



BOARD OF ZONING APPEALS INFORMATION COVER SHEET

Type of Application: Minor Variance File #04-144724

Hearing Date: September 27, 2004

Location: 930 MOUND STREET

Purpose: Two variances in order to build a new detached garage in the front yard. 1.) The maximum allowable height is 15 feet with 17 feet-9 inches proposed, for a variance of 2 feet-9inches. 2.) An accessory structure may not be located in a required front yard and the applicant is proposing to locate the garage within the required setback, 26 feet from the street.

Applicant/Representative: PAO F. VANG
930 MOUND STREET
ST PAUL MN 55106-4037

Telephone: 651-462-6212

Property Owner: PAO F. VANG
930 MOUND STREET
ST PAUL MN 55106-4037

Legal Description: RIO VISTA, ST. PAUL, MINNESOTA LOT 1

Date Received: September 13, 2004

Notification Sent: September 13, 2004

Land Use Map: 30

Present Zoning: R-4; RC-4

Planning District: 4

Staff Person Assigned: John Hardwick



APPLICATION FOR ZONING VARIANCE

OFFICE OF LICENSE, INSPECTION, AND ENVIRONMENTAL PROTECTION

300 Lowry Professional Building
350 St. Peter Street
Saint Paul, MN 55102-1510
(651) 266-9008

Zoning office use only

File # 04-144724
Fee: \$280.-
Tentative hearing date: 9.27.04
Section(s) 63.50
City agent Tacho

APPLICANT

Name PAO FUE VANG Company
Address 930 Mound St
City St Paul St. MN Zip 55106 Daytime Phone 651 482 6212
Property Interest of Applicant (owner, contract purchaser, etc.) _____
Name of Owner (if different) Same

PROPERTY INFORMATION

Address / Location 930 Mound St St Paul MN 55106
Legal Description see attached
(attach additional sheet if necessary)
Lot Size _____ Present Zoning _____ Present Use Residential
Proposed Use Residential

1. Variance(s) requested:

Height of Garage above 15'

2. What physical characteristics of the property prevent its being used for any of the permitted uses in your zone? (topography, size and shape of lot, soil conditions, etc.)

Garage is tucked in the hill, needs 2nd floor at level grade and storage space.

3. Explain how the strict application of the provisions of the Zoning Ordinance would result in peculiar or exceptional practical difficulties or exceptional undue hardships.

Property is very hilly and need storage space at street level. It's very difficult to carry personal properties up the hill all the time.

4. Explain how the granting of a variance will not be a substantial detriment to the public good or a substantial impairment of the intent and purpose of the Zoning Ordinance.

The garage is tucked in the hill and will blend with the neighbors' homes. located on Hill.

CASHIERS USE ONLY

Applicant's Signature

[Signature]

Date

9-2-04

Phone: (651) 297-2401; fax 296-0445
E-mail: sandy.feicht@dnr.state.mn.us

September 27, 2004

Board of Zoning Appeals
Room S-330 City Hall
c/o John Hardwick
St. Paul, MN 55102

By fax and mail

RE: Variances; Variances of River Corridor Standards, Mississippi Critical Area Corridor and Mississippi National River and Recreation Area
Zoning File # 04-144724, Pao Vang
930 Mound St.

Dear Board Members:

Thank you for the notification of the variance application of Pao Vang received September 20, 2004. We would like to submit the following comments for consideration and submission to all decision-making and hearing records.

This lot is within the Mississippi River Critical Area Corridor District, established in 1976, and the Mississippi National River and Recreation Area (MNRRA), established in 1988. This site is within the Urban Diversified District, River Corridor (RC) - 4. Since 1995, the Department of Natural Resources has had responsibility for duties for management of the Mississippi River Corridor Critical Area as established in Executive Orders and Minnesota Rules and Statutes originally for the Environmental Quality Board.

In addition to the variances noted in the Information Cover Sheet, a variance for the construction of a new detached garage (a permitted residential use) in the front yard is needed from the City's Zoning Code, Sec. 68.402 (b) (3) which requires for the entire River Corridor that no residential development shall be permitted on slopes greater than eighteen (18) percent. Under the "development" definition, this requirement applies to all proposed development activities including structures, decks, driveways, topographic alterations, vegetative clearing, retaining walls, and sewage treatment systems. This proposal occurs on slopes greater than 18%, averaging 30%. A variance is also needed from Sec. 68.402 (b) (4) which requires that "bluff development shall take place at least forty (40) feet landward of all blufflines." Under the Zoning Code, Sec. 60.202: in any particular case, the bluffline shall mean a line drawn along the top of the bluff such that the slope below the line is steeper than eighteen (18) percent and the slope above is eighteen (18) percent or less. Variances may also be needed from Sec. 68.403 (b) and (c) which require "no bluffline vegetation shall be removed or altered except that required for the placement of structures," and "clear cutting shall be prohibited except as necessary for placing approved public roads, utilities, structures and parking areas." A variance may also be needed from Sec. 68.402 (c) (6) that requires "development shall fit existing topography and vegetation with a minimum of clearing and grading. Executive Order 79-19 requires protection of bluffs within the entire River Corridor greater

Variance - 930 Mound St.
Page 2

than 18%, and specific conditions for development of slopes between 12 and 18%. The Order also requires for all plans and regulations that bluffs are to remain in their natural state, minimization of site alteration, and retention of existing vegetation and landscaping. These bluff protections serve many purposes including protection of the stability of the bluff, reduction of runoff rates, protection of scenic and natural values which led to the designation as a Critical Area, reduction of erosion and sedimentation, and protection and continuation of wildlife habitat, biological diversity, and already connected greenways.

