

**CERTIFICATE OF APPROPRIATENESS**

**Application Date:** August 6, 2014

**Applicant:** Steve Folkes, Corbella Inc., for John Nash, owner

**Property:** 128 W 17<sup>th</sup> Street, Lots 13 & 14, Block 133, Houston Heights Subdivision. The property is a vacant 5,330 square foot (65' x 82') corner lot.

**Significance:** The site is currently vacant.

**Proposal:** New Construction – Three-story 4,532 square foot brick veneer mixed-use building

At the June 2014 HAHC meeting, the applicant was denied a COA to construct a three-story 4,532 square foot mixed-use building with commercial space on the ground floor and residential space on floors two and three. On July 10, 2014, the Planning Commission upheld this decision on appeal.

The applicant has resubmitted an application for a COA. The revised proposal is identical to the previously denied proposal with the exception of an overall height decrease of 1', from approximately 38' (37'-10") to 37' (36'-10"), driven by a 1' decrease in the first floor plate height (from 10' to 9'.)

Other project details, unchanged from the original submittal, are as follows:

- The structure will be approximately 51' wide, 33' deep, and 38' tall, with the front façade facing Yale Street, with an attached one-story garage at the rear measuring 22' wide by 23' deep by 13'-6" tall and taking access from W 17<sup>th</sup> St.
- The three-story portion of the structure will be set back 10' from Yale Street, 10' from W. 17<sup>th</sup> Street, 3'-6" from the south side property line and 39' from the east property line shared with the neighboring historic residence. The attached garage will be set back 38'-6" from W 17<sup>th</sup> St and 17' from the east property line.
- Three parking spaces will be required for the commercial space and two for the residential space, all of which will be provided on site. Two spaces will be provided in the attached garage and the other three spaces will be surface parking in front of the garage.

See enclosed application materials and detailed project description on p. 8-22 for further details.

**Public Comment:** No public comment received at this time.

**Civic Association:** No comment received.

**Recommendation:** Denial - does not satisfy criteria

**HAHC Action:** -

APPROVAL CRITERIA

NEW CONSTRUCTION IN A HISTORIC DISTRICT

Sec. 33-242: HAHC shall issue a certificate of appropriateness for new construction in a historic district upon finding that the application satisfies the following criteria:

S D NA S - satisfies D - does not satisfy NA - not applicable

- (1) The new construction must match the typical setbacks of existing contributing structures in the historic district

The typical front setback of contributing two-story commercial and mixed-use structures is 0', while contributing one-story single-use commercial structures feature a wider range of setbacks. Chapter 42 requires a 25' setback on Yale Street, a major thoroughfare, but staff believes a 10' setback is more appropriate for a mixed use structure in a historic district. The reduced setback on the west side would also help provide additional separation between this building and the contributing residence next door.

The 10' setback will require a variance from Planning Commission, but the approval of a COA will require Planning Commission to approve the variance request.

- (2) The exterior features of new construction must be compatible with the exterior features of existing contributing structures in the historic district

The exterior features of the proposed building include exterior brick, arched windows, a pronounced cornice and a two-story arched entryway. Criterion #2 does not reference use, so comparable buildings include all contributing structures in the district, rather than just commercial structures. Similar features are found on buildings within Heights East, including Lambert Hall across W 17th Street, and the proposed structure references, simplifies and abstracts them appropriately.

- (3) The proportions of the new construction, including width and roofline, must be compatible with the typical proportions of existing contributing structures and objects in the historic district

This criterion does not reference use, so structures such as the Educational Building at Grace United Methodist Church, Lambert Hall and other religious and institutional buildings can be used for comparison, and the proposal's proportions are compatible with these structures.

- (4) The height of the eaves of a new construction intended for use for residential purposes must not be taller than the typical height of the eaves of existing contributing structures used for residential purposes in the historic district; and

Typical eave height for contributing residential uses in Heights East is 22' and under. Because the proposed building will contain ground floor commercial, staff is reviewing the project under Criterion #5. See Staff Note below for rationale.

If the proposed structure were reviewed as a residential building, the maximum appropriate eave height would be 22'.

- (5) The height of new construction intended for use for commercial purposes must not be taller than the typical height of the existing structures used for commercial purposes in the historic district.

The proposed building contains a ground floor of commercial (office) with two stories of residential above. Staff believes that, although the building is 1/3 commercial and 2/3 residential, reviewing it for height under Criterion 5 is more appropriate, as the proposed use

*configuration is typical of historic commercial buildings that might or might not have one or more stories of residential above. See more information in the Staff Note below.*

*There are ten contributing commercial structures in the Heights East District, of which six are one-story single-use commercial structures. Of the four two-story commercial structures, at least two are mixed-use – commercial on the ground floor and residential above. The four contributing two-story commercial buildings feature heights ranging from 24'-10" to 29'-6", with the two mixed-use buildings featuring heights of 27'-9" and 29'-6". There are no three-story commercial buildings in Houston Heights East.*

*At three stories and 36'-10" tall, the proposed structure is 7'-4" and a full story taller than the tallest contributing commercial structure in Heights East.*

**Staff Note on Criteria 4 and 5:**

In applying the criteria, staff had to make two determinations:

- 1) Whether the building is "intended for use" for "residential purposes," for "commercial purposes," or for other purposes, and
- 2) If considered "residential" or "commercial," what existing contributing buildings would be used for comparison for the purpose of applying Criteria 4 or 5.

