



## Variance Application - Part I

### Project Data

Address of Subject Property 30 Dexter Avenue, 35213

Zoning Classification VST District

Name of Property Owner(s) Crestline Commercial Partners, LLC

Phone Number 368-2249 (John Bryant) Email c/o Len Shannon ls@shanwalt.com

Name of Surveyor Laurence D. Weyand

Phone Number 205-942-0086 Email info@weygandsurveyors.com

Name of Architect (if applicable) Scott P. Phillips, Boomhover Phillips Architecture

Phone Number 205-335-8187 Email sphillips@boomphillips.com

Property owner or representative agent must be present at hearing

Please **fill in only applicable** project information (relating directly to the variance request(s)):

	Zoning Code Requirement	Existing Development	Proposed Development
Lot Area (sf)			
Lot Width (ft)			
Front Setback (ft) <i>primary</i>			
Front Setback (ft) <i>secondary</i>			
Right Side Setback			
Left Side Setback			
Right Side Setback (ft): For non-conforming narrow lots in Res-B or Res-C: Less than 22' high → 22' high or greater →			
Left Side Setback (ft): For non-conforming narrow lots in Res-B or Res-C: Less than 22' high → 22' high or greater →			
Rear Setback (ft)			
Lot Coverage (%)			
Building Height (ft)			
Other			
Other			

**MOUNTAIN BROOK BOARD OF ZONING ADJUSTMENT  
56 CHURCH STREET  
MOUNTAIN BROOK, ALABAMA**

**NOTICE TO OWNERS OF ADJACENT PROPERTY**

A request for an appeal from the decision of the zoning officer as to the uses permitted in the Vine Street Transitional District, has been filed by Crestline Commercial Partners, LLC. In the decision being appealed, the zoning officer found that a proposed urgent care medical care facility did not constitute a “professional office” use under the City’s zoning ordinance and was therefore not permitted in the Vine Street Transitional District.

The appeal requests a finding by the Board of Zoning Adjustment that an urgent care medical facility is, by definition, a “professional office,” and that, therefore, the establishment of an urgent care medical facility is permitted as a matter of right on any property zoned Vine Street Transitional District, subject to the development regulations set forth in Section XXXII of the Municipal Code of Mountain Brook. At the meeting the following appeal will thus be heard:

**A-15-18:** Crestline Commercial Partners, LLC, requests an appeal from the decision of the zoning officer as to the permitted uses in the Vine Street Transitional District with respect to urgent care and professional office uses.  
**- 30 Dexter Avenue**

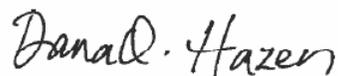
The public hearing with respect to case A-15-18 will be held by the Board of Zoning Adjustment on **MONDAY, November 16, 2015 at 5:00 p.m.** in Mountain Brook City Hall, at which time you may appear and be heard, if you so desire, either in person or by agent or by attorney.

**The application and related material are available for inspection during regular business hours at City Hall, 56 Church Street or by viewing:**

[www.mtnbrook.org](http://www.mtnbrook.org)

- Government
- Other Meeting Agendas
- Board of Zoning Adjustment
- November 16, 2015 *(to view survey select link associated with the case number on the agenda)*

Sincerely,



Dana O. Hazen, MPA, AICP  
Director of Planning, Building & Sustainability  
(205) 802-3821  
[hazend@mtnbrook.org](mailto:hazend@mtnbrook.org)