Under the City's Zoning Code, Sec. 68.401, "the objective of standards and criteria is to maintain the aesthetic integrity and natural environment of the river corridor in conformance to the St. Paul Mississippi River Corridor Plan by reducing the effects of poorly planned shoreline and bluffline development, ...preventing soil erosion; and implementing metropolitan plans, policies, and standards." For the Urban Diversified District, the lands and waters within this district shall be used and developed ... to protect natural scenic and environmental resources.... New ... residential ... uses may be permitted if they are compatible with these goals. Proposed development on wooded slopes greater than 18% does not reduce the effects of poorly planned bluffline development nor protect the natural scenic and environmental resources, but results in the detriment of the Mississippi River bluffs.

Under state statutes for variances required by the Critical Area laws, members acting as a Board of Zoning Appeals on variance decisions should solicit testimony on all of the following variance prerequisites from Minnesota Statutes. We ask the Board to consider the statutory prerequisites and posed questions (shown in italics) regarding the Critical Area River Corridor in their final decision. According to the courts, the applicant has a heavy burden of proof to show that **all of the prerequisites** have been met. In addition to the statewide statutory requirements, the Board also needs to follow more restrictive variance requirements in their ordinance. The Board of Appeals and Adjustments has the following statutory powers with respect to variances and the zoning ordinance from MN Statutes, section 462.357, subd. 6:

- 1) Variances shall only be granted when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance.

Does the granting of these variances protect the Mississippi River Corridor and prevent and mitigate irreversible damage to this resource? Does the granting of these variances meet the purposes for the Urban Diversified District to protect the natural scenic and environmental resources, under which new residential uses may be permitted? Does the granting of a variance reduce the effects of poorly planned shoreline and bluffline development, prevent soil erosion, and implement plans for the Critical Area?

- 2) Strict enforcement would cause undue hardship because of circumstances unique to the individual property.

What unique circumstances of the property compel the development on a lot that is comprised mostly of wooded slopes greater than 18%? If the constraint is common to a number of properties in the area or along the river, such as blufflines or slopes greater than 18% which is the case here, then the circumstances are not unique to the subject property.

- 3) Undue hardship means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls.

Variance - 930 Mound St.

Page 3

Does the property already have reasonable use with the construction of a single-family residence?

- 4) Undue hardship means the plight of the landowner is due to circumstances unique to the property not created by the landowner.

Court cases have shown that problems peculiar to the present owners, their individual desires, or economic desires do not satisfy the prerequisite because they don't relate to the property itself. What is unique about the actual land of the individual property for the structures and development? If the problem is common to a number of properties in the area or along the river, such as blufflines, and slopes greater than 18% then it is not unique to the subject property.

Another factor for Boards to consider is whether the landowner bought the property after the effective date of the ordinance provision from which the variances are sought and had access to knowledge and information about ordinance requirements prior to purchasing the lot. The Critical Area ordinance requirements have been in effect since 1982, available to Mr. Vang who purchased in 2001, and commented on by DNR and submitted to Mr. Vang's public hearing in 2001.

- 5) Undue hardship means the variance, if granted, will not alter the essential character of the locality.

Is the essential character of the Mississippi River Corridor detrimentally altered if structures and development are allowed to occur on the bluff faces greater than 18% themselves, as well as into bluffline setbacks, and bluffline vegetation is removed?

- 6) Economic considerations alone shall not constitute an undue hardship if a reasonable use of the property exists under the terms of the ordinance.

Reasonable use of the property exists since the construction of the single-family residence.

- 7) No variance shall be granted that would permit any use that is prohibited in this ordinance.

- 8) Undue hardship also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

We do not see where all of the prerequisites for variance approval and proof of hardship under Minnesota statutory law can be met. This was inherently an unbuildable lot in 2001, as shown by the large majority of the lot being on a Mississippi River bluff and slope greater than 18% with the state protected Mississippi Critical Area Corridor. Protection of the remaining slopes and bluffs becomes even more important since bluffs on over 50% of the lot have already been graded and destroyed. The circumstances of this individual property or land itself are not unique. Many properties near to the Mississippi River in the city have bluffs, blufflines, and slopes greater than 18%. Landowners create their own hardship if they knowingly buy a lot where multiple variances are required to even build on a non-unique property.

Variance - 930 Mound St.
Page 4

Any such variance approvals for this additional structure and vegetation removal on the bluff itself would

be unacceptable and not comply with state statutes for variance decisions. Such a decision will not be in keeping with the spirit and intent of the Critical Areas Act of 1973, Critical Area requirements or federal Mississippi National River and Recreation Area policies to preserve and protect bluffs greater than 18% and ensure bluffs remain in their natural state. There are higher purposes under the Critical Area state law than just the engineering capability to build on a particular site.

We ask that your decision support compliance with all the requirements for the Critical Area River Corridor and variance prerequisites. We are very concerned about the implementation of the Critical Area mandates and cumulative impacts of decisions to allow variances within the protected River Corridor. Thank you for properly implementing the state statutes and Critical Area plans and regulations in protecting and preserving the Mississippi Critical Area Corridor. As required, please send us notification of the final decision on this proposal, as well as 30-day notification prior to final action as required for all variances and development activities requiring a public hearing or discretionary action.

