

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of February 7, 2012

**SUBJECT: 1320 South University Avenue Rezoning with Conditions and Area Plan
Project Nos. Z11-010 and AP11-001**

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the 1320 South University Avenue rezoning from D2 Downtown Interface base/South University character overlay district to D1 Downtown Core base/South University character district, with conditions, and Area Plan.

STAFF RECOMMENDATION

Staff recommends that the proposed conditional rezoning be **denied** because there is no evidence of an error in the zoning chapter and/or map that needs to be corrected; there has been no change in municipal policy affecting this site or the surrounding area; and they have been no changed or changing conditions that impact this property since it was rezoned to D2 in 2009. Further staff finds that the proposed rezoning is not in keeping with the master plan recommendation for the subject site and the proposed rezoning does not meet the Zoning Ordinance's intent of maintaining a sound, stable and desirable development within the City.

Staff recommends that the area plan be **denied** if the proposed rezoning does not prevail because it will not comply with D2 base/South University character overlay zoning requirements.

LOCATION

This site is located on the south side of South University Avenue between South Forest and Washtenaw Avenues, in the Central planning area and the Mallett's Creek watershed.

DESCRIPTION OF PETITION

The subject site is 35,275 square feet (0.82 acres) and is currently zoned D2 Downtown Interface base and South University character overlay district. It currently contains a two-story apartment building. The petitioner has requested the site be rezoned to D1 Downtown Core base/South University character overlay district with conditions.

The proposed conditions would 1) limit the maximum floor area ratio permitted to 700% with premiums; 2) limiting the maximum height permitted to 145 feet; 3) increase minimum side and rear setback requirements and 4) limit permitted principal uses to those uses permitted as if the site was zoned D2.

The petitioner proposes to develop a mixed-use building up to 145 feet tall (between 10 and 14 stories) on the site. An area plan has been submitted to illustrate a potential development consistent with the proposed conditional zoning request. The proposed area plan shows a

250,000-square foot, 14-story rectangular building including a two-story streetwall. Approximately 2,000-square feet of retail space is proposed on the ground level along with a residential lobby, elevators and stairwells and other accessory features of residential apartments. No specific number or range of dwelling units is noted on the area plan. Assuming residential uses are provided on all of the upper floors with an average of 800-square feet per unit, over 225 dwelling units are possible. Approximately 100 off-street vehicle parking spaces would be required for a building of this size, one for each 1,000 square feet of premium floor area. A driveway is shown on the west side of the site, leading to 30 off-street parking spaces at grade, most of those underneath the building footprint, and to an underground parking garage. A few at-grade parking spaces are shown outside of the building footprint at the far southeast corner of the site.

The development shown on the area plan has a 0-foot front and west side setback for the building base. The east side setback is 15 feet in the north half of the site, where the property line extends straight down from South University Avenue. The east side building setback increases from 15 feet to 68 feet as the east property line flares outward towards the back of the site. The combined effect of straight building line and angled property line result some adjacent properties to the south having a direct line of sight to South University Avenue between the potential development and the Sigma Alpha Epsilon Fraternity House at 1408 Washtenaw Avenue.

The building shown on the area plan is set back approximately 5 feet from the south property line and more than 38 feet to the R4C zoning district boundary to the south. A 15-foot wide conflicting land use buffer is shown along the east side of the site as well as the eastern-most 50 feet of the south/rear property line, wherever the subject site directly abuts residential zoning districts. Approximately 10% of the site is open space and the building covers 75% of the lot. Storm water management is shown underground on the area plan.

SURROUNDING LAND USES AND ZONING

	LAND USE	ZONING
NORTH	Mixed Use	D1 Downtown Core/South University Character
EAST	Group Housing (Fraternity)	R2B Two-Family Dwelling and Student Housing
SOUTH	Residential	D2 Downtown Interface/South University Character and R4C Multiple-Family Dwelling
WEST	Mixed Use (under construction)	D1 Downtown Core/South University Character

ZONING DISTRICT COMPARISION CHART

	CURRENT REQUIREMENTS	PROPOSED REQUIREMENTS	PROPOSED CONDITIONAL ZONING
Base Zoning	D2 (Downtown Interface)	D1 (Downtown Core)	D1 with Conditions
Schedule of Uses	See Table 5:10.19A of Zoning Ordinance	See Table 5:10.19A of Zoning Ordinance	Limited to uses listed in D2 Downtown Interface column of Table 5:10.19A of Zoning Ordinance
Max. Usable Floor Area in % of Lot Area	200% Normal (without premiums) 400% With Premiums	400% Normal (without premiums) 700% With Premiums 900% With Affordable Housing Premiums	400% Normal (without premiums), 700% With Premiums
Character Overlay District	South University D2	South University D1	South University D1 with Conditions
Minimum Height	24 feet, 2 stories	24 feet, 2 stories	No condition proposed
Maximum Building Height	60 ft MAX	150 ft MIN	145 ft MAX
Side (East) Setback	40 ft MIN abutting any R district	30 ft MIN abutting any R district	Variable width 15 to 68 ft (see attached diagram)
Rear (South) Setback	40 ft MIN abutting any R district	30 ft MIN abutting any R district	38 feet MIN to R district (see attached diagram)
Maximum Building Coverage	80% of lot area	None	80%
Minimum Open Space	10% of lot area	None	12% of lot area (4,287 sf)
Streetwall Height	3 stories MAX 2 stories MIN	3 stories MAX 2 stories MIN	No condition proposed
Offset at Top of Streetwall	Average 5 ft MIN	Average 5 ft MIN	No condition proposed
Massing Articulation	45 ft	45 ft	No condition proposed
Building Frontages	Primary		
South University Avenue	0 ft MIN – 1 ft MAX <ul style="list-style-type: none"> Up to 20% of the building frontage may exceed for entry court or plaza area May be exceed up to a max of 16 ft from back of curb to allow for pedestrian circulation Vehicle access shall be provided from a public alley, if accessible. Recesses and alcoves on the level of adjacent street to accommodate entry ways, display windows, planters, or similar features shall not be considered as setbacks, provided streetwall of upper stories complies with max required front setback 		No conditions proposed

HISTORY

Downtown Zoning

Residential uses have long been permitted in downtown and residential use premiums have been offered in downtown zoning districts since 1994. In 2003, the City heightened its efforts to promote residential uses in the downtown area by appointing a task force to explore barriers to residential development. A consultant was hired in 2004 to assess how the City's zoning and development policies met the future desires of residents. In 2006, City Council directed staff to implement several key priorities identified by the consultant and appointed a steering committee to oversee subcommittees of each priority item. Also at this time, planning staff initiated amendments to the C2A Central Business District and rezoning of the South University Avenue area to immediately incorporate some of the most pressing residential development barriers identified by the task force. The entire effort was named Ann Arbor Discovering Downtown and became known as the A2D2 project.

1320 South University

On June 6, 2006, planning staff initiated a rezoning of the South University Avenue area¹ but did not include 1320 South University Avenue in the petition. At the request of the Planning Commission, the petition was amended to include the Park Plaza Apartments property at 1320 South University Avenue, which was then zoned R4C Multiple-Family Dwelling District. Via the South University Avenue Area rezoning petition, Planning Commission recommended approval for rezoning 1320 South University Avenue from R4C to C2A on August 15, 2006, and City Council approved the rezoning on October 16, 2006.

In October 2007, City Council charged the Planning Commission with implementing the Downtown Zoning Advisory Committee's recommendations, which included rezoning of 1320 South University Avenue from C2A to the proposed D1 Downtown Core base zoning district and South University Character overlay zoning district. A formal petition for those A2D2 amendments was submitted to the Planning Commission on May 20, 2008. The Planning Commission recommended approval of the downtown rezonings on September 16, 2008.

The A2D2 Steering Committee immediately thereafter asked the Planning Commission to seek additional public engagement. Numerous revisions were made to the petition but no change was made to the proposed zoning classification proposed for 1320 South University Avenue. The Planning Commission held a fourth public hearing and recommended approval of the A2D2 petition on February 20, 2009.