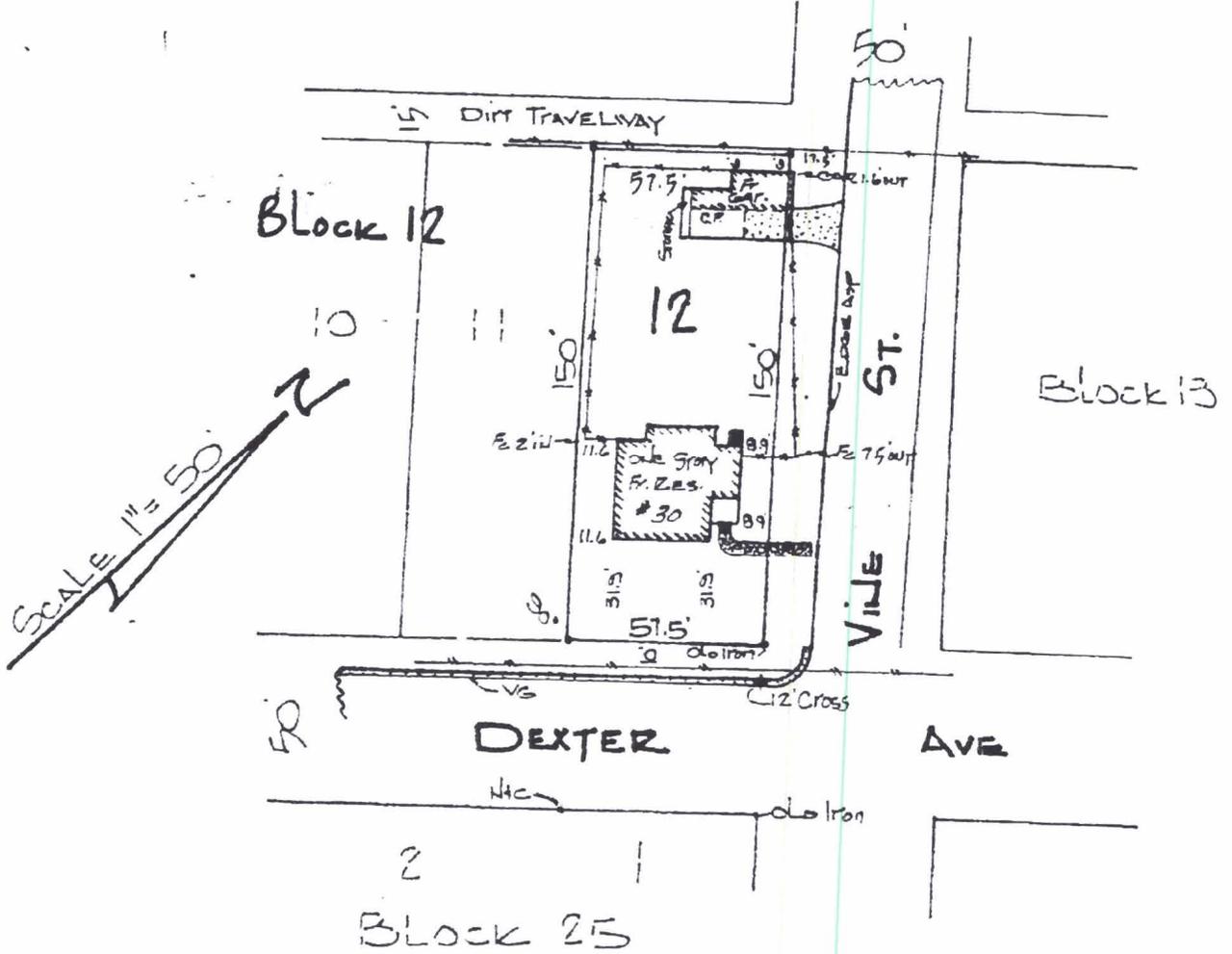
# A-15-18 (Zoning)



**Zoning Legend**

- Clustered Residential
- Community Shopping
- Estate Residence District
- Local Business District
- MXD
- Office Park District
- Professional District
- PUD
- Residence A District
- Residence B District
- Residence C District
- Residence D District
- Residence E District
- Residence F District
- Residence G District
- Recreation District
- RID
- Rec-2





STATE OF ALABAMA  
JEFFERSON COUNTY

I, Laurence D. Weygand, a registered Engineer, Land Surveyor, certify that I have surveyed Lot...12...Block 12...CRESTLINE HEIGHTS...as recorded in Map Volume...7... Page...10...in the office of the Judge of Probate...JEFFERSON...County, Alabama; that there are no rights-of-way, easements, or joint driveways over or across said land visible on the surface except as shown; that there are no electric or telephone wires (excluding wires which serve premises only) or structures or supports therefor, including poles, anchors and guy wires, on or over said premises except as shown; that I have consulted the Federal Insurance Administration "Flood Hazard Boundary Map" and found that this property is not located in "a special flood hazard area", that there are no encroachments on said lot except as shown; that improvements are located as shown above; and that the correct address is as follows: 30 DEXTER AVE. according to my survey of: March 31, 1988 942-0050

Clearge

Survey invalid if not sealed in red.

