DAVID BRILEY
MAYOR

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

Metropolitan Historic Zoning Commission
Sunnyside in Sevier Park
3000 Granny White Pike
Nashville, Tennessee 37204
Telephone: (615) 862-7970
Fax: (615) 862-7974

STAFF RECOMMENDATION
111 4th Avenue South
August 21, 2019

Application: Violation/Show Cause; Alteration
District: Broadway Historic Preservation Zoning Overlay
Council District: 19
Base Zoning: DTC
Map and Parcel Number: 09306400800
Applicant: Swingin' Doors Saloon, LLC
Project Lead: Melissa Sajid, melissa.sajid@nashville.gov

Description of Project: Staff has issued a Show Cause hearing for work done differently than permitted by HCP 2018063543. In this case, the existing chimneys were altered contrary to the permitted plans.

The applicant is required to appear before the Commission and show cause as to why any original Preservation Permits should not be revoked by the Commission.

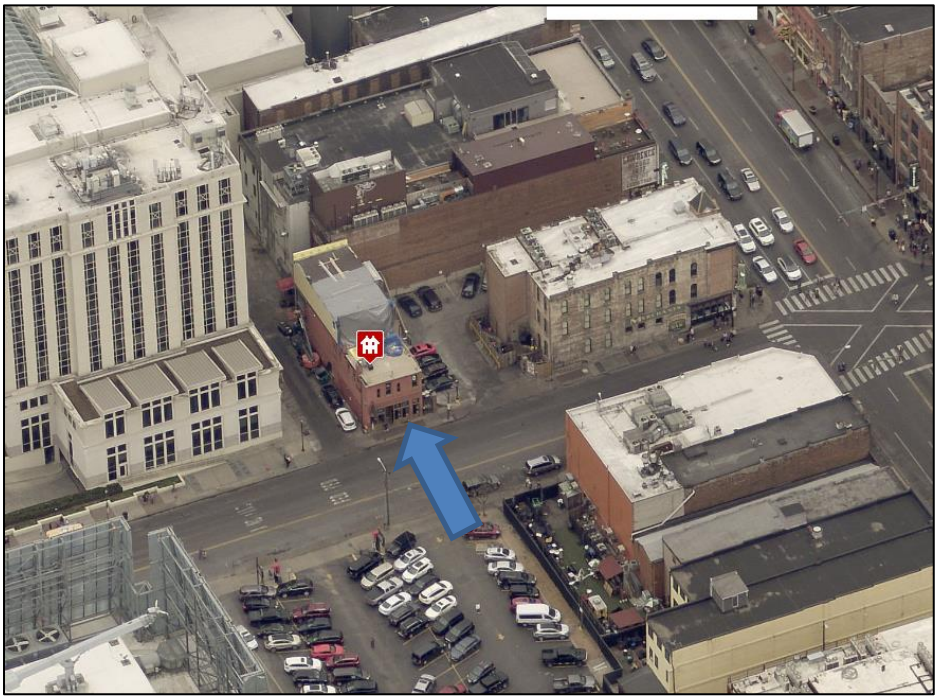
Recommendation Summary: Staff finds that work has taken place differently than reviewed and approved by the Commission and permitted via Permit #2018063543. Furthermore, staff finds that the alteration of the chimneys does not meet Section II.L.1. of the design guidelines for the Broadway Historic Preservation Zoning Overlay.

If the new materials were wrapped around the existing chimneys, then staff recommends that the wrap shall be removed within 30 days. If the chimneys were demolished and reconstructed with the new materials, then staff recommends that the applicant submit scaled plans to reconstruct the chimneys with materials that were specified in the "Memorandum and Order Reversing Denial of Preservation Permit" and that the chimneys be reconstructed within 60 days of approval of the plans.

Attachments
A: Photographs
B: Preservation Permit (HCP 2018063543)
C: Memorandum and Order Reversing Denial of Preservation Permit
D: Notice of Violation

Vicinity Map:

Aerial Map:



Applicable Design Guidelines & Rules:

Rules of Order

X. ENFORCEMENT PROCEUDRES

In cases of non-compliance with historic zoning regulations and preservation permits the staff will follow these general steps as appropriate until compliance has been reached.

A. Request the Department of Codes Administration to post, a Stop Work Order if work is in progress.

B. Notify the owner of the violation in writing through US mail, email or hand-delivery, and provide the opportunity for the owner to appear before the Commission on the issue of the violation within 30 days.

C. If the violation remains and the matter is not brought into compliance, Staff shall cite the applicant to a court of competent jurisdiction or issue a Show Cause Order on behalf of the Commission.

E. Show Cause Hearing. In cases where violations persist and a Show Cause Order has been issued, the applicant shall be required to appear before the Commission and show cause as to why any original Preservation Permits should not be revoked by the Commission.

Design Guidelines

II. Rehabilitation

L. Roofs and Chimneys

1. Historic roofs, chimneys, and related elements should be retained.
2. Guidelines for brick and mortar should be followed for chimney maintenance.
3. Deteriorated or damaged roofs and chimneys should be repaired using historically appropriate materials and methods.
4. Guidelines for brick and mortar should be followed for chimney repair.
5. If replacement roofs or chimneys are necessary, replacements should be appropriate for the building's style and period.
6. Appropriate roof coverings include standing seam metal, composite asphalt, rolled roofing, and rubber membrane roofing. Most rooflines in the Broadway district are flat or sloped while a small number retain original gable roof forms. These roof forms should not be altered unless based on historical documentation.
7. Rooftop locations concealed from pedestrian view are appropriate places for climate control and other mechanical systems. Mechanical systems should be located at the rear façade and screened.

V. Demolition

1. Demolition is not appropriate if a building or a major portion of a building contributes to the architectural or historical significance or character of the district.
2. Demolition is appropriate if a building or a major portion of a building does not contribute to the historical or architectural character and importance of the district.
3. Demolition is appropriate if a building or a major portion of a building has irretrievably lost its architectural and historical integrity and importance, and its removal will result in a more historically appropriate visual effect on the district.

4. Demolition is appropriate if the denial of the demolition will result in an economic hardship on the applicant as determined by the MHZC in accordance with section 17.120.190, as amended, of the historic zoning ordinance.

Background: The commercial building at 111 4th Avenue South was constructed before 1897 and is a contributing building in the Broadway Historic Preservation Zoning Overlay (Figure 1.) The 4th Avenue storefront was rehabilitated in 1987 and again in 2011 to an appearance appropriate for the age of the building. The building was originally a store and now serves as a restaurant/bar.

Figure 1: 111 4th Avenue South, c. 1990

The Commission disapproved a proposed rooftop addition in May 2017. The decision was appealed, and in April 2018, the Chancery Court determined that the request be remanded back to the Commission for issuance of a Preservation Permit (HCP 2018063543; Attachment B).

Staff has issued a Show Cause hearing for work done differently than permitted by HCP 2018063543, including the alteration of an historic feature. The applicant received written notice dated June 27, 2019 regarding painted signage installed without a preservation permit and alterations to the chimneys (Attachment D). The violation notice stated that the chimneys were removed, but chimneys are still located in the same approximate locations as the chimneys labeled as existing on the plans approved with the Preservation Permit. As of August 13, 2019, staff has not been able to confirm with the applicant whether the chimneys were removed and reconstructed or altered by wrapping the existing chimneys with a different material.

Analysis and Findings:

<u>Chimney Alteration</u>:

Chimneys, including their location and materials, are considered character-defining features of historic structures. Photos taken by MHZC staff on June 18, 2019 show that the chimneys were altered during construction of the addition (Figure 2). The applicant did not request to alter the chimney materials, and so the chimneys were not inspected by staff nor was the action reviewed by the Commission. No reason has been given for the alteration of the chimneys.

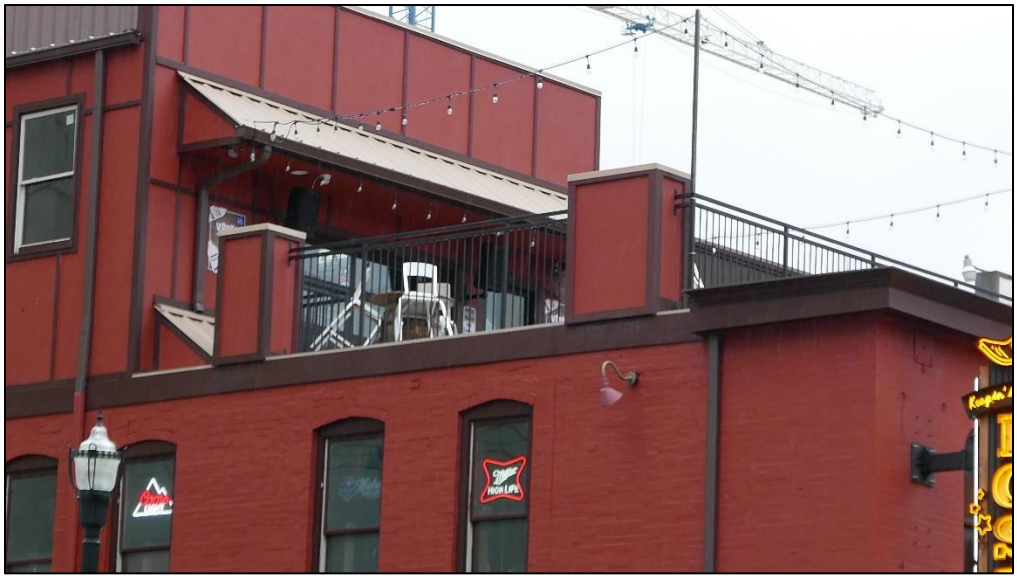


Figure 2. 111 4th Ave S, June 18, 2019.

There are two existing chimneys within thirty feet (30') of the front wall and one beyond that was proposed to be extended above the new roof of the addition. The requirement to retain the front two chimneys is documented in several locations. Under the "Partial Demolition" heading, the Preservation Permit specifically states that "existing chimneys within thirty feet (30') of the primary front wall (deck area) shall be retained." (See Attachment B.) The south elevation included with the Preservation Permit labels both as "existing chimney" and does not indicate any changes to the materials of chimneys that were to remain or the chimney to be extended above the new addition (Figure 3).

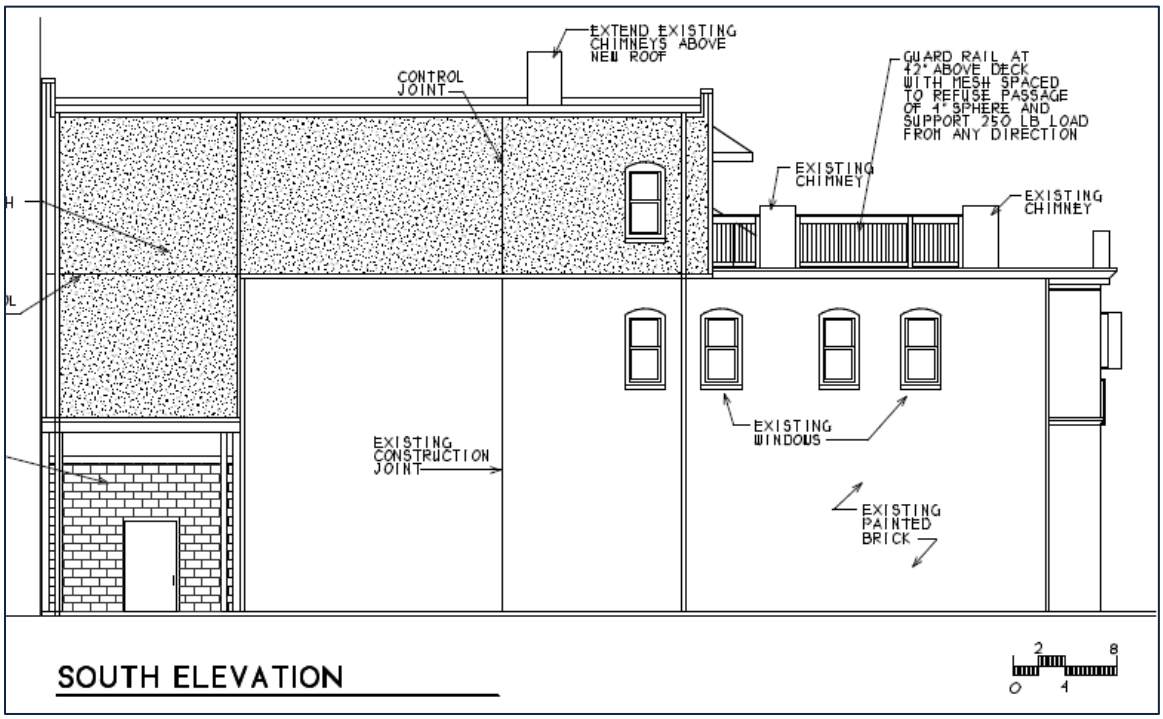


Figure 3. South elevation, HCP 2018063543.