On May 19, 2009, the Planning Commission adopted amendments to the Downtown Plan in response to comments from City Council. On June 15, 2009, City Council approved the amended Downtown Plan as a subplan of the City Master Plan. The Master Plan indicated that the 1320 South University parcel and an adjacent parcel that fronts on South Forest should be zoned D2.

The A2D2 rezoning petition was passed by City Council at first reading on July 6, 2009. Revisions to the A2D2 amendments were once more made, which the City Council introduced and passed at first reading on September 8, 2009, including rezoning 1320 South University Avenue to D2 Downtown Interface, consistent with the changes that had been incorporated into the Downtown Plan.

¹ South University Avenue Area Rezoning, file no. 9283J15.2 and Ordinance ORD 38-06.

A public hearing for the A2D2 rezoning petition was scheduled for November 16, 2009. A representative of 1320 South University Avenue requested an individual public hearing be held for the proposed rezoning of that property², also scheduled for November 16, 2009. During its public hearing, the representative of 1320 South University Avenue requested that the property be zoned D1 Downtown Core and offered conditions to the proposed area, height and placement regulations of the D1 Downtown Core. Although City Council made some final revisions to the proposed A2D2 amendments, it did not change the rezoning designation of 1320 South University Avenue and by extension did not accept the offered conditions. 1320 South University Avenue was rezoned to D2 Downtown Interface base and South University Character overlay zoning districts as part of the adoption of the A2D2 petition on November 16, 2009, effective December 26, 2009.

PLANNING BACKGROUND

The Downtown Plan (2009) future land use recommendation for the subject site is interface area (Figure 9, page 30). The goal of the interface area is to “preserve and enhance incremental transitions in land use, density, building scale and height in the Interface areas located between downtown’s neighborhood edges and Core Areas” (see page 29). The Downtown Plan also contains a zoning plan (Figure 14, page 55), which recommends the base and overlay zoning districts for the subject site be D2 Downtown Interface and South University Character, respectively.

The Downtown Plan was adopted by Resolution R-09-260 of the Ann Arbor City Council on June 15, 2009. The subject site was zoned D2 Downtown Interface base zoning district and South University Character overlay zoning district by Ordinance ORD-09-12 approved by the Ann Arbor City Council on November 16, 2009 and effective on December 26, 2009.

REZONING PETITION ANALYSIS

Changes to the text or map of Chapter 55 (Zoning) may be made pursuant to Section 5:107 and 5:108 - Amendments. The following justification is offered by the petitioner (staff comments in italics):

1. The extent to which the rezoning is necessary:

The D1 [*and conditional South University Character overlay*] rezoning is necessary because the D2 zoning of the Property unduly limits the potential for the South University Character Area’s overall growth and economic vitality while also failing to further the purpose of the D2 Interface zoning. The D2 zoning unnecessarily and unfairly restricts the Owner’s use of the Property because the restriction cannot reasonably further the intent of the D2 character district or Interface zoning. See Original Narrative pp 3-4, 14-34, 38-39.

Staff is not aware of any reason why the site cannot be developed as currently zoned. A development conforming to the current zoning requirements would allow all of the same permitted principal, special exception and accessory uses given the offered conditions to restrict use to those allowed in the D2 district and would still bring a return on investment to the property owner. Rezoning does not seem necessary to enable a particular use to be provided

² File# 09-1068, 09-1109, 09-1042

at this location and does not seem necessary to enable an economical use of the property. Every planning goal that the petitioner has indicated could be achieved by the proposed rezoning could, in fact, be achieved by a development conforming to the current zoning designation. This development would be at the smaller scale established by the zoning standards, implementing the future land use recommendation for a transition zone between the core downtown areas and immediately adjacent residential neighborhoods.

2. The rezoning will affect the public welfare and property rights of persons located in the vicinity in the following ways:

The purposed rezoning would have a positive affect because the Property is better suited than most of the D1 zoned parcels in the South University Area to achieve Downtown and Transportation Plan goals designed to further the public welfare. The Property can achieve required density levels without parcel aggregation. The parcel is large enough to provide on-site parking and open space. The Petitioner is offering a deeper rear setback to the R4C parcel. See Original Narrative pp 7-13 and Exhibit 5.

The rezoning would negatively affect the public welfare because the planned transition between the downtown core area and the adjacent residential neighborhoods would essentially be eliminated. The subject site is master planned for, and zoned to be, an interface area. The offer of conditions would allow area, height and placement of future development on the subject site to be almost if there were no conditions placed on the zoning district. The expectations of property owners in the vicinity for a transition between the downtown core and residential neighborhoods would be significantly eroded by the request for rezoning despite the offer of conditions to slightly reduce the maximum permitted height and total floor area ratio and marginally increase the side and rear setback requirements.

3. The rezoning will be advantageous to the City in the following ways:

The Property is partially located in the DDA. It is unique because all taxing units will benefit from the development of the Property under D1 densities. The rezoning supports transit oriented development that will encourage even less use of vehicles within the City. The rezoning advances the goals of the Downtown Plan. See Original Narrative pp 4-13, 27-33, 37-38.

The current zoning designation was established as recommended by the City's master plan for the subject site, and deviation from this for the same permitted uses as allowed currently would not be advantageous to the immediate surroundings or the City overall.

4. This particular location will meet the convenience and service requirements of potential users and occupants in the following ways:

The rezoning can met service requirements because of its potential for mixed uses. The Property is located close to transit corridors and the City's major employment and activity centers. The development would offer residents the opportunity to be within walking and biking distance to these locations. See Original Narrative pp 7-10.

Since the rezoning would not change the uses permitted at the subject site, the rezoning would not significantly affect any convenience or service requirements of the potential users and

occupants in any way. The proposed rezoning offers no further advantage to potential future residents of the site, the vicinity or the City.

5. Any changed or changing conditions in any particular area, or in the City in general which may have bearing on the proposed rezoning are:

See Exhibit 3, Changed Conditions. See also Original Narrative, pp 10-13.

Since the Landmark Building currently under construction adjacent to the subject site (originally site planned at the 601 Forest Building) was already proposed for site plan approval at the time the A2D2 petition was being considered, there have been no changes to the surrounding conditions of the site. There have also been no changes to the plans or policies of the City to trigger reconsideration of the Downtown Plan or zoning regulations of the area.

The petitioner has provided detailed census data with this conditional rezoning petition that was unavailable during the A2D2 process. However, in staff's opinion, the availability of current census data does not provide evidence of a changed or changing condition. The data simply supports the underlying assumptions of the A2D2 process – that there is a demand for a vibrant downtown core and there are established and well populated neighborhoods immediately adjacent. The master plan and zoning ordinance amendments adopted as a result enable a downtown core with increased density that is tempered by an interface zone that allows the equally vibrant and desirable adjacent neighborhoods to remain so.

6. Other circumstances and factors which justify the requested rezoning are:

See Generally Original Narrative pp 3-35 and accompanying tables for the factors and circumstances that support D1 zoning. The character and trends of the population and building in the area justify the requested zoning. Moreover, setbacks can serve as transition areas. See pp 34-35 Original Narrative and Exhibit 4, Comparison with E. Huron 1 District.

In response to the petitioner's claim that there has been an error, staff feel strongly that no error has occurred. Public records clearly show that the City Council requested the subject site be proposed for classification as D2 Downtown Interface base zoning district and took deliberate action to approve the A2D2 amendments including that classification. City Council exercised its authority to plan and zone the land within the City following all proper procedures and requirements.

CITIZEN PARTICIPATION SUMMARY

The petitioner invited persons owning property and living within 1000 feet of the site to a meeting on March 16, 2010 (note that the petition was submitted on September 1, 2011). Nine persons attended the meeting. The petitioner summarized the meeting as follows, the complete report is attached:

“... [citizen] participants were and continue to be opposed to any D1 zoning in the South University Area rather than objecting only to the D1 rezoning of the subject property. The participants voice the same concerns that they and others had expressed to the City Planning Commission and City Council regarding any D1 zoning in the South University Area. The primary objection is that the participants do not believe that buildings taller than 5-7 stories belong on South University. The participants believe that taller buildings cause externalities such

as increased traffic, parking shortages, excessive density and unattractive architecture.”

