels and built in accordance with the Plans, Elevations, Sections and Details attached hereto as EXHIBIT-C, PAGES A-1 and A-2, which drawings were prepared by r.l.d. Residential Design.

2.The Garage Structure shall be located approximately Thirty-six (36'-0" +/-) Feet.behind the Structure erected on PARCEL-A.

3.The Parties Agree that the PARCEL-A OWNER shall have the principle responsibility for the construction, maintenance and tax payments covering the assessment made against the Garage Improvement and shall also inure to the principle use of the Garage Facilities, reserving to the PARCEL-B Owner the right to use one of the parking spaces within the Garage Structure.

4.It is acknowledged that there is a common right of access and certain utilities existing across both Parcel-A and Parcel-B, which inure to the benefit of PARCEL-A OWNER and the property OWNER located North of PARCEL-A, and that neither party to this Agreement shall at any time interfere with or engage in any activity which will effect the existing rights of

the present property Owners to the peaceful use and enjoyment of their access and/or utility rights without prior written approval of each one of the relevant Owners.

5. All existing public and private utilities of whatever kind or nature now located within the Right-of-Way be allowed to remain in their present locations with the additional conditions:

i. THE UTILITY COMPANIES and/or the CITY of NOVI will at all times have access to the existing property for the purpose of maintenance, repair, replacement of existing services and health and safety requirements.

ii. The Easement shall extend over the entire width and length of the Garage Structure with sufficient land surrounding the Structure necessary for the repair, maintenance and general access to the facilities being created, being no less than 10'-0" of open space on all sides of the Garage.

iii. The City of Novi shall also have a right of access for Police, Fire Protection and Service Trucks for the purposes of serving all of the property interests described herein just as they would have had, had this Easement not been created.

6. For the purpose of day to day use of the proposed new Garage, PARCEL-A OWNER shall contribute 2/3rds and PARCEL-B OWNER shall contribute 1/3rd of the cost for the repair, maintenance and/or care of the Garage structure and immediately surrounding open space area, and each Party shall be responsible for the upkeep and maintenance of any and all Landscaping, with the understanding that the lawn and landscaping put in place at the time of completion of the above described improvements will at all times be sustained in first class condition with the lawn areas regularly cut.

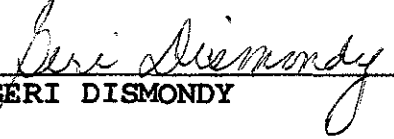
i. In the event that either party should not make contribution on an annual basis, and/or should fail, refuse and/or neglect to maintain the property as set forth herein, then after giving 15 days prior written notice, the compliant party shall have the right to enter upon the adjacent premises and perform all of the maintenance, repair and/or lawn/planting replacement and to bill the adjacent property Owner for the materials and/or services provided. Failure to make contribution shall also allow the party performing the services the right to file a lien upon the non-contributing parties realty.

ii. In the event of any dispute under this Agreement, then either party shall have the right to have the dispute resolved in the Small Claims Division of the Court of Jurisdiction governing disputes in the City of Novi. By mutual written agreement the parties are also at liberty to submit any disputes to private binding Arbitration by a single Arbitrator who shall be selected by Agreement of both parties. An award may be entered in a Court of Competent Jurisdiction for Judgment.



7. Should the failure of either party to pay their realty taxes which results in placing the title to the Garage in Jeopardy, then the non-offending party shall have the right to pay the realty taxes, File a Lien against their neighbors property and follow any of the above procedures for collection, including the right of Lien Foreclosure and obtaining title to the offending property Owners Realty, by Sheriff's Sale. Notice by Publication is herein approved for purposes of Foreclosure. NOTICES required under this Agreement shall be given by First Class Mail send to the above addresses and by posting on the Garage Door of the Party being notified.

Executed By:

PROPERTY-B OWNER


GERI DISMONDY

PROPERTY-A OWNERS


DAVID D. DISMONDY

MARIA DISMONDY

SUBSCRIBED and Sworn to before me an Oakland County Notary in Oakland County this 30th day of April, 2010 by GERI DISMONDY, DAVID D. DISMONDY AND MARIA DISMONDY, as their free act and deed.



S. H. MANDELL, OAKLAND COUNTY NOTARY ACTING IN OAKLAND COUNTY
My commission expires October 12, 2011.

Exhibit A - LEGAL DESCRIPTION

Deal Number: 11-00789648

Title Number: 11-01932935 REV. NO.