*Laurence D. Weygand*

Laurence D. Weygand, Reg. No. 10 373 phone: 871-7620  
1700 So. 29th Court Suite 120 Birmingham, AL 35209

Order No. 56331

**CAMPBELL | GUIN**  
WILLIAMS, GUY & GIDIERE, LLC

Andrew P. Campbell  
Andy.campbell@campbellguin.com  
205.224.0751  
505 20<sup>th</sup> Street North  
16<sup>th</sup> Floor  
FINANCIAL CENTER  
Birmingham, AL 35203

September 30, 2015

**Via Email & U.S. Mail**

Mr. Whit Colvin  
Bishop, Colvin, Johnson & Kent, LLC  
1910 1<sup>st</sup> Avenue North  
Birmingham, AL 35203  
[wcolvin@bishopcolvin.com](mailto:wcolvin@bishopcolvin.com)

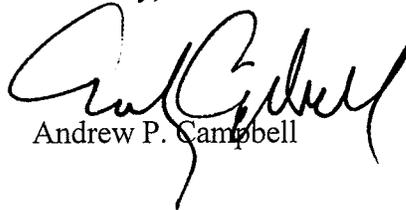
RE: Village Care and Wellness

Dear Whit:

This letter is written to request formally that Dana Hazen, the City Planner Officer, give my client her position on whether the planned location of the above-described Physician's office at 300 Dexter Avenue is a permissible use under the applicable zoning regulation. As we have discussed on several occasions, we believe the planned use as a Physician's office fully complies with the appropriate uses for the VST District.

However, prior to closing on this property we need a firm decision from the City Planner officer as to whether she will accept this as a permissible use pursuant to Section 129-411 of the Ordinance. If she takes the position that it is not a permissible use, we will appeal under Section 129-453 to the BZA. As you are Counsel for the city I am directing this letter to you because of your active involvement. I would appreciate your client's review and prompt response so that my clients may proceed accordingly.

Sincerely,



Andrew P. Campbell

APC/jmo

cc: Dr. R. Lee England, IV



**Dana O. Hazen, AICP**  
**Director of Planning, Building**  
**& Sustainability**  
56 Church St  
Mountain Brook, Alabama 35213-0009  
Telephone: 205/802-3805  
hazend@mtnbrook.org

October 12, 2015

Andrew Campbell  
Campbell, Guin, Williams, Guy & Gidiere LLC  
505 20th St N, Suite 1600  
Birmingham, AL 35203

RE: 30 Dexter Avenue

Dear Mr. Campbell,

Thank you for your letter of September 30, 2015 requesting a formal interpretation of whether or not a walk-in medical clinic is a permissible use under the zoning regulations for the Vine Street Transitional District. As you know, the Vine Street Transitional District includes as a permissible use "Professional Office."

Your client is an entity that owns and operates walk-in medical clinics and the representative for that entity, at least for purposes of the present request, is Dr. Lee England, a local resident. Dr. England has described the nature of the proposed business in detail. The proposal is to establish a walk-in urgent care medical clinic at the proposed site. Although Dr. England is a physician, the clinic is not proposed to be his office or a permanent office for any particular physician. It will instead be staffed by independent contractors (or employees) who may or may not be regularly assigned there and it is not any particular "doctor's office." The walk in clinic is proposed to be open to the general public seven days per week with extended hours from 8:00 a.m. to 8:00 p.m. For the business model to work, the necessary minimum patient load per day was described to be at least 30-50 patients per day. Volume was explained to be a major driver of profitability. Service will be provided on a "first come-first served" basis without appointments. The clinic will provide emergency care in addition to general medical practice. Unlike a traditional medical practice where "customers" are limited by appointment and physician availability, in this context, the limitations are instead based on available space to provide service or to queue customers, parking and demand. While the zoning of the subject property allows "Professional Office" as a use, it is my interpretation that the proposed walk-in clinic does not constitute a "Professional Office" use as it is contemplated in this district, given the nature of the use described above.

The Vine Street Transitional District is one that was created by the City, in cooperation with the property owners of the single family dwellings in the immediate vicinity of the subject property, to allow "soft" uses that would serve as a transition from the Local Business District of Crestline Village to the single family district on the northeast side of Vine Street. Professional or business offices anticipated for this zoning district were those that provide employment and space for the administrative affairs of business, but that would not generally involve frequent or intensive interactions by clients or general consumers on a daily basis. Uses with high patronage (such as restaurants, banks, and salons) were purposely and mindfully excluded from this district so as to protect the residential character of the neighborhood on the northeast side of Vine Street.