At staff’s request because of the long delay between the meeting and petition submittal, the petitioner mailed notice the week of September 12, 2011 to the same group indicating they had submitted a formal petition.

SERVICE UNIT COMMENTS

Most service units involved in petition review have commented they have no objection to the proposed rezoning, noting that any future development must comply with all development regulations regardless of the zoning designation or zoning conditions. Service units with more specific comments are provided below.

Systems Planning (Sanitary Sewer Impacts) – Detailed sanitary sewer flow information was not submitted by the petitioner [and is not required for an area plan]. Assumptions on the proposed flow amounts were used for a hydraulic model analysis of the downstream sanitary sewer system impacts. The preliminary results from this analysis identified two downstream areas as having potential capacity issues due to the proposed increase inflow. A final determination for any required offsite sanitary sewer improvements will be made with for a site plan petition [which requires submittal of detailed sanitary sewer flow information].

Systems Planning (Public Utility Infrastructure) – The site has access to a public right-of-way as well as public water main, sanitary and storm sewers. It is noted that the water main in South University Avenue will need to be upsized to 12 inches to the subject parcel line. The proposed fire hydrant on the area plan is not acceptable and will need to be revised if a site plan is submitted. A storm sewer easement will be required for the existing 36-inch storm sewer main crossing at the southeast corner of the parcel – sewer easement widths are based on the depth of the sewer and the total width shall equal twice the depth (D) of the sewer plus ten feet, with the sewer located at distance D from the edge of the easement. Additional comments for use by the petitioner when preparing a site plan were also provided and address required information, construction activities, design requirements, and necessary notations.

Public Services (Traffic) – In general, the surrounding transportation system can accommodate the additional demand from the proposed density increase without significant impacts. Some minor adjustments and improvements may be necessary which should generally focus on pedestrian, bicycle and public transit rather than traffic mitigation and could include retrofitting pedestrian crossing signals to accommodate the visually impaired, relocating bus stops and/or improving bus shelters in the vicinity.

Planning – Staff does not support the request to rezone to D1 Downtown Core base zoning district and South University Character overlay zoning district with conditions. The arguments put forth by the petitioner are not, in staff’s opinion, enough to deviate from the results of the lengthy and exhaustive A2D2 public engagement process or the numerous public hearings and discussions held by the City Planning Commission and City Council in adopting the A2D2 petition which zoned the subject site D2 Downtown Interface base zoning district. That process even included an individual public hearing for the rezoning of 1320 South University Avenue from C2A to D1.

Prepared by Alexis DiLeo
Reviewed by Wendy Rampson
2/3/12

Attachments: Parcel and Zoning Map
Aerial Photo
2/3/12 Draft Conditional Rezoning Statement of Conditions
Rezoning Application
Area Plan/Exhibit B
Street Elevations
Setback Illustration
Petitioner's Citizen Participation Report

c: Petitioner: Susan Friedlaender
Berry Reynolds & Rogowski, PC
33493 W. 14 Mile Road, Suite 100
Farmington Hills, MI 48331-1587

Owner: Philip Sotirop
1320 South University, LLC
610 Church Street
Ann Arbor, MI 48104

City Attorney
Systems Planning
File Nos. Z11-010 and AP11-001

**1320 S. University Ave.
-Zoning Map-**



Map Legend

- ~ Railroads
- Parcel Property
- Township
- City of Ann Arbor



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Map Created: 9/8/2011

1320 S. University Ave.
-Aerial Map-



Map Legend

≈ Railroads

□ Parcel Property



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Map Created: 9/8/2011

1320 South University Avenue

Conditional Rezoning Statement of Conditions

This Conditional Rezoning Statement of Conditions ("Statement of Conditions") is made and entered into this ____ day of _____, 2012, by and between the City of Ann Arbor, a Michigan municipal corporation, with offices located at 100 N. Fifth Avenue, Ann Arbor, Michigan 48107, and 1320 South University, LLC, a Michigan Limited Liability Company ("Developer"), whose address is 610 Church Street, Ann Arbor, Michigan 48104.

Recitals

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land in MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developer, that certain conditions could be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On September 1, 2011, Developer applied for rezoning of the property located at 1320 South University Avenue, containing 0.82 acres, on the south side of South University Avenue between South Forest and Washtenaw Avenues, as more fully described on the attached **Exhibit A** (the "Property").
- D. On _____, 2012, the Planning Commission, after public hearing, recommended approval of zoning of the Property to D1 (Downtown Core) base zoning district and South University Character overlay zoning district. The Developer also submitted an Area Plan showing a potential proposed use and site design of the property.

- E. Subsequently, Developer voluntarily offered in writing restrictions on certain use of the land as a condition to the zoning of the Property.
- F. On _____, 2012, City approved the conditional rezoning subject to this Statement of Conditions.
- G. Based on the specific facts and circumstances regarding this property, City has decided to accept the developer's offer for conditional zoning.
- H. By executing this Statement of Conditions, the City and the Developer desire to set forth and confirm the conditions under which the City granted conditional rezoning for this Property.

NOW, THEREFORE, Developer and City agree:

- 1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached Exhibit A. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developer and the City, and their heirs, successors and assigns, and shall run with the Property.
- 2. Area Plan. The conditional rezoning was granted by the City based, in part, by the Developer's stated proposed uses for the Property as a mixed use development, as shown in the proposed Area Plan attached as Exhibit B.
- 3. List of Conditions. The conditional rezoning was granted to Developer based on conditions which were voluntarily offered by Developer. The conditions which form the basis of the City's grant of the conditional rezoning are as follows:
 - i. The permitted uses shall be limited to those permitted in the D2 Downtown Interface Base zoning district subject to all the regulations set forth therein.
 - ii. The maximum usable floor area in percentage of lot area shall be limited to 400 percent normal (without premiums), or 700 percent with premiums as set forth in the Zoning Ordinance for the D1 Downtown Core Base zoning district.
 - iii. The maximum building height shall be limited to 145 feet.

- iii. The minimum east (side) required open space, as defined in the Zoning Ordinance, shall be as shown on Exhibit B, the Area Plan, and generally vary between 15 and 68 feet.
 - iv. The minimum distance the exterior face of rear (southern) or side (eastern or western) walls of the building to any R4C zoning district boundary shall be 38 feet as shown on Exhibit B, the Area Plan.
 - v. The minimum open space shall be 12 percent (4,287 square feet).
 - vi. The maximum building coverage shall be 80 percent.
 - vii. The standards and regulations for minimum height, minimum gross lot size, streetwall height, offset at top of streetwall, massing articulation, and primary street building frontage in the D1 Downtown Core Base zoning district, the South University D1 Character Overlay district, and primary frontage shall remain as set forth in the Zoning Ordinance . All other applicable standards and regulations shall also remain as set forth in the City Code.
4. Developer Acknowledgment. Developer acknowledges that it voluntarily offered and consented to the provisions contained in this Statement of Conditions. Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional rezoning, and are necessary to insure capability with adjacent and surrounding uses of land; to promote use of the Property in a socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.
5. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developer, and Developer acknowledges that it is the only party having an interest in the Property. Furthermore, the signatory for Developer acknowledges that he is authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.
6. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as well as the surrounding land uses and other characteristics regarding this property, and approval of these

conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional rezoning.

7. Obligation to Obtain Other Approvals. Developer acknowledges that any use or development approved by this conditional rezoning that may require a special exception use permit, a variance, or site plan approval under the terms of the Ann Arbor City Code, may only be commenced if such special exception use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of the Ann Arbor City Code.
8. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.
9. Compliance with Statement of Conditions. Developer shall continuously operate and maintain the development and/or use of the Property in full compliance with all of the conditions set forth in this Statement of Conditions. Any failure to comply fully with the conditions contained within the Statement of Conditions shall constitute a violation of the Zoning Ordinance of Ann Arbor City Code, and shall be punished accordingly. Any such violation shall be deemed a nuisance per se and subject to judicial abatement, or any other remedy as provided by law.
10. Rezoning. Developer acknowledges that nothing in this Statement of Conditions shall prohibit the City from exercising its right to rezone the property at any time as allowed by law. The City acknowledges that nothing in this Statement of Conditions shall prohibit the Developer to request a rezoning of the Property at any time, or to continue an existing nonconforming use as allowed by law if the Property is rezoned by the City.