Tax ID Number: 22-03-204-003

Land situated in the City of Novi, in the County of Oakland, State of Michigan is described as follows:

Part of the North 1/2 of Section 3, Town 1 North, Range 8 East, described as: Beginning at a point which is North 89 degrees 19 minutes East 191.2 feet and North 29 degrees 20 minutes East 20.88 feet from the Point of Intersection of the North line of Lake Wall Subdivision with the Easterly line of West Lake Drive (platted East Boulevard) said Point of Intersection being by record South 30 degrees 48 minutes West 315.6 feet and North 89 degrees 19 minutes East 1634.2 feet from the Northwest corner of the Northeast 1/4 of Northwest 1/4 of said Section 3; thence from the Point of Beginning North 62 degrees 16 minutes West 207.8 feet; thence Due North 49.69 feet; thence South 62 degrees 16 minutes East 232.15 feet; thence South 29 degrees 20 minutes West 44.0 feet to the Point of Beginning, being bounded on the West by lands now or formerly owned by William C. Frue, subject to an easement for ingress and egress to the premises lying Northerly of above described premises over a 10 foot strip of land being 5 feet on either side of a line running Northeasterly across above Parcel from a point in the Southerly line which is 74.57 feet Westerly from the Southeasterly corner to a point in the Northerly line which is 70.57 feet Westerly from the Northeasterly corner thereof.

Commonly known as: 1181 Westlake Dr, Novi, MI 48377-1337

Property Description: PARCEL-B 1185 WEST LAKE DRIVE

Land situated in the City of NOVI, Oakland County, Michigan, described as:

Town 1 North, Range 8 East, Section 3, LAKE WALL SUBDIVISION, part of the Northwest 1/4 of Section 3, Township of Novi (now City of Novi), Oakland County, Michigan, Town 1 North, Range 8 East, as recorded in Liber 20 of Plats, Page 15 of Oakland County Records, beginning on North lot line distance North 89 degrees 19 minutes 00 seconds East, 141.33 feet from Northwest lot corner; thence South 61 degrees 46 minutes 10 seconds East, 43.20 feet to lake; thence North 29 degrees 20 minutes 00 seconds East, 24.12 feet along shore; thence South 89 degrees 19 minutes 00 seconds West, 49.87 feet to Beginning. Also part of the Northeast fractional 1/4 beginning at point distant North 89 degrees 19 minutes 00 seconds East 57.80 feet and North 64 degrees 44 minutes 00 seconds East 27.64 feet from the Northwest corner of Lot 17, LAKE WALL SUBDIVISION; thence North 62 degrees 13 minutes 40 minutes East 22.10 feet; thence South 61 degrees 46 minutes 10 seconds East 44.57 feet to the North line of said Lot 17; thence North 89 degrees 19 minutes 00 seconds East 49.87 feet to lake; thence North 29 degrees 20 minutes 00 seconds East along shore 20.88 feet; thence North 62 degrees 16 minutes 00 seconds West 134.37 feet; thence South 70.54 feet to Beginning.

Note: The property description is as furnished by client.
Subject to any part taken, used or deeded for street, road, or highway purposes.

BEING THAT IMPROVED PROPERTY LOCATED AT 1185 WEST LAKE DRIVE.

May 3rd, 2010

To Whom It May Concern:

As you may recall from a previous ZBA approval last year, the two adjacent properties that our family owns are located on a unique peninsula on Walled Lake. Currently, we have two separate homes and one detached garage. Last year's ZBA approval granted us the right to construct a second detached garage.

Instead of constructing a second detached garage, making two separate garages in this very tiny space, we are proposing the demolition of the existing garage and erection of one garage that will service both homes. The legalities associated with this proposal have been handled by our family attorney. The proposed easement that he drafted is included in this package. After consulting with the Novi building department and our architect, this proposal will serve our unique property better – leaving us more green area and more open air, without negatively impacting any neighbors' views.

Thank you for the opportunity to present our case to you.

Respectfully,

David Dismondy

1181 West Lake



- City Boundary
- Landmarks
- Civic Center
- Rock Financial Showplace
- Court
- DFW
- Fire Station
- Hospital
- Ice Arena
- Library
- Parks & Rec Field Office
- Police Station
- Post Office
- Recycling
- School
- Senior Center
- Railroad
- Roads
- Freeway
- Arterials
- Collectors
- Scenic Drive Road
- Local Roads
- Water - Lakes
- Water - Rivers
- Parcels
- Lots
- Parks
- 2006 Aerial Photos

DISCLAIMER: The information provided herewith has been compiled from recorded deeds, plats, tax maps, surveys, and other public records. The information presented is not a legally recorded map or survey and is not intended as a substitute for original or official source information. The City of Novi makes no warranty, express or implied, as to the accuracy, completeness, or usefulness of the information presented.

