

## Report to Planning & Environment Committee

**To:** Chair and Members  
Planning and Environment Committee  
**From:** Scott Mathers, MPA, P.Eng  
Deputy City Manager, Planning and Economic Development  
**Subject:** Limiting Distance (No-Build) Agreement between the Corporation of the City of London and the owners of 20-720 Apricot Drive  
**Date:** January 9, 2023

## Recommendation

That, on the recommendation of the Deputy City Manager, Planning and Economic Development, the following actions be taken in respect of a limiting distance (no-build) agreement between the Corporation of the City of London and Southside Construction Management Limited (20-720 Apricot Drive, London, Ontario):

- a) the attached proposed limiting distance agreement for the property at 20-720 Apricot Drive between the Corporation of the City of London and Southside Construction Management Limited **BE APPROVED**; and
- b) the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting of November 28, 2022, to approve the limiting distance agreement between the Corporation of the City of London and Southside Construction Management Limited for the property at 20-720 Apricot Drive, and to delegate authority to the Deputy City Manager, Environment and Infrastructure to execute the agreement on behalf of the City of London as the adjacent property owner.

## Executive Summary

The purpose of this report is to authorize the Deputy City Manager, Environment and Infrastructure, to execute into a limiting distance agreement on behalf of the Corporation of the City of London (Corporation) as the owner of the adjacent property. The Corporation is the owner of the lot to the west of 20-720 Apricot Drive.

As defined in the Ontario Building Code (OBC), Limiting Distance means the distance from an exposing building face to a property line, to the centre line of a street, lane, or public thoroughfare or to an imaginary line between two buildings or fire compartments on the same property, measured at right angles to the exposing building face.

Under the OBC, the required limiting distance for an exposing building face is permitted to be measured to a point beyond the property line that is not the centre line of a street, lane, or public thoroughfare if the owners of the properties enter into an agreement stipulating no construction will take place within the proposed limiting distance. This agreement is required to be registered on title of both properties.

## Linkage to the Corporate Strategic Plan

Growing our Economy

- London is a leader in Ontario for attracting new jobs and investments.

Leading in Public Service

- The City of London is trusted, open, and accountable in service of our community.
- Improve public accountability and transparency in decision making.

## Analysis

### 1.0 Background Information

Previous report:

January 28, 2009 – Report to Board of Control, submitted by the Director of Building Controls to amend the Appointment By-law authorizing the Chief Building Official to bind the Corporation of the City of London while exercising his duties in executing limiting distance agreements.

### 2.0 Discussion and Considerations

The owners of the property situated at 20-720 Apricot Drive namely, Southside Construction Management Limited will be applying to obtain a building permit for the construction of a new single detached dwelling.

The Ontario Building Code (OBC) provides optional relief from any setback restrictions, by allowing a *virtual* property line to be established. This requires the property owner to enter into a limiting distance, or otherwise commonly known as a “no-build”, agreement with both the adjacent owner(s) and the municipality.

Through the agreement, the adjacent owner covenants that no building or structure will be erected or placed within the portion of the property wherein the virtual property line has been shifted upon. This, in essence, allows the other owner to either construct or retain a building closer to the actual property line and thus being ‘relieved’ from the requirements of the OBC with respect to the percentage of unprotected wall openings and wall construction type from a fire resistance standpoint.

The virtual property line, for the purposes of the limiting distance agreement is proposed to be established at 4.95 m to the west of the property line between 20-720 Apricot Drive and the lands owned by the City of London (BLOCK 45).

Southside Construction Management Limited (referred to in the agreement as ‘Owner’), concur with the Building Division to enter into such an agreement which would eliminate the need to have the west wall openings protected and the west wall face designed with a fire resistance rating.

As previously mentioned, the OBC (Division B – Articles 9.10.14.2.(4) and (5)) allows for a municipality to optionally enter into a limiting distance(no-build) agreement with the property owners affected.