Sincerely,

DNR Waters

Sandy Fecht
Critical Area/MNRRRA Hydrologist

cc: National Park Service - Nancy Duncan/Jim von Haden
Area Hydrologist Molly Shodeen
Rebecca Wooden

city of saint paul
planning commission resolution
file number _____
date _____

WHEREAS, PAO FUE VANG, File #01-230-434, has applied for a Modification of River Corridor Standards and a Variance under the provisions of §65.650 and §64.300(f)(2) of the Saint Paul Legislative Code, for property located at 930 Mound Street, Parcel Identification Number (PIN) 04-28-22-21-0062 legally described as Lot 1 Rio Vista; and

WHEREAS, the Zoning Committee of the Planning Commission, on November 8, 2001, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §64.300 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The applicant wishes to construct a single family home with detached garage on the property at 930 Mounds St. The garage would be built into the slope off the street while the home would be built further into the yard at the top of the rise.
2. The portion of the lot where the garage is planned contains a slope of approximately 30%. Slopes at the rear of the lot are approximately 20%. Development standards in the RC-4 River Corridor Overlay District prohibit residential development on slopes greater than 18%.
3. The planning commission may approve modifications of the river corridor standards upon finding that:
 - a. *by reason of exceptional circumstances the strict enforcement of this chapter would cause undue hardship and strict conformity with the standards would be unreasonable, impractical and not feasible under the circumstances.* This condition is not met. The site is located in an existing residential neighborhood. Most of the adjacent lots appear to have been graded at an earlier time in order to construct the existing houses. This leaves this property approximately 10 feet higher than the surrounding lots.

moved by _____
seconded by _____
in favor _____
against _____

However, strict conformity with the standards would not be unreasonable, impractical and not feasible.

- b. *such modification will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment.* This condition is not met. Construction of a house on this site will adversely affect the safety, use or stability of a public way, slope or drainage channel.
 - c. *the modification is consistent with the general purposes of the standards contained in this chapter and state law.* The modification is not consistent with the purpose of the chapter "to maintain the River Corridor's value and utility for residential, commercial, purposes." Irrespective of the property's distance from the bluff line and river and its location amidst similar development, construction of the proposed house will affect the recreational, biological or ecological functions of the River Corridor.
4. The building plan includes a garage built into the slope near the front of the lot. The applicant proposes locating this garage 26 ft. from the front property line. The zoning code requires a 40 ft. setback, which is the average of this block. The applicant needs a variance of 14 ft. to construct the garage in the proposed location.
 5. The planning commission may approve variances for projects that also need planning commission review upon making the findings listed in Section 64.203:
 - (1) *The property in question cannot be put to a reasonable use under the strict provision of the code.* The proposed house is consistent with the design of nearby houses. The size, location, and topography of the lot are such that the house cannot meet the front yard setback requirement without variance.
 - (2) *The plight of the landowner is due to circumstances unique to his property, and these circumstances were not created by the landowner.* The existing topography and the location between two developed lots are circumstances unique to this property and these circumstances were not created by the landowner.
 - (3) *The proposed variance is in keeping with the spirit and intent of the code, and is consistent with the health, safety, comfort, morals and welfare of the inhabitants of the City of Saint Paul.* This finding is met. The location of the garage provides adequate space between it and neighboring properties and accommodates the terrain as much as possible. The proposed setback is consistent with the health, safety, comfort, morals and welfare of the adjoining properties and the inhabitants of the City of Saint Paul.
 - (4) *The proposed variance will not impair an adequate supply of light and air to adjacent property, not will it alter the essential character of the surrounding area*

or unreasonably diminish established property values within the surrounding area. The garage will be set into the hill. Therefore, the variance will not impair the supply of light and air to adjacent property. The essential character of the surrounding area is residential, as is the proposed use. The variance will not alter the essential character of the surrounding area or unreasonably diminish established property values.

- (5) *The variance, if granted, would not permit any use that is not permitted under the provisions of the code for the property in the district where the affected land is located, nor would it alter or change the zoning district classification of the property. Variance of required front yard will not affect the use of the property, which is permitted under the R-4 zoning district, nor will it change the zoning district classification of the property.*
- (6) *The request for variance is not based primarily on a desire to increase the value or income potential of the parcel of land. The variance is based on the topography of the lot and the applicant's desire to construct a house, not primarily to increase the value or income potential of the lot.*

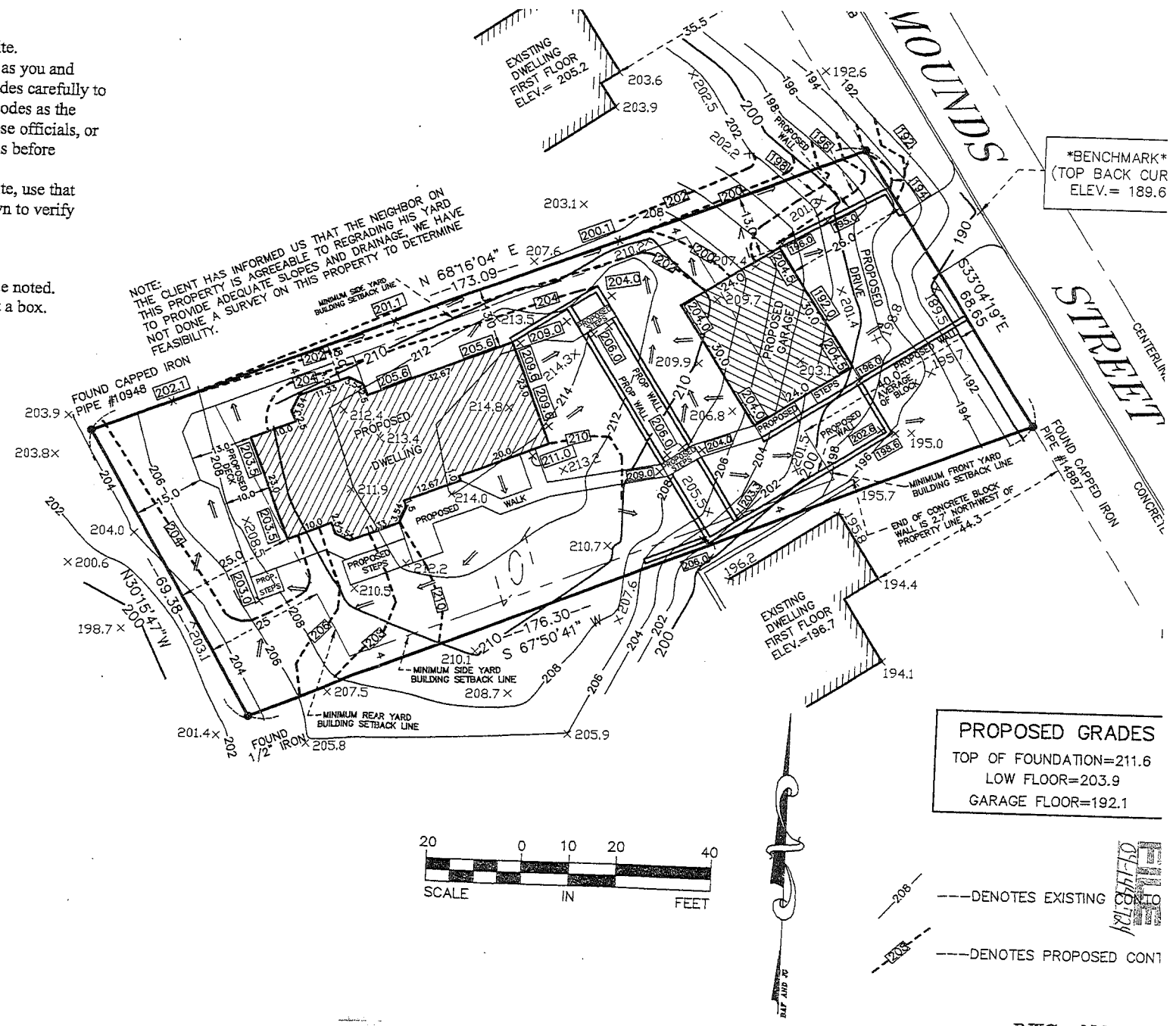
NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of PAO FUE VANG for a Modification of River Corridor Standards and Variance for a single family home on slopes greater than 18% and variance of front yard setback of 26 ft. (variance of 14 ft.) at 930 Mound St. , is hereby denied.