SOURCES: City of Novi, Oakland County, Plansight LLC, October 2006 for County Data, October 2006 for City Data, Aerial Imagery as specified

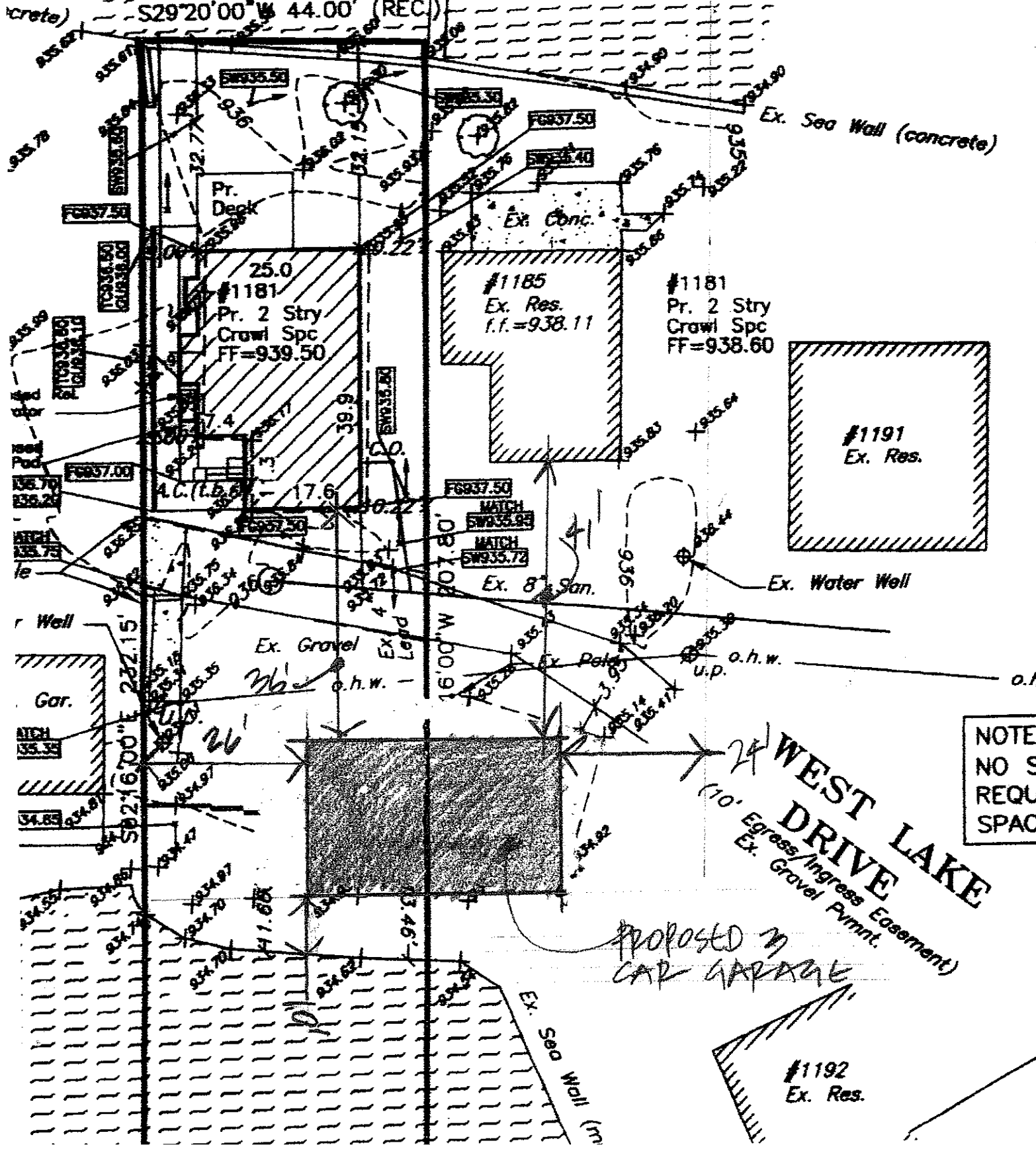
SITE:
1"=20'

WALLED LAKE

Existing Water Elevation
(08-12-09) = 933.6

S29°20'00"W 44.23' (MEAS.)

S29°20'00"W 44.00' (REC.)



NOTE:
NO S
REQU
SPAC

WEST LAKE
DRIVE
(10' Egress/Ingress Easement)
Ex. Gravel Pymnt.

PROPOSED
CAR GARAGE

#1192
Ex. Res.