IN WITNESS WHEREOF, the parties have caused this Conditional Rezoning Statement of Conditions to be executed on the day and year recited above.

WITNESSES:

Print Name:

Print Name:

WITNESSES:

Print Name:

CITY OF ANN ARBOR
a Michigan municipal corporation

By:_____
John Hieftje, Mayor

By:_____
Jacqueline Beaudry, City Clerk

DEVELOPER

By:_____
Philip Sotiroff, Manager
1320 South University, LLC

ACKNOWLEDGMENT
STATE OF MICHIGAN)

COUNTY OF WASHTENAW) ss
)

The foregoing Agreement was acknowledged before me John Hieftje and
Jacqueline Beaudry, the Mayor and City Clerk respectfully of the City of Ann
Arbor on the _____ day of 2012.

_____, Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

The foregoing Agreement was acknowledged before me by Philip Sotiroff, of
1320 South University, LLC, on the _____ day of 2012.

_____, Notary Public

My Commission Expires: _____

Exhibit A

Legal description:

Beginning at the northwest corner of Lot 75, Ransom S. Smith's Second Addition to the City of Ann Arbor, Washtenaw County, Michigan, as recorded in Liber 42 of Deeds, page 446, Washtenaw County Records; thence S00°24'01"W 264.64 feet along the west line of said Lot 75 and the west line of fractional Lot 9 of R.S. Smith's Second Addition to the City of Ann Arbor, Washtenaw County, Michigan, according to the Plat thereof as recorded in Liber 48 of Deeds, Page 40, Washtenaw County Records and the extension of said west lines to the south of Lot 2, Block V of said R.S. Smith's Second Addition; thence S89°52'53"E 179.85 feet along the south line of said Lot 2 to the southeast corner of said lot; thence N22°53'34"W 162.63 feet along the west line of Porter's Land to a point; thence N00°24'01"E 115.23 feet parallel with the easterly line of Forest Avenue and along the east line of Miranda A. Lukin's Land to the south line of South University Avenue; thence west along the south line of University Avenue 115.00 feet to the Place of Beginning, being all of Lot 75 of said Ramson S. Smith's Second Addition, as recorded in Liber 42 of Deeds, Page 446, all of Lot 1 and part of Lot 2, Block V and all of fractional Lot 9, of said R.S. Smith's Second Addition, as recorded in Liber 48 of Deeds, Page 40 and part of the East ½ of the Southwest ¼ Section 28, City of Ann Arbor, Washtenaw County, Michigan.

Containing 35,395 square feet or 0.81 acres of land

Parcel ID: 09-09-28-309-034

Address: 1320 South University Avenue

Exhibit B

1320 South University Avenue Area Plan

© Copyright 2010

Location Map

NTS.

CHURCH ST.

S. FOREST AVE.

FOREST CT.

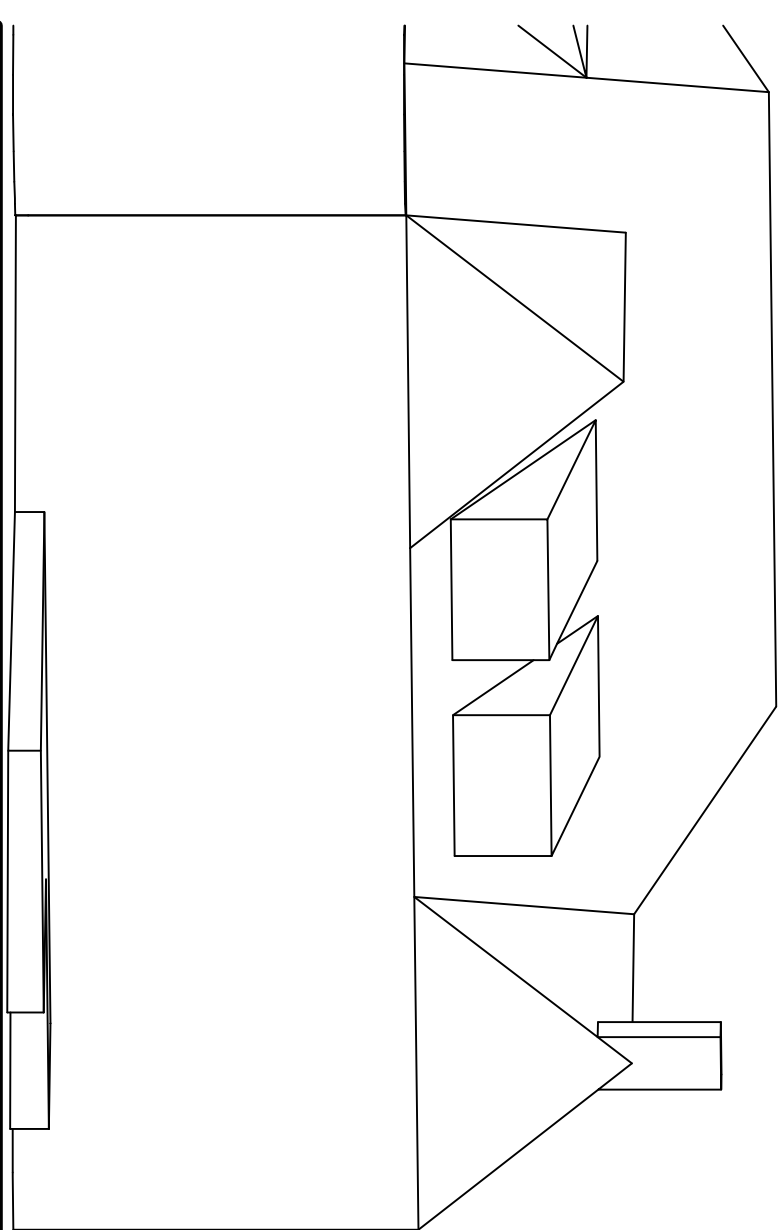
SITE

WASHTEWAT AVE.