Articles (4) and (5) state:

*(4) The required limiting distance for an exposing building face is permitted to be measured to a point beyond the property line that is not the centre line of a street, lane or public thoroughfare if,*

*(a) the owners of the properties on which the limiting distance is measured, and the municipality enter into an agreement in which such owners agree that,*

*(i) each owner covenants that, for the benefit of land owned by the other covenantors, the owner will not construct a building on his or her property unless the limiting distance for exposing building faces in respect of the proposed construction is measured in accordance with the agreement,*

*(ii) the covenants contained in the agreement are intended to run with the lands, and the agreement shall be binding on the parties and their respective heirs, executors, administrators, successors, and assigns,*

*(iii) the agreement shall not be amended or deleted from title without the consent of the municipality, and*

*(iv) they will comply with such other conditions as the municipality considers necessary, including indemnification of the municipality by the other parties, and  
(b) the agreement referred to in Clause (a) is registered against the title of the properties to which it applies.*

*(5) Where an agreement referred to in Sentence (4) is registered against the title of a property, the limiting distance for exposing building faces in respect of the construction of any buildings on the property shall be measured to the point referred to in the agreement.*

The agreement will also be registered on the titles of the lands in question.

The Corporation (referred to in the agreement as 'Adjacent Owner'), is the owner of the property to the west. Considering the west property is open undeveloped space, entering into this agreement with both the Owners and the Corporation of the City of London is considered a feasible option. This would result in the elimination of the need to protect the west exposed building face wall openings and would also eliminate the need for the west wall to have a fire resistance rating.

The Building Division consulted with the Deputy City Manager, Environment and Infrastructure, with respect to the agreement, and was advised that there was no objection with this proposal.

A site plan depicting the proposed building at 20-720 Apricot Dr as well as a west wall elevation are included in Appendix 'A' of this report.

Previously, City Council has resolved to authorize the Chief Building Official to bind the Corporation in executing limiting distance agreements, exercising his duties under the provisions of the Ontario Building Code.

## **Conclusion**

The purpose of this report is to authorize the Deputy City Manager, Environment and Infrastructure, to execute a limiting distance agreement on behalf of the Corporation in its capacity as the Adjacent Owner. The Corporation is the owner of the lot to the west of 20-720 Apricot Drive.

The agreement, a provision under the Ontario Building Code, would allow the owner of 20-720 Apricot Drive to eliminate the need to protect the west wall openings and also eliminate the need for the proposed west wall face to have a fire resistance rating.

**Prepared by:** Peter Kokkoros, P.Eng  
Director, Building and Chief Building Official  
Planning and Economic Development

**Submitted &  
Recommended by:** Scott Mathers, MPA, P.Eng  
Deputy City Manager, Planning and Economic Development

c.c:  
Kelly Scherr, Deputy City Manager, Environment and Infrastructure  
Aynsley Anderson, Solicitor II  
Jeff Bruin, Manager, Parks Planning and Design

Bill No.

By-law No.

A By-law to approve a limiting distance agreement between the Corporation of the City of London and Southside Construction Management Limited for the property at 20-720 Apricot Drive and to delegate authority to the Deputy City Manager, Environment and Infrastructure, to execute the agreement on behalf of the City of London as the adjacent property owner.

**WHEREAS** section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

**AND WHEREAS** section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

**AND WHEREAS** it is deemed expedient for The Corporation of the City of London (the “City”) to enter into a limiting distance agreement with Southside Construction Management Limited for the property at 20-720 Apricot Drive (the “Agreement”);

**AND WHEREAS** it is appropriate to delegate authority to the Deputy City Manager, Environment and Infrastructure, to execute the agreement on behalf of the City of London as the adjacent property owner;

**NOW THEREFORE** the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement substantially in the form attached as Schedule “A” to this by-law and to the satisfaction of the Deputy City Manager, Legal Services, being limiting distance agreement between the Corporation of the City of London and Southside Construction Management Limited for the property at 20-720 Apricot Drive, is hereby APPROVED.
2. The Deputy City Manager, Environment and Infrastructure, is hereby authorized to execute the Agreement approved under section 1 of this by-law on behalf of the City of London as the adjacent property owner.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council, , 2023