It is my conclusion that the proposed use, due to the operational characteristics described to me by Dr. England, may not be considered a professional office. It is a contemporary variation of a traditional physician's office (which has historically been a 9:00-5:00 Monday-Friday type of use) and is not a use currently anticipated or allowed by the City of Mountain Brook's code in any district. It is a use that may warrant further study by the city for inclusion in the list of permitted uses in the Local Business District, but certainly was not anticipated by the City Council, Planning Commission or neighborhood representatives who contrived the Vine Street Transitional District as one that would permit soft uses that would provide a good "buffer" for the protection of the single family neighborhood along Vine Street.

Sincerely,

Dana O. Hazen

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## ***Petition Summary***

Request to rezone property at 30 Dexter Avenue from Residence-D District to Vine Street Transitional (VST) District.

## ***Background***

The VST District ordinance was adopted by the City Council in November 2013 as a potential zoning district choice for eligible properties along the west side of Vine Street. It is intended to provide the opportunity for compact, appropriate-scaled buildings consisting of either detached or attached (townhouse) single family dwellings, professional and business offices, or mix of commercial and residential uses, with offices on the ground level and residential above.

The district is intended to establish an effective transition from the Local Business District in Crestline Village to the residential neighborhoods on the perimeter of the Village. It is also intended to provide an opportunity for eligible properties to be developed with a building form and façade design that is transitionally compatible with the neighboring commercial and residential zoning districts.

*On December 1, 2014, the Planning Commission voted to recommend approval of this rezoning request.*

## ***Analysis***

The proposed use is office, with a one or two suite option. The plans are in substantial conformance with the VST District development regulations, and the building scale and materials have been developed with “transitional” characteristics. Proposed setbacks are still under staff review and may undergo some revision. New on-street parking and sidewalks along Vine Street and Dexter Avenue are proposed in conjunction with this development. Seventeen parking spaces are proposed on the street (and will be credited to this project’s minimum 21 space parking requirement) and four spaces will be provided on-site, taking access from the alley.

## ***VDR***

The applicant has initiated the Village Design Review process and as received initial feedback from the VDR, all of which was positive. Final review and approval by VDR is anticipated subsequent to zoning approval.

## ***Binding Effect***

The VST ordinance (similar to a PUD) requires that the master plan submitted for zoning approval shall be an integral and essential element of any zoning approval and shall be binding on the property and any subsequent development thereof. Therefore, the submitted plan will become part of any rezoning approval.

***Subject Property and Surrounding Land Uses***

The subject property contains a single family dwelling, with the same across Vine Street (zoned Res-C) and Dexter Avenue (zoned Res-D), and commercial uses to the west and north (zoned LB).

***Affected Regulation***

Article XXXI, Village Overlay Standards; Sections 129-554 through 129-557

***Appends***

LOCATION: 30 Dexter Avenue

EXISTING ZONING DISTRICT: Res-D

PROPOSED ZONING DISTRICT: Vine Street Transitional (VST)

OWNER: Crestline Commercial Partners, LLC



August 28, 2015

Dr. R. Lee England, IV  
Phone: (205) 249-5593

Re: Zoning & Permitted Use for the Vine Street Transitional District  
Proposed Village Urgent Care Center  
30 Dexter Avenue, Mountain Brook, AL 35213  
BPA Project #15022

Dr. England,

As you have requested, I have again researched the City of Mountain Brook Zoning Code with regards to the above listed property, and my opinion remains that the existing regulations, as written and approved for the Vine Street Transitional (VST) District, allow Professional and Business Offices specifically, and this project should be classified as such.

I do not see anything in the Zoning Code for the VST District that would indicate otherwise or restrict Professional Medical Office use. This exact parcel was specifically approved for use as "Office" in Zoning Ordinance #1931, adopted February 23, 2015 (recommended for approval by the Planning Commission on December 1, 2014).

