



CITY OF ORONO
RESOLUTION OF THE CITY COUNCIL

NO. 6711

**A RESOLUTION
APPROVING VARIANCES FROM
MUNICIPAL ZONING CODE
SECTION 78-305**

FILE NO. 16-3880

WHEREAS, James M. Cleary, is the president of Everlast Enterprises, Inc., a Minnesota Corporation (hereinafter the "Applicant"), the owner of the property located at **230 Tonka Avenue** and legally described as:

Lots 14, 15, and 16, Block 2, Bayside Addition to Lake Minnetonka, Hennepin County, Minnesota (hereinafter the "Property");

WHEREAS, on October 18, 2016, the Applicant made application to the City of Orono for variances to Orono Municipal Zoning Code Section 78-305 to allow the following:

1. A variance to permit a 30.2 foot setback from the front/street lot line (Tonka Avenue) where a 50 foot setback is required;
2. A variance to permit a 40 foot setback from the north side street lot line (undeveloped Brook Street) where 50 foot setbacks are required;
3. A lot area variance to permit redevelopment of a 0.43 acre property where 2.0 acres is required; and
4. A lot width variance to permit redevelopment of a property with 150 feet in width where 200 feet is required.

WHEREAS, on November 21, 2016, after published and mailed notice in accordance with Minnesota Statutes and the City Code, the Planning Commission held a public hearing, at which time all persons desiring to be heard concerning this application were given the opportunity to speak thereon; and

WHEREAS, on November 21, 2016, the Planning Commission recommended approval of the variances; and

WHEREAS, on December 12, 2016, the City Council reviewed the application and the recommendations of the Planning Commission and City staff; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of Orono, Minnesota hereby approves the requested variances as described above based on one or more of the following findings of fact concerning the Property:



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FINDINGS OF FACT:

1. This application was reviewed as Zoning File #16-3880. The analysis contained within staff memos and the exhibits attached to the aforesaid memos, all minutes from the above mentioned meetings, and any and all other materials distributed at these meetings are hereby incorporated by reference.
2. The Property is located in the LR-1A Single Family Lakeshore Residential Zoning District.
3. The Property contains 0.43 acres in area and has a defined lot width of 150 feet.
4. The Property is within Tier 3 and hardcover is limited to 35% according to the Stormwater Quality Overlay District.
5. Applicant has applied for the following variance[s]:
 - a. Lot area variance.
 - b. Lot width variance.
 - c. Setback variances.
6. In considering this application for variances, the Council has considered the advice and recommendation of the Planning Commission and the effect of the proposed variances upon the health, safety and welfare of the community, existing and anticipated traffic conditions, light and air, danger of fire, risk to the public safety, and the effect on values of property in the surrounding area.

ANALYSIS:

1. "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance" The lot area and lot width variances requested are consistent with the general intent of the Ordinance. There is adequate space for light, air, and open space between the proposed home and the street and neighboring homes with reduced setbacks requested. The variances are in harmony with the Ordinance.
2. "Variances shall only be permitted . . . when the variances are consistent with the comprehensive plan." The variances resulting in a permit for construction of a single family residence in a residential zone are consistent with the Comprehensive Plan.



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3. "Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. 'Practical difficulties,' as used in connection with the granting of a variance, means that:

a. *The property owner in question proposes to use the property in a reasonable manner, however, the proposed use is not permitted by the official controls.*

The request to permit construction of portions of the proposed home within the 50 foot side street and front setback areas appears to be reasonable as the adjacent properties do not appear to be adversely impacted; the encroachment on the north (undeveloped Brook Street) will afford a greater setback and open space from the neighboring home on the south. There is no neighboring home on the north.

b. *The plight of the landowner is due to circumstances unique to his property not created by the landowner.*

The sub-standard size of the Property was not the result of actions by the landowner. The neighboring homes are separated sufficiently to allow for light, air, and open space between the homes.

c. *The variance, if granted, will not alter the essential character of the locality."*

The proposed home will not alter the character of the neighborhood. The structures on adjacent lots are set back similarly from Tonka Avenue.