S. UNIVERSITY AVE.

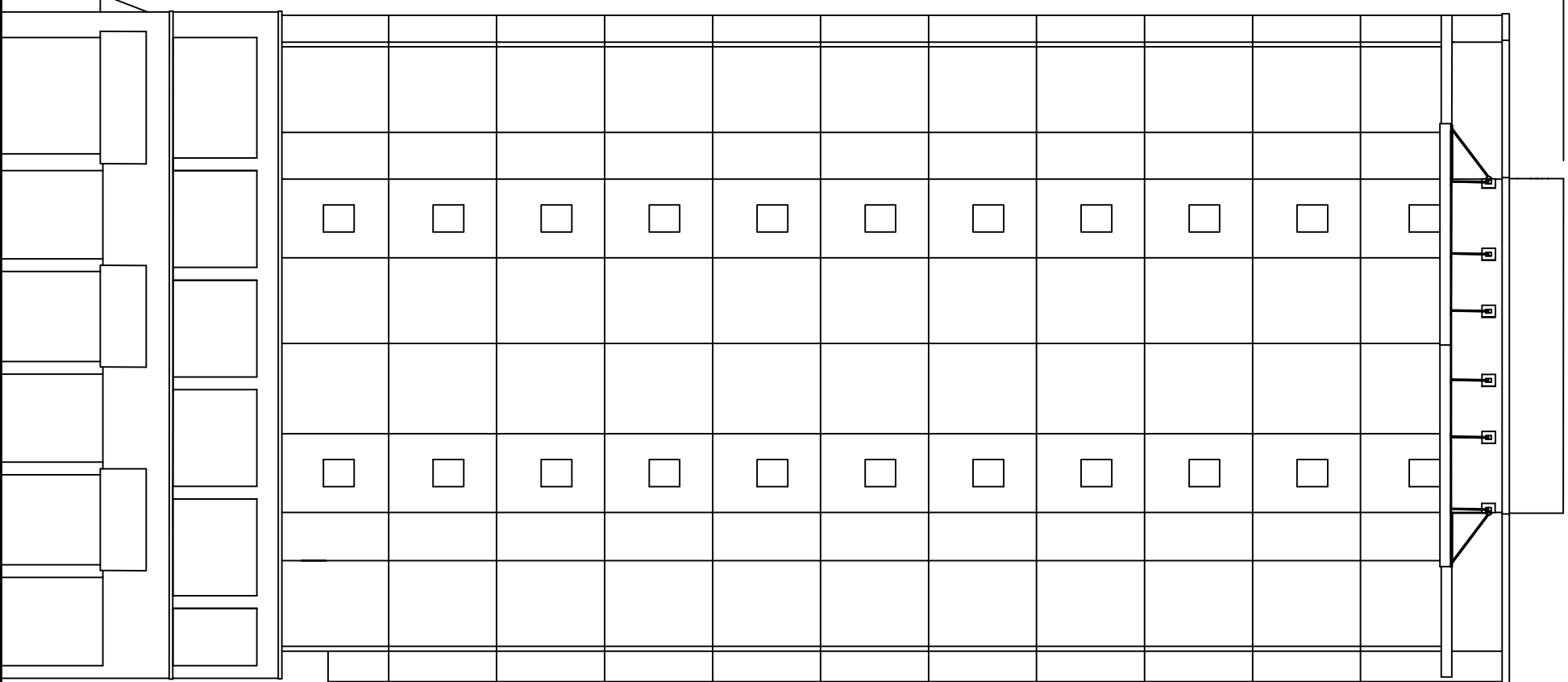
OBSERVATORY ST.

C1.1

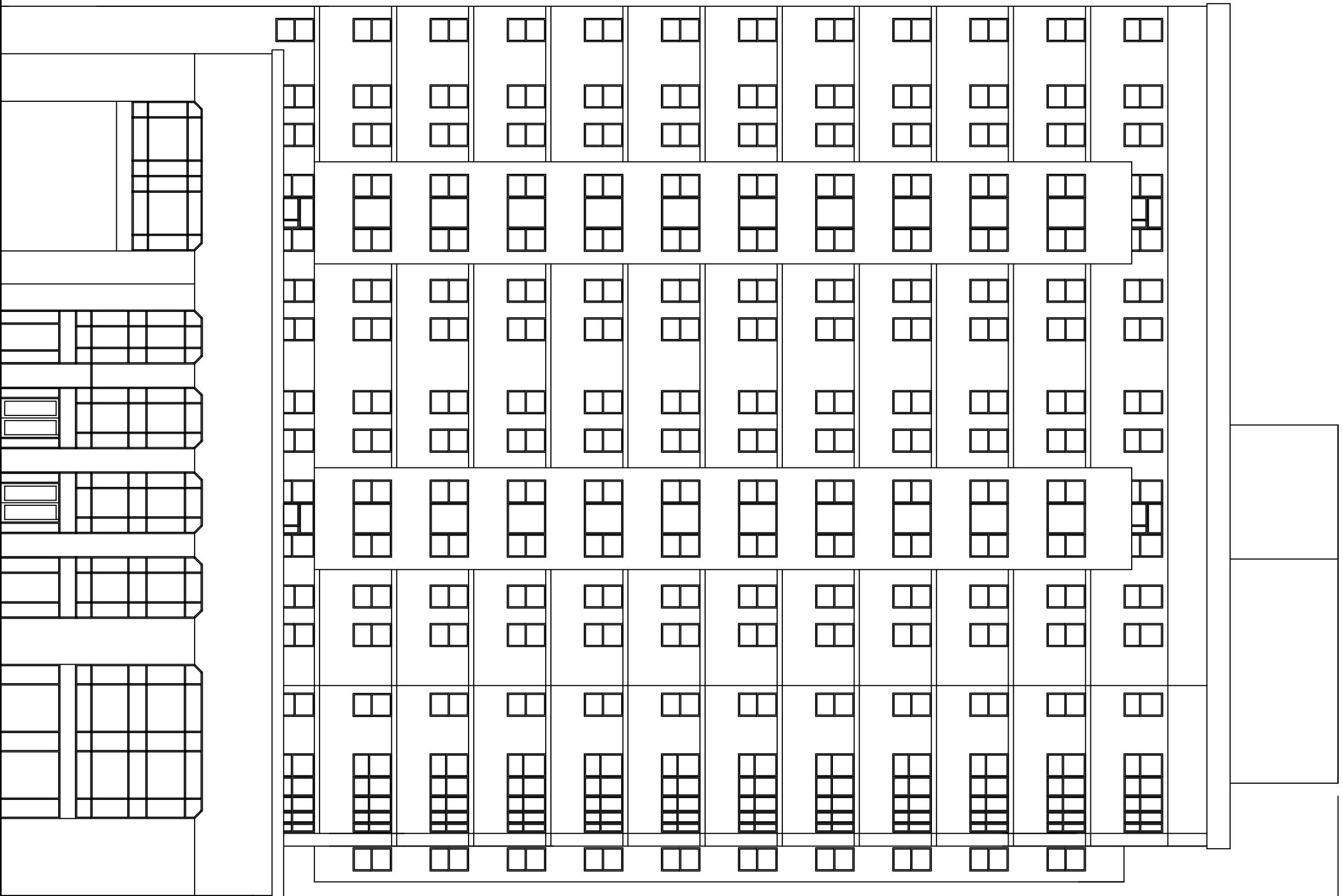


MUD BOWL

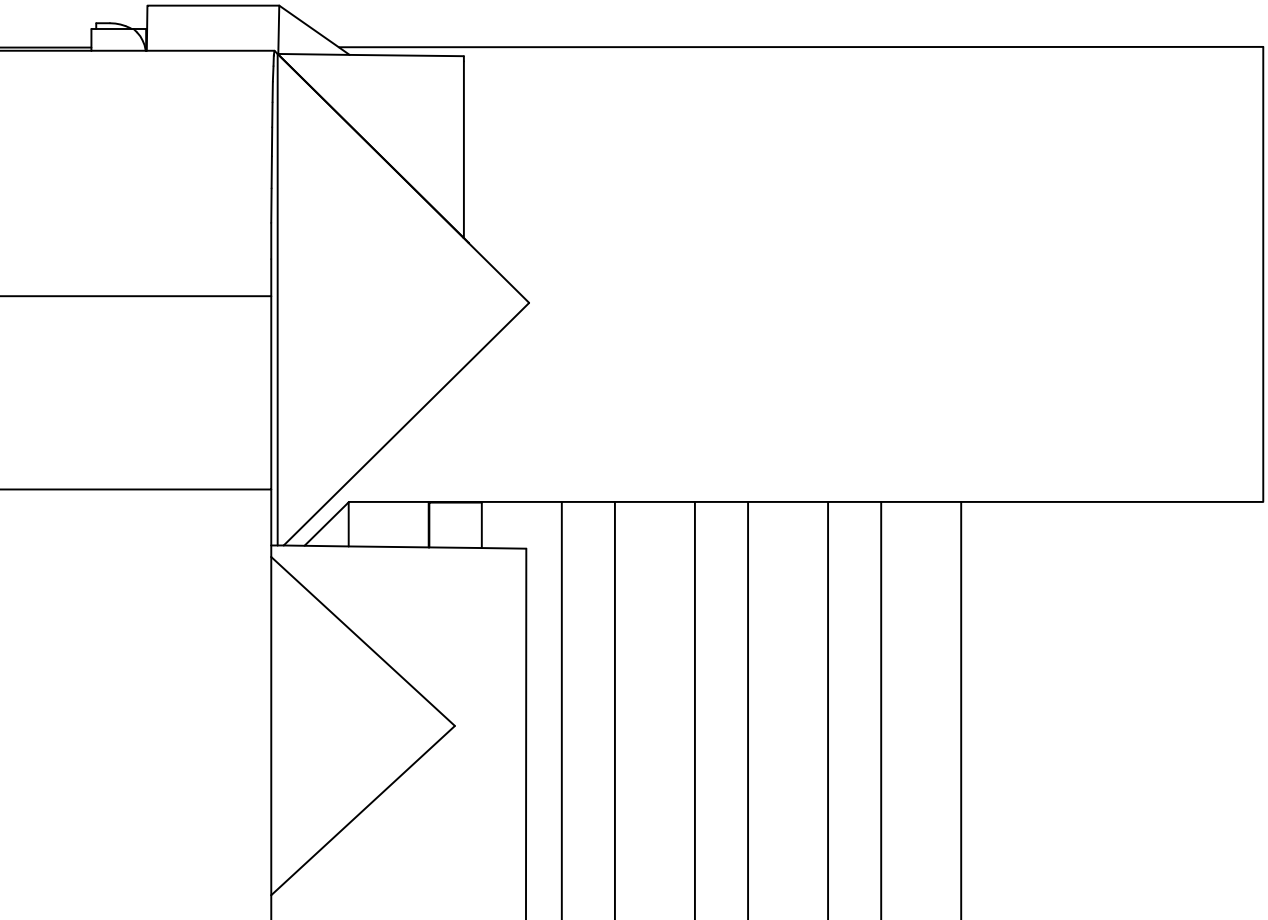
145'-0"