existing monuments to mark the corners of the property.
 contours necessary to show elevation differences on the site.
 r this home, we are not as familiar with your house plans as you and
 ur proposed location and siting of the home and yard grades carefully to
 ruction begins. Also, we are not as familiar with local codes as the
 n this community are. Be sure to show this survey to these officials, or
 on over the home and its siting, and obtain their approvals before

r use in determining elevations for construction on this site, use that
 se. Check the elevation of at least one other feature shown to verify

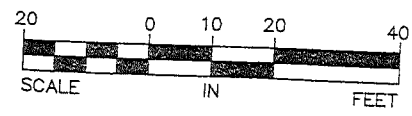
ONS:
 bearing State License Number 9235, set, unless otherwise noted.
 around them, while existing elevations are shown without a box.
 1 water on the site.

n, report or survey was prepared by me or
 a licensed Professional Engineer and
 ie State of Minnesota.



BENCHMARK
 (TOP BACK CUR
 ELEV.= 189.6

PROPOSED GRADES
 TOP OF FOUNDATION=211.6
 LOW FLOOR=203.9
 GARAGE FLOOR=192.1



---DENOTES EXISTING
 ---DENOTES PROPOSED CON

Ryan Moe

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Fax: 877-389-1054

ALL PLANS ARE TO BE
REVIEWED BY THE
GENERAL CONTRACTOR
AND THE MUNICIPAL
BUILDING OFFICIAL PRIOR
TO CONSTRUCTION. RYAN
MOE HOME DESIGN IS NOT
RESPONSIBLE FOR ANY
PROBLEM AS A RESULT OF
AN ERROR/OMISSION ON
THESE PLANS.

