

# CITY OF MISSION PLANNING COMMISSION

## AGENDA

**July 27, 2020**

**7:00 PM**

### **Virtual Through Zoom**

1. Call to Order
2. Approval of Minutes from the April 27, 2020 Meeting
3. New Business
  - A. Case # 20-04 Non-Conforming Situation Permit - 6350 Johnson Drive

An application for a Non-Comforming Situation Permit located at 6350 Johnson Drive.

    - a. Staff Report
    - b. Site Plan
    - c. Elevations
    - d. Photometrics
    - e. Landscaping Plan
4. Old Business
5. PC Comments
6. Staff Updates

*Questions concerning this meeting may be addressed to staff contact,  
Kaitlyn Service at (913) 676-8366 or [kservice@missionks.org](mailto:kservice@missionks.org).*

# **MINUTES OF THE PLANNING COMMISSION MEETING**

**APRIL 27, 2020**

**DRAFT**

**\*\*Note\*\* When the recording started, the meeting was already in progress.**

The regular meeting of the Mission Planning Commission was called to order by Chairman Mike Lee at 7:00 PM Monday, April 27, 2020. Members also present: Robin Dukelow, Frank Bruce, Charlie Troppito, Brad Davidson and Stuart Braden. Burton Taylor, Pete Christiansen and Jordon McGee were absent. Also in attendance: Brian Scott, Assistant City Administrator, Kaitlyn Service, City Planner, and Audrey McClanahan, Secretary to the Planning Commission.

## **Approval of Minutes from the February 24, 2020 Meeting**

**Comm. Dukelow moved and Comm. Troppito seconded** a motion to approve the minutes of the February 24, 2020, Planning Commission meeting as amended.

Comm. Dukelow had the following corrections to the February 24, 2020 minute:

- Page 6: Comm. Christiansen was the unidentified Commissioner.
- Page 7: In regarding the trash dumpster enclosure, Comm. Dukelow commented that it should be fully grouted CMU walls with top cap & gate per City Requirements.
- Page 7: Comm. Dukelow's comments were made with the intent to provide low landscape screening for the parking lot that fronts Martway and not the entire south side of the property.
- Page 10: The motion included an amendment for the Applicant to work with City staff to provide landscape screening for parking along Martway, detail the dumpster enclosure, and provide rooftop screening for mechanical equipment per City Requirements.

The vote was taken (6-0). The **motion carried**.

## **New Business**

### **Case #20-02 Second Amendment of Final Site Development Plan for The Gateway Development – 4801 Johnson Drive**

Mr. Scott: ...fall of 2019. The developers managed to plan another tenant for the office building, which essentially necessitates adding another floor to the building. So, they have submitted an application for consideration by you all this evening to add a fifth level to the office building. That would essentially bring the overall square footage to about 103,557 square feet. Other than the fifth floor, everything else in the office building is the same. All of the exterior that was first presented to you in October for your consideration is still the same. Nothing has really changed with the layout of the building or the shape of the building at all. All that is still the same. So, that's really a summation of my staff report. I know the architect is here this evening, as well as the developers, so I will let the architect share a little bit more the intent of the plan while I try to find the actual – there it is – the FDP, the site plan that he has submitted. Steve, do you have anything to add?

Mr. Steve Salzer, Eldorado Architects: Not really. I can go through the basics. It's a pretty simple add. We want to add a floor plate to the office building, like Brian said. It's in the

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same position and shape in general and superior layout. It just is going another story higher. If you remember from previous presentations, you can drive through the ground level. The very ground level, at level one, is mostly service space. The office floor plates are two, three, four, and now five. The total square footage went up about 27,000 square feet. As Brian said, the exterior is very similar, just a bit taller. We've tweaked the proportions of the balconies just a bit to make it look nice. The glazing is still similar, materials for screening and so on. I think from a parking perspective, we have surplus capacity, and even with this floor add, I think we still are showing a pretty good surplus of parking overall against the minimum requirement. That's kind of it in a nutshell, really. Are there any questions?

Mr. Troppito: Mr. Chairman, I have a question. Can you review the parking and how the parking has changed since last approved?

Mr. Salzer: Since last time we presented the parking garage, we pulled it in on the north and south ends of the site and gave it some more breathing room to the residential building on the north and the hotel on the south, and we went a story higher. The parking garage has a level 2 connection to the hotel to the south and four level 3 connections to the residential building, and then the office building has connection – these are pedestrian connections I'm describing – pedestrian connections at levels 2, 3 and 4.

Mr. Troppito: Excuse me, but I was wondering about the number of spaces.

Mr. Salzer: Oh, number of spaces. The number of spaces is the same, providing 1,457. Based on the calculations, the required number of stalls is only 1,364, so we have, with the added floor level of the office requiring an additional 77 stalls. So, we're still showing a surplus of 93.

Mr. Troppito: Great. Thank you.

Mr. Salzer: Sure.

Chair Lee: Any other questions?

Ms. Dukelow: No questions, Mr. Chairman.

Chair Lee: Very good. Well, thank you. Would the applicant like to speak?

Unidentified Speaker: I don't think we have anything to add, Mr. Chair.

Chair Lee: Okay. Well, are there any discussion or questions in general for staff?

Ms. Dukelow: I have no questions, Mr. Chairman.

Mr. Braden: No questions here.

Chair Lee: Charlie?

Mr. Troppito: No further questions.

Chair Lee: Brad?

Mr. Davidson: No further questions. Congratulations on signing up another client.

Ms. Dukelow: Yes.

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Chair Lee: If there are no further questions or any discussion, then we would entertain a motion.

Ms. Dukelow: I'll make a motion –

Mr. Troppito: I recommend and approve Case #20-02 Second Amendment of Final Site Development Plan to Gateway Development Project at 4801 Johnson Drive for the addition of the fifth floor to the office building, with conditions as outlined in the staff report.

Ms. Dukelow: Second.

Chair Lee: Call the roll please.

The vote was taken (6-0). **The motion passed.**

Chair Lee: Great. Congratulations.

Unidentified Speaker: Thank you very much.

### Old Business

Chair Lee: And then, Brian, we're going to have the discussion of the...when the lender is not part of the project?

Mr. Scott: Yes. We can have that discussion now, or we can wait until we meet in person, whatever you'd like to do.

Chair Lee: I'm open. I can go either way.

Ms. Dukelow: I'm sorry. What is the subject?

Chair Lee: Brian, why don't you share that information with everybody?

Mr. Scott: Well, if you recall, last time that we met in October, Commissioner Troppito requested that I look into – Commissioner Troppito, you'll have to help me if I'm missing the mark on this – but the question was, in absence of a sophisticated lender on a project, can staff require a Phase I environmental survey in accordance with [inaudible] standards. Is that correct?

Mr. Troppito: Actually, it's ASTM standards – American Society of Testing Materials.

Mr. Scott: Okay. ASTM standards, yes. I did discuss that with our land use attorney, Pete Heaven, and he basically advised against that. He said that if we start requiring environmental studies of that nature, we're getting out of our zone, our jurisdiction within the Zoning Regulations that are adopted by the City, and case law, and we're opening ourselves up to potential liability.

Mr. Troppito: All right, so that came from Pete Heaven, right?

Mr. Scott: Correct, yeah.

Mr. Troppito: That was the legal opinion, right?

Mr. Scott: Yes. Correct.

Mr. Troppito: Was it written?

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Mr. Scott: I got an email. It's not a formal memo, but I got an email that I'd be happy to share.

Mr. Troppito: Well, why I brought this up was, it's pretty obvious that the former Pride Cleaners project there at Johnson Drive and Nall that was presented to us was contaminated from the beginning, was going nowhere. There was no sophisticated lender involved. The idea there was to save the staff and the Planning Commission time for projects like this that obviously aren't going anywhere until they're financed. As it turns out, there was no sophisticated lender involved. There was no...And the developer that presented it – correct me if I'm wrong – is now listing it for sale. Is that correct?

Mr. Scott: Sale or lease. That was the last I talked to them.

Mr. Troppito: Well, the point is, projects like this, where there's no contamination and this site has been on the KDHE clean-up list for quite a while. There's several others in the city that's in the same situation, let's say. So if the City really doesn't want to do this, if it's the administration and city attorneys' opinion that this is overstepping our bounds, well, I certainly respect that. So I won't pursue this any further, except to say that one thing I would like to know – it might be good question for staff to put on the development application form – is if the project that's being submitted is being self-financed, or financed by a lender. That might trigger the commissioners' interest in pursuing that further at the meetings.

Ms. Dukelow: I just want to chime in that I thought that was probably the intent, Charlie, and I appreciate what Brian shared from the land use attorney, but I agree it would be...I think it would be worthy of our time to find a way to help ensure that the applicant is informed and that somehow we're not spending time and staff isn't spending time on potential projects where the applicant is not informed, where the proper procedural steps haven't already been taken – due diligence, if you will, might be a better phrase for that.

Mr. Troppito: Environmental due diligence, right?

Ms. Dukelow: Environmental due diligence, yes. I mean, and maybe the environmental issue is what is making this more difficult, because we do want the site assessment. But is there a way that we can accomplish the due diligence regardless of the overlying issue that we might be able to include the environmental issues with all of that? Did that make sense in a roundabout way? Sorry, Audrey, the notes are going to get messy, aren't they?

