



Staff Report

PLANNING DIVISION

DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake Appeals Hearing Officer
From: Krissy Gilmore, Senior Planner
Kristina.Gilmore@slcgov.com or 801-535-7780
Date: February 16, 2022
Re: PLNZAD2022-01204: Variance Request for a second story inline addition

Variance

PROPERTY ADDRESS: 1707 S Windsor Street
PARCEL ID: 16-17-326-001-0000
MASTER PLAN: Sugar House
ZONING DISTRICT: R-1/5,000 Single Family Residential District

REQUEST:

Tiffany Rowe, project architect representing the property owner, is requesting a variance to construct a vertical inline addition into the required 10-foot side yard setback of the property located at 1707 S Windsor Street. The property is within the R-1/5,000 Single Family Residential Zoning District. The second story vertical inline addition would follow the existing footprint of the duplex home that is a noncomplying structure due to its construction encroaching into the required side yard setback.

RECOMMENDATION:

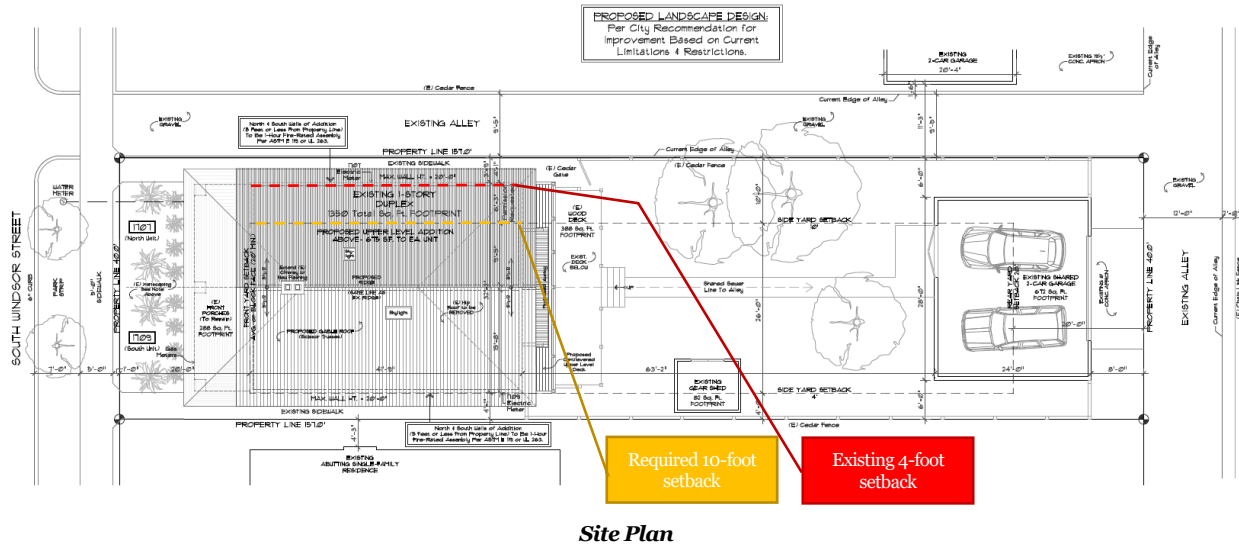
Based on the information and findings listed in the staff report, it is the Planning Staff's opinion that the request does not meet the applicable standards of approval and therefore recommends the Appeals Hearing Officer deny the request.

ATTACHMENTS

- A. [Vicinity Map](#)
- B. [Site Photos](#)
- C. [Applicant Materials](#)
- D. [Variance Standards](#)
- E. [Public Comments](#)

PROJECT DESCRIPTION

The subject property is a detached noncomplying duplex structure within the R-1/5000 Single Family Residential Zoning District. The property owner is seeking a variance to allow a second story addition with a wall height of 20 feet that follows the existing footprint of the structure that is noncomplying on the north side yard setback. The existing setback is approximately 4 feet where 10 feet is required. The south side yard setback complies with the current ordinance.



The structure on the subject property was built in 1918, prior to current zoning regulations. While the proposed setbacks would remain fundamentally equal to those of the existing structure, the structure would be different in regard to building and exterior wall height. The following table provides the dimension of the property and the building setbacks in relation to the current zoning requirements:

<u>R-1-5000 Standard</u>	<u>Existing</u>	<u>Proposed</u>
Minimum Lot Area: 5000 sf.	6,280 SF	NA
Minimum Lot Width: 50 ft.	40 ft	NA
Minimum Lot Depth: NA	141 ft	NA
Front Yard Setback: Average of existing block face or 20 ft.	20 ft	NA
Interior Side Yards: 4 ft. on one side and 10 ft. on the other	4'-1" on both sides	Variance required for second story addition within the required 10 ft setback following existing footprint
Rear Yard: 25% of the lot depth, or 20 ft, whichever is less	~65 ft.	NA
Lot Coverage: 40%	44%	NA
Building Height: 28 ft (pitched roof)	~16'-9"	28'
Max Wall Height: 20 ft (minus 1 foot for each foot closer to the side yard)	~11'-9"	20' (variance required for wall height)

Interior Side Yard Vertical Inline Addition

The existing principal structure is a noncomplying structure in regard to the north side yard setback (10-foot setback is required). The existing side yard setbacks on both sides of the existing structure are approximately 4 feet. Section 21A.38.050.B.2.c.(2) prohibits two story additions on structures with noncomplying side yard setbacks. Section 21A.38.050.B.2.c.(1)ii allows for a single story noncomplying structure to follow the existing interior side yard setback line provided that the addition does not extend the noncomplying exterior wall more than 20% of the length of the existing wall. The applicant has stated that this is not a feasible option because they are already at 40% lot coverage, and that the only way to reasonably expand their home is by adding a second story utilizing the same footprint.

Section 21A.38.050.B.2.c:

c. Interior Side Yards: Additions to a principal structure with noncomplying side yard setback(s) are permitted as follows:

(1) Single story additions are permitted to follow the existing setback line provided the following standards are complied with:

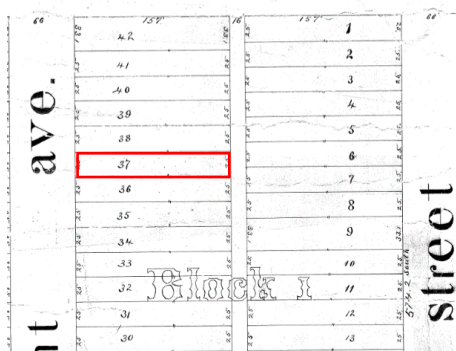
i. The exterior wall height of the addition is equal to or less than the exterior wall height of the existing building. When a cross slope exists along the exterior wall, the interior floor to ceiling height of the addition shall match the interior floor to ceiling height of the existing building.

ii. The addition may extend the noncomplying exterior wall of the building up to twenty percent (20%) of the length of the existing wall. This shall be a one-time addition and no further additions are permitted.

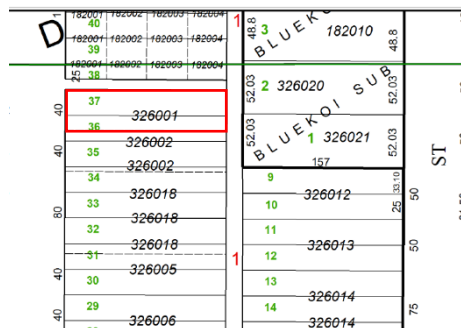
(2) Two story or greater additions shall comply with the side yard setback requirement(s) and maximum wall height as specified in the underlying zone.

Subject Property Description

The property was created as Lot 37 of the Paradise Addition Subdivision in 1890. The current configuration of the lot and surrounding properties is inconsistent with the original subdivision plat. It appears the private alley north of the subject property, running east to west, was created via a warranty deed in 1934 using the south 10 feet of Lot 38 to allow ingress and egress to the subject property. This alley was not platted with the original subdivision and is not a public alley. The subject property was eventually reorganized to be the north 15 feet of Lot 36 and all of Lot 37 for a total width of 40 feet. The image below illustrates the recorded plat and development pattern compared with today.



Original Plat (1890)



Approximate Property Lines Today

In general, subdivisions developed in this era included original lot widths of 25 feet that were later reconfigured to either 40 feet or 50 feet. A lot width under 50 feet is not uncommon in this area of Salt Lake City. Other lots, including majority along this section of Windsor Street, have a similar lot width and length as the subject property. Planning Staff also conducted an aerial review of Windsor Street and found that majority of the homes have similar setback restrictions, with homes within the required setback that would also prevent a second story addition within those setbacks. As a result, the overall buildable area is of similar size as other properties in the neighborhood and zoning district.