The “Memorandum and Order Reversing Denial of Preservation Permit” also addresses the existing chimneys and indicates that, in the opinion of the court, “the front two chimneys can be retained as recommended in Section II.L.1.” (See Attachment C.)

The Court Order further states that all chimneys existing prior to the addition were masonry except for the front chimney on the south elevation, which was “a painted sheet metal structure, or wrap, and we were unable to determine if there is a masonry chimney behind the sheet metal.” (See Figure 4.) The two chimneys that were to remain now appear to be clad in materials similar to what was used on the addition, which was stucco or panels with trim (Figure 5). The chimney that was to be extended above the addition, which was previously masonry, now also appears to be clad in materials similar to the addition.

Figure 4. Chimneys prior to addition, April 2018.

Figure 5. Chimneys altered with material similar to that used on the addition, August 6, 2019.

As of August 13, 2019, staff has not been able to confirm with the applicant whether the chimneys were removed and reconstructed or altered by wrapping the existing chimneys with a different material. Neither action, however, would meet Section II.L.1. of the design guidelines which states that "historic roofs, chimneys, and related elements should be retained."

Recommendation: Staff finds that work has taken place differently than reviewed and approved by the Commission and permitted via Permit #2018063543. Furthermore, staff finds that the alteration of the chimneys does not meet Section II.L.1. of the design guidelines for the Broadway Historic Preservation Zoning Overlay.

If the new materials were wrapped around the existing chimneys, then staff recommends that the wrap shall be removed within 30 days. If the chimneys were demolished and reconstructed with the new materials, then staff recommends that the applicant submit scaled plans to reconstruct the chimneys with materials that were specified in the "Memorandum and Order Reversing Denial of Preservation Permit" and that the chimneys be reconstructed within 60 days of approval of the plans.

ATTACHMENT A: PHOTOGRAPHS

2007, Google street view

2013, Google street view

March 2019, Google street view

August 6, 2019, MHZC staff

Attachment B

3566555

METRO HISTORIC ZONING COMMISSION

Sunnyside at Sevier Park
3000 Granny White Pike
Nashville TN 37204
(615) 862-7970
histlap1@nashville.gov

HISTORICAL COMMISSION PERMIT - 2018063543

Issued under Chancery Court Decision Case No. 17-543-III

Site Address
111 4TH AVE
NASHVILLE TN, 37201

Historic District: Broadway HPZO

Parcel Owner
SWINGIN' DOORS SALOON, LLC
111 4TH AVE S
NASHVILLE, TN 37201

Purpose: Construct 2nd Story Rear Addition, Enclosed Partial 3rd Story Addition, Uncovered Rooftop Deck, Exterior Stairs. No change to building footprint. This permit does not include signage. (See attached architectural plans)

PARTIAL DEMOLITION
- Existing hipped roof shall be removed.
- Existing cornice at front of building to be retained.
- Existing chimneys within thirty feet (30') of the primary front wall (deck area) shall be retained.

SECOND STORY ADDITION
- New second story shall be constructed above existing one-story rear addition.
- Second story shall be partially enclosed on left side, as indicated on attached plans.
- New roof to be added at second story level on right side, as indicated on attached plans.
- Roof material shall be standing-seam metal, the color to be approved by MHZC Staff prior to purchase/installation.

THIRD STORY ADDITION
- Third story addition shall increase the wall height a maximum of fifteen feet (15'), from top of existing cornice elevation.
- Front wall of third story addition to be stepped back thirty feet (30') from primary front wall.
- Exterior wall material shall be cement-plaster (stucco).
- Window and door selections, including roll-up door, shall be approved by MHZC Staff prior to purchase/installation.
- HVAC/mechanical units to be located on roof of second story (at the level of the third floor).

DECK & STAIRS
- Guard rail shall be no greater than forty-two inches (42") in height, from top of existing cornice elevation.
- Guard rail shall be stepped back at least eight feet (8') from primary front wall.
- The 30’ step-backed area (rooftop deck) shall not have any overhead features such as lighting, canopies, tents or awnings.
- No features shall be attached to the railing of the rooftop deck such as lighting, heaters/coolers, a/v equipment or signage.

HVAC
- HVAC/Mechanical/Utility vents, pipes, lines, and all associated components, condensers or boxes shall be located on second story metal roof, as indicated on attached plans.

HISTORICAL COMMISSION PERMIT - 2018063543

GENERAL
MHZC Staff may have added notes to submitted drawings that are a part of this permit. Any substitutions or deviation from the approved work requires further review and approval by the MHZC PRIOR to work being undertaken or materials being purchased.

All measurements and relationships of existing conditions and new construction shall be field checked for accuracy with approved plans at the responsibility of the applicant. Inaccuracies or differences should be reported to MHZC staff prior to continuing with the project.

This permit becomes invalid TWELVE months after issue date. Expired permits must be reissued prior to work being undertaken.

THIS IS NOT A BUILDING PERMIT nor does it permit any particular type of use. No work can begin without the appropriate review and approval by the Metropolitan Department of Codes Administration: Howard School Building Campus (615) 862-6500.

Activities to be Completed - Call: (615) 862-7970

REVIEWS REQUIRED:

ROOFING COLOR APPROVAL PRIOR TO INSTALL
WINDOWS APPROVAL PRIOR TO INSTALL
LIGHTING APPROVAL PRIOR TO INSTALL
GARAGE DOOR APPROVAL PRIOR TO INSTALL
DOOR APPROVAL PRIOR TO INSTALL
DECORATIVE ELEMENTS APPROVAL PRIOR TO INSTALL
MASONRY APPROVAL PRIOR TO INSTALL

INSPECTIONS REQUIRED:

ROUGH FRAMING INSPECTION – HZ

APPLICANT: John F. Werne

Issued Date: 11-Oct-2018 **Issued By:** Sean Alexander

HISTORICAL COMMISSION PERMIT 2018063543

CALL 615-862-7970 FOR QUESTIONS AND TO SCHEDULE INSPECTIONS

1. Please refer to notes on pages 1-2.
2. Staff must approve the construction progress after the rough framing has been completed.
3. The following must be submitted for final approval before purchase:
   a. Windows and doors
   b. Roof color

MHZC NOTES; CALL (615) 862-7970 FOR QUESTIONS

1. Structure to be constructed in accordance with attached scaled site plan and elevations. Any deviation from the approved plans could result in **changes being reversed** to reflect the approved drawings. Any alterations, whether or not approved by other Metro Departments, must be communicated to MHZC for a revision of the permit prior to construction or material purchase.

2. All measurements and relationships of existing conditions and new construction shall be field checked for accuracy with approved plans at the responsibility of the applicant. Inaccuracies or differences should be reported to MHZC staff prior to continuing with the project.

3. Exterior finish materials shall be trim grade (smooth and square). Stud wall lumber or embossed wood grain is not appropriate. All wood shall be milled and painted.

4. The 30' step-backed area (rooftop deck) shall not have any overhead features such as lighting, canopies, tents or awnings.
5. No features shall be attached to the railing of the rooftop deck such as lighting, heaters/coolers, a/v equipment or signage.
6. This permit does not include signage.

DOOR SCHEDULE

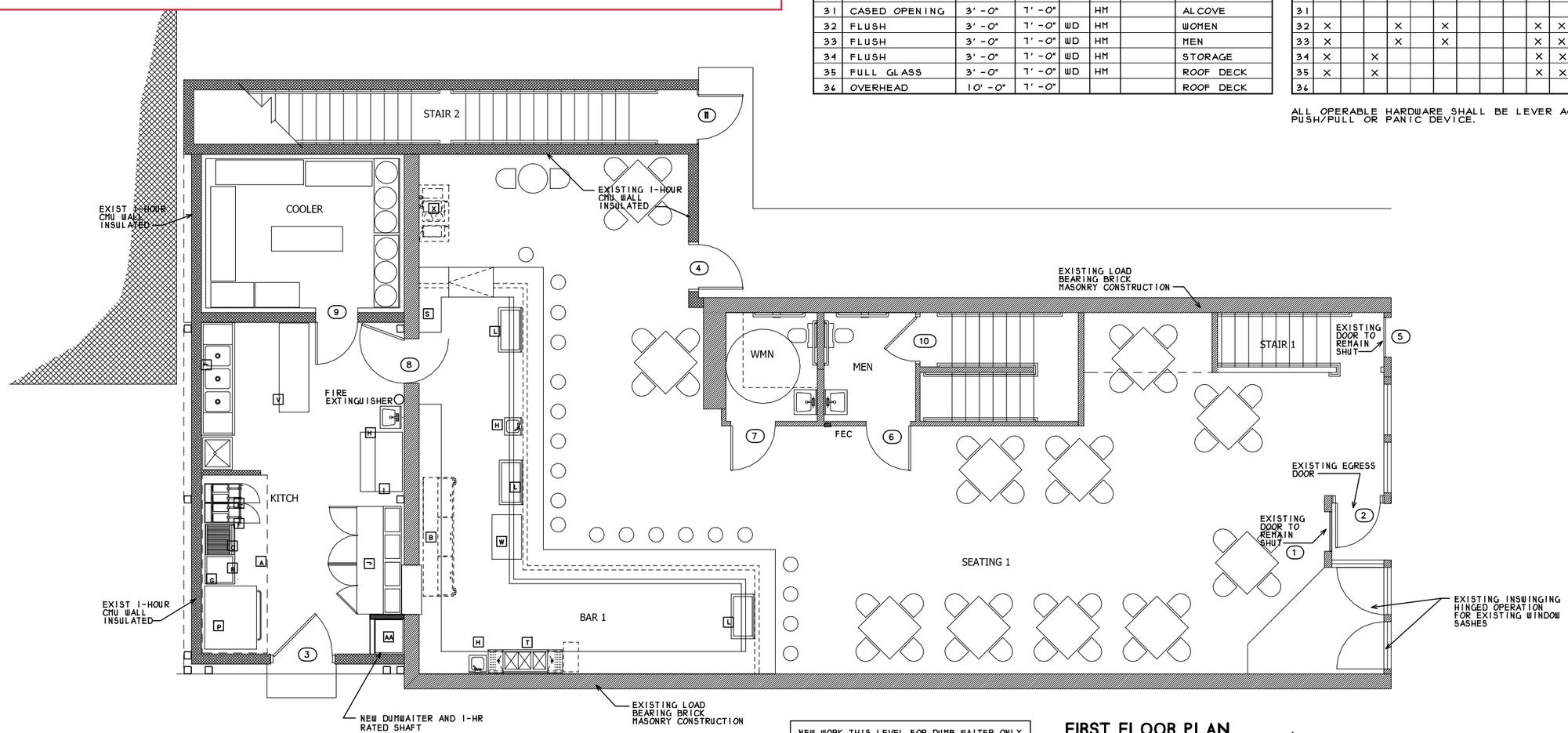
DOOR NUMBER	TYPE	WIDTH	HEIGHT	DOOR MATERIAL	FRAME MATERIAL	RATING	LOCATION
1	EX FULL GLASS	2'-8"	-				FRONT
2	EX 1/2 GLASS	3'-0"	MATCH	WD	WD		ENTRANCE
3	EX FLUSH W/VIEW	4'-0"	7'-0"	HM	HM	45 MIN	KITCHEN
4	EX FLUSH W/VIEW	3'-0"	7'-0"	HM	HM		SIDE EXIT
5	EXISTING	2'-8"	-				FRONT
6	EX FLUSH	3'-0"	7'-0"	WD	HM		MEN
7	EX FLUSH	3'-0"	7'-0"	WD	HM		WMN
8	EX FLUSH W/VIEW	3'-0"	7'-0"	AL			KITCH
9	EXCOOLER DOOR						COOLER
10	EX FLUSH	3'-0"	7'-0"	WD	HM		BASEMENT
11	EX GATE	3'-0"	3'-6"	AL	AL		STAIR #2
20	EX FLUSH	3'-0"	7'-0"	WD	HM		MEN
21	EX FLUSH	3'-0"	7'-0"	WD	HM		WMN
22	EXISTING	3'-0"	7'-0"				OFFICE
23	EX CASED OPENING	3'-0"	7'-0"		HM		HALL
24	EX FLUSH W/ VIEW	3'-0"	7'-0"	HM	HM	45 MIN	REAR EXIT
25	EX FLUSH	3'-0"	7'-0"	WD	HM		STORAGE
26	FLUSH	3'-0"	7'-0"	WD	HM		STORAGE
27	COOLER	3'-0"					
30	FULL GLASS	3'-0"	7'-0"	HM	HM		EXIT
31	CASED OPENING	3'-0"	7'-0"		HM		ALCOVE
32	FLUSH	3'-0"	7'-0"	WD	HM		WOMEN
33	FLUSH	3'-0"	7'-0"	WD	HM		MEN
34	FLUSH	3'-0"	7'-0"	WD	HM		STORAGE
35	FULL GLASS	3'-0"	7'-0"	WD	HM		ROOF DECK
36	OVERHEAD	10'-0"	7'-0"				ROOF DECK

HARDWARE SCHEDULE

DOOR NUMBER	SET OF BUTT HINGES	PIVIOT SELF CLOSE	LOCKSET	PRIVACY LATCHSET	PASSAGE LATCHSET	CLOSER	PANIC DEVICE	PUSH/PULL	KNURLED HANDEL	SILENCERS	STOP	THRESHOLD	WEATHER SEAL
1	—												
2	X		X			X	X			X	X		X
3	X		X			X				X	X	X	X
4	X		X			X	X			X	X		X
5	—												
6	X			X		X				X	X		
7	X			X		X				X	X		
8		X						X					
9													
10	X		X							X	X		
11	X						X						
20	X			X		X				X	X		
21	X			X		X				X	X		
22	—												
23	—												
24	X		X			X	X			X	X	X	X
25	X		X							X	X		
26	X		X							X	X		
30	X		X			X	X			X	X		X
31													
32	X			X		X				X	X		
33	X			X		X				X	X		
34	X		X							X	X		
35	X		X							X	X		
36													

ALL OPERABLE HARDWARE SHALL BE LEVER ACTION, PUSH/PULL OR PANIC DEVICE.