Mr. Troppito: Well, I'd like to see, obviously, a way to do that, but I was hoping staff would come up with a suggestion for that. But I'm interested in the legal rationale, which is why I wanted to see the written opinion on that and maybe discuss that further with Pete. There's always another way to accomplish things. If nothing else, then for Planning Commissioners to start asking questions, whether proper environmental due diligence has been done when the developer presents, or when staff presents, the case and the recommendation to the Planning Commission. I intend to do that on every development coming forward, but there's quite a bit of time wasted by staff to get to that point, and City resources, and I was hoping to eliminate that. But if staff doesn't have an interest in that, well, I wish you did, but if you don't, you don't.

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Mr. Scott: Yeah, it's not to say we don't have an interest in it, but like everybody else, there's guardrails that we have to operate within in accordance with the Zoning Regulations and with case law. When we start getting out of those guard rails, when we start imposing conditions on an applicant that are not necessarily tied to the development, per se, we go beyond the impact that a development could have on surrounding property or the road system or infrastructure, that's when we start to open ourselves up to... And that's where the attorney's concern is, that if the Planning Commission were to deny an application based on something that does not necessarily pertain to the impact that the development is going to have on the surrounding properties or on the community, then you're opening yourselves to possibly a lawsuit for a faulty zoning decision.

Mr. Troppito: Well –

Mr. Scott: That's not to say I disagree with what you're saying, Commissioner Troppito, but there are just boundaries that we have to operate within. It's probably worth exploring a little further. How can we kind of push those boundaries, if you will? But –

Mr. Troppito: Well, I wish you would, because, as you know, in Zoning code, staff is required to make certain environmental decisions and look at environmental conditions, so I don't see how requiring a phase I environmental assessment for a project would be in violation of that. Again, that goes back to the legal thinking that I requested to see. But to me, it seems that falls right within the responsibility that the City has passed by ordinance onto the staff to consider as a part of development projects.

Mr. Scott: Yeah, so when we're looking at –

Mr. Troppito: And if that's not the case, I'd like to know why.

Mr. Scott: So when we're looking at a development project, we're looking at the impact maybe of noise, or of additional stormwater, or if it's something really hideous, air pollution of some sort, the impact that that development is going to have on the surrounding properties and the community as a whole. When we look at whether the property is already "environmentally damaged," if you will, that's where it's kind of questionable. It gets a little grey there, and that's what's concerning the attorney. So, it's not like we're going to be opposing something –

Mr. Troppito: It's worth discussing it some more. This isn't something that has to be decided tonight. This has been going on for months. But if you do a little due diligence and look at the sites list and map them out of the different sites that are on KDHE's clean-up list in the City of Mission we'll see that this isn't likely to be an isolated incident.

Mr. Scott: No. Yeah, there are several sites on that list.

Mr. Troppito: It's likely it will come up again, so I'd like you all to reconsider.

Ms. Dukelow: I have a question. Would it be possible and legal to just require the applicant to do the independent research to determine whether or not the site is on the KDHE clean-up list? And then, perhaps provide the City with some sort of – I don't know – documentation/verification that they are aware and they have done that due diligence without requiring, of course, the environmental assessment? The phase I assessment.

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Mr. Scott: Yeah, I think if you even go down that road with the applicant, even asking, we're opening ourselves up.

Chair Lee: So basically what you're saying, Brian, is that if a decision, if the applicant were turned down and that was the reason he was turned down, then we're subject to that.

Mr. Scott: Right. And even to ask, "Can you show us whether you're on a KDHE list, or any other list?" kind of pre-supposes something. Okay, so they are on the list, so then what? If they choose not to do anything and we ultimately present that to Planning Commission and the Planning Commission turns it down, that's opening us up for liability.

Ms. Dukelow: My understanding, though, is that if they know that the property is on that list, they don't get choose whether or not they ultimately are going to do anything. It's my understanding that they aren't going to have a choice as to whether or not they're going to ultimately conduct the test. They just wouldn't be doing it under our directive in this case. Will KDHE require...? KDHE will require the site assessment and the clean-up, won't they?

Mr. Troppito: They'll require, if it's on the state clean-up list, then they'll require a Phase II environmental assessment. But there's no requirement...By that time the Phase I is just not pertinent anymore. They would go directly to Phase II once...To even get on the state clean-up list –

Mr. Scott: You have to have had a Phase I –

Mr. Troppito: You have to have a Phase II to begin with, okay?

Ms. Dukelow: You mean a Phase I to get on the list?

Mr. Troppito: No. There has to be a Phase II, which is defined as testing on the site to determine that the site is polluted or contaminated with something on one list or another, possibly even lead from lead in gasoline. So that's what's involved in the Phase II. Then once the determination is made by the analytical testing, then it goes from there into the clean-up under the clean-up list.

Mr. Davison: I have a question for Brian. You mentioned, you alluded to, there's already a list of hazardous properties, or something, in the city of Mission. I guess question number one is, how many are these different sites that are on a list with the City, and how many of them on that list are undeveloped properties, and are there existing developed properties with hazardous waste just sitting about?

Mr. Scott: Yeah, the City does not have a list. If anybody would have a list, it would be KDHE. We know of a handful of properties that are on that KDHE list. One is that site that we looked at last year at the corner of Nall and Johnson Drive, and there's at least two, maybe three, former dry cleaners that are on that list.

Mr. Davison: Okay, so I guess – and I understand completely what Charlie is getting about as far as the reasoning for trying to have a trip cord, so to speak, when these properties come about, but if we're only talking three, four, five, six properties or fewer, we just needed Charlie on the Planning Commission. He's like the hawk, you know, and he will

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bring it to our attention. Of course, we all will now, since he's educated us on this. Anyway, that's all I had.

Mr. Troppito: Let me clarify something there. The list that we're talking about on the KDHE clean-up list, there's not just one list. What we were looking at was the KDHE groundwater contamination list. But there's other lists of contaminated sites that would not be reflected in that, like leaking underground storage tanks and possibly – well, not possibly, but – chemical spill sites where chemical spills have been reported. Sites like the former Neff property. That was on a different clean-up list for different types of contaminants. There is a way to get a list like that if the City wanted to do it, or a list of lists. You would have to order and pay for a report, but there's companies out there that put those lists together, that map the sites and put together a report. My best recollection – you'll have to check prices if there's interest in this – but for the City as a whole, for a radius of that size, you could be looking at around \$1,000. That would depend on the company you were dealing with, what you selected that you wanted to get reports on. But the City could get a report like that annually.

Mr. Davidson: Brian, I have another question for you. Are there any other cities that you know in Johnson County that have some type of checks and balances on environmental waste that you know of - ?

Mr. Scott: No. None that I know of, no.

Mr. Davidson: Okay.

Mr. Troppito: One option is I can keep bugging Brian until he gives up. What do you think about that one, Brian?

Mr. Scott: I'll be here for a while, so that's fine.

Mr. Troppito: That's all I had to say. Thank you.

Chair Lee: Okay, anyone else have anything tonight?

Ms. Dukelow: I have a question. Why did the staff report include 300 pages of a traffic study?

Mr. Scott: They actually updated their traffic study. It doesn't look much different than the last traffic study but... Because they were adding another floor, for official traffic, we asked for an updated traffic study, which they provided.

Ms. Dukelow: Thank you.

### Staff Updates - None

### ADJOURNMENT

With no other agenda items, **Comm. Braden moved and Comm. Dukelow seconded a motion to adjourn.** (Vote was unanimous). The **motion carried.** The meeting adjourned at 7:35 P.M.



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**APRIL 27, 2020**

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Mike Lee, Chair

**ATTEST:**

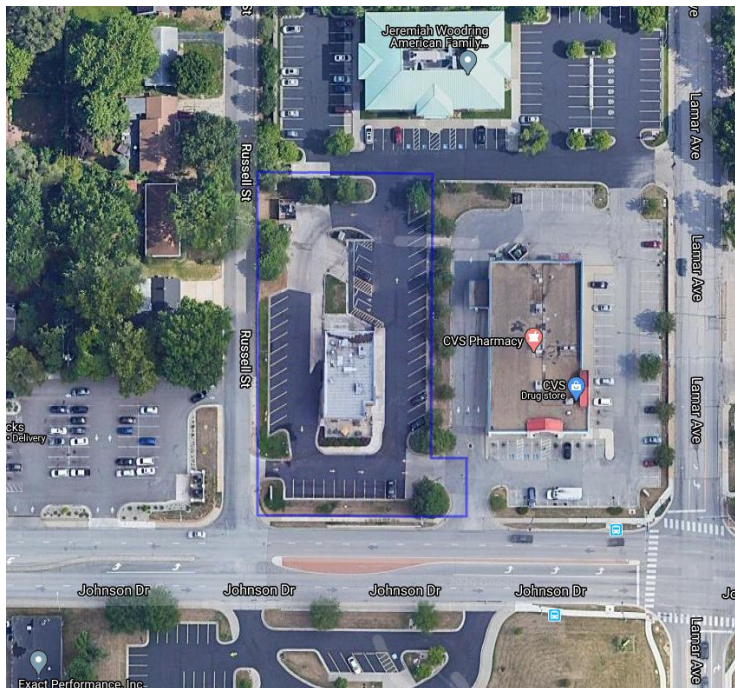
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Audrey M. McClanahan, Secretary



**STAFF REPORT**  
**Planning Commission Meeting**  
**July 27, 2020**

**AGENDA ITEM NO.:** 1  
**PROJECT NUMBER / TITLE:** Case # 20-04  
**REQUEST:** Non-Conforming Situation Permit  
**LOCATION:** 6350 Johnson Drive  
**PARCEL:** KP14500000 0002  
**APPLICANT/OWNER:** Rouse Frets White Goss Gentile Rhodes, P.C.  
**STAFF CONTACT:** Kaitlyn Service  
**ADVERTISEMENT:** Not required, but a courtesy notice was sent to surrounding properties  
**PUBLIC HEARING:** Not required



### **Property Information**

The property is located at the northeast corner of Russell Street and Johnson Drive and is addressed as 6350 Johnson Drive. The property is developed with a one-story building that is approximately 3,000 sq. ft. The building has been a restaurant since its construction in 1998. Most recently, it was a Qdoba. The applicant represents a prospective buyer that would like to continue to use the building as a restaurant. The buyer intends to open a Taco Bell restaurant in the building.