The applicant asserts in their application materials that the subject property is unique compared to neighboring structures because it is a duplex rather than a single-family home, which warrants consideration of a variance to create similar livable square footage as other homes. While staff agrees that the property is unique in that it is a duplex rather than a single-family home along this section of Windsor Street, staff is of the opinion that the applicant has similar buildable area available, and does not have a hardship related to size, shape, or topography. Additionally, a larger living space is not a fundamental property right that would justify a variance.

Variance Standards Analysis and Summary

The standards required for granting a variance are set forth in Utah Code Section 10-9-707 and Salt Lake City Zoning Ordinance, Section 21A.18.060. The Hearing Officer may grant a variance if all of the conditions described in Attachment D are met. The applicant shall bear the burden of demonstrating that the standards have been met and the variance is justified. The key issues have been listed below through analysis of this project:

1. **Substantial Property Right:** Having a home on the property is a privilege granted to other properties and is a substantial property right. The property currently accommodates an existing duplex home. While the size of each side of the duplex is modest, at approximately 675 per unit, in Planning Staff's opinion, the request to construct a vertical inline addition into the required side yard setback for enlarged living space is not a substantial property right.
2. **Minimal Variance Necessary:** Variances should only be granted if, "it is not greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant." In reviewing the application materials and site plan, the applicant is limited by lot coverage and cannot exceed 40% in the R-1/5,000 zone. The applicant is above that threshold with a lot coverage of 44%; however, there is a detached garage and shed that could be removed to allow the available lot coverage to increase in the form of a horizontal inline addition. Additionally, a basement addition could potentially be constructed. While the applicant has not provided information on the feasibility of these options, the limitations would likely be economic related. The applicant also has the option of building the second story addition at the setback of 10 feet to comply with the ordinance. While this may not fit the design preference for the addition, design preference and economic consideration are not permissible in a variance case.
3. **Demonstrated Hardship:** The requested variance is not associated with any evidenced property related hardship; it is rather a request for additional living space in their home. As will be discussed further in Attachment D, staff does not believe the property has a hardship that is unique to the subject property as many of the lots in the neighborhood have a similar restriction that would prevent a second story addition.

APPEALS HEARING OFFICER NEXT STEPS

Approval of the Variance Request

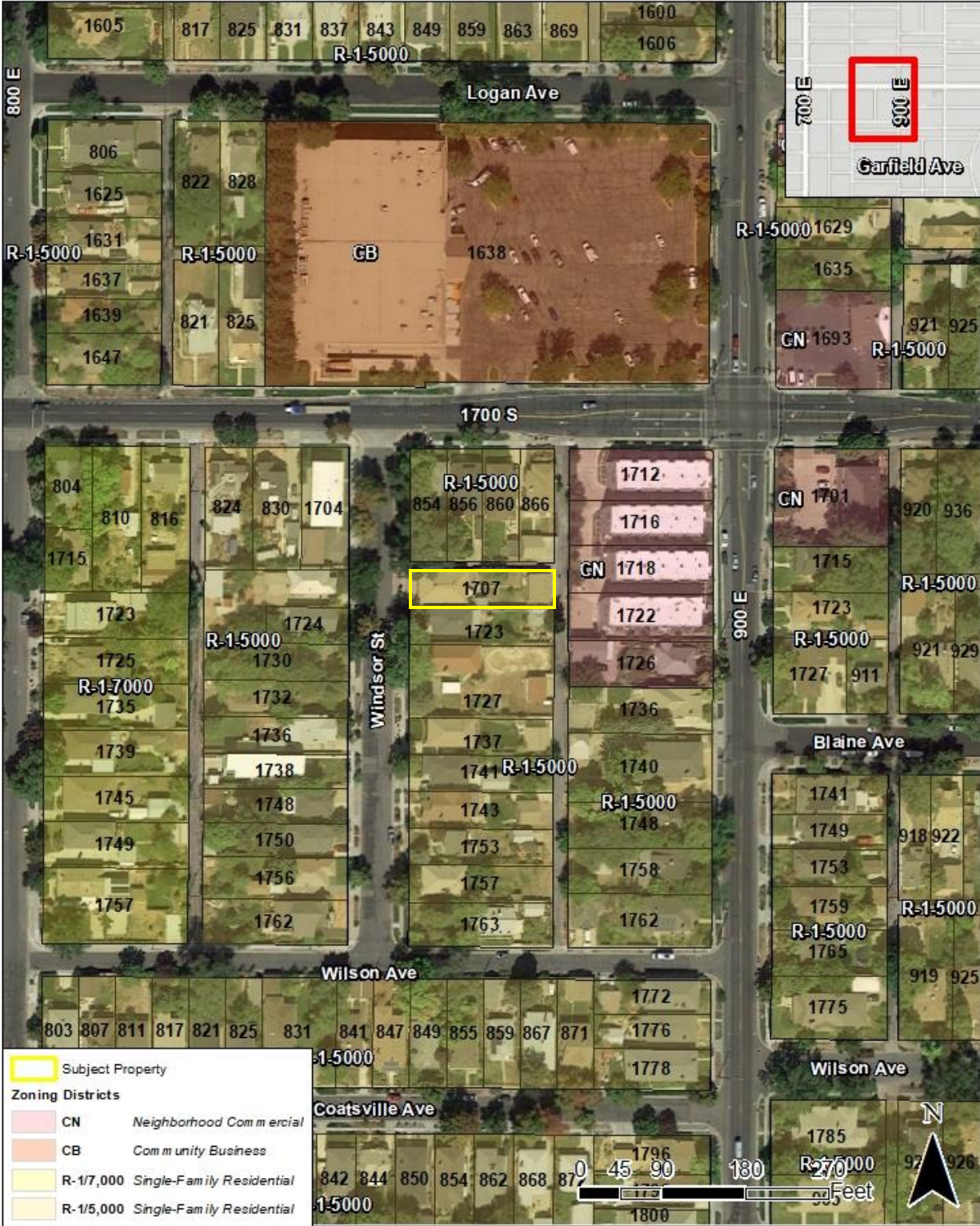
If the requested variance is granted the applicant will be able to construct the second story vertical inline addition within the side yard setback through the building permit process.

Denial of the Variance Request

If the requested variance is denied the applicant would not be permitted to construct a vertical inline addition within the side yard setback but could construct an addition that meets the standards in the R-1/5,000 zoning district.

ATTACHMENT A: VICINITY MAP

Vicinity Map



ATTACHMENT B: SITE PHOTOS



Subject Property



Adjacent alley and property to the north

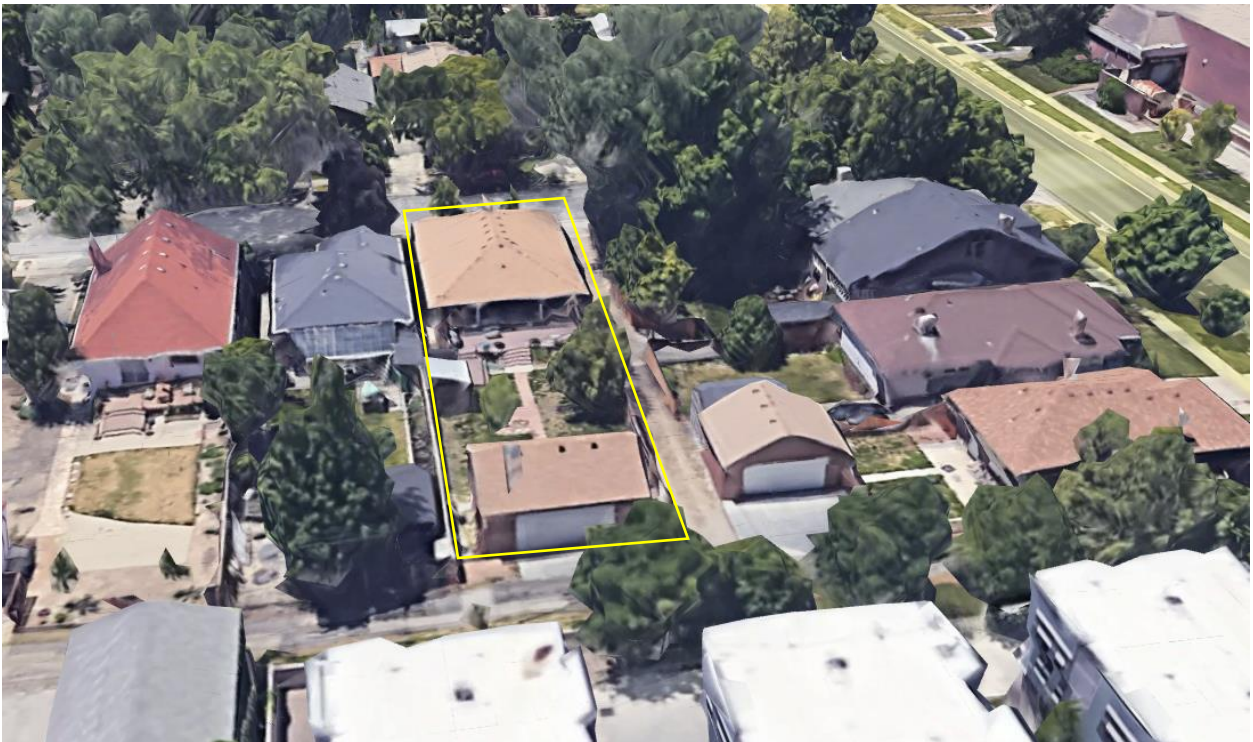


Image showing rear of subject property looking west



Properties across street from subject property



Adjacent properties to the south of subject property

ATTACHMENT C: APPLICANT MATERIALS

REQUESTED VARIANCE INFORMATION

**For: An Existing Duplex @ 1707 & 1709 South Windsor Street,
Salt Lake City, UT 84105 (Built 1918): Zoned R-1-5,000**

PROJECT DESCRIPTION: We are requesting permission to build a second story addition directly above the existing footprint of our single-story duplex because of a disadvantaged use caused by the north side-yard setback restriction. Please see all submitted plans for reference.

