

PLANNING COMMISSION
10101 Montgomery Road • Montgomery, Ohio 45242 • (513) 891-2424

### February 19, 2024 7:00 P.M.

- 1. Call to Order
- 2. Roll Call
- 3. **Election of Officers**
- 4. **Guests and Residents**
- 5. Old Business
- 6. **New Business** 
  - A. Application for a Modification of a Conditional Use and Final Development Plan Approval regarding a Façade Change for Camargo Cadillac.
  - B. Proposed Text Amendment Chapter 151.1202 Use Regulations or Chapter 1502.02 General Provisions Regarding Retail Sales of Recreational Marijuana.
- 7. Staff Report
- Approval of Minutes: November 20th, 2023 8.
- Adjournment 9.



### STAFF REPORT

### Planning Commission

Application for a Modification of a Conditional Use and Final Development Plan Approval regarding a Façade Change for Camargo Cadillac

9880 Montgomery Rd

February 16, 2024

Applicant: Elevar Design Group, LLC

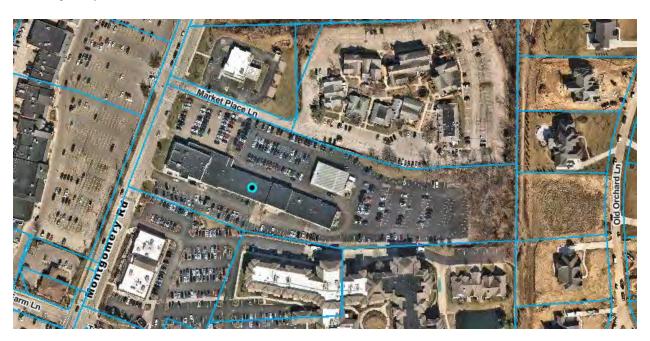
555 Carr Street

Cincinnati, Ohio 45203

Property Owner: Camargo Cadillac Company

250 E Fifth Street Suite 285 Cincinnati, Ohio 45202

### Vicinity Map:



### Nature of request:

The owner, Camargo Cadillac Company, is requesting a Modification of a Conditional Use and Final Development Plan approval for a new façade on the structure located at 9880 Montgomery Road. The new façade is intended to modernize the building to meet the current Cadillac branding standards. No additional building expansion will occur, however the interior of the building will be expanded by 594 square feet due to the proposed enclosure of a porte-cochère.

### Zoning:

The property is zoned 'GB' – General Business and is used for Camargo Cadillac. Auto dealerships are a conditional use in the 'GB' District. The exterior façade change to the principal building requires a modification of the existing conditional use permit for the property. The property to the north is zoned 'LB' Limited Business and used for Fifth Third Bank and The Marketplace of Montgomery. The property to the east is located in the Village of Indian Hill and zoned for large lot residential. The property to the south is zoned 'D-2' – Multi-Family and 'GB' – General Business District. The portion of the property that is zoned 'D-2' is used for the main campus of Twin Lakes. The property to the west across Montgomery Road is zoned 'GB' and used for Montgomery Square Shopping Center.

### Findings:

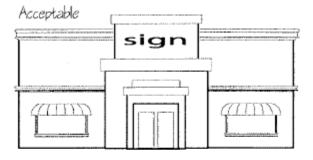
Setbacks: The proposed façade changes will not impact the setback requirements.

Building Materials: While the building materials are not fully in compliance with the Montgomery Road Corridor Design Guidelines, the architect has worked with Staff to improve the material types regarding the usage of brick and stone which brings the facade closer into conformance with the Corridor Design Guidelines:

### Montgomery Road Corridor Design Guidelines

 The Corridor Design Guidelines state that the building design is one of the strongest features in creating an image for the Corridor and the City. A façade that is a flat plane with no visual breaks, no architectural details uses, and a flat roof is not acceptable and horizontally long buildings should be visually broken up by recesses, setback variations, architectural detailing various roof heights and application of building materials.

- Additionally, building facades are to have a clearly defined base, roof edge
  with a distinct base, middle, and top at a scale that relates to the individual
  human. The façades should incorporate a variety of architectural design
  features, techniques, patterns, materials, and colors in a coordinated manner
  that relates to the overall design.
- While the sides of the proposed structure appear to meet the intent of the guidelines, the front façade with flat ACM panels does not provide variation or material changes.



Facade is broken up horizontally by the placement of windows and doors and the projection of the central entrance. The use of different rooflines, comice mouldings, scoring of the exterior material and awnings break up the vertical bulk of the building relating it the pedestrian with smaller human scale elements.

The acceptable examples use architectural details, setbacks, windows and various roof heights to break up the mass of the structure.

### Figure 6: Building Bulk Not Acceptable



Facade is a flat plain with no visual breaks. no architectural details used, and a flat roof. Building appears to be horizontally long and does not incorporate human scale elements.

### **Building Materials**

The character of the Corridor is enhanced by the use of quality building materials that reflect the purpose of these guidelines. The following guidelines apply to the exterior of all buildings in the Corridor.

### Permitted Materials

a. <u>Primary Materials-</u> Buildings in the Corridor should have a primary exterior covering of brick, stone, natural wood clapboard, wood board and batten, wood shingles or modern manufactured materials that create the appearance of the materials listed above.

- b. <u>Accent Materials</u>- Buildings in the corridor may incorporate any of the above permitted primary materials as an accent. The following additional materials may be used on a building in the corridor as an accent that comprises no more than 25% of the buildings exterior wall surface; efface, decorative concert masonry units, and cementious fiber board.
- c. Other materials that are not listed as prohibited may be approved by the review board on a case by case basis as a primary or accent building material.

*Building:* The interior of the building will be expanded by 594 square feet due to the proposed enclosure of porte-cochère. However, no exterior building expansion will occur.

Parking: The interior expansion would require two additional parking spaces to be added. The applicant has indicated that the can comply with code requirements to add the two additional parking spaces.

Circulation: The proposed façade changes will not affect the circulation of the site.

Lighting: The application does not indicate any additional lighting.

Landscaping: The applicant is proposing that no changes be made to the landscaping as part of this application.

Stormwater: This project will not increase the amount of impervious surface area and the City Engineer has indicated no additional requirements or concerns.

Utilities: No changes in utility service are proposed

Signage: New wall signage will be submitted for separate approval. The current location of the proposed wall signage is not permissible as it is located above the window height and must be located equal or below the top of the window. There is an existing non-conforming freestanding pole sign that will remain with a future permissible face change.

### CONDITIONAL USE SPECIFIC CONDITIONS:

Chapter 151.2007(r) lists the specific conditions for places of public safety facilities. Those conditions are listed below with a description of how the applicant is or proposes to address the condition.

- 1. Vehicle parking areas, equipment storage areas, maneuvering lanes, and access ways to public streets shall be designed to cause no interference with the safe and convenient movement of automobile traffic on and adjacent to the site.
  - No changes are being proposed to the parking and/or maneuvering or access ways.
- 2. Display of vehicles for sale shall be located on a paved surface and shall comply with the parking setbacks according to the regulations in Section 151.1207.
  - No changes are being proposed to the vehicle display areas.
- 3. No junk or inoperative vehicle shall be permitted to remain outdoors on the property for a period exceeding 72 hours.
  - No junk or inoperative vehicles will remain outdoors for a period exceeding 72 hours.
- 4. Lighting for all areas used for the outdoor display of automobiles shall be in accordance with a plan consistent with the lighting regulations set forth in § 151.3213(c) and approved by the Planning Commission.

No changes are being made to the lighting of the outdoor display areas.

Chapter 151.2002 lists 12 general standards that are applicable to all conditional uses. Staff has reviewed these 12 conditions and found that the site and the proposed expansion of the body shop meets all the conditions.

### Staff Comments and Recommendation

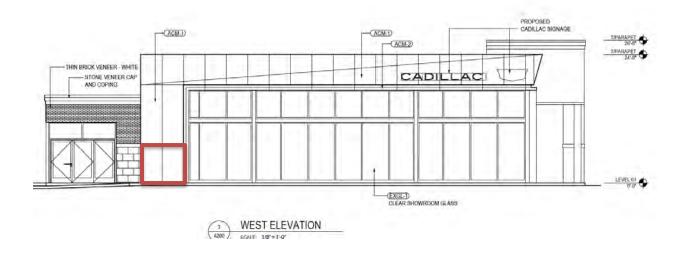
The applicant worked with Staff proposing multiple iterations of a façade to meet the Design Guidelines more closely while also working to adhere to the new national brand desired architecture for Cadillac. They have incorporated stone and brick on much of the façade, however the full-length metal ACM panels along the Montgomery Road frontage are not meeting the base, body and variation of materials regulations. The use of the full ACM proposed panels on the frontage will need further review by the Planning Commission.

The City Engineer, Public Works, Police and Fire Departments had no comment regarding the proposed façade change as it does not impact stormwater, access, or safety issues.

To date, no public comments have been received regarding the application.

Should the Planning Commission recommend approval to City Council for the Modification of a Conditional Use and Final Development Plan, Staff would recommend the following conditions:

1. Discussion regarding adding a stone base on the western side (and wrapped around to the north) of the structure fronting Montgomery Road indicated below in the **red** area.



- 2. An updated site plan indicating compliance with the required two additional parking spaces.
- 3. The Final Development Plan be approved contingent on City Council's approval of the Expansion of Conditional Use.



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8	Existing Photo - north elevation
9	Existing Photo - north image
10	Existing Photo - SW image
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13	Cadillac proposed brand image
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15	Sheet A201 - Proposed Exterior Elevations
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### APPLICATION FORM

Meeting (Circle): Board of Zoning Appeals Planning Commis Commission	ssion Landmarks
Project Address (Location): <u>9880 Montgomery Rd</u>	
Project Name (if applicable): Camargo Cadillac	
Auditors Parcel Number: 603-0008-0010-00	
Gross Acres: 6.199 Lots/Units 1 Commercial	Square Footage 32,567
Additional Information: Exterior facade upgrade and interior remodel	
PROPERTY OWNER(S) <u>Camargo Cadillac Company</u> Contac	
Address 250 E Fifth St Suite 285 Phone	
City <u>Cincinnati</u> State <u>OH</u>	
E-mail address <u><b>gjdealer@aol.com</b></u>	
APPLICANT_Elevar Design Group, LLC Contact _Kev	vin Bleichner
Address <u>555 Carr St.</u> Phone	
City Cincinnati State OH	
E-mail address kbleichner@elevar.com	Ζιρ <u>40200</u>
certify that I am the applicant and that the information submitted with this application is true a pelief. I understand the City is not responsible for inaccuracies in information presented, and the application may cause the application to be rejected. I further certify that I am the owner or nvolved in this application, or the lessee or agent fully authorized by the owner to make this subpelow.	at inaccuracies, false information or incomplete purchaser (or option holder) of the property
Property Owner Signature	FOR DEPARTMENT USE
ONLY	
Print Name	Meeting Date:
Greg Joseph	Total Fee:
Date <u>1/29/2024</u>	Date Received:
	Received By:



### CONSENT OF OWNER(S) TO INSPECT PREMISES

To: City of Montgomery Planning Commission and Staff City Hall 10101 Montgomery Road Montgomery, Ohio 45242 Re: Review Subject Site Dear Members and Staff: As owner(s) of the property located at 9880 Montgomery Road we hereby grant permission to Members of the Planning Commission and City of Montgomery Staff to enter the property for visual inspection of the exterior premises. The purpose of said inspection is to review the existing conditions of the subject site as they relate to the application as filed to the Planning Commission. Print Name Greg Joseph Date 1/29/2024 Planning Commission Members: Vince Dong Peter Fossett Dennis Hirotsu Andy Juengling Barbara Steinebrev

Patrick Stull

Alex Schneider



January 29, 2024

City of Montgomery, OH Attn: Melissa Hays, AICP, City Planner 10101 Montgomery Rd Montgomery, OH 45242

RE: Application for Conditional Use for the Camargo Cadillac building

Zoning administrator,

This is a request by Kevin Bleichner of Elevar Design Group, LLC located at 555 Carr Street, Cincinnati, OH 45203 for the remodel of the exterior and interior of the Camargo Cadillac building as a conditional use for the property located at 9880 Montgomery Road, Montgomery, OH on behalf of the owner, Gregory G. Joseph of the Camargo Cadillac Company located at 250 East Fifth Street Suite 285, Cincinnati, OH 45202.

#### STATEMENT OF NEED

The property currently contains a 32,567 sf dealership building with 36 service bays and a body shop. The brand, General Motors, Cadillac Motor Car Division is requiring older facilities to be updated to meet the current brand standards. This includes changes the exterior façade and compete updating of materials and lighting inside.

### **SUMMARY REPORT**

The updating of this facility will provide a fresh look inside and out while still meeting the appearance criteria outlined in the Code of Ordinances. Because the building footprint is not being expanded there will not be any additional need for service vehicle, inventory or customer parking areas. There will be an increase in building square footage of 594 square feet by enclosing the Porte-cochere on the north side of the building. Also there will be no change to entries or exits onto Montgomery Road or Market Place Lane nor will there be any change to the existing parking lot lighting. A slight modification to the sidewalk on the NW corner will be effected to allow for cars to exit the New Car Delivery room. This will include some warping of the existing pavement to meet the finished floor elevation of this space. The additional building lighting will be LED lighting that outlines the glass on the west and south showroom elevations. An image of this lighting is presented herein.

#### STATEMENT OF MITIGATION OF NEGATIVE EFFECTS AND STANDARDS COMPLIANCE

With the proposed location of the building, there will be no negative effects. Compliance with sections 151.2003-151.2008 will be met.

#### Section 151.2006, Schedule 151.2006

1. The total lot size is 6.9 acres with the minimum requirement being 3 acres.



2. The building is located greater than 65' from the residential buildings on the adjacent lot to the east, greater than 5' from the property line to the north and south as well as greater than 50' from the property line to the west, Montgomery Road.

### Section 151.2007,(B) (1)-(4)

- 1. There will be no change in circulation within the existing property limits.
- 2. All automobile service will be conducted within the proposed building and no junk, inoperable or unlicensed vehicles will be stored on site.
- 3. No parking lot or building lighting will be added. All parking lot lighting is existing to remain.
- 4. There is no change to the remaining display of vehicles for sale.

### Section 151.2007,(D), (1)-(3)

1. This facility does not contain a car was and none is planned

#### Other items

- 1. As the facility is not being expanded, there will be no changes to any parking, and as such no change in the current storm water management with the project site.
- 2. The current landscaping will remain as is with no changes.
- 3. The building materials will be changed as illustrated in the attached documents.
- 4. Signage will be updated to reflect the current Cadillac brand standards.
  - a. A separate submittal for signage will be applied for after receipt of current brand requirements are discussed.
- 5. Detailed plans are attached for review as well as proof of ownership.