The property is zoned “C-2B” Retail and Service District. A restaurant is an allowable use in this zoning district.

This property is subject to the Mission, Kansas *Design Guidelines* for the Johnson Drive Corridor. It is also located in Block “X” of the West Gateway Overlay District and therefore subject to the *West Gateway Form Based Code*.

Surrounding properties are zoned and developed as follows:

- North: “C-2A” Pedestrian Oriented Business - Brill Eye Center and office space
- East: “C-2B” Planned Retail & Service - CVS
- South: “C-2B” Planned Retail & Service- Shawnee Mission Horizons High
- West: “C-2B” Planned Retail & Service and “R-1” Single Family Residential- Starbucks and single family homes

### **Future Land Use Recommendation:**

The Comprehensive Plan designates the property as “future commercial”. The Form Based Code envisions a multistory building with retail on the first floor and residential or office space on upper floors. It also suggests townhomes along Russell Street. The building types allowed for this block include townhouse, mid-rise (2-4 stories), and parking structure.

### **Project Background-Non Conforming Situations**

The Applicant proposes to remodel the existing vacant Qdoba building to accommodate a new Taco Bell restaurant. The proposed exterior improvements could generally be referred to as a “reskin” of the existing building. No window or glazing modifications are proposed except the addition of a drive thru window. Other exterior elements would include new signage, paint, materials, and artwork. The building footprint and patio footprint will not change. The interior tenant improvements will consist of new finishes, revised kitchen layout, upgraded lighting and seating areas.

### **Zoning:**

As noted above, the subject property is zoned C-2B. Section 410.100 of the Mission Municipal Code provides the purpose and intent of this zoning district as;

“This business district is for the purpose of permitting, regulating and encouraging retail and service establishments which serve a broad section of the general public. Products

and services offered are of the type where the consumer enters one (1) or more places of business to accomplish his/her purpose or where he/she may remain in an automobile while conducting business. Customer and employee parking are commonly on the premises. The sale and servicing of motor vehicles may be permitted including auto parts, gasoline service stations, car washes and quick-lube shops. In addition, this district is suitable for such non-pedestrian oriented businesses as plumbing and heating shops, repair shops and supermarkets.”

The existing use is permitted within this zoning district, and the structure and overall property comply with the stipulations of the zoning district in terms of height, setbacks and parking.

In addition, this property is located in Block “X” of the West Gateway Form Based Code (FBC) district, which stipulates mid-rise structures (2-4 stories in height) and townhouse structures (2-4 stories in height) with parking structures located behind. Upon the adoption of the FBC the subject property no longer conformed to one or more of the regulations applicable to the zoning district in which it is located. This makes it a legal non-conforming situation. There are three (3) types of non-conforming situations regulated by the City Code. These are use, lot area, and site improvements. The type which applies to this property is the site improvement, which means that the property has improvements like, but not limited to, parking, storm water facilities, sidewalks, and landscaping that no longer conform to the current codes that regulate the property.

Section 410.340 (C) (1) of the Mission Municipal Code provides for the following:

C. There is hereby incorporated herein by this reference the "Form Based Code for the West Gateway Study Area" ("Form Based Code"), copies of which are on file in the City offices. The Form Based Code shall be applicable to the West Gateway District.

1. Designs and uses set forth in the Form Based Code shall govern all facets of the development or redevelopment in the West Gateway Study Area, except as indicated in Sections 420.130 through 420.230.

Section 420.190- Non- Conforming Site Improvements states:

A. On lots with non-conforming site improvements, no additions to or repairs or renovations of any structure or site improvement may be made without first either bringing the non-conforming site improvements into complete conformity with the regulations applicable to the zoning district in which the lot is located, or obtaining a non-conforming situation permit pursuant to this Section. Provided however, that this Section shall not apply to the following circumstances:

1. Repairs or restoration of a structure pursuant to Subsection (B) of Section 420.170;
- or
2. Minor repairs or renovation of a structure or site improvement.

B. For purposes of this Section, "*minor repairs or renovation*" shall mean repairs or renovation costs which do not exceed ten percent (10%) of the structural value of a structure or site improvement.

C. When an addition to or repairs or renovation of any structure or site improvement is proposed on a lot with a non-conforming site improvement(s), the Board of Zoning Appeals (in the case of a conventional zoning district) or the Planning Commission (in the case of a planned zoning district) may approve a non-conforming situation permit allowing such addition or repairs or renovation if it finds that:

1. The non-conforming site improvement(s) is the only non-conforming situation pertaining to the property.
2. Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible.
3. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.

D. For purposes of Subsection (C), mere financial hardship does not constitute grounds for finding that compliance with the site improvement requirements is not reasonably possible.

**Analysis:**

The existing structure conforms to the underlying C-2B district zoning regulations. However, it does not conform to the Form Based Code relative to height and setbacks. Therefore, any improvements to the structure would necessitate compliance with the Form Based Code except for those improvements that fall within the parameters of Section 420.130 through Section 420.230 of the Mission Municipal Code to non-conformities. In this case, Section 420.190 applies specifically to the non-conforming site.

Section 420.190 states:

“No additions to or repairs or renovations of any structure or site improvement may be made without first either bringing the non-conforming site improvements into complete conformity with the regulations applicable to the zoning district in which the lot is located or obtaining a non-conforming situation permit pursuant to this Section. Provided however, that this Section shall not apply to the following circumstances:

1. Repairs or restoration of a structure pursuant to Subsection (B) of Section 420.170;  
or
2. Minor repairs or renovations of a structure or site improvement.”

Section 420.170 states:

“Minor repairs to and routine maintenance of structures where non-conforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than fifty percent (50%) of the fair market value of the structure to be renovated, shall not be permitted.”

“Any repairs, renovation or restoration of a structure pursuant to this Section which would require the issuance of any permit shall also require the issuance of a non-conforming situation permit by the Community Development Department. In support of the application for such permit, the applicant shall submit such information as may be required to satisfy the department that the cost of the proposed repairs, renovation or restoration would not exceed fifty percent (50%) of the fair market value of the structure.

1. The “cost” of renovation or repair or restoration shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair or restoration.

2. The “cost” of renovation or repair or restoration shall mean the total cost of all such intended work, and no person may seek to avoid the intent of this Chapter by doing such work incrementally.

The Johnson County Appraiser’s Office reflects the value of the structure as being \$625,910. Fifty percent of this value is \$312,955.

Minor repairs or renovation of a structure is defined as anything less than 10% of the value of the structure. The Johnson County Appraiser’s Office reflects the value of the structure as being \$625,910. Ten percent of this value is \$62,591.

Therefore, Subsection “C” of Section 420.190 becomes applicable, which states:

When an addition to or repairs or renovation of any structure or site improvement is proposed on a lot with a non-conforming site improvement(s), the Board of Zoning Appeals (in the case of a conventional zoning district) or the Planning Commission (in the case of a planned zoning district) may approve a non-conforming situation permit allowing such addition or repairs or renovation if it finds that:

1. The non-conforming site improvement(s) is the only non-conforming situation pertaining to the property.

2. Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible.

3. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.

## **Suggested Findings of Fact- Section 420-190 Non-Conforming Site Improvements**

The Planning Commission may make the following findings of fact in granting a non-conforming situation permit to the applicant for the property located at 6350 Johnson Drive:

1. The non-conforming site improvement(s) is the only non-conforming situation pertaining to the property.

*The existing structure is the primary non-conforming situation on the property. The Form Based Code stipulates a mid-rise structure with a minimum height of two (2) stories and a setback of no more than ten (10) feet.*

*The existing structure is one story and the existing setbacks from the property lines are approximately: 86 feet (south along Johnson Drive); 59 feet (west along Russell St); 138 feet (north) & 50 feet (to east edge of parking lot). Full compliance with the Form Based Code would necessitate substantial renovation or the demolition and re-building of the structure which is not reasonably possible or economically feasible.*

2. Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible.

*Full compliance with the Form Based Code would necessitate substantial renovation or the demolition and re-building of the structure which is not reasonably possible.*

3. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.