EQUIPMENT LEGEND	
#	DESCRIPTION
A	HOOD
B	BEER BOX
C	CHAR-BROILER
D	DRAFT TAPS
E	DOUGH ROLLER
F	FRYER
G	GRIDDLE
H	HAND SINK
I	ICE MACHINE
J	FOOD/PIZZA PEP
K	FREEZER
L	BAR TENDER STATION
M	MICROWAVE
N	MIXER
O	POINT OF SALE
P	PIZZA OVEN
Q	DUMP SINK
R	48"REFERGERATED STAND
S	BEER TAP
T	3-COMPARTMENT SINK
U	BAG N BOX SYSTEM
V	6'x2' PREP TABLE
W	WINE COOLER
X	BEVERAGE SERVICE
Y	STORAGE RACK
Z	BEVERAGE GAS
AA	DUMB WAITER



NEW WORK THIS LEVEL FOR DUMB WAITER ONLY

FIRST FLOOR PLAN

2,410 SF TOTAL

0 2 4

JOHN F. WERNE III
REGISTERED ARCHITECT
COMMISSION NO. 2-2-2-2-2-4
STATE OF TENNESSEE

SWINGING DOOR SALOON

3RD FLOOR AND ROOF DECK ADDITION

111 4TH AVE S, NASHVILLE, TN 37201

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

A-2

DATE: 9/28/18

HISTORICAL COMMISSION PERMIT 2018063543

CALL 615-862-7970 FOR QUESTIONS AND TO SCHEDULE INSPECTIONS

1. Please refer to notes on pages 1-2.
2. Staff must approve the construction progress after the rough framing has been completed.
3. The following must be submitted for final approval before purchase:
   a. Windows and doors
   b. Roof color

MHZC NOTES; CALL (615) 862-7970 FOR QUESTIONS

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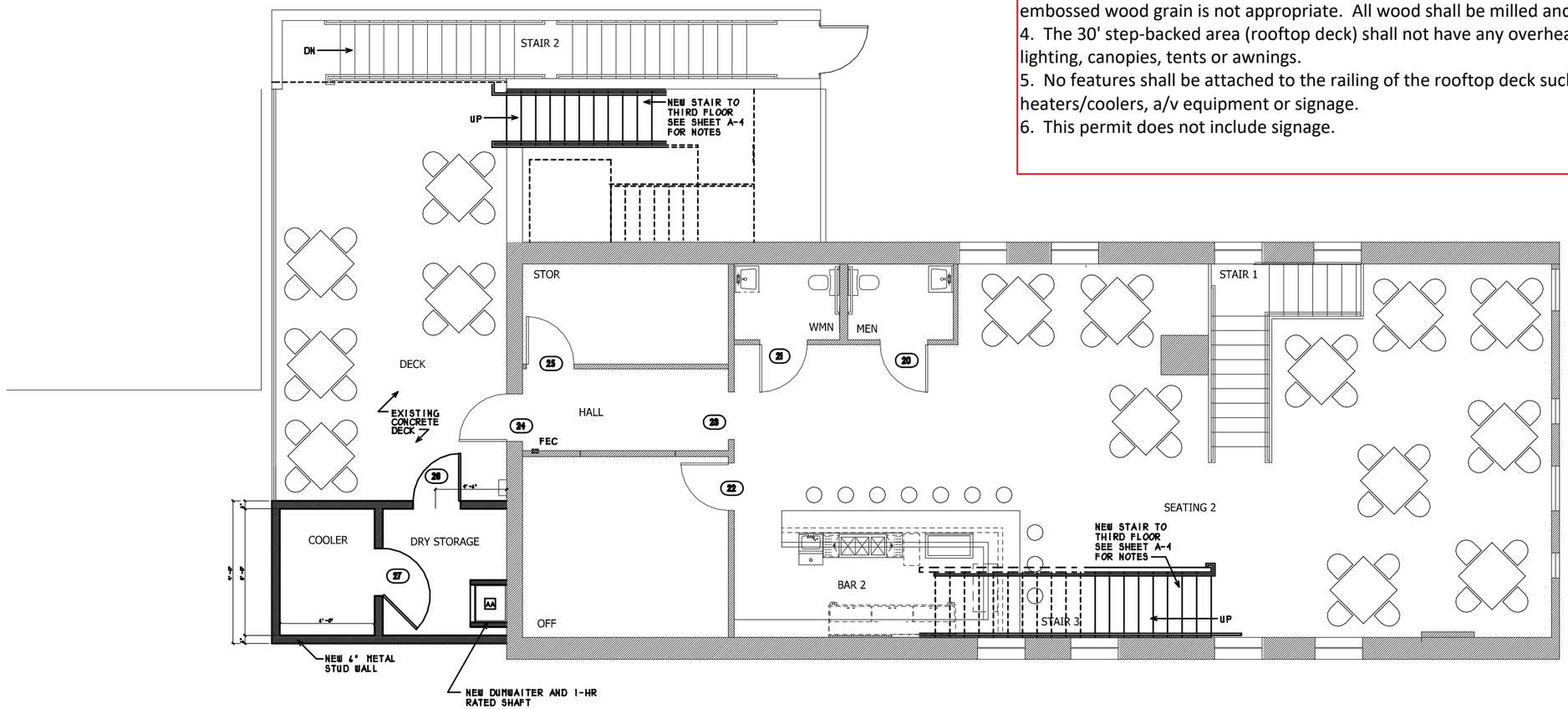
3. Exterior finish materials shall be trim grade (smooth and square). Stud wall lumber or embossed wood grain is not appropriate. All wood shall be milled and painted.

4. The 30' step-backed area (rooftop deck) shall not have any overhead features such as lighting, canopies, tents or awnings.

5. No features shall be attached to the railing of the rooftop deck such as lighting, heaters/coolers, a/v equipment or signage.

6. This permit does not include signage.



SECOND FLOOR PLAN

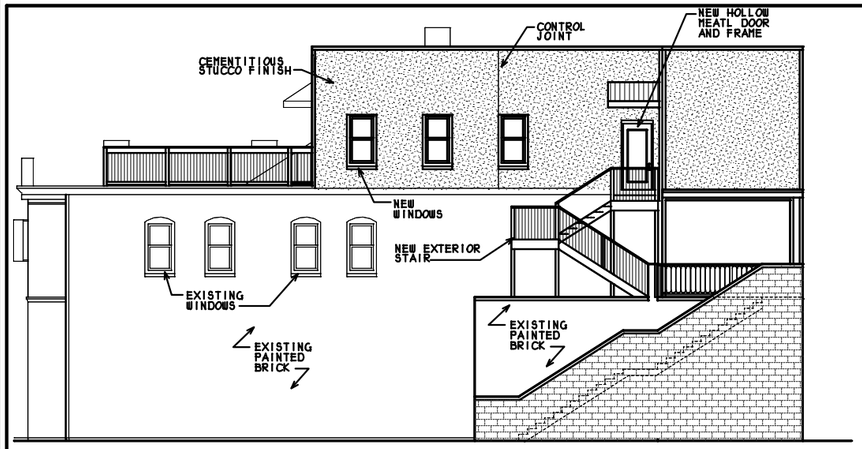
1,150 SF EXISTING OUTSIDE FACE OF WALL

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

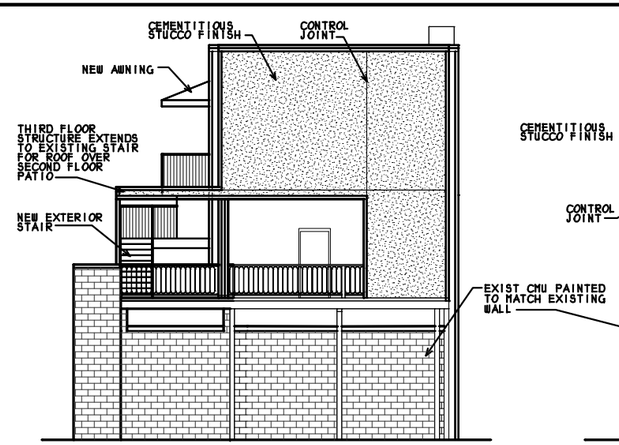
SWINGING DOOR SALOON
3RD FLOOR AND ROOF DECK ADDITION
111 4TH AVE S, NASHVILLE, TN 37201