1) "intended for use" for "residential purposes," "commercial purposes," or for other purposes

In order to correctly apply the Criteria in Sec 33-242, Planning must make a determination as to whether the proposed project should be considered as 'residential,' as 'commercial,' or as another use, as Sec. 33-242 provides height criteria for 'residential' and 'commercial' uses only. Uses that do not fall within either category, such as churches, schools, or masonic lodges, are not required to meet Criteria 4 or 5. Their appropriateness as new construction is instead determined by applying Criteria 1-3 only.

The proposed three-story building would have 2 floors of residential and one floor of commercial/office space, and is therefore 2/3 residential and 1/3 commercial. According to information from Code Enforcement, the ground floor will be permitted under the International Building Code, whereas the two residential floors will be permitted under the International Residential Code (see further explanation of building codes below). This information confirms that the building is 2/3 residential and 1/3 commercial.

Staff believes that even though the majority use is residential, that classification as 'commercial' is more appropriate, as the proposed use configuration is typical of historic commercial buildings that might or might not have one or more stories of residential above. A similar mixed-use configuration exists in contributing buildings classified as "commercial" in the Houston Heights Historic District East inventory, including 110 W 12th Street and 112 W 12th Street.

If considered as a residential use, the proposed structure would be restricted to a 22' eave height. Reviewing this building as commercial allows this owner a building height of up to 30'.

*Staff concluded that the proposed project should be considered as "intended for use for commercial purposes."*

2) What existing contributing buildings should be used for comparison for the purpose of applying Criterion 5.

Staff looked first to the Houston Heights Historic District East inventory for information. Most structures in Heights East are single-family residential, although there are 10 contributing buildings categorized as 'commercial' and several churches and other contributing institutional buildings of various sizes. Institutional buildings within the District include the Houston Heights City Hall at 107 W 12th Street and Masonic Lodge at 1100 Harvard Street, which was later converted to condos.

Community gathering facilities – churches, schools, meeting halls – are often ‘landmarks’ in a community, and are commonly larger, taller and more distinctive than residences or commercial buildings. These buildings were called out separately within the Houston Heights Historic District East designation report because, as major landmarks, their atypical nature is a distinct part of their significance “with respect to the visual continuity of the community.”

On appeal, the applicant asserted that churches and fraternal halls should be considered as ‘commercial’ use for the sake of height comparison under Criterion 5, as their facilities are often rented for events and money changes hands. Staff’s position is that ‘commerce’ is highly secondary to the purposes of religious institutions as well as to non-profit fraternal halls, and that these buildings should not be considered as ‘used for commercial purposes’ under Criterion 5.

Standard practice in land use planning treats religious, fraternal and education institutions as distinct land uses from commercial/business uses. The American Planning Association considers “Activity” and “Function” with regard to land use. Activity refers to the “actual use of land based on its observable characteristics,” and a separation is made between commercial, institutional and mass gathering activities. Religious activities fall under “mass gathering,” though individual churches that have other activities (for example educational) can fall under both institutional and mass gathering activity classes. Function refers to the “economic function or type of establishment using the land.” Nine function classes are described, and, again, a clear distinction between commercial and institutional use is made. In this classification religious use is included with other institutional uses. Using national planning standards, a clear delineation must be made between properties intended for commercial use and properties intended for institutional use.

Examples of apparently non-religious use at church buildings in Heights East include the Claire School of Dance and Upstage Theatre. Upstage Theatre is all volunteer staffed and is, according to its website, “a proud member of Texas Nonprofit Theatres, LLC.” Claire School of Dance has its mailing address in the Education Building at Grace United Methodist Church, and it also offers courses in the Education Wing of Heights Christian Church, Cathedral House Montessori, and the Kinkaid School. Though Claire School of Dance collects tuition from its students and their parents, it is an educational entity that partners with multiple religious and non-sectarian educational facilities. Though not necessarily a religious use, education is an institutional use rather than a commercial one.

The applicant has also asserted that the City of Houston applies the same “commercial” building code to churches as to commercial buildings, rather than the “residential” code applied to single family homes, and that therefore churches are “commercial” uses. Though often referred to colloquially as “commercial,” the relevant code is the International Building Code (IBC), which is not intended solely for commercial properties and can in fact apply to many uses, including single-family residential uses over a certain height. The IBC applies to all construction, with exception only for “detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures,” which are instead reviewed under the International Residential Code (IRC). IBC is not truly a “commercial” code; rather it is an all-encompassing building code that is used whenever the IRC does not apply. In this case, two floors of the proposed structure will be reviewed using the IRC, and the ground floor will be reviewed using the IBC.

Institutional properties are not explicitly referenced within the five criteria for new construction, but they are referenced in the Houston Heights Historic District East designation report and there are national standards referencing commercial and institutional as separate uses.