PAO VANG
930 MOUND STREET
SAINT PAUL, MN 55106

REVISIONS

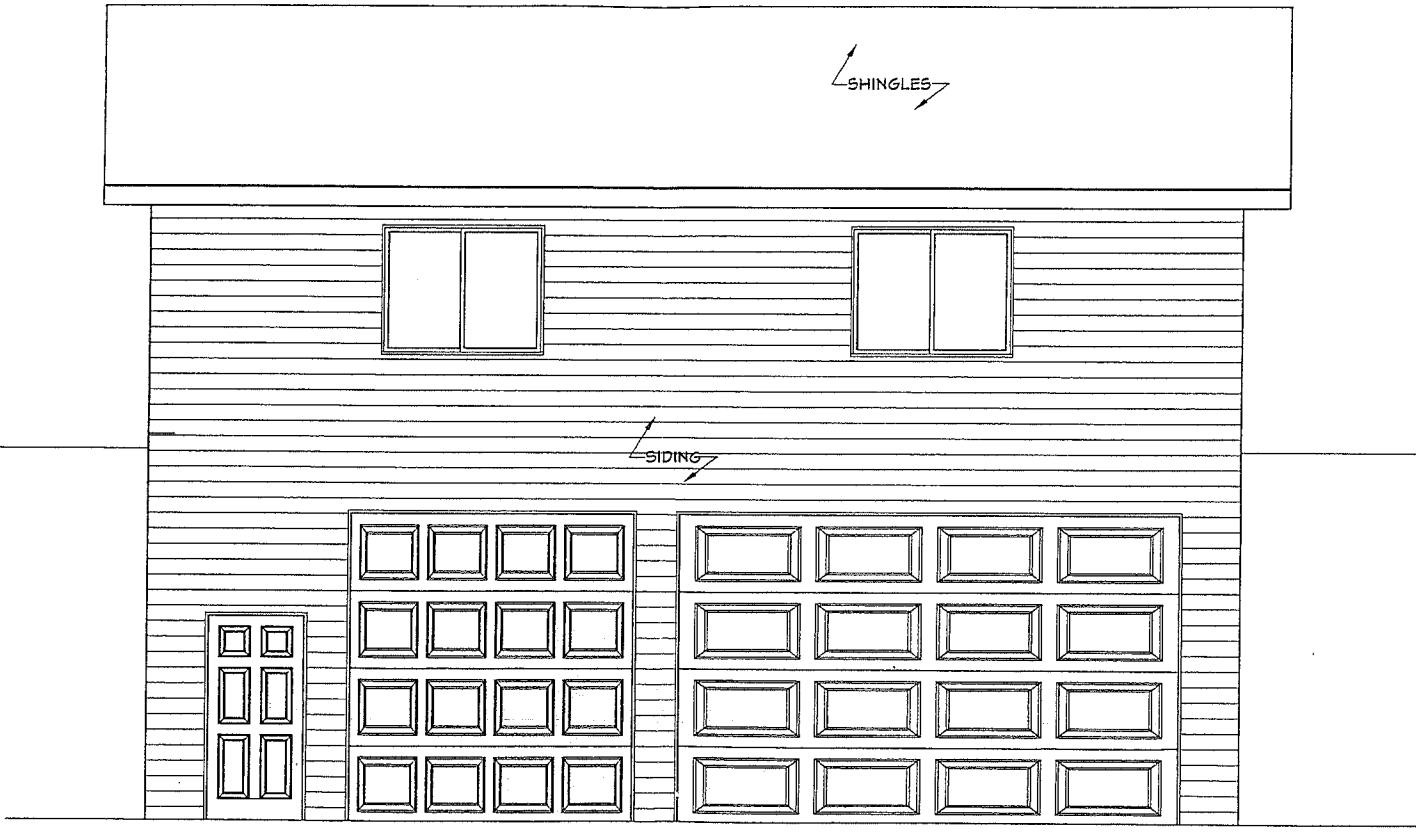
JOB NO 11023

ISSUE DATE:
8-13-04

DRAWN BY:
RDM

SHEET NO:
3

h26771-30
DATE
SCALE



FRONT ELEVATION

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

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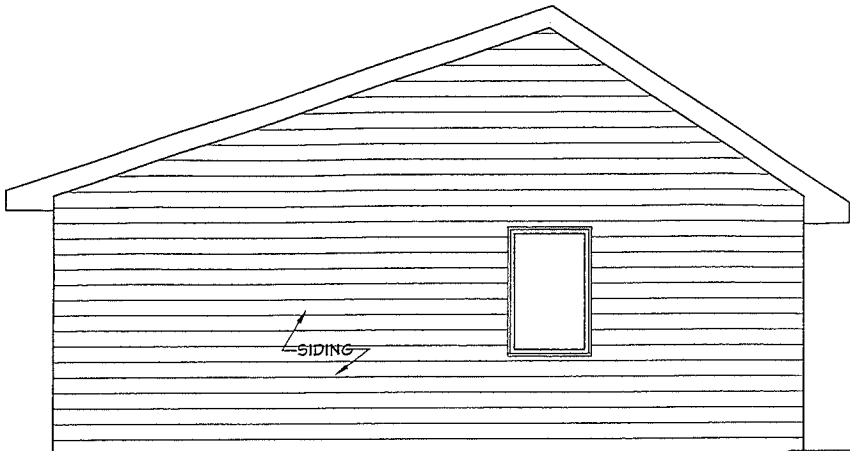
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JOB NO 11023

ISSUE DATE 8-13-04

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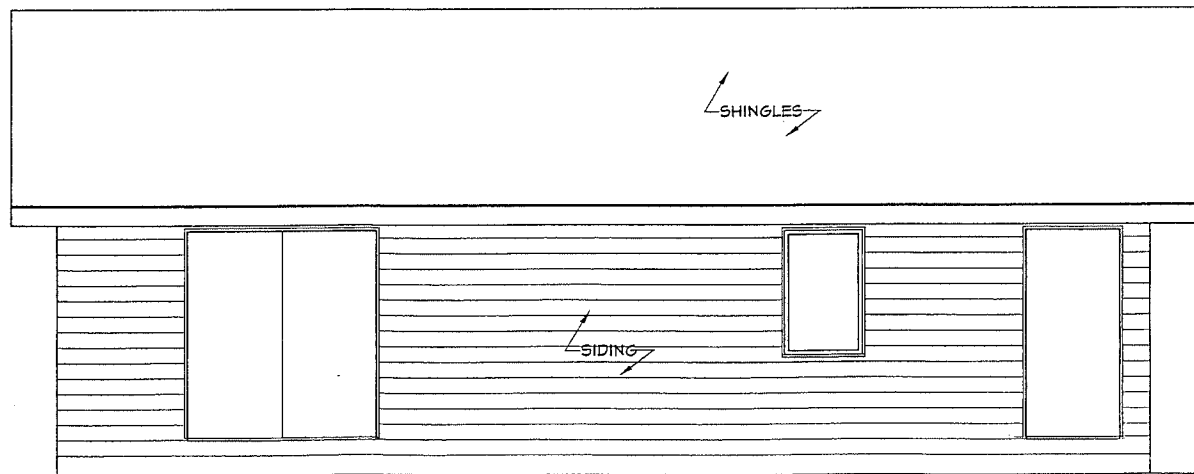
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SIDING