4. "Economic considerations alone do not constitute practical difficulties." The Applicant has not requested consideration based on economic difficulties.
5. "Practical difficulties also include but are not limited to inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth-sheltered construction as defined in Minn. Stat. § 216C.06, subd. 2, when in harmony with Orono City Code Chapter 78." This criterion is not applicable.
6. "The board or the council may not permit as a variance any use that is not permitted under Orono City Code Chapter 78 for property in the zone where the affected person's land is located." A residential home is a permitted use. This criterion is met.
7. "The board or council may permit as a variance the temporary use of a one-family dwelling as a two-family dwelling." This criterion is not applicable.
8. "The special conditions applying to the structure or land in question are peculiar to such property or immediately adjoining property." The nonconforming lot area and lot width of the



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Property are not uncommon in the surrounding neighborhood. The Applicant is building more centrally on the Property than the existing home. The existing substandard setback to the south lot line will be improved (setback increased) with the proposed home.

9. "The conditions do not apply generally to other land or structures in the district in which the land is located." The proposed home will be generally in line with the neighboring homes with respect to size and setback.
10. "The granting of the application is necessary for the preservation and enjoyment of a substantial property right of the applicant." This criterion has been met.
11. "The granting of the proposed variance will not in any way impair health, safety, comfort or morals, or in any other respect be contrary to the intent of this chapter." Granting the requested variances will not adversely impact health, safety, comfort, or morals; nor will it be contrary to the intent of the Code.
12. "The granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable difficulty." The substandard size and width of the Property combined with the 2-acre district setbacks create practical difficulties affecting the Property; the variances are necessary and not merely serve as a convenience to the Owner.

CONCLUSIONS, ORDER AND CONDITIONS:

Based upon one or more of the above findings, the Orono City Council hereby grants variances to Orono Municipal Zoning Code Section 78-305 to allow the following:

1. A 30.2 foot setback from the front/street lot line (Tonka Avenue) where a 50 foot setback is required;
2. A 40 foot setback from the north side street lot line (undeveloped Brook Street) where 50 foot setbacks are required;
3. Redevelopment of a 0.43 acre property where 2.0 acres is required; and
4. Redevelopment of a property with 150 feet in width where 200 feet is required, subject to the following conditions:
 1. Council approval is based on the survey dated 09/27/16 and building plans submitted by the Applicants and annotated by City staff, attached to this Resolution as **Exhibits A & B**. Any amendments to the plans which are not in conformity with City codes may require further Planning Commission and City Council review.
 2. Authorities granted by this resolution run with the Property not with the Applicant, but are permissive only and must be exercised by obtaining a building permit for the new construction and commencing construction of said project. A framing inspection must be



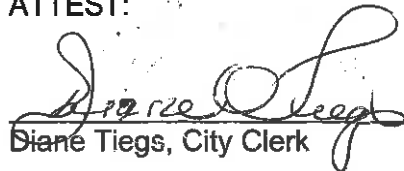
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completed within one year of the date of Council approval, or the variances will expire on that date (December 12, 2017).

3. Violation of or non-compliance with any of the terms and conditions of this resolution shall constitute a violation of the zoning code, shall automatically terminate any authority granted herein, and shall be punishable as a misdemeanor.
4. The undersigned Applicant has read, understands and hereby agrees to the terms of this resolution and on behalf of the Applicant and the Applicant's heirs, successors and assigns, hereby agrees to the recording of this resolution in the chain of title of the Property.


ADOPTED by the Orono City Council on this 12th day of November 2016.

ATTEST:



Diane Tieg, City Clerk

CITY OF ORONO:



Lili Tod McMillan, Mayor



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NO. 6777

Everlast Enterprises, Inc.
A Minnesota Corporation

By: _____, its president.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

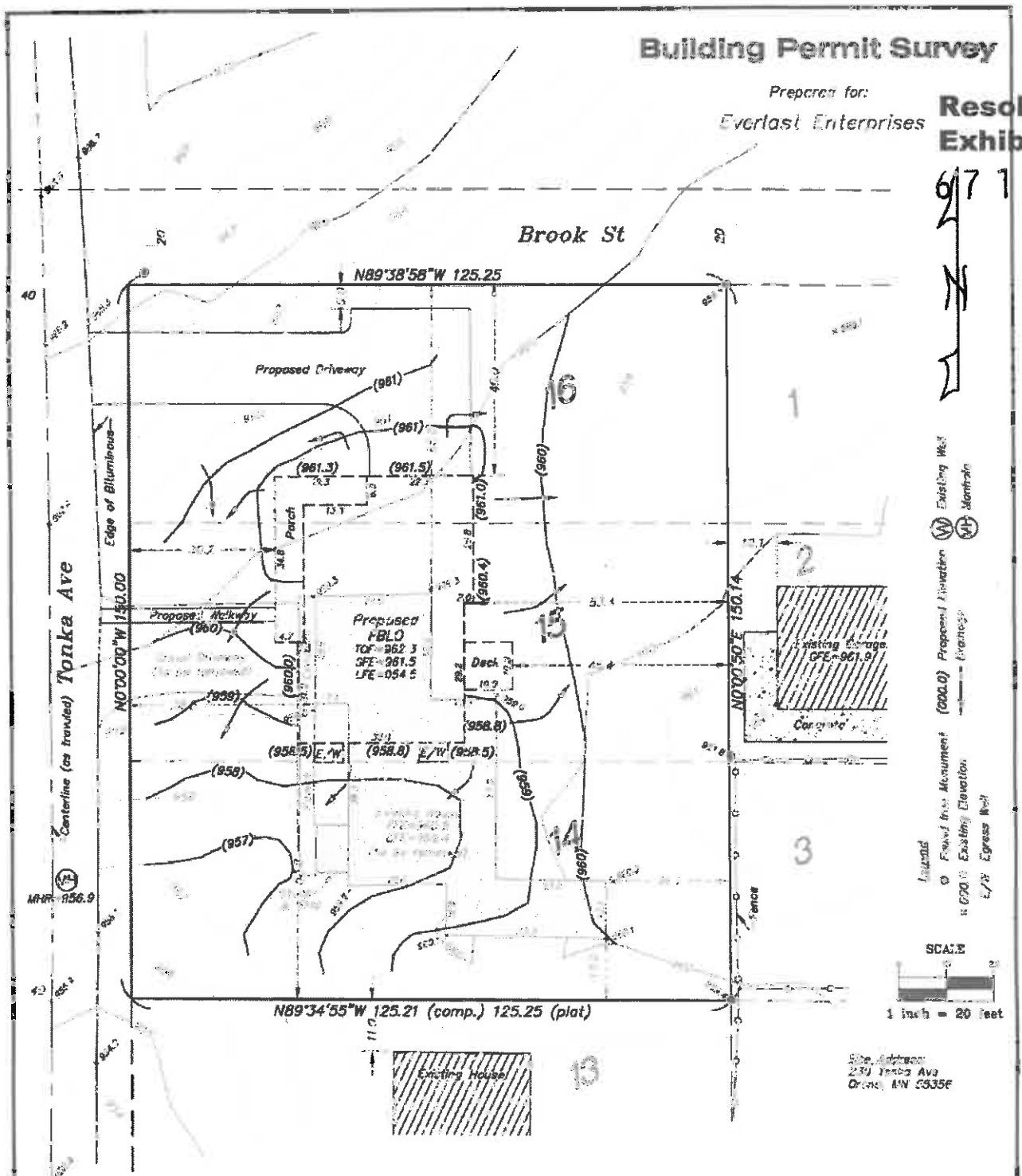
This instrument was acknowledged before me this ___ day of _____, 20___, by _____, the president of Everlast Enterprises, Inc., a Minnesota corporation, on behalf of the corporation.

Notary Public

Building Permit Survey

Prepared for:
Everlast Enterprises

**Resolution
Exhibit A**



617 1
N

- Existing Well
- Proposed Foundation
- Proposed Monument
- Proposed Elevation
- Existing Elevation
- Egress Well

SCALE
1 inch = 20 feet

Site Address:
230 Tonka Ave
Orono, MN 55356

Existing Hardover Calculations (sq. ft.)	
House	2,131
Gravel Driveway	664
Pavers	115
Concrete	77
Stoop & Step	68
Lot Area	18,793
Total Hardover	18.2%

Proposed Hardover Calculations (sq. ft.)	
House	2,287
Driveway	1,529
Porch	289
Deck	104
Lot Area	18,793
Total Hardover	22.3%