1320 S. UNIVERSITY

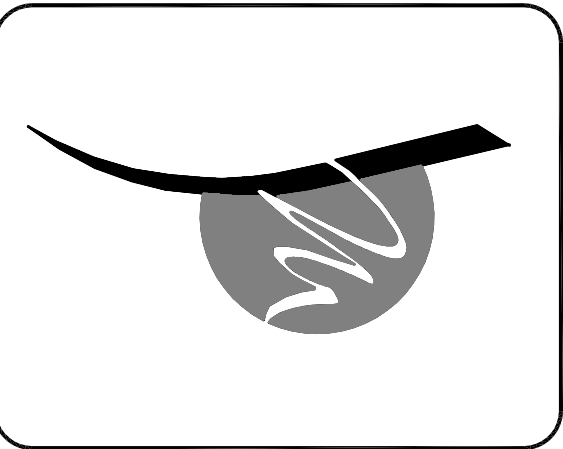


173'-9"



601 FOREST AVE,
1258 S. UNIVERSITY

601 FOREST



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1320 S. University
Rezoning
Ann Arbor, Michigan

Site Comparisons

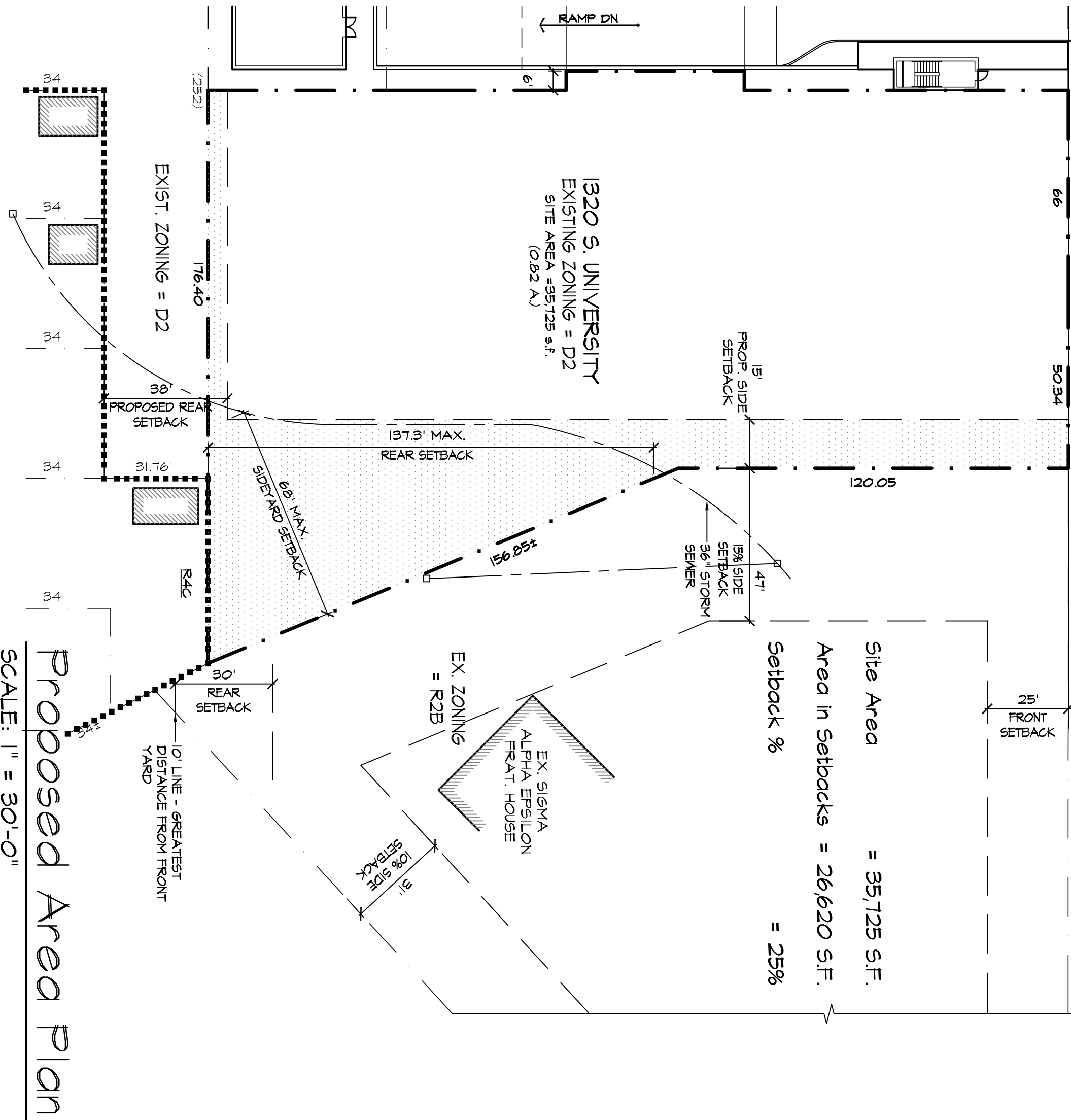
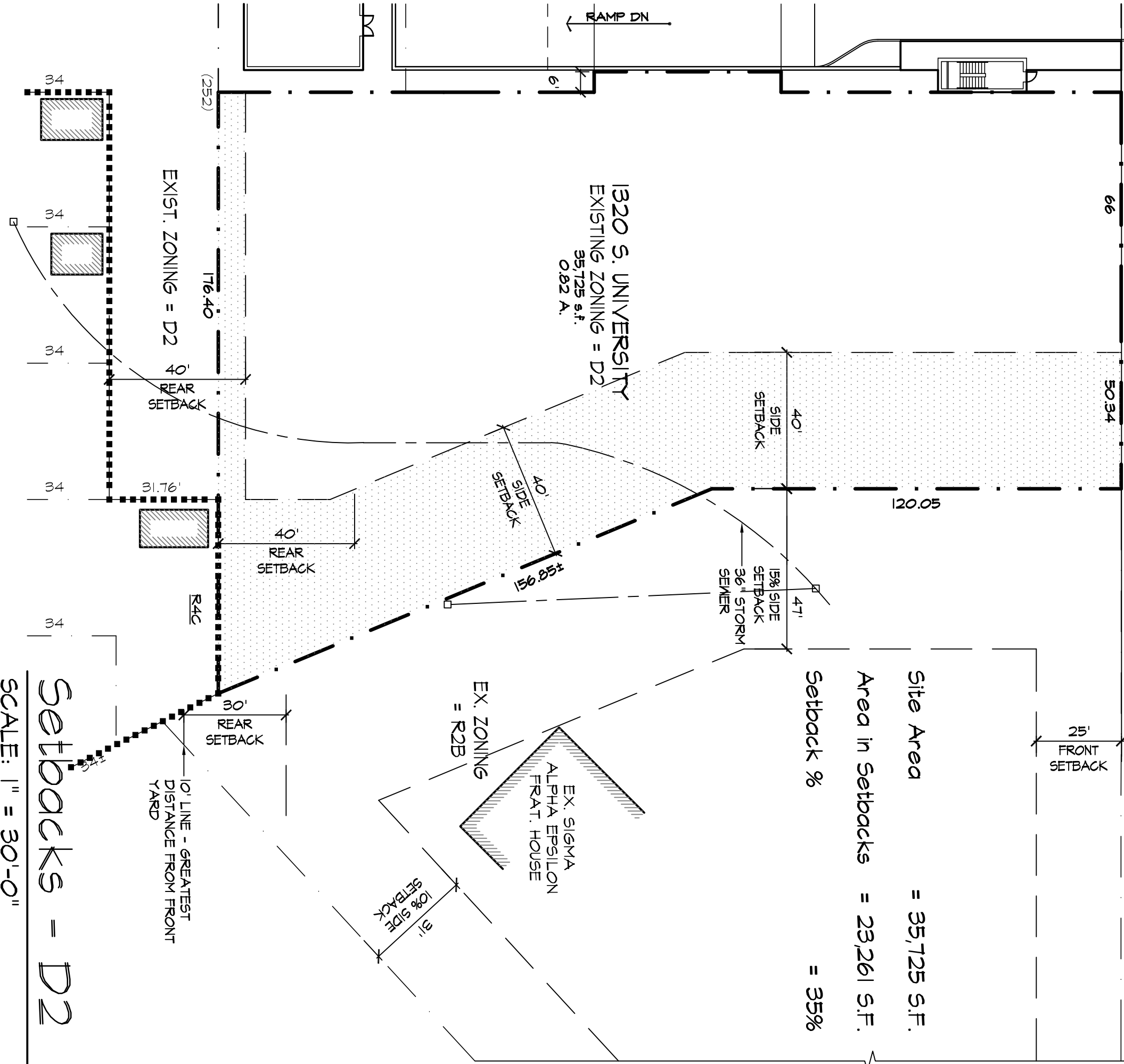
J BRADLEY MOORE
& ASSOCIATES