A. Describe your proposed construction and specifically how it would not meet the zoning ordinance:

The existing 1918 single-story duplex is physically located outside of the current conditions/restriction of the north-side side yard setback (10'). The north side of this property abuts to an alley, whereas the south side abuts to a single-family residence and will be in compliance to the 4' side yard setback here.

In addition, we are currently at our 40% allowed coverage so a backyard addition is not viable. By allowing us to build directly on our current footprint, we will be able to accommodate and grant both units of the duplex equal usage. Additional bedrooms with proper egress at the upper levels can also be met with our proposed request.

New upper level construction would be simple wood framing with scissor trusses coordinated for current codes and structurally designed by a licensed engineer.

B. Cite the zoning ordinance that prevents your proposal from meeting the zoning requirements:

Currently, the 1918 duplex does not meet the north-side side yard setback along the alley. However, if the variance will be granted, all other setbacks and wall/roof height limits would be met per the granted in-line (vertical) addition.

We would like to briefly note that there is a garage on the east end of the same alley much closer to the alley edge than the dimension we are asking forgiveness for. We would not impede whatsoever on the use of the alley nor impede any view.

C. What special circumstances associated with the subject property prevent you from meeting the zoning requirement?

We are effectively not able to make reasonable use of the lot except for going directly up over the existing footprint because of existing conditions of the duplex as stated above and per plans.

Being granted a variance will make it possible to have a reasonable use of the land and duplex. Additionally, it would be an asset to the neighborhood.

D. Explain how the literal enforcement of this Zoning Ordinance causes an unreasonable hardship that is not necessary in the carrying out of the general purpose of this Zoning Ordinance:

The existing north-side side yard setback zoning restriction, as applied to our specific properties, interferes with reasonable use of the property considering the unique duplex setting and inherent layout within its current environment among single-family households.

Without being granted a variance, we would face a loss of viable and equal use of space for both expanding families. Being granted this variance also reassures both families to not be forced out of their homes. The impact of an addition would only be an asset to the neighborhood, especially when there would be no loss or hardship from an abutting north-side residence that doesn't exist, which the side-yard setback typically protects.

E. Explain what special circumstances exist on the subject property, which do not generally apply to other properties in the same zoning district. The law requires that a property-related hardship be identified before granting a variance:

Because of our unique setting, we are a duplex with very specific needs among single-family residences. Space restrictions would be greatest on the north side unit without the variance. To make the best and most thoughtful use of the current conditions for both families, a direct build above their current footprints would eliminate this hardship, especially since we are working with two separate expanding families in two separate residences with no other feasible way to expand but up.

F. Explain how this variance will be essential to the enjoyment of a substantial property right possessed by other properties in the same zoning district:

By granting this variance, we would not only increase property values within the neighborhood, but we would also help establish a less restrictive standard where specific needs can be met within reason.

G. Would the variance uphold the general zoning plan and not negatively affect the public interest?

We will be consistent with zoning practices and preserve the intent and spirit of the ordinance. We will have integrity in honoring these intents.

Our approach is to be considerate of our neighbors and neighborhood while allowing the right for the owners to enjoy their property and have an ease of expansion for their wellbeing.

H. Explain how this variance will observe the spirit of this Zoning Ordinance and City Master Plan:

Our intent for this variance is **to never**: impair an adequate supply of light/air to adjacent properties, substantially increase the hazard from fire or other dangers to said property or adjacent properties, impair the public health, safety, comfort, morals or general welfare of the inhabitants of the neighborhood, increase traffic congestion in the public streets, nor create a nuisance.

Hopefully, if the variance is granted, we will be able to show flexibility within current codes to be more lenient towards the original moldings of our beloved older homes~ as long as there are no negative implications. It can show the spirit of preservation within guidelines and reason.

If the spirit allows in the near future, we can work together within a different set of standards for certain older "restricted" properties~ to show that they too can still fit in into an increasingly restricted code structure.

Thank you very much for your consideration as we hereby are requesting a variance to allow us the expansion of the permitted use of our duplex to be permissible for both of our growing families.

Additional notes for 1707 & 1709 S. Windsor Street:

We propose that putting on an upper level addition to our existing duplex allows us~ a substantial property RIGHT~ to have proper LEGAL bedrooms with enough light & egress compared to other single family homes in the zoning area. This seems to be the most logical solution to gain this right. Almost all the homes in the area are single family residences and do not face a similar "hardship" to ours (a UNIQUE bisected floor plan) so we believe we should have equal rights as an old duplex standing among single family homes to expand in a nonintrusive, sensible manner. We see no realistic or practical alternative way to achieve our goals to aid our expanding families and their needs.

As cited in one "substantial property right" case in the state of Michigan: "Black's Law Dictionary (8th ed) defines "property" as "[t]he right to possess, use, and enjoy a determinate thing (. . . a tract of land . . .); "property right" is defined as "[a] right to specific property, whether tangible or intangible;" and "right" is defined in relevant part as "[s]omething that is due to a person . . . [a] power, privilege, or immunity secured to a person by law." Random House Webster's College Dictionary (1997) defines "substantial" in relevant part as "of real worth, value, or effect." Applying these definitions, "substantial property right" is reasonably defined in plain, ordinary language as the right or privilege to possess, use, and enjoy the aspects of one's land that are of considerable value and importance."

What we are proposing does not violate the code except for forgiveness to the north side-yard setback because of our non-conforming duplex position. By definition, a setback typically protects the proximity to a neighboring home that could prevent direct sunlight from reaching the neighbor's windows, impede views, or cause damage to an existing ecosystem. Our proposal does not affect this code based on these terms since it abuts to an alley. We cannot foresee any negative impact whatsoever that the variance would cause.

We wish for the city to honor leniency when it comes to older homes, and specifically multi-plex homes, that don't easily fit into the new conformity of an unforgiving code. In essence, the current code does not respect pre-existing conditions to older homes that deserve to be preserved and enjoyed in a simplified manner. We believe it is unreasonable to deny a request for no reason other than abiding by the systematic process of the interpretation of words without considering the humanity and reasonable request of a simple, unobtrusive solution.

By honoring this vertical "in-line" variance, of a sense, it shows that the city can be judicious with respect to history and preservation while still maintaining authority.

