

# Development Services

## From Concept to Construction

Phone: 503-823-7300 Email: [bds@portlandoregon.gov](mailto:bds@portlandoregon.gov) 1900 SW 4th Ave, Portland, OR 97201

More Contact Info (<http://www.portlandoregon.gov/bds/article/519984>)



### APPEAL SUMMARY

**Status:** Hold for Additional Information

<b>Appeal ID:</b> 27586	<b>Project Address:</b> 4800 N Lombard St
<b>Hearing Date:</b> 3/16/22	<b>Appellant Name:</b> Michael Barrett
<b>Case No.:</b> B-007	<b>Appellant Phone:</b> 541-968-9374
<b>Appeal Type:</b> Building	<b>Plans Examiner/Inspector:</b> Connie Jones
<b>Project Type:</b> commercial	<b>Stories:</b> 1 <b>Occupancy:</b> B, M <b>Construction Type:</b> V-B
<b>Building/Business Name:</b> University Park	<b>Fire Sprinklers:</b> No
<b>Appeal Involves:</b> Alteration of an existing structure	<b>LUR or Permit Application No.:</b> 21-039721-CO
<b>Plan Submitted Option:</b> pdf [File 1] [File 2]	<b>Proposed use:</b> Retail

### APPEAL INFORMATION SHEET

#### Appeal item 1

<b>Code Section</b>	OSSC 705.8.1 - Allowable Area of Openings
<b>Requires</b>	The maximum area of unprotected and protected openings permitted in an exterior wall in any story of a building shall not exceed the percentages specified in table 705.8 based on the fire separation distance of each individual story.
<b>Code Modification or Alternate Requested</b>	Define fire separation of edge of access easement at adjacent property in lieu of parcel property line.
<b>Proposed Design</b>	<p>A shared access easement to create a permanent 5' setback at the adjacent parcel is proposed . This essentially moves the property line 5' further away from the existing building walls and openings. See Exhibit A for FLS analysis and site plan.</p> <p>Easement language to be reviewed by Nancy Thorington to vest appeal conditions and recorded with the county on the adjacent parcel. See Exhibit B for draft language of easement.</p> <p>No additional changes to implementation to Table 705.8 or this code section is proposed outside of measuring the fire separation distance at the edge of the access easement and not the legal property line.</p>
<b>Reason for alternative</b>	<p>Three separate lots create an existing retail building and parking lot within North Portland, functioning as a single lot. The project team has worked with BDS to update permit history and conform the building to current building and planning requirements.</p> <p>Two existing openings exist along the property line within existing two hour cast in place concrete walls with a 2 hour rating. Rather than record a "do not sell separately" agreement, the project team seeks to record a permanent 5' setback through an easement agreement recorded with the county.</p>

With a permanent easement, the project meets the same life-safety protection required for exterior walls and openings as required by Section 705.8 of the OSSC.

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## Appeal item 2

<b>Code Section</b>	OSSC 1028.5 - Access to a Public Way
<b>Requires</b>	The exit discharge shall provide a direct and unobstructed access to a public way.
<b>Code Modification or Alternate Requested</b>	Allow exit discharge to connect to a public way through a shared access easement, crossing a property line.
<b>Proposed Design</b>	<p>A shared access easement shall be recorded on the adjacent property line creating a 5' setback for egress access. This access easement shall be accessed across the project property line and used where a second exit is required.</p> <p>Easement language to be reviewed by Nancy Thorington to vest appeal conditions and recorded with the county on the adjacent parcel.</p> <p>This is a similar appeal to Appeal 18481 - Item 1 (9/26/18)</p>
<b>Reason for alternative</b>	<p>Three separate lots create an existing retail building and parking lot within North Portland, functioning as a single lot. The project team has worked with BDS to update permit history and conform the building to current building and planning requirements.</p> <p>As part of establishing up to date permit history, the project team wishes to establish routes for second exits for tenant suites for use under future tenant improvement permits. The existing building walls are located on the property line, preventing exit access from the existing rear exits to the public right of way without crossing a property line.</p> <p>The project team wishes to vest the use of these exits and future second exits through the establishment of a shared access easement on the adjacent property line. This creates a permanent exit discharge route if the existing parking lot is developed in the future.</p>

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## APPEAL DECISION

**1. Increase in allowable area of unprotected exterior wall openings with easement on adjacent property: Hold for additional information.**

**2. Access to Public Way with egress across property line with easement on adjacent property: Hold for additional information.**

**See note below regarding the process for submitting additional information.**

**Appellant may contact John Butler (503 865-6427) or e-mail at [John.Butler@portlandoregon.gov](mailto:John.Butler@portlandoregon.gov) with questions.**

Additional information is submitted as a no fee reconsideration, following the same submittal process and using the same appeals form as the original appeal. Indicate at the beginning of the appeal form that you are filing a reconsideration and include the original assigned Appeal ID number. The reconsideration will receive a new appeal number.