However, as you know, City Planner Dana Hazen has indicated she would reject the project outright, and considers your project something other than Professional Office use. This appears to be in conflict with the ordinance and to her email to Len Shannon (of Shannon Waltchack) on July 9, 2015 verifying that a professional medical office use is allowed. On August 3<sup>rd</sup>, George Elliott (Shannon Waltchack) also emailed Dana Hazen to confirm the use, and at this point mentioned that the type of medical office would be urgent care. Dana Hazen did not respond to George's email. In my telephone conversation with Dana Hazen on August 19<sup>th</sup>, she stated that she had not replied to George because she was concerned about a "mini-hospital" and wanted to consult with the City Attorney regarding how she could deny this use. Also as you know, in our meeting with Dana Hazen on August 20, 2015, she confirmed that the Zoning Code does allow Medical Office use, but stated "this is not what we had in mind for this property", and again referred to the project as a "mini-hospital". She also indicated she will likely press for a revision to the VST District Ordinance to block such a use.

Dana Hazen's references to the project as a "mini-hospital" is not accurate based on the Building Code's definitions of a Hospital vs. Business. The City of Mountain Brook has adopted and is regulated by the International Building Code (IBC). Your proposed project is specifically classified under IBC Section 304.1 as Business Occupancy, which lists: "*Professional services (architect, attorneys, dentists, physicians, engineers, etc.)*" for this classification, including outpatient clinics. A Hospital is defined by the International Building Code Section 308.4 as Institutional Occupancy which specifically states is a facility "*used for*



*medical care on a 24-hour basis for more than five persons who are incapable of self-preservation". Urgent Care is a Doctor's Professional Office, and not a mini-hospital in any regards. You also clarified that Urgent Care is confirmed as a Physician's Professional Office under Federal guidelines, but this was disregarded as her response was to encourage us to seek direct approval from the Planning Commission as she intended to reject the project outright, stating that she had never anticipated this type of project for this site.*

Your project meets the stated intent of the VST (emphasis added):

Sec. 129-571. - Intent and purpose.

**The Vine Street Transitional (VST) District is intended to provide compact, appropriate-scaled buildings along the west side of Vine Street in Crestline Village for detached single-family, attached single-family (townhouse dwelling), professional and business offices and mixed use (residential above office). The district may be applied to sites which can establish an effective transition from the Local Business District in Crestline Village to adjacent residential neighborhoods and the Crestline Elementary School site. The district is intended to provide a high degree of pedestrian connectivity within Crestline Village to increase accessibility and patronage of businesses, and to enhance the pedestrian character of Crestline Village.**

Regarding the building design, Dana Hazen indicated that any slight variation from the Conceptual Design package (the Master Development Plan) would force us to return before the Planning Commission as if it were a brand-new application and would be an opportunity to deny this project. The written text of the VST District Ordinance does not support this as the intent. While the Master Development Plan is binding, there is an allowance for minor modifications needed that are likely to occur as a project moves from the Conceptual state to Final implementation (emphasis added):

Sec. 129-577. - Intent and purpose.

**(d) Binding effect of approved master development plan. The master development plan that is required to be submitted with an application for zoning or rezoning shall be deemed an integral and essential element of any zoning or rezoning approved hereunder; and the plan, if and as modified and approved by the city council, shall be binding on the property and any subsequent development thereof unless and until the property is subsequently rezoned or modified in the manner prescribed by law; provided, however, that in order to accommodate such minor adjustments to the approved master development plan as may be required by engineering or other circumstances unforeseen at the time of its approval by the city council, the city's zoning officer is authorized to approve alterations to the master development plan which, in his [her] opinion, are incidental or minor in scope, and which maintain the intent and character of the approved master development plan.**



While the approval of any modification rests with the zoning officer, the written text does not indicate that the purpose is to block a project for minor changes. If Dana Hazen's opinion of the project's classification can be addressed, minor changes to the design should be allowed as long as the intent and character of the approved Master Development Plan is maintained.

Please feel free to contact me with questions or with anything I can do to assist in trying to move the project forward. You have my direct number at 205-335-8187 or by email at [sphillips@boomphillips.com](mailto:sphillips@boomphillips.com).

Respectfully,

A handwritten signature in black ink that reads 'Scott Phillips'.

Scott P. Phillips, Architect  
Boomhover Phillips Architecture, LLC

cc: George Elliott, Shannon Waltchack

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## Rezoning Application

Sec. 129-433. - Basic requirements for application for rezoning.