*The existing structure was constructed in 1998 and has operated in its current capacity for 22 years without an adverse impact to surrounding properties or the public health and safety. The proposed improvements reflect harmony with other recent façade improvements along the Johnson Drive corridor. Other elements of the proposed design including materials, and landscaping do comply with the Form Based Code and the Johnson Drive Design Guidelines.*

### **Additional Comments/Project Details**

All of the proposed renovations are in keeping with the Johnson Drive Design Guidelines.

Landscaping will be added along the existing wall along the north property line of Russell Street to provide an interesting and softening view. An ailing shade tree along Johnson Drive will be replaced with a shade tree that is healthy. The area around the existing monument sign will be landscaped.

For internal vehicle circulation, the applicant proposes to remove 3 parking spaces to allow for vehicle stacking as vehicles wait in the drive thru lane. Grass and a shade tree will replace the removed parking spaces.

One parking stall is required per four restaurant seats and ten parking spaces are required per drive thru window. 70 seats are proposed for the interior of the restaurant and 24 seats are proposed for the exterior patio for a total of 94 seats. One drive thru is proposed. 24 parking spaces are required for the 94 seats and 10 spaces are required for the drive thru window for a total of 34 required spaces. The applicant is providing 48 spaces, which is sufficient to meet the code requirements. Consistent with the streetscape elements proposed by the Form Based Code, the applicant is providing two bicycle parking racks, which are visible from Johnson Drive.

The existing metal facade element will be removed to expose the brick underneath. The existing purple accent walls toward the back of the building will be painted a different shade of purple. The dumpster enclosure will be enclosed by stucco walls and a latching gate.

A photometric plan was submitted showing that lights will illuminate the parking area but will direct light away from the adjoining residential homes.

#### **Staff Recommendation**

Staff recommends the Planning Commission adopt the findings of fact contained in this staff report and grant a non-conforming situation permit for Case #20-04

#### **Planning Commission Action**

The Planning Commission will meet on Monday, July 27, 2020 to consider this application.

#### **City Council Action**

No City Council Action is required.



June 18, 2020

**VIA ELECTRONIC MAIL**

Mr. Brian Scott ([bscott@missionks.org](mailto:bscott@missionks.org))  
Ms. Kaitlyn Service ([kservice@missionks.org](mailto:kservice@missionks.org))  
City of Mission, Kansas  
6090 Woodson  
Mission, KS 66202

**Re: Application for Non-Confirming Situation Permit / 6350 Johns on Drive**

Dear Brian and Kaitlyn:

Please consider this letter an application on behalf of First Street Development for approval of a Non-Confirming Situation Permit for a proposed "new" Taco Bell located at 6350 Johnson Drive. As you requested, our application includes the following:

1. Description of the Project. The Applicant proposes to remodel the existing vacant Quidoba building to accommodate a new Taco Bell restaurant. The proposed exterior improvements could generally referred to as a "reskin" of the existing building. No window or glazing modifications are proposed except the addition of a drive thru window. Other exterior elements would include new signage, paint, materials, and artwork. The building footprint and patio footprint will not change. The interior tenant improvements will consist of new finishes, revised kitchen layout, upgraded lighting and seating areas. Since our proposed improvements (exterior and interior) to the existing structure exceed 10% of the current assessed value of the existing building, pursuant to Section 420.190.B, we are requesting approval of a Non-Confirming Situation Permit from the City's Planning Commission before work can proceed.

As an aside and not as part of this application, this location is a candidate to operate as a Taco Bell Cantina. The Applicant is performing its due diligence but has not determined if it would pursue a liquor license at this time. If it did proceed with this, the location would be upgraded to a Cantina restaurant. A Taco Bell Cantina is a new concept within Taco Bell that would serve alcoholic drinks via a separate serving area for on premise consumption. A Cantina would also consist of enhanced customer amenities (Audio/Visual improvements, upscale finishes and seating) and an expanded menu.

2. Site Plan. A site plan (including the interior proposal layout) showing the improvements to the Property are attached hereto.

3. Elevations. Elevations of the proposed development are attached hereto.

{33568 / 70737; 885572. }

June 18, 2020

Page 2

4. Proposed Changes. A Demolition Notes Plan is attached hereto.

We understand you will be in contact with us to schedule a meeting to discuss our proposed plan and your comments in advance of the July 27, 2020 Planning Commission meeting.

We look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink that reads "Aaron". The letter "A" is large and stylized, with a loop at the top. The name "Aaron" is written in a cursive script.

Aaron G. March

AGM:jjw

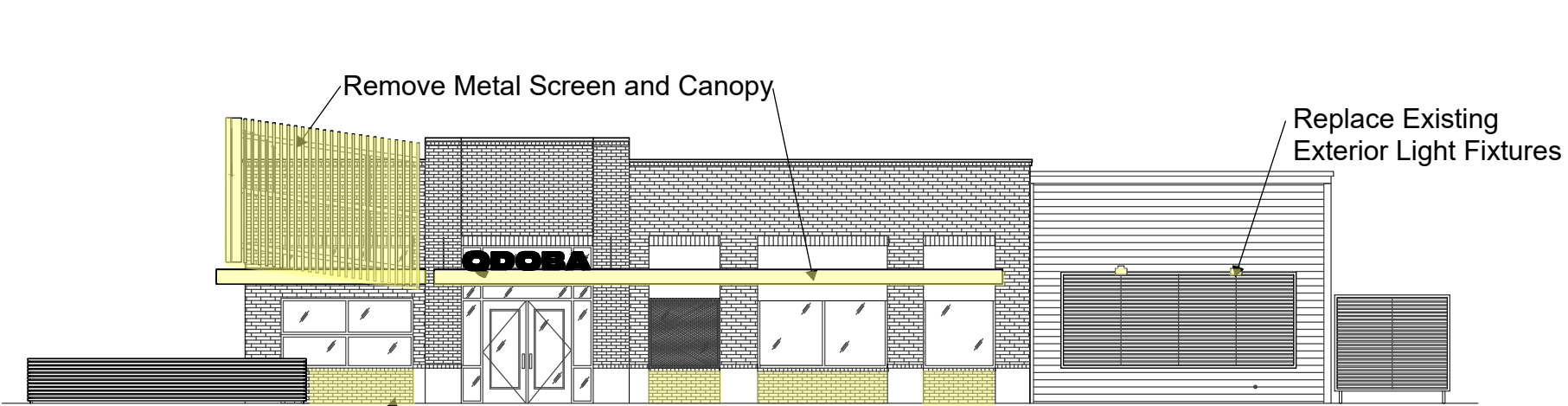
Attachments

cc: Mr. Chris Czyz  
Mr. Max DiCarlo  
Mr. Brandon Stein  
Mr. Brandon Duffy

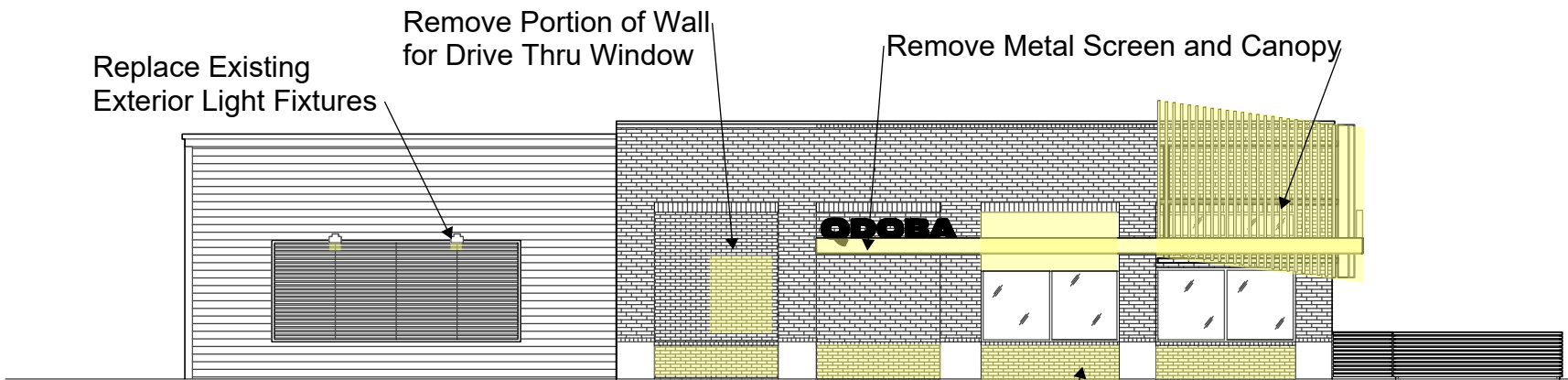
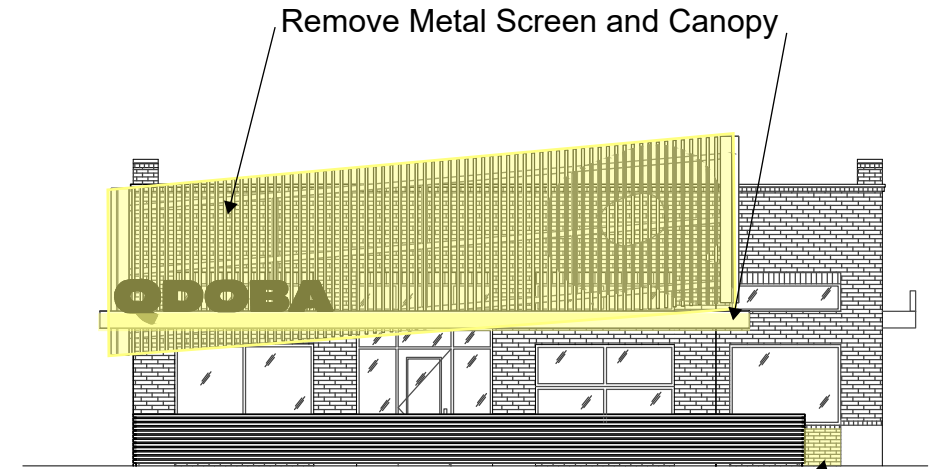