*Staff maintains that comparing the proposed project against church and other institutional uses for height purposes under Criterion 5 is not appropriate. Only the 10 contributing commercial structures in Heights East are used for comparison.*

## PROJECT REVIEW TIMELINE

- 2/20/08: Houston Heights Historic District East was designated by City Council.
- 5/10/09: Houston Heights Historic District East recorded in Harris County property records.
- 2/22/13: The property was purchased by the current owner, per HCAD records.
- 1/31/14: Project plans for a 4+ story residence were submitted to Houston Permitting Center (HPC); plans were resubmitted on Feb 26, 2014, and April 4, 2014 following plan rejection by HPC.
- 3/6/14: The City began to receive complaints from the neighborhood that work was being done without permits on the vacant lot.
- 3/17/14: The property was red-tagged by Code Enforcement for doing work (setting forms) without permits.
- 4/18/14: Mr. Folkes contacted Planning Department to discuss the historic district regulations. Staff met with the applicants on 4/28/14 and 5/6/14.
- 5/7/14: A COA application was submitted to Planning for a three-story brick building, containing one story of office space with two stories of residential above.
- 5/8/14: Staff sent the applicant an email strongly suggesting he contact Heights East organizations and that he decrease the height of the structure to 35', and informed him that all non-residential structures were being compared, but that this approach was still "the subject of discussion."
- 5/19/14: At staff's request, Mr. Folkes informed staff that the ground floor would be permitted under the IBC (commercial code), and the upper two floors would be permitted under the IRC (residential code).
- 5/22/14 HAHC meeting: The item was deferred by HAHC following staff's recommendation to have time to clarify whether criterion 4 or 5 was appropriate to review the proposal with and to survey typical heights, setbacks and proportions of non-residential historic structures in the district.
- 6/3/14: Staff notified applicant that Planning would review the building as a commercial use under Criterion 5, and would compare the building to existing contributing commercial (including mixed commercial/residential) structures found within the district. Based on a field survey, no existing contributing commercial buildings in the district are taller than two stories in height, and the height range for these structures is 24'-10" to 31'-6". Staff informed the applicant that the recommendation would be denial of the project as proposed, but that a two-story building with a maximum height of approximately 30' would be acceptable.
- 6/4/14: Mr. Folkes informed staff that he wished to proceed to HAHC with no changes to the plans.
- 6/19/14: HAHC denied the application based on the project's failure to comply with Criterion 5 regulating the maximum height of commercial structures in the historic district.
- 6/23/14: Applicant appealed the decision of the HAHC to Planning Commission.
- 7/10/14: Planning Commission upheld the decision of HAHC.