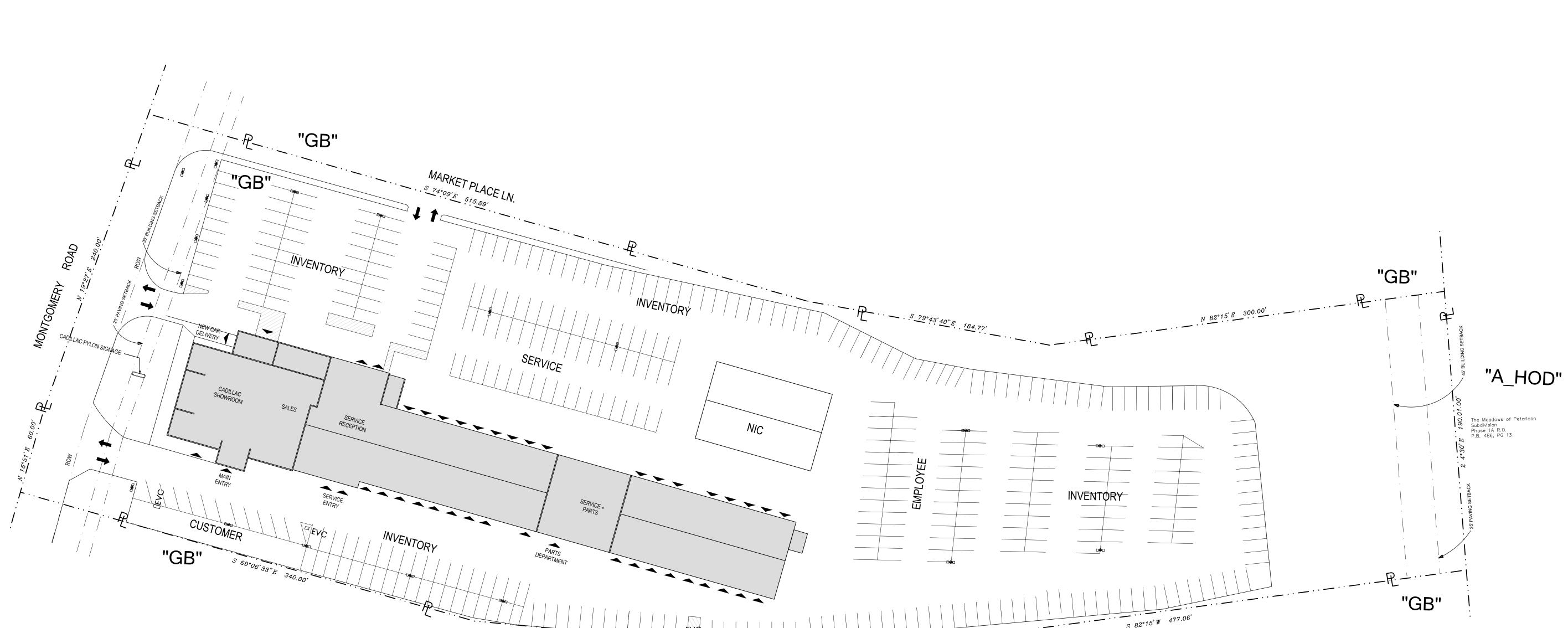
This concludes the Application for Conditional Use.

Sincerely,

Kevin Bleichner, RA

en P. Mc

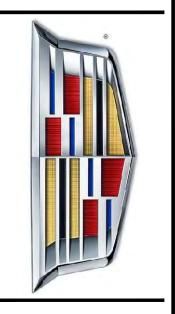
Cincinnati Dayton Lexington Cleveland











CADILLAC i, Montgomery, OH 45242 CAMARGO (9880 Montgomery Roadi, N

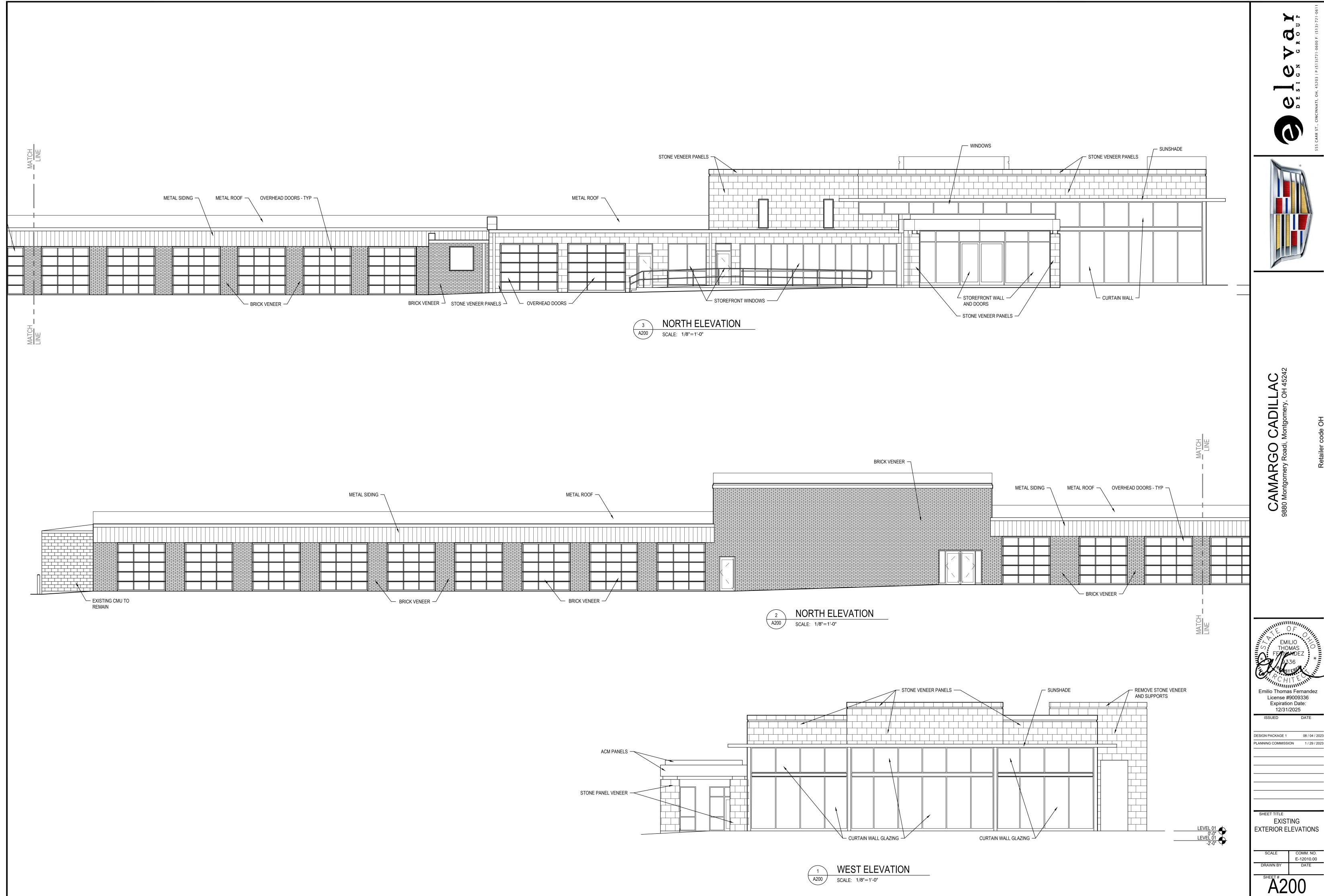
Emilio Thomas Fernandez

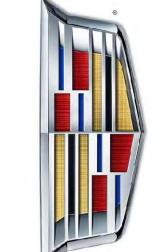
License #9009336 Expiration Date: 12/31/2025

DESIGN PACKAGE 1 08 / 04 / 2023 DESIGN PACKAGE 1 RESPONSE 09 / 18 / 2023 12 / 06 / 2023 DESIGN PACKAGE 2 PLANNING COMMISSION 1 / 29 / 2023

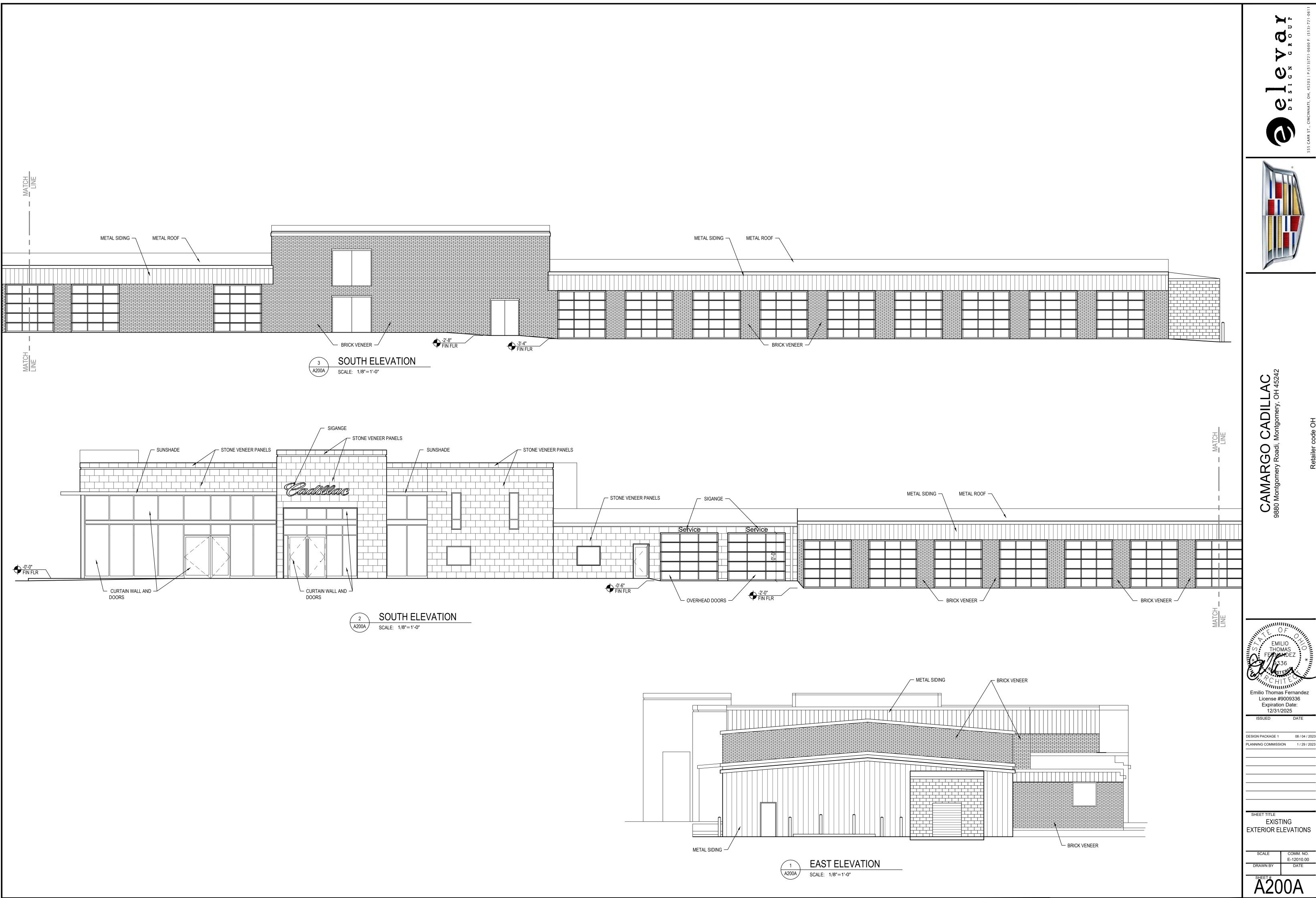
ARCHITECTURAL SITE PLAN

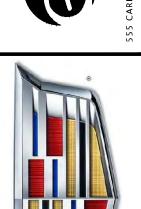
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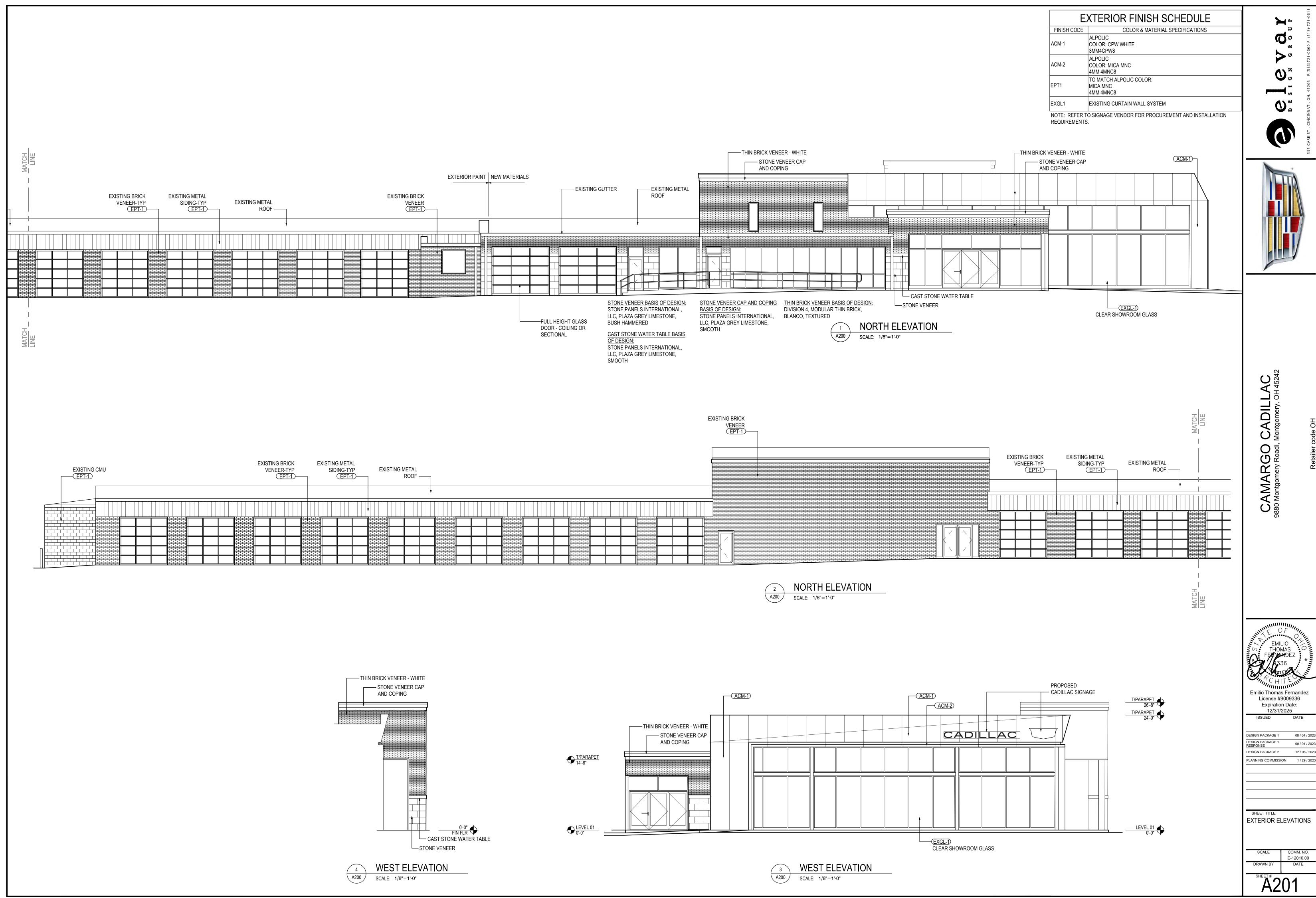
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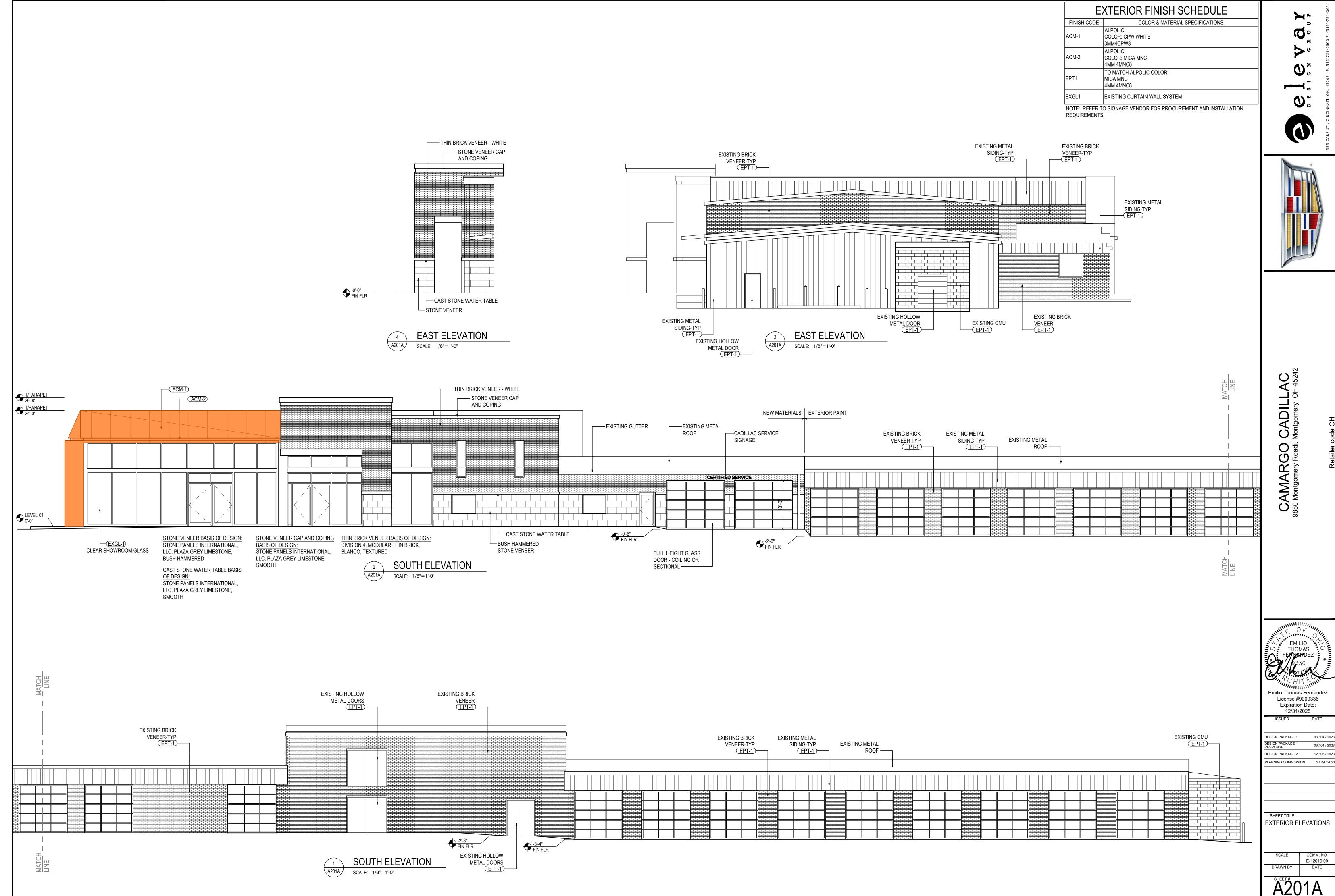