EXIST. CONC.
BLK WALL

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



SHINGLES

SIDING

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

11023-50

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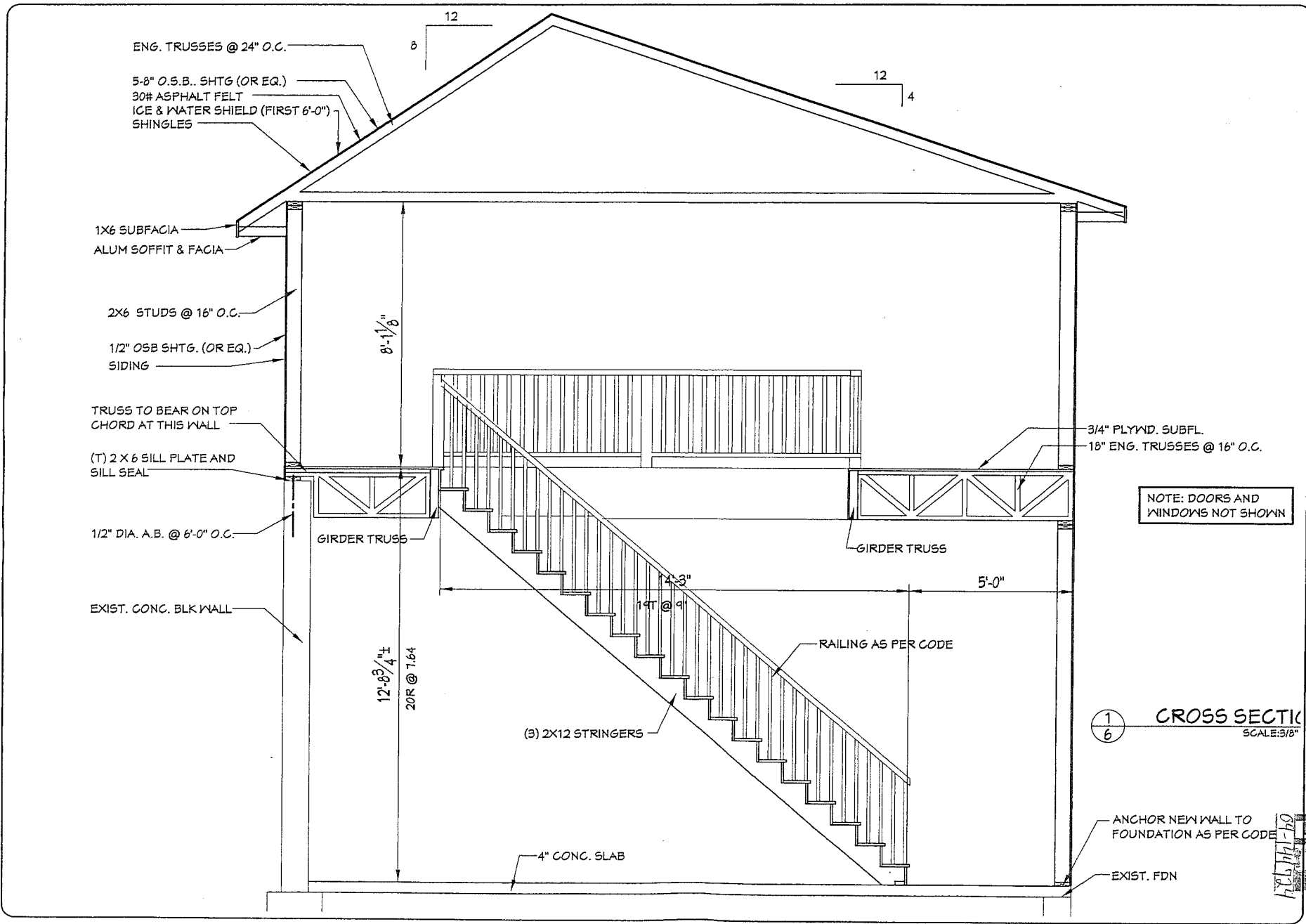
Phone: 952-334-2189
Fax: 877-389-1054

ALL PLANS ARE TO BE REVIEWED BY THE GENERAL CONTRACTOR AND THE MUNICIPAL BUILDING OFFICIAL PRIOR TO CONSTRUCTION. RYAN MOE HOME DESIGN IS NOT RESPONSIBLE FOR ANY PROBLEM AS A RESULT OF AN ERROR OR OMISSION ON THESE PLANS.

PAO VANG
930 MOUND STREET
SAINT PAUL, MN 55106

REVISIONS

JOB NO 11023
ISSUE DATE: 8-13-04
DRAWN BY: RDM
SHEET NO: 6



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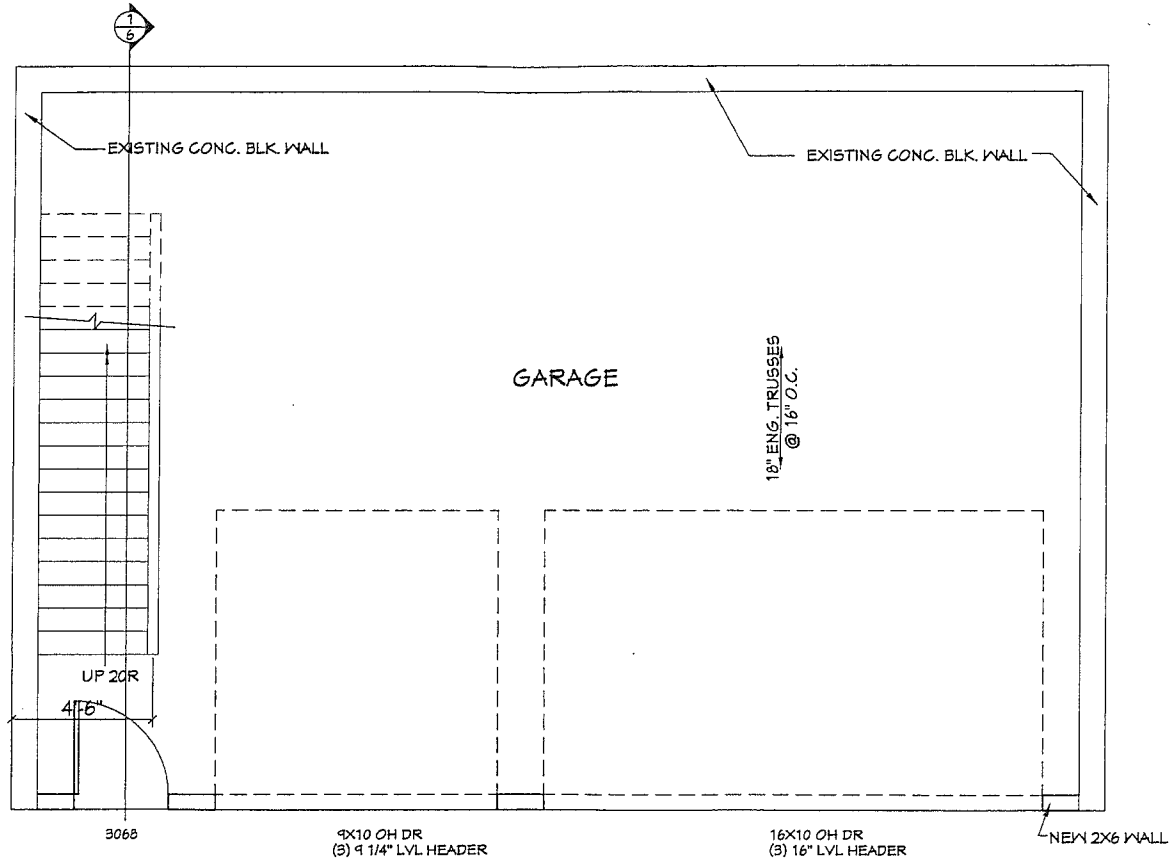
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REVISIONS