A-3

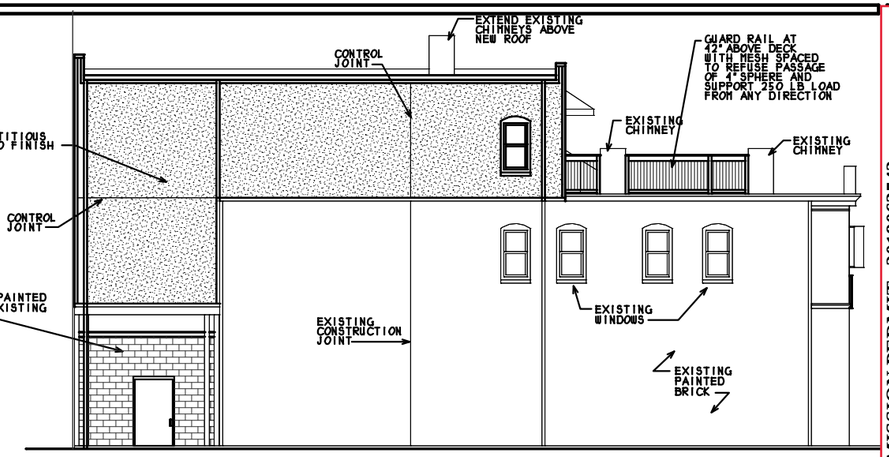
DATE: 9/28/18



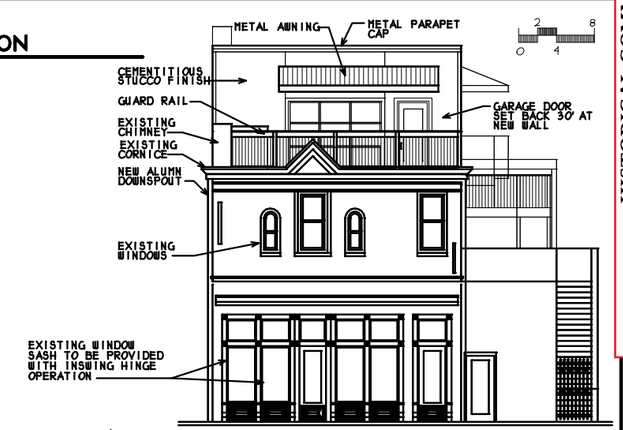
NORTH ELEVATION



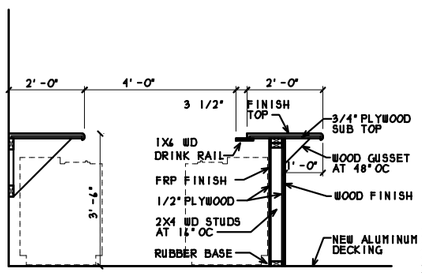
REAR ELEVATION



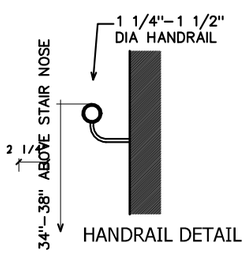
SOUTH ELEVATION



FRONT ELEVATION



BAR DETAIL



HANDRAIL DETAIL

EQUIPMENT LEGEND	
#	DESCRIPTION
A	HOOD
B	BEER BOX
C	CHAR-BROILER
D	DRAFT TAPS
E	DOUGH ROLLER
F	FRYER
G	GRIDDLE
H	HAND SINK
I	ICE MACHINE
J	FOOD/PIZZA PEP
K	FREEZER
L	BAR TENDER STATION
M	MICROWAVE
N	MIXER
O	POINT OF SALE
P	PIZZA OVEN
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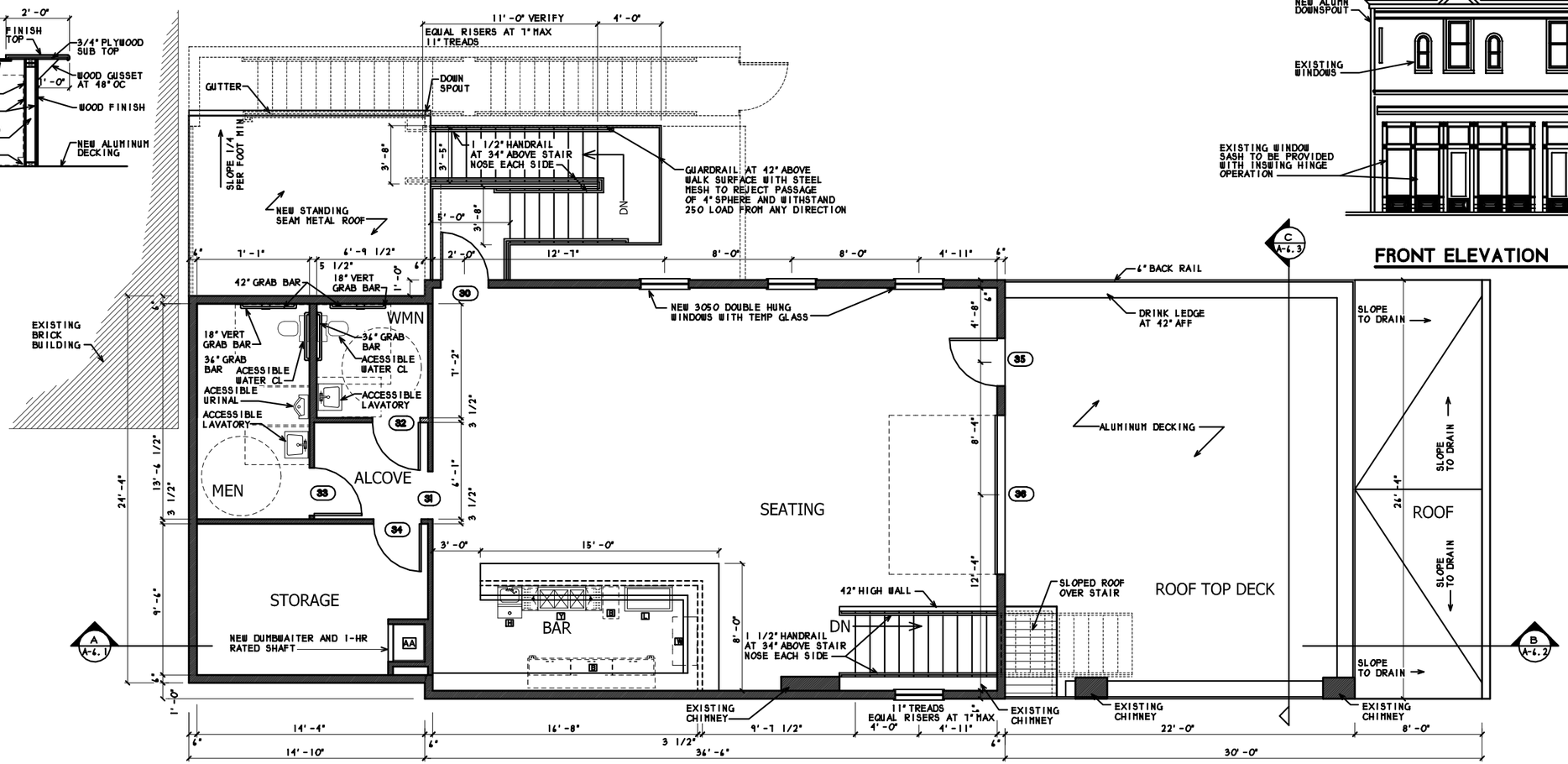
T	3-COMPARTMENT SINK
U	BAG N BOX SYSTEM
V	6'x2' PREP TABLE
W	WINE COOLER
X	BEVERAGE SERVICE
Y	STORAGE RACK
Z	BEVERAGE GAS
AA	DUMB WAITER
BB	TRASH RECPT



THIRD FLOOR AND ROOF DECK

1,254 SF ENCLOSED FLOOR AREA

HISTORICAL COMMISSION PERMIT 201806543

CALL 615-862-7970 FOR QUESTIONS AND TO SCHEDULE INSPECTIONS

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3. The following must be submitted for final approval before purchase.
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   b. Roof color

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

REV 10/4/18

A-4

DATE: 9/28/18

HISTORICAL COMMISSION PERMIT 2018063543

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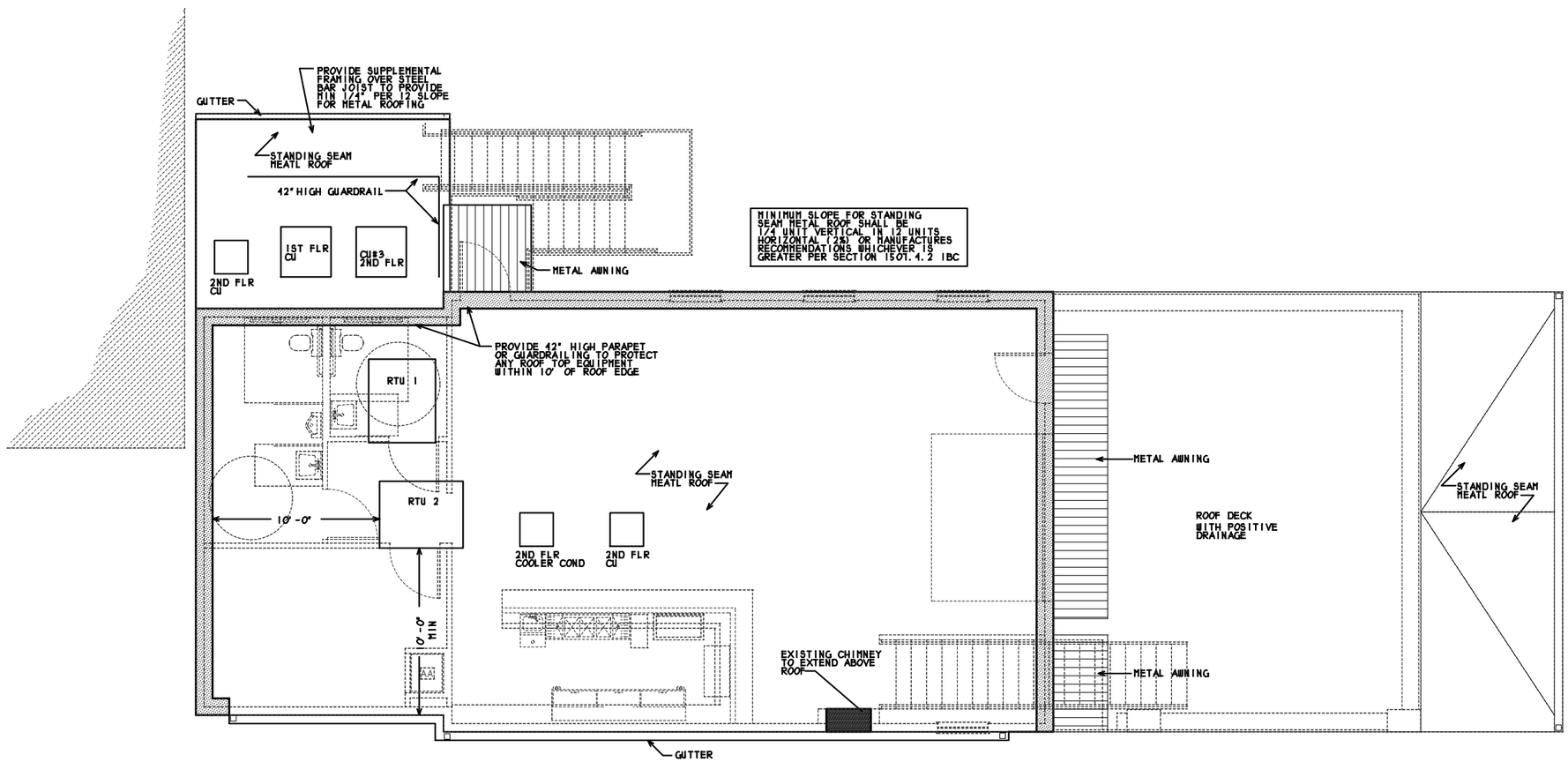
5. No features shall be attached to the railing of the rooftop deck such as lighting, heaters/coolers, a/v equipment or signage.
6. This permit does not include signage.



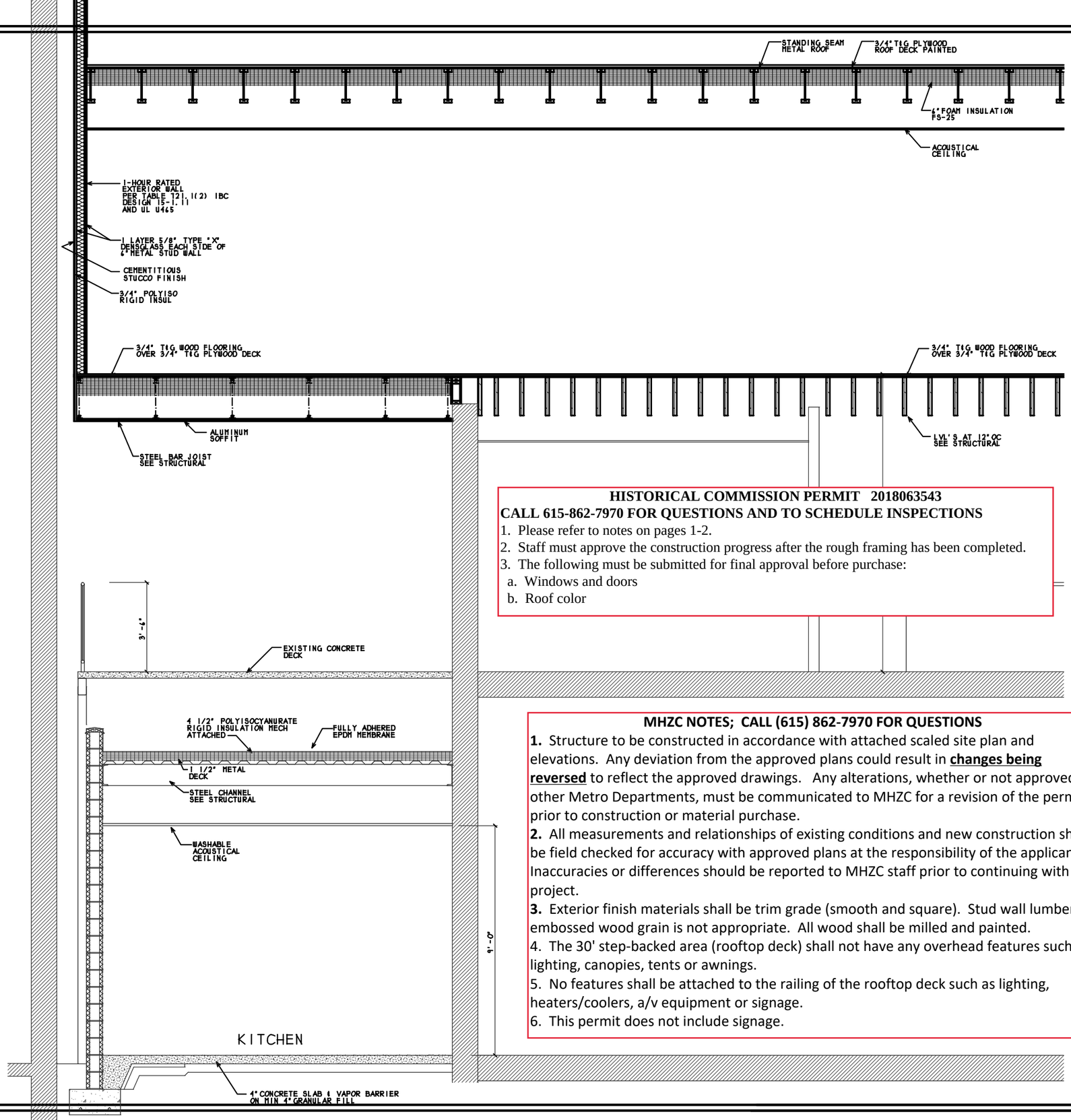
THIRD FLOOR ROOF

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

SWINGING DOOR SALOON
3RD FLOOR AND ROOF DECK ADDITION
111 4TH AVE S, NASHVILLE, TN 37201

A-5

DATE: 9/28/18



HISTORICAL COMMISSION PERMIT 2018063543

CALL 615-862-7970 FOR QUESTIONS AND TO SCHEDULE INSPECTIONS

1. Please refer to notes on pages 1-2.
2. Staff must approve the construction progress after the rough framing has been completed.
3. The following must be submitted for final approval before purchase:
   a. Windows and doors
   b. Roof color

MHZC NOTES; CALL (615) 862-7970 FOR QUESTIONS

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3. Exterior finish materials shall be trim grade (smooth and square). Stud wall lumber or embossed wood grain is not appropriate. All wood shall be milled and painted.