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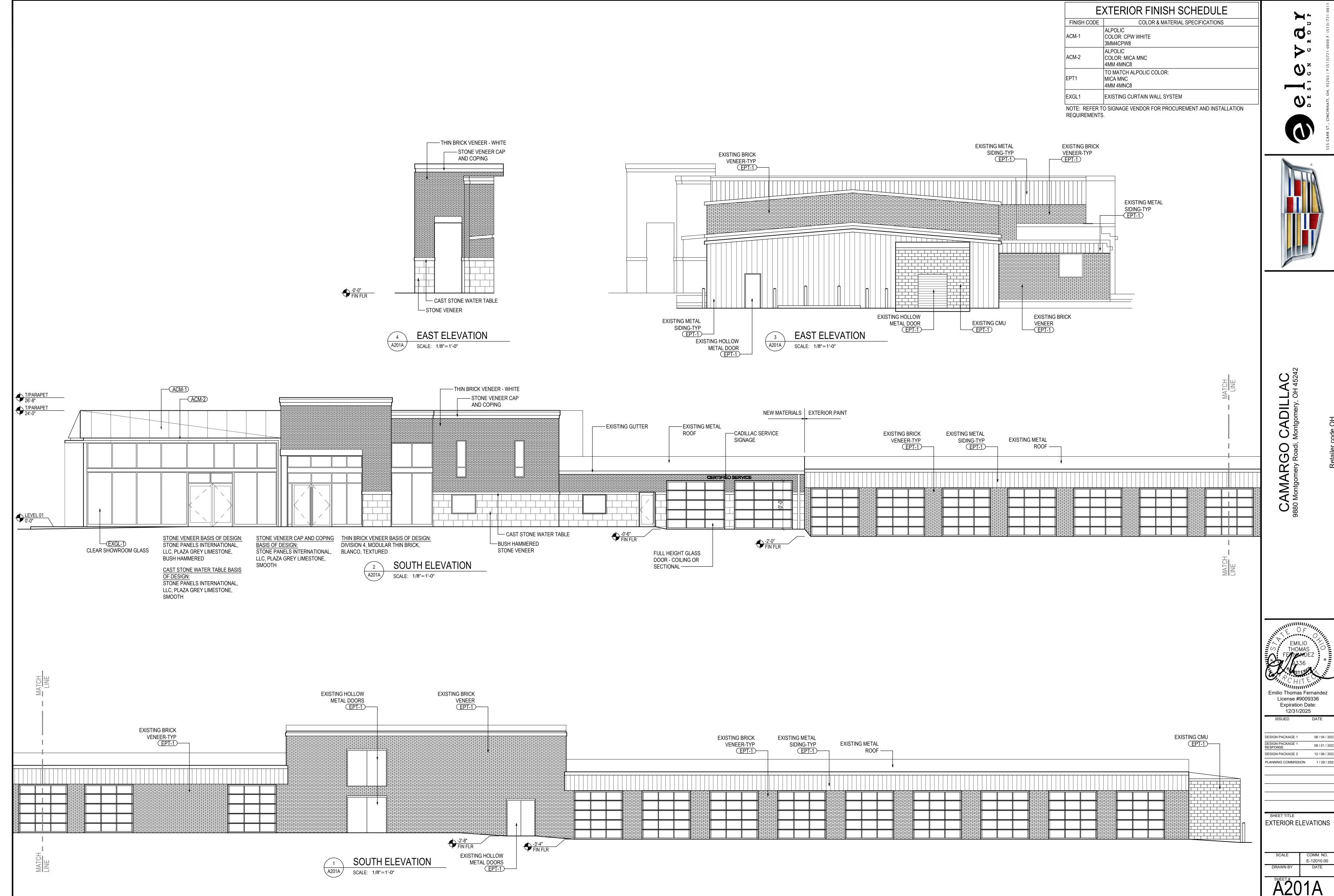




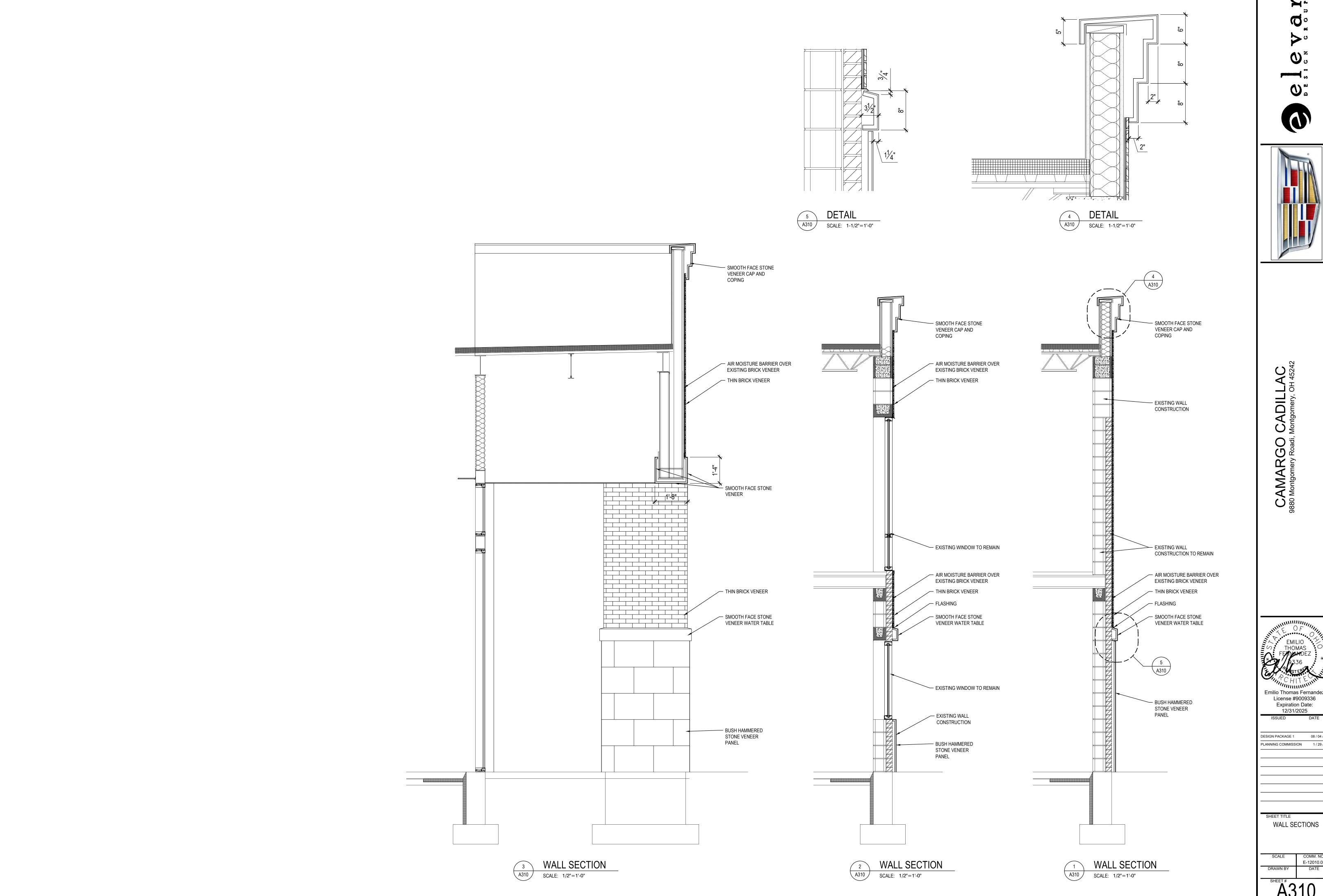
# CADILLAC CORPORATE IDENTITY



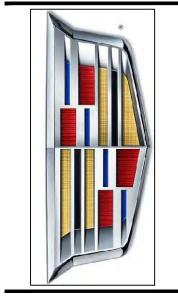




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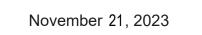
Emilio Thomas Fernandez License #9009336

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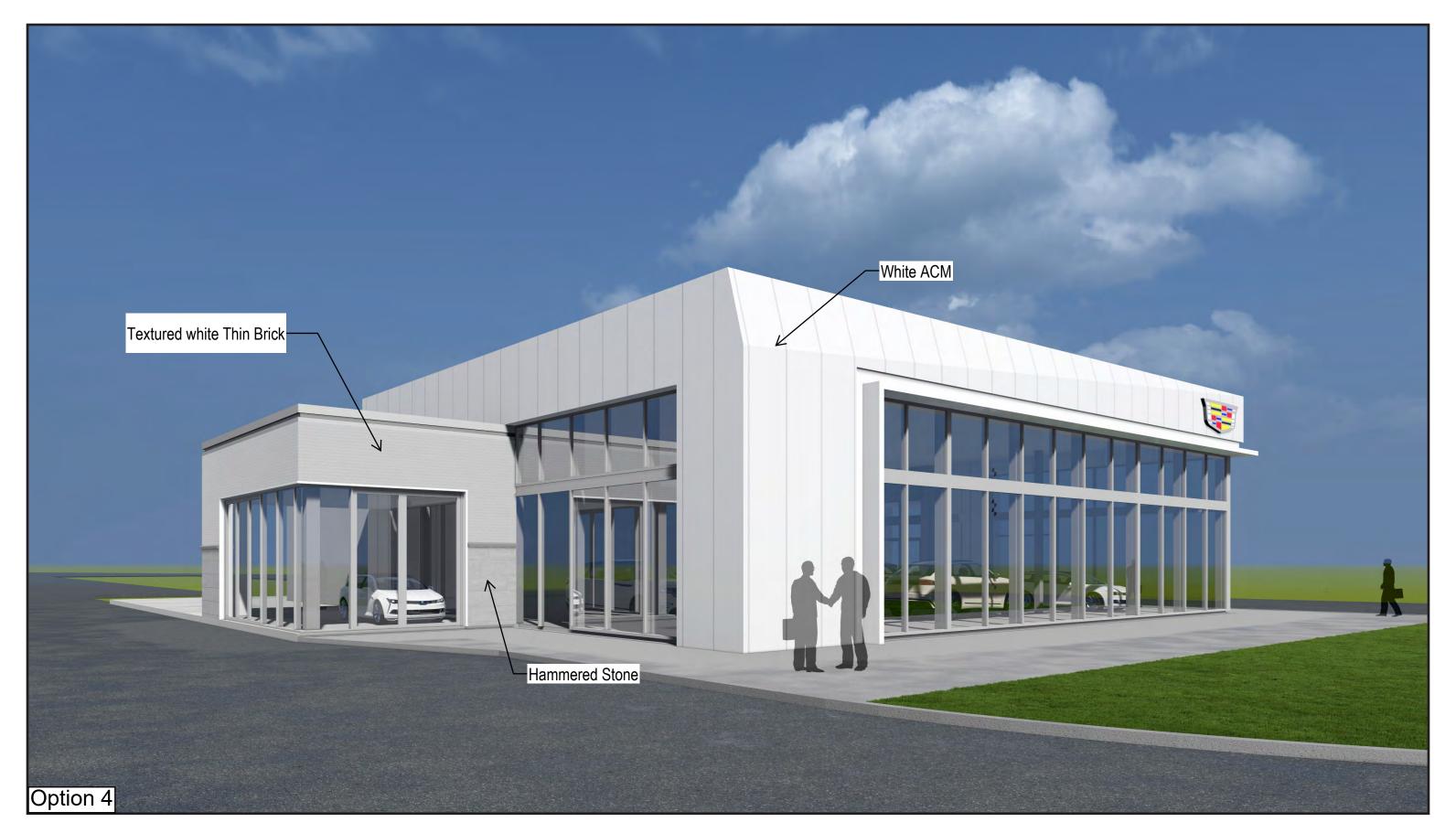
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STORE LOCATOR FIND A PAINTER BLOG FINANCING

<u></u> □ 0



FLOORING  $\lor$  PAINT & STAIN  $\lor$  PAINT SUPPLIES  $\lor$  COLOR  $\lor$  INTERIOR FINISHES  $\lor$ 

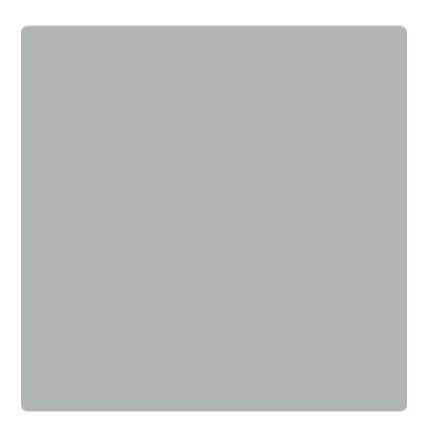
ABOUT US 

✓ CONTRACTORS 

✓ CURRENT PROMOTIONS MODERN MILLWORK



#### HOME / PRODUCTS / 1599 MARINA GRAY



### 1599 MARINA GRAY

List Price: \$5.99

+ PaintCare Fee: (\$0.45)

## **Total Including PaintCare Fee:**

\$6.44

This color is part of the Benjamin Moore Classics®.