PROPERTY LOCATION  
HEIGHTS EAST HISTORIC DISTRICT

Building Classification

- Contributing
- Non-Contributing
- Park



**CURRENT PHOTO**

WORK BEGUN WITHOUT REQUIRED PERMITS  
RED TAG ISSUED MAR 17 2014 TO STOP WORK



**NEIGHBORING PROPERTIES**

124 W 17<sup>TH</sup> STREET – CONTRIBUTING – 1909 (NEIGHBOR)



1701 HEIGHTS BOULEVARD – CONTRIBUTING – 1927 (ACROSS STREET)



**3D RENDERINGS – DENIED 6/19/14**

**SIDE FACING WEST 17<sup>TH</sup> STREET**



**SIDE FACING YALE STREET**



WEST ELEVATION – FRONT FACING YALE STREET

DENIED – 6/19/14

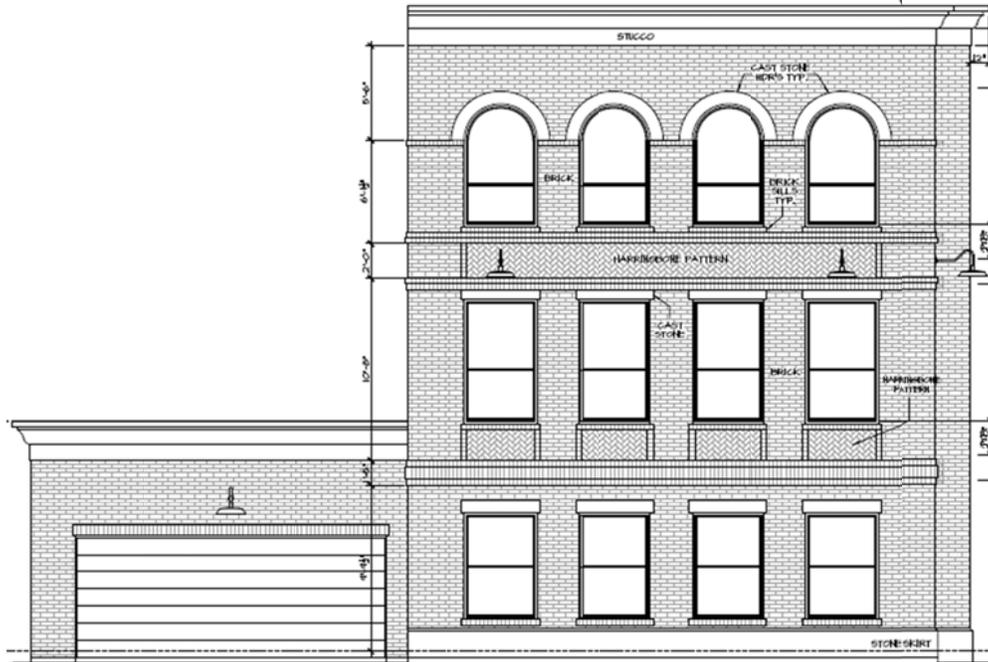


PROPOSED



**NORTH SIDE ELEVATION – FACING WEST 17<sup>TH</sup> STREET**

DENIED – 6/19/14

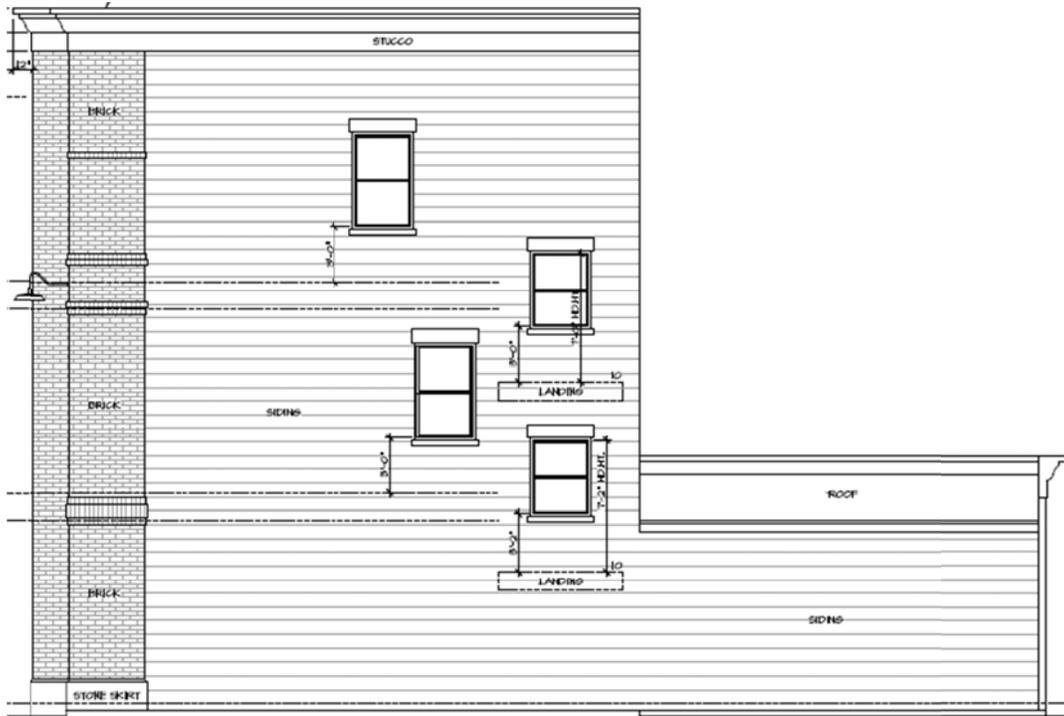


PROPOSED

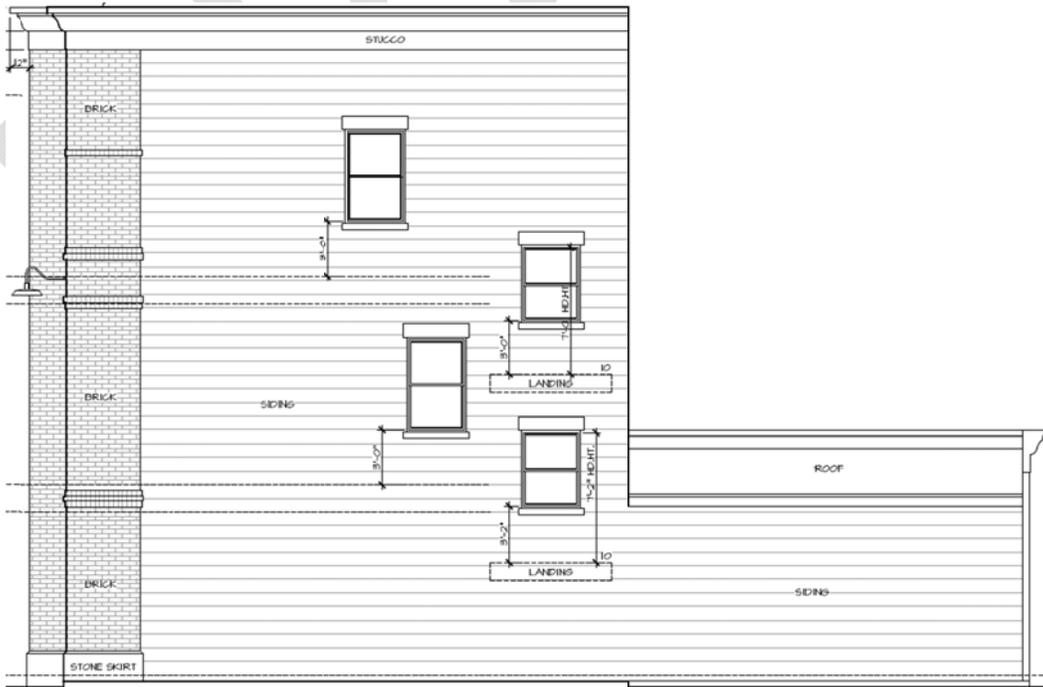


**SOUTH SIDE ELEVATION**

DENIED – 6/19/14