Proposed Elevation:
Top of Blk = 962.3
Garage Floor = 961.5
Basement Floor = 954.5

Bearings based on assumed datum

**SCHOBORG
LAND SERVICES
INC.**

763-972-3291 8997 Co. Rd. 13 SE
www.SchoborgLand.com Delano, MN 55328

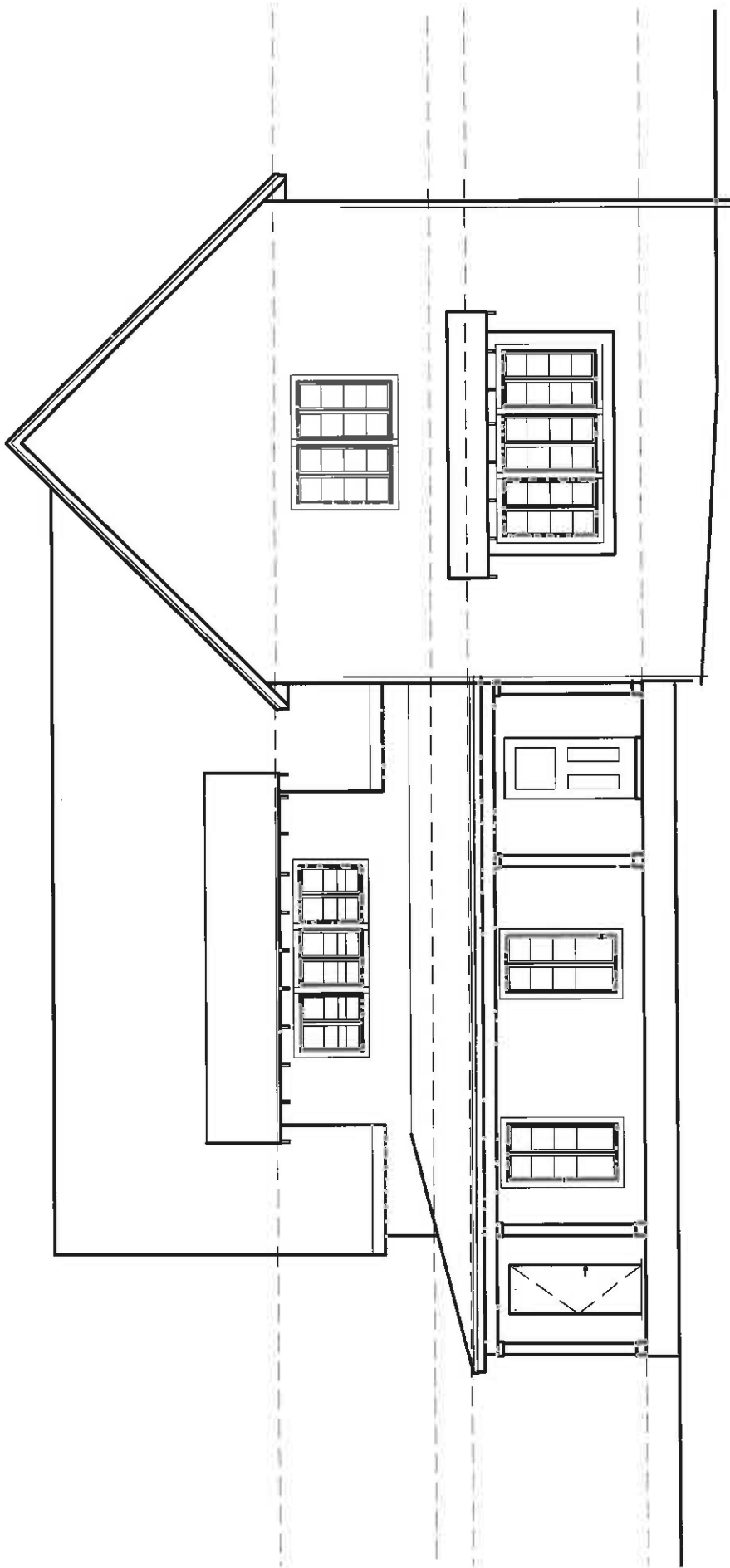
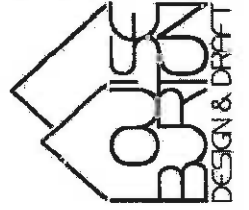
I hereby certify that this certificate of survey was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