# TACO BELL 6350 JOHNSON DR. MISSION, KS

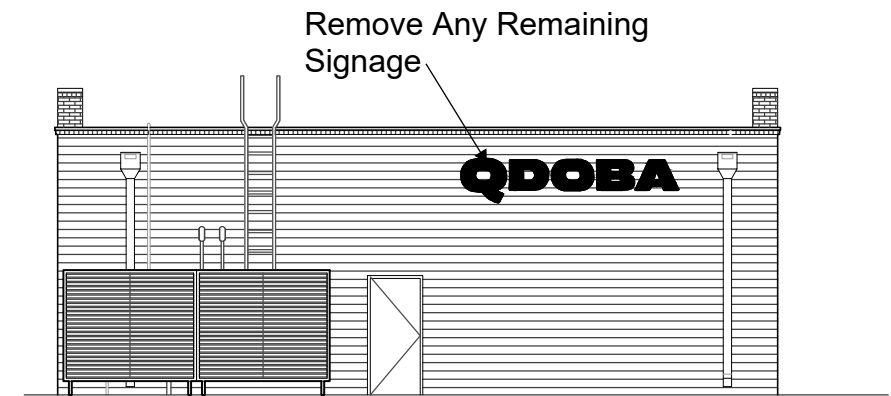
## DEMOLITION NOTES



Remove Glazed Accent Brick Below Windows



Remove Glazed Accent Brick Below Windows



KEYNOTES

- ① EXISTING MONUMENT SIGN BASE TO REMAIN. INSTALL NEW BRAND SIGNAGE AND CABINET. COORDINATE WITH SIGN VENDOR.
- ② EXISTING EXTERIOR PATIO SHALL REMAIN. INSTALL NEW PATIO SEATING/TABLES AND UMBRELLAS. REFER TO ARCH. DRAWINGS FOR SEATING LAYOUT.
- ③ INSTALL NEW LED SITE LIGHTS ON EXISTING SITE LIGHT POLES REQUIRED (TYP.) REFER TO PHOTOMETRIC.
- ④ INSTALL DRIVE THRU WINDOW.
- ⑤ EXISTING ADA PARKING TO REMAIN.
- ⑥ INSTALL NEW DIGITAL MENU BOARD.
- ⑦ INSTALL NEW CANOPY AND SPEAKER POST.
- ⑧ INSTALL NEW CMU DUMPSTER ENCLOSURE WITH METAL GATES. PAINT CMU ENCLOSURE AND GATES. REFER TO DETAIL SHEET.
- ⑨ REMOVE 3 EXISTING PARKING STALLS. INSTALL NEW TURF SOD AND ONE SHADE TREE.
- ⑩ EXISTING ACCESSIBLE PATH AND RAMP.
- ⑪ PROVIDE NEW LANDSCAPE AS SHOWN ON LANDSCAPE PLAN.
- ⑫ PROVIDE 2 BICYCLE RACKS.
- ⑬ PROVIDE NEW CLEARANCE BAR.

SITE PLAN NOTES

1. PRIOR TO STARTING CONSTRUCTION THE CONTRACTOR SHALL BE RESPONSIBLE TO MAKE SURE THAT ALL REQUIRED PERMITS AND APPROVALS HAVE BEEN OBTAINED. NO CONSTRUCTION OR FABRICATION SHALL BEGIN UNTIL THE CONTRACTOR HAS RECEIVED AND THOROUGHLY REVIEWED ALL PLANS AND OTHER DOCUMENTS APPROVED BY ALL OF THE PERMITTING AUTHORITIES.
2. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THESE PLANS, SPECIFICATIONS AND THE REQUIREMENTS AND STANDARDS OF THE LOCAL GOVERNING AUTHORITY.
3. CONTRACTOR SHALL CONTACT DIG SAFE PRIOR TO ANY EXCAVATION/DIGGING.
4. ALL EXISTING CONDITIONS, DIMENSIONS, AND GRADES SHOWN ON THE PLANS SHALL BE FIELD VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. CONTRACTOR SHALL NOTIFY THE CONSTRUCTION MANAGER IF ANY DISCREPANCIES EXIST, PRIOR TO PROCEEDING WITH CONSTRUCTION, FOR NECESSARY PLAN OR GRADE CHANGES. NO EXTRA COMPENSATION SHALL BE PAID TO THE CONTRACTOR FOR WORK HAVING TO BE REDONE DUE TO DIMENSIONS OR GRADES SHOWN INCORRECTLY ON THESE PLANS IF SUCH NOTIFICATION HAS NOT BEEN GIVEN.
5. G.C. SHALL REPAIR ALL DISTURBED LANDSCAPING.
6. G.C. SHALL MODIFY EXISTING IRRIGATION SYSTEM TO PROPERLY WATER ANY REVISED OR ADDED LANDSCAPE AREAS.

SITE INFORMATION

PROPERTY ID: KP145000000 0002  
 ADDRESS: 6350 JOHNSON DRIVE, MISSION, KS 666202  
 LEGAL DESCRIPTION: NO SURVEY AVAILABLE  
 ACRES: 1.09 AC  
 ZONING: C-2B (RETAIL AND SERVICE DISTRICT)

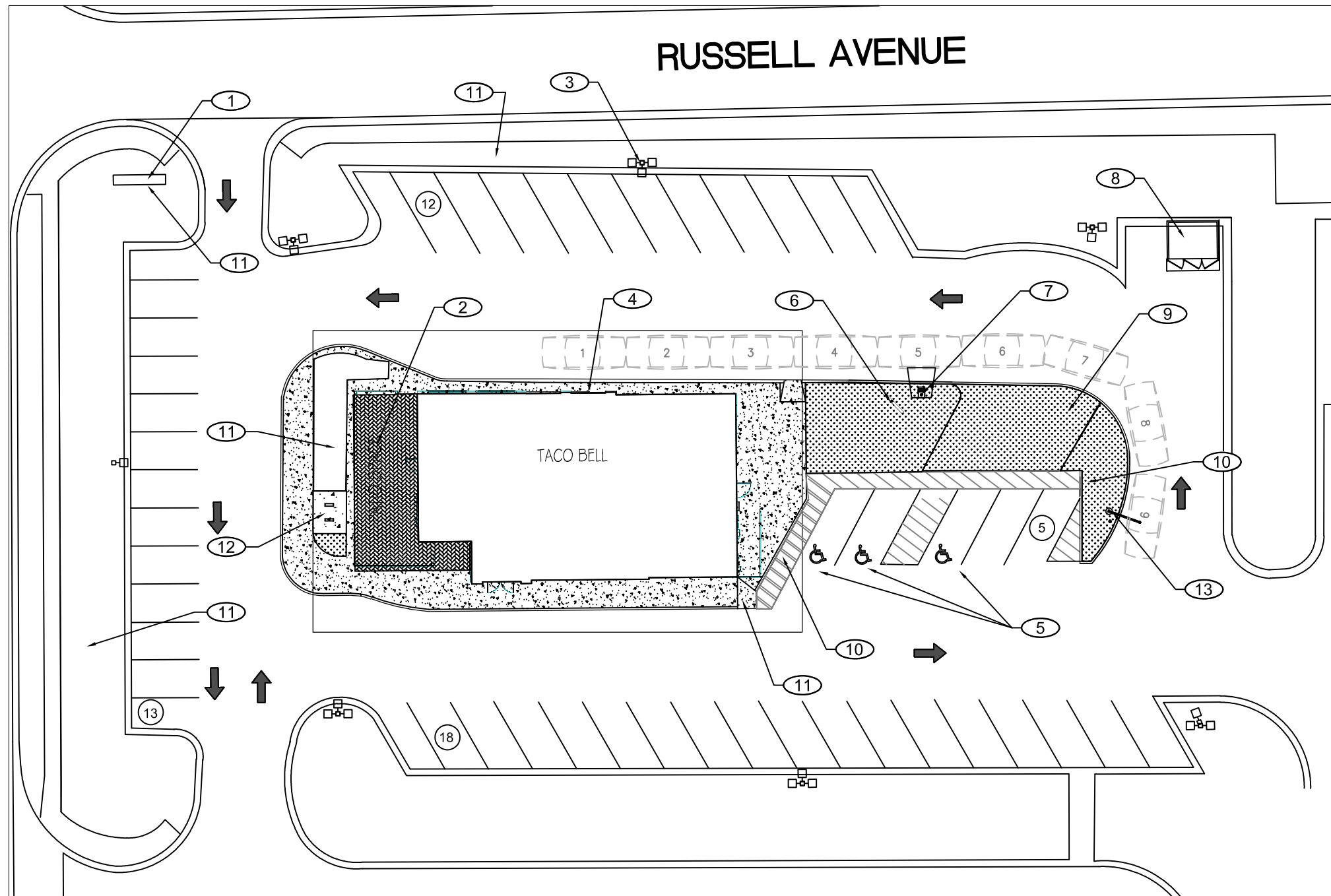
PARKING REQUIREMENT:  
 1 PER 4 SEATS OF RESTAURANT SEATING PLUS 10 PER DRIVE-THRU WINDOW.