Include the original attachments and appeal language. Provide new text with only that information that is specific to the reconsideration in a separate paragraph(s) clearly identified as "Reconsideration Text" with any new attachments also referenced. Once submitted, the appeal cannot be revised.

No additional fee is required.







RECORDING REQUESTED BY, AND  
WHEN RECORDED, RETURN TO:

Brad Miller  
Brix Law LLP  
75 SE Yamhill, Suite 202  
Portland, OR 97214

### **RESTRICTIVE COVENANT AGREEMENT**

This Restrictive Covenant Agreement ("**Agreement**") is executed effective as of February \_\_, 2022 (the "**Effective Date**"), by DIG UP PROJECT LLC, an Oregon limited liability company ("**Declarant**").

#### **Recitals**

A. Declarant is the owner of that certain property located in the City of Portland, Multnomah County, Oregon more particularly described as follows (the "**Declarant Property**"):

Lots 1, 2, 3 and 4, Block 72, UNIVERSITY PARK, City of Portland, Multnomah County, Oregon.

B. The Declarant Property is comprised, in part, of certain real property legally described as follows on which a building currently exists (the "**Building Parcel**"):

Lots 1 and 2, Block 72, UNIVERSITY PARK, City of Portland, Multnomah County, Oregon.

and the Declarant Property is comprised, in part, of certain real property legally described as follows on which a parking lot currently exists (the "**Parking Space Lots**"):

Lots 3 and 4, Block 72, UNIVERSITY PARK, City of Portland, Multnomah County, Oregon

C. Lot 3 of the Parking Space Lots is referred to herein as "**Lot 3**". The northern boundary of Lot 3 abuts and is contiguous with the southern boundary of the Building Parcel.

D. Declarant is executing this Agreement to create a five (5) foot wide access easement that runs along the entire northern boundary of Lot 3 for the benefit of the Building Parcel (the "**5 Foot Wide Access Easement Strip**").

NOW, THEREFORE, for good and valuable consideration, Declarant hereby agrees as follows:

1. Declarant hereby grants and declares a non-exclusive access easement for the benefit of the owner of the Building Parcel in 5 Foot Wide Access Easement Strip.

2. The owner of the Building Parcel shall not permit any claim, lien or other encumbrance to accrue against or attach to the 5 Foot Wide Access Easement Strip.

3. No permanent structures or permanent physical barriers may be placed in the 5 Foot Wide Access Easement Strip.

4. Each owner of a lot in the Declarant Property shall procure and maintain in full force and effect general public liability insurance and property damage insurance, on an occurrence basis, against claims for personal injury, death or property damage, such insurance to afford protection with \$1,000,000 per occurrence and aggregate limits of not less than \$2,000,000.00.

5. The easements, covenants, rights and obligations contained in this Agreement shall bind and inure to the benefit of each owner of Lot 3 and the Building Parcel and each of their respective heirs, representatives, lessees, successors, assigns, mortgagees and beneficiaries under any deed of trust.

6. In the event a suit or action is instituted to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorneys' fees, paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, at trial or on any appeal, in addition to all other amounts provided by law.

7. The invalidity or unenforceability of any provision of this Agreement with respect to a particular party or set of circumstances shall not in any way affect the validity or enforceability of any other provision hereof, or the same provision when applied to another party or a different set of circumstances.

8. Failure by an owner of Lot 3 or the Building Parcel to enforce any of the rights, obligations, covenants or restrictions contained in this Agreement shall in no event be deemed a waiver of the right to enforce the same at any future time.

EXECUTED as of the date first written herein.