4. The 30' step-backed area (rooftop deck) shall not have any overhead features such as lighting, canopies, tents or awnings.

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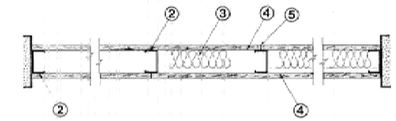
Design No. U465

Nonbearing Wall Rating — 1 HR.



1. **Floor and Ceiling Runners** — (not shown) — Channel shaped runners, 3-5/8 in. wide (min), 1-1/4 in. legs, formed from min No. 25 MSG galv steel, attached to floor and ceiling with fasteners spaced 24 in. OC max.
2. **Steel Studs** — Channel shaped, 3-5/8 in. wide (min), 1-1/4 in. legs, 3/8 in. folded back returns, formed from min No. 25 MSG galv steel spaced 24 in. OC max.
3. **Batts and Blankets*** — (Optional) — Mineral wool or glass fiber batts partially or completely filling stud cavity.
   See Batts and Blankets (BZJZ) category for names of Classified companies.

3A. **Fiber, Sprayed*** — As an alternate to Batts and Blankets (Item 3) — Spray applied cellulose insulation material. The fiber is applied with water to completely fill the enclosed cavity in accordance with the application instructions supplied with the product. Nominal dry density of 3.0 lb/ft³.
   U S GREENFIBER L L C — Cocoon stabilized cellulose insulation.

3B. **Fiber, Sprayed*** — As an alternate to Batts and Blankets (Item 3) and Item 3A - Spray applied cellulose insulation material. The fiber is applied with water to interior surfaces in accordance with the application instructions supplied with the product. Applied to completely fill the enclosed cavity. Minimum dry density of 4.3 pounds per cubic ft.
   NU-WOOL CO INC — Cellulose Insulation

4. **Gypsum Board*** — 5/8 in. thick, 4 ft wide, attached to steel studs and floor and ceiling track with 1 in. long, Type S steel screws spaced 8 in. OC, along edges of board and 12 in. OC in the field of the board. Joints oriented vertically and staggered on opposite sides of the assembly.

When attached to item 6 (resilient channels) or 6A (furring channels), wallboard is screw attached to furring channels with 1 in. long, Type S steel screws spaced 12 in. OC.

AMERICAN GYPSUM CO — Types AG-C, AGX-1, AGX-2.
BEIJING NEW BUILDING MATERIALS CO LTD — Type DBX-1.
BPB AMERICA INC — Types 1, EGRG, ProRoc Type X, ProRoc Type C.
BPB CANADA INC — ProRoc Type C, ProRoc Type X or ProRoc Type Abuse-Resistant.
CANADIAN GYPSUM COMPANY — Types AR, C, IP-AR, IP-X1, IP-X2, IPC-AR, SCX, SHX, WRC or WRX.
G-P GYPSUM CORP, SUB OF
GEORGIA-PACIFIC CORP — Types 5, 9, C, DAP, DD, DA, DGG, DS, GPPS6.
LAFARGE NORTH AMERICA INC — Types LGFC2, LGFC2A, LGFC6, LGFC6A, LGFC-C, LGFC-C/A.
NATIONAL GYPSUM CO — Types FSK, FSK-C, FSK-G, FSW-C, FSW-G, FSW, FSW-3, FSW-5.
PABCO GYPSUM, DIV OF
PACIFIC COAST BUILDING PRODUCTS INC — Type PG-C or PG-9 .
PANEL REY S A — Type PRX.
SIAM GYPSUM INDUSTRY (SARABURI) CO LTD — Type EX-1
STANDARD GYPSUM L L C — Type SG-C.
TEMPLE-INLAND FOREST PRODUCTS CORP — Type TG-C.
UNITED STATES GYPSUM CO — Type AR, C, FRX-C, IP-AR, IP-X1, IP-X2, IPC-AR, SCX, SHX, WRC or WRX.
USG MEXICO S A DE C V — Type AR, C, IP-AR, IP-X1, IP-X2, IPC-AR, SCX, SHX, WRC or WRX.

4A. **Gypsum Board*** — (As alternate to Item 4) - Nom 5/8 in. thick gypsum panels with beveled, square or tapered edges, applied vertically or horizontally. Vertical joints centered over studs and staggered one stud cavity on opposite sides of studs. Horizontal edge joints and horizontal butt joints on opposite sides of studs need not be staggered or backed. Panels attached to steel studs and floor runner with 1 in. long Type S steel screws spaced 8 in. OC when applied horizontally or 8 in. OC along vertical and bottom edges and 12 in. OC in the field when panels are applied vertically.
   CANADIAN GYPSUM COMPANY — Types AR, C, IP-AR, IP-X1, IP-X2, IPC-AR, SCX, SHX, WRC or WRX.
   UNITED STATES GYPSUM CO — Type AR, C, FRX-G, IP-AR, IP-X1, IP-X2, IPC-AR, SCX, SHX, WRC or WRX.
   USG MEXICO S A DE C V — Type AR, C, IP-AR, IP-X1, IP-X2, IPC-AR, SCX, SHX, WRC or WRX.

4B. **Gypsum Board*** — (As an alternate to Items 4 or 4A) — Nom 3/4 in. thick, 4 ft wide, installed as described in Item 4A with screw length increased to 1-1/4 in.
   CANADIAN GYPSUM COMPANY — Types AR, IP-AR.
   UNITED STATES GYPSUM CO — Types AR, IP-AR.
   USG MEXICO S A DE C V — Types AR, IP-AR.

5. **Joint Tape and Compound** — Vinyl, dry or premixed joint compound, applied in two coats to joints and screw heads; paper tape, 2 in. wide, embedded in first layer of compound over all joints. As an alternate, nominal 3/32 in. thick gypsum veneer plaster may be applied to the entire surface of Classified veneer baseboard. Joints reinforced.
6. **Resilient Channel** — (Optional-Not Shown) — 25 MSG galv steel resilient channels spaced vertically max 24 in. OC, flange portion attached to each intersecting stud with 1/2 in. long type S-12 pandhead steel screws.

6A. **Steel Framing Members (Not Shown)*** — As an alternate to Item 3, furring channels and resilient sound isolation clip as described below:
   a. **Furring Channels** — Formed of No. 25 MSG galv steel, 2-3/8 in. wide by 7/8 in. deep, spaced 24 in. OC perpendicular to studs. Channels secured to studs as described in Item b. Ends of adjoining channels are overlapped 6 in. and tied together with double strand of No. 18 SWG galv steel wire near each end of overlap. As an alternate, ends of adjoining channels may be overlapped 6 in. and secured together with two self-tapping #8 framing screws, min. 7/16 in. long at the midpoint of the overlap, with one screw on each flange of the channel.
   b. **Steel Framing Members*** — Used to attach furring channels (Item a) to studs (Item 1). Clips spaced 48 in. OC., and secured to studs with 1-5/8 in. wafer or hex head Type S steel screw through the center grommet. Furring channels are friction fitted into clips.
      PAC INTERNATIONAL INC — Type RSIC-1.

*Bearing the UL Classification Mark

SECTION "A"

1 0 2 4

JOHN F. WERNE III
REGISTERED ARCHITECT
No. 2,0,9,3,4
STATE OF TENNESSEE
9-28-18

SWINGING DOOR SALOON

3RD FLOOR AND ROOF DECK ADDITION

111 4TH AVE S, NASHVILLE, TN 37201

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

A-6.1

DATE: 9/28/18

HISTORICAL COMMISSION PERMIT 2018063543

CALL 615-862-7970 FOR QUESTIONS AND TO SCHEDULE INSPECTIONS

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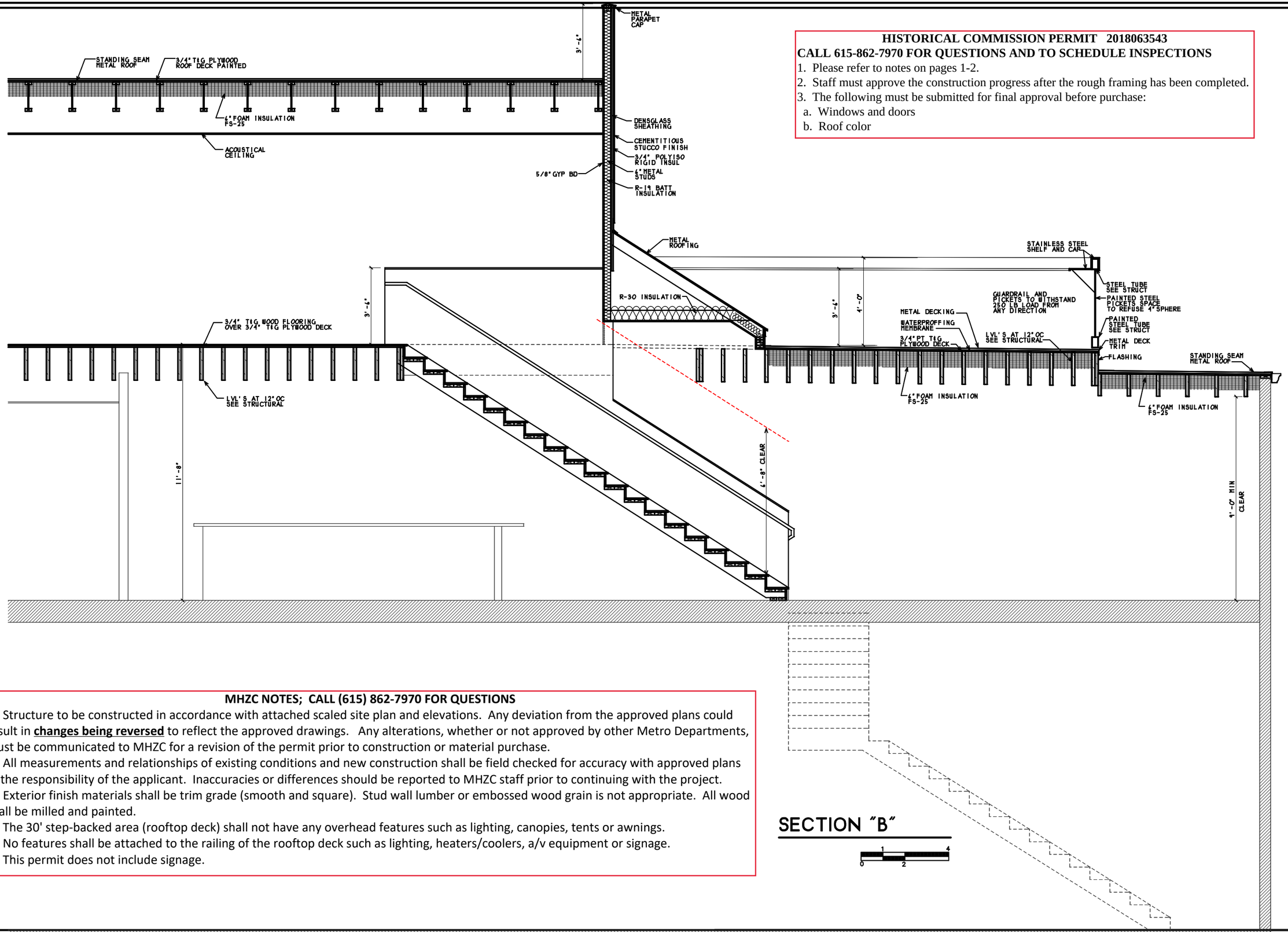

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4. The 30' step-backed area (rooftop deck) shall not have any overhead features such as lighting, canopies, tents or awnings.
5. No features shall be attached to the railing of the rooftop deck such as lighting, heaters/coolers, a/v equipment or signage.
6. This permit does not include signage.