RESTAURANT SEATING: 70 INTERIOR ; 24 EXTERIOR

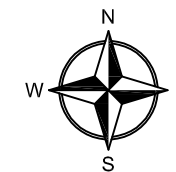
PARKING REQUIRED: 24 FOR SEATING + 10 FOR 1 DRIVE THRU WINDOW = 34 PARKING STALLS.

PARKING PROVIDED: 48 SPACES INCLUDING 3 ACCESSIBLE SPACES.

PARKING DIMENSIONS: 9' X 16' W/ 22' AISLE NO LOADING ZONE REQUIRED.



1 SITE PLAN  
 1" = 30'-0"



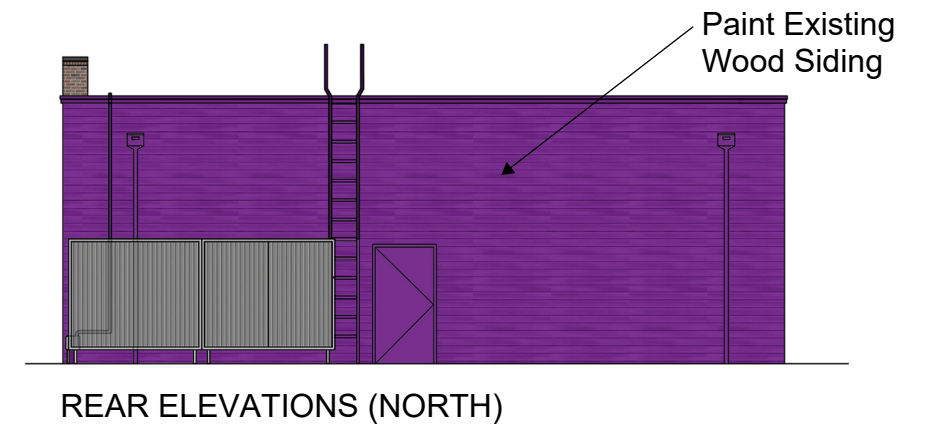
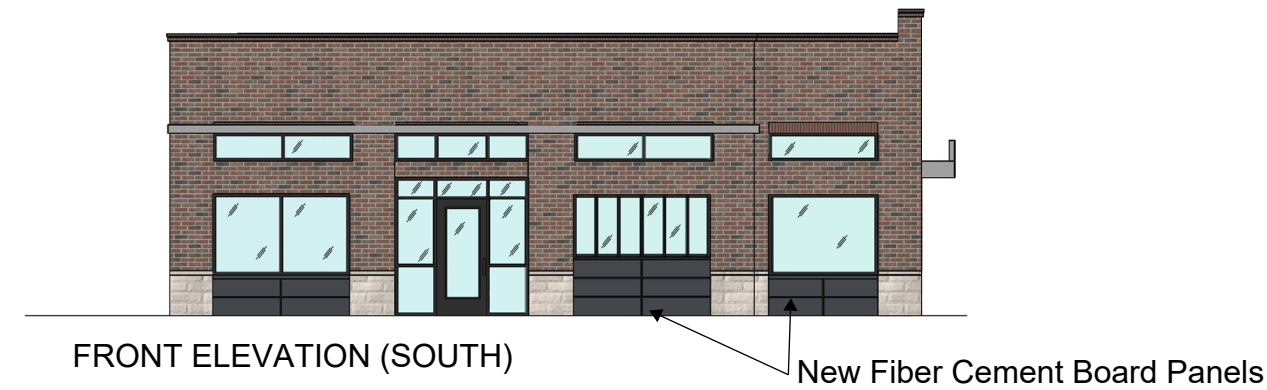
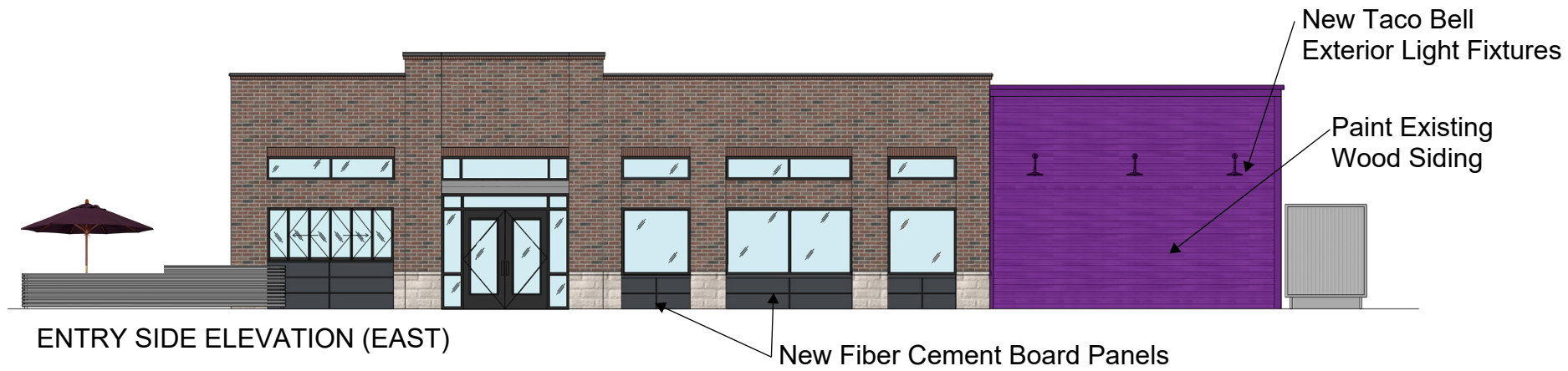
LEGEND