DIG UP Project LLC, an Oregon limited liability company

By DIG Development Company, LLC, Manager

By \_\_\_\_\_  
William Rozakis, Manager

By \_\_\_\_\_  
Nicholas G. Diamond, Manager

STATE OF OREGON                               )  
  ss)  
COUNTY OF MULTNOMAH                     )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2022, by William Rozakis, as Manager of DIG Development Company, LLC, an Oregon limited liability company, as Manager of DIG UP Project, LLC, an Oregon limited liability company, on behalf of the limited liability company.

Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

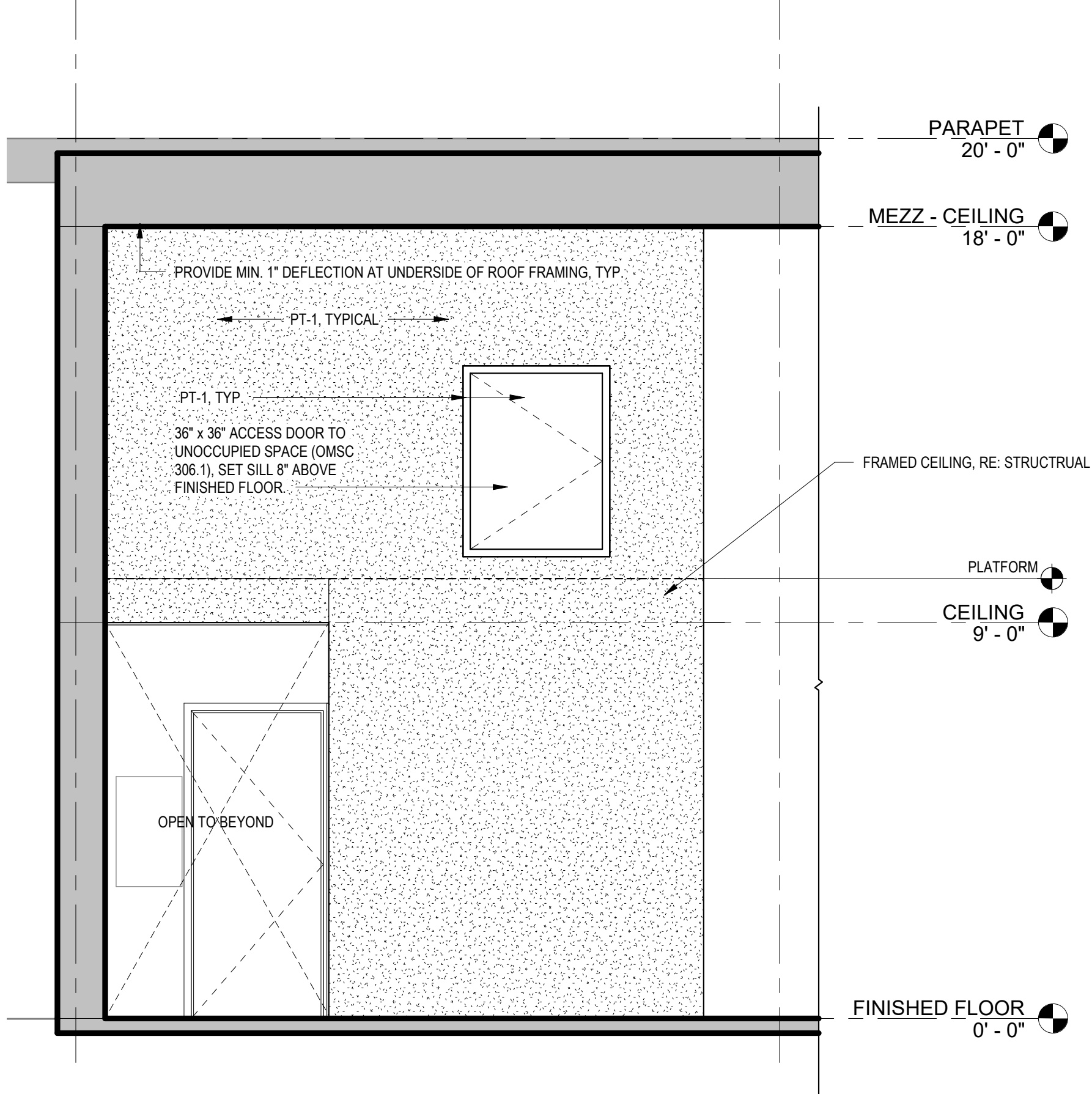
STATE OF OREGON                               )  
  ss)  
COUNTY OF MULTNOMAH                     )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2022, by Nicholas G. Diamond, as Manager of DIG Development Company, LLC, an Oregon limited liability company, as Manager of DIG UP Project, LLC, an Oregon limited liability company, on behalf of the limited liability company.