Paul R. Schoborg
Paul R. Schoborg

Date: 09/27/16 Registration No. 14700

Job Number:	8301
Book/Page:	11
Survey Date:	9/27/16
Drawing Name:	everlast.dwg
Drawn by:	GMS
Revisions:	

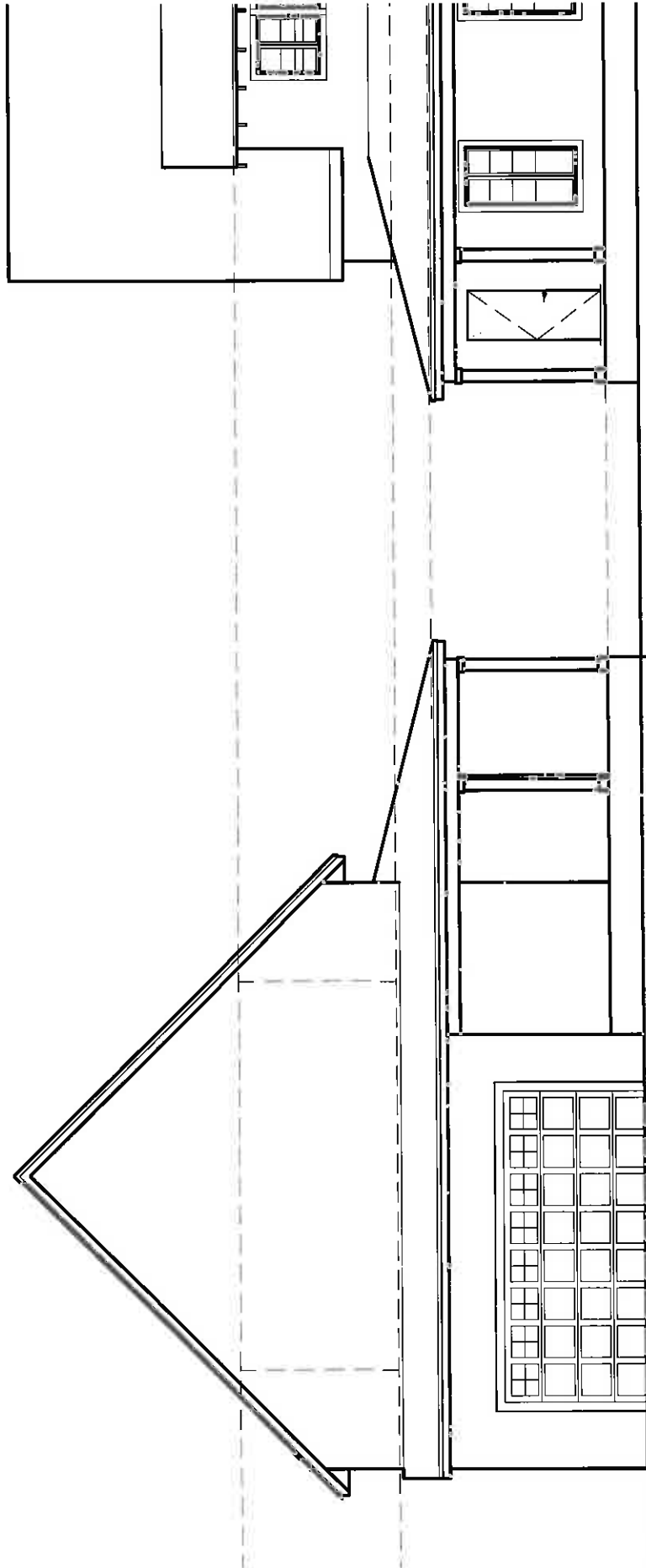
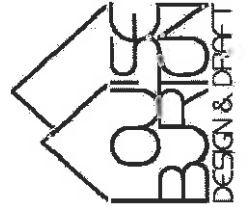
PC Exhibit C