- EXISTING OUTDOOR PATIO SPACE
- LANDSCAPE AREA
- EXISTING CONCRETE SIDEWALK



# TACO BELL 6350 JOHNSON DR. MISSION, KS

## PROPOSED ELEVATIONS



P-2  
TB2603C Purple

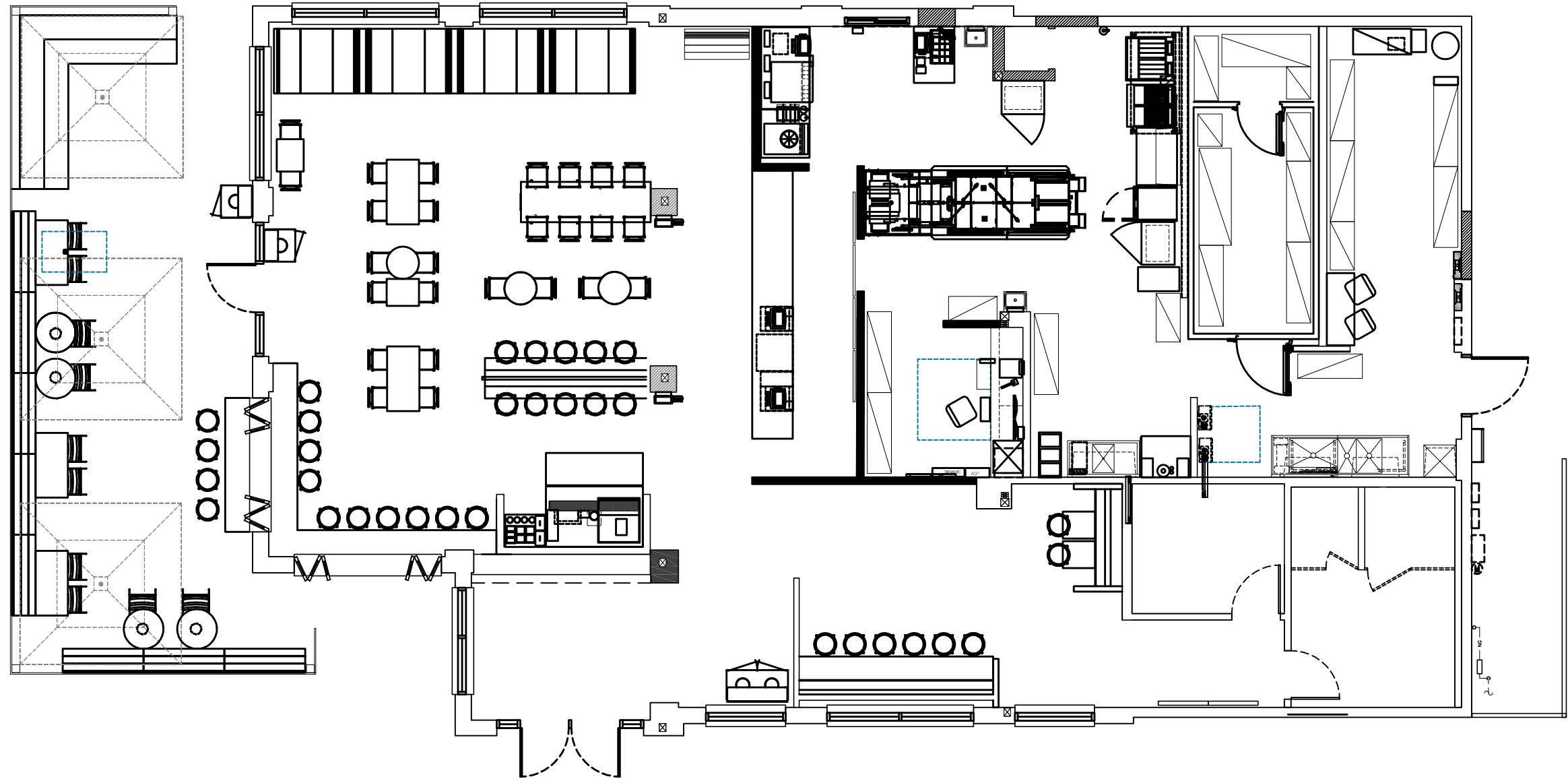


P-3  
SW7076 Cyber Space



TACO BELL 6350 JOHNSON DR. MISSION, KS

PROPOSED LAYOUT



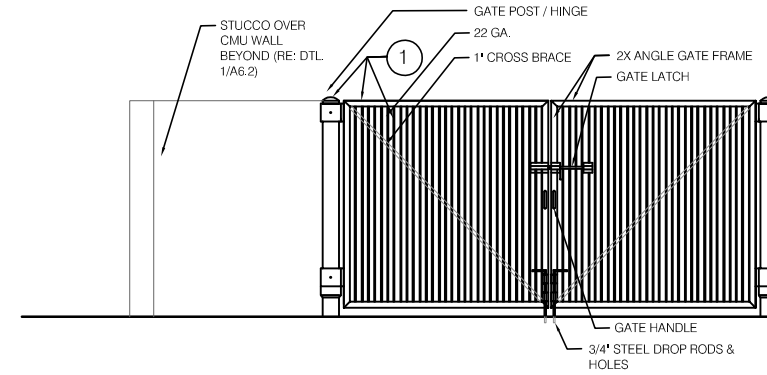


# TACO BELL 6350 JOHNSON DR. MISSION, KS

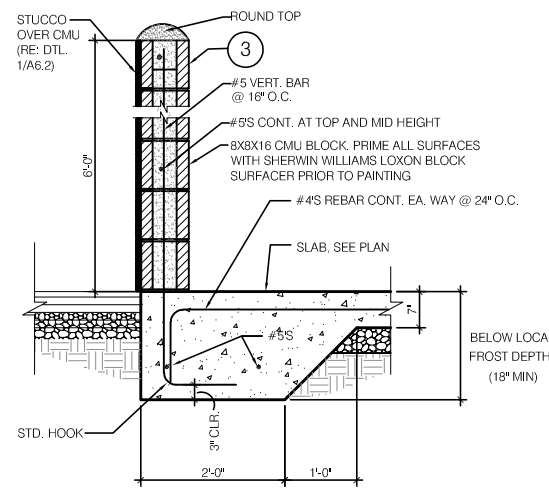
## PROPOSED DUMPSTER ENCLOSURE

SYMBOL	AREA	MANUFACTURER	COLOR
①	GATE COLOR	SHERWIN WILLIAMS	CYBERSPACE SW 7076
②	PIPE BOLLARDS	SHERWIN WILLIAMS	SAFETY YELLOW
③	CMU/STUCCO	SHERWIN WILLIAMS	CYBERSPACE SW 7076
VERIFY ALL COLORS WITH ARCHITECT PRIOR TO CONSTRUCTION			