MORTGAGE SURV

Property Description:
SEE PAGE 2 OF 2

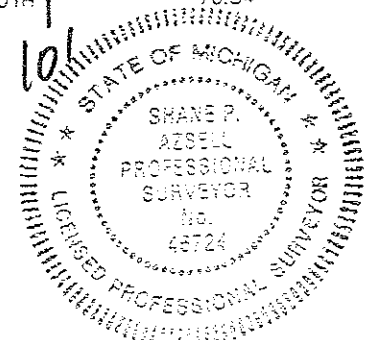
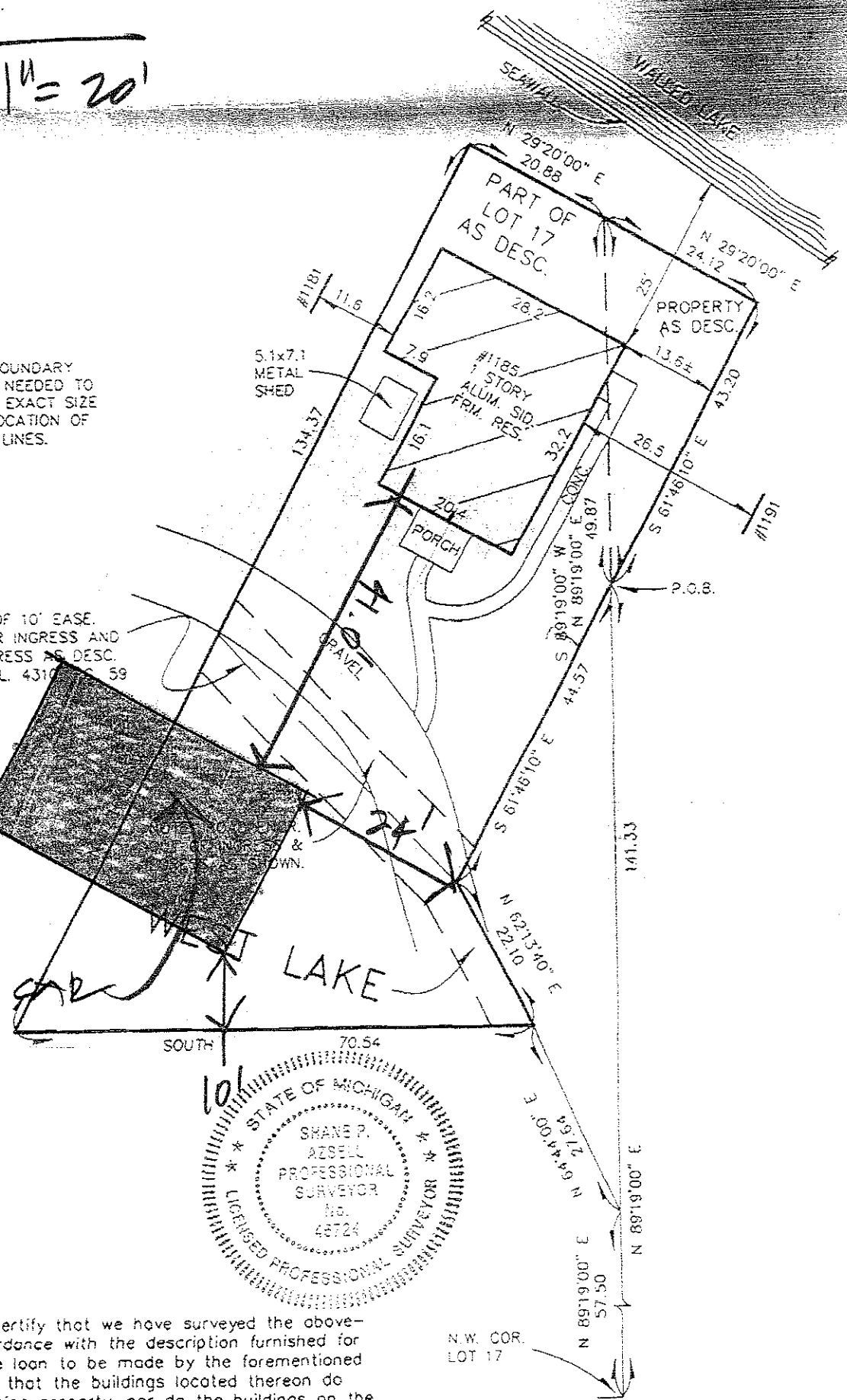
SITE
1" = 20'

NOTE: A BOUNDARY SURVEY IS NEEDED TO DETERMINE EXACT SIZE AND/OR LOCATION OF PROPERTY LINES.