1 Tonka Rd House 10-12-16

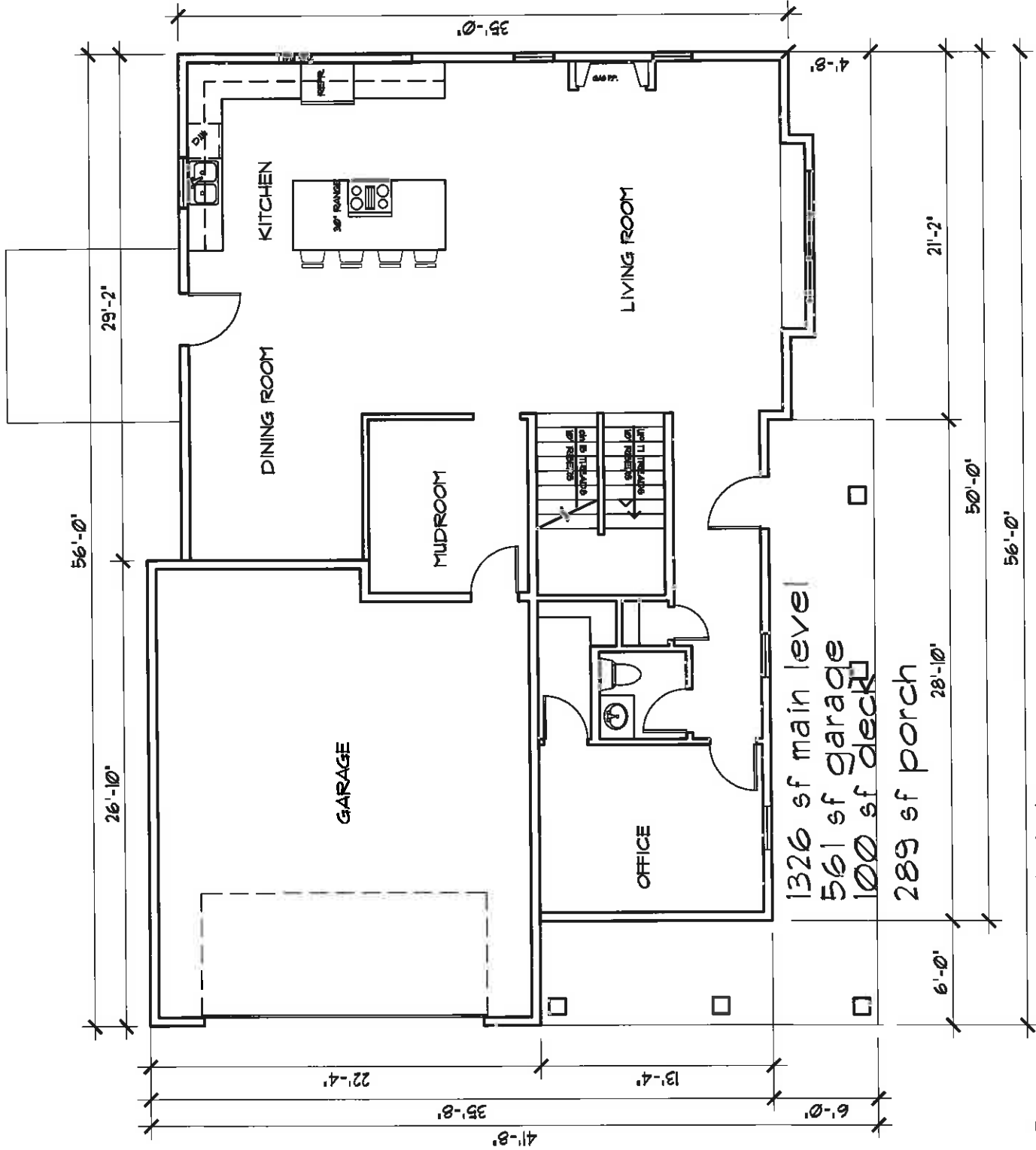
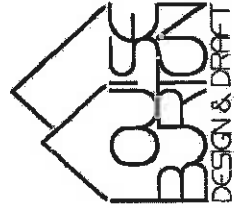
AI SCALE: 1/8" = 1'-0"