An application for any change in the zoning classification of a parcel must include the following items and information:

(1) Present zoning classification of the parcel; **R-D**

(2) Zoning classification to which the applicant wishes to have the property changed; **VST District**

(3) The address, real estate tax parcel identification number and legal description of the parcel, and the size of the parcel in square feet and acreage;

**30 Dexter Avenue, 35213**

- **Parcel ID: 28-04-2-012-007**
- **Legal Lot 12, Blk 12 Crestline Heights**
- **Size: 8,625 SF**

(4) Name and address of the owner of the parcel;

**Crestline Commercial Partners, LLC**  
**Attn: John Bryant**  
**120 18th Street South, Suite 101**  
**Birmingham, AL 35233**

(5) Name and address of the applicant, if he is someone other than the owner;

**Crestline Commercial Partners, LLC**  
**Attn: John Bryant**  
**120 18th Street South, Suite 101**  
**Birmingham, AL 35233**

(6) If the application is made by anyone other than all of the owners of the parcel, written authorization from the other owners with respect to the filing of the application;

**Crestline Commercial Partners, LLC**  
**Attn: John Bryant**  
**120 18th Street South, Suite 101**  
**Birmingham, AL 35233**

(7) Name and address of any party who holds a mortgage on the parcel, or any part thereof;

**Servis First Bank**  
**850 Shades Creek Parkway, Suite 200**  
**Birmingham, Alabama 35209**

(8) Statement of how the parcel is to be used if the rezoning application is granted;  
**Parcel will be used to construct an office building for commercial use**

Master Devel. Plan (VST) 1941  
 requirements:

**A. Written documentation, including:**

**(a) A legal description and confirmation of current zoning of the subject property.**

Legal Description: Lot 12, Blk 12, Crestline Heights as recorded in MV 7, page 16, as recorded in the office of the probate judge, Jefferson County; current zoning is Residence-D.

**(b) The names and addresses of the applicant and owner of the property.**

**i. Owner of Subject Property:**

Crestline Commercial Partners, LLC  
 120 18<sup>th</sup> Street South, suite 101  
 Birmingham, Al 35233

**ii. Members: John Bryant, Kevin Gann, Seed Corn, LLC  
 Managing Member: Len Shannon**

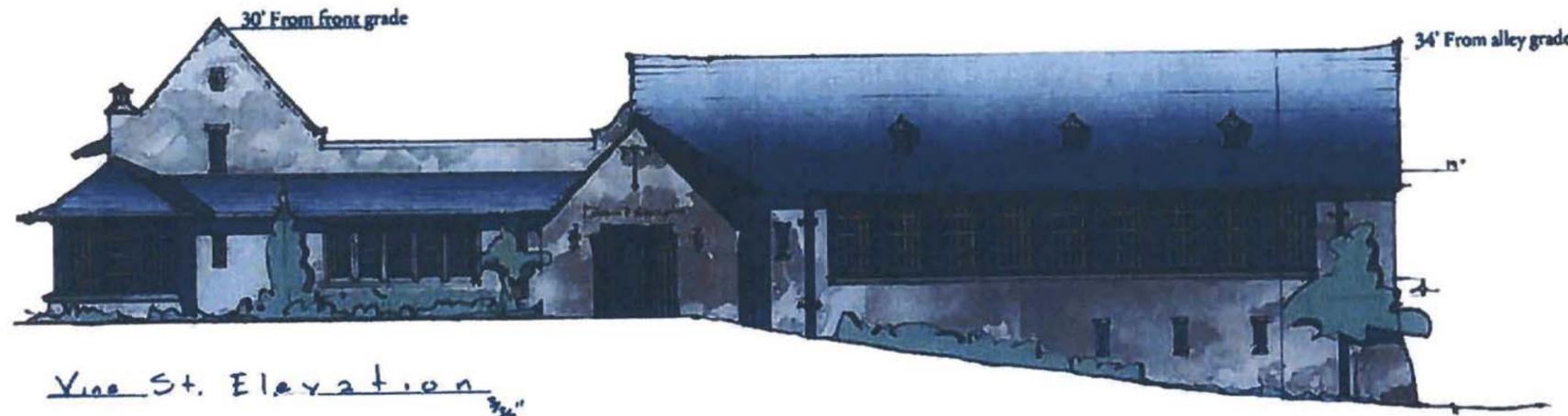
**(a) A statement of development objectives to be achieved through the particular approach proposed by the applicant, including a detailed description of the character of the proposed development and its relationship to surrounding areas.**