This collection features Benjamin Moore
favourites with timeless appeal complement
styles from traditional to modern and everything
in between..

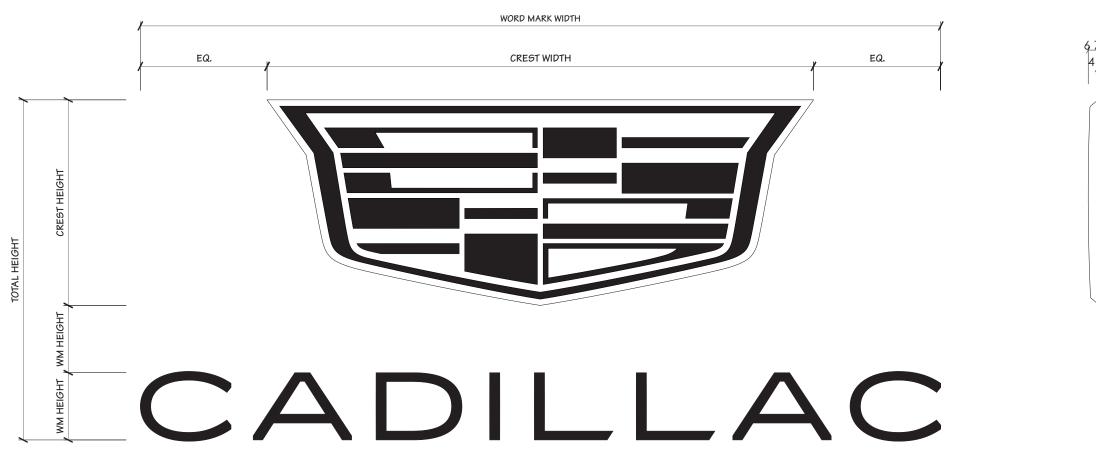
### **PRODUCT**

Color Sample

#### **SHEEN**

Eggshell Chat w/ Yakima Staff X

STACKED	CREST		WORD	MARK	LOCK-UP	
SIZE	WIDTH (ft-in)	HEIGHT (ft-in)	WIDTH (ft-in)	HEIGHT (ft-in)	GAP (ft-in)	TOTAL HEIGHT (ft-in)
WSO (BOUTIQUE)	7' - 1 1/16"	2' - 8"	9' - 9 1/2"	9 7/8"	9 7/8"	4' - 3 3/4"
	2160 mm	813 mm	2985 mm	251 mm	251 mm	1314 mm
WS1 (STANDARD)	8' - 3"	3' - 1 1/4"	11' - 7 7/8"	11 3/4"	11 3/4"	5' - 0 3/4"
	2515 mm	946 mm	3553 mm	298 mm	298 mm	1543 mm
WS2 (LARGE)	10' - 9 5/8"	4' - 0 3/4"	15' - 9 13/16"	1' - 3 15/16"	1' - 3 15/16"	6' - 8 5/8"
	3292 mm	1238 mm	4821 mm	405 mm	405 mm	2048 mm
WS3 (X-LARGE)	17' - 0 1/16"	6' - 4 3/4"	24' - 10 15/16"	2' - 1 1/8"	2' - 1 1/8"	10' - 7"
	5183 mm	1949 mm	7593 mm	638 mm	638 mm	3225 mm



- 1. WALL-MOUNT LAYOUT FOR WS2 ILLUMINATED CREST AND WORDMARK LETTERS.
- 2. CREST & WORDMARK ARE BAI-MMT75 MATTE FINISH OIKE CHROME APPLIED FIRST SURFACE.
- 3. GEMS & PERIMETER TO BE SURFACE APPLIED 3M #3630-22 BLACK VINYL.

2655 International Parkway Virginia Beach, VA 23452

T.Free: 001.844.511.7565 Phone: 001.757.301.7008 Fax: 001.866.418.9462 Email: e-gmdi@agi.net

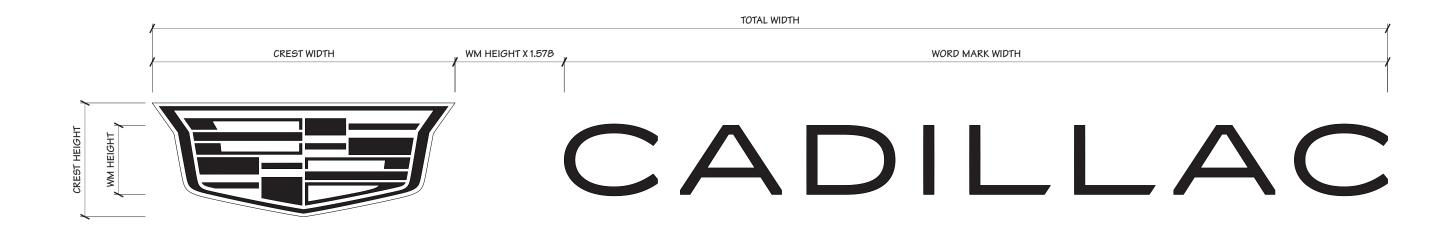
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**GMFI** Drawn By DLR Account GM-Cadillac AGI Rep. KT **Project Title** 1:16 Approved By: Date Revised 3.30.23 Date Created 9.12.22



HORIZONTAL	CREST		WORD MARK		LOCK-UP		WEIGHT	AMP5
SIZE	WIDTH (ft-in)	HEIGHT (ft-in)	WIDTH (ft-in)	HEIGHT (ft-in)	GAP (ft-in)	TOTAL WIDTH (ft-in)		
WH1 (BOUTIQUE)	5' - 10 3/4"	2' - 2 5/8"	15' - 9 3/4"	1' - 3 15/16"	2' - 1 1/8"	23' - 9 5/8"	— Ibs.	.64
	1797 mm	676 mm	4820 mm	405 mm	638 mm	7255 mm		
WH2 (STANDARD)	7' - 1 1/16"	2' - 8"	18' - 9"	1' - 6 7/8"	2' - 5 13/16"	28' - 3 1/2"	— lbs.	1.05
	2161 mm	813 mm	5715 mm	479 mm	757 mm	8623 mm		
WH3 (LARGE) 9	9' - 7 5/16"	3' - 7 3/8"	24' - 11"	2' - 1 1/8"	3' - 3 5/8"	37' - 10"	— lbs.	1.44
	2929 mm	1102 mm	7544 mm	638 mm	1006 mm	11532 mm		
WH4 (X-LARGE)	14' - 8 1/4"	5' - 6 5/16"	39' - 11 <i>3/8</i> "	3' - 4 1/4"	5' - 3 9/16"	59' - 11 5/16"	— lbs.	2.56
	4477 mm	1684 mm	12176 mm	1022 mm	1614 mm	18270 mm		



- 1. WALL-MOUNT LAYOUT FOR WS2 ILLUMINATED CREST AND WORDMARK LETTERS.
- 2. CREST & WORDMARK ARE BAI-MMT75 MATTE FINISH OIKE CHROME APPLIED FIRST SURFACE.
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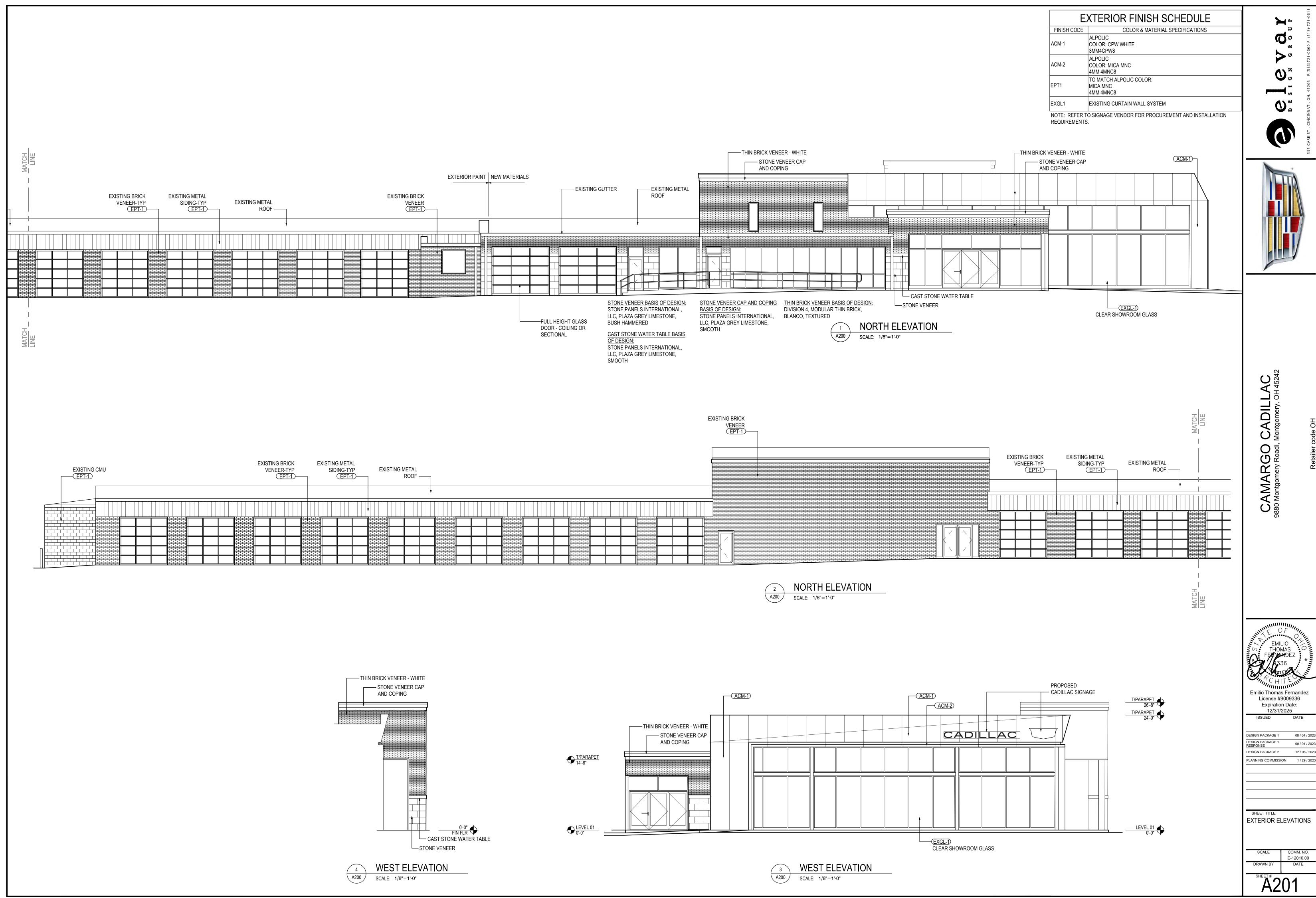
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Project Title GM-Cadillac AGI Rep. KT

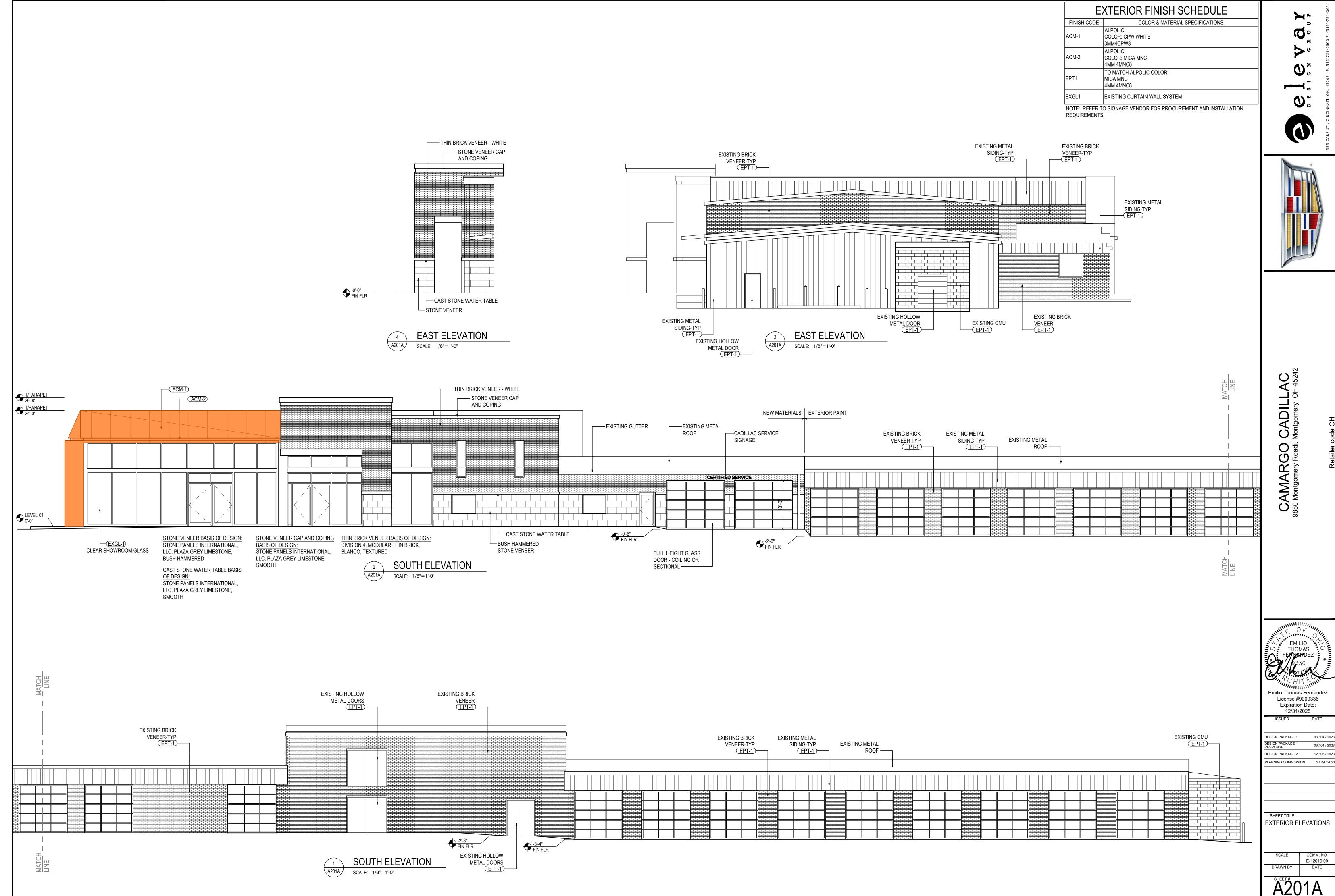
Scale NA Approved By:

Date Created 9.12.22 Date Revised 3.30.23













#### **Planning Commission**

# Proposed Text Amendment Chapter 151.1202 Use Regulations or Chapter 1502.02 General Provisions Regarding Retail Sales of Recreational Marijuana

#### February 16, 2024

**Applicant:** City of Montgomery, Ohio

10101 Montgomery Road Montgomery, Ohio 45242

#### Nature of Request:

City Council, at the regularly scheduled December 20, 2023 meeting requested that that Planning Commission review and make a recommendation to City Council whether to regulate and/or prohibit Recreational Marijuana businesses within the City consistent with the restrictions already in place for Medical Marijuana facilities.

#### **Background:**

The following informational background has been provided by the City Law Director:

With the passage of Issue 2, Recreational Marijuana has been approved for use and sale in the State of Ohio. A portion of Issue 2 allows local cities by Home Rule authority to regulate and/or prohibit marijuana dispensaries, cultivators or processors in the City. This is similar to the Medical Marijuana Program which was approved in 2018.