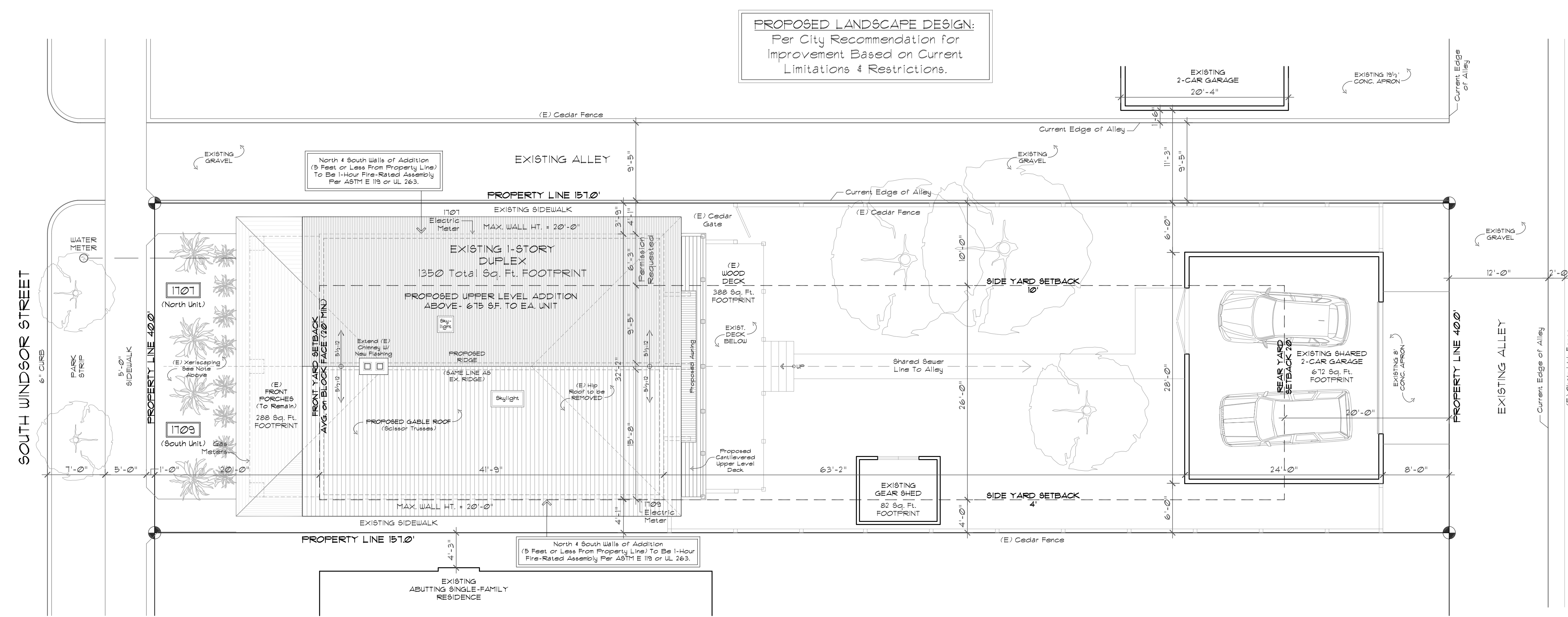
Please don't allow the clients to have to close their doors on the sanctity of "home" for the sake of mere verbiage enforcement without reasonable acknowledgement of a non-threatening request. We are requesting this variance because we are a duplex with physical limitations and human needs, not a single family residence with singular desires.

Humanity, wisdom, integrity and cooperation is what we ultimately seek.

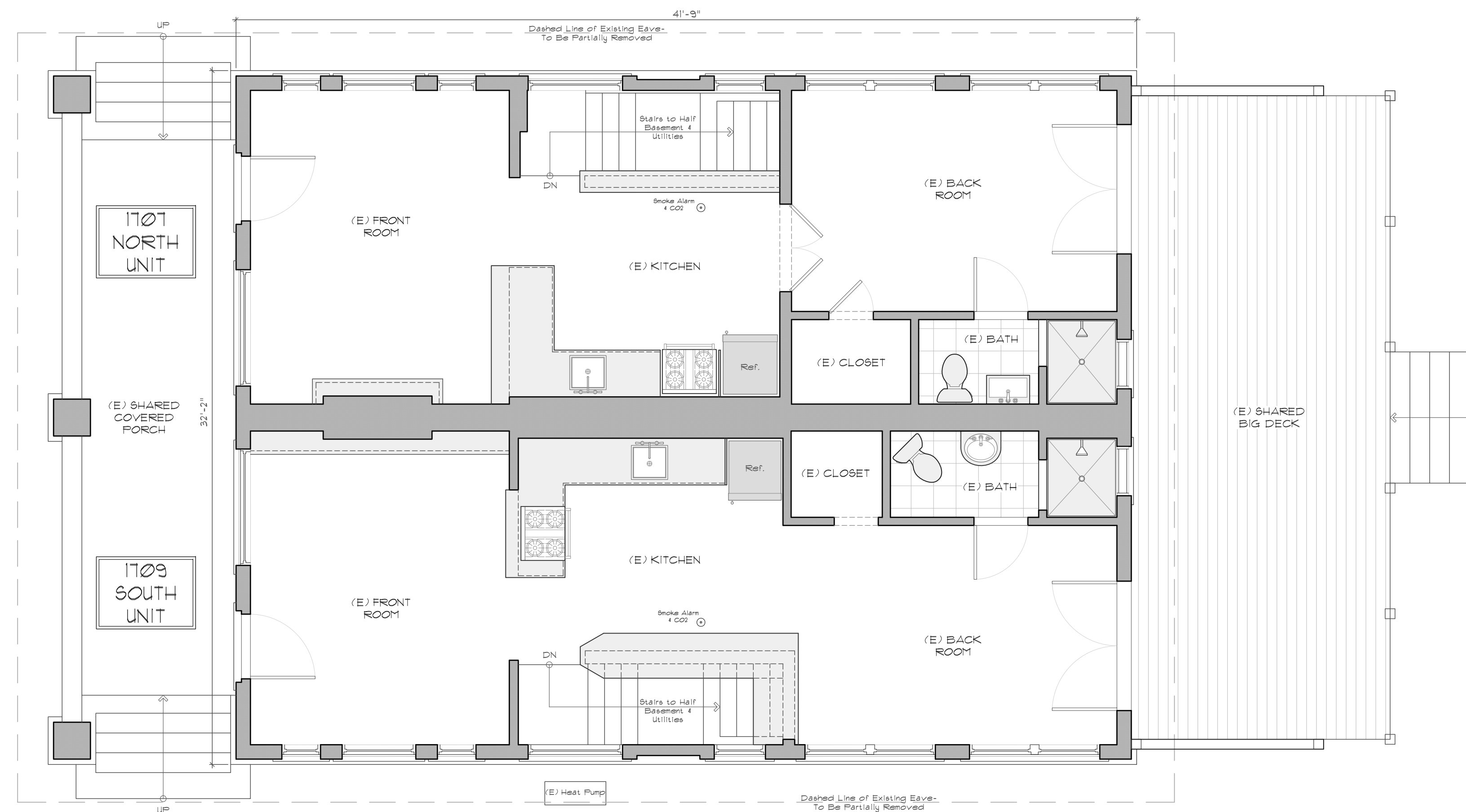
DESCRIPTION	AREA COVERAGES
SCOPE OF WORK (If Variance Granted) Construction of Two New Upper Levels Over Existing 1918 Duplex Footprint.	(E) ML Footprint- Unit 1701 675 sq ft (E) ML Footprint- Unit 1709 675 sq ft (E) Shared Front Porch 4 Steps 288 sq ft (E) Shared Back Deck 4 Steps 388 sq ft (E) Shared Gear Shed 82 sq ft (E) Shared Garage 672 sq ft
SETBACK REQUIREMENTS (R-1-5.000) Front Yard- Avg. of Block (20' Min.) Rear Yard- 25% or 20' Whichever is Less Side Yards- 4' and 10'	Total 2,780 sq ft Lot Area 6,280 sq ft Total Coverage 2,780 sq ft Total % Coverage 44%
HEIGHT LIMITS Sloped Ridge- 28' Sideyard Wall- 20'	New Proposed Upper Levels Will Not Change Coverage Calcs

OWNERS/SITE ADDRESSES	CONTRACTOR	ENGINEER
Fate Bergman 1707 South Windsor Street Salt Lake City, UT 84105 Phone: 801-556-3784	TBD - - Contact: Phone: Email:	TBD - - Contact: Phone: Email:
George Collins 1709 South Windsor Street Salt Lake City, UT 84105 Email: gcollins@bostonurveying.com		
DESIGNER	ZONING	ARCH SHEET INDEX
Designed Per 2015 IRC w/ State Amendments, 2015 IECC Energy Codes, 2017 NEC Electric Codes + SLC Title 21.	Zoned: R-1-5.000 Parcel: *16-17-326-001 Legal Description: N 15 FT OF LOT 36 & ALL LOT 31 BLK 1 PARADISE ADD	A-1.0 - Site Plan, Roof Plan & Landscape Note A-1.1 - Existing & Proposed Floor Plans A-2.0 - Existing & Proposed Exterior Elevations A-2.1 - Existing & Proposed Exterior Elevations
Contact: Tiffany Rowe Phone: 801-634-3234 Email: tiffanyrowe@yahoo.com		