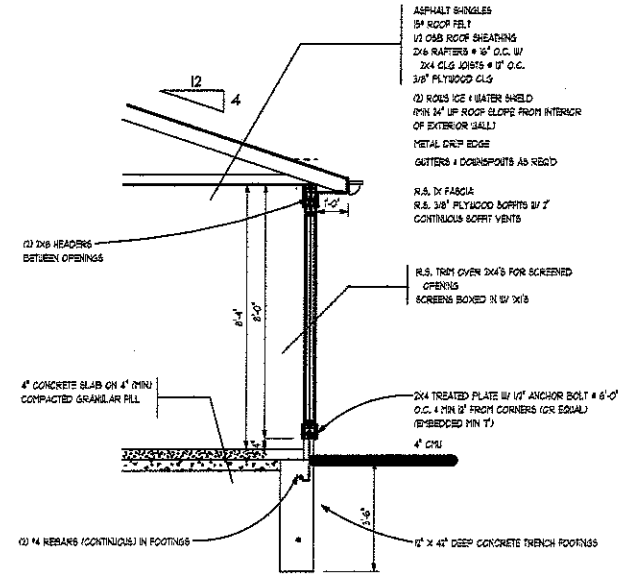
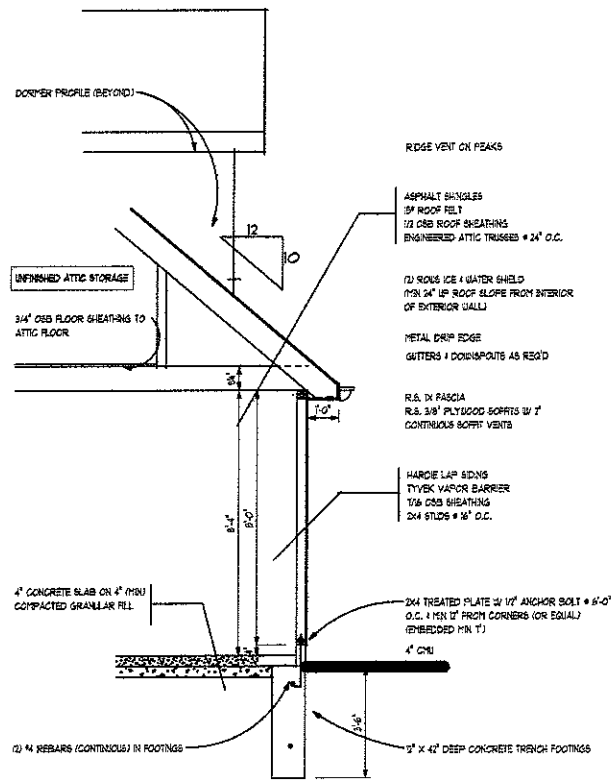
OF 10' EASE FOR INGRESS AND EGRESS AS DESC. IN L. 43100-59



PROPOSED 3 GARAGE



CERTIFICATE: We hereby certify that we have surveyed the above-described property in accordance with the description furnished for the purpose of a mortgage loan to be made by the forementioned applicants, mortgagor, and that the buildings located thereon do not encroach on the adjoining property, nor do the buildings on the adjoining property encroach upon the property heretofore described, except as shown. This survey is not to be used for the purpose of