In 2018, after review by the Planning Commission, Council accepted the recommendation to amend the Zoning Code to prohibit Medical Marijuana related businesses or related home occupations in the City.

With the authority reserved to the City with the enactment of Issue 2, the question to be posed is whether or not Recreational Marijuana similarly should be prohibited as a permitted use in the City. The zoning amendment can be initiated by Council by motion which will refer the issue to the Planning



# STAFF REPORT

Commission for recommendation under Chapter 150.22 to amend the Zoning Code.

As we know, regulations still need to be developed at the State level for licensing. The cultivation or processing of Recreational Marijuana likely would not be a permitted use in the City as this is more of a manufacturing or commercial use which is not recognized under the Code. The regulations would focus upon dispensaries. Any regulation would not ban the use of marijuana, but only limit dispensaries in the various zoning districts. The Planning Commission can recommend restrictions which Council can then, after public hearing, enact or amend.

Updated information has also been provided by the Law Director in the Packet.

For reference the current Medical Marijuana Prohibitions Regulations are as follows:

#### § 150.0205 MEDICAL MARIJUANA.

- (A) Legislative purpose. Although medical marijuana is in some respects legal under applicable state law, it remains illegal under federal law. The purpose of this section is to prohibit the use of real property in the city for a medical marijuana-related business or home occupation, whether as a cultivator, processor, distributor or dispensary. This section is expressly adopted as authorized by ORC § 3796.29 and as an exercise of the city's power of local self-government and Home Rule authority reserved to the city under the City Charter, and Section 3, Article XVIII of the Constitution of the State of Ohio.
- (B) *Definitions*. The following definitions shall apply for all purposes under the zoning code:
  - (1) MARIJUANA. As defined in ORC § 3719.01.
- (2) *MEDICAL MARIJUANA*. Marijuana that is cultivated, processed, dispensed, tested, possessed, or used, for a medical purpose, regardless of whether such marijuana is, or is not, in a form or intended for incorporation into a form permitted under ORC § 3796.06.
- (3) MEDICAL MARIJUANA- RELATED BUSINESS OR HOME OCCUPATION. A business or home occupation use, involving in whole or in part, the cultivation, processing, distribution, and/or wholesale or retail sale of medical marijuana on the premises. This definition shall specifically include, but is not limited to, dispensaries of medical marijuana; facilities for the



### STAFF REPORT

cultivation, packing, transportation, processing, storage, and/or sale of medical marijuana; and bakeries or kitchens producing edible forms of medical marijuana or products containing the same.

(C) Prohibition. No medical marijuana-related business or home occupation may be established, operated, or maintained within the city, nor shall any provision of the zoning code be construed to permit the use of any property for that purpose. This prohibition shall apply within all zoning districts within the city.

(Ord. 8, 2018, passed 7-11-18)

#### **Staff Comments and Recommendations:**

With the passage of Issue 2, Recreational Marijuana Dispensaries are currently under a rule making process that will not be finalized for many months. Additionally, as pointed out in the included Law Director correspondence, the initial licenses proposed to be issued will first go to existing medical marijuana facilities with the remaining licensing rounds proposed to be limited and competitive.

City Council is requesting that to order to make appropriate code regulations in a timely manner, Planning Commission review the issue of whether to permit or prohibit Recreational Marijuana Retail Facilities in Montgomery like the Medical Marijuana prohibition. It is important to note that any prohibition or regulation would not impact an individual's right to grow or utilize recreational marijuana within the City as authorized and regulated by Issue 2. Only the retail sales of such within our corporation limits would be impacted.

If the Planning Commission wishes to recommend a prohibition, the Law Director would then craft regulations, similar to section 150.0205, for City Council review and adoption. If the Planning Commission wishes to permit sales of recreational marijuana, they would need to determine which commercial zoning district(s) would be most appropriate for the location as well as recommend any other potential regulations. Included in the packet is the Use Regulations for Business Districts.

From: <u>Terry Donnellon</u>
To: <u>Kevin Chesar</u>

 Subject:
 Recreational Marijuana Regulations

 Date:
 Monday, February 12, 2024 11:57:19 AM

 Attachments:
 Recreational Marijuana Regulations Summary.pdf

Kevin: Attached is a quick summary I received this week after the Commission released its proposed rules for licensing Marijuana Retailers. I do not know that it impacts any recommendation from the Planning Commission but it does provide more information.

As you can see we are months away yet from any licenses being issued, and the first round of licensing is limited to existing medical marijuana license holders. Since we have none within the City, it would not impact us. The second level of licensing is the first option for someone to open a facility in Montgomery. As I read it these are 10(b) license holders who are eligible for licensing as a standalone retail outlet if they hold an existing medical license. A cultivator can obtain up to three dispensary licenses and a current medical dispensary can obtain one 10(b) license. These are the licenses which could be placed in Montgomery although we do not have any medical licenses. These licenses in the second takedown while limited to existing license holders does not seem to restrict them to the same jurisdictional location as their existing license.

The final group which could locate within the City are the catch all licenses limited to 50 in the state and are open to anyone. These are to be issued at a future unknown date.

Given that the regulations call for a lottery for 10(b) licenses I believe they expect applications in numbers from existing medical licensees well beyond the current available recreational retail licenses.

If the practical effect may be that there will not be enough licenses to go around and come to Montgomery, the long term *use categorization* for our Code and the City is to be able to control location for any future licensed retailer if the regulations change down the road and new opportunities arise. The new statute allows us to opt out. If we opt out now we are prohibiting this use now and in the future no matter what the expanded licensing regulations may be. If we opt in, we are deciding now under the regulatory authority given to us, where we would permit these retail uses, ie. Limited Business versus General Business.

In the future the legislature could try to override or pre-empt or right to control the zoning, but we need to decide now where we land while we have the limited control.

I hope this helps.

Terrence M. Donnellon, Attorney at Law



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# REMINGER

# Ohio Division of Cannabis Control Announces Proposed Rules and Deadlines for First Round of Adult-Use Cannabis Retail Licenses

Feb 12, 2024

by Nathan A. Lennon, Esq. & Mark R. Bush, Esq.

On December 7, 2023, Ohio passed its adult-use cannabis statute, making it legal for adults ages 21 and older to buy and possess up to 2.5 ounces of cannabis for recreational use. With the passage of this statute, legal adult-use sales are projected to exceed \$1 billion annually. In addition to cannabis possession, the statute also regulates the cultivation, processing, sale, purchase, and home growth of cannabis.

Because Ohio has already had a medical cannabis market for several years, the new adult-use statute creates opportunities for new growers, processors, and retail dispensaries to join the Ohio marketplace. The Ohio Division of Cannabis Control ("DCC") is promulgating new rules regarding adult-use cannabis license applications. The DCC recently published its proposed rules, which

provide for two application rounds for adult-use licenses for existing medical marijuana growers, processors, and dispensaries. The rules provide for a first application round which would simply convert an existing facility to a "dual license" facility. This type of "dual license" conversion allows the licensee to participate in both the recreational and medical cannabis markets. Currently, the dual license application for this round has no application fee.

The rules then set out the process for a second round of competitive applications for the other type of license, which is designated a 10(B) license. Although this type of license also requires that the applicant be a currently licensed Level I or II medical marijuana cultivator, the advantage of the 10(B) license is the right to open additional retail dispensaries (which is the distinction between this class and the "dual use" license). Applications for a 10(B) license carry a \$5,000 application fee. Licensed Level I cultivators are eligible for up to three 10(B) dispensary licenses. Level II cultivators and standalone medical dispensaries can obtain one 10(B) license. All 10(B) applicants who are determined eligible will be entered into a ranked drawing conducted by a third-party operator, which will be separated into two phases. Once a dispensary has a provisional license, it then must obtain a certificate of operation within 12 months.

Applications for both of these types of licenses will be available by June 7, 2024. On September 7, 2024, the DCC will begin granting provisional recreational licenses to these types of facilities. The DCC has also indicated that

# **Attorneys**



Mark Bush 859.426.3661



Nathan Lennon 859.426.7222

# **Practice Areas**

Cannabis and Hemp Law

for applicants who do not currently hold a medical marijuana license, it will hold a round of applications for up to 40 Level III adult-use cultivator licenses, and 50 adult-use dispensary licenses at a future time, with deadlines to be established later.

Should you have any questions about this legislation, please contact one of the co-chairs of Reminger's Cannabis and Hemp Law Liability Practice Group, Mark Bush and Nathan Lennon.

#### Issue 2

# To Commercialize, Regulate, Legalize, and Tax the Adult Use of Cannabis Proposed Law

#### **Proposed by Initiative Petition**

#### To enact Chapter 3780 of the Ohio Revised Code

A majority yes vote is necessary for the law to pass.

To enact Chapter 3780 of the Ohio Revised Code, which would:

- Define adult use cannabis to mean marijuana as defined in Section 3719.01 of the Revised Code and establish the Division of Cannabis Control (the "Division") within the Department of Commerce;
- Authorize the Division to regulate, investigate, and penalize adult use cannabis operators, adult use testing laboratories, and individuals required to be licensed;
- Legalize and regulate the cultivation, processing, sale, purchase, possession, home grow, and use of cannabis by adults at least twenty-one years of age;
- Create additional protections for individuals who engage in permitted adult use cannabis conduct;
- Establish the cannabis social equity and jobs program and require the Department of Development to certify program applicants based on social and economic disadvantage;
- Define "social disadvantage" to include membership in a racial or ethnic minority group, disability status, gender, or long-term residence in an area of high unemployment;
- Shield certain confidential information from disclosure to the public, including but not limited to any information reported to or collected by the Division that identifies or would tend to identify any adult use cannabis consumer and prohibit the Department of Development from releasing certain application information as public records;
- Require the Division to provide preferential treatment to applicants who have qualified for the cannabis social equity and jobs program based on social disadvantage when issuing level III adult use cannabis cultivator licenses and dispensary licenses;
- Prohibit certain local government entities from limiting specific research, levying a tax, or charge on adult use operations, their owner, or their property not generally charged on other business, and prohibit certain local government entities from prohibiting or limiting adult use cannabis home grow or prohibiting or restricting an activity authorized by the proposed law;
- Authorize a landlord or an employer to prohibit the adult use of cannabis in certain circumstances, and prohibit the operation of a motor vehicle while using or under the influence of adult use cannabis and from using any other combustible adult use cannabis while a passenger in a motor vehicle;
- Limit criminal liability for certain financial institutions that provide financial services to any lawful adult use cannabis operator or testing laboratory licensed under the proposed law;

- Require the Division to enter into an agreement with the Department of Mental Health and Addiction Services to create a program for cannabis addiction services;
- Provide for the creation of five funds in the state treasury: the adult use tax fund; the
  cannabis social equity and jobs fund; the host community cannabis fund; the substance
  abuse and addiction fund; and the division of cannabis control and tax commissioner fund;
  and
- Provide for taxation of 10 percent on the sale of adult use cannabis by dispensaries in addition to usual sales taxes and require that all monies collected from the 10 percent tax levied to be deposited into the adult use tax fund and quarterly distributed as follows: 36 percent to the cannabis social equity and jobs fund; 36 percent to the host community cannabis facilities fund; 25 percent to the substance abuse and addiction fund; and three percent to the division of cannabis control and tax commission fund.

If passed, the law will become effective 30 days after the election.

YES	SHALL THE PROPOSED LAW BE
NO	ADOPTED?

#### **CERTIFICATION**

Acting in my capacity as the secretary of the Ohio Ballot Board, I hereby certify to the Secretary of the State of Ohio that the foregoing text is the ballot language prescribed by the Ohio Ballot Board, acting pursuant to Article II, Section 1g of the Ohio Constitution and Section 3505.062 of the Revised Code of Ohio, for this initiated law proposed by petition for submission to the Ohio electorate at the election to be held on November 7, 2023.

In testimony whereof, I have subscribed my name in Columbus, Ohio, this 24<sup>th</sup> day of August, 2023.

Secretary, Ohio Ballot Board

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City Council Work Session Minutes

December 20, 2023

Page 6

#### 249 Mr. Margolis

Mr. Margolis shared his appreciation for staff and Council members and wished everyone a wonderful Christmas and Happy New Year.

#### MINUTES

Mr. Margolis moved to accept the December 4, 2023 Special Session and December 6, 2023 Business Session minutes as written. Mrs. Mills-Reynolds seconded. City Council unanimously agreed.

#### OTHER BUSINESS

Vice Mayor Naiman informed Council that she would be out of town from January 9 thru January 18.

Mr. Donnellon explained that with the passage of Issue 2, Recreational Marijuana has been approved for use and sale in the State of Ohio. A portion of Issue 2 allows local cities by Home Rule authority to regulate and/or prohibit marijuana dispensaries, cultivators or processors in the City. This is similar to the Medical Marijuana Program which was approved in 2018.

In 2018, after review by the Planning Commission, Council accepted the recommendation to amend the Zoning Code to prohibit Medical Marijuana related businesses or related home occupations in the City.

With the authority reserved to the City with the enactment of Issue 2, the question to be posed is whether or not Recreational Marijuana similarly should be prohibited as a permitted use in the City. The zoning amendment can be initiated by Council by motion which will refer the issue to the Planning Commission for recommendation under Chapter 150.22 to amend the Zoning Code.

While the issue is studied in the community, Council is asked to make a motion with a voice vote for the Planning Commission to study whether or not Recreational Marijuana should be similarly restricted as a permitted use in the City. The Planning Commission, after a public meeting, would make a recommendation to Council, which would then be reviewed to potentially amend the Code.

As we know, regulations still need to be developed at the State level for licensing. The cultivation or processing of Recreational Marijuana likely would not be a permitted use in the City as this is more of a manufacturing or commercial use which is not recognized under the Code. The regulations would focus upon dispensaries. Any regulation would not ban the use of marijuana, but only limit dispensaries in the various zoning districts. The Planning Commission can recommend restrictions which Council can then, after public hearing, enact or amend.

Mr. Dobrozsi explained that consistent with Chapter 150.22 of the Code of Ordinances, the Planning Commission is asked to review and make a recommendation to City Council whether or not to regulate and/or prohibit Recreational Marijuana businesses within the City consistent with the restrictions already in place for Medical Marijuana facilities. Mr. Margolis seconded. City Council unanimously agreed.

#### **EXECUTIVE SESSION**

Vice Mayor Naiman stated that as Mr. Riblet had requested an Executive Session, a motion would be needed to adjourn. She stated that there would be a short recess prior to adjourning to the Executive Session and that there would be no further discussion or vote of legislation when returning to Public Session.

Mr. Margolis made a motion to adjourn into an Executive Session for separate matters related to:

#### FREQENTLY ASKED QUESTIONS - RECREATIONAL MARIJUANA (OR CANNIBIS)

#### What does the passage of Issue 2 allow?

The passage of Issue 2 allows adults over 21 and older to use and possess up to 2.5 ounces of marijuana and 15 grams of extracts or edibles. The legislation also allows adults 21 and over to grow up to six plants per individual or 12 plants per household.

## Does the City have a Drug-Free Workplace Policy?

Yes, see the attached Policy Number VI-2: Drug/Alcohol Free Workplace Policy. This policy prohibits the use of drugs and alcohol in the workplace, including the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances or alcohol on City premises while conducting City business. This includes recreational marijuana. Violations of this policy will result in disciplinary action, up to and including discharge.