SECTION "B"

0 1 2 4

JOHN F. WERNE III ARCHITECT STATE OF TENNESSEE

SWINGING DOOR SALOON

3RD FLOOR AND ROOF DECK ADDITION

111 4TH AVE S, NASHVILLE, TN 37201

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

A-6.2

DATE: 9/28/18

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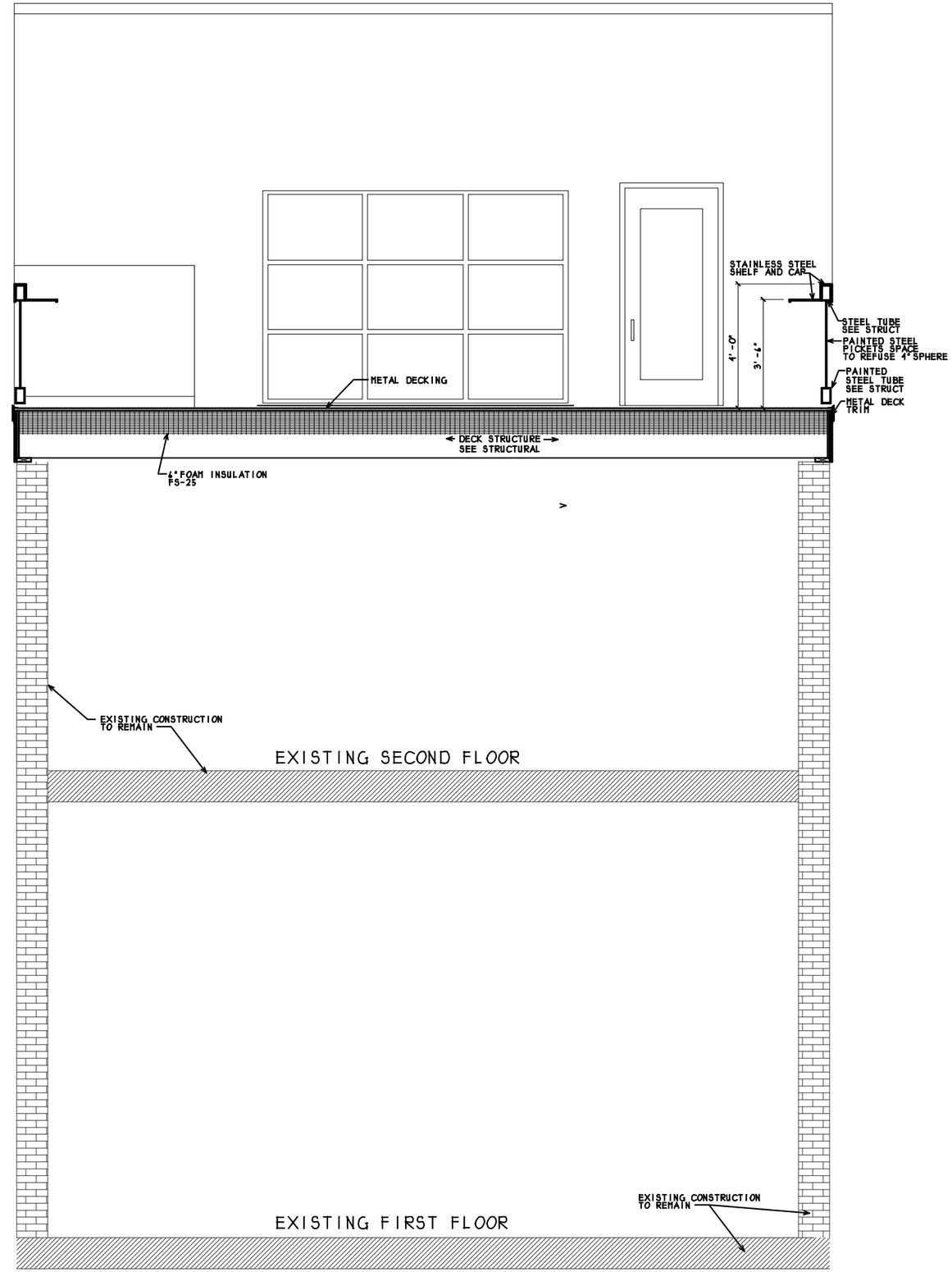

SECTION "C"

0 1 2 4

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

SWINGING DOOR SALOON

3RD FLOOR AND ROOF DECK ADDITION

111 4TH AVE S, NASHVILLE, TN 37201

A-6.3

DATE: 9/28/18

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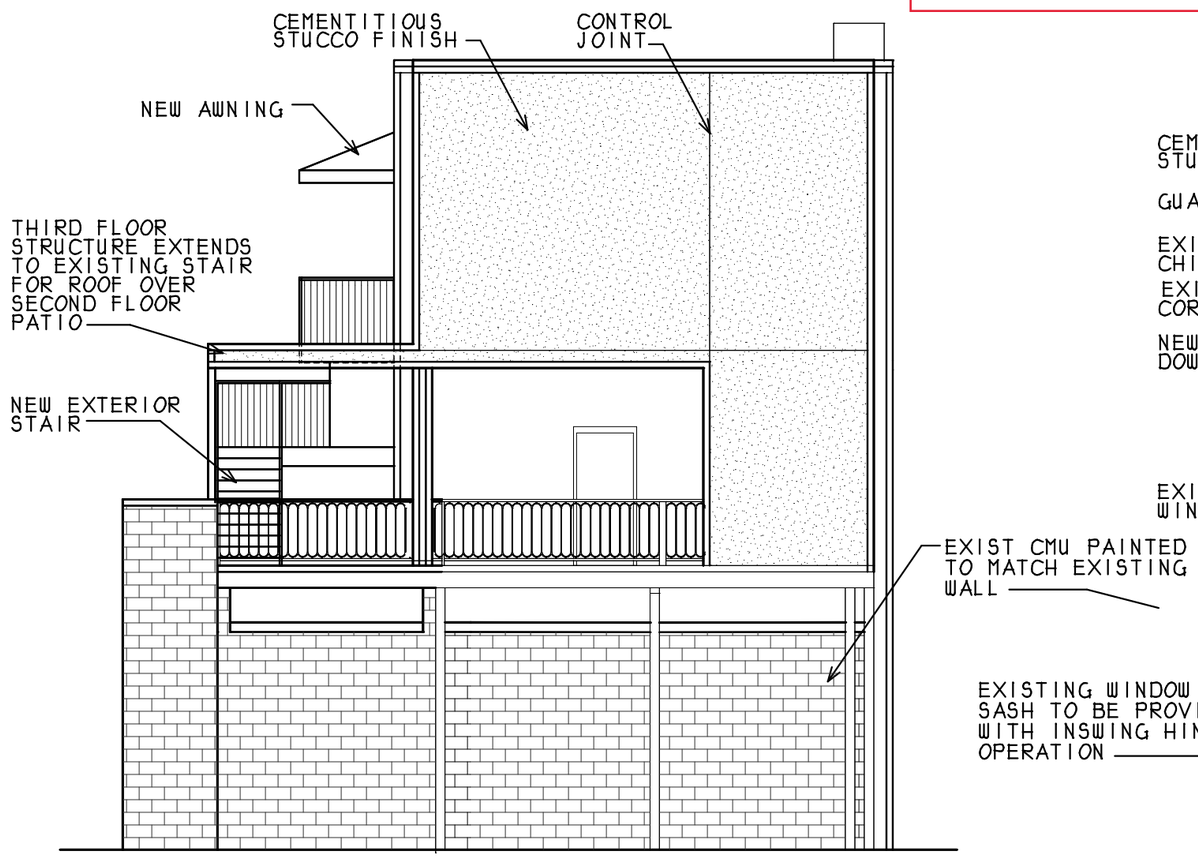
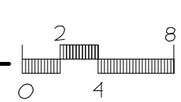
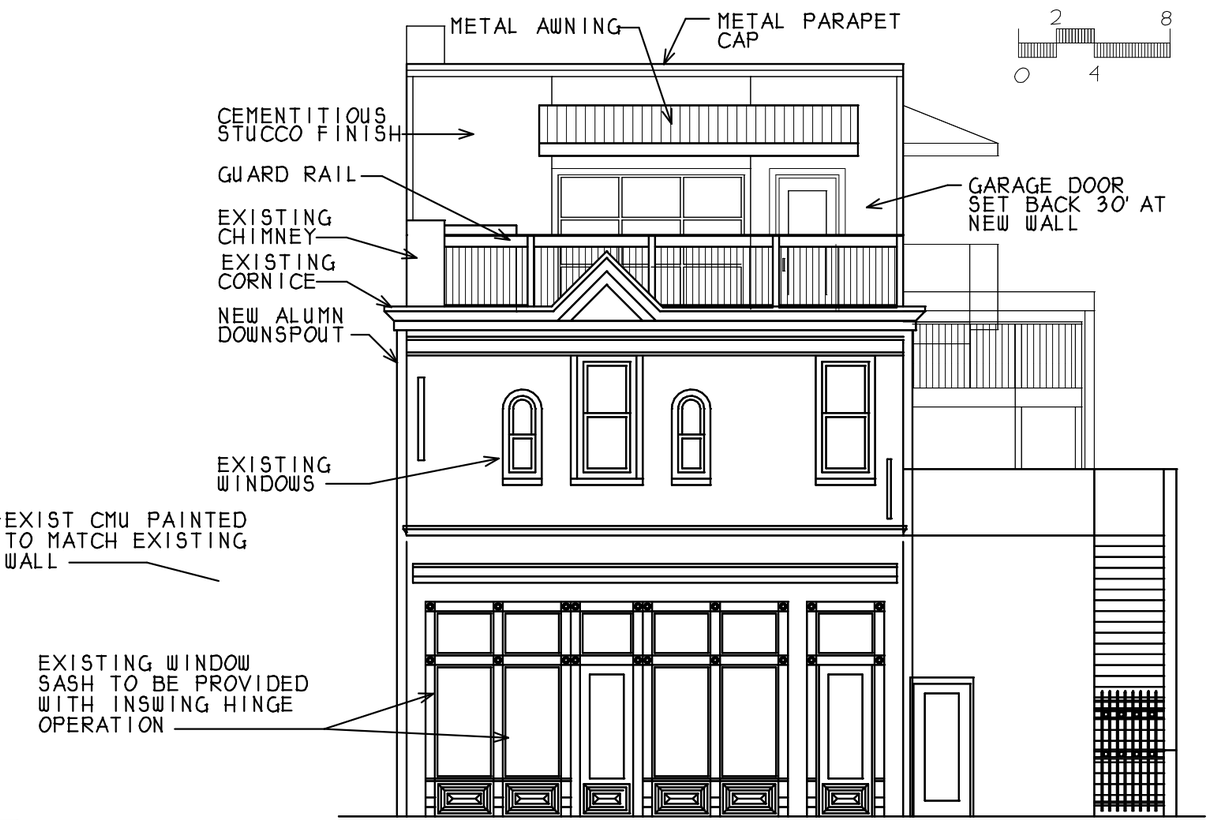
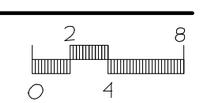