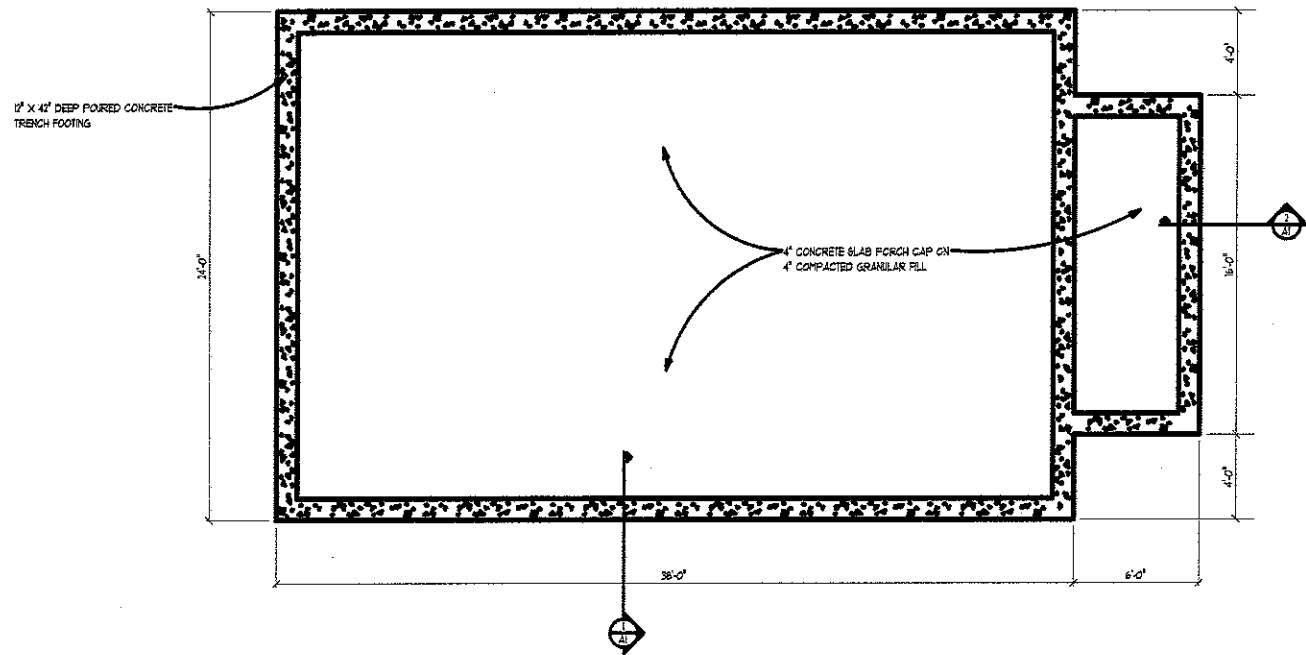


1 WALL SECTION - BLDG
3/8" = 1'-0"

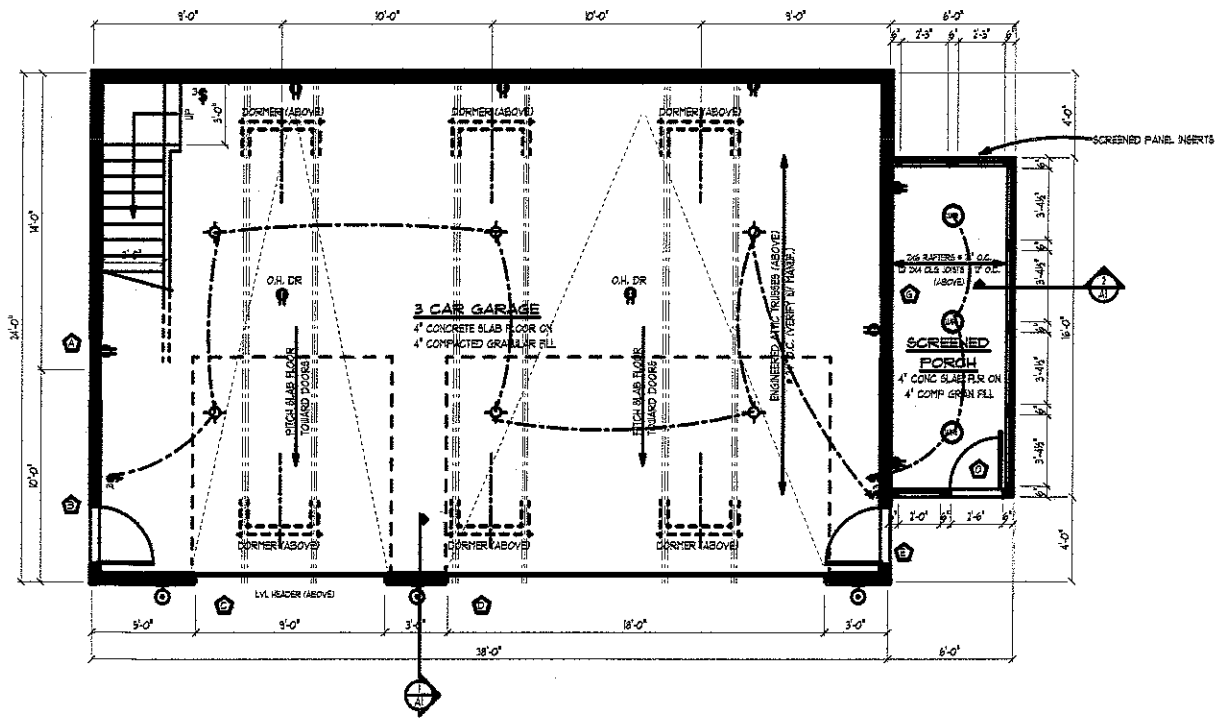
2 WALL SECTION - BLDG
3/8" = 1'-0"

STAIRCASE NOTES:
RISER HEIGHT MAX 8 1/4"
TREADS TO BE 9" W/ 1 1/4" NOSING (MATCH EXIST'G)
INSTALL NEW HANDRAIL + NEW INTERIOR WALL 36"
ABOVE NOSING
HANDRAIL HEIGHT 34-36" ABOVE STAIR NOSING
ENTIRE RUN OF STAIRS
HANDRAIL GRIP TO BE 1 1/4" - 2" OUTSIDE DIAMETER
BALUSTER SPACING NOT TO EXCEED 4"

SOIL CONDITIONS MUST BE VERIFIED
TYPE OF EXCAVATION/DEPTH/LOCATION
BEARING CAPACITY ASSUMED 3000 PSF



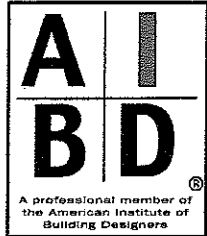
FOUNDATION PLAN
SCALE: 1/4" = 1'-0"



GARAGE PLAN
SCALE: 1/4" = 1'-0"

ELECTRICAL	SYMBOL
3-way switch	
ceiling mounted light fixture	
duplex receptacle	
exterior incandescent light	
ground fault receptacle	
single pole switch	
waterproof recessed light	