#### Can I get in trouble at work if I use marijuana outside of working hours?

That is a complicated question, but the short answer is yes, use of marijuana during off-hours can still lead to negative consequences at work. It is important that employees understand marijuana absorbs into the body differently than alcohol. Unlike alcohol which can leave your system within a day, marijuana can stay in your system for up to 30 days. Put another way, employees who smoked, took a gummy, or ate an edible on their own time can test positive later that week, or even later that month. There is currently no test on the market to pinpoint when marijuana was ingested, just that it had been ingested. Employees who test positive for marijuana can face disciplinary action, up to and including discharge.

As a reminder, a mandatory drug test is required in any accident involving city vehicles or equipment that involves loss of life, injury or in which the driver receives a citation under state or local law for a moving violation arising from the accident. Additionally, the City may require a drug test in the event of an accident involving city vehicles or equipment in which there is a reasonable suspicion that the usage of alcohol or drugs was involved.

Furthermore, there are additional random drug testing and reporting requirements from the US Department of Transportation and the Federal Motor Carrier Safety Administration which could result in the forfeiture of a Commercial Driver's License (CDL) for an employee who tests positive for drugs (including marijuana/THC) and/or alcohol. The City can also require a drug/alcohol test at any time, if there is reasonable suspicion that an employee is under the influence while performing their duties.

#### Is marijuana permitted under Federal Law?

No, medical and/or recreational marijuana is <u>not</u> permitted under Federal Law.

Can I legally purchase recreational marijuana in Ohio?

No, currently there are no state-licensed dispensaries in the State of Ohio for purchase of recreational marijuana. The State has nine months to complete the rulemaking and licensing processes for non-medical marijuana.

Can I purchase recreational marijuana in another state and bring it into Ohio?

No, Federal Law prohibits traveling across state lines with marijuana.

Can I purchase recreational marijuana and have it shipped in the mail?

No, Federal Law prohibits mail order marijuana.

Where can I smoke marijuana?

Smoking marijuana follows the same rules as cigarettes in the State of Ohio.

Can I operate a vehicle while under the influence of marijuana?

No, Ohio's OVI law makes it illegal to operate a vehicle under the influence of drugs, alcohol, or both.

Can I use marijuana if I own a gun?

No, under Federal Law, gun owners are not permitted to possess or use marijuana.

### $\S$ 151.1203 SCHEDULE OF PERMITTED USES.

Land Use Category	Office District "O"	Office Commercial District "OC"	Limited Business District "LB"	General Business District "G- B"	Old Montgomery Gateway District "OMG"	Old Montgomery District "OM"
Land Use Category	Office District "O"	Office Commercial District "OC"	Limited Business District "LB"	General Business District "G- B"	Old Montgomery Gateway District "OMG"	Old Montgomery District "OM"
(A) Residential						
(1) Single-family attached dwellings					Р	Р
(2) Two-family dwellings					Р	<sub>P</sub> (a)
(3) Multi-family dwellings			P(e )	P(e)	Р	P(a)
(4) Retirement villages	С	С				
(5) Bed and Breakfasts					С	С
(6) Residential uses as conversions from retail and office uses						P(a)
(7) Residential units on upper floor of a commercial/office building		Р			Р	Р
(8) Mixed Use Developments		Р	С	С	Р	P(a)
(B) Community Facilities						
(1) Places of worship	С	С	С	С	С	С
(2) Daycare within churches, schools	Р	Р	Р	Р	Р	Р
(3) Day care center (child and adult)	Р	Р	Р	Р	Р	Р
(4) Public utility substations	С	С	С	С		
(5) Libraries, museums	Р	Р	Р	Р	Р	Р
(6) Public offices	Р	Р	Р	Р	Р	Р
(7) Public safety facilities	Р	Р	Р	Р	Р	Р
(8) Public service facilities				С		
(9) Schools, public & private	С	С	С	С	С	С
(C) Medical Facilities						
(1) Hospitals	C(q)	C( q)		С		
(2) Nursing Homes	С	С		С		
(D) Office and Professional Services						
(1) Administrative, executive and professional offices including the management of commercial businesses, and religious institutions	Р	Р	Р	Р	Р	Р
(2) Banks and other financial institutions	Р	Р	Р	Р	Р	Р
(3) Public offices	Р	Р	Р	Р	Р	Р
(4) Medical offices of physicians, dentists, health and allied services and clinics	Р	Р	Р	Р	Р	Р
(E) Retail			-			

(1) Bakery, confectionery (retail/storefront operation only)			Р	Р	Р	Р
(2) Greenhouses				Р		
(3) Freestanding automated teller machines		Р	А	Α	А	
(4) Drive-through facility in association with a permitted use	Р	Р	Р	Р	С	C/
(5) Retail, specialty including jewelry store, clothing boutique, vitamin store and other similar uses		<sub>P</sub> (f)	Р	Р	Р	Р
(6) Retail, general including furniture store, grocery, drug store and other similar uses		А	Р	Р	Р	Р
(F) Eating Establishments						•
(1) Restaurants						
(a) Table Service			Р	Р	Р	Р
(b) Counter Service			Р	Р	Р	Р
(2) Taverns, bars, cocktail lounges				Р	Р	Р
(3) Outdoor dining			Р	Р	Р	Р
(G) Services		l	1			
(1) Animal boarding facility			С	С		
(2) Animal grooming facility (excluding open kennels or open runs)			Р	Р		Р
(3) Animal hospital or clinic; grooming facility (excluding open kennels or open runs)			Р	Р		Р
(4) Barber and beauty shops		Р	Р	Р	Р	Р
(5) Dry cleaning / laundry pickup station			Р	Р	Р	Р
(6) Funeral home, mortuaries	Р	Р		Р		
(7) Motels, hotels				Р	Р	P(a)
(8) Studios for instruction		Р	Р	Р	Р	Р
(9) Shoe repair, tailoring		Р	Р	Р	Р	Р
(10) Construction and Mechanical Services				Р		
(H) Automotive/Transportation		1	1			
(1) Parking as principal use (lot or garage)				Р	Р	С
(2) Automobile, truck, trailer sales and rental				С		
(3) Car wash				С		
(4) Gasoline station				С		
(5) Vehicle maintenance and repair facility				С		
(I) Entertainment/Recreation		ı	_1	<u> </u>	l	<u> </u>
(1) Indoor recreation such as bowling lanes, tennis, fitness, etc.				Р	Р	Р
(2) Theaters				Р	Р	Р
		<u>I</u>	I		l .	

(3) Public and private parks	Р	Р	Р	Р	Р	Р
(4) Clubs, lodges or other assembly halls	Р	Р		Р	Р	<sub>P</sub> (a)
(5) Outdoor recreation including miniature golf courses, swimming pools and other similar uses				С		
(J) Trade Businesses/Services						- I
Repair and service shop for such items as bicycles; typewriters; keys and locks; electrical, radio and television appliances in completely enclosed buildings			Р	Р	Р	Р
(K) Other			l	l .		
(1) Outdoor displays			P(t)	P <sup>(f)</sup>	P(f)	P <sup>(f)</sup>
(2) Wireless Telecommunications Facilities	See Chapter 151.36					
(3) Sexually oriented businesses				P(g)		
(L) Accessory			1			<u> </u>
(1) Restaurants and pharmacies in connection with a principal use when conducted and entered only from within the principal building	А	А	А	А	А	
(2) Off- street parking and loading areas	Α	А	А	А	А	А
(3) Fences, walls, landscape features	Α	А	А	А	А	А
(4) Trash receptacles	Α	А	А	А	А	А
(5) Signs	Α	Α	Α	А	А	А
(6) Outdoor recreation, including basketball courts, swimming pools and other similar uses in association with an approved multi-family development or hotel/motel	А	А			А	А
or note/moter						

Note	Notes to § 151.1203:		
(a)	Permitted in the "outer area" only. See City Zoning Map for boundaries of outer area.		
(b)	Uses above the first floor.		
(c)	Uses on the first floor.		
(d)	Except as permitted by right per § 151.1215.		
(e)	Only as part of a Mixed Use Development.		
(f)	Permitted subject to supplemental regulations of § 151.1209.		
(g)	See sexually oriented business regulations in Chapter 151.18.		
P =	Use Permitted by Right C = Conditional Use A = Accessory Use		

(Am. Ord. 6-2006, passed 4-5-06; Am. Ord. 7-2006, passed 4-19-06; Am. Ord. 12-2008, passed 9-3-08; Am. Ord. 16-2013, passed 11-6-13; Am. Ord. 2-2014, passed 3-5-14; Am. Ord. 19-2014, passed 12-3-14; Am. Ord. 2-2017, passed 1-4-17; Am. Ord. 7-2022, passed 10-5-22)

# CITY OF MONTGOMERY PLANNING COMMISSION REGULAR MEETING

CITY HALL · 10101 MONTGOMERY ROAD · MONTGOMERY, OH 45242

#### November 20, 2023

	PRESENT	
GUESTS & RE	SIDENTS_	<u>STAFF</u>
Nermine Banke Chairman Church of the Saviour	Jon Homer Director of Business Development	Kevin Chesar Community Development Director
7492 Trailwind Dr., 45242	Life Enriching Communities (LEC)	Melissa Hays, Zoning and Code Compliance Officer
John Berry Trustee Church of the Saviour	Twin Lakes 6279 Tri-Ridge Blvd., Ste 320 Loveland, OH 45140	Karen Bouldin, Secretary
137 Woodcrest Dr., 45242		COMMISSION MEMBERS PRESENT Dennis Hirotsu, Chairman
Mark Combs 9295 Shallow Creek Loveland, OH 45140	Rick Huff 7516 Fawnmeadow Dr. Cincinnati, OH 45241	Barbara Steinebrey, Vice Chairman Vince Dong Peter Fossett Pat Stull
Eric Day 9912 Forestglen Dr., 45242	Chris Philpott 10091 Humphrey Manor Ct. 45242	MEMBERS NOT PRESENT Andy Juengling Alex Schneider

#### Call to Order

Chairman Hirotsu called the meeting to order at 7:00 p.m. He reminded all guests and residents to sign in, and please turn off all cell phones.

#### Roll Call

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The roll was called and showed the following response/attendance:

PRESENT: Mr. Stull, Mr. Fossett, Ms. Steinebrey, Mr. Dong, Chairman Hirotsu
ABSENT: Mr. Juengling, Mr. Schneider
(5)

#### **Guests and Residents**

- Chairman Hirotsu asked if there were any guests or residents who wished to speak about items that were not on the agenda. There were none.
- Chairman Hirotsu explained the process for this evening's meeting to all guests and residents:

#### **Planning Commission Meeting**

November 20, 2023

- 24 "Mr. Chesar reviews his Staff Report and the Commission asks any questions they might have.
- 25 The applicant presents their application and the Commission then asks any questions. The floor
- 26 is opened to all residents for comments. If a resident agrees with a comment that was previously
- stated, they could simply concur, instead of restating the entire comment to save time. The
- 28 Commission discusses the application and residents are not permitted to comment or question
- 29 during this discussion. The Commission will then decide to table, approve or deny the
- 30 application.

31 32

Chairman Hirotsu suggested that we switch the order of the agenda items (in the interest of time), as the New Business will probably take much less discussion time. All members agreed.

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#### **New Business**

An application from Twin Lakes for an extension request of a Final Development Site Plan Approval pertaining to 30 independent living units to be located at 10120 Montgomery Road.

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### **Staff Report**

- 40 Mr. Chesar reviewed the Staff Report dated November 20, 2023, "Application for an
- 41 Extension of a Final Development Site Plan for Twin Lakes' 30 Independent Living Units
- 42 at 10120 Montgomery Road."

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He showed drawings on the wide screen for all to see, to provide more understanding of the Staff Report.

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He indicated that there had been no calls or emails received regarding this application.

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He asked for any questions, noting that the applicant was also in attendance to answer any questions.

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Regarding the length of this extension, Mr. Dong asked if the applicant needed to start or finish this project within this upcoming year. Mr. Chesar stated that the applicant just needed to start the project, to meet the requirement.

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Mr. Fossett asked if this Commission had any ability / authority to reconsider the merits of the underlying Plan. Mr. Chesar stated that this was only a matter of extension or not. If this plan does not get extended, the applicant could come in with a new plan, or get started prior to January 1. Mr. Chesar stated that technically the Plan doesn't expire until January 1, 2024.

- Mr. Chesar asked if Mr. Fossett had concerns about this Plan. Mr. Fossett did not; he was just inquiring as to the scope of the Commission's duties this evening. Mr. Stull pointed out that the
- 63 applicant came before this Commission with a proposed plan, and we offered suggestions. The
- 64 applicant then came back a second or third time, and finally came up with a plan that this
- 65 Commission approved. He did not feel it was appropriate at this time to specify changes, unless
- any of the Code pertaining to this had changed. Mr. Chesar confirmed that the base Code had
- 67 not changed since then.

#### **Planning Commission Meeting**

November 20, 2023

Chairman Hirotsu asked if the applicant wished to speak.

Jon Homer, Director of Business Development, Life Enriching Communities (LEC), Twin Lakes, 6279 Tri-Ridge Boulevard, Suite 320, Loveland, OH 45140 stated that it has been two years since this application had started. He noted that they were now able to focus on this project, and their goal was to have everything finalized, and start taking reservations in the first quarter of 2024. If all goes well, they could be onsite with construction, as early as spring of next year.

Chairman Hirotsu asked if the Board had any questions for the applicant. There were none.

Chairman Hirotsu asked if any guests or residents had comments.

Eric Day, 9912 Forestglen Drive, Montgomery, OH 45242 stated that he was in support of new development, however he was concerned with this corner parcel because of the added traffic. He stated that this past year, it has been horrible between the hours of 3pm to 6pm, and with 30 additional units, possibly 60 individuals, he felt it would make the traffic even worse. He asked if there was any consideration or plan for this. He offered his services, as well as his father's, (as together they hold 50 years' experience in development), to make this a good thing for our community.

There were no other comments from guests or residents.

Chairman Hirotsu closed the meeting to public comment.

#### **New Business**

 An application from Twin Lakes for an Extension Request of a Final Development Site Plan Approval pertaining to 30 independent living units to be located at 10120 Montgomery Road.

Mr. Fossett asked if there had been a traffic study, based on the impact of the new development. Mr. Chesar was not aware if there was a traffic impact study, as this had taken place prior to his tenure. He noted that the road that actually services that area was put in by the City that services the Indian Hill development; he felt that all considerations for traffic would have been considered, from that aspect.

Regarding the access from Montgomery Road, and relating to the significant prime hours in the morning and evening, Mr. Chesar noted that the City is well aware of the congestion in that area. He added that the City was still working to try to bring on the access control management that they have for better timing of traffic lights – which will improve that situation. He was not sure of the status of it, but knew that Public Works was in the process of coordinating cameras, and internet and all necessary pieces to achieve this goal.

#### **Planning Commission Meeting**

November 20, 2023

Mr. Stull recalled that it had been discussed, as they had to have a specific volume of traffic to be able to put the traffic light in. He didn't remember the actual number.

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114 Chairman Hirotsu felt that 30 units was a relatively small amount, compared to other traffic 115 studies done (since he has been on this Commission) for much larger projects, and the answer 116 has always been very incremental.

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Mr. Fossett felt that bulk of the traffic was already flowing north and south on Montgomery, and if anybody would be inconvenienced by the traffic flow, it would be the people trying to go in or out of that new development. He was not suggesting that a traffic study be done, he simply wanted to understand the background.

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Ms. Steinebrey recalled that when they discussed the project, this would be more of a senior living situation, and there may not be a lot of cars, and they may not actually drive during those peak hours.

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Chairman Hirotsu asked if Mr. Homer had any history on this. Mr. Homer stated that they had made considerable improvements on Schoolhouse Lane – widening it, putting in turn lanes, and stacking, to accommodate both the Indian Hill traffic anticipated, as well as the potential of 30 additional cars, at least, from this project. He explained that the villas were 2-car garages, but most were 1-car residents – they considered somewhere between 30 and 60 vehicles.