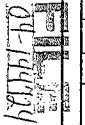
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ISSUE DATE:	8-13-04
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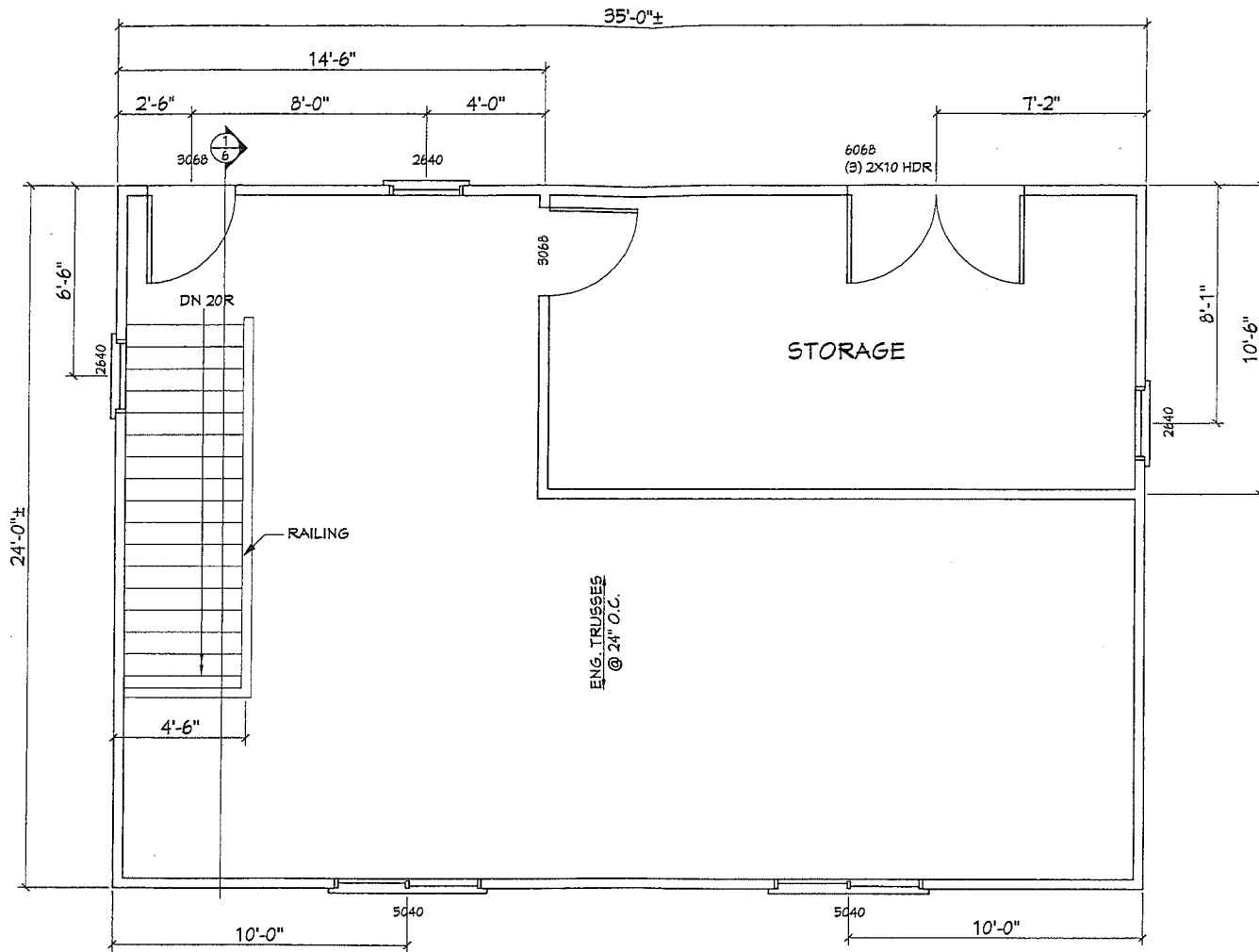


LOCATE DOORS IN EXISTING MASONRY OPENINGS

FIRST FLOOR PLAN

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





SECOND FLOOR PLAN

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

VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION

GENERAL NOTES

1. ALL EXTERIOR HEADERS ARE (2) 2X10 UNLESS NOTED OTHERWISE
2. ALL L.V.L. BEAMS ARE TO BE 1 3/4" WIDE, MICROLLAM OR EQ, 1.9E WITH BEARING THE FULL WIDTH OF BEAM

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930 MOUND STREET
SAINT PAUL, MN 55106