EXTERIOR DOOR/WINDOW SCHEDULE				
ITEM	UNIT TYPE	SPACE	UNIT SIZE	REMARKS
1	1 SEC DEL HING	GARAGE	7-6 X 4-0	
2	2888 EXT STL DOOR	GARAGE		
3	O.H. DOOR	GARAGE	5-0 X 1-0	
4	O.H. DOOR	GARAGE	8-0 X 1-0	
5	2888 EXT STL DOOR	GARAGE		
6	1 SEC DEL HING	GARAGE	7-6 X 4-0	
7	1 SEC DEL HING	ATTIC	7-6 X 4-0	
8	1 SEC DEL HING	ATTIC	7-6 X 4-0	
9	1 SEC DEL HING	ATTIC	7-6 X 4-0	
10	1 SEC DEL HING	ATTIC	7-6 X 4-0	
11	1 SEC DEL HING	ATTIC	7-6 X 4-0	
12	1 SEC DEL HING	ATTIC	7-6 X 4-0	
13	1 SEC DEL HING	ATTIC	7-6 X 4-0	
14	1 SEC DEL HING	ATTIC	7-6 X 4-0	
15	1 SEC DEL HING	ATTIC	7-6 X 4-0	
16	2888 EXT DOOR	SCREENED PORCH		



A professional member of the American Institute of Building Designers

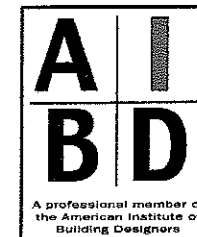
KEY:
 new partition
 existing partition
 removed partition

GENERAL NOTES:
 1. ALL DIMENSIONS TO FINISHED SURFACES, UNLESS NOTED OTHERWISE.
 2. DO NOT SCALE DRAWINGS. FIELD MEASURE ONLY.
 3. VERIFY ENGINEERING PRIOR TO CONSTRUCTION.
 4. ANY DISCREPANCIES IN PLANS TO BE DISCUSSED + RESOLVED W/ HOMEOWNER AND/OR DESIGNER.
 5. PROJECT TO BE CONSTRUCTED IN ACCORDANCE W/ LOCAL ORDINANCES + 2006 MICHIGAN RESIDENTIAL CODES.

Rick Lindbeck Design, Inc.
rld
 RESIDENTIAL DESIGN
 rick@ricklindbeckdesign.com
 248.310.4590

BLDR:
 DATE: April 23, 2010
 REVISIONS:

OWNER:
DISMONDY RESIDENCE
 DAVE & MARIA
 1181 WEST LAKE DR.
 NOVI, MI

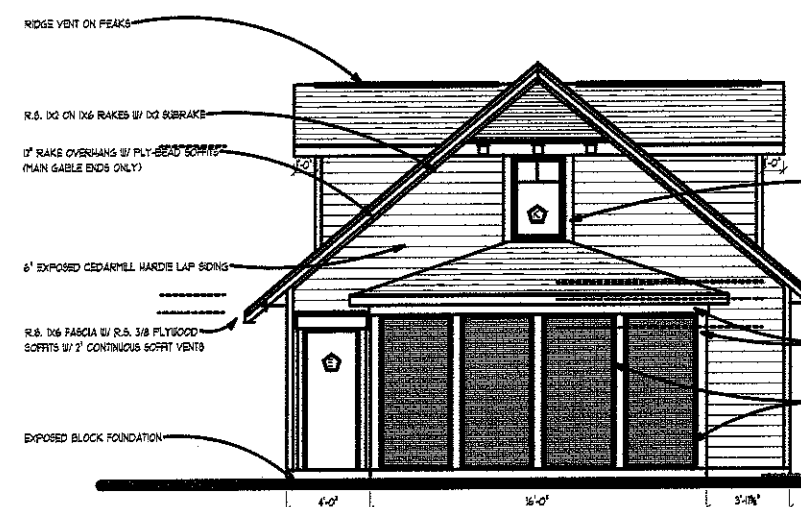


KEY

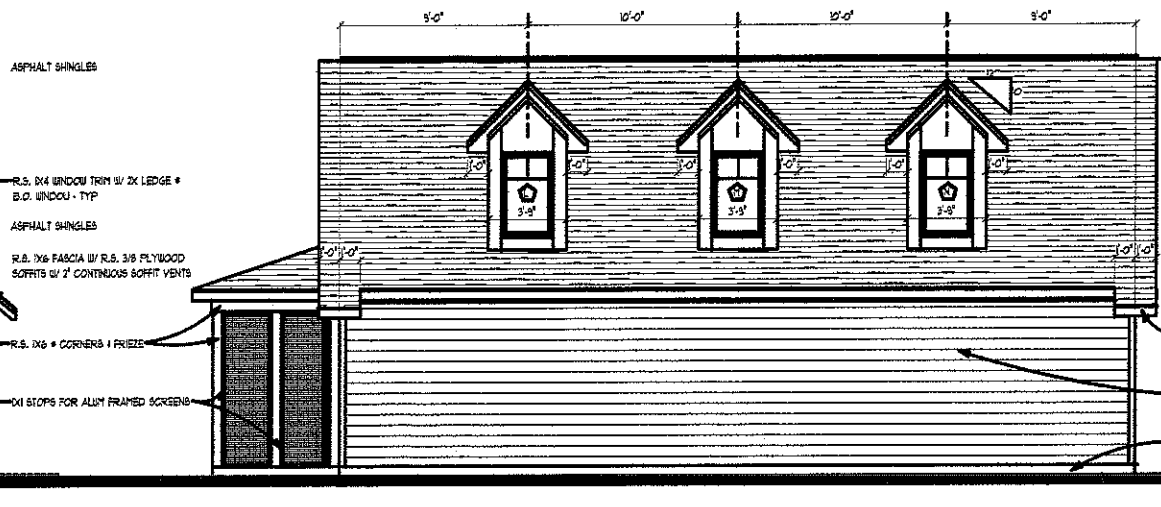
	new partition
	exist'g partition
	removed partition