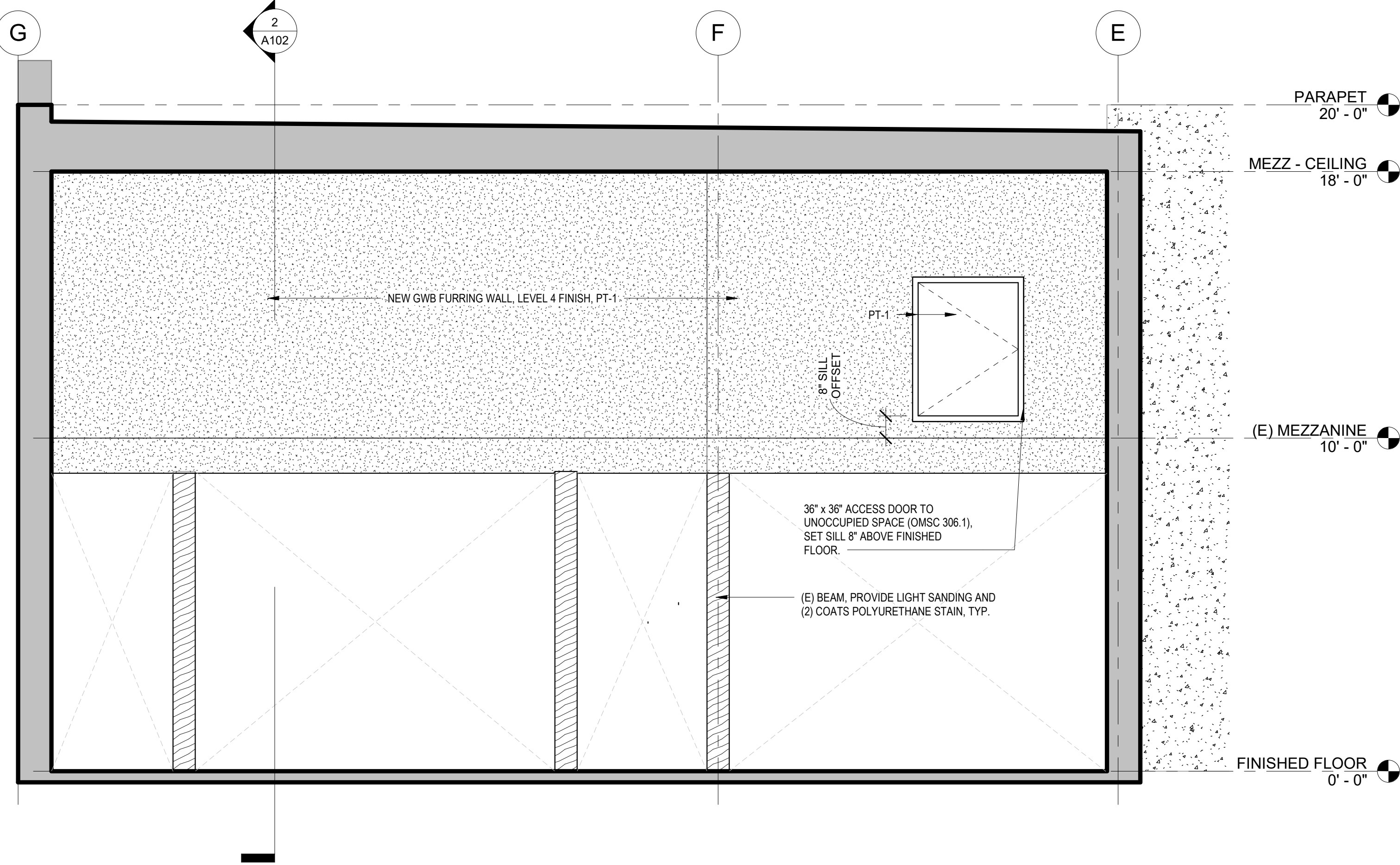
Notary Public

Print Name: \_\_\_\_\_

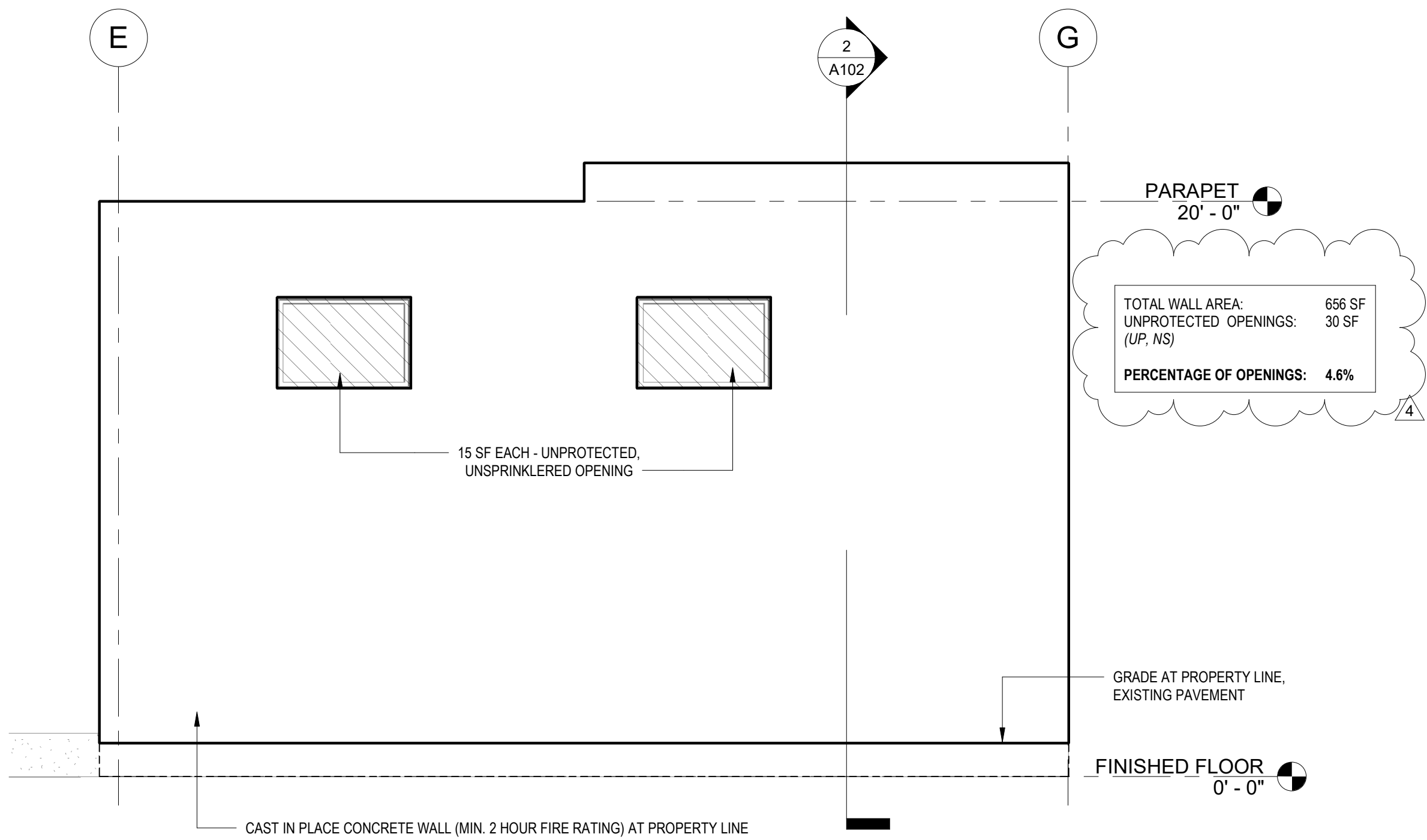
My Commission Expires: \_\_\_\_\_



ELEVATION - RESTROOM PLATFORM ACCESS  
3/8" = 1'-0"



ELEVATION - FORMER MEZZANINE ACCESS  
3/8" = 1'-0"



BUILDING ELEVATION - UNPROTECTED OPENINGS  
1/4" = 1'-0"