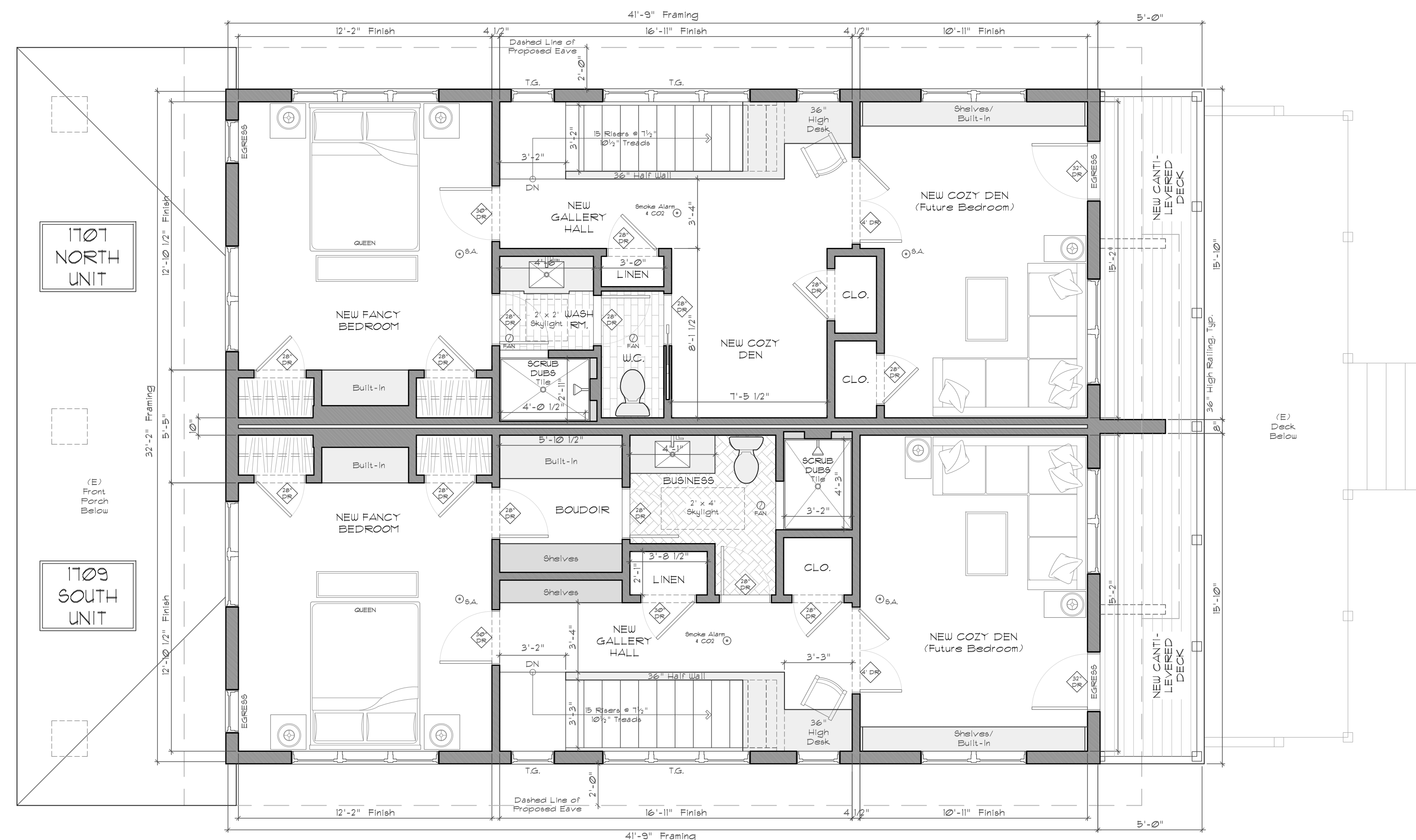
ABBREVIATION LIST									
AB	ANCHOR BOLT	D	PENNY	GA	GAUGE	MIN	MINIMUM	SCHED	SCHEDULE
ABV	ABOVE	DEL	ERYER	GAL	GALLON	MS	MICROSWAVE	SF	SQUARE FOOT
AC	AIR CONDITIONING	DBL	DOUBLE	GALV	GALVANIZED	N	NORTH	SM	SIMILAR
ADJ	ADJUSTABLE	DIA	DIAMETER	GFI	GROUND FAULT INTERRUPTER	NA	NOT APPLICABLE	SS	STAINLESS STEEL
AFF	ABOVE FINISH FLOOR	DIAG	DIAGONAL	GLB	GLU-LAMINATED BEAM	NC	NOT IN CONTRACT	STD	STANDARD
ALT	ALTERNATE	DN	DIMENSION	GUB	GUTTER WALL BOARD	NOM	NORMAL	STRUC	STRUCTURAL
ALJT	ALUMINUM	DR	DOOR	HB	HOSE BIBB	NTS	NOT TO SCALE	T	TREAD
ARCH	ARCHITECTURAL	DS	DOWNSPROUT	HDR	HEADER	OC	ON CENTER	TBD	TO BE DETERMINED
BO	BOARD	DTL	DETAIL	HLD	HARDWOOD	OD	OUTSIDE DIAMETER	TG	TEMPERED GLASS
BLDG	BUILDING	DUB	DUB	HOR	HANGER	OPNG	OPENING	TO	TONGUE AND GROOVE
BLK	BLOCKING	DUG	DRAWING	HORZ	HORIZONTAL	OPPP	OPPOSITE	TOP	TOP OF
BM	BENCHMARK	EA	EACH	HT	HEIGHT	PERF	PERFORATED	TOP	TOP OF PLATE
BOF	BOTTOM OF FOOTING	EU	EXPANSION JOINT	ID	INSIDE DIAMETER	PERP	PERPENDICULAR	TOW	TOP OF WALL
BOU	BOTTOM OF WALL	ELEV	ELEVATION	IN	IN	PL	PLATE	TV	TELEVISION
BRG	BEARING	ENG	ENGINEER	INSUL	INSULATION	PLYUD	PLYWOOD	TYP	TYPICAL
BTWN	BETWEEN	EQ	EQUAL	INT	INTERIOR	PSF	POUNDS PER SQUARE FOOT	UNO	UNLESS NOTED OTHERWISE
CAB	CABINET	EQIP	EQUIPMENT	IRC	INTERNATIONAL RESIDENTIAL CODE	R#	RADIUS PER SQUARE	UNO	UNLESS NOTED OTHERWISE
CB	CATCH BASIN	EXST	EXISTING	JST	JOIST	FT	FOOT	VERT	VERTICAL
CFM	CUBIC FEET PER MINUTE	EXT	EXTENSION	JT	JOINT	PTD	PRESSED TREATED	VERT	VERTICAL
CJ	CONTROL JOINT	FD	FLOOR DRAIN	FF	FINISH FLOOR	QTY	QUANTITY	W	WIDTH
CL	CENTER LINE	FF	FINISH FLOOR	FLR	FLOOR	R	RADIUS	W	WASHER
CLO	CLOSET	FIN	FINISH	LAM	LAMINATED	RD	ROOF DRAIN	WD	WITH
CLR	CLEAR	FRG	FRAMING	LB	POUNDS	REF	REFRIGERATOR	WD	WASHER DRYER COMBO
CMU	CONCRETE MASONRY UNIT	FT	FOOT/FEET	LIF	LINIAL FOOT	REIN	REINFORCING	WD	WOOD
CONC	CONCRETE	FTG	FOOTING	MAX	MAXIMUM	REOD	REQUIRED	WD	WOOD
CONT	CONTINUOUS	FTG	FOOTING	MECH	MECHANICAL	RO	ROUGH OPENING	WUM	WATERPROOF
				MEMB	MEMBRANE	RY	RIDGE VENT	WUM	WELDED WIRE MESH
				MFR	MANUFACTURER				



SITE PLAN
Scale: 1/8" = 1'-0"



1 WINDSOR DUPLEX- EXISTING MAIN LEVEL FLOOR PLANS
SCALE: 1/4"=1'-0" NORTH



2 WINDSOR DUPLEX - PROPOSED UPPER LEVEL FLOOR PLANS
SCALE: 1/4"=1'-0" NORTH

GENERAL KEY	
	Dimensions to Framing or Concrete Wall, UNO.
	Window Symbol - See Window Schedule & GLAZING NOTES on Sheet A-10.
	Door Panel Width- For Glass Doors. See GLAZING NOTES on Sheet A-10. See Sheet A-43 For Exterior Doors.
	Exhaust Fan- See VENTILATION NOTES on Sheet A-10.
	Smoke Alarm &/or CO Detector (Interconnect w/ Smoke Alarm, Smoke Alarm To Meet The Provisions of NFPA 72).