Applicant intends to build an office building (option for one-two suites). The exterior design of which is to be compatible and harmonious with the adjoining residential neighborhood. Roof lines are residential in nature and building materials are the same as used in neighboring houses. The height, scale and massing of the proposed building will be compatible with the adjoining residential neighborhood, and will serve as a transition of building form between that of the heavy commercial to the west and single family neighborhood to the east



Dexter Ave

- Painted brick exterior
- Clad wood windows with aluminum SDL
- Roofs Facing Streets - Architectural Shingle



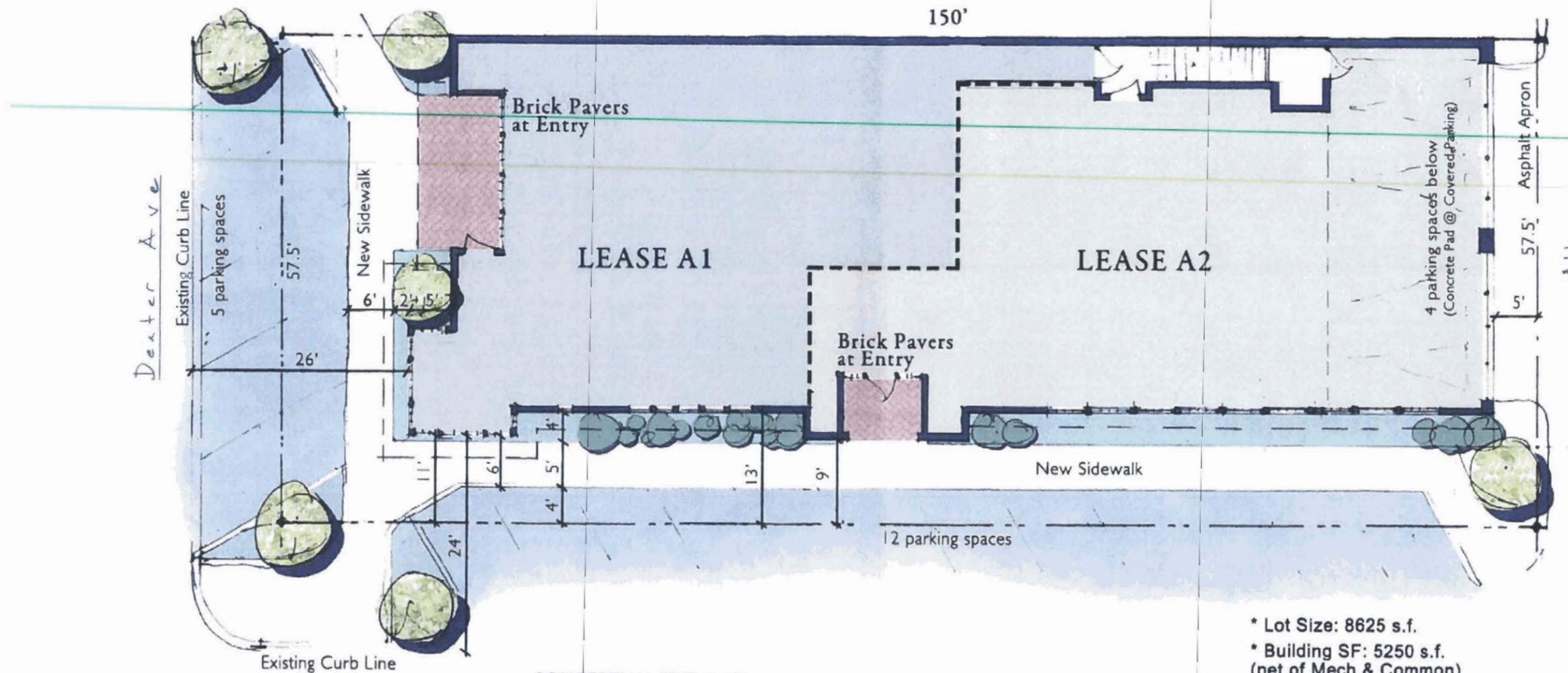
Vine St. Elevation

30 DEXTER AVENUE

DUNGAN NEQUETTE ARCHITECTS

1941

A-15-18



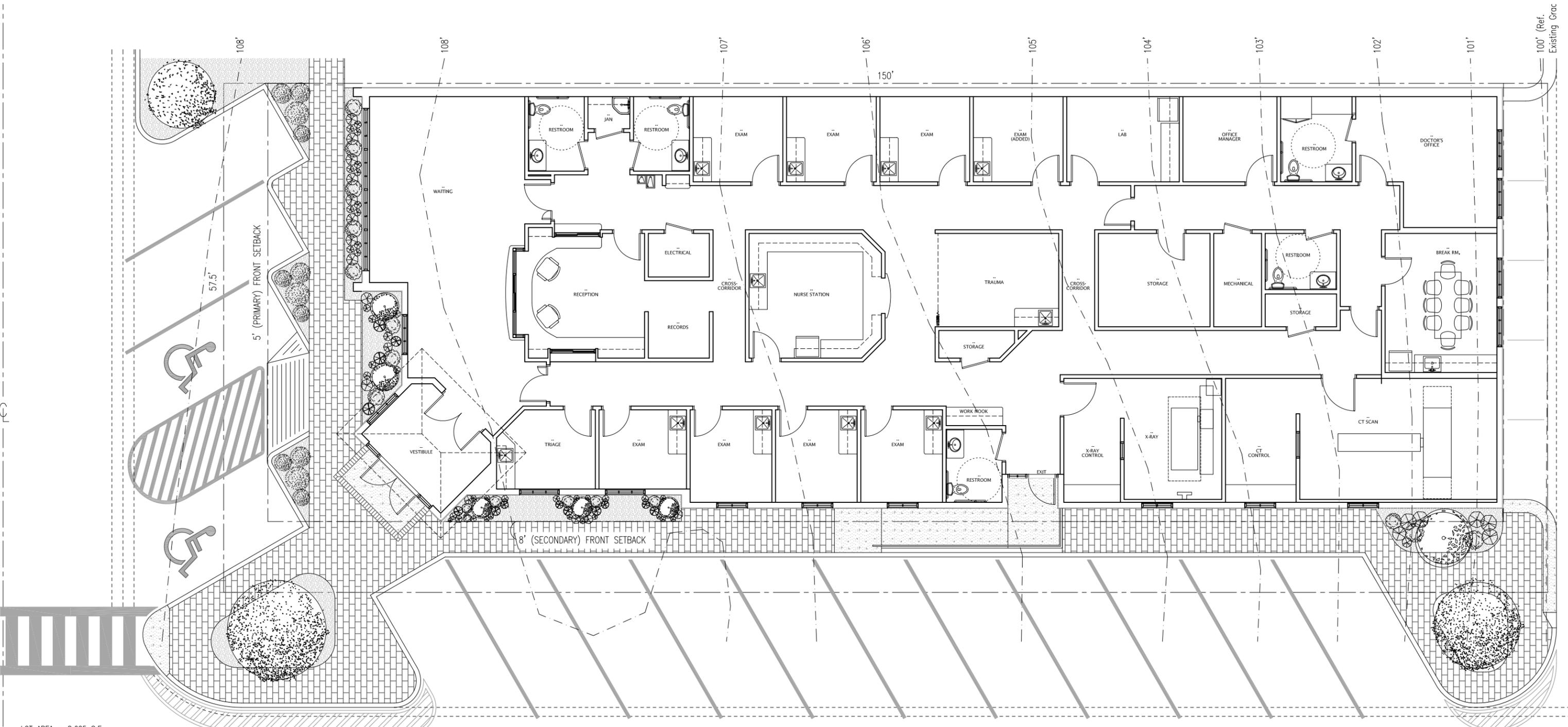
CONCEPTUAL SITE PLAN  
SCALE: 3/16" = 1'-0"



- \* Lot Size: 8625 s.f.
- \* Building SF: 5250 s.f. (net of Mech & Common)
- \* Parking Required: 21 spaces
- \* Parking Provided: 21 spaces
- \* Lot Coverage: 65%
- \* Open Green Space: 8%
- \* Building Height: 30'
- \* Parking - 9'x19' Min.

30 DEXTER AVENUE

DUNGAN NEQUETTE ARCHITECTS



LOT AREA = 8,625 S.F.  
 80% MAX BUILDABLE AREA =  
 6,900 S.F. FOOTPRINT, MAX.  
 (6,116 S.F. SHOWN)



**1** DRAWING TITLE  
 SCALE: 3/32" = 1'-0"



100' (Ref. Existing Grac

# A-15-18 (Aerial)