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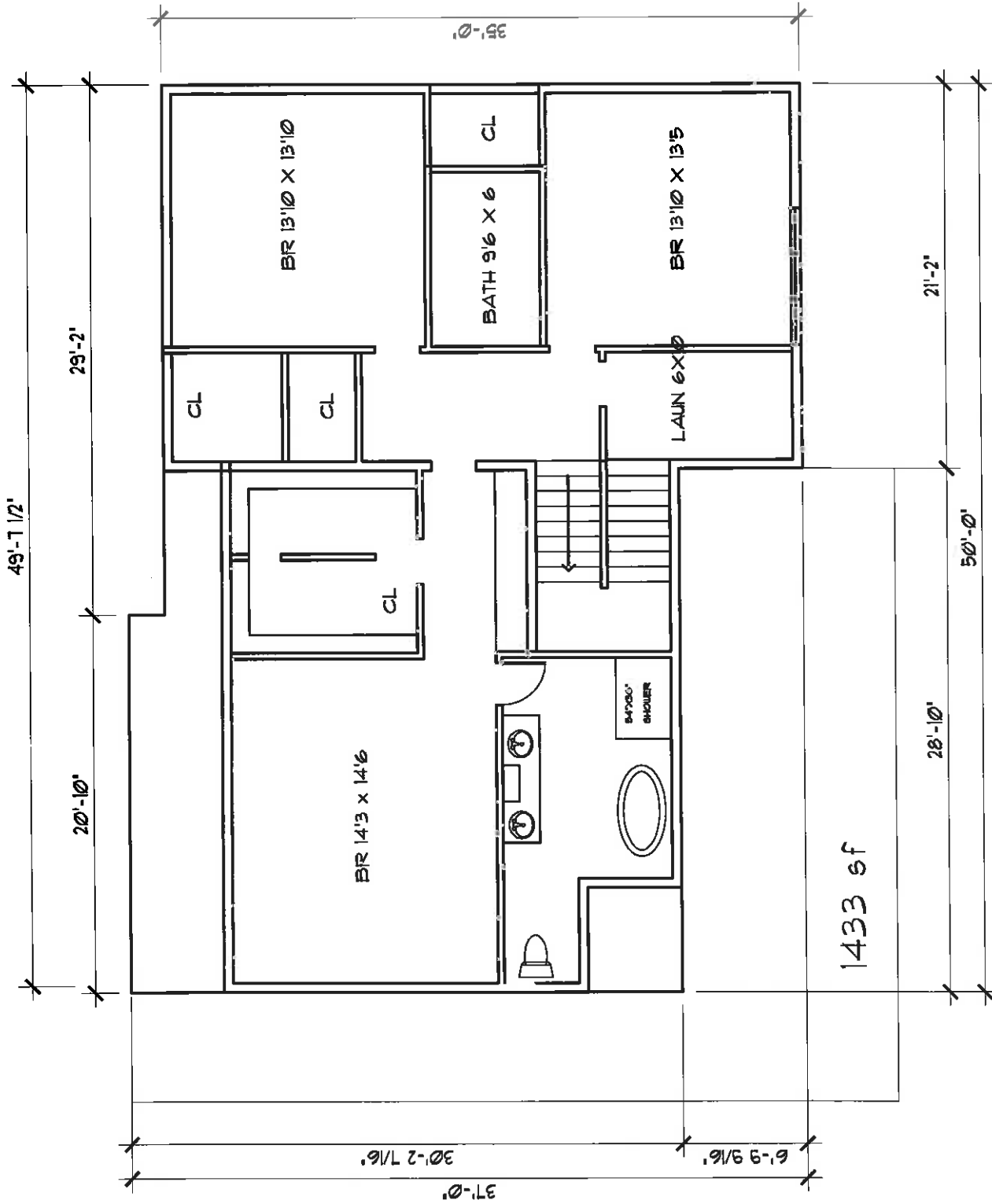
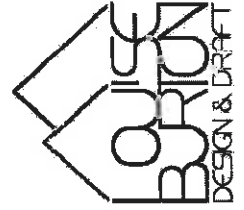


1 Tonka Rd House 10-12-16

AI SCALE: 1/8" = 1'-0"



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1 Tonka Rd House 10-12-16

AI SCALE: 1/8" = 1'-0"