4844 Jackson Road, #150 Ann Arbor, MI 48103 (734) 930-1500

revisions

job 201160

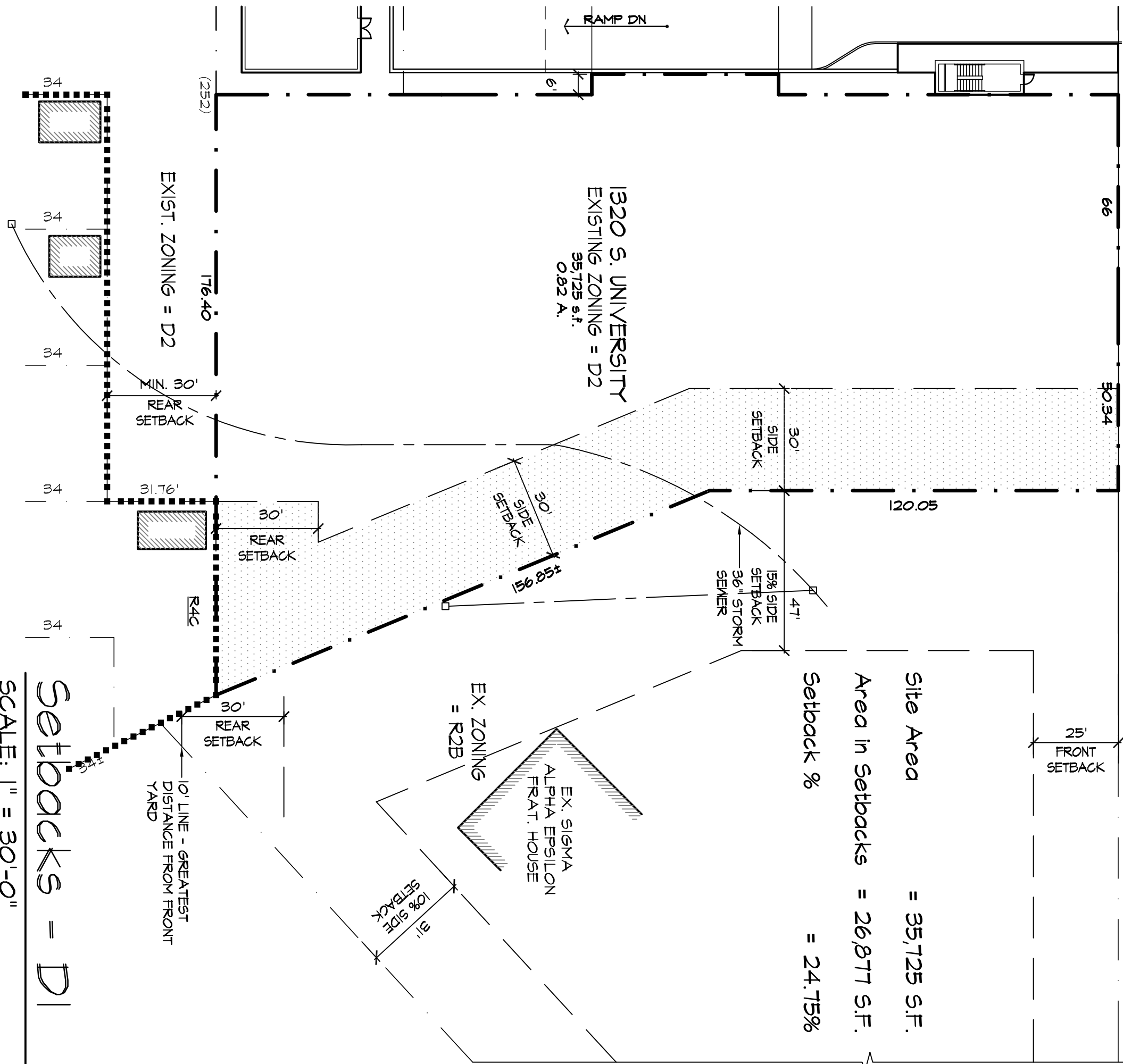
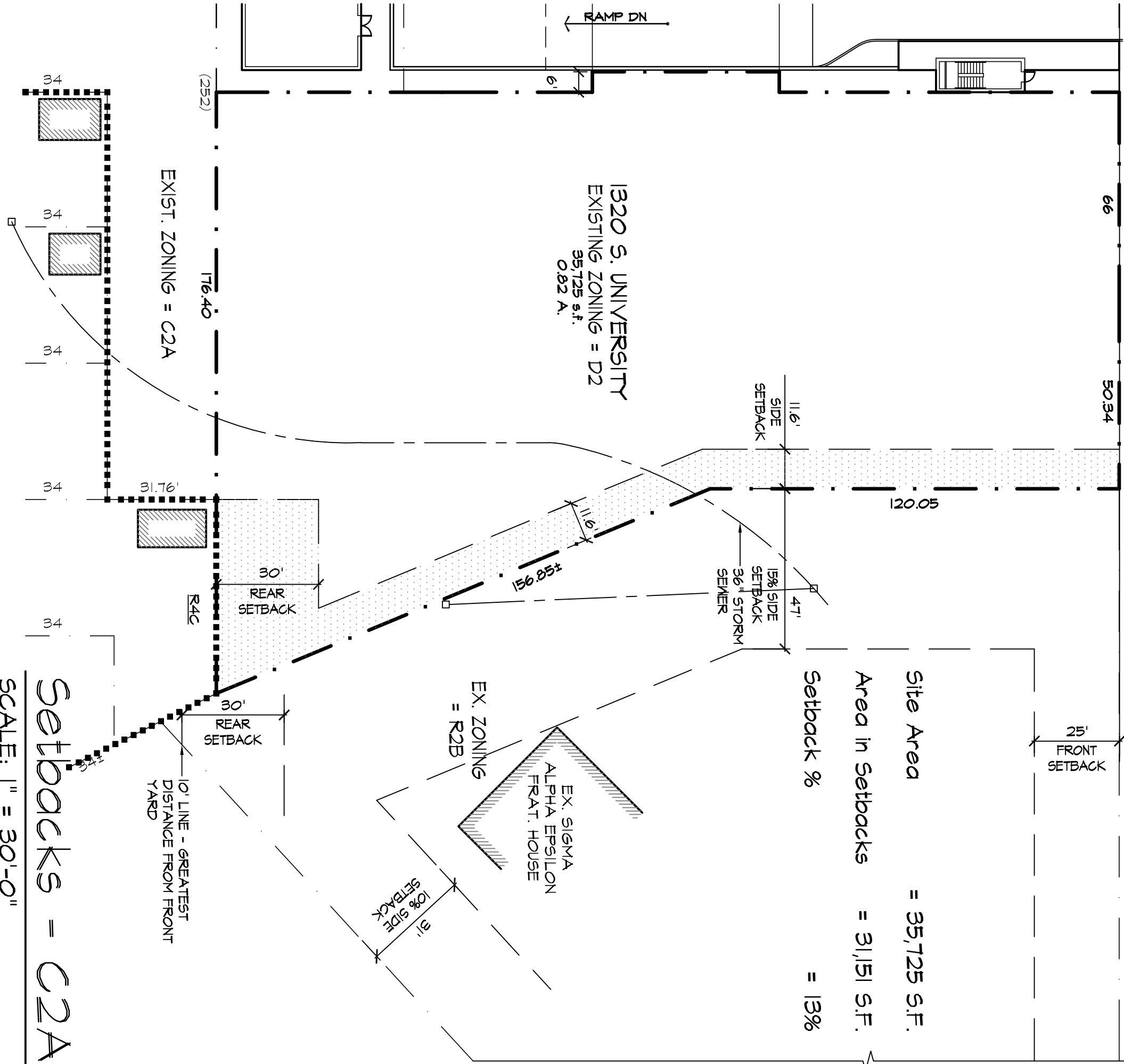
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Setbacks - D2