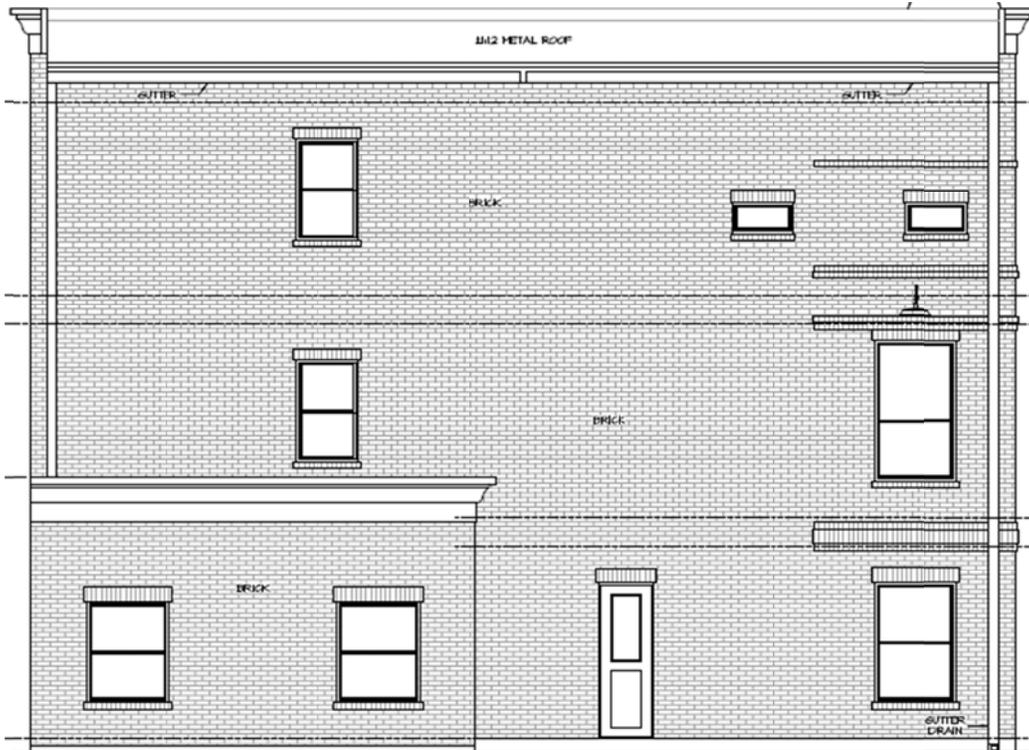


**PROPOSED**

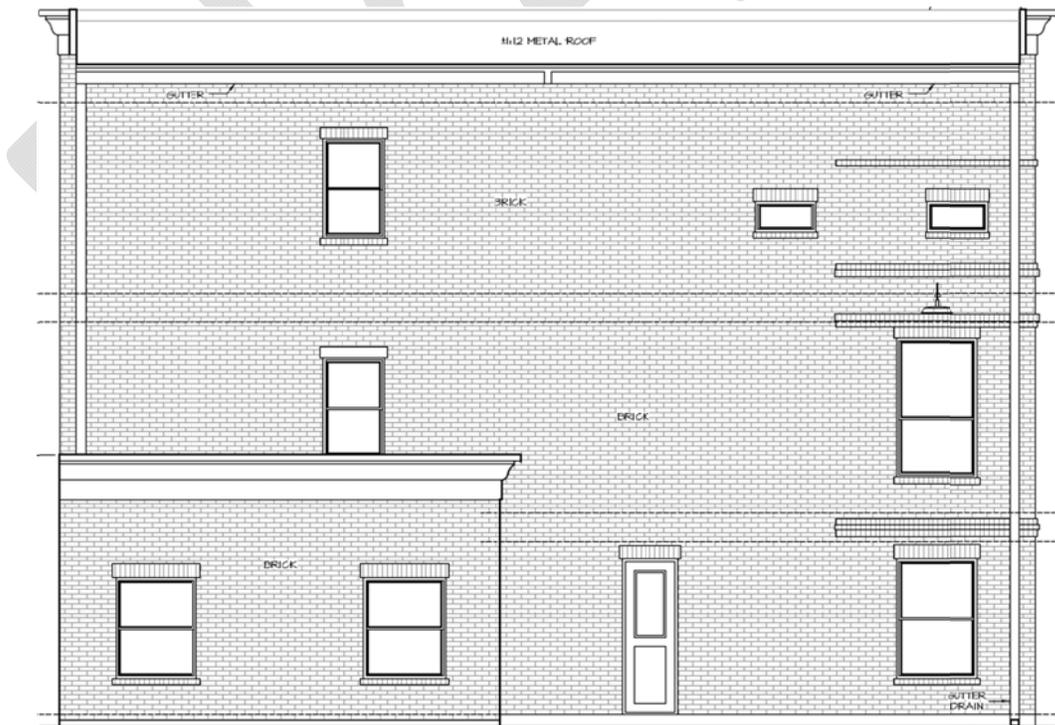


**EAST (REAR) ELEVATION**

DENIED – 6/19/14



PROPOSED

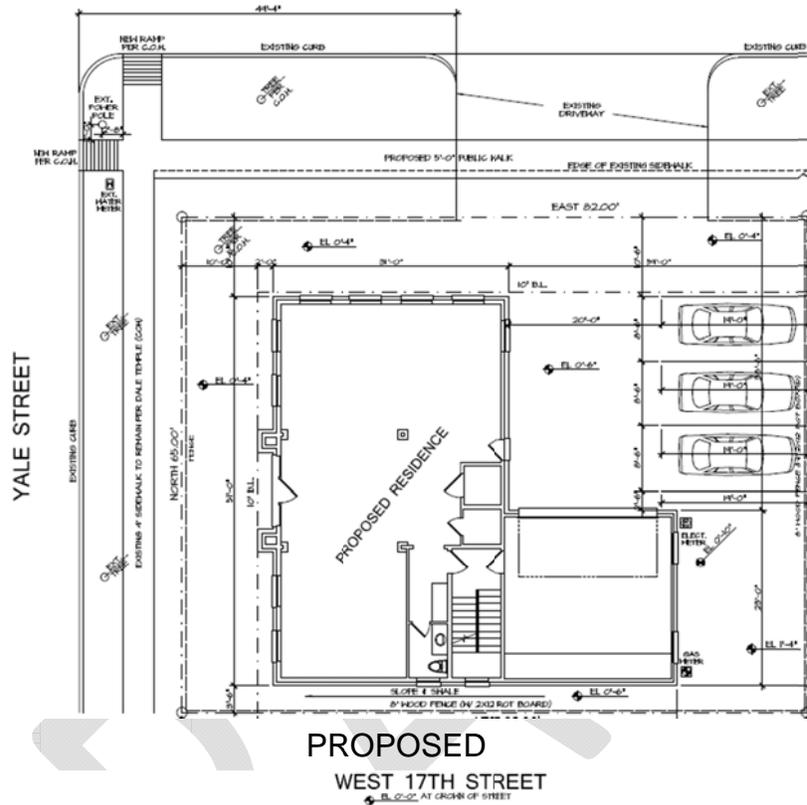




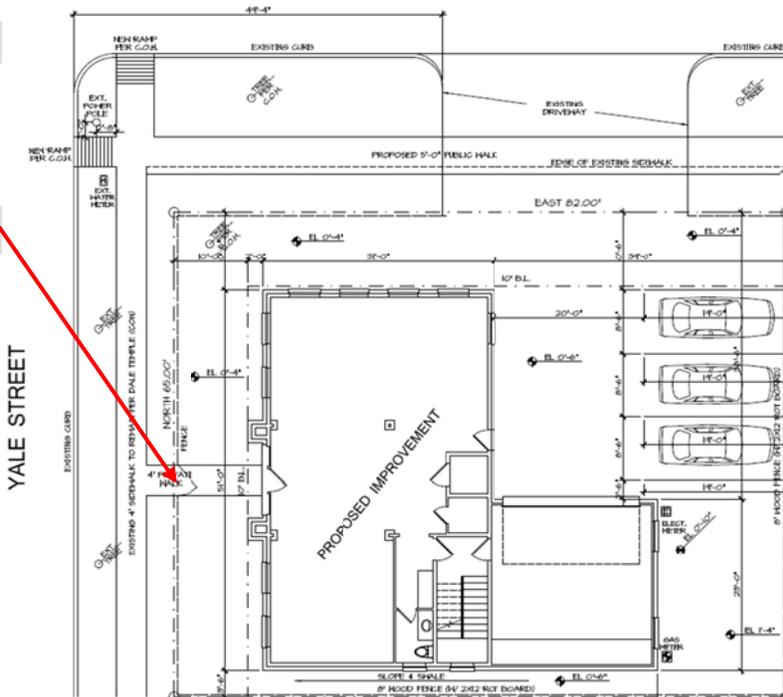
### SITE PLAN

DENIED – 6/19/14

WEST 17TH STREET



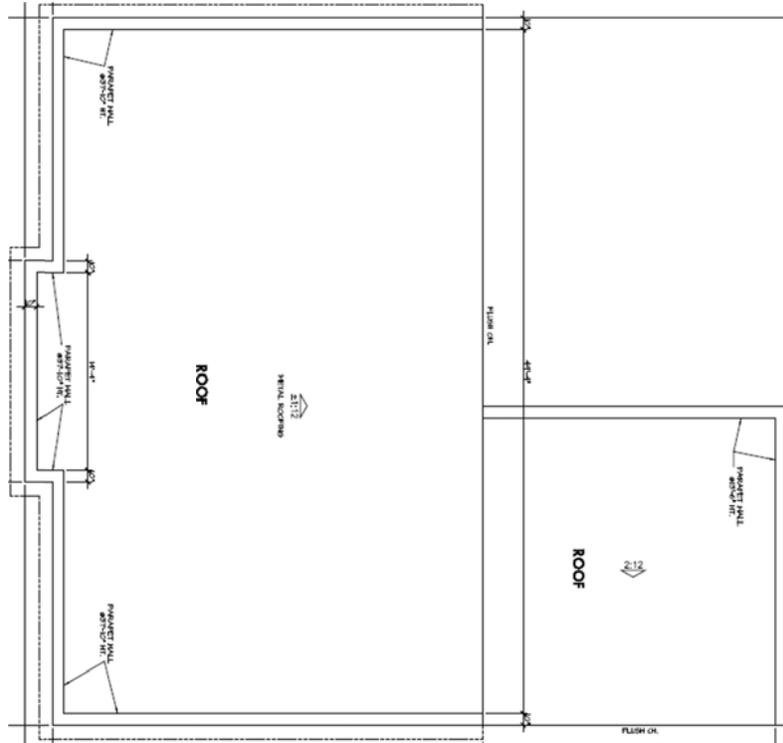
ADDITION OF SIDEWALK ACCESS ONLY PROPOSED CHANGE