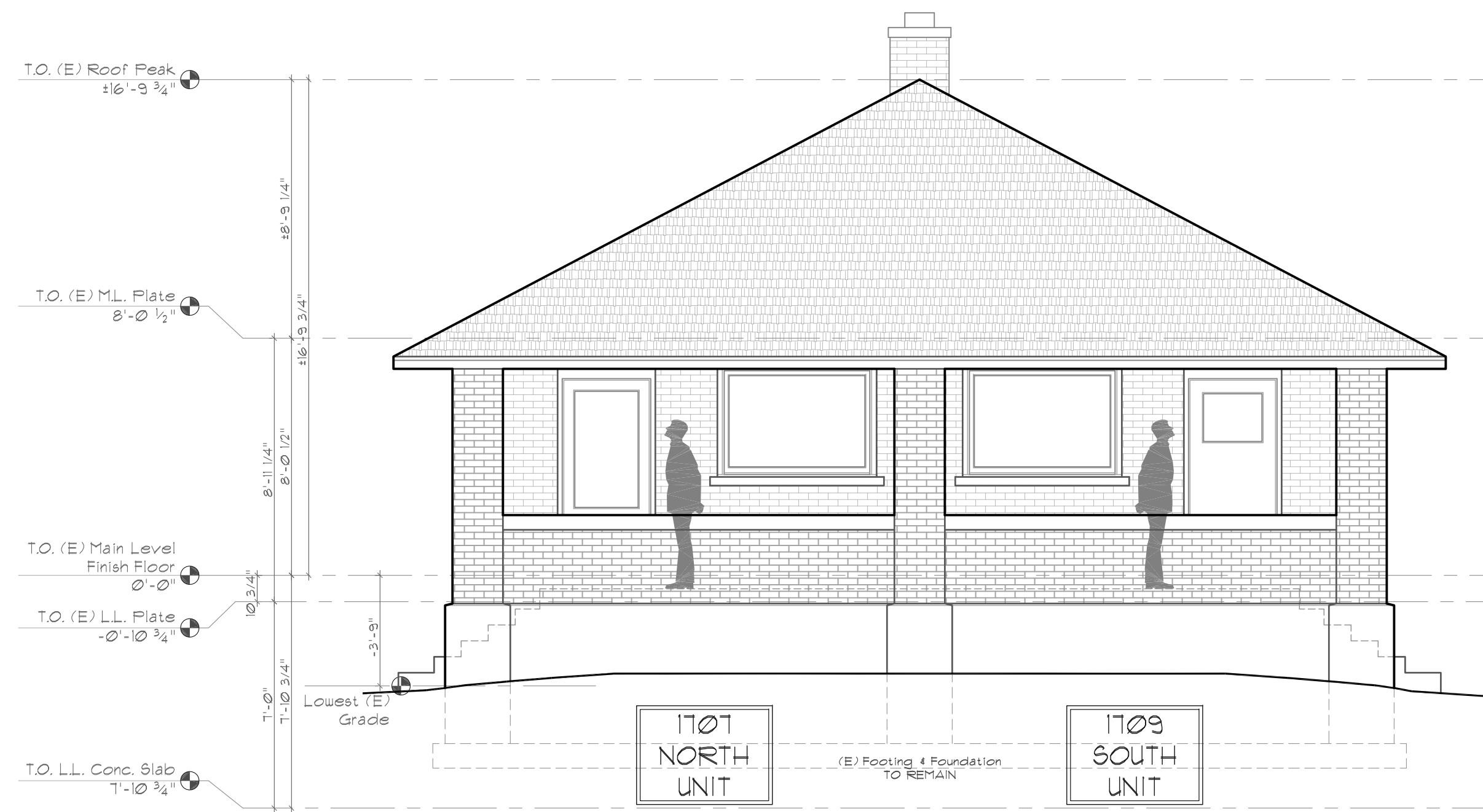
WINDSOR DUPLEX- FLOOR PLANS

1707 & 1709 South Windsor Street, Salt Lake City, Utah 84105 | DATE: December 29th, 2022