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Mr. Homer confirmed that this was all looked at. He explained that they placed 2 curb cuts, coming in, and they also considered how to alleviate the traffic within the development, on Schoolhouse. The traffic concerns they addressed related to Schoolhouse Road, not Montgomery Road – as they can't control that. He also noted that, for this development, 62 was the minimum age, the average age is 81.

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Mr. Dong remembered this original application, that they went through extensive discussion, with much input from the residents; he felt they did a very good job with it. Chairman Hirotsu recalled a considerable amount of redesign that took place.

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Mr. Dong made a motion to approve an application from Twin Lakes for an extension request of one year, beginning on January 1, 2024, of a Final Development Site Plan, pertaining to 30 independent living units to be located at 10120 Montgomery Road, as detailed in the Staff Report dated November 20, 2023.

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Mr. Stull seconded the motion.

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150 The roll was called and showed the following vote:

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152 AYE: Mr. Fossett, Ms. Steinebrey, Mr. Dong, Mr. Stull, Chairman Hirotsu (5)
153 NAY: (0)

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154 ABSENT: Mr. Juengling, Mr. Schneider *(2)* 155 ABSTAINED: (0)156

157 This motion is approved.

#### **Old Business**

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An application from Church of the Saviour, 8005 Pfeiffer Road, for reconsideration of conditional use approvals pertaining to the clarification of counseling services provided by the Church at Ministry Center, located at 8003 Pfeiffer Road.

164 Mr. Dong moved to take this application off of the table.

Ms. Steinebrey seconded the motion.

All members unanimously approved.

#### **Staff Report**

- 171 Mr. Chesar reviewed the Staff Report dated November 20, 2023, "Application for
- 172 Reconsideration of a Conditional-Use Approval Condition for Church of the Saviour,
- 173 8005 and 8003 Montgomery Road."

175 He indicated that there had been no calls or emails received regarding this application.

He showed verbiage on the wide screen for all to see, to provide more understanding of the Staff 177 178 Report.

He asked for any questions, noting that the church members were in attendance to answer any questions.

Mr. Dong was concerned with the 24 hours – he asked if that number was not per supplier, but a total; was it one or two days/week? He also wondered how many counselors there would be.

Mr. Chesar stated that it was his understanding they did not want to have more than one patient specific days or personnel. Mr. Chesar deferred to the applicant.

there at a time, for confidentiality purposes. Their intent was to block the time, but not limit it to

190 Mr. Dong was also concerned with the community and the impact on the community. He felt 191 that on the weekends, there would be more children around, and that they should be cognizant of 192 that. He believed that mental health was a serious issue, something that is happening in the 193 entire country, and it is a very complicated issue. He understood that this was a great 194 opportunity, but what if there were sex offenders or addicts coming here. He was concerned 195 with this, in the neighborhood, and near residents. You don't know who is or isn't, but when you

196 open it up so widely, it includes many areas, which could include drug addicts. We need to think

197 about this, not just for the Church, but for public safety, as well. He asked if there was a liability

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198 for the City to allow this, or if there was liability to the Church. He had concerns with the 199 consequences because it was open to the public. He felt this was a very difficult situation that 200 we have no control over. He appreciated the positives but was concerned with the negatives.

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Mr. Chesar wanted to point out that the Code currently allows a counseling service, as a home occupation, to operate from anyone's home, throughout any residential district. You could have a drug addiction counselor, operating as a home occupation, and they would be allowed one additional employee. As long as you met the criteria – and the most restrictive item was that you couldn't use more than 25% of your residence, and you could not operate out of the garage.

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Mr. Stull stated that the Church has a kindergarten in their school. This is basically running a school out of a church. He asked if counseling out of the church was any different than running a school out of the church. Chairman Hirotsu added that day care is written into the Code as a permitted use.

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- From the perspective of Planning Commission's previous decision, Mr. Chesar stated that, as the Law Director noted, it had already been considered as an associated use, approved in 2019. He read from Terry Donnellon's email, dated November 17, 2023 (also included in the
- Commission's packets):

217 218 "Counseling itself, as associated with the Church, is approved by virtue of this coming before them, and getting approved in 2019."

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Mr. Dong corrected, noting that it was "faith-based" counseling that was approved.

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Mr. Fossett stated that Mr. Donnellon's memo points out, "expanding the nature of the counseling *reopens* the question".

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Mr. Fossett referred to page 6 of the Staff Report, stating that he reads Conditions a and b together, and interprets them as behavior and mental health being the boundaries of the type of counseling that would be permitted in the Church. Meaning that it couldn't be financial counseling or career counseling – is that correct?

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> Mr. Chesar stated that at the last meeting (October 2, 2023) there was a discussion on the meaning of "faith-based" and it was determined to be a specific form of counseling.

232 The Planning Commission's intent (in 2019) was to ensure that their counseling was in some 233

way associated / related to the Church. Mr. Dong stated that the Church brought that language

234 (faith-based) to the Planning Commission (PC); we did not create that. And Bassett

235 Psychological Services even came before us, and they discussed it, with that proposed language.

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Chairman Hirotsu asked if the applicant would address this question.

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239 Mr. Fossett again asked if the point in the proposed language of conditions a and b on page 6, 240 was to limit the counseling services only to behavioral and mental health counseling.

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- Mr. Chesar stated that he was simply suggesting and offering verbiage; he was not implying a limitation.
- Mr. Chesar explained the history regarding conditions c and d, noting that there was a lengthy discussion about payment at the last meeting (October 2, 2023). Item c was originally (in 2019) intended by the applicant to mean that the Church would not charge the counselor to use / lease their facilities. The City and PC understood that verbiage to mean that the patient would not be charged or paying, else it would constitute a commercial business.
  - Mr. Chesar explained that last month (October 2, 2023), there was much conversation with the applicant, as they did expect that money/insurance would dispense between the patient and the provider. This led into more discussion about HIPPA, knowing what people were coming for. If the Church paid for some patients or awarded scholarships, were they a qualified mental health institution? If the patient pays, versus the Church, does it constitute a commercial business then? He again deferred to the applicant.
  - Chairman Hirotsu stated that the payment was an issue for him; does that exchange of money then constitute this as a business, and then, the nature of what we are approving. This is why he specifically asked for Mr. Donnellon's (Law Director) point of view, which is that it doesn't change the nature of this, it is neither disapproved, nor is it automatically within our Code. Mr. Donnellon noted that the PC has the authority to make a decision, and put conditions on it, if we choose.
    - Mr. Fossett felt that Mr. Donnellon's memo said that payment for services does make this a commercial use, and we need to decide if the new model of having patients pay for their services takes this out of an associated use that we want to allow.
- 267 268 Mr. Stull gave an example of the Church holding a fish fry: people pay for the fish, and it is a 269 public event. Is this a commercial business? Chairman Hirotsu had more concerns about 270 individuals paying for day care at the Church -- and that is actually approved in our Code. 271 Mr. Stull asked if this could be permitted if the patient was a member of the congregation, as 272 opposed to the public; does that change the perspective because then they are providing a service 273 to their community, their charter. Is that an alternate option that would allow them to proceed? 274 Chairman Hirotsu asked how we would know if they were a member or not. Mr. Stull 275 acknowledged that there were always unknowns – how would you know if they were providing 276 faith-based counseling?
  - Mr. Chesar stated that even when Bassett was offering this before, it could have been to anyone, and the same for the day care it is provided for the whole community.
- Mr. Chesar read from Mr. Donnellon's memo, page 2:

  "Are we concerned that while counseling is an associated use, it is also a commercial use in a residential district? When counseling was previously approved, the understanding was that the Church would pay the counselor. Payment for services does make this a

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commercial use, but is it less intrusive if the payment comes from the Church rather than the patient? ...but this is for the Planning Commission to decide."

Mr. Stull asked if he went there (not being a member of the Church), versus a Church member, would the Church would pay?

Chairman Hirotsu asked if the applicant wished to speak and address some of these questions.

Nermine Banke, Chairman, Church of the Saviour, 7492 Trailwind Drive, Montgomery, OH 45242 stated that they came back to PC, specifically to change the verbiage "faith-based". She explained that, as they were looking for providers, they were made aware from the provider that it was a specific type of counseling, and legally, professionally, this is not recognized.

Ms. Banke stated that the Church's intention was to provide a ministry to the community, it is not intended as a profit center for the Church or for any provider. They want this to be for the community, not limited to their congregation, and nothing will be pushed religiously on anyone. They do not want to put barriers in place to prevent anyone from coming to receive help.

At the last meeting, they were made aware of the misunderstanding of who is paying. Every time we have this conversation, there are concerns about mental health and individuals with mental health issues. And this is all part of the stigma that we are all trying to understand. Times have changed, especially after COVID.

Ms. Banke explained that they were looking to help folks in this community. Whether they have an issue that I want to know about or not know about, this is about providing help or not providing help. As a personal neighbor who lives close to the Church, Ms. Banke does not have a concern that "crazy" people are coming to our neighborhood. We all have to stop viewing it that way – they are really our friends and neighbors and their children – who have anxiety and other problems. These are the people we are serving.

Chairman Hirotsu stated that a question came up about why people didn't just go to the counseling office. Ms. Banke stated that the anxiety and the stigma around mental health is such a problem that it also prevents folks from going specifically to a hospital or a mental health facility. The fact that this is a house with a parking lot – makes it less intimidating. And, also this is what we have to offer for the providers and the community's space. This doesn't mean that our relationship with a provider will then preclude them from doing counseling in their own space – that can be part of it, for sure.

Mr. Fossett understood that this will provide a convenience for the community by bringing counselors into the community, so they are closer to the people in the community and it is easier for them to get to the services they need, as opposed to having to find out where a doctor's office is and drive somewhere to their office; instead they could possibly walk there. Ms. Banke agreed that physical proximity is also an advantage. The Church can also use the location and the facility as our leverage to get emergency scheduling preferences with a provider. One of the

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- hardest things right now for mental health is simply getting scheduled quickly with a provider.
- This is another advantage for those coming to the Church.

Ms. Banke pointed out that the Church has a long history with Sycamore Schools; some of heart behind this idea stems from a suicide at Sycamore many years ago. There were many people in their congregation involved with that. One of the folks in the congregation was a counselor at Sycamore at the time. This is why it is good to be close to the schools. And that is why they were working with Bassett and children. But now they will also have providers for adults.

Ms. Banke noted that they do not want this to be about one provider; they have a parishioner who is a music therapist that is also interested to help. They want to offer the space and need to have the proper language to be able to contract with providers that works for mental health today because they are hard to come by, it is competitive, and it is hard to get appointments. There is a lot of touchiness of how we use our language as lay people, when it comes to their profession.

Ms. Banke wanted to address Mr. Dong's concerns with the volume and restriction on volume. She pointed out that the Church has something going on in their buildings from 8am to 9pm, pretty much every day of the week. The additional cars and traffic for this service would be completely unnoticeable. This will not be a major volume, as they are only using 25% of what used to be a residence; the overall space is fairly small. They can certainly put in a contract how many hours they will allow each provider, but not necessarily put timed hours on it. The odds are that there will be only 1 or 2 people in there at any one given time.

To address the concern that a business is making profit from this center, Ms. Banke felt it made sense to restrict how much any one provider can be there, because then it cannot be their sole business.

Chairman Hirotsu closed the meeting to public comment. He asked for comments/questions from Board members.

Mr. Fossett asked if it was their intention to provide counseling related to mental health. Ms. Banke confirmed. He wanted to be sure that we have the proper language that describes the service they provide, but also restricts it from the counseling they are not providing, perhaps such as career or financial counseling. Ms. Banke explained that, being a Church, they have all kinds of opportunities - they provide health classes, they have Dave Ramsey – who is a financial planner; but the difference is that these are not ongoing counseling services. She asked that they adjust the language to avoid restricting those types of events.

Mr. Fossett felt there was a difference between the Church bringing in someone to give a seminar or conference, and the Church renting out space to a third party who would operate their professional operation in the Peace House. He felt that the correct verbiage for the operation in the Peace House would be mental health counseling. Ms. Banke agreed.

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- Chairman Hirotsu asked if they would do marriage counseling, as he wanted to be sure of what 372 373 the Commission was approving. Ms. Banke believed that the Pastor did the marriage counseling; 374
  - but she was not sure. Chairman Hirotsu wanted to use very specific language, for approval.
- 376 Ms. Banke stated that they were here for behavioral therapy and mental health.
  - Chris Philpott, 10091 Humphrey Manor Court, Montgomery, OH 45242 stated that part of the problem is that they haven't lined up the counselors yet, and won't, until they have the green light to do so. It might happen that a counsellor they contract also provides marriage counseling, -- they haven't crossed that bridge yet. He agreed to put these limits on them, and if they have to come back, for some unforeseen items, they will do it. Today, mental health is the issue and behavioral therapy is a strategy included in mental health.
  - Ms. Banke ensured the Commission that that they were not renting or leasing to the counselors. They do not want any of the providers to feel like this is their space; it will be a common-use space – they will not leave any of their information in these offices. Many of them will not want to be in the building at the same time. Someone may have the space on Monday/Tuesday and someone else on other days.
  - Mr. Fossett asked if the counselors will do this without any direct oversight from the Church. He noted that the Church enters into an agreement with the counselors, allowing the counselors to use the space, but then the Church is removed from the operation. Ms. Banke confirmed, and because of HIPPA, they will not even know who came and who left.
  - Ms. Steinebrey asked how the providers will schedule the time, if the Church has any idea. Ms. Banke stated that, in some conversations with counselors, the Church will offer windows of hours for each counselor, and the Church will not know how many people they will see in that time. They may have an 8-hour block, and they many only see 1 or 8 patients in that time.
  - Mr. Fossett pointed out that this speaks to the point of convenience, by making it easier for someone to see a therapist, instead of having to schedule an appointment, they could just walk up. Ms. Banke was unsure about that, because there is a lot of patient onboarding; she felt they would more likely make an appointment through the practice – and the convenience piece comes in by asking them where they would like to meet. This will allow them to use practitioners from all over the city.
  - Mr. Fossett asked if the Church would be advertising this service, or if the patient would need to find the practitioner and then learn if they are offering services at the Church. Ms. Banke stated that the Church would have the connection with the patients, via the congregation and the community and the schools. The Church would never help them make an appointment. Chairman Hirotsu noted that the Code permitted them to advertise in their Church Bulletin, but they could not put a sign outside of the Church.

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- Mr. Dong had concerns with violent mental health, and how to mediate that, because of this
- being in a residential area. He did not know if they had the facilities to control that. He asked if
- 417 there was a way to deal with this, perhaps in the contract. Mr. Philpott stated that this is hard to
- 418 predict. Mr. Dong agreed, but pointed out that is why we don't have mental health facilities in
- 419 the center of our residential neighborhoods.

Mr. Philpott noted that they were 100 yards from Bethesda North Hospital. There was more discussion. Mr. Philpott stated that their focus was mostly on youth. He didn't know how they could identify violent situations. Ms. Banke stated that part of it is who they choose to partner with – they would not choose to partner with someone who specializes in sexual addiction.

Mr. Dong asked, what if something bad did happen, how would you deal with it, or how could you have prevented it? Ms. Banke stated that there was no easy answer to this. Mr. Philpott was not sure, but thought that the counselors were required by law, to report to the authorities, if someone was having harmful thoughts. He stated that they could also remind the counselors of this, in the contract between the Church and the counselor.