REAR ELEVATION





FRONT ELEVATION



SWINGING DOOR SALOON

3RD FLOOR AND ROOF DECK ADDITION

111 4TH AVE S, NASHVILLE, TN 37201

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

REV 10/4/18

DATE: 9/28/18

HISTORICAL COMMISSION PERMIT 2018063543
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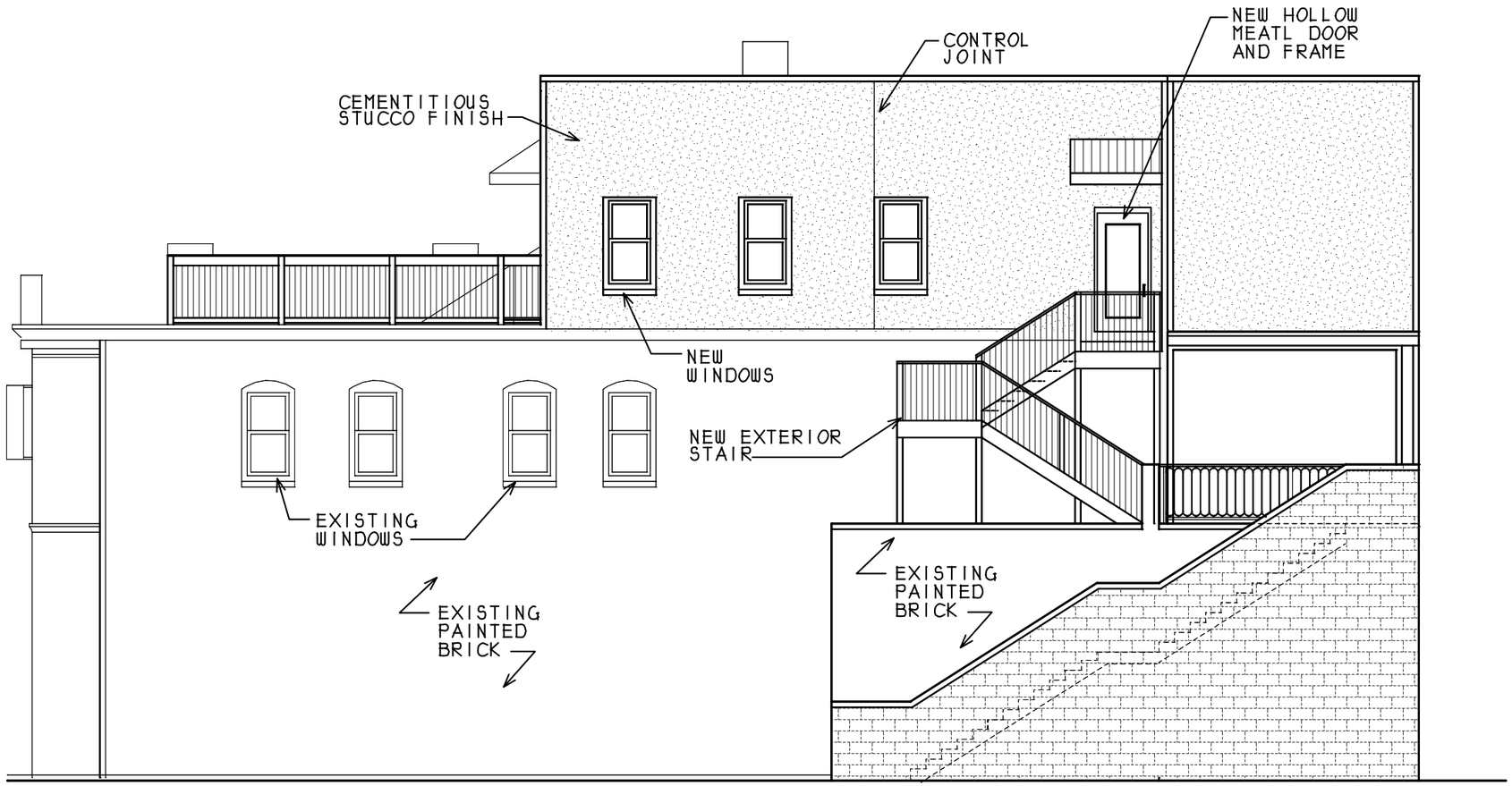

NORTH ELEVATION

2 8
0 4

SWINGING DOOR SALOON
3RD FLOOR AND ROOF DECK ADDITION
111 4TH AVE S, NASHVILLE, TN 37201

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

REV 10/4/18

DATE: 9/28/18

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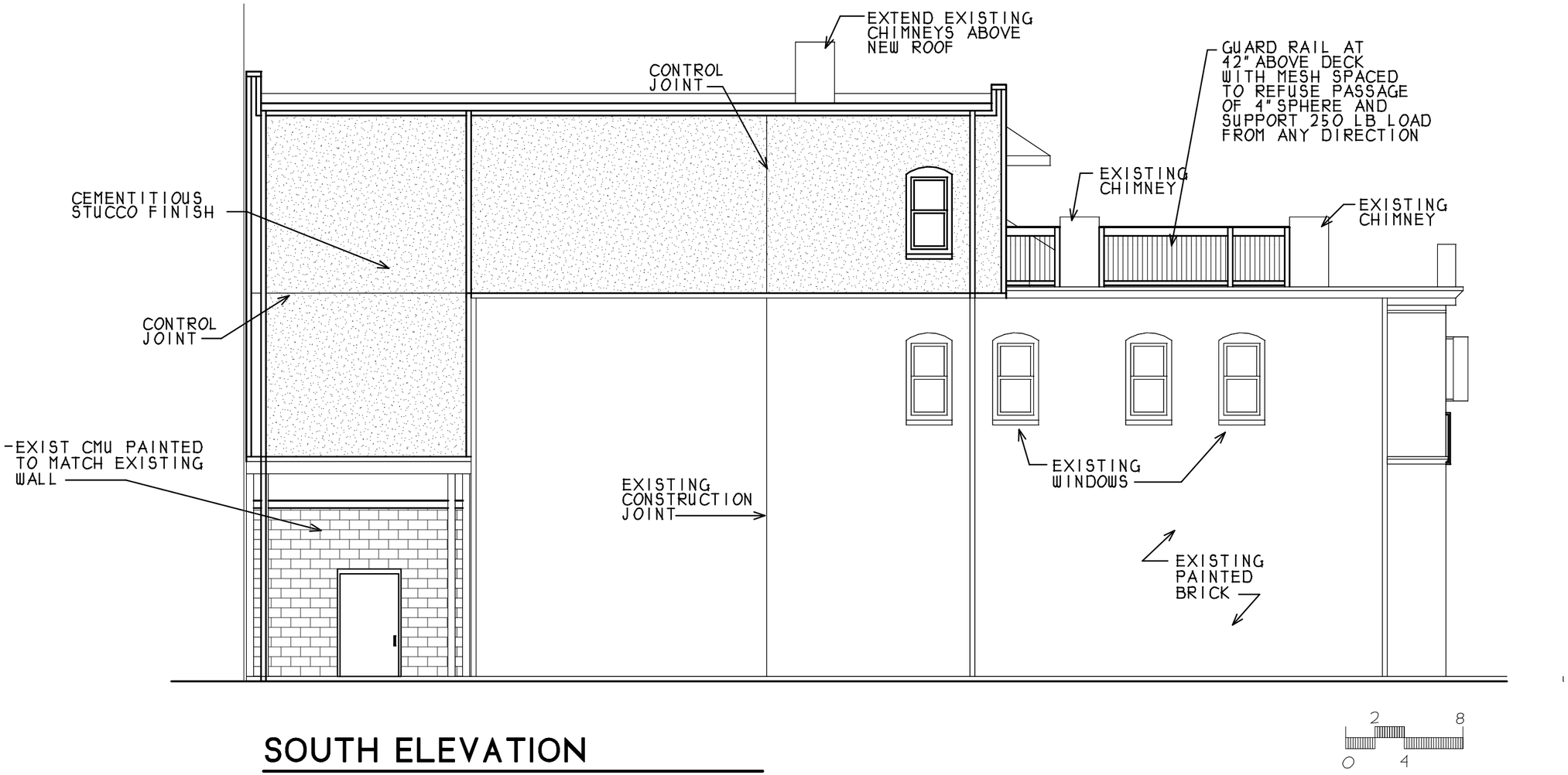

SOUTH ELEVATION

SWINGING DOOR SALOON
3RD FLOOR AND ROOF DECK ADDITION
111 4TH AVE S, NASHVILLE, TN 37201

JOHN F. WERNE III
ARCHITECT
1020 OWEN COURT, ASHLAND CITY, TENNESSEE 37015 615-792-3966

REV 10/4/18

DATE: 9/28/18

E-FILED
4/16/2018 8:27 AM
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

Attachment C

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

SWINGIN' DOORS SALOON, INC.,	)	
	)	
Petitioner,	)	
	)	
VS.	)	**NO. 17-543-III**
	)	
METROPOLITAN HISTORIC ZONING COMMISSION,	)	
	)	
Respondent.	)	

MEMORANDUM AND ORDER REVERSING DENIAL OF PRESERVATION PERMIT

This matter is a Petition for Writ of Certiorari filed pursuant to Tennessee Code Annotated sections 27-8-102 and 104 by Swingin' Doors Saloon, LLC. It operates a restaurant and bar on Fourth Avenue South located in the Broadway historic district of lower Broad, which includes the Ryman Auditorium and the "honky tonk" area down to the riverfront.

The Petitioner challenges the May 17, 2017 denial of the Respondent Metropolitan Historic Zoning Commission ("MHZC") to remove a hipped roof and chimneys on the Petitioner's existing two-story restaurant and bar for construction of a third-floor rooftop addition.

As provided in Tennessee Code Annotated section 27-9-111,[1] on February 5, 2018, a *de novo* hearing was conducted in this Court to consider evidence in conjunction with the record previously developed in the proceedings before MHZC. The *de novo* evidence consisted of the testimony of Architect, James Thompson, with specialization and expertise in the field of historic preservation, whose testimony was presented on behalf of the Petitioner, and the testimony of Sean Alexander, a 10-year staff member as a Historic Preservationist 1 with MHZC.

After considering the evidence from the February 5, 2018 *de novo* hearing before this Court and the evidence of record from the Commission proceedings, the Court finds that the decision of MHZC denying issuance of the Preservation Permit is unsupported by material evidence and is arbitrary, and is reversed.

The findings of fact, conclusions of law, and orders for this decision are provided below.

Background Facts

The building in issue is located at 111 4th Avenue South, between Merchants and the Hilton Hotel. The present building is a two-story structure built before 1897, originally used as a store. It currently serves as a restaurant/bar.

[1] "The hearing shall be on the proof introduced before the board or commission contained in the transcript and upon such other evidence as either party may desire to introduce." TENN. CODE ANN. § 27-9-111(b).

The building is located within the Broadway Historic District, which requires that construction, alteration, repair, rehabilitation, relocation or demolition of any building, structure, or other improvement situated within must be approved by MHZC. TENN. CODE ANN. § 13-7-407.

The process for obtaining MHZC approval is by applying for a Preservation Permit prior to the work being done. TENN. CODE ANN. § 13-7-407.

On March 21, 2017, Petitioner filed its application for a Preservation Permit containing the following description of work.

> DESCRIPTION OF WORK: Rooftop addition (3rd floor) including bar area, restrooms, and an exterior roof deck. Removal of existing chimneys and hipped roof. Addition of a stair to the side of the building (over existing non-contributing construction) to serve as a second emergency exit from the 3rd floor. New stair is required to be enclosed by building and fire codes because it is less than 10 feet from the property line.

On April 19, 2017, MHZC Staff recommended disapproval of the application, finding that the proposal did not meet the design guidelines for rehabilitation, additions or demolition.

> Construction of the addition and deck would require the demolition of the original hipped roof and four chimneys. The hipped roof on this building is a rare architectural feature in the in the (sic) Broadway Historic District as the majority of buildings have flats (sic) roofs. Staff finds that the removal of the roof and all the chimneys is not appropriate under section V.1 [of] the design guidelines for the Historic Preservation Zoning Overlay. The removal also does not meet section III.H.3 four (sic) additions which states that the "additions should not obscure or contribute to the loss of historic character-defining features or materials" and section II.L.1 which "historic roofs, chimneys, and related elements should be retained."

The hearing before the Planning Commission occurred on May 17, 2017. The record shows that during the hearing the Staff and Commission focused on removal of the hipped roof as the noncompliant part of the renovation. Reference to the removal of the four chimneys was only in connection with the roof, and the Staff did not address any of its recommendations as to removal of chimneys.

At the hearing the Petitioner presented evidence that the hipped roof described in the Staff Report was not visible from a normal street view. The Petitioner demonstrated that numerous of the photographs in the Staff Report show that the hipped roof is not visible from the street view, including the one historic photograph of the building that was included in the Staff Report. Also there was no proof presented to the Commission that the roof was, in fact, historic. The Petitioner's position was that the roof did not contribute in any way to the architectural character and historic importance of the district.

In a letter dated May 18, 2017, the Commission provided formal notice of its decision to disapprove Petitioner's application, "At the May 2017 Metro Historic Zoning Commission, the Commission voted to disapprove your proposal for new construction-additions at 111 4th Avenue South."

On May 31, 2017, the Petitioner filed the above captioned matter seeking reversal of MHZC's decision to deny the Permit.

Applicable Law

Tennessee Code Annotated section 13-7-409 provides that appeal from a decision of the Historic Zoning Commission is by statutory certiorari.