Proposed Area Plan

SCALE: 1" = 30'-0"



Conditional Rezoning Request For 1320 S. University
CITIZEN PARTICIPATION MEETING FINAL REPORT

1. Petitioner's Efforts Used To Involve Citizens In Rezoning Of Property

On March 16, 2010, the Petitioners held a meeting to inform interested citizens of the Petitioners plan to seek rezoning of its property.

2. Notices and Attendance

The meeting was held at the Pizza House pursuant to notice mailed to over 1200 citizens who resided within a 1000-foot radius of the site. The city provided the mailing list. Nine persons attended the meeting.

3. Summary Of Comments Concerns, Issues, And Problems Expressed By Citizen Participants.

a. Comments and Questions

- What is the occupancy rate of the existing building, the number of people that could occupy the conceptual building, the price of the units in the conceptual building, and current market prices?
- Could the owner could develop condominium rather than rental units?
- What is the likelihood of combining 1320 South University with 601 S. Forest?
- Which uses are permitted in the D-2 zone?
- A participant questioned the aesthetics of a larger vs. smaller building.
- A participant asked about the adjoining property lines on all sides of the building.
- A resident who lives on Forest Court commented that she does not want to look at big buildings.
- How does the change benefit the neighbors of the property and surrounding areas?
- What is the square footage of 1320 S. University?

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b. Issues of Concern

- Traffic entering and leaving the site,
- Cars flowing into the neighborhood,

- Negative consequences in the neighborhood including of parking, density, noise, and garbage.
- Looking at a tall building.

c. How Will The Owner Satisfy The Neighbor's Concerns?

The Owners invited the participants to write, call or email with any suggestions that they had for the proposed rezoning to address concerns. To date the owner has received no communication from the participants.

The majority of the attendees are on record as opposing any D1 zoning in the South University Area. The Petitioner cannot address concerns regarding the existing D1 zoning, which includes all the parcels in the South University Area except for the subject parcel and 625 S. Forest. The D2 zoning of 1320 S. University does not address the participants basic objection to the D1 zoning in the area. The aesthetic and other concerns with buildings taller than 5-7 stories cannot be addressed or mitigated by restricting 1320 S. University to the D2 height limitations when the owners of the vast majority of buildings in the area have the right to construct 12-15 story buildings. In fact, a building on 1320 S. University taller than allowed under the D2 ordinance would have a smaller footprint than a building developed under D2. The parcel would provide more open space areas facing South University and adjacent to 1321 Forest court if developed under D1 with conditions. A wider 5-story building would actually create more of a visual barrier between Forest Court and South University than a more narrow taller building. The development of the majority of the undersized parcels in the South University D1 zoning district even when combined will allow for little or no open space elements.

The D1 development of 1320 S. University will cause less parking conflicts than development of the many of the other D1 zoned parcels in the area because those parcels unless combined -- and even when combined -- would have little or no room for onsite parking. 1320 S. University has room for on site parking.

The proximity of 1320 S. University to public transportation and the University would mean less traffic and parking demand if the development encourages students to move out of the residential neighborhoods and closer to campus. The development of high density high rises on the periphery of the City under R4E zoning will cause much more traffic and parking conflicts in City neighborhoods and streets than a comparable building on South University.

The City's Master Plan recommends that it "[l]ocate higher residential densities near mass transit routes and in proximity to commercial, employment and activity centers. p. 35 The purpose of that recommendation is to reduce traffic congestion and parking conflicts and encourage non-motorized transportation. The D1 zoning of 1320 S. University substantially furthers that goal and can do so better than most of the D1 zoned parcels in the South University Area because of its size and location adjacent to the Washtenaw transit corridor.

d. Owners' Synopsis Of Meeting, Comments, And Ways If Any To Address Concerns

Synopsis

The general synopsis of the meeting is that the participants were and continue to be opposed to *any* D-1 zoning in the South University Area rather than objecting only to the D1 rezoning of the subject property. The participants voiced the same concerns that they and others had expressed to the City Planning Commission and City Council regarding any D1 zoning in the South University Area. The primary objection is that the participants do not believe that buildings taller than 5-7 stories belong on South University. The participants believe that taller buildings cause externalities such as increased traffic, parking shortages, excessive density and unattractive architecture.

Addressing Concerns

The Downtown Plan addresses many of the concerns voiced by the attendees with the following recommendations:

Parking: "Reduce parking pressures in neighborhood areas by expanding the use of resident parking permit programs and strictly limiting the addition of surface parking lots." p. 46

"Encourage the development of structures rather than surface parking to serve new downtown development, giving special emphasis to the construction of underground parking in all major projects." p. 47

Traffic: "Minimize through automobile traffic impacts on neighborhood streets by adding traffic calming facilities such as corner bulb-outs, raised pedestrian crossings, speed humps, or other appropriate measures." p. 31

Building Height Aesthetics- "Encourage articulation in the massing of larger new buildings to fit sensitively into the existing development context. Encourage design approaches which minimize the extent to which high-rise buildings create negative impacts in terms of scale, shading, and blocking views." p. 33

Use "incremental transitions in building height to tie taller building elements into surrounding development context." P.33

As fully discussed in the Conditional Zoning Application, and with due respect to the participants' concerns, the demographic data demonstrates that higher residential densities in the South University Area is not the cause of traffic and parking conflicts in the neighborhoods south of Hill Street. The South University population makes more use of public and non-motorized transportation than almost any other area in the City. The South University population has access to significantly fewer vehicles than the property owners and renters who live south of Hill Street. The City's Master Plan, Downtown Plan and Transportation all support much higher

residential density for 1320 S. University than allowed under the D2 zoning to further many of the key goals of those plans.

The D1 zoning of 1320 S. University will much better serve citywide objectives for the benefit of the entire existing and future population than the D2 zoning, which was the result of a political compromise to satisfy the concerns of a much smaller special interest group.