GENERAL NOTES

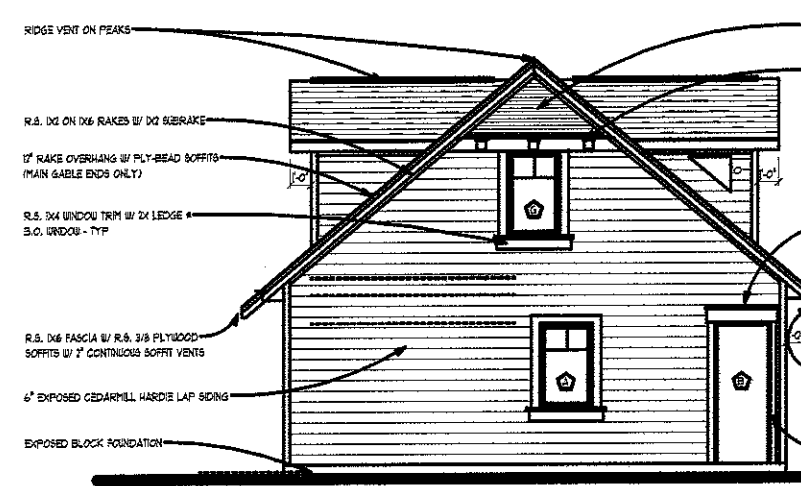
1. ALL DIMENSIONS TO FINISHED SURFACES, UNLESS NOTED OTHERWISE.
2. DO NOT SCALE DRAWINGS. FIELD MEASURE ONLY.
3. VERIFY ENGINEERING PRIOR TO CONSTRUCTION.
4. ANY DISCREPANCIES IN PLANS TO BE DISCUSSED & RESOLVED W/ HOMEOWNER AND/OR DESIGNER.
5. PROJECT TO BE CONSTRUCTED IN ACCORDANCE W/ LOCAL ORDINANCES & 2006 MICHIGAN RESIDENTIAL CODE.



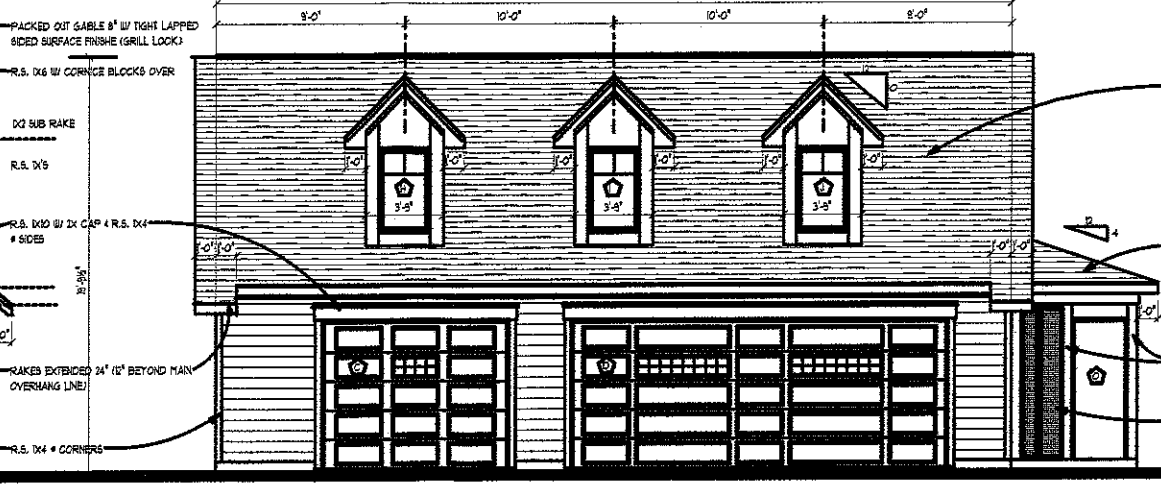
RIGHT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



REAR ELEVATION
SCALE: 1/4" = 1'-0"



LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



FRONT ELEVATION
SCALE: 1/4" = 1'-0"

Rick Lindbeck Design, Inc.
rld
RESIDENTIAL DESIGN
rick@ricklindbeckdesign.com
248.310.4590

BLDR:

DATE:	April 22, 2010
REVISION:	

OWNER:
DISMONDY RESIDENCE
DAVE & MARIA
1801 WEST LAKE DR.
NOVI, MI