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First reading – , 2023

Second reading – , 2023

Third reading – , 2023

## **SCHEDULE "A"**

**THIS AGREEMENT** made in duplicate this 31 day of October 2022

**BETWEEN:**

**Southside Construction Management Limited** (hereinafter called the "OWNER") of the FIRST PART  
and

**The Corporation of the City of London** (hereinafter called the "CITY", in its capacity as a municipality and principal authority under the Building Code Act, 1992, S.O.1992, c.23, as amended) of the SECOND PART  
and

**The Corporation of the City of London** (hereinafter called the "ADJACENT OWNER") of the THIRD PART.

**WHEREAS** the Owner is the registered owner of the lands also described in Schedule "A" (the "Owners' Lands");

**AND WHEREAS** the Adjacent Owner is the registered owner of lands also described in Schedule "A" (the "Adjacent Lands");

**AND WHEREAS** the west property line of the Owners' Lands abuts the Adjacent Lands;

**AND WHEREAS** the Owners have applied to the City for permission to be exempted from certain provisions of the Ontario Building Code pertaining to glazing and fire rating in the west facing wall of a house to be constructed on the Owners' Lands (the "Proposed Building");

**AND WHEREAS** Parties have agreed to enter into this agreement in accordance with Article 9.10.14.2(4) of the Ontario Building Code to facilitate same;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of TWO DOLLARS (\$2.00) and other good and valuable consideration now paid by each of the parties hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the City, the Owner and Adjacent Owner hereby covenant and agree as follows:

1. The Adjacent Owner irrevocably agrees with the Owner not to construct any building or structure within 4.95 metres from the west property line of the Owners' Lands; failing which, the Adjacent Owner shall be fully liable for all costs of any work to be performed to rectify same on both the Owner's Lands and the Adjacent Lands, as required by the City or pursuant to the Ontario Building Code.
2. The Adjacent Owner acknowledges and agrees that, prior to the construction of any building on the Adjacent Lands, the "limiting distance" from an "exposing building face" facing the western property line of the Owners' Lands, shall be calculated by the City from a line located on the Adjacent Property 4.95 metres from the western property line of the Owner's lands.
3. The Owner acknowledges and agrees that, prior to the construction of any building on the Owners' Lands, the "limiting distance" from an "exposing building face" facing the western property line of the Owners' Lands shall be calculated by the City from a line located on the Adjacent Property 4.95 metres from the western property line of the Owner's lands.
4. The Parties acknowledge that the terms "limiting distance" and "exposing building face" as referenced in this Agreement shall have the meanings defined in Article 1.4.1.2. of the Ontario Building Code, as amended.

5. The burdens and benefits of this Agreement shall run with the Owners' Lands and the Adjacent Lands and shall ensure to the benefit of and be binding upon all Parties hereto, their respective heirs, executors, administrators, successors and assigns.

6. The Parties consent to the registration of this Agreement against title to the Owners' Lands and the Adjacent Lands and further agree to obtain and register any postponements required to ensure this Agreement is registered in priority to any existing or future encumbrances affecting the lands.

7. The Owners covenant and agree with the City that the Owners will forthwith bring the west wall of the proposed building into compliance, as is prescribed by the Ontario Building Code then in effect, coincidental with the construction of any building or structure upon the Adjacent Lands, which is located 4.95 metres from the west property line of the Owners' Lands

8. Amendment or removal of this agreement from the title of either property shall require the written agreement of all parties (or their heirs or assigns) to this agreement.