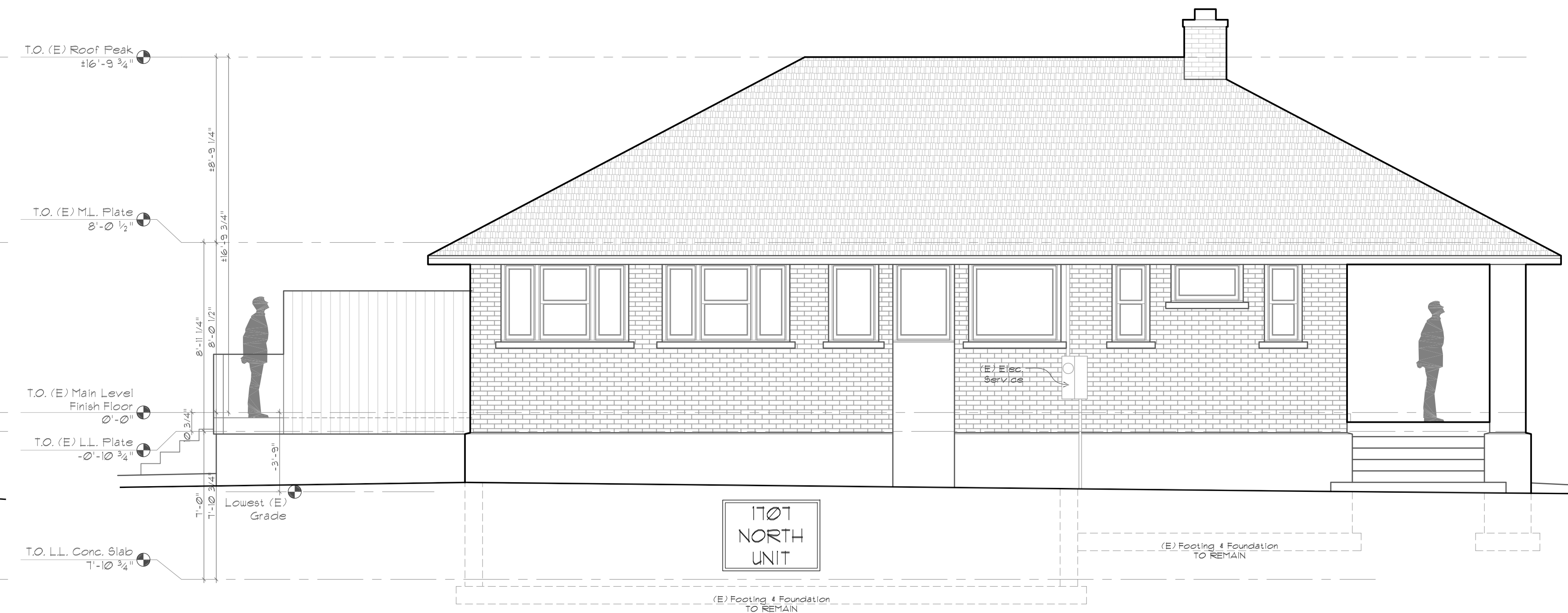
PRELIMINARY:
FOR CITY USE ONLY

DESIGN BY:
TIFFANY ROWE
801-634-3234
© 2022

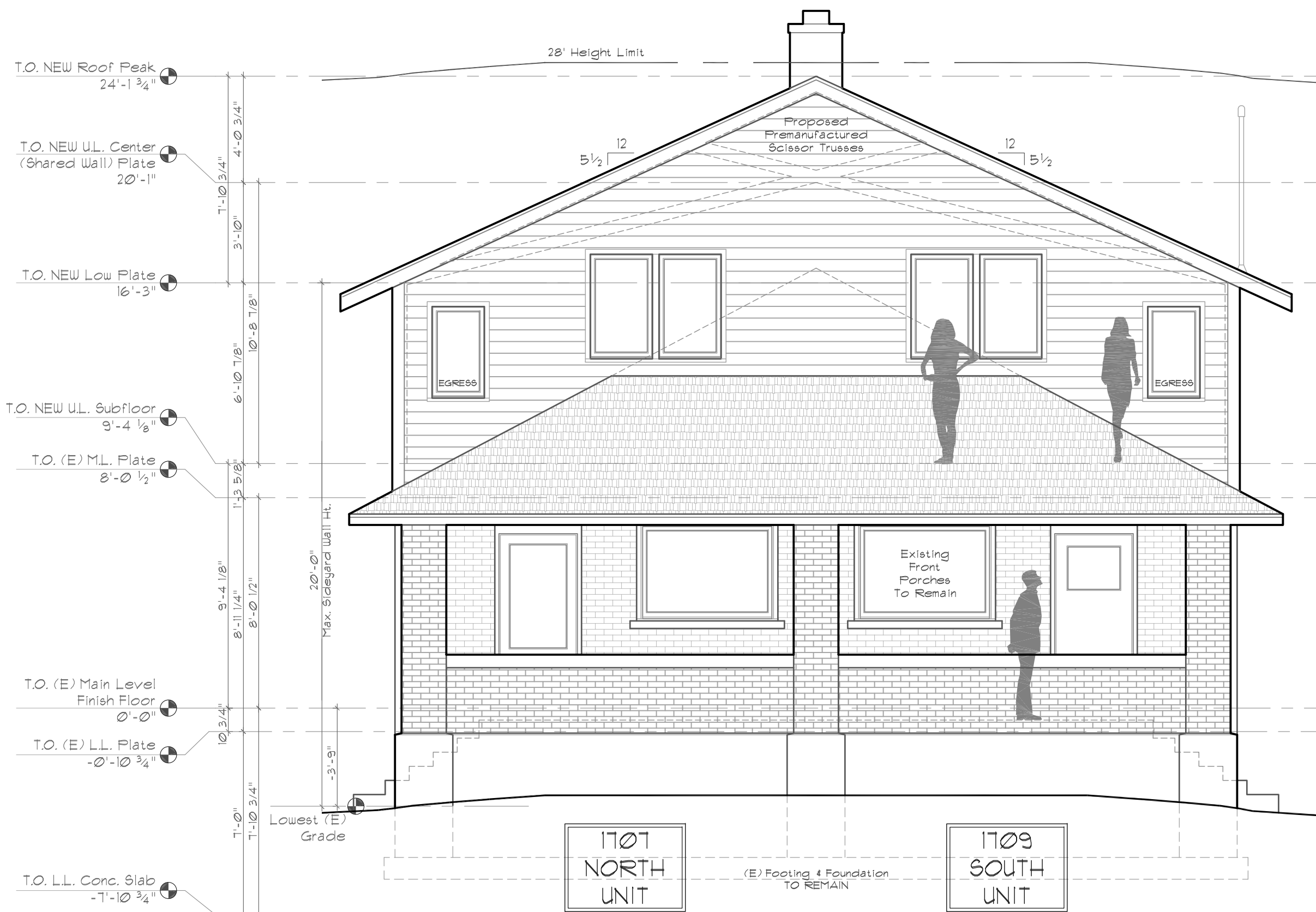
SHEET
A- 1. 1



1 WINDSOR DUPLEX - EXISTING EXTERIOR ELEVATION- WEST
SCALE: 1/4"=1'-0"



2 WINDSOR DUPLEX - EXISTING EXTERIOR ELEVATION- NORTH
SCALE: 1/4"=1'-0"



3 WINDSOR DUPLEX - PROPOSED EXTERIOR ELEVATION- WEST
SCALE: 1/4"=1'-0"



4 WINDSOR DUPLEX - PROPOSED EXTERIOR ELEVATION- NORTH
SCALE: 1/4"=1'-0"

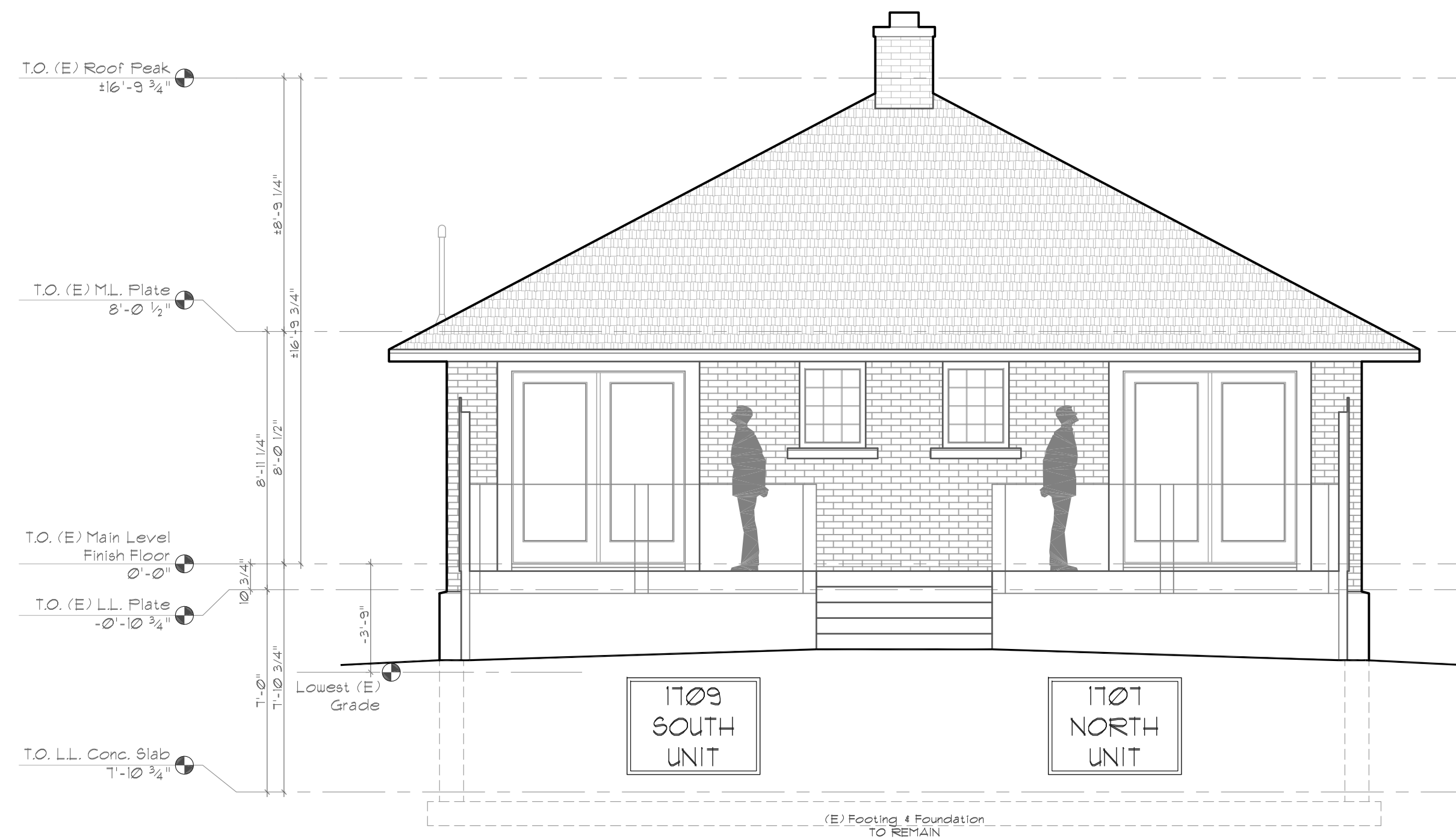
WINDSOR DUPLEX- EXTERIOR ELEVATIONS

1707 & 1709 South Windsor Street, Salt Lake City, Utah 84105 | DATE: December 29th, 2022

PRELIMINARY:
FOR CITY USE ONLY

DESIGN BY:
TIFFANY ROWE
801-634-3234
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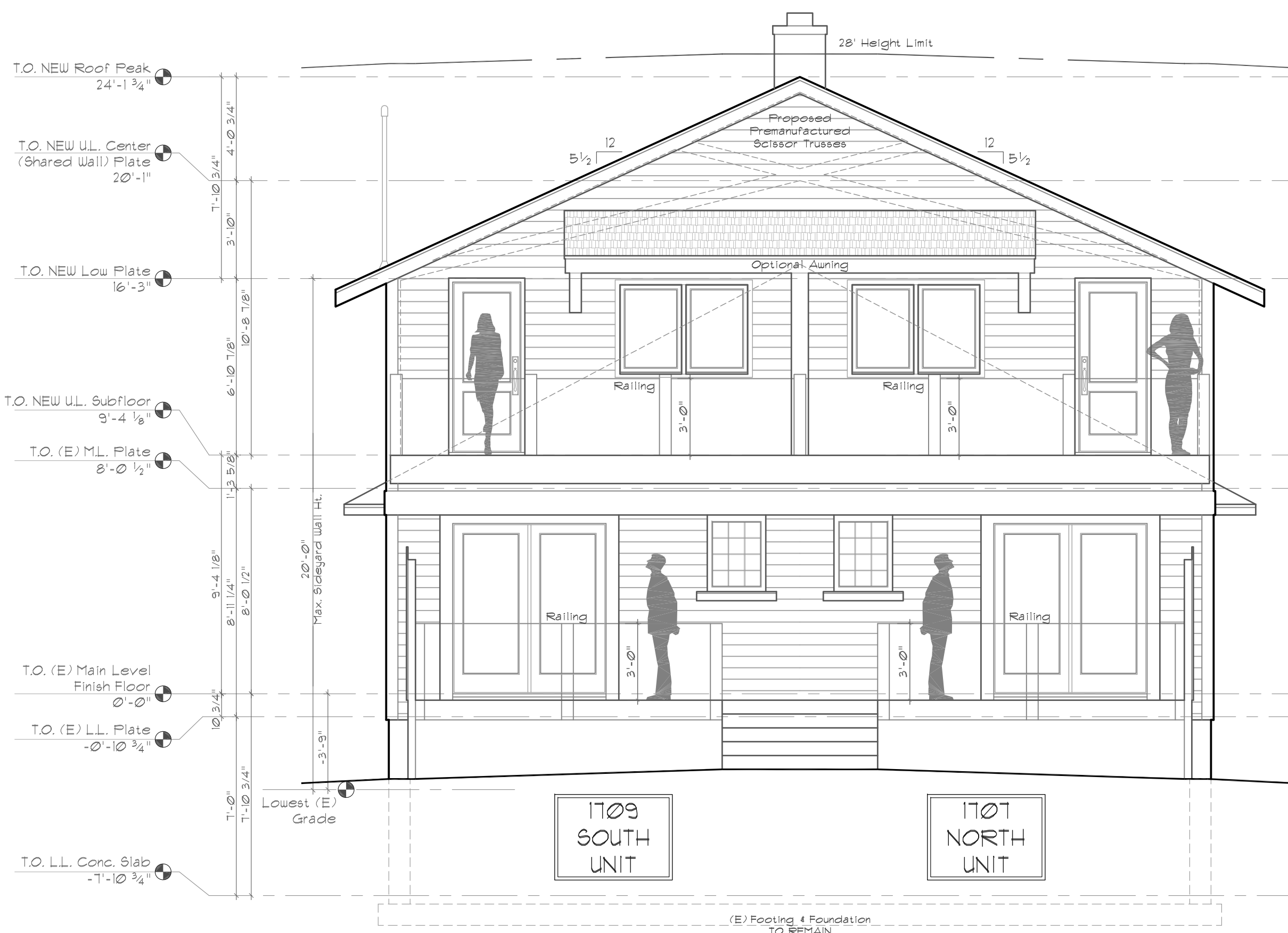
SHEET
A- 2. 0