**ROOF PLAN**

DENIED – 8/19/14 (NO CHANGES PROPOSED)

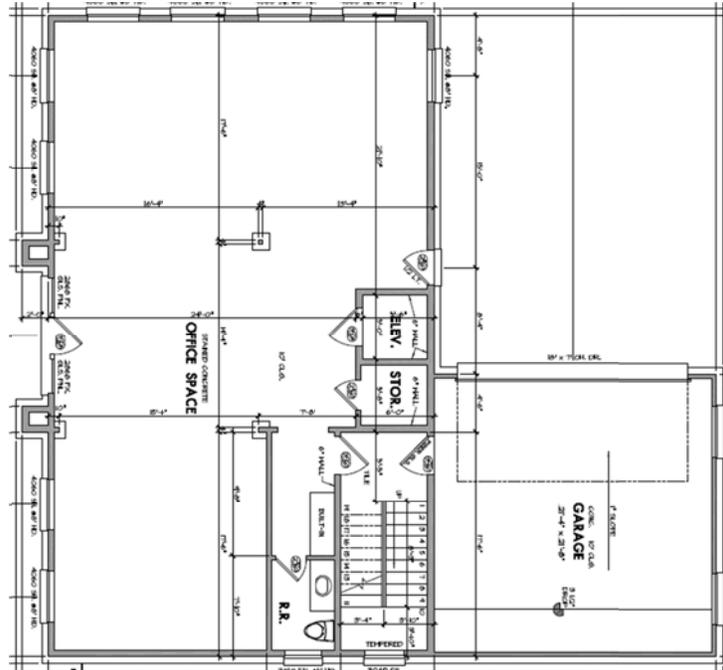


DRAFT



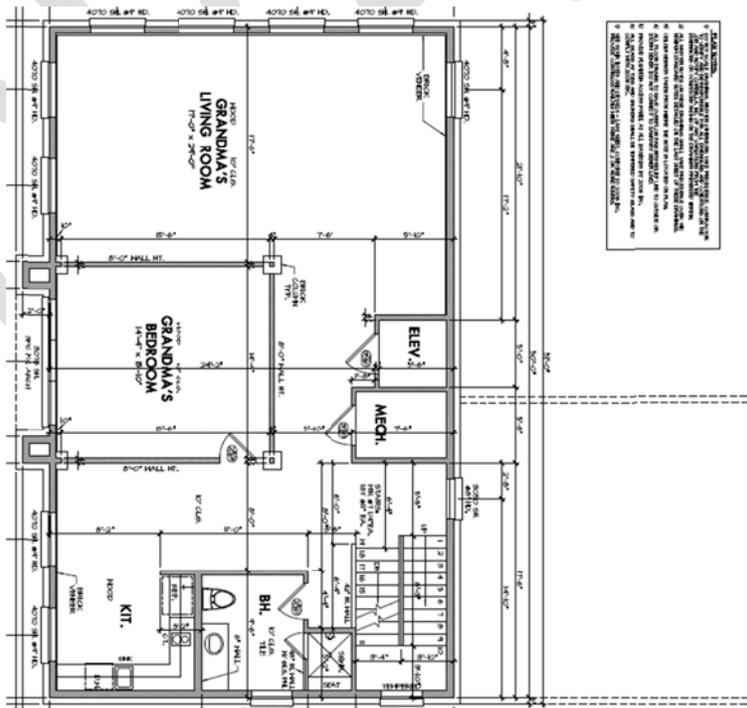
**FIRST FLOOR PLAN**

**DENIED – 6/19/14 (NO CHANGES PROPOSED)**



**SECOND FLOOR PLAN**

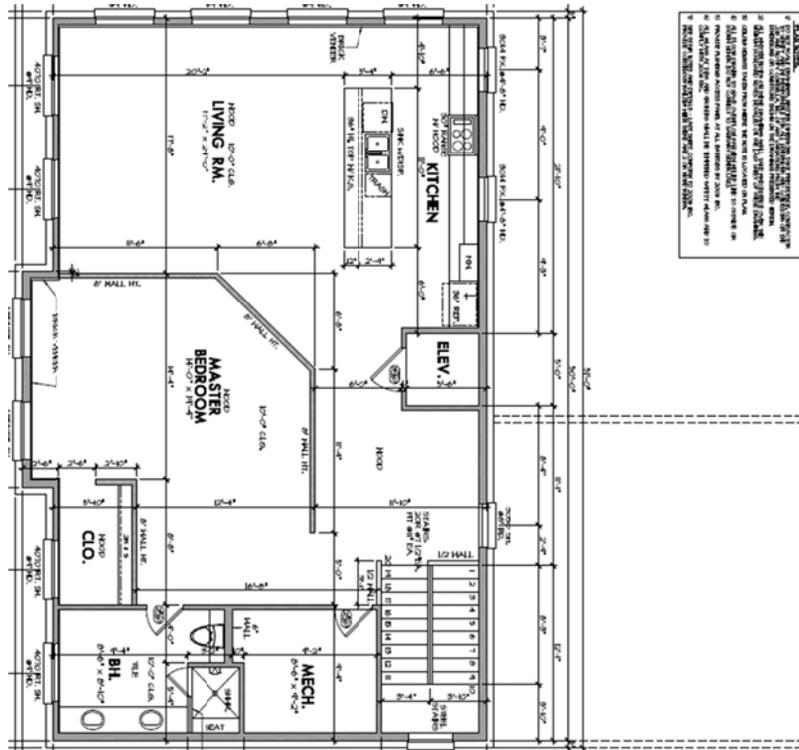
**DENIED – 6/19/14 (NO CHANGES PROPOSED)**