**IN WITNESS WHEREOF** the parties hereto have hereunto duly executed this agreement.

**SIGNED AND DELIVERED** in the presence of:

**OWNERS**

Southside Construction Management Limited

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**THE CORPORATION OF THE CITY OF LONDON**

Per:

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Peter Kokkoros, P.Eng. Director, Building and Chief Building Official  
Authorized Officer

**ADJACENT OWNER: THE CORPORATION OF THE CITY OF LONDON**

Per:

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Kelly Scherr, Deputy City Manager, Environment and Infrastructure  
Authorized Officer

**Schedule "A"**

**Owner's Lands:** 20-720 Apricot Drive, London, ON, N6K 5A7; London

**Adjacent Lands:** Block 45, Plan 33M-811; London

APPENDIX 'A'

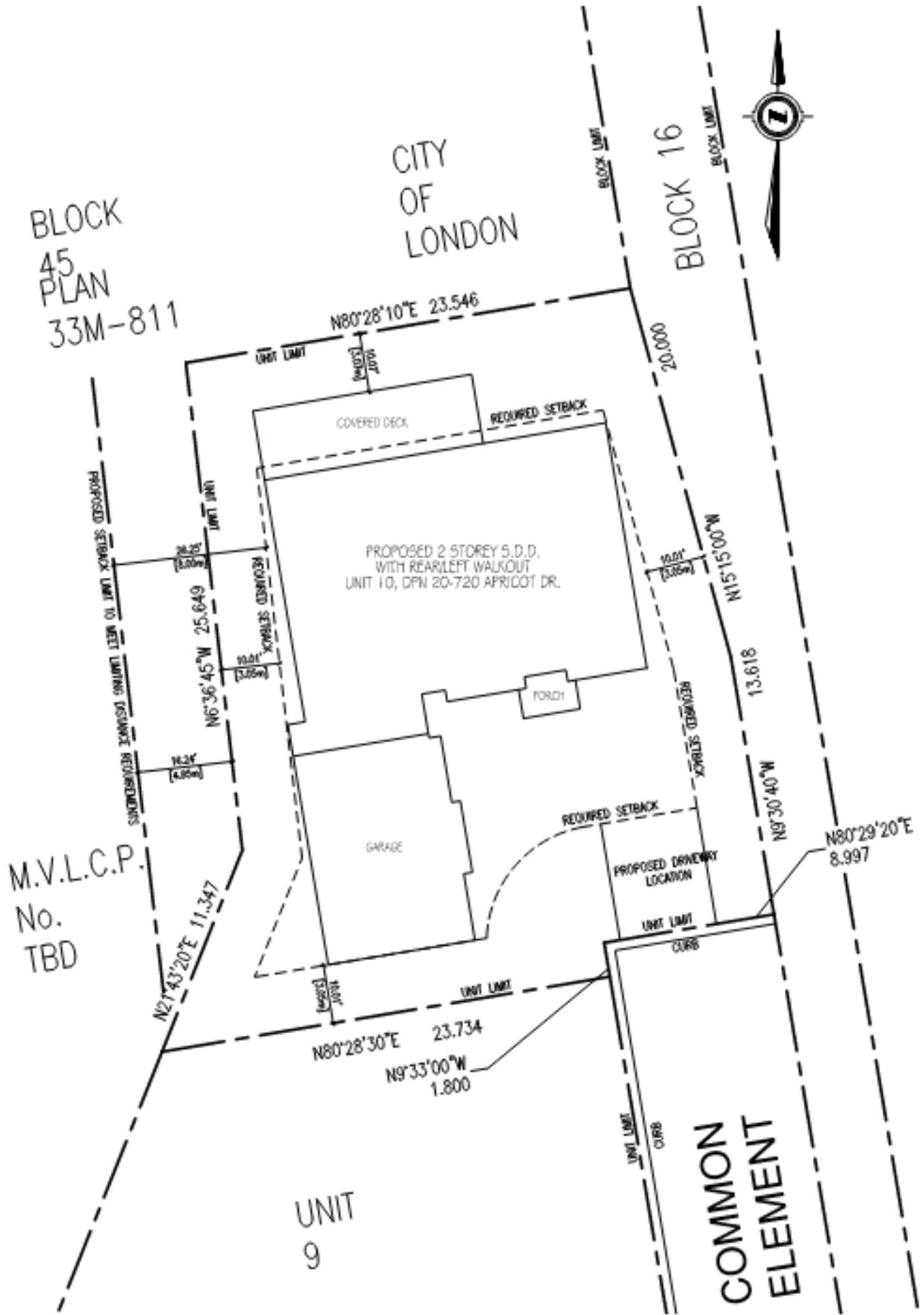


Figure No.1 Proposed Site Plan



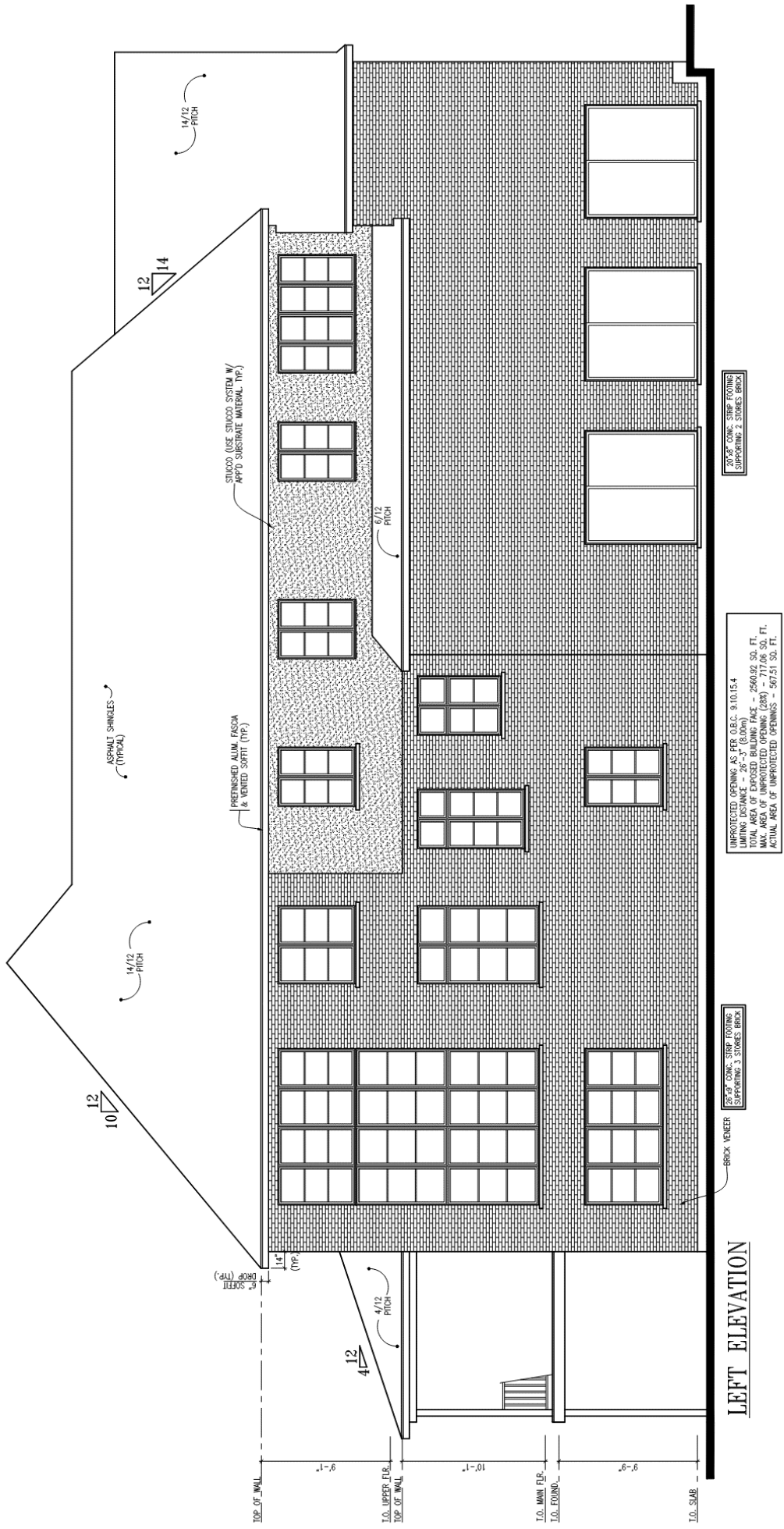


Figure 2. Proposed West Elevation