1 WINDSOR DUPLEX - EXISTING EXTERIOR ELEVATION- EAST
SCALE: 1/4"=1'-0"



2 WINDSOR DUPLEX - EXISTING EXTERIOR ELEVATION- SOUTH
SCALE: 1/4"=1'-0"



3 WINDSOR DUPLEX - PROPOSED EXTERIOR ELEVATION- EAST
SCALE: 1/4"=1'-0"



4 WINDSOR DUPLEX - PROPOSED EXTERIOR ELEVATION- SOUTH
SCALE: 1/4"=1'-0"

SEE SHEET A-2.0 FOR
TYPICAL ELEV. NOTES

ATTACHMENT D: VARIANCE STANDARDS

The Finding for each standard is the recommendation of the Planning Division based on the facts associated with the proposal, the discussion that follows, and the input received during the engagement process. Input received after the staff report is published has not been considered in this report.

21A.18.050 Prohibited Variances: Subject to the prohibitions set forth in section [21A.18.050](#) of this chapter, and subject to the other provisions of this chapter, the appeals hearing officer may grant a variance from the terms of this title only if:

A. Is intended as a temporary measure only
Discussion: The second story addition would be constructed as a permanent structure, and not be temporary in nature.
Finding: Complies
B. Is greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant
Discussion: While the applicant is somewhat limited in other options to expand the size of the duplex due to lot coverage, they could construct a second story addition that meets the setback requirement. Further, staff has determined that there is no hardship to relieve that could not be met by following the existing ordinance.
Finding: Does Not Comply
C. Authorizes uses not allowed by law (i.e., a "use variance").
Discussion: The proposal would be an addition to the existing duplex home, which is not a permitted use in the R-1/5,000 zoning district. However, the use is a legal conforming use per section 21A.38.070 and granting the variance would not authorize a use that is not legally allowed.
Finding: Complies

21A.18.060: Standards for Variances: Subject to the prohibitions set forth in section [21A.18.050](#) of this chapter, and subject to the other provisions of this chapter, the appeals hearing officer may grant a variance from the terms of this title only if:

A. General Standards
1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;

Finding: Does Not Comply

Discussion: The zoning ordinance requires that specified yard areas remain open and unobstructed by buildings, this is accomplished through building setbacks. Setbacks are the minimum distance between the property line and built structure, they are established by the zoning district and vary in size.

The subject property is within the R-1/5,000 zoning district, which is strictly a single-family residential zone that sit on 5,000 square foot lots.

The applicant has not provided sufficient evidence of a property related hardship. The lot, which is approximately 40 feet in width and 6,280 square feet in size, could accommodate a second story addition that meets the requirements of the zoning district. Literal enforcement of the side yard setback requirement would not cause an unreasonable hardship that is not necessary to carry out the purpose of the Zoning Ordinance as staff believes that there are other solutions that could accommodate an addition.

Condition(s): n/a

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;

Finding: Does Not Comply

Discussion: The property is similar in shape and dimensions as other properties in the zoning district. It is staff's opinion that the property does not have special circumstances that do not generally apply to other properties within the same zoning district.

Condition(s): n/a

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.

Finding: Does Not Comply

Discussion: Granting the requested variance would allow the construction of the proposed addition that would, as stated by the applicant, provide more functional living space for both sides of the duplex. Granting this variance is not essential to the enjoyment of a substantial property right, as the property provides a livable home for both units. Staff finds that the proposal provides a desired amenity rather than a substantial property right.

Condition(s): n/a

4. The variance will not substantially affect the general plan of the city and will not be contrary to the public interest; and

Finding: Does Not Comply

Discussion: The Sugar House Master Plan is not substantially affected by this request; however, it should be noted that allowing structures to encroach into required yard areas diminishes the buffer areas between properties which provide for privacy, space, and light between structures. This creates a development pattern contrary to the public interest.

It is the opinion of Staff that a property related hardship does not exist; therefore, it would be contrary to the public interest to deviate from the zoning ordinance regulations.

Condition(s): n/a

5. The spirit of this title is observed, and substantial justice done.

Finding: Does Not Comply

Discussion: Having a home on the property is a privilege granted to other properties and is a substantial property right. However, the request to encroach into the required side yard setback to accommodate a vertical inline second story addition is not a substantial property right. In staff's opinion, the request does not meet the variance standards; therefore, the spirit of the Zoning Ordinance is not observed, and substantial justice would not be done.

Condition(s): n/a

B. Circumstances Peculiar to Property: In determining whether or not enforcement of this title would cause unreasonable hardship under subsection A of this section, the appeals hearing officer may not find an unreasonable hardship unless:

1. The alleged hardship is related to the size, shape or topography of the property for which the variance is sought; and

Finding: Does Not Comply

Discussion: The lot width is 40 feet with existing setbacks of 4 feet on each side and 157 feet deep. The average lot width and lot size on the block face is similar, and other properties would likely face similar limitations for any proposed second story addition within an existing side yard setback. Staff agrees that the property is unique in that it is a duplex rather than a single-family home but does not find that it contains a hardship that is related to the size, shape, or topography.

Condition(s): n/a

2. The alleged hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

Finding: Does Not Comply

Discussion: The subject site requires a 10-foot setback on one side and a 4-foot setback on the other side. The existing home is approximately 4 feet on both sides. The side requesting the variance is on the 10-foot setback side, which also borders a private alley that provides a 10-foot buffer from the adjacent properties. While the buffer from the alley to the neighboring property does help mitigate impacts from the second story addition, the applicant does not own the alley and cannot treat the property as the required setback.

Staff researched the alley and found that while it appears public, it is a private right of way. While the alley cannot be vacated through a public city process, the property owner could potentially work with the abutting property owners to purchase the alley and combine it with their property. This would then meet the setback requirement to construct the vertical addition where proposed.

Staff agrees with the applicant's assessment of the site, but the conditions of the property do not constitute a hardship as they are the same conditions as the other properties on Windsor Street and in the broader area. Staff is of the opinion that the subject property does not have any peculiar circumstances related to the size or shape of the lot.

Condition(s): n/a

C. Self-Imposed Or Economic Hardship: In determining whether or not enforcement of this title would cause unreasonable hardship under subsection A of this section, the appeals hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

1. The hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

Finding: Does Not Comply

Discussion: The requested addition is related to the applicant's desire to have additional living space within the duplex home. A functional, though modest sized duplex is existing on site. The hardship in this case is self-imposed.

Condition(s): n/a

D. Special Circumstances: In determining whether or not there are special circumstances attached to the property under Subsection A of this section, the appeals hearing officer may find that special circumstances exist only if:

1. The special circumstances relate to the alleged hardship;

Finding: Does Not Comply

Discussion: As discussed above, the property is similar in shape and dimensions as other properties in the zoning district. It is staff's opinion that the property does not have special circumstances that do not generally apply to other properties within the same zoning district.

Condition(s): n/a

2. The special circumstances deprive the property of privileges granted to other properties in the same zoning district.

Finding: Does Not Comply

Discussion: The subject property has an existing duplex home that encroaches into the north side yard setback. The dimensions of the lot do not deprive the property of privileges, as the surrounding homes also present similar encroachments into the side yard setbacks. An addition could be built that follows the required setback. It would not have the desired space or design that the applicant seeks, but it would provide some addition of living space.

Condition(s): n/a

ATTACHMENT E: PUBLIC COMMENTS

Notice of the public hearing for the proposal included:

February 3, 2023:

- Public hearing notice mailed
- Public notice posted on City and State websites and Planning Division list serve

February 6, 2023: Public hearing notice sign posted on the property

Public Input: No public comments have been received since the publishing of this report.