REVISIONS

JOB NO 11023

ISSUE DATE: 8-13-04

DRAWN BY: RDM

SHEET NO: 2

hcm/hj-bj
11/13/04
11/13/04
11/13/04

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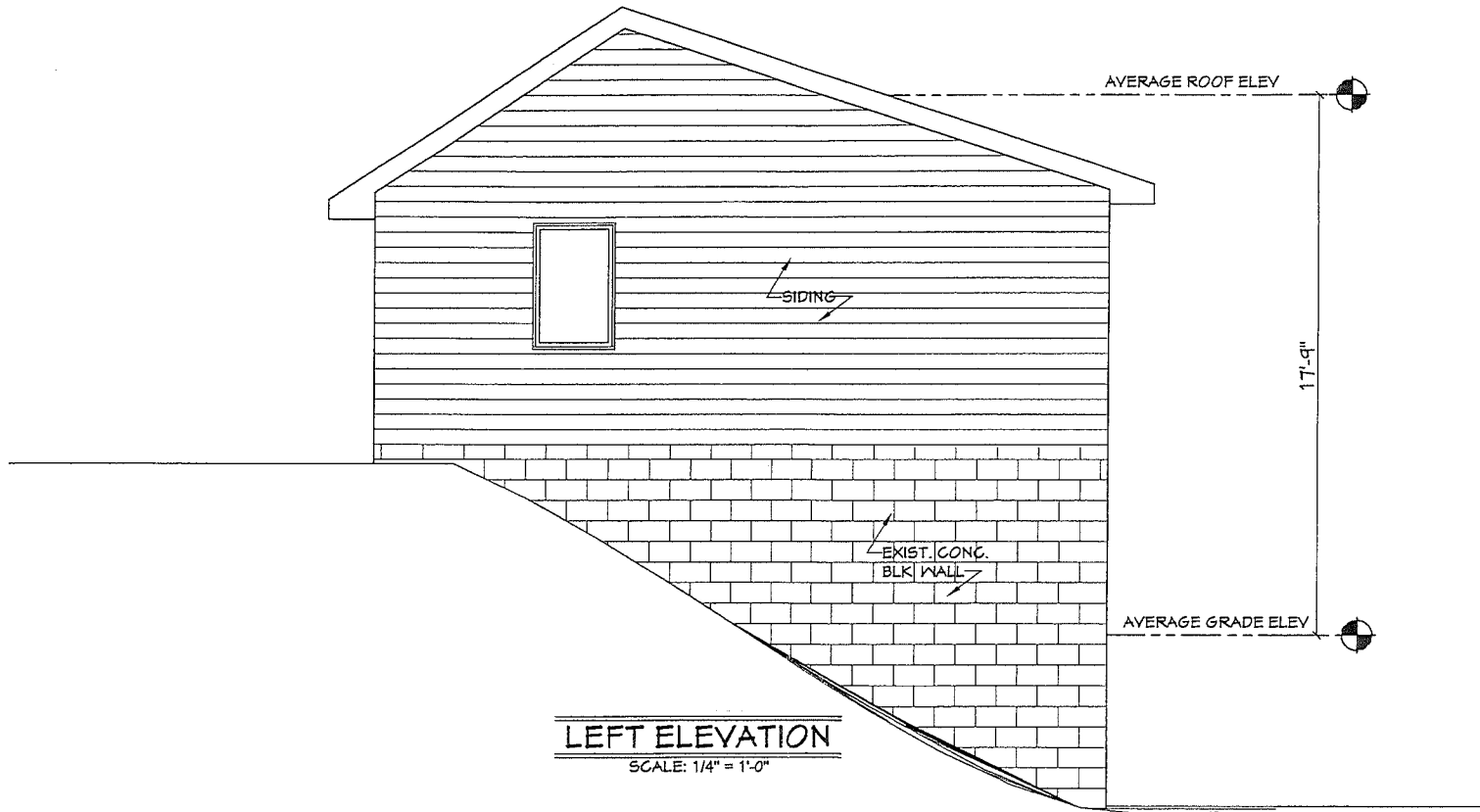
REVISIONS

JOB NO 11023

ISSUE DATE 8-13-04

DRAWN BY RDM

SHEET NO 5



LEFT ELEVATION

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

11023-50

**CITY OF SAINT PAUL, MINNESOTA
MODIFICATION OF RIVER CORRIDOR STANDARDS**

ZONING FILE NO: 01-230-434

APPLICANT: Pao Fue Vang

PURPOSE: Modification of River Corridor Standards and a Variance under the provisions of §65.650 and §64.300(f)(2) of the Saint Paul Legislative Code

LOCATION: 930 Mound Street

LEGAL DESCRIPTION: PIN 04-28-22-21-0062 legally described as Lot 1 Rio Vista

ZONING COMMITTEE ACTION: Approval with conditions

PLANNING COMMISSION ACTION: Approval with conditions

CONDITIONS OF THIS PERMIT:

1. Applicant receives site plan approval for the construction of the house; and
2. The final grading plan shows runoff deflected from the southwest corner of the lot.

APPROVED BY: Gladys Morton, Commission Chairperson

I, the undersigned Secretary to the Zoning Committee of the Planning Commission for City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on minutes of the Saint Paul Planning Commission meeting held on January 11, 2002, and on record in the Saint Paul Planning Office, 25 West Fourth Street, Saint Paul, Minnesota.

This permit will expire one year from the date of approval if the use herein permitted is not established.

The decision to grant this permit by the Planning Commission is an administrative action subject to appeal to the City Council. Anyone affected by this action may appeal this decision by filing the appropriate application and fee at the Zoning Office, 1400 City Hall Annex, 25 West Fourth Street. **Any such appeal must be filed within 15 calendar days of the mailing date noted below.**

Violation of the conditions of this permit may result in its revocation.

Carol A. Martineau
Secretary to the Saint Paul
Zoning Committee

Copies to: Applicant Pao Fue Vang
 File No. 01-230-434
 Zoning Administrator Wendy Lane
 License Inspector Christine Rozek
 District Council 4

Mailed: 1/15/02