**THIRD FLOOR PLAN**

DENIED – 6/19/14 (NO CHANGES PROPOSED)



**WINDOW / DOOR SCHEDULE** (no changes proposed)

<b>WINDOWS</b>	
MANUFACTURER: JELDWEN	
1ST FLOOR	LOW-E 272 VINYL WITH CHESTNUT BRONZE EXTERIOR - 1/1
2ND FLOOR	LOW-E 272 VINYL WITH CHESTNUT BRONZE EXTERIOR - 1/1
3RD FLOOR	LOW-E 272 VINYL WITH CHESTNUT BRONZE EXTERIOR - 1/1
<b>DOORS</b>	
MANUFACTURER: JELDWEN	
FRONT DR.	ALUMINUM WITH CHESTNUT BRONZE EXTERIOR - 1 LT.
BACK DR	PAINTED FIBERGLASS WITH WINDOW INSERT - 1/2 LT.
INTERIOR	SOLID CORE MASONITE 1 PANEL RECESSED
GARAGE	16+ GAUGE MULTI-PANEL OVERHEAD

**CONTRIBUTING ONE-STORY COMMERCIAL STRUCTURES**



208 E 20<sup>th</sup> Street – Contributing – 1945



521 E 16<sup>th</sup> Street – Contributing – 1930



117 E 11<sup>th</sup> Street – Contributing – 1925



215 E 11<sup>th</sup> Street – Contributing – 1930



301 E 11<sup>th</sup> Street – Contributing – 1934



1216 Yale Street – Contributing – 1920

**CONTRIBUTING TWO-STORY COMMERCIAL STRUCTURES**

COMPARISON OF TYPICAL DETAILS

	Address	Stories	Max Width	Height
Commercial only	320 E 20th	2	27'-6"	24'-10"
Commercial only	104 W 12th	2	29'-4"	29'-6"
Mixed use	112 W 12th	2	53'-6"	27'-9"
Mixed use	114 W 12th	2	45'-10"	29'-6"
<b>Proposed structure</b>	<b>128 W 17th</b>	<b>3</b>	<b>51'</b>	<b>36'-10"</b>

CURRENT PHOTOS



110 W 12th Street – Contributing – 1916



112 W 12<sup>th</sup> Street – Contributing – 1922



320 E 20th Street – Contributing – 1930



104 W 12<sup>th</sup> Street – Contributing – 1900

---

**PROJECT DETAILS**

**Shape/Mass:** Proposed structure will measure 36'-10" above finished grade by 51' wide by 33' deep with a rear one-story attached garage extending an additional 22' from the rear that is 23' wide and 13'-6" tall above finished grade.

**Setbacks:** Proposed structure's front set back is 10' from Yale Street (west), 10' from West 17th Street (north), 3'-6" from the south, and 17' from the east. The three-story portion of the structure will be set back 39' from the east property line.

**Foundation:** The foundation will be slab on grade.

**Windows/Doors:** Proposed structure will feature vinyl single-hung 1-over-1 windows, one single-lite aluminum door, one painted fiberglass door with single-lite insert and one overhead garage door.

**Exterior Materials:** The east, west and north elevations will be clad in brick and the south elevation will be clad in horizontal lap cementitious siding.

**Roof:** Proposed structure will have a flat metal roof (nominal 1-over-12 pitch) with a 2'-4" parapet with stucco cornice detailing.

**Front Elevation:** Proposed structure will be clad with brick on the west, north and east elevations and feature a projecting central bay that contains a two-story arched entryway with a centrally located door flanked by side lites, separated from an arched upper window by a brick band. Additional brick banding will separate each floor. First and second floor will each feature four 1-over-1 vinyl windows. Third floor will feature six 1-over-1 arched vinyl windows. The parapet will feature decorative star details and a decorative stucco cornice.

**Side Elevation:** Proposed structure will feature four 1-over-1 vinyl windows on the first floor, four 1-over-1 vinyl windows on the second floor, four arched 1-over-1 vinyl windows on the third floor and a decorative stucco cornice. An attached one-story garage on the east side will feature one overhead garage door and a decorative stucco cornice.

**Side Elevation:** Proposed structure will feature horizontal lap cementitious siding, four 1-over-1 vinyl windows and a decorative stucco cornice.

**Rear Elevation:** Proposed structure will feature an entry door and one 1-over-1 vinyl window on the first floor, two 1-over-1 vinyl windows on the second floor, and one 1-over-1 vinyl window and two fixed vinyl windows on the third floor. A projecting one-story attached garage on the south side will feature two 1-over-1 vinyl windows and a decorative stucco cornice.