Mr. Fossett wanted to clarify that their objective was to serve the existing community, not to reach out and bring people in from outside of the community; so if there was someone who presented violent tendencies, it would probably be from someone within the community. It would not be drawing in someone from outside the community. Mr. Philpott agreed, but also pointed out that as our therapists build relationships with Sycamore Schools, the school may get a reference about a child from another school. Chairman Hirotsu felt that we had many people in our community right now (some even violent) who have mental health issues and need this help. This was the main point for him – for us to help our community, and prevent suicides and violent acts.

Ms. Steinebrey thought that if the counselor felt someone was a threat, that they would not choose to meet them at the Peace House, where they were fairly contained. She felt that they would go to an office where there were other counselors and people around. Ms. Banke agreed with Ms. Steinebrey, and stated that this point did come up with one of the counselors – that there was not enough traffic or volume (it was unrelated to this situation), for certain clients.

Mr. Dong asked if they planned to use this 24/7. Ms. Banke stated that she felt it would be just weekdays, during the time they have other church activities. She felt it would be between 8am and 9pm, but not sure what days. She asked what would it matter what days it was limited to – maybe they would hold it on Saturday, but not Friday. She pointed out that because there would be so few, it wouldn't be noticed, by the traffic and volume. Mr. Dong felt that if it is was 24/7, it would appear to be more like a commercial business. Mr. Philpott suggested that they provide a total hours per week – 60 hours/week maximum, regardless of how many providers there were. There are only 2 therapy rooms available. When you consider that it is between 4-6 different providers, 60 hours is not a lot.

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- 458 Ms. Steinebrey referred to page 6 of the Staff Report, Item 2: ..and no single counselor can
- provide more than 24 hours/week to ensure the site does not function as their primary office
- location. Mr. Chesar stated that this was just suggested verbiage from Staff, which is open to be
- 461 changed.

463 Mr. Fossett suggested 3 different limitations: 1) hours/counselor 2) hours/counseling service 464 and 3) total hours/week.

Mr. Philpott wanted to clarify the consternation around fees. He felt that if the preschool was a permitted use, and they charged students for preschool, why wouldn't the counseling service be the same, as it mirrored the same model. He stated that the providers of the nursery school have their own EIN, yet they are part of the Church.

Mr. Fossett asked about the relationship between the preschool and the Church. Mr. Philpott stated that the preschool thought they were their own entity, but they are not, they are part of the Church. Mr. Fossett pointed out that was the difference because the Church is providing preschool services, but the Church is not going to be providing counseling. Mr. Philpott stated that the counselors will report through the Church - be hired and terminated by the Church, much like the preschool teachers.

Mr. Fossett stated that from earlier conversations, he thought that there was no relationship or oversight with the counselors, just that the Church would arrange for the counselors to come in and provide services. Mr. Philpott stated that they would be hands-off the counseling, but they would be hands-on, as far as who will do the counseling at their facility. Ms. Banke stated that they will partner with providers that they choose, and the providers would have a contract with the Church, for use of space, liability, insurance coverage, etc. They could also include conditions in their contract, such as the weekly hour maximum.

Mr. Fossett asked if their preschool providers held preschool anywhere else, or if it was only in the Church. Mr. Philpott stated that this preschool has been with them for 60 years. Mr. Dong pointed out that day care was a permitted use, whereas counseling was an associated use – that is the distinction. Mr. Chesar pointed out that the Law Directory's memo stated that the definition is not all encompassing – there are associated uses that are common place, or that are actually with a Church or institution. Mr. Chesar stated that the definition is clearly not all encompassing because something is always evolving.

Ms. Banke agreed, noting that churches are trying to serve the community and their needs, and this is clearly a need. She stated that they looked at other models and the only way it would work for the Church was through a third -party, because they don't have all of the necessities to hire a counselor; and that would be a huge undertaking.

- 499 Mr. Fossett asked if the Church had any control over the curriculum over the preschool.
- Ms. Banke stated that they did not. The preschool has its own Board. The Church Board hires

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the Director of the preschool and they approve the preschool Board. There are 9 Board members, and they ask that 5 of them be members of the Church.

Chairman Hirotsu asked what the oversight structure would be for the mental health service. Mr. Philpott stated that the Church Board would review the providers that were chosen; it has been discussed if they should elect its own (subset) board, but this has not been determined yet. Ms. Banke stated that there would be a contract with the counseling providers.

Mr. Chesar asked who would decide on termination of a provider. Ms. Banke stated that it would be the Church Board. Mr. Dong asked how your oversee, if you don't know who the patients are. Ms. Banke stated that it wouldn't be on an individual counselor level; obviously, reputation would be a huge part of who is brought in. It would be through client complaints, and failure to adhere to our guidelines, compliance issues and customer satisfaction issues. Ms. Banke stated that it is also safer for them to use a provider who has multiple counselors, because that provider looks over their counselors.

Mr. Dong felt that one of the contract points might state that 80% of the time, you would need to have counseling for someone. This would encourage the success of this service, and not allow for wasted time. If they had so many hours, and did not use them, that would be a dis-service. Ms. Banke was in favor of this contract condition, but also noting that counsellors don't receive payment if they are not seeing clients.

Mr. Fossett asked how hard it would be for the Church to acquire property in a commercially zoned part of Montgomery in which to house the counselors and to completely avoid all of these questions of whether this is a commercial use. Mr. Philpott stated that would not be financially feasible. He stated that the pastoral staff preferred not to live on campus, and this was the highest, best use of an existing facility; so they engaged in a \$400,000 renovation of this home.

Chairman Hirotsu asked if there were any other questions from the Board. There were none.

He had crafted a list for the Commission to discuss, noting that these were items that could be covered by conditions. He suggested discussing one at a time, and also invited the Commissioners to add their own items:

1) Qualifications of counselors and should we require licensing?

2) How do we restrict the hours?

 3) What limits do we have to keep it from being a commercial enterprise versus an accessory use?4) How do we / or do we, exclude people we deem unsafe; is there a way to do that?

5) Oversight from the Church, rather than the business providing its own oversight?

Mr. Fossett stated that if the Commission decided that the counseling arrangement that the Church was proposing looked like a commercial business, then that would be the end of the issue. He thought this should be the first discussion.

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Mr. Chesar clarified that this application related to the faith-based aspect. You cannot revoke what has already been approved in 2019. The Planning Commission and City Council have already approved their conditional use - as faith-based. Mr. Fossett pointed out that there was nothing in the original approval that talked about patients paying the counselors. Mr. Chesar explained that this is where the misunderstanding came in: regarding item c on page 6 of the Staff Report, the City understood this to mean that there was no charge for the counselors; the Church understood this to mean that they were not going to charge a lease or rent to the providers.

There was more discussion among the Commissioners, and it was determined that the basis of this application was that there needed to be an agreement on item c between both parties – by means of additional, clarifying verbiage, whether it be as Mr. Fossett's point or anything else.

Mr. Fossett felt there was a difference between the Church providing a food pantry and the Church allowing a grocery store to operate out of its base; but the day care presents the same issue, yet it was permitted. He couldn't decide if there was enough difference between the relationship between the Church and the day care versus the relationship between the counselors and the Church, for us to accept that day care was ok, but counseling was not. Mr. Stull explained that the day care was in the Code as a permitted use, and this counseling was not – it was listed as an associated use. This takes us back to the payment situation, and if we see this as a commercial use.

Mr. Fosset understood how a Church could offer the counseling, but when the Church goes beyond providing the counselor, and allows professional counselors to charge clients for counseling services on Church property, that looks different.

Mr. Stull offered another option: the Church offers this service to their parishoners, and if you are a mental health counselor and want to come in and counsel, we will give you the space, as long as you don't charge for your services. Mr. Dong agreed with this. Ms. Banke noted that they would not find counselors who would work for free.

Ms. Steinebrey felt this was a needed service for children, and she understood that the Church could not afford to pay for counseling. Hopefully, some of the people could get supplemented from their health insurance to help pay for these services. She would like to let the patient pay the provider, and have the space given for free. She felt the need was too great to get mired in all of the technicalities.

Mr. Dong agreed with the need for counseling. He felt that we could alleviate the "commercialuse" issue, by limiting the hours/days so that it could be considered as a satellite. To have it 5 days out of 7, would make it feel like a commercial business, to him.

Chairman Hirotsu agreed with the others, and stated that if we approved this, we would be setting a precedent. Mr. Fossett stated that precedents were always fact-specific, and the only

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way this would be a precedent for any other operation would be if another Church decided to come in and ask to provide counseling in their own building; it would not set precedent for anything else. Mr. Hirotsu agreed, and felt strongly about setting conditions that would prove this to be a unique situation.

Mr. Fossett stated that if this was Mr. Philpott's personal residence, the Code would permit him to operate a full-time licensed counseling service in that building, with one additional employee, and no more than 25% use of the residence. Mr. Chesar pointed out that one condition to limit space would be to keep this in the 2 therapy rooms of the Peace House, which were less than 25% of the Peace House. This would not be applicable to any other Church.

Chairman Hirotsu would like to also put conditions on the hours for the provider, and for the business. He asked all members if they were ok to proceed with this application (setting precedent), if we placed conditions on it.

Mr. Fossett was in agreement because of the importance of the service and because the Law Director clearly stated that it is within the meaning of associate use; and even if the clients are paying for the service, we can decide that this is an appropriate associate use for a Church. Even though it felt commercial to him, Mr. Fossett felt that conditions associated with this application could offset that.

Chairman Hirotsu felt that the Commission was leaning in the way of Mr. Fossett's thinking, and asked if they could discuss conditions. There was much discussion, and the following conditions were proposed:

- 1) Counseling services at 8003 Pfiefer Road shall comply with the following conditions:
  - a. Counseling services offered at 8003 Pfeifer Road <u>will be limited to mental health</u> counseling by licensed professionals.
  - b. Services will be contracted by and monitored by the church board;
  - c. Counseling space will be less than 25% of the total floor area and no more than XX square feet; and,
  - d. There will be no charges for the counselor's use of the space;
  - e. A patient may directly compensate a provider for mental health counseling.
  - f. An individual provider/company will not operate more than 20 hours per week.
  - g. No more than 40 hours of operation (building open for counseling) per week in total for all counseling services is permitted.
  - h. All counseling services shall be provided between the hours of 8 a.m. to 9 p.m.
  - i. There will be no signage for the provider of services.
  - j. No counseling provider/company shall operate their principal office on the site;.
  - k. Pending the Law Director review, approval of final language; no person identified as a danger to the community can be provided services at the site (for example, no registered sex offender or person convicted of felonious or aggregated assault) out of concern for the community and the preschool on site.

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- 1. One year from the start of services, the applicant shall update the Planning Commission on the status of operations.
- 1) A continuous evergreen screen be planted between the existing driveway and the adjacent property to the west in compliance with the plan presented to City Council at the public hearing and approved by Staff and the City Arborist.

Mr. Fossett felt that while some of these conditions might seem to be very limiting, and would be very difficult to track, at least if something came up down the road, if we establish clear conditions, then we have guardrails to fall back on.

Mr. Philpott came up with numbers that would be manageable with a total hours / week with counseling. He had experience with his own challenging staffing issues per week. He felt this would limit what they were trying to accomplish. They could divide it up between providers and this would address the Commission's concern.

There was discussion on how to provide verbiage concerning violent behavior. Mr. Dong suggested something be put in the contract between the Church and the provider, such as no violent or suspected violent clients. Mr. Fossett did not think this was practical. Mr. Stull agreed. Mr. Dong asks how you can allow this, but not provide safeguards. This is in a residential area with a day care right next to them; he felt that we would be negligent not to include something because there is a possibility that this could happen. Suggested verbiage for the Church's contract with the provider: If a counselor providing services at 8003 Pfeiffer, determines that a client presents a danger to the community, then that provider shall no longer see the client at 8003 Pfeiffer. It was undecided if this was permitted, legally. Ms. Banke stated that they would pursue professional information regarding this situation. Mr. Chesar offered a statement "to be reviewed by the Law Director, prior to City Counsel approval". Mr. Dong felt that the Church should be the ones to determine this. Mr. Fossett felt that it would make sense for us to put something in our conditions, and hope that the Church puts something in their contract with the provider. There was concern among members about counseling a sex offender within such close range (100 yards) of the day care. We could then ask the Law Director to make sure we have appropriate verbiage for that requirement.

Mr. Philpott noted that if the limit got to its maximum and there was still a great demand, they will come back before the Commission, to see if they can expand. They will then also have a good sense of how it may have impacted the neighbors – if it felt like a commercial use. He appreciated the Commission's concern, but knowing where that building sits on the property, and how it works, the Church does not see this as being a big issue.

Rick Huff, 7516 Fawnmeadow Drive, Cincinnati, OH 45241 stated that he has been with Church of the Saviour, especially working on the Peace House, since the beginning, when it was a rectory, prior to the remodel. He invited the Commission to come to the Church and see the Peace House. He stated that he could answer many questions. He had concerns with limiting the people or hours -- what does a counsellor tell a mother who has a crisis and needs to see someone as soon as possible. And he says my hours are up this week at the Church, how about

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676 next week. Mr. Fossett noted that it was an inherent problem in this service; and they also have another office.

There was discussion about the process, given the Law Director's recommendation of verbiage (or not). The choice was to have this come back before Planning Commission for their approval of the Law Director's decision, or to move it along to City Council, as it is ultimately their final decision. Mr. Chesar gave timelines, noting that this would take more time. Commission members wished to see the final verbiage before making the recommendation to City Council. The Commission discussed their availability for their next PC meeting/s.

Chairman Hirotsu asked if any guests or residents had comments. There were none.

Pending the Law Director's review of the proposed modified conditions, Mr. Fossett made a motion to table the application from Church of the Saviour, 8005 Pfeiffer Road, for reconsideration of conditional use approvals pertaining to the clarification of counseling services provided by the Church at the Peace House, located at 8003 Pfeiffer Road, as detailed in the Staff Report dated November 20, 2023.

Mr. Dong seconded the motion.

The roll was called and showed the following vote:

AYE: Ms. Steinebrey, Mr. Dong, Mr. Stull, Mr. Fossett, Chairman Hirotsu (5)
NAY: (0)
ABSENT: Mr. Juengling, Mr. Schneider (2)
ABSTAINED: (0)

This motion to table the application is approved.

#### **Staff Update**

Mr. Chesar asked if the Commissioners were interested in keeping the start-time of future Planning Commission meetings at 6:30pm or 7:00pm. It was unanimously decided that we will start the future Planning Commissions meetings at 7:00pm.

Chairman Hirotsu referred to Montgomery's Moment program, specifically the online survey. He noted that an idea was presented that Montgomery Road would not be a two lane road north and 2 lanes south, in the Historic District. Mr. Chesar stated that it didn't mean it was actually going to happen, just a question as to what you preferred, mostly based on visual preference. They are looking into more outdoor dining, and then narrowing the road in certain places. They are asking what people prefer in the Historic Center. This is more information gathering from residents. Mr. Chesar encouraged members to take the survey, and see others' comments. He pointed out that any changes will ultimately come through this Commission. Mr. Chesar

stated that he will keep the Commission updated on this program, but also encouraged the two representatives that are on this Commission to do the same.

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720	
721	Council Report
722	Ms. Bissmeyer was not present; there was no Council Report.
723	
724	<u>Minutes</u>
725	Mr. Dong moved to approve the minutes of October 2, 2023, as submitted.
726	Ms. Steinebrey seconded the motion. The Commission unanimously approved the minutes.
727	
728	<u>Adjournment</u>
729	Mr. Dong moved to adjourn. Mr. Stull seconded the motion.
730	The Commission unanimously approved. The meeting adjourned at 10:00 p.m.
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737	Karen Bouldin, Clerk Dennis Hirotsu, Chairman Date
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