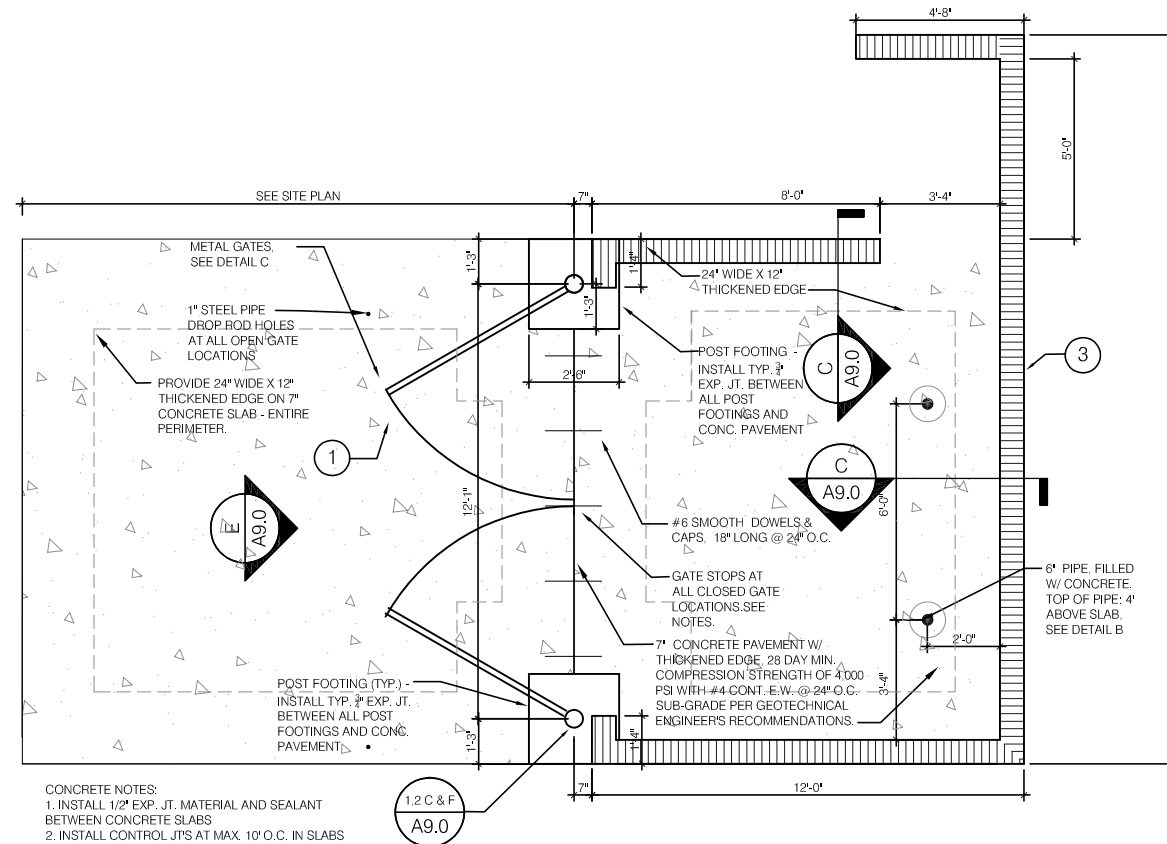
**SCHEDULE** N.T.S. | **D**



**FRONT ELEVATION** N.T.S. | **B**



**CMU WALL SECTION** N.T.S. | **C**



CONCRETE NOTES:  
 1. INSTALL 1/2\"/>

**DUMPSTER PLAN** N.T.S. | **A**

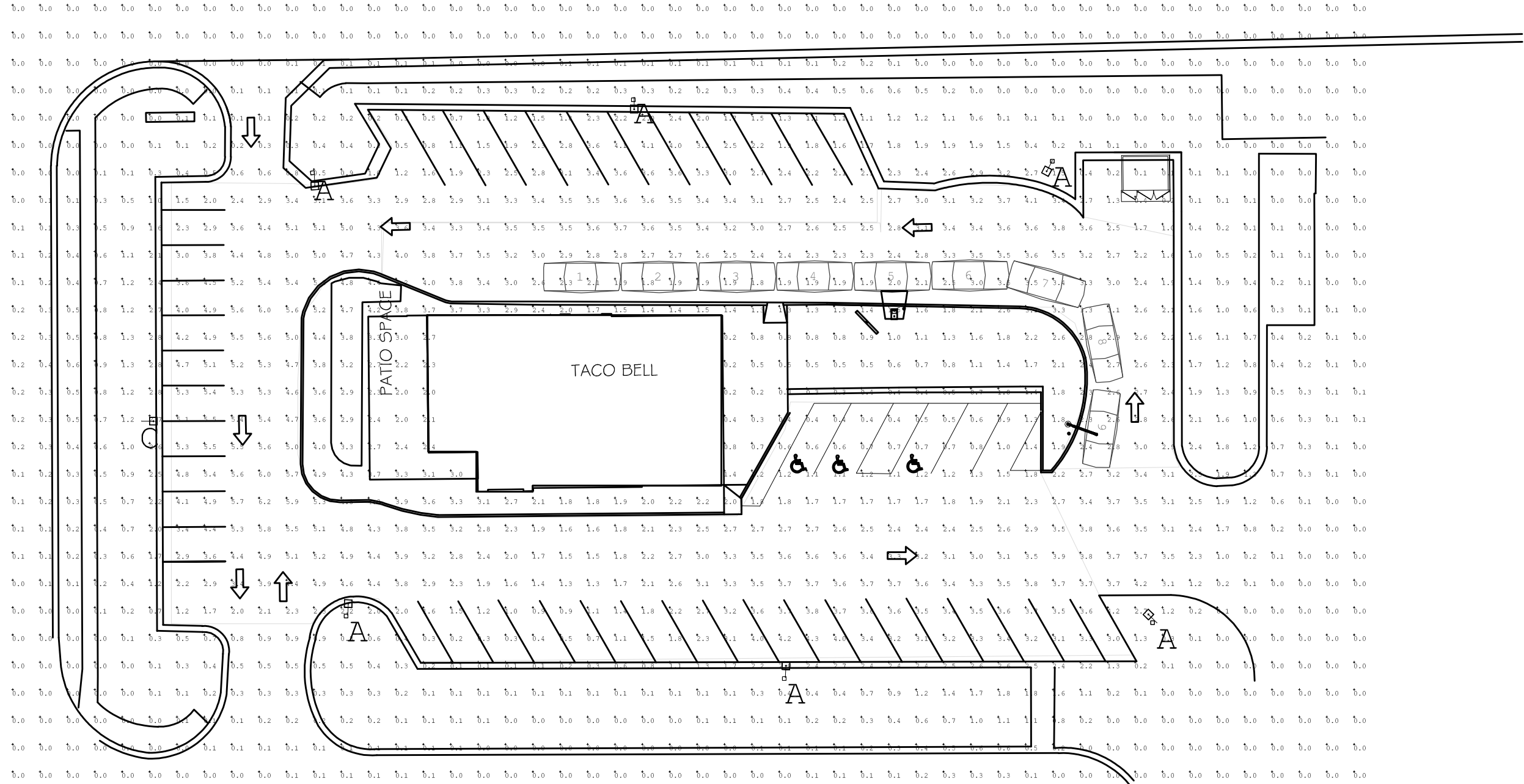




PHOTOMETRICS COMPLETED BY CAPITOL LIGHT

LOCATION MISSION, KS

Please contact Thomas Balacki or Michael Mucha if you would like a quote or to place an order  
 Thomas - 860-520-2373  
 Thomas.Balacki@capitol light.com  
 Michael - 860-520-2366  
 Michael.Mucha@capitol light.com



Luminaire Schedule			
Symbol	Qty	Label	Description
→	6	A	MRM-LED-24L-SIL-FT-40-70CRI-IL WITH REAR HOUSING SHIELD USING EXISTING POLES
→	1	C	MRM-LED-24L-SIL-FT-40-70CRI-IL WITH REAR HOUSING SHIELD USING NEW POLES

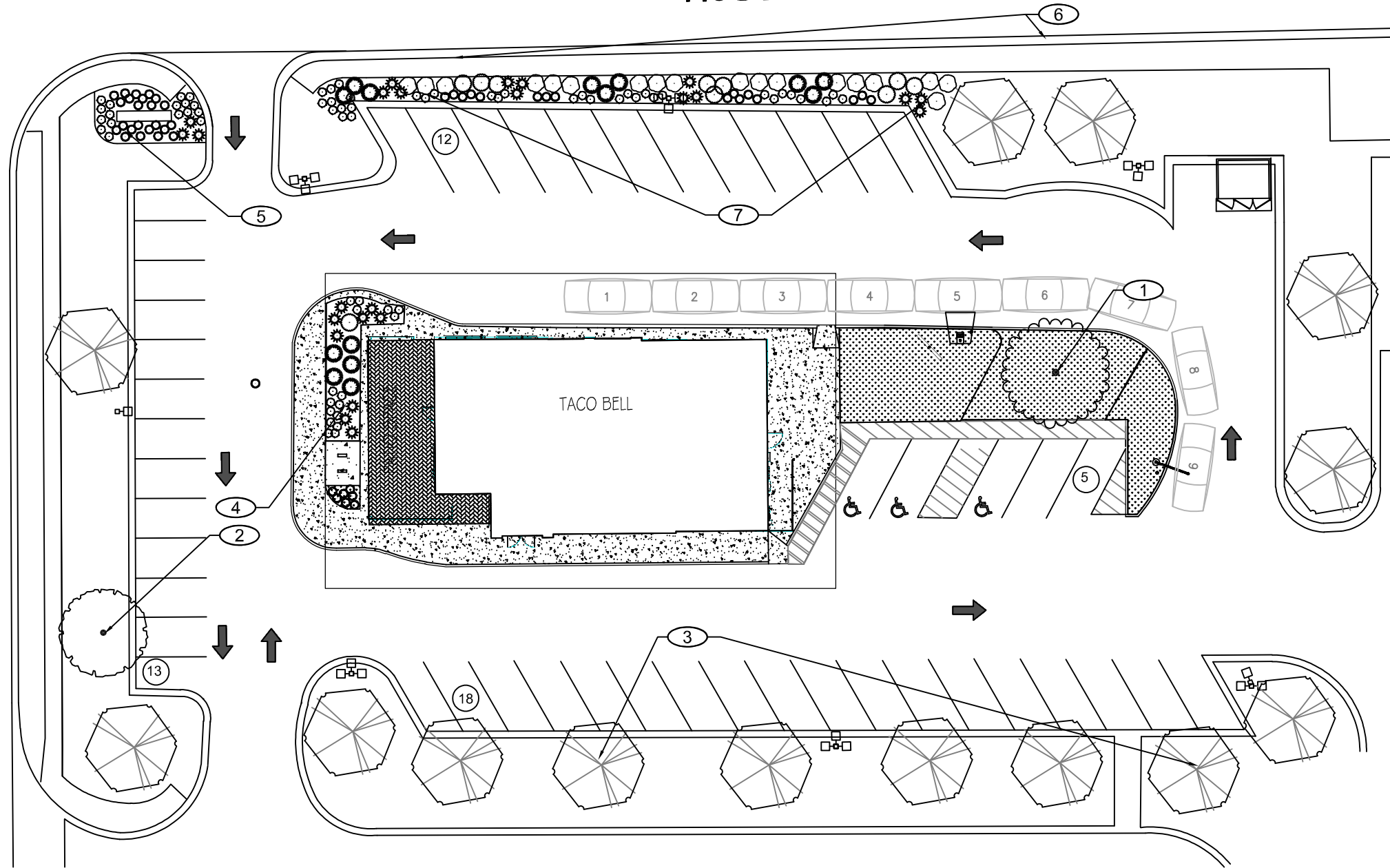
Calculation Summary					
Label	Avg	Max	Min	Avg/Min	Max/Min
-	N.A.	N.A.	N.A.	N.A.	N.A.
DRIVE THRU SURFACE	2.89	4.2	1.6	1.81	2.63
PARKING LOT SURFACE	2.97	6.2	0.2	14.85	31.00





# TACO BELL 6350 JOHNSON DR. MISSION, KS PROPOSED LANDSCAPE PLAN

RUSSELL AVENUE



## KEYNOTES

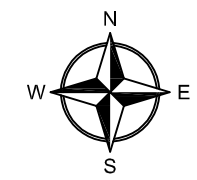
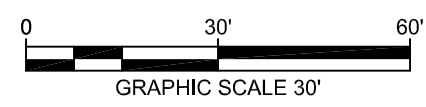
- ① PLANT TREE IN NEW TURF AREA . REFER TO PLANTING LIST.
- ② REMOVE EXITING TREE AND INSTALL NEW TREE. REFER TO PLANTING LIST.
- ③ EXISTING SHRUBS AND TREES TO REMAIN UNLESS OTHERWISE NOTED.
- ④ REPLACE SHRUBS. REFER TO PLANTING LIST.
- ⑤ PROVIDE NEW LANDSCAPE SHRUBS AT MONUMENT SIGN. REFER TO PLANTING LIST.
- ⑥ EXISTING SCREEN FENCE SHALL REMAIN.
- ⑦ PROVIDE SHRUBS ALONG SCREEN FENCE.

## PLANT SCHEDULE

TREES	QTY	BOTANICAL / COMMON NAME	CONT.
	1	Acer x freemanii 'Armstrong' / Armstrong Freeman Maple	2" Cal. + B&B
	1	Gleditsia triacanthos inermis 'Shademaster' / Shademaster Locust 2 in Cal.	2" Cal. + B&B
SHRUBS	QTY	BOTANICAL / COMMON NAME	CONT.
	18	Euonymus alatus 'Fire Ball' / Fire Ball Burning Bush	—
	47	Festuca glauca 'Elijah Blue' / Elijah Blue Fescue	5 gal
	14	Miscanthus sinensis 'Gracillimus' / Maiden Grass	—
	10	Spiraea japonica 'Double Play Red' / Double Play Red Spiraea	—
	24	Yucca filamentosa 'Bright Edge' / Bright Edge Yucca	5 gal.
GRASSES & PERENNIALS	QTY	BOTANICAL / COMMON NAME	CONT.
	67	Hemerocallis x 'Stella Supreme' / Stella Supreme Daylily	1 gal.

## 1 LANDSCAPE PLAN

1" = 30'-0"



## LEGEND

- EXISTING OUTDOOR PATIO SPACE
- LANDSCAPE AREA
- EXISTING CONCRETE SIDEWALK
- EXISTING TREE TO REMAIN