> Appeals – Anyone who may be aggrieved by any final order or judgment of the historic zoning commission or regional historic zoning commission may have such order or judgment reviewed by the courts by the procedure of statutory certiorari, as provided in title 27, chapter 8.

Review by statutory certiorari is *de novo* such that, as in this case, testimony may be added to the administrative record. *See Boyce v. Williams*, 389 S.W.2d 272, 276 (Tenn. 1965) ("The statutory writ of certiorari is authorized, in lieu of appeal, to correct errors of fact and law committed by an inferior tribunal. The review is *de novo*.").

Grounds for reversal of the Commission's decision is if the decision is illegal, in excess of the Commission's jurisdiction, or arbitrary, capricious, unreasonable, or an abuse of discretion. *See McCallen v. City of Memphis*, 786 S.W.2d 633, 640-41 (Tenn. 1990). An "abuse of discretion means action that is in opposition to the intent and policy of the statute and of the ordinance adopted conformably to its provisions, as applied to the facts and circumstances of the case." *Id*. at 641 (quoting 8A E. McQuillin, *The Law of Municipal Corporations*, § 25.310, at 562 (3d ed. 1986)). Illegal, arbitrary or fraudulent actions include: "(1) the failure to follow the minimum standards of due process; (2) the misrepresentation or misapplication of legal standards; (3) basing a decision on ulterior motives; and (4) violating applicable constitutional standards." *Harding Acad. v. Metro. Gov't of Nashville & Davidson Cnty*., 222 S.W.3d 359, 363 (Tenn. 2007). "The question

of whether or not there is any material evidence to support the [Commission's] decision is one of law, to be decided by the reviewing court upon an examination of the evidence introduced before the [Commission]." *Hemontolor v. Wilson County Bd. Of Zoning Appeals*, 883 S.W.2d 613, 617 (Tenn. Ct. App. 1994) (citing *Watts v. Civil Serv. Ed. for Columbia*, 606 S.W.2d 274, 277 (Tenn. 1980)).

The following portions of the Broadway Historic Preservation Zoning Overlay Design Guidelines ("Design Guidelines") govern "Rehabilitation" of roofs and chimneys.

> 1. Historic roofs, chimneys, and related elements should be retained.
>
> 2. Guidelines for brick and mortar should be followed for chimney maintenance.
>
> 3. Deteriorated or damaged roofs and chimneys should be repaired using historically appropriate materials and methods.
>
> 4. Guidelines for brick and mortar should be followed for chimney repair.
>
> 5. If replacement roofs or chimneys are necessary, replacements should be appropriate for the building's style and period.

According to the Design Guidelines, the following recommendations exist for "New Construction—Additions to Existing Buildings":

> 1. Additions to existing buildings should be compatible in scale, materials, and texture; additions should not be visually jarring or contrasting. Additions to historic buildings should be minimal. Additions normally not recommended on historic structures may be appropriate for non-historic buildings, if the addition will result in a building that is more compatible with the district.

2. Rooftop additions should not exceed one story (or 15') in height and should be set back a minimum of 30 feet from the main facade of the building and 20 feet from the secondary street if it is a corner building.

Rooftop railings and decking should sit back from each street facing wall by a minimum of 8'.

Railings should not be used to support additional elements such as speakers, lighting, plants or signage.

In locations where railings are visible from the street, the materials should minimize the impact of the railing.

Materials such as butt-joint glass or horizontal steel cable, may be appropriate.

3. Additions should not obscure or contribute to the loss of historic character-defining features or materials.

According to the Design Guidelines, the following recommendations exist for "Demolition":

1. Demolition is not appropriate if a building; or a major portion of a building contributes to the architectural or historical significance or character of the district.

2. Demolition is appropriate if a building or a major portion of a building does not contribute to the historical or architectural character and importance of the district.

3. Demolition is appropriate if a building or a major portion of a building has irretrievably lost its architectural and historical integrity and importance, and its removal will result in a more historically appropriate visual effect on the district.

4. Demolition is appropriate if the denial of the demolition will result in an economic hardship on the applicant as determined by the MHZC in accordance with section 17.120.190, as amended, of the historic zoning ordinance.

Findings of Fact and Conclusions of Law

Applying the foregoing law to this case, the Court finds that the decision of MHZC to deny issuance of the Permit is unsupported by substantial and material evidence and is arbitrary because the evidence establishes that the Project proposed by the Petitioner conforms to the Design Guidelines. In so finding, the Court accredits and gives weight to the testimony of Petitioner's expert James Thompson.

Reliance upon the testimony of James Thompson is well placed based upon his experience and qualifications. The proof established that James Thompson is a principal at Centric Architecture and chair of the Murfreesboro Historic Zoning Commission. He has 38 years of architectural experience with a focus in historical preservation. His qualifications are included in Trial Exhibit 8 and establish that he is aptly qualified to testify about historic preservation. He has received numerous awards for his preservation work. His extensive work as an architect on historic projects includes the Tennessee Supreme Court Building, the University of the South, four projects at Vanderbilt University, the Legislative Plaza and War Memorial Building interior renovations, the Trolley Barns restoration/renovation, and restoration of the Tennessee State Capitol including the cupola restoration and the house and senate chamber restoration. He is a licensed architect with a bachelor of architectural degree from the University of Tennessee. He is a board member of the Tennessee Historical

Commission's State Review, Belmont Mansion, Historic Rosemont Mansion, and the Nashville Area Chamber.

Based upon his expertise, Mr. Thompson stated in his report and testified at the court hearing that "Roofing in this period frequently had low-slope roofs which did not pay an important role as an architectural feature. Other architectural styles, such as Italianate or French Second Empire, had more prominent visible roofs that were celebrated. This building would not qualify as high-style design . . . ." Trial Exhibit 8.

Added to Mr. Thompson's opinion about the lack of period architectural significance of the roof design in this case is his testimony about the appropriate visibility standard which should be applied to determine if the roof's visibility qualifies it as a significant or defining architectural feature. Based upon his extensive experience in historical preservation, the Court accredits Mr. Thompson's testimony that the reasonable standard in this case to effectuate the intent of the Design Guidelines is not the view at a greater distance used by the Respondent but views consistent with the surrounding urban environment and density and with pedestrian views. This is a standard Mr. Thompson testified he has used in many cases and which should be used in this case, quoting from Mr. Thompson's report as follows.

> Professional Standard of Care for Viewing Roofs: The Broadway Historic Preservation Zoning Overlay design guidelines do not address how far away an individual may stand from the building to determine if a roof is visible. Given the urban environment and density, the standard of care in my industry is to view the front façade, or provide sight line studies, from the across the street right-of-way/property line to see if the roof is visible.

> Additionally, where this building's side elevations have either an alley and parking lot on either side, the standard of care for the side elevations in this particular case would be to view the hipped roof from the walls of the adjacent buildings. In each case the sides of the roof are not visible from the ground and stepping back a half lot or more to view the roof places a higher scrutiny or evaluation on it than other buildings common in the district that are taller and built immediately next to another.
>
> Existing Chimneys: There are four (4) chimneys on the building. The north elevation contains one masonry chimney and the south elevation has three. The front chimney on the south elevation is a painted sheet metal structure, or wrap, and we were unable to determine if there is a masonry chimney behind the sheet metal. In our opinion, the front two chimneys can be retained as recommended in Section II.L.1.
>
> Summary:
>
> The proposed project meets the intent of the Broadway Historic Preservation Zoning Overlay design guidelines, however the distance from which to determine if the roof is visible or a character defining element is not identified in the guidelines document. We feel our approach uses a reasonable professional standard of care and meets the guidelines' intent for which all other building in the district are judged and must comply.
>
> We therefore believe that the roof is not a major portion of the building, does not contribute to the architectural or historical significance or character of the district and the project meets the intent of the design guidelines using a reasonable professional standard of care.

Trial Exhibit 8.

The foregoing testimony is critical because the Design Guidelines prohibit demolition of "historic" roofs; provide that "additions should not . . . contribute to the loss of historic character-defining features"; and that demolition "is not appropriate if . . . a major portion of a building contributes to the architectural or historical significance or

character of the district" but is appropriate if a major portion of a building does not contribute to the historical or architectural character and importance of the district." As established by Mr. Thompson, the roof in issue was not designed in its period to serve an important architectural function, nor is the hipped roof visible from the standard, reasonable viewpoint for determining architectural significance in this case. Mr. Thompson's conclusion is that the roof is not a celebrated one, and it is not a character-defining element. The roof is a secondary element, and therefore is not a preservation element.

The testimony of Respondent's expert, its staffer Sean Alexander, does not equal, rebut or overcome the testimony of Mr. Thompson. While the facts are that Mr. Alexander has 11 years of experience in applying the Design Guidelines, Mr. Alexander does not have the architectural and preservation expertise to inform the key issue under the Design Guidelines of the appropriate vantage point to apply to assess the architectural significance of the hipped roof and whether the roof is a character-defining element. Mr. Alexander's testimony that vernacular roofs, even if not of a high style, can have architectural significance is particularly arbitrary when the low visibility of the roof in this case is taken into account.

The Court therefore concludes and finds that the greater weight and preponderance of the evidence is that the roof in issue

— is not of a high style architectural feature, and

— does not have sufficient visibility in the District to constitute a feature of architectural or historic significance which must be preserved under the Guidelines.

Lastly, the focus of the proceedings below was on the roof. Demolition of the four chimneys was not concentrated upon or particularly addressed except within the blanket denial of the Permit. Nevertheless, to avoid multiple proceedings on this matter, it is appropriate for this Court to address the chimneys, and proper to do so since evidence was presented to this Court by Mr. Thompson that two of the chimneys could be retained.

Additionally, Mr. Thompson's testimony concerning the chimneys is supported by late-filed Exhibit 12. That Exhibit was testified to and about in the *de novo* hearing this Court conducted. The Petitioner has filed a motion for late-filed Exhibit 12 to be admitted into evidence. It is ORDERED that the motion is granted and late-filed Exhibit 12 is admitted into evidence. In granting that motion, the Court finds that Exhibit 12 is relevant, constitutes permissible *de novo* evidence under Tennessee Code Annotated section 27-9-111(b), and provides further assistance and information to this Court in preparing a ruling to address all issues of the case in one proceeding.

It is therefore ORDERED that the decision of MHZC that the roof and four chimneys can not be demolished is reversed; the denial of the Petitioner's permit application by MHZC is reversed, and the Permit shall be issued; and the case is

remanded for issuance of the Permit with retaining two of the chimneys consistent with Trial Exhibit 12. Court costs are taxed to the Respondent.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

cc by U.S. Mail, email, or efiling as applicable to:
C. Tucker Herndon
Matthew J. DeVries
J. Brooks Fox
Catherine J. Pham

Rule 58 Certification

A copy of this order has been served upon all parties or their Counsel named above.

s/Phyllis Hobson April 16, 2018
Deputy Clerk
Chancery Court

Attachment D

METRO HISTORIC ZONING COMMISSION

Sunnyside at Sevier Park
3000 Granny White Pike
Nashville TN 37204
(615) 862-7970

06/27/2019

SWINGIN' DOORS SALOON, LLC
111 4th Ave S
NASHVILLE, TN 37201

Re: NOTICE OF ABATEMENT FOR: 111 4th AVE S 37201

Dear SWINGIN' DOORS SALOON, LLC:

You are hereby notified as owner, occupant, or agent in control of the above referenced property that work has occurred on your property without the appropriate permits. This property is located within the **Broadway HPZO**. The Metropolitan Historic Zoning Commission, must review any project within the district, prior to work being Initiated.

The work now at issue is: **1. Painted signage on side facades installed without permit (see attached images); 2. Staff has further observed that the previously-existing chimneys were removed during construction of the rooftop addition, in violation of Preservation Permit 2018-063543. The project was approved with the condition that the existing chimneys would remain.**

A copy of the full design guidelines document for your historic district and a Preservation Permit Application may be found at: https://www.nashville.gov/Historical-Commission/Services/Preservation-Permits.

In order to rectify this violation, you may either remove the portion of the work in violation, or you may submit an application for the project to be reviewed as-is by the Metro Historic Zoning Commission.

Please either correct the work within 30 days of this notice or submit an application no later than 4:30 p.m. on 07/27/2019.
In either case, please inform the MHZC staff within 15 days of your intended course of action.

As this is a violation of the Zoning Code, if the work is not corrected or we do not receive the application and supporting materials by the requested deadline, we will send the violation to the Metro Legal Department for enforcement in Environmental Court.

Please let us know if you have any questions and thank you for your help with resolving this issue.

Sincerely,
Paul Hoffman
Metro Historic Zoning Staff
(615) 862-7970
paul.hoffman@nashville.gov